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### **NO MORE BAILOUTS FOR MAYNILAD!**

*Press Statement, Freedom from Debt Coalition, April 9, 2003 (Posted FDC website on Nov 14, 2003)*

We, from the Freedom from Debt Coalition, strongly urge the MWSS Board of Trustees to stand firm in honoring its commitment to protect the interest of the Filipino people in the operations and management of the West Zone concession area.

Today, as Maynilad presents its new business plan, let us clearly remember that the concessionaire's six-year presence in the water sector has only shamed the government and its water privatization policy.

Maynilad has not delivered on its promises. Water rates are unjustifiably high. Non-revenue water exceeds that of the former publicly owned MWSS. Maynilad refuses to pay the government P5 billion in concession fees but still charges consumers the amounts that are supposed to cover the concession fees. It blames the government for the termination of its concession contract. Now it negotiates for another chance at running the West Zone?

Despite all the comfort that government accorded to the concessionaire, Maynilad only succeeded in doing what it does best: sacrificing the public's interest in the name of profit.

Not even Maynilad can deny its poor performance. In fact, the company has already admitted its shortcomings but it chooses to blame government, our justice system, local government units, water thieves, everybody except themselves, for its fiasco.

Maynilad is rotting from the inside. It has failed the government and has only proven itself unworthy of the trust of the Filipino people. Maynilad's violations of its concession contract and unjustifiable increases in water rates have crudely disregarded the people's right to adequate water supply and sanitation services.

With Maynilad's renewed vigor to negotiate with the government, the Freedom from Debt Coalition challenges the new leadership of the MWSS Board of Trustees to remain true to their roles as servants of the people. Maynilad's record in managing the West Zone speaks so loudly that the public need not hear its new set of promises.

As the keeper of the public's trust, government must pursue the case to terminate Maynilad's contract and let the arbitration process take its course. There will be no more bailouts for violators of the people's right to water. Not in our watch.

Water is a human right. Public service, not private profit!  
Oppose the privatization of water!

### **Maynilad's \$120-M bond untouchable**

*BusinessWorld, November 19, 2003, Jennee Grace U. Rubrico and Cecille M. Santillan-Visto*

A Quezon City trial court order that effectively suspends Maynilad Water Services Inc.'s payment of past due and maturing loans also bars the state-run Metropolitan Waterworks and Sewerage System (MWSS) from drawing on Maynilad's \$120-million performance bond.

An official from Benpres Holding Corp., the Lopez-controlled investment company that owned 59% of Maynilad, said MWSS could not touch the bond even to just collect on Maynilad's over PhP6 billion in arrears. Benpres chief operating officer Angel S. Ong said, "MWSS is prevented by the stay order from drawing on the performance bond."

Even Maynilad's court-appointed receiver said that requiring it to pay by next week some PhP6.7 billion in concession fees to MWSS would jeopardize the Lopez-led water company's rehabilitation.

Lawyer Rosario S. Bernaldo agreed with Benpres's position that MWSS could not draw on the \$120-million performance bond without violating the debt reprieve ordered by Quezon City Judge Reynaldo B. Daway.

Justice undersecretary Manuel A.J. Teehankee, government corporate counsel, said recently that while Maynilad was temporarily excused by the court order from paying the government, its guarantors of the firm could still be forced to settle Maynilad obligations. The court gave Maynilad debt relief after it petitioned for corporate rehabilitation.

Its court-appointed receiver, Ms. Bernaldo, is managing partner of Bernaldo, Mirador Law Offices. She is also part of the accounting firm R.S. Bernaldo and Associates. Ms. Bernaldo also handles the rehabilitation of ASB Realty Corp., Trans-Pacific Investment Corp., and East Asia Capital Corp.

"If we follow the theory that there should be payment by November 22, then maybe that would jeopardize the rehabilitation plan," she said in an interview with *BusinessWorld*.

She also said the \$120-million bond merely guaranteed Maynilad's performance of service targets, and was not intended to answer for its unpaid concession fees.

Ms. Bernaldo may undertake her duties as receiver after posting the required PhP4-million bond and taking her oath. She is the former president of the Financial Executives of the Philippines and is a recognized tax expert.

