



THE ROLE OF DENR AND LGUs IN SUSTAINABLE FINANCE: A CASE STUDY OF CHINA-FUNDED KALIWA DAM



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THE ROLE OF DENR AND LGUs IN SUSTAINABLE FINANCE: A CASE STUDY OF CHINA-FUNDED KALIWA DAM

Abstract

The Kaliwa Dam Project (KDP) is one the flagship projects of the Duterte administration's Build, Build, Build program that is funded by loans from the Chinese government. It is meant to augment water resources in Metro Manila and other nearby areas. However, it is important to ensure that such development financing is socially and environmentally sustainable in accordance with good governance practices. As such, this study seeks to: first, identify the role and relationship dynamics between the DENR, LGUs and other stakeholders in relation to the KDP. Second, determine the environmental, legal and socio-economic concerns in the said project. Third, analyze and provide recommendations in strengthening the role of DENR and LGUs in sustainable finance in the country. Findings show that gaps exist in the conduct of environment compliance certificate (ECC) to ensure the community's consent over the project. The LGUs were also left out in the process. Environmental, social and cultural concerns also about in the KDP. The study, thus, recommended institutional and policy recommendations to ensure sustainable finance in development projects such as the KDP.

Keywords: Kaliwa Dam, Sustainable Finance, environmental impact, social impact



LIST OF ABBREVIATIONS AND ACRONYMS

AO	Administrative Order
ADB	Asian Development Bank
BBB	Build, Build, Build program
CADTs	Certificate of Ancestral Domain Titles
CEEC	China Energy Engineering Corporation
CNC	Certificate of Non-Coverage
COA	Commission on Audit
CMR	Compliance Monitoring Report
COVID19	Coronavirus 2019
CSWCD	College of Social Work and Community Development
DED	Detailed Engineering Design
DENR	Department of Environment and Natural Resources
DOF	Department of Finance
ECC	Environment Certificate of Compliance
EIA	Environmental Impact Assessment
EIARC	Environmental Impact Assessment Review Committee
EIAMD	Environmental Impact Assessment and Management Division
EMB	Environmental Management Bureau
EMP	Environmental Management Plan
EMoP	Environmental Monitoring Plan
FAO	Food and Agriculture Organization
FPIC	Free and Prior Informed Consent
GA	Government Agency
GAA	General Appropriations Act
GUDC	Global Utility Development Corporation
HKIAC	Hong Kong International Arbitration Center
ICC	Indigenous Cultural Communities
IFPs	Infrastructure Flagship Projects
ICC	Investment Coordination Committee
IFC	International Finance Corporation
IRR	Implementing Rules and Regulations
IP	Indigenous People

KDP	Kaliwa Dam Project
LGC	Local Government Code
LGU	Local Government Unit
MOA	Memorandum of Agreement
MC	Memorandum Circular
MMT	Multipartite Monitoring Team
MWSS	Metropolitan Waterworks and Sewerage System
NEPC	National Environmental Protection Council
NCIP	National Commission on Indigenous Peoples
NCWS	New Centennial Water Source
NEDA	National Economic and Development Authority
NEPA	National Environmental Policy Act
NIPAS	National Integrated Protected Areas System
NGO	Non-government Organization
NO to NCWSP	Network Opposed to the New Centennial Water Source Project
NTCC	Notice to Commence Construction
NTP	Notice to Proceed
ODA	Official Development Assistance
PEISS	Philippine Environmental Impact Statement System
PD	Presidential Decree
PPP	Public Private Partnership
REDO	Research and Extension Development Office
RP	Resolusyon ng Pagpayag
SAGIBIN-LN	Samahan ng mga Katutubong Agta-Dumagat-Remontado na Binabaka at Ipinagtatanggol ang Lupaing Ninuno
SKDN	Stop Kaliwa Dam Network
SBN	Sustainable Banking Network
WB	World Bank
SDP	Social Development Plan
SP	Sangguniang Panlalawigan
UP	University of the Philippines
WHO	World Health Organization



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INTRODUCTION

The Environmental Impact Assessment (EIA) practice can be traced from the United States' National Environmental Policy Act (NEPA) in 1969. The act seeks to address the increasing environmental issues during this period. Countries were urged at the 1972 United Nations Conference on Environment in Stockholm to integrate environmental considerations into socioeconomic development for the present and future generation. In response, many countries worldwide adopted the EIA system. The Philippines was among the first countries to adopt the EIA system in 1978 (Supetran, 2013).

The EIA system in the Philippines is

the Environmental Management Bureau (EMB)¹ and its regional offices (DENR AO No 2003-30, Sec. 1). In general, only projects that pose significant impact to the environment are required to secure the Environment Certificate of Compliance (ECC) from DENR-EMB (DENR AO No 2003-30, Sec.4). The issuance of ECC is important for project implementation because it implies that the proposed project will not cause significant negative impact to the environment (DENR EMB, 2019).

Nevertheless, the issuance of ECC for a project under PEISS does not exempt the project proponent from securing other government permits and

The KDP is a Chinese-funded project worth P12 billion and is being implemented by the Metropolitan Waterworks and Sewerage System (MWSS) (MWSS, 2019).

officially referred to as the Philippine Environmental Impact Statement System (PEISS) which was implemented in 1978 through the passage of the Presidential Decree (PD) Number (No) 1586. The main goal of PEISS is "to ensure a rational balance between socio-economic development and environmental protection for the benefit of present and future generation" (PD No 1586, Section 1; Department of Environment and Natural Resources Administrative Order Number 2003-30, Section 1). The Department of Environment and Natural Resources (DENR) is given the task to implement the PEISS through

clearances as required by other laws (DENR AO No 2003-30, Sec. 4). One of these permits is issued by the concerned local government units. According to the 1991 Local Government Code (LGC), Section 27, there is a need for consultations and prior approval of the "sanggunian (or council) concerned" before any project is implemented by government agencies (Republic Act Number 7160, Sec. 27). Another important permit to be secured if the project location is within the ancestral domain is the Free and Prior Informed Consent (FPIC). RA No 8371, or The Indigenous Peoples' Rights Act of 1997,

states that there is a need to secure FPIC from the concerned indigenous peoples (IPs) before any start of project implementation (RA No 8371, Sec. 7 (a)).

One of the major ongoing government projects required to secure ECC is the New Centennial Water Source (NCWS), or also known as the Kaliwa Dam Project (KDP) (Metropolitan Waterworks and Sewerage System, 2019). It is one of the flagship projects in Duterte's Build, Build, Build (BBB) program (National Economic and Development Authority, 2020). It is a 60 meter high dam and a 27.70-kilometer raw water conveyance tunnel. The project locations are Barangay Pagsangahan, General Nakar and Barangay Magsaysay, Infanta, both in Quezon Province. The KDP is a Chinese-funded project worth P12 billion and is being implemented by the Metropolitan Waterworks and Sewerage System (MWSS) (MWSS, 2019). There are two important contracts in the project. First is the loan agreement between the Export-Import Bank of China (or known as China Eximbank) and the Philippine government wherein the former agreed to lend \$211 million (P11 billion) for the project, with the remaining cost to be shouldered by the government (Department of Finance, 2019). Second is the commercial contract which is the contract for the construction of the dam itself. This is the contract between MWSS and the China Energy Engineering Corporation (CEEC) (MWSS, 2018).

The DENR EMB issued the ECC for KDP on October 11, 2019 (see Appendix A). This was after MWSS completed the requirements of PD No 1586 and its Implementing Rules and Regulations (IRR) and upon recommendation of the Environmental Impact Assessment (EIA) Review Committee. The ECC for KDP explicitly mentioned that the water

regulator "may proceed with the project implementation only after securing the necessary permits from other pertinent Government agencies (DENR EMB, 2019).

Similar to many developing countries like the Philippines have been facing considerable sustainable development challenges specifically in the water sector (Pulhin and Tapia, 2016). The World Health Organization (WHO) noted that water is an "extremely important resource" to all living beings. However, there are Filipinos who are still being left behind in terms of access to improved water sources in rural communities. The recent water shortage in Metro Manila also highlights the uncertainty of water access even in the nation's capital (World, Health Organization, 2019). To address this concern, the Philippine government proposed KDP as an alternative source to maintain water security in Metro Manila and nearby areas (NEDA, 2019). It should be noted that the construction of large dams has environmental and social costs (WHO, 2020). The WHO cited the studies of Lerer and Scudder (1999) and Tilt et al. (2009) regarding the health and social impacts of large dams. Some of these impacts include changes in water and food security, increases in communicable diseases, and the social disruption caused by construction and involuntary resettlement. Hence, the government should ensure that the benefits of dam construction always outweigh the costs (WHO, 2020).

KDP has environmental, social implications and legal concerns. The KDP, as an infrastructure project located within the Sierra Madre mountain range, is mandated by PD No 1586 and DENR AO No 2003-30 to obtain ECC from DENR EMB. On October 11, 2019, DENR issued the conditional ECC of the heavily opposed KDP (DENR-

EMB, 2019). It is conditional because there are requisites stated in the ECC that must be complied first before the start of the project implementation. It also provides a sanction for non-compliance of any of the provisions of the ECC (DENR-EMB, 2019). One of the requisites stated in the ECC for KDP is the FPIC from the concerned Dumagat/Remontado (DENR-EMB, 2019). Hence, the Commission on Audit (COA) (2019) has flagged the Notice to Proceed (NTP) for the Detailed Engineering and Design and Construction of the KDP issued by MWSS because of the “non-compliance with the requirements provided for under the Loan Agreement, thus preventing the effectivity of the Commercial Contract” (p.85). As of this writing, the FPIC from the concerned IPs has not been obtained by the water regulator (COA, 2019; Obanil, personal communication, October 8, 2020; Tena, personal communication, November 22, 2020).

