

PUBLIC TRUST IN PRIVATE HANDS?: THE PUBLIC TRUST DOCTRINE IN PUBLIC-PRIVATE PARTNERSHIPS FOR WATER*

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ABSTRACT

Access to clean and safe water is a fundamental human right, yet billions of people still lack access to safe water and sanitation, worsened by climate change. Achieving universal access by 2030 requires significant investment in infrastructure, and in the Philippines, public-private partnerships (“PPPs”) have emerged as a potential solution with mixed reactions—some see them as privatization, while others highlight the benefits of efficiency and innovation. This Article explores how PPPs can operationalize the Public Trust Doctrine (“PTD”) in water governance, ensuring that private sector involvement aligns with the State’s duty to protect public access to water. It articulates a doctrinal framework that harmonizes the PTD’s environmental stewardship mandate, first introduced in *Maynilad v. DENR*, with the principles of PPPs. Further, the Article argues that PPPs can fulfill the PTD when structured correctly, with a focus on preserving public control, enforcing fiduciary duties, and ensuring strong governance.

KEYWORDS: public trust doctrine, public-private partnerships, contracts, water law

* Cite as Jan Aurel Nikolai M. Castro, *Public Trust In Private Hands?: The Public Trust Doctrine in Public-Private Partnerships for Water*, 99 PHIL. L.J.191, [page cited] (2026).

An earlier draft of this Article was awarded the inaugural Ocampo Manalo Valdez & Lim Law Firm Prize–Best Paper in Transportation and Public Utilities Law and the Roberto Sabido Memorial Prize Best Legal Research Paper Award for Supervised Legal Research (2025), University of the Philippines College of Law.

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The Author would like to thank his adviser, Dean Gwen Grecia-de Vera, for her guidance in Law 119 (Supervised Legal Research), and Associate Dean Paolo S. Tamase for his invaluable insights.

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I. INTRODUCTION

Access to clean and safe water has been recognized as a *human right* by the United Nations (UN) General Assembly¹ and is reflected in Sustainable Development Goal No. 6, which aims to “ensure availability and sustainable management of water and sanitation for all” by 2030.”²

Despite these commitments, access to clean water remains uneven. According to UNESCO’s *World Water Development Report 2023*, progress on all SDG No. 6 targets remains “off-track.” Approximately 2 billion people

¹ U.N. General Assembly, Resolution 64/292, The Human Right to Water and Sanitation, U.N. Doc. A/RES/64/292 (Aug. 3, 2010), at <https://docs.un.org/en/A/RES/64/292>.

² U.N. General Assembly, Resolution 70/1, *Transforming Our World: The 2030 Agenda for Sustainable Development*, U.N. Doc. A/RES/70/1 (Oct. 21, 2015), at <https://undocs.org/A/RES/70/1>.

lack access to safely managed drinking water services, while 3.6 billion do not have access to safely managed sanitation.³

In the Philippines, many areas are served by government-run water utilities, with local water districts covering the largest population across all water service providers.⁴ Persistent challenges—including underinvestment, political interference, and operational inefficiencies—continue to constrain service delivery, leading to issues such as unsustainable tariffs and a lack of cost recovery.⁵ Achieving universal access will require substantial infrastructure investment, estimated at 7 trillion dollars globally⁶ and at least 1.07 trillion pesos in the Philippines.⁷

In response, several water districts have entered into public-private partnerships (“PPPs”) to improve service delivery.⁸ These arrangements remain contested: critics characterize them as a form of privatization,⁹ while proponents emphasize their potential to improve efficiency and expand access.

In *Maynilad Water Services, Inc. v. Secretary of Environment and Natural Resources* (“*Maynilad v. DENR*”),¹⁰ the Philippine Supreme Court affirmed that water is a natural resource held in trust by the State for the benefit of the public. This landmark decision articulated the public trust doctrine (“PTD”)

³ U.N. Educ. Sci. & Cultural Org. (UNESCO), *The United Nations World Water Development Report 2023: Partnerships and Cooperation for Water; Facts, Figures and Action Examples*, at 21 (2023), at <https://unesdoc.unesco.org/ark:/48223/pf0000384657>.

⁴ See Lawrence G. Velasco et al., *The Philippine Local Government Water Sector* [hereinafter “Velasco et al., *Local Gov’t Water Sector*”] 9 (Phil. Inst. for Dev. Stud. (PIDS), Discussion Paper Series No. 2020-33, Dec. 2020).

⁵ Maria Victoria M. Evangelista, et. al, Policy Brief, *Quenching Policy Thirst: Reforming Water Governance in the Philippines*, 10 (Senate Econ. Planning Office (SEPO), Policy Brief PB-24-02, Apr. 2024).

⁶ U.N. Dep’t of Econ. & Soc. Aff., *Special Envoy Marsudi Discusses the Global Water Agenda in 2026 UN Water Conference Co-Host UAE*, UNITED NATIONS, Jan. 10, 2025, at <https://sdgs.un.org/news/special-envoy-marsudi-discusses-global-water-agenda-2026-un-water-conference-co-host-uae-57896>.

⁷ NAT’L ECON. DEV. AUTH. (NEDA), PHILIPPINE WATER SUPPLY AND SANITATION MASTER PLAN 2019–2030 [hereinafter “PWSSMP”] 114 (2021).

⁸ Iris Gonzales, *Conglomerates rush to get into lucrative water supply business*, PHILSTAR, Apr. 1, 2019, at <https://www.philstar.com/business/2019/04/01/1906161/conglomerates-rush-get-lucrative-water-supply-business>.

⁹ See Alyssa Nicole O. Tan, *Gov’t Urged to Ensure Access to Water via Public Ownership*, BUSINESSWORLD, Sept. 17, 2023, at <https://www.bworldonline.com/economy/2023/09/17/546083/govt-urged-to-ensure-access-to-water-via-public-ownership/>.

¹⁰ [Hereinafter “*Maynilad v. DENR*”], 858 Phil. 765 (2019).

for the first time, emphasizing that the State bears a dual responsibility: to prevent private ownership of natural resources and, at the same time, to guarantee public access to essential utilities, even when operational functions are delegated to private entities.¹¹ Private sector participation must therefore remain consistent with the State's duty to protect and manage water resources for the public.

While PPPs are often presented as a uniform solution, their institutional design varies and performance of current PPPs in the water sector is mixed. Differences in governance (whether operating as incorporated joint ventures or as unincorporated contracts) affect the State's ability to exercise oversight, enforce performance, and align private incentives with public obligations. This Article argues that the compatibility of PPPs with the PTD depends not on their form, but on whether they preserve public control, ensure accountability, and enable effective regulatory enforcement.

This Article examines how PPPs can operationalize the PTD in water governance. It analyzes PPPs from two perspectives: the role of the private sector in providing capital and technical expertise, and the State's capacity to fulfill its trustee obligations within PPPs.

Part II outlines the institutional framework of water governance and existing utility models. Part III discusses the development of the public trust doctrine, from Roman Law until its resurgence in the seminal article of Joseph Sax in 1970,¹² and its interpretation in Philippine law. Part IV applies the PTD framework to PPPs, and Part V offers concluding observations and recommendations.

II. MANAGING WATER FOR THE PUBLIC INTEREST

A. Water as a Public Resource

As of 2022, 2.2 billion people lack access to clean water and 4.2 billion people lack adequate sanitation, and their situation is worsened by

¹¹ *Id.* at 808–14.

¹² See Joseph Sax [hereinafter “Sax (1970)”], *The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention*, 68 MICH. L. REV. 471 (1970).

climate change.¹³ Although water is *technically* abundant, only 0.5% is usable freshwater, and pressures from urbanization, pollution, population growth, and climate change continue to strain available resources.¹⁴ As a result, a significant portion of the population already live under conditions of water stress.¹⁵

In the Philippines, only 48% of the population has access to safely managed water services and 37% lacks access to a safely managed sanitation.¹⁶ In terms of service levels, a significant portion still relies on basic water sources such as wells (Level I), while fewer are connected to piped systems (Level III), including water districts.¹⁷

While the country has substantial surface and ground water reserves, many are not suitable for potable water due to watershed degradation, pollution, and climate-related impacts.¹⁸ The country has been under water stress since 2007, with relatively low per capita water availability compared to its regional peers in Southeast Asia.¹⁹ Urban centers like Metro Manila, Metro Cebu, among others, are particularly vulnerable, as demand has outpaced supply due to rapid urbanization.²⁰

Beyond scarcity, water is now understood not merely as a physical commodity but as both an economic asset and a fundamental human right.

¹³ *Water and Sanitation*, U.N. SUSTAINABLE DEV. GOALS WEBSITE, <https://sdgs.un.org/topics/water-and-sanitation>.

¹⁴ WORLD METEOROLOGICAL ORG., 2021 STATE OF CLIMATE SERVICES: WATER 5 (2021).

¹⁵ *Id.* at 8.

¹⁶ UN Water, *Philippines*, SDG 6 DATA PORTAL, at <https://www.sdg6data.org/en/country-or-area/Philippines> (last visited Apr. 22, 2025).

¹⁷ PWSSMP, *supra* note 7, at 28.

¹⁸ Evangelista, *supra* note 5, at 2–5.

¹⁹ *Expert Warns of Declining Water Availability, Urges Reform in Philippine Water Laws*, PIDS WEBSITE, Aug. 14, 2024, at <https://www.pids.gov.ph/details/news/press-releases/expert-warns-of-declining-water-availability-urges-reform-in-philippine-water-laws>.

²⁰ WORLD BANK, PHILIPPINES ECONOMIC UPDATE: SAFE WATER AND SANITATION FOR ALL 53 (2023), at <http://documents.worldbank.org/curated/en/099120423160035715>. See PWSSMP, *supra* note 7, at 17. See also Boo Chanco, *Demand and Supply: Water*, PHILSTAR.COM, Mar. 8, 2023, at www.philstar.com/business/2023/03/08/2249976/water;

Iris Hazel Mascardo, *A crisis of supply or a failure of governance?*, FREEMAN, Jan. 23, 2025, at <https://www.philstar.com/the-freeman/cebu-news/2025/01/23/2416251/crisis-supply-or-failure-governance>.

International frameworks, such as the Dublin Principles,²¹ recognize water as both a social and economic good.

In 2002, the United Nations Committee on Economic, Social and Cultural Rights (“CESCR”), in General Comment No. 15,²² affirmed the right to water as part of the “right to an adequate standard of living” for health and well-being, as outlined in Articles 11 and 12 of the International Covenant on Economic and Social Rights (“ICESCR”).²³ The Comment also emphasizes the “constant and continuing duty” of State parties under the ICESCR to work towards the full realization of the right to water, noting that States control a wide range of resources, including water, which makes the realization of this right both practicable and feasible.²⁴

The Dublin Principles also recognized, for the first time, that water as an economic good, holds value for users—the value of water is the “maximum amount the user would be willing to pay for the use of the resource”—and such value would depend on the type of user and the purpose of water.²⁵

In the framework by Peter Rogers, Ramesh Bhatia, and Annette Huber, they emphasized that the economic value of water should consider both the costs involved in its provision (direct and indirect) and the value derived from its use, which will depend on the type of user (whether household, urban, industrial or agricultural), and affected by factors such as reliability of supply, water quality, and adjusted further for societal objectives including poverty reduction and employment.²⁶ Since water is a finite source, the authors propose using a partial equilibrium approach to estimate economic value by calculating the opportunity cost of allocating water to one

²¹ Intl Conf. on Water & Env't. (ICWE), *The Dublin Statement on Water and Sustainable Development*, 22 ENVTL. POL'Y & L. 54 (1992).

²² U.N. Comm. on Econ., Soc. & Cultural Rts. (“CESCR”), *General Comment No. 15: The Right to Water (Arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*, ¶ 1, U.N. Doc. E/C.12/2002/11 (Jan. 20, 2003).

²³ International Covenant on Economic, Social and Cultural Rights [hereinafter “ICESCR”] art. 11–12, Dec. 16, 1966, 993 U.N.T.S. 3.

²⁴ *Id.* at ¶ 18.

²⁵ John Briscoe, *Chapter 3: Water as an Economic Good*, in COST-BENEFIT ANALYSIS AND WATER RESOURCES MANAGEMENT 48 (Roy Brouwer & David Pearce eds., 2005). See also John Briscoe, *Water as an Economic Good: The Idea and What it Means in Practice* 5 (paper presented at the World Congress of the Intl. Comm'n on Irrigation & Drainage, Cairo, Sept. 1996).

²⁶ See Peter Roger, Ramesh Bati, & Annette Huber, *Water as a Social and Economic Good: How to Put the Principle into Practice* 12 (TAC Background Papers No. 2, 1998).

sector (i.e., industry) to reflect the cost to society of depriving other sectors, such as households.²⁷

In the Philippines, according to Edward Lapong and Masayuki Fujihara, the current water pricing policy fails to consider the scarcity or abundance of water. It likewise fails to reflect the economic value of water as it does not allocate the water to the most productive users nor incentivizes conservation.²⁸ There remains a widespread perception that water is a free good rather than an economic resource with a price—a view reinforced even by elected officials who are reluctant to impose water tariffs on constituents accustomed to free (or subsidized) water services.²⁹ Without recognizing the economic value of water, consumers will be unlikely to accept higher tariffs.

Although “water as an economic good” is central to the Dublin Principles framework, it does not advocate for the commodification or full marketization of water.³⁰ Rather, it merely recommends that States use economic valuation techniques such as cost-benefit analysis to inform water allocation decisions and improve policies.³¹ While a full discussion of water’s economic valuation is beyond the scope of this Article, the underlying rationale is that recognizing water’s *economic* value—as a finite and vulnerable resource—can incentivize States to adopt an integrated approach to water governance, one that emphasizes efficiency and sustainability.

B. Current Governance Structure

Water is managed through the legal and institutional mechanisms of *water governance*, which is the “political, social, economic and administrative systems that are in place to regulate development and management of water resources and provisions of water services at different levels of society.”³² While water governance involves multiple actors, the legal framework places primary responsibility on the State. The Water Code, the foundational legislation on water,³³ asserts that “water is vital to national development and

²⁷ *Id.* at 5–6.

²⁸ Edward Lapong & Masayuki Fujihara, *Water Resources in the Philippines: An Overview of Its Uses, Management, Problems and Prospects*, 14 J. RAINWATER CATCHMENT SYS. 57, 64 (2008).

²⁹ *Id.*

³⁰ See ROBERT A. YOUNG & JOHN B. LOOMIS, DETERMINING THE ECONOMIC VALUE OF WATER 12 (2nd ed., 2014), available at <https://www.perlego.com/book/1611891>.

³¹ *Id.*

³² Peter Rogers & Alan W. Hall, Global Water Partnership, *Effective Water Governance* 7 (Global Water Partnership TEC Background Papers No. 7, 2003).

³³ See also Velasco et al., *Local Gov’t Water Sector*, *supra* note 4, at 5.

it has become increasingly necessary for government to intervene actively in improving the management of water resources.”³⁴ Complimentary legislation—including the Provincial Water Utilities Act,³⁵ Local Government Code (“LGC”),³⁶ National Water Crisis Act,³⁷ Clean Water Act,³⁸ Indigenous Peoples’ Rights Act,³⁹ and the Amended Public Service Act⁴⁰—further assigns to the State a central role in regulating and allocating water resources.

