



**Fw: Supreme Court original Petition writ of kalikasan Supreme court-petition for writ of kalikasan with continuing mandakus and non compliancw with the provisions of the Clean Water Act vs Mun boac 26 November 2023 - MAI FORMAT**

1 message

**Pedrito Nepomuceno** <pedritomnepomuceno@yahoo.com> Tue, Dec 19, 2023 at 12:26 AM  
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**Subject:** Supreme Court original Petition writ of kalikasan Supreme court-petition for writ of kalikasan with continuing mandakus and non compliancw with the provisions of the Clean Water Act vs Mun boac 26 November 2023 - MAI FORMAT

Dear May,

Please , pa format ulit.

Thanks

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REPUBLIC OF THE PHILIPPINES  
SUPREME COURT OF THE PHILIPPINES  
PADRE FAURA  
CITY OF MANILA

PEDRITO M. NEPOMUCENO

Former Mayor – Boac

Former Board Member – Marinduque

73 D. Reyes Street, San Miguel

Boac, Marinduque

Petitioner

Vs. G. R. NO. \_\_\_\_\_

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Respondents

X-----X

# **PETITION FOR WRIT OF KALIKASAN WITH CONTINUING MANDAMUS, FOR THE FULL IMPLEMENTATION OF AND STRICT COMPLIANCE WITH THE PROVISIONS OF REPUBLIC ACT NO. 9275 OTHERWISE KNOWN AS THE PHILIPPINE CLEAN WATER ACT OF 2004.**

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I

## **PREFATORY STATEMENT**

### **Good Governance**

A Democratic Government is said to be a “government by the people, of the people and for the people”. Government was created by the people themselves for their own good, for the orderly and harmonious way of life not only with one another but, likewise, with the environment they live in. The government adopt set of laws, rules and regulations for people to follow to have a civilized community. The government's role is to see to it that the laws, rules and regulations are followed to realize the goal of having a pleasant community for everyone. We, therefore, need a government that is responsive and effective, a government that always have the people's back, otherwise, people will live in chaos.

We, the people, always aspire for perfect government, however, there is no such thing as “perfect government”. Near perfect, perhaps, but, not even. Every government has its flaws and misdemeanor, It will always depend on the kind of people we chose as our leader. Perfect government is hard to achieve, but, nevertheless, we always seek redress and continue to expect for a government that takes care of our needs and provide for our protection. We are hoping for a government that is, at least, favorable to our aspiration.

Having an imperfect government, either due to malfeasance, misfeasance or nonfeasance or utter negligence by those in charge of the implementation of the law, rules and regulations, disorder occurs in the community and among people, resulting to degradation of life. When this happen, people, as their natural reaction, goes to the government for redress, hoping that they will be able to find solution to their predicament, anyway their situation is the results of flawed government functionaries. . They seek remedy for their problem. This is what the herein Petitioner is doing. We seek solution to our problem with the aim of having a balance life as guaranteed by our constitution.

All three branches of government, having their own role in good governance, and, as they may all have their own flaws and shortcomings, there is a need for people to participate in government to remind and make them aware of the people's predicament and to make them all responsive to the needs of the people. People's participation in government is part and parcel of a democratic process which aim of having Social order.

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There are laws, rules and regulations that must have been implemented/required/imposed by the Department of Environment and Natural Resources (DENR), which, in turn must have been followed and complied with by the Department of Public Works and Highways (DPWH) for the good of the people, unfortunately, this did not happen. Those laws, rules and regulations were totally ignored and disregarded and for failure to do so, it created a problem to the people of Boac. Failure to properly implement always creates an unpleasant predicament to the people which must be corrected and this is the very reason why we go to the Honorable Supreme Court for rectification of the carelessness of government officials.

This Petition is about exercise of democratic process, of seeking redress when one branch of government fails, we, the people, go to the other branch who has the oversight function and has the power to correct the mistakes inflicted to the people. All we are asking is for government officials, the DENR and DPWH and DILG and other concerned government agencies to do what they are supposed to do, implement the laws, rules and regulations and to correct whatever mistakes they have committed to the disadvantage of the people. This is all being asked in the spirit of Article II, Section 16 of the 1986 Philippine Constitution which provides that "the State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.". We deserve to live a balanced and healthy life.

## II

### THE PETITIONER

PEDRITO M. NEPOMUCENO, a concerned Filipino citizen and an advocate of good government, former Mayor of the Municipality of Boac, Marinduque and Former Board Member of the Province of Marinduque, is of legal age - senior citizen, happily married but sadly disturbed with what is happening in our government and a resident of 73 D. Reyes Street, Barangay San Miguel, Boac, Marinduque.

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## III.

### CASES / FACTS

#### CASE No. 1

#### **The Present Water Supply and Sewage System Situation in the Municipality of Boac, Province of Marinduque.**

Hereunder is a specific case and best example of the effect of non-compliance with and non-implementation of R.A. No. 9275, the present sorry state of the Water supply and Sewage System in the Municipality of Boac, Province of Marinduque. Herein Petitioner believes that if this is happening in a first class Municipality like Boac, it is of great possibility that it is, likewise, happening in many, if not all, Local Government Units (LGUs) in the entire Philippines. With this dire situation, it is easy to say that the government is remiss, in particular, the Department of Environment and Natural Resources (DENR), in the performance of its duty/obligation in providing its people with a "balanced and healthy environment as promised by our Constitution and this can also be blamed on negligent local government officials.

