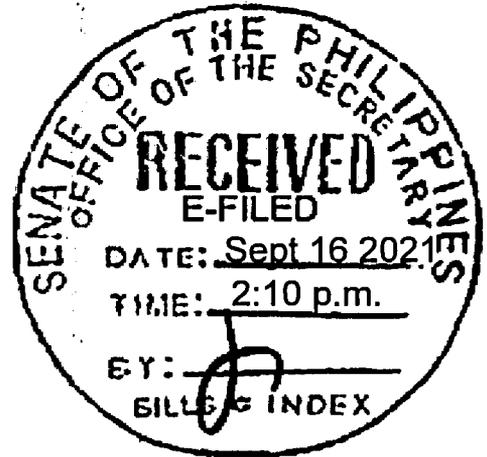


EIGHTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
Third Regular Session)



SENATE

P.S. Res. No. 909

Introduced by **SENATOR LEILA M. DE LIMA**

RESOLUTION
URGING THE METROPOLITAN WATERWORKS AND SEWERAGE
SYSTEM (MWSS) TO IMMEDIATELY SUSPEND CONSTRUCTION
ACTIVITIES IN THE KALIWA DAM PROJECT OWING TO THE
REPORTED FINDINGS IN SUCCESSIVE COMMISSION ON AUDIT (COA)
REPORTS AND A SUBSEQUENT SENATE INVESTIGATION WHICH
CITED MULTIPLE IRREGULARITIES AND VIOLATIONS OF
PROCEDURAL GUIDELINES AND PROTOCOLS IN PROJECT
IMPLEMENTATION

1 WHEREAS, the 1987 Constitution, Article II, Section 10 declares that the
2 State “shall promote social justice in all phases of national development”;

3 WHEREAS, Article II, Section 22 of the same states that, “the State recognizes
4 and promotes the rights of indigenous cultural communities within the framework of
5 national unity and development.” The Constitution provides that the State shall
6 “protect and advance the right of the people to a balanced and healthful ecology in
7 accord with the rhythm and harmony of nature”;

8 WHEREAS, Section 2(b) of Republic Act (R.A.) No. 8371, otherwise known as
9 the “Indigenous Peoples’ Rights Act of 1997”, mandates that “[t]he State shall protect
10 the rights of ICCs/IPs to their ancestral domains to ensure their economic, social and
11 cultural well-being and shall recognize the applicability of customary laws governing
12 property rights or relations in determining the ownership and extent of ancestral
13 domain”;

14 WHEREAS, Section 10 of the same provides that “[u]nauthorized and
15 unlawful intrusion upon, or use of any portion of the ancestral domain, or any
16 violation of the rights hereinbefore enumerated, shall be punishable under this law.
17 Furthermore, the Government shall take measures to prevent non-ICCs/IPs from

1 taking advantage of the ICCs/IPs customs or lack of understanding of laws to secure
2 ownership, possession of land belonging to said ICCs/IPs”;

3 WHEREAS, dams are among the many types of infrastructures designed to
4 harness and utilize natural water resources for the Filipino people. Controversies
5 have constantly surrounded large dam projects going back as far as the late 1970s.
6 Their construction is always met with fierce resistance from various groups due to
7 their destructive effects on local communities as well as the surrounding ecosystem.
8 Among the permanent damages that the construction of large dams have caused are:
9 1) siltation, where rocks and sand builds up upstream, at the back of the dam,
10 thereby debilitating its flood control function; 2) displacement of human settlements,
11 particularly indigenous peoples and farmer settlers including their sources of
12 livelihood and income; 3) increasing food insecurity, as large dams divert water from
13 its original course or limit its flow towards local communities and their farmlands;
14 and 4) human rights violations as a number of various environmental and
15 indigenous peoples’ activists have become the target of State-sanctioned and
16 perpetrated acts of violence and coercion;¹

17 WHEREAS, one such dam project which has met much resistance from
18 various groups and stirred controversies is the Kaliwa Dam. The project is envisioned
19 as a new water source to be constructed to meet the increasing demand of the people
20 of Metro Manila, Rizal and Quezon by constructing another dam and to reduce total
21 dependence on the Angat Dam;²

22 WHEREAS, despite its purported benefits, issues and controversies have
23 surrounded the project since its inception. Critics have pointed to the adverse impact
24 it will have as more than 100,000 people downstream stand to be displaced by
25 possible flooding upon construction of the dam. The biodiversity of the Sierra Madre
26 is also threatened as almost 300 hectares of forest ecosystems will be submerged;³

27 WHEREAS, critics have also pointed to the Kaliwa Dam project as a “debt
28 trap” and have outlined how the government has severely overblown its benefits

¹ IBON Foundation, Inc. (2018). *Large dams in the Philippines and sustainable options* (pp. 24-29, Publication). Quezon City.

