



Republic of the Philippines  
Department of Environment and Natural Resources

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**ADMINISTRATIVE ORDER**  
No. 2002- 35

**DEC 05 2002**

**Subject : Guidelines Governing the Management of the Diwalwal Mining Areas and Vicinity as Mineral Reservation and Environmentally Critical Area Pursuant to Proclamation No. 297 and for Other Purposes**

**WHEREAS**, Article II of the 1987 Philippine Constitution and Section 4 of Republic Act (R.A.) No. 7942, otherwise known as the Philippine Mining Act of 1995, provide that mineral resources are owned by the State, that the exploration, development and utilization thereof shall be under its full control and supervision and that it may directly undertake such activities or pursue the same through agreements with qualified contractors;

**WHEREAS**, Executive Order (E.O.) No. 192 mandates that the Department of Environment and Natural Resources (DENR) shall be the primary agency of Government responsible for the conservation, management, development and proper use of the country's environment and natural resources, as well as the licensing and regulation of all natural resources as may be provided by law to ensure equitable sharing of the benefits derived therefrom for the welfare of the present and future generations of Filipinos;

**WHEREAS**, Section 8 of R.A. No. 7942 also provides that the DENR shall be the primary agency of Government responsible for the conservation, management, development and proper use of the State's mineral resources, including those in reservations, watershed areas and lands of the public domain, and that the DENR Secretary shall have the authority to promulgate rules and regulations as may be necessary to implement the intent and provisions of R.A. No. 7942;

**WHEREAS**, Diwalwal in Mt. Diwata, Monkayo, Compostela Valley has been the site of crude and semi-mechanized to mechanized types of mining operations, starting as a gold rush area in 1983, involving thousands of miners, local entrepreneurs and service providers;

**WHEREAS**, the Diwalwal mining and mineral processing operations have also adversely effected the environment over the years, mainly through pollution and siltation of the river systems, and posed serious threat to health and safety because of mercury contamination;

**WHEREAS**, conflicting claims and rivalries over the Diwalwal mining areas have further brought about peace and order problems that, together with the environmental, health and safety problems, have led to an emergency situation needing immediate intervention by Government;

**WHEREAS**, DENR Administrative Order (DAO) No. 2002-18 was issued on August 12, 2002, *Declaring an Emergency Situation in the Diwalwal Gold Rush Area and Providing for Interim Guidelines to Address the Critical Environmental and Social Consequence Therein*;

**WHEREAS**, DAO No. 2002-18 imposed the stoppage of mining and mineral processing activities of major operators in Diwalwal until such time that all the environmental and permitting requirements are complied with, the relocation of mineral processing plants and construction of a common mill tailings disposal system in the nearby Mabatás Area completed and the implementation of a mine management plan to generate cash flow for the construction activities in the Mabatás Area and to address socio-environmental issues, including the sustainable livelihood of subsistence mine workers, attained;

**WHEREAS**, the President of the Philippines issued Proclamation No. 297 on November 25, 2002 *Excluding a Certain Area from the Operation of Proclamation No. 369 dated February 27, 1931, and Declaring the same as Mineral Reservation and as Environmentally Critical Area*, which mainly includes the Diwalwal mining areas and the Mabatás Area;

**WHEREAS**, Proclamation No. 297 expressly provides that mining operation in the Mineral Reservation may be undertaken either by the DENR directly, subject to payment of just compensation that may be due the legitimate and existing claimants, or through a qualified contractor, subject to any existing rights;

**WHEREAS**, Section 5 of R.A. No. 7942 provides that mining operation in a mineral reservation may be undertaken either directly by the DENR or through a contractor;

**WHEREAS**, Proclamation No. 297 also provides that the DENR shall formulate and issue the appropriate guidelines, including the establishment of an environmental and social fund, to implement its intent and provision;

**NOW, WHEREFORE**, the foregoing premises considered, the following guidelines in the management of said Mineral Reservation and Environmentally Critical Area are hereby promulgated for the guidance and/or compliance of all concerned:

**Section 1. Title.** This Administrative Order shall be known as the "Guidelines in the Management of the Diwalwal Mineral Reservation and for Other Purposes."