The DENR and LGUs are crucial in ensuring that the intended and unintended impacts of the Kaliwa Dam are mitigated. The national and local governance dynamics have to be assessed to understand lessons learned and gaps to further improve the implementation of development projects in relation to their social, environmental and legal impacts. Such assessments can serve as the basis for future developments and amendments of policies related to the sustainable finance of development projects and programs.

STATEMENT OF THE PROBLEM

DENR EMB and other DENR regional offices are given the task to implement PEISS, which provides the legal and

procedural framework for conducting EIAs for projects likely to have significant impacts. Most importantly, DENR, as an environmental regulator, is part of the Sustainable Banking Network (SBN) which is a voluntary community of financial regulators committed to support the financial sector to adopt environmental and social risk management and green lending (International Finance Corporation, 2020). DENR joined the SBN network in 2013 (IFC, 2020). Given this, it is important to study the role of DENR and LGUs in sustainable finance specifically in the case of Kaliwa Dam project. As such, the study aims to answer the following research questions:

1. What is the role and relationship dynamics between the DENR, LGUs and other stakeholders in relation to the KDP?
2. What are the environmental, legal and socio-economic concerns in the said project?
3. How can the role of DENR and LGUs be strengthened in pushing for sustainable finance in the country?

The study aims to examine the role of DENR and LGUs in sustainable finance in the Philippines. Thus, the study aims to:

1. Identify the role and relationship dynamics between the DENR, LGUs and other stakeholders in relation to the KDP;
2. Determine the environmental, legal and socio-economic concerns in the said project; and
3. Analyze and provide recommendations in strengthening the role of DENR and LGUs in sustainable finance in the country.

SCOPE AND LIMITATIONS

The research has several limitations. First, the dynamics of DENR and LGUs with stakeholders were mainly obtained from officials of the said agencies and other relevant institutions. The study used the formal institutional approach by looking into legislations, official mandates, and documents as well as primary data through interviews. Informal or unwritten but equally relevant roles of DENR and LGUs were discussed but not explored in depth due to the limitations in respondent selection which would ideally require a more exhaustive set of interviews

and focus group discussions. Second, environmental concerns and socio-economic issues came from existing assessments and documents available or through an “Official” perspective. The study using a descriptive design reflected this in the analysis. Lastly, the utilization of key informant interview (KII) due to the limitations with mobility and communication because of the pandemic has been the primary used of data gathering. Other modes of data gathering to reveal the complexity of policy dynamics regarding the project can be explored in future studies.

METHODOLOGY

RESEARCH DESIGN

The research is qualitative as it studies the roles, dynamics and relationships of stakeholders which requires rich and detailed narratives. It uses a case study design which pertains to “an empirical enquiry that investigates a contemporary phenomenon in depth and within its real-life context, especially when the boundaries between phenomenon and context are not clearly evident” (Yin, 2009: 4 as cited in Willis, 2014). The design in this particular study focused on the “intensive case study of a single unit” (Gerring, 2004: 342 as cited in Willis, 2014).

The study is descriptive in nature, designed to unpack the complex processes that shape the roles of DENR and LGUs in the Kaliwa Dam Project and their relationship to various stakeholders.

Data collection is through KII conducted between 12 November 2020 and 15 January 2021. Key Informants include officials from the national and regional offices of NCIP, the Local Government Unit of the Province of Rizal, MWSS and DENR. The results of the KII were triangulated with official documents, newspaper clippings, government press releases online and previous studies in constructing a narrative to answer the research questions and come up with recommendations. The key informants are listed in Table 1.

Table 1. List of Key Informants

Code	Position and Organization	Date of Interview
Rovik Obanil	SKDN Spokesperson	08 October 2020
Name redacted at the request of MWSS	MWSS Administrator	12 November 2020
Marcelino Tena	Dumagat Leader	8 January 2021
Name redacted at the request of officer	NCIP Provincial Officer Rizal	15 January 2021
Name redacted at the request of DENR	DENR EMB	26 January 2021

DEFINITION OF TERMS

The following terminologies were used in the study which have the following meanings:

Table 2. Definition of Terms

Terminology	Conceptual Definition
Environmental Impact	"Inherent in development projects and programs are activities which alter the environment , or cause some "environmental disturbance . These environmental disturbances lead to "environmental impacts" , which are categorized as being either negative or positive." ²
Official Development Assistance	"ODA is defined as government aid designed to promote the economic development and welfare of developing countries. Loans and credits for military purposes are excluded." ³
Social Impact	"Social impact refers to wider social effects beyond the immediate program objectives of an organization and beyond any short-term effects." ⁴
Sustainable Finance	" Sustainable finance generally refers to the process of taking due account of environmental, social and governance (ESG) considerations when making investment decisions in the financial sector, leading to increased longer-term investments into sustainable economic activities and projects." ⁵

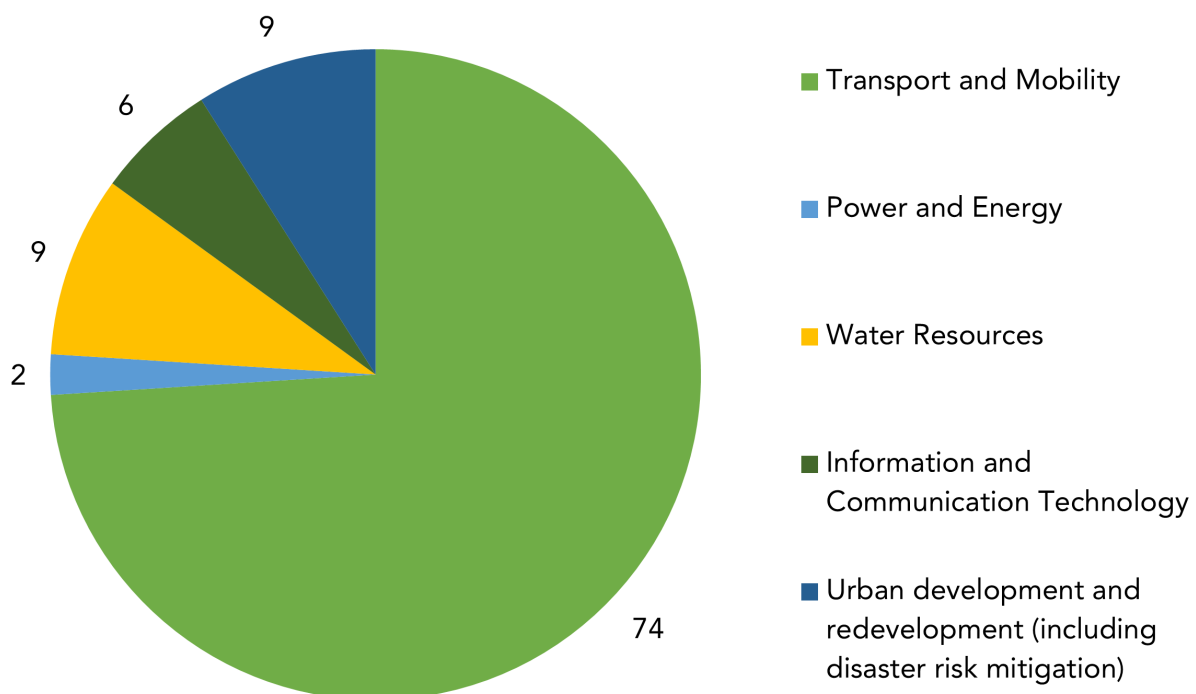
RELATIONSHIP DYNAMICS OF DENR, LGUs AND OTHER STAKEHOLDERS IN THE KDP

DUTERTE'S BUILD BUILD BUILD (BBB) PROGRAM

The BBB Program is considered as the Duterte administration's legacy which aims to address the poor quality of infrastructure in the country (National Economic Development Authority, 2019). It is composed of 100 high impact infrastructure flagship

projects (IFPs) identified by the NEDA Board Committee on Infrastructure (INFRACOM) and the Investment Coordination Committee (ICC) as of February 17, 2020 (NEDA, 2019). Figure 1 illustrates the BBB composition by sector.

Figure 1. BBB Composition by Sector



Author's illustration based on the Revised List of Infrastructure Flagship Projects (NEDA, 2020)

The BBB Program has three funding sources which include official development assistance (ODA), general appropriations act (GAA) and public private partnership (PPP). Nevertheless, majority of the projects are financed

by ODA. According to the Philippines ODA portfolio 2019 report⁶, Japan continued to be the top source of ODA to the country accounting for 39% share (USD 8.5 billion for 41 loans/grants) of the active ODA portfolio, followed by

the Asian Development Bank (ADB) with 26% (USD5.6 billion for 44 loans/grants) and the World Bank (WB) with

20% (USD4.3 billion for 25 loans/grants) (NEDA, 2019), as shown in Table 3.

