



# Philippine Resources

Mining, Petroleum & Energy Journal

Issue 3, 2017



Mineral Reporting  
Code under threat

Better Days Ahead?

DENR Chief speaks up



# Headlines in this issue



**6**



**18**



**40**

## **Resources Commentary**

6 *Ronnie Penarroyo expresses concerns for the future of the Philippine Mineral Reporting Code*

18 *Patricia A. O. Bunye searches for a return in confidence in the mineral sector following key DENR changes*

22 *New DENR Chief speaks out*

24 *Cimatu urged to seek good advice*

## **Mining News**

26 *Open pit mine still under a cloud*

28 *Apex decides to go it alone*

32 *Semirara rehabilitating Panian open pit*

35 *Senator speaks up for geothermal sector*

42 *CTPCMC showcases 'Katas ng Mina'*

43 *OceanaGold a powerhouse in the community*

48 *MICC to put 'clearer' mining fiscal regime in place*



# Better days ahead?

By Patricia A. O. Bunye

The respective appointments of Department of Environment and Natural Resources (DENR) Secretary Roy Cimatu and Mines and Geosciences Bureau (MGB) Director Wilfredo Moncano have been met with (cautious) optimism that we are returning to a regime where laws are properly implemented and due process of law is upheld at all times.

It has greatly helped that the President himself has confirmed, during his meeting in Malacanang with mining companies on August 3, that since “there is a law allowing mining, who am I to stop it?”. He, however, sternly reminded the companies to follow the law and to protect the environment, admonishing them to plant trees. The President also stated that he does not object to open pit mining, saying “Ok lang ako sa open pit mining but you have to spend and go to the people and make amends. Either you support to give them another livelihood and my demand is plant trees”.

The return to normalcy after the tumultuous stint of the former Secretary, however, is expectedly slow, as the previous dispensation left a long list of orders and actions that need to be reviewed. In his first major public speaking engagement

on the “DENR Agenda and Priorities in Support of Sustainable Business” before the Joint Foreign Chambers on June 15, the new Secretary himself acknowledged that he needs time to study the issues. Nevertheless, his public pronouncements on responsible mining have been positive.

It is also clear from the updates given by MGB Director Moncano at the Membership Meeting of the Philippine Mining and Exploration Association (PMEA) on August 7 that he and Secretary Cimatu have lost no time in tackling the gargantuan tasks ahead of them, including visiting problem areas like Diwalwal, which is unfortunately been referred to as the “face of mining in the Philippines”. Director Moncano intimated that Diwalwal is “on the mind” of the President, and addressing the issues there will go a long way in correcting miss-impressions on the state of mining in the Philippines.

The aforementioned visits and fly-bys by Messrs. Cimatu and Moncano in a helicopter have also allowed the Secretary to see for himself the actual conditions at the mine sites, including, for example that the Taganito River is actually clean, contrary to what has been portrayed in a TV documentary.

Director Moncano confirmed that there have been no new administrative orders

issued to date by the DENR/MGB and that they are awaiting the review by the Minerals Industry Coordinating Council (MICC). In this regard, the Department of Finance will soon be constituting a technical review team from among its shortlist of legal, technical, social and financial experts.

On this score, the Chamber of Mines of the Philippines (COMP) has announced that it will expel members who are found to have violated the law based on the industry review conducted by the MICC. This comes on the heels of the withdrawal of Apex Mining Co, Inc. from the COMP, citing its “disappointment and frustration” with the COMP’s alleged failure to “regulate its own ranks and discipline its members who do not comply with existing mining rules and regulations, and those who pay lip service to responsible mining.” While many in the industry agree that erring COMP members should be weeded out, a number have also expressed apprehensions that Apex’s withdrawal and/or the formation of a new group may paint a picture of discord within the industry.

As of this writing, the President of the Chamber of Mines, Philip Romualdez, has stepped down after many years of devoted service to the industry. Indeed, he has led and won many battles, including during the dark days of attacks on the constitutionality of the Mining Act. For this, he has our utmost respect and admiration.

Among the most important issues on Secretary Cimatu’s plate are: (1) the ban on open pit mining as contained in DENR Administrative Order No. 2017-10; and (2) the moratorium on the approval of new mining agreements for the last 7 years since issuance of Executive Order No. 79.

With respect to the ban on open pit mining, a number of mining companies have requested Secretary Cimatu to review the matter since it is unconstitutional



Continued on page 20



## < Continued from page 18

and contrary to the Mining Act considering that, among other things, (a) the open pit mining method is allowed under the Mining Act; (b) DAO No. 2017-10 was a usurpation of the legislative powers of Congress; (c) DAO No. 2017-10 was issued without the required consultation with the parties that would be most adversely affected; and (d) it infringes the right of foreign investors to “fair and equitable treatment” under the relevant bilateral investment treaties executed by the Philippines.

