



Republic of the Philippines
Department of Environment and Natural Resources
MINES AND GEOSCIENCES BUREAU

North Avenue, Diliman, Quezon City, Philippines
 Tel No. (+63 2) 920-9120/920-9130 Trunkline No. 667-6700 loc. 134 Fax No. (+63 2) 920-1635 Email: central@mgb.gov.ph

DEC 21 2023

**IN RE: DENIAL OF APPLICATION FOR
 EXPLORATION PERMIT OF DITEKI MINES
 DEVELOPMENT CORPORATION
 DENOMINATED AS EXPA-000005II**

X-----X

NOTICE OF ISSUANCE OF A DECISION

The President

Diteki Mines Development Corporation
 1301 Estrada St. cor.
 Pres. Sergio Osmeña Highway, Manila

Reg. Mail

The Regional Director

Mines and Geosciences Bureau
 Regional Office No. II
 No. 18 Dalan na Pagayaya corner Matunung
 Regional Government Center
 Carig Sur, Tuguegarao City

Reg. Mail

Please be notified that a Decision was issued by this Office on even date on the subject, a copy of which is attached.



[Handwritten Signature]

ATTY. DANILO U. UYKIENG
 OIC, Director



**"MINING SHALL BE PRO-PEOPLE AND PRO-ENVIRONMENT
 IN SUSTAINING WEALTH CREATION AND IMPROVED QUALITY OF LIFE."**

20-284716



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North Avenue, Diliman, Quezon City, Philippines

Tel No. (+63 2) 920-9120/920-9130 Trunkline No. 667-6700 loc. 134 Fax No. (+63 2) 920-1055 Email: central@mgb.gov.ph

CERTIFIED TRUE COPY

DANILO D. DELEÑA
 CHIEF
 MINING TENEMENTS MANAGEMENT DIVISION

**IN RE: DENIAL OF APPLICATION FOR
 EXPLORATION PERMIT
 DENOMINATED AS EXPA-000005-II
 OF DITEKI MINES DEVELOPMENT
 CORPORATION**

X-----X

DECISION

Before this Office is the Appeal dated January 25, 2012 of Diteki Mines Development Corporation (DMDC) to the Orders dated February 14, 2011 and January 05, 2012 of the Mines and Geosciences Bureau (MGB) Regional Office (RO) No. II denying the application of the company for Exploration Permit (EP) denominated as EXPA-000005-II.

Records of this Office bear the following antecedent facts:

On November 23, 1995, DMDC filed EXPA-000005-II in MGB RO No. II covering an area of about 15,957.00 hectares located in San Guillermo and Echague, Isabela.

On February 17, 1997, MGB RO No. II issued the Notice of Application for EXPA-000005-II (Notice).

On March 11, 1997, the Affidavit for Publication was issued by a national newspaper where the Notice was published.

On April 14, 1997, the Affidavit for Publication was issued by a local newspaper where the Notice was published.

On January 08, 1998, DMDC wrote to MGB RO No. II submitting proofs of publication, posting and radio announcement of the Notice.

On January 12, 1998, DMDC wrote to the Office for Northern Cultural Communities requesting for the issuance of certification to the existence or non-existence of issued Certificate of Ancestral Domain Claim and/or Certificate of Ancestral Land Claim with the area covered by EXPA-000005-II.

On January 20, 1998, DMDC wrote to MGB RO No. II submitting other requirements in relation to EXPA-000005-II.

On April 03, 1998, MGB RO No. II wrote to MGB Central Office (CO) forwarding the EP application of DMDC for clearance of the Department of Environment and Natural Resources (DENR) Secretary.

On January 11, 2000, DMDC wrote to MGB RO No. II submitting documents in compliance with the DENR Memorandum Order (DMO) No. 99-10.