Table 3. Total ODA by Fund Source in USD million

Fund Source	Loan Amount (USD million)	Grant Amount (USD million)	Total ODA (USD million)	%Share	Rank
Japan	8,462.07	51.91	8,513.98	39.39	1
ADB	5,603.79	99.75	5,703.54	26.38	2
WB	4,251.67	54.03	4,305.70	19.92	3
Korea	581.77	48.8	630.57	2.92	4
China	493.08	97.27	590.35	2.73	5
USA	-	577.71	577.71	2.67	6
UN System	146.90	202.35	349.25	1.62	7
Australia	-	289.63	289.63	1.34	8
AIIB	207.61	-	207.61	.96	9
France	142.22	5.22	147.44	.68	10
EU	-	138.15	138.15	.64	11
Germany	-	43.05	43.05	.20	12
Italy	34.56	5.48	40.04	.19	13
Austria	30.00	-	30.00	.14	14
OFID	22.68	-	22.68	.10	15
Canada	-	14.14	14.14	.06	16
Spain	-	9.8	9.80	.04	17
New Zealand	-	3.89	3.89	.02	18
Grand Total	19,976.35	1,641.18	21,617.53	100.00	

Source: (NEDA, 2019, p. 15)

Chinese loans to the Philippines have been increasing over the years. The Freedom from Debt Coalition (FDC)'s research (2019) revealed that China was rapidly climbing up the list of

the Philippines' top funding sources, from the 17th rank, with a total ODA of US\$9.11 million in December 2017 to the 11th rank, with a total ODA of US\$124.37 million in June 2018 (FDC,

2019). According to the Philippine ODA portfolio 2019 review, China ranked 5th in ODA assistance accounting for 2.79% share or USD 590.98 million for 5 loans/grants (NEDA, 2019). Trinidad (2020) explained that the increasing number of Chinese loans to the country is seen as a form of reward because of Duterte's pro-China policy. When Duterte assumed office in 2016, he has considered China as a major development partner. During the state visit of Chinese President Xi Jinping to Manila in November 2018, a total of "twenty-nine deals were signed including Memorandum of Understandings on cooperation on the Belt and Road Initiative (BRI), oil and gas development, and infrastructure development over a period of ten years" (Trinidad, 2020, p.105). Duterte's pro-China policy can also be observed on how the government has been handling the conflict in the West Philippine Sea. During his State of the Nation Address on July 27, 2020, Duterte reiterated again that he could not afford to go to war against China because they are "in possession" of the contested waters (GOVPH, 2020). Surprisingly, Duterte suddenly invoked the country's sovereign right over the West Philippine Sea during his first address to the United Nations General Assembly. Specifically, he stressed the country's legal victory at The Hague in its maritime dispute against China (Aljazeera, 2020).

China Eximbank agreed to lend the Philippine government P11 billion for the project, with the remaining cost to be shouldered by the government. Specifically, the borrower is MWSS and guaranteed by the Philippine government. Under Article 2 of the loan agreement, the loan bears an interest rate of 2%, as well as a management fee of 0.3% and commitment fee of 0.3% per annum. It is payable in 20 years, including a grace period of 7 years. It

should be noted that there are important conditions to loan effectiveness (DOF, 2019). These are the following:

1. The Lender has received copies of the approval issued by the relevant authorities of the Borrower's Country approving the borrowing by the Borrower hereunder, including but not limited to, the certified true copy of the Bangko Sentral ng Pilipinas' Monetary Board Final approval on the financing;
2. The Lender has received copies of the Commercial Contract signed by the Borrower and the Chinese Contract in full form and substance satisfactory to the Lender; and
3. The Lender has received certified true copy of the Environmental Compliance Certificate issued by the authorized government agency of the Borrower's Country.

(Kaliwa Dam Loan Agreement, Article 9.1)

The ECC for Kaliwa Dam is one of the conditions required by China Eximbank in order for the loan agreement to become effective (DOF, 2019). DENR EMB explained that the ECC for KDP is included as one of the loan conditions because an ECC is a requirement under Sec 4 of PD 1586, which states that, "... No person, partnership or corporation shall undertake or operate any such declared environmentally critical project or area without first securing an Environmental Compliance Certificate issued by the President or his duly authorized representative..." (email communication, January 26, 2021). From this, one can infer that the ECC for KDP is a necessary requirement for the project to proceed but not necessarily.

It should be noted that the ECC is a crucial document in order to proceed with the project implementation. In the case of KDP, the MWSS' Environmental Impact Statement (EIS)⁷ submitted to DENR was conducted from February 2019 to April 2019 (MWSS, 2019). The EIS is a crucial document in order to apply for an ECC. The EIS is a comprehensive study which identifies the likely environmental impacts of the KDP (DENR AO No 2003-30, Sec.3). The ECC for KDP was issued by DENR-EMB on October 11, 2019 (DENR-EMB, 2019; MWSS, 2020). In effect, China Eximbank transmitted the Notice of Effectiveness of Loan Agreement on November 1, 2019, conveying its satisfaction on the conditions set forth under Article 9.1 which have been complied with by MWSS (MWSS, 2020). Most importantly, MWSS former administrator mentioned that they have the support of the President to implement this project (personal communication, November 12, 2020).

ROLE OF DENR

The DENR is given the task to implement the PEISS through EMB and its regional offices (DENR AO No 2003-30, Sec. 1). In general, only projects that pose significant impact to the environment are required to secure ECC from DENR-EMB (DENR AO No 2003-30, Sec.4). The issuance of ECC is important for project implementation because it implies that the proposed project will not cause significant negative impact to the environment (DENR EMB, 2019). In the ECC issuance, the project proponent should submit its EIS study to the DENR-EMB. The Environmental Impact Assessment Review Committee (EIARC)⁸ is an independent body being convened by the DENR-EMB to undertake the

review and evaluation process. The EIARC is a part of the EIA Review Team, along with the DENR-EMB Case Handler and EMB Resource Persons to evaluate the EIS and other relative documents to determine whether the proposed mitigating measures to be imposed by the proponent, based on the identified environmental impacts, are appropriate and provide recommendations to EMB on the issuance or non-issuance of ECC for the project.

There are three important general criteria in reviewing the EIS study: 1) that environmental considerations should be integrated in the overall project planning, 2) that the assessment is technically sound and proposed environmental measures are effective and 3) that social acceptability is based on informed public participation (DENR AO No 2003-30, Sec.1 (d)). The policy defines public participation as involving the broadest range of stakeholders as follows:

...open, transparent, gender-sensitive, and community-based process aimed at ensuring the social acceptability of a project or undertaking, involving the broadest range of stakeholders, commencing at the earliest possible stage of project design and development and continuing until post-assessment monitoring (DENR AO No 2003-30, Sec.3 (aa)).

It should be noted that the procedural review is being done to the EIS draft submitted by the proponent before it is subjected to substantive review. This is to check the completeness of the EIS based on the scoping checklist that was discussed during the Project Scoping stage. After the review and evaluation process, DENR-EMB will

then prepare the decision documents, Review Process Report, EIARC Report, and documentation of activities done throughout the review stage of the project.

Dr. Nestor Castro, a member of EIARC specifically looking at the socio-cultural component of the project, said in a letter addressed to Chief Environmental Impact Assessment and Management Division (EIAMD) Engineer Esperanza Sajul that he did not endorse the issuance of an ECC for the Kaliwa Dam Project. This is because, at this stage, the project remains socially unacceptable to the IPs of the area.

The resolution of the IP communities of Sari, Mabagin-Bagin, Pemuhuan, Tumbil, and Minanga (pp. A3-98 to A3-100) states that “*ipinapahayag ng mga sumusunod na komunidad ang kanilang naging kapasyahan sa papamagitan ng mga Kaksaan, Gemot, at Kasapian ang HINDI PAGPAYAG SA PROYEKTONG NEW CENTENNIAL WATER SOURCE KALIWA DAM.*” The IP communities of Yok-yok and Makalya also expressed their “*HINDI PAGPAYAG SA PROYEKTONG NEW CENTENNIAL WATER SOURCE KALIWA DAM* (pp. A3-129 TO a3-133).” The IP communities in Cluster 4 (Dinigman, Malatungian, Maligayan, Maksa, Masanga, Panangatan, and Tamala) likewise declared, “*Naging kapasyahan na hindi pagpayag sa proyektong Centennial Water Source-Kaliwa Dam Project* (pp. A3-147-150).” The IP communities of Mandaraque, Mataping, Dadyangaw, Singawan, Pulang-lupa, Dinigman, Lapdok, Matawe and Maktang (Cluster

5) all expressed their “*AYAW SA PROYEKTO* (pp. 174-189).” On the other hand, the other IP communities have expressed certain conditions from the project proponent before they give their consent for the proposed project.

Dr. Castro also added that he was present during the Public Hearing at General Nakar and witnessed the walkout of a large number of IP participants in the public hearing. Although there were some IP members who stayed in the meeting, they do not represent the majority of the IPs in the area. Based on the assessment of Dr. Castro, the Public Hearing at General Nakar “is a failure and therefore null and void”. Dr. Castro concluded in the letter that while it may be argued that the securing of FPIC is a requirement of the NCIP and not of the EMB-DENR and that it may be a post-ECC condition, the IP resolutions and the walkout of several participants during the Public Hearing at General Nakar indicates that the proposed project is not socially acceptable to the IPs.

In terms of monitoring MWSS’ ECC compliance for KDP, DENR EMB that MWSS is required to submit semi-annually a Compliance Monitoring Report (CMR), attaching a supporting document in compliance with the conditions of the ECC and status of implementation of its Environmental Management Plan (EMP), Environmental Monitoring Plan (EMoP) and Social Development Plan (SDP) as mandated by the Revised Procedural Manual for DAO 2003-30, Moreover, for transparency, MWSS is required to establish a Multipartite Monitoring Team (MMT) to assist EMB in monitoring compliance with its ECC, EMP, and EMoP. The MMT shall also submit its semi-annual Compliance Monitoring and

Validation Report (CMVR). Currently, the establishment and identification of appropriate stakeholders that will form part of the MMT are ongoing (email communication, January 26, 2021).

