



Philippine Resources

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The gloves are off
in industry battle with Lopez

The last sieve

World Bank tips
commodities turnaround

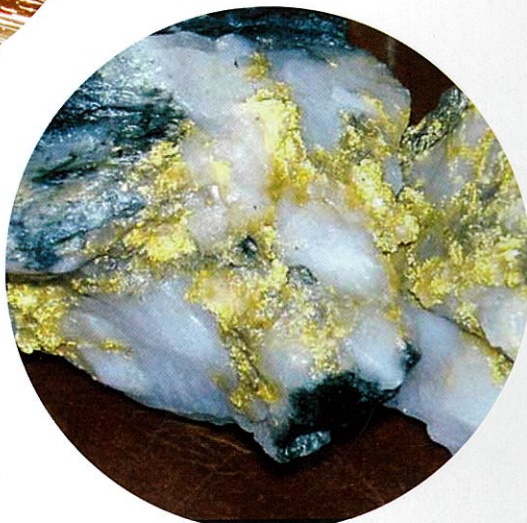
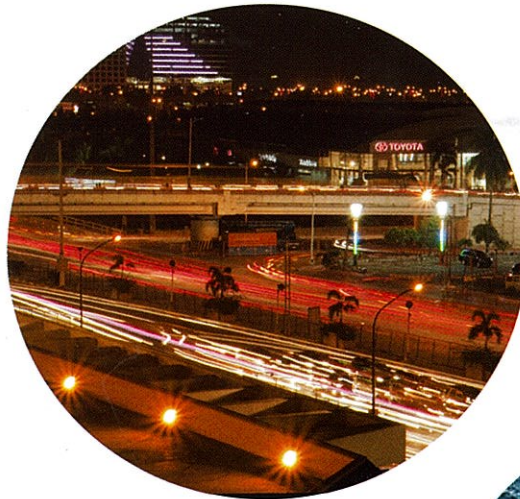


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The last sieve

By Patricia A. O. Bunye

As this article was being written, the Minerals Industry Coordinating Council (MICC) had just issued Resolution No. 6 dated 09 February 2017 stating that:

1. Mining companies shall strictly observe the law, and rules and regulations.
2. Those found guilty of violating mining contracts, laws and regulations, after observance of due process, shall be meted the appropriate penalty under relevant laws.
3. Pursuant to EO No. 79, the MICC shall create a multi-stakeholder review and advise the Department of Environment and Natural Resources (DENR) on the performance of existing mining operations in consultation with local government units (LGUs). The review shall be based on the guidelines and parameters set forth in the specific mining contract

and in other pertinent laws, taking into account the valid exercise of the State's police power to serve the common good, especially of the poor.

4. Those adversely affected by any suspension or closure, including displaced workers directly or indirectly employed by mining contractors, shall be assisted through the Government's livelihood and employment transition plan.

One day earlier, the President's spokesperson announced that "the President and his Cabinet collectively decided to observe due process with regard to the mining issue.

This means companies affected by mining closures for violations of environmental laws and regulations will be given the opportunity to respond or dispute with the audit, or make the necessary remedies to ensure compliance with government standards."

A welcome pronouncement, although it

seemed absurd that the cabinet had to "collectively decide to observe due process" as if it were a discretionary matter and not a constitutional right.

These two announcements capped a tumultuous week following the February 2 press conference of DENR Secretary Gina Lopez in which she ordered the closure of 23 metallic mines, while suspending five others, for alleged serious environmental violations supposedly discovered during the industry-wide audit conducted by the DENR since July last year.

Curiously, when the suspensions and closures were announced, none of the named companies had received any order informing them of the findings against them.

This prompted the Chamber of Mines of the Philippines to invoke the provisions of Executive Order No. 2, Series of 2016 (EO No. 2), and DENR Administrative Order No. 2016-29 (the DENR's Freedom of Information Manual) to compel the DENR to make public the audit reports which were the basis for the omnibus order of suspensions and closures.

It will be recalled that Secretary Lopez declined to provide details of the findings of the Mines and Geosciences Bureau-led technical committee that was formed to review the results of the wide-ranging mine audit that began in July last year. She had emphasized that the findings of the review committee were merely "recommendatory."

She had declared "[At] the end of the day, I look at the recommendations and I visited the mine sites myself. I visited the people myself. And then I used my judgment on what is the best thing to do."

When pressed to reveal the basis for her order, she further said "If it [recommen-



The President and his Cabinet collectively decided to observe due process with regard to the mining issue

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dations] is not resonant with the principles under which DENR runs, and my own observations, why would I give it to you, if I don't agree with it?"

In complete disregard of the DENR Freedom of Information Manual which she herself signed and which mandates full public disclosure and transparency in her department's actions, Lopez said, "I don't want to show you the recommendations, whatever it may be. I don't have to have you privy to the processes on which I made my decision. What I'm sharing with you are the principles to which I stand by."

Clearly, the Secretary has a penchant for making public pronouncements without legal and technical basis and, worse, which are diametrically opposed to the provisions of the Constitution, the Mining Act and other relevant issuances.

Back in September 2016, she had announced the suspension of twenty (20) mining companies without having completed the audit procedure. As of the day of the press conference, no actual suspension orders had been issued and no detailed audit reports were released to the companies named.

After this press conference, the stock prices in the Philippine Stock Exchange of the named companies fell. The drop extended to shares of companies listed overseas, such as ASX-listed OceanaGold, whose share price fell 8.2% on the news of that it was among the suspended companies, prompting it to request a trading halt pending an announcement on the developments in the Philippines.

