



Ipilan Nickel Corporation

August 18, 2023

Atty. Danilo U. Uykieng
Director
Mines and Geosciences Bureau
Visayas Ave., Diliman,
Quezon City

Dear Atty. Uykieng:

Filing of Ipilan's and CNMEC's Motion for Reconsideration of CDO issued by the NCIP

Following our counsel's letter of August 17, 2023, we confirm having filed today the attached Motion for Reconsideration of Ipilan Nickel Corporation and Celestial Nickel Mining Exploration Corporation¹ to challenge the Cease and Desist Order ("CDO") issued by National Commission on Indigenous Peoples (NCIP) MIMAROPA.

Pursuant to Chapter IX, Section 68 of R.A. No. 8371, Rule VIII, Sections 34 and 35 of the 2018 NCIP Rules of Procedure, Rule IX, Section 4 of NCIP Administrative Order No. 1, Series of 1998, Book VII, Chapter 4, Section 15 and Book VII, Chapter 4, Section 20 of the Administrative Code of the Philippines, the timely filing of a motion for reconsideration stays the execution of the CDO and prevents it from attaining finality.

Thank you very much.


Dante R. Bravo
President

Copy furnished:

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Visayas Ave., Diliman,
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¹ Annex "A".

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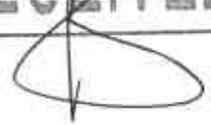
Municipal Mayor
Brooke's Point, Palawan,
Brooke's Point, Philippines, 5305

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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

NCIP MIMAROPA
RECEIVED
AUG 18 2023
BY: 

RELEASED
BY: R. OCHER
DATE: 8/18/2023
MAIL: E. MACATLANG
MSG

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

- versus -

CELESTIAL NICKEL MINING
EXPLORATION CORPORATION,
and IPILAN NICKEL
CORPORATION,
Responding Parties.

X-----X

MOTION FOR RECONSIDERATION¹
(EX ABUNDANTI AD CAUTELAM)

Responding Parties CELESTIAL NICKEL MINING EXPLORATION CORPORATION (CNMEC) and IPILAN NICKEL CORPORATION ("Ipilan"), by counsel, respectfully moves for the reconsideration of the August 11, 2023 Cease and Desist Order (CDO) issued by National Commission on Indigenous Peoples MIMAROPA Regional Office (NCIP MIMAROPA) ("Assailed Order"),² on the following □

· GROUND S

I.

NCIP MIMAROPA HAS NO JURISDICTION TO ISSUE A CDO AGAINST CNMEC AND IPILAN, NON-MEMBERS OF ANY INDIGENOUS CULTURAL COMMUNITIES/INDIGENOUS PEOPLES, AND A MINING COMPANY UNDER THE PRIMARY REGULATION OF THE MINES & GEOSCIENCES BUREAU, FROM ITS MINERAL OPERATIONS, MUCH LESS STOP IT FROM CONDUCTING MINING OPERATIONS AUTHORIZED UNDER A GOVERNMENT-MANDATED MINERAL PRODUCTION SHARING AGREEMENT.

II.

NCIP MIMAROPA IS ESTOPPED FROM REVERSING THE LETTER OF EXEMPTION ISSUED BY FORMER ADO DIRECTOR MYRNA CAOAGAS ON MARCH 31, 2006.

III.

THE 2022 FREE AND PRIOR INFORMED CONSENT PROCESSES WERE FACILITATED BY NCIP MIMAROPA AND CONDUCTED

¹ This Motion for Reconsideration is filed pursuant to Rule IX, Section 45 of NCIP Administrative Order No. 1, Series of 2003, and Rule VIII, Section 33 of NCIP Administrative Order No. 1, Series of 2018.

² Annex "A".

PURSUANT TO NCIP ADMINISTRATIVE ORDER
NO. 3, SERIES OF 2012.

IV.

ASSUMING THAT NCIP MIMAROPA HAS JURISDICTION OVER CNMEC AND IPILAN, THE CDO IS VOID FOR NON-COMPLIANCE WITH RULE VII OF NCIP 2003 RULES ON PLEADINGS, PRACTICE, AND PROCEDURE, AND RULE VII OF NCIP 2018 RULES OF PROCEDURE.

V.

NCIP MIMAROPA CANNOT ORDER IPILAN TO IMMEDIATELY CEASE OPERATIONS WITHIN FIVE (5) DAYS FROM RECEIPT OF THE CDO FOR LACK OF BASIS.

VI.

TO IMPLEMENT AND EXECUTE THE CDO WILL, IN FACT, BE CONTUMACIOUS, AS IT IS A CLEAR "UNLAWFUL INTERFERENCE WITH THE PROCESSES OR PROCEEDINGS OF A COURT."

ARGUMENTS AND DISCUSSION

NCIP MIMAROPA has no jurisdiction to issue a CDO against Ipilan, a non-member of any Indigenous Cultural Communities/ Indigenous Peoples (ICCs/IPs), and a mining company under the primary regulation of the Mines & Geosciences Bureau, from its mineral operations, much less stop it from conducting mining operations authorized under a government-mandated Mineral Production Sharing Agreement (MPSA).

1. NCIP MIMAROPA does not have the power to regulate the mining industry and issue an order for the stoppage of a legitimate

operation between a mining company and the Republic of the Philippines. There is nothing in the Indigenous Peoples' Rights Act of 1997 (IPRA), the NCIP Administrative Order No. 01-98, or The Rules and Regulations Implementing the IPRA (IPRA IRR), and the 2018 NCIP Rules of Procedure that provides basis for the NCIP to issue a CDO against non-ICCs/IPs.