ROLE OF LGUs

There are existing laws which explain the role of LGUs in infrastructure projects like KDP. The 1991 LGC states that there is a need for consultations and then prior approval of the "sanggunian concerned" before any project is implemented by government agencies (Republic Act Number 7160, Sec. 27). However, DENR Memorandum Circular No. 2007-08 simplifies the requirements for ECC or Certificate of Non-Coverage (CNC) Applications. This states that "No permits, and / or clearances issued by other National Government Agencies and Local Government Units shall be required in the processing of ECC or CNC applications". This means that the

and negate the purpose and function of the EIA.

In addition to this, the EIA is a planning tool used to identify project impacts of projects that guides decision makers. The findings and recommendations of the EIA shall be transmitted to relevant agencies, such as LGUs and NCIP, for them to integrate it in their decision making prior to the issuance of its respective clearances, permits, and licenses under their mandates. Further, DENR MC 2008-08 (Role of LGUs in PEISS) states that the results of the EIA process is an input to the LGU endorsement of the proposed projects. It is believed that the LGU has the ultimate mandate over the approval of proposed projects.

Unfortunately, in the case of KDP, both LGUs of Tanay and Quezon are against this project implementation. Dumagat leader Marcelino Tena said that the LGU in Tanay is against the KDP construction. Dumagat leader Tena further explained

Dumagat leader Marcelino Tena said that the LGU in Tanay is against the KDP construction. Dumagat leader Tena further explained that both Mayor Rex Manuel Tanjuatco and Vice Mayor Rafael Tanjuatco of Tanay are not in favor of this project.

LGU's endorsement of the proposed projects will not be mandatory in the processing of the ECC applications. DENR MC No. 2007-08 further states that the current practice of requiring various permits, clearances and licenses only constrain the EIA evaluation process

that both Mayor Rex Manuel Tanjuatco and Vice Mayor Rafael Tanjuatco of Tanay are not in favor of this project. He encountered them once in a public forum on KDP (Tena, online communication, January 8, 2021).

Like Tanay, the LGU of Quezon is against the dam construction. Quezon's Sangguniang Panlalawigan (SP) passed a resolution authorizing Governor Danilo Suarez to take the necessary steps in stopping the construction of KDP. The resolution was unanimously approved by 11 of the 13 SP members led by Vice Governor Sam Nantes. Governor Suarez promised to oppose the dam construction (Sierva, 2020).

In Villaluz's *Advancing the EIA system in the Philippines* (n.d.), the author argued that the current EIA system is not enough to address the increasing deterioration of the environment. One of the major concerns is the intent and timing of the EIA process. The EIA system is perceived as catering only to the needs of the private sector. The common practice is to subject "an EIA study specific projects in predetermined locations rather than analyze the environmental impacts of a mix of projects and locations" (p.258). Another concern in the EIA system is the institutional capacity of the implementing agency. The law did not create permanent career positions for EIA professionals in the government service. In effect, there is a lack of both competent government personnel and available expertise and resources both at the national and local levels. In connection to this, there is a large gap in the procedural guidelines of the EIS review. The study further pointed out that "there are no programs in place, no equipment available and there are not enough trained staff or accredited laboratories to analyze the samples" (p. 258).

There are also problems in the absence of baseline environmental data and the lack of public hearings and public consultations. Villaluz (n.d.) noted that the absence of baseline environmental

data explains why consultants have to gather baseline information for every EIA study they conduct or collect secondary data generated by similar studies, which in many cases are unreliable. In most cases, the period of sampling is shortened and does not capture the varying conditions attributable to the changing seasons and/or man-made phenomena. Lastly, for the most part, public hearings and public consultations are rarely conducted and poorly presented because of the time constraints and the lack of skills within government to handle social issues. It is also noted that documents "are not freely accessible to the public due to fear, uncertainty and a lack of experience in handling seemingly contentious matters" (p. 259).

ENVIRONMENTAL, LEGAL & SOCIO-ECONOMIC CONCERNS

Stop Kaliwa Dam Network (SKDN) Spokesperson Rovik Obanil purported that the project is delayed due to permit problems (personal communication, October 8, 2020). The SKDN Spokesperson Obanil purported that there are a number of environmental, cultural and legal concerns because of the project locations (personal communication, October 8, 2020). The project locations are at Barangay Pagsangahan, General Nakar and Barangay Magsaysay, Infanta, both in Quezon Province (MWSS, 2019). SKDN Spokesperson Obanil pointed out that the project site is within the Sierra Madre mountain range and has been identified as rich in biodiversity. This means that the dam construction will potentially destroy the habitat of critically endangered species (personal communication, October 8, 2020). Other environmental concerns include many

potential ecotourism sites within the area (i.e., falls, caves) might be affected, explore possible co-management arrangements with the affected barangays, especially with peoples' organizations engaged in watershed management and so forth (MWSS, 2019). The MWSS' EIA report identified some social concerns. One is the loss of sacred burial sites, fishing and hunting grounds for IPs which has significant

cultural value to them and as sources of their livelihood. There is also fear that there will be nothing left for the future generation of IPs for life and survival (MWSS, 2019). The table below illustrates the sacred sites that may be affected by the project. Majority of them are "spring water sources where they source their drinking water, lead their sick to be healed, and conduct their baptismal rites" (MWSS, 2019, p. 55).

Table 4. Sacred Sites of the IP Communities in Tanay and Gen. Nakar.

Source: (MWSS, 2019, p.75)

Barangay		Sacred Sites
1	Daraitan, Tanay, Rizal	Tinipak Falls
		Tinipak Caves
		Mamara - Sacred burial grounds
2	Lumutan, Gen. Nakar, Quezon	Murak - Spring source
		Sari - Spring source
		Kaharigan - Spring source
3	Pagsangajan and Magsaysay, Gen. Nakar, Quezon	Tinipak Spring - Spring water source
		Makidata - Sacred burial site near Queborosa
		Sitio Yukyuk - Sacred grounds for rituals

On the legal aspect, the project site includes the ancestral domains of the Dumagat and Remontado. Two

Certificate of Ancestral Domain Titles (CADTs) have been promulgated as shown in Table 7.

Table 5. Profile of the Ancestral Domain Lands Covered by the Project

Source: (MWSS, 2019, p.74)

IP Group	Location	CADT No.	Survey No.	Total Area *(has)	Total Population
Dumagat and Remontados	Gen. Nakar, Quezon (and Dingalan, Aurora)	R04 -NAK-1208-097	ADs-0404-0016-Gni	163,641.4611	Gen. Nakar = 3,437 Dingalan = 581
Dumagat and Remontados	Tanay, Rizal (and portion of Santiago, Laguna)	R04 -TAN-0709-130	ADS-0405-0017-Gni	24,664.0069	6,060

Given this, the project needs to secure the FPIC⁹ from the Dumagat and Remontado as required by RA. No (Obanil, personal communication, October 8, 2020). This means that the consent of the Dumagat/Remontado must first be secured in order for the project to proceed.

The right to stay in the territory and not to be removed therefrom—No ICCs/IPs will be relocated without their free and prior informed consent, nor through any means other than eminent domain. Where relocation is considered necessary as an exceptional measure, such relocation shall take place only with the free and prior informed consent of the ICCs/IPs concerned and whenever possible, they shall be guaranteed the right to return to their ancestral domains, as soon as the grounds for relocation cease to exist. When such return is not possible, as determined by agreement or through appropriate procedures, ICCs/IPs shall be provided in all possible cases with lands of quality and legal status at least equal to that of the land previously occupied by them, suitable to provide for their present needs and future development. Persons thus relocated shall likewise be fully compensated for any resulting loss or injury (RA No 8371, Section 7(a)).

It should be noted that the right of ICCs/IPs to protect their ancestral lands is also present in the United Nations document which states that the FPIC is a prerequisite for any activity that affects indigenous peoples' ancestral lands, territories and natural resources (Food and Agriculture Organization, 2016).

ISSUANCE OF THE ECC FOR KDP

On October 11, 2019, DENR-EMB issued the ECC for KDP despite the opposition of several environmental groups such as SKDN (DENR EMB, 2019). The ECC for KDP is crucial because without it the project cannot proceed to the next phase of the implementation according to PD No 1586. This is to ensure the protection of the people and environment against man-made disaster.

No person, partnership or corporation shall undertake or operate any such declared environmentally critical project or area without first securing an Environmental Compliance Certificate issued by the President or his duly authorized representative (PD No 1586, Sec. 4).

It should be noted that the ECC for KDP has 17 conditions and four general conditions. The Certificate also identified four restrictions. One of the restrictions states that, "no activity shall commence until the proponent satisfies the following conditions" (DENR EMB, 2019). These conditions are the following:

- a. Compliance to the requirements of the National Integrated Protected Areas System Act as Amended (RA 7586 as amended by RA 11038 and other relevant rules and issuances.
- b. Necessary certifications from the National Commission on Indigenous Peoples (NCIP) prior to project implementation;
- c. Disposal sites of excavated materials have been identified duly covered by agreement/s and have been permitted in accordance with the law. Proof of compliance shall be filled

with the Regional Office having jurisdiction over the disposal area and shall be without prejudice to environmental safeguards that may be prescribed as warranted. Likewise, a copy of which shall form of the requirement under Condition 7 hereof; and.

- d. The appropriate instrument (s) (e.g. lease agreement, deed of absolute sale, etc.) shall be secured.