Hereunder is a brief narrative of the upsetting condition of the Boac Waterworks System and its Sewage System, which, the herein Petitioner, former Mayor of the Municipality of Boac, believes that it is the microcosm of a countrywide situation. That this situation in Boac, Marinduque is also true and happening throughout the Philippines, thus, this Petition. There is an urgent need to remedy the situation, not only in Boac but in the entire country. This is the reason for this Petition which is somewhat similar as in the case wherein the Supreme Court ordered the Clean Up the Manila Bay. The same Court which we believed in and has our full confidence, shall, true to its mandate, as the last bastion of hope and justice, shall be lenient and indulgent enough and give due consideration to judiciously provide remedy for the realization of a "balanced and healthy environment", and, make the negligent government officials through the Issuance of "The Writ of Kalikasan with continuing Mandamus", into a responsible and pro-active public servants:

During the American occupation, in the early years of their administration, in 1914, the Boac Waterworks System was completed. It was thru the effort of Gregorio Nieva who secured the budget of P5,000.00, from the then Tayabas Assembly, whom Marinduque is attached. The P5,000.00 is all for the construction of waterworks

system which included the “Boac Fontana”, a historical landmark commemorating the founding of the Boac Waterworks System and the Boac Sewage System.

The Boac Waterworks System efficiently supplied the entire Poblacion of Boac with potable water and together with it is the Boac Sewage System, a network of open canal that catches household waste, including rainwater which discharges on to the Boac River. The sewage system may not be in accordance with the current environmental safety standards of sewage system but the fact is that it helped in maintaining Boac a clean community, a “balanced and healthy environment”.

In those days we have an existing, functioning and efficient water supply system and an effective sewage system. Compared to the present situation, wherein water supply is intermittent and doubtful, in terms of daily water distribution and water safety, and, likewise, of proper sewage disposal. The water supply and sewage system of the past is much appreciated than of today's condition.

Boac, for decades, has also the problem of perennial flood, mainly because the carefree attitude of the leadership of Boac who failed to properly prepare plans and measures on how flood may be controlled and avoided. Flooding in Boac is due to the narrowing of the creeks and lack of drainage system and aggravated by the Boac River Reclamation project, a project which constricted the flow of water coming from all directions and on to the different creeks and to the Boac river. Flow of rainwater including household waste water are restricted which resulted to flooding in most areas of Boac. In 2013, a DPWH Diversion Box Canal worth P5 Million project, which could have helped mitigate the problem of flood in Boac, was rejected by the Municipal Mayor claiming they have their own flood control project. They have none and since then, after 20 years flood persist in Boac.

It is so sad that, even with the various Presidential Decrees and DENR's Rules and Regulations pertaining to Clean supply of water and proper waste water disposal and most importantly with “R.A. No. 9275 or THE CLEAN WATER ACT OF 2004”, we, in Boac, Marinduque, and also in other municipalities, have a miserable situation pertaining to Water Supply System and Sewage System – where household waste water goes directly to the street gutter and on to the esteros and river. This is the result of a government totally disregarding the laws of the land particularly the Clean Water Act.

A law, rules and regulations for environmental protection, no matter how nicely crafted, if unimplemented, it is nothing but a piece of

paper. It will ruin people's lives and will contribute to economic downturn.

Due to negligent leadership, the people of Boac is suffering from lack or intermittent supply of potable water, non-existent sewage system, perennial flooding, not to mention the economic losses it brings to the municipality.

This petition is about compliance and proper implementation of DENR Rules and Regulations on environmental protection and R.A. 9275 otherwise known as the Philippine Clean Water Act of 2004 and other relevant laws to realize the constitutional provisions for a healthy community.

## CASE No. 2

### The Boac River Reclamation Project, the cause of Perennial

#### Flood in Boac

#### FACTS

In 1981 a reclamation project was started at the river banks of Boac river in the Municipality of Boac, Province of Marinduque. After three (3) decades of construction the reclaimed area is now the site of the so called "Marinduque Sports and Recreational Center". This undertaking was the project of former Congresswoman with no purpose but to extend the area of Boac town proper and during the many years of reclamation works, it has brought misery to the residents of Kabilang Ilog Barangays – Tabi, Poras Tabigue, Lupac, due to uncontrolled flooding

In the past, on several occasions, due to uncontrolled flow of floodwaters and due to flawed construction, the protective dike of the reclamation project gave way to rushing floodwaters which claimed the life of a Boacano and destroying millions worth of properties.

At one point in time, after several destructions of the reclamation project due to flooding, there was a proposal from many sectors to discontinue the project as it always endanger the lives and properties, not only of the residents living along the riverbanks, especially those at the "Kabilang Ilog Barangays", but also those in the Isok, Tampus, Malusdak, Murallon, Mercado in Poblacion, who usually bear the brunt of the reclamation project. There was also an opinion from some professional engineers that a river can not be the subject of a

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reclamation project as we can not control the flow of waters in a river, unlike in a shoreline where water flows only in one direction. It was absurd and ironic that while some sectors called for the discontinuance of the reclamation project, the proponent and the DPWH expressed disgust claiming that they have poured in hundreds of millions of pesos in the project and that they can no longer abandon it. A total disregard to the safety of residents along the Boac river.

Sometime in 1992 when the newly constructed dike of the reclamation project (they found out later that the reinforcement used in the dike by the Contractor were bamboos instead of steel bars), gave way due to flood waters and with part of the original flood control dike demolished (without appropriate permission), a structure which is much stronger and reliable than the new dike and has protected the town proper of Boac for more than 50 years, for the first time in decades, the Poblacion of Boac was flooded damaging millions worth of properties.

The undersigned Petitioner, during his term as Provincial Board Member, has requested the DPWH to prepare a complete plan for the construction of a protective dike on the opposite side of the reclamation project and alongside with it is a road leading to the coastal Barangay of Tabigue which the DPWH District Office has complied. It is, however, unfortunate that the present officials of the DPWH does not have a mitigating plan for the Poblacion flood.

Likewise, the undersigned, during his term as Provincial Board Member, repeatedly called on the DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR) to require the DPWH Regional and District Offices to prepare and submit to the DENR an Environmental Impact Analysis (EIA) and Environmental Compliance Certificate (ECC) and other DENR requirements pertaining to environment a safety and protection of the Boac reclamation, but to no avail.