2. NCIP MIMAROPA anchored its authority to issue the CDO against CNMEC and Ipilan from the NCIP Commission En Banc (CEB) Resolution No. 08-017-2021 dated May 19, 2021, as follows:

WHEREAS, the Commission En Banc, may motu proprio or upon the instance of ICCs/IPs, shall have the right to stop and suspend the implementation of any development, program, project, policy or plan, that failed to satisfy the FPIC Process or failed to obtained [sic] a Certificate Precondition as required under section [sic] 59 of IPRA:

xxx

NOW, THEREFORE, on motion duly seconded, be it resolved, as it is hereby Done, to authorize and/or confirm the authority of its Regional Directors to issue cease and desist orders to any private individual, entity or corporation, above premises duly considered.

3. NCIP MIMAROPA erroneously asserts its jurisdiction to issue the CDO as deriving from Section 59 of the IPRA, which states -

Section 59. Certification Precondition. - All departments and other governmental agencies shall henceforth be strictly enjoined from issuing, renewing, or granting any concession, license or lease, or entering into any production-sharing agreement, without prior certification from the NCIP that the area affected does not overlap with any ancestral domain. Such certification shall only be issued after a field-based investigation is conducted by the Ancestral Domains Office of the area concerned: *Provided*, That no certification shall

be issued by the NCIP without the free and prior informed and written consent of ICCs/IPs concerned: *Provided, further,* That no department, government agency or government-owned or -controlled corporation may issue new concession, license, lease, or production sharing agreement while there is a pending application for a CADT: *Provided, finally,* That the ICCs/IPs shall have the right to stop or suspend, in accordance with this Act, any project that has not satisfied the requirement of this consultation process.

4. Section 59 of IPRA provides that the affected community has the right to stop or suspend the project. "This can be done by filing an action with the regular courts, invoking Section 59, and relating it with Sections 10 (Unlawful or unauthorized intrusion) or 72 (Penalties for violation) of the IPRA.³ Notably, under Section 59 of IPRA, the right to stop or suspend any project that has not satisfied the requirement of the consultation process embodied is given to the ICCs/IPs. The provision does not give the NCIP the power to stop any project for failure to comply with the right of the ICCs/IPs to Free and Prior Informed Consent. This means that the right granted to the ICCs/IPs to stop any project for violation of their right to Free and Prior Informed Consent will have to be enforced before the regular courts.

5. Verily, if the alleged unlawful or unauthorized intrusion involves a party other than a member of the ICCs/IPs, the NCIP does not have jurisdiction over the complaint, let alone issue a CDO. Section 66 of the IPRA provides that the NCIP, through its regional offices, shall have jurisdiction only over all claims and disputes involving the rights of the parties who are both ICCs/IPs:

Section 66. Jurisdiction of the NCIP. - The NCIP, through its regional offices, shall have jurisdiction over all claims and disputes involving the rights of ICCs/IPs: *Provided, however,* That no such dispute shall be brought to the NCIP unless the parties have exhausted all remedies provided under their customary laws. For this purpose, a

³ M. Pimentel, *The Indigenous People's Rights Act - Commentaries and Guide in Practice* (2021).

certification shall be issued by the Council of Elders/Leaders who participated in the attempt to settle the dispute that the same has not been resolved, which certification shall be a condition precedent to the filing of a petition with the NCIP.

6. In the 2015 case of *Unduran v. Aberasturi*,⁴ the Supreme Court clarified that the NCIP's jurisdiction under Section 66 of IPRA is limited to cases where both parties are ICCs/IPs, thus:

Therefore, pursuant to Section 66 of the IPRA, the NCIP shall have jurisdiction over claims and disputes involving rights of ICCs/IPs only when they arise between or among parties belonging to the same ICC/IP. When such claims and disputes arise between or among parties who do not belong to the same ICC/IP, i.e., parties belonging to different ICC/IPs or where one of the parties is a non-ICC/IP, the case shall fall under the jurisdiction of the proper Courts of Justice, instead of the NCIP. (Underscoring supplied.)

7. The Supreme Court also ruled that the following sections of the IPRA IRR and the 2003 NCIP Rules of Procedure are null and void insofar as they expand the jurisdiction of the NCIP under Section 66 of the IPRA to include such disputes where the parties do not belong to the same ICCs/IPs:⁵

IPRA IRR

Rule IX

Jurisdiction and Procedures for Enforcement of Rights

Section 1. *Primacy of Customary Law.* - All conflicts related to ancestral domains and lands, involving ICCs/IPs, such as but not limited to conflicting claims and boundary disputes, shall be resolved by the concerned parties through the application of

⁴ G.R. No. 181284, October 20, 2015.

⁵ *Supra.*

customary laws in the area where the disputed ancestral domain or land is located.

All conflicts related to the ancestral domains or lands where one of the parties is a non-ICCs/IPs or where the dispute could not be resolved through customary law shall be heard and adjudicated in accordance with the Rules on Pleadings, Practice and Procedures before the NCIP to be adopted hereafter.

All decisions of the NCIP may be brought on Appeal by Petition for Review to the Court of Appeals within fifteen (15) days from receipt of the Order or Decision.