While Secretary Cimatu himself has not officially spoken on the matter, an official of the Mines & Geosciences Bureau who is part of the team reviewing the policy orders of the former secretary made statements to media that the ban on open-pit mining has “no legal basis” and is under review. He further stated that “(I)n the Philippines ... surface mining or ‘open-pit’ is technically and financially feasible”. The aforementioned statement of the President in favour of open pit mining is likewise very encouraging. According to MGB Director Moncano, administrative orders lifting both the ban on open pit mining and the moratorium on new mining agreements have been drafted.

In contrast to the Executive branch, where things appear to be looking up, there remain in the Legislative branch a number of bills that could vex the mining industry. As reported by Chamber of Mines Vice President for Legal and Policy Ronald Recidoro at the August 11 Philippine Mining Luncheon, there are 48 mining-related bills pending in the House of Representatives: 21 cover matters that are “red flags” such as proposals for a new fiscal regime, proposals to abrogate the current Mining Act, the proposed ban on the exportation of mineral ores, and a proposal to require a legislative franchise as prerequisite for the issuance of a mineral production sharing agreement. There are also 9 bills proposing to expand the coverage of no-go zones, such as in the Municipality of Kibungan, Benguet, Third District of Palawan, cities of Cagayan de Oro and Davao, Provinces of North Cotabato, Biliran, Southern

Leyte and Davao Oriental.

According to Atty. Recidoro, the Chamber has cautioned the legislators representing the aforementioned districts that it would be injudicious to ban mining outright without doing exploration work as they would not know what they are giving up. Further, he opined that the proposed ban on ore exports export will not necessarily result in processing plants being put up because, in order to attract investors to put up such plants, issues such as high power costs and lack of infrastructure need to be addressed first.

What the August 3 meeting with the President underscored is that the industry has a lot of catching up to in terms of communicating what it has been doing. For example, the President mentioned at least twice in his remarks that mining companies must plant trees. However, mining companies have long been at the forefront of the government’s reforestation program. Their efforts, however, may not be as well-publicized as they should be.

It is therefore apt that one of the key themes of Secretary Cimatu’s first public engagement with the mining industry was diplomacy. Secretary Cimatu began his speech by quoting a popular saying (or joke, as some internet sources have it), that “when a diplomat says yes, he means perhaps; when a diplomat says perhaps, he means no; and when a diplomat says no, he is not a diplomat”. During the Q&A portion after his speech, Ambassador Delia Albert prefaced her remarks by addressing the new Secretary as “Ambassador”, recalling the days when he was Special Envoy to the Middle East and she was the Foreign Affairs Secretary and how, together, they had saved the life of a Filipino OFW. She suggested holding a regular dialogue among Secretary Cimatu, the DENR and the private sector, which was an approach employed by the erstwhile Minerals Development Council. The efficacy of this approach, she said, was demonstrated by what all the participants of that day’s meeting learned from engaging one another. She then asked Secretary Cimatu to be the “Ambassador for Mining”. Given the

long road we still need to trek in revitalizing the industry, all of us need to heed that call by each being an ambassador for responsible mining!

\*\*\*

Allow me to congratulate the newly-elected officers of Diwata-Women in Resource Development (“Diwata”): Eliza (Ging) R. Laudencia, President; Joan Adaci-Cattiling, Vice President-Operations; Rodalee Ofaza, Vice President-Programs; Nancy R. Aguda, Secretary; Joy R. Dompoc, Treasurer. Diwata celebrated its fifth anniversary on 18 July 2017, which was also Nelson Mandela Day. It is gratifying to see that, despite many ups and downs (often mirroring those of the mining industry), Diwata has persevered and endured, presenting many opportunities for meaningful dialogue, starting with its inaugural forum, “EO 79: The IPs’ and Women’s Views” to its more recent roadshow in Santiago, Isabela and Tuba, Benguet, culminating in a panel on “Women in Mining” at the Mining Philippines 2016. At Mining Philippines 2017, Diwata will be hosting a panel discussion on “Is Responsible Mining Possible? -Millennials Respond”. ■



**Patricia A. O. Bunye is a senior partner at Cruz Marcelo & Tenefrancia and head of its mining and energy practice. She is also President of Diwata-Women in Resource Development, Inc. Questions and comments are welcome at [po.bunye@cruzmarcelo.com](mailto:po.bunye@cruzmarcelo.com).**