

Republika ng Pilipinas  
**Pambansang Pangasiwaan ng Patubig**  
(NATIONAL IRRIGATION ADMINISTRATION)  
Lungsod ng Quezon

OFFICE ADDRESS: NATIONAL GOVERNMENT CENTER  
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QUEZON CITY PHILIPPINES

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OUR REFERENCE:

Memorandum Circular No. 55  
Series of 2007

## MEMORANDUM CIRCULAR

**TO : THE DEPUTY ADMINISTRATOR, ASSISTANT  
ADMINISTRATORS, REGIONAL/OPERATIONS/  
DEPARTMENT/PROJECT MANAGERS, PROVINCIAL  
IRRIGATION OFFICERS, IRRIGATION SUPERINTENDENTS  
AND ALL OTHERS CONCERNED**

**SUBJECT : GESA and MANAGEMENT FEE**

To address the seeming confusion among NIA offices regarding the imposition of management fee under the NIA Charter and general engineering supervision and administrative (GESA) overhead charges under Republic Act No. 9401 or the General Appropriations Act of 2007, we are circularizing herewith the opinion issued by the Office of the Solicitor General (OSG) dated July 5, 2007.

In view of the above, it is hereby directed that NIA shall continue to charge 5% management fee for all projects implemented by it whether the same is undertaken by the PDI sector or SOEM sector.

This memorandum shall take effect immediately.

  
**MARCELINO V. TUGAOEN, Jr.**  
Administrator

August 30, 2007

**REPUBLIC OF THE PHILIPPINES  
OFFICE OF THE SOLICITOR GENERAL**

**134 Amorsolo St., Legaspi Village**

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July 5, 2007

**Marcelino V. Tugaoen, Jr.**

Deputy Administrator and concurrently

Acting Asst. Administrator

for Administrative Services

**NATIONAL IRRIGATION ADMINISTRATION**

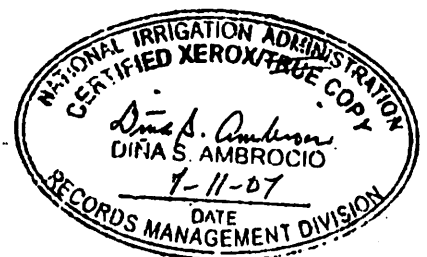
National Government Center

E. de los Santos Avenue, Quezon City

Dear Administrator Tugaoen, Jr.:

This refers to your letter dated June 18, 2007 requesting for our opinion regarding the legality of imposing 5% administration and engineering overhead charge on project fund released to NIA under Republic Act No. 9401, or the General Appropriations Act of 2007.

In the aforesaid letter, you point out that under Section 1(b) of Presidential Decree No. 1702 (NIA Charter, as amended), the NIA is authorized to collect or charge 5% administrative and engineering overhead charge. However, under Section 4 of the special provisions of R.A. No. 9401, only 3.5% is allowed for engineering and administrative overhead charges. Thus, there is a seeming inconsistency between the said laws.



To address the above issue, there is a need to trace the history of the two (2) laws involved and determine their classification.

On July 18, 1980, then President Ferdinand E. Marcos issued Presidential Decree No. 1702 amending Republic Act No. 3601, the charter of the NIA. The Decree recognized the need for an increase in the NIA's capitalization due to the increased cost of irrigation systems.<sup>1</sup> Thus, it authorized NIA to impose administrative and overhead charge in the amount of "5 percent of the total cost of the projects undertaken by it:"

**The National Irrigation Administration is hereby authorized to impose as an administration and engineering overhead charge, 5 percent of the total cost of projects undertaken by it, which shall likewise form part of its operating capital.<sup>2</sup>**

Twenty-seven (27) years later, the Congress enacted R.A. No. 9401, the General Appropriations act of 2007 (GAA). Under the GAA's Chapter on Agriculture and Fisheries Modernization Program: Special Provisions, the allowed engineering and administrative overhead charge "shall not exceed three and one-half percent (3.5%) of the project cost":

**4. Engineering and Administrative Overhead. In order to ensure that at least ninety six and one-half percent (96.5%) of the infrastructure fund released by DBM is made available for direct implementation of irrigation projects, any authorized deduction from project funds for administrative overhead, pre-construction activities after detailed engineering, construction project management, testing and quality control, acquisition, rehabilitation and repair of heavy equipment, and other related equipment and parts used in the implementation of irrigation projects and**