Despite this framework, actual implementation remains weak. The Philippines’ limited progress in expanding access reflects the persistent challenges in in coordination and execution. In practice, water sector regulation is highly fragmented, resulting in uncoordinated decision-making in water planning, implementation, and regulatory compliance.⁴¹ There is no single agency mandated to manage the water sector and two agencies, the National Water Resources Board (“NWRB”) and the Local Water Utilities Administration (“LWUA”) play overlapping and sometimes conflicting roles

³⁴ WATER CODE, pmb1 ¶ 4.

³⁵ See Pres. Dec. No. 198 (1973). Provincial Water Utilities Act. This Act decentralized water utility management by enabling the creation of local water districts.

³⁶ LOCAL GOV’T CODE, § 26. This allows LGUs to operate their own waterworks systems and devolved certain functions to LGUs such as the enforcement of laws on cleanliness and sanitation and recognized the duty of national government agencies in the maintenance of ecological balance.

³⁷ Rep. Act No. 8041 [hereinafter “National Water Crisis Act”] (1995). As a response to the nationwide water crisis in the early 1990s, the Act enabled the privatization of state-run water utilities like the Metropolitan Waterworks and Sewerage System (“MWSS”).

³⁸ Clean Water Act, § 2. The law reinforced the State’s duty to protect water resources from degradation by regulating pollution and establishing quality standards.

³⁹ Rep. Act No. 8731 [hereinafter “IPRA”] (1997), § 7(f). Section 7(f) of IPRA recognized the right to claim waters within the ancestral domains of indigenous peoples, and their right to safe and clean water.

⁴⁰ Com. Act. No. 146 [hereinafter “Public Service Act”] (1936), *amended by* Rep. Act No. 11659 (2022). The Public Service Act entrusts the regulation of water utilities to the State, while recognizing the role of the private sector in providing public services and allowing a reasonable rate of return.

⁴¹ Agnes C. Rola et al., *Drivers of water governance reforms in the Philippines*, 32 INT’L J. WATER RES. DEV. 135, 136 (2016). According to the Dep’t of Interior and Local Government, there are a total of 82 provinces, 149 cities, and 1,493 municipalities as of July 31, 2025. *Regional Summary – Number of Provinces, Cities, Municipalities, and Barangays as of December 31, 2025*, DEP’T OF INT. & LOC. GOV’T., Sept. 30, 2024, at www.dilg.gov.ph/facts-and-figures/Regional-and-Provincial-Summary-Number-of-Provinces-Cities-Municipalities-and-Barangays-as-of-30-September-2020/32. See also Lapong & Fujihara, *supra* note 28, at 63.

in water governance.⁴² The NWRB, an attached agency of the Department of Environment and Natural Resources (“DENR”), functions as both the *policy-making body* for the Philippine water sector and the *water resource regulator*,⁴³ overseeing water allocation and approving water tariffs of water service providers (“WSPs”).⁴⁴ LWUA, in turn, finances and regulates local water districts,⁴⁵ including setting performance standards and water tariffs.⁴⁶ These overlapping roles contribute to inconsistent regulation and weak sector coordination.⁴⁷

Aside from these, more than 30 national agencies are involved in water and sanitation in the Philippines,⁴⁸ alongside local government units (“LGUs”), further complicating the governance structure.

Recent reforms have sought to address this. Executive Order No. 22, series of 2023 created the Water Resources Management Office (“WRMO”) under the DENR⁴⁹ to harmonize government efforts in water resource management, including the proposed Department of Water, integrated water management planning, inter-agency coordination, and data generation for policy and planning.⁵⁰ The Executive Order also attached key agencies—NWRB, MWSS, LWUA, and LLDA—to the DENR to improve coordination with the WRMO.⁵¹ However, rather than streamlining governance, it risks adding another bureaucratic layer without resolving the core structural incoherence.

C. Comparing Water Service Provider (WSP) Models

Even at the level of WSPs, the Philippine water sector is highly fragmented. A variety of delivery models operate under distinct regulatory regimes, with different key performance standards, tariff-setting models, and

⁴² See Lawrence G. Velasco, Charlotte Justine Diokno-Sicat, Angel Faye G. Castillo, & Ricxie B. Maddawin, *The Philippine Local Water Sector: Institutional Issues in Supply Governance* [“*Local Water Sector*”], 45 PHIL. J. DEV. 23, 24 (2021).

⁴³ PWSSMP, *supra* note 7, at 21.

⁴⁴ *Id.*

⁴⁵ *About Us*, LWUA WEBSITE, at <https://lwua.gov.ph/about-us> (last accessed Apr. 21, 2026).

⁴⁶ Velasco et al., *Local Water Sector*, *supra* note 42, at 36.

⁴⁷ See *Id.* at 38.

⁴⁸ Velasco et al., *Local Gov’t Water Sector*, *supra* note 4, at 5–6.

⁴⁹ Exec. Order No. 22 (2023). Creating the Water Resources Management Office in the Department of Environment and Natural Resources.

⁵⁰ § 1–2.

⁵¹ § 3.

ownership structures, which has led to uneven service quality, pricing, and access to water services.

Regardless of ownership or delivery model, WSPs are considered public utilities under the Public Service Act, as amended by Republic Act No. 11659. Water (public) utilities as entities that operate, manage or control for public use “[w]ater [p]ipeline [d]istribution [s]ystems and [w]astewater [p]ipeline [s]ystems, including sewerage pipeline systems[,]”⁵² which refer to the “operation and maintenance of water pipeline distribution systems to ensure an uninterrupted and adequate supply and distribution of potable water.”⁵³ This definition of water utilities reflects their public service function to ensure access to water.

Further, the amended proviso in Section 13 (d) which states that “[a]ll concessionaires, joint ventures and other similar entities that wholly operate, manage or control for public use the sectors above are public utilities”⁵⁴ clarifies that any entity—whether local water district, a concessionaire like Maynilad or Manila Water, or a joint venture—that manages water pipeline distribution systems and wastewater pipeline systems are considered public utilities.⁵⁵

1. “Purely Public” Water Utilities

“Purely public” WSPs—such as local water districts (“WDs”), LGU-run systems and community-based organizations, i.e., Rural Waterworks and Sanitation Associations (“RWSAs”), and Barangay Waterworks and Sanitation Associations (“BWSAs”)—retain State ownership of water infrastructure but operate under fragmented regulatory oversight: LWUA oversees WDs,⁵⁶ LGUs regulate their own systems through the legislative councils,⁵⁷ and community-based providers like BWSAs and RWSAs are regulated by either NWRB or LWUA,⁵⁸ often alongside local government oversight.⁵⁹

⁵² Public Service Act, *as amended*, § 13(d).

⁵³ Rep. Act No. 11659 (2022), § 2(o).

⁵⁴ Public Service Act, *as amended*, § 13(d).

⁵⁵ *See* Maynilad Water Services, Inc. v. Nat’l Water Res. Bd. (NWRB) [hereinafter “*Maynilad v. NWRB*”], 918-A Phil. 17, 97 (2021).

⁵⁶ Pres. Dec. No. 198 (1973), § 49. *See* Lagman v. Ochoa, 888 Phil. 434, 539 (2020).

⁵⁷ Velasco et al., *Local Gov’t Water Sector*, *supra* note 4, at 40.

⁵⁸ Exec. Ord. No. 124 (1987), § 28(b). Reorganizing the Ministry of Public Works and Highways, Redefining its Powers and Functions, and for Other Purposes.

⁵⁹ Rep. Act No. 6716, § 3.

Velasco et al. note that the uneven investments in the water sector may be attributed to fragmentation, particularly the absence of an oversight body that monitors nationwide investments in local water systems.⁶⁰ At the national level, funds intended to support water sector investments are often inadequate for maintenance, rehabilitation, and expansion, and remain difficult to access.⁶¹ While WDs are permitted under P.D. 198 (and expected) to fully recover all costs through tariff revenues and may propose rate adjustments,⁶² these are often insufficient to achieve optimal performance. As a result, many WDs seek additional financing through loans from the LWUA⁶³ or government banks to support service improvement and expansion.⁶⁴ In contrast, LGU-run water utilities depend largely on local government subsidies, as their tariffs are generally insufficient to cover operating costs and capital expenditures.⁶⁵

Aside from the financial constraints, service quality of publicly-owned WSPs remains inconsistent because of aging infrastructure, lack of technical expertise, outdated technology, and bureaucratic inefficiencies.⁶⁶ As a result, many struggle with high levels of non-revenue water or water losses in their distribution networks.⁶⁷ These challenges across all publicly-owned WSPs directly contribute to poor service quality and undermines the State's fiduciary obligations under the PTD.

WDs account for the largest population of people served (54% according to the Philippine Water Supply And Sanitation Master Plan 2019–2030 or “PWSSMP”).⁶⁸ As of December 2024, there are 532 operational WDs.⁶⁹ Some WDs remain non-operational either due to the lack of water sources in the area, problems with water quality, lack of qualified personnel, or no funding to develop the water supply system facilities.⁷⁰

⁶⁰ Velasco et al., *Local Water Sector*, *supra* note 42, at 30.

⁶¹ PWSSMP, *supra* note 7, at 57; Lawrence G. Velasco, *An Assessment of the Financial Sustainability and Performance of Philippine Water Districts*, 45 PHIL. J. DEV. 49, 57 (2021).

⁶² Velasco et al., *Local Gov't Water Sector*, *supra* note 4, at 14.

⁶³ *Id.* at 17–18.

⁶⁴ PWSSMP, *supra* note 7, at 49.

⁶⁵ *Id.* at 51.

⁶⁶ *Id.* at 56–57.

⁶⁷ Evangelista et al., *supra* note 5, at 4.

⁶⁸ *Id.* at 39.

⁶⁹ Databank: *Philippine Water Districts*, LWUA WEBSITE, at <http://210.213.82.217/waterrates/RatesTable.asp>.

⁷⁰ PWSSMP, *supra* note 7, at 36. *See also* Velasco et al., *Local Gov't Water Sector*, *supra* note 4, at 11.

Recognizing their operational limitations, some WDs have entered into arrangements with the private sector. Under Section 31 of P.D. 198, WDs are authorized “to enter into contracts with any person for the purpose of performing any functions of the district,” except those discretionary powers vested in the Board.⁷¹ According to a DILG memorandum circular, these PPPs or JVs, once formed, “are not under the jurisdiction of any political subdivision.”⁷² These PPP arrangements will be discussed in further detail below.

2. “Purely Private” Water Utilities

Privately-run WSPs in the Philippines operate under various legal bases, including through Certificates of Public Convenience (“CPCs”) issued by the NWRB, legislative franchises granted by Congress or local legislative councils, and informal or unregulated operations such as those managed by homeowners’ associations and cooperatives.

The amended Public Service Act transferred the power of the Public Service Commission (“PSC”) to issue authority to operate water utilities or CPCs to the NWRB.⁷³ Private entities like partnerships, homeowners’ associations, real estate developers, industrial locators, water supply corporations, or cooperatives need to secure a CPC and a water permit to maintain and operate a water supply system over a predefined service area.⁷⁴

Private water utilities, while often more operationally efficient, still face financial challenges, especially in low-demand or low-income areas. These utilities generally own the water infrastructure and operate under CPCs issued by the NWRB or through a legislative franchise. They fall under Category A of NWRB’s economic regulatory framework, which allows for a 12% maximum return on investment based on a 10-year business plan.⁷⁵

⁷¹ See Sec’y of Just. (DOJ) Op. No. 10 (Mar. 11, 2020), *citing* Pres. Dec. 198 (1973), § 30. *In re* Whether the Zamboanga City Water District May Enter into a Joint Venture Agreement with a Private Entity under the 2013 NEDA JV Guidelines for Certain Activities.

⁷² See Dep’t of Interior & Loc. Gov’t (DILG) Mem. Circ. No. 2019-003 (Jan. 10, 2019).

⁷³ Rep. Act No. 11659, § 3.

⁷⁴ Velasco et al., *Local Gov’t Water Sector*, *supra* note 4, at 24–25.

⁷⁵ NWRB Economic Regulatory Framework Rules & Regs. (2019), Rule 1, § 2.2. In terms of tariff-setting, the NWRB has veered away from the “return on investment (ROI)” model and adopted an Economic Regulatory Framework (“ERF”) which classifies water utilities into two categories for tariff setting purposes: for-profit and not-for-profit, and three for service regulation: Category A, which includes privately-owned or run water utilities, GOCCs that opted to be classified as Category A; Category B, which are GOCCs that did

Tariff adjustments occur every five years depending on compliance with service and investment targets.⁷⁶

Despite this structure, the tariff model is primarily oriented toward cost recovery and may not, on its own, sufficiently incentivize water conservation or social equity unless indicated in service level agreements.⁷⁷ It may be argued that because revenues are linked to consumption, incentives for demand management may be limited absent complementary regulation. Moreover, NWRB oversight, in relation to tariff adjustments, tends to focus on financial and operational indicators, which may not fully account for broader objectives such as service expansion or equitable access.

In some cases, Congress may also issue legislative franchises to operate water utilities with specific service areas. For example, Republic Act No. 9185⁷⁸ granted a franchise to Calapan Waterworks System and Development Corporation to operate the water supply and sewerage system in Calapan City, Oriental Mindoro.⁷⁹

Originally, Maynilad and Manila Water operated solely under concession agreements with MWSS, pursuant to the National Water Crisis Act.⁸⁰ However, in 2019, then-President Rodrigo Duterte ordered MWSS to cancel the contract extension of the Metro Manila Concession Agreements from 2022 to 2037, citing alleged economic sabotage.⁸¹ In 2021, Congress granted legislative franchises to Maynilad and Manila Water through Republic Act Nos. 11600⁸² and 11601,⁸³ respectively, to operate a 25-year franchise (from 2022 to 2047) to operate and maintain the waterworks system in the West and East service area of Mero Manila and Cavite.

Compared to other privately-run water utilities, the MWSS Regulatory Office regulates the performance of the two Metro Manila

not opt to be classified as Category A; and Category C, which are community-based water utilities. The tariff model for Category “A” Water Utilities also applies to Category B, except that there is no allowable return on investment for Category B utilities.

⁷⁶ § 2.1.

⁷⁷ See PWSSMP, *supra* note 7, at 51.

⁷⁸ Rep. Act No. 9185 (2003).

⁷⁹ Velasco et al., *Local Gov’t Water Sector*, *supra* note 4, at 24–25.

⁸⁰ Rep. Act No. 8041 (1995), § 7. National Water Crisis Act of 1995.

⁸¹ Delon Porcalla & Paolo Romero, *MWSS cancels water contract extension*, PHIL. STAR, Dec. 12, 2019, at <https://www.philstar.com/headlines/2019/12/12/1976429/mwss-cancels-water-contract-extension>.

⁸² Rep. Act No. 11600 (2021).

⁸³ Rep. Act No. 11601 (2021).

Concessionaires under a “regulation by contract” framework. This involves oversight of their compliance with performance standards and service obligations under the Concession Agreements, including approval of water rates. If MWSS does not extend the contracts at the end of the concession period, both concessionaires are obligated to transfer ownership of the water and wastewater infrastructure back to MWSS, which may either manage it directly or re-privatize the system through a new bidding process.

