

By ANTONIO MANAYTAY

In an interview with ABS-CBN TV Patrol last May 2, Mayor Isabelle "Beng" Climaco-Salazar intimated that she will question the mining operations of Atro Mining to the DENR Secretary and that whatever is his decision she will abide.

This pronouncement of the Mayor came after the majority of the members of the Sangguniang Panlungsod passed Resolution No. 562 "proposing for the adoption of a resolution interposing no objection to the implementation of the mining operations of Hard Rock Mineral Trading, Inc. (HRMTI), through the Atro Mining-Vitali, Inc., as exclusive operator, subject to the applicable laws, rules and regulations, including those that may apply if and when the area covered by the MPSA shall be declared as watershed reservation or protected watershed reserved by the proper higher authorities" and Resolution No. 563 "urging the City Mayor to favorably consider the application of Atro Mining-Vitali, Inc. for Mayor's Permit to open an office in Vitali, this city, consistent with the policy and directives contained in Exec. Order No. 79, Series of 2012, and DILG Memorandum Circular No. 2012-181", as stated in the Report, Findings and Recommendations of the Committee on Natural Resources and Environmental Protection, and the Committee on Ordinances and Resolutions which was duly passed and adopted by the august body in their regular session last April 29, 2014 held at its Session Hall.

Sometime last March 19, 2014, Resolution No. 443 was referred to the Joint Committee, Committee on Natural Resources and Environmental Protection, and the Committee on Ordinances and Resolutions, the issue concerning the mining at Brgy. Vitali, this city, by Atro Mining-Vitali, Inc. whose application for a Business Permit to open an Office in the said Barangay has been denied by the Executive Branch of the City Government.

According to Hon. Charlie M. Mariano, this Report, Findings and Recommendations of the Joint Committees which he chaired is a result of the committee meetings and ocular inspection conducted by the committee, the members of the Sangguniang Panlungsod, the city government officials and media personalities of Zamboanga City in response to Resolution No. 443 which purpose is to determine the true state of the mining activities of Atro Mining-Vitali, Inc., including its factual and legal basis, and to address the need to develop a harmonious

policy on the matter between the executive and the legislative branch of the local government.

To recall, Mayor Climaco-Salazar also made a pronouncement last April 21, 2014 and several pronouncements thereafter when interviewed during her weekly media briefing stating that “she stand firm on her decision not to grant business permit to AMVI, but she will abide by the decision of the City Council.”

By bringing the issue of Atro Mining's operations to the DENR Secretary, it would now appear that Her Honor, Mayor Climaco-Salazar is not going to abide by her earlier pronouncements of abiding by the decision of the City Council.

The factual and legal basis as found out by the Joint Committees are indisputably crystal clear that the issuance and approval of the MPSA by the Republic of the Philippines to Hard Rock Mineral Trading, Inc. (HRMTI) are anchored, as stated in the pre-ambulatory clauses of and elsewhere of the MPSA, on the Constitution itself, in Republic Act. No. 7942 otherwise as the Philippine Mining Law of 1995 and the Implementing Rules and Regulations thereunder.

Under Section 2 of Article XII of the 1987 Constitution, the constitutional provision which is the nucleus of the issue, reads thus: “Sec. 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture or production-sharing agreements with Filipino citizens or corporations or associations at least sixty per centum of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law.”

Under R.A. 7942 of the Philippine Mining Act of 1995, the Secretary of the Environment and Natural Resources (DENR) is authorized to enter into Mineral Production Sharing Agreements in furtherance of the objectives of the Government and the Constitution to bolster the national economy through sustainable and systematic development of mineral lands.

It is thus clear that when the DENR Secretary entered into the MPSA with the Hard Rock Mineral Trading Inc., his act was in the exercise of authority and jurisdiction conferred upon him by the Constitution and the law. That said MPSA of HRMTI could have only been granted after proper compliance with all the mandatory requirements as mandated under the Mining Act of 1995 and its Implementing Rules and Regulations. It also bears pointing out that the official acts of the DENR Secretary as a public officer enjoys the presumption of regularity.

