

Philex units say DENR's cancellation of MPSA's illegal

Published February 27, 2017, 10:00 PM

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Philex Mining Corporation's wholly-owned subsidiaries Silangan Mindanao Mining Co., Inc. (SMMCI) and Philex Gold Philippines, Inc. (PGPI) told the government that it will be illegal to cancel their mining contracts.

The firms filed separate letters responding to the Department of Environment and Natural Resources' (DENR) show cause letters which directed them to explain why their Mineral Production Sharing Agreements ("MPSAs") should not be cancelled on the alleged ground that the contract areas of said MPSAs are situated within watershed areas.

In their respective letters, SMMCI and PGPI said "the threatened cancellation of the MPSAs has no legal and factual basis whatsoever, yet the DENR Secretary unceremoniously held a press conference announcing their cancellation three days prior to the actual personal service of the DENR letters."

They said the announcement resulted "not just in actual losses but in significant damage to the reputation of both companies and the erosion of investor confidence without affording them their due process rights and any opportunity to be heard."

The two firms emphasized that all their MPSAs, which were subjected to the rigorous process prescribed by applicable law and regulations which included obtaining the requisite regulatory clearances that the areas covered by the MPSAs are open to mining, are valid and legal.

"Mining is not prohibited in all watershed areas. Under Philippine law, only watersheds that are proclaimed, designated or set aside pursuant to law or presidential decrees, presidential proclamations or executive orders as watershed forest reserves or as critical watersheds are closed to mining operations," they said.

They noted that, "none of the MPSAs' contract areas are situated inside proclaimed watersheds forest reserves and critical watersheds where mining is prohibited."

They also pointed out that "DENR's precipitate action and announcement also disregarded the mandatory dispute resolution provisions that the DENR itself had written into the MPSAs."

These provisions entitle SMMCI and PGPI to a one-year cure period within which to amicably settle their disputes with the DENR, failing which the parties must submit and resolve the disputes in good faith through mandatory arbitration.

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