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[G.R. No. 207257, February 03, 2015]

HON. RAMON JESUS P. PAJE, IN HIS CAPACITY AS SECRETARY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR), PETITIONER, VS. HON. TEODORO A. CASIÑO, HON. RAYMOND V. PALATINO, HON. RAFAEL V. MARIANO, HON. EMERENCIANA A. DE JESUS, CLEMENTE G. BAUTISTA, JR., HON. ROLEN C. PAULINO, HON. EDUARDO PIANO, HON. JAMES DE LOS REYES, HON. AQUILINO Y. CORTEZ, JR., HON. SARAH LUGERNA LIPUMANO-GARCIA, NORAIDA VELARMINO, BIANCA CHRISTINE GAMBOA ESPINOS, CHARO SIMONS, GREGORIO LLORCA MAGDARAOG, RUBELH PERALTA, ALEX CORPUS HERMOSO, RODOLFO SAMBAJON, REV. FR. GERARDO GREGORIO P. JORGE, CARLITO A. BALOY, OFELIA D. PABLO, MARIO ESQUILLO, ELLE LATINAZO, EVANGELINE Q. RODRIGUEZ, JOHN CARLO DELOS REYES, RESPONDENTS.

[G.R. NO. 207257]

REDONDO PENINSULA ENERGY, INC., PETITIONER, VS. HON. TEODORO A. CASIÑO, HON. RAYMOND V. PALATINO, HON. RAFAEL V. MARIANO, HON. EMERENCIANA A. DE JESUS, CLEMENTE G. BAUTISTA, JR., HON. ROLEN C. PAULINO, HON. EDUARDO PIANO, HON. JAMES DE LOS REYES, HON. AQUILINO Y. CORTEZ, JR., HON. SARAH LUGERNA LIPUMANO-GARCIA, NORAIDA VELARMINO, BIANCA CHRISTINE GAMBOA ESPINOS, CHARO SIMONS, GREGORIO LLORCA MAGDARAOG, RUBELH PERALTA, ALEX CORPUS HERMOSO, RODOLFO SAMBAJON, REV. FR. GERARDO GREGORIO P. JORGE, CARLITO A. BALOY, OFELIA D. PABLO, MARIO ESQUILLO, ELLE LATINAZO, EVANGELINE Q. RODRIGUEZ, JOHN CARLO DELOS REYES, RAMON JESUS P. PAJE, IN HIS CAPACITY AS SECRETARY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES AND SUBIC BAY METROPOLITAN AUTHORITY, RESPONDENTS.

[G.R. NO. 207276]

HON. TEODORO A. CASIÑO, HON. RAYMOND V. PALATINO, HON. EMERENCIANA A. DE JESUS, CLEMENTE G. BAUTISTA, JR., HON. RAFAEL V. MARIANO, HON. ROLEN C. PAULINO, HON. EDUARDO PIANO, HON. JAMES DE LOS REYES, HON. AQUILINO Y. CORTEZ,

JR., HON. SARAH LUGERNA LIPUMANO-GARCIA, NORAIDA VELARMINO, BIANCA CHRISTINE GAMBOA ESPINOS, CHARO SIMONS, GREGORIO LLORCA MAGDARAOG, RUBELH PERALTA, ALEX CORPUS HERMOSA, RODOLFO SAMBAJON, ET AL., PETITIONERS,

[G.R. NO. 207282]

RAMON JESUS P. PAJE IN HIS CAPACITY AS SECRETARY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, SUBIC BAY METROPOLITAN AUTHORITY, AND REDONDO PENINSULA ENERGY, INC., RESPONDENTS.

[G.R. NO. 207366]

SUBIC BAY METROPOLITAN AUTHORITY, PETITIONER, VS. HON. TEODORO A. CASIÑO, HON. RAYMOND V. PALATINO, HON. RAFAEL V. MARIANO, HON. EMERENCIANA A. DE JESUS, CLEMENTE G. BAUTISTA, JR., HON. ROLEN C. PAULINO, HON EDUARDO PIANO, HON. JAMES DE LOS REYES, HON. AQUILINO Y. CORTEZ, JR., HON. SARAH LUGERNA LIPUMANO-GARCIA, NORAIDA VELARMINO, BIANCA CHRISTINE GAMBOA, GREGORIO LLORCA MAGDARAOG, RUBELH PERALTA, ALEX CORPUS HERMOSO, RODOLFO SAMBAJON, REV. FR. GERARDO GREGORIO P. JORGE, CARLITO A. BALOY, OFELIA D. PABLO, MARIO ESQUILLO, ELLE LATINAZO, EVANGELINE Q. RODRIGUEZ, JOHN CARLO DELOS REYES, HON. RAMON JESUS P. PAJE, IN HIS CAPACITY AS SECRETARY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES AND REDONDO PENINSULA ENERGY, INC., RESPONDENTS.

D E C I S I O N

DEL CASTILLO, J.:

Before this Court are consolidated Petitions for Review on *Certiorari*[1] assailing the Decision[2] dated January 30, 2013 and the Resolution[3] dated May 22, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 00015, entitled "*Hon. Teodoro A. Casiño, et al. v. Hon. Ramon Jesus P. Paje, et al.*"

Factual Antecedents

In February 2006, Subic Bay Metropolitan Authority (SBMA), a government agency organized and established under Republic Act No. (RA) 7227,[4] and Taiwan Cogeneration Corporation (TCC) entered into a Memorandum of Understanding (MOU) expressing their intention to build a power plant in Subic Bay which would

supply reliable and affordable power to Subic Bay Industrial Park (SBIP).[5]

On July 28, 2006, SBMA and TCC entered into another MOU, whereby TCC undertook to build and operate a coal-fired power plant.[6] In the said MOU, TCC identified 20 hectares of land at *Sitio* Naglatore, Mt. Redondo, Subic Bay Freeport Zone (SBFZ) as the suitable area for the project and another site of approximately 10 hectares to be used as an ash pond.[7] TCC intends to lease the property from SBMA for a term of 50 years with rent fixed at $3.50 per square meter, payable in 10 equal 5-year installments.[8]

On April 4, 2007, the SBMA Ecology Center issued SBFZ Environmental Compliance Certificate (ECC) No. EC-SBFZ-ECC-69-21-500 in favor of Taiwan Cogeneration International Corporation (TCIC), a subsidiary of TCC,[9] for the construction, installation, and operation of 2x150-MW Circulating Fluidized Bed (CFB) Coal-Fired Thermal Power Plant at *Sitio* Naglatore.[10]

On June 6, 2008, TCC assigned all its rights and interests under the MOU dated July 28, 2006 to Redondo Peninsula Energy, Inc. (RP Energy),[11] a corporation duly organized and existing under the laws of the Philippines with the primary purpose of building, owning, and operating power plants in the Philippines, among others.[12] Accordingly, an Addendum to the said MOU was executed by SBMA and RP Energy.[13]

RP Energy then contracted GHD Pty, Ltd. (GHD) to prepare an Environmental Impact Statement (EIS) for the proposed coal-fired power plant and to assist RP Energy in applying for the issuance of an ECC from the Department of Environment and Natural Resources (DENR).[14]

On August 27, 2008, the *Sangguniang Panglungsod* of Olongapo City issued Resolution No. 131, Series of 2008, expressing the city government's objection to the coal-fired power plant as an energy source and urging the proponent to consider safer alternative sources of energy for Subic Bay.[15]

On December 22, 2008, the DENR, through former Secretary Jose L. Atienza, Jr., issued an ECC for the proposed 2x150-MW coal-fired power plant.[16]

Sometime thereafter, RP Energy decided to include additional components in its proposed coal-fired power plant. Due to the changes in the project design, which involved the inclusion of a barge wharf, seawater intake breakwater, subsea discharge pipeline, raw water collection system, drainage channel improvement, and a 230kV double-circuit transmission line,[17] RP Energy requested the DENR Environmental Management Bureau (DENR-EMB) to amend its ECC.[18] In support of its request, RP Energy submitted to the DENR-EMB an Environmental Performance Report and Management Plan (EPRMP), which was prepared by GHD.

[19]

On June 8, 2010, RP Energy and SBMA entered into a Lease and Development Agreement (LDA) over a 380,004.456-square meter parcel of land to be used for building and operating the coal-fired power plant.[20]

On July 8, 2010, the DENR-EMB issued an amended ECC (first amendment) allowing the inclusion of additional components, among others.[21]

Several months later, RP Energy again requested the DENR-EMB to amend the ECC.[22] Instead of constructing a 2x150-MW coal-fired power plant, as originally planned, it now sought to construct a 1x300-MW coal-fired power plant.[23] In support of its request, RP Energy submitted a Project Description Report (PDR) to the DENR-EMB.[24]

On May 26, 2011, the DENR-EMB granted the request and further amended the ECC (second amendment).[25]

On August 1, 2011, the *Sangguniang Panglalawigan* of Zambales issued Resolution No. 2011-149, opposing the establishment of a coal-fired thermal power plant at *Sitio* Naglatore, Brgy. Cawag, Subic, Zambales.[26]

On August 11, 2011, the *Liga ng mga Barangay* of Olongapo City issued Resolution No. 12, Series of 2011, expressing its strong objection to the coal-fired power plant as an energy source.[27]

On July 20, 2012, Hon. Teodoro A. Casiño, Hon. Raymond V. Palatino, Hon. Rafael V. Mariano, Hon. Emerenciana A. De Jesus, Clemente G. Bautista, Jr., Hon. Rolen C. Paulino, Hon. Eduardo Piano, Hon. James de los Reyes, Hon. Aquilino Y. Cortez, Jr., Hon. Sarah Lugerna Lipumano-Garcia, Noraida Velarmino, Bianca Christine Gamboa Espinos, Charo Simons, Gregorio Llorca Magdaraog, Rubelh Peralta, Alex Corpus Hermoso, Rodolfo Sambajon, Rev. Fr. Gerardo Gregorio P. Jorge, Carlito A. Baloy, Ofelia D. Pablo, Mario Esquillo, Elle Latinazo, Evangeline Q. Rodriguez, and John Carlo delos Reyes (Casiño Group) filed before this Court a Petition for Writ of *kalikasan* against RP Energy, SBMA, and Hon. Ramon Jesus P. Paje, in his capacity as Secretary of the DENR.[28]

On July 31, 2012, this Court resolved, among others, to: (1) issue a Writ of *kalikasan*; and (2) refer the case to the CA for hearing and reception of evidence and rendition of judgment.[29]

While the case was pending, RP Energy applied for another amendment to its ECC (third amendment) and submitted another EPRMP to the DENR-EMB, proposing the construction and operation of a 2x300-MW coal-fired power plant.[30]

On September 11, 2012, the Petition for Writ of *kalikasan* was docketed as CA-G.R. SP No. 00015 and raffled to the Fifteenth Division of the CA.[31] In the Petition, the Casiño Group alleged, among others, that the power plant project would cause grave environmental damage;[32] that it would adversely affect the health of the residents of the municipalities of Subic, Zambales, Morong, Hermosa, and the City of Olongapo;[33] that the ECC was issued and the LDA entered into without the prior approval of the concerned *sanggunians* as required under Sections 26 and 27 of the Local Government Code (LGC);[34] that the LDA was entered into without securing a prior certification from the National Commission on Indigenous Peoples (NCIP) as required under Section 59 of RA 8371 or the Indigenous Peoples' Rights Act of 1997 (IPRA Law);[35] that Section 8.3 of DENR Administrative Order No. 2003-30 (DAO 2003-30) which allows amendments of ECCs is *ultra vires* because the DENR has no authority to decide on requests for amendments of previously issued ECCs in the absence of a new EIS;[36] and that due to the nullity of Section 8.3 of DAO 2003-30, all amendments to RP Energy's ECC are null and void.[37]

On October 29, 2012, the CA conducted a preliminary conference wherein the parties, with their respective counsels, appeared except for Hon. Teodoro A. Casiño, Hon. Rafael V. Mariano, Hon. Emerencia A. De Jesus, Clemente G. Bautista, Mario Esquillo, Elle Latinazo, Evangeline Q. Rodriguez, and the SBMA.[38] The matters taken up during the preliminary conference were embodied in the CA's Resolution dated November 5, 2012, to wit:

> I. ISSUES
>
> A. Petitioners (Casiño Group)
>
> 1. Whether x x x the DENR Environmental Compliance Certificate ('ECC' x x x) in favor of RP Energy for a 2x150 MW Coal-Fired Thermal Power Plant Project ('Power Plant,' x x x) and its amendment to 1x300 MW Power Plant, and the Lease and Development Agreement between SBMA and RP Energy complied with the Certification Precondition as required under Section 59 of Republic Act No. 8371 or the Indigenous People's Rights Act of 1997 ('IPRA Law,' x x x);
>
> 2. Whether x x x RP Energy can proceed with the construction and operation of the 1x300 MW Power Plant without prior consultation with and approval of the concerned local government units ('LGUs,' x x x), pursuant to Sections 26 and 27 of Republic Act No. 7160 or the Local Government Code;
>
> 3. Whether x x x Section 8.3 of DENR Administrative Order No. 2003-30 ('DAO No. 2003-30,' x x x) providing for the amendment

of an ECC is null and void for being *ultra vires*; and

4. Whether x x x the amendment of RP Energy's ECC under Section 8.3 of DAO No. 2003-30 is null and void.

B. Respondent RP Energy

1. Whether x x x Section 8.3 of DAO No. 2003-30 can be collaterally attacked;

1.1 Whether x x x the same is valid until annulled;

2. Whether x x x petitioners exhausted their administrative remedies with respect to the amended ECC for the 1x300 MW Power Plant;

2.1 Whether x x x the instant Petition is proper;

3. Whether x x x RP Energy complied with all the procedures/requirements for the issuance of the DENR ECC and its amendment;

3.1 Whether x x x a Certificate of Non-Overlap from the National Commission on Indigenous Peoples is applicable in the instant case;

4. Whether x x x the LGU's approval under Sections 26 and 27 of the Local Government Code is necessary for the issuance of the DENR ECC and its amendments, and what constitutes LGU approval;

5. Whether x x x there is a threatened or actual violation of environmental laws to justify the Petition;

5.1 Whether x x x the approved 1x300 MW Power Plant complied with the accepted legal standards on thermal pollution of coastal waters, air pollution, water pollution, and acid deposits on aquatic and terrestrial ecosystems; and

6. Whether x x x the instant Petition should be dismissed for failure to comply with the requirements of proper verification and certification of non-forum shopping with respect to some petitioners.

C. Respondent DENR Secretary Paje

1. Whether x x x the issuance of the DENR ECC and its amendment in favor of RP Energy requires compliance with Section 59 of the

IPRA Law, as well as Sections 26 and 27 of the Local Government Code;

2. Whether x x x Section 8.3 of DAO No. 2003-30 can be collaterally attacked in this proceeding; and

3. Whether x x x Section 8.3 of DAO No. 2003-30 is valid.

II. ADMISSIONS/DENIALS

Petitioners, through Atty. Ridon, admitted all the allegations in RP Energy's Verified Return, except the following:

1. paragraphs 1.4 to 1.7;
2. paragraphs 1.29 to 1.32; and
3. paragraphs 1.33 to 1.37.

Petitioners made no specific denial with respect to the allegations of DENR Secretary Paje's Verified Return. x x x

Respondent RP Energy proposed the following stipulations, which were all admitted by petitioners, through Atty. Ridon, viz:

1. The 1x300 MW Power Plant is not yet operational;
2. At present, there is no environmental damage;
3. The 1x300 MW Power Plant project is situated within the Subic Special Economic Zone; and
4. Apart from the instant case, petitioners have not challenged the validity of Section 8.3 of DAO No. 2003-30.

Public respondent DENR Secretary Paje did not propose any matter for stipulation.[39]

Thereafter, trial ensued.

The Casiño Group presented three witnesses, namely: (1) Raymond V. Palatino, a two-term representative of the *Kabataan* Partylist in the House of Representatives;[40] (2) Alex C. Hermoso, the convenor of the Zambales-Olongapo City Civil Society Network, a director of the PREDA[41] Foundation, and a member of the Zambales Chapter of the *Kaya Natin* Movement and the Zambales Chapter of the People Power Volunteers for Reform;[42] and (3) Ramon Lacbain, the Vice-Governor of the Province of Zambales.[43]

RP Energy presented five witnesses, namely: (1) Junisse P. Mercado (Ms. Mercado),

an employee of GHD and the Project Director of ongoing projects for RP Energy regarding the proposed power plant project;[44] (2) Juha Sarkki (Engr. Sarkki), a Master of Science degree holder in Chemical Engineering;[45] (3) Henry K. Wong, a degree holder of Bachelor of Science Major in Mechanical Engineering from Worcester Polytechnic Institute;[46] (4) Dr. Ely Anthony R. Ouano (Dr. Ouano), a licensed Chemical Engineer, Sanitary Engineer, and Environmental Planner in the Philippines;[47] and (5) David C. Evangelista (Mr. Evangelista), a Business Development Analyst working for RP Energy.[48]

SBMA, for its part, presented its Legal Department Manager, Atty. Von F. Rodriguez (Atty. Rodriguez).[49]

The DENR, however, presented no evidence.[50]

Meanwhile, on October 31, 2012, a Certificate of Non-Overlap (CNO) was issued in connection with RP Energy's application for the 2x300-MW coal-fired power plant.[51]

On November 15, 2012, the DENR-EMB granted RP Energy's application for the third amendment to its ECC, approving the construction and operation of a 2x300-MW coal-fired power plant, among others.[52]

Ruling of the Court of Appeals

On January 30, 2013, the CA rendered a Decision denying the privilege of the writ of *kalikasan* and the application for an environment protection order due to the failure of the Casiño Group to prove that its constitutional right to a balanced and healthful ecology was violated or threatened.[53] The CA likewise found no reason to nullify Section 8.3 of DAO No. 2003-30. It said that the provision was not *ultra vires*, as the express power of the Secretary of the DENR, the Director and Regional Directors of the EMB to issue an ECC impliedly includes the incidental power to amend the same.[54] In any case, the CA ruled that the validity of the said section could not be collaterally attacked in a petition for a writ of *kalikasan.*[55]

Nonetheless, the CA resolved to invalidate the ECC dated December 22, 2008 for non-compliance with Section 59 of the IPRA Law[56] and Sections 26 and 27 of the LGC[57] and for failure of Luis Miguel Aboitiz (Mr. Aboitiz), Director of RP Energy, to affix his signature in the Sworn Statement of Full Responsibility, which is an integral part of the ECC.[58] Also declared invalid were the ECC first amendment dated July 8, 2010 and the ECC second amendment dated May 26, 2011 in view of the failure of RP Energy to comply with the restrictions set forth in the ECC, which specifically require that "any expansion of the project beyond the project description or any change in the activity x x x shall be subject to a new Environmental Impact Assessment."[59] However, as to the ECC third amendment dated November 15,

2012, the CA decided not to rule on its validity since it was not raised as an issue during the preliminary conference.[60]

The CA also invalidated the LDA entered into by SBMA and RP Energy as it was issued without the prior consultation and approval of all the sanggunians concerned as required under Sections 26 and 27 of the LGC,[61] and in violation of Section 59, Chapter VIII of the IPRA Law, which enjoins all departments and other governmental agencies from granting any lease without a prior certification that the area affected does not overlap with any ancestral domain.[62] The CA noted that no CNO was secured from the NCIP prior to the execution of the LDA,[63] and that the CNO dated October 31, 2012 was secured during the pendency of the case and was issued in connection with RP Energy's application for a 2x300-MW coal-fired power plant.[64]

Thus, the CA disposed of the case in this wise:

> WHEREFORE, premises considered, judgment is hereby rendered DENYING the privilege of the writ of *kalikasan* and the application for an environmental protection order. The prayer to declare the nullity of Section 8.3 of the DENR Administrative Order No. 2003-30 for being *ultra vires* is DENIED; and the following are all declared INVALID:
>
> 1. The Environmental Compliance Certificate (ECC Ref. Code: 0804-011-4021) dated 22 December 2008 issued in favor of respondent Redondo Peninsula Energy, Inc. by former Secretary Jose L. Atienza, Jr. of the Department of Environment and Natural Resources;
>
> 2. The ECC first amendment dated 08 July 2010 and ECC second amendment dated 26 May 2011, both issued in favor of respondent Redondo Peninsula Energy, Inc. by OIC Director Atty. Juan Miguel T. Cuna of the Department of Environment and Natural Resources, Environmental Management Bureau; and
>
> 3. The Lease and Development Agreement dated 08 June 2010 entered into by respondents Subic Bay Metropolitan Authority and Redondo Peninsula Energy, Inc. involving a parcel of land consisting of 380,004.456 square meters.
>
> SO ORDERED.[65]

The DENR and SBMA separately moved for reconsideration.[66] RP Energy filed a Motion for Partial Reconsideration,[67] attaching thereto a signed Statement of Accountability.[68] The Casiño Group, on the other hand, filed Omnibus Motions for

Clarification and Reconsideration.[69]

On May 22, 2013, the CA issued a Resolution[70] denying the aforesaid motions for lack of merit. The CA opined that the reliefs it granted in its Decision are allowed under Section 15, Rule 7 of the Rules of Procedure for Environmental Cases as the reliefs enumerated therein are broad, comprehensive, and non-exclusive.[71] In fact, paragraph (e) of the said provision allows the granting of "such other reliefs" in consonance with the objective, purpose, and intent of the Rules.[72] SBMA's contention that the stoppage of a project for non-compliance with Section 59 of the IPRA Law may only be done by the indigenous cultural communities or indigenous peoples was also brushed aside by the CA as the Casiño Group did not file a case under the IPRA Law but a Petition for a Writ of *kalikasan,* which is available to all natural or juridical persons whose constitutional right to a balanced and healthful ecology is violated, or threatened to be violated.[73] As to RP Energy's belated submission of a signed Statement of Accountability, the CA gave no weight and credence to it as the belated submission of such document, long after the presentation of evidence of the parties had been terminated, is not in accord with the rules of fair play.[74] Neither was the CA swayed by the argument that the omitted signature of Luis Miguel Aboitiz is a mere formal defect, which does not affect the validity of the entire document.[75] The dispositive portion of the ++Resolution reads:

> **WHEREFORE**, premises considered, respondents Subic Bay Metropolitan Authority's Motion for Reconsideration dated 18 February 2013, Department of Environment and Natural Resources Secretary Ramon Jesus P. Paje's Motion for Reconsideration dated 19 February 2013, and Redondo Peninsula Energy, Inc.'s Motion for Partial Reconsideration dated 22 February 2013, as well as petitioners' Omnibus Motions for Clarification and Reconsideration dated 25 February 2013, are all DENIED for lack of merit.
>
> **SO ORDERED**.[76]

Unsatisfied, the parties appealed to this Court.

The Casiño Group's arguments

The Casiño Group, in essence, argues that it is entitled to a Writ of *kalikasan* as it was able to prove that the operation of the power plant would cause environmental damage and pollution, and that this would adversely affect the residents of the provinces of Bataan and Zambales, particularly the municipalities of Subic, Morong, Hermosa, and the City of Olongapo. It cites as basis RP Energy's EIS, which allegedly admits that acid rain may occur in the combustion of coal;[77] that the

incidence of asthma attacks among residents in the vicinity of the project site may increase due to exposure to suspended particles from plant operations;[78] and that increased sulfur oxides (SOx) and nitrogen oxides (NOx) emissions may occur during plant operations.[79] It also claims that when the SBMA conducted Social Acceptability Policy Consultations with different stakeholders on the proposed power plant, the results indicated that the overall persuasion of the participants was a clear aversion to the project due to environmental, health, economic and socio-cultural concerns.[80] Finally, it contends that the ECC third amendment should also be nullified for failure to comply with the procedures and requirements for the issuance of the ECC.[81]

The DENR's arguments

The DENR imputes error on the CA in invalidating the ECC and its amendments, arguing that the determination of the validity of the ECC as well as its amendments is beyond the scope of a Petition for a Writ of *kalikasan*.[82] And even if it is within the scope, there is no reason to invalidate the ECC and its amendments as these were issued in accordance with DAO No. 2003-30.[83] The DENR also insists that contrary to the view of the CA, a new EIS was no longer necessary since the first EIS was still within the validity period when the first amendment was requested, and that this is precisely the reason RP Energy was only required to submit an EPRMP in support of its application for the first amendment.[84] As to the second amendment, the DENR-EMB only required RP Energy to submit documents to support the proposed revision considering that the change in configuration of the power plant project, from 2x150MW to 1x300MW, was not substantial.[85] Furthermore, the DENR argues that no permits, licenses, and/or clearances from other government agencies are required in the processing and approval of the ECC.[86] Thus, non-compliance with Sections 26 and 27 of the LGC as well as Section 59 of the IPRA Law is not a ground to invalidate the ECC and its amendments.[87] The DENR further posits that the ECC is not a concession, permit, or license but is a document certifying that the proponent has complied with all the requirements of the EIS System and has committed to implement the approved Environmental Management Plan.[88] The DENR invokes substantial justice so that the belatedly submitted certified true copy of the ECC containing the signature of Mr. Aboitiz on the Statement of Accountability may be accepted and accorded weight and credence.[89]

SBMA's arguments

For its part, SBMA asserts that since the CA did not issue a Writ of *kalikasan*, it should not have invalidated the LDA and that in doing so, the CA acted beyond its powers.[90] SBMA likewise puts in issue the legal capacity of the Casiño Group to impugn the validity of the LDA[91] and its failure to exhaust administrative remedies.[92] In any case, SBMA contends that there is no legal basis to invalidate

the LDA as prior consultation under Sections 26 and 27 of the LGC is not required in this case considering that the area is within the SBFZ.[93] Under RA 7227, it is the SBMA which has exclusive jurisdiction over projects and leases within the SBFZ and that in case of conflict between the LGC and RA 7227, it is the latter, a special law, which must prevail.[94] Moreover, the lack of prior certification from the NCIP is also not a ground to invalidate a contract.[95] If at all, the only effect of non-compliance with the said requirement under Section 59 of the IPRA Law is the stoppage or suspension of the project.[96] Besides, the subsequent issuance of a CNO has cured any legal defect found in the LDA.[97]

RP Energy's arguments

RP Energy questions the propriety of the reliefs granted by the CA considering that it did not issue a writ of *kalikasan* in favor of the Casiño Group.[98] RP Energy is of the view that unless a writ of *kalikasan* is issued, the CA has no power to grant the reliefs prayed for in the Petition.[99] And even if it does, the reliefs are limited to those enumerated in Section 15, Rule 7 of the Rules of Procedure for Environmental Cases and that the phrase "such other reliefs" in paragraph (e) should be limited only to those of the same class or general nature as the four other reliefs enumerated.[100] As to the validity of the LDA, the ECC and its amendments, the arguments of RP Energy are basically the same arguments interposed by SBMA and the DENR. RP Energy maintains that the ECC and its amendments were obtained in compliance with the DENR rules and regulations;[101] that a CNO is not necessary in the execution of an LDA and in the issuance of the ECC and its amendments;[102] and that prior approval of the local governments, which may be affected by the project, are not required because under RA 7227, the decision of the SBMA shall prevail in matters affecting the Subic Special Economic Zone (SSEZ), except in matters involving defense and security.[103] RP Energy also raises the issue of non-exhaustion of administrative remedies on the part of the Casiño Group.[104]

Preliminaries

This case affords us an opportunity to expound on the nature and scope of the writ of *kalikasan*. It presents some interesting questions about law and justice in the context of environmental cases, which we will tackle in the main body of this Decision.

But we shall first address some preliminary matters, in view of the manner by which the appellate court disposed of this case.

The Rules on the Writ of *kalikasan*,[105] which is Part III of the Rules of Procedure for Environmental Cases,[106] was issued by the Court pursuant to its power to promulgate rules for the protection and enforcement of constitutional rights,[107] in

particular, the individual's right to a balanced and healthful ecology.[108] Section 1 of Rule 7 provides:

> Section 1. *Nature of the writ.* - The writ is a remedy available to a natural or juridical person, entity authorized by law, people's organization, non-governmental organization, or any public interest group accredited by or registered with any government agency, on behalf of persons whose constitutional right to a balanced and healthful ecology is violated, or threatened with violation by an unlawful act or omission of a public official or employee, or private individual or entity, involving environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.

The writ is categorized as a special civil action and was, thus, conceptualized as an extraordinary remedy, which aims to provide judicial relief from threatened or actual violation/s of the constitutional right to a balanced and healthful ecology of a magnitude or degree of damage that transcends political and territorial boundaries.[109] It is intended "to provide a stronger defense for environmental rights through judicial efforts where institutional arrangements of enforcement, implementation and legislation have fallen short"[110] and seeks "to address the potentially exponential nature of large-scale ecological threats."[111]

Under Section 1 of Rule 7, the following requisites must be present to avail of this extraordinary remedy: (1) there is an actual or threatened violation of the constitutional right to a balanced and healthful ecology; (2) the actual or threatened violation arises from an unlawful act or omission of a public official or employee, or private individual or entity; and (3) the actual or threatened violation involves or will lead to an environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.

Expectedly, the Rules do not define the exact nature or degree of environmental damage but only that it must be sufficiently grave, in terms of the territorial scope of such damage, so as to call for the grant of this extraordinary remedy. The gravity of environmental damage sufficient to grant the writ is, thus, to be decided on a case-to-case basis.

If the petitioner successfully proves the foregoing requisites, the court shall render judgment granting the privilege of the writ of *kalikasan*. Otherwise, the petition shall be denied. If the petition is granted, the court may grant the reliefs provided for under Section 15 of Rule 7, to wit:

> Section 15. *Judgment.* - Within sixty (60) days from the time the petition is submitted for decision, the court shall render judgment granting or denying the privilege of the writ of *kalikasan*.

The reliefs that may be granted under the writ are the following:

(a) Directing respondent to permanently cease and desist from committing acts or neglecting the performance of a duty in violation of environmental laws resulting in environmental destruction or damage;

(b) Directing the respondent public official, government agency, private person or entity to protect, preserve, rehabilitate or restore the environment;

(c) Directing the respondent public official, government agency, private person or entity to monitor strict compliance with the decision and orders of the court;

(d) Directing the respondent public official, government agency, or private person or entity to make periodic reports on the execution of the final judgment; and

(e) Such other reliefs which relate to the right of the people to a balanced and healthful ecology or to the protection, preservation, rehabilitation or restoration of the environment, except the award of damages to individual petitioners.

It must be noted, however, that the above enumerated reliefs are non-exhaustive. The reliefs that may be granted under the writ are broad, comprehensive and non-exclusive.[112]

Prescinding from the above, the DENR, SBMA and RP Energy are one in arguing that the reliefs granted by the appellate court, *i.e.* invalidating the ECC and its amendments, are improper because it had denied the Petition for Writ of *kalikasan* upon a finding that the Casiño Group failed to prove the alleged environmental damage, actual or threatened, contemplated under the Rules.

Ordinarily, no reliefs could and should be granted. But the question may be asked, could not the appellate court have granted the Petition for Writ of *kalikasan* on the ground of the invalidity of the ECC for failure to comply with certain laws and rules?

This question is the starting point for setting up the framework of analysis which should govern writ of *kalikasan* cases.

In their Petition for Writ of *kalikasan*,[113] the Casiño Group's allegations, relative to the actual or threatened violation of the constitutional right to a balanced and healthful ecology, may be grouped into two.

The first set of allegations deals with the actual environmental damage that will

occur if the power plant project is implemented. The Casiño Group claims that the construction and operation of the power plant will result in (1) thermal pollution of coastal waters, (2) air pollution due to dust and combustion gases, (3) water pollution from toxic coal combustion waste, and (4) acid deposition in aquatic and terrestrial ecosystems, which will adversely affect the residents of the Provinces of Bataan and Zambales, particularly the Municipalities of Subic, Morong and Hermosa, and the City of Olongapo.

The second set of allegations deals with the failure to comply with certain laws and rules governing or relating to the issuance of an ECC and amendments thereto. The Casiño Group claims that the ECC was issued in violation of (1) the DENR rules on the issuance and amendment of an ECC, particularly, DAO 2003-30 and the Revised Procedural Manual for DAO 2003-30 (Revised Manual), (2) Section 59 of the IPRA Law, and (3) Sections 26 and 27 of the LGC. In addition, it claims that the LDA entered into between SBMA and RP Energy violated Section 59 of the IPRA Law.

As to the first set of allegations, involving actual damage to the environment, it is not difficult to discern that, if they are proven, then the Petition for Writ of *kalikasan* could conceivably be granted.

However, as to the second set of allegations, a nuanced approach is warranted. The power of the courts to nullify an ECC existed even prior to the promulgation of the Rules on the Writ of *kalikasan* for judicial review of the acts of administrative agencies or bodies has long been recognized[114] subject, of course, to the doctrine of exhaustion of administrative remedies.[115]

But the issue presented before us is not a simple case of reviewing the acts of an administrative agency, the DENR, which issued the ECC and its amendments. The challenge to the validity of the ECC was raised in the context of a writ of *kalikasan* case. The question then is, can the validity of an ECC be challenged via a writ of *kalikasan*?

We answer in the affirmative subject to certain qualifications.

As earlier noted, the writ of *kalikasan* is principally predicated on an actual or threatened violation of the constitutional right to a balanced and healthful ecology, which involves environmental damage of a magnitude that transcends political and territorial boundaries. A party, therefore, who invokes the writ based on alleged defects or irregularities in the issuance of an ECC must not only allege and prove such defects or irregularities, but must also provide a causal link or, at least, a reasonable connection between the defects or irregularities in the issuance of an ECC and the actual or threatened violation of the constitutional right to a balanced and healthful ecology of the magnitude contemplated under the Rules. Otherwise, the petition should be dismissed outright and the action re-filed before the proper forum with due regard to the doctrine of exhaustion of administrative remedies. This must be so if we are to preserve the noble and laudable purposes of the writ

against those who seek to abuse it.

An example of a defect or an irregularity in the issuance of an ECC, which could conceivably warrant the granting of the extraordinary remedy of the writ of *kalikasan*, is a case where there are serious and substantial misrepresentations or fraud in the application for the ECC, which, if not immediately nullified, would cause actual negative environmental impacts of the magnitude contemplated under the Rules, because the government agencies and LGUs, with the final authority to implement the project, may subsequently rely on such substantially defective or fraudulent ECC in approving the implementation of the project.

To repeat, in cases of defects or irregularities in the issuance of an ECC, it is not sufficient to merely allege such defects or irregularities, but to show a causal link or reasonable connection with the environmental damage of the magnitude contemplated under the Rules. In the case at bar, no such causal link or reasonable connection was shown or even attempted relative to the aforesaid second set of allegations. It is a mere listing of the perceived defects or irregularities in the issuance of the ECC. This would have been sufficient reason to disallow the resolution of such issues in a writ of *kalikasan* case.

However, inasmuch as this is the first time that we lay down this principle, we have liberally examined the alleged defects or irregularities in the issuance of the ECC and find that there is only one group of allegations, relative to the ECC, that can be reasonably connected to an environmental damage of the magnitude contemplated under the Rules. This is with respect to the allegation that there was no environmental impact assessment relative to the first and second amendments to the subject ECC. If this were true, then the implementation of the project can conceivably actually violate or threaten to violate the right to a healthful and balanced ecology of the inhabitants near the vicinity of the power plant. Thus, the resolution of such an issue could conceivably be resolved in a writ of *kalikasan* case provided that the case does not violate, or is an exception to the doctrine of exhaustion of administrative remedies and primary jurisdiction.[116]

As to the claims that the issuance of the ECC violated the IPRA Law and LGC and that the LDA, likewise, violated the IPRA Law, we find the same not to be within the coverage of the writ of *kalikasan* because, assuming there was non-compliance therewith, no reasonable connection can be made to an actual or threatened violation of the right to a balanced and healthful ecology of the magnitude contemplated under the Rules.

