



Republic of the Philippines  
**SAN FRANCISCO WATER DISTRICT**

San Francisco, Agusan del Sur  
Tel.No. (085) 343-8623, 839-0457  
email add: sanfranzwd\_yahoo.com

October 29, 2014

**MR. ROMEO V. GARCIA**

Chairman  
Board of Governors  
Philippine Association of Water Districts, Inc.  
LWUA Building, Katipunan Road  
Balara, Quezon City

THRU: **ENGR. PABLITO S. PALUCA**  
President  
Philippine Association of Water Districts, Inc.

**Gentlemen:**

This to express our opinion relative to the DPWH Department Order No. 73, series of 2014. The rationale of the said order is to ensure public safety, convenience, speedy relief operations and immediate restoration of any damaged public infrastructure facilities. The common good of the public is being adhered by this DO 73. However, there are gray areas of this order that need to be looked into and be delved deeply for these may ignite or invite legal battles between concerned or affected agencies, especially with local water districts which by virtue of a special law, the Presidential Decree 198, are also granted of the right-of-way.

First, on the definition of "right-of-way", per Republic Act No. 917 or known as the "Philippine Highway Act of 1953", right-of-way means the land secured and reserved to the public for highway purposes. Such definition is so specific and limited to the use for bridges, ferries, drainage structures, signs, guard rails and protective structures in connection with highways. The DPWH Department Order No.73, S.2014 prohibits other activities other than as mentioned. It forbids occurrence or presence of other structures or facilities and directs immediate removal of all obstructions and prohibited uses/activities thereto. Through this Order, all structures and facilities installed by utility providers will be affected and subject for removal or relocation. It appears that this Order prohibits all utility providers including the Water Districts to use portion of the right-of-way to deliver its services to the public. This prohibition is in conflict with Sec. 29 of P.D.198 which provides as follows:

***"Rights of Way.-The right of way is hereby granted to locate, construct and maintain works of the district on any land which is now, or hereafter may be, owned by the Government of the Philippines or by any of its political subdivisions, and/or instrumentalities. A district may construct any works along, under or across any street, watercourse, or conduit or any manner which will afford security for life and property. Provided, that in planning any such works, the environmental aspects shall also be considered".***

Thus, the above provision of P.D.198 promulgates that authority is given to the Water District to construct and maintain works as may be deemed necessary for the advancement of the purpose to which the Water District has been created and mandated. The grant of such authority is explicit and definite to any works along, under or across any street, watercourse or conduit; in a nutshell any works within or along the right-of-way. Therefore, pursuant to this provision, the Water Districts have the same authority as the DPWH over the use of right-of-way. This logically implies that the right-of-way is not exclusively for highway uses and not solely for DPWH projects. Furthermore, it is well-founded and coherent that Water Districts are no longer covered by the permit requirement in the excavation, construction, pipe-laying and other works as the authority to conduct the same is unequivocally granted under the foregoing provision of P.D.198. However, it is proper that Water Districts shall inform and coordinate with DPWH and other government agencies in the course of implementation of any works specified under said provision of the decree.

Second, on the prohibited uses within the right-of-way that is anchored from the provision of Section 23 of PD No.17 which states that ***"It shall be unlawful for any person to usurp any portion of a right-of-way,***

***"Beyond Providing Water"***



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***to convert any part of any public highway, bridge, wharf or trail to his own private use or to obstruct the same in any manner....***". The provision is undoubtedly directed to and is demonstrably applicable to any person, private individuals or government entities whose use of right-of-way is not for the common good of the public but instead uses that threaten public safety or may cause obstruction on prompt delivery of basic goods and services. Since the Water Districts' use of right-of-way is for the benefit of the public within its area of jurisdiction, Water Districts are exempted or are not covered by the abovementioned provision. The use of right-of-way for the delivery of basic services essential to life such as water neither cause obstruction along the highway nor instigate danger to life or threat to public safety. Instead, the Water Districts utilization of right-of-way sustains life and economy. It is for the welfare and best interest of the consuming public in general.