3. Public-Private Partnerships as Hybrid Models

Public-private partnerships (“PPPs”) form a distinct service delivery model from purely public or purely private WSP utility models in terms of structure, regulation, and accountability. PPPs represent a hybrid structure, blending public oversight with private sector efficiency and capital, which merits a detailed discussion.

In a PPP, a private entity enters into a contract agreement with a government agency to “finance, design, construct, operate, and maintain, or any combination or variation thereof, Infrastructure or Development Projects and Services which are typically provided by the public sector, where each party shares in the associated risks, and where the investment recovery of the Private Partner is linked to performance.”⁸⁴ The key to a PPP is the contribution of assets and the risk allocation scheme, which is typically not present in the other utility models.

Prior to the enactment of the PPP Code in 2023,⁸⁵ there were already several forms of PPPs operating under different legal frameworks. Infrastructure projects and large concessions were undertaken through the Build-Operate-Transfer Law,⁸⁶ the NEDA Joint Venture Guidelines,⁸⁷ and local PPP codes or ordinances. Bulk water supply contracts were often procured as “goods” on a take-or-pay arrangements under procurement laws like the Government Procurement Reform Act⁸⁸ (“GPRA”) which is now repealed by the New Government Procurement Act⁸⁹ (“NGPA”). Water

⁸⁴ Rep. Act No. 11966 Rules & Regs. [hereinafter “PPP CODE IRR”] (2024), § 4(rr).

⁸⁵ Rep. Act No. 11966 [hereinafter “PPP CODE”] (2023).

⁸⁶ Rep. Act No. 6957 [hereinafter “BOT Law”] (1990), *amended by* Rep Act No. 7718 (1993).

⁸⁷ Nat’l Econ. Dev. Auth. (NEDA) 2023 Revised Guidelines and Procedures for Entering Into Joint Venture (JV) Agreements Between Government and Private Entities [hereinafter “2023 NEDA JV Guidelines”] (2023).

⁸⁸ Rep. Act No. 9184 (2003).

⁸⁹ Rep. Act No. 12009 (2024).

districts enter into these arrangements or contracts pursuant to their corporate powers under Section 31 of P.D. 198,⁹⁰ while LGUs enter into contracts for infrastructure through their general corporate powers under LGC or by enacting a local PPP ordinance.⁹¹ Similarly, the PPP Code also authorized government agencies and LGUs to undertake PPP projects pursuant to Section 5 of the new PPP Code.⁹²

The most common form of PPPs in the water sector are joint ventures. Pursuant to Executive Order No. 423, series of 2005,⁹³ NEDA issued the *Guidelines and Procedures for Entering into Joint Venture Agreements Between Government and Private Entities* (“NEDA JV Guidelines”) to promote transparency, competitiveness, and accountability in government transactions involving private sector participation.⁹⁴ Under these guidelines, a joint venture is defined as:

An arrangement whereby a Private Entity or a group of Private Entities on one hand, and a Government Entity or a group of Government Entities on the other hand, provide contribution to undertake a time-bound investment activity. Such investment activity or undertaking shall be for the purpose of accomplishing a specific goal with the end view of facilitating private sector initiative in a particular industry or sector, and eventually transfer the activity to either the Private Entity under competitive market conditions or to the Government. The JV involves a community or pooling of interests in the performance/implementation of the investment activity, and each Party shall have the right to direct and govern the policies in connection therewith with the intention to share both profits and risks and losses subject to agreement by the JV Partners. A JV may be through a Contractual JV or a JV Company.⁹⁵

Simply put, a joint venture is a contractual arrangement in which a government agency and a private entity (or a consortium of private entities) combine their resources—such as capital, services, or assets—to undertake a specific infrastructure or development project typically carried out by the

⁹⁰ *See* Sec’y of Just. (DOJ) Op. No. 10 (Mar. 11, 2020), at 1.

⁹¹ BOT Law, § 3. Private Initiative in Infrastructure.

⁹² PPP CODE, § 5.

⁹³ Exec. Order No. 423 (2005), § 8.

⁹⁴ 2023 NEDA JV Guidelines, § 5.11.

⁹⁵ § 5.11.

public sector.⁹⁶ As a form of partnership under Article 1767 of the Civil Code,⁹⁷ the parties share in the profits, as well as the risks and losses of the venture. However, the government's contribution shall not exceed 50% of the project cost or 50% of the outstanding capital stock of the JV company.⁹⁸

Under the NEDA JV Guidelines and prior to the PPP Code in 2023, JVs with water districts often go unnoticed because the project cost or investment amount involved did not meet the thresholds requiring approval by the NEDA Investment Coordination Committee ("NEDA ICC"),⁹⁹ nor did they require clearance from LWUA. As government-owned and controlled corporations ("GOCCs"), water districts were only required to secure legal clearance from the Office of the Government Corporate Counsel ("OGCC") as a condition precedent for executing JV agreements.¹⁰⁰

In terms of regulation, PPPs in the water sector typically operate under a regulation by contract model, where the public partner oversees the performance of the private operator (whether a joint venture company or the private partner directly) based on the contractual obligations in a Service Agreement or Concession Agreement.¹⁰¹ The public partner (i.e., a water

⁹⁶ See also PPP CODE, § 3(r); Rep Act. No. 10667 Rules & Regs. [hereinafter "Phil. Competition Act IRR"] (2014), Rule 2, § (i); See Sec'y of Interior & Loc. Gov't (DILG) Mem. Circ. No. 2016-120 [hereinafter "DILG LGU P4 Guidelines"] (2016), § 5.1. Guidelines for Implementation of Public-Private Partnership for the People Initiative for Local Governments (LGU P4).

⁹⁷ CIVIL CODE, art. 1767.

⁹⁸ 2023 NEDA JV Guidelines, § 5.5; PPP CODE, § 11(b)(i)–(ii). See also Emma Rose R. Tomaneng, *Establishment of joint ventures for undertaking PPP projects*, BUSINESSWORLD, Mar. 27, 2024, at www.bworldonline.com/opinion/2024/03/27/584272/establishment-of-joint-ventures-for-undertaking-ppp-projects.

⁹⁹ Under the 2023 NEDA JV Guidelines, infrastructure or development projects with a project cost of at least 2.5 billion pesos or government contribution of at least 150 million pesos or with the government entity contributing 50% of its entire assets require approval of the NEDA Board – Investment Coordination Committee ("NEDA ICC"). See 2023 NEDA JV Guidelines, § 7.2 (c).

¹⁰⁰ ADM. CODE, bk. IV, tit. III, ch. 3, § 10. "The OGCC is mandated to act as the principal law office of all government-owned or controlled corporations, such as LWUA and COWD, their subsidiaries, other corporate off springs, and government acquired asset corporations." Sec'y of Just. (DOJ) Op. No. 27 (June 18, 2024), at 2. *In re* *Gayagan de Oro Water District Management and Water Rate Determination*. See also Off. of Gov't Corp. Counsel (OGCC) Mem. Circ. 2023-07 (Aug. 24, 2023). Guidelines on the referrals and requests made to the Office of the Government Corporate Counsel for case handling, opinion, and contract review.

¹⁰¹ See Pub.-Private Partnership Res. Ctr. ("PPPRC"), *Regulation by Contract*, WORLD BANK, at ppp.worldbank.org/public-private-partnership/regulation-contract (last accessed Apr. 4, 2026).

district), which may itself be regulated by LWUA or NWRB, is responsible for ensuring that the operator complies with both the terms of the contract and the applicable regulatory standards (of LWUA or NWRB). It establishes a Regulatory Office, Contract Monitoring Unit, or PPP Unit to serve as the interface between the regulator (NWRB or LWUA) and the operator (PPP company). This structure aligns with the NEDA JV Guidelines, which provide that “entering into a JV does not change the nature of the Government Entity[.]”¹⁰² and “[d]uring the life and implementation of the JV Agreement, the Government Entity shall continue to adhere to its regular statutory, oversight, and regulatory requirements pursuant to existing laws, rules and regulations, if any.”¹⁰³

Water sector JVs are typically structured as either incorporated or unincorporated arrangements. In incorporated JVs, the parties establish a project company (“JVCo”) with a separate juridical personality, through which the government and the private partner hold equity and participate in governance. Unlike full privatization, incorporated joint ventures involve shared ownership and operation of infrastructure in the JVCo or through joint ownership of an existing company via share acquisition.¹⁰⁴ In this structure, the government acts both as a shareholder and regulator, while the private sector partner takes the lead in managing the operations.¹⁰⁵

Earlier iterations of the NEDA JV Guidelines identified incorporation of a stock corporation as the preferred mode of implementing a JV Agreement,¹⁰⁶ although subsequent revisions have adopted a more flexible approach. The NEDA 2013 JV Guidelines recognized that “[i]f the formation of a JV Company is not the best mode to implement a JV Activity, [parties] may opt to implement the JV project through a contractual agreement[.]”¹⁰⁷ which suggests that incorporated JVs should still be the default option. The 2023 Revised Guidelines and the PPP Code no longer

¹⁰² 2023 NEDA JV Guidelines, § 2.12.

¹⁰³ § 2.13.

¹⁰⁴ ASIAN DEVELOPMENT BANK, PUBLIC-PRIVATE PARTNERSHIP HANDBOOK 41 (2008).

¹⁰⁵ *Id.*

¹⁰⁶ NEDA, 2008 Guidelines and Procedures for Entering Into Joint Venture (JV) Agreements Between Government and Private Entities [hereinafter “2008 NEDA JV Guidelines”] (2008), § 6.2.

¹⁰⁷ NEDA, 2013 Revised Guidelines and Procedures for Entering Into Joint Venture (JV) Agreements Between Government and Private Entities [hereinafter “2013 NEDA JV Guidelines”] (2013), § 6.3.

include this provision but retained the parameters governing the JV Agreements.¹⁰⁸

Unincorporated JVs, by contrast, are governed primarily by contract and do not involve the creation of a separate corporate entity. The parties' rights and obligations are defined by the JV Agreement, including the allocation of risks, responsibilities, and returns. While the contract is not subject to the corporate governance standards imposed on a separately incorporated entity, governance is exercised through contractual and regulatory mechanisms indicated in the contract.

The PPP Code and its Implementing Rules and Regulations ("IRR") retain the NEDA JV approach but formalizes the approval tiers,¹⁰⁹ standardizes the comparative challenge rules¹¹⁰ and the rules on unsolicited and solicited proposals. Section 10 of the PPP Code and Title V of its IRR now require private proponents to submit unsolicited proposals to the PPP Center through its website for a completeness check and compliance with the PPP Code, rather than submitting directly to the implementing agency, as was previously the practice.¹¹¹ While this change enhances coordination, it may also lead to potential delays or increased bureaucracy, as the involvement of a national agency could limit the contracting flexibility of water districts.

At the local government level, LGUs also adopted their own PPP ordinances to facilitate water supply and sanitation projects prior to the enactment of the PPP Code. However, since December 2023, the PPP Code has become the umbrella framework for national and local PPPs as Section 37 repealed the NEDA Joint Venture Guidelines and local PPP ordinances, among other "executive orders and administrative laws, [...] rules and

¹⁰⁸ 2023 NEDA JV Guidelines, § 6.3

¹⁰⁹ PPP CODE, § 7. National projects, which are those undertaken by the national government, SUCs, and GOCCs such as local water districts, have to be approved by the NEDA ICC if the project cost is 15 billion pesos and above, or by the head of the implementing agency if the PPP project costs less than 15 billion pesos, unless (1) it physically overlaps with another project approved by a government authority; (2) negatively impacts the economic benefits, demand and/or financial viability of another government project; (3) requires financial government undertakings under the national budget; (4) involves availability payments; or (5) the contribution of the implementing agency exceeds 50% of its entire assets, in which case the NEDA ICC approves the project. Local PPP projects, on the other hand, shall be approved by the respective local Sanggunians.

¹¹⁰ § 10(e).

¹¹¹ PPP CODE, § 10; PPP CODE IRR, §§ 52, 4(jjj).

regulations, and ordinances”¹¹² insofar as they are inconsistent with the new Code.

D. Prospective Reforms

To resolve the conflicting mandates and the structural overlaps, a bill creating the Department of Water Resources (“DWR”) and establishing the Water Regulatory Commission (“WRC”) was approved by the House of Representatives on its Third Reading and transmitted to the Senate in December 2023 but was not enacted into law before the close of the 19th Congress.¹¹³ The measure was subsequently refiled in the 20th Congress as House Bill No. 6789 (“H.B. 6789”), otherwise known as the “National Water Resources Management Act.”¹¹⁴

Initially filed by Representative Martin Romualdez, the proposed measure was among the priority measures cited by President Marcos, Jr. in his 2023 State of the Nation Address.¹¹⁵ H.B. 6789 substantially replicates House Bill No. 9663 filed in the 19th Congress.

Under the bill, the DWR would become the “primary agency responsible for the comprehensive and integrated identification and mapping of all water resources, planning, policy formulation, and management of the ownership, appropriation, utilization, exploitation, development, and protection of water resources in the Philippines” and would serve as the primary implementing agency of the Water Code.¹¹⁶ Guided by the framework of integrated water resource management,¹¹⁷ the DWR’s functions would encompass policymaking, planning, resource allocation, regulation, and coordination¹¹⁸ to further the State’s policy to ensure “the provision of safe, adequate, affordable, and sustainable water supply and improved sanitation services, while maintaining the protection, preservation,

¹¹² PPP CODE, § 37.

¹¹³ H. No. 9663, 19th Cong., 2nd Sess. (2023).

¹¹⁴ H. No. 6789, 20th Cong., 1st Sess. [hereinafter “National Water Resources Management House Bill”] (2025). An Act Establishing the National Framework for Water Resource Management and Creating the Department of Water Resources and the Water Regulatory Commission, Defining Their Mandates, Powers and Functions, and Appropriating Funds Therefor.

¹¹⁵ Filane Mikee Cervantes, *House passes PBBM priority bills*, PHIL. NEWS AGENCY, Dec. 12, 2023, at <https://www.pna.gov.ph/articles/1215312>.

¹¹⁶ National Water Resources Management House Bill, § 5.

¹¹⁷ § 6 (c).

¹¹⁸ § 8.

and revival of the quality of the country's water resources and ecological balance."¹¹⁹

The resource allocation function currently exercised by NWRB would be absorbed by the DWR's Resource Allocation Office and the newly created National Water Resources Allocation Board, which would also have quasi-judicial powers over disputes regarding the appropriation and utilization of water.¹²⁰ The program implementation functions of LWUA, such as technical assistance, personnel training, and compliance monitoring would be transferred to the Local Water Service Providers Bureau ("LWSPB") under the DWR.¹²¹ The MWSS, NIA, and the LLDA would also be attached to the DWR for policy and program coordination, with the Secretary of Water Resources serving as the Chair of their respective boards.¹²²

Meanwhile, the economic regulatory or the water tariff/rate-setting powers of the LWUA over local water districts, as well as the licensing authority for all water supply and sanitation services, including bulk water suppliers, of the NWRB would be transferred to the WRC, an independent, quasi-judicial body composed of a Chairperson and four members appointed by the President.¹²³ The WRC would have rule-making authority to promulgate and enforce "just and reasonable technical standards, classifications and measurements of service" and the power to cause the "dissolution, consolidation, privatization, or management takeover" of nonperforming or underperforming local water district.¹²⁴ Note, however, that it is the DWR which is tasked to develop the standardized pricing framework,¹²⁵ while the WRC's power is to "review, determine, fix, and approve, consistent with the rules [...] which the Commission shall provide, proposed water and sewerage and septage management tariffs, rates, and charges[.]"¹²⁶

The proposed Act also recognizes in its Guiding Principles the role of the private sector in providing water supply services and promoting water security:

¹¹⁹ § 2.