To elaborate, the alleged lack of approval of the concerned sanggunians over the subject project would not lead to or is not reasonably connected with environmental damage but, rather, it is an affront to the local autonomy of LGUs. Similarly, the alleged lack of a certificate precondition that the project site does not overlap with an ancestral domain would not result in or is not reasonably connected with environmental damage but, rather, it is an impairment of the right of Indigenous

Cultural Communities/Indigenous Peoples (ICCs/IPs) to their ancestral domains. These alleged violations could be the subject of appropriate remedies before the proper administrative bodies (like the NCIP) or a separate action to compel compliance before the courts, as the case may be. However, the writ of *kalikasan* would not be the appropriate remedy to address and resolve such issues.

Be that as it may, we shall resolve both the issues proper in a writ of *kalikasan* case and those which are not, commingled as it were here, because of the exceptional character of this case. We take judicial notice of the looming power crisis that our nation faces. Thus, the resolution of all the issues in this case is of utmost urgency and necessity in order to finally determine the fate of the project center of this controversy. If we were to resolve only the issues proper in a writ of *kalikasan* case and dismiss those not proper therefor, that will leave such unresolved issues open to another round of protracted litigation. In any case, we find the records sufficient to resolve all the issues presented herein. We also rule that, due to the extreme urgency of the matter at hand, the present case is an exception to the doctrine of exhaustion of administrative remedies.[117] As we have often ruled, in exceptional cases, we can suspend the rules of procedure in order to achieve substantial justice, and to address urgent and paramount State interests vital to the life of our nation.

Issues

In view of the foregoing, we shall resolve the following issues:

1. Whether the Casiño Group was able to prove that the construction and operation of the power plant will cause grave environmental damage.

    1.1. The alleged thermal pollution of coastal waters, air pollution due to dust and combustion gases, water pollution from toxic coal combustion waste, and acid deposition to aquatic and terrestrial ecosystems that will be caused by the project.
    1.2. The alleged negative environmental assessment of the project by experts in a report generated during the social acceptability consultations.
    1.3. The alleged admissions of grave environmental damage in the EIS itself of the project.

2. Whether the ECC is invalid for lack of signature of Mr. Luis Miguel Aboitiz, as representative of RP Energy, in the Statement of Accountability of the ECC.

3. Whether the first and second amendments to the ECC are invalid for failure to undergo a new environmental impact assessment (EIA) because of the utilization of inappropriate EIA documents.

4. Whether the Certificate of Non-Overlap, under Section 59 of the IPRA Law, is a precondition to the issuance of an ECC and the lack of its prior issuance rendered the ECC invalid.

5. Whether the Certificate of Non-Overlap, under Section 59 of the IPRA Law, is a precondition to the consummation of the Lease and Development Agreement (LDA) between SBMA and RP Energy and the lack of its prior issuance rendered the LDA invalid.

6. Whether compliance with Section 27, in relation to Section 26, of the LGC (*i.e.,* approval of the concerned *sanggunian* requirement) is necessary prior to the implementation of the power plant project.

7. Whether the validity of the third amendment to the ECC can be resolved in this case.

Ruling

The parties to this case appealed from the decision of the appellate court pursuant to Section 16, Rule 7 of the Rules of Procedure for Environmental Cases, *viz*:

> Section 16. *Appeal.* - Within fifteen (15) days from the date of notice of the adverse judgment or denial of motion for reconsideration, any party may appeal to the Supreme Court under Rule 45 of the Rules of Court. **The appeal may raise questions of fact.** (Emphasis supplied)

It is worth noting that the Rules on the Writ of *kalikasan* allow the parties to raise, on appeal, questions of fact— and, thus, constitutes an exception to Rule 45 of the Rules of Court— because of the extraordinary nature of the circumstances surrounding the issuance of a writ of *kalikasan*. [118] Thus, we shall review both questions of law and fact in resolving the issues presented in this case.

We now rule on the above-mentioned issues in detail.

I.

Whether the Casiño Group was able to prove that the construction and operation of the power plant will cause grave environmental damage.

The alleged thermal pollution of coastal waters, air pollution due to dust and combustion gases, water pollution from toxic coal combustion waste, and acid deposition in aquatic

and terrestrial ecosystems that will be caused by the project.

As previously noted, the Casiño Group alleged that the construction and operation of the power plant shall adversely affect the residents of the Provinces of Bataan and Zambales, particularly, the Municipalities of Subic, Morong and Hermosa, and the City of Olongapo, as well as the sensitive ecological balance of the area. Their claims of ecological damage may be summarized as follows:

1. *Thermal pollution of coastal waters*. Due to the discharge of heated water from the operation of the plant, they claim that the temperature of the affected bodies of water will rise significantly. This will have adverse effects on aquatic organisms. It will also cause the depletion of oxygen in the water. RP Energy claims that there will be no more than a 3°C increase in water temperature but the Casiño Group claims that a 1°C to 2°C rise can already affect the metabolism and other biological functions of aquatic organisms such as mortality rate and reproduction.

2. *Air pollution due to dust and combustion gases.* While the Casiño Group admits that Circulating Fluidized Bed (CFB) Coal technology, which will be used in the power plant, is a clean technology because it reduces the emission of toxic gases, it claims that volatile organic compounds, specifically, polycyclic aromatic hydrocarbons (PAHs) will also be emitted under the CFB. PAHs are categorized as pollutants with carcinogenic and mutagenic characteristics. Carbon monoxide, a poisonous gas, and nitrous oxide, a lethal global warming gas, will also be produced.

3. *Water pollution from toxic coal combustion waste*. The waste from coal combustion or the residues from burning pose serious environmental risk because they are toxic and may cause cancer and birth defects. Their release to nearby bodies of water will be a threat to the marine ecosystem of Subic Bay. The project is located in a flood-prone area and is near three prominent seismic faults as identified by Philippine Institute of Volcanology and Seismology. The construction of an ash pond in an area susceptible to flooding and earthquake also undermines SBMA's duty to prioritize the preservation of the water quality in Subic Bay.

4. *Acid deposition in aquatic and terrestrial ecosystems*. The power plant will release 1,888 tons of nitrous oxides and 886 tons of sulfur dioxide per year. These oxides are responsible for acid deposition. Acid deposition directly impacts aquatic ecosystems. It is toxic to fish and other aquatic animals. It will also damage the forests near Subic Bay as well as the wildlife therein. This will threaten the stability of the biological diversity of the Subic Bay Freeport which was declared as one of the ten priority sites among the protected areas

in the Philippines and the Subic Watershed and Forest Reserve. This will also have an adverse effect on tourism.[119]

In its January 30, 2013 Decision, the appellate court ruled that the Casiño Group failed to prove the above allegations.

We agree with the appellate court.

Indeed, the three witnesses presented by the Casiño Group are not experts on the CFB technology or on environmental matters. These witnesses even admitted on cross-examination that they are not competent to testify on the environmental impact of the subject project. What is wanting in their testimonies is their technical knowledge of the project design/implementation or some other aspects of the project, even those not requiring expert knowledge, vis-à-vis the significant negative environmental impacts which the Casiño Group alleged will occur. Clearly, the Casiño Group failed to carry the onus of proving the alleged significant negative environmental impacts of the project. In comparison, RP Energy presented several experts to refute the allegations of the Casiño Group.

As aptly and extensively discussed by the appellate court:

> Petitioners[120] presented three (3) witnesses, namely, Palatino, Hermoso, and Lacbain, all of whom are not experts on the CFB technology or even on environmental matters. Petitioners did not present any witness from Morong or Hermosa. Palatino, a former freelance writer and now a Congressman representing the Kabataan Partylist, with a degree of BS Education major in Social Studies, admitted that he is not a technical expert. Hermoso, a Director of the PREDA foundation which is allegedly involved on environmental concerns, and a member of Greenpeace, is not an expert on the matter subject of this case. He is a graduate of BS Sociology and a practicing business director involved in social development and social welfare services. Lacbain, incumbent Vice-Governor of the Province of Zambales, an accounting graduate with a Master in Public Administration, was a former *Banco* Filipino teller, entertainment manager, disco manager, marketing manager and college instructor, and is also not an expert on the CFB technology. Lacbain also admitted that he is neither a scientist nor an expert on matters of the environment.
>
> Petitioners cited various scientific studies or articles and websites culled from the internet. However, the said scientific studies and articles including the alleged Key Observations and Recommendations on the EIS of the Proposed RPE Project by Rex Victor O. Cruz (Exhibit "DDDDD") attached to the Petition, were not testified to by an expert witness, and are basically hearsay in nature and cannot be given probative weight.

The article purportedly written by Rex Victor O. Cruz was not even signed by the said author, which fact was confirmed by Palatino.

Petitioners' witness, Lacbain, admitted that he did not personally conduct any study on the environmental or health effects of a coal-fired power plant, but only attended seminars and conferences pertaining to climate change; and that the scientific studies mentioned in the penultimate whereas clause of Resolution No. 2011-149 (Exhibit "AAAAA") of the *Sangguniang Panlalawigan* of Zambales is based on what he read on the internet, seminars he attended and what he heard from unnamed experts in the field of environmental protection.

In his Judicial Affidavit (Exhibit "HHHHH"), Palatino stated that he was furnished by the concerned residents the Key Observations and Recommendations on the EIS of Proposed RPE Project by Rex Victor O. Cruz, and that he merely received and read the five (5) scientific studies and articles which challenge the CFB technology. Palatino also testified that: he was only furnished by the petitioners copies of the studies mentioned in his Judicial Affidavit and he did not participate in the execution, formulation or preparation of any of the said documents; he does not personally know Rex Cruz or any of the authors of the studies included in his Judicial Affidavit; he did not read other materials about coal-fired power plants; he is not aware of the acceptable standards as far as the operation of a coal-fired power plant is concerned; petitioner Velarmino was the one who furnished him copies of the documents in reference to the MOU and some papers related to the case; petitioner Peralta was the one who e-mailed to him the soft copy of all the documents [letters (a) to (o) of his Judicial Affidavit], except the LGU Resolutions; and he has never been at the actual Power Plant project site. It must be noted that petitioners Velarmino and Peralta were never presented as witnesses in this case. In addition, Palatino did not identify the said studies but simply confirmed that the said studies were attached to the Petition.

Indeed, under the rules of evidence, a witness can testify only to those facts which the witness knows of his or her personal knowledge, that is, which are derived from the witness' own perception. Concomitantly, a witness may not testify on matters which he or she merely learned from others either because said witness was told or read or heard those matters. Such testimony is considered hearsay and may not be received as proof of the truth of what the witness has learned. This is known as the hearsay rule. Hearsay is not limited to oral testimony or statements; the general rule that excludes hearsay as evidence applies to written, as well as oral statements. There are several exceptions to the hearsay rule under the Rules of Court, among which are learned treatises under Section 46 of Rule 130, *viz*:

> "SEC. 46. Learned treatises. -A published treatise, periodical or pamphlet on a subject of history, law, science, or art is admissible as tending to prove the truth of a matter stated therein if the court takes judicial notice, or a witness expert in the subject testifies, that the writer of the statement in the treatise, periodical or pamphlet is recognized in his profession or calling as expert in the subject."

The alleged scientific studies mentioned in the Petition cannot be classified as learned treatises. We cannot take judicial notice of the same, and no witness expert in the subject matter of this case testified, that the writers of the said scientific studies are recognized in their profession or calling as experts in the subject.

In stark contrast, respondent RP Energy presented several witnesses on the CFB technology.

In his Judicial Affidavit, witness Wong stated that he obtained a Bachelor of Science, Major in Mechanical Engineering from Worcester Polytechnic Institute; he is a Consulting Engineer of Steam Generators of URS; he was formerly connected with Foster Wheeler where he held the positions of site commissioning engineer, testing engineer, instrumentation and controls engineer, mechanical equipment department manager, director of boiler performance and mechanical design engineering and pulverized coal product director. He explained that: CFB stands for Circulating Fluidized Bed; it is a process by which fuel is fed to the lower furnace where it is burned in an upward flow of combustion air; limestone, which is used as sulfur absorbent, is also fed to the lower furnace along with the fuel; the mixture of fuel, ash, and the boiler bed sorbent material is carried to the upper part of the furnace and into a cyclone separator; the heavier particles which generally consist of the remaining uncombusted fuel and absorbent material are separated in the cyclone separator and are recirculated to the lower furnace to complete the combustion of any unburned particles and to enhance SO2 capture by the sorbent; fly ash and flue gas exit the cyclone and the fly ash is collected in the electrostatic precipitator; furnace temperature is maintained in the range of 800° to 900° C by suitable heat absorbing surface; the fuel passes through a crusher that reduces the size to an appropriate size prior to the introduction into the lower furnace along with the limestone; the limestone is used as a SO2 sorbent which reacts with the sulfur oxides to form calcium sulfate, an inert and stable material; air fans at the bottom of the furnace create sufficient velocity within the steam generator to maintain a bed of fuel, ash, and limestone mixture; secondary air is also introduced above the bed to facilitate circulation and complete combustion of the mixture; the combustion process generates heat, which then heats the boiler feedwater flowing through boiler tube bundles under pressure; the heat generated in the furnace circuit turns

the water to saturated steam which is further heated to superheated steam; this superheated steam leaves the CFB boiler and expands through a steam turbine; the steam turbine is directly connected to a generator that turns and creates electricity; after making its way through the steam turbine, the low-pressure steam is exhausted downwards into a condenser; heat is removed from the steam, which cools and condenses into water (condensate); the condensate is then pumped back through a train of feedwater heaters to gradually increase its temperature before this water is introduced to the boiler to start the process all over again; and CFB technology has advantages over pulverized coal firing without backend cleanup systems, i.e., greater fuel flexibility, lower SO2 and NOx emissions. Moreover, Wong testified, *inter alia*, that: CFBs have a wider range of flexibility so they can environmentally handle a wider range of fuel constituents, mainly the constituent sulfur; and is capable of handling different types of coal within the range of the different fuel constituents; since CFB is the newer technology than the PC or stalker fire, it has better environmental production; 50 percent of the electric generation in the United States is still produced by coal combustion; and the CFB absorbs the sulfur dioxide before it is emitted; and there will be a lower percentage of emissions than any other technology for the coal.

In his Judicial Affidavit, Sarrki, stated that: he is the Chief Engineer for Process Concept in Foster Wheeler; he was a Manager of Process Technology for Foster Wheeler from 1995 to 2007; and he holds a Master of Science degree in Chemical Engineering. He explained that: CFB boilers will emit PAHs but only in minimal amounts, while BFB will produce higher PAH emissions; PAH is a natural product of any combustion process; even ordinary burning, such as cooking or driving automobiles, will have some emissions that are not considered harmful; it is only when emissions are of a significant level that damage may be caused; a CFB technology has minimal PAH emissions; the high combustion efficiency of CFB technology, due to long residence time of particles inside the boiler, leads to minimal emissions of PAH; other factors such as increase in the excess air ratio[,] decrease in Ca/S, as well as decrease in the sulfur and chlorine contents of coal will likewise minimize PAH production; and CFB does not cause emissions beyond scientifically acceptable levels. He testified, *inter alia*, that: the CFB technology is used worldwide; they have a 50% percent share of CFB market worldwide; and this will be the first CFB by Foster Wheeler in the Philippines; Foster Wheeler manufactures and supplies different type[s] of boilers including BFB, but CFB is always applied on burning coal, so they do not apply any BFB for coal firing; CFB has features which have much better combustion efficiency, much lower emissions and it is more effective as a boiler equipment; the longer the coal stays in the combustion chamber, the better it is burned; eight (8) seconds is already beyond adequate but it keeps a margin; in CFB technology, combustion

technology is uniform throughout the combustion chamber; high velocity is used in CFB technology, that is vigorous mixing or turbulence; turbulence is needed to get contact between fuel and combustion air; and an important feature of CFB is air distribution.

In his Judicial Affidavit, Ouano stated that: he is a licensed Chemical Engineer, Sanitary Engineer and Environmental Planner in the Philippines; he is also a chartered Professional Engineer in Australia and a member of the colleges of environmental engineers and chemical engineers of the Institution of Engineers (Australia); he completed his Bachelor in Chemical Engineering in 1970, Master of Environmental Engineering in 1972 and Doctor of Environmental Engineering in 1974; he also graduated from the University of Sydney Law School with the degree of Master of Environmental Law in 2002 and PhD in Law from Macquarie University in 2007. He explained in his Judicial Affidavit that: the impacts identified and analyzed in the EIA process are all potential or likely impacts; there are a larger number of EIA techniques for predicting the potential environmental impacts; it is important to note that all those methods and techniques are only for predicting the potential environmental impacts, not the real impacts; almost all environmental systems are non-linear and they are subject to chaotic behavior that even the most sophisticated computer could not predict accurately; and the actual or real environmental impact could only be established when the project is in actual operation. He testified, *inter alia*, that: the higher the temperature the higher the nitrous oxide emitted; in CFB technology, the lower the temperature, the lower is the nitrogen oxide; and it still has a nitrogen oxide but not as high as conventional coal; the CFB is the boiler; from the boiler itself, different pollution control facilities are going to be added; and for the overall plant with the pollution control facilities, the particulate matters, nitrogen oxide and sulfur dioxide are under control. (Citations omitted)[121]

We also note that RP Energy controverted in detail the afore-summarized allegations of the Casiño Group on the four areas of environmental damage that will allegedly occur upon the construction and operation of the power plant:

1. *On thermal pollution of coastal waters.*

As to the extent of the expected rise in water temperature once the power plant is operational, Ms. Mercado stated in her Judicial Affidavit thus:

Q: What was the result of the Thermal Plume Modeling that was conducted for RP Energy?
A: The thermal dispersion modeling results show that largest warming change (0.95°C above ambient) is observed in the shallowest (5 m) discharge scenario. The warmest

surface temperature change for the deepest (30 m) scenario is 0.18°C. All the simulated scenarios comply with the DAO 90-35 limit for temperature rise of 3°C within the defined 70 x 70 m mixing zone. The proposed power plant location is near the mouth of Subic Bay, thus the tidal currents influence the behavior of thermal discharge plume. Since the area is well-flushed, mixing and dilution of the thermal discharge is expected.

It also concluded that corals are less likely to be affected by the cooling water discharge as corals may persist in shallow marine waters with temperatures ranging from 18°C to 36°C. The predicted highest temperature of 30.75°C, from the 0.95°C increase in ambient in the shallowest (5 m) discharge scenario, is within this range.[122]

In the same vein, Dr. Ouano stated in his Judicial Affidavit:

Q: In page 41, paragraph 99 of the Petition, it was alleged that: "x x x a temperature change of 1°C to 2°C can already affect the metabolism and other biological functions of aquatic organisms such as mortality rate and reproduction." What is your expert opinion, if any, on this matter alleged by the Petitioners?

A: Living organisms have proven time and again that they are very adaptable to changes in the environment. Living organisms have been isolated in volcanic vents under the ocean living on the acidic nutrient soup of sulfur and other minerals emitted by the volcano to sub-freezing temperature in Antarctica. As a general rule, metabolism and reproductive activity [increase] with temperature until a maximum is reached after which [they decline]. For this reason, during winter, animals hibernate and plants become dormant after shedding their leaves. It is on the onset of spring that animals breed and plants bloom when the air and water are warmer. At the middle of autumn when the temperature drops to single digit, whales, fish, birds and other living organisms, which are capable of migrating, move to the other end of the globe where spring is just starting. In the processes of migration, those migratory species have to cross the tropics where the temperature is not just one or two degrees warmer but 10 to 20 degrees warmer.

When discussing the impact of 1 to 2 degrees temperature change and its impact on the ecosystem, the most important factors to consider are – (1) Organism Type – specifically its tolerance to temperature change (mammals have higher tolerance); (2) Base Temperature – it is the

temperature over the optimum temperature such that an increase will result in the decline in number of the organisms; (3) Mobility or Space for Migration (i.e., an aquarium with limited space or an open ocean that the organism can move to a space more suited to [a] specific need, such as the migratory birds); and (4) Ecosystem Complexity and Succession. The more complex the ecosystem the more stable it is as succession and adaptation [are] more robust.

Normally, the natural variation in water temperature between early morning to late afternoon could be several degrees (four to five degrees centigrade and up to ten degrees centigrade on seasonal basis). Therefore, the less than one degree centigrade change predicted by the GHD modeling would have minimal impact.[123]

On cross-examination, Dr. Ouano further explained—

ATTY. AZURA:
x x x When you say Organism Type – you mentioned that mammals have a higher tolerance for temperature change?

DR. OUANO:
Yes.

ATTY. AZURA:
What about other types of organisms, Dr. Ouano? Fish for example?

DR. OUANO:
Well, mammals have high tolerance because mammals are warm[-]blooded. Now, when it comes to cold[-]blooded animals the tolerance is much lower. But again when you are considering x x x fish [e]specially in open ocean you have to remember that nature by itself is x x x very brutal x x x where there is always the prey-predator relationship. Now, most of the fish that we have in open sea [have] already a very strong adaptability mechanism. And in fact, Kingman back in 1964 x x x studied the coal reef around the gulf of Oman where the temperature variation on day to day basis varied not by 1 degree to 2 degrees but by almost 12 degrees centigrade. Now, in the Subic Bay area which when you're looking at it between daytime variation, early dawn when it is cold, the air is cold, the sea temperature, sea water is quite cold. Then by 3:00 o'clock in the afternoon it starts to warm up. So the variation [in the] Subic Bay area is around 2 to 4 degrees by natural variation from the sun as well as from the current that goes around it. So when you are talking about what the report has said of around 1 degree change, the total impact x x x on the fishes will be minimal. x x x

ATTY. AZURA:

x x x So, you said, Dr. Ouano, that fish, while they have a much lower tolerance for temperature variation, are still very adaptable. What about other sea life, Dr. Ouano, for example, sea reptiles?

DR. OUANO:
That's what I said. The most sensitive part of the marine ecology is physically the corals because corals are non-migratory, they are fix[ed]. Second[ly] x x x corals are also highly dependent on sunlight penetration. If they are exposed out of the sea, they die; if they are so deep, they die. And that is why I cited Kingman in his studies of coral adaptability [in] the sea of Oman where there was a very high temperature variation, [they] survived.

ATTY. AZURA:
Would you be aware, Dr. Ouano, if Kingman has done any studies in Subic Bay?

DR. OUANO:
Not in Subic Bay but I have reviewed the temperature variation, natural temperature variation from the solar side, the days side as well as the seasonal variation. There are two types of variation since temperatures are very critical. One is the daily, which means from early morning to around 3:00 o'clock, and the other one is seasonal variation because summer, December, January, February are the cold months and then by April, May we are having warm temperature where the temperature goes around 32-33 degrees; Christmas time, it drops to around 18 to 20 degrees so it[']s a variation of around seasonal variation of 14 degrees although some of the fish might even migrate and that is why I was trying to put in corals because they are the ones that are really fix[ed]. They are not in a position to migrate in this season.

ATTY. AZURA:
To clarify. You said that the most potentially sensitive part of the ecosystem would be the corals.

DR. OUANO:
Or threatened part because they are the ones [that] are not in a position to migrate.

ATTY AZURA:
In this case, Dr. Ouano, with respect to this project and the projected temperature change, will the corals in Subic Bay be affected?

DR. OUANO:
As far as the outlet is concerned, they have established it outside the coral area. By the time it reaches the coral area the temperature variation, as per the GHD study is very small, it[']s almost negligible.

ATTY AZURA:
Specifically, Dr. Ouano, what does negligible mean, what level of variation are we talking about?

DR. OUANO:
If you are talking about a thermometer, you might be talking about, normally about .1 degrees centigrade. That's the one that you could more or less ascertain. x x x

ATTY. AZURA:
Dr. Ouano, you mentioned in your answer to the same question, Question 51, that there is a normal variation in water temperature. In fact, you said there is a variation throughout the day, daily and also throughout the year, seasonal. Just to clarify, Dr. Ouano. When the power plant causes the projected temperature change of 1 degree to 2 degrees Celsius this will be in addition to existing variations? What I mean, Dr. Ouano, just so I can understand, how will that work? How will the temperature change caused by the power plant work with the existing variation?

DR. OUANO:
There is something like what we call the zonal mixing. This is an area of approximately one or two hectares where the pipe goes out, the hot water goes out. So that x x x, we have to accept x x x that [throughout it] the zone will be a disturb[ed] zone. After that one or two hectares park the water temperature is well mixed [so] that the temperature above the normal existing variation now practically drops down to almost the normal level.[124]

2. *On air pollution due to dust and combustion gases.*

To establish that the emissions from the operation of the power plant would be compliant with the standards under the Clean Air Act,[125] Ms. Mercado stated in her Judicial Affidavit thus:

271. Q: What was the result of the Air Dispersion Modeling that was conducted for RP Energy?

A: The Air Dispersion Modeling predicted that the Power Plant Project will produce the following emissions, which [are] fully compliant with the standards set by DENR:

	Predicted GLC[126] for 1-hr	National Ambient Air

	averaging period	Quality Guideline Values
SO_2	45.79 µg/Nm_3	340 µg/Nm_3
NO_2	100.8 µg/Nm_3	260 µg/Nm_3
CO	10 µg/Nm_3	35 µg/Nm_3

	Predicted GLC for 8-hr averaging period	National Ambient Air Quality Guideline Values
CO	0.19 mg/ncm	10 µg/Nm_3

	Predicted GLC for 24-hr averaging period	National Ambient Air Quality Guideline Values
SO_2	17.11 µg/Nm_3	180 µg/Nm_3
NO_2	45.79 µg/Nm_3	150 µg/Nm_3

	Predicted GLC for 1-yr averaging period	National Ambient Air Quality Guideline Values
SO_2	6.12 µg/Nm_3	80 µg/Nm_3
NO_2	No standard	---
CO	No standard	---

272. Q: What other findings resulted from the Air Dispersion Modeling, if any?

A: It also established that the highest GLC to Clean Air Act Standards ratio among possible receptors was located 1.6 km North NorthEast ("NNE") of the Power Plant Project. Further, this ratio was valued only at 0.434 or less than half of the upper limit set out in the Clean Air Act. This means that the highest air ambient quality disruption will happen only 1.6 km NNE of the Power Plant Project, and that such disruption would still be compliant with the standards imposed by the Clean Air Act.[127]

The Casiño Group argued, however, that, as stated in the EIS, during upset conditions, significant negative environmental impact will result from the emissions. This claim was refuted by RP Energy's witness during cross-examination:

ATTY. AZURA:

If I may refer you to another page of the same annex, Ms. Mercado, that's page 202 of the same document, the August 2012. Fig. 2-78 appears to show, there's a Table, Ms. Mercado, the first table, the one on top appears to show a comparison in normal and upset conditions. I noticed, Ms. Mercado, that the black bars are much higher than the bars in normal condition. Can you state what this means?

MS. MERCADO:

It means there are more emissions that could potentially be released when it is under upset condition.

ATTY. AZURA:

I also noticed, Ms. Mercado, at the bottom part of this chart there are Receptor IDs, R1, R2, R3 and so forth and on page 188 of this same document, Annex "9-Mercado," there is a list identifying these receptors, for example, Receptor 6, Your Honor, appears to have been located in Olongapo City, Poblacion. Just so I can understand, Ms. Mercado, does that mean that if upset condition[s] were to occur, the Olongapo City Poblacion will be affected by the emissions?

MS. MERCADO:

All it means is that there will be higher emissions and a higher ground concentration. But you might want to also pay attention to the "y axis," it says there GLC/CAA [Ground Level Concentration/Clean Air Act limit]. So it means that even under upset conditions… say for R6, the ground level concentration for upset condition is still around .1 or 10% percent only of the Clean Air Act limit. So it's still much lower than the limit.

ATTY. AZURA:

But that would mean, would it not, Ms. Mercado, that in the event of upset conditions[,] emissions would increase in the Olongapo City Poblacion?

MS. MERCADO:

Not emissions will increase. The emissions will be the same but the ground level concentration, the GLC, will be higher if you compare normal versus upset. But even if it[']s under upset conditions, it is still only around 10% percent of the Clean Air Act Limit.

x x x x

J. LEAGOGO:

So you are trying to impress upon this Court that even if the plant is in an upset condition, it will emit less than what the national standards dictate?

MS. MERCADO:

Yes, Your Honor.[128]

With respect to the claims that the power plant will release dangerous PAHs and CO, Engr. Sarrki stated in his Judicial Affidavit thus:

> Q: In page 42, paragraph 102 of the Petition, the Petitioners alleged that Volatile Organic Compounds ("VOC") specifically Polycyclic Aromatic Hydrocarbon ("PAH") will be emitted even by CFB boilers. What can you say about this?
>
> A: Actually, the study cited by the Petitioners does not apply to the present case because it does not refer to CFB technology. The study refers to a laboratory-scale tubular Bubbling Fluidized Bed ("BFB") test rig and not a CFB. CFB boilers will emit PAHs but only in minimal amounts. Indeed, a BFB will produce higher PAH emissions.
>
> x x x x
>
> Q: Why can the study cited by Petitioners not apply in the present case?
>
> A: The laboratory-scale BFB used in the study only has one (1) air injection point and does not replicate the staged-air combustion process of the CFB that RP Energy will use. This staged-air process includes the secondary air. Injecting secondary air into the system will lead to more complete combustion and inhibits PAH production. There is a study entitled "Polycyclic Aromatic Hydrocarbon (PAH) Emissions from a Coal-Fired Pilot FBC System" by Kunlei Liu, Wenjun Han, Wei-Ping Pan, John T. Riley found in the Journal of Hazardous Materials B84 (2001) where the findings are discussed.

Also, the small-scale test rig utilized in the study does not simulate the process conditions (hydrodynamics, heat transfer characteristics, solid and gas mixing behavior, etc.) seen in a large scale utility boiler, like

those which would be utilized by the Power Plant Project.

x x x
x

Q: Aside from residence time of particles and secondary air, what other factors, if any, reduce PAH production?

A: Increase in the excess air ratio will also minimize PAH production. Furthermore, decrease in Calcium to Sulfur moral ratio ("Ca/S"), as well as decrease in the sulfur and chlorine contents of coal will likewise minimize PAH production. This is also based on the study entitled "Polycyclic Aromatic Hydrocarbon (PAH) Emissions from a Coal-Fired Pilot FBC System" by Kunlei Liu, Wenjun Han, Wei-Ping Pan, John T. Riley.

In RP Energy's Power Plant Project, the projected coal to be utilized has low sulfur and chlorine contents minimizing PAH production. Also, due to optimum conditions for the in-furnace SO2 capture, the Ca/S will be relatively low, decreasing PAH production.

Q: In paragraph 104 of the Petition, it was alleged that "Carbon monoxide (CO), a poisonous, colorless and odorless gas is also produced when there is partial oxidation or when there is not enough oxygen (O2) to form carbon dioxide (CO2)." What can you say about this?

A: CFB technology reduces the CO emissions of the Power Plant Project to safe amounts. In fact, I understand that the projected emissions level of the Power Plant Project compl[ies] with the International Finance Corporation ("IFC") standards. Furthermore, characteristics of CFB technology such as long residence time, uniform temperature and high turbulence provide an effective combustion environment which results [in] lower and safer CO emissions.

Q: I have no further questions for you at the moment. Is there anything you wish to add to the foregoing?

A: Yes. PAH is a natural product of ANY combustion process. Even ordinary burning, such as cooking or driving automobiles, will have some emissions that are not considered harmful. It is only when emissions are of a significant level that damage may be caused.

Given that the Power Plant Project will utilize CFB technology, it will have minimal PAH emissions. The high combustion efficiency of CFB technology, due to the long residence time of particles inside the boiler, leads to the minimal emissions of PAH. Furthermore, other factors such as increase in the excess air ratio, decrease in Ca/S, as well as decrease

in the sulfur and chlorine contents of coal will likewise minimize PAH production. CFB does not cause emissions beyond scientifically acceptable levels, and we are confident it will not result in the damage speculated by the Petitioners.[129]

3. *On water pollution from toxic coal combustion waste.*

With regard to the claim that coal combustion waste produced by the plant will endanger the health of the inhabitants nearby, Dr. Ouano stated in his Judicial Affidavit thus:

Q: In page 43, paragraph 110 of the Petition, it was alleged that: "[s]olid coal combustion waste is highly toxic and is said to cause birth defects and cancer risks among others x x x." What is your expert opinion, if any, on this matter alleged by the Petitioners?

A: Coal is geologically compressed remains of living organisms that roamed the earth several million years ago. In the process of compression, some of the minerals in the soil, rocks or mud, the geologic media for compression, are also imparted into the compressed remains. If the compressing media of mud, sediments and rocks contain high concentration of mercury, uranium, and other toxic substances, the coal formed will likewise contain high concentration of those substances. If the compressing materials have low concentration of those substances, then the coal formed will likewise have low concentration of those substances. If the coal does not contain excessive quantities of toxic substances, the solid residues are even used in agriculture to supply micronutrients and improve the potency of fertilizers. It is used freely as a fill material in roads and other construction activities requiring large volume of fill and as additive in cement manufacture. After all, diamonds that people love to hang around their necks and keep close to the chest are nothing more than the result of special geologic action, as those in volcanic pipes on coal.[130]

RP Energy further argued, a matter which the Casiño Group did not rebut or refute, that the waste generated by the plant will be properly handled, to wit:

4.1.49 When coal is burned in the boiler furnace, two by-products are generated - bottom and fly ash. Bottom ash consists of large and fused particles that fall to the bottom of the furnace and mix with the bed media. Fly ash includes fine-grained and powdery particles that are

carried away by flue gas into the electrostatic precipitator, which is then sifted and collected. These by-products are non-hazardous materials. In fact, a coal power plant's Fly Ash, Bottom Ash and Boiler Slag have consequent beneficial uses which "generate significant environmental, economic, and performance benefits." Thus, fly ash generated during the process will be sold and transported to cement manufacturing facilities or other local and international industries.

4.1.50 RP Energy shall also install safety measures to insure that waste from burning of coal shall be properly handled and stored.

4.1.51 Bottom ash will be continuously collected from the furnace and transferred through a series of screw and chain conveyors and bucket elevator to the bottom ash silo. The collection and handling system is enclosed to prevent dust generation. Discharge chutes will be installed at the base of the bottom ash silo for unloading. Open trucks will be used to collect ash through the discharge chutes. Bottom ash will be sold, and unsold ash will be stored in ash cells. A portion of the bottom ash will be reused as bed material through the installation of a bed media regeneration system (or ash recycle). Recycled bottom ash will be sieved using a vibrating screen and transported to a bed material surge bin for re-injection into the boiler.

4.1.52 Fly ash from the electrostatic precipitator is pneumatically removed from the collection hopper using compressed air and transported in dry state to the fly ash silo. Two discharge chutes will be installed at the base of the fly ash silo. Fly ash can either be dry-transferred through a loading spout into an enclosed lorry or truck for selling, re-cycling, or wet-transferred through a wet unloader into open dump trucks and transported to ash cells. Fly ash discharge will operate in timed cycles, with an override function to achieve continuous discharge if required. Fly ash isolation valves in each branch line will prevent leakage and backflow into non-operating lines.