The Joint Committee findings also belied the assertion that the MPSA is illegal on the ground that it was entered into by the DENR Secretary without the Hard Rock Mineral Trading Inc. having undertaken the consultations required under Sections 2(c), 26 and 27 of the Local Government Code, as records clearly show that as a pre-requisite for the approval of the Application for the Production Sharing Agreement (APSA) No. 00109-IX filed by HRMTI with the MGB Regional Office No. IX, on June 3, 2004, HRMTI, through Linktone International Mining Corp., as its authorized operator at that time, have undertaken all the processes under the rules leading to the grant and approval of the MPSA.

Clearly, requirements of consultations with the affected communities and the approval of the Sangguniang Panlungsod as provided for under the Local Government Code are concerned were complied with, as records show that consultations were undertaken in Barangay Vitali and other barangays within the Vitali District. As a matter of fact, the Barangay Council of Vitali adopted and passed Resolution No. 015, dated June 28, 2005 and the Liga ng mga Barangay adopted and passed Resolution No. 050-15, dated November 21, 2005, all of which favorably endorsed the mining project to the Sangguniang Panlungsod.

In addition, pursuant to the rules, a presentation of the proposed project was made by Linktone to the Sangguniang Panlungsod on October 29, 2005 and the latter passed and adopted SP Resolution No. 202 on March 9, 2006 which in part provides thus: "RESOLVED, That the Sangguniang Panlungsod of Zamboanga City endorses favorably the mining project of Linktone International Mining Corporation, situated in Campo Uno, Campo Cuatro, Limbong, Aboles and Sibait, all in Vitali, this city, relative to their application for an ECC with the EMB-DENR, subject however to compliance with all the requirements and strict monitoring of the mining operation."

It also bears pointing out that the said Resolution was adopted after the then Joint Committees on Agriculture and Agrarian Relations, Urban Planning and Land Use, Natural Resources and Environmental Protection and Barangay Affairs of the Sangguniang Panlungsod of Zamboanga City made the findings and recommendations thus: "After thorough review of the issues and concerns, manifestations of Linktone International Mining Corporation, the Supreme Court Resolution, the thrust of the National Government under E.O. 270 and the consultation and

subsequent adoption of the resolution by the Officers and Members of the Board of the Liga ng Mga Barangay, the Committees on Environment, Barangay Affairs, Agriculture and Land Use, therefore recommends to the august body favorable endorsement of the Linktone International Mining Corporation relative to their application for ECC with the DENR, subject to compliance of all requirements and strict monitoring of the mining operation.”

“Without any doubt the MPSA as granted by the Philippine Government to HRMTI is legal and valid, Hon. Mariano added.”

With respect to the legal basis for the act of HRMTI in entering into an Exclusive Mines Operating Agreement (EMOA) first with Linktone International Mining Corporation and then with Atro Mining-Vitali Inc., it is also clear in Sec. 30 of R.A. No. 7942 or the Philippine Mining Act of 1995, that “assignment or transfer of rights and obligations” under any mineral agreement subject to the prior approval of the Secretary are expressly allowed. And in the applicable DENR Department Administrative Orders which provide for the Implementing Rules and Regulations of R.A. No. 7942, such “Memorandum of Agreement/Option Agreement or Operating Agreement and other similar form of Agreements are allowed subject to their registration with MGB Central Office and Regional Office concerned and the approval of the MGB Director upon evaluation and recommendation by the RO concerned.”

More so, it is expressly provided in the MPSA itself that the HRMTI or its assigned or assignees of interest has the right “To sell, assign, transfer, convey or otherwise dispose of all its rights, interests and obligations under the Agreement, subject to the approval of the Government.” Hence, the above provisions are clear that its rights and obligations can be sold, assigned, transferred or assumed by another qualified entity thru a Memorandum of Agreement or Operating Agreement in accordance to law, subject to the approval of the MGB Director or the DENR Secretary as the case maybe.

In the case of ATRO, its Exclusive Mines Operating Agreement with HRMTI was approved pursuant to the rules by the MGB Central Office Director last December 16, 2011.

“Indisputable, the act of HRMTI in entering into Exclusive Mines Operating Agreement with a qualified company is legal and valid as it is expressly allowed and provided under the law, Hon. Mariano further added.”

On the issue that the MPSA area of HRMTI is within the Vitali Watershed, the question to resolve is whether said watershed area is a "Watershed Reservation" and withdrawn from mining activities or not.