**Section 2. Policies and Objectives.** Guided by the social reform agenda of the Government, the policies and objectives of this Administrative Order shall be:

- a. To rationalize the mining and mineral processing operations in the Mineral Reservation and Environmentally Critical Area for greater efficiency and to provide for adequate environmental protection and mine rehabilitation measures.
- b. To adequately address the health and safety concerns of the miners, mineral processors and residents.
- c. To uplift the social and economic well-being of the underprivileged sectors that are directly and indirectly involved in the mining and mineral processing operations.
- d. To stabilize the peace and order situation.


- e. To provide for an equitable sharing scheme for the benefits derived from the utilization of the mineral resources.
- f. To ensure that the benefits derived from mining and mineral processing operations shall accrue to the communities, Government, both local and national, and other legitimate stakeholders.

**Section 3. Scope.** This Administrative Order covers the management, administration and regulation of all mining and mining processing operations and related activities within the Diwalwal Mineral Reservation declared under Proclamation No. 297 dated November 25, 2002.

**Section 4. Definition of Terms.** As used in and for the purposes of these Guidelines, the following terms shall be defined accordingly:

- a. "Diwalwal Mineral Reservation" refers to the area declared as Mineral Reservation and as Environmentally Critical Area pursuant to Proclamation No. 297 dated November 25, 2002, particularly bounded by the following geographical coordinates:

Corner	Longitude	Latitude
1	126°08'	7°46'
2	126°08'	7°51'
3	126°13'	7°51'
4	126°13'	7°46'

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- b. "Mill Tailings" means materials, whether solid, liquid or both, segregated from the ores as a result of mineral processing operations, which may or may not have economic values.
  - c. "Mine Waste" means soil and/or rock materials from surface or underground mining operations with no present economic value to the generator of the same.
  - d. "Mineral Processing" means the milling, beneficiation, leaching, smelting, cyanidation, calcination and/or upgrading of ores, minerals, rocks, mill tailings, mine wastes and/or other metallurgical by-products or by similar means to convert the same into marketable products.
  - e. "Natural Resources Development Corporation" refers to the government corporation of that name established as a corporate arm of the DENR pursuant to Executive Order No. 786 dated March 19, 1982.
  - f. "Ore Transport Permit" refers to the permit that may be granted to a Service Contractor to transport minerals/mineral products.
  - g. "Service Contractor" means a person or entity who enters into an agreement with the DENR or Natural Resources Development Corporation (NRDC) to undertake specific work(s) related to mining or mineral processing operations;


**Section 5. Identification and Delineation of Mining/Mineral Processing Areas.** The Mines and Geosciences Bureau (MGB) shall identify and delineate mining and mineral processing areas within the Diwalwal Mineral Reservation, where mining for gold and its associated minerals may be allowed. It shall mainly take into account the trends, dimensions and sites of the ore veins and vein systems, access to the veins and working areas, buffer zones, and other development works in delineating such areas.

Thereafter, the DENR shall endeavor to confine all mining and mineral processing operations to such areas. However, actual mining and mineral processing operations in said areas delineated may be allowed only after the same have been properly verified on the ground through technical and geodetic surveys by the MGB.

**Section 6. Direct State Utilization as Mode of Mineral Resources Development.** Pursuant to the pertinent provisions of Proclamation No. 297 dated November 25, 2002 and consistent with the pertinent provisions of R.A. No. 7942, the DENR shall directly undertake mining and mineral processing operations in certain identified areas in the Diwalwal Mineral Reservation through the NRDC with the assistance of the MGB and other sectors of the DENR, subject to payment of just compensation that may be due the legitimate and existing claimants.

For this purpose, the DENR and the NRDC shall enter into a Memorandum of Agreement that shall embody the pertinent terms and conditions.