(DENR EMB, 2019, p.9)

System (NIPAS) Act, as Amended (RA 7586 as amended by RA 11038); other relevant laws and issuances; and the necessary certifications from the National Commission of Indigenous Peoples (NCIP) including the Certificate of Precondition after the Free and Prior and Informed Consent (FPIC) is obtained from the affected Indigenous Cultural Communities (ICCs) or Indigenous Peoples (IPs) (COA, 2019, p.86).

Another important concern emphasized

COA has flagged the water agency in its 2019 annual report after MWSS issued the NTP to KDP's Chinese contractor, despite its pending compliance with environmental guidelines and failure to secure consent from the Dumagat and Remontado (COA, 2019).

COA has flagged the water agency in its 2019 annual report after MWSS issued the NTP to KDP's Chinese contractor, despite its pending compliance with environmental guidelines and failure to secure consent from the Dumagat and Remontado (COA, 2019). State auditors explained that the FPIC from the affected IPs is one of the requisites indicated in the ECC for KDP (COA, 2019), as follows:

Furthermore, it was emphasized in the ECC that no activity shall commence until the proponent has complied with the requirements of the National Integrated Protected Areas

in the 2019 MWSS annual report is that the Resolusyon ng Pagpayag (RP) of the Dumagat/Remontado Tribe of General Naka, Quezon, submitted by the water regulator showed a number of deficiencies (COA, 2019). This is because the RP does not follow the guidelines prescribed under the NCIP Administrative Order Number 3, series of 2012 (COA, 2019). The NCIP AO No 3, s. 2012 defined the resolution of consent as "the written resolution adopted by the affected ICCs/IPs by themselves or through their duly authorized elders/leaders expressing their acceptance of the plan, program, project or activity". This Administrative Order also mentioned

that the resolution of consent should be “prepared, signed and released” once the consensus is favorable (NCIP AO No 3, s. 2012). However, COA (2019) noted five important deficiencies “which cast doubts on the validity of the Resolution as well as the acceptability and legitimacy of the signatures gathered”, as follows:

- a. The RP does not mention the tribal leaders or elders who would recognize or attest to the identity of the IP member who signed the resolution;
- b. The RP does not bear any date when the purported IPs affixed their signature. The date of signing is significant since it must be within the date of assemblies held or a reasonable period thereafter and not earlier or prior to the date of the execution of the document;
- c. The Resolution does not state the number of pages that the document contains; there is no attestation at the back of the document or after all the signatures; and that the signatories were properly informed of the legal effects of the resolution. Thus, we cannot determine whether these are only the contents of the Resolution or the signature sheets were only attached to the main document;
- d. As per Report on the Government Projects, Programs and Activities (PPAs) of the MWSS as of December 31, 2019, the IPs and ICCs of Rizal and Quezon Provinces adopted the resolution of consent during the final consensus building last December 9 and 17, 2019. However, the attached listing of signatures of the RP is dated December 19, 2019; and

- e. The RP was not notarized. The notarization by a notary public converts a private document into a public document, making it admissible in evidence without further proof of its authenticity. A notarial document is, by law, entitled to full faith and credit upon its face.

(COA, 2019, p.17).

State auditors noted that the “questionable character of the consent of the IP members” (p.90) was bolstered during a Senate hearing on January 22, 2020 (COA, 2019). Many stakeholders and groups purported that they “were disregarded in the dialogues conducted during the community assemblies conducted” (COA, 2019, p.91).

The NCIP AO No 3, s. 2012, Sec. 31 further explained that when the consent of the concerned IPs is obtained, the terms and conditions agreed should be included in a memorandum of agreement (MOA) to be executed among the ICC/IPs, the applicant/proponent and the NCIP. The Administrative order also clarified that the signing of the MOA should be done within the affected ancestral domain during a general assembly called for the purpose. This implies that the MOA should be signed only after its contents is fully read aloud and explained by the FPIC Team (composed of representatives from MWSS and the Consultant), and understood and affirmed by the community. The signatories of the MOA include the following:

- a. Elders/leaders or their alternates who have been identified during the validation and authorized by the community to sign;
- b. For corporations, partnerships or single proprietorship

- entities, the authorized officers, representatives, or partners per Board Resolution;
- c. and The Chairperson shall sign the MOA in behalf of the NCIP as Third Party. For projects where the Regional Director is authorized by this Guidelines to issue the corresponding certification precondition, the MOA shall be signed by him/her in behalf of the NCIP as Third Party.

(NCIP AO No 3, s. 2012, Sec. 33)

Given this, state auditors recommended MWSS to craft “a valid and proper” RP that will comply with the requirements under NCIP AO No 3, s. 2012 and other pertinent laws (COA, 2019).

MWSS RESPONSE TO THE 2019 COA REPORT

In response to the 2019 COA report, MWSS former administrator clarified that the report was already available in public prior to his appointment in August 2019. This means that he was not yet in MWSS when these issues identified in the COA report happened. Nevertheless, the person argued that all of these issues are resolved.

MWSS former administrator explained that the water agency has been compliant with ECC conditions and other rules and regulation in the dam construction (personal communication, November 12, 2020). He clarified that the 21 conditions under ECC are going to be strictly implemented throughout the project implementation. Based on the MWSS response to the 2019 COA report, the document explained that the NTP for the Detailed Engineering

Design and Construction of the KDP was issued after complying with the several requirements such as the signed Loan Agreement between the Philippines and China, Loan Effectiveness issued by China Eximbank and ECC on KDP (MWSS, 2020). This means that the NTP issued by MWSS on November 13, 2019 only covers the design and build contract for the project. The Notice to Commence Construction (NTCC) will only be issued after compliance with all the permitting works and clearances, including the compliance with some of the provisions of the ECC (MWSS, 2020).

Such statement on the project status is supported by DENR EMB. Based on the proponents' Compliance Monitoring Report (CMR) for the 1st Semester 2021, there is no construction yet in the areas as the project is still in its Detailed Engineering Design (DED) stage (email communication, January 26, 2021).

MWSS former administrator added that the 2019 COA findings—specifically on the issues of RP—are addressed. Hence, they were able to negotiate the MOA with the tribal leaders (personal communication, November 12, 2020). Based on the MWSS response to the 2019 COA report, the document identified the various efforts of the water regulator in order to be faithful in the implementation of the provisions of the RA 8371 and NCIP AO No 03-2012. However, the document¹⁰ does not include a proof showing that the RP submitted to COA is already notarized (with name of tribal leaders and date). The document explained that NCIP has yet to release official documentation pertaining to the FPIC process.

Much as we would want to furnish the COA with the official process documentation of the FPIC Process, the NCIP has yet

to release official documents, video documentation pertaining to the FPIC process pursuant to Section 22 of NCIP Administrative Order No3, Series of 2012, which states “the Resolution of Consent of the community shall be prepared, signed and released along with the finalization of the Memorandum of Agreement (MOA) and submission of FPIC report by the FPIC Team”. This is to ensure the objectivity of the on-going FPIC process for the NCWS-KDP (MWSS, 2020).

NCIP RESPONSE ON FCIP

As explained by MWSS, the FPIC negotiation process on KDP has started since 2018 (personal communication, November 12, 2020). This is also confirmed by the NCIP Provincial Officer who is in charge of the FPIC process on KDP. Specifically, he acts as the mediator

The NCIP Provincial Officer explained that this project is really a long negotiation process because of its huge environmental and social impacts of the KDP (personal communication, January 15, 2021).

With regard to the overall stand of the affected IPs on KDP, the NCIP Provincial Officer pointed out that they are divided on the project. He explained that most IPs who are against the project are either affiliated to non- government organizations (NGOs) such as the Samahan ng mga Katutubong Agta-Dumagat-Remontado na Binabaka at Ipinagtatangol ang Lupaing Ninuno (SAGIBIN-LN) or the Catholic Church in Infanta. On the other hand, those IPs who are in favor of the project implementation are not connected to either of them. In short, some NGOs and the Catholic Church in Infanta are the reasons why there are IPs who are not in favor of the project (personal communication, January 15, 2021).

■ With regard to the overall stand of the affected IPs on KDP, the NCIP Provincial Officer pointed out that they are divided on the project. He explained that most IPs who are against the project are either affiliated to non-government organizations (NGOs) . . . or the Catholic Church.

between MWSS and the affected IPs regarding issues and concerns on KDP. He also provides administrative and technical assistance to the FPIC team.

What is happening in General Nakar is that the IPs are divided. Based on my observation, those who are against are connected

to NGOs. They are part of this NGO, they are connected to the NGO and they are employed in the NGO. Because there are IPs that are also members of NGOs like the SAGIBIN-LN and the Tribal Center for Development, which is under the umbrella of the Catholic. These are those against the project. And then those who are in favor of the project, these are the individuals who are not connected to NGOs (NCIP Provincial Officer, personal communication, January 15, 2021).

(Ang nangyayari kasi dyan sa mga katutubo sa General Nakar ay divided sila. Base sa observation ko ang mga umaayaw ay hawak ng mga NGO. Nasa NGO sila, connected sila sa NGO at mga empleyado ng NGO. Kasi may mga katutubo doon na miyembro ng NGO tulad ng SAGIBIN-LN and Tribal Center for Development, which is under the umbrella of the Catholic. Ito po yung mga umaayaw sa project. Tapos yung mga pabor sila po yung mga individual na walang humawak na NGO.)

