



I Mina'trentai Unu na Liheslaturan Guåhan

The 31st Guam Legislature

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March 24, 2011

The Honorable Madeleine Z. Bordallo

Guam Delegate to the U.S. House of Representatives

120 Father Duenas Avenue, Suite 107

Hagåtña, Guam 96910

RE: Substitute Resolution No. 48-31 (COR)

Hafa Adai Congresswoman Bordallo:

Transmitted herewith is **Substitute Resolution No. 48-31 (COR)** – “Relative to voicing the sense of *I Liheslaturan Guåhan* (the Guam Legislature) on the proposed transfer of the United States Department of the Navy waterworks infrastructure to the government of Guam; to supporting the autonomy of Guam’s democratically-elected Consolidated Commission on Utilities; to stating unequivocally that Guam asserts the Navy waterworks infrastructure should be transferred at no cost to the government of Guam in trust for the people of Guam; and to insisting that the United States government honor the rights of the people of Guam over their island’s fresh water resources”, which was duly and regularly adopted by *I Mina'Trentai Unu Liheslaturan Guåhan* on March 23, 2011.

Senseremiente,


Tina Rose Muña Barnes

Legislative Secretary

Enclosure

I MINA'TRENTAI UNU NA LIHESLATURAN GUÅHAN
2011 (FIRST) Regular Session

Resolution No. 48-31 (COR)

As substituted by the Author and amended on the Floor.

Introduced by:

T. C. Ada
R. J. Respicio
Judith P. Guthertz, DPA
B. J.F. Cruz
T. R. Muña Barnes
Adolpho B. Palacios, Sr.
Dennis G. Rodriguez, Jr.
F. F. Blas, Jr.
V. Anthony Ada
Aline A. Yamashita, Ph.D.
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Sam Mabini, Ph.D.
Judith T. Won Pat, Ed.D.

Relative to voicing the sense of *I Liheslaturan Guåhan* (the Guam Legislature) on the proposed transfer of the United States Department of the Navy waterworks infrastructure to the government of Guam; to supporting the autonomy of Guam's democratically-elected Consolidated Commission on Utilities; to stating unequivocally that Guam asserts the Navy waterworks infrastructure should be transferred at no cost to the government of Guam in trust for the people of Guam; and to insisting that the United States government honor the rights of the people of Guam over their island's fresh water resources.

1 **BE IT RESOLVED BY *I MINA'TRENTAI UNU NA LIHESLATURAN***
2 ***GUÅHAN*:**

1 **WHEREAS**, in 1992, the Guam Power Authority (GPA) became a single,
2 unified power system serving all of Guam, including both military and civilian
3 customers, when the U.S. Department of the Navy negotiated a transfer of its
4 power infrastructure assets to the government of Guam (GovGuam) without the
5 need for the purchasing of the assets. Instead, a mutual agreement was reached in
6 terms of industry performance standards that GPA had to achieve as a prerequisite
7 for the Navy to cease being a provider and become instead a customer of GPA; and

8 **WHEREAS**, both the U.S. Department of the Navy and all of Guam's
9 residents and visitors have benefited from the 1992 transfer of the Navy power
10 infrastructure to GovGuam, with the Navy eliminating the costs and liabilities
11 associated with operating a power system, and GPA realizing the efficiencies and
12 economies of scale inherent with centrally managing the power infrastructure that
13 serves the island's power demands; and

14 **WHEREAS**, since the 1992 transfer, the Department of Defense (DoD) has
15 been a paying customer of GPA – an arrangement that has served both parties well,
16 as demonstrated by the prompting of current discussions to continue the
17 collaborative relationship through a new long-term customer service agreement;
18 and

19 **WHEREAS**, one of Guam's great advantages over other small islands, and
20 a mainstay of its strategic value, is its plentiful supply of fresh water; and

21 **WHEREAS**, the Consolidated Commission on Utilities (CCU) is an
22 independent, democratically-elected body of the government of Guam, charged
23 with the governance of GPA and the Guam Waterworks Authority (GWA), and
24 potentially, pursuant to pending legislation, solid waste and landfill assets; and

25 **WHEREAS**, since its creation by Guam Public Law 26-76 in 2001, the
26 CCU has fulfilled its mandate to provide governance and critical oversight for both

1 utilities, and to provide all customers, inclusive of DoD, with a means to voice and
2 adjudicate issues of concern; and