2003 NCIP Rules of Procedure

Rule III Jurisdiction

Sec. 5. *Jurisdiction of the NCIP.* – The NCIP through its Regional Hearing Offices shall exercise jurisdiction over all claims and disputes involving rights of ICCs/IPs and all cases pertaining to the implementation, enforcement, and interpretation of R.A. 8371, including but not limited to the following:

(1) Original and Exclusive Jurisdiction of the Regional Hearing Officer (RHO):

- a. Cases involving disputes, controversies over ancestral lands/domains of ICCs/IPs;
- b. Cases involving violations of the requirement of free and prior and informed consent of ICC/IPs;
- c. Actions for enforcement of decisions of ICCs/IPs involving violations of customary laws or desecration of ceremonial sites, sacred places, or rituals;
- d. Actions for redemption/reconveyance under Section 8 (b) of R.A. 8371; and
- e. Such other cases analogous to the foregoing.

(2) Original jurisdiction of the Regional Hearing Officer:

- a. Cases affecting property rights, claims of ownership, hereditary succession, and settlement of land disputes, between and among ICCs/IPs that have not been settled under customary laws; and
- b. Actions for damages arising out of any violation of Republic Act No. 8371;

(3) Exclusive and Original Jurisdiction of the Commission:

- a. Petition for cancellation of Certificate of Ancestral Domain Titles/Certificate of Ancestral Land Titles (CADTs/CALTs) alleged to have been fraudulently acquired by, and issued to, any person or community as provided for under Section 54 of R.A. 8371. Provided that such action is filed within one (1) year from the date of registration.

8. In the 2017 case of *Unduran v. Aberasturi*,⁶ the Supreme Court reiterated that the jurisdiction of the NCIP under Section 66 is limited only when the parties are both ICCs/IPs, thus:

After a circumspect review of the relevant laws and jurisprudence, the Court maintains that the jurisdiction of the NCIP under Section 66 of the IPRA is limited to claims and disputes involving the rights of IPs/ICCs where both parties belong to the same ICC/IP group, but if such claims and disputes arise between or among parties who do not belong to the same ICC/IP group, the proper regular courts shall have jurisdiction.

9. In the 2015 case of *Unduran v. Aberasturi*,⁷ Justice Arturo Brion's separate concurring opinion dissected Section 66 and opined

⁶ G.R. No. 181284, April 18, 2017.

⁷ J. Brion, Separate Opinion, *Unduran v. Aberasturi*, G.R. No. 181284, October 20, 2015.

that NCIP does not have jurisdiction over disputes involving non-ICCs/IPs since they have no customary laws to follow, we quote:

Section 66 is composed of three parts: the first states the NCIP's jurisdiction; the second requires the prior exhaustion of remedies under customary law; and third states that a certification from the council of elders/leaders is a condition precedent to the filing of a petition with the NCIP.

The first part lays down the NCIP's jurisdiction, *i.e.*, over all claims and disputes involving the rights of ICCs/IPs. The NCIP's jurisdiction is not dependent on who the parties are, but on whether the dispute involves the rights of ICCs/IPs.

However, the second part contains the *proviso* "Provided, However, That no such dispute shall be brought to the NCIP unless the parties have exhausted all remedies provided under their customary laws." The third part begins with the phrase "for this purpose": the "purpose" referred to being the exhaustion of remedies under their customary laws.

Jurisprudence tells us that the office of a *proviso* is to limit the application of the law.

Taking these considerations into account, while the NCIP's jurisdiction is initially couched in general terms to include any and all disputes involving the rights of ICCs/IPs, the second and third parts limit the NCIP's jurisdiction to disputes where both parties have remedies to exhaust under customary laws.

Consequently, the NCIP does not have jurisdiction over disputes involving non-ICCs/IPs because non-ICCs/IPs have no customary laws to exhaust.

10. Consequently, the NCIP issued the 2018 Rules of Procedure to conform to the 2015 and 2017 *Unduran* rulings, removing the

exclusive jurisdiction of the NCIP on claims and disputes involving rights of ICCs/IPs:

Rule III

Power and Authority to Hear and Resolve Cases (Jurisdiction)

Section 4. *Original Jurisdiction of the RHO.* - The NCIP, through its RHOs, shall have the jurisdiction over the following cases arising between and among parties belonging to the same ICCs/IPs group:

a. All claims and disputes involving rights of ICCs/IPs: Provided, however that no such dispute shall be brought to the NCIP unless the parties have exhausted all remedies provided under the customary laws. For this purpose, a certification shall be issued by the Council of Elders/Leaders who participated in the attempt to settle the dispute that the same has not been resolved, which certification shall be a condition precedent to the filing of a petition with the NCIP;

b. Violation of any provisions of RA 8371, such as, but not limited to, unauthorized and/or unlawful intrusion upon any ancestral lands or domains as stated in Sec. 10, Chapter III, or shall commit any of the prohibited acts mentioned in Sections 21 and 24, Chapter V, Section 33, Chapter VI, thereof, which are punishable under customary laws of the ICCs/IPs concerned: Provided, that the imposable penalty shall not be cruel, degrading or inhuman; nor the same amounts to excessive fines or imposition of the death penalty. However, in the event that the aggrieved party choose to avail the remedies provided under other existing laws, the regular process in the filing of cases as provided therein shall be observed.

Section 5. *Original Jurisdiction of the CEB.* - The CEB shall exercise original jurisdiction over cases involving cancellation of CADTs/CALTs alleged to have been fraudulently acquired and issued,

provided that such case for cancellation is filed within one (1) year from the date of registration with the Register of Deeds.