4.1.53 Approximately 120,000m² will be required for the construction of the ash cell. Ash will be stacked along the sloping hill, within a grid of excavations (i.e. cells) with a 5m embankment. Excavated soils will be used for embankment construction and backfill. To prevent infiltration [of] ash deposits into the groundwater, a clay layer with minimum depth of 400mm will be laid at the base of each cell. For every 1-m depth of ash deposit, a 10-cm soil backfill will be applied to immobilize ash and prevent migration via wind. Ash cell walls will be lined with high-density polyethylene to prevent seepage. This procedure and treatment method is in fact suitable for disposal of toxic and hazardous wastes although fly ash is not classified as toxic and hazardous materials.[131]

Anent the claims that the plant is susceptible to earthquake and landslides, Dr. Ouano testified thus:

J. LEAGOGO:

In terms of fault lines, did you study whether this project site is in any fault line?

DR. OUANO:

There are some fault lines and in fact, in the Philippines it is very difficult to find an area except Palawan where there is no fault line within 20 to 30 [kilometers]. But then fault lines as well as earthquakes really [depend] upon your engineering design. I mean, Sto. Tomas University has withstood all the potential earthquakes we had in Manila[,] even sometimes it[']s intensity 8 or so because the design for it back in 1600 they are already using what we call floating foundation. So if the engineering side for it[,] technology is there to withstand the expected fault line [movement].

J. LEAGOGO:

What is the engineering side of the project? You said UST is floating.

DR. OUANO:

The foundation, that means to say you don't break…

J. LEAGOGO:

Floating foundation. What about this, what kind of foundation?

DR. OUANO:

It will now depend on their engineering design, the type of equipment…

J. LEAGOGO:

No, but did you read it in their report?

DR. OUANO:

It[']s not there in their report because it will depend on the supplier, the equipment supplier.

J. LEAGOGO:

So it[']s not yet there?

DR. OUANO:

It[']s not yet there in the site but it is also covered in our Building Code what are the intensities of earthquakes expected of the different areas in the Philippines.

J. LEAGOGO:

Have you checked our geo-hazard maps in the Philippines to check on this project site?

DR. OUANO:

Yes. It is included there in the EIA Report.

J. LEAGOGO:

It[']s there?

DR. OUANO:

It[']s there.[132]

4. *On acid deposition in aquatic and terrestrial ecosystems.*

Relative to the threat of acid rain, Dr. Ouano stated in his Judicial Affidavit, thus:

Q: In page 44, paragraph 114 of the Petition, it was alleged that "the coal-fired power plant will release 1,888 tons of nitrous oxides (NOx) per year and 886 tons of sulfur dioxide (SO2) per year. These oxides are the precursors to the formation of sulfuric acid and nitric acid which are responsible for acid deposition." What is your expert opinion on this matter alleged by the Petitioners?

A: NO2 is found in the air, water and soil from natural processes such as lightning, bacterial activities and geologic activities as well as from human activities such as power plants and fertilizer usage in agriculture. SO2 is also found in air, water and soil from bacterial, geologic and human activities.

NO2 and SO2 in the air are part of the natural nitrogen and sulfur cycle to widely redistribute and recycle those essential chemicals for use by plants. Without the NO2 and SO2 in the air, plant and animal life would be limited to small areas of this planet where nitrogen and sulfur are found in abundance. With intensive agricultural practices, nitrogen and sulfur are added in the soil as fertilizers.

Acid rain takes place when the NO2 and SO2 concentration are excessive or beyond those values set in the air quality standards. NO2 and SO2 in the air in concentrations lower than those set in the standards have beneficial effect to the environment and agriculture and are commonly known as micronutrients.[133]

On clarificatory questions from the appellate court, the matter was further dissected thus:

J. LEAGOGO:
x x x The project will release 1,888 tons of nitrous oxide per year. And he said, yes; that witness answered, yes, it will produce 886 tons of sulfur dioxide per year. And he also answered yes, that these oxides are the precursors to the formation of sulfuric acid and nitric acid. Now my clarificatory question is, with this kind of releases there will be acid rain?

DR. OUANO:
No.

J. LEAGOGO:
Why?

DR. OUANO:
Because it[']s so dilute[d].

J. LEAGOGO:
It will?

DR. OUANO:
Because the acid concentration is so dilute[d] so that it is not going to cause acid rain.

J. LEAGOGO:
The acid concentration is so diluted that it will not cause acid rain?

DR. OUANO:
Yes.

J. LEAGOGO:
What do you mean it[’]s so diluted? How will it be diluted?

DR. OUANO:
Because it[’]s going to be mixed with the air in the atmosphere; diluted in the air in the atmosphere. And besides this 886 tons, this is not released in one go, it is released almost throughout the year.

J. LEAGOGO:
You also answered in Question No. 61, “acid rain takes place when the NO2 AND SO2 concentration are excessive.” So when do you consider it as excessive?

DR. OUANO:
That is something when you are talking about acid…

J. LEAGOGO:
In terms of tons of nitrous oxide and tons of sulfur oxide, when do you consider it as excessive?

DR. OUANO:
It is in concentration not on tons weight, Your Honor.

J. LEAGOGO:
In concentration?

DR. OUANO:
In milligrams per cubic meter, milligrams per standard cubic meter.

J. LEAGOGO:
So being an expert, what will be the concentration of this kind of 1,888 tons of nitrous oxide? What will be the concentration in terms of your…?

DR. OUANO:
If the concentration is in excess of something like 8,000 micrograms per standard cubic meters, then there is already potential for acid rain.

J. LEAGOGO:
I am asking you, Dr. Ouano, you said it will release 1,888 tons of nitrous oxide?

DR. OUANO:
Yes.

J. LEAGOGO:
In terms of concentration, what will that be?

DR. OUANO:
In terms of the GHD study that will result [in] 19 milligrams per standard cubic meters and the time when acid rain will start [is when the concentration gets] around 8,000 milligrams per standard cubic meters. So we have 19 compared to 8,000. So we are very, very safe.

J. LEAGOGO:
What about SO2?

DR. OUANO:
SO2, we are talking about ... you won't mind if I go to my codigo. For sulfur dioxide this acid rain most likely will start at around 7,000 milligrams per standard cubic meter but then … sorry, it[']s around 3,400 micrograms per cubic meter. That is the concentration for sulfur dioxide, and in our plant it will be around 45 micrograms per standard cubic meter. So the acid rain will start at 3,400 and the emission is estimated here to result to concentration of 45.7 micrograms.

J. LEAGOGO:
That is what GHD said in their report.

DR. OUANO:
Yes. So that is the factor of x x x safety that we have.[134]

Apart from the foregoing evidence, we also note that the above and other environmental concerns are extensively addressed in RP Energy's Environmental Management Plan or Program (EMP). The EMP is "a section in the EIS that details the prevention, mitigation, compensation, contingency and monitoring measures to enhance positive impacts and minimize negative impacts and risks of a proposed project or undertaking."[135] One of the conditions of the ECC is that RP Energy shall strictly comply with and implement its approved EMP. The Casiño Group failed to contest, with proof, the adequacy of the mitigating measures stated in the aforesaid EMP.

In upholding the evidence and arguments of RP Energy, relative to the lack of proof as to the alleged significant environmental damage that will be caused by the project, the appellate court relied mainly on the testimonies of experts, which we find to be in accord with judicial precedents. Thus, we ruled in one case:

> Although courts are not ordinarily bound by testimonies of experts, they may place whatever weight they choose upon such testimonies in accordance with the facts of the case. The relative weight and sufficiency of expert testimony is peculiarly within the province of the trial court to decide, considering the ability and character of the witness, his actions upon the witness stand, the weight and process of the reasoning by

> which he has supported his opinion, his possible bias in favor of the side for whom he testifies, the fact that he is a paid witness, the relative opportunities for study and observation of the matters about which he testifies, and any other matters which serve to illuminate his statements. The opinion of the expert may not be arbitrarily rejected; it is to be considered by the court in view of all the facts and circumstances in the case and when common knowledge utterly fails, the expert opinion may be given controlling effects (20 Am. Jur., 1056-1058). The problem of the credibility of the expert witness and the evaluation of his testimony is left to the discretion of the trial court whose ruling thereupon is not reviewable in the absence of an abuse of that discretion.[136]

Hence, we sustain the appellate court's findings that the Casiño Group failed to establish the alleged grave environmental damage which will be caused by the construction and operation of the power plant.

In another vein, we, likewise, agree with the observations of the appellate court that the type of coal which shall be used in the power plant has important implications as to the possible significant negative environmental impacts of the subject project.[137] However, there is no coal supply agreement, as of yet, entered into by RP Energy with a third-party supplier. In accordance with the terms and conditions of the ECC and in compliance with existing environmental laws and standards, RP Energy is obligated to make use of the proper coal type that will not cause significant negative environmental impacts.

The alleged negative environmental assessment of the project by experts in a report generated during the social acceptability consultations

The Casiño Group also relies heavily on a report on the social acceptability process of the power plant project to bolster its claim that the project will cause grave environmental damage. We purposely discuss this matter in this separate subsection for reasons which will be made clear shortly.

But first we shall present the pertinent contents of this report.

According to the Casiño Group, from December 7 to 9, 2011, the SBMA conducted social acceptability policy consultations with different stakeholders on RP Energy's proposed 600 MW coal plant project at the Subic Bay Exhibition and Convention Center. The results thereof are contained in a document prepared by SBMA entitled "Final Report: Social Acceptability Process for RP Energy, Inc.'s 600-MW Coal Plant Project" (Final Report). We note that SBMA adopted the Final Report as a common exhibit with the Casiño Group in the course of the proceedings before the appellate court.

The Final Report stated that there was a clear aversion to the concept of a coal-fired power plant from the participants. Their concerns included environmental, health, economic and socio-cultural factors. Pertinent to this case is the alleged assessment, contained in the Final Report, of the potential effects of the project by three experts: (1) Dr. Rex Cruz (Dr. Cruz), Chancellor of the University of the Philippines, Los Baños and a forest ecology expert, (2) Dr. Visitacion Antonio, a toxicologist, who related information as to public health; and (3) Andre Jon Uychiaco, a marine biologist.

The Final Report stated these experts' alleged views on the project, thus:

> **IV. Experts' Opinion**
>
> x x x x
>
> The specialists shared the judgment that the conditions were not present to merit the operation of a coal-fired power plant, and to pursue and carry out the project with confidence and assurance that the natural assets and ecosystems within the Freeport area would not be unduly compromised, or that irreversible damage would not occur and that the threats to the flora and fauna within the immediate community and its surroundings would be adequately addressed.
>
> The three experts were also of the same opinion that the proposed coal plant project would pose a wide range of negative impacts on the environment, the ecosystems and human population within the impact zone.
>
> The specialists likewise deemed the Environment Impact Assessment (EIA) conducted by RPEI to be incomplete and limited in scope based on the following observations:
>
> i. The assessment failed to include areas 10km. to 50km. from the operation site, although according to the panel, sulfur emissions could extend as far as 40-50 km.
>
> ii. The EIA neglected to include other forests in the Freeport in its scope and that there were no specific details on the protection of the endangered flora and endemic fauna in the area. Soil, grassland, brush land, beach forests and home gardens were also apparently not included in the study.

iii. The sampling methods used in the study were limited and insufficient for effective long-term monitoring of surface water, erosion control and terrestrial flora and fauna.

The specialists also discussed the potential effects of an operational coal-fired power plant [on] its environs and the community therein. Primary among these were the following:

i. Formation of acid rain, which would adversely affect the trees and vegetation in the area which, in turn, would diminish forest cover. The acid rain would apparently worsen the acidity of the soil in the Freeport.

ii. Warming and acidification of the seawater in the bay, resulting in the *bio-accumulation* of contaminants and toxic materials which would eventually lead to the overall reduction of marine productivity.

iii. Discharge of pollutants such as Nitrous Oxide, Sodium Oxide, Ozone and other heavy metals such as mercury and lead to the surrounding region, which would adversely affect the health of the populace in the vicinity.

V. Findings

Based on their analyses of the subject matter, the specialists recommended that the SBMA re-scrutinize the coal-fired power plant project with the following goals in mind:

i. To ensure its coherence and compatibility to [the] SBMA mandate, vision, mission and development plans, including its Protected Area Management Plan;

ii. To properly determine actual and potential costs and benefits;

iii. To effectively determine the impacts on environment and health; and

iv. To ensure a complete and comprehensive impacts zone study.

The specialists also urged the SBMA to conduct a *Comprehensive Cost And Benefit Analysis Of The Proposed Coal Plant Project Relative To Each Stakeholder Which Should*

Include The Environment As Provider Of Numerous Environmental Goods And Services.

They also recommended an *Integrated/Programmatic Environmental Impact Assessment* to accurately determine the environmental status of the Freeport ecosystem as basis and reference in evaluating future similar projects. The need for a more *Comprehensive Monitoring System for the Environment and Natural Resources* was also reiterated by the panel.[138]

Of particular interest are the alleged key observations of Dr. Cruz on the EIS prepared by RP Energy relative to the project:

Key Observations and Recommendations on the EIS of Proposed RPE Project
Rex Victor O. Cruz
Based on SBMA SAP on December 7-9, 2011

1. The baseline vegetation analysis was limited only within the project site and its immediate vicinity. No vegetation analysis was done in the brushland areas in the peninsula which is likely to be affected in the event acid rain forms due to emissions from the power plant.

2. The forest in the remaining forests in the Freeport was not considered as impact zone as indicated by the lack of description of these forests and the potential impacts the project might have on these forests. This appears to be a key omission in the EIS considering that these forests are well within 40 to 50 km away from the site and that there are studies showing that the impacts of sulphur emissions can extend as far as 40 to 50 km away from the source.

3. There are 39 endemic fauna and 1 endangered plant species (Molave) in the proposed project site. There will be a need to make sure that these species are protected from being damaged permanently in wholesale. Appropriate measures such as *ex situ* conservation and translocation if feasible must be implemented.

4. The Project site is largely in grassland interspersed with some trees. These plants if affected by acid rain or by sulphur emissions may disappear and have consequences on the soil properties and hydrological processes in the area. Accelerated soil erosion and increased surface runoff and reduced infiltration of rainwater into the soil.

5. The rest of the peninsula is covered with brushland but were never

included as part of the impact zone.

6. There are home gardens along the coastal areas of the site planted to ornamental and agricultural crops which are likely to be affected by acid rain.

7. There is also a beach forest dominated by aroma, talisai and agoho which will likely be affected also by acid rain.

8. There are no Environmentally Critical Areas within the 1 km radius from the project site. However, the Olongapo Watershed Forest Reserve, a protected area is approximately 10 km southwest of the project site. Considering the prevailing wind movement in the area, this forest reserve is likely to be affected by acid rain if it occurs from the emission of the power plant. This forest reserve is however not included as part of the potential impact area.

9. Soil in the project site and the peninsula is thin and highly acidic and deficient in NPK with moderate to severe erosion potential. The sparse vegetation cover in the vicinity of the project site is likely a result of the highly acidic soil and the nutrient deficiency. Additional acidity may result from acid rain that may form in the area which could further make it harder for the plants to grow in the area that in turn could exacerbate the already severe erosion in the area.

10. There is a need to review the proposal to ensure that the proposed project is consistent with the vision for the Freeport as enunciated in the SBMA Master Plan and the Protected Area Management Plan. This will reinforce the validity and legitimacy of these plans as a legitimate framework for screening potential locators in the Freeport. It will also reinforce the trust and confidence of the stakeholders on the competence and authority of the SBMA that would translate in stronger popular support to the programs implemented in the Freeport.

11. The EGF and Trust Fund (Table 5.13) should be made clear that the amounts are the minimum amount and that adequate funds will be provided by the proponent as necessary beyond the minimum amounts. Furthermore the basis for the amounts allocated for the items (public liability and rehabilitation) in Trust Fund and in EGF (tree planting and landscaping, artificial reef establishment) must be clarified. The specific damages and impacts that will be covered by the TF and EGF must also be presented clearly at the outset to avoid protracted negotiations in the event of actual impacts occurring in the future.

12. The monitoring plan for terrestrial flora and fauna is not clear on the frequency of measurement. More importantly, the proposed method of measurement (sampling transect) while adequate for estimating the

> diversity of indices for benchmarking is not sufficient for long[-]term monitoring. Instead, long[-]term monitoring plots (at least 1 hectare in size) should be established to monitor the long[-]term impacts of the project on terrestrial flora and fauna.
>
> 13. Since the proposed monitoring of terrestrial flora and fauna is limited to the vicinity of the project site, it will be useful not only for mitigating and avoiding unnecessary adverse impacts of the project but also for improving management decisions if long[-]term monitoring plots for the remaining natural forests in the Freeport are established. These plots will also be useful for the study of the dynamic interactions of terrestrial flora and fauna with climate change, farming and other human activities and the resulting influences on soil, water, biodiversity, and other vital ecosystem services in the Freeport.[139]

We agree with the appellate court that the alleged statements by these experts cannot be given weight because they are hearsay evidence. None of these alleged experts testified before the appellate court to confirm the pertinent contents of the Final Report. No reason appears in the records of this case as to why the Casiño Group failed to present these expert witnesses.

We note, however, that these statements, on their face, especially the observations of Dr. Cruz, raise serious objections to the environmental soundness of the project, specifically, the EIS thereof. It brings to fore the question of whether the Court can, on its own, compel the testimonies of these alleged experts in order to shed light on these matters in view of the right at stake— not just damage to the environment but the health, well-being and, ultimately, the lives of those who may be affected by the project.

The Rules of Procedure for Environmental Cases liberally provide the courts with means and methods to obtain sufficient information in order to adequately protect or safeguard the right to a healthful and balanced ecology. In Section 6 (l)[140] of Rule 3 (Pre-Trial), when there is a failure to settle, the judge shall, among others, determine the necessity of engaging the services of a qualified expert as a friend of the court (*amicus curiae*). While, in Section 12[141] of Rule 7 (Writ of *kalikasan*), a party may avail of discovery measures: (1) ocular inspection and (2) production or inspection of documents or things. The liberality of the Rules in gathering and even compelling information, specifically with regard to the Writ of *kalikasan*, is explained in this wise:

> [T]he writ of *kalikasan* was refashioned as a tool to bridge the gap between allegation and proof by providing a remedy for would-be environmental litigants to compel the production of information within the custody of the government. The writ would effectively serve as a remedy for the enforcement of the right to information about the

> environment. The scope of the fact-finding power could be: (1) anything related to the issuance, grant of a government permit issued or information controlled by the government or private entity and (2) [i]nformation contained in documents such as environmental compliance certificate (ECC) and other government records. In addition, the [w]rit may also be employed to compel the production of information, subject to constitutional limitations. This function is analogous to a discovery measure, and may be availed of upon application for the writ.[142]

Clearly, in environmental cases, the power to appoint friends of the court in order to shed light on matters requiring special technical expertise as well as the power to order ocular inspections and production of documents or things evince the main thrust of, and the spirit behind, the Rules to allow the court sufficient leeway in acquiring the necessary information to rule on the issues presented for its resolution, to the end that the right to a healthful and balanced ecology may be adequately protected. To draw a parallel, in the protection of the constitutional rights of an accused, when life or liberty is at stake, the testimonies of witnesses may be compelled as an attribute of the Due Process Clause. Here, where the right to a healthful and balanced ecology of a substantial magnitude is at stake, should we not tread the path of caution and prudence by compelling the testimonies of these alleged experts?

After due consideration, we find that, based on the statements in the Final Report, there is no sufficiently compelling reason to compel the testimonies of these alleged expert witnesses for the following reasons.

First, the statements are not sufficiently *specific* to point to us a flaw (or flaws) in the study or design/implementation (or some other aspect) of the project which provides a causal link or, at least, a reasonable connection between the construction and operation of the project vis-à-vis potential grave environmental damage. In particular, they do not explain why the Environmental Management Plan (EMP) contained in the EIS of the project will not adequately address these concerns.

Second, some of the concerns raised in the alleged statements, like acid rain, warming and acidification of the seawater, and discharge of pollutants were, as previously discussed, addressed by the evidence presented by RP Energy before the appellate court. Again, these alleged statements do not explain why such concerns are not adequately covered by the EMP of RP Energy.

Third, the key observations of Dr. Cruz, while concededly assailing certain aspects of the EIS, do not clearly and specifically establish how these omissions have led to the issuance of an ECC that will pose significant negative environmental impacts once the project is constructed and becomes operational. The recommendations stated therein would seem to suggest points for improvement in the operation and monitoring of the project, but they do not clearly show why such recommendations are indispensable for the project to comply with existing environmental laws and

standards, or how non-compliance with such recommendations will lead to an environmental damage of the magnitude contemplated under the writ of *kalikasan*. Again, these statements do not state with sufficient particularity how the EMP in the EIS failed to adequately address these concerns.

Fourth, because the reason for the non-presentation of the alleged expert witnesses does not appear on record, we cannot assume that their testimonies are being unduly suppressed.

By ruling that we do not find a sufficiently compelling reason to compel the taking of the testimonies of these alleged expert witnesses in relation to their serious objections to the power plant project, we do not foreclose the possibility that their testimonies could later on be presented, in a proper case, to more directly, specifically and sufficiently assail the environmental soundness of the project and establish the requisite magnitude of actual or threatened environmental damage, if indeed present. After all, their sense of civic duty may well prevail upon them to voluntarily testify, if there are truly sufficient reasons to stop the project, above and beyond their inadequate claims in the Final Report that the project should not be pursued. As things now stand, however, we have insufficient bases to compel their testimonies for the reasons already proffered.

The alleged admissions of grave environmental damage in the EIS of the project.

In their Omnibus Motions for Clarification and Reconsideration before the appellate court and Petition for Review before this Court, the Casiño Group belatedly claims that the statements in the EIS prepared by RP Energy established the significant negative environmental impacts of the project. They argue in this manner:

> ***Acid Rain***
>
> 35. According to RP Energy's Environmental Impact Statement for its proposed 2 x 150 MW Coal-Fired Thermal Power Plant Project, acid rain may occur in the combustion of coal, to wit –
>
> > x x x x
> >
> > During the operation phase, combustion of coal will result in emissions of particulates SOx and NOx. This may contribute to the occurrence of acid rain due to elevated SO2 levels in the atmosphere. High levels of NO2 emissions may give rise to health problems for residents within the impact area.
> >
> > x x x x

Asthma Attacks

36. The same EPRMP[143] mentioned the incidence of asthma attacks [as a] result of power plant operations, to wit –

> x x x x
>
> The incidence of asthma attacks among residents in the vicinity of the project site may increase due to exposure to suspended particulates from plant operations.[144]

RP Energy, however, counters that the above portions of the EIS were quoted out of context. As to the subject of acid rain, the EIS states in full:

> **Operation**
>
> During the operation phase, combustion of coal will result in emissions of particulates, SOx and NOx. This may contribute to the occurrence of acid rain due to elevated SO2 levels in the atmosphere. High levels of NO2 emissions may give rise to health problems for residents within the impact area. Emissions may also have an effect on vegetation (Section 4.1.4.2). **However, the use of CFBC technology is a built-in measure that results in reduced emission concentrations. SOx emissions will be minimised by the inclusion of a desulfurisation process, whilst NOx emissions will be reduced as the coal is burned at a temperature lower than that required to oxidise nitrogen.**[145] (Emphasis supplied)

As to the subject of asthma attacks, the EIS states in full:

> The incidence of asthma attacks among residents in the vicinity of the project site may increase due to exposure to suspended particulates from plant operations. Coal and ash particulates may also become suspended and dispersed into the air during unloading and transport, depending on wind speed and direction. **However, effect on air quality due to windblown coal particulates will be insignificant as the coal handling system will have enclosures (i.e. enclosed conveyors and coal dome) to eliminate the exposure of coal to open air, and therefore greatly reduce the potential for particulates from being carried away by wind (coal handling systems, Section 3.4.3.3). In addition, the proposed process will include an electrostatic precipitator that will remove fly ash from**

the flue gas prior to its release through the stacks, and so particulates emissions will be minimal.[146] (Emphasis supplied)

We agree with RP Energy that, while the EIS discusses the subjects of acid rain and asthma attacks, it goes on to state that there are mitigating measures that will be put in place to prevent these ill effects. Quite clearly, the Casiño Group quoted piecemeal the EIS in such a way as to mislead this Court as to its true and full contents.

We deplore the way the Casiño Group has argued this point and we take this time to remind it that litigants should not trifle with court processes. Along the same lines, we note how the Casiño Group has made serious allegations in its Petition for Writ of *kalikasan* but failed to substantiate the same in the course of the proceedings before the appellate court. In particular, during the preliminary conference of this case, the Casiño Group expressly abandoned its factual claims on the alleged grave environmental damage that will be caused by the power plant (*i.e.,* air, water and land pollution) and, instead, limited itself to legal issues regarding the alleged non-compliance of RP Energy with certain laws and rules in the procurement of the ECC.[147] We also note how the Casiño Group failed to comment on the subject Petitions before this Court, which led this Court to eventually dispense with its comment.[148] We must express our disapproval over the way it has prosecuted its claims, bordering as it does on trifling with court processes. We deem it proper, therefore, to admonish it to be more circumspect in how it prosecutes its claims.

In sum, we agree with the appellate court that the Casiño Group failed to substantiate its claims that the construction and operation of the power plant will cause environmental damage of the magnitude contemplated under the writ of *kalikasan*. The evidence it presented is inadequate to establish the factual bases of its claims.

II.

Whether the ECC is invalid for lack of signature of Mr. Luis Miguel Aboitiz (Mr. Aboitiz), as representative of RP Energy, in the Statement of Accountability of the ECC.

The appellate court ruled that the ECC is invalid because Mr. Aboitiz failed to sign the Statement of Accountability portion of the ECC.

We shall discuss the correctness of this ruling on both procedural and substantive grounds.

Procedurally, we cannot fault the DENR for protesting the manner by which the appellate court resolved the issue of the aforesaid lack of signature. We agree with

the DENR that this issue was not among those raised by the Casiño Group in its Petition for Writ of *kalikasan*.[149] What is more, this was not one of the triable issues *specifically* set during the preliminary conference of this case.[150]

How then did the issue of lack of signature arise?

A review of the voluminous records indicates that the matter of the lack of signature was discussed, developed or surfaced only in the course of the hearings, specifically, on clarificatory questions from the appellate court, to wit:

> J. LEAGOGO:
> I would also show to you your ECC, that's page 622 of the *rollo*. I am showing to you this Environmental Compliance Certificate dated December 22, 2008 issued by Sec. Jose L. Atienza, Jr. of the DENR. This is your "Exhibit "18." Would you like to go over this? Are you familiar with this document?
>
> MS. MERCADO:
> Yes, it[']s my Annex "3," Your Honor.
>
> J. LEAGOGO:
> I would like to refer you to page 3 of the ECC dated December 22, 2008. Page 2 refers to the Environmental Compliance Certificate, ECC Ref. No. 0804-011-4021. That's page 2 of the letter dated December 22, 2008. And on page 3, Dr. Julian Amador recommended approval and it was approved by Sec. Atienza. You see that on page 3?
>
> MS. MERCADO:
> Yes, Your Honor.
>
> J. LEAGOGO:
> Okay. On the same page, page 3, there's a Statement of Accountability.
>
> MS. MERCADO:
> Yes, Your Honor.
>
> J. LEAGOGO:
> Luis, who is Luis Miguel Aboitiz?
>
> MS. MERCADO:
> During that time he was the authorized representative of RP Energy, Your Honor.
>
> J. LEAGOGO:
> Now, who is the authorized representative of RP Energy?

MS. MERCADO:
It would be Mr. Aaron Domingo, I believe.

J. LEAGOGO:
Please tell the Court why this was not signed by Mr. Luis Miguel Aboitiz, the Statement of Accountability?

Because the Statement of Accountability says, "Mr. Luis Miguel Aboitiz, Director, representing Redondo Peninsula Energy with office address located at 110 Legaspi Street, Legaspi Village, Makati City, takes full responsibility in complying with all conditions in this Environmental Compliance Certificate [ECC][.]" Will you tell this Court why this was not signed?

MS. MERCADO:
It was signed, Your Honor, but this copy wasn't signed. My apologies, I was the one who provided this, I believe, to the lawyers. This copy was not signed because during….

J. LEAGOGO:
But this is your exhibit, this is your Exhibit "18" and this is not signed. Do you agree with me that your Exhibit "18" is not signed by Mr. Aboitiz?

MS. MERCADO:
That's correct, Your Honor.[151]

We find this line of questioning inadequate to apprise the parties that the lack of signature would be a key issue in this case; as in fact it became decisive in the eventual invalidation of the ECC by the appellate court.

Concededly, a court has the power to suspend its rules of procedure in order to attain substantial justice so that it has the discretion, in exceptional cases, to take into consideration matters not originally within the scope of the issues raised in the pleadings or set during the preliminary conference, in order to prevent a miscarriage of justice. In the case at bar, the importance of the signature cannot be seriously doubted because it goes into the consent and commitment of the project proponent to comply with the conditions of the ECC, which is vital to the protection of the right to a balanced and healthful ecology of those who may be affected by the project.

Nonetheless, the power of a court to suspend its rules of procedure in exceptional cases does not license it to foist a surprise on the parties in a given case. To illustrate, in oral arguments before this Court, involving sufficiently important public interest cases, we note that individual members of the Court, from time to time, point out matters that may not have been specifically covered by the advisory (the advisory delineates the issues to be argued and decided). However, a directive is

given to the concerned parties to discuss the aforesaid matters in their memoranda. Such a procedure ensures that, at the very least, the parties are apprised that the Court has taken an interest in such matters and may adjudicate the case on the basis thereof. Thus, the parties are given an opportunity to adequately argue the issue or meet the issue head-on. We, therefore, find that the appellate court should have, at the very least, directed RP Energy and the DENR to discuss and elaborate on the issue of lack of signature in the presentation of their evidence and memoranda, before making a definitive ruling that the lack thereof invalidated the ECC. This is in keeping with the basic tenets of due process.

At any rate, we shall disregard the procedural defect and rule directly on whether the lack of signature invalidated the ECC in the interest of substantial justice.

The laws governing the ECC, *i.e.,* Presidential Decree No. (PD) 1151 and PD 1586, do not specifically state that the lack of signature in the Statement of Accountability has the effect of invalidating the ECC. Unlike in wills or donations, where failure to comply with the specific form prescribed by law leads to its nullity,[152] the applicable laws here are silent with respect to the necessity of a signature in the Statement of Accountability and the effect of the lack thereof. This is, of course, understandable because the Statement of Accountability is a mere off-shoot of the rule-making powers of the DENR relative to the implementation of PD 1151 and PD 1586. To determine, therefore, the effect of the lack of signature, we must look at the significance thereof under the Environmental Impact Assessment (EIA) Rules of the DENR and the surrounding circumstances of this case.

To place this issue in its proper context, a helpful overview of the stages of the EIA process, taken from the Revised Manual, is reproduced below:

Figure 1-3 Overview of Stages of the Philippine EIA Process[153]

1.0 SCREENING	**Screening** determines if a project is covered or not covered by the PEISS.[154] If a project is covered, screening further determines what document type the project should prepare to secure the needed approval, and what the rest of the requirements are in terms of EMB office of application, endorsing and decision
2.0 SCOPING	

	authorities, duration of processing.
EIA STUDY and 3.0 REPORT PREPARATION	**Scoping** is a Proponent-driven multi-sectoral formal process of determining the focused Terms of Reference of the EIA Study. Scoping identifies the most significant issues/impacts of a proposed project, and then, delimits the extent of baseline information to those necessary to evaluate and mitigate the impacts. The need for and scope of an Environmental Risk Assessment (ERA) is also done during the scoping session. Scoping is done with the local community through Public Scoping and with a third party EIA Review Committee (EIARC) through Technical Scoping, both with the participation of the DENR-EMB. The process results in a signed Formal Scoping Checklist by the review team, with final approval by the EMB Chief.
EIA REPORT 4.0 REPORT and EVALUATION	The **EIA Study** involves a description of the proposed project and its alternatives, characterization of the project environment, impact identification and prediction, evaluation of impact significance, impact mitigation, formulation of Environmental Management and Monitoring Plan, with corresponding cost estimates and institutional support commitment. The study results are presented in an **EIA Report** for which an outline is prescribed by

	EMB for every major document type.
5.0 DECISION MAKING	**Review of EIA Reports** normally entails an EMB procedural screening for compliance with minimum requirements specified during Scoping, followed by a substantive review of either composed third party experts commissioned by EMB as the EIA Review Committee for PEIS/EIS-based applications, or DENR/EMB internal specialists, the Technical Committee, for IEE-based applications. EMB evaluates the EIARC recommendations and the public's inputs during public consultations/hearings in the process of recommending a decision on the application. The EIARC Chair signs EIARC recommendations including issues outside the mandate of the EMB. The entire EIA review and evaluation process is summarized in the Review Process Report (RPR) of the EMB, which includes a draft decision document.
MONITORING. 6.0 VALIDATION, and EVALUATION/ AUDIT	**Decision Making** involves evaluation of EIA recommendations and the draft decision document, resulting to the issuance of an ECC, CNC or Denial Letter. When approved, a covered project is issued its certificate of Environmental Compliance Commitment (ECC) while an application of a non-covered project is issued a Certificate of Non-Coverage (CNC). Endorsing

	and deciding authorities are designated by AO 42, and further detailed in this Manual for every report type. Moreover, the Proponent signs a sworn statement of full responsibility on implementation of its commitments prior to the release of the ECC. The ECC is then transmitted to concerned LGUs and other GAs for integration into their decision-making process. **The regulated part of EIA Review is limited to the processes within EMB control. The timelines for the issuance of decision documents provided for in AO 42 and DAO 2003-30 are applicable only from the time the EIA Report is accepted for substantive review to the time a decision is issued on the application.**
	Monitoring, Validation and Evaluation/Audit stage assesses performance of the Proponent against the ECC and its commitments in the Environmental Management and Monitoring Plans to ensure actual impacts of the project are adequately prevented or mitigated.

The signing of the Statement of Accountability takes place at the Decision-Making Stage. After a favorable review of its ECC application, the project proponent, through its authorized representative, is made to sign a sworn statement of full responsibility on the implementation of its commitments prior to the official release of the ECC.

The definition of the ECC in the Revised Manual highlights the importance of the signing of the Statement of Accountability:

> Environmental Compliance Certificate (ECC) - a certificate of Environmental Compliance Commitment to which the Proponent conforms with, after DENR-EMB explains the ECC conditions, **by signing the sworn undertaking of full responsibility over implementation of specified measures which are necessary to comply with existing environmental regulations or to operate within best environmental practices that are not currently covered by existing laws.** It is a document issued by the DENR/EMB after a positive review of an ECC application, certifying that the Proponent has complied with all the requirements of the EIS System and has committed to implement its approved Environmental Management Plan. The ECC also provides guidance to other agencies and to LGUs on EIA findings and recommendations, which need to be considered in their respective decision-making process.[157] (Emphasis supplied)

As can be seen, the signing of the Statement of Accountability is an integral and significant component of the EIA process and the ECC itself. The evident intention is to bind the project proponent to the ECC conditions, which will ensure that the project will not cause significant negative environmental impacts by the "implementation of specified measures which are necessary to comply with existing environmental regulations or to operate within best environmental practices that are not currently covered by existing laws." Indeed, the EIA process would be a meaningless exercise if the project proponent shall not be strictly bound to faithfully comply with the conditions necessary to adequately protect the right of the people to a healthful and balanced ecology.