² Metropolitan Waterworks and Sewerage System (28 March 2019) *NEW WATER SOURCE: KALIWA DAM VS. INTAKE WEIR (JAPANESE PROPOSAL)*. Retrieved last 13 September 2021 from: <https://mwss.gov.ph/why-the-ncws-kaliwa-dam-instead-of-the-japanese-proposed-kaliwa-weir-project/>

³ Santos, T. G. (28 February 2020). *Stop Kaliwa Dam construction -CBCP*. Retrieved 13 September 2021, from <https://newsinfo.inquirer.net/1234441/stop-kaliwa-dam-construction-cbcp>

1 while simultaneously downplaying its risks.⁴ Critics have observed how the loan
2 agreement is unfavorably tilted towards China with its unusually high interest rate,
3 exclusivity to Chinese contactors, bias for Chinese laws, and potential to compromise
4 Philippine patrimonial assets and properties in arbitration proceedings;⁵

5 WHEREAS, further issues were uncovered in June 2019 when the
6 Commission on Audit (COA) issued an audit observation memorandum (AOM) to
7 the Metropolitan Waterworks and Sewerage System (MWSS) for appearing to rig the
8 bidding process for the project in favor of China Energy Engineering Corporation
9 Limited;⁶

10 WHEREAS, in September 2020, in the COA's 2019 annual audit report on the
11 MWSS, the COA had once again flagged the water agency for issuing a notice to
12 proceed (NTP) to the contractor, China Energy Engineering Corporation Limited,
13 despite its non-compliance with the requirements under the loan agreement, as it
14 failed to secure consent from affected indigenous peoples (IP) and provide a copy of
15 the environmental compliance certificate (ECC);⁷

16 WHEREAS, on 2 March 2021, despite the subsequent lockdowns and
17 restrictions to movement brought by the government's effort to manage the COVID-
18 19 pandemic, it was reportedly observed that the project's Chinese proponents were
19 being allowed to continue inspections and drilling on the site while lockdown
20 restrictions are enforced on the indigenous peoples. An access road to the planned
21 site was also being built despite the construction activity's lack of Free and Prior
22 Informed Consent (FPIC) from the indigenous community;⁸

23 WHEREAS, in a separate report on 24 March 2021, it was reported that
24 indigenous people who would be affected by the construction of the Kaliwa Dam have
25 yet to give their consent to its construction. According to *Samahan ng Katutubong*
26 *Agta, Dumagat, Remontado* president Marcelino Tena, five of six clusters of

⁴ Punongbayan, J. (21 March 2019). [ANALYSIS] *Kaliwa Dam: Is China's involvement cause for concern?* Retrieved 13 September 2021, from <https://www.rappler.com/voices/thought-leaders/analysis-is-china-involvement-kaliwa-dam-project-cause-concern>

⁵ IBON Foundation. (11 October 2020). *Four reasons why the Kaliwa Dam Project loan is onerous.* Retrieved 13 September 2021, from <https://www.ibon.org/four-reasons-why-the-kaliwa-dam-project-loan-is-onerous/>

⁶ Buan, L. (19 August 2019). *Kaliwa Dam bidding looks rigged for China Energy – COA.* Retrieved 13 September 2021, from <https://www.rappler.com/nation/coa-memo-kaliwa-dam-bidding-china-energy>

⁷ CNN Philippines Staff. (13 September 2020). *COA flags ₱12-billion Kaliwa Dam project for absence of environmental compliance, consent from IPs.* Retrieved 13 September 2021, from <https://www.cnnphilippines.com/news/2020/9/11/COA-flags-Kaliwa-Dam-absence-environmental-compliance-consent-IPs-.html>