11. In the recent 2022 case of *Santos v. Gabaen*,⁸ the Supreme Court *En Banc*'s Decision is illuminating. It "clarified that the NCIP does not automatically have jurisdiction over all disputes involving ICCs/IPs." Citing *Unduran v. Aberasturi*, the High Court "declared that Section 66 of R.A. No. 8371 does not confer on the NCIP exclusive and original jurisdiction over all claims and disputes involving rights of ICCs/IPs." It "emphasized that the proper construction of the provision, particularly its qualifying *proviso*, is that the NCIP's jurisdiction over such claims and disputes occur 'only when they arise between or among the parties belonging to the same ICC/IP.'"

12. The recourse of the Pala'wan ICCs/IPs for the stoppage of CNMEC and Ipilan's mining operations should not be with the NCIP as the latter is bereft of any authority to take cognizance of their complaint.

13. As such, NCIP MIMAROPA's issuance of the CDO is an *ultra vires* act as it was issued outside of its authority. Also, the NCIP CEB Resolution No. 08-017-2021 dated May 19, 2021 has arrogated upon itself the right granted by Section 59 to the ICCs/IPs and worse, even widened its scope, to include the *motu proprio* power to order the stoppage of a project. By exceeding the scope of the provisions of the law it is supposed to implement, the En Banc Resolution is necessarily void *ab initio* and must be struck down as such.

14. Action of an administrative agency may be disturbed or set aside by the judicial department if there is an error of law, a grave abuse of power or lack of jurisdiction or grave abuse of discretion clearly conflicting with either the letter or the spirit of a legislative enactment. It may be stressed that the function of promulgating rules and regulations may be legitimately exercised only for the purpose of carrying out the provisions of the law into effect. Thus, administrative regulations cannot extend the law or amend a legislative enactment, for settled is the rule that administrative regulations must be in harmony with the provisions of the law.⁹

⁸ G.R. No. 195638, March 22, 2022.

⁹ *Land Bank of the Phils. v. Court of Appeals*, G.R. Nos. 118712 & 118745, October 6, 1995.

15. Hence, the CDO is null and void, and CNMEC and Ipilan's mining operations cannot be stopped by NCIP.

NCIP MIMAROPA is estopped from reversing the letter of exemption issued by former ADO Director Myrna Caoagas on March 31, 2006.

16. CNMEC and Ipilan maintains the position that its MPSA, issued in 1993, pre-dated the IPRA and is protected by vested rights. The IPRA explicitly states that "Property rights within the ancestral domains already existing and/or vested upon effectivity of this Act, shall be recognized and respected."¹⁰ The vested and prior rights granted to existing property rights holder was also emphasized in the IRR of IPRA which mandates that "[e]xisting contracts, licenses, concessions, leases, and permits for the exploitation of natural resources within the ancestral domain may continue to be in force and effect until they expire."¹¹

17. While the MPSA was amended in 2000, the same remained effective and did not expire. The amendment does not involve a new production-sharing agreement nor a renewal of the MPSA that would have triggered the application of Section 59¹² of the IPRA.

¹⁰ Chapter VIII, Section 56, R.A. 7381.

¹¹ Rule VIII, Part 2, Section 6 of the Implementing Rules and Regulations of the IPRA.

¹² Section 59. Certification Precondition. — All departments and other governmental agencies shall henceforth be strictly enjoined from issuing, renewing, or granting any concession, license or lease, or entering into any production-sharing agreement, without prior certification from the NCIP that the area affected does not overlap with any ancestral domain. Such certification shall only be issued after a field-based investigation is conducted by the Ancestral Domains Office of the area concerned: Provided, That no certification shall be issued by the NCIP without the free and prior informed and written consent of ICCs/IPs concerned: Provided, further, That no department, government agency or government-owned or -controlled corporation may issue new concession, license, lease, or production sharing agreement while there is a pending application for a CADT: Provided, finally, That the ICCs/IPs shall have the right to stop or suspend, in accordance with this Act, any project that has not satisfied the requirement of this consultation process.

18. Consistent with the Civil Code provision proscribing the retroactive application of laws,¹³ the enactment of IPRA four years after the issuance of the MPSA in 1993 cannot be used as a basis to impair the vested rights of CNMEC and Ipilan.

19. As discussed by the Supreme Court in *Republic of the Philippines v. Court of Appeals and Zenaida C. Bobiles*,¹⁴ vested rights express —

... the concept of present fixed interest which in right reason and natural justice should be protected against arbitrary State action, or an innately just and imperative right which enlightened free society, sensitive to inherent and irrefragable individual rights, cannot deny. Vested rights include not only legal or equitable title to the enforcement of a demand but also an exemption from new obligations created after the right has vested.

20. Notwithstanding its statutory exemption, in 2006, CNMEC sought clarification from NCIP and requested the issuance of a CP for its intended mining operations. In a letter-reply, dated March 31, 2006, then NCIP Ancestral Domain Office Director Myrna Caoagas declared that Ipilan is exempt from the provisions of the IPRA because “[the] MPSA was already approved by the DENR-MGB on August 5, 1993,” or four years before IPRA was enacted and implemented. She also clarified that the provisions of IPRA only apply to applications filed after its enactment in 1997. In the absence of clear evidence of partiality or malice, ADO Director Caoagas’ legal position in the discharge of her official function enjoys the presumption of validity and regularity.¹⁵

21. More to the point, the said letter-reply dated March 31, 2006 of ADO Director Caoagas has been recognized by the Office of the Provincial Prosecutor of Palawan, and formed the basis of the dismissal of a baseless and frivolous complaint for violation of R.A. No. 8371, previously filed against Ipilan and its officers in 2018. In dismissing the said complaint, the Office of the Provincial Prosecutor

¹³ Civil Code (1889), as amended, Art. 4.