Third, on the directive to remove immediately all obstructions within the right-of-way of all national roads, it must be understood that Water Districts spent millions for excavation, pipe-laying, bridge/box culvert pipe crossings, pipe interconnections and installation of valves and its appurtenances. The money or funds used from the start of the installation of pipelines and other water facilities are government funds. Spending additional funds for the removal/relocation of the same is greatly disadvantageous to the government. Aside from that, it is illogical and baseless to cause removal and relocation of pipelines as these do not cause obstructions to the right-of-way because these are embedded on standard depth below the ground. Also, the Water District has the authority to use right-of-way as categorically stipulated in its charter and it is impractical to spend more millions to acquire properties/lots for the relocation of these facilities outside the road-right-of-way.

With the foregoing contentions, it is best that an in-depth research should be made on the laws relating to right-of-way and the laws governing stakeholders' use over road-right-of-way. Through this DO No.73, it seems to appear that the DPWH holds an exclusive right over the road-right-of-way and that it has the power to order immediate cessation of all prohibited uses it has identified without minding the authority and legal rights of other right-of-way users. We would like to stress that DPWH has equal footing with Local Water Districts as one of the stakeholders of the ROW. It is important also to take cognizant that a special law like P.D.198 could not just be suppressed by a mere Department Order, Issuances or Ordinances. The former is superior over the latter. Furthermore, this Department Order appears to be lack of foresight on the financial burden it will cause to the affected utility providers especially to the Local Water Districts in terms of its operating and maintenance costs which requires millions. It also fails to anticipate the indirect effect it will bring to the community such as upsurge of social and economic costs as an effect of delayed or obstructed water supply system improvement or expansion projects and stunted productivity and economic growth which all boils down to the disadvantage of the government.

Finally, it is recommended that a Technical Working Group or a "Task Force Right-of-Way" shall be initiated to study and formulate fair recommendations for all stakeholders or users. A dialogue between stakeholders of the right-of-way is also ideal to hold in order to have an avenue for levelling-off and reaching of win-win solutions and actions for the benefit and common good of the public.

Very truly yours,

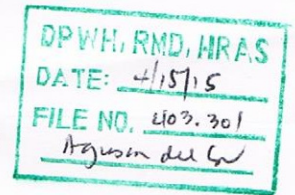
**ELMER T. LUZON**  
General Manager

cc: **Hon. Sec. Rogelio Singson**  
DPWH Secretary  
**Hon. Andres F. Ibara**  
LWUA Administrator  
**Asst. Sec. Emilia J. Cruz**  
LWUA BOT  
**Asst. Sec. Catalina E. Cabral**  
LWUA BOT  
**Engr. Eduardo C. Santos**  
LWUA BOT

***"Beyond Providing Water"***



Republic of the Philippines  
DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS  
BUREAU OF DESIGN  
Manila



BOD Ref. No. 001079  
13 April 2015

**Mr. ELMER T. LUZON**

General Manager  
San Francisco Water District  
San Francisco, Agusan del Sur

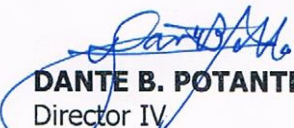
Dear Mr. Luzon:

This refers to your letter dated October 29, 2014 to Mr. Romeo V. Garcia, Chairman, Board of Governors, Philippine Association of Water Districts, Inc., expressing your opinion relative to the DPWH D.O. No. 73, s. 2014 re: Prohibited Uses Within the Right-of-Way of National Roads.

Forwarded herewith is the memorandum dated April 8, 2015 of Director Estrella T. Decena-Zaldivar of our Legal Service enumerating therein the coverage and implications of said D.O. 73, hoping it has addressed all your concerns.