⁸ Algo, J.L. (2 March 2021). *Algo: The resilience of indigenous peoples in the Covid-19 era.* Retrieved 13 September 2021, from <https://www.sunstar.com.ph/article/1887518/Manila/Opinion/Algo-The-resilience-of-indigenous-peoples-in-the-Covid-19-era>

1 Indigenous people consulted by the MWSS on the dam's construction rejected the
2 project;⁹

3 WHEREAS, in September 2021, the COA, for the third time, flagged the
4 MWSS for proceeding with the implementation of the Kaliwa Dam project without
5 proof of compliance with environmental prerequisites and submission of necessary
6 permits. The report noted that based on the MWSS' 2020 report on projects,
7 programs and activities, the detailed engineering and design phase of the dam
8 project was 92.67 percent complete at the end of the year. This was despite the
9 MWSS' failure to show proof that the preconditions set by the Department of
10 Environment and Natural Resources (DENR) under an environmental compliance
11 certificate issued on 11 October 2019 have been complied with;¹⁰

12 WHEREAS, a Senate investigation into the Kaliwa Dam project was concluded
13 in July of this year. In its Committee Report, the Committee on Cultural
14 Communities stated that "laws protecting indigenous peoples' rights were not
15 complied with in the course of implementing the Kaliwa Dam Project"¹¹ as activities
16 in relation thereto were undertaken prior to the finalization of the Free and Prior
17 Informed Consent (FPIC) process in violation of the Indigenous Cultural
18 Communities/Indigenous Peoples (ICCs/IPs) protected rights;

19 WHEREAS, the Committee also stressed that the National Commission on
20 Indigenous Peoples (NCIP) should have exercised its injunctive powers to enjoin
21 construction activities until all requirements are met by the project proponents;¹²

22 WHEREAS, government remains hell-bent to push forward with the project,
23 despite credible claims that the social, cultural, environmental, and economic costs
24 of the Kaliwa Dam Project outweigh its purported benefits;

25 WHEREAS, there is a need to suspend all construction activities on the Kaliwa
26 Dam project immediately, until all its prerequisites are met by the implementing
27 agencies;

⁹ Gregorio, X. (24 March 2021). *Indigenous people yet to agree to Kaliwa Dam's construction*. Retrieved 13 September 2021, from <https://www.philstar.com/headlines/2021/03/24/2086644/indigenous-people-yet-agree-kaliwa-dams-construction>

¹⁰ Marcelo, E. (9 September 2021). *COA flags MWSS over P12 billion Kaliwa Dam project*. Retrieved 13 September 2021, from <https://www.philstar.com/nation/2021/09/09/2125794/coa-flags-mwss-over-p12-billion-kaliwa-dam-project>

¹¹ Senate Committee on Cultural Communities & Senate Committee on Public Works. (19 July 2021) *Committee Report No. 275*, p. 40.

¹² Senate Committee on Cultural Communities & Senate Committee on Public Works. (19 July 2021) *Committee Report No. 275*, p. 54.

1 WHEREAS, there is a need to determine once and for all the viability of the
2 Kaliwa Dam Project and the impacts it will have on its primary stakeholders,
3 particularly the local indigenous population;

4 WHEREAS, those who allowed such construction activities to commence in
5 the first place, despite not having secured the necessary prerequisites including the
6 consent of the affected ICCs/IPs, must be held accountable under the Indigenous
7 Peoples' Rights Act of 1997 and other relevant laws;

8 WHEREAS, with the controversies surrounding the Kaliwa Dam project, there
9 is also a need to explore alternatives to address water security so that we may not
10 only protect the rights of ICCs/IPs to their ancestral lands but also maintain the
11 beauty and biodiversity of our forests and mountainous regions;

12 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE, to urge the
13 Metropolitan Waterworks and Sewerage System (MWSS) to immediately suspend
14 construction activities in the Kaliwa Dam project owing to the reported findings in
15 successive Commission on Audit (COA) reports and a subsequent Senate
16 investigation which cited multiple irregularities and violations of procedural
17 guidelines and protocols in project implementation.

Adopted,


LEILA M. DE LIMA