¹⁴ G.R. No. 92326, January 24, 1992.

¹⁵ *Yap v. Lagtapon*, G.R. No. 196347, January 23, 2017.

gave credence to the letter-reply of ADO Director Caoagas; as can be seen from its Resolution dated 11 March 2019.¹⁶

22. From 2006 until Ipilan commenced commercial operations in 2022, there has been no formal reversal of the official pronouncement of former ADO Director Myrna Caoagas. NCIP MIMAROPA should now be estopped and barred by laches from maliciously and unilaterally reversing the 2006 pronouncement of ADO Director Caoagas for "failure or neglect, for an unreasonable and unexplained length of time, to do that which, by exercising due diligence, could or should have been done earlier"¹⁷ to the prejudice of Ipilan. Ipilan stresses that NCIP MIMAROPA cannot shield itself from the application of the doctrine of estoppel. In *Republic of the Philippines v. Court of Appeals*, the Supreme Court cautioned government agencies that while estoppel cannot be generally invoked against the State, this doctrine cannot be used as a defense to allow the government to deal dishonorably or capriciously with its citizens.¹⁸

23. Moreover, NCIP MIMAROPA's reliance on Memorandum Order No. RMD-ADO-264-2022-5, issued by ADO Director Atty. Caesar Ortega on May 24, 2022, as the basis for reversing the letter exemption of ADO Director Caoagas, is inadequate. Firstly, NCIP failed to provide CNMEC and Ipilan with a copy of the Memorandum Order issued by ADO Director Ortega nor was the said document attached to the subject CDO. Clearly, CNMEC and Ipilan were deprived of its opportunity to be apprised of and to question such reversal at a proper forum. Nevertheless, ADO Director Ortega, in a sworn affidavit dated May 25, 2023,¹⁹ impliedly acknowledged the 2006 exemption and explained that the same was issued because "the corresponding MPSA was issued by the MGB to Celestial [Nickel] Mining [Exploration] Corp[oration]/Ipilan Nickel Corp[oration] before the effectivity/ of IPRA." In the absence of any clear or express reversal from the ADO, Ipilan has sufficient reason to believe that it is not required to secure a CP for its mining operations.

24. Also, the Memorandum Order by ADO Director Ortega cannot be given weight in reversing the letter of exemption of ADO

¹⁶ Annex "B."

¹⁷ *Republic of the Philippines v. Sixto Sundiam et. al.*, G.R. No. 236381, August 27, 2020.

¹⁸ G.R. No. 116111, January 21, 1999.

¹⁹ Annex "C".

Director Caoagas. At the very most, a Memorandum Order issued by an administrative agency is a formal directive or communication that outlines specific policies, guidelines, or procedures within the agency. For instance, the President of the Republic of the Philippines can issue Memorandum Orders "on matters of administrative detail or of subordinate or temporary interest which only concern a particular officer or office of the Government."²⁰ For the Bureau of Internal Revenue, Revenue Memorandum Orders are "issuances that provide directives or instructions; prescribe guidelines; and outline processes, operations, activities, workflows, methods and procedures necessary in the implementation of stated policies, goals, objectives, plans and programs of the Bureau in all areas of operations, except auditing."²¹ In the same vein, the Memorandum Order by ADO Director Ortega, for whatever is its worth, is purely an internal matter only of the NCIP. It was not addressed to the party that is going to be adversely affected by it and was not intended to reverse the letter exemption of ADO Director Caoagas issued to Ipilan. As a matter of fact, ADO Director Ortega, in his affidavit,²² even admitted that his memorandum is only "an internal communication and is not for public consumption."

The 2022 Free and Prior Informed Consent Processes were facilitated by NCIP MIMAROPA and conducted pursuant to NCIP Administrative Order No. 3, Series of 2012.

25. Pursuant to NCIP MIMAROPA Work Order No. 05-22-13, on June 10, 2022, Ipilan attended the Pre-FPIC Conference organized by NCIP Provincial Office to discuss the FPIC Process, the role of Ipilan, as proponent, the Work and Financial Plan, and schedule of all FPIC-related activities. As early as the Pre-FPIC Conference, the FPIC team and Ipilan already settled that the 2022 FPIC process will be in preparation for the renewal of the MPSA held by CNMEC and Ipilan in 2025.

26. After the Pre-FPIC Conference, NCIP MIMAROPA approved the schedules for the conduct of the first round of

²⁰ Sec. 5, Chapter 1, Title 1, Book III, Administrative Code of 1987.

²¹ <https://www.bir.gov.ph/index.php/revenue-issuances/revenue-memorandum-orders.html>

²² *Supra.*

community assemblies for IPs residing within the six impact barangays of Ipilan.²³ In July 2022, the FPIC team facilitated various community assemblies and gave Ipilan an opportunity to exhaustively explain its mining project to the IP groups of Barangays Calasaguen, Maasin, Mambalot, Ipilan, Aribungos, and Barong-barong. The significant attendance and IPs' active participation during the community assemblies were remarkable; the IPs were also allowed to discuss and clarify their concerns regarding the mining project pursuant to the FPIC guidelines.²⁴

27. After the community consultative assemblies, the FPIC team gave the IPs ample time to intelligently arrive at a consensus of consent, and identify terms and conditions and infrastructure, social, educational, and health programs they intend to include in the agreement. Ipilan maintained transparency and exhaustively addressed the concerns of IP members throughout the process. The concerted and collaborative efforts of the parties resulted in the issuance of the Free and Prior Informed Consent and the execution of a Memorandum of Agreement between Ipilan and the IP groups on September 1, 2022. From the time the parties gave consent, both Ipilan and BICAMM bound themselves to comply with all the obligations arising from the agreement.