The DPWH, due to the erroneous reclamation project, with so much threat to people's lives and properties, can not claim that they started the project in 1981 and that it is not subject to the DENR's Environmental Impact Analysis (EIS) system and the Economic Impact Assessment (EIA) and Environmental compliance Certificate (ECC) requirements which was adopted at a later date, in early 1990s (after 1981 when the project was started); the undersigned, however, disagree for the simple reason that the original structure (dike) was totally destroyed before and the new structure was constructed when the EIA and ECC requirements is already in effect and **the fact that lives of the**

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**residents of Kabilang Ilog Barangays are always in danger during rainy season; another reason is that whether the rules pertains to the present, we must realize that safety and wellbeing of the people living in the area is of prime importance rather than being technical just to avoid compliance with the DENR rules and regulations.**

**FOR THE UNDERSIGNED PETITIONER, SUCH KIND OF PROJECT IS SUBJECT TO THE DENR RULES AND REGULATIONS on Environmental Compliance Certificate (ECC).**

The herein Petitioner believes that the proponent and the implementer of the Boac River Reclamation Project must be required by the DENR to comply with the EIS system and subject the project to EIA and ECC. Compliance with DENR rules and Regulations will save lives and properties in the future and have a balance environment.

In 2011, the herein Petitioner filed a similar petition with the DENR with the same prayers but to no avail. What is important is the safety of the people and the environment and this can be best attained by way of compliance with the DENR's Rules and Regulations on a project that will alter the our environment.

Perennial and unabated flooding is being experienced in Poblacion area of the Municipality of Boac, Province of Marinduque, mainly due to the Boac River Reclamation project which restrict the flow of water coming from various sources, mountain and creeks running down to the town proper and on to the Boac river. Such a situation, with the Boac River Reclamation Project practically rendering the drainage system of Boac dead and inoperative with the road gutters catching all the rain water and household waste making the town proper filthy and unhealthy.

The DPWH initiated the "Boac River Reclamation Project" with no Environmental Compliance Certificate (ECC) as required by the DENR. The only RIVER reclamation project we know of. We see coastal areas being reclaimed but not a river. It is easier and less expensive/costly to construct flood control dikes on both sides of the river and develop the other side of the river rather than reclaim a side of the riverbanks where the flow of water are hard to control. Costly and disastrous.

The Boac river reclamation project in the Municipality of Boac, Province of Marinduque which started decades ago, the protective dike of which have, on several occasions been repeatedly and completely

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been destroyed due to substandard construction has caused the death of at least one Boacano and has brought millions of pesos in damages to properties.

The Department of Environment and Natural Resources (DENR) Environmental Compliance Certificate (ECC) requirements has not been observed and totally ignored by the Department of Public Works and Highways (DPWH) in spite of the fact that it was already in effect when they were re-building the dikes. The DPWH, has always, claimed that the project is not subject to ECC. The herein Petitioner disagree. The poor people of Boac continue to suffer from flooding because of their (DPWH) claim that the DENR's Environmental Compliance Certificate (ECC) is not required. It is the position of the Petitioner and the people of Boac that such kind of project – altering nature - is covered by the DENR's ECC requirements to provide protection to the environment and the people of Boac.

With the reclamation project, the original protective dike which provides protection to the Municipality of Boac for many decades, since the 1920s, was demolished by the DPWH, without any approval from the Local Government of Boac and the DENR. With the removal of the original Dike, they practically eliminated the protection it provided before, as if they have opened the flood gate. With the Boac river reclamation project the sewage system in the municipality of Boac became clogged as water has nowhere to go, thus creating a situation of uncontrolled flooding within the Municipality. The reason is simple, the rain water and the house hold waste have no outlet, thus, flooding occur. All creeks and canals, which have narrowed down due to unabated/illegal encroachment, within the town proper of Boac lead to the Boac river thru the concrete protective dikes built during the 1920s.

Another contributory to the flooding in Boac is the uncontrolled encroachments along the creek, from Barangay Tampus, Barangay Isok to Barangay Malusak, Barangay Mercado and on to Barangay Murallon and San Miguel. The government must be wary of this situation and this continued encroachment must be stopped and government must claim back the legal easements from the creeks.

To correct the situation, the herein Petitioner recommend that a Flood control summit, in relation to the Implementation of the Clean Water Act, be Called to discuss the issues and to adopt measures to address the problem.

Above pictures is one of the reasons for this petition, FLOOD..

In spite of the perennial flood which has brought so much damage to properties every year, it is observed that the DENR and the DPWH and even the Local Government are not mindful of the situation. They are not keen in the implementation of the laws to protect the people and environment as no officials are taking action to correct the mistake that has caused the existing predicament of the people of Boac.

We believe that the recourse for the people of Boac is thru the issuance of the Writ of Kalikasan by the Supreme Court. Thru this Petition for Writ of Kalikasan we are merely asking all the concerned government agencies, the DENR, the DPWH and the DILG to implement the laws on environmental safety thru the ECC process and for the DPWH together with the DILG – LGUs to collaboratively prepare plan to mitigate the situation. Sadly, all effort have been to no avail. We need mitigating projects to protect lives and properties.

Under the above mentioned situation the “State is not providing protection and advancing the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.”.

#### IV

#### THE LAW / DENR RULES AND REGULATIONS

**PRESIDENTIAL DECREE NO. 1586** – Establishing an Environmental Impact Statement (EIS) System Including other Environmental Management Related Measures and for Other Purposes.

**DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR) Department Administrative Order  
no. 96-37**

The Philippine Environmental Impact Statement(EIS) System provides that “projects in the Philippines that are likely to have considerable environmental impact are covered by a comprehensive legal and procedural framework that highlights public participation in the review process and the projects’ social acceptability (Excerpt from Philippine Management Guidebook No. 7: By: Mary Gleason, James Maragos and Lloly de Jesus); it also provides the legal and procedural framework for conducting Environmental Impact Assessments (EIAs) for projects likely to have significant environmental impact. The Philippines formally established the EIS System in 1978 through Presidential Decree (PD) 1586 that designated [Department of Environment and Natural Resources \(DENR\)](#) Environmental Management Bureau (EMB) and DENR Regional Offices as implementing agencies; The EIS system was designed to safeguard the Philippine environment and natural resources in the face of growing industrialization and urbanization. Through DENR Administrative Order (DAO) 96-37, DENR upgraded the EIS System and revised the implementing rules and **regulations**.

DENR issued DAO 2000-05 that highlights the importance of public participation and social acceptability in the environmental review process.

The EIS system requires completion of an Environmental Impact Analysis (EIA) and preparation of an EIS report for any Environmentally Critical Project (ECP) or any project located in an Environmentally Critical Area (ECA). The Boac Reclamation Project is within the scope of these requirements.

DENR DAO NO. 2000-5: Revising DAO 94-11 and DAO 96-37 Providing Programmatic compliance within the Environmental Impact Statement (EIS) System

**BOAC RIVER RECLAMATION PROJECT**

**IS COVERED BY DENR DAO 97-36**

The Boac River Reclamation project is considered as Environmentally Critical Project (ECP) under Table 1: which say”

Infrastructure Projects: including major dams, major roads and bridges, major power plants (fossil-fuelled, nuclear, coal-fired, hydroelectric, geothermal), and **major reclamation projects**”; Boac Reclamation Project is a major reclamation project; and at the same time it is located in an Environmentally Critical Area (ECA) under Table no. 2: which says: Areas frequently hit by natural calamities (geologic hazards, floods, typhoons, volcanic activity, etc); Boac is visited by at least 20 typhoons every year, and, therefore, the Boac Reclamation project is subject to Environmental Impact system and environmental Compliance Certificate (ECC).

EIS also provides that projects or structures that have been operating or existing since 1982, even if they are ECPs or in an ECA; however, expansion of developed area or production output by these enterprises requires an ECC; however, the Boac reclamation project has, several times, been destroyed due to sub-standard construction and the most destructive that completely destroyed the whole reclamation project and claiming the life of a resident in the area and destroying millions worth of properties was in 1992 as flood waters was all over Poblacion and Kabilang Ilog Barangays.

After the 1992 total destruction of the reclamation project, the project proponent, the former Congressman and the proponent of the project, the DPWH, decided to pursue the project in spite of the various complaints and call for

the abandonment of the project that brings disaster to the people of Boac during rainy season.

After the 1992 destruction of the the Boac Reclamation project, in spite of the existence of Department of Environment and Natural Resources Depart Administrative Order (DAO) No. 96-37 the proponent and the implementing government agency, the DPWH, without the necessary Environmental Impact Analysis (EIA) and Environmental Impact Statement (EIS) as required under DENR's DAO 96-37, proceeded with the reconstruction of the project.

Sports and Recreational Facilities was constructed in the reclaimed area but the bad effect of the reclamation project is continuously being experienced in Poblacion and in Kabilang Ilog and we see no reprieve from flood during rainy season unless mitigating measures are introduced thru compliance with the DENR's DAO No. 96-37.

Having not been subjected to DENR's Environmental Impact Analysis (EIA) AS Required under DENR'sw DA 96-37 which requires and Environmental Impact Statement (EIS) of the reclamation project, obviously, there was no Environmental Compliance Certificate (ECC)

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and therefore no mitigating measures being introduced so that every time it rains, flood water covers the tract of the newly constructed sports oval and the river reclamation project continue to restrict the flow of water coming from Poblacion thereby flooding the whole of Poblacion and with no effective flood control dike at the other side of the reclamation project Barangyas in Kabilang Ilog always suffer from flood. There is, therefore, the need to mitigate the situation to avoid the continuing inundation of Poblacion and Kabilang Ilog Barangays during rainy season and the answer is compliance with DAO No. 96-37.

**THE SUPREME COURT'S ACTION ON THE PREVIOUS PETITION FOR WRIT OF KALIKASAN :  
DISMISSAL FOR INSUFFICIENCY IN FORM AND SUBSTANCE**

With the Supreme Court's dismissal of the previous petition for reason of insufficiency in form and substance, the herein Petitioner believes that the dismissal based on technicality is without prejudice to the filing of A new Petition, hopefully, this time, herein Petition would be determined to be sufficient in form and substance.

The Supreme Court is said to be the last bastion of hope for the protection of the people's rights and well being. It is hoped that they will give due consideration to this simple request for the issuance of a Writ of Kalikasan that will provide credence to the people's constitutional right to a healthy environment. It would be very hard to imagine where people would go for redress and protection and for the rectification of the mistakes and neglect of concerned government agencies, the DENR, DILG and the DPWH. The reclamation project with no ECC – and essential requirement in every earth moving projects - has brought hardship and misery to the people of Boac. It would be a great disservice and injustice to the people of Boac if nobody will take action to protect their well being. It would be a violation of the people's rights to a healthy environment as guaranteed by the Philippine Constitution.