Such observation is also mentioned in the interview with MWSS former administrator. He pointed out that one of the reasons why the project is going to be delayed is because of the resistance of some NGOs such as SKDN. He also noted that these NGOs used the 2019 COA report as their basis to stop the project implementation (personal communication, November 12, 2020). Nevertheless, the NCIP Provincial Officer assured that all the affected IPs—whether they are pro or anti KDP—will receive full payment of compensation for lost assets. He also

emphasized that they will receive a huge amount of money as compensation for losses. However, he said that he cannot share the document on relocation and compensation packages because this is not yet final.

It should be noted that LGUs such as Quezon Province are also opposing the KDP implementation.

It should be noted that LGUs such as Quezon Province are also opposing the KDP implementation. The NCIP Provincial Officer explained that this would not affect the entire FPIC process. These LGUs opposing the project would need to settle it with the national government (personal communication, January 15, 2021). Currently, MWSS and NCIP assured that they have already addressed the issues on RP. This means that they have the consent of the affected IPs to proceed to the project implementation. This explains why MWSS and NCIP were able to start the MOA negotiation (MWSS former administrator, personal communication, November 12, 2020; NCIP Provincial Officer, personal communication, January 15, 2021). This is because RP is a conditional precedent prior to the MOA negotiation with tribal leaders. The NCIP Provincial Officer admitted that they have started the MOA negotiation on KDP and they only invited the tribal leaders given the COVID19-Inter-Agency Task Force (IATF) protocol. After this, they will convene all the affected IPs to discuss the result of the

MOA negotiation with tribal leaders for validation (NCIP Provincial Officer, personal communication, January 15, 2021). The caveat is that both of these government agencies have not yet provided any document which can attest to their statement on RP.

IP RESPONSE ON FPIC

Dumagat leader Tena purported that they have not given their consent regarding the project implementation (Tena, email communication, January 8, 2021). He also revealed some IP members had allegedly received bribes from the water regulator. Lastly, Dumagat leader Tena emphasized that even if MWSS had offered education, livelihood and other financial support, they would not give their consent for this project.

(Hindi kami pumapayag masira ang kalikasan at lupaing ninuno, mawawala ang among buhay at kabuhayan, tahanan, mga sagradong lugar at libingan ng among ninuno.)

Other than this, Dumagat leader Tena revealed that there is an alleged connivance between MWSS and NCIP. Hence, they were able to get the consent of some IPs in the area (personal communication, January 8, 2021). In response to this, the NCIP Provincial Officer rejected this allegation. He said that Dumagat leader Tena has been resisting the project because he is one of the employees of the local Catholic Church in Infanta, Quezon, who is also against the KDP implementation. In a public forum organized by the University of the Philippines (UP) College of Social Work and Community Development (CSWCD) Research and

“We do not allow the destruction of the environment and our ancestral domain, we will lose our lives and our livelihood, houses, and sacred burial sites (Tena, personal communication, January 8, 2021).”

We do not allow the destruction of the environment and our ancestral domain, we will lose our lives and our livelihood, houses, and sacred burial sites (Tena, personal communication, January 8, 2021).

Extension for Development Office (REDO) on the Kaliwa, Kanan, Laiban Dam Projects, the school invited various IP communities' non-government organizations, academic and research institutions, students, faculty, church workers, and members of the press to discuss its impact on ancestral domains

and IPs. The forum was organized in partnership with the UP Diliman Gender Office (UP DGO), CSWCD Student Council, KATRIBU UP Diliman, Kalipunan ng Katutubong Mamamayan sa Pilipinas (KATRIBU), Philippine Task Force for Indigenous Peoples' Rights (TFIP), and BAI Indigenous Women's Network (BAI), and the Network Opposed to the New Centennial Water Source Project (NO to NCWSP) (College of Social Work and Community Development, 2019)

■ ■ She also claimed that despite the growing protests from the IPs and the public, these destructive large dam projects are already being implemented through divide and conquer tactics, and directly neglect and violate IP rights (CSWCD, 2019).

Wilma Quirrez and two other Dumagats shared their experiences and their struggle to defend Sierra Madre. Chairperson of Dumagat Sierra Madre Quirrez narrated that the MWSS Office is already being built on a two-hectare ancestral land even without FPIC. In effect, they cannot enter the area which is part of their ancestral land to gather small crabs and other food without getting prior permission from the military. She also claimed that despite the growing protests from the IPs and the public, these destructive large dam projects are already being implemented through divide and conquer tactics, and directly neglect and violate IP rights (CSWCD, 2019).

STRENGTHENING THE ROLE OF DENR AND LGUS IN SUSTAINABLE FINANCE IN THE COUNTRY

CONCLUSION AND RECOMMENDATIONS

The KDP implementation is one of the flagship projects of the Duterte administration. The project is already delayed because of the opposition of various stakeholders such as some affected IPs in the area, NGOs, local Catholic Church in Infanta, Quezon, LGUs in Tanay and Quezon Province. Every actor has its own position on KDP. The government agencies such as MWSS, NCIP and DENR-EMB believe that KDP is an alternative source to maintain water security in Metro Manila and nearby areas. The NCIP Provincial Officer noted that KDP is considered as a solution to the deterioration of the watershed areas in the project locations. He explained that the increasing number of Tagalogs in General Nakar is one of the reasons why many watershed areas are being destroyed because they do not know how to take care of the environment unlike the IPs in the area (NCIP Provincial Officer, personal communication, January 15, 2021). Like NCIP, MWSS believed that the project will bring more good than harm. He also mentioned that even if there are a significant number of groups opposing the project, he has the support of the President to implement it.

On the contrary, NGOs like SKDN and SAGIBIN-LN, the local Catholic Church in Infanta and the Governor of Quezon Province argued that KDP should

be stopped because of its negative environmental and social impacts. SKDN Spokesperson Obanil emphasized that the issues on the RP should be addressed first before starting the MOA negotiation. He reiterated that their group has been asking MWSS to release any document which can attest to its statement that the issues on RP are resolved. However, SKDN has not received any document from the water regulator. Like SKDN Spokesperson Obanil, Dumagat leader Tena and Chairperson of Dumagat Sierra Madre Quirrez are some of the IPs opposing KDP. Both of them argued that they will not give their consent for this project given its negative environmental, social and cultural impacts. Dr. Castro, an EIA reviewer on KDP, noted in his letter addressed to EIAMD that he did not endorse the issuance of an ECC for KDP. He said the dam project is socially unacceptable to the Dumagat and Remontado peoples. In the same way, Quezon Province Governor Suarez vowed to block the project as long as he is the governor of the province.

From this, one can infer that the State capacity is crucial in order to generate the participation and involvement of stakeholders beyond itself. The State in itself cannot be able to implement genuine projects and reforms without the support and cooperation of various stakeholders. Therefore, it is important for the State to prepare the proper venue through which citizens, institutions, organizations, groups articulate their interests, express their rights and mediate their differences in pursuit of the collective good.

In terms of research, future studies can use focus group discussions, participatory mapping and other qualitative and quantitative research tools to understand the complexity

of the roles of DENR and LGUs in development projects such as KDP. The number of key informants can also be increased and the conduct of expert interviews with ECC practitioners or assessors may yield richer analyses.

In terms of practice, the study has six policy recommendations points to strengthen the roles of DENR and LGUs in the sustainable finance in the country specifically in the case of KDP. First, there is a need for the government to build strong relationships and partnerships with various stakeholders. Huge projects such as KDP can be successfully implemented by gathering support from stakeholders. It is already established that KDP will have huge potential environmental and social impacts because of its size and project locations. Hence, it is expected that this would take a long negotiation process in order for the project to be implemented. In the case of KDP, the project has started seemingly even without the full support and cooperation of the affected IPs, LGUs, NGOs and the local Catholic Church in Infanta. In effect, MWSS admitted that the project is already delayed because of the opposition of some groups.

Second, the government should be more open to the public specifically in the access of public documents. In the case of KDP, DENR said that it does not have information about this matter. Both MWSS and NCIP have not yet responded to the request concerning the document which can attest to their statement that the issues on RP are already addressed. This is important because the RP serves as the conditional requirement prior to the MOA negotiation. Such concern is also mentioned in Villaluz's (n.d.) EIA study that public documents are not freely accessible due to fear, uncertainty and a lack of experience in handling

seemingly contentious matters.

Third, LGU approval and FPIC should be required in the processing of ECC applications specifically in the case of KDP. This is because the review of the EIS study, which serves as an application for an ECC. LGUs are not only in principle more attuned to the needs of their constituents and local environment, but people can also put their community leaders into account for policy decisions through elections and other democratic processes. As such, LGU participation in the ECC is crucial.

Fourth, the government should take measures to professionalize EIA in the country. The main dilemma in measuring the environmental impact of development projects is how to ensure transparency, competence based on science and people's participation, and independence of individuals spearheading the study. DENR may partner with the Commission on Higher Education (CHED) and State Universities and Colleges (SUCs) to establish EIA centers or offices in key provinces, cities and municipalities in the country. The establishment of which specific localities facilitates the utilization of local knowledge as well as scientific expertise to be integrated in the conduct of environmental impact assessments.

Fifth, the compensation for IPs whose ancestral domains are being encroached by development projects needs to be genuinely cultural-sensitive. Monetizing and introducing development interventions such as education, health and other social services that may run counter against the indigenous ways of life. These will not only disempower IP communities but may also pose potentials for distrust and eventual conflict with authorities. Meaningful participation of IPs require not just

means for participation but enhanced ability to exercise their rights. Thus, the DENR, LGUs, NCIP and other government agencies as well as the civil society should empower local champions through education and capacity building initiatives among IPs to help them secure their right over their land given the technicalities involved in development projects such as the KDP.