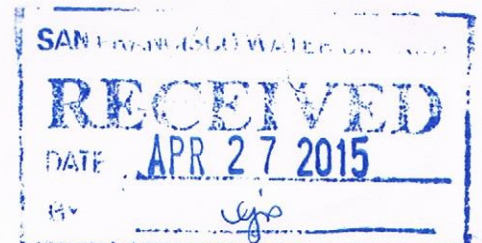
We thank you for sharing your valuable opinion regarding the matter.

Very truly yours,

  
**DANTE B. POTANTE**  
Director IV

cc: Secretary Rogelio L. Singson  
Undersecretary Raul C. Asis  
Assistant Secretary Gilberto S. Reyes

5.1.3/cbd/DLB  
Mr. Luzon/SFWD





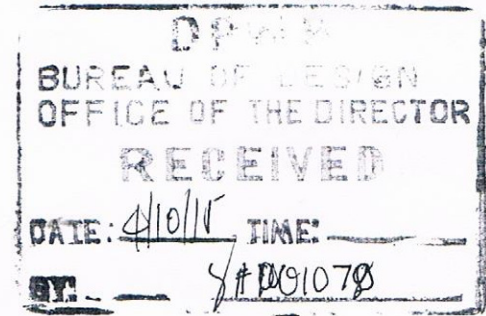
Republic of the Philippines  
**DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS**  
**OFFICE OF THE SECRETARY**  
Manila

April 8, 2015

**MEMORANDUM**

**FOR** : **DANTE B. POTANTE**  
Director IV, Bureau of Design

**SUBJECT** : **Letter of Mr. Elmer T. Luzon (Mr. Luzon), General Manager of San Francisco Water District (SFWD)**



This has reference to November 24, 2014 Memorandum of Assistant Secretary Gilberto S. Reyes, relative to the October 29, 2014 letter of Mr. Luzon, regarding the stand/position of the latter on the Department of Public Works and Highways (DPWH) Department Order (D.O.) No. 73, Series of 2014, in relation to Section 29 of Presidential Decree Number (P.D.) 198, otherwise known as "Provincial Water Utilities Act" as amended by P.D. Nos. 768 and 1479, as well as R.A. No. 9286.

Mr. Luzon contends that the DPWH does not have the exclusive right over the Road Right-Of-Way (ROW) since P.D. 198, as amended, expressly gives SFWD the same right. Thus, he asserts that SFWD has concurrent right over the use of ROW. He also asseverates that Section 23 of P.D. 17, otherwise known as the "Revised Philippine Highway Act, amending Philippine Highway Act of Nineteen Hundred Fifty Three", is not applicable to Water Districts (WDs), such as SFWD, on the ground that the WD's use of ROW is for the benefit of the public, and therefore, the same does not threaten public safety nor cause obstruction on prompt delivery of basic goods and services.

Article II, Section 3, of P.D. 17 defines ROW as "the land secured and reserved to the public for highway purposes"

Section 29 of P.D. 198 states that:

*"Section 29. Rights of Way. The **right of way is hereby granted to locate, construct and maintain works of the district on any land which is now, or hereafter may be, owned by the Government of the Philippines or by any of its political subdivisions, and/or instrumentalities.** A district may construct any works along, under or across any street, watercourse, railway, or conduct in any manner, which will afford security for life and property. Provided, that in planning any such works, the environmental aspects shall also be considered. (As amended by Sec.5, PD 1479)"*

while D.O. 73, Series of 2014 provides that:

"In view hereof, and pursuant to the provisions of Section 23 of P.D. 17, as amended, declaring as **unlawful for any person to usurp any portion of a right-of-way, to convert any part of any public highway, bridge, wharf or trail to his own private use or to obstruct the same in any manner.**"


Thus, D.O. 73 enjoined All Regional/District Engineering Offices to immediately remove or cause the removal of all obstructions and prohibited uses within the ROW of all national roads within their respective jurisdictions and henceforth prohibit the presence/occurrence of the following structures, objects and such other similar items and activities along our national roads as well as strictly disallow the building, erection, construction, planting, and fabrication of the same:

1. all kinds of temporary and permanent structures, such as buildings, houses, shanties, stores, shops, stalls, sheds, canopies, billboards, signages, advertisements, fences, walls, railings, basketball courts, barangay halls, garbage receptacles, and the like;
2. posts and towers of Electric Cooperatives and Major Electric Power Distributors; distribution lines; posts for cables of phones and mobile service providers;
3. driveways and ramps occupying or protruding to the sidewalk;
4. trees, shrubs, and plant boxes;
5. humps, whether permanent or temporary;
6. dumping and storage of construction materials, such as sand, gravel, cement, lumber and steel bars, earth spoils, waste materials, debris, embankment, heaps, and the like;
7. vehicles and equipment, including junked items that are parked, occupying or protruding to the sidewalk or shoulder;
8. vending, repair of vehicles, and other businesses within the sidewalk and other parts;
9. disposal of household/commercial/industrial wastewater and sewage into the sidewalk, curb and gutter, and carriageway;
10. raising of animals or allowing them to roam within the ROW;
11. washing and drying of clothes, crops, and similar items."

After a cursory reading/analysis of the above-quoted provisions of law vis-à-vis D.O. 73, Series of 2014, the Legal Service opines that D.O. 73 does not apply to WD's. Even the above enumeration of the prohibited structures/improvements does not include works of WD's. What is not included in the enumeration given by law or rule should be excluded applying the principle in latin "*expressio unius est exclusio alterius*" which literally means that the express mention of one thing implies the exclusion of others. Elementary is the rule that when laws or rules are clear, application not interpretation thereof is imperative (*Garcia v. Social Security Commission*, G. R. NO. 170735, December 17, 2007).

Further, Section 29 of P.D. 198 expressly grants an encompassing ROW in favor of WD's, to construct and maintain works on any land owned or may be owned in the future by the Government, or any of its political subdivisions and instrumentality. This necessarily includes lands within the ROW of the DPWH. In other words, the use of ROW is not exclusive to this Department, hence, by implication, WD's have concurrent ROW with the DPWH.

In view of the foregoing, it appears that Mr. Luzon's concerns, under the circumstances, are without basis since D.O. 73, Series of 2014, does not encroach on the rights conferred by P.D. 198 on WD's.

  
**ESTRELLA T. DECENA-ZALDÍVAR**  
Director IV, Legal Service

cc: Mr. Elmer T. Luzon, General Manager, San Francisco Water District, San Francisco, Agusan del Sur

4.6.3 AHPK/GMM/FLFJr./CGF/ETDZ



Republic of the Philippines  
 DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS  
**OFFICE OF THE SECRETARY**  
 Manila

097.130 PWH  
 07-08-2014

JUL 07 2014

DEPARTMENT ORDER )  
 )  
 NO. 73 )  
 )  
 Series of 2014 ) 07. 08. 14

SUBJECT : PROHIBITED USES WITHIN THE  
 RIGHT-OF-WAY OF NATIONAL  
 ROADS

The presence of fallen electrical and other utility poles, tangled/twisted transmission/distribution and other lines of cable, communications and utility service providers; and felled trees along national roads as a result of natural and man-made calamities create imminent danger to lives and properties and hamper speedy relief operations, prompt delivery of basic goods and services and the immediate restoration of damaged public infrastructure facilities.

