

12<sup>th</sup> August 2017

## **PRESS STATEMENT**

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## **SUNGAI MUDA: NO BASIS FOR KEDAH TO CLAIM RAW WATER CHARGES FROM PENANG.**

- **PBAPP abstracts raw water from Sungai Muda in Penang territory.**
- **Sungai Muda is a river that flows naturally through Penang. Kedah is not pumping raw water to Penang.**
- **Penang has abstracted raw water without charge from Sungai Muda for 44 years because there is no agreement, contract or mention of charges.**

PENANG, Saturday (12/8/2017): There is no legal, historical or geographical basis for Kedah to claim that it is losing revenue for failing to impose raw water charges on Penang for abstracting raw water from Sungai Muda.

On 31/7/2017 and 1/8/2017, various newspapers and online media published news reports quoting the Laporan Ketua Audit Negara 2016 – Kedah Siri 1 as stating that “water charges that were not imposed had caused the Kedah State Government to lose revenue.”

It appears that Kedah's claims are based on the premise that Sungai Muda is located only in Kedah, as noted in the report.

The premise that Sungai Muda is located exclusively in Kedah is incorrect.

History, a Memorandum of Understanding (MoU), a Federal Law, State Enactments by Penang and Kedah, and geography reflect the fact that Sungai Muda flows naturally through Penang territory.

## Historical Perspective

According to the 1869 treaty which was signed between Britain and Siam (Thailand), the “original” state boundary that separated Penang and Kedah was a 30.5km stretch of the northern bank of Sungai Muda. As such, a 30.5km stretch of Sungai Muda was originally regarded as “Penang territory” and not “in Kedah”.

On 25/10/1982, Penang and Kedah signed a government-to-government MoU to realign the states’ border to the middle of Sungai Muda. Penang also surrendered 27.7 acres (10.88 hectares) of land to Kedah after the construction of the Rantau Panjang Barrage.

In return, Kedah provided a “water guarantee” to Penang to implement the “Penang Water Supply Project” which is also known as the “Sungai Muda Water Scheme”.

On 16/10/1985, Kedah’s water guarantee was noted in a Parliamentary Session to propose the passing of the Kedah and Penang (Alteration of Boundary) Act 1985 (Act 325). During that 1985 parliamentary debate, the Member of Parliament (MP) of Kuala Kedah, Dato’ Haji Mohd. Abu Bakar Rautin bin Ibrahim said:

*“The State of Kedah had agreed to the agreement to supply water, that is the agreement between the State of Penang and the Asian Development Bank (ADB) that has specified that before the loan is approved for Penang’s Water Supply programme, the State of Kedah has to guarantee water supply from the catchments in Ulu Sungai Muda that is located in Kedah.”*

The Kedah and Penang (Alteration of Boundary) Act 1985 (Act 325) was subsequently passed and included as an Act in Article 2 of the Federal Constitution.

On 4/7/1985, both Penang and Kedah gazetted state enactments that place the states’ boundary at the “centre line” of Sungai Muda.

In summary, Penang agreed to a re-delineation of its border with Kedah and surrendered part of its state territory to Kedah, in exchange for a “water guarantee” in 1985.

Kedah accepted the land and provided the “water guarantee” to facilitate an ADB loan arranged by the Federal Government for the Sungai Muda Water Scheme.

Until today, maps of Malaysia depict the middle of Sungai Muda as the boundary between Penang and Kedah.

## **8 Reasons Why Penang Should Not Be Asked to Pay**

1. The Sungai Muda Water Scheme was officially opened by late Tun Abdul Razak bin Hussein, the second Prime Minister of Malaysia, on 9/11/1973.

During the 1973 opening ceremony, there was no mention of any raw water charges. There was also no mention of any charges in the 1985 MoU, the Kedah and Penang (Alteration of Boundary) Act 1985 (Act 325), and the 4/7/1985 State Enactments.

This shows that there was no intent for any raw water charges to be levied, and, therefore, no charges are applicable today.

2. Penang abstracts raw water from Sungai Muda in its own territory. It is not abstracting raw water in Kedah territory. As such, Penang stands by its “riparian rights” (water rights) to abstract water from Sungai Muda without charge.
3. Penang abstracts raw water from Sungai Muda with its own resources and at its own cost. Penang’s abstraction does not cost Kedah a “sen”. Since there is no cost, there should be no charge.
4. Sungai Muda is a river that flows naturally into the sea. Johor charges Melaka for pumping raw water to Melaka, but Kedah is not pumping raw water to Penang. By itself, Sungai Muda is delivering raw water to Penang naturally.
5. Penang abstracts water “downstream” of Kedah’s water treatment plants and irrigation intakes. Kedah has built dams to release water into Sungai Muda during dry seasons but the reserves of the Beris Dam and Muda Dam are primarily intended for abstraction by Kedah.

In other words, Penang is taking the “leftover water” that would otherwise flow wastefully into the Straits of Malacca.

6. Penang’s abstraction of raw water from Sungai Muda during the wet seasons helps to prevent or alleviate flooding in the southern regions of Kedah.
7. Since 1973, Penang has been abstracting raw water from Sungai Muda for about 44 years without charge. There is no rationale for charges to be “suddenly” applicable today because Penang’s abstraction does not:
  - affect Kedah’s own abstraction upstream;
  - incur any costs for Kedah; or
  - infringe on, or compromise, Kedah’s rights to abstract water from Sungai Muda.
8. Kedah is continuing to license logging in the Greater Ulu Muda Catchments that collects rainwater for Sungai Muda and other raw water systems in the Northern Corridor Economic Region (NCER).

Logging is affecting the quantity and quality of water in Sungai Muda, and should be completely banned in this regional water catchment that encompasses 163,000 ha of forestlands. By right, Ulu Muda should be conserved and gazetted as a NCER Water Catchment.

Kedah should seek federal compensation (in lieu of forest premiums) from the Federal Government because Ulu Muda serves as a water catchment for three NCER states: Perlis, Kedah and Penang.

It should be remembered that water supply security is essential element for life and progress in the NCER, now and in the future.

It should also be noted that Perlis, Penang and Kedah contributed to about 10.4% of Malaysia’s GDP in 2014, according to the Department of Statistics ([statistics.gov.my](http://statistics.gov.my)). In 2016, the forecast GDP of Malaysia was valued at RM1.106 trillion by the Malaysian Treasury ([treasury.gov.my](http://treasury.gov.my)).

As such, Penang is not the only NCER state that benefits from Ulu Muda as a water catchment. According to the Department of Statistics (statistics.gov.my), the estimated combined population of Perlis, Penang and Kedah was 4.09 million people in 2016.

As such, the gazetting and conservation of Ulu Muda should be regarded as a NCER issue that deserves Federal attention, funding and legislation.

In summary, we would like to reiterate the following:

- Penang stands by its riparian rights to abstract water from Sungai Muda, within Penang territory, without charge.
- There is no legal, historical or geographical basis for Kedah to claim any charges or fees from Penang, vis-à-vis raw water from Sungai Muda. As such, Kedah cannot claim to have suffered losses for failing to impose charges on Penang.
- Instead of trying to claim non-existent charges from Penang, Kedah should stop logging in Ulu Muda, and seek Federal Government compensation to gazette and conserve 163,000 ha. of forestlands as a NCER Water Catchment for the benefit of 4.09 million people.

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