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17 August 2023

MINES AND GEOSCIENCES BUREAU CENTRAL OFFICE

MGB Compound, North Avenue
Diliman, Quezon City

To: Atty. Danilo U. Uykieng
OIC Director
central@mgb.com.ph

Re: Cease and Desist Order (CDO) issued by NCIP MIMAROPA

Dear Atty. Uykieng:

We refer to the undated Cease and Desist Order (CDO) issued by Regional Director Dr. Marie Grace T. Pascua, CESO III in relation to the captioned matter, a copy of which is hereto attached as **Annex A** for easy reference.

I. Background

The CDO, received on August 16, 2023, directed Celestial Nickel Mining Exploration Corporation (CNMEC) and Ipilan Nickel Corporation (Ipilan), "to immediately cease and desist from further operating its nickel ore mining operations," giving them five (5) days "to wind up operation and install safety protocols."

The immediate issuance of the CDO by the Regional Director, citing an alleged deficiency in Ipilan's Certificate Precondition (CP), came as a surprise. Ipilan has a fruitful partnership at present with the indigenous community, and exerted sincere efforts to address royalty concerns in consultations with NCIP.

To recall, while not explicitly bound by the IPRA, in 2006, CNMEC engaged with and secured the free and prior informed consent of the Palaw'an Indigenous Peoples/Indigenous Cultural Communities (IPs/ICCs). The process resulted in the execution of a Memorandum

of Agreement (MOA) signed on 18 December 2008. Building on this precedent, Ipilan and the Palaw'an IPs/ICCs solidified their commitment through a second MOA on 1 September 2022. These agreements were meticulously administered by the NCIP, ensuring the free and prior informed consent of the indigenous peoples (IPs) to the company's existing operations and its future MPSA renewal in 2025.

II. Ipilan intends to exhaust all available legal remedies

While the CDO mentions that the Provincial Office of the NCIP may secure the help of the Mines and Geosciences Bureau, among others, to enforce the same, please be informed that Ipilan intends to assail the issuance of the CDO by way of a Motion for Reconsideration (MR) to the Regional Hearing Office under Section 33, or a Memorandum of Appeal to the Regional Hearing Office under Section 37 of NCIP Administrative Order No. 1, Series of 2018 (NCIP Rules of Procedure). Ipilan commits to furnish MGB and other relevant offices of its filed Motion or Appeal.

III. The NCIP has no jurisdiction to issue a CDO to a non-IP member

In its MR/Appeal, Ipilan will raise, among others, that NCIP does not have jurisdiction to issue a Cease and Desist Order against a private company that does not belong to the ICC/IP, to halt its legitimate mining operations pursuant to the landmark decisions of the Supreme Court in *Unduran v. Aberasturi*¹ and *Santos v. Gabaen*,² where it was clarified that Section 66 of the IPRA should not be read to grant the NCIP blanket authority to address all disputes related to ICC/IP rights. The Court explained that the NCIP's jurisdiction under the IPRA should be limited to cases between parties from the same Indigenous Peoples (IPs) group and should not extend to cases when one of the parties does not belong to any IP group, as in the case of Ipilan. Thus, the Court emphasized that disputes arising between IPs and non-IPs fall within the jurisdiction of proper courts of justice, and are outside of the limited jurisdiction granted to NCIP.

IV. The CDO is not yet final and executory

Ipilan also respectfully submits that, the timely filing of the MR/Appeal will stay the execution of the CDO and prevent the same from attaining finality.

¹ G.R. No. 181284, October 20, 2015; G.R. No. 181284, April 18, 2017.

² G.R. No. 195638, March 22, 2022.

First, pursuant to Chapter IX, Section 68 of Republic Act No. 8371, it is only “upon expiration of the period provided, and no appeal is perfected” that a writ of execution may be issued, requiring the sheriff or officer “to execute final decisions, orders, or awards of the Regional Hearing Officer of the NCIP.”

The NCIP Rules of Procedure, too, is clear, and provides in Rule VIII, Sections 34 and 35 that: (1) a judgment rendered by the RHO becomes final and executory “upon lapse of fifteen (15) days from receipt of all parties and/or their counsel/s of the decision, award, or order denying the motion for reconsideration, and there is no appeal;” and (2) “only judgments, decisions, or final orders that finally dispose of the case shall be the subject of execution as a matter of right.”

Stated otherwise, before an order, such as the subject CDO, becomes executory, the party concerned should be given the opportunity to file a motion for reconsideration, as well as an appeal.

Similarly, Rule IX, Section 4 of Administrative Order No. 1, Series of 1998 categorically provides:

Section 4. Execution of Decisions, Awards, and Orders. Upon expiration of the period herein provided and no appeal is perfected by any of the contending parties, the Hearing Officer of the NCIP, on its own initiative, or upon motion by the prevailing party, shall issue a writ of execution requiring the sheriff or the proper officer to execute final decisions, orders or awards of the Regional Officer of the NCIP.

