

Republic of the Philippines
Department of Environment and Natural Resources
MINES AND GEOSCIENCES BUREAU
MIMAROPA Region

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05 September 2022

HON. KENYO R. RABINO

Vice Mayor
Sangguniang Bayan of Cajidiocan
Cajidiocan Municipal Hall, Romblon

HON. ANTONIO R. MENESE

Vice Mayor
Sangguniang Bayan of Magdiwang
Magdiwang Municipal Hall, Romblon

HON. DOMINGO B. MARIN

Vice Mayor
Sangguniang Bayan of San Fernando
San Fernando Municipal Hall, Romblon

Dear Vice Mayor K. R. Rabino, A. R. Menese and D. B. Marin:

We are respectfully forwarding a copy of the 30 August 2022 letter of Altai Philippines Mining Corporation, in reference to the Joint Resolution No. 1, Series of 2022, issued by the *Sangguniang Bayans* of San Fernando, Cajidiocan and Magdiwang, Romblon, opposing Mineral Production Sharing Agreement No. 304-2009-IVB, for your information.

Thank you.

Very truly yours,


GLENN MARCELO C. NOBLE
Regional Director

Enc'l.: As stated

cf: **The Regional Executive Director**
Department of Environment and Natural Resources
MIMAROPA Region

The PENRO
Provincial Environment and Natural Resources Office
Odiongan, Romblon

The Director
Mines and Geosciences Bureau
North Ave., Diliman, Quezon City

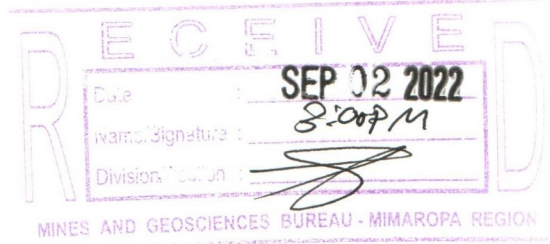


**"MINING SHALL BE PRO-PEOPLE AND PRO-ENVIRONMENT
IN SUSTAINING WEALTH CREATION AND IMPROVED QUALITY OF LIFE."**

ALTAI PHILIPPINES MINING CORPORATION

August 30, 2022

ENGR. GLENN MARCELO C. NOBLE
Regional Director
Mines and Geosciences Bureau
MIMAROPA Region
7th Floor DENR Bldg., 1515 Roxas Blvd.
Ermita, Manila



SUBJECT: REPLY-COMMENT TO (1) JOINT RESOLUTION NO. 1 SERIES OF 2022 BY THE SANGGUNIANG BAYAN OF SAN FERNANDO, CAJIDIOCAN, AND MAGDIWANG, ROMBLON, AND (2) THE SANGGUNIANG PANLALAWIGAN RESOLUTION NO. 07-2022-20 OF ROMBLON

Dear Dir. Noble:

This refers to your letter dated 17 August 2022 directing **Altai Philippines Mining Corporation ("Altai")** to submit a reply-comment in connection with Joint Resolution No. 1 Series of 2022 by the Sangguniang Bayan of San Fernando, Cajidiocan, and Magdiwang, Romblon ("Joint Resolution No. 1"), and the Sangguniang Panlalawigan Resolution No. 07-2022-20 of Romblon ("SP Resolution No. 07").

Joint Resolution No. 1 resolved to: (1) oppose metallic large-scale mining in Sibuyan Island, and to request President Ferdinand R. Marcos, Jr. and the Congress of the Philippines to declare Sibuyan Island free from large-scale metallic mining, and to urge Department of Environment and Natural Resources (DENR) Secretary Ma. Antonia Yulo-Loyzaga to immediately review, halt, revoke, and reject all mining agreements, exploration activities, mining operations, and applications within the territorial jurisdiction; and (2) furnish with a copy of the Resolution His Excellency Ferdinand Romualdez Marcos, Jr., President of the Republic of the Philippines; the Congress of the Philippines; Madam Ma. Antonia Yulo-Loyzaga, Secretary of the of the DENR; Hon. Eleandro Jesus F. Madrona, Congressman, Lone District of Romblon; Hon. Jose R. Riano, Governor of Romblon; the PENRO, Odiongan, Romblon; the Sangguniang Panlalawigan, Romblon – for their information, appropriate action, and record; the Local Government Unit of Magdiwang, Cajidiocan, and San Fernando, Romblon; the liga ng mga Barangay, San Fernando, Romblon; the MLGOO and all offices concerned, for their information and record.

On the other hand, SP Resolution No. 07 contained the following resolutions: (1) to stand firm in its position to oppose and prohibit any form of environmentally destructive and irresponsible mining in the Province of Romblon and ensures the rights of its constituents to a safe and healthy environment; (2) that no application for mining exploration, excavation, and other similar activities that categorically falls on the abovementioned definition shall be allowed and be approved in the Province of Romblon; (3) that copies of the Resolution be furnished to the Hon. Eleandro Jesus F. Madrona, Congressman of Romblon, the Hon. Jose R. Riano, the Governor of Romblon, and all Municipal Mayors in the seventeen (17) municipalities of the province.

ALTAI PHILIPPINES MINING CORPORATION

Altai thus comes before this Honorable Office to abate the overreaching of the Sangguniang Bayan of San Fernando, Cajidiocan, and Magdiwang, and to restore the rule of law.

In light of the issuance of Joint Resolution No. 1 and SP No. 07, Altai hereby respectfully submits the following comments in response:

I. Joint Resolution No. 1 is an *ultra vires* issuance for being unconstitutional and thus should be invalidated.

A similar action by the Municipality of San Fernando has already been declared invalid in 2013.