Contrary to RP Energy's position, we, thus, find that the signature of the project proponent's representative in the Statement of Accountability is necessary for the validity of the ECC. It is not, as RP Energy would have it, a mere formality and its absence a mere formal defect.

The question then is, was the absence of the signature of Mr. Aboitiz, as representative of RP Energy, in the Statement of Accountability sufficient ground to invalidate the ECC?

Viewed within the particular circumstances of this case, we answer in the negative.

While it is clear that the signing of the Statement of Accountability is necessary for the validity of the ECC, we cannot close our eyes to the particular circumstances of this case. So often have we ruled that this Court is not merely a court of law but a court of justice. We find that there are several circumstances present in this case

which militate against the invalidation of the ECC on this ground.

We explain.

First, the reason for the lack of signature was not adequately taken into consideration by the appellate court. To reiterate, the matter surfaced during the hearing of this case on clarificatory questions by the appellate court, viz:

> J. LEAGOGO:
> Please tell the Court why this was not signed by Mr. Luis Miguel Aboitiz, the Statement of Accountability?
>
> Because the Statement of Accountability says, "Mr. Luis Miguel Aboitiz, Director, representing Redondo Peninsula Energy with office address located at 110 Legaspi Street, Legaspi Village, Makati City, takes full responsibility in complying with all conditions in this Environmental Compliance Certificate [ECC][.]" Will you tell this Court why this was not signed?
>
> MS. MERCADO:
> **It was signed, Your Honor, but this copy wasn't signed. My apologies, I was the one who provided this, I believe, to the lawyers. This copy was not signed because during...**
>
> J. LEAGOGO:
> But this is your exhibit, this is your Exhibit "18" and this is not signed. Do you agree with me that your Exhibit "18" is not signed by Mr. Aboitiz?
>
> MS. MERCADO:
> That's correct, Your Honor.[158] (Emphasis supplied)

Due to the inadequacy of the transcript and the apparent lack of opportunity for the witness to explain the lack of signature, we find that the witness' testimony does not, by itself, indicate that there was a deliberate or malicious intent not to sign the Statement of Accountability.

Second, as previously discussed, the concerned parties to this case, specifically, the DENR and RP Energy, were not properly apprised that the issue relative to the lack of signature would be decisive in the determination of the validity of the ECC. Consequently, the DENR and RP Energy cannot be faulted for not presenting proof during the course of the hearings to squarely tackle the issue of lack of signature.

Third, after the appellate court ruled in its January 30, 2013 Decision that the lack of signature invalidated the ECC, RP Energy attached, to its Motion for Partial Reconsideration, a certified true copy of the ECC, issued by the DENR-EMB, which

bore the signature of Mr. Aboitiz. The certified true copy of the ECC showed that the Statement of Accountability was signed by Mr. Aboitiz on December 24, 2008.[159]

The authenticity and veracity of this certified true copy of the ECC was not controverted by the Casiño Group in its comment on RP Energy's motion for partial reconsideration before the appellate court nor in their petition before this Court. Thus, in accordance with the presumption of regularity in the performance of official duties, it remains uncontroverted that the ECC on file with the DENR contains the requisite signature of Mr. Aboitiz in the Statement of Accountability portion.

As previously noted, the DENR and RP Energy were not properly apprised that the issue relative to the lack of signature would be decisive in the determination of the validity of the ECC. As a result, we cannot fault RP Energy for submitting the certified true copy of the ECC only after it learned that the appellate court had invalidated the ECC on the ground of lack of signature in its January 30, 2013 Decision.

We note, however, that, as previously discussed, the certified true copy of the Statement of Accountability was signed by Mr. Aboitiz on December 24, 2008 or two days after the ECC's official release on December 22, 2008. The afore-discussed rules under the Revised Manual, however, state that the proponent shall sign the sworn statement of full responsibility on implementation of its commitments **prior** to the release of the ECC. It would seem that the ECC was first issued, then it was signed by Mr. Aboitiz, and thereafter, returned to the DENR to serve as its file copy. Admittedly, there is lack of strict compliance with the rules although the signature is present. Be that as it may, we find nothing in the records to indicate that this was done with bad faith or inexcusable negligence because of the inadequacy of the evidence and arguments presented, relative to the issue of lack of signature, in view of the manner this issue arose in this case, as previously discussed. Absent such proof, we are not prepared to rule that the procedure adopted by the DENR was done with bad faith or inexcusable negligence but we remind the DENR to be more circumspect in following the rules it provided in the Revised Manual. Thus, we rule that the signature requirement was substantially complied with *pro hac vice*.

Fourth, we partly agree with the DENR that the subsequent letter-requests for amendments to the ECC, signed by Mr. Aboitiz on behalf of RP Energy, indicate its implied conformity to the ECC conditions. In practical terms, if future litigation should occur due to violations of the ECC conditions, RP Energy would be estopped from denying its consent and commitment to the ECC conditions even if there was no signature in the Statement of Accountability. However, we note that the Statement of Accountability precisely serves to obviate any doubt as to the consent and commitment of the project proponent to the ECC conditions. At any rate, the aforesaid letter-requests do additionally indicate RP Energy's conformity to the ECC conditions and, thus, negate a pattern to maliciously evade accountability for the ECC conditions or to intentionally create a "loophole" in the ECC to be exploited in a possible future litigation over non-compliance with the ECC conditions.

In sum, we rule that the appellate court erred when it invalidated the ECC on the ground of lack of signature of Mr. Aboitiz in the ECC's Statement of Accountability relative to the copy of the ECC submitted by RP Energy to the appellate court. While the signature is necessary for the validity of the ECC, the particular circumstances of this case show that the DENR and RP Energy were not properly apprised of the issue of lack of signature in order for them to present controverting evidence and arguments on this point, as the matter only developed during the course of the proceedings upon clarificatory questions from the appellate court. Consequently, RP Energy cannot be faulted for submitting the certified true copy of the ECC only after it learned that the ECC had been invalidated on the ground of lack of signature in the January 30, 2013 Decision of the appellate court.

The certified true copy of the ECC, bearing the signature of Mr. Aboitiz in the Statement of Accountability portion, was issued by the DENR-EMB and remains uncontroverted. It showed that the Statement of Accountability was signed by Mr. Aboitiz on December 24, 2008. Although the signing was done two days after the official release of the ECC on December 22, 2008, absent sufficient proof, we are not prepared to rule that the procedure adopted by the DENR was done with bad faith or inexcusable negligence. Thus, we rule that the signature requirement was substantially complied with pro hac vice.

III.

Whether the first and second amendments to the ECC are invalid for failure to undergo a new environmental impact assessment (EIA) because of the utilization of inappropriate EIA documents.

Upholding the arguments of the Casiño Group, the appellate court ruled that the first and second amendments to the ECC were invalid because the ECC contained an express restriction that any expansion of the project beyond the project description shall be the subject of a new EIA. It found that both amendments failed to comply with the appropriate EIA documentary requirements under DAO 2003-30 and the Revised Manual. In particular, it found that the Environmental Performance Report and Management Plan (EPRMP) and Project Description Report (PDR), which RP Energy submitted to the DENR, relative to the application for the first and second amendments, respectively, were not the proper EIA document type. Hence, the appellate court ruled that the aforesaid amendments were invalid.

Preliminarily, we must state that executive actions carry presumptive validity so that the burden of proof is on the Casiño Group to show that the procedure adopted by the DENR in granting the amendments to the ECC were done with grave abuse of discretion. More so here because the administration of the EIA process involves special technical skill or knowledge which the law has specifically vested in the DENR.

After our own examination of DAO 2003-30 and the Revised Manual as well as the

voluminous EIA documents of RP Energy appearing in the records of this case, we find that the appellate court made an erroneous interpretation and application of the pertinent rules.

We explain.

As a backgrounder, PD 1151 set the Philippine Environment Policy. Notably, this law recognized the right of the people to a healthful environment.[160] Pursuant thereto, in every action, project or undertaking, which significantly affects the quality of the environment, all agencies and instrumentalities of the national government, including government-owned or -controlled corporations, as well as private corporations, firms, and entities were required to prepare, file and include a statement (*i.e.,* Environmental Impact Statement or EIS) containing:

(a) the environmental impact of the proposed action, project or undertaking;

(b) any adverse environmental effect which cannot be avoided should the proposal be implemented;

(c) alternative to the proposed action;

(d) a determination that the short-term uses of the resources of the environment are consistent with the maintenance and enhancement of the long-term productivity of the same; and

(e) whenever a proposal involves the use of depletable or non-renewable resources, a finding must be made that such use and commitment are warranted.[161]

To further strengthen and develop the EIS, PD 1586 was promulgated, which established the Philippine Environmental Impact Statement System (PEISS). The PEISS is "a systems-oriented and integrated approach to the EIS system to ensure a rational balance between socio-economic development and environmental protection for the benefit of present and future generations."[162] The ECC requirement is mandated under Section 4 thereof:

> SECTION 4. *Presidential Proclamation of Environmentally Critical Areas and Projects.* The President of the Philippines may, on his own initiative or upon recommendation of the National Environmental Protection Council, by proclamation declare certain projects, undertakings or areas in the country as environmentally critical. **No person, partnership or corporation shall undertake or operate any such declared environmentally critical project or area without first securing an Environmental Compliance Certificate issued by the President or his duly authorized representative.** x x x (Emphasis supplied)

The PEISS consists of the Environmental Impact Assessment (EIA) process, which is mandatory for private or public projects that may significantly affect the quality of the environment. It involves evaluating and predicting the likely impacts of the project on the environment, designing appropriate preventive, mitigating and enhancement measures addressing these consequences to protect the environment and the community's welfare.[163]

PD 1586 was implemented by DAO 2003-30 which, in turn, set up a system or procedure to determine when a project is required to secure an ECC and when it is not. When an ECC is not required, the project proponent procures a Certificate of Non-Coverage (CNC).[164] As part of the EIA process, the project proponent is required to submit certain studies or reports (i.e., EIA document type) to the DENR-EMB, which will be used in the review process in assessing the environmental impact of the project and the adequacy of the corresponding environmental management plan or program to address such environmental impact. This will then be part of the bases to grant or deny the application for an ECC or CNC, as the case may be.

Table 1-4 of the Revised Manual summarizes the required EIA document type for each project category. It classifies a project as belonging to group I, II, III, IV or V, where:

I- Environmentally Critical Projects (ECPs) in either Environmentally Critical Area (ECA) or Non-Environmentally Critical Area (NECA),

II- Non-Environmentally Critical Projects (NECPs) in ECA,

III- NECPs in NECA,

IV- Co-located Projects, and

V- Unclassified Projects.

The aforesaid table then further classifies a project, as pertinent to this case, as belonging to category A, B or C, where:

A- new;

B- existing projects for modification or re-start up; and

C- operating projects without an ECC.

Finally, the aforesaid table considers whether the project is single or co-located.[165] After which, it states the appropriate EIA document type needed for the application for an ECC or CNC, as the case may be.

The appropriate EIA document type vis-à-vis a particular project depends on the potential significant environmental impact of the project. At the highest level would be an ECP, such as the subject project. The hierarchy of EIA document type, based on comprehensiveness and detail of the study or report contained therein, insofar as single projects are concerned, is as follows:

1. Environmental Impact Statement[166] (EIS),

2. Initial Environmental Examination[167] (IEE) Report,

3. Initial Environmental Examination[168] (IEE) Checklist Report,

4. Environmental Performance Report and Management Plan[169] (EPRMP), and

5. Project Description[170] (PD) or Project Description Report (PDR).

Thus, in the course of RP Energy's application for an ECC, it was required by the DENR-EMB to submit an EIS because the subject project is: an ECP, new and a single project.

The present controversy, however, revolves around, not an application for an ECC, but amendments thereto.

RP Energy requested the subject first amendment to its ECC due to its desire to modify the project design through the inclusion of a barge wharf, seawater intake breakwater, subsea discharge pipeline, raw water collection system, drainage channel improvement and a 230-kV double transmission line. The DENR-EMB determined that this was a major amendment and, thus, required RP Energy to submit an EPRMP.

The Casiño Group argued, and the appellate court sustained, that an EPRMP is not the correct EIA document type based on the definition of an EPRMP in DAO 2003-30 and the Revised Manual.

In DAO 2003-30, an EPRMP is defined as:

> Environmental Performance Report and Management Plan (EPRMP) — documentation of the actual cumulative environmental impacts and effectiveness of current measures for single projects that are **already operating but without ECC's**, i.e., Category A-3. For Category B-3 projects, a checklist form of the EPRMP would suffice;[171] (Emphasis supplied)

Further, the table in Section 5 of DAO 2003-30 states that an EPRMP is required for "A-2: Existing and to be expanded (including undertakings that have stopped operations for more than 5 years and plan to re-start with or without expansion) and A-3: Operating without ECC."

On the other hand, the Revised Manual delineates when an EPRMP is the proper EIA document type, thus:

> For **operating projects with previous ECCs but planning or applying for clearance to modify/expand or re-start operations**, or for **projects operating without an ECC** but applying to secure one to comply with PD 1586 regulations, the appropriate document is not an EIS but an EIA Report incorporating the project's environmental performance and its current Environmental Management Plan. **This report is** x x x **an** x x x **Environmental Performance Report and Management Plan (EPRMP) for single project applications** x x x[172] (Emphasis supplied)

In its "Glossary," the Revised Manual defines an EPRMP as:

> Environmental Performance Report and Management Plan (EPRMP) - documentation of the actual cumulative environmental impacts and effectiveness of current measures **for single projects that are already operating but without ECCs**.[173] (Emphasis supplied)

Finally, Table 1-4, in the Revised Manual, states that an EPRMP is required for "Item I-B: Existing Projects for Modification or Re-start up (subject to conditions in Annex 2-1c) and I-C: Operating without ECC."

From these definitions and tables, an EPRMP is, thus, the required EIA document type for an ECP-single project which is:

> 1. Existing and to be expanded (including undertakings that have stopped operations for more than 5 years and plan to re-start with or without expansion);
>
> 2. Operating but without ECCs;
>
> 3. Operating projects with previous ECCs but planning or applying for clearance to modify/expand or re-start operations; and
>
> 4. Existing projects for modification or re-start up.

It may be observed that, based from the above, DAO 2003-30 and the Revised Manual appear to use the terms "operating" and "existing" interchangeably. In the case at bar, the subject project has not yet been constructed although there have been horizontal clearing operations at the project site.

On its face, therefore, the theory of the Casiño Group, as sustained by the appellate court — that the EPRMP is not the appropriate EIA document type— seems plausible because the subject project is not: (1) operating/existing with a previous ECC but planning or applying for modification or expansion, or (2) operating but without an ECC. Instead, the subject project is an unimplemented or a non-implemented, hence, non-operating project with a previous ECC but planning for modification or expansion.

The error in the above theory lies in the failure to consider or trace the ***applicable*** provisions of DAO 2003-30 and the Revised Manual ***on amendments*** to an ECC.

The proper starting point in determining the validity of the subject first amendment, specifically, the propriety of the EIA document type (*i.e.*, EPRMP) which RP Energy submitted in relation to its application for the aforesaid amendment, must of necessity be the rules on amendments to an ECC.[174] This is principally found in Section 8.3, Article II of DAO 2003-03, *viz*:

> 8.3 Amending an ECC
>
> Requirements for processing ECC amendments shall depend on the nature of the request but **shall be focused on the information necessary to assess the environmental impact of such changes.**
>
> 8.3.1. Requests for minor changes to ECCs such as extension of deadlines for submission of post-ECC requirements shall be decided upon by the endorsing authority.
>
> 8.3.2. Requests for major changes to ECCs shall be decided upon by the deciding authority.
>
> 8.3.3. For ECCs issued pursuant to an IEE or IEE checklist, the processing of the amendment application shall not exceed thirty (30) working days; and for ECCs issued pursuant to an EIS, the processing shall not exceed sixty (60) working days. Provisions on automatic approval related to prescribed timeframes under AO 42 shall also apply for the processing of applications to amend ECCs. (Emphasis supplied)

Implementing the afore-quoted section, the Revised Manual pertinently states in

Section 2.2, paragraph 16:

16) Application Process for ECC Amendments

Figure 2-4 presents how Proponents may request for minor or major changes in their ECCs. Annex 2-1c provides a decision chart for the determination of requirements for project modifications, particularly for delineating which application scenarios will require EPRMP (which will be subject to Figure 2-1 process) or other support documentations (which will be subject to Figure 2-4 process).

Figure 2-4, in turn, provides:

Figure 2-4. Flowchart on Request for ECC Amendments[175]

Scenario 1: Request for Minor Amendments 1. Typographical error 2. Extension of deadlines for submission of post-ECC requirement/s 3. Extension of ECC validity 4. Change in company name/ownership 5. Decrease in land/project area or production capacity 6. Other amendments deemed "minor" at the discretion of the EMB CO/RO Director	**Scenario 2: Request for Major Amendments** 1. Expansion of project area w/in catchment described in EIA 2. Increase in production capacity or auxiliary component of the original project 3. Change/s in process flow or technology 4. Addition of new product 5. Integration of ECCs for similar or dissimilar but contiguous projects (NOTE: ITEM#5 IS PROPONENT'S OPTION, NOT EMB'S) 6. Revision/Reformatting of ECC Conditions 7. Other amendments deemed "major" at the discretion of the EMB CO/RO Director
	1[Start]
	Within three (3) years from ECC issuance (for projects not started) OR at any time during project implementation, the Proponent prepares and submits to the

1 [Start]

Within three (3) years from ECC issuance (for projects not started) OR at any time during project implementation, the Proponent prepares and submits to the ECC-endorsing DENR-EMB office a **LETTER-REQUEST** for ECC amendment, including data/information, reports or documents to substantiate the requested revisions.

↓

2

The ECC-endorsing EMB office assigns a Case Handler to evaluate the request

3 ↓

ECC-endorsing DENR-EMB office a **LETTER-REQUEST** for ECC amendments, including data/information, reports or documents to substantiate the requested revisions.

2

For projects that have started implementation, EMB evaluates request based on **Annex 2-1c** for various scenarios of project modification. Documentary requirements may range from a Letter-Request to an EPRMP to the EMB CO/RO while for those with Programmatic ECC, a PEPRMP may need to be submitted to the EMB CO to support the request. It is important to note that for operating projects, the appropriate document is not an EIS but an EIA Report incorporating the project's historical environmental performance and its current EMP, subject to specific documentary requirements detailed in **Annex 2-1c** for every modification scenario.

3 ↓

For EPRMP/PEPRMP-based requests, EMB forms a Technical/Review Committee to evaluate the request. For other requests, a Case Handler may solely undertake the evaluation. EMB CO and RO will process P/EPRMP for PECC/ECC under Groups I and II respectively. (Go to **Figure 2-1**)

4 ↓

ECC-endorsing/issuing Authority (per Table 1-4) decides on Letter Requests/EPRMP/PEPRMP/Other documents based on EMB CH and/or Tech/Review Committee recommendations.

Max Processing Time to Issuance of Decision			
CO PEPRMP	**CO EPRMP**	**RO PEPRMP**	**RO EPRMP**
120 workdays	**90 workdays**	**60 workdays**	**30 workdays**

Other document applications: max 30

Authority decides on the Letter-Request, based on CH recommendation	workdays (EMB CO and RO)
Maximum Processing Time to Issuance of Decision	
EMB CO	**7 workdays**
EMB RO	**7 workdays**

Noteworthy in the above, which is pertinent to the issue at hand, is that the amendment process squarely applies to projects not started, such as the subject project, based on the phrase "[w]ithin three (3) years from ECC issuance (for projects not started) x x x".

Annex 2-1c, in turn, provides a "Decision Chart for Determination of Requirements For Project Modification." We reproduce below the first three columns of Annex 2-1c, as are pertinent to the issue at hand:

ANNEX 2-1c

DECISION CHART FOR DETERMINATION OF REQUIREMENTS FOR PROJECT MODIFICATION[178]

Proposed Modifications to the Current Project		**Analysis of Proposed Modifications**	**Resulting Decision Document/Type of EIA Report Required**
			Operational projects, or those which have stopped for ≤ 5 years and plan to re-start
			For Groups I and II EIS-based Projects with an ECC applying for modification
1.	Expansion of land/project	Since the modification will be	**ECC Amendment** /Letter Request with

	area w/in catchment or environment described in the original EIA Report	in an area already described and evaluated in the original EIA Report, incremental impacts from additional land development will have been addressed in the approved EMP	brief description of activities in the additional area
2.	Expansion of land/project area OUTSIDE catchment or environment described in the original EIA Report	It is assumed the modification proposal may have significant potential impacts due to absence of prior assessment as to how the project may affect the proposed expansion area	**ECC Amendment** /Environmental Performance Report and Management Plan (EPRMP)
3.	Increase in capacity or auxiliary component of the original project which will **either** not entail exceedance of PDR (non-covered project) thresholds **or** EMP & ERA can still address impacts & risks arising from modification	Non-exceedance of PDR (non covered project) threshold is assumed that impacts are not significant; Modification scenario and decision process are applicable to both non-implemented and operating projects issued ECCs	**ECC Amendment** /Letter Request with brief description of additional capacity or component
4.	Increase in capacity or auxiliary component of the original project which will either exceed PDR (non-covered project) thresholds, or	Exceedance of PDR (non-covered) threshold is assumed that impacts may be potentially significant, particularly if modification will result to a next	**ECC Amendment** /Environmental Performance Report and Management Plan (EPRMP)

	EMP & ERA cannot address impacts and risks arising from modification	higher level of threshold range Modification scenario and decision process are applicable to both non-implemented and operating projects with or without issued ECCs	
5.	Change/s in process flow or technology	EMP and ERA can still address impacts & risks arising from modification	**ECC Amendment** /Letter Request with brief process description
		EMP and ERA cannot address impacts & risks arising from modification	**ECC Amendment** /Environmental Performance Report and Management Plan (EPRMP)
6.	Additional component or products which will enhance the environment (e.g. due to compliance to new stringent requirements) or lessen impacts on the environment (e.g. thru utilization of waste into new products)	Activity is directly lessening or mitigating the project's impacts on the environment. However, to ensure there is no component in the modification which fall under covered project types, EMB will require disclosure of the description of the components and process with which the new product will be developed.	**ECC Amendment** /Letter Request with consolidated Project Description Report of new project component and integrated EMP
7.	Downgrade project size or area or other units of measure of thresholds limits	No incremental adverse impacts; may result to lower project threshold or may result to non-coverage	**From ECC Amendment to Relief of ECC Commitments (Conversion to**

			CNC): /Letter-Request only
8.	Conversion to new project type (e.g. bunker-fired plant to gas-fired)	Considered new application but with lesser data requirements since most facilities are established; environmental performance in the past will serve as baseline; However, for operating projects, there may be need to request for Relief from ECC Commitment prior to applying for new project type to ensure no balance of environmental accountabilities from the current project	**New ECC** /EIS
9.	Integration of ECCs for similar or contiguous projects (Note: Integration of ECCs is at the option of the Proponent to request/apply)	No physical change in project size/area; no change in process/technology but improved management of continuous projects by having an integrated planning document in the form or an integrated ECC (ECC conditions will be harmonized across projects; conditions relating to requirements within other agencies' mandates will be deleted)	**ECC Amendment** /Letter Request with consolidated Project Description Report and integrated EMP
10.	Revision/ Reformatting of ECC Conditions	No physical change on the project but ECC conditions relating to requirements within	**ECC Amendment** /Letter Request only

		other agencies' mandates will be deleted	

We now apply these provisions to the case at bar.

To reiterate, the first amendment to the ECC was requested by RP Energy due to its planned change of project design involving the inclusion of a barge wharf, seawater intake breakwater, subsea discharge pipeline, raw water collection system, drainage channel improvement and a 230-kV double transmission line. The DENR-EMB determined[179] that the proposed modifications involved a major amendment because it will result in an increase in capacity or auxiliary component, as per Scenario 2, Item #2 of Figure 2-4:

Scenario 2: Request for Major Amendments

1. Expansion of project area w/in catchment described in EIA
2. Increase in production capacity or auxiliary cmponent of the original project[180]
3. Change/s in process flow or technology
4. Addition of new product
5. Integration of ECCs for similar or dissimilar but contiguous projects (NOTE: ITEM#5 IS PROPONENT'S OPTION, NOT EMB'S)
6. Revision/Reformatting of ECC Conditions
7. Other amendments deemed "major at the discretion of the EMB CO/RO Director

The Casiño Group does not controvert this finding by the DENR-EMB and we find the same reasonably supported by the evidence on record considering that, among others, the construction of a 230-kV double transmission line would result in major activities outside the project site which could have significant environmental impacts.

Consequently, the amendment was considered as falling under Item#4 of Annex 2-1c, and, thus, the appropriate EIA document type is an EPRMP, *viz*:

4.	Increase in capacity or auxiliary component of the original project which will either exceed PDR (non-	Exceedance of PDR (non-covered) thresholds is assumed that impacts may be potentially significant, particularly if	**ECC Amendment** / Environmental Performance Report and

	covered project) thresholds, or EMP & ERA cannot address impacts and risks arising from modification	modification will result to a next higher level of threshold range Modification scenario and decision process are applicable to both non-implemented and operating projects with or without issued ECCs	Management Plan (EPRMP) [182]

Note that the Chart expressly states that, "[m]odification scenario and decision process are applicable to both **non-implemented** and operating projects **with** or without ECCs."[183] To recall, the subject project has not been constructed and is not yet operational, although horizontal clearing activities have already been undertaken at the project site. Thus, the subject project may be reasonably classified as a non-implemented project with an issued ECC, which falls under Item#4 and, hence, an EPRMP is the appropriate EIA document type.

This lengthy explanation brings us to a simple conclusion. The definitions in DAO 2003-30 and the Revised Manual, stating that the EPRMP is applicable to (1) operating/existing projects with a previous ECC but planning or applying for modification or expansion, or (2) operating projects but without an ECC, were **not** an exclusive list.

The afore-discussed provisions of Figure 2-4, in relation to Annex 2-1c, plainly show that the EPRMP can, likewise, be used as an appropriate EIA document type for a single, non-implemented project applying for a major amendment to its ECC, involving an increase in capacity or auxiliary component, which will exceed PDR (non-covered project) thresholds, or result in the inability of the EMP and ERA to address the impacts and risks arising from the modification, such as the subject project.

That the proposed modifications in the subject project fall under this class or type of amendment was a determination made by the DENR-EMB and, absent a showing of grave abuse of discretion, the DENR-EMB's findings are entitled to great respect because it is the administrative agency with the special competence or expertise to administer or implement the EIS System.

The apparent confusion of the Casiño Group and the appellate court is understandable. They had approached the issue with a legal training mindset or background. As a general proposition, the definition of terms in a statute or rule is controlling as to its nature and scope within the context of legal or judicial

proceedings. Thus, since the procedure adopted by the DENR-EMB seemed to contradict or go beyond the definition of terms in the relevant issuances, the Casiño Group and the appellate court concluded that the procedure was infirm.

However, a holistic reading of DAO 2003-30 and the Revised Manual will show that such a legalistic approach in its interpretation and application is unwarranted. This is primarily because the EIA process is a system, not a set of rigid rules and definitions. In the EIA process, there is much room for flexibility in the determination and use of the appropriate EIA document type as the foregoing discussion has shown.[184] To our mind, what should be controlling is the guiding principle set in DAO 2003-30 in the evaluation of applications for amendments to ECCs, as stated in Section 8.3 thereof: "[r]equirements for processing ECC amendments shall depend on the **nature of the request** but shall be focused on the **information necessary** to assess the environmental impact of such changes."[185]

This brings us to the next logical question, did the EPRMP provide the necessary information in order for the DENR-EMB to assess the environmental impact of RP Energy's request relative to the first amendment?

We answer in the affirmative.

In the first place, the Casiño Group never attempted to prove that the subject EPRMP, submitted by RP Energy to the DENR-EMB, was insufficient for purposes of evaluating the environmental impact of the proposed modifications to the original project design. There is no claim that the data submitted were falsified or misrepresented. Neither was there an attempt to subpoena the review process documents of the DENR to establish that the grant of the amendment to the ECC was done with grave abuse of discretion or to the grave prejudice of the right to a healthful environment of those who will be affected by the project. Instead, the Casiño Group relied solely on the definition of terms in DAO 2003-30 and the Revised Manual, which approach, as previously discussed, was erroneous.

At any rate, we have examined the contents of the voluminous EPRMP submitted by RP Energy and we find therein substantial sections explaining the proposed changes as well as the adjustments that will be made in the environmental management plan in order to address the potential environmental impacts of the proposed modifications to the original project design. These are summarized in the "Project Fact Sheet"[186] of the EPRMP and extensively discussed in Section 4[187] thereof. Absent any claim or proof to the contrary, we have no bases to conclude that these data were insufficient to assess the environmental impact of the proposed modifications. In accordance with the presumption of regularity in the performance of official duties, the DENR-EMB must be deemed to have adequately assessed the environmental impact of the proposed changes, before granting the request under the first amendment to the subject ECC.

In sum, the Revised Manual permits the use of an EPRMP, as the appropriate EIA document type, for major amendments to an ECC, **even for an unimplemented or non-implemented project with a previous ECC**, such as the subject project. Consequently, we find that the procedure adopted by the DENR, in requiring RP Energy to submit an EPRMP in order to undertake the environmental impact assessment of the planned modifications to the original project design, relative to the first amendment to the ECC, suffers from no infirmity.

We apply the same framework of analysis in determining the propriety of a PDR, as the appropriate EIA document type, relative to the second amendment to the subject ECC.

Again, the Casiño Group, as sustained by the appellate court, relied on the definitions of a PDR in DAO 2003-30 and the Revised Manual:

> Project Description (PD) — document, which may also be a chapter in an EIS, that describes the nature, configuration, use of raw materials and natural resources, production system, waste or pollution generation and control and the activities of a proposed project. It includes a description of the use of human resources as well as activity timelines, during the pre-construction, construction, operation and abandonment phases. It is to be used for reviewing co-located and single projects under Category C, as well as for Category D projects.[188]
>
> x x x x
>
> a) For new projects: x x x For non-covered projects in Groups II and III, a x x x Project Description Report (PDR) is the appropriate document to secure a decision from DENR/EMB. The PDR is a "must" requirement for environmental enhancement and mitigation projects in both ECAs (Group II) and NECAs (Group III) to allow EMB to confirm the benign nature of proposed operations for eventual issuance of a Certificate of Non-Coverage (CNC). All other Group III (non-covered) projects do not need to submit PDRs – application is at the option of the Proponent should it need a CNC for its own purposes, e.g. financing pre-requisite. For Group V projects, a PDR is required to ensure new processes/technologies or any new unlisted project does not pose harm to the environment. The Group V PDR is a basis for either issuance of a CNC or classification of the project into its proper project group.
>
> b) For operating projects with previous ECCs but planning or applying for clearance to modify/expand or re-start operations, or for projects operating without an ECC but applying to secure one to comply with PD 1586 regulations, the appropriate document is not an EIS but an EIA Report incorporating the project's environmental performance and its current Environmental Management Plan. This report is either an ***(6)***

> Environmental Performance Report and Management Plan (EPRMP) for single project applications or a ***(7)*** Programmatic EPRMP (PEPRMP) for co-located project applications. However, for small project modifications, an updating of the project description or the Environmental Management Plan with the use of the proponent's historical performance and monitoring records may suffice. [189]
>
> x x x x
>
> Project Description (PD) - document, which may also be a chapter in an EIS, that describes the nature, configuration, use of raw materials and natural resources, production system, waste or pollution generation and control and the activities of a proposed project. It includes a description of the use of human resources as well as activity timelines, during the pre-construction, construction, operation and abandonment phases.[190]

We will no longer delve into the details of these definitions. Suffice it to state, similar to the discussion on the EPRMP, that if we go by the strict limits of these definitions, the PDR relative to the subject second amendment would not fall squarely under any of the above.

However, again, these are not the only provisions governing the PDR in the Revised Manual.

After the favorable grant of the first amendment, RP Energy applied for another amendment to its ECC, this time in consideration of its plan to change the configuration of the project from 2 x 150 MW to 1 x 300 MW. In practical terms, this meant that the subject project will still produce 300 MW of electricity but will now make use of only one boiler (instead of two) to achieve greater efficiency in the operations of the plant. The DENR-EMB determined[191] this amendment to be minor, under Scenario 1, Item#6 of Figure 2-4:

Scenario 1: Request for Minor Amendments

1. Typographical error
2. Extension of deadlines for submission of post-ECC requirement/s
3. Extension of ECC validity
4. Change in company name/ownership
5. Decrease in land/project area or production capacity
6. Other amendments deemed "minor" at the discretion of the EMB CO/RO Director[192]

— because (1) there is no increase in capacity; (2) it does not constitute any

significant impact; and (3) its EMP and ERA as specified in the submitted EPRMP remain the same.[193] Relative to Annex 2-1c, the requested amendment was, in turn, determined to fall under Item#3:

3.	Increase in capacity or auxiliary component of the original project which will either not entail exceedance of PDR (non-covered project) thresholds or EMP & ERA can still address impacts & risks arising from modification	Non-exceedance of PDR (non covered project) thresholds is assumed that impacts are not significant; Modification scenario and decision process are applicable to both non-implemented and operating projects issued ECCs	**ECC Amendment** / Letter Request with brief description of additional capacity or component

We make the same observation, as before, that the above applies to an unimplemented or non-implemented project with a previous ECC, like the subject project. Although it may be noted that the proposed modification does not squarely fall under Item#3, considering that, as previously mentioned, there will be no increase in capacity relative to the second amendment, still, we find nothing objectionable to this classification by the DENR-EMB, for it seems plain enough that this classification was used because the modification was deemed too minor to require a detailed project study like an EIS or EPRMP. Since this is the classification most relevant and closely related to the intended amendment, following the basic precept that the greater includes the lesser, the DENR-EMB reasonably exercised its discretion in merely requiring a letter request with a brief description of the modification.

As earlier noted, the PDR is the EIA document type with the least detail, and, thus, applicable to such minor modifications. Thus, the DENR-EMB cannot be faulted for requiring RP Energy to submit a PDR relative to its application for the second amendment. Consequently, as before, we find that the Revised Manual supports the procedure adopted by the DENR-EMB in requiring RP Energy to submit a PDR in order to assess the environmental impact of the planned modifications relative to the second amendment.

In their Petition before this Court, the Casiño Group boldly asserts that "[t]here is nothing in the Project Description Report that provides an environmental impact assessment of the effects of constructing and operating a single 300-MW generating unit."[196] However, to our dismay, as in their other serious allegations in their

Petition for Writ of *kalikasan*, the same is, likewise, baseless. Apart from such a sweeping claim, the Casiño Group has provided no evidence or argument to back up the same.

An examination of the PDR readily reveals that it contains the details of the proposed modifications[197] and an express finding that no significant environmental impact will be generated by such modifications, as in fact it is expected that the operation of the power plant will become more efficient as a result of the change from 2 x 150 MW to 1 x 300 MW configuration.[198] Consequently, the PDR merely reiterates the same mitigating measures that will presumably address the minor modifications to the project design. Again, no evidence was presented to show substantial errors or misrepresentations in these data or their inadequacy for providing the bases for the DENR-EMB to assess the environmental impact of the proposed modifications under the second amendment.

In fine, absent proof to the contrary, bearing in mind that allegations are not proof, we sustain the procedure adopted by the DENR-EMB in requiring RP Energy to submit a PDR and, on the basis thereof, approving the request for the second amendment.