**Section 7. Responsibilities of the NRDC.** As the implementing arm of the DENR in undertaking mining and mineral processing in the Diwalwal Mineral Reservation and in strict coordination with the MGB, the NRDC shall have the following responsibilities:

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- a. Implement a medium-scale and labor-intensive mine management plan for the cost-effective, environmentally sound and socially responsible mining and mineral processing operations in the Diwalwal Mineral Reservation.
  - b. Secure the necessary permits and licenses and comply with all requirements pertinent to the conduct of mining and mineral processing operations.
  - c. Avail of services of competent professional group(s) to undertake the necessary planning, design and implementation works.
  - d. Construct and operate mineral processing plant(s) and mill tailings disposal system in the Mabatatas Area.
  - e. Collect the share of Government from the utilization of the mineral resources in the Diwalwal Mineral Reservation.
  - f. Establish the environmental and social fund as required under Proclamation No. 297.
  - g. Initiate the environmental clean-up of the Diwalwal mining areas, Naboc River and other affected areas.
  - h. At its option and subject to just compensation, provide services to the mining and mineral processing operations, such as ventilation and power supply, blasting and assaying, among others.
  - i. Coordinate with the Environmental Management Bureau (EMB) and other agencies/instrumentalities of the DENR and Government in the implementation of the mine management plan.

**Section 8. Service Contracts.** The DENR Secretary or the NRDC may enter into service contracts with various mining groups/cooperatives presently occupying and actively mining in the Diwalwal mining areas, for the purpose of mining and/or processing of the ores therefrom.

In line with the above, the mining areas shall be allocated by underground levels/working areas in accordance with Section 5 hereof: Provided, That any Service Contract for mining purpose shall be confined to the limits and immediate vicinity of the Diwalwal mining areas, as follows:

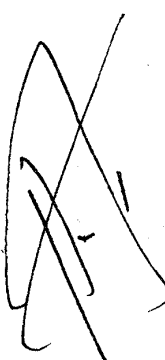
Corner	Longitude	Latitude
1	126°10'30"	7°48'30"
2	126°10'30"	7°50'00"
3	126°12'00"	7°50'00"
4	126°12'00"	7°48'30"

The execution of the Service Contract shall be upon the recommendations of the MGB Regional Director concerned/Multisectoral Evaluation Committee through the MGB Director.

On recommendation of the MGB Director, the DENR Secretary, however, may directly enter into Service Contracts with the rightful applicants, to protect and preserve the interest of the Government.

Service contracts entered into by the DENR Secretary or NRDC prior to the effectivity of this Administrative Order but are not inconsistent herewith shall remain valid with full force and effect.

**Section 9. Multisectoral Evaluation Committee.** The Multisectoral Evaluation Committee (MEC) shall be tasked with the initial evaluation of application for Service Contracts and indorsement of the rightful applicants to the MGB Regional Director concerned. It shall be composed of the following:

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- Chairperson : Team Leader, Diwalwal Technical Working Group
  - Members : Representative, mining groups/cooperatives
  - Representative, Local Government Unit – Mt. Diwata
  - Representative, Indigenous Cultural Community(ies) concerned
  - Representative, Nongovernment Organization concerned

**Section 10. Small-Scale Mining.** In accordance with the pertinent provisions of Section 5 of R.A. No. 7942 pertaining to small-scale mining, the MGB shall allocate a maximum of twenty-five per cent (25%) of the Diwalwal Mineral Reservation for small-scale mining cooperatives covered by R.A. No. 7076, or the *People's Small-Scale Mining Act of 1991*.

**Section 11. Transport of Ores.** The transportation of minerals and/or mineral product(s), including tailings that still contain the valuable metals in economic quantity, from the Diwalwal Mineral Reservation shall be covered by an Ore Transport Permit (OTP). The absence of an OTP shall be sufficient ground for the materials being transported to be apprehended/confiscated in favor of the Government, and disposed in accordance with existing laws, rules and regulations. An OTP shall be issued only to service contractors upon the recommendation of NRDC, in accordance with the pertinent provisions of DAO No. 96-40, as amended.