As early as 2013, the attempt to completely ban mining in Sibuyan has already been declared unconstitutional by the Regional Trial Court of Romblon in the case of *Sibuyan Nickel Properties Development Corporation vs. Hon. Eduardo C. Firmalo, et al.*¹, in its decision dated January 17, 2013, which has attained finality. In that case, the Joint Municipal Resolutions adopted by the Sangguniang Bayan of San Fernando, Cajidiocan, and Magdiwang, Romblon opposed all forms of mining in Sibuyan Island, and requested the Department of Environment and Natural Resources (DENR) to revoke all metallic mining permits in Sibuyan Island. Similarly, the Joint Resolutions also requested the President and the Philippine Congress to declare Sibuyan free from all forms of metallic mining. Then-Romblon Governor Firmalo subsequently issued a moratorium on the exploration, excavation, extraction, and utilization of metallic minerals in the Province of Romblon.

In the above-mentioned *Sibuyan Nickel* Case, the Court held that there is no constitutional ban against mining, and as such, any ordinance or law prohibiting mining enacted by the local legislative branch would be unconstitutional. As the Court stated in its decision:

"The Constitution does not prohibit mining, thus, any law, executive order or act of the legislative or executive branch of the government/ whether it be local or national that prohibits all forms of mining, even the legal ones, is unconstitutional.

xxx

If the State does not have the power to prohibit mining, but merely to regulate the same, then, with more reason that a local chief executive of the province has no power to prohibit mining for an indefinite period of time."

A copy of the Decision issued by the Regional Trial Court of Romblon dated January 17, 2013 in the case entitled *Sibuyan Nickel Properties Development Corporation vs. Hon. Eduardo C. Firmalo, et al.* is hereto attached as Annex "A", while the Resolution of the same Court dated June 14, 2013 denying the Motions for Reconsideration filed by the Local Government Units is likewise attached as Annex "B".

¹ Special Civil Action Case No. V-1906

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The same ruling applies to the Sangguniang Bayan of Fernando, Cajidiocan, and Magdiwang, who likewise collectively do not have the power to prohibit mining. In fact, the RTC of Romblon ruled with finality that "Under paragraph 2, Section 12 of Executive Order No. 79, signed by President Benigno Simeon Aquino III, institutionalizing and implementing reforms in the Philippine Mining Sector, providing policies and guidelines to ensure environmental protection and responsible mining in the utilization of mineral resources, **LGUs shall confine themselves only to the imposition of *reasonable limitations* on mining activities conducted within their respective territorial jurisdictions that are consistent with national laws and regulations.**" Thus, it is clear that Joint Resolution No. 1 is unconstitutional since it attempts to completely put a ban on mining activities in Sibuyan Island, Romblon, contrary to the Philippine Constitution and national laws.

It is respectfully submitted that the Sangguniang Bayan of San Fernando, Cajidiocan, and Magdiwang **may not make any issuance, which is inconsistent with the provisions of the Constitution or a statute, or which are in derogation of, or defeat, the purpose of the Constitution or a statute.** The Court has spoken and its Decision has attained finality. This should be respected.

However, in issuing the Assailed Joint Resolution, the Sangguniang Bayan of San Fernando, Cajidiocan, and Magdiwang acted beyond the limits of the authority conferred by law. Perforce, the Assailed Resolution is *ultra vires* issuance and as such, it should be declared void.

Moreover, since Joint Resolution No. 1 is just a resolution and not an ordinance, then it does not have the force and effect of a law. As the Supreme Court has explained, "A municipal ordinance is different from a resolution. An ordinance is a law, *but a resolution is merely a declaration of the sentiment or opinion of a lawmaking body on a specific matter*. An ordinance possesses a general and permanent character, but a resolution is temporary in nature."²

Given the nature and content of Joint Resolution No. 1, then it is our humble opinion that it should not be given any weight by this Honorable Office.

II. Altai is only in the exploration phase of its MPSA, so there is no damage to speak of which would necessitate the revocation of its operations or the opposition of all mining agreements, exploration activities, mining operations, and applications.

It is also worth pointing out that Altai's operations at this point are only for the exploration of nickel in the area—thus, the fear of damages cited by the Sangguniang Bayan of San Fernando, Cajidiocan, and Magdiwang in its Joint Resolution are premature and purely hypothetical. No harm has been proven to be caused by Altai's operations, and the alleged damages that will be caused to rivers and tributaries in the area are speculative.

Since the alleged damage or injury raised by Joint Resolution No. 1 is not immediate or even real, it is merely a hypothetical problem and is not a valid ground for action or intervention.

² Municipality of Parañaque vs. V.M. Realty Corporation, G.R. No. 127820 July 20, 1998

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III. There is presumption of regularity in the issuance of the MPSA in favor of Altai.

The issuance of the Mineral Production Sharing Agreement (MPSA) No. 304-2009-IVB in favor of Altai by the DENR-MGB carries with it the presumption of regularity unless the contrary is proven.

The presumption of regularity in the performance of official functions favors the validity of Altai's MPSA. Under Section 3, Rule 131 of the Rules of Court, there is a disputable presumption that an official duty has been performed unless contradicted and overcome by evidence. Here, there is no iota of proof on record that will clearly and convincingly rebut such presumption.

The presumption of regularity in the performance of official duties is an aid to the effective and unhampered administration of government functions. Without such benefit, every official action could be negated with minimal effort from litigants, irrespective of merit or sufficiency of evidence to support such challenge. To this end, our body of jurisprudence has been consistent in requiring nothing short of clear and convincing evidence to the contrary to overthrow such presumption.³ This same presumption of regularity in the performance of official duties supports the validity of Altai's MPSA.