Sixth, crucial to the attainment of the State's responsibility to protect the rights of indigenous people is the development of their ancestral domain in culturally acceptable and sustainable ways. This necessitates an integrated platform where DENR, LGUs, NCIP, Civil Society, IPs and other stakeholders can discuss and craft strategies to conserve environmental and cultural resources within ancestral domains. This should be ultimately geared at ensuring that the environment is conserved, IPs are provided sustainable and cultural appropriate sources of livelihood and enable them to preserve their cultural practices through the establishment of schools or institutions for indigenous knowledge and culture. In so doing, governmental and community capacity to assess and mitigate the impacts of development projects within IP lands are strengthened. Sustainable finance happens when institutions are strengthened and streamlined, and stakeholders such as IPs are empowered and capacitated to meaningfully participate in the development process.



ENDNOTES

- 1 In 1978, the implementing agency of PEISS was the National Environmental Protection Council (NEPC) under the Ministry of Human Settlements. Through the passage of Executive Order 192 of 1987, the NEPC and the National Pollution Control Commission (NPCC) into what is now the Environmental Management Bureau (EMB), which is under the administrative jurisdiction of the Department of Environment and Natural Resources. DENR EMB then assumed the NEPC functions including the PEISS implementation (Supretran, 2013).
- 2 <https://elaw.org/system/files/Environmental%20Impact%20Analysis.pdf>
- 3 <https://www.oecd-ilibrary.org/docserver/factbook-2015-83-en.pdf?expires=1610043517&id=id&accname=guest&checksum=6A6D26E15F5E99E5DB7BFF9790E17BCF>
- 4 https://www.researchgate.net/publication/272731688_Social_Impact_a_Theoretical_Model/fulltext/5642cb9008aeacfd89387199/Social-Impact-a-Theoretical-Model.pdf
- 5 https://ec.europa.eu/info/business-economy-euro/banking-and-finance/sustainable-finance/overview-sustainable-finance_en#:~:text=Sustainable%20finance%20generally%20refers%20to,sustainable%20economic%20activities%20and%20projects.
- 6 NEDA conducts the annual ODA portfolio review pursuant to the Republic Act (8182), also known as the "ODA Act of 1996".
- 7 DENR Administrative Order (AO) No 2003-30, or also known as the Implementing Rules and Regulations for the Philippine Environmental Impact Statement (EIS) System, defined EIS as the "document, prepared and submitted by the project proponent and/or EIA Consultant that serves as an application for an ECC. It is a comprehensive study of the significant impacts of a project on the environment. It includes an Environmental Management Plan/Program that the proponent will fund and implement to protect the environment".
- 8 The EIARC is a body of independent technical experts and professionals of known probity from various fields organized by the EMB (DENR AO No 2003-30, Sec.3).
- 9 It should be noted that the right of ICCs/IPs to protect their ancestral lands is also present in the United Nation document which states that the FPIC is a prerequisite for any activity that affects indigenous peoples' ancestral lands, territories and natural resources (Food and Agriculture Organization, 2016).
- 10 The researcher emailed MWSS regarding any document which can serve as proof that the water agency has already addressed the issues on RP. Until now, MWSS has not yet responded to the request. In the case of DENR, EMB responded that his office does not have information on the said matter.

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APPENDIX



Republic of the Philippines
Department of Environment and Natural Resources
ENVIRONMENTAL MANAGEMENT BUREAU
DENR Compound, Visayas Avenue, Diliman Quezon City 1116
Telephone Nos.: (632) 927-1517, 928-3725; Fax No.: (632) 920-2258
Website: <http://www.emb.gov.ph>

OCT 11 2019

ECC-CO-1907-0017

The Administrator
**METROPOLITAN WATERWORKS
AND SEWERAGE SYSTEM (MWSS)**
489 Katipunan Road
Balara, Quezon City

SUBJECT: **ENVIRONMENTAL COMPLIANCE CERTIFICATE**

Dear Sir:

This refers to the application for Environmental Compliance Certificate (ECC) for the **New Centennial Water Source – Kaliwa Dam Project (NCWS-KDP)** to be located in Teresa and Tanay, Rizal; and General Nakar and Infanta, Quezon.

After satisfying the requirements of PD No. 1586 and its Implementing Rules and Regulations and upon recommendation of the Environmental Impact Assessment Review Committee, the Department through the Environmental Management Bureau (EMB), has decided to issue the ECC for the abovementioned Project.

With the issuance of this ECC, you are expected to implement the measures presented in the EIS intended to protect and mitigate the project's adverse impacts on community health, welfare and the environment. However, you may proceed with the project implementation only after securing the necessary permits from other pertinent Government agencies. Environmental considerations shall be incorporated in all phases and aspects of the Project. This Office shall be monitoring the project periodically to ensure your compliance with stipulations cited in the attached ECC.

Please be guided accordingly.

Very truly yours,

By the Authority of the Secretary:

ENGR. METODIO U. TERRELLA
Director



cc: DOLE
NCIP
MGB-DENR
EMB – Region IVA
BMB – DENR
FMB – DENR

LGU- Infanta, Quezon
LGU –Teresa, Rizal
LGU-Gen. Nakar, Quezon
LGU –Tanay, Rizal
PHIVOLCS
Presidential Task Force on China ODA Projects

Protect the environment... Protect life...

ENVIRONMENTAL COMPLIANCE CERTIFICATE

(Issued under Presidential Decree No. 1586)

ECC-CO-1907-0017

THIS IS TO CERTIFY THAT THE PROPONENT, **Metropolitan Waterworks and Sewerage System (MWSS)**, as represented by its Administrator is granted this Environmental Compliance Certificate (ECC) for the **New Centennial Water Source – Kaliwa Dam Project (NCWS-KDP)** to be located Teresa and Tanay, Rizal and General Nakar and Infanta, Quezon.

SUBJECT to the conditions and restrictions set out herein labeled as Annexes A and B.

PROJECT DESCRIPTION

This Certificate shall cover the construction and operation of gravity dam along the Kaliwa River with a dam height of 60 meters referred to a riverbed elevation of 100 meters. It will cover a reservoir surface area of 291 hectares with a gross reservoir volume of 57 million cubic meters at full supply level. The project shall be bounded within the geographical coordinates identified in the EIS.

The project shall have the following components:

1. **Dam** [Spillway with elevation of 160 meters to be located at the right bank of Kaliwa River; Two (2) diversion tunnel at left abutment area of proposed dam; 10-12 meters dam free board]
2. **Conveyance Tunnel** [Length of approximately 28 kilometers with tunnel diameter of 4 meters]
3. **Intake Structure** [Maximum design capacity of 2400 million liters per day; Complete with trash racks, trash rake mechanism, log boom, access roads, headworks and other appurtenant facilities]
4. **Basin Transition Structure at Outlet** [Flow measuring device; Flow control structure; Overflow structure; Stub-out for interconnection to MWSS concessionaire's transmission lines]
5. **Camp Site Development** [Dam Site - Site Office, Laboratory, Living Quarters, Canteen, Workshop and Security Offices; Tunnel Outlet Site - Site Office, Living Quarters, Canteen, Workshop and Security Offices Project Information Center]
6. **Access Roads** [6 kilometers access road from Dam to Intake Structure; 1.2 kilometers access road from Tunnel Outlet Site to existing concrete road at Lake Briza (Pantay-Buhangin, Teresa)]
7. **Quarry, Spoil and Transit Areas**

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New Centennial Water Source – Kaliwa Dam Project
Metropolitan Waterworks and Sewerage System



This Certificate is issued in compliance with the requirements of Presidential Decree No. 1586 and the implementing rules and regulations thereof. Non-compliance with any of the provisions of this Certificate shall be a sufficient cause for its cancellation and/or imposition of a fine in an amount not to exceed Fifty Thousand Pesos (P50,000.00) for every violation thereof, which shall be without prejudice to imposition of fines and penalties under other environmental laws. The EMB, however, is not precluded from reevaluating and correcting any deficiencies or errors that may be found after issuance of this Certificate.

Issued at DENR, Quezon City, Philippines, this OCT 11 2019.

Recommending Approval:


ENGR. ESPERANZA A. SAJUL
Chief, EIAM Division

Approved by the Authority of the Secretary:


ENGR. METODIO U. TURBELLA
Director



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New Centennial Water Source - Kaliwa Dam Project
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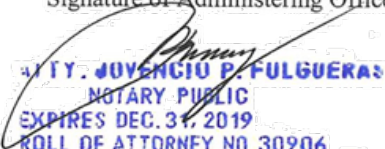
SWORN ACCOUNTABILITY STATEMENT

I, **Lt. Gen. Emmanuel B. Salamat (Ret.)**, Administrator representing Metropolitan Waterworks and Sewerage System (MWSS) with office address located at 489 Katipunan Road, Balara, Quezon City takes full responsibility in complying with all conditions contained in this Environmental Compliance Certificate (ECC).


Lt. Gen. Emmanuel B. Salamat (Ret.)

Subscribed and sworn to before me this 10/8/2019, the above-named affiant taking oath presenting _____ issued on _____ at _____.

Signature of Administering Officer


ATTY. JOVENCIO P. FULGUERAS
NOTARY PUBLIC
EXPIRES DEC. 31, 2019
ROLL OF ATTORNEY NO. 30906
IBP NO. 016526/10.26.2017/PASIG
PTR NO. 3882687-C/1-16-2017/Q.C.
MCLE COMPLIANCE NO. V-0006760
ADD: MWSS BLDG. KATIPUNAN RD. BALARA Q.C.