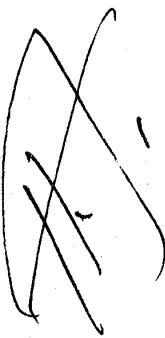
**Section 12. Mine Wastes and Mill Tailings Disposal Management.** Mine wastes and mill tailings produced as a result of the mining and mineral processing operations contemplated herein shall be managed in a technically, financially, socially, culturally and environmentally acceptable manner and in a way that effectively safeguards the environment and protects the rights of the concerned communities.

Management of mine wastes and mill tailings must be guided by current best practices committed to ensure control over their impacts and efficiently protect the environment. It shall be undertaken with due and equal emphasis on the economic and environmental considerations, as well as safety, health, social, and cultural concerns.

The above principles shall be implemented through the specific provisions of DENR Memorandum Order No. 99-32, otherwise known as the Policy Guidelines and Standards for Mine Waste and Mill Tailings Management.

In line with the foregoing, all mineral processing operations shall no longer be allowed in the Diwalwal mining areas. Instead, the Mabatás Area shall be made available as relocation site of the mineral processing plants of Diwalwal, as well as area for a common tailings disposal system that features engineered tailings dam(s).

The Mabatás Area shall also be made available as resettlement site of the Diwalwal community.



**Section 13. Environmental Protection and Social/Community Development.** The NRDC shall submit for approval and implement a programmatic Environmental Protection and Enhancement Program (EPEP) for the mining and mineral processing operations. This EPEP shall be guided by Chapter XVI – *Environmental Protection* of DAO No. 96-40, as amended. All other requirements of law, including the conduct of a programmatic Environmental Impact Assessment (EIA) and the issuance of appropriate Environmental Clearance Certificates (ECC's) by the DENR, shall also be strictly complied with.

The NRDC shall also submit a Social Development and Management Program (SDMP) for the mining and mineral processing operations. This SDMP shall be guided by DAO No. 2000 - 99, the Rules and Regulations on the Implementation of the Social Development and Management Programs for Mining Projects.

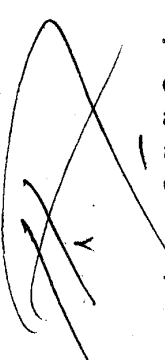
**Section 14. Use of Explosives and Chemicals.** Only NRDC is authorized to secure the appropriate licenses to possess, transport and use explosives, blasting accessories and chemicals for the mining and mineral processing operations. All applications for such licenses shall require the endorsement by the MGB Regional Office concerned or EMB, as the case may be, to the Philippine National Police - Firearms and Explosives Office in compliance with the applicable law and implementing rules and regulations.

The DENR Secretary, however, may authorize other qualified entity(ies) to secure such licenses, to protect and preserve the interest of Government in the Diwalwal Mineral Reservation.

**Section 15. Mine Rehabilitation.** The Service Contractor shall technically and biologically rehabilitate the excavated, mined-out, tailings-covered and/or disturbed areas, as provided for in Chapter XVIII of DAO No. 96-40, as amended.

A Mine Rehabilitation Fund shall be established, based on the approved work program, and shall be deposited as a trust fund in a government depository bank. It shall be used for the physical and social rehabilitation of areas and communities affected by the mining and mineral processing operations and for research on the social, technical and preventive aspects of mine rehabilitation.

**Section 16. Enforcement of Mining Plan and ECC.** The MGB and the EMB shall strictly enforce the implementation of the mine management plan and ECC of NRDC and the Service Contractor(s). These two agencies shall be responsible for ensuring that the appropriate environmental protection and remedial measures are duly implemented. Should there be any violation of the conditions set forth in the Service Contract or under the applicable laws, and rules and regulations, the MGB and/or EMB, after conferring/consulting with each other, may recommend the suspension of the mining/processing operations or cancellation of the Service Contract(s) to the Secretary.