IV. Altai Philippines Mining Corporation is simply exercising its rights under MPSA No. 304-2009-IVB, and aims to provide help and livelihood to the local community through responsible mining.

Altai was granted MPSA No. 304-2009-IVB on December 23, 2009. Since then, Altai has been complying with its obligations under the Mineral Production Sharing Agreement, and has respected all of the government's orders in relation thereto, even when a Cease and Desist Order was issued against Altai on September 19, 2011. Finally, on September 9, 2021, the DENR lifted the Cease and Desist Order, and only then did Altai begin the process of resuming its operations for MPSA No. 304-2009-IVB. In fact, the DENR even renewed Altai's exploration period under MPSA No. 304-2009-IVB in a letter dated 12 July 2022, which allowed Altai to implement its proposed Exploration Work Program (ExWP) and its Environmental Work Program (EWP) immediately upon the date of its issuance. These developments show that Altai has been able to prove to the DENR and all concerned agencies that it has been faithfully complying with all of the requirements and that it should be allowed to continue with its operations.

Under the DENR and the MGB's watchful guidance and control, Altai will implement its full exploration work program, aimed to develop an economically mineable resource of nickel ore. The success of the exploration program could lead to successful nickel mining operations in the Province of Romblon under the principle of responsible and sustainable mining.

In light of the current pandemic and economic troubles prevailing in the country which resulted in the surge of unemployment that adversely affected the local community of Sibuyan Island,

³ Susan A. Yap vs. Elizabeth Lagtapon, GR. No. 196347, January 23, 2017

ALTAI PHILIPPINES MINING CORPORATION

Altai aims to provide help through the implementation of its Two (2) Years Exploration Work Program. The program is expected to generate direct employment for over two hundred (200) local laborers from the Sibuyan community. Given the opportunity, we at Altai are confident that we will be able to show to the local government units and communities concerned that our operations will not negatively affect Sibuyan Island, and will in fact bring prosperity and development to its people.

Based on the foregoing, it is our opinion that Sangguniang Bayan Resolution No. 83 executed by the Municipality of San Fernando is invalid and has no basis for its issuance. As such, it should not be given any credence by the Mines and Geosciences Bureau and the Department of Environment and Natural Resources.

V. Sangguniang Panlalawigan Resolution No. 07-2022-20 of Romblon rightly opposes and prohibits any form of environmentally destructive and irresponsible mining in the Province of Romblon.

SP Resolution No. 07 defines “environmentally destructive and irresponsible mining” as:

- A. Forms/types of mining that would have negative impact impacts on the air, water, and land, and tangible and intangible heritage of the communities;
- B. Forms/types of mining that would affect the lives and livelihood of the local communities;
- C. Forms/types of mining that would have irreversible effect to the environment and the health of the local communities;
- D. Forms/types of mining that would have no economic impact to local communities and are not keen in owning social responsibilities; and
- E. Mining in areas that fall under Section 19 of Republic Act No. 7942 otherwise known as the Philippine Mining Act of 1995, and mining in other areas deemed prohibited by other laws and policies.

Altai’s activities and mining operations clearly do not fall under any of the criteria that define environmentally destructive and irresponsible mining as contemplated in SP Resolution No. 07, because Altai is committed to the safe, responsible, and ecologically-conscious type of mining that would contribute to the livelihood and development of Sibuyan Island and its people.

We applaud and support SP Resolution No. 07 for expressing the Province of Romblon’s opposition to environmentally destructive and irresponsible mining, for it is these destructive, illegal, and irresponsible mining activities in the country that negatively affect the perception of mining as a whole—even those that are legitimate and conducted responsibly. What’s more, these irresponsible mining operations do not contribute anything to the economy, since they do not pay the required fees to the LGUs and concerned government agencies, and do not prioritize the welfare of local communities. To be clear, we support this Sangguniang Panlalawigan Resolution since we are clearly not covered by its definition of environmentally destructive and irresponsible mining; thus, SP Resolution No. 1 does not preclude Altai from exercising its rights under MPSA No. 304-2009-IVB. It is our hope that SP Resolution No. 07 is used by other Sanggunians in Sibuyan Island, Province of Romblon, as an example of a reasonable Resolution that properly regulates mining and does not just completely ban all forms of mining, without distinguishing the destructive operations from the responsible ones.

ALTAI PHILIPPINES MINING CORPORATION

We believe that mining, if operated consciously and responsibly, under the watchful eye of the MGB and the DENR, is not inherently destructive and is a concrete way to bring prosperity and development to the Philippines.

A representative of the Chamber of Mines of the Philippines has stated, "**Responsible mining does exist in our country.** Local miners are now moving to operate beyond mere compliance and use best practices."⁴ And as emphasized by an attendee during the MGB's 2-day "Elevating the Mission of Responsible Mining" Forum, "The question whether or not responsible mining is real... is an insult to the MGB. These people have sworn to do one thing, which is to foster responsible mining in the country... **It is an insult to these people in the MGB to claim that there is no responsible mining.**"⁵

In fact, even the late former DENR Secretary Gina Lopez, a well-known critic of mining in the Philippines, stated, "*Pwede pala!*", admitting that responsible mining is possible after she toured the operations of two nickel mining companies in Barangay Rio Tuba in the Municipality of Bataraza, in the province of Palawan.⁶ Responsible mining is indeed possible and existing in the Philippines, and we support the Sangguniang Panlalawigan's efforts to prohibit only destructive and irresponsible mining.