**CASE NO. 3:**

**ADDITIONAL CASES WHICH NEEDS URGENT**

## REMEDIAL RESPONSE FROM THE GOVERNMENT

Case No. 3: A. The Marcopper Mining Corporation Pits and Dams

threat of collapsing:

1. Tapian Pit– Makulapnit Dam\*; and

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2. San Antonio Pit–Magguila-guila Dam,

in Sta, Cruz and Boac, Marinduque

Since the closure of the Marcopper Mining Corporation (Marcopper) in 1996 due to the Mine Waste Spill into the Boac river, the two (2) existing Mining Pits and siltation Dams, 1. The Tapian Pit and the Makulapnit Siltation Dam and 2. The San Antonio Pit and the Maguila-guila Siltation Dam, have been abandoned and have no maintenance program since then. With the big volume of waste materials and water at the Pit and at the siltation dams with no Environmental Compliance Certificate (ECC) in effect or no safety measures being implemented/observed, these structures have become a hazard and posed danger to the people of Boac (Makulanit Dam) and of Mogpog, (Maguila-guila Dam). Without maintenance and without the required ECC, not even monitoring of its condition, these dams, again, might burst anytime just like what happened in Tapian Pit in 1996 and the Maguila-guila in 1992 which inundated Boac and Mogpog. A pro-active response from the government, the DENR, will prevent a repeat of the 1992 and 1996 disaster.

The Marcopper Mine Waste Spill into the Boac river still need to be cleaned up. Without the clean up, there can be no assurance that the drinking water of Boac is safe.

Because there was no proper clean up of the Boac river, skin diseases among residents along the stretch of Boac river persists. Greenish stones in the river can be prevalently seen, proof that the river is contaminated. It has to be decontaminated to avoid diseases.

**B. The Consolidated Mines, Inc. (CMI),**  
**Marinduque**

**abandoned Mining Pit in Mogpog,**

The Consolidated Mining Inc. (CMI) ceased mining operations in the 1980s due to slump in copper prices in the world market. The CMI mining pit was abandoned without any clean up and maintenance and believed to be contaminated with mine waste which are hazardous to the environment and the health and well being of the resident in nearby Barangay. The DENR must conduct regular ocular inspection to find out the condition of the pit so that proper measures may be implemented to ensure safety among the people living nearby.

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This CMI Pit must be decontaminated.

## THE LAW

### A. THE WRIT OF KALIKASAN

**Article II, Section 16 of the 1986 Philippine Constitution states that "the State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.";**

As this provision was said to be "not self-executing, the provision of The Writ Of Kalikasan was written by the Supreme Court under Rule 7 of the Rules of Procedure for the Environmental cases as a Special Civil Action. The Supreme Court under Chief Justice Reynato Puno took the initiative and issued Rules of Procedure for environmental Case, therefore, this Petition as a recourse or remedy for the people seek redress from the negligent attitude of Local and National Officials with non-implementation of the provisions of the Clean Water Act of 2004. It is sad that 19 years

(since 2004) had past, and still, such inaction resulted in the silent suffering of many people from the provinces, cities, and municipalities whose officials failed to implement the mandate and guidelines of R.A. 9275.

“The WRIT OF KALIKASAN is available against an unlawful act or omission of a public official or employee, or private individual or entity, involving environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.”

With the Non-implementation of the provisions and mandate of R.A. 9275 by the Department of Environment and Natural Resources and the Department of Interior and Local Government, the LGUs, such as Provincial, Cities and Municipalities in particular, are guilty of an act of omission – gross neglect of duty which give reason for this Petition. they are guilty of non-feasance resulting to damages to our environment, such non-action is considered unlawful. BOAC in one of these LGUs.

“The WRIT OF CONTINUING MANDAMUS is directed against [a] the unlawful neglect in the performance of an act specifically enjoined

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by law in connection with the enforcement/ violation of an environmental rule or [b] the unlawfully exclusion of another from the use or enjoyment of such right and in both instances, there is no other plain, speedy and adequate remedy in the ordinary course of law.”

Once granted, we respectfully urge the Honorable court to issue a Writ of Continuing Mandamus, until such time that the DENR, the DILG-LGs have complied with the specific guidelines under the Implementing Rules and Regulations of the Clean Water Act of 2004.

## **B. REPUBLIC ACT NO. 9275, OTHERWISE KNOWN AS THE PHILIPPINE CLEAN WATER ACT**

### **Discussion:**

The Department of Environment and Natural Resources' (DENR) is the lead government agency tasked of protecting our environment. They are mandated and obligated to comply/ implement the provisions of the Republic Act No. 9275 otherwise known as The Philippine Clean Water Act of 2004. It is, therefore, incumbent upon them, the DENR, to oversee the implementation of R.A. No. 9275 and ensure that the provisions contained therein are carried out at the Local government level. This did not happen.

Article II, Section 16 of the 1986 Philippine Constitution provides that "the State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature."; It is in this context that Republic Act. No. 9275, otherwise known as Philippine Clean Water Act, was adopted by Congress in 2004..

It has been almost 20 years since the adoption of the Clean Water Act and we have not seen any positive action to religiously implement the provisions of R.A No. 9275. It is, so sad, that the DENR seems to have failed to “lay down water quality standards and regulations” as required under the law, leaving Local Government Units having no action pursuant to the mandate of R.A. No. 9275. The guidelines on how to comply and implement the Clean Water Act seems non-existent. After almost 2 decades specific provisions of R. A. No. 9275 have not been properly implemented causing uncontrolled pollution all over, land and bodies of water and even causing flooding in many areas.

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Hereunder are some provisions of R.A. No. 9275 which the herein Petitioner believed are yet to be implemented and must be complied with to be able to aptly control water pollution on land and in the bodies of water:

SEC. 5. Water Quality Management Area. — The Department, in coordination with National Water Resources Board (NWRB), shall designate certain areas as water quality management areas using appropriate physiographic units such as watershed, river basins or water resources regions. Said management areas shall have similar hydrological, hydrogeological, meteorological or geographic conditions which affect the physicochemical, biological and bacteriological reactions and diffusions of pollutants in the water bodies, or otherwise share common interest or face similar development programs, prospects, or problems.