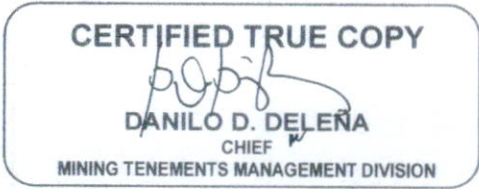
On November 6, 2003, MGB RO No. II forwarded a copy of the Notice to MGB CO, through a Memorandum.

On November 18, 2003, MGB RO No. II wrote to DMDC informing that the EXPA-000005-II was filed and endorsed to MGB CO for clearance but was

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returned back for further review and rectification and providing list of the identified deficiencies.

On December 10, 2003, DMDC wrote to National Commission on Indigenous Peoples (NCIP) requesting for the issuance of Certification Precondition for EXPA-000005-II and providing copy of the pertinent location map.

On January 26, 2004, MGB RO No. II wrote to DMDC informing of the lacking requirements to be submitted as indicated its Letter dated November 18, 2003.

On May 03, 2004, DMDC wrote to MGB RO No. II providing copy of the Certification from the Panel of Arbitrators, sworn statement of the Mining Engineer, NCIP Memorandum No. 00023.

On July 07, 2004, MGB RO No. II sent the second Letter-Notice to DMDC reiterating the submission of the proof of consultation with the *Sanggunian* concerned, NCIP Certification and proof of financial capability as provided in Section 19 of DAO No. 96-40.

On September 16, 2004, MGB RO No. II wrote to DMDC requesting for the submission of the necessary requirements mentioned in the previous Letters-Notice within fifteen days from the receipt thereof.

On October 13, 2004, DMDC wrote to MGB RO No. II submitting its compliance to the requirements stipulated in its Letter dated July 07, 2004.

On August 23, 2005, MGB RO No. II sent the third and final Letter-Notice to DMDC requesting for the submission of the lacking requirements within fifteen days from the receipt thereof.

On September 03, 2005, DMDC wrote to MGB RO No. II requesting for 60 days extension for fully comply with the requirements stated in the Letter dated August 23, 2005.

On January 23, 2006, DMDC wrote to MGB RO No. II submitting 1) copies of the Exploration Work Program (ExWP) and Environmental Work Program (EWP) duly received by the *Sanggunian* concerned and 2) copy of bank certification.

On December 08, 2006, NCIP RO No. II wrote to DMDC informing that the FBI team has already conducted a partial FBI on the said application, however, cannot penetrate the area due to insurgency and lack of manpower.

On December 12, 2006, MGB RO No. II wrote to MGB Central Office forwarding the necessary documents related to EXPA-000005-II for evaluation and action.

On February 06, 2007, MGB CO issued a Certification regarding the posting of the Notice.

On February 19, 2007, NCIP issued a Certification stating that the area covered by EXPA-000005-II is not within ancestral domains.



Daniilo D. Deleña
 DANILO D. DELEÑA
 CHIEF

MINING TENEMENTS MANAGEMENT DIVISION

On July 30, 2007, DMDC wrote to MGB RO No. II submitting copies of Affidavit of Undertaking, Certificate of Posting from MGB CO and Certification Precondition from NCIP.

On July 26, 2008, MGB CO wrote to MGB RO No. II providing its evaluation of the forwarded documents related to EXPA-000005-II.

On September 09, 2008, DMDC wrote to MGB RO No. II submitting documents in compliance with the requirements stated in the July 26, 2008 Memorandum of MGB CO.

On October 06, 2008, DMDC wrote to MGB RO No. II submitting additional documents in support with its submission attached in the Letter dated September 09, 2008.

On October 21, 2008, MGB RO No. II wrote to DMDC informing of the following deficiencies: 1) payment for the registration of the Affidavit of Undertaking, 2) submission of the copies of newspaper clippings from regarding the publication of the Notice of Application, 3) payment for the Certification from the Panel of Arbitrators prior to the issuance of a new certification.

On November 04, 2008, DMDC wrote to MGB RO No. II submitting copies and Affidavit of Undertaking and required payment and informing that it is in the process of securing clippings from the publication of the Notice.