Therefore, based on the foregoing, we submit that Joint Resolution No. 1 is not a valid Resolution for being outside of the authority of the Sangguniang Bayans of San Fernando, Cajidiocan, and Magdiwang to issue. On the other hand, we applaud and support SP No. 07 for properly regulating destructive mining operations in the Province of Romblon.

Thank you.

Sincerely,


HANNIEL T. NGO
President

Cf:

The Presidential Complaint Center

pcc@malacanang.gov.ph

PCC Code No: PCC-GDP-06-13-2022-074

The DENR Action Center/Hotline

Department of Environment and Natural Resources

denr@8888.gov.ph

⁴ <https://www.bworldonline.com/opinion/2021/05/05/366311/responsible-mining-is-possible/>

⁵ <https://www.manilatimes.net/2022/02/12/business/top-business/responsible-mining-in-ph-real-not-myth/1832643>

⁶ https://malaya.com.ph/news_opinion/pwede-pala/

ALTAI PHILIPPINES MINING CORPORATION

The Presiding Officers

Sangguniang Bayan of San Fernando
Sangguniang Bayan of Cajidiocan
Sangguniang Bayan of Magdiwang
Sibuyan Island, Romblon

The Director

Mines and Geosciences Bureau
North Avenue, Diliman, Quezon City

The Sangguniang Panlalawigan

Office of the Sangguniang Panlalawigan
Province of Romblon
Romblon

Republic of the Philippines
REGIONAL TRIAL COURT
 Fourth Judicial Region
BRANCH 81
 Romblon, Romblon

SIBUYAN NICKEL PROPERTIES
 DEVELOPMENT CORPORATION
 Petitioner,

SPECIAL CIVIL ACTION CASE
NO. V-1906

-versus-

- for -

HON. EDUARDO C. FIRMALO in his
 Capacity as Governor of Romblon,
 HON. DINDO C. RIOS, in his capacity
 as Mayor of San Fernando, HON.
 MANUEL MADRID, ABNER PEREZ, FELIX
 YLAGAN and VENIZAR MARAVILLA, in
 their Capacity as Sangguniang Panlalawigan
 of Romblon, HON. MABINI T. MACA, in his
 Capacity as Vice Mayor of Cajidiocan, HON.
 JESUSIMA R. CASTRO in her Capacity as Vice
 Mayor of San Fernando, HON. DENISA R.
 REPIZO, in her Capacity as Vice Mayor of
 Magdiwang, Romblon, HON. HERMINIO R.
 MORTEL, HAIDE R. RABINO, CONSTANCIO
 M. GOTANGCO, RIZAL T. RUBA, RICHARD
 D. ROTONI, JAIME M. LANGIT, LARRY V.
 NOLASCO, FRANK ANTHONY R. REGALA,
 ROBINSON R. ROYO, RENE L. BARANDA,
 DAXIE BENEDICT R. RIOS, ZENAIDA A.
 RENION, DOMINGO B. MARIN, ZORAIDA R.
 REPIL, SAMUEL B. RODA, ADO V.
 TANSIONGCO, ROMMEL AUGUSRUS R. RADAN,
 ANTONIO R. MENESE, VILMA L. MOLO,
 MARIO R. ROLDAN, in their Capacity as
 Sangguniang Bayan Members of Cajidiocan,
 Magdiwang and San Fernando, Romblon and
 ESPAÑA BARANGAY CHAIRMAN HON.
 DONATO ROYO, in his Capacity as Barangay
 Chairman of España, San Fernando, Romblon,
 Respondents.

**DECLARATORY RELIEF W/
 PRAYER FOR ISSUANCE
 TRO AND INJUNCTION**

X-----X

R E S O L U T I O N

CERTIFIED PHOTOCOPY

LEONARDO M. BANZUELO
 Legal Researcher II-OIC
 RTC Branch 81, Romblon, Romblon
 June 8, 2022

A verified petition for Declaratory Relief under Rule 63 of the Rules of Court was filed on April 26, 2012 by Sibuyan Nickel Properties Development Corporation through its President, Ms. Casiana Dalangin pursuant to a board resolution evidenced by Secretary's Certificate (Exhibit A) dated March 13, 2012, being the assignee of the Mineral Production Sharing Agreement No. 304-2009-IVB (ALTAI/SIBUYAN MPSA) praying for the declaration of nullity of Executive Order No. 001, Series of 2011 issued by Respondent Provincial Governor of Romblon, Hon. Eduardo C. Firmalo, in his capacity as such. Likewise, the nullity of Joint Municipal Resolutions No. 01-10 and 02-10 both dated August 20, 2010 adopted by the Respondent Members of the Sangguniang Bayan of San Fernando, Cajidiocan and Magdiwang, Romblon is being sought by the Petitioner.

On December 23, 2009, the Government of the Republic of the Philippines, through the then Secretary of the Department of Environment and Natural Resources, Jose L. Atienza, Jr., entered into a Mineral Production Sharing Agreement No. 304-2009-IVB (Exhibit B) with Altai Mining Corporation in accordance with Republic Act No. 7942, The Philippine Mining Act of 1995 the primary purpose of which is to provide for a rational exploration, development, and commercial utilization of nickel, iron, cobalt, chromite, and other associated mineral deposits existing within the contract area, and that is in the Municipality of San Fernando, Romblon. Altai Philippines Mining Corporation assigned its rights/properties to Sibuyan Nickel Properties Development Corporation, and constituted the latter as attorney-in-fact, for the purpose of instituting an action or claim against the area covered, pursuant to a deed of assignment (Exhibit C) dated September 7, 2010.

