

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

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Resolution No. 48-31 (COR)

Introduced by:

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Relative to voicing concerns with the proposed transfer of United States Department of the Navy waterworks infrastructure to the Guam Waterworks Authority; to 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 Guam's taxpayers; and to insisting that the government of the United States honor the riparian rights of the people of Guam over their island's fresh water resources.

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

3 **WHEREAS,** in 1992, the Guam Power Authority (GPA) became a
4 single, unified power system serving all of Guam, including both military
5 and civilian customers, when the Department of Navy negotiated a transfer
6 of its power infrastructure assets to the government of Guam without the
7 need for the purchasing of the assets. Instead, a mutual agreement was

1 reached in terms of industry performance standards that GPA had to
2 achieve as a prerequisite for the Navy to cease being a provider and
3 become instead a customer of GPA; and

4 **WHEREAS**, both the Department of the Navy and all of Guam's
5 residents and visitors have benefited from the 1992 transfer of the Navy
6 power infrastructure to GPA, with the Navy eliminating the costs and
7 liabilities associated with operating a power system, and GPA realizing the
8 efficiencies and economies of scale inherent with centrally managing the
9 power infrastructure that serves the island's power demands; and

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

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

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

22 **WHEREAS**, since its creation by Guam Public Law 26-76 in 2001, the
23 CCU has fulfilled its mandate to provide governance and critical oversight
24 for both utilities, and to provide all customers, inclusive of DoD, with a
25 means to voice and adjudicate issues of concern; and

26 **WHEREAS**, greater operating efficiencies and economies of scale
27 would result in lower operating costs and responsive cross leveling
28 through the operation of a unified waterworks system, and would provide

1 the capability to more effectively meet the growing service requirements of
2 the island-wide community, especially in light of the impending buildup of
3 military forces; which would be similar to arrangements across the United
4 States in which local entities provide utility services for a majority of
5 military bases and facilities; and

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

18 **WHEREAS**, Fena Lake and its watershed, consisting of a spring and
19 several rivers and streams in Talofofo, Yona and Agat, rightfully belong to
20 the people of Guam, and no part of the Lake, rivers or streams that flow
21 from this system should have been taken from the people and their
22 descendants, who possess the riparian rights to the resources therein,
23 including the right that all landowners with property adjoining a body of
24 water, river or stream have to make reasonable use of their land; and

25 **WHEREAS**, the fresh water resources of any territory or state should
26 and must belong to the people who reside, make their lives, and raise their
27 families in that territory or state, and the resources should not belong to
28 any Federal Government entity that decides to acquire it for convenience

1 and utilize the resources for its own purposes, even if those purposes
2 include assisting the local population; and

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

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

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

17 **WHEREAS**, following the end of World War II, federal law,
18 specifically the Organic Act of Guam, required the naval government of
19 Guam to turn over "the title to all property, real and personal, owned by
20 the United States and employed by the naval government of Guam in the
21 administration of the civil affairs of the inhabitants of Guam, including ...
22 water and sewerage facilities ... to the government of Guam within ninety
23 days after August 1, 1950;" however, the "water and sewerage facilities" at
24 Fena were kept in the hands of the Navy for primarily their own usage,
25 despite their earlier frequent use "in the administration of the civil affairs
26 of the inhabitants of Guam;" and

27 **WHEREAS**, in 1994, the Honorable William Jefferson Clinton,
28 President of the United States, signed Public Law 103-339, entitled the

1 “Guam Excess Lands Act,” which required the Administrator of General
2 Services to “transfer all right, title, and interest of the United States in and
3 to the parcels of land described in subsection (b) (together with any
4 improvements thereon) to the government of Guam for public benefit use,
5 by quitclaim deed and without reimbursement;” and

6 **WHEREAS**, per this same Public Law 103-339, it is stipulated that
7 “Such transfers shall take place after a determination by the head of the
8 Federal agency controlling a parcel that the parcel is excess to the needs of
9 such agency,” with the parcels of land described therein consisting of
10 nearly 2,200 acres; and

11 **WHEREAS**, the water facilities at Fena were not included among the
12 list of parcels, however the operation of land-based water facilities would
13 not seem to fall under the core operating requirements of the Department
14 of the Navy any more than would the operation of land-based power
15 plants and transmission lines (which were consequently transferred to the
16 Guam Power Authority in 1991), as evidenced by the Department of the
17 Navy’s use of public utilities across the United States for water, sewer and
18 power services; and

19 **WHEREAS**, although this utilities asset has been withheld from the
20 people of Guam for more than 60 years, the Guam Legislature (*I*
21 *Liheslatura*) is mindful of three important and controlling facts:

- 22 • **First**, Fena is an integral part of our island’s waterworks
23 infrastructure and should be managed and operated by Guam’s
24 utilities commission as part of an island-wide utilities system;
- 25 • **Second**, the Fena watershed is co-located with Naval Magazine, a
26 high security ammunition and weapons storage area from which the
27 Navy outfits and re-supplies United States forces in the western
28 Pacific; and

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

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

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

17 **WHEREAS**, Section 2822 of U.S. P.L. 111-383 requires any purchase
18 of waterworks infrastructure from the Department of the Navy by the
19 Guam Waterworks Authority to also include the condition that the
20 Secretary of Defense "must obtain at least a 33 percent voting
21 representation on the Guam Consolidated Commission on Utilities,
22 including a proportional representation as chairperson of the
23 Commission;" and

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

1 **WHEREAS**, the CCU is composed of five commissioners, each
2 elected by the registered voters of Guam, and as a Territory of the United
3 States, the military and DoD families who live in Guam can vote for the
4 commissioners simply by registering and casting their vote; and

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

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

23 **RESOLVED**, that *I Liheslaturan Guåhan*, on behalf of the people of
24 Guam, does hereby take the position that the Department of Defense
25 should turn over to the Guam Waterworks Authority, at no cost to the
26 government of Guam or the people of Guam, the Department of the Navy’s
27 waterworks infrastructure at Fena Reservoir and its attendant water

1 distribution, storage, and treatment infrastructure in Guam; and be it
2 further

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

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

17 **RESOLVED**, that the Speaker certify, and the Legislative Secretary attest
18 to, the adoption hereof, and that copies of the same be thereafter
19 transmitted to the Honorable Congresswoman Madeleine Z. Bordallo,
20 Guam Delegate to the United States Congress; to the Honorable Dr. Robert
21 M. Gates, Secretary of the United States Department of Defense; to the
22 Honorable Ken Salazar, Secretary of the United States Department of the
23 Interior; to the Honorable Ray Mabus, Secretary of the United States Navy;
24 to the Honorable Robert O. Work, Under Secretary of the United States
25 Navy; to The Honorable Jackalyn Pfannenstiel, Assistant Secretary of the
26 United States Navy (Energy, Installations and Environment); to the
27 Honorable Anthony M. Babauta, Assistant Secretary for Insular Areas,
28 United States Department of the Interior; to Rear Admiral Paul J. Bushong,

- 1 Commander, Joint Region Marianas; to Captain Peter S. Lynch,
- 2 Commanding Officer, Naval Facilities Engineering Command, Marianas; to
- 3 John Jackson, Director, Joint Guam Program Office; and to the Honorable
- 4 Edward Baza Calvo, Governor of Guam (*I Maga'lahaen Guåhan*).

**DULY AND REGULARLY ADOPTED BY *I MINA'TRENTAI UNU*
NA LIHESLATURAN GUÅHAN ON THE ____ DAY OF _____ 2011.**

JUDITH T. WON PAT, Ed.D
Speaker

TINA ROSE MUÑA-BARNES
Legislative Secretary