In another vein, we note that the appellate court proceeded from the erroneous premise that the EIA is a document, when it repeatedly stated that the amendments to the ECC require a new EIA, and not merely an EPRMP or PDR. The appellate court relied on the *proviso* in the ECC, which stated that "[a]ny expansion of the project beyond the project description or any change in the activity or transfer of location shall be subject to a new Environmental Impact Assessment."[199]

However, as correctly pointed out by the DENR and RP Energy, the EIA is not a document but a process:

> Environmental Impact Assessment (EIA) — **process** that involves evaluating and predicting the likely impacts of a project (including cumulative impacts) on the environment during construction, commissioning, operation and abandonment. It also includes designing appropriate preventive, mitigating and enhancement measures addressing these consequences to protect the environment and the community's welfare. The process is undertaken by, among others, the project proponent and/or EIA Consultant, EMB, a Review Committee, affected communities and other stakeholders.[200] (Emphasis supplied)

When the *proviso* in the ECC, therefore, states that a new EIA shall be conducted, this simply means that the project proponent shall be required to submit such study or report, as warranted by the DENR Rules and circumstances, which will

sufficiently aid the DENR in making a new EIA and, thus, determine whether to grant the proposed amendment (or project modification). As we have seen, consistent with DAO 2003-30 and the Revised Manual, the DENR required RP Energy to submit an EPRMP and a PDR relative to the latter's request involving the first and second amendments, respectively, which led to the new EIA of the project in compliance with the *proviso* of the ECC.

Verily, the various EIA documents, such as the EPRMP and PDR, are mere tools used by the DENR to assess the environmental impact of a particular project. These documents are flexibly used by the DENR, as the circumstances warrant, in order to adequately assess the impacts of a new project or modifications thereto. Being the administrative agency entrusted with the determination of which EIA document type applies to a particular application for an amendment to an ECC, falling as it does within its particular technical expertise, we must accord great respect to its determination, absent a showing of grave abuse of discretion or patent illegality.

In sum, we find that the appellate court erred when it ruled that the first and second amendments to the subject ECC were invalid for failure to comply with a new EIA and for violating DAO 2003-30 and the Revised Manual. The appellate court failed to properly consider the applicable provisions in DAO 2003-30 and the Revised Manual on amendments to ECCs. Our examination of the provisions on amendments to ECCs, as well as the EPRMP and PDR themselves, shows that the DENR reasonably exercised its discretion in requiring an EPRMP and a PDR for the first and second amendments, respectively. Through these documents, which the DENR reviewed, a new EIA was conducted relative to the proposed project modifications. Hence, absent sufficient showing of grave abuse of discretion or patent illegality, relative to both the procedure and substance of the amendment process, we uphold the validity of these amendments.

IV.

Whether the Certificate of Non-Overlap (CNO), under Section 59 of the IPRA Law, is a precondition to the issuance of an ECC and the lack of its prior issuance rendered the ECC invalid.

The appellate court ruled that the ECC issued in favor of RP Energy on December 22, 2008 is invalid because the CNO covering the subject project was issued only on October 31, 2012 or almost four years from the time of issuance of the ECC. Thus, the ECC was issued in violation of Section 59 of the IPRA Law and its implementing rules which require that a CNO be obtained prior to the issuance of a government agency of, among others, a license or permit. In so ruling, the appellate court implicitly upheld the Casiño Group's argument that the ECC is a form of government license or permit pursuant to Section 4 of PD 1586 which requires all entities to secure an ECC before (1) engaging in an environmentally critical project or (2) implementing a project within an environmentally critical area.

The DENR and RP Energy, however, argue that an ECC is not the license or permit

contemplated under Section 59 of the IPRA Law and its implementing rules as may be deduced from the definition, nature and scope of an ECC under DAO 2003-03 and the Revised Manual. The DENR explains that the issuance of an ECC does not exempt the project proponent from securing other permits and clearances as required under existing laws, including the CNO, and that the final decision on whether a project will be implemented lies with the concerned local government unit/s or the lead government agency which has sectoral mandate to promote the government program where the project belongs.

We agree with the DENR and RP Energy.

Section 59, Chapter VIII of the IPRA Law provides:

> SEC. 59. *Certification Precondition.* **All departments and other governmental agencies shall henceforth be strictly enjoined from issuing, renewing, or granting any** concession, **license** or lease, or entering into any production-sharing agreement, **without prior certification from the NCIP that the area affected does not overlap with any ancestral domain**. Such certification shall only be issued after a field-based investigation is conducted by the Ancestral Domains Office of the area concerned: Provided, That no certification shall be issued by the NCIP without the free and prior informed and written consent of ICCs/IPs concerned: Provided, further, That no department, government agency or government-owned or -controlled corporation may issue new concession, license, lease, or production sharing agreement while there is a pending application for a CADT: Provided, finally, That the ICCs/IPs shall have the right to stop or suspend, in accordance with this Act, any project that has not satisfied the requirement of this consultation process. (Emphasis supplied)

While Section 9, Part II, Rule VIII of National Commission on Indigenous Peoples (NCIP) Administrative Order No. 01-98[201] states:

> SECTION 9. Certification Precondition Prior to Issuance of any Permits or Licenses. —
>
> a. Need for Certification. **No department of government or other agencies shall issue, renew or grant any** concession, **license**, lease, **permit**, or enter into any production sharing agreement **without a prior certification from the NCIP that the area affected does not overlap any ancestral domain.**
>
> b. Procedure for Issuance of Certification by NCIP.

> 1) The certification, above mentioned, shall be issued by the Ancestral Domain Office, only after a field based investigation that such areas are not within any certified or claimed ancestral domains.
>
> 2) The certification shall be issued only upon the free, prior, informed and written consent of the ICCs/IPs who will be affected by the operation of such concessions, licenses or leases or production-sharing agreements. A written consent for the issuance of such certification shall be signed by at least a majority of the representatives of all the households comprising the concerned ICCs/IPs. (Emphasis supplied)

As may be deduced from its subtitle, Section 59 requires as a precondition, relative to the issuance of any concession, license, lease or agreement over natural resources, a certification issued by the NCIP that the area subject thereof does not lie within any ancestral domain.[202] This is in keeping with the State policy to protect the rights of Indigenous Cultural Communities/Indigenous Peoples (ICCs/IPs) to their ancestral domains in order to ensure their economic, social and cultural well-being as well as to recognize the applicability of customary laws governing property rights or relations in determining the ownership and extent of such ancestral domain.[203]

The IPRA Law and its implementing rules do not define the terms "license" and "permit" so that resort to their plain or ordinary meaning in relation to the intendment of the law is appropriate.

A "license" has been defined as "a governmental permission to perform a particular act (such as getting married), conduct a particular business or occupation, operate machinery or vehicles after proving capacity and ability to do so safely, or use property for a certain purpose"[204] while a "permit" has been defined as "a license or other document given by an authorized public official or agency (building inspector, department of motor vehicles) to allow a person or business to perform certain acts."[205]

The evident intention of Section 59, in requiring the CNO prior to the issuance of a license or permit, is to prevent the implementation of a project that may impair the right of ICCs/IPs to their ancestral domains. The law seeks to ensure that a project will not overlap with any ancestral domain prior to its implementation and thereby pre-empt any potential encroachment of, and/or damage to the ancestral domains of ICCs/IPs without their prior and informed consent.

With these considerations in mind, we now look at the definition, nature and scope of an ECC in order to determine if it falls within the ambit of a "license" or "permit" to which the CNO requirement, under Section 59 of the IPRA Law and its implementing rules, finds application.

Section 4 of PD 1586 provides, in part:

> SECTION 4. *Presidential Proclamation of Environmentally Critical Areas and Projects.* — The President of the Philippines may, on his own initiative or upon recommendation of the National Environmental Protection Council, by proclamation declare certain projects, undertakings or areas in the country as environmentally critical. **No person, partnership or corporation shall undertake or operate any such declared environmentally critical project or area without first securing an Environmental Compliance Certificate issued by the President or his duly authorized representative**. For the proper management of said critical project or area, the President may by his proclamation reorganize such government offices, agencies, institutions, corporations or instrumentalities including the re-alignment of government personnel, and their specific functions and responsibilities. (Emphasis supplied)

While the above statutory provision reveals that the ECC is an indispensable requirement before (1) the conduct of an environmentally critical project or (2) the implementation of a project in an environmentally critical area, it does not follow that the ECC is the "license" or "permit" contemplated under Section 59 of the IPRA Law and its implementing rules.

Section 3(d), Article I of DAO 2003-03 defines an ECC in this wise:

> SECTION 3. Definition of Terms. —
>
> For the purpose of this Order, the following definitions shall be applied:
>
> x x x x
>
> d. Environmental Compliance Certificate (ECC) — document issued by the DENR/EMB after a positive review of an ECC application, certifying that based on the representations of the proponent, the proposed project or undertaking will not cause significant negative environmental impact. The ECC also certifies that the proponent has complied with all the requirements of the EIS System and has committed to implement its approved Environmental Management Plan. The ECC contains specific measures and conditions that the project proponent has to undertake before and during the operation of a project, and in some cases, during the project's abandonment phase to mitigate identified environmental impacts.

In turn, Section 1.0, paragraphs 3 and 6 of the Revised Manual provide, in part:

3) Purpose of the EIA Process

As a basic principle, EIA is used to enhance planning and guide decision-making. In this Manual, EIA is primarily presented in the context of a requirement to integrate environmental concerns in the planning process of projects at the feasibility stage. Through the EIA Process, adverse environmental impacts of proposed actions are considerably reduced through a reiterative review process of project siting, design and other alternatives, and the subsequent formulation of environmental management and monitoring plans. A positive determination by the DENR-EMB results to the issuance of an Environmental Compliance Commitment (ECC) document, to be conformed to by the Proponent and represents the project's Environmental Compliance Certificate. **The release of the ECC allows the project to proceed to the next stage of project planning, which is the acquisition of approvals from other government agencies and LGUs, after which the project can start implementation.**

x x x x

6) The EIA Process in Relation to Other Agencies' Requirements

It is inherent upon the EIA Process to undertake a comprehensive and integrated approach in the review and evaluation of environment-related concerns of government agencies (GAs), local government units (LGUs) and the general public. The subsequent EIA findings shall provide guidance and recommendations to these entities as a basis for their decision making process.

a) An Inter-agency MOA on EIS Streamlining was entered into in 1992 by 29 government agencies wherein ECC of covered projects was agreed to be a pre-requisite of all other subsequent government approvals;
b) DENR Memo Circular No. 2007-08 issued on 13 July 2007 reiterates in effect the intent of the MOA and reinforces the role of the ECC/CNC **as a guidance document to other agencies and LGUs**, as follows:
    i) "No permits and/or clearances issued by other National Government Agencies and Local Government Units shall be required in the processing of ECC or CNC applications.
    ii) The findings and recommendations of the EIA shall be transmitted to relevant government agencies for them to integrate in their decision making prior to the issuance of clearances, permits and licenses under their mandates.

iii) The issuance of an ECC or CNC for a project under the EIS System does not exempt the Proponent from securing other government permits and clearances as required by other laws. The current practice of requiring various permits, clearances and licenses only constrains the EIA evaluation process and negates the purpose and function of the EIA."

iv) Henceforth, all related previous instructions and other issuances shall be made consistent with the Circular.

c) "Permits, licenses and clearances" are inclusive of other national and local government approvals such as endorsements, resolutions, certifications, plans and programs, which have to be cleared/approved or other government documents required within the respective mandates and jurisdiction of these agencies/LGUs.

x x x

x

f) **The final decision whether a project will be implemented or not lies either with the LGUs who have spatial jurisdiction over the project or with the lead government agency who has sectoral mandate to promote the government program where the project belongs,** e.g. DOE for energy projects; DENR-MGB for mining projects. (Emphasis supplied)

As can be seen, the issuance of the ECC does not, by and of itself, authorize the implementation of the project. Although it is indispensable before the covered project can be commenced, as per Section 4 of PD 1586, the issuance of the ECC does not, as of yet, result in the implementation of the project. Rather, the ECC is intended to, among others, provide guidance or act as a decision-making tool to other government agencies and LGUs which have the final authority to grant licenses or permits, such as building permits or licenses to operate, that will ultimately result in, or authorize the implementation of the project or the conduct of specific activities.

As a consequence, we find that the CNO requirement under Section 59 of the IPRA Law is not required to be obtained prior to the issuance of an ECC. As previously discussed, Section 59 aims to forestall the implementation of a project that may impair the right of ICCs/IPs to their ancestral domains, by ensuring or verifying that a project will not overlap with any ancestral domain prior to its implementation. However, because the issuance of an ECC does not result in the implementation of the project, there is no necessity to secure a CNO prior to an ECC's issuance as the goal or purpose, which Section 59 seeks to achieve, is, at the time of the issuance of an ECC, not yet applicable.

In sum, we find that the ECC is not the license or permit contemplated under Section 59 of the IPRA Law and its implementing rules. Hence, there is no necessity

to secure the CNO under Section 59 before an ECC may be issued and the issuance of the subject ECC without first securing the aforesaid certification does not render it invalid.

V.

Whether the Certificate of Non-Overlap (CNO), under Section 59 of the IPRA Law, is a precondition to the consummation of the Lease and Development Agreement (LDA) between SBMA and RP Energy and the lack of its prior issuance rendered the LDA invalid.

We now turn to the applicability of Section 59 of the IPRA Law to the LDA entered into between the SBMA and RP Energy on June 8, 2010. Similar to the ECC, the LDA was entered into prior to the issuance of the CNO on October 31, 2012.

Before this Court, SBMA and RP Energy reiterate their arguments on why the CNO is no longer necessary in the instant case, to wit:

1. Prior to entering into the LDA with RP Energy, SBMA entered into a lease agreement with HHIC[206]-Philippines, Inc. and a CNO was already issued therefor which, for all intents and purposes, is applicable to the area leased by RP Energy being part of contiguous lots in Redondo Peninsula.

2. The site of the power plant project is very distant from the boundaries of the lone area at the Subic Bay Freeport Zone covered by an Aeta Community's Certificate of Ancestral Domain Title (CADT).

3. There was no indigenous community within the vicinity of the project area as stated in RP Energy's EIS.

4. The land where the project is located was subsequently classified as industrial by the SBMA.

5. The scoping/procedural screening checklist classified as "not relevant" the issue of indigenous people.

6. Ms. Mercado, who was part of the team which prepared the EIS, testified that she visited the project site ten or more times and did not see any Aeta communities there.

7. Mr. Evangelista testified that the project site used to be a firing range of the U.S. Armed Forces which would make it impossible to be a settlement area of indigenous communities.

8. Atty. Rodriguez stated that the project site is not covered by a CADT and that from the start of negotiations on the LDA, the SBMA Ecology Center verified

with the NCIP that there was no application for said area to be covered by a CADT.

RP Energy further argues that, in any case, as a matter of prudence, it secured a CNO from the NCIP. On October 31, 2012, the NCIP issued the subject CNO over the project site, which should erase any doubt as to whether it overlaps with an ancestral domain.

Upholding the arguments of the Casiño Group, the appellate court ruled that SBMA failed to comply with the CNO requirement and, thus, the LDA entered into between SBMA and RP Energy is invalid. It rejected the reasons given by SBMA and RP Energy, to wit:

1. RP Energy's reliance on its own field investigation that no indigenous community was found within the vicinity is unavailing because it was not the field investigation by the NCIP required by the IPRA Law.

2. RP Energy acknowledged that Aetas were among the earliest settlers in the municipality where the project will be built. Hence, it was not clearly shown that in 2008, at the time the LDA was entered into, there were no indigenous communities in the project site.

3. SBMA's representation that the project site is industrial relies on a letter dated March 5, 2008 and the scoping checklist, which are hearsay evidence.

4. The statements of Atty. Rodriguez have no probative value because he is not an officer of SBMA Ecology Center or an officer of NCIP.

5. At the time the CNO was issued on October 31, 2012, and the field investigation relative thereto was conducted by the NCIP, the project site no longer reflected the actual condition on December 22, 2008 when the LDA was entered into because the households which occupied the site had already been relocated by then.

6. SBMA, prior to entering into a lease agreement with HHIC, secured a CNO, but oddly did not do the same with respect to the lease agreement with RP Energy, considering that both leases cover lands located within the same peninsula. RP Energy appears to have been accorded a different treatment.

7. The CNO issued in favor of HHIC cannot justify the lack of a CNO for the power plant project because the two projects are situated in different locations: the HHIC project is located in *Sitio Agusuhin,* while the power plant project is located in *Sitio Naglatore*.

While we agree with the appellate court that a CNO should have been secured prior to the consummation of the LDA between SBMA and RP Energy, and not after, as was done here, we find that, under the particular circumstances of this case, the subsequent and belated compliance with the CNO requirement does not invalidate the LDA.

For convenience, and as starting point of our analysis, we reproduce Section 59 of the IPRA Law below:

> SEC. 59. *Certification Precondition.* **All departments and other governmental agencies shall henceforth be strictly enjoined from issuing, renewing, or granting any** concession, license or **lease**, or entering into any production-sharing agreement, **without prior certification from the NCIP that the area affected does not overlap with any ancestral domain**. Such certification shall only be issued after a field-based investigation is conducted by the Ancestral Domains Office of the area concerned: Provided, That no certification shall be issued by the NCIP without the free and prior informed and written consent of ICCs/IPs concerned: Provided, further, That no department, government agency or government-owned or -controlled corporation may issue new concession, license, lease, or production sharing agreement while there is a pending application for a CADT: Provided, finally, That the ICCs/IPs shall have the right to stop or suspend, in accordance with this Act, any project that has not satisfied the requirement of this consultation process. (Emphasis supplied)

The law is clear but its actual operation or application should not be interpreted beyond the bounds of reason or practicality.

We explain.

Indeed, a CNO is required prior to the grant of a lease by all government agencies, including the SBMA. Again, the evident intention is to prevent the impairment of the right of ICCs/IPs to their ancestral domains. A lease, such as the LDA under consideration, would result in, among others, granting RP Energy the right to the use and enjoyment of the project site to the exclusion of third parties.[207] As such, the lease could conceivably encroach on an ancestral domain if the CNO is not first obtained.

However, implicit in the operation of Section 59 is the practical reality that the concerned government agency must make a *preliminary determination* on whether or not to obtain the required certification in the first place. To expound, a government agency, which wishes to lease part of its property located near Padre Faura Street, Manila City could not, and should not be reasonably expected to

obtain the CNO, as it is obviously inapplicable to its planned lease. In contrast, a government agency, which intends to lease a property in a valley or mountainous region, where indigenous communities are known to reside, conduct hunting activities, perform rituals, or carry out some other activities, should be reasonably expected to secure the CNO prior to consummating the planned lease with third persons.

Even if the indigenous community does not actually reside on the proposed lease site, the government agency would still be required to obtain the CNO ***precisely*** to rule out the possibility that the proposed lease site encroaches upon an ancestral domain. The reason for this is that an ancestral domain does not only cover the lands actually occupied by an indigenous community, but all areas where they have a claim of ownership, through time immemorial use, such as hunting, burial or worship grounds and to which they have traditional access for their subsistence and other traditional activities.[208]

The wording of the law itself seems to presuppose that if the concession, lease, license or production-sharing agreement is over natural resources, then the CNO should be first obtained. This is because the last term, "production-sharing agreement," normally refers to natural resources. But the problem arises as to what should be considered "natural resources"; for a vacant lot, near Padre Faura Street, or a forest land, in Mt. Banahaw, could both be considered as "natural resources," depending on the restrictive or expansive understanding of that term.

After due consideration, we find that the proper rule of action, for purposes of application of Section 59, is that all government offices should undertake proper and reasonable diligence in making a preliminary determination on whether to secure the CNO, bearing in mind the primordial State interest in protecting the rights of ICCs/IPs to their ancestral domains. They should consider the nature and location of the areas involved; the historical background of the aforesaid areas relative to the occupation, use or claim of ownership by ICCs/IPs; the present and actual condition of the aforesaid areas like the existence of ICCs/IPs within the area itself or within nearby territories; and such other considerations that would help determine whether a CNO should be first obtained prior to granting a concession, lease, license or permit, or entering into a production-sharing agreement.

If there are circumstances that indicate that a claim of ownership by ICCs/IPs may be present or a claim of ownership may be asserted in the future, *no matter how remote*, the proper and prudent course of action is to obtain the CNO. In case of doubt, the doubt should be resolved in favor of securing the CNO and, thus, the government agency is under obligation to secure the aforesaid certification in order to protect the interests and rights of ICCs/IPs to their ancestral domains. This must be so if we are to accord the proper respect due to, and adequately safeguard the interests and rights of, our brothers and sisters belonging to ICCs/IPs in consonance with the constitutional policy[209] to promote and protect the rights of ICCS/IPs as fleshed out in the IPRA Law and its implementing rules.

In the case at bar, we find, applying this rule of action, that the SBMA should have first secured a CNO before entering into the LDA with RP Energy for the following reasons.

First, the Subic area is historically known to be the home of our brothers and sisters belonging to the Aeta communities. In particular, the EIS[210] itself of RP Energy noted that Aeta communities originally occupied the proposed project site of the power plant. Thus, even if we assume that, at the time of the ocular inspection of the proposed project site in 2008, there were no Aeta communities seen thereat, as claimed by RP Energy, the exercise of reasonable prudence should have moved SBMA and RP Energy to secure a CNO in order to rule out the possibility that the project site may overlap with an ancestral domain. This is especially so, in view of the observation previously made, that lack of actual occupation by an indigenous community of the area does not necessarily mean that it is not a part of an ancestral domain because the latter encompasses areas that are not actually occupied by indigenous communities but are used for other purposes like hunting, worship or burial grounds.

Second, SBMA and RP Energy claim that the SBMA Ecology Center verified with the NCIP that the project site does not overlap with an ancestral domain. However, the person, who allegedly did the verification, and the officer from the NCIP, who was contacted in this alleged verification, were not presented in court. Assuming that this verification did take place and that the SBMA Ecology Center determined that there is no pending application for a CADT covering the project site and that the presently recognized CADT of Aeta communities is too far away from the project site, it still does not follow that the CNO under Section 59 should have been dispensed with.

The acts of individual members of a government agency, who allegedly checked with the NCIP that the project site does not overlap with an ancestral domain, cannot substitute for the CNO required by law. The reason is obvious. Such posture would circumvent the noble and laudable purposes of the law in providing the CNO as the appropriate mechanism in order to validly and officially determine whether a particular project site does not overlap with an ancestral domain. It would open the doors to abuse because a government agency can easily claim that it checked with the NCIP regarding any application for an ancestral domain over a proposed project site while stopping short of securing a CNO. To reiterate, the legally mandated manner to verify if a project site overlaps with an ancestral domain is the CNO, and not through personal verification by members of a government agency with the NCIP.

Third, that the project site was formerly used as the firing range of the U.S. Armed Forces does not preclude the possibility that a present or future claim of ancestral domain may be made over the aforesaid site. The concept of an ancestral domain indicates that, even if the use of an area was interrupted by the occupation of

foreign forces, it may still be validly claimed to be an ancestral domain.[211]

Fourth, that the project site was subsequently classified by the SBMA as forming part of an industrial zone does not exempt it from the CNO requirement. The change in the classification of the land is not an exception to the CNO requirement under the IPRA Law. Otherwise, government agencies can easily defeat the rights of ICCs/IPs through the conversion of land use.

Fifth, SBMA argues that the CNO issued to HHIC should, for all intents and purposes, be applicable to RP Energy. However, as correctly ruled by the appellate court, the CNO issued to HHIC's shipyard cannot be extended to RP Energy's project site because they involve two different locations although found within the same land mass. The CNO issued in favor of HHIC clearly states that the findings in the CNO are applicable only to the shipyard location of HHIC.

Last, the steps taken by SBMA, in securing a CNO prior to its lease agreement with HHIC, was the proper and prudent course of action that should have been applied to the LDA with RP Energy. It does not matter that HHIC itself asked for the CNO prior to entering into a lease agreement with SBMA, as claimed by SBMA, while RP Energy did not make such a request because, as we have discussed, SBMA had the obligation, given the surrounding circumstances, to secure a CNO in order to rule out the possibility that the project site overlapped with an ancestral domain.

All in all, we find, applying the foregoing rule of action, that SBMA should have secured a CNO before entering into the LDA with RP Energy. Considering that Section 59 is a prohibitory statutory provision, a violation thereof would ordinarily result in the nullification of the contract.[212] However, we rule that the harsh consequences of such a ruling should not be applied to the case at bar.

The reason is that this is the first time that we lay down the foregoing rule of action so much so that it would be inequitable to retroactively apply its effects with respect to the LDA entered into between SBMA and RP Energy. We also note that, under the particular circumstances of this case, there is no showing that SBMA and RP Energy had a deliberate or ill intent to escape, defeat or circumvent the mandate of Section 59 of the IPRA Law. On the contrary, they appear to have believed in good faith, *albeit* erroneously, that a CNO was no longer needed because of the afore-discussed defenses they raised herein. When the matter of lack of a CNO relative to the LDA was brought to their attention, through the subject Petition for Writ of *kalikasan* filed by the Casiño Group, RP Energy, with the endorsement of SBMA, promptly undertook to secure the CNO, which was issued on October 31, 2012 and stated that the project site does not overlap with any ancestral domain.[213]

Thus, absent proof to the contrary, we are not prepared to rule that SBMA and RP Energy acted in bad faith or with inexcusable negligence, considering that the foregoing rule of action has not heretofore been laid down by this Court. As a

result, we hold that the LDA should not be invalidated due to equitable considerations present here.

By so ruling, we clarify that we reject RP Energy's claim that the belated submission of the CNO is an "over compliance" on its part. Quite the contrary, as we have discussed, the CNO should have been first secured given the surrounding circumstances of this case.

In the same vein, we reject SBMA's argument that the belated application for, and submission of the CNO cured whatever defect the LDA had. We have purposely avoided a ruling to the effect that a CNO secured subsequent to the concession, lease, license, permit or production-sharing agreement will cure the defect. Such a ruling would lead to abuse of the CNO requirement since the defect can be cured anyway by a subsequent and belated application for a CNO. Government agencies and third parties, either through deliberate intent or negligence, may view it as an excuse not to timely and promptly secure the CNO, even when the circumstances warrant the application for a CNO under the afore-discussed rule of action, to the damage and prejudice of ICCs/IPs. Verily, once the concession, lease, license or permit is issued, or the agreement is entered into without the requisite CNO, consequent damages will have already occurred if it later turns out that the site overlaps with an ancestral domain. This is so even if the ICCs/IPs can have the project stopped upon discovery that it overlapped with their ancestral domain under the last *proviso*[214] of Section 59. To prevent this evil, compliance with the CNO requirement should be followed through the afore-discussed rule of action.

In sum, we rule that a CNO should have been secured prior to the consummation of the LDA between SBMA and RP Energy. However, considering that this is the first time we lay down the rule of action appropriate to the application of Section 59, we refrain from invalidating the LDA due to equitable considerations.

VI.

Whether compliance with Section 27, in relation to Section 26, of the LGC (*i.e.*, approval of the concerned *sanggunian* requirement) is necessary prior to the implementation of the power plant project.

Sustaining the arguments of the Casiño Group, the appellate court ruled that the subject project cannot be constructed and operated until after the prior approval of the concerned *sanggunian* requirement, under Section 27 of the LGC, is complied with. Hence, the ECC and LDA could not be validly granted and entered into without first complying with the aforesaid provision. It held that all the requisites for the application of the aforesaid provision are present. As to the pertinent provisions of RA 7227 or "The Bases Conversion and Development Act of 1992," which grants broad powers of administration to the SBMA over the Subic Special Economic Zone (SSEZ), the appellate court ruled that RA 7227 contains a provision recognizing the basic autonomy of the LGUs which joined the SSEZ. Thus, the LGC and RA 7227

should be harmonized whereby the concerned *sanggunian's* power to approve under Section 27 must be respected.

The DENR impliedly agrees with the Casiño Group that compliance with Section 27 is still required but without clearly elaborating its reasons therefor.

The SBMA and RP Energy, however, argue that the prior approval of the concerned *sanggunian* requirement, under Section 27, is inapplicable to the subject project because it is located within the SSEZ. The LGC and RA 7227 cannot be harmonized because of the clear mandate of the SBMA to govern and administer all investments and businesses within the SSEZ. Hence, RA 7227 should be deemed as carving out an exception to the prior approval of the concerned *sanggunian* requirement insofar as the SSEZ is concerned.

We agree with the SBMA and RP Energy.

Preliminarily, we note that Sections 26 and 27 of the LGC contemplate two requirements: (1) prior consultations and (2) prior approval of the concerned *sanggunian, viz*:

> 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 supplied)
>
> 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 supplied)

In the case at bar, the Casiño Group only questions the alleged lack of the prior approval of the concerned sanggunians under Section 27 of the LGC. Thus, we shall limit our discussion to the resolution of this issue. (Parenthetically, we note that

prior consultations, as required by Section 26 of the LGC, appear to have been complied with. This may be gleaned from the EIS of RP Energy which contains the documentation of the extensive public consultations held, under the supervision of the DENR-EMB, relative to the subject project, as required by the EIA process, [215]as well as the social acceptability policy consultations conducted by the SBMA, which generated the document entitled "Final Report: Social Acceptability Process for RP Energy, Inc.'s 600-MW Coal Plant Project," as noted and discussed in an earlier subsection.[216])

We also note that the Casiño Group argues that the approval of the concerned *sanggunian* requirement was necessary prior to the issuance of the ECC and the consummation of the LDA; the absence of which invalidated the ECC and LDA.

We shall no longer discuss at length whether the approval of the concerned *sanggunian* requirement must be complied with prior to the issuance of an ECC. As discussed in an earlier subsection, the issuance of an ECC does not, by itself, result in the implementation of the project. Hence, the purpose or goal of Sections 26 and 27 of the LGC, like Section 59 of the IPRA Law, does not yet obtain and, thus, the ECC may be issued even without prior compliance with Sections 26 and 27 of the LGC.

We, thus, limit the discussion as to whether the approval of the concerned *sanggunian* requirement should have been complied with prior to the consummation of the LDA, considering that the LDA is part of the implementation of the subject project and already vests in RP Energy the right to the use and enjoyment of the project site, as in fact horizontal clearing activities were already undertaken by RP Energy at the project site by virtue of the LDA.

The prior approval of the concerned *sanggunian* requirement is an attribute and implementation of the local autonomy granted to, and enjoyed by LGUs under the Constitution.[217] The LGU has the duty to protect its constituents and interests in the implementation of the project. Hence, the approval of the concerned *sanggunian* is required by law to ensure that local communities partake in the fruits of their own backyard.[218]

For Section 27, in relation to Section 26, to apply, the following requisites must concur: (1) the planning and implementation of the project or program is vested in a national agency or government-owned and-controlled corporation, *i.e*., national programs and/or projects which are to be implemented in a particular local community; and (2) the project or program may cause pollution, climatic change, depletion of non-renewable resources, loss of cropland, rangeland, or forest cover, extinction of animal or plant species, or call for the eviction of a particular group of people residing in the locality where the project will be implemented.[219]

In the case at bar, the two requisites are evidently present: (1) the planning and implementation of the subject project involves the Department of Energy, DENR,

and SBMA; and (2) the subject project may cause pollution, climatic change, depletion of non-renewable resources, loss of cropland, rangeland, or forest cover, and extinction of animal or plant species, or call for the eviction of a particular group of people residing in the locality where the project will be implemented. Hence, Section 27 of the LGC should ordinarily apply.

It is not disputed that no approval was sought from the concerned *sanggunians* relative to the subject project. What is more, the affected LGUs have expressed their strong oppositions to the project through various sanggunian resolutions.[220] However, it is also undisputed that the subject project is located within the SSEZ and, thus, under the territorial jurisdiction of the SBMA pursuant to RA 7227.

Thus, we are tasked to determine the applicability of the prior approval of the concerned *sanggunian* requirement, under Section 27 of the LGC, relative to a project within the territorial jurisdiction of the SBMA under RA 7227.

RA 7227 was passed on March 13, 1992 in the aftermath of the Mount Pinatubo eruption and the closure of the Subic Naval Base of the U.S. Armed Forces. It sought to revive the affected areas by creating and developing the SSEZ into a "self-sustaining industrial, commercial, financial and investment center to generate employment opportunities in and around the zone and to attract and promote productive foreign investments."[221] The SSEZ covered the City of Olangapo and Municipality of Subic in the Province of Zambales and the lands and its contiguous extensions occupied by the former U.S. Naval Base, which traversed the territories of the Municipalities of Hermosa and Morong in the Province of Bataan. Under Section 12 of RA 7227, the creation of the SSEZ was made subject to the concurrence by resolution of the respective sanggunians of the City of Olongapo and the Municipalities of Subic, Morong and Hermosa, *viz*:

> SECTION 12. Subic Special Economic Zone. — Subject to the concurrence by resolution of the *sangguniang panlungsod* of the City of Olongapo and the *sangguniang bayan* of the Municipalities of Subic, Morong and Hermosa, there is hereby created a Special Economic and Free-port Zone consisting of the City of Olongapo and the Municipality of Subic, Province of Zambales, the lands occupied by the Subic Naval Base and its contiguous extensions as embraced, covered, and defined by the 1947 Military Bases Agreement between the Philippines and the United States of America as amended, and within the territorial jurisdiction of the Municipalities of Morong and Hermosa, Province of Bataan, hereinafter referred to as the Subic Special Economic Zone whose metes and bounds shall be delineated in a proclamation to be issued by the President of the Philippines. Within thirty (30) days after the approval of this Act, each local government unit shall submit its resolution of concurrence to join the Subic Special Economic Zone to the office of the President. Thereafter, the President of the Philippines shall issue a

proclamation defining the metes and bounds of the Zone as provided herein.

Subsequently, the aforesaid *sanggunians* submitted their respective resolutions of concurrence and the President issued Presidential Proclamation No. 532, Series of 1995, defining the metes and bounds of the SSEZ.