28. True to its commitments, Ipilan immediately took active steps to provide assistance and cater to the needs of the IP groups. From the execution of the MOA in September 2022 until July 2023, Ipilan already disbursed P6,480,864.20 to implement various educational, scholarship, livelihood, and other community-development programs for the ICCs/IPs.

29. To reiterate, from June 2022 until the signing of the MOA between Ipilan and the IP groups in September 2022, Ipilan underwent a rigorous procedure under the strict supervision of both NCIP Region and Provincial Office in anticipation of the renewal of the Company's MPSA in 2025. Throughout the entire process, including all the community assemblies, Ipilan maintained a consistent stance regarding the exemption of its current operations from obtaining a CP. Both NCIP and Ipilan were also in agreement that Ipilan is no longer required to secure a CP for its current mining

²³ Sec. 22, NCIP Administrative Order No. 3, Series of 2012, April 13, 2012.

²⁴ Section 22, NCIP Administrative Order No. 3, Series of 2012.

operations and that the 2022 FPIC process is in preparation for the renewal of the company's MPSA.

30. At any point, NCIP had the opportunity to challenge CNMEC and Ipilan's position and demand a CP for its current operation, yet neither NCIP MIMAROPA nor the Provincial Office took this action. The absence of contradictory stance from both the NCIP Region and Provincial Office and concurrent failure to timely raise their opposition to the same, during the 3-month 2022 FPIC process, connotes the issue on the exemption of CNMEC and Ipilan from securing a Certification Precondition for its current operations has already been impliedly settled.

Assuming that NCIP MIMAROPA has jurisdiction over CNMEC and Ipilan, the CDO is void for non-compliance with Rule VII of NCIP 2003 Rules on Pleadings, Practice, and Procedure, and Rule VII of NCIP 2018 Rules of Procedure.

31. To recall, in a letter received on July 4, 2023, NCIP MIMAROPA directed CNMEC and Ipilan to submit a comment, within 10 working days, to the Resolutions issued by the Pala'wan ICCs/IPs of Brgys. Barong-barong, Ipilan, Calasaguen, Aribungos, Maasin and Mambalot, Brooke's Point, Palawan (BICAMM) in relation to the Certification Precondition application for the renewal of MPSA No. 017-93-IV as Amended 2000. A close review of the IP "Resolutions", however, revealed that the letters submitted by the IP groups which mainly consist of general and self-serving allegations, and unsubstantiated claims, hardly constitute an actionable complaint that may be taken into cognizance by NCIP MIMAROPA. In support of their letter, the IP members attached copies of Resolutions showing that they were the authorized representatives who signed the 2022 MOA with Ipilan. They, however, failed to attach the corresponding Resolutions to show that they were able to get the indigenous communities' consent to file complaints against the 2022 FPIC process and withdraw the Pala'wan's consent to the signed and partially executed 2022 MOA. They appear to have proceeded from a mistaken assumption that the previous authority granted to them to sign the 2022 MOA can be expanded to include the authority to withdraw consent without undergoing proper consultations, as required under indigenous and customary laws.

32. NCIP MIMAROPA abused its authority by taking cognizance of the letters filed by select IP members, despite their apparent failure to prove their personality to file on behalf of the Pala'wan IP groups of Brooke's Point as required under Rule VI, Section 12 of the 2018 NCIP Rules of Procedure which states:

Section 12. Parties to a Case. - xxx

In cases involving community interest, the real party interest shall be the ICCs/IPs, represented by person/s authorized through a community resolution and selected following their customary practices.

33. This is especially crucial since the very people these select IP members claim to represent repudiated their supposed authority. In a Manifesto submitted to Ipilan on June 22, 2023, approximately 2,260 concerned IP members and leaders strongly condemned the blatant disregard of certain leaders toward their indigenous and customary laws.²⁵ They communicated that, contrary to customary laws, they were not adequately consulted before select IP leaders executed resolutions to withdraw the IP Groups' consent to the 2022 MOA. Wary of the potential repercussions of their leaders' unauthorized acts, the IP members reaffirmed their support for Ipilan and requested the company to continue their education, livelihood, and other programs for the indigenous community.

34. In the absence of clear proof of authority, the select IP members have no legal capacity to represent and act on behalf of the IP group of Brooke's Point as a whole. In *Philippine Numismatic and Antiquarian Society v. Genesis Aquino*,²⁶ the Court ruled that a person claiming to represent a group, corporation, or institution should be able to substantiate and prove such authority; "otherwise, the complaints will have to be dismissed." Also worth noting is the fact that the "Complaints" of the Requesting IPs were not verified in clear contravention with the NCIP Rules which require that all complaints or petitions to be lodged before NCIP MIMAROPA to be verified before officers authorized to administer oath and shall clearly state

²⁵ Annex "D".