The Joint Committees findings revealed that "while it is true that the City Government Officials of Zamboanga passed Resolution No.56 last January 16, 2003 for Watershed Characterization Survey and Resolution No. 566 last June 5, 2003 declaring the Barangay of Ayala, Culianan, Manicahan, Bolong and Vitali as Watershed and Protected Areas covering a Total Area of 21, 002.66 hectares, the same did not create, classify or confer to the said forest areas the legal status as watershed reservations. The same thing can be said about the Memorandum of Agreement entered into between the City of Zamboanga with DENR-X and the Philippine Environment Governance Project (ECOGOV) for the improvement of watershed and upland resources management last February 26, 2004 and the Supplemental Memorandum of Agreement to the MOA of February 26, entered last November 15, 2005 reiterating the commitment to protect the watersheds."

Section 3 of Presidential Decree No. 705, otherwise known as the Revised Forestry Code of the Philippines, defines a "watershed" as a land area drained by a stream or fixed body of water and its tributaries having common outlet for surface run-off. It also states that a "watershed reservation" is "a forest land reservation established to protect or improve the conditions of the water yield thereof or reduce sedimentation". "Forest lands" include "the public forest, the permanent forest or forest reserves, and forest reservations". And a forest reservation refers to forest land which have been reserved by the President of the Philippines for any specific purpose or purposes.

Under Section 18 of the same law, the authority to establish Forest Reservations, including watershed reservations, is vested in the President of the Philippines who "may establish within any lands of the public domain, forest reserve and forest reservation for the national park system, for preservation as critical watersheds, or for any other purpose, and modify boundaries of existing ones."

From the said provisions, it is clear that a forest land does not become a watershed reservation and withdrawn from other uses unless it be declared so by the President of the Philippines. Under the applicable rules and regulations of the DENR, the official declaration of an area as a watershed reservation shall come only from the President by way of a Presidential Proclamation upon the recommendation of DENR Secretary.

Even under Republic Act. No. 7585, otherwise known as the National Integrated Protected Areas System, there are processes and stages of implementations for the declaration of an area as a protected watershed reservation and made part of the National Integrated Protected Areas System. Under the said law and its implementing rules, such a declaration requires a thorough technical study by the DENR, the proclamation by the President upon the recommendation of the DENR Secretary declaring the area as protected and finally its inclusion into the NIPAS by an act of Congress. (DENR Administrative Order No. 2008- 26 or the Revised Implementing Rules and Regulations of R.A. No. 7586 or the National Integrated Protected Areas System Act of 1992).

It also bears pointing out that in a Certification dated March 27, 2014 by Mr. Tito L. Gadon, Provincial Environment and Natural Resource Officer (PENRO) of Zamboanga City, has confirmed that according to records of his office, there are only three (3) proclaimed protected areas in Zamboanga City, to wit: (1) Pasonanca Natural Park under NIPAS Presidential Proclamation No. 132 dated July 5, 1999 (2) Great and Little Sta. Cruz Island Protected Landscape and Seascape Protected Area under NIPAS Presidential Proclamation No. 271 date April 23, 2000 and (3) Vitali Mangrove Swamp Forest Reserve under Presidential Proclamation No. 2152 date December 29, 1981. It is clear from the above that Vitali Watershed is not a watershed reservation or a proclaimed protected watershed.

Section 18 of R.A. 7942, or the Philippine Mining Act of 1995, provides that "(s)ubject to any existing rights or reservations and prior agreements of all parties, all mineral resources in public or private lands, including timber or forestlands as defined in existing laws, shall be open to mineral agreements or financial or technical assistance agreement applications.

On the other hand, Section 19(f) of the same law also mentioned areas that are closed to mining applications such as "(f) old growth or virgin forests, proclaimed watershed forest reserves, wilderness areas, mangrove forests, mossy forests, national parks provincial/municipal forests, parks, greenbelts, game refuge and bird sanctuaries as defined by law and in areas expressly prohibited under the National Integrated Protected Areas System (NIPAS) under Republic Act No. 7586, Department Administrative Order No. 25, series of 1992 and other laws."