In view hereof, and pursuant to the provisions of Section 23 of Presidential Decree (PD) No. 17, also known as the Revised Philippine Highway Act, as amended, declaring as unlawful for any person to usurp any portion of a right-of-way, to convert any part of any public highway, bridge, wharf or trail to his own private use or to obstruct the same in any manner; and the provisions of the National Building Code of the Philippines (PD No. 1096) and its Implementing Rules and Regulations, and in the interest of public safety and convenience and of the common good, all Regional/District Engineering Offices are hereby directed to immediately remove or cause the removal of all obstructions and prohibited uses within the right-of-way (ROW) of all national roads within their respective jurisdictions and henceforth prohibit the presence/occurrence of the following structures, objects and such other similar items and activities along our national roads as well as strictly disallow the building, erection, construction, planting, and fabrication of the same, thus:

1. All kinds of temporary and permanent structures, such as buildings, houses, shanties, stores, shops, stalls, sheds, canopies, billboards, signages, advertisements, fences, walls, railings, basketball courts, barangay halls, garbage receptacles, and the like;
2. Posts and towers of Electric Cooperatives and Major Electric Power Distributors; distribution lines; posts for cables of phones and mobile service providers;
3. Driveways and ramps occupying or protruding to the sidewalk;
4. Trees, shrubs, and plant boxes;
5. Humps, whether permanent or temporary;
6. Dumping and storage of construction materials, such as sand, gravel, cement, lumber and steel bars, earth spoils, waste materials, debris, embankment, heaps, and the like;
7. Vehicles and equipment, including junked items that are parked, occupying or protruding to the sidewalk or shoulder;
8. Vending, repair of vehicles, and other businesses within the sidewalk and other parts of ROW;

9. Disposal of household/commercial/industrial wastewater and sewage into the sidewalk, curb and gutter, and carriageway;
10. Raising of animals or allowing them to roam within the ROW;
11. Washing and drying of clothes, crops, and similar items;

Should clearing operations for road widening; improvement and/or rehabilitation are to be conducted, no compensation shall therefore be paid and allowed on the removal of these obstructions.

It is further directed that in cases where Applicants from Utility Agencies (collectively, Electric Cooperatives and Major Electric Power Distributors, Phones, Mobile, and Cable Service providers and the like) and its respective contractors shall request the construction, building and/or erection of posts and towers for their distribution lines, subject Applicants should therefore be advised that they should now commence the acquisition of their own right-of-way to fulfill their specific mandate. Note further that in the context of this Order, the ROW shall include the carriageway, curb and gutter, sidewalks, shoulders, canals and other portions within the defined road right-of-way.

On obstructions, the following tabulated formats under Annexes "A"; "B"; and "C" hereof shall be used by the Regional/District Engineering Offices with these duly filled-up formats to be submitted to this Office (copy furnished the Bureau of Maintenance, this Department) every end of the 1<sup>st</sup> and 2<sup>nd</sup> semester of the year.

- 1) Annex "A" : Inventory of Obstructions within the Right-of-way of National Roads;
- 2) Annex "B": Due notices to the concerned persons and entities of the noted obstructions and prohibited uses and directing the voluntary removal of the same;
- 3) Annex "C": Status Report on the Removal of Obstructions.

This Department Order shall take effect immediately and shall supersede the following Departmental issuances:

- 1) DO No. 29 s. 2012: *Removal of Illegal Structures and Obstructions within Right-of-Way of National Roads;*
- 2) DO No. 15 s. 2000: *Tree Planting along National Roads;*
- 3) DO No. 38 s. 2006: *Amendment to Department Order No. 15, series of 2000, Re: Tree Planting along National Roads;*
- 4) DO No. 52 s. 2003: *Removal of Obstructions and Prohibited Uses within the Right-of-Way of National Roads*

  
**ROGELIO L. SINGSON**  
**Secretary**

Department of Public Works and Highways  
Office of the Secretary



WIN4I02416



INVENTORY OF OBSTRUCTIONS WITHIN THE RIGHT-OF-WAY  
OF NATIONAL ROADS

DISTRICT ENGINEERING OFFICE \_\_\_\_\_

REGION: \_\_\_\_\_

NAME OF ROAD	LOCATION OF OBSTRUCTION	DESCRIPTION OF OBSTRUCTION

DATE PREPARED:

SUBMITTED BY:

\_\_\_\_\_

\_\_\_\_\_

District Engineer

NOTED:

\_\_\_\_\_

Regional Director

REPUBLIC OF THE PHILIPPINES  
DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS  
OFFICE OF THE DISTRICT ENGINEER

---

TO : Mr./Ms. \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

FROM : District Engineer \_\_\_\_\_

DATE : \_\_\_\_\_

SUBJECT : **NOTICE OF OBSTRUCTIONS AND PROHIBITED USES WITHIN  
THE RIGHT-OF-WAY OF NATIONAL ROADS**

- First Notice       Second Notice       Third Notice

Pursuant to the provisions of Section 23 of Presidential Decree (PD) No. 17 (Revised Philippine Highway Act), as amended, which states that:

“It shall be unlawful for any person to usurp any portion of a right-of-way, to convert any part of any public highway, bridge, wharf or trail to his own private use or to obstruct the same in any manner x x x ”

and the provisions of the National Building Code of the Philippines (PD NO. 1096) and its Implementing Rules and Regulations, as well as other relevant laws and rules of the government, and in the interest of public safety and the common good, you are notified of the following obstructions and prohibited uses, which are marked x, within the right-of-way (ROW) of the national road in the vicinity of your premises.

- Private temporary or permanent structures, such as buildings, houses, shanties, stores, shops, stalls, sheds, posts, canopies, billboards, signages, advertisements, fences, walls, railings, basketball courts, garbage receptacles, or the like.
- Construction materials, such as sand, gravel, cement, lumber and steel bars, earth spoils, waste materials, debris, embankment, heaps, or the like.
- Plants or plant boxes.
- Driveways or ramps occupying or protruding to the sidewalk.
- Humps, whether permanent or temporary.

- Vehicles or equipment, including junked items, that are parked, occupying or protruding to the sidewalk or shoulder.
- Vending, repair of vehicles, or and other businesses within the sidewalk or other parts of the ROW.
- Disposal of domestic/commercial/industrial wastewater or sewage into the sidewalk, curb and gutter, or travelway.
- Raising of animals or allowing them to roam within the ROW.
- Washing or drying of clothes, crops and similar items.
- Sports or related activities.

You are hereby given seven (7) days <sup>1/2</sup> from receipt of this notice within which to voluntarily remove the abovestated obstructions and prohibited uses within the road right-of-way. If you fail to do so, we will take appropriate measures to remove the said obstructions and prohibited uses and charge to you the corresponding costs we would incur, and we will also resort to proper sanctions provided for by existing laws and rules of the government.

We will highly appreciate your utmost cooperation on this matter.

\_\_\_\_\_  
District Engineer

Note: <sup>1/2</sup> Should be thirty (30) days in case underprivileged and homeless citizens are affected, pursuant to Section 8 of Republic Act No. 7279.

-----  
This Notice was received by:

\_\_\_\_\_  
Date received: \_\_\_\_\_

-----  
Voluntary Removal

I take note of the obstructions and prohibited uses within the road right-of-way as marked above, and I will voluntarily remove the same within a period of \_\_\_\_\_ ( ) days starting on \_\_\_\_\_.

\_\_\_\_\_  
Name of Recipient  
Date received: \_\_\_\_\_

STATUS REPORT OF REMOVAL OF OBSTRUCTION  
 WITHIN THE RIGHT-OF-WAY OF NATIONAL ROADS  
 FOR THE PERIOD: \_\_\_\_\_

District Engineering Office: \_\_\_\_\_ Date Prepared: \_\_\_\_\_  
 Region: \_\_\_\_\_

NAME OF ROAD	KM STATION/ADDRESS/ LOCATION OF OBSTRUCTION	DESCRIPTION OF OBSTRUCTION	STATUS OF REMOVAL AS OF LAST REPORT	STATUS OF REMOVAL AS OF THIS REPORT

PREPARED BY: \_\_\_\_\_ SUBMITTED BY: \_\_\_\_\_

NOTED: \_\_\_\_\_