In *Executive Secretary v. Southwing Heavy Industries, Inc.,*[222] we described the concept of SSEZ as a Freeport:

> The Freeport was designed to ensure free flow or movement of goods and capital within a portion of the Philippine territory in order to attract investors to invest their capital in a business climate with the least governmental intervention. The concept of this zone was explained by Senator Guingona in this wise:
>
> > Senator Guingona. Mr. President, the special economic zone is successful in many places, particularly Hong Kong, which is a free port. The difference between a special economic zone and an industrial estate is simply expansive in the sense that the commercial activities, including the establishment of banks, services, financial institutions, agro-industrial activities, maybe agriculture to a certain extent.
> >
> > **This delineates the activities that would have the least of government intervention, and the running of the affairs of the special economic zone would be run principally by the investors themselves, similar to a housing subdivision, where the subdivision owners elect their representatives to run the affairs of the subdivision, to set the policies, to set the guidelines.**
> >
> > **We would like to see Subic area converted into a little Hong Kong, Mr. President, where there is a hub of free port and free entry, free duties and activities to a maximum spur generation of investment and jobs.**
> >
> > While the investor is reluctant to come in the Philippines, as a rule, because of red tape and perceived delays, we envision this special economic zone to be an area where there will be minimum government interference.
> >
> > The initial outlay may not only come from the Government or the Authority as envisioned here, but from them themselves,

> because they would be encouraged to invest not only for the land but also for the buildings and factories. As long as they are convinced that in such an area they can do business and reap reasonable profits, then many from other parts, both local and foreign, would invest, Mr. President.[223] (Emphasis in the original)

To achieve the above-mentioned purposes, the law created SBMA to administer the SSEZ. In the process, SBMA was granted broad and enormous powers as provided for under Section 13(b) of RA 7227:

> Sec. 13. *The Subic Bay Metropolitan Authority.* –
>
> x x x x
>
> (b) *Powers and functions of the Subic Bay Metropolitan Authority* - The Subic Bay Metropolitan Authority, otherwise known as the Subic Authority, shall have the following powers and function:
>
> (1) To operate, administer, manage and develop the ship repair and ship building facility, container port, oil storage and refueling facility and Cubi Air Base within the Subic Special Economic and Free-port Zone as a free market in accordance with the policies set forth in Section 12 of this Act;
>
> (2) **To accept any local or foreign investment, business or enterprise**, subject only to such rules and regulations to be promulgated by the Subic Authority in conformity with the policies of the Conversion Authority without prejudice to the nationalization requirements provided for in the Constitution;
>
> (3) **To undertake and regulate the establishment, operation and maintenance of utilities, other services and infrastructure in the Subic Special Economic Zone** including shipping and related business, stevedoring and port terminal services or concessions, incidental thereto and airport operations in coordination with the Civil Aeronautics Board, and to fix just and reasonable rates, fares charges and other prices therefor;
>
> (4) **To construct, acquire, own, lease, operate and maintain on its own or through contract, franchise, license permits bulk purchase from the private sector and build-operate transfer scheme or joint-venture the required utilities and infrastructure** in coordination with local government units and appropriate government agencies concerned and in conformity with existing applicable laws therefor;

(5) To adopt, alter and use a corporate seal; to contract, lease, sell, dispose, acquire and own properties; to sue and be sued in order to carry out its duties and functions as provided for in this Act and to exercise the power of eminent domain for public use and public purpose;

(6) Within the limitation provided by law, to raise and/or borrow the necessary funds from local and international financial institutions and to issue bonds, promissory notes and other securities for that purpose and to secure the same by guarantee, pledge, mortgage deed of trust, or assignment of its properties held by the Subic Authority for the purpose of financing its projects and programs within the framework and limitation of this Act;

(7) To operate directly or indirectly or license tourism related activities subject to priorities and standards set by the Subic Authority including games and amusements, except horse racing, dog racing and casino gambling which shall continue to be licensed by the Philippine Amusement and Gaming Corporation (PAGCOR) upon recommendation of the Conversion Authority; to maintain and preserve the forested areas as a national park;

(8) To authorize the establishment of appropriate educational and medical institutions;

(9) To protect, maintain and develop the virgin forests within the baselands, which will be proclaimed as a national park and subject to a permanent total log ban, and for this purpose, the rules and regulations of the Department of Environment and Natural Resources and other government agencies directly involved in the above functions shall be implemented by the Subic Authority;

(10) To adopt and implement measures and standards for environmental pollution control of all areas within its territory, including but not limited to all bodies of water and to enforce the same. For which purpose the Subic Authority shall create an Ecology Center; and

(11) To exercise such powers as may be essential, necessary or incidental to the powers granted to it hereunder as well as to carry out the policies and objectives of this Act. (Emphasis supplied)

The Implementing Rules of RA 7227 further provide:

Sec. 11. *Responsibilities of the SBMA*. Other than the powers and functions prescribed in Section 10 of these Rules, the SBMA shall have

the following responsibilities:

(a) The SBMA shall exercise authority and jurisdiction over all economic activity within the SBF[224]

x x x x

(f) Consistent with the Constitution, the SBMA shall have the following powers to enforce the law and these Rules in the SBF:

x x x x

(8) to issue, alter, modify, suspend or revoke for cause, any permit, certificate, license, visa or privilege allowed under the Act or these Rules;

x x x x

(11) to promulgate such other rules, regulations and circulars as may be necessary, proper or incidental to carry out the policies and objectives of the Act, these Rules, as well as the powers and duties of the SBMA thereunder.[225]

As can be seen, the SBMA was given broad administrative powers over the SSEZ and these necessarily include the power to approve or disapprove the subject project, which is within its territorial jurisdiction. But, as previously discussed, the LGC grants the concerned sanggunians the power to approve and disapprove this same project. The SBMA asserts that its approval of the project prevails over the apparent disapproval of the concerned sanggunians. There is, therefore, a real clash between the powers granted under these two laws.

Which shall prevail?

Section 12 of RA 7227 provides:

Sec. 12. *Subic Special Economic Zone.* x x x

The abovementioned zone shall be **subjected to the following policies**:

(a) Within the framework and subject to the mandate and limitations of the Constitution and the pertinent provisions of the Local Government Code, the Subic Special Economic Zone shall be developed into a self-sustaining, industrial, commercial, financial and investment center to generate employment opportunities in and around the zone and to attract and promote productive foreign investments;

x x x x

(i) **Except as herein provided**, the local government units comprising the Subic Special Economic Zone **shall retain their basic autonomy and identity**. The cities shall be governed by their respective charters and the municipalities shall operate and function in accordance with Republic Act No. 7160, otherwise known as the Local Government Code of 1991. (Emphasis supplied)

This section sets out the basic policies underlying the creation of the SSEZ. Indeed, as noted by the appellate court, Section 12(i) expressly recognizes the basic autonomy and identity of the LGUs comprising the SSEZ. However, the clause "[e]xcept as herein provided" unambiguously provides that the LGUs do not retain their basic autonomy and identity when it comes to matters specified by the law as falling under the powers, functions and prerogatives of the SBMA.

In the case at bar, we find that the power to approve or disapprove projects within the SSEZ is one such power over which the SBMA's authority prevails over the LGU's autonomy. Hence, there is no need for the SBMA to secure the approval of the concerned *sanggunians* prior to the implementation of the subject project.

This interpretation is based on the broad grant of powers to the SBMA over all administrative matters relating to the SSEZ under Section 13 of RA 7227, as afore-discussed. Equally important, under Section 14, other than those involving defense and security, the SBMA's decision prevails in case of conflict between the SBMA and the LGUs in all matters concerning the SSEZ, *viz*.:

Sec. 14. *Relationship with the Conversion Authority and the Local Government Units.*

(a) **The provisions of existing laws, rules and regulations to the contrary notwithstanding, the Subic Authority shall exercise administrative powers, rule-making and disbursement of funds over the Subic Special Economic Zone** in conformity with the oversight function of the Conversion Authority.

(b) **In case of conflict between the Subic Authority and the local government units concerned** on matters affecting the Subic Special Economic Zone other than defense and security, **the decision of the Subic Authority shall prevail**. (Emphasis supplied)

Clearly, the subject project does not involve defense or security, but rather business and investment to further the development of the SSEZ. Such is in line with the

objective of RA 7227 to develop the SSEZ into a self-sustaining industrial, commercial, financial and investment center. Hence, the decision of the SBMA would prevail over the apparent objections of the concerned *sanggunians* of the LGUs.

Significantly, the legislative deliberations on RA 7227, likewise, support and confirm the foregoing interpretation. As earlier noted, Section 13 b(4) of RA 7227 provides:

> Sec. 13. *The Subic Bay Metropolitan Authority.* –
>
> x x x x
>
> (b) *Powers and functions of the Subic Bay Metropolitan Authority* - The Subic Bay Metropolitan Authority, otherwise known as the Subic Authority, shall have the following powers and function:
>
> x x x x
>
> (4) To construct, acquire, own, lease, operate and maintain on its own or through contract, franchise, license permits bulk purchase from the private sector and build-operate transfer scheme or joint-venture the required utilities and infrastructure in coordination with local government units and appropriate government agencies concerned and in conformity with existing applicable laws therefor;

In the Senate, during the period of amendments, when the provision which would eventually become the afore-quoted Section 13 b(4) of RA 7227 was under consideration, the following exchanges took place:

> Senator Laurel. Mr. President.
>
> The President. Senator Laurel is recognized.
>
> Senator Laurel. Relative to line 27 up to line 31 of page 16, regarding the provision to the effect that the Authority will have the following functions: "to construct, acquire, own, etcetera," that is all right.
>
> My motion is that we amend this particular line, starting from the word "structures", by deleting the words that follow on line 31, which states: "in coordination with local government units and", and substitute the following in place of those words: "**SUBJECT TO THE APPROVAL OF THE SANGGUNIAN OF THE AFFECTED LOCAL GOVERNMENT UNITS AND IN COORDINATION WITH.**"
>
> So, this paragraph will read, as follows: "to construct, own, lease,

operate, and maintain on its own or through contract, franchise, license permits, bulk purchase from the private sector and build-operate-transfer scheme or joint venture the required utilities and infrastructure SUBJECT TO THE APPROVAL OF THE SANGGUNIAN OF THE AFFECTED LOCAL GOVERNMENT UNITS AND IN coordination with appropriate government agencies concerned and in conformity with existing applicable laws therefor."

The President. What does the Sponsor say?

Senator Shahani. **I believe this would cripple the Authority. I would like to remind our Colleagues that in the Board of Directors, the representatives of the local government units that agree to join with the Subic Special Economic Zone will be members of the Board so that they will have a say, Mr. President. But if we say "subject," that is a very strong word. It really means that they will be the ones to determine the policy.**

So, I am afraid that I cannot accept this amendment, Mr. President.

Senator Laurel. May I respond or react, Mr. President.

The President. Yes.

Senator Laurel. The Constitution is there, very categorical in the promotion and encouragement of local autonomy, and mandating Congress to enact the necessary Local Government Code with emphasis on local autonomy.

We have now Section 27 of the new Local Government Code which actually provides that for every project in any local government territory, the conformity or concurrence of the Sanggunian of every such local government unit shall be secured in the form of resolution—the consent of the Sanggunian.

The President. Well, both sides have already been heard. There is the Laurel amendment that would make the power of the Subic Bay Metropolitan Authority to construct, acquire, own, lease, operate and maintain on its own or through contract, franchise, license, permits, bulk purchases from private sector, build-operate-and-transfer scheme, or joint venture, the required utilities and infrastructure, subject to approval by the appropriate Sanggunian of the local government concerned.

This amendment to the amendment has been rejected by the Sponsor. So, we are voting now on this amendment.

As many as are in favor of the Laurel amendment, say Aye. (Few Senators: Aye.)

Those who are against the said amendment, say Nay. (Several Senators: Nay.)

Senator Laurel. Mr. President, may I ask for a nominal voting.

The President. A nominal voting should be upon the request of one-fifth of the Members of the House, but we can accommodate the Gentleman by asking for a division of the House.

Therefore, those in favor of the Laurel amendment, please raise their right hands. (Few Senators raised their right hands.)

Senator Laurel. I was asking, Mr. President, for a nominal voting.

The President. A nominal voting can be had only upon motion of one-fifth of the Members of the Body.

Senator Laurel. That is correct, Mr. President. But this is such an important issue being presented to us, because this question is related to the other important issue, which is: May an elected public official of a particular government unit, such as a town or municipality, participate as a member of the Board of Directors of this particular zone.

The President. The ruling of the Chair stands. The division of the House is hereby directed.

As many as are in favor of the Laurel amendment, please raised (sic) their right hands. (Few Senators raised their right hands.)

As many as are against the said amendment, please do likewise. (Several Senators raised their right hands.)

The amendment is lost.[226] (Emphasis supplied)

Indubitably, the legislature rejected the attempts to engraft Section 27's prior approval of the concerned *sanggunian* requirement under the LGC into RA 7227. Hence, the clear intent was to do away with the approval requirement of the concerned sanggunians relative to the power of the SBMA to approve or disapprove a project within the SSEZ.

The power to create the SSEZ is expressly recognized in Section 117 of the LGC,

viz.:

TITLE VIII.
Autonomous Special Economic Zones

> SECTION 117. *Establishment of Autonomous Special Economic Zones.* — The establishment by law of autonomous special economic zones in selected areas of the country shall be subject to concurrence by the local government units included therein.

When the concerned *sanggunians* opted to join the SSEZ, they were, thus, fully aware that this would lead to some diminution of their local autonomy in order to gain the benefits and privileges of being a part of the SSEZ.

Further, the point of Senator Shahani that the representation of the concerned LGUs in the Board of Directors will compensate for the diminution of their local autonomy and allow them to be represented in the decision-making of the SBMA is not lost on us. This is expressly provided for in Section 13(c) of RA 7227, *viz*:

> SECTION 13. The Subic Bay Metropolitan Authority. —
>
> x x x x
>
> (c) Board of Directors. — The powers of the Subic Authority shall be vested in and exercised by a Board of Directors, hereinafter referred to as the Board, which shall be composed of fifteen (15) members, to wit:
>
> **(1) Representatives of the local government units that concur to join the Subic Special Economic Zone;**
>
> (2) Two (2) representatives from the National Government;
>
> (3) Five (5) representatives from the private sector coming from the present naval stations, public works center, ship repair facility, naval supply depot and naval air station; and
>
> (4) The remaining balance to complete the Board shall be composed of representatives from the business and investment sectors. (Emphasis supplied)

SBMA's undisputed claim is that, during the board meeting when the subject project was approved, except for one, all the representatives of the concerned LGUs were present and voted to approve the subject project.[227] Verily, the wisdom of the law

creating the SSEZ; the wisdom of the choice of the concerned LGUs to join the SSEZ; and the wisdom of the mechanism of representation of the concerned LGUs in the decision-making process of the SBMA are matters outside the scope of the power of judicial review. We can only interpret and apply the law as we find it.

In sum, we find that the implementation of the project is not subject to the prior approval of the concerned *sanggunians*, under Section 27 of the LGC, and the SBMA's decision to approve the project prevails over the apparent objections of the concerned *sanggunians* of the LGUs, by virtue of the clear provisions of RA 7227. Thus, there was no infirmity when the LDA was entered into between SBMA and RP Energy despite the lack of approval of the concerned sanggunians.

VII.

Whether the validity of the third amendment to the ECC can be resolved by the Court.

The Casiño Group argues that the validity of the third amendment should have been resolved by the appellate court because it is covered by the broad issues set during the preliminary conference.

RP Energy counters that this issue cannot be resolved because it was expressly excluded during the preliminary conference.

The appellate court sustained the position of RP Energy and ruled that this issue was not included in the preliminary conference so that it cannot be resolved without violating the right to due process of RP Energy.

We agree with the appellate court.

Indeed, the issue of the validity of the third amendment to the ECC was not part of the issues set during the preliminary conference, as it appears at that time that the application for the third amendment was still ongoing. The following clarificatory questions during the aforesaid conference confirm this, *viz*.:

> J. LEAGOGO:
> So what are you questioning in your Petition?
>
> ATTY. RIDON:
> We are questioning the validity of the amendment, Your Honor.
>
> J. LEAGOGO:
> Which amendment?
>
> ATTY. RIDON:
> From 2 x 150 to 1 x 300, Your Honor.

J. LEAGOGO:
Your Petition does not involve the 2 x 300 which is still pending with the DENR. Because you still have remedies there, you can make your noise there, you can question it to your heart[']s content because it is still pending

x x x x

J. LEAGOGO:
Atty. Ridon, I go back to my question. We're not yet talking of the legal points here. I'm just talking of what are you questioning. You are questioning the 1 x 300?

ATTY. RIDON:
Yes, Your Honor.

J. LEAGOGO:
Because it was 2 x 150 and then 1 x 300?

ATTY. RIDON:
Yes, Your Honor.

J. LEAGOGO:
Up to that point?

ATTY. RIDON:
Yes, Your Honor.

J. LEAGOGO:
Because there is no amended ECC yet for the 2 x 300 or 600. That's clear enough for all of us.

ATTY. RIDON:
Yes, Your Honor.[228]

Given the invocation of the right to due process by RP Energy, we must sustain the appellate court's finding that the issue as to the validity of the third amendment cannot be adjudicated in this case.

Refutation of the Partial Dissent.

Justice Leonen partially dissents from the foregoing disposition on the following grounds:

(a) Environmental cases, such as a petition for a writ of *kalikasan*, should not, in

general, be litigated *via* a representative, citizen or class suit because of the danger of misrepresenting the interests— and thus, barring future action due to *res judicata*— of those not actually present in the prosecution of the case, either because they do not yet exist, like the unborn generations, or because the parties bringing suit do not accurately represent the interests of the group they represent or the class to which they belong. As an exception, such representative, citizen or class suit may be allowed subject to certain conditions; and

(b) The amendments to the ECC, granted by the DENR in favor of RP Energy, are void for failure to submit a new EIS in support of the applications for these amendments to the subject ECC, and a petition for writ of *kalikasan* is not the proper remedy to raise a defect in the ECC.

We disagree.

A.

Justice Leonen's proposition that environmental cases should not, in general, be litigated via a representative, citizen or class suit is both novel and ground-breaking. However, it is inappropriate to resolve such an important issue in this case, in view of the requisites for the exercise of our power of judicial review, because the matter was not raised by the parties so that the issue was not squarely tackled and fully ventilated. The proposition will entail, as Justice Leonen explains, an abandonment or, at least, a modification of our ruling in the landmark case of *Oposa v. Factoran*.[229] It will also require an amendment or a modification of Section 5 (on citizen suits), Rule 2 of the Rules of Procedure for Environmental Cases. Hence, it is more appropriate to await a case where such issues and arguments are properly raised by the parties for the consideration of the Court.

B.

Justice Leonen reasons that the amendments to the subject ECC are void because the applications therefor were unsupported by an EIS, as required by PD 1151 and PD 1586. The claim is made that an EIS is required by law, even if the amendment to the ECC is minor, because an EIS is necessary to determine the environmental impact of the proposed modifications to the original project design. The DENR rules, therefore, which permit the modification of the original project design without the requisite EIS, are void for violating PD 1151 and PD 1586.

We disagree.

Indeed, Section 4 of PD 1151 sets out the basic policy of requiring an EIS in every action, project or undertaking that significantly affects the quality of the environment, viz:

SECTION 4. Environmental Impact Statements. — Pursuant to the above enunciated policies and goals, all agencies and instrumentalities of the national government, including government-owned or -controlled corporations, as well as private corporations, firms and entities shall prepare, file and include in every action, project or undertaking **which significantly affects the quality of the environment** a detailed statement on —

(a) the environmental impact of the proposed action, project or undertaking;
(b) any adverse environmental effect which cannot be avoided should the proposal be implemented;
(c) alternative to the proposed action;
(d) a determination that the short-term uses of the resources of the environment are consistent with the maintenance and enhancement of the long-term productivity of the same; and
(e) whenever a proposal involves the use of depletable or non-renewable resources, a finding must be made that such use and commitment are warranted.

Before an environmental impact statement is issued by a lead agency, all agencies having jurisdiction over, or special expertise on, the subject matter involved shall comment on the draft environmental impact statement made by the lead agency within thirty (30) days from receipt of the same. (Emphasis supplied)

As earlier stated, the EIS was subsequently developed and strengthened through PD 1586 which established the Philippine Environmental Impact Statement System. Sections 4 and 5 of PD 1586 provide:

SECTION 4. *Presidential Proclamation of Environmentally Critical Areas and Projects.* The President of the Philippines may, on his own initiative or upon recommendation of the National Environmental Protection Council, by proclamation declare certain projects, undertakings or areas in the country as environmentally critical. **No person, partnership or corporation shall undertake or operate any such declared environmentally critical project or area without first securing an Environmental Compliance Certificate issued by the President or his duly authorized representative**. For the proper management of said critical project or area, the President may by his proclamation reorganize such government offices, agencies, institutions, corporations or instrumentalities including the re-alignment of government personnel, and their specific functions and responsibilities.

For the same purpose as above, the Ministry of Human Settlements

> shall: (a) prepare the proper land or water use pattern for said critical project(s) or area(s); (b) establish ambient environmental quality standards; (c) develop a program of environmental enhancement or protective measures against calamituous factors such as earthquake, floods, water erosion and others, and (d) perform such other functions as may be directed by the President from time to time.
>
> SECTION 5. *Environmentally Non-Critical Projects*. — All other projects, undertakings and areas not declared by the President as environmentally critical shall be considered as non-critical and shall not be required to submit an environmental impact statement. The National Environmental Protection Council, thru the Ministry of Human Settlements may however require non-critical projects and undertakings to provide additional environmental safeguards as it may deem necessary. (Emphasis supplied)

These laws were, in turn, implemented by DAO 2003-30 and the Revised Manual.

As correctly noted by Justice Leonen, Presidential Proclamation No. 2146 was subsequently issued which, among others, classified fossil-fueled power plants as environmentally critical projects.

In conformity with the above-quoted laws and their implementing issuances, the subject project, a coal power plant, was classified by the DENR as an environmentally critical project, new and single. Hence, RP Energy was required to submit an EIS in support of its application for an ECC. RP Energy thereafter complied with the EIS requirement and the DENR, after review, evaluation and compliance with the other steps provided in its rules, issued an ECC in favor of RP Energy. As can be seen, the EIS requirement was **duly complied with.**

Anent Justice Leonen's argument that the subsequent amendments to the ECC were void for failure to prepare and submit a new EIS relative to these amendments, it is important to note that PD 1586 does not state the procedure to be followed when there is an application for an amendment to a previously issued ECC. There is nothing in PD 1586 which expressly requires an EIS for an amendment to an ECC.

In footnote 174 of the ponencia, it is stated:

> Parenthetically, we must mention that the validity of the rules providing for amendments to the ECC was challenged by the Casiño Group on the ground that it is ultra vires before the appellate court. It argued that the laws governing the ECC do not expressly permit the amendment of an ECC. However, the appellate court correctly ruled that the validity of the rules cannot be collaterally attacked. Besides, the power of the DENR to issue rules on amendments of an ECC is sanctioned under the doctrine of

necessary implication. Considering that the greater power to deny or grant an ECC is vested by law in the President or his authorized representative, the DENR, there is no obstacle to the exercise of the lesser or implied power to amend the ECC for justifiable reasons. This issue was no longer raised before this Court and, thus, we no longer tackle the same here.

Because PD 1586 did not expressly provide the procedure to be followed in case of an application for an amendment to a previously issued ECC, the DENR exercised its discretion, pursuant to its delegated authority to implement this law, in issuing DAO 2003-30 and the Revised Manual.

Justice Leonen's argument effectively challenges the validity of the provisions in DAO 2003-30 and the Revised Manual relative to amendments to an ECC for being contrary to PD 1151 and 1586.

We disagree.

First, to repeat, there is nothing in PD 1586 which expressly requires an EIS for an amendment to an ECC.

Second, as earlier noted, the proposition would constitute a collateral attack on the validity of DAO 2003-30 and the Revised Manual, which is not allowed under the premises. The Casiño Group itself has abandoned this claim before this Court so that the issue is not properly before this Court for its resolution.

Third, assuming that a collateral attack on the validity of DAO 2003-30 and the Revised Manual can be allowed in this case, the rules on amendments appear to be reasonable, absent a showing of grave abuse of discretion or patent illegality.

Essentially, the rules take into consideration the nature of the amendment in determining the proper Environmental Impact Assessment (EIA) document type that the project proponent will submit in support of its application for an amendment to its previously issued ECC. A minor amendment will require a less detailed EIA document type, like a Project Description Report (PDR), while a major amendment will require a more detailed EIA document type, like an Environmental Performance Report and Management Plan (EPRMP) or even an EIS.[230]

The rules appear to be based on the premise that it would be unduly burdensome or impractical to require a project proponent to submit a detailed EIA document type, like an EIS, for amendments that, upon preliminary evaluation by the DENR, will not cause significant environmental impact. In particular, as applied to the subject project, the DENR effectively determined that it is impractical to require RP Energy to, in a manner of speaking, start from scratch by submitting a new EIS in support of its application for the first amendment to its previously issued ECC, considering that the existing EIS may be supplemented by an EPRMP to adequately

evaluate the environmental impact of the proposed modifications under the first amendment. The same reasoning may be applied to the PDR relative to the second amendment.

As previously discussed, the Casiño Group failed to prove that the EPRMP and PDR were inadequate to assess the environmental impact of the planned modifications under the first and second amendments, respectively. On the contrary, the EPRMP and PDR appeared to contain the details of the planned modifications and the corresponding adjustments to be made in the environmental management plan or mitigating measures in order to address the potential impacts of these planned modifications. Hence, absent sufficient proof, there is no basis to conclude that the procedure adopted by the DENR was done with grave abuse of discretion.

Justice Leonen's proposition would effectively impose a stringent requirement of an EIS for each and every proposed amendment to an ECC, no matter how minor the amendment may be. While this requirement would seem ideal, in order to ensure that the environmental impact of the proposed amendment is fully taken into consideration, the pertinent laws do not, however, expressly require that such a procedure be followed. As already discussed, the DENR appear to have reasonably issued DAO 2003-30 and the Revised Manual relative to the amendment process of an ECC, by balancing practicality vis-à-vis the need for sufficient information in determining the environmental impact of the proposed amendment to an ECC. In fine, the Court cannot invalidate the rules which appear to be reasonable, absent a showing of grave abuse of discretion or patent illegality.

We next tackle Justice Leonen's argument that a petition for certiorari, and not a writ of *kalikasan*, is the proper remedy to question a defect in an ECC.

In general, the proper procedure to question a defect in an ECC is to follow the appeal process provided in DAO 2003-30 and the Revised Manual. After complying with the proper administrative appeal process, recourse may be made to the courts in accordance with the doctrine of exhaustion of administrative remedies. However, as earlier discussed, in exceptional cases, a writ of *kalikasan* may be availed of to challenge defects in the ECC **provided** that (1) the defects are causally linked or reasonably connected to an environmental damage of the nature and magnitude contemplated under the Rules on Writ of *kalikasan*, and (2) the case does not violate, or falls under an exception to, the doctrine of exhaustion of administrative remedies and/or primary jurisdiction.

As previously discussed, in the case at bar, only the allegation with respect to the lack of an EIA relative to the first and second amendments to the subject ECC may be reasonably connected to such an environmental damage. Further, given the extreme urgency of resolving the issue due to the looming power crisis, this case may be considered as falling under an exception to the doctrine of exhaustion of administrative remedies. Thus, the aforesaid issue may be conceivably resolved in a writ of *kalikasan* case.

More importantly, we have expressly ruled that this case is an **exceptional case** due to the looming power crisis, so that the rules of procedure may be suspended in order to address issues which, ordinarily, the Court would not consider proper in a writ of *kalikasan* case. Hence, all issues, including those not proper in a writ of *kalikasan* case, were resolved here in order to forestall another round of protracted litigation relative to the implementation of the subject project.

Conclusion

We now summarize our findings:

1. The appellate court correctly ruled that the Casiño Group failed to substantiate its claims that the construction and operation of the power plant will cause environmental damage of the magnitude contemplated under the writ of *kalikasan*. On the other hand, RP Energy presented evidence to establish that the subject project will not cause grave environmental damage, through its Environmental Management Plan, which will ensure that the project will operate within the limits of existing environmental laws and standards;

2. The appellate court erred when it invalidated the ECC on the ground of lack of signature of Mr. Aboitiz in the ECC's Statement of Accountability relative to the copy of the ECC submitted by RP Energy to the appellate court. While the signature is necessary for the validity of the ECC, the particular circumstances of this case show that the DENR and RP Energy were not properly apprised of the issue of lack of signature in order for them to present controverting evidence and arguments on this point, as the issue only arose during the course of the proceedings upon clarificatory questions from the appellate court. Consequently, RP Energy cannot be faulted for submitting the certified true copy of the ECC only after it learned that the ECC had been invalidated on the ground of lack of signature in the January 30, 2013 Decision of the appellate court. The certified true copy of the ECC, bearing the signature of Mr. Aboitiz in the Statement of Accountability portion, was issued by the DENR-EMB, and remains uncontroverted. It showed that the Statement of Accountability was signed by Mr. Aboitiz on December 24, 2008. Because the signing was done after the official release of the ECC on December 22, 2008, we note that the DENR did not strictly follow its rules, which require that the signing of the Statement of Accountability should be done before the official release of the ECC. However, considering that the issue was not adequately argued nor was evidence presented before the appellate court on the circumstances at the time of signing, there is insufficient basis to conclude that the procedure adopted by the DENR was tainted with bad faith or inexcusable negligence. We remind the DENR, however, to be more circumspect in following its rules. Thus, we rule that the signature requirement was substantially complied with *pro hac vice.*

3. The appellate court erred when it ruled that the first and second amendments to the ECC were invalid for failure to comply with a new EIA and for violating DAO 2003-30 and the Revised Manual. It failed to properly consider the applicable provisions in DAO 2003-30 and the Revised Manual for amendment to ECCs. Our

own examination of the provisions on amendments to ECCs in DAO 2003-30 and the Revised Manual, as well as the EPRMP and PDR themselves, shows that the DENR reasonably exercised its discretion in requiring an EPRMP and a PDR for the first and second amendments, respectively. Through these documents, which the DENR reviewed, a new EIA was conducted relative to the proposed project modifications. Hence, absent sufficient showing of grave abuse of discretion or patent illegality, relative to both the procedure and substance of the amendment process, we uphold the validity of these amendments;

4. The appellate court erred when it invalidated the ECC for failure to comply with Section 59 of the IPRA Law. The ECC is not the license or permit contemplated under Section 59 of the IPRA Law and its implementing rules. Hence, there is no necessity to secure the CNO under Section 59 before an ECC may be issued, and the issuance of the subject ECC without first securing the aforesaid certification does not render it invalid;

5. The appellate court erred when it invalidated the LDA between SBMA and RP Energy for failure to comply with Section 59 of the IPRA Law. While we find that a CNO should have been secured prior to the consummation of the LDA between SBMA and RP Energy, considering that this is the first time we lay down the rule of action appropriate to the application of Section 59, we refrain from invalidating the LDA for reasons of equity;

6. The appellate court erred when it ruled that compliance with Section 27, in relation to Section 26, of the LGC (*i.e.,* approval of the concerned sanggunian requirement) is necessary prior to issuance of the subject ECC. The issuance of an ECC does not, by itself, result in the implementation of the project. Hence, there is no necessity to secure prior compliance with the approval of the concerned *sanggunian* requirement, and the issuance of the subject ECC without first complying with the aforesaid requirement does not render it invalid. The appellate court also erred when it ruled that compliance with the aforesaid requirement is necessary prior to the consummation of the LDA. By virtue of the clear provisions of RA 7227, the project is not subject to the aforesaid requirement and the SBMA's decision to approve the project prevails over the apparent objections of the concerned sanggunians. Thus, the LDA entered into between SBMA and RP Energy suffers from no infirmity despite the lack of approval of the concerned sanggunians; and

7. The appellate court correctly ruled that the issue as to the validity of the third amendment to the ECC cannot be resolved in this case because it was not one of the issues set during the preliminary conference, and would, thus, violate RP Energy's right to due process.

WHEREFORE, the Court resolves to:

1. **DENY** the Petition in G.R. No. 207282; and

2. **GRANT** the Petitions in G.R. Nos. 207257, 207366 and 207276:

    2.1. The January 30, 2013 Decision and May 22, 2013 Resolution of the Court of Appeals in CA-G.R. SP No. 00015 are reversed and set aside;
    2.2. The Petition for Writ of *kalikasan*, docketed as CA-G.R. SP No. 00015, is denied for insufficiency of evidence;
    2.3. The validity of the December 22, 2008 Environmental Compliance Certificate, as well as the July 8, 2010 first amendment and the May 26, 2011 second amendment thereto, issued by the Department of Environment and Natural Resources in favor of Redondo Peninsula Energy, Inc., are upheld; and
    2.4. The validity of the June 8, 2010 Lease and Development Agreement between Subic Bay Metropolitan Authority and Redondo Peninsula Energy, Inc. is upheld.

SO ORDERED.

Sereno, C.J., Carpio, Leonardo-De Castro, Peralta, Bersamin, Villarama, Jr., Perez, Mendoza, and *Reyes, JJ*., concur.
Velasco, Jr., J., please see concurring opinion.
Brion, J., on leave.
Perlas-Bernabe, J., I concur with the ponencia in denying the petition for writ of kalikasan but asleft J. Leonen's view on the manner by which as ECC should be assailed.
Leonen, J., see saparate concurring and dissenting opinion.
Jardeleza, J., no part.

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[1] *rollo* (G.R. No. 207257), pp. 122-153; *rollo* (G.R. No. 207276), Volume I, pp. 13-105; *rollo* (G.R. 207282), pp. 2-50; and *rollo* (G.R. No. 207366), pp. 117-149.

[2] *rollo* (G.R. No. 207257), pp. 158-258; penned by Associate Justice Celia C. Librea-Leagogo and concurred in by Associate Justices Franchito N. Diamante and Melchor Quirino C. Sadang.

[3] Id. at 259-266.

[4] The Bases Conversion and Development Act of 1992.

[5] *rollo* (G.R. No. 207257), p. 210.

[6] Id.

[7] Id. at 210-211.

[8] Id. at 159.

[9] Id.

[10] Id. at 211.

[11] Id.

[12] *rollo* (G.R. No. 207276), Volume I, p. 24.

[13] *rollo* (G.R. No. 207257), p. 160.

[14] Id. at 167 and 211.

[15] Id. at 160.

[16] Id. at 213.

[17] Id. at 179.

[18] Id. at 167.

[19] Id.

[20] Id. at 211.

[21] Id. at 165.

[22] Id. at 216.

[23] Id. at 165.

[24] Id at 216.

[25] Id.

[26] Id. at 160.

[27] Id.

[28] Id. at 159.

[29] Id.

[30] Id. at 179.

[31] Id. at 159.

[32] Id. at 163.

[33] Id.

[34] Id. at 161.

[35] Id. at 160-161.

[36] Id. at 162.

[37] Id.

[38] Id. at 170.

[39] Id. at 170-172.

[40] Id. at 173.

[41] People's Recovery Empowerment and Development Assistance

[42] *rollo* (G.R. No. 207257), p. 175.

[43] Id.

[44] Id. at 178.

[45] Id. at 184.

[46] Id. at 187.

[47] Id. at 190.

[48] Id. at 195.

[49] Id. at 199.

[50] Id. at 203.

[51] Id. at 178.

[52] Id. at 198.

[53] Id. at 239-247.

[54] Id. at 236-239.

[55] Id. at 239.

[56] Id. at 222-228.

[57] Id. at 230-236.

[58] Id. at 213-216.

[59] Id. at 216-222.

[60] Id. at 213.

[61] Id. at 230-236.

[62] Id. at 222-230.

[63] Id. at 223-224.

[64] Id.

[65] Id. at 247-248.

[66] Id. at 260.

[67] Id.

[68] Id. at 262.

[69] Id. at 260-261.

[70] Id. at 259-266.

[71] Id. at 261.

[72] Id.

[73] Id. at 262.

[74] Id. at 264.

[75] Id. at 262-263.

[76] Id. at 265.

[77] *rollo* (G.R. No. 207282), p. 26.

[78] Id. at 27.

[79] Id. at 27-28.

[80] Id. at 29-36.

[81] Id. at 39-44.

[82] *rollo* (G.R. No. 207257), pp. 133-137.

[83] Id. at 148-152.

[84] Id. at 150-151.

[85] Id. at 151-152.

[86] Id. at 141.

[87] Id. at 138-145.

[88] Id. at 140.

[89] Id. at 145-148.

[90] *rollo* (G.R. No. 207366), pp. 134-137.

[91] Id. at 136-137 and 140-141.

[92] Id. at 141-142.

[93] Id. at 142-147.

[94] Id.

[95] Id. at 138-139.