3 **WHEREAS**, greater operating efficiencies and economies of scale would
4 result in lower operating costs and responsive cross leveling through the operation
5 of a unified waterworks system, and would provide the capability to more
6 effectively meet the growing service requirements of the island-wide community,
7 especially in light of the impending buildup of military forces; which would be
8 similar to arrangements across the United States in which local entities provide
9 utility services for a majority of military bases and facilities; and

10 **WHEREAS**, other than from GWA's system of wells and the *Ugum* River
11 dam, DoD's primary source of fresh water on Guam is currently the reservoir
12 known as *Fena* Lake, its area and capacity having been much smaller until the
13 Navy, which has had control over the *Fena* area since immediately after World
14 War II, condemned a large portion of the watershed for ammunition storage, and
15 later constructed a dam to create a reservoir for fresh water, completing it in 1951,
16 thereby dramatically increasing the size of the body of water which now covers
17 approximately two hundred (200) acres. This construction, however, reduced the
18 volume and diverted the natural flow of rainwater, negatively affecting the lives
19 and livelihood of those depending primarily on their crops and livestock for
20 sustenance; and

21 **WHEREAS**, *Fena* Lake and its watershed, consisting of a spring and
22 several rivers and streams in *Talofofo*, *Yona* and *Agat*, rightfully belong to the
23 people of Guam, and no part of the Lake, rivers or streams that flow from this
24 system should have been taken from the people and their descendents, who possess
25 the rights to the resources therein; and

26 **WHEREAS**, the fresh water resources of any territory or state should and
27 must belong to the people who reside, make their lives, and raise their families in

1 that territory or state, and the resources should *not* belong to any Federal
2 Government entity that decides to acquire it for convenience and utilize the
3 resources for its own purposes, even if those purposes include assisting the local
4 population; and

5 **WHEREAS**, during the six (6) decades that *Fena* has been under the Navy's
6 umbrella, the use of this valuable resource has primarily been for the needs of the
7 DoD, although assisting the civilian population of Guam through the sale of excess
8 water production has regularly been a practice of the Navy; and

9 **WHEREAS**, Section 2822 of U.S. Public Law 111-383, the National
10 Defense Authorization Act for FY 2011, calls for GWA to pay fair market value
11 for any transfer of waterworks infrastructure from the Department of the Navy to
12 the people of Guam; and

13 **WHEREAS**, the people of Guam should *not* be required to pay for the
14 transfer of *Fena* Lake, reservoir and all accompanying infrastructure because this
15 incredible resource was wrongfully taken without full regard for the well-being of
16 Guam's residents to whom the resource rightfully belongs; and

17 **WHEREAS**, Governor Edward B. Calvo, during his State of the Island
18 Address on March 14, 2011, stated emphatically that *Fena* lake belongs to the
19 people of Guam, and that Congress should *not* "make a profit out of Guam by
20 selling to us what is rightfully ours;" and

21 **WHEREAS**, requiring the Guam Waterworks Authority to pay fair market
22 value for the transfer of *Fena* Lake, reservoir and all accompanying infrastructure
23 would place an inequitable and unreasonable financial burden on current and future
24 ratepayers, and significantly hamper the Authority's ability to continue investing in
25 maintenance and capital improvements that will serve all customers, including the
26 Department of Defense; and

1 **WHEREAS**, following the end of World War II, federal law, specifically
2 the Organic Act of Guam, required the naval government of Guam to turn over
3 “the title to all property, real and personal, owned by the United States and
4 employed by the naval government of Guam in the administration of the civil
5 affairs of the inhabitants of Guam, including ... water and sewerage facilities ... to
6 the government of Guam within ninety days after August 1, 1950;” however, the
7 “water and sewerage facilities” at *Fena* were kept in the hands of the Navy for
8 primarily their own usage, despite their earlier frequent use “in the administration
9 of the civil affairs of the inhabitants of Guam;” and

10 **WHEREAS**, in 1994, the Honorable William Jefferson Clinton, President of
11 the United States, signed Public Law 103-339, entitled the “Guam Excess Lands
12 Act,” which required the Administrator of General Services to “transfer all right,
13 title, and interest of the United States in and to the parcels of land described in
14 subsection (b) (together with any improvements thereon) to the government of
15 Guam for public benefit use, by quitclaim deed and without reimbursement;” and