¹²⁰ §§ 15(a), 18, 19(d).

¹²¹ §§ 15(b)(1)–(3).

¹²² § 14.

¹²³ §§ 15(b), 21–23, 27.

¹²⁴ § 22(d).

¹²⁵ § 7(h).

¹²⁶ § 22(g).

SEC. 6 (i) The State recognizes the role of the private sector and mobilization of private resources in the development of waterworks systems through concession agreements, joint venture agreements, bulk water supply agreements, management and service agreements and other contracts for water supply provision, water sanitation and treatment services, and the development, operation and maintenance of water supply and septage management systems. The State shall encourage the private sector to provide the needed investments for programs and projects to ensure adequate water supply and promote water security.¹²⁷

Voting 263-7-0, the House approved on third and final reading H.B. 6789 on December 22, 2025, and it was transmitted to the Senate on even date.¹²⁸ Currently, the bill is pending in the Committee-level after it was read on First Reading on January 28, 2026.¹²⁹

While the proposed department and regulatory commission may help streamline agency mandates and improve policy coordination, it will not guarantee that the State's obligations to manage water effectively will be fulfilled. A useful parallel to the proposed water regulatory is the energy sector reform under the Electric Power Industry Reform Act of 2001 ("EPIRA").¹³⁰

Enacted as a response to the power crisis and inefficiencies in the state-owned National Power Corporation ("NPC") in the 1990s,¹³¹ EPIRA aimed to ensure the quality, reliability, security, and affordability of electric power supply¹³² and mandated the financial and organizational restructuring of the electric power industry through the privatization of NPC and the establishment of the Energy Regulatory Commission ("ERC"), a quasi-

¹²⁷ § 6(i).

¹²⁸ Vivienne Gulla, *House OKs bill creating Department of Water Resources*, ABS-CBN, Dec. 22, 2025, at <https://www.abs-cbn.com/news/nation/2025/12/22/house-oks-bill-creating-department-of-water-resources-1639>; House of Representatives of the Philippines (@HouseofRepsPH), X (FORMERLY TWITTER) (Dec. 22, 2025, 11:34 AM), at <https://x.com/HouseofRepsPH/status/2002945814445109265>.

¹²⁹ *National Water Resources Management Act*, SENATE PHIL. WEBSITE, at <https://senate.gov.ph/legislative-documents/bills/614127?documentType=Bill&congress=20th+Congress>.

¹³⁰ Rep. Act No. 9136 [hereinafter "EPIRA"] (2001). Electric Power Industry Reform Act of 2001.

¹³¹ Robert W. Bacon, *Learning from Power Sector Reform: The Case of The Philippines* (World Bank Policy Research Working Paper No. WPS 8853, 2019).

¹³² EPIRA, § 2(b).

judicial regulatory body which replaced the Energy Regulatory Board (“ERB”). Under the EPIRA, policy and planning coordination was centralized in the Department of Energy (“DOE”), and the regulatory functions such as tariff-setting were transferred to the ERC.

Despite this reform, service has not necessarily improved for customers. Overlapping mandates have led to institutional conflicts, with the DOE’s planning and policy authority conflict with the ERC’s regulatory powers. Prospective plant operators have also complained of the ERC’s delays in approving power supply agreements or issuing certificates of compliance necessary to operate new power generation facilities.¹³³ In some instances, the ERC has even overstepped its mandate by revising policies issued by the DOE, as illustrated in the case of *Alyansa Para sa Bagong Pilipinas, Inc. (“ABP”) v. Energy Regulatory Commission (ERC)*,¹³⁴ where the Court ruled that the power of the ERC is limited to executing, not altering, the policies set by the DOE such as the 2015 Circular on the Competitive Selection Process.¹³⁵

In the current draft, the DWR would frame water policy, including tariff methodology, while an independent WRC would apply those rules. Dividing “policy-making” and “economic regulation” may be ideal on paper, but without clear delineation and strong institutional safeguards, the same governance concerns faced by the energy sector would also undermine water sector reform: institutional conflicts, bureaucratic red tape, weak enforcement, and regulatory capture, as highlighted in *ABP v. ERC*. These structural risks in the water governance framework have direct implications on providing adequate water services.

Even if the bill were passed in its current form, many structural weaknesses would persist and the need to provide water and sanitation services would remain unmet. Structural centralization alone will not address the institutional fragmentation of the regulatory framework. Without improving water service provider models, the same governance failures—only under a new agency—could persist.

¹³³ See Rey Gambo, *Is ERC undermining DOE?*, PHILSTAR, Mar. 30, 2017, at <https://www.philstar.com/business/2017/03/30/1682990/erc-undermining-doe>. See also Robert Bacon, World Bank Group, *Learning from Power Sector Reform: The Case of the Philippines* 52 (World Bank Group, Policy Research Working Paper 8853, 2019).

¹³⁴ 852 Phil. 1 (2019).

¹³⁵ *Id.* at 66–67.

III. UNDERSTANDING THE PUBLIC TRUST DOCTRINE

Effective water governance requires not only a legal framework but also the efficient management of water regulatory institutions and resources. The Public Trust Doctrine (“PTD”) underpins the State’s obligation to manage water for the public good and provides the constitutional and common-law foundation for that obligation.

As originally conceived, the PTD provides that “public trust lands, waters and living resources in a state are held by the state in trust for the benefit of all of the people, and establishes the right of the public to fully enjoy public trust lands, waters and living resources for a wide variety of recognized public uses.”¹³⁶ Until 2019, this principle has never been expressly recognized in the Philippine Constitution, laws, or jurisprudence. This changed with *Maynilad v. DENR*, hailed as a “monumental decision”¹³⁷ or the “most important environmental decision [the Supreme Court] has ever made”¹³⁸ since the case formally adopted a public trust rationale in relation to water management. Upon closer reading, however, the main opinion showed that the Court’s reasoning diverges from global public trust scholarship, especially the classic formulation as widely understood.

A. *Maynilad v. DENR*

Maynilad v. DENR involved the two private water concessionaires of Metro Manila, Maynilad and Manila Water, and MWSS. The DENR imposed administrative fines on both utilities for failing to meet their sanitation obligations under the Section 8 of the Clean Water Act.¹³⁹ The Supreme Court affirmed the ruling of the Court of Appeals and agreed with the DENR’s finding that the concessionaires and MWSS were guilty of violating the Clean Water Act. Under the law, MWSS, the government agency vested with the duty to provide water and sewerage services, and/or the concessionaires in Metro Manila and other highly urbanized cities (as defined in the LGC) were obligated to connect all existing sewage lines to the available sewerage system within five years from the CWA’s effectivity (or from May 6, 2004).

¹³⁶ MICHAEL C. BLUMM & MARY C. WOOD, *THE PUBLIC TRUST DOCTRINE IN ENVIRONMENTAL AND NATURAL RESOURCES LAW* 67 (3rd ed., 2021).

¹³⁷ Tony La Viña, *Water as a public trust*, MANILA STANDARD, Oct. 15, 2019, at <https://manilastandard.net/?p=307441>.

¹³⁸ Tony La Viña, *Clean water is non-negotiable*, MANILA STANDARD, Oct. 12, 2019, at <https://manilastandard.net/?p=307177>.

¹³⁹ See Clean Water Act, § 8.

In this case, Justice Hernando, as *ponente*, introduced the PTD as “an imposed duty upon the State and its representative of continuing supervision over the taking and use of appropriated water.”¹⁴⁰ While the government as trustee, through MWSS, was mandated under the Clean Water Act to provide water and sanitation services, the two concessionaries, as the State’s agents, “acquired rights in trust property [but] [only hold] these rights subject to the trust and, therefore, could assert no vested right to use those rights in a manner harmful to the trust.”¹⁴¹

The Court reiterated that “water is not a mere commodity for sale and consumption but a natural asset to be protected and conserved” and the “collective responsibility to preserve water resources and improve sanitation facilities for future generations.”¹⁴² In the PTD framework, the State acts as the trustee who manages specific natural resources (the *res* of the trust) on behalf of the public (the trust principal) for the benefit of the current and future generations (the beneficiaries). The State has the duty to integrate the PTD into its planning and management of natural resources and the obligation to protect common resources. Justice Hernando says that the PTD is more than a principle but a resource management tool flexible enough to address environmental concerns. In essence, “[t]he public trust doctrine is based on the notion that private individuals cannot fully own trust resources but can only hold them subject to a servitude on behalf of the public.”¹⁴³

Justice Hernando invoked three legal doctrines to support his application of the PTD: (1) the Regalian doctrine; (2) police power; and (3) *parens patriae*.¹⁴⁴ He argued that the public trust concept “fills the void” by unifying these doctrines into a cohesive and flexible framework—one that integrates state ownership over natural resources, its duty to protect the general welfare, and its role as guardian over the defenseless such as the environment or future generations.¹⁴⁵

Justine Leonen concurred but disagreed on how Justice Hernando justified invoking the PTD through the three doctrines. For him, the PTD stands on independent constitutional grounds, and there is no need to derive

¹⁴⁰ *Maynilad v. DENR*, 858 Phil. at 811.

¹⁴¹ *Id.*

¹⁴² *Id.* at 781.

¹⁴³ *Id.* at 814.

¹⁴⁴ *Id.* at 808–11.

¹⁴⁵ *Id.* at 812–14.

it from these implicit concepts.¹⁴⁶ He anchors the PTD on several constitutional provisions such as Article II, Section 1 (“Sovereignty resides in the people and all government authority emanates from them”),¹⁴⁷ Article XI, Section 1 (“Public office is a public trust”),¹⁴⁸ and in the provisions under Article XII which emphasize that the State’s authority over natural resources is always exercised in trust and the benefit of people.¹⁴⁹ Thus, Leonen’s approach frames the PTD as a direct constitutional obligation, grounded in public accountability and the primacy of the general welfare.

Maynilad, Manila Water and MWSS moved for reconsideration and in 2022, the Court granted the motion in part by reducing the fines imposed on Maynilad and Manila Water, acknowledging good faith and real efforts to comply with their obligations.¹⁵⁰ The Court also considered the new legislative franchises of both concessionaires which took effect on January 22, 2022 which set a new target of achieving 100% sewerage and sanitation coverage by 2037. However, these did not condone the petitioners’ prior violations. Finally, the Court reiterated the PTD: “the people are the ultimate owners of the country’s resources, over which the State is a trustee, a subservient manager, a mere nominal holder.”¹⁵¹ It also highlighted both concessionaires’ renewed mandate under their franchises, which integrated the public trust concept:

SEC. 7. Responsibility to the Public. — The grantee, its successors or assignees, shall conform to the ethics of honest enterprise and shall provide water supply and sewerage services to its service area in a prudent, efficient, and satisfactory manner.¹⁵²

B. Historical Origins of the PTD

To fully understand the Philippine interpretation of the PTD, it is essential to examine its historical origins from the Roman law concept of *jus publicum*, which recognized “public rights” to access and use natural

¹⁴⁶ *Maynilad v. DENR*, 858 Phil. at 857 (Leonen, J., concurring).

¹⁴⁷ CONST. art. II, § 1.

¹⁴⁸ Art. X, § 1.

¹⁴⁹ See Art. XII. §§ 1, 2, 11.

¹⁵⁰ *Maynilad Water Services, Inc. v. Sec’y of Dep’t Env’t. & Nat. Res. (DENR)*, 926 Phil. 1 (2022).

¹⁵¹ *Id.* at 26.

¹⁵² Rep. Act No. 11600 (2022), § 7. *Maynilad franchise*; Rep. Act No. 11601 (2022), § 7. *Manila Water franchise*.

resources.¹⁵³ Though the concepts of *jus publicum* and *res communes* predate Justinian,¹⁵⁴ his *Institutes* provided the clearest example: “By the law of nature these things are common to mankind – the air, running water, the sea[.]”¹⁵⁵ By this passage, he meant that the public is entitled to use the shared natural resources, and in some cases, could even make improvements provided that such actions were consistent with their intended use or did not infringe on the rights of others.¹⁵⁶ In this context, the State is responsible for managing these resources while keeping them accessible for the benefit and use of the public.

Though the term *public trust doctrine* was only coined by Joseph Sax,¹⁵⁷ the early Roman concept of *res communes* laid the foundation, asserting that certain resources, such as rivers, the seashore, forests, and the air were held in trust for the general public¹⁵⁸ and were incapable of private ownership since these must remain accessible for the common good, as restricting public access to them would harm society as a whole.¹⁵⁹ Thus, the State must manage these resources on behalf of the public.

This idea of *jus publicum* evolved through English common law, particularly in the Magna Carta of 1215, by affirming public rights in navigable waters, and later extended to undeveloped royal lands through the Charter of the Forest.¹⁶⁰ In his 1786 treatise *De Jure Maris*, Lord Matthew Hale argued that the King, as sovereign, held these waterways in trust for the public and emphasized the duty of the Crown to protect common resources and promote the general welfare.¹⁶¹ By the end of the 19th Century, English common law had recognized that public rights—particularly in navigable

¹⁵³ Samuel H. Ruddy, *Finding a Constitutional Home for the Public Trust Doctrine*, 43 ENVIRONS ENVTL. L. & POL’Y J. 139, 143 (2020). See Joseph Orangias, *Towards Global Public Trust Doctrines: An Analysis of the Transnationalisation of State Stewardship Duties*, 12 TRANSNAT’L LEG. THEORY 550, 553 (2021).

¹⁵⁴ Michael Blumm & Zachary Schwartz, *The Public Trust Doctrine Fifty Years After Sax and Some Thoughts on Its Future*, 44 PUB. LAND & RES. L. REV. 1, 6 (2021).

¹⁵⁵ Ruddy, *supra* note 153.

¹⁵⁶ *Id.*

¹⁵⁷ Blumm & Schwartz, *supra* note 154, at 10.

¹⁵⁸ James L. Huffman, *Why Liberating the Public Trust Doctrine is Bad for the Public*, 45 ENV’T L. 337, 343, 353 (2015), at law.lclark.edu/live/files/19611-45-2huffman.

¹⁵⁹ Phoebe Liccardo, *The Public Trust Doctrine: Roman Law Roots and Future in Environmental Litigation* 23 (Apr. 20, 2023) (honors theses for the Western Michigan University).

¹⁶⁰ Erin Ryan, *A Short History of the Public Trust Doctrine and Its Intersection with Private Water Law*, 38 VA. ENV’T L. J. 135 (2020).