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<sup>1</sup> *Whereas clause*, Presidential Decree 1702, July 18, 1980

<sup>2</sup> emphasis supplied

**contingencies, shall not exceed three and one-half percent (3.5%) of the project cost: xxx<sup>3</sup>**

The general rule is that later laws abrogate prior laws that are contrary to them. However, there are instances where prior laws prevail over subsequent laws. Thus, in *Bagatsing vs. Ramirez*,<sup>4</sup> the Supreme Court declared:

**And the rule commonly said is that a prior special law is not ordinarily repealed by a subsequent general law. The fact that one is special and the other general creates a presumption that the special is to be considered as remaining an exception of the general, one as a general law of the land, the other as the law of a particular case. However, the rule readily yields to a situation where the special statute refers to a subject in general, which the general statute treats in particular.**

A special law relates to particular persons or things of a class, or to a particular portion or section of the state.<sup>5</sup> The charter of the NIA and the laws amending it are undeniably special laws because they deal exclusively with the NIA's powers and functions. On the other hand, a general law affects all people of the state or all of a particular class of persons in the same state or embraces a class of subjects or places and does not omit any subject or place naturally belonging to such class.<sup>6</sup> It has been judicially declared that the GAA is one such general law because it outlines the share in the national fund of all branches of the national government.<sup>7</sup>

However, before concluding that the GAA, a general law, cannot impliedly repeal the NIA's charter, it must first be determined whether

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<sup>3</sup> Section 4; emphasis supplied

<sup>4</sup> 74 SCRA 306, 312 (1976)

<sup>5</sup> U.S. vs. Serapio, 23 Phil. 584 (1912)

<sup>6</sup> *id.*

<sup>7</sup> *Leynes vs. Commission on Audit, et al.*, 418 SCRA 180, 196 (2003)

the exception to the rule applies, i.e. whether "the special statute refers to a subject in general which the general statute treats in particular." The exception has two (2) requirements, namely: (1) the special statute refers to a subject in general and (2) the general statute treats it in particular. These requirements do not obtain here.

To be sure, Presidential Decree No. 1702 was enacted to deal solely and particularly with the NIA's increasing operating costs.<sup>8</sup> To increase the NIA's capitalization, the law gave it the authority to charge 5% administrative and engineering overhead charge on the total cost of projects undertaken by it. The law did not refer to the matter of the NIA's capitalization in a general way. On the contrary, it provided a specific means for the NIA to raise its operating costs.

Moreover, the GAA, a general law, deals with the budgetary allotment of **all government agencies, programs and projects**. It does not deal with the NIA's operating costs particularly and exclusively. Thus, it could not have repealed the NIA's charter. Besides, the 5% charge will still be available for the direct implementation of irrigation projects, as mandated by the GAA, because it becomes part of the NIA's operating capital to be used to maintain and repair the NIA's projects.

Accordingly, it is our considered opinion that R.A. No. 9401, or the General Appropriations Act of 2007, did not impliedly repeal P.D. 1702; hence, the NIA may continue to charge the 5% administrative and engineering overhead charge of projects undertaken by it pursuant to its Charter. ✓

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<sup>8</sup> Presidential Decree No. 1702, *Amending Section 3 of Republic Act No. 3601, as Amended by Presidential Decree No. 552:*

x x x

WHEREAS, the implementation of the irrigation integrated program of the government and the attainment of the "Irrigation Age" as envisioned under Republic Act No. 3601, is the primary responsibility and goal of the National Irrigation Administration; and

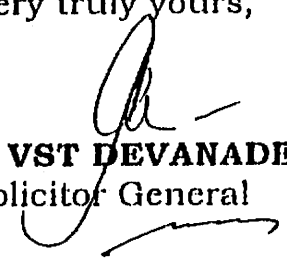
*pace*  
WHEREAS, the increased pays of irrigation development together with the increased cost of irrigation systems require an increase in capitalization of the National Irrigation Administration and the strengthening of its power and resources to assure long term capacity for meeting its responsibilities and attaining its goals;

x x x

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Best regards.

Very truly yours,

  
**AGNES VST DEVANADERA**  
Solicitor General

BIA/tcy folkerabad.nla