On March 12, 2010, the DMO No. 2010-04¹ was issued, providing, among others, for policy directives in cleansing mining applications in all MGB ROs. Section B of thereof provides the ground for the denial of mining applications, as follows:

B. Cleansing of Mining Applications

1. Strict implementation of the Three (3) Letters-Notice Policy:

The maximum time interval of 30 days between Letter-Notice shall be strictly followed in the implementation of the Three (3) Letter-Notice Policy in exacting compliance with the requirements for the grant of mining tenements and as ground for denial of mining applications.

x x x

3. Grounds for denial of mining applications:

Mining applications that have not complied with any of the following requirements shall also be denied:

- a. Securing the NCIP Certificate of Non-Overlap within 1 year and NCIP Certification Precondition (Compliance Certificate) within 3*



¹ Reforms in the Department Mining Tenement System

years from the date of the NCIP's receipt of the pertinent letter-request from

- b. Securing the proof of consultation with the Sanggunian concerned within 2 years from the date of acceptance of the mining application.
- c. Completion of the publication, posting and radio announcement requirements within 1 year from the date of acceptance of mining application.

On February 14, 2011, MGB RO No. II issued the Order denying EXPA-000005-II for failure to submit 1) NCIP Certification of Non-Overlap or Certification Precondition and 2) proof of completion of publication, posting and radio announcement within the prescribed period stipulated under Section B.3 of DMO No. 2010-04.

On March 04, 2011, DMDC filed a Motion for Reconsideration stating that 1) the NCIP Certification was issued on February 19, 2007, 3 years, 1 month and 14 days from the endorsement of MGB RO No. II on January 07, 2004, 2) NCIP cited the peace and order problem in the area as the cause for the delay in the conduct of the Field-Based Investigation, 3) delays in the submission of other requirements can be attributed to the delay of endorsement of such to other offices/agencies.

On January 05, 2012, MGB RO No. II denied the MR of DMDC stating that the completion of the publication, posting and radio announcement requirements exceeded the one (1) year period from the date of acceptance of EXPA-000005-II and further citing that MGB Memorandum Circular No. 2011-02 provides that the deadline set in DMO No. 2010-04 in connection with the compliance of mining applications with NCIP requirement is fixed and non-extendible.

On January 25, 2012, DMDC filed an Appeal to this Office averring that 1) DMO No. 2010-04 has no retroactive effect, 2) when the publication, posting and radio announcement of the Notice were completed, there is no DMO No. 2010-04 existing, and 3) the peace and order situation in the area prevented the conduct of the FBI which caused the delay in the issuance of the NCIP Certification.

After evaluation of the said Appeal this Office determined the following:

1. On the argument of DMDC that the said DMO has no retroactive effect, DMDC is reminded that DMO No. 2010-04 is procedural in nature. This Office emphasizes the Supreme Court ruling that "[a]s a general rule, laws have no retroactive effect. **But there are certain recognized exceptions, such as when they are remedial or procedural in nature.**"² (emphasis ours)

The Supreme Court also ruled that "[p]rocedural laws may operate retroactively as to pending proceedings even without express provision to that effect. Accordingly, rules of procedure can apply to cases pending at the time of their enactment. In fact, statutes regulating the



² Zulueta vs. Asia Brewery, Inc., G.R. No. 138137

*procedure of the courts will be applied on actions undetermined at the time of their effectivity. Procedural laws are retrospective in that sense and to that extent.*³ (emphasis ours)

Moreover, the policy directives pursuant to DMO No. 2010-04 were issued for the compliance of all concerned. DMO No. 2010-04 is not violative of any right of DMDC. EXPA-000005II is still an application and DMDC do not yet have any vested rights.