²⁶ G.R. No. 206617, January 30, 2017.

the causes of action, the substance of the claim made, the grounds relied upon, and the relief being pursued.²⁷

35. While it can be argued that administrative bodies are not bound by the technical niceties of law, NCIP MIMAROPA should not be allowed to skirt the rules and prejudice the proprietary and vested rights of CNMEC and Ipilan over unverified and self-serving of IP members who are not properly clothed with authority to represent their indigenous communities.

The NCIP MIMAROPA cannot order CNMEC and Ipilan to immediately cease its operations within five (5) days from receipt of the CDO for lack of basis.

36. Assuming, without admitting, that NCIP MIMAROPA has jurisdiction over the complaint and has the authority to issue a CDO against CNMEC and Ipilan, it cannot whimsically direct CNMEC and Ipilan to cease its mining operations within five (5) days effective immediately from its receipt of the CDO without observance of the IPRA, NCIP Administrative Order No. 01-98 or "The Rules and Regulations Implementing the IPRA," and the 2018 NCIP Rules of Procedure. In other words, the CDO cannot yet be executed.

37. As provided under Section 68 of IPRA, NCIP MIMAROPA can only implement its CDO when its decision becomes final, and only through the issuance of a writ of execution requiring the sheriff or the proper officer to execute its final decision or judgment:

Section 68 of IPRA. Execution of Decisions, Awards, 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 Hearing Officer of the NCIP.

²⁷ Rule VII, Section 14, Administrative Order No. 1, Series of 2018.

38. A decision becomes final only upon the lapse of fifteen (15) days from CNMEC and Ipilan's receipt of (a) the decision or (b) the order denying the motion for reconsideration, and CNMEC and Ipilan did not file an appeal.²⁸ Under the IPRA, its IRR, and the 2018 NCIP Rules of Procedure, CNMEC and Ipilan have fifteen (15) days from the receipt of the CDO to file either a motion for reconsideration, an appeal to the NCIP Commission *En Banc* (CEB), or an appeal by way of petition for review to the Court of Appeals, as follows:

2018 NCIP Rules of Procedure

Rule VIII

Proceedings in the Regional Hearing Office

Section 33. *Motion for Reconsideration.* - Only one motion for reconsideration on the RHO's decision, award or order which disposes of the case shall be allowed. Said motion shall be filed within fifteen (15) days from receipt of a copy of the assailed decision, award or order. The timely filing of a Motion for Reconsideration shall interrupt the running of the period to appeal. A party is afforded a fresh period of fifteen (15) days from receipt of the resolution of the Motion for Reconsideration within which to file its appeal.

Section 37. *Appeal to the CEB.* Decisions, awards, or final orders of the RHO may be appealed to the CEB by filing a Memorandum on Appeal with the RHO within fifteen (15) days from the receipt thereof or from the denial of the motion for reconsideration, and serving a copy to the adverse party.

xxx

²⁸ Section 34 of the 2018 NCIP Rules of Procedure (ROP). Finality of Judgment. - A judgment rendered by the Regional Hearing Officer (RHO) shall become final and executory upon the lapse of fifteen (15) days from the receipt of all parties and/or their respective counsel/s of the decision, award, or order denying the motion for reconsideration, and there is no appeal. If the 15th day falls on a Saturday, a Sunday or a Holiday, the last day shall be the next working day.

NCIP Administrative Order No. 01-98
Rules and Regulations Implementing the IPRA
Rule IX

Section 3. *Appeals to the Court of Appeals.* - Decisions of the NCIP is [sic] appealable to the Court of Appeals by way of petition for review within fifteen (15) days from the receipt of a copy thereof.

39. During that 15-day reglementary period and during the pendency of this appeal until its finality and the consequent issuance of the writ of execution, NCIP MIMAROPA cannot simply direct or order CNMEC and Ipilan to cease its operations.

40. Hence, the CDO cannot yet be executed.

To implement and execute the CDO will, in fact, be contumacious, as it is a clear "unlawful interference with the processes or proceedings of a court."

41. As early as 3 August 2017, a civil case has been filed against Ipilan, docketed *Prudencio D. Danadio v. Ipilan Nickel Corporation*, Civil Case No. 5559, pending before Branch 49 of the Regional Trial Court of Brooke's Point, Palawan.

42. As can be seen from the Complaint therein,²⁹ the Plaintiffs already alleged that "INC does not have a Certification Precondition from the NCIP." Trial is ongoing in the said civil case, where the trial court is called upon to determine "whether in fact the violations in the Complaint have been committed by Ipilan," including operating allegedly without the Certificate Precondition.

43. To add, ADO Director Ortega of the NCIP is well aware of the existence of this civil case, as he even testified therein on 6 June 2023. Interestingly, when ADO Director Ortega executed his Affidavit dated 25 May 2023, and even when he testified on 6 June 2023, he never mentioned anything about the supposed "resolution of the elders/leaders representing the ICCs/IPs requesting that a cease-and-desist order be issued against CNMEC/INC for operating

²⁹ Annex "E."

without a CP," supposedly received by the NCIP on 15 May 2023, as mentioned in the CDO.

44. Interestingly, too, the trial court, in this pending case, in its Order dated 7 August 2017,³⁰ directed the plaintiffs therein to furnish the NCIP a copy of their complaint. NCIP, despite this Order, never participated in the said proceedings, save for the appearance of NCIP's Atty. Ortega as a witness. NCIP, now, seemingly tries to undermine the authority of the trial court, as it acts in such a way that pre-empts the judgment of the latter.