**Section 17. Confiscation/Seizure of Illegally Sourced Ores and Mill Tailings and Apprehension of Violators.** The DENR/MGB and its deputies are empowered to confiscate, seize and dispose in accordance with existing rules and regulations illegally sourced ores and mill tailings, apprehend the violators in accordance with existing laws, and rules and regulations and file the appropriate charges in the proper court, if warranted.

**Section 18. Sale of Gold.** All gold produced by the Service Contractors from the Diwalwal Mineral Reservation shall be sold to the Bangko Sentral ng Pilipinas or its duly authorized representatives, at prices competitive with those prevailing in the world market regardless of volume or weight.

**Section 19. Share of Government.** The NRDC is authorized to collect as share of Government not more than twenty per cent (20%) of the ore produced by a Service Contractor.

This shall be allocated for the payment of excise tax and royalties due the Government from a mineral reservation and the Indigenous Peoples concerned as provided by law, as well as for management fee of NRDC, provision for the social and environmental fund, among others.

The NRDC is likewise authorized to collect the appropriate service fees from Service Contractors for mineral processing.

**Section 20. Multipartite Monitoring Team.** The Diwalwal Multipartite Monitoring Team (MMT) created pursuant to DENR Special Order No. 2002-955 shall be maintained to pursue their functions but this time, in connection with the compliance of Service Contractors with the terms and conditions of their Service Contracts.

**Section 21. Service Providers.** The Service Contractors may avail of the services of Service Providers under terms and conditions that shall not be disadvantageous to the interest and welfare of said Service Contractors: Provided, That the pertinent contract or agreement between a Service Contractor and Service Provider shall be subject to review and approval by the MGB Director, upon the recommendation of the MGB Regional Director concerned/Diwalwal Technical Working Group.

**Section 22. Reportorial Requirements and Fines.** NRDC and all the Service Contractors are required to submit the necessary monthly, quarterly, semi-annual, and annual reports, particularly production and sales, in accordance with Sections 270 and 271 of DAO No. 96-40, as amended.

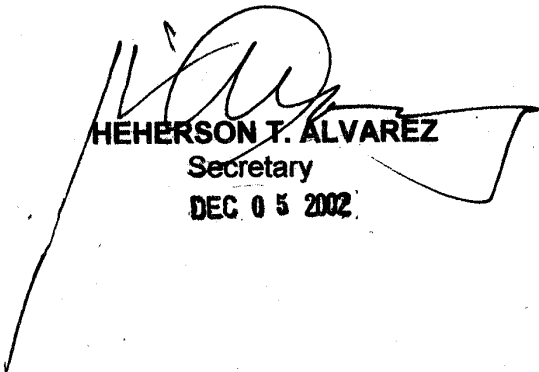
**Section 23. Arbitration.** Any mining dispute within the Diwalwal Mineral Reservation shall be settled by a tribunal of Arbitrators, to be constituted as follows: each of the opposing parties to appoint one Arbitrator and the MGB Director or his representative to act as Chairman. Such arbitration shall be conducted pursuant to R.A. No. 876, otherwise known as the "Arbitration Act."

**Section 24. Transitory Provision.** All existing Service Contractors operating in the Diwalwal mining areas pursuant to the pertinent provisions of DAO No. 2002-18 shall immediately comply with the provisions of this Administrative Order. Mineral processing plants and related facilities and structures situated in the Diwalwal mining areas, which are compliant with the existing requirements of law, may still be utilized by the Service Contractors until such time that the Mabatás Area becomes operational.

**Section 25. Separability Clause.** If any part or section of this Order is declared unconstitutional or invalid by a competent court, such declaration shall not affect the other parts or Sections of this Order.

**Section 26. Repealing Clause.** All orders, rules and regulations inconsistent with this Order are deemed repealed or modified accordingly.

**Section 27. Effectivity.** This Order shall take effect immediately.

  
**HEHERSON T. ALVAREZ**  
Secretary  
DEC 05 2002