On August 20, 2010, the Sangguniang Bayan Members of the Municipalities of San Fernando, Cajidiocan and Magdiwang, Romblon, adopted Joint Resolution No. 01-10 (Exhibit D) opposing all forms of metallic mining in the Sibuyan Island, Romblon Province, and at the same time requested the Secretary of The Department of Environment and Natural Resources, Hon. Ramon Paje to revoke all metallic mining permits issued in Sibuyan Island. On the same day, another joint resolution, Joint Resolution No. 02-10 (Exhibit E), was passed requesting His Excellency, President Benigno Simeon C. Aquino, III, and the Congress of the Philippines to declare Sibuyan Island, Province of Romblon free from all forms of metallic mining.

On January 10, 2011, the Governor of Romblon, Hon. Eduardo C. Firmalo issued Executive Order No. 001, Series of 2011 (Exhibit F) declaring a moratorium on the exploration, excavation, extraction and utilization of metallic minerals in the province of Romblon. Said executive order also created a special task force to spearhead an assessment of all

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LEONARDO M. BANZUELO
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RTC Branch 81, Romblon, Romblon
June 8, 2022

mining applications, permits and operations existing in the province and to review the MPSA granted to Altai Philippines Mining Corporation. The same executive order further directed the Philippine National Police of the Province of Romblon to vigorously implement and enforce the Executive Order and all related mining laws and regulations. The executive order provides further that, it shall take effect immediately, without however, providing any clause for publication in newspaper of general circulation in the province.

On the same January 10, 2011, the Sangguniang Panlalawigan of Romblon passed a resolution, Resolution No. 01-2011-23 (Exhibit G) strongly supporting Executive Order No. 001, Series of 2011 on the declaration of the moratorium on all mining activities in the province of Romblon. On the same January 10, 2011 the Sangguniang Panlalawigan of Romblon passed another resolution, Resolution No. 01-2011-24 (Exhibit H) requesting the Philippine National Police, Provincial Director to immediately coordinate with other law enforcement agencies and arrest the source of illegal mercury that is smuggled in the Province of Romblon. On January 24, 2011, the Sangguniang Panlalawigan of Romblon passed another resolution, Resolution No. 01-2011-41 (Exhibit J) withdrawing support to Sangguniang Panlalawigan of Romblon Resolution No. 01-2011-23 strongly supporting Executive Order No. 001, Series of 2011 on the declaration of moratorium on all mining activities in the province of Romblon.

On September 13, 2011 Respondent Municipal Mayor of San Fernando, Dindo C. Rios wrote a letter (Exhibit K) to the Acting Director of Mines and Geosciences Bureau (MGB) Leo L. Jasareno requesting for issuance of Cease-and-Desist Order on the ground that the exploration will severely endanger the river and streams of Sibuyan and the fact that the respondent Provincial Governor has already issued Executive Order declaring a moratorium on all forms of mining activities in the Province of Romblon. And on September 19, 2011, the Mines and Geosciences Bureau, acting on the letter of the Mayor Dindo C. Rios and the previously issued Memorandum dated July 14, 2008 directing the Regional Office No. IV-B to conduct an investigation on the complaint of the Catholic Bishops Conference of the Philippines and other groups concerned against mining and to thoroughly review all mining operations and applications in Sibuyan Island, Acting Director, Leo Jasareno issued a cease and desist order (Exhibit L) against Altai Philippines Mining Corporation, disallowing the latter to conduct mining operations in the contract area covering 1,580.8010 hectares under MPSA No. 304-2009-IVB, pending the investigation and resolution of the issues that was never defined, as there was no appropriate summary or formal hearing conducted until February 8, 2012, according to the records on hand of this Court. The cease and desist order also provided for a fifteen day period from receipt of the Altai Philippines Mining Corporation within which to submit its comment on the

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LEONARDO M. BANZUELO
Legal Researcher II-OIC
RTC Branch 81, Romblon, Romblon
June 8, 2022

issues. On the same September 19, 2011 the Regional Director, Roland De Jesus of the Mines and Geosciences Bureau of Region IV-B, earnestly reiterated the cease and desist order issued by acting director of Mines and Geosciences Bureau, Leo L. Jasareno advising Altai Philippines Mining Corporation to refrain from conducting mining operation or any other related activities within the contract area covered by MPSA No.309-2004-IVB (sic) as evidenced by a letter, cited as Exhibit M. On September 21, 2011, Sibuyan Nickel Properties Development Corporation responded through its president, Atty. Casiana N. Dalangin asking for the lifting of the cease and desist order issued by Mines and Geosciences Bureau Acting Director Jasareno as evidenced by a letter cited as Exhibit N. On October 3, 2011 the counsel for the petitioner wrote a letter (Exhibit O) with an attached APPROVED Exploration Work Program, dated December 23, 2009, to the Acting Director Jasareno arguing that the cease and desist order has no basis in fact and in law. On October 4, 2011 counsel for the petitioner wrote a letter (Exhibit P) to the Secretary of the Department of Environment and Natural Resources, Hon. Ramon J.P. Paje, inquiring on the action taken by department and requested that the cease and desist order issued by the Mines and Geosciences Bureau be lifted.

Records also show that respondent Dindo C. Rios, denied the application of petitioner for issuance of mayor's permit, and respondent Donato R. Royo denied the application of the petitioner for issuance of barangay clearance on the ground that an executive order has already been issued by respondent Eduardo C. Firmalo.