16 **WHEREAS**, per this same Public Law 103-339, it is stipulated that “Such
17 transfers shall take place after a determination by the head of the Federal agency
18 controlling a parcel that the parcel is excess to the needs of such agency,” with the
19 parcels of land described therein consisting of nearly two thousand two hundred
20 (2,200) acres; and

21 **WHEREAS**, the water facilities at *Fena* were *not* included among the list of
22 excess land parcels, however, the operation of land-based water facilities would
23 *not* seem to fall under the core operating requirements of the Department of the
24 Navy any more than would the operation of land-based power plants and
25 transmission lines (which were consequently transferred to the government of
26 Guam in 1992), as evidenced by the Department of the Navy’s use of public
27 utilities across the United States for water, sewer and power services; and

1 **WHEREAS**, although this utilities asset has been withheld from the people
2 of Guam for more than sixty (60) years, *I Liheslaturan Guåhan* (the Guam
3 Legislature) is mindful of three (3) important and controlling facts:

4 • **First**, *Fena* is an integral part of our island's waterworks infrastructure and
5 should be managed and operated by Guam's utilities commission as part of
6 an island-wide utilities system;

7 • **Second**, the *Fena* watershed is co-located with Naval Magazine, a high
8 security ammunition and weapons storage area from which the Navy outfits
9 and re-supplies United States forces in the western Pacific; and

10 • **Third**, in the midst of the enormous buildup of military forces in Guam,
11 the *Fena* asset should be transferred to the people of Guam as a portion of
12 the Federal Government's support for the socio-economic needs of the
13 people of Guam; and

14 **WHEREAS**, this utilities asset should be returned to the people of Guam
15 without any caveats or reversionary clauses other than the need for GWA to
16 provide service to all of its customers, and the need for the DoD to have sole
17 control and access to the most sensitive areas of the Naval Magazine for military
18 purposes; and

19 **WHEREAS**, an amendment to provisions already existing in U.S. Public
20 Law 103-339 can rightfully categorize the return of the *Fena* utilities asset and
21 attendant facilities, this return being accomplished in the same manner as other
22 excess land has been returned to Guam by the DoD at no cost to the people of
23 Guam, because of the historic and unique circumstances concerning land rights,
24 land takings and land use in Guam; and

25 **WHEREAS**, Section 2822 of U.S. P.L. 111-383 requires any purchase of
26 waterworks infrastructure from the Department of the Navy by the Guam
27 Waterworks Authority to also include the condition that the Secretary of Defense

1 “must obtain at least a 33 percent voting representation on the Guam Consolidated
2 Commission on Utilities, including a proportional representation as chairperson of
3 the Commission;” and

4 **WHEREAS**, the forced inclusion of the Secretary of Defense on the
5 democratically-elected CCU, a local government body, violates the spirit of
6 democracy and suggests a colonialist mindset on the part of Congress, which
7 should be more concerned about the one-man, one-vote equal protection provisions
8 under American law; and

9 **WHEREAS**, the CCU is composed of five (5) Commissioners, each elected
10 by the registered voters of Guam; and

11 **WHEREAS**, the forced inclusion of unelected federal appointees on a
12 locally elected commission suggests a governing body for the utilities that is part
13 local and part federal, thus overstepping previously respected boundaries between
14 local and federal jurisdiction, and violating the long-established definition of
15 “public utility” found in local law; and

16 **WHEREAS**, Section 2822 of U.S. P.L. 111-383 purports to address
17 concerns associated with the transfer of waterworks assets and infrastructure by
18 forcibly placing federal appointees onto the CCU, but there is *no* justification for
19 the impact such federal intrusion will have on the regulatory affairs of the Guam
20 Power Authority, which is also under jurisdiction of the CCU, and the Guam Solid
21 Waste Authority, which may soon also be placed under the CCU; and

22 **WHEREAS**, the U.S. Congress, in 48 U.S.C. §1423a, the Organic Act of
23 Guam, provided for “the establishment of an independent rate-making authority by
24 the government of Guam”, to be the Public Utilities Commission, to oversee
25 ratemaking decisions of the public utilities of Guam; however, U.S. P.L. 111-383
26 denies such independence by forcing the Public Utilities Commission to interact
27 and regulate utilities that will be partially controlled by the Federal Government,