It should also be recalled that immediately upon the announcement that President Duterte offered the DENR post to Lopez in June 2016, the mining sub-index dropped 488.55 points or by 4.09%.

Based on OceanaGold's later disclosure on 18 October 2016 when its audit results were finally known, the findings and recommendations outlined in the audit report turned out to be related mostly to a need to further educate a broader group of stakeholders on specific aspects of the operations and to expand the company's Information, Education and Communication (IEC) Program.

The audit report on OceanaGold also stated that the company "has extended more than what is required by law xxx and was found to be complying (with) its permitting requirements set forth by different Philippine Environmental Laws xxx.

Moreover, its mining operations are being governed by an Environmental Management System that ISO 14001:2004 compliant." In other words, after the company had already been virtually tried publicly as a result of the Secretary's injudicious statements, it was apparent that a suspension was not warranted and that the findings that were earlier publicized were not even part of the final report.

OceanaGold's case is but one of the examples of the reputational damage wrought by the seeming 'shoot now, ask questions later' attitude of the Secretary, whose public statements even before her appointment have been purlblindly anti-mining. Shortly after her appointment, she was quoted in a 22 June 2016 interview that "(I) don't like mining, the foreigners and the rich are the only ones benefitting from it, but the farmers and the fishermen suffer."

While she occasionally mouths this administration's platitudes to responsible mining, the Secretary appears to have made up her mind, and has openly expressed her opinion that "wherever there is mining, there is poverty."

On the Tampakan Copper Gold project, which was issued a Financial and Technical Assistance Agreement in 1995, a contract that the government must honor, she has said: "I don't like Tampakan at



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all. Not even a little bit. It's a seven hundred football field, open-pit mine on top of an agricultural land. xxx. There is no way I will ever, ever, ever allow a seven hundred football field open pit mine on top of an agricultural land. It's immoral. I don't know what the law is but to me, it is socially unjust of business companies to put the lives of the farmers there and the indigenous people at risk." (Emphasis supplied).

These are only a few examples of the Secretary's actions and pronouncements that betray a clear agenda against large-scale mining. With her undigued bias and prejudice, it is evident that she will do what it takes to shut down the mining industry, regardless of what the Constitution, the Philippine Mining Act and the related laws and regulations provide.

With her looming confirmation hearing before the Commission on Appointments (CA), and faced with several oppositions filed against such confirmation, the Secretary has said, "I don't know how long I'm gonna last here, my commission on appointments is coming if I'm in ABS I'm just a tree-hugger, now I'm DENR secretary so let me use my position now". Perhaps anticipating that her appointment will be rejected or at the very least, she will again be bypassed, she has also declared, "I said now that I'm still here, DENR Secretary, let me close the mines so I can at least show the public what it is".

Considering the circumstances that led to her appointment as DENR Secretary, the coming confirmation hearings will test the CA's effectivity as a check against injudicious appointments by the President. While it does not curtail the President's appointing authority, the CA serves as a countervailing force against its abuse and assures that the President has exercised the power to appoint wisely, i.e., by appointing only those who are fit and qualified.

The President himself recounted in his first State of the Nation Address how

Lopez was appointed after she had visited him several times in Davao to lobby her environmental advocacies in the wee hours of the morning. He relates the story himself, "Dalawang oras na ma'am, mukhang hindi na [siya] matapos...Sabi ko, 'Ma'am, maga-alas kwatro na.' Ano kaya kung ikaw na lang ang DENR (Department of Environment and Natural Resources) [secretary] ko?" he recalled telling Lopez. "Bigla syang sagot, totoo ka?"

Despite seeming to have made the appointment in jest, the President has, on occasion, defended Lopez, whom he has called a 'crusader.' "I wouldn't appoint somebody who is alien to my thinking," he said.

Nevertheless, it is inconceivable how the President could allow the aforementioned mine closures if these would result in a loss of up to 1.2 million jobs and LGU revenues, as the Secretary of Finance has warned.

Lopez, however, had made light of these possible negative consequences, "I don't know where that number of 1.2 [million] is coming from because they don't even have jobs every day of the year. The latest number of NGP (National Government Portal) is 219,000 in the third quarter of last year," Lopez argued.

While the MICC issuance above states that "those adversely affected by any suspension or closure, including displaced workers directly or indirectly employed by mining contractors, shall be assisted through the Government's livelihood and employment transition plan," it behooves us to ask why we would even allow this situation of displacement to arise.

The President of the Philippine Stock Exchange has likewise characterized the DENR Secretary's latest moves as a "surprise, worrisome, and irresponsible", pointing out that when the DENR Secretary announced the closure and suspension orders last week, global nickel prices climbed by 7 to 8 percent. "It's interesting that an announcement from a particular agency can move global prices. It's not something we want to project

to global investors. We always talk about consistency of policy, consistency of execution," he said.

He added that "(F)rom a macro-perspective, the reason we say we're concerned is that when surprise announcements like this, which do not sync or align with the overall economic plan of the economy, it makes you wonder whether or not the policy makers have an angle on the game plan... we have a situation wherein a particular individual or groups can hijack a well-thought economic plan".

Given the far reaching repercussions of the DENR Secretary's imprudent and seemingly unscientific approach to regulating the mining industry, the Commission on Appointments' action is much anticipated. It would do well to evaluate the many serious oppositions filed against the secretary's confirmation. Horsetrading should certainly play no role here if the Commission were to truly serve the public interest. ■



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