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I. CONDITIONS

ENVIRONMENTAL MANAGEMENT

All commitments, appropriate mitigating/enhancement measures and monitoring requirements contained in the approved EIS particularly in the Environmental Management and Monitoring Plan (EMP/EMoP) shall be instituted and strictly implemented by the proponent throughout the project implementation including the following:

1. Conduct an effective Information, Education and Communication (IEC) Program to inform and educate all stakeholders, especially its contractors, workers, and local residents on the following:
 - a. mitigating measures embodied in its EIS;
 - b. the conditions herein stipulated and the environmental disaster risk reduction management measures and climate change related issues/concerns, and
 - c. human safety features for greater awareness, understanding and sustained acceptance of the project.

A report of program implementation shall be submitted to EMB Central Office (EMB-CO) as part of the second-semester Compliance Monitoring Report;

2. Submit a duly signed Memorandum of Agreement (MOA) with the Local Government Units (LGUs) for the Social Development Program six (6) months upon receipt of this Certificate;
3. Implement a Comprehensive Social Development Program (SDP), Ancestral Domain and Cultural Heritage Sustainable Development Plan (ADCHSDP) and Cultural Heritage Protection Plan (CHPP). The ADCHSDP and CHPP shall be updated semiannually in consultation with the National Commission on Indigenous Peoples (NCIP). Submit a separate report together with the CMR to the EMB-CO and copy furnished EMB Region IVA on a semi-annual basis;
4. Submit NCIP approved Indigenous Peoples Development Plan to the EMB-CO at least one (1) year prior to the start of project construction/implementation;
5. Establishment of a reforestation and carbon sink program using endemic/indigenous species to offset greenhouse gas (GHG) emissions of the project in line with the DENR's thrust for GHG emissions reduction programs. The program shall be submitted for approval to EMB-CO within 6 months from receipt of this Certificate. Copy of the approved reforestation program shall be furnished to EMB Region IVA;
6. Adequate buffer zone with a width of at least 20 meters shall be maintained along the periphery of the project facilities;
7. Submit detailed waste management program for proper handling, collection, and disposal of solid, hazardous, and liquid waste to EMB-CO and EMB Region IVA

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within six (6) months prior to project implementation. Proof of implementation shall be submitted together with the CMR;

8. Conduct and submit actual inventory and assessment of threatened species that may be affected during clearing operations including maps showing the project location relative to the protected area boundaries and management zones, location of observed threatened species; land cover map indicating the various habitat types and location of management zones relative to the area for vegetation prior to the conduct of the Detailed Engineering Design (DED);
9. Develop an Integrated Watershed Management Plan (IWMP) in coordination with the DENR Region IVA and the Protected Area Management Board (PAMB) and submit the same within six (6) months prior to project implementation to EMB-CO. Proof of IWMP implementation shall be submitted together with the CMR;
10. Ensure the structural soundness/stability of the dam through compliance with internationally accepted structural dam design standards. A certificate attesting to such shall be submitted to EMB-CO 60 days prior to project construction;
11. Conduct a detailed geological assessment of the areas and ensure that appropriate measures has been integrated in the design to mitigate the effects along the conveyance tunnel transected by an active fault and caves;
12. Ensure that the sacred sites and burial grounds, as well as the culture and livelihood of the IPs, are preserved and protected;
13. Ensure that appropriate mitigating measures as cited in the EIS shall be carried out to protect and preserve the Tinipak Spring and Tinipak White Rocks;
14. The proponent shall operate and maintain hydro-meteorological and seismic monitoring instruments in coordination with DOST (PAGASA and PHIVOLCS);
15. Coordinate with PAGASA about the Joint Operations and Management Committee (JOMC) on flood forecasting and warning for dam operations;
16. Establish a comprehensive early warning system to inform public on release of water from the dam during operation phase;
17. Conduct quantitative risk assessment a month prior to project operation covering the entire facilities which shall be updated every 5 years thereafter, to ensure that hazards and risks are kept at a minimum. The report shall be submitted to EMB-CO within 30 days from the conduct of assessment;

GENERAL CONDITIONS

18. The plant operations shall conform with the provisions of environmental laws regulations and their Implementing Rules and Regulations namely: RA 6969 (Toxic Substances and Hazardous and Nuclear Wastes Control Act of 1990), RA 8749 (Philippine Clean Air Act of 1999), RA 9003 (Ecological Solid Waste Management Act of 2000), PD 705 as amended (Revised Forestry Code of the Philippines), and RA 9275 (Philippine Clean Water Act of 2004);

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19. The proponent shall set-up the following:

- 19.1 A readily available and replenishable Environmental Guarantee Fund (EGF) to cover the following expenses:
 - 1) further environmental assessments, compensations/indemnification for whatever damages to life and property that may be caused by the project;
 - 2) rehabilitation and /or restoration of areas affected by the project's implementation; and
 - 3) abandonment/decommissioning of the project facilities related to the prevention of possible negative impacts and as a source of fund for contingency and clean-up activities;
- 19.2 Establish a Multipartite Monitoring Team (MMT) in accordance with DAO 2017-15 and DAO 2018-18. The MMT shall primarily oversee the compliance of the proponent with the Environmental Management Plan/ Environmental Monitoring Plan as well as the conditions of its ECC;
- 19.3 A replenishable Environmental Monitoring Fund (EMF) to cover all costs attendant to the operation of the MMT such as training, sampling, and analysis, the hiring of technical experts, accommodations, and transportation.

The amount and mechanics of the EGF, EMF and the establishment of the MMT shall be determined by EMB-CO and the proponent in coordination with EMB Region IVA through a Memorandum of Agreement (MOA) which shall be submitted at least 1 year prior to project construction/implementation.

20. Creation of an Environmental Unit (EU) within 60 days from receipt of this Certificate that shall competently handle the environment-related aspects of the project. In addition to the monitoring requirements as specified in the Environmental Management Plan/ Environmental Monitoring Plan, the EU shall have the following responsibilities:
 - a. Monitor actual project impacts vis-à-vis the predicted impacts and management measures in the EIS;
 - b. Recommend revisions to the EMP/EMoP, whenever necessary subject to the approval of EMB-CO.
 - c. Ensure that data gathered during monitoring activities are properly documented, assessed, evaluated and reported to EMB (Central Office and Region IVA) in accordance with the standard formats; and,
 - d. Ensure that monitoring and submissions of reports to EMB (Central Office and Region IVA) are carried out as required;
21. Ensure that its contractors and subcontractors strictly comply with the relevant conditions of this Certificate;

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II. RESTRICTIONS

22. No activity shall commence until the proponent satisfied the following conditions:
- Compliance to the requirements of the National Integrated Protected Areas System Act as Amended (RA 7586 as amended by RA 11038) and other relevant rules and issuances;
 - Necessary certifications from the National Commission on Indigenous Peoples (NCIP) prior to project implementation;
 - Disposal sites of excavated materials have been identified, duly covered by agreement/s and have been permitted in accordance with the law. Proof of compliance shall be filed with the Regional Office having jurisdiction over the disposal area and shall be without prejudice to environmental safeguards that may be prescribed as warranted. Likewise, a copy of which shall form of the requirement under Condition 7 hereof; and
 - The appropriate instrument(s) (e.g. lease agreement, deed of absolute sale, etc.) shall be secured.
23. Controlled blasting for quarrying of aggregate materials to be used in the construction of the project facilities shall be undertaken during daytime only and the corresponding permits from concerned agencies shall be secured;
24. Any modification of the Project beyond the project description or any change in the details as a result of the DED shall be subject to submission of new/revised EIA study; and
25. Transfer of ownership of this project carries these same conditions and restrictions for which written notification shall be made by the transferee to EMB within fifteen 15 days from such transfer.

O.R. No. : 2395961
Processing Fee : PhP 10,100
Date : 07/30/2019

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PROJECT ASSESSMENT PLANNING TOOL

For the assistance of the Proponent and Government Agencies concerned in the management of the project and for better coordination in the mitigation of the impacts of the project on its surrounding areas and to the environment, the following are recommended to the parties and authorities concerned for proper action.

RECOMMENDATIONS	RESPONSIBLE AGENCY
1. Compliance with the following: • Sanitation Code of the Philippines • Labor Code of the Philippines including occupational health and safety standards • National Building Code of the Philippines	Department of Health Department of Labor and Employment Local Government Unit (LGU)
2. Ensure conformance with the Ecological Solid Waste Management Act	LGU
3. Secure quarry permit	DENR
4. Secure tree cutting permit	DENR
5. Secure Special Use Agreement in Protected Areas	DENR
6. Ensure conformance with National Guidelines on Archeological Finds and Historical Sites within the project area	National Museum/ National Historical Commission of the Philippines
7. Secure permit for water allocation	National Water Resources Board
ENVIRONMENTAL PLANNING RECOMMENDATIONS FOR THE PROPONENT	
8. Give priority employment to qualified Indigenous Peoples and local residents. Adequate public information for jobs available to local residents in the affected areas shall be provided. Trainings shall be undertaken to develop skills of the residents for possible hiring;	
9. Conduct rigid/periodic monitoring of related health/sickness during project's implementation;	
10. The proponent shall conduct regular structural monitoring to detect potential problems and trigger remedial responses to avoid possible dam/tunnel failure/breakdown.	

For the information and dissemination to parties concerned.


ENGR. ESPERANZA A. SAJUL
Chief, EIAM Division


ENGR. METODIOS U. TURBELLA
Director

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