45. Not only is the CDO unlawful, as it was issued without jurisdiction, it also constitutes contumacious conduct, as it interferes with the proceedings before the said court, which is poised to decide whether indeed Ipilan committed the violation of "operating without a CP." To prematurely and hastily execute the CDO, which is unlawful to begin with, is contemptuous conduct is punishable under Rule 71 of the Rules of Court.

PRAYER

WHEREFORE, Ipilan Nickel Corporation respectfully prays that NCIP MIMAROPA Regional Office:

- [a] RECONSIDER and LIFT the Cease and Desist Order dated August 11, 2023 issued by NCIP MIMAROPA; and
- [b] DISMISS the Resolutions of Brooke's Point IP groups for failure to comply with the requirements of existing NCIP Rules and Guidelines.

Other just and equitable reliefs are likewise prayed for.

Makati City and Parañaque City for Quezon City, August 14, 2023.

³⁰ Annex "F."

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IBP No. 181336; 4 January 2023; Quezon City

Roll No. 41096, 15 April 1996

MCLE Exemption No. VII-Acad003026; 10.05.21



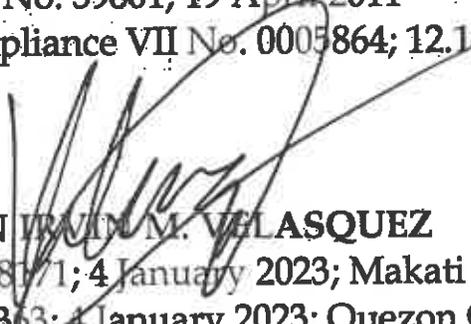
CHRISTOPHER P. CAPUL

PTR No. 9568155; 4 January 2023; Makati City

IBP No. 181351; 4 January 2023; Manila I

Roll No. 59801; 19 April 2011

MCLE Compliance VII No. 0005864; 12.14.21



JONN IRWIN M. VELASQUEZ

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IBP No. 181363; 4 January 2023; Quezon City

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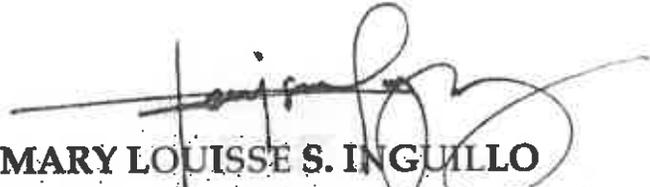
IBP Lifetime Member No. 019114; March 15, 2018,

Masbate

Roll No. 41064, 12 April 1996

MCLE Compliance No. VI - 0025386, April 19, 2019

And by:



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Roll No. 83991, June 15, 2022
Exempt for current MCLE compliance period
Tel No.: (02) 85197888

COPY FURNISHED:

JULHADI C. TITTE

President

Indigenous Peoples Development Office - BICAMM Inc.
Brooke's Point, Palawan.

RE # 786 345 623 22

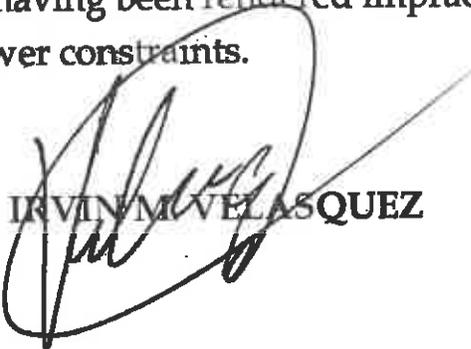
Makati City Hall P.O.

8/18/2023

EXPLANATION FOR SERVICE BY REGISTERED MAIL

The foregoing *Motion* was served by registered mail and licensed courier, personal service having been rendered impracticable due to time, distance, and manpower constraints.

JONN IRVIN M. VELASQUEZ



REPUBLIC OF THE PHILIPPINES)
PARANAQUE CITY) S.S

VERIFICATION

I, DANTE R. BRAVO, of legal age, Filipino, and with address at Penthouse, Platinum Tower, Asean Ave. Cor. Fuentes St., Aseana City, Tambon, Paranaque City, under oath, state:

1. I am the President and authorized representative of IPILAN NICKEL CORPORATION ("Ipilan") and CELESTIAL NICKEL MINING EXPLORATION CORPORATION ("CNMEC") with full power and authority to cause the preparation and filing of this Motion for Reconsideration.

2. I caused the preparation and filing of this Motion for Reconsideration and I certify that

- a. I have read the contents and attest that the allegations in the Motion for Reconsideration are true and correct based on my personal knowledge and/or authentic records;
- b. The Motion for Reconsideration is not filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation; and,
- c. The factual allegations in the Motion for Reconsideration have evidentiary support or, if specifically so identified, will likewise have evidentiary support after a reasonable opportunity for discovery.

August 14, 2023, Paranaque City.


DANTE R. BRAVO
Affiant

SUBSCRIBED AND SWORN to before me on August 14, 2023
2023 in Paranaque City, affiant exhibiting to me his Philsys ID
No. 3290-3826-7392-3584.

Doc. No. 192
Page No. 28
Book No. I
Series of 2023.


ATTY. ~~HERNAN P. PARRERA~~
Notary Public for Paranaque City
Notarial Commission No. 339-2023
Valid until December 31, 2024
Pinnacle, Pinnacle Tower
Asean, Asean corner Puentes St.
Laguna, Paranaque City
Roll No: 71237, 06/06/2018
IBP No. 278645, 01/09/2023, Surigao del Norte
PTR No. 3231800, 01/27/2023, Paranaque City
MCLÉ Compliance No. VII-00055986, 11/12/2021