Her first meeting with Maynilad and its creditors has been set for early January. Among Maynilad's creditors are:

- Credit Agricole Indosuez Merchant Bank Asia Ltd., which lent it some \$26 million;
- Citibank N.A., Barclays Bank PLC and Paribas and a number of other foreign banks that lent it \$100 million; and
- Equitable PCI Bank, Rizal Commercial Banking Corp., East West Bank and Development Bank of the Philippines, which lent it about PhP1.8 billion.

#### **QC court stops water firm's debt payments**

*Nov. 19, 2003, By Tina Santos, Inquirer News Service*

THE QUEZON City Regional Trial Court (QC-RTC) has stopped creditors and other parties from making claims against the Maynilad Water Services Inc. as the water firm sought corporate rehabilitation.

In a two-page Stay Order dated Nov. 17, Judge Reynaldo Daway of the QC-RTC Branch 90 prevented Maynilad's creditors from collecting payment from the water firm.

Maynilad sought relief from the court on Nov. 13 after the Paris-based ICC International Court of Arbitration ordered it to pay 6.77 billion pesos in concession fees to the Manila Waterworks and Sewerage System (MWSS).

However, the court order also covers other parties with claims against Maynilad.

In the meantime, the court directed Maynilad's suppliers to continue rendering services to the company for its continuous operation.

The court set the initial hearing on the petition for rehabilitation on Jan. 7.

In its petition, Maynilad said that despite its total assets of 16,940,306,229.61 pesos as of Oct. 31, it foresees an impossibility of meeting its maturing debts.

It then sought a suspension of debt payments as it underwent "corporate rehabilitation."

It said that on the basis of projected market conditions for the next nine years up to 2012, it has a good chance of being rehabilitated.

In relation to the payment due to the MWSS, Maynilad is seeking the rescheduling and

restructuring of its unpaid concession fees with interest at nine percent per year.

The court appointed lawyer and accountant Rosario Bernaldo to evaluate the rehabilitation plan.

### **Court puts Maynilad under receivership**

*Nov. 19, 2003, Doris C. Dumlao, Inquirer News Service*

THE QUEZON City Regional Trial Court has placed the beleaguered Maynilad Water Services Inc. under receivership, protecting it from the government water agency Metropolitan Waterworks and Sewerage System (MWSS) and other creditors that may collect on 350 million dollars' worth of debts.

In a disclosure to the Philippine Stock Exchange Tuesday, Maynilad's parent company Benpres Holdings Corp. said Branch 90 of the Regional Trial Court issued on Nov. 17 an order granting its petition for court protection.

The court also appointed Rosario Bernaldo, managing partner of Bernaldo, Mirador Law offices and of the accounting firm of RS Bernaldo and Associates, as rehabilitation receiver for Maynilad.

The order effectively suspended enforcement of all claims -- whether for money or otherwise and whether such enforcement is by court action or otherwise -- against the petitioner, its guarantors and sureties not solidarily liable with Maynilad.

Benpres chief operating officer Angel Ong added that the order effectively prevented the MWSS from drawing on Maynilad's performance bond.

The International Arbitration Court last week ordered Maynilad to pay 6.77 billion pesos in dues to the government and rejected its petition to terminate its 25-year water concession agreement with the MWSS.

MWSS was likewise allowed by the arbitrator to draw on a 120-million-dollar performance bond put up by Maynilad when it bid for the franchise in 1997. Benpres guarantees 60 percent of the bond. Joint-venture partner Ondeo-Degremont group of France guarantees the balance of 40 percent.

The initial hearing on the petition for corporate rehabilitation was set on Jan. 7, 2004.

Benpres, which owns 59 percent of the outstanding capital stock of Maynilad, earlier said the recourse to the courts would enable Maynilad to ensure continuous delivery of water services to its consumers.

Aside from the MWSS, Maynilad is indebted to foreign lenders like Citibank NA, Credit Lyonnais, Chase Manhattan, Credit Industriel et Commercial Fortis Bank and KBC Bank NV.

Maynilad covers the west zone of the MWSS concession consisting of Manila, Pasay, Las Piñas, Malabon, Muntinlupa, Valenzuela, Navotas, Parañaque, Bacoor, Kawit, Imus, Cavite City, Noveleta, Rosario and parts of Taguig and Quezon City.

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## **Maynilad gets debt reprieve**

*By Zinnia B. Dela Peña, The Philippine Star 11/19/2003*

Maynilad Water Services Inc. has secured a court reprieve yesterday on the payment of its P17.59-billion debt to creditors, giving the company enough time to map out a viable rehabilitation plan.