[96] Id.

[97] Id.

[98] *rollo* (G.R. No. 207276), Volume I, pp. 32-37.

[99] Id. at 37-41.

[100] Id. at 41-43.

[101] Id. at 52-77.

[102] Id. at 78-87.

[103] Id. at 87-102.

[104] Id. at 44-52.

[105] Rule 7, Part III, Rules of Procedure for Environmental Cases

[106] A.M. No. 09-6-8-SC dated April 13, 2010

[107] ARTICLE VIII, Section 5(5) of the Constitution provides:

Section 5. The Supreme Court shall have the following powers:

x x x x

5. Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the integrated bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of

cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

[108] Article II, Section 16, Constitution.

[109] The Rationale and Annotation to the Rules of Procedure for Environmental Cases issued by the Supreme Court [hereafter Annotation], p. 133.

[110] *Annotation,* p. 78.

[111] *Annotation*, p. 78-79.

[112] *Annotation,* p. 139.

[113] *Rollo* (G.R. 207282), pp. 2-50.

[114] *See* Rule 43, Rules of Court.

[115] *See Bangus Fry Fisherfolk v. Lanzanas*, 453 Phil. 479, 494 (2003).

[116] It should be noted that the Rules on the Writ of *kalikasan* were promulgated with due regard to the doctrine of exhaustion of administrative remedies and primary jurisdiction. (*Annotation*, p. 100).

[117] Boracay Foundation v. The Province of Aklan, G.R. No. 196870, June 26, 2012, 674 SCRA 555, 604.

[118] *Annotation,* p. 140.

[119] CA *rollo*, Volume I, pp. 41-47.

[120] Referred to as the Casiño Group in this case.

[121] *rollo* (G.R. No. 207257), pp. 241-245.

[122] *rollo* (G.R. No. 207276), Volume I, p. 474.

[123] CA *rollo*, Volume XVI, pp. 5856-5857.

[124] TSN, December 12, 2012, pp. 179-186.

[125] RA 8749 entitled "An Act Providing for a Comprehensive Air Pollution Control Policy and for Other Purposes"; also known as "The Philippine Clean Air Act of 1999."

[126] Refers to ground level concentrations.

[127] *rollo* (G.R. No. 207276), Volume I, p. 475.

[128] TSN, December 5, 2012, pp. 162-164, 169.

[129] CA *rollo*, Volume XV, pp. 5763-5765.

[130] CA *rollo*, Volume XVI, p. 5857.

[131] *rollo* (G.R. No. 207282), pp. 342-343.

[132] TSN, December 12, 2012, pp. 171-174.

[133] CA *rollo*, Volume XVI, p. 5859.

[134] TSN, December 12, 2012, pp. 141-148.

[135] Section 3(l), DAO 2003-30.

[136] *Salomon v. Intermediate Appellate Court*, 263 Phil. 1068, 1077 (1990).

[137] The appellate court noted, thus:

However, while the CFB technology appears to be a better choice compared with the traditional technology for operating power plants, it cannot be declared, at this point in time, that the CFB technology to be used by RP Energy in its Power Plant project will not cause any environmental damage or harm. Sarkki, who is one of the members of the team that developed the CFB technology and an employee of Foster Wheeler (manufacturer of the CFB boilers) testified that: it depends on the kind of coal and the technology to be used in burning the coal; semirara coal is known to have very high fouling characteristics and it was not in the interest of RP Energy to utilize said coal; and high fouling means ash is melting in low temperature and collected on its surfaces and making it impossible to continue the operation of a boiler; RP Energy has not yet ordered any CFB boiler from Foster Wheeler, and manufacturing has not started because there is no finalized contract; and RP Energy is still finalizing its coal contract. Wong testified that he was not shown any coal supply agreement. Ouano testified that, per report, there are no coal and equipment supply agreements yet and that he recommended to RP Energy the Indonesian coal because it has much lower volatile matter and it is better than

semirara coal. Mercado also testified that she did not see any coal supply agreement with a supplier. Evangelista testified that RP Energy already selected Foster Wheeler as the supplier for the Power Plant project's boiler but there is no purchase agreement yet in connection with the equipment to be used. Thus, since RP Energy has, as yet, no equipment purchase agreement in connection with its proposed CFB Coal-Fired Power Plant project nor a coal supply agreement that comply with the recommendations of the various engineers on CFB technology, there is no scientific certainty of its environmental effect. [*rollo* (G.R. No. 207257), pp. 245-246]

[138] CA *rollo*, Volume I, pp. 127-129.

[139] Id. at 131-132.

[140] SEC. 6. *Failure to settle.* - If there is no full settlement, the judge shall:

x x x x

(l) Determine the necessity of engaging the services of a qualified expert as a friend of the court (amicus curiae); x x x

[141] SEC. 12. *Discovery Measures.* — A party may file a verified motion for the following reliefs:

(a) *Ocular Inspection; order* — The motion must show that an ocular inspection order is necessary to establish the magnitude of the violation or the threat as to prejudice the life, health or property of inhabitants in two or more cities or provinces. It shall state in detail the place or places to be inspected. It shall be supported by affidavits of witnesses having personal knowledge of the violation or threatened violation of environmental law.

After hearing, the court may order any person in possession or control of a designated land or other property to permit entry for the purpose of inspecting or photographing the property or any relevant object or operation thereon. The order shall specify the person or persons authorized to make the inspection and the date, time, place and manner of making the inspection and may prescribe other conditions to protect the constitutional rights of all parties.

(b) *Production or inspection of documents or things; order* —The motion must show that a production order is necessary to establish the magnitude of the violation or the threat as to prejudice the life, health or property of inhabitants in two or more cities or provinces.

After hearing, the court may order any person in possession, custody or control of any designated documents, papers, books, accounts, letters, photographs, objects or tangible things, or objects in digitized or electronic form, which constitute or

contain evidence relevant to the petition or the return, to produce and permit their inspection, copying or photographing by or on behalf of the movant.

The production order shall specify the person or persons authorized to make the production and the date, time, place and manner of making the inspection or production and may prescribe other conditions to protect the constitutional rights of all parties.

[142] *Annotation,* p. 80.

[143] Environmental Performance Report and Management Plan.

[144] *rollo* (G.R. 207282), pp. 21-22.

[145] CA *rollo*, Volume III, p. 847.

[146] Id.

[147] TSN, October 29, 2012, p. 82; see also issues for the Casiño Group in preliminary conference.

[148] In its Resolution dated July 23, 2013, the Court required the adverse parties to comment within ten days from notice on the separate Petitions for Review on *Certiorari* in G.R. Nos. 207257, 207276, 207282 and 207366. Then in its Resolution dated April 1, 2014, the Court resolved to, among others, dispense with the filing of the comment of respondents Casiño, et al. (Casiño Group) in G.R. No. 207276. Additionally, the Court, among others, noted in its Resolution dated June 10, 2014, SBMA's Manifestation and Motion to Resolve dated May 21, 2014 praying, among others, that respondents Casiño, et al. (Casiño Group) be deemed to have waived their right to file their comment with respect to the Petition for Review on *Certiorari* dated July 15, 2013 in G.R. No. 207366.

[149] As earlier noted, the grounds raised by the Casiño Group in its Petition for Writ of *kalikasan* were limited to whether: (1) the power plant project would cause grave environmental damage; (2) it would adversely affect the health of the residents of the municipalities of Subic, Zambales, Morong, Hermosa, and the City of Olongapo; (3) the ECC was issued and the LDA entered into without the prior approval of the sanggunians concerned as required under Sections 26 and 27 of the Local Government Code (LGC); (4) the LDA was entered into without securing a prior certification from the NCIP as required under Section 59 of the IPRA Law; (5) Section 8.3 of DAO 2003-30 which allows amendments of ECCs is *ultra vires* because the DENR has no authority to decide on requests for amendments of previously issued ECCs in the absence of a new EIS; and (6) due to the nullity of Section 8.3 of DAO 2003-30, all amendments to RP Energy's ECC are null and void.

[150] As narrated earlier, the issues set during the preliminary conference were limited to:

I. ISSUES

A. Petitioners (Casiño Group)

1. Whether x x x the DENR Environmental Compliance Certificate ('ECC' x x x) in favor of RP Energy for a 2x150 MW Coal-Fired Thermal Power Plant Project ('Power Plant,' x x x) and its amendment to 1x300 MW Power Plant, and the Lease and Development Agreement between SBMA and RP Energy complied with the Certification Precondition as required under Section 59 of Republic Act No. 8371 or the Indigenous People's Rights Act of 1997 ('IPRA Law,' x x x);

2. Whether x x x RP Energy can proceed with the construction and operation of the 1x300 MW Power Plant without prior consultation with and approval of the concerned local government units ('LGUs,' x x x), pursuant to Sections 26 and 27 of Republic Act No. 7160 or the Local Government Code;

3. Whether x x x Section 8.3 of DENR Administrative Order No. 2003-30 ('DAO No. 2003-30,' x x x) providing for the amendment of an ECC is null and void for being ultra vires; and

4. Whether x x x the amendment of RP Energy's ECC under Section 8.3 of DAO No. 2003-30 is null and void.

B. Respondent RP Energy

1. Whether x x x Section 8.3 of DAO No. 2003-30 can be collaterally attacked;

1.1 Whether x x x the same is valid until annulled;

2. Whether x x x petitioners exhausted their administrative remedies with respect to the amended ECC for the 1x300 MW Power Plant;

2.1 Whether x x x the instant Petition is proper;

3. Whether x x x RP Energy complied with all the procedures/requirements for the issuance of the DENR ECC and its amendment;

3.1 Whether x x x a Certificate of Non-Overlap from the National Commission on Indigenous Peoples is applicable in the instant case;

4. Whether x x x the LGU's approval under Sections 26 and 27 of the Local Government Code is necessary for the issuance of the DENR ECC and its amendments, and what constitutes LGU approval;

5. Whether x x x there is a threatened or actual violation of environmental laws to justify the Petition;

5.1 Whether x x x the approved 1x300 MW Power Plant complied with the accepted legal standards on thermal pollution of coastal waters, air pollution, water pollution, and acid deposits on aquatic and terrestrial ecosystems; and

6. Whether x x x the instant Petition should be dismissed for failure to comply with the requirements of proper verification and certification of non-forum shopping with respect to some petitioners.

C. Respondent DENR Secretary Paje

1. Whether x x x the issuance of the DENR ECC and its amendment in favor of RP Energy requires compliance with Section 59 of the IPRA Law, as well as Sections 26 and 27 of the Local Government Code;

2. Whether x x x Section 8.3 of DAO No. 2003-30 can be collaterally attacked in this proceeding; and

3. Whether x x x Section 8.3 of DAO No. 2003-30 is valid.

Concededly, the issue as to "whether x x x RP Energy complied with all the procedures/ requirements for the issuance of the DENR ECC and its amendment" is broad enough to include the issue of the lack of signature. That this was, however, contemplated by the parties or the appellate court is negated by the context in which the issue arose, as will be discussed in what follows.

[151] TSN, December 12, 2012, pp. 63-67.

[152] *See* CIVIL CODE, Art. 745 and 749.

[153] Revised Procedural Manual for DAO 2003-30 (Revised Manual), p. 15.

[154] Philippine Environmental Impact Statement System.

[155] Administrative Order.

[156] Underline supplied for this sentence.

[157] Revised Manual, p. 9 and Glossary, letter h; Section 3(d), Article I, DAO 2003-30.

[158] TSN, December 12, 2012, pp. 65-67.

[159] CA *rollo*, Volume XVII, pp. 7010-7011.

[160] Section 3 of PD 1151 provides:

SECTION 3. *Right to a Healthy Environment.* — In furtherance of these goals and policies, the Government recognizes the right of the people to a healthful environment. It shall be the duty and responsibility of each individual to contribute to the preservation and enhancement of the Philippine environment.

[161] Section 4, PD 1151.

[162] Section 1, Article I, DAO 2003-30.

[163] Section 3(h), Article I,DAO 2003-30.

[164] Under Section 3(a), Article I of DAO 2003-30, a CNC is "a certification issued by the EMB certifying that, based on the submitted project description, the project is not covered by the EIS System and is not required to secure an ECC."

[165] As distinguished from single projects, co-located projects/undertakings are defined under Section 3(b), Article I of DAO 2003-30 as "projects, or series of similar projects or a project subdivided to several phases and/or stages by the same proponent, located in contiguous areas."

[166] Section 3(k), Article I of DAO 2003-30 defines an EIS as a "document, prepared and submitted by the project proponent and/or EIA Consultant that serves as an application for an ECC. It is a comprehensive study of the significant impacts of a project on the environment. It includes an Environmental Management Plan/ Program that the proponent will fund and implement to protect the environment."

[167] Section 3(s), Article I of DAO 2003-30 defines an IEE as a "document similar to an EIS, but with reduced details and depth of assessment and discussion."

[168] Section 3(t), Article I of DAO 2003-30 defines an IEE Checklist Report as a "simplified checklist version of an IEE Report, prescribed by the DENR, to be filled up by a proponent to identify and assess a project's environmental impacts and the mitigation/enhancement measures to address such impacts."

[169] Section 3(p), Article I of DAO 2003-30 defines an EPRMP as a "documentation of the actual cumulative environmental impacts and effectiveness of current measures for single projects that are already operating but without ECC's, *i.e.*, Category A-3. For Category B-3 projects, a checklist form of the EPRMP would suffice."

[170] Section 3(x), Article I of DAO 2003-30 defines a PD as a "document, which may also be a chapter in an EIS, that describes the nature, configuration, use of raw materials and natural resources, production system, waste or pollution generation and control and the activities of a proposed project. It includes a description of the use of human resources as well as activity timelines, during the pre-construction, construction, operation and abandonment phases. It is to be used for reviewing co-located and single projects under Category C, as well as for Category D projects."

[171] Section 3(p), Article I, DAO 2003-30.

[172] Section 1.0, paragraph 8 (b), Revised Manual.

[173] Glossary, letter (t), Revised Manual.

[174] Parenthetically, we must mention that the validity of the rules providing for amendments to the ECC was challenged by the Casiño Group on the ground that it is ultra vires before the appellate court. [It] argued that the laws governing the ECC do not expressly permit the amendment of an ECC. However, the appellate court correctly ruled that the validity of the rules cannot be collaterally attacked. Besides, the power of the DENR to issue rules on amendments of an ECC is sanctioned under the doctrine of necessary implication. Considering that the greater power to deny or grant an ECC is vested by law in the President or his authorized representative, the DENR, there is no obstacle to the exercise of the lesser or implied power to amend the ECC for justifiable reasons. This issue was no longer raised before this Court and, thus, we no longer tackle the same here.

[175] Footnotes omitted.

[176] Underline supplied.

[177] Underline supplied.

[178] Footnotes omitted.

[179] *rollo* (G.R. No. 207257), pp. 150-151. (DENR's Petition, pp. 29-30)

[180] Underline supplied.

[181] Underline supplied.

[182] Underline supplied.

[183] Emphasis supplied.

[184] To illustrate the flexibility of the EIA documents used in the EIA process, we can look at the EPRMP itself. The contents of an EPRMP, under Section 5.2.5, Article II of DAO 2003-30, are as follows:

5.2.5. x x x

The EPRMP shall contain the following:

> a. Project Description;
> b. Baseline conditions for critical environmental parameters;
> c. Documentation of the environmental performance based on the current/past environmental management measures implemented;
> d. Detailed comparative description of the proposed project expansion and/or process modification with corresponding material and energy balances in the case of process industries[;] and
> e. EMP based on an environmental management system framework and standard set by EMB.

As previously demonstrated, the EPRMP is not just used for ECPs, which are operating but without an ECC or operating with a previous ECC but planning for expansion or re-start, but for major amendments to a non-implemented project with a previous ECC, such as the subject project. Section 5.2.5(c), however, requires that an EPRMP should contain "[d]ocumentation of the environmental performance based on the current/past environmental management measures implemented." This would be inapplicable to a non-implemented project. Thus, the project proponent merely notes in the EPRMP that there are no current/past environmental management measures implemented because the project is not yet implemented. As can be seen, the use of the EPRMP is flexible enough to accommodate such different project types, whether implemented or not, for as long as the necessary information is obtained in order to assess the environmental impact of the proposed changes to the original project design/description.

[185] Emphasis supplied.

[186] CA *rollo*, Volume IV, pp. 1129-1132.

[187] Excerpts from Section 4 of the EPRMP ("Baseline Environmental Conditions for Critical Environmental Parameters, Impact Assessment and Mitigation") are reproduced below:

4.1 The Land

4.1.1 Existing Condition

The proposed route of the transmission line will traverse grasslands with sloping terrain, ranging from 3-50% slopes as shown in Figure 30 and Figure 31. x x x

4.1.2 Impacts

Construction of the transmission line components will include minimal civil and electrical works. Tower structures will be pre-assembled in a workshop and transported to designated locations for erection and linkage. Excavation and clearing activities will be minimal and short-term, whilst generated spoils will be low/negligible in terms of volume.

x x x x

4.1.3 Mitigation

Generated spoils will be used as backfill material for aesthetic rehabilitation and stabilisation, if necessary. Slope stabilisation, and inspection and testing of the transmission line components will be conducted prior to project turnover for quality assurance and structural integrity. Proper handling and transport of the tower structures, as well as safe practice for electrical works will be disseminated and complied with across all personnel and involved contractors.

An integrated foundation system consisting of combined footings will be employed in order to ensure adequate footing embedment and tower stabilization. Soil stabilisation and slope protection measures will be implemented to significantly reduce erosion potential of mountain soil.

Tower installation and related activities will only commence upon finalisation of agreement between the proponent and concerned stakeholders (i.e., regulatory agencies). Disputes and discussions over lease agreement and right-of-way permitting works will be placed through due legal process of the SBMA.

x x x x

4.2 The Water

x x x x

4.2.1 Existing Condition

The Subic Bay is rich in marine biodiversity including coral reef areas, seagrass patches, fisheries and coastal resources. x x x

4.2.2 Impacts

The additional RPE project facilities, except for the transmission line, will have impacts on water quality and ecology for both freshwater and marine components,

as these will be located along the coastline or involve the use of freshwater resources.

The construction phase entails earth-moving activities, both inland and offshore. The initial concern upon implementation of the project is the degradation of the reef area within the proposed RPE project site, resulting from high sediment influx either via soil erosion, surface run-off or re-suspension.

x x x x

4.2.3 Mitigation

The following mitigating measures may be applied in order to minimize the potential impacts of the proposed project on marine resources. Whilst these measures will aid in minimizing the perceived impacts, mortalities of coastal resources may still occur as individuals of different coral and seagrass species have different levels of environmental sensitivity. Likewise, mortalities may also be influenced by a variety of factors unrelated to the proposed project such as water temperature fluctuations due to climatic phenomenon.

- Placing mooring buoys within the area encompassed by offshore construction work would allow construction barges to dock onto them during the construction of the coal pier and other offshore project facilities. The mooring buoys will negate the need to use chain anchors to prevent these vessels from drifting towards the reef or seagrass areas.
- During the driving of the pier piles, the use of silt curtains to minimise suspended sediments from reaching the coral community will aid the chance of survival of many coral colonies. The coral community in the area is dominated by massive growth forms which are more resilient to sedimentation compared to branching colonies. Whilst this is true, these massive forms still have a maximum tolerance threshold, hence the use of mitigating measures is imperative. Sediment curtains will greatly improve the chances of survival of these corals during the construction phase by constraining the movement of liberated silt.
- The operators of construction equipment, as well as contractors, will need to be informed of the location of the fragile coral community and seagrass bed in the area, so that they will work in a manner that will minimise the effects on these areas. This condition can be included in their contracts.
- Alignment and/or integration of mitigations with the Subic Coastal Resources Management Plan.
- Overall, the primary impact that needs to be mitigated is sedimentation resulting from heavy equipment manoeuvring to construct the coal pier and other structures and from increased traffic in the project area due to vehicles working inland and construction barges working offshore.

x x x x

4.3 The Air

Baseline conditions for this module as reported in the EIS (GHD, 2008) are appropriate and sufficient to describe site conditions for the additional RPE components. A brief summary to highlight the key impacts and mitigation for this module are presented below.

4.3.1 Existing Condition

The air shed of the proposed project site falls under the category of Type I climate, which is characterized by two pronounced seasons, generally dry season from December to May, and wet season from June to November.

4.3.2 Impacts

Dust and noise generation resulting from earthmoving activities (i.e., excavation, scraping and leveling methods) is of significant concern. Concentration of suspended particulates in the atmosphere is likely to increase for the duration of the construction phase. Similarly, high noise levels within the immediate impact area will be experienced.

4.3.3 Mitigation

The proponent will implement control measures addressed at reducing noise levels and dust concentrations. Regular wetting of construction grounds, as well as putting up perimeter wall around major construction areas will limit the re-suspension of dust. Installation of noise barriers (i.e., vegetation buffer, noise wall) around the construction area and noise reduction technology for vehicles and equipment (i.e., mufflers) will significantly reduce the impacts of construction noise to nearby communities. In addition, construction activities contributing to high-noise levels will be scheduled during daytime. x x x (CA *rollo*, Volume IV, pp. 1193-1194, 1200-1201, 1204)

[188] Section 3(x), Article I, DAO 2003-30.

[189] Section 1.0, paragraph 8 (a) and (b), Revised Manual.

[190] Glossary, letter aa, Revised Manual.

[191] *rollo* (G.R. No. 207257), pp. 151-152. (DENR's Petition pp. 30-31)

[192] Underline supplied.

[193] Supra note 191.

[194] Underline supplied.

[195] Underline supplied.

[196] *rollo* (G.R. No. 207282) p. 9. (Casiño Group Petition, p. 8)

[197] CA *rollo*, Volume V, pp. 1444-1448.

[198] The PDR states, in part:

RPE now proposes to construct a single high-efficiency 300-MW (net) circulating-fluidized-bed coal-fired generating unit for Phase 1 of the project, instead of two less-efficient 150-MW units, the environmental impacts of which are unchanged from the original proposal. (CA *rollo*, Volume V, p. 1441)

[199] *rollo* (G.R. No. 207257), p. 68.

[200] Section 3(h), Article I, DAO 2003-30.

[201] Rules and Regulations implementing Republic Act No. 8371, otherwise known as "The Indigenous Peoples' Rights Act of 1997."

[202] *Cruz v. Sec. of Environment & Natural Resources*, 400 Phil. 904, 1012 (2000).

[203] RA 8371, Section 2 (b).

[204] (visited 27 November 2014).

[205] (visited 27 November 2014).

[206] Hanjin Heavy Industries and Construction

[207] Article 1643 of the Civil Code provides:

ARTICLE 1643. In the lease of things, one of the parties binds himself to give to another the enjoyment or use of a thing for a price certain, and for a period which may be definite or indefinite. However, no lease for more than ninety-nine years shall be valid.

[208] This is the clear import of the definition of "ancestral domains" in Section 3(a) of the IPRA Law, *viz*:

SECTION 3. *Definition of Terms*. — For purposes of this Act, the following terms shall mean:

a) Ancestral Domains — Subject to Section 56 hereof, refer to all areas generally belonging to ICCs/IPs comprising lands, inland waters, coastal areas, and natural resources therein, held under a claim of ownership, occupied or possessed by ICCs/IPs, by themselves or through their ancestors, communally or individually since time immemorial, continuously to the present except when interrupted by war, force majeure or displacement by force, deceit, stealth or as a consequence of government projects or any other voluntary dealings entered into by government and private individuals/corporations, and which are necessary to ensure their economic, social and cultural welfare. It shall include ancestral lands, forests, pasture, residential, agricultural, and other lands individually owned whether alienable and disposable or otherwise, hunting grounds, burial grounds, worship areas, bodies of water, mineral and other natural resources, **and lands which may no longer be exclusively occupied by ICCs/IPs but from which they traditionally had access to for their subsistence and traditional activities, particularly the home ranges of ICCs/IPs who are still nomadic and/or shifting cultivators**; x x x (Emphasis supplied)

[209] The following are the relevant constitutional provisions:

Article II, Section 22: The State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development.

Article XII, Section 5: The State, subject to the provisions of this Constitution and national development policies and programs, shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being.

The Congress may provide for the applicability of customary laws governing property rights and relations in determining the ownership and extent of ancestral domain.

ARTICLE XIV, Section 17: The State shall recognize, respect, and protect the rights of indigenous cultural communities to preserve and develop their cultures, traditions, and institutions. It shall consider these rights in the formulation of national plans and policies.

ARTICLE XIII, Section 6: The State shall apply the principles of agrarian reform or stewardship, whenever applicable in accordance with law, in the disposition or utilization of other natural resources, including lands of the public domain under lease or concession suitable to agriculture, subject to prior rights, homestead rights of small settlers, and the rights of indigenous communities to their ancestral lands.

The State may resettle landless farmers and farmworkers in its own agricultural estates which shall be distributed to them in the manner provided by law.

Article XVI, Section 12: The Congress may create a consultative body to advise the President on policies affecting indigenous cultural communities, the majority of the members of which shall come from such communities.

Article VI, Section 5(2): The party-list representatives shall constitute twenty per centum of the total number of representatives including those under the party list. For three consecutive terms after the ratification of this Constitution, one-half of the seats allocated to party-list representatives shall be filled, as provided by law, by selection or election from the labor, peasant, urban poor, indigenous cultural communities, women, youth, and such other sectors as may be provided by law, except the religious sector.

[210] RP Energy's EIS dated September 2008 stated, in part:

4.4.1.1.4 Indigenous People

The Aetas are acknowledged to be one of the earliest settlers in the municipality. Historically, as lowlanders came to Subic, Aetas were displaced and were forced to flee to the hinterlands. While a number of Aetas have managed to be integrated within the mainstream of development activities in the municipality, many have remained deprived of public services such as health, social welfare and basic education. Aeta families are scattered in some barangays in Subic, such as: Batiawan and Naugsol. There are no Aeta communities identified within the vicinity of the project areas." (CA *rollo*, Volume III, p. 857)

[211] This is the clear implication of the clause "except when interrupted by war, force majeure or displacement by force, deceit, stealth or as a consequence of government projects or any other voluntary dealings entered into by government and private individuals/corporations" in the definition of "ancestral domain," in the IPRA Law *viz*:

SECTION 3. *Definition of Terms*. — For purposes of this Act, the following terms shall mean:

a) Ancestral Domains — Subject to Section 56 hereof, refer to all areas generally belonging to ICCs/IPs comprising lands, inland waters, coastal areas, and natural resources therein, held under a claim of ownership, occupied or possessed by ICCs/IPs, by themselves or through their ancestors, communally or individually since time immemorial, continuously to the present **except when interrupted by war, force majeure or displacement by force, deceit, stealth or as a consequence of government projects or any other voluntary dealings entered into by government and private individuals/corporations**, and which are necessary to ensure their economic, social and cultural welfare. It shall include ancestral lands, forests, pasture, residential, agricultural, and other lands individually owned whether alienable and disposable or otherwise, hunting grounds, burial grounds, worship areas, bodies of water, mineral and other natural resources,

and lands which may no longer be exclusively occupied by ICCs/IPs but from which they traditionally had access to for their subsistence and traditional activities, particularly the home ranges of ICCs/IPs who are still nomadic and/or shifting cultivators; x x x (Emphasis supplied)

[212] Article 5 of the Civil Code provides:

ARTICLE 5. Acts executed against the provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity.

[213] The Certificate of Non-Overlap with Control No. RIII-CNO-12-10-0011 issued on 31 October 2012 stated:

"**THIS IS TO CERTIFY** that based on the findings of the FBI Team in its report dated October 8, 2012 and submitted by Ms. Candida P. Cabinta, Provincial Officer, the applied site/s for Certification Precondition situated at Subic Bay Freeport Zone (SBFZ) Sitio Naglatore, Brgy. Cawag, Subic, Zambales covering an aggregate area of Thirty Eight (38.00) hectares more or less, does not affect/overlap with any ancestral domain.

THIS CERTIFICATION is issued to SBMA-REDONDO PENINSULA ENERGY CORPORATION with office address at Unit 304 The Venue, Rizal Highway, Subic Bay Industrial Park, Phase I, Subic Bay Freeport Zone 2222 in connection with the application for 600 MW Circulating Fluidized Bed (CFB) Coal Fired Power Plant before the Ecology Center, Subic Bay Metropolitan Authority.

x x x x (CA *rollo*, Volume XVI, p. 6495)

[214] SECTION 59. *Certification Precondition.* — All departments and other governmental agencies shall henceforth be strictly enjoined from issuing, renewing, or granting any concession, license or lease, or entering into any production-sharing agreement, without prior certification from the NCIP that the area affected does not overlap with any ancestral domain. Such certification shall only be issued after a field-based investigation is conducted by the Ancestral Domains Office of the area concerned: Provided, That no certification shall be issued by the NCIP without the free and prior informed and written consent of ICCs/IPs concerned: Provided, further, That no department, government agency or government-owned or -controlled corporation may issue new concession, license, lease, or production sharing agreement while there is a pending application for a CADT: **Provided, finally, That the ICCs/IPs shall have the right to stop or suspend, in accordance with this Act, any project that has not satisfied the requirement of this consultation process**. (Emphasis supplied)

[215] The DENR, in assessing ECC applications, requires project proponents to conduct public participation/consultation. Section 5.3, Article II of DAO 2003-30 on public hearing/consultation requirements provides, in part:

Proponents should initiate public consultations early in order to ensure that environmentally relevant concerns of stakeholders are taken into consideration in the EIA study and the formulation of the management plan. All public consultations and public hearings conducted during the EIA process are to be documented. x x x

[216] In any event, there appears to be no good reason why the subject project should not comply with the prior consultations requirement under Section 26, in relation to Section 27, of the LGC. There would be no conflict with RA 7227 because prior consultations do not impair the power of the SBMA to approve or disapprove a project within the SSEZ, i.e. the results of the public consultations do not bind or compel the SBMA to either approve or disapprove the project or program. See discussion, infra.

[217] Article X, Section 2 of the Constitution provides:

The territorial and political subdivisions shall enjoy local autonomy.

[218] *Alvarez v. Picop*, 538 Phil 348, 402-403 (2006).

[219] *Lina, Jr. v. Paño,* 416 Phil. 438, 449-450 (2001).

[220] Supra notes 15, 26, and 27.

[221] RA 7227, Section 12(a).

[222] 518 Phil 103 (2006).

[223] Id. at124-125.

[224] Subic Bay Freeport; also referred to as the SSEZ.

[225] Section 11 of the "Rules and Regulations Implementing the Provisions Relative to the Subic Special Economic and Freeport Zone and the Subic Bay Metropolitan Authority Under Republic Act No. 7227, Otherwise Known as the 'Bases Conversion and Development Act of 1992."

[226] III Records, Senate 8th Congress, 59th Session, 613 (January 29, 1992).

[227] CA *rollo*, Volume XVII, p. 6893. (Motion for Reconsideration of SBMA)

[228] TSN, October 29, 2012, pp. 47, 50-51.

[229] G.R. No. 101083, July 30, 1993, 224 SCRA 792 (1993).

[230] Note that in Item #8 of the "DECISION CHART FOR DETERMINATION OF REQUIREMENTS FOR PROJECT MODIFICATION," a new EIS can be required for the amendment covered therein:

8.	Conversion to new project type (e.g. bunker-fired plant to gas-fired)	Considered new application but with lesser data requirements since most facilities are established; environmental performance in the past will serve as baseline; However, for operating projects, there may be need to request for Relief from ECC Commitment prior to applying for new project type to ensure no balance of environmental accountabilities from the current project	**New ECC** /EIS

CONCURRING OPINION

VELASCO, JR., *J.*:

I concur with the well-crafted *ponencia* of Justice Mariano C. Del Castillo. I will, however, further elucidate on the procedural issues raised by the indefatigable Justice Marvic M.V.F.Leonen.

Justice Leonen posits that a petition for a writ of *kalikasan* is not the proper remedy in the instant proceedings since what the petitionersin G.R. No. 207282 assail is the propriety of the issuance and subsequent amendment of the ECCs by DENR for a project that has yet to be implemented. He argues that the novel action is inapplicable even more so to projects whose ECCs are yet to be issued or can still be challenged through administrative review processes. He concludes that the extraordinary initiatory petition does not subsume and is not a substitute for "all remedies that can contribute to the protection of communities and their environment." While the good Justice did not specifically mention what the other available remedies are, *certiorari* under Rule 65 easily comes to mind as one such remedy.

I beg to disagree. The special civil action for a writ of *kalikasan* under Rule 7 of the Rules of Procedure for Environmental Cases (RPEC for brevity) is, I submit, the best available and proper remedy for petitioners Casiño, et al.

As distinguished from other available remedies in the ordinary rules of court, the writ of kalikasan is designed for a narrow but special purpose: to accord a stronger protection for environmental rights, aiming, among others, to provide a speedy and effective resolution of a case involving the violationof one's constitutional right to a healthful and balanced ecology. As a matter of fact, by explicit directive from the Court, the RPEC are SPECIAL RULES crafted precisely to govern environmental cases. On the other hand, the "remedies that can contribute to the protection of communities and their environment" alluded to in Justice Leonen's dissent clearly form part of the Rules of Court which by express provision of the special rules for environmental cases "shall apply in a suppletory manner" under Section 2 of Rule 22. Suppletory means "supplying deficiencies." It is apparent that there is novacuum in the special rules on the legal remedy on unlawful acts or omission concerning environmental damage since precisely Rule 7 on the writ of *kalikasan* encompasses all conceivable situations of this nature.

As a potent and effective tool for environmental protection and preservation, Rule 7, Section l of A.M. No. 09-6-8-SC, orthe RPEC, reads:

> SEC. 1. Nature of the writ. – The writ [of *kalikasan*] is a remedy available to a natural or juridical person, entity authorized by law, people's organization, non-governmental organization, or any public interest group accredited by or registered with any government agency, on behalf of persons whose constitutional right to a balanced and healthful ecology is violated, or threatened with violation by an unlawful act or omission of a public official or employee, or private individual or entity, involving environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.

Availment of the *kalikasan* writ would,therefore, be proper if the following requisites concur in a given case:

1. that there is an actual or threatened violation of the constitutional right to a balanced and healthful ecology;

2. the actual or threatened violation is due to an unlawful act or omission of a public official or employee, or private individual or entity;

3. the situation in the ground involves an environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.

Perusing the four corners of the petition in G.R. No. 207282, it can readily be seen that all the requisites are satisfactorily met.

There is, aproposthe first requisite, allegations of actual or threatened violation of the constitutional right to a balanced and healthful ecology, as follows:

> **Environmental Impact and**
> **Threatened Damage to the**
> **Environment and Public Health**
>
> ***Acid Rain***
>
> 35. According to RP Energy's Environmental Impact Statement for its proposed 2 x 150 MW Coal-Fired Thermal Power Plant Project, acid rain may occur in the combustion of coal, to wit -
>
> x x x x
>
> During the operation phase, combustion of coal will result in emissions of particulates SOx and NOx. This may contribute to the occurrence of acid rain due to elevated SO2 levels in the atmosphere. High levels of NO2 emissions may give rise to health problems for residents within the impact area.
>
> x x x x
>
> ***Asthma Attacks***
>
> 36. The same EPRMP mentioned the incidence of asthma attacks as result of power plant operations, to wit –
>
> x x x x
>
> The incidence of asthma attacks among residents in the vicinity of the project site may increase due to exposure to suspended particulates from plant operations.
>
> x xxx
>
> 37. The respondent's witness, Junisse Mercado, the Project Director of GHD, RP Energy's project Consultant engaged to conduct the

environmental impact assessments, cannot also make certain that despite the mitigation and the lower emissions of the Proposed Project, no incidence of asthma will occur within the project site.