2. On the publication, posting and radio announcement of the Notice of Application, records show that all the proofs were submitted by the applicant on January 08, 1998, which is beyond the period of one year from the acceptance of the application on November 23, 1995. However, DMDC cannot be faulted for belatedly completing the required publication, posting and radio announcement because to emphasize, the Notice of Application was issued by MGB RO No. II only on February 17, 1997.
3. On the NCIP Certification, records show that as early as January 08, 1998, DMDC was already requesting for the issuance of the required certification, although with the ONCC. Republic Act No. 8371 or the Indigenous Peoples' Rights Act (IPRA) of 1997 was signed into law and paved the way to the creation of the NCIP but its Implementing Rules and Regulations (IRR), NCIP Administrative Order No. 1, was only approved on June 09, 1998. Moreover, DMDC also sent a Letter dated December 10, 2003 to the NCIP requesting again for the issuance of the pertinent Certification.

While these concerns may be considered as force majeure, such were already cured when eventually, DMDC was issued its NCIP Certification on February 19, 2007 stating that the area covered by EXPA-000005-II is not within ancestral domains.

4. On the proof of consultation with the *Sanggunian* concerned, records show that the proofs were submitted by the applicant on January 23, 2006. However, DAO No. 2010-21, requires the compliance with the required consultation with the *Sanggunian* concerned pursuant to the pertinent provisions of Republic Act (RA) No. 7160 or the Local Government Code.

RA No. 7160 requires prior consultation with the *Sanggunian* concerned, to wit:

"Section 2. Declaration of Policy

XXX

(c) It is likewise the policy of the State to require all national agencies and offices to conduct periodic consultations with appropriate local government units, nongovernmental and people's organizations, and other concerned sectors of the community before any project or program is implemented in their respective jurisdictions.

XXX



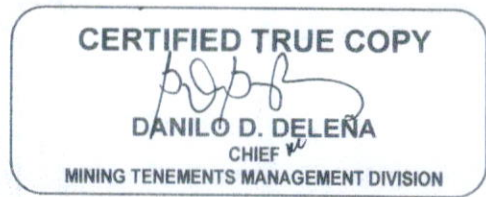
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MINES & GEOSCIENCES BUREAU
Office of the Director

³ Nedira vs. NJ World Corporation, G.R. No. 240005



Section 26. Duty of National Government Agencies in the Maintenance of Ecological Balance. - It shall be the duty of every national agency or government-owned or -controlled corporation authorizing or involved in the planning and implementation of any project or program that may cause pollution, climatic change, depletion of non-renewable resources, loss of cropland, rangeland, or forest cover, and extinction of animal or plant species, **to consult with the local government units, nongovernmental organizations, and other sectors concerned and explain the goals and objectives of the project or program, its impact upon the people and the community in terms of environmental or ecological balance, and the measures that will be undertaken to prevent or minimize the adverse effects thereof.** [Emphasis ours.]

Section 27. Prior Consultations Required. - No project or program shall be implemented by government authorities **unless the consultations mentioned in Sections 2 (c) and 26 hereof are complied with, and prior approval of the sanggunian concerned is obtained:** Provided, That occupants in areas where such projects are to be implemented shall not be evicted unless appropriate relocation sites have been provided, in accordance with the provisions of the Constitution." [Emphasis ours.]

Submission of copies of ExWP and EWP duly received by the Secretary of Sanggunian concerned is not considered a compliance with the required submission of proof of consultation with the Sanggunian concerned. Moreover, a national law requiring the conduct of consultations with the Sanggunian concerned cannot be overruled by a Memorandum Order modifying the said requirement. Thus, DMDC failed to show proof that it conducted a consultation with the Sanggunian concerned.

As such, the Appeal of DMDC is bereft of merit.

NOW, WHEREFORE, the foregoing premises considered, the Appeal of Diteki Mines Development Corporation dated January 25, 2012 is hereby **DENIED** and the Order dated February 14, 2011 and January 05, 2012 of the Mines and Geosciences Bureau Regional Office No. II are hereby **AFFIRMED**.

SO ORDERED.

Quezon City, Philippines, DEC 21 2023

ATTY. DANILO U. UYKIENG
OIC, Director