The Petitioner maintains the unconstitutionality of Executive Order No. 001, Series of 2011 issued by Respondent Provincial Governor of Romblon, Eduardo C. Firmalo, in his capacity as such, as well as the Joint Municipal Resolutions No. 01-10 and 02-10 both dated August 20, 2010 adopted by the Respondent Members of the Sangguniang Bayan of San Fernando, Cajidiocan and Magdiwang, Romblon, and the illegality of the acts committed thereafter, citing laws and jurisprudence that are in their theory, applicable.

The Respondents on the other hand, maintain the constitutionality of the assailed Executive Order and Sangguniang Bayan Resolutions and the legality of the acts committed thereafter, likewise citing laws and jurisprudence that are in their theory, applicable.

7 There are no factual issues to be resolved in the instant Petition, since the facts are undisputed.

This Court has only one issue to be resolved in this Petition, and that is, whether or not Executive Order No. 001, Series of 2011 issued by Respondent Eduardo C. Firmalo, in his capacity as the Provincial Governor

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LEONARDO M. BANSUELO

Legal Researcher II-OIC
RTC Branch 81, Romblon, Romblon
June 8, 2022

of Romblon, is constitutional. The other issues are merely incidental to the main issue to be resolved.

This Court finds three grounds for the unconstitutionality of the Executive Order No. 001, series of 2011.

I.

The Constitution does not prohibit mining, thus, any law, executive order or act of the legislative or executive branch of the government, whether it be local or national that prohibits all forms of mining, even the legal ones is unconstitutional. Section 1 of the assailed executive order issued by the respondent provincial governor was totally prohibitive in nature for an indefinite period of time, to wit:

"Section 1. A MORATORIUM in the exploration, excavation, extraction and utilization of metallic minerals in the Province of Romblon until all issues fears and concerns raised by different sectors, organizations, associations and inhabitants in the local communities are genuinely addressed."

The 1987 Constitution does not prohibit mining, which on the other hand ordains the same under Section 2, Article XII, the relevant provision of which states that "The exploration, development, utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities or it may enter into co-production, joint venture, or production sharing agreements with Filipino citizens, or corporations or associations at least 60 per centum of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than 25 years, and under such terms and conditions as may provided by law. The Respondent's contention to the effect that such executive order is merely regulatory and not prohibitory in nature, must necessarily fail, because the ultimate effect of the executive order is to prohibit all forms of metallic mining and its immediate implementation, likewise offends the Constitution, considering that the legalized forms of mining are already placed in the same footing as the illegal ones for an indefinite period of time.

II.

7 The assailed executive order is an *Ultra Vires* act of the Provincial Governor of Romblon. This Court notes that the executive order issued by the Provincial Governor himself, prohibits all forms of metallic mining in the province of Romblon. A careful reading of Section 1 of the assailed executive order will show that it does not seek to enforce or implement the

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LEONARDO M. BANZUELO
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RTC Branch 81, Romblon, Romblon
June 8, 2022

law or ordinance because there is no law or ordinance that prohibits or suspends all forms of metallic mining.

The Executive Order having the force and effect of the law, the same must originate from the local legislative body as an ordinance and not from the chief executive of the province. That being the case, the provincial governor acted beyond his power when he issued the said executive order.

This Court further observes that the issuance of the Cease and Desist Order by the Mines and Geosciences Bureau against the petitioner was anchored actually on the assailed executive order that takes the form, force and effect of the law. Such Cease and Desist Order was issued on September 19, 2011, well within the effectivity and immediate implementation of Executive Order No. 001, Series of 2011. The Department of Environment and Natural Resources through the Mines and Geosciences Bureau was in effect persuaded to issue cease and desist order on account of the letter dated September 13, 2011, of respondent Dindo C. Rios that informs the said department and bureau that there was a moratorium issued by respondent Eduardo C. Firmalo prohibiting all forms of metallic mining for an indefinite period of time.

The cease and desist order would not be issued were it not for the executive order that takes the form, force and effect of the law. Thus, the contention of the respondents that assuming that the executive order will be declared unconstitutional by this Court, the Respondent cannot be obliged to issue permits or resolutions in favor the petitioner is untenable, because the actions of respondent Dindo C. Rios and Donato R. Royo, who obviously referred to the same executive order are independent matters that should be properly addressed in the proper forum, and therefore not a concern of this Court and not specifically in this action. The concern of this Court is to determine and check the act of the local chief executive of the province of Romblon in the light of his conformity with the fundamental law or the Constitution. In this case, the Provincial Governor went beyond his authority when he issued the assailed executive order, an ultra vires act.

III.

7 The assailed executive order issued by the Provincial Governor is inconsistent to the language and spirit of Section 465 of the Local Government Code of 1991, The Philippine Mining Act of 1995, Republic Act No. 7942, and Sec. 12, Executive Order No. 79, issued by His Excellency Benigno Simeon Aquino III.

Under paragraph b, subparagraph 2iii, Section 465 of the Local Government Code of 1991, "For the efficient, effective, and economical governance the purpose of which is general welfare of the province and

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LEONARDO M. SANZUELO
Legal Researcher II-OIC
RTC Branch 81, Romblon, Romblon
June 8, 2022

inhabitants pursuant to Section 16 of this Code, the provincial governor shall:

2) Enforce all laws and ordinances relative to the governance of the province and the exercise of appropriate corporate powers, provided for under Section 22 of this Code, implement all approved policies, programs, projects, services and activities of the province and, in addition to the foregoing shall:

iii) Issue such executive orders for the faithful and appropriate enforcement and execution of laws and ordinances.

The argument of the respondents is misplaced, because there is no ordinance or law passed or enacted by the local legislative branch of the province of Romblon, and even assuming there was, the same is unconstitutional as there was no constitutional prohibition against mining. The assailed executive order is by itself a statute that prohibits all forms of metallic mining. If the State does not have the power to prohibit mining, but merely to regulate the same, then, with more reason that a local chief executive of the province has no power to prohibit mining for an indefinite period of time.