1 and to accept only a fair market value purchase for the transfer of waterworks
2 infrastructure, an action that will directly impact rates; and

3 **WHEREAS**, the “ONE GUAM” pillar proposed by Under Secretary of the
4 Navy Robert Work supports more fully the perspective of elected board members,
5 from all sectors (civilian and military) of the community, rather than the proposal
6 of appointed military members, an offensive approach that serves to divide
7 ratepayers into two communities instead of furthering the concept of “ONE
8 GUAM;” now, therefore, be it

9 **RESOLVED**, that *I Mina’ Trentai Unu Na Liheslaturan Guåhan* (the 31st
10 Guam Legislature), on behalf of the people of Guam, does hereby implore the
11 Honorable Madeleine Z. Bordallo, Guam Delegate to the U.S. House of
12 Representatives, to offer the following proposed amendment to U.S. Public Law
13 103-339: “The Department of the Navy hereby declares that the *Fena* Reservoir
14 and its attendant water distribution and treatment infrastructure in Guam is excess
15 to their military needs, and the Administrator of General Services *shall*, subject to
16 mutually agreed upon water production and distribution quality standards, proceed
17 to transfer the *Fena* Reservoir and its attendant water distribution, storage, and
18 treatment infrastructure under the provisions of the existing federal law governing
19 disposal of excess federal property in Guam to the government of Guam;” and be it
20 further

21 **RESOLVED**, that *I Liheslaturan Guåhan*, on behalf of the people of Guam,
22 does hereby take the position that the Department of Defense should turn over to
23 the government of Guam, at *no* cost to the government of Guam or the people of
24 Guam, the Department of the Navy’s waterworks infrastructure at *Fena* Reservoir
25 and its attendant water distribution, storage, and treatment infrastructure in Guam;
26 and be it further

1 **RESOLVED**, that *I Liheslaturan Guåhan*, on behalf of the people of Guam,
2 does hereby take the position that following the transfer of the Navy's waterworks
3 system from the Department of the Navy to the government of Guam, the former
4 *shall* become a paying customer of the latter, with all the rights and responsibilities
5 that come with being a paying customer of the Guam Waterworks Authority,
6 inclusive of the ability to bring concerns before the Consolidated Commission on
7 Utilities and the Public Utilities Commission for adjudication; and be it further

8 **RESOLVED**, that *I Liheslaturan Guåhan*, on behalf of the people of Guam,
9 does hereby vehemently oppose and strongly condemn any attempt to forcefully
10 dilute the voice of the democratically-elected Commissioners of the Consolidated
11 Commission on Utilities by forcing the unelected thirty-three percent (33%) voting
12 membership of the Secretary of Defense onto the CCU; and be it further

13 **RESOLVED**, that the Speaker certify, and the Legislative Secretary attest
14 to, the adoption hereof, and that copies of the same be thereafter transmitted to the
15 Honorable Madeleine Z. Bordallo, Guam Delegate to the United States House of
16 Representatives; to the Honorable Barack H. Obama, President of the United States
17 of America, and Commander-in-Chief of the United States Armed Forces; to the
18 Honorable Dr. Robert M. Gates, Secretary of the United States Department of
19 Defense; to the Honorable Ken Salazar, Secretary of the United States Department
20 of the Interior; to the Honorable Ray Mabus, Secretary of the United States Navy;
21 to the Honorable Robert O. Work, Under Secretary of the United States Navy; to
22 the Honorable Jackalyne Pfannenstiel, Assistant Secretary of the United States
23 Navy (Energy, Installations and Environment); to the Honorable Anthony M.
24 Babauta, Assistant Secretary for Insular Areas, United States Department of the
25 Interior; to Rear Admiral Paul J. Bushong, Commander, Joint Region Marianas; to
26 Captain Peter S. Lynch, Commanding Officer, Naval Facilities Engineering
27 Command, Marianas; to John Jackson, Director, Joint Guam Program Office; and

1 to the Honorable Edward Baza Calvo, *I Maga'lahaen Guåhan* (the Governor of
2 Guam).

DULY AND REGULARLY ADOPTED BY *I MINA'TRENTAI UNU NA LIHESLATURAN GUÅHAN* ON THE 23RD DAY OF MARCH, 2011.



JUDITH T. WON PAT, Ed.D.
Speaker



TINA ROSE MUNA BARNES
Legislative Secretary