¹⁶¹ Blumm & Schwartz, *supra* note 154, at 7.

rivers—could override individual property rights and the Crown merely held these resources in trust for the benefit of the general public.¹⁶²

In the United States, American courts have integrated the PTD into state water law, largely due to the influence of English common law on the legal systems of former colonies.¹⁶³ A key case, *Martin v. Lessee of Waddel*,¹⁶⁴ involved a dispute over the land under the tidal waters of the Raritan River in New Jersey. The court ruled that lands under navigable waters were held “as a public trust for the benefit of the whole community to be freely used by all for navigation and fishery”¹⁶⁵ and are not subject to absolute private ownership.¹⁶⁶ Citing *De Jure Maris*, this case marks one of the earliest acknowledgements of the PTD in American jurisprudence, affirming that state governments, as successors to the Crown, not only held legal title but also had the continuing responsibility to manage these resources for the public’s benefit.¹⁶⁷

In 1892, in what Sax calls the “lodestar” of the PTD in American jurisprudence,¹⁶⁸ *Illinois Central Railroad v. Illinois*,¹⁶⁹ the Supreme Court ruled that Illinois’ grant of 1,000 acres of submerged land under Lake Michigan in 1969 to a railroad company impaired the public’s interest. The Court explained that the state’s title to the lakebeds was held in trust for the public, specifically for navigation, commerce, and fishing, and this trust must be free from private interference.¹⁷⁰ The Court emphasized that the State could not abdicate its responsibilities over trust property, except when doing so would improve navigation or when the property can be disposed of without harming the public interest.¹⁷¹ The Court added:

In the administration of government, the use of such powers may for a limited period be delegated to a municipality or other body, but there always remains with the state the right to revoke those powers and exercise them in a more direct manner, and one more conformable to its wishes. So with trusts connected with public property, or property of a special character, like lands under

¹⁶² Ruddy, *supra* note 153, at 145.

¹⁶³ *Id.* at 145–46. *See also* Ryan, *supra* note 160, at 167–68.

¹⁶⁴ 41 U.S. 367 (1842).

¹⁶⁵ *Id.* at 413.

¹⁶⁶ *Id.* at 426.

¹⁶⁷ *See* Ruddy, *supra* note 155, at 146.

¹⁶⁸ *See* Sax (1970), *supra* note 12, at 489.

¹⁶⁹ [Hereinafter “*Illinois Central Railroad*”], 146 U.S. 387 (1892).

¹⁷⁰ *Id.* at 452.

¹⁷¹ *Id.* at 453.

navigable waters; they cannot be placed entirely beyond the direction and control of the state.¹⁷²

Thus, the core principle of the PTD, as held in *Illinois Central Railroad*, is that the State may grant the use of public resources to private entities, but it cannot relinquish its ultimate authority or fiduciary duty over those resources, which must remain subject to public oversight and control.

C. Joseph Sax and the Resurgence of PTD

The PTD and its resurgence is largely credited to American law professor Joseph Sax who wrote about the doctrine in his seminal 1970 article and reintroduced the doctrine as a dynamic and enforceable legal tool for the protection of common resources.¹⁷³ Sax “unhooked [the PTD] from its traditional moorings on or around water bodies and applied it to dry land”¹⁷⁴ as well as in controversies involving non-natural resources such as those “involving air pollution, the dissemination of pesticides, the location of rights of way for utilities, and strip mining or wetland filing on private lands in a state where governmental permits are required.”¹⁷⁵

At its core, Sax’s formulation of the PTD imposes three key duties on the State. First, the PTD imposes on the State the duty to preserve public trust from alienation. Sax enumerated three types of restrictions on State authority in relation to managing the trust resources:

1. The property subject of the trust must not only be used for a public purpose, but it must be held available for use by the general public;
2. The property may not be sold, even for a fair cash equivalent; and
3. The property must be maintained for particular types of uses, either as:
 - a. The resource must be held available for certain traditional uses; or
 - b. The uses which are made of the property must be in some sense related to the natural uses peculiar to that resource.¹⁷⁶

¹⁷² *Id.* at 453–54.

¹⁷³ Sax (1970), *supra* note 12, at 474.

¹⁷⁴ Carol M. Rose, *Joseph Sax and the Idea of the Public Trust*, 25 *ECOLOGY L.Q.* 351, 352 (1998).

¹⁷⁵ Sax (1970), *supra* note 12, at 556–57.

¹⁷⁶ *Id.* at 477.

For Sax, these limitations served to clarify the confusion resulting from the courts' failure to differentiate between the government's broad duty to promote the public benefit, and the more specific, fiduciary responsibility it assumes when acting as a trustee over natural resources.¹⁷⁷

Second, the State has the obligation to manage the resources in the public interest. For Sax, the public does not have a proprietary interest over the *res* in the same way a private landowner does. His concept of the PTD diverged from the traditional *res communes* approach, which conferred property rights on the general public as distinct from the legislature.¹⁷⁸ He critiqued this formulation on the ground that it would create problematic legal implications: specifically, when the government grants the use of these resources owned by the general public to a private party, it could be interpreted as analogous to taking of private property, thereby triggering the requirement to pay just compensation—not to a specific individual, but to the public at large.¹⁷⁹ Sax viewed this as practically and legally absurd, arguing that if public ownership were construed too literally, the government would be constrained from managing or reallocating public resources without violating property rights.¹⁸⁰ Thus, the trust imposes fiduciary obligations on the State, but does not render the public a legal “owner” entitled to compensation.¹⁸¹

Third, the State has the obligation to ensure that the public trust serves as a judicially enforceable tool against acts of the government in breach of the public interest. Rather than framing the doctrine in terms of ownership, Sax emphasized that the PTD should operate as a check on legislative power and a tool for judicial intervention when the government alienates or mismanages public trust resources.¹⁸² In his discussion on the *Illinois Central Railroad* case, he highlighted a foundational principle in public trust litigation:

When a state holds a resource which is available for the free use of the general public, a court will look with considerable skepticism upon *any* governmental conduct which is calculated

¹⁷⁷ *Id.* at 478.

¹⁷⁸ See Rose, *supra* note 174, at 357.

¹⁷⁹ Sax (1970), *supra* note 12, at 478.

¹⁸⁰ *Id.* at 479–80.

¹⁸¹ See *id.* at 480.

¹⁸² See *id.* at 558–59.

either to reallocate that resource to more restricted uses *or* to subject public uses to the self-interest of private parties.¹⁸³

Further, he enumerated four indicia suggesting that the legislature has improperly “given away” the public trust resources against public interest:

- (1) When the public property has been disposed of at less than market value without any reason for the subsidy;
- (2) When the power to make public resource decisions has been given to private interests;
- (3) When there is a reallocation of public uses to private uses; and
- (4) Lastly, when the resource is being used in a way inconsistent with its natural or traditional purpose.¹⁸⁴

However, Sax clarified that the PTD does not impose an absolute bar against the alienation of trust resources, even when such transfers are substantial in scale.¹⁸⁵ Instead, the doctrine requires that courts interpret grants of public resources restrictively and apply a more rigorous standard than would be used in cases involving transfers by private parties.¹⁸⁶

Sax argued that courts may uphold transfers of public resources to private entities—“even though that transfer may exclude or impair certain uses”¹⁸⁷—provided that the State retains ultimate control and oversight. He noted that such grants are not illegal solely for diminishing public uses¹⁸⁸ but become constitutionally questionable if they effectively remove the resource from public oversight or undermine the public trust’s purpose.¹⁸⁹

¹⁸³ *Id.* at 490. (Emphasis supplied.)

¹⁸⁴ *Id.* at 562–65. *See also* Melissa Scanlan, *The Role of the Courts in Guarding Against Privatization of Important Public Environmental Resources*, 7 MICH. J. ENVTL. & ADM. L. 237, 558–59 (2018).

¹⁸⁵ *Id.* at 486.

¹⁸⁶ *Id.* at 486–87.

¹⁸⁷ *See e.g.* *Commonwealth v. Alger*, 61 Mass. (7 Cush.) 53, 74, 5 (1851); and *State v. Cleveland & Pittsburgh Railway*, 94 Ohio St. 61, 113 N.E. 677 (1916). In both cases cited by Sax, the courts permitted the transfer of some element of the public trust into private parties (regulation of wharf construction, and filling of submerged lands in Lake Erie by a railroad company, respectively) and were permitted to exclude the public from the trust property previously open to all. However, private property rights are not absolute, especially when they interfere with the public interests in natural resources, and the State can step in to regulate. *See id.* at 487–89.

¹⁸⁸ *Id.* at 488–89.

¹⁸⁹ *Id.* at 491.

In 1980, Sax expanded on his earlier work in *Liberating the Public Trust Doctrine from Its Historical Shackles*,¹⁹⁰ advocating for a broader application of the PTD. He argued that the PTD should extend beyond lands beneath navigable waters and tidelands to include other ecological resources. Sax emphasized that the doctrine's core purpose is to protect the public from destabilizing changes—whether social, ecological or economic—when commonly held resources are withdrawn from public use or significantly altered without providing a proper transition.¹⁹¹ While public expectations for access may not be explicitly stated in the constitutional text, Sax believed that safeguarding these expectations is a legitimate function of the State.¹⁹²

D. Contemporary Public Trust Theory

Following Sax's seminal article, contemporary legal scholarship on the PTD has evolved as courts, in the United States and other countries like the Philippines,¹⁹³ India,¹⁹⁴ Pakistan,¹⁹⁵ and Kenya,¹⁹⁶ among others, and influential scholars have expanded (or contested) the Saxion PTD, with each contributing their own perspective on how the doctrine operates and its relevance in law.

Carol M. Rose interprets the PTD as a safeguard against the “tragedy of the commons”—a situation in which publicly accessible resources are depleted or wasted by overuse or underuse and individuals have less incentive to preserve or conserve what they do not exclusively own¹⁹⁷—

¹⁹⁰ See Joseph L. Sax [hereinafter “Sax (1980)”], *Liberating the Public Trust Doctrine from Its Historical Shackles*, 14 U.C. DAVIS L. REV. 185 (1980), at lawcat.berkeley.edu/record/1111513/files/fulltext.pdf.

¹⁹¹ See *id.* at 188–89.

¹⁹² *Id.* at 193–94.

¹⁹³ See, e.g., *Oposa v. Factoran*, 296 Phil. 694 (1993), *Laguna Lake Dev. Auth. (LLDA) v. Ct. of Appeals*, 321 Phil. 395 (1996), & *Maynilad v. DENR*, 858 Phil. 765 (2019).

¹⁹⁴ See UNITED NATIONS ENVIRONMENT PROGRAMME (UNEP), I COMPENDIUM OF JUDICIAL DECISIONS ON MATTERS RELATED TO ENVIRONMENT: NATIONAL DECISIONS [hereinafter “UNEP COMPENDIUM VOL. I”] 259, citing *M.C. Mehta v. Kamal Nath & Others* (1977) 1 SCC 388 (India).

¹⁹⁵ *Id.*, citing *In re: Human Rights Case (Environment Pollution in Balochistan) PLD 1994 Supreme Court 102 (Pakistan)* & *Gen. Sec’y West Pakistan Salt Miners Labour Union v. The Dir. Of Indus. & Mineral Dev., Punjab, Lahore 1994 S C MR 2061 (Pakistan)*.

¹⁹⁶ *Id.*, citing *Abdikadir Sheikh Hassan v. Kenya Wildlife Service HCCC No. 2059 of 1996 (Kenya)* & *Comm’r of Lands v. Coastal Aquaculture Ltd. Civil Appeal No. 252 of 1996 (Kenya)*.

¹⁹⁷ Carol M. Rose, *The Comedy of the Commons: Custom, Commerce, and Inherently Public Property* [hereinafter “*Comedy of the Commons*”], 53 U. CHICAGO L. REV. 711, 712 (1986), citing Garrett Hardin, *The Tragedy of the Commons*, 162 SCI. 1243 (1968).

particularly in relation to property held in common such as roads, waterways and others tied to commerce. She introduces the “comedy of the commons” arguing that resources such as waterways and roads can be managed for public benefit, yielding increasing returns rather than depletion.¹⁹⁸

Rose argues that the PTD is one of several “strong doctrines,” alongside prescription and custom, supporting the idea that some property are inherently public.¹⁹⁹ Her focus is not solely on environmental protection, but on reserving properties essential for public needs like travel, communication, commerce, and public speaking—uses that foster interaction between people.²⁰⁰ Thus, she views the PTD as only indirectly related to environmental protection.²⁰¹

Rose distinguishes between two publics: the “unorganized public” (the general public) and the “government-organized public” (the State). She argues that the strong doctrines, including the PTD, grant property rights to the unorganized public who have unrestricted access to the resources, often leading to the “tragedy of the commons.”²⁰² However, she argues that such access is not property right, but merely “a mass of passive ‘things’ awaiting reduction to private property.” For the “unorganized public” to claim property, she asserts two conditions: (1) the property must be capable of being monopolized by private parties, and (2) the public’s claim must be superior, as the resource is more valuable when used by many.²⁰³

Mary Christina Wood expanded the PTD through her “Nature’s Trust” framework as a way to hold government and its officials accountable as trustees for protecting natural resources.²⁰⁴ She argues that the present and future generations of citizens have a “beneficial interest” in these resources, and the government has a strict fiduciary duty to manage them for the public welfare, ensuring that they are exploited not simply for private gain or political advantage.²⁰⁵

¹⁹⁸ *Id.* at 723.

¹⁹⁹ *Id.* at 711–14.

²⁰⁰ Rose, *supra* note 174, at 359–60, citing Rose, *Comedy of the Commons*, *supra* note 197.

²⁰¹ *Id.*

²⁰² Rose, *Comedy of the Commons*, *supra* note 197, at 721.

²⁰³ *Id.* at 774.

²⁰⁴ Mary Christina Wood, “You Can’t Negotiate with a Beetle”: *Environmental Law for a New Ecological Age*, 50 NAT. RES. J. 167, 200 (2010).

²⁰⁵ *Id.*

Wood critiques how modern bureaucracies often view environmental decisions as discretionary, allowing damage to public natural assets which undermine the PTD's fiduciary role.²⁰⁶ She calls for institutionalizing the PTD within environmental agencies, guiding administrative discretion in two aspects. First, Wood proposes imposing "fiduciary standards" on the management of ecological assets which should prioritize sustainability, recovery, and replenishment over exploitation or mere use and must be grounded on scientific data—ideally from experts insulated from political influence.²⁰⁷ Second, she calls for safeguards to ensure that government employees remain accountable to the public as trust beneficiaries, not towards private or commercial interests.²⁰⁸

Wood also highlights the lack of effective judicial enforcement mechanisms in the current application of the PTD.²⁰⁹ She emphasizes the judiciary's role in upholding the State's fiduciary obligations, arguing that courts should not allow procedural defenses such as issues on standing, the political question doctrine, or preemption to undermine PTD enforcement.²¹⁰

After Sax and Rose, Richard Epstein offers a more conservative interpretation of the PTD, likening it to eminent domain.²¹¹ He argues that both the PTD and eminent domain impose parallel restrictions on government power—while eminent domain allows for the taking of private property for public use with just compensation, the PTD restricts the government's ability to transfer public rights to private parties without compensation.²¹² Epstein compares this to the Takings Clause of the Fifth Amendment,²¹³ emphasizing that the PTD also prevents legislatures from transferring property for their own benefit at the public's expense.