At the same time, the Quezon City Regional Trial Court has appointed Rosario Bernaldo, a certified public accountant and lawyer, as Maynilad's rehabilitation receiver. She was given five days from receipt of order to manifest her acceptance or non-acceptance of her appointment.

In granting Maynilad's request for suspension of debt payments, the Quezon City RTC said it found the petition sufficient in form and substance.

The order also effectively barred Maynilad from selling, transferring or disposing in any manner any of its properties, except in the ordinary course of business.

The RTC likewise ordered the water utility firm to pay in full all administrative expenses incurred after the issuance of the stay order.

The court has scheduled a hearing on Jan. 7, 2004 to discuss the proposed rehabilitation plan of Maynilad.

In its petition for suspension of debt payments, Maynilad said while it has total assets of P16.94 billion as of Oct. 31, 2003, it foresees the impossibility of meeting its debt payments as they respectively fall due.

Maynilad said on the basis of projected market conditions for the next nine years, it stands a good chance of recovering from its financial difficulties.

The company's rehabilitation plan calls for the rescheduling and restructuring of its suspended and current concession fees to state regulator Metropolitan Waterworks and Sewerage System (MWSS) with interest at nine percent and the rescheduling of a big portion of its liabilities.

Maynilad is about 59 percent controlled by Benpres Holdings, the

local flagship of the Lopez family. About 20 percent is owned by Ondo, a French multinational affiliated with Suez Lyonnaise des Eaux, and the remaining 20 percent by Lyonnaise Asia Water Ltd.

Maynilad's corporate rehabilitation plea came a few days after an international arbitration panel

ruled that the utility firm would have to maintain its 25-year water concession for the western part of Metro Manila. The panel also allowed the MWSS to draw on Maynilad's \$120-million performance bond that is primarily guaranteed by Benpres.

The panel likewise ordered Maynilad to settle about P6.77 billion in unpaid concession fees.

Benpres said the payment of the performance bond is part of the debt restructuring plan it is now working out with its creditors. It has guaranteed up to 60 percent of the performance bond.

The panel also ruled that neither Maynilad nor MWSS has grounds to terminate the concession and ordered both parties to continue from where they left off prior to the arbitration.

Maynilad has sought clarification on the terms and conditions of the continuation of the concession agreement which in their view failed to take into account the financial impact of such a decision.

In particular, Maynilad sought the arbitration panel's guidance on the rate rebasing exercise conducted by the MWSS-Regulatory Office that has a negative effect on the economic viability of the concession.

In Dec. 2002, Maynilad filed a notice of termination of its concession agreement with the Philippine government and sought the return of at least \$303 million it allegedly invested in the privatized water utility.

**Maynilad wins debt ruling, But MWSS insists QC Regional Trial Court's stay order not a 'reprieve'**

*By Honey Madrilejos-Reyes, Manila Times, Nov 19, 2003*

THE Lopez-controlled Maynilad Water Services Inc. (Maynilad) got an early score against the Metropolitan Waterworks and Sewerage System (MWSS) after the Quezon City Regional Trial Court (QCRTC) issued on Monday a stay order in relation to its petition for corporate rehabilitation.

The order stays the enforcement of all claims, whether for money or otherwise and whether such enforcement is by court action or otherwise, against Maynilad, its guarantors and sureties not solidarily liable with the petitioner, from the date the petition was filed on November 13.

However, the Regulatory Office of the MWSS clarified on Tuesday that the QCRTC has not yet decided on the petition for corporate rehabilitation filed by the Lopez-controlled Maynilad Water Services, Inc. last week.

Ed Santos, spokesman of the MWSS regulatory office, said that Judge Daway of Quezon City RTC Branch 90 merely acknowledged that the documents submitted by Maynilad are in substance and in form.

“This does not mean that the court ruled in favor of Maynilad,” Santos said to deny reports that the court granted the water concessionaire a reprieve from the payment of P6.77 billion it owes the MWSS.

With the order, Angel S. Ong, Benpres Holdings Corp. chief operating officer, said MWSS is prevented from drawing from the \$120-million performance bond, which is a form of stand-by letter of credit.

When Maynilad won in the bidding for the west zone concession in 1997, part of the requirements was the posting of a performance bond, which the MWSS can tap in case problems arise.