Book VII, Chapter 3, Section 15 of the Administrative Code also states that the decision of agencies shall only “become final and executory fifteen days after the receipt of the copy thereof by the party adversely affected unless within that period an administrative appeal or judicial review if proper, has been perfected.”

Chapter 4, Section 20 of Book VII complements this rule by providing that administrative appeals may be perfected within 15 days from receipt of the decision complained of or within 15 days from the denial of a timely filed Motion for Reconsideration. Corollary, the filing of an “appeal shall stay the decision appealed from unless otherwise provided by law, or the appellate agency directs execution pending appeal, as it may deem just, considering the nature and circumstances of the case.”³

³ Book VII, Chapter 4, Section 21 of the Administrative Code of the Philippines.

As can be gathered from the provisions above, the party concerned, Ipilan, should be given the opportunity to file its motion for reconsideration and its appeal, as well, before the CDO can be executed. As stated above, Ipilan intends to pursue and exhaust all available remedies under the law and rules, and, in the meantime, respectfully requests from your good office that Ipilan be given full opportunity to do so, without any threat of hasty, premature and unlawful execution of the CDO.

Very truly yours,

**SIGUION-REYNA MONTECILLO &
ONGSIAKO**

By:


CARLA E. SANTAMARIA-SEÑA


CHRISTOPHER P. CAPUL


JONN IRVIN M. VELASQUEZ


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Copy furnished:

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Atty. Jansen I. Jontila
Provincial Director
National Commission on Indigenous Peoples - Palawan
Sta. Monica, Puerto Princesa,
Palawan

Hon. Cesareo Benedito, Jr.
Municipal Mayor
Municipality of Brooke's Point, Palawan



Republic of the Philippines
Office of the President
NATIONAL COMMISSION ON INDIGENOUS PEOPLES
MIMAROPA Regional Office
3rd Floor, Argo Building, Eden corner P. Tuzon, Cebu, Quezon City
Email Address: regional@ncip.gov.ph

NCIP - PALAWAN
RECEIVED
DATE 08-11-23
BY *R*

In the matter of:

THE RESOLUTION OF PALA'WAN ICCs/IPs
OF BROOKE'S POINT, PALAWAN FOR THE
ISSUANCE OF A CEASE-AND-DESIST
ORDER (CDO) AGAINST THE
CONTINUING OPERATION OF MPSA NO.
017-93-IVB AMENDED 2000 OF
CELESTIAL NICKEL MINING
EXPLORATION CORPORATION FOR
LACK OF THE REQUIRED FREE AND
PRIOR INFORMED CONSENT AND
CERTIFICATION PRECONDITION (CP)

PALA'WAN ICCs/IPs OF BROOKE'S POINT,
PALAWAN

REQUESTING PARTY

CEASE AND DESIST ORDER

WHEREAS, Celestial Nickel Mining Exploration Corporation (CNMEC) through its operator Ipilan Nickel Corporation (INC) has a nickel ore mine operating in the ancestral domain of the Pala'wan ICCs/IPs of Brgys. Barong-barong, Ipilan, Calasaguen, Aribungos, Mambalot, and Maasin (BICAMM AD). The mining operation is covered by Mineral Production Sharing Agreement No. 017-93-IVB Amended 2000 signed between CNMEC and the government in 1993 and amended in 2000.

WHEREAS, in March 31, 2006, former ADO Director Myrna Caoagas issued a memorandum addressed to CNMEC clarifying that CNMEC's MPSA is exempted from the Certification Precondition requirement, being a contract issued prior to the enactment of Republic Act 8371.

WHEREAS, in 2008, CNMEC applied for a Certification Precondition from the NCIP with a subsequent memorandum of agreement signed between INC and the ICCs/IPs of Brgys. Ipilan, Calasaguen, Mambalot, and Maasin on December 2008. However, the consent provided and the MOA signed was not perfected and a certification precondition was not issued by the Commission En Banc.

WHEREAS, In July 17, 2017, CNMEC/INC applied again for certification precondition for the renewal of their MPSA which is set to expire on 2018. A field-based investigation was conducted by a duly constituted FBI Team, however the application was abandoned by CNMEC/INC.

WHEREAS, in 2020, two years after the supposed MPSA expiration in 2018, the Department of Environment and Natural Resources clarified that the effectivity of the MPSA and its date of reckoning would be when it was amended in the year 2000 and would only expire in 2025.

NCIP MIMAROPA
RECEIVED
BY: *[Signature]*

IPILAN NICKEL CORPORATION
RECEIVED
BY: *[Signature]*
DATE 8-16-23

NCIP PALAWAN PO
CERTIFIED TRUE COPY
DATE 08-14-2023
BY: *[Signature]*

WHEREAS, on May 24, 2022, ADO Director Atty Caesar Ortiga clarified through Memorandum Order No. RMD-ADO-204-2022-6 that the Caoagas memorandum is no longer effective and that INC/CNMEC's MPSA is no longer exempted from the Certification Precondition requirement when its date of effectivity was changed to 2000 which is already within the effectivity period of IPRA.