Epstein develops a property-based framework to limit the power of the legislature to dispose of public property by analyzing the rules governing the acquisition of property and the transfers between public and private

²⁰⁶ *Id.* at 202.

²⁰⁷ *Id.* at 204–05.

²⁰⁸ *Id.*

²⁰⁹ *Id.* at 207.

²¹⁰ *Id.*

²¹¹ Richard A. Epstein, *The Public Trust Doctrine*, 7 CATO J. 411, 426 (1987). *See also* Huffman, *supra* note 158, at 353.

²¹² *Id.* at 421.

²¹³ U.S. CONST. amend. V. ("...nor shall private property be taken for public use, without just compensation.")

ownership. He argues that parties enter into such transactions to transfer property because of *mutual benefit*—where someone is better off without making anyone else worse off.²¹⁴

Epstein proposes a two-step analysis of the PTD: (1) whether the State’s transfer of public property to private ownership should be made, and (2) if so, what compensation should be provided.²¹⁵ First, a transfer should only occur if it improves the general welfare, measured by whether the proposed private use is more beneficial than public ownership.²¹⁶ If the transfer reduces overall utility, no amount of compensation will justify it. Second, any transfer from the public to private parties require just compensation, similar to eminent domain.²¹⁷ While compensation under eminent domain is considered *just* when the “gains to the state exceed the losses that the taking imposes [on the private owner],”²¹⁸ determining just compensation under the PTD is challenging, especially when the public property cannot be alienated. As a procedural safeguard, Epstein suggests a competitive auction to ensure the public receives maximum value.²¹⁹

Epstein also explores the constitutional basis of the PTD, suggesting that it may find its “home” in either the Due Process Clause or the Equal Protection Clause, particularly in contexts where uncompensated transfers of public property benefit a few at public’s expense.²²⁰ However, these clauses privilege individual liberties rather than collective rights or social benefits protected under the PTD.

E. The Public Trust Doctrine in the Philippines

While it was only in *Maynilad v. DENR* when the Supreme Court integrated the PTD in Philippine jurisprudence, it may be argued that the idea of a public trust was already embedded in the 1987 Constitution, environmental laws, as well as in early Supreme Court landmark cases prior to 2019.

Article XII, Section 2 of the 1987 Constitution, lays the groundwork for the public trust by declaring that:

²¹⁴ Epstein, *supra* note 211, at 413.

²¹⁵ *Id.* at 419.

²¹⁶ *Id.*

²¹⁷ *Id.* at 418.

²¹⁸ *Id.*

²¹⁹ *Id.* at 421.

²²⁰ *Id.* at 427–28.

Section 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. *With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State.*²²¹

This provision embodies the Spanish colonial concept of the Regalian doctrine or *jura regalia*—all lands of the public domain belong to the State, including the waters and natural resources, and the government controls and regulates exploration, development, and utilization of such.²²² This provision, albeit with a few minor changes, were likewise present in the 1935²²³ and the 1973²²⁴ Constitutions of the Philippines. In addition, Article II, Section 16²²⁵ also declares the “right of the people to a balanced and healthful ecology” and a corresponding duty of the State to “protect and advance” the environment. Both of these provisions lay a strong constitutional foundation for the PTD in the Philippines.

Michael C. Blumm and Rachel D. Guthrie identified the earliest manifestation of the PTD in the Philippines in the Water Code, which declared that “all waters of the Philippines belong to the State.”²²⁶ However, several other environmental laws also reflect PTD principles without explicitly stating such, emphasizing environmental stewardship of natural resources held in trust for citizens. These include the Philippine Clean Water Act,²²⁷ the National Integrated Protected Areas System Act (“NIPAS”),²²⁸

²²¹ CONST. art. XII, § 2. (Emphasis supplied.)

²²² See Antonio G. M. La Viña, *After More than 100 Years of Environmental Law, What’s Next for the Philippines*, 88 PHIL. L.J. 195, 226 (2014).

²²³ CONST. (1935) art. XII, § 1.

²²⁴ CONST. (1973) art. XIV, § 8.

²²⁵ CONST. art. II, § 16.

²²⁶ Michael C. Blumm & Rachel D. Guthrie, *Internationalizing the Public Trust Doctrine: Natural Law and Constitutional and Statutory Approaches to Fulfilling the Saxion Vision Symposium - The Public Trust Doctrine: 30 Years Later*, 45 U.C.D. L. REV. 741, 770 (2011), citing Pres. Dec. No. 1067 [hereinafter “WATER CODE”] (1976), art. 3(a).

²²⁷ Rep. Act No. 9275 [hereinafter “Clean Water Act”] (2004). Section 2 of the law declares that “[t]he State shall pursue a policy of economic growth in a manner consistent with the protection, preservation and revival of the quality of our fresh, brackish and marine waters.”

²²⁸ Rep. Act No. 7586 (1992), as amended by Rep. Act No. 11038 (2018). Section 2 of NIPAS, as amended, declares that “[i]t is hereby declared the policy of the State to secure for the Filipino people of present and for future generations, the perpetual existence of all

the Ecological Solid Waste Management Act,²²⁹ and the Philippine Clean Air Act,²³⁰ among others.

Even prior to its express recognition in *Maynilad v. DENR*, the Supreme Court had already articulated principles analogous to the public trust. In *Oposa v. Factoran*,²³¹ the Supreme Court introduced the idea of intergenerational responsibility,²³² emphasizing the duty to preserve the environment for “present as well as future generations.” It grounded its reasoning in Article II, Section 16 of the Constitution, construing the right to a balanced and healthful ecology as carrying with it a “correlative duty to refrain from impairing the environment,”²³³ and recognizing the standing of minors to sue on behalf of future generations.²³⁴

In *Laguna Lake Development Authority (LLDA) v. Court of Appeals*,²³⁵ the Supreme Court addressed a jurisdictional conflict between the LLDA’s regulatory authority and the power of LGUs to issue fishing permits under the LGC. Though the Court’s discussion on environmental principles was merely *obiter*, it reinforced the State’s fiduciary duty to protect the

native plants and animals through the establishment of a comprehensive system of integrated protected areas[.]”

²²⁹ Rep. Act No. 9003 (2001). The law regulates waste disposal and declares in Section 2 “the policy of the State to adopt a systematic, comprehensive, and ecological solid water management program which shall: (a) ensure the protection of public health and environment.”

²³⁰ Rep. Act No. 8749 (1999). This law sets the National Air Quality guidelines. In Section 2, the law reiterates the State policy to “protect and advance the right of the people to a balanced and healthful ecology” while recognizing its duty to “promote and protect the global environment” and the “primary responsibility of local governments to deal with environmental problems.” Section 3 also recognizes the rights of citizens “to breathe clean air.”

²³¹ G.R. No. 101083 [hereinafter “*Oposa*”], 296 Phil. 694 (1993).

²³² See also LYNDY COLLINS, *THE ECOLOGICAL CONSTITUTION* 53 (1st ed., 2021), available at <https://www.perlego.com/book/2534572>, citing EDITH BROWN WEISS, *IN FAIRNESS TO FUTURE GENERATIONS: INTERNATIONAL LAW, COMMON PATRIMONY, AND INTERGENERATIONAL EQUITY* (1989). The doctrine of intergenerational equity is based on the legal framework for environmental governance developed by Edith Brown Weiss. “Brown Weiss posits the present generation of humans as both beneficiaries of a planetary legacy passed down from the past and trustees of the planetary legacy for future generations. The doctrine recognises both the rights of the present generation to use and enjoy ecological resources and its obligation to adequately conserve such resources for the future.” (Citations omitted.)

²³³ *Oposa*, 224 SCRA at 696.

²³⁴ *Id.* at 713.

²³⁵ [Hereinafter “*LLDA v. CA*”], 321 Phil. 395 (1995).

environment and promote sustainable development.²³⁶ Justice Hermosissima asked, “[h]ow do we strike a balance between environmental protection, on the one hand, and the individual personal interests of people, on the other?”²³⁷—alluding to the public trust obligation to balance environmental protection with proprietary interests, particularly in relation to shared resources such as the Laguna Lake.

F. Aligning *Maynilad* with PTD

The Philippine formulation of the PTD in *Maynilad*, and even the separate opinion of Justice Leonen, diverges from the original concept as envisioned by Joseph Sax. Justice Hernando’s framework heavily relies on existing State powers, presenting the PTD as a synthesis of the Regalian doctrine, police power, and *parens patriae*. While this approach provides a conceptual structure, it arguably dilutes the PTD’s function as a judicially enforceable check on governmental overreach. Sax envisioned the PTD not as a mere articulation of existing sovereign powers, but as a constraint on the legislative itself as a tool for effective judicial intervention when the government fails its fiduciary obligation.²³⁸

By framing the PTD as an integration of doctrines already available to the State, the *ponencia*’s formulation risks reducing the doctrine to a restatement of sovereign authority, rather than recognizing it as an enforceable constitutional duty that may be invoked against the government. This undermines the distinct normative power of the PTD as theorized by Sax, demonstrated in *Illinois*, where the US Supreme Court limited the state legislature’s ability to alienate public trust lands.

On the other hand, Justice Leonen’s position, while closer to Sax’s in principle, presents its own tensions. He argues that the PTD is already found in the constitutional text without the need to invoke implicit doctrines. For example, by grounding the PTD in the constitutional provision that “public office is a public trust” (Article XI, Section 1), there is a risk of conflating the general fiduciary duty of public officials with the distinct trust relationship established under the PTD—where the State acts as trustee, the public as both trust principal and beneficiary.

²³⁶ *Id.* at 401.

²³⁷ *Id.*

²³⁸ Sax (1970), *supra* note 12, at 474.

Sax's theory more explicitly empowers the courts to act as guardians of the public interest, especially when the legislature itself threatens to alienate trust resources. In this sense, the PTD can or should operate as a mechanism of judicial review, enabling courts to check grave abuse of discretion involving the government's mismanagement or privatization of public trust assets.²³⁹ Compared to *Maynilad*, Sax's theory more explicitly envisions the PTD as a robust check on any governmental overreach, particularly in the context of environmental governance. While *Maynilad* is a step in the right direction, it remains less expansive and less judicially focused than the model Sax proposed in 1970.

IV. APPLYING THE PUBLIC TRUST DOCTRINE TO WATER PPPs

This Section proceeds from an operational understanding that the PTD, informed by the framework articulated by Joseph Sax. Under this approach, the State retains ultimate responsibility over water resources, even when service delivery is delegated to private entities. In this sense, the State's roles as trustee is not displaced by PPPs, but must instead be exercised through them.

Building on this framework, this Section evaluates the extent to which water PPPs comply with public trust obligations. It examines how PPP arrangements may be structured to balance private participation with the State's trustee duties, and how legal, institutional, and contractual safeguards can be incorporated into PPP design. Through selected examples, it illustrates how deficiencies in these safeguards may impair public trust compliance, and conversely, how their proper design may better align water governance aligns with the public trust.

A. Reframing Sax's PTD

To recall, the public trust envisions a relationship, in which the State, as trustee, manages the trust resource (the *res*), on behalf of the "unorganized" public (the trust principal), for the benefit of current and future generations (the beneficiaries). In a PPP arrangement, the private partner becomes the agent of the State, the trustee. When the State, through the public sector partner holds equity in the joint venture, it acts as both regulator and shareholder. While this dual role may appear to present a conflict of interest, the government agency acts as a "minority director,"

²³⁹ *Id.* at 491. See Blumm & Schwartz, *supra* note 154, at 16.

safeguarding the interests of the public (the minority) to maintain control of the resource. This ensures a balance between the private partner's focus on profit and efficiency, and the public interest in preserving the resource for future generations.

As discussed in Part III, Sax's formulation of the PTD imposes three duties on the State: (1) to preserve trust resources from alienation, (2) to manage them in the public interest, and (3) to ensure judicial enforceability against government actions that threaten these obligations.²⁴⁰ He characterized the PTD as a check on legislative power, and did not oppose private involvement *per se*, but warned against the State abdicating its fiduciary role by transferring the trust resource out of the State's control.²⁴¹ Delegation, through arrangements like PPPs, must be accompanied by strong safeguards that preserve public control, and protect the resource for both current and future generations.

Sax framed the PTD as imposing three non-negotiable limits on state authority over common resources: (1) public accessibility—property must remain accessible and beneficial to the general public;²⁴² (2) inalienability—the State cannot permanently divest its control over trust assets;²⁴³ and (3) use consistent with the resource's character—management must preserve ecological integrity for present and future generations.²⁴⁴

In the context of water PPP contracts, these limits may act as contractual safeguards that align directly with the fiduciary duties under the PTD mentioned by Sax. First, universal-service and affordability clauses ensure that the water services are available to the public, reflecting the principle that “a public utility—unlike an ordinary private business—cannot selectively serve a clientele, but must provide service to an indefinite public.”²⁴⁵ Water service providers, particularly PPPs, must expand access to previously unserved areas to achieve universal access and serve the broader public interest, rather than limiting services to high-paying or select sectors. Beyond physical access (connecting pipelines to households), this also includes economic access by ensuring tariffs are affordable for customers, while maintaining a sustainable level for cost recovery and reasonable profit.

²⁴⁰ See *supra* Part III.C.

²⁴¹ Sax (1970), *supra* note 12, at 488–90.

²⁴² *Id.* at 477.

²⁴³ *Id.*

²⁴⁴ *Id.*

²⁴⁵ *Maynilad v. NWRB*, 918-A Phil. 17, 98 (2021).

The public trust demands equity from the State by ensuring fair access to the trust resource.

Second, asset reversion clauses and regulation-by-contract provisions guarantee that the State retains control over water infrastructure and the trust resource. This distinguishes PPPs from outright privatization, where the State sells or bids out infrastructure or assets to a private entity, as in the case of the Metro Manila water concessionaires and MWSS. In a PPP, while the private sector finances, operates, or controls the water systems under a service agreement, the State retains control—both as a regulator, and a shareholder of the joint venture company. At the end of the contract term, PPPs are structured in a way that the assets—bulk water supply sources, treatment plants, storage, distribution network, and human capital—revert to the State, which has the option to operate the system or tender the contract to another private operator.

Additionally, the State must retain regulatory authority: rate-setting oversight, performance monitoring, and the ability to impose penalties or terminate for default. The public trust mandates the sustainability of the trust resource, ensuring it remains available for both present and future generations. Given water's scarcity, efforts towards replenishing it for future use are an integral part of the fiduciary duty.

Third, performance-linked environmental metrics ensure that any tariffs or fee increases is directly linked to conservation and sustainability efforts. Though the traditional use of water, as embodied in the public trust, is navigation, recreation, or fishery, contemporary understanding of "use" involves utilizing the resource while preserving its essential character. PPP contracts can operationalize this through performance indicators on non-revenue water, leak reduction, demand management, water conservation, and source-protection coupled with financial penalties (or incentives). By providing adequate and reliable water services to the public, more should be able to enjoy and use the trust resources since a well-developed public utility under a PPP should be able to manage water infrastructure efficiently. Water infrastructure and allocation policies must support essential public uses, consistent with the right to an adequate standard of living, rather than purely commercial or industrial exploitation that undermines the social and economic value of water.