The QCRTC appointed Rosario S. Bernaldo as rehabilitation receiver for Maynilad. Bernaldo is currently the managing partner of Bernaldo, Mirador Law Offices and of the accounting firm R.S. Bernaldo and Associates.

The initial hearing on Maynilad’s petition for corporate rehabilitation is set on January 7, 2004.

Maynilad is seeking corporate rehabilitation on claims that it would have difficulty in paying off its debts when they fall due as a result of the decision of the international arbitration panel allowing the MWSS to draw from the \$120-million performance bond.

Once the court approves the corporate rehabilitation, Maynilad would be able to phase all its obligations in an orderly manner.

“This course of action [corporate rehabilitation] will enable Maynilad to ensure continuous delivery of water services to its consumers,” Benpres said.

Maynilad also sought an explanation from the arbitration panel regarding issues relating to its dispute with the state-controlled MWSS.

“Maynilad is seeking clarification on the terms and conditions of the continuation which in their view fails to take into account the financial impact of such a decision,” Benpres said.

In particular, Maynilad wants the arbitration panel’s guidance on the rate rebasing exercise conducted by the MWSS-Regulatory Office that has a negative effect on the economic viability of the concession.

Furthermore, Maynilad is asking the arbitration panel to consider the impact of authorizing MWSS to draw on the performance bond in the light of the recommendation of the arbitration panel for the parties to continue to seek extra-judicial solutions.

MWSS earlier said Maynilad owes the water regulator some P7 billion.

Maynilad only has until November 22 to settle its obligation, unless the court approves its petition for corporate rehabilitation.

Maynilad is 59-percent owned by Benpres, the flagship project of the Lopez family, and 40 percent by Ondeo Philippines, which is affiliated with French firm Suez Lyonnaise des Eaux. With the privatization of MWSS in 1997, Maynilad won a 25-year concession contract to distribute water to the western half of the metropolis. The Ayala group's Manila Water Co. won the right to service the eastern part.

Maynilad announced in December last year that it was ending its contract with the MWSS after it accused the government agency of failing to help the company recover from its losses. Under the original contract, Maynilad was supposed to assume \$800 million in loans of the MWSS from the Asian Development Bank and World Bank.

Records showed, however, that Maynilad's financial problem stemmed from its inability to trim its nonrevenue water rate, which stood at 68.1 percent as of July this year. Of the 2,343 million liters a day that it supplied in July, it was able to bill only 748.4 million liters a day.

The dispute was eventually elevated to the Paris-based International Arbitration Court, which is expected to issue its ruling in three months.

Maynilad services the west zone of the old service area of the MWSS including Tondo and parts of Manila, Makati and Quezon City and the whole of Malabon, Navotas, Muntinlupa, Caloocan, Pasay, Parañaque, Las Piñas, Valenzuela and Cavite.

MWSS' Santos said officials of the MWSS Regulatory Office are meeting today to discuss its next legal step with regards to the Maynilad issue.

Among the issues to be tackled is whether Maynilad can be held liable for noncompliance with the concession contract over the past 12 months. Another critical issue is the outbreak of gastroenteritis in Maynilad's service area in Tondo, Manila that caused the death of at least six residents and the hospitalization of hundreds more.

Santos said an investigating body has already been organized to determine the culpability of the water firm.

The Philippine Water Vigilance Network (Bantay Tubig) said Maynilad should be held liable "for its gross inefficiency and irresponsibility."

"According to the terms of its concession agreement in 1997, it is Maynilad's responsibility to supply water, repair and maintain the pipe network, and check water quality and water pressures. "Who else should be accountable for this?" the group asked.

The group also said that while Maynilad stopped upgrading its facilities when it ended its contract with the MWSS in December, it continued to charge its clients an extra P8.28 per cubic meter, representing 40 percent of the basic rate, since December last year.

Carla A. Montemayor, the group's coordinator, said the figure includes P4.21 for the foreign currency differential adjustment (FCDA) and P4.07 for accelerated extraordinary price adjustment (AEPA).

FCDA is described as a foreign exchange recovery mechanism that allowed Maynilad to adjust its rates beginning January 2002. An amendment to the Concession Agreement between Maynilad and MWSS in October 2001 allowed the utility firm to recover its foreign exchange losses in the form of AEPA from October 2001 up to December 2002.

Montemayor said Maynilad's overcharges have accumulated to a total of P6 billion for this year alone.

The overcharging issue was included in the arbitration case. ♦