SEC. 6. Management of Non-attainment Areas. — The Department shall designate water bodies, or portions thereof, where specific pollutants from either natural or man-made source have already exceeded water quality guidelines as non-attainment areas for the exceeded pollutants. It shall prepare and implement a program that will not allow new sources of exceeded water pollutant in non-attainment areas without a corresponding reduction in discharges from existing sources: Provided, That if the pollutant is naturally occurring, e.g. naturally high boron and other elements in geothermal areas, discharge of such pollutant may be allowed: Provided, further, That the effluent concentration of discharge shall not exceed the naturally occurring level of such pollutant in the area: Provided, finally, That the effluent concentration and volume of discharge shall not adversely affect water supply, public health and ecological protection.

SEC. 7. National Sewerage and Septage Management Program. — The Department of Public Works and Highways (DPWH), through its relevant attached agencies, in coordination with the Department, LGUs and other concerned agencies, shall, as soon as possible, but in no case exceeding a period of twelve (12) months from the effectivity of this Act, prepare a national program on sewerage and septage management in connection with Section 8 hereof. Such program shall include a priority listing of sewerage, septage and combined sewerage-septage projects for LGUs based on population density and growth, degradation of water resources, topography, geology, vegetation, programs/projects for the rehabilitation of existing facilities and such other factors that the

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Secretary may deem relevant to the protection of water quality. On the basis of such national listing, the national government may allot, on an annual basis, funds for the construction and rehabilitation of required facilities

SEC. 8. Domestic Sewage Collection, Treatment and Disposal. — Within five (5) years following the effectivity of this Act, the agency vested to provide water supply and sewerage facilities and/or concessionaires in Metro Manila and other highly urbanized cities (HUCs) as defined in Republic Act No. 7160, in coordination with LGUs, shall be required to

connect the existing sewage line found in all subdivisions, condominiums, commercial centers, hotels, sports and recreational facilities, hospitals, market places, public buildings, industrial complex and other similar establishments including households to available sewerage system: Provided, That the said connection shall be subject to sewerage services charge/fees in accordance with existing laws, rules or regulations unless the sources had already utilized their own sewerage system: Provided, further, That all sources of sewage and septage shall comply with the requirements herein.

SEC. 20. Role of Local Government Units (LGUs). — LGUs shall share the responsibility in the management and improvement of water quality within their territorial jurisdictions.

Each LGU shall within six (6) months after the establishment of the water quality management area action plan prepare a compliance scheme in accordance thereof, subject to review and approval of the governing board.

Each LGU shall, through its Environment and Natural Resources Office (ENRO) established in Republic Act No. 7160, have the following powers and functions:

- a) Monitoring of water quality;
- b) Emergency response;
- c) Compliance with the framework of the Water Quality Management Action Plan;
- d) To take active participation in all efforts concerning water quality protection and rehabilitation; and
- e) To coordinate with other government agencies and civil

society and the concerned sectors in the implementation of measures to prevent and control water pollution: Provided, however, That in provinces/cities/municipalities where there are no environment and natural resources officers, the local executive concerned may with the approval of the Secretary of the DENR designate any of his official and/or chief of office preferably the provincial, city or municipal agriculturist, or any of his employee: Provided, finally, That in case an employee is designated as such, he must have sufficient experience in environmental and natural resources management, conservation and utilization.

SEC. 33. Joint Congressional Oversight Committee. — There is hereby created a Joint Congressional Oversight Committee to monitor the implementation of this Act and to review the implementing rules and regulations promulgated by the Department. The Committee shall be composed of five (5) Senators and five (5) Representatives to be appointed by the Senate President and the Speaker of the House of Representatives, respectively. The Oversight Committee shall be co-chaired by the Chairpersons of the Committee on Environment of the Senate and the Committee on Ecology of the House of Representatives.

Even Congress has failed to comply with the mandate of Section 33 of R.A. No. 9275, a legislation they, themselves, enacted, re: creation of a “Committee to monitor the implementation of this Act Committee to monitor the implementation of this Act”.

NON-COMPLIANCE/IMPLEMENTATION OF THE PROVISIONS OF R.A NO. 9275, OTHERWISE KNOWN AS THE PHILIPPINE CLEAN WATERACT OF 2004 IS THE RESULT OF NEGLIGENT ATTITUDE AMONGST FORMER GOVERNMENT OFFICIALS, PARTICULARLY DENR OFFICIALS, WHICH HAS BROUGHT MISERY TO OUR PEOPLE. THIS ATTITUDE MUST BE CORRECTED/REVERSED. WE ARE HOPING AND PRAYING THAT CURRENT CONCERNED GOVERNMENT - DENR OFFICIALS SHALL ACTIVELY PURSUE THEIR MANDATE AND BRING TO THE PEOPLE THE PROMISE OF THE CONSTITUTION TO HAVE A “BALANCED AND HEALTHFUL ECOLOGY IN ACCORD WITH THE RHYTHM AND HARMONY OF NATURE.”

Above enumerated provisions may have been mentioned in the Implementing Rules and Regulations (IRR) but we do not feel its presence or its implementation at the Local Government Level. Sadly it seems there is a need for Supreme Court Order to comply and implement the provisions of R.A. No. 9275. A Supreme Court Order similar to that of the Manila Bay Clean Up.

#### **C. PRESIDENTIAL DECREE NO. 856**

##### **CODE ON SANITATION OF THE PHILIPPINES**

The objective of this Decree is the improvement of the way of the Filipinos by directing public health services towards the protection and promotion of the health of the people.

How can we protect and promote the health of the people of Boac and other LGUs for that matter when we have no efficient water supply and sewerage system. Therefore, without efficient water supply and efficient sewage system, the Municipality of Boac, is violating this Code. To comply and provide protection and promote the health of the people of Boac and other places and as compliance with this code, herein Petitioner respectfully asks the Honorable Supreme Court to issue an order mandating the improvement of water supply system and the construction of efficient sewage system for Boac and in other places with similar situation.