WHEREAS, the FPIC activities of CNMEC/INC commenced in June 2022 for the renewal of the MPSA in 2025, with a memorandum between INC and the authorized representatives of the BICAMM AD signed in August 2022.

WHEREAS, Iplan Nickel Corporation, as the designated operator of CNMEC, commenced commercial operations in September 2022.

WHEREAS, on July 10, 2023, the NCIP received a resolution of the elders/leaders representing the ICCs/IPs revoking the MOA due to alleged irregularities, particularly, the extension of the provision of consent for both the ongoing operations and its renewal and a lack of provision for royalty payments for its ongoing operations, thus being highly disadvantageous to the ICCs/IPs of BICAMM AD. INC was also furnished a copy of a letter requesting for a renegotiation of the September 2022 MOA and its amendment to reflect the royalty payments originally inscribed in the 2008 MOA between the ICCs/IPs and CNMEC.

WHEREAS, INC responded to the IPs stating that they will not renegotiate nor amend the September 2022 MOA because they are supposedly exempted from royalty payments for their ongoing operations and that the MOA signed shall be respected as binding and executory for the two parties.

WHEREAS, on May 15, 2023, the NCIP received a resolution of the elders/leaders representing the ICCs/IPs requesting that a cease-and-desist order be issued against CNMEC/INC for operating without a CP and the FPIC process be terminated for INC's bribery of IP members and leaders to continue support for their operations.

WHEREAS, as part of the process, the complaints of the ICCs/IPs was validated by a validation team on June 10, 2023. The result of the validation activities clearly shows the true sentiments of the ICCs/IPs against the operation of CNMEC/INC within their ancestral domain and their dissent to the earlier MOAs that were executed.

WHEREAS, on June 15, 2023 the NCIP received a resolution of non-consent from the Pala'wan ICCs/IPs, citing as grounds the lack of respect of INC to the ICCs/IPs, material misrepresentation during the FPIC process, and bribery of IP leaders and members. Also included in the resolution was an iteration for the issuance of a cease-and-desist order.

WHEREAS, convinced of the decision of the ICCs/IPs and the urgency of their request, the NCIP Regional Office sent a letter dated July 11, 2023 to the Commission En Banc forwarding the request of the Pala'wan ICCs/IPs for the issuance of a cease-and-desist order against CNMEC/INC and levy the appropriate sanctions for the bribery complaints pursuant to Section 85 of the FPIC guidelines.

WHEREAS, on July 26, 2023 the Commission En Banc deliberated the request of the ICCs/IPs and instructed the Regional Office to issue CNMEC/INC an order to show cause for their operations within the ancestral domain without a certification precondition with a five-day non-extendable deadline.

WHEREAS, baring no new response from the CNMEC/INC aside from their reiteration of their supposed exemption under the 2008 Caoagas memorandum, the Regional Office re-endorsed its report to the Commission En Banc for the issuance of a cease-and-desist order.

NCIP PALAWAN PO
CERTIFIED TRUE COPY

FE- 08-14-2023

[Signature]

WHEREAS, on its August 8, 2023 Special En Banc, the resolution of the ICCs/IPs requesting for the issuance of CDO and the response of CNMEC/INC to the show cause order were forwarded to the Commission En Banc for information with NCIP MIMAROPA Regional Director clarifying that INC/CNMEC is not exempted from the free and prior informed consent, royalty payment, and certification precondition requirements, because the MPSA's date of effectivity in 2000 is already within the ambit of both Republic Act No. 7942 or the Philippine Mining Act and Republic Act No. 8371 or the Indigenous Peoples Right Act.

WHEREFORE, pursuant to Section 50 of Republic Act No. 8371, and by virtue of the authority granted by the Commission En Banc Resolution No. 08-017-2021, CELESTIAL NICKEL MINING EXPLORATION CORPORATION AND IPILAN NICKEL MINING CORPORATION, its respective officers, directors, agents, representatives, and any and all persons, conduit entities and subsidiaries claiming and acting under their authority are hereby ordered to immediately CEASE AND DESIST from further operating its nickel ore mining operations. The company is given five (5) days to wind up operation and install safety protocols as not to endanger the community. It is expected that the company completely cease operation at five (5) days after receipt hereof.

This Cease-and-Desist Order shall remain in force and effect and shall only be lifted upon submission of proof by CNMEC/INC that it secured the CP and FPIC of the host ICCs/IPs of Brooke's Point, Palawan as required by RA 8371.

The NCIP Provincial Office of Palawan Province is hereby directed to serve this CDO to CNMEC/INC to its office address at Brgy. Maasin, Brooke's Point, Palawan.

The Provincial Office may secure the help of the ICCs/IPs, their respective Local Government Units, Department of Environment and Natural Resources, Mines and Geosciences Bureau, and other Law Enforcement Agencies and Government Instrumentalities in the enforcement of the CDO.

SO ORDERED

NCIP PALAWAN PO
CERTIFIED TRUE COPY

DATE: 08-14-2023

BY: *[Signature]*

By Authority of the Commission En Banc:

[Signature]
DR. MARIE GRACE T. PASCUA, CESO III
Regional Director