When these three restrictions are read together, they show that water services comply with the public trust only when it broadens public access, preserves public ownership and regulatory control, and aligns profit

objectives with duties of stewardship. Of all the utility models, PPPs more closely adhere to these restrictions than any purely public or purely private WSP model.

B. PPPs as a Middle Ground Solution

As early as 2019, local water services were described as a key area for private sector expansion, with firms such as PrimeWater rapidly entering into JVs with multiple water districts.²⁴⁶ After more than a decade of implementation under the NEDA JV Guidelines and more recently under the PPP Code, these arrangements are now subject to increased public and regulatory scrutiny.

PPPs may serve as a potential mechanism for advancing the State's obligations under the PTD, particularly where arrangements are structured to ensure public access, preserve State control, and enforce accountability.

However, the extent to which PPPs fulfill these objectives varies across projects. Outcomes depend less on the formal classification of the arrangement than on the design of governance mechanisms that enable the State to exercise effective oversight and enforce performance standards. Some recent cases suggest that projects structured as *incorporated* joint venture companies may perform better than those organized as simple, *unincorporated* contracts. But this does not necessarily mean that one structure is inherently superior or should be preferred over the other.

As of May 2026, the PPP Center reports that there are currently 121 active PPP projects in the water and sanitation sector, totaling PHP 591.64 billion pesos—making it the fourth-largest sector in terms of investment amount after railways, aviation, roads, and property development, and it also has the highest number of active projects.²⁴⁷ However, these figures may underrepresent the actual scale of projects undertaken through JVs, as many agreements are not formally reported. For instance, the previously Villar-owned PrimeWater Infrastructure Corporation (“PrimeWater”) leads the list of water supply providers engaged in joint venture agreements and has

²⁴⁶ Segundo Eclar Romero, *On the Move: Local water: the new battleground*, INQUIRER.NET, Nov. 25, 2019, at opinion.inquirer.net/125463/local-water-the-new-battleground (last accessed May 5, 2026).

²⁴⁷ *PPP Projects Dashboard*, PPP CTR. WEBSITE, May 22, 2025, at <https://ppp.gov.ph/project-dashboard> (last accessed May 22, 2026).

signed at least 75 JVs with local water districts,²⁴⁸ though some sources estimate closer to 100.²⁴⁹ Other major players include Manila Water Philippine Ventures, Inc. (“Manila Water”),²⁵⁰ and Manny V. Pangilinan’s MetroPac Water Investments Corporation (“MPW”),²⁵¹ which each maintain multiple JVs.

1. Laguna Water

A key example of a successful JV is Laguna Water, an incorporated joint venture between the Provincial Government of Laguna and AAA Water Corporation. Before Manila Water acquired AAA Water in 2009, Laguna Water was underperforming with only 14% service coverage and 48% non-revenue water.²⁵² Through the JV, the Provincial Government retained ownership of the water assets, reflecting the public trust doctrine by ensuring that water remains a public resource.²⁵³ When the private partner failed to meet service obligations, Manila Water acquired its interest, and since then, the utility has improved services by increasing coverage from 14% to 115% (over 132,000 households at present), providing 24/7 service, enhancing water pressure, and reduced water losses to 24%.²⁵⁴

²⁴⁸ *Water Supply Improvement and Rehabilitation*, PRIMEWATER CORP. WEBSITE, at primewatercorp.com/water-supply-improvement-and-rehabilitation/.

²⁴⁹ Madelaine B. Mirafior, *Prime Water has taken over 100 water districts*, MANILA BULLETIN, Jan. 7, 2021, at mb.com.ph/2021/1/7/prime-water-has-taken-over-100-water-districts (last accessed May 9, 2025). See also Mariejo Ramos, *Down the Drain – Philippines water joint ventures stir anger*, REUTERS, Aug. 7, 2023, at www.reuters.com/article/markets/feature-down-the-drain-philippines-water-joint-ventures-stir-anger-idUSL8N38F0ZA (last accessed May 13, 2025).

²⁵⁰ *Manila Water Philippine Ventures*, MANILA WATER WEBSITE, at www.manilawater.com/business-units/manila-water-philippine-ventures (last accessed May 5, 2026). See Jan Escosio, *Manila Water Philippine Ventures champions partnerships beyond NCR*, INQUIRER.NET, Mar. 21, 2025, at newsinfo.inquirer.net/2045742/manila-water-philippine-ventures-champions-partnerships-beyond-ncr (last accessed May 5, 2026).

²⁵¹ *Portfolio*, METRO PACIFIC WATER WEBSITE, at metropacificwater.com/our-portfolio.

²⁵² Noel O. Julao, *Alternative PPP Model: The Laguna Water Story 4*, (Public-Private Infrastructure Advisory Facility (PPIAF)–World Bank Group PPP Short Story Competition, Case Study Winner, 2015). See also *Manila Water forms subsidiary for Laguna project*, GMA NEWS ONLINE, Sept. 18, 2009, at www.gmanetwork.com/news/money/companies/172597/manila-water-forms-subsidiary-for-laguna-project/story (last accessed May 5, 2026).

²⁵³ COMM’N ON AUDIT (COA), ANNUAL AUDIT REPORT ON THE PROVINCE OF LAGUNA FOR THE YEAR ENDED DECEMBER 31, 2023 12 (2024).

²⁵⁴ *Manila Water Philippine Ventures champions partnerships beyond Metro Manila*, MANILA WATER WEBSITE, Mar. 20, 2025, at www.manilawater.com/news/manila-water-philippine-ventures-champions-partnerships-beyond-metro-manila (last accessed May 5, 2026); *About*

2. *Metro Pacific Iloilo Water*

The PPP of Metro Iloilo Water District (“MIWD”) illustrates another example of how an incorporated joint venture can effectively rehabilitate and expand water services while adhering to PTD principles. In 2018, MIWD entered into a joint venture agreement with Metro Pacific Water (“MPW”) to improve the water distribution system and wastewater management facilities, following an unsolicited proposal in 2014 and a competitive selection process.²⁵⁵ The partnership created Metro Pacific Iloilo Water (“MPIW”), with MIWD owning a 20% stake and the MPW controlling the remaining 80%. MIWD also acts as the regulator under the JV agreement, ensuring compliance with the service obligations and imposing penalties for non-performance. Its 20% stake in the JVCo is crucial for maintaining public oversight over public infrastructure.

Under the JV, MIWD contributed its existing assets—such as the water distribution system, deep wells, and pumping stations, and crucially, its water rights and certificate of conformance (its *franchise*)—while MPIW, as the private sector partner, invested capital and committed to improving service delivery. Liabilities were also transferred to MPIW, with the JVCo paying off MIWD’s outstanding loans to ensure financial sustainability. Additionally, existing MIWD employees were transferred to the JVCo, where they would receive training and upskilling to ensure continuity of operations upon transition. This focus on labor issues is particularly important, as the World Bank has noted that many of the most serious efficiency and performance problems in such reforms are rooted in labor management.²⁵⁶ This model of transferring assets and liabilities, staff, and the business of the utility into a corporation, known as “corporatization,” is considered by the World Bank, to be a more sustainable approach to reform.²⁵⁷

The service agreement stipulates that MPIW pays an annual lease fee for the existing facilities and water rights, which remain MIWD’s property, while new facilities will be transferred to MIWD at the end of the concession

Us, LAGUNA WATER, at <https://www.lagunawater.com.ph/about-us> (last accessed May 5, 2026).

²⁵⁵ COA, *Notes to Financial Statements, in ANNUAL AUDIT REPORT ON THE METRO ILOILO WATER DISTRICT FOR THE YEAR ENDED DECEMBER 31, 2023* 34–39 (2024).

²⁵⁶ PPPRC, *Corporatization of Public Water Utilities*, WORLD BANK, at ppp.worldbank.org/public-private-partnership/ppp-sector/water-sanitation/water-agreements/corporatization-public-water-utilities/corporatization (last accessed May 5, 2026).

²⁵⁷ *Id.*

term. Aside from the lease fee, the district receives dividends from the retained earnings of the JVCo as a shareholder. This structure upholds the PTD by preventing the privatization of water resources while enabling private sector investment to enhance public services, consistent with Sax's principles of inalienability, public accessibility, and sovereign control over water.

Since operations began in 2019, MPIW has made significant improvements to water services across Metro Iloilo: increasing service coverage to 26% (50,000 connections), reducing non-revenue water from 59% to 38%, and providing 24-hour service to 65% of customers. MPIW has also invested in expanding the pipeline network to ensure broader access.²⁵⁸ Despite rising operational costs, MPIW has kept water rates low amid expansion and rising operational costs—PHP200 for the first 10 cubic meters or PHP20 per cubic meter, compared to other utilities serving similarly urbanized areas—reflecting the principle that water should remain accessible to all.²⁵⁹ MPIW is awaiting approval from LWUA for its proposed tariff increases, which were submitted in 2024 after public consultations.

In 2024, MPIW announced plans to develop a 5-billion-peso desalination plant, which will produce an additional 66.5 million liters of water per day to address the metro area's water scarcity challenges.²⁶⁰ Previously, MPW had also entered into another joint venture agreement with the water district for a 170-MLD bulk water supply project, resulting in the formation Metro Iloilo Bulk Water Supply Corporation ("MIB"), which now supplies 80 million liters per day.²⁶¹

²⁵⁸ Francis Allan L. Angelo, *'WATER SECURITY IS OUR PRIORITY': MPIW achieves major milestones since joint venture with MIWD*, DAILY GUARDIAN, June 10, 2024, at <https://dailyguardian.com.ph/water-security-is-our-priority-mpiw-achieves-major-milestones-since-joint-venture-with-miwd> (last accessed May 15, 2026); See Joseph Bernard A. Marzan, *MPIW kept Iloilo rates low amid expansion, crises*, DAILY GUARDIAN, June 11, 2024, at <https://dailyguardian.com.ph/mpiw-kept-iloilo-rates-low-amid-expansion-crises> (last accessed May 5, 2026).

²⁵⁹ Marzan, *supra* note 258; Ime Sornito, *Water rate adjustment for Metro Iloilo seen to take effect in 2025*, PANAY NEWS, Dec. 7, 2024, at <https://www.panaynews.net/water-rate-adjustment-for-metro-iloilo-seen-to-take-effect-in-2025> (last accessed May 5, 2026).

²⁶⁰ Sheldeen Joy Talavera, *How Metro Pacific Water is addressing Iloilo's rising demand*, BUSINESSWORLD, Nov. 22, 2024, at <https://www.bworldonline.com/corporate/2024/11/22/636564/how-metro-pacific-water-is-addressing-iloilos-rising-demand/> (last accessed May 5, 2026).

²⁶¹ Leo Solinap, *Iloilo City residents rejoice as Metro Pacific Iloilo Water supply improves*, SUNSTAR, May 29, 2024, at <https://www.sunstar.com.ph/iloilo/local-news/iloilo-city-residents-rejoice-as-metro-pacific-iloilo-water-supply-improves> (last accessed May 5, 2026).

MIWD's experience demonstrates the potential of incorporated joint ventures to align with the PTD by balancing public ownership of essential water assets with private sector efficiency and investment. One editorial piece published in the local news remarked, “[e]quitable and secure water distribution was achieved because of the JVA. Public-private partnership has become a crucial factor for the water distribution to improve.”²⁶²

3. *PrimeWater*

While the performance of water JVs varies, a growing consensus suggests that those involving PrimeWater often underperform compared to the pre-JV operations of the partner water districts. These JVs often result in unfavorable outcomes for water districts. Many of these PPPs were hastily entered into, sometimes due to political pressure from local politicians, leading to agreements that prioritize short-term political gain over long term-service efficiency.

A key distinction is that PrimeWater typically structures their JVs as unincorporated partnerships, which maintains rights and liabilities directly between the parties, rather than creating a separate JVCo. Under this structure, the water district receives a “JV share” in the profits, which is a fixed amount as stated in the JVA, while PrimeWater will be entitled to the remaining profits and assumes responsibility for all losses.²⁶³ Legal title to the facilities shall remain with the water district, and simply grants PrimeWater usufructuary rights as operator. The water district only has strategic control which involves policy-making, planning, and coordination for tariff approvals, while PrimeWater has operational control. Unlike in a JVCo, where the water district has a seat in the board, in unincorporated JVs the water district acts solely as a regulator, similar to its role in privatization, with no direct involvement in the operational-decision making.

While financial metrics alone cannot fully assess utility performance, they remain a strong proxy for efficiency and service outcomes. In April 2025, the Board of Directors of the San Jose del Monte Water District

²⁶² *Waters of Change: Iloilo's Journey*, DAILY GUARDIAN, Mar. 4, 2024, at <https://dailyguardian.com.ph/waters-of-change-iloilos-journey/> (last accessed May 5, 2026).

²⁶³ *In Full. The Primewater-BACIWA Joint Venture Agreement*, DNX, Apr. 30, 2024, at <https://dnx.news/in-full-the-primewater-baciwa-joint-venture-agreement/>. The full text of the Joint Venture Agreement (“JVA”) was made available on the DNX website by former Bacolod City Councilor Wilson Gamboa Jr. (last accessed May 5, 2026).

(“SJDMWD”) in Bulacan sent a Notice of Intent to Pre-Terminate its JV with PrimeWater, citing customer complaints over inadequate service, including low to zero water pressure.²⁶⁴ PrimeWater had assumed operations in 2018, when SJDMWD was one of the best-performing water districts nationwide, earning 187 million pesos between 2015 to 2016.²⁶⁵ Following the JV, however, its financial and service performance declined significantly, prompting adverse findings from the Commission on Audit (COA).²⁶⁶

In contrast, PrimeWater’s net income steadily increased to 1 billion pesos in 2022.²⁶⁷ COA also noted that failure of both the district and PrimeWater to finalize a Rewards and Penalties framework within the prescribed period, preventing the imposition of sanctions for noncompliance.²⁶⁸ Similar patterns were observed in five other WDs in Pampanga, which likewise experienced declines in financial and operational performance after entering into JVs with PrimeWater.²⁶⁹

In response to mounting concerns, Senator Risa Hontiveros filed a resolution in May 2025 calling for a Senate investigation into JV agreements between water districts and private entities, particularly those involving PrimeWater, MWPV, and MPW, citing the case of SJDMWD.²⁷⁰ Hontiveros emphasized the COA findings that raised concerns about the economic viability and service quality of these JVs, as well as the absence of transparency and accountability mechanisms in the agreements.²⁷¹ Camille Villar, who won a Senate seat during the May 2025 midterm elections,

²⁶⁴ See also *San Jose del Monte Water board moves to pre-terminate PrimeWater*, PHIL. NEWS AGENCY, Apr. 28, 2025, at www.pna.gov.ph/articles/1248873 (last accessed May 5, 2026).

²⁶⁵ Lian Buan, *Since Villars’ PrimeWater took over, Bulacan residents suffering for years*, RAPPLER, Apr. 14, 2025, at www.rappler.com/philippines/elections/since-villars-primewater-took-over-bulacan-residents-suffering-years (last accessed May 5, 2026).

²⁶⁶ *Id.*

²⁶⁷ *Id.*

²⁶⁸ COA, *Executive Summary*, in ANNUAL AUDIT REPORT ON THE SAN JOSE DEL MONTE WATER DISTRICT FOR THE YEAR ENDED DECEMBER 31, 2023 iv–v (2024).