Under Section 2, Republic Act No. 7942, it is the policy of the State that "All mineral resources in public and private lands within the territory and exclusive economic zone are owned by the State. It shall be the responsibility of the State to promote their rational exploration, development, utilization and conservation through the combined efforts of government and the private sector in order to enhance the national growth in a way that effectively safeguards the environment and protects the rights of the affected communities. And Section 26, a, of the same law provides that, "for purposes of mining operations, a mineral agreement may take the following forms as herein defines: a. Mineral production sharing agreement is an agreement where the Government grants to the contractor the exclusive right to conduct mining operations within a contract area and shares in the gross output. The contractor shall provide the financing, technology, management and personnel necessary for the implementation of this agreement."

7. It is clear that Republic Act No. 7942 regulates and sanctions legal mining activities in the Philippines. It does not totally prohibit the mining activities unlike the assailed executive order issued by the respondent provincial governor on Romblon. Such executive order ultimately placed the legal mining in the same standing as the illegal one, thus certain property rights of the petitioner under the contract was adversely affected. Such executive order cannot also create a special task force to spearhead an assessment of all mining applications, permits, and operations existing in

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LEONARDO M. BANCUELO
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RTC Branch 61, Romblon, Romblon
June 8, 2022

the province and the Mineral Production Sharing Agreement granted to Altai Philippines Mining Corporation, now represented by Sibuyan Nickel Properties Development Corporation, in the light of pertinent laws and strategic environment assessment, because such power is vested only in the Department of Environment and Natural Resources and the Mines and Geosciences Bureau, and the Local Government Units are merely expected to cooperate so that the environmental standards of mining laws, rules and regulations are fully and strictly enforced.

Under paragraph 2, Section 12 of Executive Order No. 79, signed by President Benigno Simeon Aquino III, institutionalizing and implementing reforms in the Philippine Mining Sector, providing policies and guidelines to ensure environmental protection and responsible mining in the utilization of mineral resources, LGUs shall confine themselves only to the imposition of reasonable limitations on mining activities conducted within their respective territorial jurisdictions that are consistent with national laws and regulations.

Considering that in the above provision, the local government shall ONLY confine themselves to the imposition of reasonable limitations on mining activities conducted within their territorial jurisdiction that are consistent with the national laws and regulations, respondent Eduardo C. Firmalo, in his capacity as the provincial governor of Romblon cannot validly issue a moratorium prohibiting all forms of metallic mining in the entire province of Romblon.

Likewise, Joint Resolution No. 01-10 and Joint Resolution No. 02-10 being a mere resolution of the Sangguniang Bayan addressed to the Secretary of the DENR and to the President of the Philippines and the Congress of the Philippines respectively; not being an ordinance, that prohibit mining, will not affect the activities of the petitioner considering the declaration of unconstitutionality of Executive Order No. 001, Series of 2011.

Finding the petition impressed with merit, the same is hereby **GRANTED.**

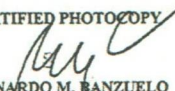
↑ **WHEREFORE,** Executive Order No. 1, Series of 2011, issued by respondent Eduardo C. Firmalo in his capacity as the Provincial Governor of Romblon is hereby declared **UNCONSTITUTIONAL.**

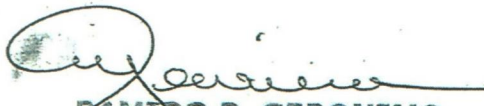
SO ORDERED.

Romblon, Romblon.

January 17, 2013.

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LEONARDO M. BANZUELO
Legal Researcher II-OIC
RTC Branch 81, Romblon, Romblon
June 8, 2022


RAMIRO R. GERONIMO
Executive Judge

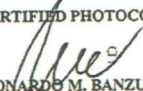
RRG/abm

CERTIFICATION

This is to certify that copy of this Resolution were sent by registered mail to Atty. Roderick R.C. Salazar III, Atty. Karl Arian A. Castillo, Atty. John Michael S. Galauran, Atty. Francisco F. Benedicto, Jr., Atty. Abner R. Perez, Atty. Cesar M. Solis, Office of the Solicitor General, Gov. Eduardo C. Firmalo, Vice Gov. Manuel M. Madrid and Pros. Karen M. Silverio-Buffe, this 17th day of January 2013.


BEETHOVEN M. ALBAN
Clerk of Court VI

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LEONARDO M. BANZUELO
Legal Researcher II-OIC
RTC Branch 81, Romblon, Romblon
June 8, 2022

Republic of the Philippines
REGIONAL TRIAL COURT
 Fourth Judicial Region
BRANCH 81
 Romblon, Romblon

SIBUYAN NICKEL PROPERTIES
 DEVELOPMENT CORPORATION,
 Petitioner.