From the said provisions, it is clear that all mineral resources in public or private lands, including timber or forest lands, are open for mining. Even watershed areas which have not been proclaimed as Watershed Forest Reserves. In a legal opinion made by MGB-IX last November 8, 2013, it opined that only those proclaimed watershed forest reserves (those covered by Presidential Proclamations) are expressly made closed to mining applications as provided in

Sec. 15 of DAO No. 96-40. Hence, locally identified and declared watersheds are still open for mining applications.

Under City Ordinance No. 273 entitled "An Ordinance Adopting the Revised Zoning Regulations for the City of Zamboanga and Providing for its Administration and Enforcement", under the "General Zone Policy" it clearly stated that "All developments or activities within the IPZ shall be geared towards protection and conservation of highly environmentally sensitive areas consisting mostly of watersheds and steeply sloped areas of 30% to 50% slope and over and shall likewise be consistent with the Department of Environment and Natural Resources' Development Regulations for Forest Zone. No extraction, excavation or other mining activity shall be undertaken within these areas except in accordance with the Mining Code and its Implementing Rules and Regulations." It is clear from the above provisions that mining is not disallowed in said areas so long as it is in accordance with the Mining Code and its Implementing Rules and Regulations.

It is clear that even the Resolution from Regional Development Council (RDC) IX (Resolution IX-025-11 date September 1, 2011) urging DENR not to issue permits for All Mining Activities Near or Within Proclaimed and Proposed/ Identified Watersheds in Zamboanga Peninsula does not have the effect of withdrawing the area subject of the MPSA from mining activities.

"Not having been declared as watershed reservation by the proper authorities, the area of 2,077,3084 hectares, more or less, located at upper Tagpangi, Vitali, Zamboanga City, and covered by MPSA No. 237-2007-IX, is open to mining," Mariano averred.

"As to what more legal grounds will Mayor Climaco-Salazar question Atro Mining's operations to the DENR Secretary, nobody knows, Mr. Leo Sosa, VP and Resident Manager of Atro Mining replied when asked about the recent move of the Mayor.

"As mentioned in the report and finding of the Joint Committees chaired by Hon. Charlie Mariano, all the factual and legal basis of HRMTI and Atro Mining's operations are well settled and established, Mr. Sosa added." "There are no more rooms for other legal interpretations, Sosa added."

In the same ABS-CBN TV Patrol interview with Atty. Jesus C. Carbon, Jr., Zamboanga City

Legal Officer, he declared that “it is now difficult to stop the mining operations of Atro Mining as it has already complied with all the legal requirements and has been issued the Permit by the National Government for its mining operations. I am just waiting for the instructions of the City Mayor on what to do.”.

Sosa also stated that though the company is saddened by the move of the Mayor, it also welcomed it, as once and for all, the company believes that this will settle all the issues that are still bothering the minds of the City Government Officials of Zamboanga. Mr. Sosa added that “the company can now just hope and pray that DENR Secretary will support its mining operations, as it is also his office which grants all the permits to HRMTI and Atro Mining.”

In supporting the two Resolutions passed by the august members of the City Council, Councilor Benjamin B. Guingona IV clearly stated that “it is about time for the August Body to decide whether it is for mining or not.”

“Experts, like the Mine and Geosciences Bureau (MGB) or the DENR, after recognizing that Atro Mining is compliant with the all the requirements as mandated by law, had already issued all the mining permits including the ECC to the mining company. The members of this August Body do not have the technical capability to determine if mining is okay or not, but agencies which have this mandate or functions had already given their go signal, Hon. Guingona added.”

Granting that the decision of the DENR Secretary will not be favorable to Mayor's queries, will the Honorable Mayor abide by the decision of the DENR Secretary?

“We just hope that the City Mayor will comply with Section 12 of Executive Order No. 79 and its Implementing Rules and Regulations and also Memorandum Circular no. 2012-181, dated November 8, 2012 issued by DILG Sec. Mar A. Roxas which enjoined all LGU's in the exercise of their powers and functions to be consistent with and conform to the regulations, decisions and policies already promulgated and taken by the National Government relating to the conservation, management, development, and proper utilization of the State's mineral resources, particularly R.A. No. 7942 and its IRR, while recognizing the need of social acceptance of proposed mining projects and activities, Mr. Sosa said.”

“LGU's shall confine themselves only to the imposition of reasonable limitations on mining

activities conducted within their respective territorial jurisdiction that are consistent with national laws and regulations, Sec. Mar Roxas added.”