## PETITIONER'S POSITION

Herein Petitioner, as former Mayor of Boac, Marinduque and Former Board Member of Marinduque, have observed, in particular, in the Municipality of Boac and in nearby Municipalities, that in spite of the PHILIPPINE CLEAN WATER ACT or R.A 9275, there is no existing sewage system as household waste water are discharged mostly in open road gutters and canals and on to the nearby creeks and rivers.

Obviously, such practice of improper discharge of wastewater is a

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violation of the existing environmental laws and has become an environmental and health hazard.

We have a situation in the Municipality of Boac, wherein a newly constructed big Public Market, the so called Blue building and even the on-going Public Market building, they all have no 'ENVIRONMENTAL COMPLIANCE CERTIFICATE (ECC)', as required by the DENR.

The new Gasan, Municipal Public Market is a project which must be checked. Gasoline Stations with No ECC. Laundry Shops with no ECC. If they have no ECC they, obviously, have not gone through the Economic and Environmental Impact Analysis, as required by the DENR. Such violation is so glaring to disregard. There is a need for a pro-active stance from the DENR in Marinduque.

Again, if this situation of non-compliance with the provisions of R.A. 9275 and other DENR rules and Regulations is happening in a place like Marinduque, it is, with great possibility, the same situation with the same bad effect in the environment is similarly happening in many provinces, cities and municipalities throughout the country.

The DENR and the DILG are not mindful of this situation. They are guilty of negligence for failure to implemtn the DENR rules and Regulations pertaining to environmental safety. Had they, the DENR Officials, have been diligent enough to implement the Environmental Laws, Rules and Regulations as mandated by the laws itself and monitor compliance therewith, we at the local government units would not suffer from unsafe water and flooding and environment degradation.

We, therefore, say that any action from the DENR and other concerned agencies of the government, in response to the situation, as discussed above, in Boac, Marinduque, must be replicated in other places with similar situation and problem throughout the country.

## V.

### PRAYER

WHEREFORE, premises considered, the herein Petitioner most respectfully pray for the issuance of Writ of Kalikasam with Continuing Mandamus, specifically ordering the Department of Environment and Natural Resources, (DENR) Secretary Antonia Yulo Loyzaga and the Department of Interior and Local Government (DIL) Secretary Benjamin Abalos, Jr. and the Department of Public Works and Highways (DPWH) Secretary Manuel M. Bonoan, to jointly work together for the strict

implementation and compliance with the provisions of Republic Act. No. 9275 otherwise known as the Clean Water Act of 2004, including other pertinent DENR Rules and Regulations pertaining to Environmental safety and protection- the Economic Impact Analysis (EIA) System , Environmental Impact Assessment (EIA) and the environmental Compliance Certificate (ECC).

Further, it is respectfully prayed for:

**1. CASE No. 1 The Present Water Supply and Sewage System Situation in the Municipality of Boac, Province of Marinduque.**

For the Supreme Court to issue an order for the DENR together with the Department of Interior and Local Government (DILG) and the Department of Public Works and Highways (DPWH) to strictly implement the provisions of Republic Act 9275, and for the concerned Local Government Unit (LGU), in coordination and collaboration with the above mentioned government agencies, to prepare/establish plans and programs for the realization of the mandate of R.A. 9275, particularly to secure the safety and protection of the sources of drinking water and in having a working sewerage system and the establishment of a monitoring mechanism to check compliance therewith, and, likewise, in compliance with the provisions of Presidential Decree No. 856, Code of Sanitation of the Philippines by constructing a comprehensive Sewage system for the Municipality of Boac.

For the DENR and dilg to initiate measures for the recovery of the legal easement of the creeks in the Municipality of Boac.

**2. CASE No. 2 The Boac River Reclamation Project, the cause of Perennial Flood in Boac**

For the Department of Public Works and Highways (DPWH), in coordination with the Department of Environment and Natural Resources (DENR) and concerned LGU, the Municipality of Boac, to jointly conduct ocular inspection and assessment of the Reclamation Project and the town proper area and adjacent Barangays of Boac to determine the effect of the project in terms of environmental safety and protection, and, for them to present the necessary Economic and Environmental Impact Analysis of the Boac

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Reclamation Project and ultimately to determine the required and needed measures for the issuance of the required Environmental Compliance Certificate (ECC).

**3. CASE NO. 3: ADDITIONAL CASES WHICH NEEDS URGENT REMEDIAL RESPONSE FROM THE GOVERNMENT**

**Case No. 3- A. The Marcopper Mining Corporation,  
Marinduque: 1. Tapan Pit- Makulapnit Dam\*; and**

**Sta. Cruz and Boac,**

2. San Antonio Pit–Magguila-guila Dam,

On the Issue of Marcopper, the Makulapnit Dam and Maguila-guila Dam, for the DENR to conduct regular ocular inspection of the mining site including and other facilities, to submit complete report on their current conditions and it be subjected to the DENTR's requirements on Environmental` Safety and other measures deemed necessary to protect the environment and the people of Boac and Mogpog. ECC requirements must be pursued.

For 1) Makulapnit Dam and 2) Maguila-guila Dam - require the Mining company, in coordination with the DENR and concerned LGU to prepare safety maintenance program/adoption of an Environmental Compliance Certificate (ECC) for the two (2) siltation dams to avoid disaster in the future;

**Case No. 3-B CONSOLIDATED MINES, INC. (CMI)**

**ABANDONED Mine Pit:**

**For the DENR to issue a “Decontamination Order” (of toxic waste) for the clean up the abandoned Mining Pit and for the DENR to conduct regular ocular inspection of the mining pit and other facilities of the abandoned Consolidated Mines, Inc. to ensure the safety of people living in the area.**

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**ALL WE ARE ASKING IS FOR THE CONCERNED GOVERNMENT AGENCIES TO IMPLEMENT THE PROVISIONS OF PRESIDENTIAL DECREE NO. 1586, DENR DAO NO. 2000-5: Revising DAO 94-11 and DAO 96-37 AND REPUBLIC ACT NO. 9275, OTHERWISE KNOWN AS THE PHILIPPINE CLEAN WATER ACT of 2004. ALL THESE WERE TOTALLY IGNORED BY THE DENR, DPWH AND THE DILG TO THE DISADVANTAGE OF THE PEOPLE..**

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_ November 2023 at Pasig City, Metropolitan Manila, Philippines

PEDRITO M. NEPOMUCENO

Petitioner

SUBSCRIBED AND SWORN TO before me this \_\_\_\_ day of November 2023 with affiant exhibiting his Community Tax Certificate Number 001828247, April 24, 2023 issued in Boac, Marinduque and Land Transportation Office Professional Driver's License No. D0375001528, that he is the same person who personally signed before me the foregoing statement and acknowledged to me that he executed the same.