SPECIAL CIVIL ACTION
 CASE NO. V-1906

- versus -

- for -

HON. EDUARDO C. FIRMALO in his
 capacity as GOVERNOR of ROMBLON.
 HON. DINDO C. RIOS, in his capacity
 as Mayor of San Fernando.
 HON. MANUEL MADRID, HON. ABNER
 R. PEREZ, HON. FELIX YLAGAN and
 HON. VENIZAR MARAVILLA, in their
 capacity as Sangguniang Panlalawigan
 of Romblon, HON. MABINI T. MACA,
 in his capacity as Vice Mayor of Cajidiocan,
 HON. JESUSIMA R. CASTRO, in his
 Capacity as Vice Mayor of San Fernando,
 HON. DENISA R. REPISO, in her capacity
 as Vice Mayor of Magdiwang, Romblon.
 HON. HERMINIO R. MORTEL, HAIDE R.
 RABINO, CONSTANCIO M. GOTANGCO,
 RIZAL T. RUBA, RICHARD D. ROTONI,
 JAIME M. LANGIT, LARRY V. NOLASCO,
 FRANK ANTHONY R. REGALA, ROBINSON
 R. ROYO, RENE L. BARANDA, DAXIE
 BENEDICT R. RIOS, ZENAIDA A. RENION,
 DOMINGO B. MARIN, ZORAIDA R. REPIL,
 SAMUEL B. RODA, ADO V. TANSIONGCO,
 ROMMEL AUGUSTUS R. RADAN,
 ANTONIO R. MENESE, VILMA L. MOLO,
 MARIO R. ROLDAN, in their capacity as
 Sangguniang Bayan Members of Cajidiocan,
 Magdiwang and San Fernando, Romblon and
 HON. DONATO ROYO, in his capacity as
 Barangay Chairman of España, San Fernando,
 Romblon.

DECLARATORY RELIEF
 WITH PRAYER FOR
 ISSUANCE OF TRO
 AND INJUNCTION

Respondents.

x-----x

RESOLUTION

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 LEONARDO M. BANZUELO
 Legal Researcher II-OIC
 RTC Branch 81, Romblon, Romblon
 June 8, 2022

For resolution are the two (2) Motions for Reconsideration filed by the Provincial Legal Officer of Romblon. Romblon as counsel for respondent Honorable Governor Eduardo C. Firmalo, Governor, Province of Romblon and by the Office of the Provincial Prosecutor through Karen M. Silverio-Buffe, Prosecutor I, as counsel for respondents.

Without discussing the issues raised by the respondents, this Court opted to deny the twin motions.

1. On the Motion for Reconsideration filed by counsel for respondent Governor Firmalo.

As correctly pointed out by the petitioner, the motion is defective.

Section 4, Rule 15 of the Rules of Court, provides, thus:

Section 4. Hearing on Motion. Except for motions which the Court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

Every written motion required to be heard and the notice of hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the Court for good cause sets the hearing on shorter notice.

In addition, counsel for respondent Governor Firmalo failed to comply Section 13, Rule 15 of the Rules of Court, which provides:

Section 13. Proof of Service. Proof of personal service shall consist of a written admission of the party served, or the official return of the server, or the affidavit of the party serving, containing a full statement of the date, place and manner of service. If the service is by ordinary mail, proof thereof shall consist of an affidavit of the person mailing of facts showing compliance of Section 7 of this Rule (Rule 13). If service is made by registered mail, proof shall be made by such affidavit and the registry receipt issued by the mailing office. The registry return card shall be filed immediately upon its receipt by the sender; or in lieu thereof the unclaimed letter together with the certificate of sworn copy of the notice given by the postmaster to the addressee.

The failure to comply of the above-cited provisions, this Court may deny outright the said motion or may not act on the same.

2. On Motion for Reconsideration filed by the Office of the Provincial Prosecutor.

Section 4, Rule 63 of the Rules of Court provides:

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LEONARDO M. BANZUELO
Legal Researcher II-OIC
RTC Branch 81, Romblon, Romblon
June 8, 2022

Section 4. Local Government Ordinance. In any action involving the validity of a local government ordinance, the corresponding prosecutor or attorney of the local governmental unit involved shall be similarly notified and entitled to be heard. If such ordinance is alleged to be unconstitutional, the Solicitor General shall also be notified and entitled to be heard.

To the mind of the Court, considering that the Honorable Governor was duly represented by the Provincial Legal Officer of the Province, the appearance and representation of the prosecutor shall be confined only to the three (3) municipalities involved.

In addition, the Joint Resolutions Nos. 01-10 and 02-10 both dated August 20, 2010 were not declared by this Court unconstitutional, hence, there is nothing to reconsider in so far as the said joint resolutions are concerned. Besides, in as much as a resolution is not an ordinance, the local government units concerned are not entitled to representation from the Provincial Prosecution Office, as their representation is limited to any action involving the validity of a local government ordinance (Sec. 4, Rule 63).

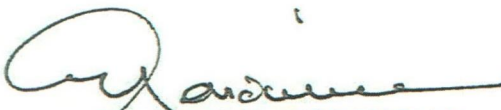
In fact as per Court record, the Office of the Solicitor General had no entry of appearance or authorized the Provincial Prosecutor to appear in their behalf despite notice to them by the petitioner.

WHEREFORE, in view of the foregoing the two **MOTIONS FOR RECONSIDERATION** are hereby **DENIED**.

SO ORDERED.

Romblon, Romblon.

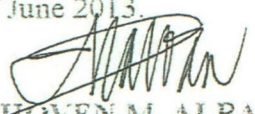
June 14, 2013.


RAMIRO R. GERONIMO
Executive Judge

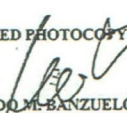
RRG gem

CERTIFICATION

This is to certify that copies of this *Resolution* were sent by registered mail to the Office of the Solicitor General, Atty. Francisco F. Benedicto, Jr., Atty. Karen M. Silverio-Buffe, Atty. Abner R. Perez, Atty. Cesar M. Solis and Atty. Roderick R.C. Salazar III, this 14th day of June 2013.


BEETHOVEN M. ALBAN
Clerk of Court VI

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LEONARDO M. BANZUELO
Legal Researcher II-OIC
RTC Branch #1, Romblon, Romblon
June 8, 2022