²⁶⁹ Jun A. Malig, *5 Pampanga water districts losing revenues under private firm – COA*, INQUIRER.NET, May 24, 2021, at newsinfo.inquirer.net/1435641/coa-5-pampanga-water-districts-losing-revenues-under-private-firm (last accessed May 5, 2026).

²⁷⁰ S. Res. No. 1352, 19th Cong., 3rd Sess. (2025). See also Press Release, *Hontiveros calls for Senate probe on ‘disadvantageous’ water agreements*, SENATE PHIL. WEBSITE, May 5, 2025, at web.senate.gov.ph/press_release/2025/0505_hontiveros1.asp (last accessed May 5, 2026); Wilnard Bacelonia, *Hontiveros seeks Senate probe on ‘murky’ water deals amid complaints*, PHIL. NEWS AGENCY, May 5, 2025, at www.pna.gov.ph/articles/1249376 (last accessed May 5, 2026).

²⁷¹ *Id.*

expressed support for a legislative inquiry into the family-owned PrimeWater.²⁷²

At present, there are two Villar scions in the Senate, with former Public Works Secretary Mark Villar serving until 2028. It has been reported that during his tenure as Public Works Secretary under the Duterte administration, PrimeWater significantly expanded its joint venture agreements—from just 15 to 75 JVAs by the end of his term in 2022.²⁷³

LWUA has likewise initiated a review of reported service deficiencies, upon the direction of President Marcos, Jr. and is currently exploring measures to assist affected consumers, including the possible termination of JVAs.²⁷⁴

On September 29, 2025, the Senate Committee on Public Services, chaired by Senator Raffy Tulfo, commenced an inquiry into PrimeWater and its JVs with water districts.²⁷⁵ In his opening statement, Senator Tulfo acknowledged that since many water districts that enter into JVAs lack the financial and technical capacity to upgrade their systems, they are forced to enter into JVAs to “bridge this gap” using private sector expertise, investment, and capital to improve services.²⁷⁶ However, he noted that in some cases, particularly those involving PrimeWater, the anticipated service improvements and capital investments did not fully materialize, and certain districts experienced declining revenues following the agreements—“*Para bang nakipag-JVA kayo sa PrimeWater para magpalugi.*” (It’s as if you entered into a JVA with PrimeWater just to incur losses.)²⁷⁷

²⁷² Joyce Ann L. Rocamora, *Camille Villar open to Senate probe into Prime Water*, PHIL. NEWS AGENCY, May 17, 2025, at <https://www.pna.gov.ph/articles/1250324>.

²⁷³ Lian Buan, *Lucio Co group buys troubled PrimeWater, consumers still aggrieved*, RAPPLER, Dec. 16, 2025, at <https://www.rappler.com/business/lucio-vincent-co-buy-primewater>; Dexter Cabalza, *Marcos concurs with LWUA recommendations on PrimeWater probe*, INQUIRER.NET, July 9, 2025, at <https://newsinfo.inquirer.net/2080302/marcos-concurs-with-lwua-recommendations-on-primewater-probe>.

²⁷⁴ Ruth Abbey Gita-Carlos, *LWUA looking to solve PrimeWater woes but JVA termination possible*, PHIL. NEWS AGENCY, July 4, 2025, at <https://www.pna.gov.ph/articles/1253590>.

²⁷⁵ Press Release, *Sen. Raffy raises concern over poor water quality, service of PrimeWater*, SENATE PHIL. WEBSITE, Sept. 29, 2025, at https://legacy.senate.gov.ph/press_release/2025/0929_tulfo1.asp.

²⁷⁶ *Id.*

²⁷⁷ *Id.*

In December 2025, amid ongoing Senate investigations and increasing calls for accountability, the Villar group sold 100% of its equity in PrimeWater to Crystal Bridges Holding Corporation (“Crystal Bridges”), an investment firm associated with Puregold tycoon Lucio Co and his heir, Vincent Co.²⁷⁸ This development followed a Senate hearing on December 2, 2025, where Senator Tulfo reported that at least 61 water districts were not satisfied with PrimeWater’s services, and more than 50 had already considered pre-termination of their JVAs.²⁷⁹

Several water districts had already issued notices of termination of their JVAs to PrimeWater, including the San Pedro City Water District (Laguna),²⁸⁰ Metro San Fernando Water District (La Union),²⁸¹ Malaybalay City Water District (Bukidnon),²⁸² and SJDMMWD.²⁸³ However, termination has proven difficult—described by Senator Tulfo as an “obstacle course”²⁸⁴—as PrimeWater has secured court protection orders maintaining the status quo.²⁸⁵

It remains to be seen how the change in ownership will affect existing JVAs, particularly as water districts were reported not informed of the acquisition until the deal was finalized.²⁸⁶ During the subsequent Senate hearing, Senator Tulfo raised concerns that the sale to Crystal Bridges was merely a front (of PrimeWater) as there was no due diligence conducted to determine whether it had the financial and technical capacity to assume

²⁷⁸ Buan, *supra* note 273.

²⁷⁹ *Senator Raffy Tulfo Opening statement*, SENATE PHIL. WEBSITE, Dec. 3, 2025, at <https://senate.gov.ph/media/news-release/senator-raffy-tulfo-opening-statement>.

²⁸⁰ Art Mercado (Mayor of San Pedro, Laguna), FACEBOOK (July 11, 2025), at <https://www.facebook.com/photo/?fbid=1188178046657159&set=a.241954844612822>,

²⁸¹ Frederick M. Nasiad, *Water district terminates deal with PrimeWater in La Union*, MANILA TIMES, May 11, 2025, at <https://www.manilatimes.net/2025/05/11/regions/water-district-terminates-deal-with-primewater-in-la-union/2110594>.

²⁸² H. Marcos C. Mordeno, *Malaybalay water district ends joint venture with PrimeWater*, MINDANNEWS, Jan. 20, 2026, at <https://mindanews.com/top-stories/2026/01/malaybalay-water-district-ends-joint-venture-with-primewater>.

²⁸³ Pot Chavez, *San Jose del Monte terminates PrimeWater joint venture*, MANILA STANDARD, Nov. 4, 2025, at <https://manilastandard.net/news/314663937/san-jose-del-monte-terminates-primewater-joint-venture.html>.

²⁸⁴ *Senator Raffy Tulfo Opening statement*, *supra* note 279.

²⁸⁵ Sherwin de Vera, *La Union group slams court protection order in favor of PrimeWater*, RAPPLER, June 27, 2025, at <https://www.rappler.com/philippines/luzon/la-union-water-people-network-reaction-court-protection-order-primewater>.

²⁸⁶ Jan Escosio, *Water districts seek ‘clear path forward’ amid PrimeWater transition*, INQUIRER.NET, Feb. 18, 2026, at <https://newsinfo.inquirer.net/2183830/water-districts-seek-clear-path-forward-amid-primewater-transition>

PrimeWater's embattled operations.²⁸⁷ He also echoed calls from water districts to be released from their JVAs under this new arrangement.²⁸⁸

The PrimeWater JVs illustrate potential deficiencies across the three dimensions of the PTD: access, control, and accountability. First, with respect to access, service obligations appear unevenly enforced, and available reports suggest that coverage has not significantly expanded in some areas, with persistent consumer complaints in certain water districts prompting moves toward pre-termination. Second, in terms of control, the arrangements raise concerns as to whether water districts have retained meaningful oversight over operations, particularly where the private partner exercised primary operational and technical decisions. To illustrate, in the JVA between PrimeWater and the City of San Fernando Water District (San Fernando, Pampanga), Clause 2.4. on Management and Operational Control of the Joint Venture, the JVA states that:

“2.4.2. Except for CSFWD functions enumerated in Section 2.5.2 hereof and as may otherwise be expressly provided in this Agreement or subsequently agreed by the Parties, PRIMEWATER, as operator, contractor, and agent of CSFWD, shall have the management and operational control of the Joint Venture, and all business operations, transactions and activities connected with an related to the JV Project shall be undertaken in the name of PRIMEWATER.”²⁸⁹

Further, the water districts functions are limited to policy setting, customer relations, tariff setting, and performance review.²⁹⁰ Under the JVA, PrimeWater is also authorized to enter into financing agreements without the need of prior approval of the water district. These contractual provisions highlight the lack of control over the operations by the water district.

In addition, the subsequent acquisition of PrimeWater by Crystal Bridges, without prior notice to all partner water districts, further highlights governance challenges as water districts with ongoing JVs now have to deal with the new entity.

²⁸⁷ *Sen. Raffy: Sale of PrimeWater to Crystal Bridges Merely a Front?*, SENATE PHIL. WEBSITE, Feb. 25, 2026, at <https://senate.gov.ph/media/news-release/sen-raffy-sale-of-primewater-to-crystal-bridges-merely-a-front>.

²⁸⁸ *Id.*

²⁸⁹ Joint Venture Agreement for the Financing, Development, Rehabilitation, Expansion, Improvement, Operation and Maintenance of the Water Supply of City of San Fernando Water District (Oct. 14, 2016), § 2.4.2.

²⁹⁰ § 252.

These issues are partly attributable to the contractual design of unincorporated JVs, where the absence of a separate juridical entity may limit mechanisms for shared governance and restrict the public partner's ability to control key decisions, including changes in ownership structure. By contrast, incorporated JVs may provide additional safeguards—such as board representation and consent rights over equity transfers or right-of-first-refusal prior to the exit of a private partner. Third, with respect to accountability, the absence or delayed implementation of performance-based mechanisms, such as rewards and penalties—as illustrated in the SJMWD example—constrained the ability of water districts to enforce contractual obligations. The lack of clear termination clauses or effective exit mechanisms in cases of poor performance has further limited the ability of water districts to respond to underperforming arrangements.

These case studies illustrate only a subset of water PPPs, but they reflect broader trends in the sector. Taken together, these developments suggest that the observed shortcomings are less a function of the private partner alone than of the underlying PPP design. Where safeguards for public control, performance monitoring, and enforcement are limited, such arrangements may fall short of the State's obligations under the PTD.

V. CONCLUSION

A key limitation in assessing water PPPs is the lack of publicly available data, as most JVAs remain proprietary (despite the fact that these should be public documents). The enhanced transparency and disclosure requirements under the PPP Code may address this gap and enable a more informed and sober analysis of the current state of water PPPs.²⁹¹

PPP offers a potential middle ground, leveraging private capital and efficiency without relinquishing the State's duty or ownership of water infrastructure. Under this model, the public sector retains control as both regulator, and in some cases, shareholder, while the private partner invests capital and expertise, and manages the water infrastructure. However, to align with the PTD, PPPs must be carefully designed with strong regulatory oversight, transparency mechanisms, and a balanced distribution of risks and responsibilities. Ultimately, the success of PPPs hinges on the institutional capacity of the public sector partner and the strengths of legal and institutional safeguards in the contract.

²⁹¹ PPP CODE, § 24 (5); PPP CODE IRR, § 114.

The State retains ultimate responsibility as trustee of the nation's water resources, but institutional conflicts, bureaucratic red tape, weak enforcement, and regulatory capture undermine that fiduciary duty. The State's obligation extends beyond merely establishing a legal framework; it must also manage the institutions that regulate water. The proposed DWR and the WRC may be a step in the right direction, but these reforms have stalled and new legislation is unlikely soon. In the meantime, critical developments in the water sector need to be undertaken, especially by the main WSPs, water districts. The government itself recognizes that it cannot fulfill the task of the PTD alone, and needs private sector participation to make progress in achieving access to safe water and sanitation services by 2030.

The experience of Philippine water PPPs confirms Joseph Sax's insight that private participation need not undermine the PTD, provided the State embeds three non-negotiable safeguards in the design: retained ownership, fiduciary performance standards, and enforceable oversight. Incorporated joint ventures, in particular, adhere more closely to that standard than unincorporated contracts, as they strike a balance between maintaining State control over trust resources and allowing private entities to invest and improve the water system.

By improving water services through PPPs, more people gain access to trust resources—water and water infrastructure—satisfying the PTD by broadening public access without fully abdicating the State's responsibility to provide public services. Compared to the counterfactual, where services are provided by underfunded publicly-owned water districts and resources are wasted due to non-revenue water losses, PPPs, when structured with carefully crafted contracts, can define the respective roles and contributions of the government and private entities.

At a minimum, JV contracts and service agreements should include the following provisions to adhere to the PTD:

1. Non-alienation – It must be emphasized that water and infrastructure remain under the ownership of the State through the water district, with the JVCo holding leasehold rights or usufructuary rights over the facilities, water permits, or franchises. These assets should be protected against mortgages or sales without government approval or just compensation. As *Illinois Central Railroad* cautioned,

rights over the property should be term-limited to prevent alienating trust resources in perpetuity.

2. **Performance-Based Compensation and Resource Sustainability** – Service agreements should ensure universal coverage while prioritizing the renewal or conservation of the water resources. Under such contracts, tariff adjustments or bonus payments hinge on meeting service targets—coverage expansion, non-revenue water reduction, and watershed protection—ensuring that private gains align with the State’s continuing stewardship of water as a trust resource. Additionally, the water governance framework should reflect this by revising national water regulations, such as those from NWRB and LWUA to incorporate integrated water resource management and environmental safeguards, alongside the need for reasonable returns to the private sector.
3. **Enforceability** – The right to safe water is judicially enforceable and the State must provide mechanisms to enforce this right. Consumers should have a right to demand better services through water districts or regulatory bodies and seek redress through the courts when their rights are violated. The water district, as the public sector partner, must enforce penalties against the JVCO’s performance bond to ensure accountability, and have the option to terminate the partnership if irreparable failures occur. Step-in rights should also be available for other private players to take over if the partner fails to meet its obligations.

With the new PPP Code, more investments in water infrastructure PPPs are expected, and the government is inviting the private sector to collaborate.²⁹² As legislative efforts towards a comprehensive water governance framework continue, the need to deliver essential water services has led to increased reliance on PPPs to address investment gaps in water infrastructure and improve service delivery. However, recent experiences with questionable PPPs, such as those involving PrimeWater, raise concerns about how such arrangements are designed and implemented in practice.

²⁹² See DoF sees PPP Code driving investment in water *infra*, BUSINESSWORLD, Feb. 13, 2024, at bworldonline.com/editors-picks/2024/02/13/575505/dof-sees-ppp-code-driving-investment-in-water-infra (last accessed May 5, 2026).

These developments do not necessarily undermine the viability of PPPs as a model, but they do highlight structural weaknesses in oversight, enforcement, and accountability that may affect their long-term sustainability. In this context, the question is not whether PPPs should be pursued, but how they may be recalibrated to ensure that they remain consistent with the State's obligations under the PTD. This requires strengthening governance mechanisms within PPP arrangements, including clearer performance standards, more effective monitoring processes, and credible exit or transition mechanisms where public interests are at risks.

PPPs are not a panacea for all challenges facing water utilities. JVs must be structured and approached on a case-by-case basis based on the circumstances. More importantly, these arrangements must align with the public trust principles, focusing on environmental sustainability and stewardship, while balancing financial sustainability and profitability for the private sector. Achieving both objectives should not be mutually exclusive.