ATTY. ROLANDO A. BERNALES

Notary Public

Pasig, San Juan, Pateros, MM.

Appointment No. 26

Until December 31, 2024

686-B Shaw Boulevard , Kapitolyo, Pasig City,

PTR No. 6132546 January 3, 2023

IBP No. 013853 Roll No. 64646

MCLE–VII-00203360 Valid until April 14, 2025

Doc. No.

Page No.

Book No.

Series of 2023

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## **VERIFICATION AND CERTIFICATION OF NON-FORUM SHOPPING**

I, PEDRITO M. NEPOMUCENO, of legal age, married with address at No. 73 D. Reyes Street, San Miguel, Boac, Marinduque after having been sworn to in accordance with law hereby depose and say that:

1. That I am the Petitioner in the above-entitled case;
2. that I have caused the preparation of the above Petition and has read and knows the contents thereof;
3. that the allegations therein are true of his own knowledge. I filed this Petition against:

SECRETARY ANTONIA YULO LOYZAGA

DEPARTMENT OF ENVIRONMENT AND NATURAL

RESOURCES (DENR)

DENR Building, Visayas Avenue

Diliman, Quezon City

E-Mail Add: [aksyonkalikasan@denr.gov.ph](mailto:aksyonkalikasan@denr.gov.ph)

SECRETARY BENJAMIN ABALOS, JR.

DEPARTMENT INTERIOR AND LOCAL GOVERNMENT

Francisco Gold Condominium, EDSA  
Diliman, Quezon City  
E-Mail Add: [bcabalosjr@dilg.gov.ph](mailto:bcabalosjr@dilg.gov.ph)

SECRETARY MANUEL M. BONOAN  
DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS  
Roxas Boulevard, Port Area, Manila  
E-Mail Add: [bonoan.manuel@dpwh.gov.ph](mailto:bonoan.manuel@dpwh.gov.ph)

4. I have NOT filed any criminal or administrative complaint or commenced any other action or proceedings involving the same parties, issues and cause of action in any other for a, EXCEPT, the following (Note: Check all, applicable boxes and space: Otherwise, put N/A or not application:

( ) courts, ( ) prosecutor's Office, ( ) quasi-judicial Body  
( ) other government agencies

5. Should I learn that a similar action or proceedings has been filed or is pending in the aforementioned court, prosecutor's office, quasi-judicial body, other government agency, I

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undertake to notify the Supreme Court of the present status thereof within FIVE (5) days from my notice of the same;

6. I fully understand that failure on my part to comply with the forgoing requiremntns shall be sifficient fornthe dismissal of this case.

IN WITNESS WHEREOF, I have hereunto set my hand this day of November 2023 at Pasig City, Metropolitan Manila..

PEDRITO M. NEPOMUCENO

Affiant

SUBSCRIBED AND SWORN TO before me this day of November 2023 with affiant exhibiting his Community Tax Certificate Number 001828247, April 24, 2023 issued in Boac, Marinduque and Land Transportation Office Professional Driver's License No. D0375001528, that he is the same person who personally signed before me the foregoing statement and acknowledged to me that he executed the same.

ATTY. ROLANDO A. BERNALES

Notary Public

Pasig, San Juan, Pateros, MM.

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73 D. Reyes Street, San Miguel

Boac, Marinduque

EMail Add: [pedritomnepomuceno@yahoo.com](mailto:pedritomnepomuceno@yahoo.com)

November2023

THE HONORABLE ALEXANDER GESMUNDO

CHIEF JUSTICE, SUPREME COURT OF THE PHILIPPINES

Padre Faura, Ermita Manila

Email Add: [judicialrecordsoffice.sc@judiciary.gov.ph](mailto:judicialrecordsoffice.sc@judiciary.gov.ph)

Subject: PETITION FOR WRIT OF KALIKASAN WITH  
THE

CONTINUING MANDAMUS, ORDERING

FULL IMPLEMENTATION OF AND STRICT  
COMPLIANCE WITH THE PROVISIONS OF  
REPUBLIC ACT NO. 9275, OTHERWISE KNOWN  
AS THE PHILIPPINE CLEAN WATER ACT OF 2004.

Dear Chief Justice Gesmundo ,

May I respectfully file, through your office, my above subject Petition and may I respectfully request for your understanding and leniency in the disposition of this appeal.

I am 72 years old, still recuperating from my cancer surgery and can not personally file and attend the hearing for this petition. May I, therefore, request that his petition be given due consideration, be properly heard and decided summarily based on the merit of the Petition, and, on what is best for us in Boac, Marinduque. I understand that a Petition for Writ of Kalikasan is exempted from paying the filing/docket fee. Thank you.

I am a non-lawyer, an ordinary concerned senior citizen trying to do my patriotic duty to protect the interest of my kababayan. Again, may I respectfully request for your indulgence on the flaws in the preparation of the Petition.

Thank you for your kind consideration

Very truly yours,

For Good Government:

PEDRITO "Toto" M. NEPOMUCENO

Advocate of Good Government (A-GO-GO)

Former Mayor – Boac

Former Board Member – Marinduque