38. RP Energy has not made a study of the existing level of asthma incidence in the affected area, despite knowledge of secondary data that the leading cause of morbidity in the area are acute respiratory diseases.

Air Impact

39. Air quality impact is (sic) exists not only in the vicinity of the Project Site but to surroundings (sic) areas, particularly contiguous local government units as well.

40. In the air dispersion modeling of the 2012 EPRMP for the expansion of the Coal Fired Power Plant, among those identified as a discrete receptor for the modeling is the Olongapo City Poblacion.

41. The results of the air dispersion modeling study show that upon upset conditions, there exists deviation from normal conditions in relation to the extent of emission and pollution, even in receptors as far as the Olongapo City Poblacion, which is an area and local government unit outside the Project Site.

42. The possibility of upset conditions during plant operations are also likewise not denied, in which increased SOx and NOx emissions may occur.[1] (citations omitted)

x x x x

57. The SBMA Social Acceptability Consultations also included the assessment of different experts in various fields as to the potential effects of the Project. x xx

58. Based on the SBMA Final Report on the above mentioned consultations, the three experts shared the view, to wit –

> x x x x
>
> x x x the conditions were not present to merit the operation of a coal-fired power plant, and to pursue and carry out the project with confidence and assurance that the natural assets and ecosystems within the Freeport area would not be unduly compromised, or that irreversible damage would not occur and that the threats to the flora and fauna within the immediate community and its surroundings would be adequately addressed.

> The three experts were also of the same opinion that the proposed coal plant project would pose a wide range of negative impacts on the environment, the ecosystems and human population within the impact zone.
>
> x x x x
>
> The specialists also discussed the potential effects of an operational coal-fired power plant to its environs and the community therein. Primary among these were the following:
>
> i. Formation of acid rain, which would adversely affect the trees and vegetation in the area which, in turn, would diminish forest cover. The acid rain would also apparently worsen the acidity of the soil in the Freeport.
>
> ii. Warming and acidification of the seawater of the bay, resulting in the bioaccumulation of contaminants and toxic materials which would eventually lead to the overall reduction of marine productivity.
>
> iii. Discharge of pollutants such as Nitrous Oxide, Sodium Oxide, Ozone and other heavy metals such as mercury and lead to the surrounding region, which would adversely affect the health of the populace in the vicinity.[2]

The second requisite, *i.e.*, that the actual or threatened violation is due to the unlawful act or omission of a public official or employee or private individual or entity, is deducible from the ensuing allegations:

> a. The environmental compliance certificate was issued and the lease and development agreement was entered upon for the construction and operation of RP Energy's 1x300 MW coal-fired power plant **without satisfying the certification precondition requirement under Sec. 59 of Republic Act No. 8371 or the indigenous peoples rights act and its implementing rules and regulations;**
>
> b. The environmental compliance certificate was issued and the lease and development agreement was entered upon for the construction and operation of the power plant **without the prior approval of the Sanggunian concerned, pursuant to Secs. 26 and 27 of the Local Government Code;**

> c. Sec. 8.3 of DENR Administrative Order 2003-30 allowing amendments of environmental compliance certificates is null and void for being enacted ultra vires;
>
> d. **Prescinding from the nullity of Sec. 8.3 of DENR Administrative Order 2003-30**, all amendments to RP Energy's Environmental Compliance Certificate for the construction and operation of a 2 x 150 MW coal-fired power plant are null and void.[3]

Specifically, the unlawful acts or omissions are:

1. Failure to comply with the certification precondition requirement under Sections 9 and 59 of Republic Act No. 8371 or the *Indigenous Peoples Rights Act* and its implementing rules and regulations;

2. Non-compliance with the requisite approval of the *Sanggunian Pambayan* pursuant to Sections 26 and 27 of the Local Government Code; and

3. Violation of Section 8.3 of DENR Administrative Order 2003-30 on environmental compliance certificate.

All the alleged unlawful acts or omissions were averred to be committed by public and private respondents. The petition impleads the DENR, the Subic Bay Metropolitan Authority and the project proponent.

Thus, the second requisite was satisfied.

The estimated range of the feared damage, as clearly set forth in the petition, covers the provinces of Bataan and Zambales, specifically the municipalities and city mentioned therein,and thus addressingthe requisite territorial requirement.

The petition avers:

> 121. The matter is thus of extreme urgency that, unless immediately restrained, will inevitably cause damage to the environment, the inhabitants of the provinces of Zambales and Bataan, particularly the municipalities of Subic, Zambales, Hermosa and Morong, Bataan and the City of Olongapo, Zambales including the herein Petitioners who will all suffer grave injustice and irreparable injury, particularly in proceeding with construction and operation of the Coal-Fired Power Plant in the absence of compliance with the Local Government Code's consultation and approval requirements under Sec. 26 and 27, Sec. 59 of R.A. No. 8371's requiring an NCIP Certification prior to the issuance of permits or

licenses by government agencies and violating the restrictions imposed in its original ECC.[4]

Having satisfied all the requirements under the special rules, then Rule 7 on the writ of kalikasan is beyond cavil applicable and presents itself as the best available remedy considering the facts of the case and the circumstances of the parties.

Petition for Issuance of Writ of Kalikasan
vis-à-vis Special Civil Action for Certiorari

Anent Justice Leonen's argument that there are other "remedies that can contribute to the protection of communities and their environment" other than Rule 7 of RPEC, doubtless referring to a Rule 65 petition, allow me to state in disagreement that there are instances when the act or omission of a public official or employee complained of will ultimately result in the infringement of the basic right to a healthful and balanced ecology. And said unlawful act or omission would invariably constitute grave abuse of discretion which, ordinarily, could be addressed by the corrective hand of *certiorari* under Rule 65. In those cases, a petition for writ of *kalikasan* would still be the superior remedy as in the present controversy, crafted as it were precisely to address and meet head-on such situations. Put a bit differently, in proceedings involving enforcement or violation of environmental laws, where arbitrariness or caprice is ascribed to a public official, the sharper weapon to correct the wrong would be a suit for the issuance of the *kalikasan* writ.

Prior to the effectivity of the RPEC which, inter alia, introduced the writ of *kalikasan*, this Court entertained cases involving attacks on ECCs via a Rule 65 petition[5] which exacts the exhaustion of administrative remedies as condition sine *qua non* before redress from the courts may be had.

Following the ordinary rules eventually led to several procedural difficulties in the litigation of environmental cases, as experienced by practitioners, concerned government agencies, people's organizations, non-governmental organizations, corporations, and public-interest groups,[6] more particularly with respect to *locus standi,* fees and preconditions. These difficulties signalled the pressing need to make accessible a more simple and expeditious relief to parties seeking the protection not only of their right to life but also the protection of the country's remaining and rapidly deteriorating natural resources from further destruction. Hence, the RPEC.With its formulation, the Court sought to address procedural concerns peculiar to environmental cases,[7] taking into consideration the imperative of prompt relief or protection where the impending damage to the environment is of a grave and serious degree. Thus, the birth of the writ of *kalikasan,* an extraordinary remedy especially engineered to deal with environmental damages, or threats thereof, that transcend political and territorial boundaries.[8]

The advent of A.M. No. 09-6-8-SC to be sure brought about significant changes in the procedural rules that apply to environmental cases. The differences on eight (8) areas between a Rule 65 *certiorari* petition and Rule *7 kalikasan* petition may be stated as follows:

1. **Subject matter**. Since its subject matter is any "unlawful act or omission," a Rule 7 kalikasan petition is broad enough to correct any act taken without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction which is the subject matter of a Rule 65 certiorari petition. Any form of abuse of discretion as long as it constitutes an unlawful act or omission involving the environment can be subject of a Rule 7 *kalikasan* petition. A Rule 65 petition, on the other hand, requires the abuse of discretion to be "grave." Ergo, a subject matter which ordinarily cannot properly be subject of a certiorari petition can be the subject of a kalikasanpetition.

2. **Who may file**. Rule 7 has liberalized the rule on *locus standi,* such thatavailment of the writ of *kalikasan* is open to a broad range of suitors, to include even an entity authorized by law, people's organization, or any public interest group accredited by or registered with any government agency, on behalf of persons whose right to a balanced and healthful ecology is violated or threatened to be violated. Rule 65 allows only the aggrieved person to be the petitioner.

3. **Respondent**. The respondent in a Rule 65 petition is only the government or its officers, unlike in a *kalikasan* petition where the respondent may be a private individual or entity.

4. **Exemption from docket fees**. The *kalikasan* petition is exempt from docket fees, unlike in a Rule 65 petition. Rule 7 of RPEC has pared down the usually burdensome litigation expenses.

5. **Venue**. The certiorari petition can be filed with (a) the RTC exercising jurisdiction over the territory where the act was committed; (b) the Court of Appeals; and (c) the Supreme Court. Given the magnitude of the damage, the *kalikasan* petition can be filed directly with the Court of Appeals or the Supreme Court. The direct filing of a kalikasan petition will prune case delay.

6. **Exhaustion of administrative remedies**. This doctrine generally applies to a certiorari petition, unlike in a *kalikasan* petition.

7. **Period to file**. An aggrieved party has 60 days from notice of judgment or denial of a motion for reconsideration to file a certiorari petition, while a *kalikasan* petition isnot subject to such limiting time lines.

8. **Discovery measures**. In a *certiorari* petition, discovery measures are not available unlike in a *kalikasan* petition. Resort to these measures will abbreviate proceedings.

It is clear as day that a *kalikasan* petition provides more ample advantages to a suitor than a Rule 65 petition for certiorari.

Taking into consideration the provisions of Rule 65 of the Rules of Court vis-à-vis Rule 7 of the RPEC, it should be at onceapparent that in petitions like the instant petition involving unlawful act or omissioncausing environmental damage of such a magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces, Rule 7 of the RPEC is the applicable remedy. Thus, the vital, pivotal averment is the illegal act or omission involving environmental damage of such a dimension that will prejudice a huge number of inhabitants in at least 2 or more cities and provinces. Without such assertion, then the proper recourse would be a petition under Rule 65, assuming the presence of the essential requirements for a resort to *certiorari.* It is, therefore, possible that subject matter of a suit which ordinarily would fall under Rule 65 is subsumed by the Rule 7 on kalikasan as long as such qualifying averment of environmental damage is present. I can say without fear of contradiction that a petition for a writ of *kalikasan* is a special version of a Rule 65 petition, but restricted in scope but providing a more expeditious, simplified and inexpensive remedy to the parties.

The Court must not take a myopic view of the case, but must bear in mind that what is on the table is a case which seeks to avert the occurrence of a disaster whichpossibly could result in a massive environmental damage and widespread harm to the health of the residents of an area. This is not a simple case of grave abuse of discretion by a government official which does not pose an environmental threat with serious and far-reaching implications and could be adequately and timely resolved using ordinary rules of procedure. To reiterate, the Rules on petitions for writ of *kalikasan* were specifically crafted for the stated purpose of expediting proceedings where immediacy of action is called for owing to the gravity and irreparability of the threatened damage. And this is precisely what is being avoided in the instant case.

Additionally, it must be emphasized that the initial determination of whether a case properly falls under a writ of kalikasan petition differs from the question of whether the parties were able to substantiate their claim of a possible adverse effect of the activity to the environment. The former requires only a perfunctoryreview of the allegations in the petition, without passing on the evidence, while the latter calls for the evaluation and weighing of the parties' respective evidence. And it is in the latter instance that Casiño, et al. miserably fell short. By not presenting even a single expert witness, they were unable to discharge their duty of proving to the Court that the completion and operation of the power plant would bring about the alleged adverse effects to the health of the residents of Bataan and Zambales and would cause serious pollution and environmental degradation thereof. Hence, the denial of their petition.

Oposa ruling should not be abandoned

The dissent proposes the abandonment of the doctrinal pronouncement in *Oposa*[9] bearing on the filing of suits in representation of others and of generations yet unborn, now embodied in Sec. 5 of the Environmental Rules. In the alternative, it is proposed that allowing citizen suits under the same Section 5 of the Environmental Rules be limited only to the following situations: (1) there is a clear legal basis for the representative suit; (2) there are actual concerns based squarely upon an existing legal right; (3) there is no possibility of any countervailing interests existing within the population represented or those that are yet to be born; and (4) there is an absolute necessity for such standing because there is a threat or catastrophe so imminent that an immediate protective measure is necessary.

I strongly disagree with the proposal.

For one, *Oposa* carries on the tradition to further liberalize the requirement on *locus standi.* For another, the dissent appears to gloss over the fact that there are instances when statutes have yet to regulate an activity or the use and introduction of a novel technology in our jurisdiction and environs, and to provide protection against a violation of the people's right to life. Hence, requiring the existence of an "existing and clear legal right or basis" may only prove to be an imposition of a strict, if impossible, condition upon the parties invoking the protection of their right to life.

And for a third, to require that there should be no possibility of any countervailing interests existing within the population represented or those that are yet to be born would likewise effectively remove the rule on citizens suits from our Environmental Rules or render it superfluous. No party could possibly prove, and no court could calculate, whether there is a possibility that other countervailing interests exist in a given situation. We should not lose sight of the fact that the impact of an activity to the environment, to our flora and fauna, and to the health of each and every citizen will never become an absolute certainty such that it can be predicted or calculated without error, especially if we are talking about generations yet unborn where we would obviously not have a basis for said determination. Each organism, inclusive of the human of the species, reacts differently to a foreign body or a pollutant, thus, the need to address each environmental case on a case-to-case basis. Too, making sure that there are no countervailing interests in existence, especially those of populations yet unborn, would only cause delays in the resolution of an environmental case as this is a gargantuan, if not well-nigh impossible, task.

It is for the same reason that the rule on *res judicata* should not likewise be applied to environmental cases with the same degree of rigidityobservedin ordinary civil cases, contrary to the dissent's contention. Suffice it to state that the highly dynamic, generally unpredictable, and unique nature of environmental cases precludes Us from applying the said principle in environmental cases.

Lastly, the dissent's proposition that a "citizen suit should only be allowed when

there is an absolute necessity for such standing because there is a threat or catastrophe so imminent that an immediate protective measure is necessary" is a pointless condition to be latched onto the RPEC. While the existence of an emergency provides a reasonable basis for allowing another person personally unaffected by an environmental accident to secure relief from the courts in representation of the victims thereof, it is my considered view that We need not limit the availability of a citizen's suit to such extreme situation.

The true and full extent of an environmental damage is difficult to fully comprehend, much so to predict. Considering the dynamics of nature, where every aspect thereof is interlinked, directly or indirectly, it can be said that a negative impact on the environment, though at times may appear minuscule at one point, may cause a serious imbalance to our environs in the long run. And it is not always that this imbalance immediately surfaces. In some instances, it may take years before we realize that the deterioration is already serious and possibly irreparable, just as what happened to the Manila Bay where decades of neglect, if not sheer citizen and bureaucratic neglect, ultimately resulted in the severe pollution of the Bay.[10] To my mind, the imposition of the suggested conditions would virtually render the provisions on citizen's suit a pure jargon, a useless rule, in short.

Anent the substantive issues, I join the *ponencia* in its determination that Casiño, et al. failed to substantiate their claim of an imminent and grave injury to the environment should the power project proceed.

I vote to **DENY** the Petition in G.R. No. 207282, and to GRANT the Petitions in G.R. Nos. 207257, 207276 and 207366.

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[1] *Rollo* (G.R. No. 207282), pp. 21-24.

[2] Id. at 31-33.

[3] Petition, pp. 17-18.

[4] Petition, p. 46.

[5] Section 1. Petition for certiorari.- When a tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46. See *Bangus Fry Fisherfolk, et al. v. Lanzanas,* G.R. No. 131442, July 10, 2003.

[6] Annotation to the Rules of Procedure for Environmental Cases, p. 98.

[7] Id.

[8] Id. at 133.

[9] G.R. No. 101083, July 30, 1993, 224 SCRA 792.

[10] See *MMDA v. Concerned Residents of Manila Bay*, G.R. Nos. 171947-48, December 18, 2008.

CONCURRING AND DISSENTING OPINION

LEONEN, *J.*:

I concur that the petition for the Issuance of a Writ of Kalikasan should be dismissed.

A Writ of Kalikasan is an extraordinary and equitable writ that lies only to prevent an actual or imminent threat "of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces."[1] It is not the proper remedy to stop a project that has not yet been built. It is not the proper remedy for proposed projects whose environmental compliance certificates (ECC) are yet to be issued or may still be questioned through the proper administrative and legal review processes. In other words, the petition for a Writ of Kalikasan does not subsume and is not a replacement for all remedies that can contribute to the protection of communities and their environment.

I dissent from the majority's ruling regarding the validity of the amended ECCs. Aside from this case being the wrong forum for such issues, Presidential Decree Nos. 1151[2] and 1586[3] instituting the Environmental Impact Statement System grants no power to the Department of Environment and Natural Resources to exempt environmentally critical projects from this requirement in the guise of amended project specifications. Besides, even assuming without granting that the Department of Environment and Natural Resources Administrative Order No. 2003-

30[4] was validly issued, the changes in the project design were substantial. Its impact on the ecology would have been different from how the project was initially presented. The Court of Appeals committed grave abuse of discretion in considering this issue because the procedure for a Writ of Kalikasan is not designed to evaluate the propriety of the ECCs.

Compliance with Sections 26[5] and 27[6] of the Local Government Code and the provisions of the Indigenous Peoples' Rights Act (IPRA)[7] is not a matter that relates to environmental protection directly. The absence of compliance with these laws forms causes of action that cannot also be brought through a petition for the issuance of a Writ of Kalikasan.

This case highlights the dangers of abuse of the extraordinary remedy of the Writ of Kalikasan. Petitioners were not able to move forward with substantial evidence. Their attempt to present technical evidence and expert opinion was so woefully inadequate that they put at great risk the remedies of those who they purported to represent in this suit inclusive of generations yet unborn.

I

Furthermore, the original Petition for the issuance of a Writ of Kalikasan that was eventually remanded to the Court of Appeals was not brought by the proper parties.

Only real parties in interest may prosecute and defend actions.[8] The Rules of Court defines "real party in interest" as a person who would benefit or be injured by the court's judgment. Rule 3, Section 2 of the Rules of Court provides:

> **SEC. 2.** *Parties in interest.* – A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.

The rule on real parties in interest is incorporated in the Rules of Procedure for Environmental Cases. Rule 2, Section 4 provides:

> **Section 4**. *Who may file.* — Any real party in interest, including the government and juridical entities authorized by law, may file a civil action involving the enforcement or violation of any environmental law.

A person cannot invoke the court's jurisdiction if he or she has no right or interest to protect.[9] He or she who invokes the court's jurisdiction must be the "owner of the right sought to be enforced."[10] In other words, he or she must have a cause

of action. An action may be dismissed on the ground of lack of cause of action if the person who instituted it is not the real party in interest.[11] The term "interest" under the Rules of Court must refer to a material interest that is not merely a curiosity about or an "interest in the question involved."[12] The interest must be present and substantial. It is not a mere expectancy or a future, contingent interest.[13]

A person who is not a real party in interest may institute an action if he or she is suing as representative of a real party in interest. When an action is prosecuted or defended by a representative, that representative is not and does not become the real party in interest. The person represented is deemed the real party in interest. The representative remains to be a third party to the action instituted on behalf of another. Thus:

> SEC. 3. ***Representatives as parties***. – Where the action is allowed to be prosecuted or defended by a representative or someone acting in a fiduciary capacity, the beneficiary shall be included in the title of a case and shall be deemed to be the real party in interest. A representative may be a trustee of an express trust, a guardian, an executor or administrator, or a party authorized by law or these Rules. An agent acting in his own name and for the benefit of an undisclosed principal may sue or be sued without joining the principal except when the contract involves things belonging to the principal.

To sue under this rule, two elements must be present: "(a) the suit is brought on behalf of an identified party whose right has been violated, resulting in some form of damage, and (b) the representative authorized by law or the Rules of Court to represent the victim."[14]

The Rules of Procedure for Environmental Cases allows filing of a citizen's suit. A citizen's suit under this rule allows any Filipino citizen to file an action for the enforcement of environmental law on behalf of minors or generations yet unborn. It is essentially a representative suit that allows persons who are not real parties in interest to institute actions on behalf of the real party in interest. In citizen's suits filed under the Rules of Procedure for Environmental Cases, the real parties in interest are the minors and the generations yet unborn. Section 5 of the Rules of Procedure for Environmental Cases provides:

> SEC. 5. Citizen suit. – Any Filipino citizen in representation of others, including minors or generations yet unborn may file an action to enforce rights or obligations under environmental laws. Upon the filing of a citizen suit, the court shall issue an order which shall contain a brief description of the cause of action and the reliefs prayed for, requiring all interested parties to manifest their interest to intervene in the case

> within fifteen (15) days from notice thereof. The plaintiff may publish the order once in a newspaper of a general circulation in the Philippines or furnish all affected barangays copies of said order.

The expansion of what constitutes "real party in interest" to include minors and generations yet unborn is a recognition of this court's ruling in *Oposa v. Factoran.*[15] This court recognized the capacity of minors (represented by their parents) to file a class suit on behalf of succeeding generations based on the concept of intergenerational responsibility to ensure the future generation's access to and enjoyment of country's natural resources.[16]

To allow citizen's suits to enforce environmental rights of others, including future generations, is dangerous for three reasons:

> *First*, they run the risk of foreclosing arguments of others who are unable to take part in the suit, putting into question its representativeness. *Second,* varying interests may potentially result in arguments that are bordering on political issues, the resolutions of which do not fall upon this court. *Third,* automatically allowing a class or citizen's suit on behalf of minors and generations yet unborn may result in the oversimplification of what may be a complex issue, especially in light of the impossibility of determining future generation's true interests on the matter.[17]

In citizen's suits, persons who may have no interest in the case may file suits for others. Uninterested persons will argue for the persons they represent, and the court will decide based on their evidence and arguments. Any decision by the court will be binding upon the beneficiaries, which in this case are the minors and the future generations. The court's decision will be res judicata upon them and conclusive upon the issues presented.

Thus, minors and future generations will be barred from litigating their interests in the future, however different it is from what was approximated for them by the persons who alleged to represent them. This may weaken our future generations' ability to decide and argue for themselves based on the circumstances and concerns that are actually present in their time.

Expanding the scope of who may be real parties in interest in environmental cases to include minors and generations yet unborn "opened a dangerous practice of binding parties who are yet incapable of making choices for themselves, either due to minority or the sheer fact that they do not yet exist."[18]

This court's ruling in *Oposa* should, therefore, be abandoned or at least should be limited to situations when:

(1) "There is a clear legal basis for the representative suit;

(2) There are actual concerns based squarely upon an existing legal right;

(3) There is no possibility of any countervailing interests existing within the population represented or those that are yet to be born; and

(4) There is an absolute necessity for such standing because there is a threat or catastrophe so imminent that an immediate protective measure is necessary."[19]

Representative suits are different from class suits. Rule 3, Section 12 of the Rules of Court provides:

> **SEC. 12. *Class suit*.** – When the subject matter of the controversy is one of common or general interest to many persons so numerous that it is impracticable to join all as parties, a number of them which the court finds to be sufficiently numerous and representative as to fully protect the interests of all concerned may sue or defend for the benefit of all. Any party in interest shall have the right to protect his individual interest.

Thus, class suits may be filed when the following are present:

> a) When the subject matter of the controversy is of common or general interest to many persons;
>
> b) When such persons are so numerous that it is impracticable to join them all as parties; and
>
> c) When such persons are sufficiently numerous as to represent and protect fully the interests of all concerned.

A class suit is a representative suit insofar as the persons who institute it represent the entire class of persons who have the same interest or who suffered the same injury. However, unlike representative suits, the persons instituting a class suit are not suing merely as representatives. They themselves are real parties in interest directly injured by the acts or omissions complained of. There is a common cause of action in a class. The group collectively — not individually — enjoys the right sought to be enforced.

The same concern in representative suits regarding res judicata applies in class suits. The persons bringing the suit may not be truly representative of all the interests of the class they purport to represent, but any decision issued will bind all

members of the class.

However, environmental damage or injury is experienced by each person differently in degree and in nature depending on the circumstances. Therefore, injuries suffered by the persons brought as party to the class suit may not actually be common to all. The representation of the persons instituting the class suit ostensibly on behalf of others becomes doubtful. Hence, courts should ensure that the persons bringing the class suit are truly representative of the interests of the persons they purport to represent.

In addition, since environmental cases are technical in nature, persons who assert environment-related rights must be able to show that they are capable of bringing "reasonably cogent, rational, scientific, well-founded arguments" as a matter of fairness to those they say they represent. Their beneficiaries would expect that they would argue for their interests in the best possible way.[20]

The court should examine the cogency of a petitioner's or complainant's cause by looking at the allegations and arguments in the complaint or petition. Their allegations and arguments must show at the minimum the scientific cause and effect relationship between the act complained of and the environmental effects alleged. The threat to the environment must be clear and imminent and "of such magnitude"[21] such that inaction will certainly redound to ecological damage.

Casiño, et al. argued that they were entitled to the issuance of a Writ of Kalikasan because they alleged that environmental damage would affect the residents of Bataan and Zambales if the power plant were allowed to operate. They based their allegations on documents stating that coal combustion would produce acid rain and that exposure to coal power plant emissions would have adverse health effects.

However, Casiño, et al. did not present an expert witness whose statements and opinion can be relied on regarding matters relating to coal technology and other environmental matters. Instead, they presented a partylist representative, a member of an environmental organization, and a vice governor. These witnesses possess no technical qualifications that would render their conclusions sufficient as basis for the grant of an environmental relief.

The scientific nature of environmental cases requires that scientific conclusions be taken from experts or persons with "special knowledge, skill, experience or training."[22]

Expert opinions are presumed valid though such presumption is disputable. In the proper actions, courts may evaluate the expert's credibility. Credibility, when it comes to environmental cases, is not limited to good reputation within their scientific community. With the tools of science as their guide, courts should also examine the internal and external coherence of the hypothesis presented by the experts, recognize their assumptions, and examine whether the conclusions of

cause and effect are based on reasonable inferences from scientifically sound experimentation. Refereed academic scientific publications may assist to evaluate claims made by expert witnesses. With the tools present within the scientific community, those whose positions based on hysteria or unsupported professional opinion will become obvious.

Casiño, et al.'s witnesses admit that they are not experts on the matter at hand. None of them conducted a study to support their statements of cause and effect. It appears that they did not even bother to educate themselves as to the intricacies of the science that would support their claim.

Casiño, et al. only presented documents and articles taken from the internet to support their allegations on the environmental effects of coal power plants. They also relied on a "final report" on Subic Bay Metropolitan Authority's social acceptability policy considerations. There were statements in the report purportedly coming from Dr. Rex Cruz, U.P. Chancellor, Los Baños, Dr. Visitacion Antonio, a toxicologist, and Andre Jon Uychianco, a marine biologist, stating that "conditions were not present to merit the operation of a coal-fired power plant." The report also stated that the "coal plant project would pose a wide range of negative impacts on the environment." Casiño, et al., however, did not present the authors of these documents so their authenticity can be verified and the context of these statements could be properly understood. There was no chance to cross-examine their experts because they could not be cross-examined. In other words, their case was filed with their allegations only being supported by hearsay evidence that did not have the proper context. Their evidence could not have any probative value.

In contrast, RP Energy presented expert witnesses answering detail by detail Casiño, et al.'s allegations. They categorically stated that the predicted temperature changes would have only minimal impact.[23] Their witnesses also testified on the results of the tests conducted to predict the emissions that would be produced by the power plant. They concluded that the emissions would be less than the upper limit set in the Clean Air Act.[24] They also testified that the gas emissions would not produce acid rain because they were dilute.[25]

There was no rebuttal from petitioners. The strength of their claim was limited only to assertions and allegations. They did not have the evidence to support their claims or to rebut the arguments of the project proponents.

This case quintessentially reveals the dangers of unrestricted standing to bring environmental cases as class suits. The lack of preparation and skill by petitioners endangered the parties they sought to represent and even foreclosed the remedies of generations yet unborn.

In my view, the standing of the parties filing a Petition for the Issuance of a Writ of Kalikasan may be granted when there is adequate showing that: (a) the suing party

has a direct and substantial interest; (b) there is a cogent legal basis for the allegations and arguments; and (3) the person suing has sufficient knowledge and is capable of presenting all the facts that are involved including the scientific basis. [26]

II

The issuance of the ECCs was irregular. Substantial amendments to applications for ECCs require a new environmental impact statement.

However, a Petition for the Issuance of a Writ of Kalikasan is not the proper remedy to raise this defect in courts. ECCs issued by the Department of Environment and Natural Resources may be the subject of a motion for reconsideration with the Office of the Secretary. The Office of the Secretary may inform himself or herself of the science necessary to evaluate the grant or denial of an ECC by commissioning scientific advisers or creating a technical panel of experts. The same can be done at the level of the Office of the President where the actions of the Office of the Secretary of the DENR may be questioned. It is only after this exhaustion of administrative remedies which embeds the possibility of recruiting technical advice that judicial review can be had of the legally cogent standards and processes that were used.

A Petition for a Writ of Kalikasan filed directly with this court raising issues relating to the Environmental Compliance Certificate or compliance with the Environmental Impact Assessment Process denies the parties the benefit of a fuller technical and scientific review of the premises and conditions imposed on a proposed project. If given due course, this remedy prematurely compels the court to exercise its power to review the standards used without exhausting all the administrative forums that will allow the parties to bring forward their best science. Rather than finding the cogent and reasonable balance to protect our ecologies, courts will only rely on our own best guess of cause and effect. We substitute our judgement for the science of environmental protection prematurely.

Besides, the extraordinary procedural remedy of a Writ of Kalikasan cannot supplant the substantive rights involved in the Environmental Impact Assessment Process.

Presidential Decree No. 1151 provides for our environmental policy to primarily create, develop, and maintain harmonious conditions under which persons and nature can exist.[27]

Pursuant to this policy, it was recognized that the general welfare may be promoted by achieving a balance between environmental protection, and production and development.[28] Exploitation of the environment may be permitted, but always with consideration of its degrading effects to the environment and the adverse conditions that it may cause to the safety of the present and future generations.[29]

The Environmental Impact Assessment System compels those who would propose an environmentally critical project or conduct activities in an environmentally critical area to consider ecological impact as part of their decision-making processes. By law and regulation, it is not only the costs and profit margins that should matter.

Presidential Decree No. 1151 established a duty for government agencies and instrumentalities, and private entities to submit a detailed environmental impact statement for every proposed action, project, or undertaking affecting the quality of the environment. Section 4 of Presidential Decree No. 1151 provides:

> **Section 4.** *Environmental Impact Statements.* Pursuant to the above enunciated policies and goals, all agencies and instrumentalities of the national government, including government-owned or controlled corporations, as well as private corporations firms and entities shall prepare, file and include in every action, project or undertaking which significantly affects the quality of the environment a detail statement on
>
> (a) the environmental impact of the proposed action, project or undertaking[;]
>
> (b) any adverse environmental effect which cannot be avoided should the proposal be implemented;
>
> (c) alternative to the proposed action;
>
> (d) a determination that the short-term uses of the resources of the environment are consistent with the maintenance and enhancement of the long-term productivity of the same; and
>
> (e) whenever a proposal involve[s] the use of depletable or non-renewable resources, a finding must be made that such use and commitment are warranted.
>
> Before an environmental impact statement is issued by a lead agency, all agencies having jurisdiction over, or special expertise on, the subject matter involved shall comment on the draft environmental impact statement made by the lead agency within thirty (30) days from receipt of the same.
>
> Based on the required environmental impact statement under Presidential Decree No. 1151, Presidential Decree No. 1586 was promulgated establishing the Environmental Impact Statement System. [30]

Under this system, the President may proclaim certain projects as environmentally

critical.[31] An environmentally critical project is a "project or program that has high potential for significant negative environmental impact."[32] Proposals for environmentally critical projects require an environmental impact statement.[33]

On December 14, 1981, the President of the Philippines issued Proclamation No. 2146 declaring fossil-fueled power plants as environmentally-critical projects. This placed fossil-fueled power plants among the projects that require an environmental impact statement prior to the issuance of an ECC.

In this case, the Department of Environment and Natural Resources issued an Environmental Compliance Certificate to RP Energy after it had submitted an environmental impact statement for its proposed 2 x 150 MW coal-fired power plant.[34]

However, when RP Energy requested for amendments of its application to the Department of Environmental and Natural Resources at least twice, amended ECCs were issued without requiring the submission of new environmental impact statements.

RP Energy's first request for amendment was due to its decision to change the project design to include "a barge wharf, seawater intake breakwater, subsea discharge pipeline, raw water collection system, drainage channel improvement, and a 230kV double-circuit transmission line".[35] RP Energy submitted only an Environmental Performance Report and Management Plan (EPRMP) to support its request.[36]

RP Energy's second request for amendment was due to its desire to construct a 1 x 300 MW coal-fired power plant instead of a 2 x 150 MW coal-fired power plant.[37] For this request, RP Energy submitted a Project Description Report (PDR).[38]

Later, RP Energy changed the proposal to 2 x 300 MW coal-fired power plant.[39] It submitted an EPRMP to support its proposal.[40]

Department of Environment and Natural Resources and RP Energy argued that the ECC was valid because it was issued in accordance with the DAO 2003-30 or the Implementing Rules and Regulations for the Philippine environmental impact statement system (IRR).[41] Department of Environment and Natural Resources also argued that since the environmental impact statement submitted by RP Energy was still valid, there was no need for the submission of a new environmental impact statement.[42] Further, a change in the configuration of the proposed coal-fired power plant from 2 x 150 MW to 1 x 150 MW was not substantial to warrant the submission of a new environmental impact statement.[43]

The Department of Environment and Natural Resources' and RP Energy's arguments

are not tenable.

The issuance of an ECC without a corresponding environmental impact statement is not valid. Section 4 of Presidential Decree No. 1151 specifically requires the filing of environmental impact statements for every action that significantly affects environmental quality. Presidential Decree No. 1586, the law being implemented by the IRR, recognizes and is enacted based on this requirement.[44]

Presidential Decree Nos. 1151 and 1586 do not authorize the Department of Environment and Natural Resources to allow exemptions to this requirement in the guise of amended project specifications.

The only exception to the environmental impact statement requirement is when the project is not declared as environmentally critical, as provided later in Presidential Decree No. 1586, thus:

> **Section 5.** ***Environmentally Non-Critical Projects.*** – All other projects, undertakings and areas not declared by the Presidents as environmentally critical shall be considered as non-critical and shall not be required to submit an environmental impact statement. The Environmental Protection Council, thru the Ministry of Human Settlements may however require non-critical projects and undertakings to provide additional environmental safeguards as it may deem necessary.

Since fossil-fuelled power plants are already declared as environmentally critical projects in Proclamation No. 2146,[45] an environmental impact statement is required. An EPMRP or a project description is not enough.

An EPMRP and a project description are different from an environmental impact statement. The IRR itself describes the differences between the features of each documentation, as well as each's appropriate uses. The most detailed among the three is the environmental impact statement, which is required under the law for all environmentally critical projects.

An environmental impact statement is a document of scientific opinion "that serves as an application for an ECC. It is a comprehensive study of the significant impacts of a project on the environment."[46] It is predictive to an acceptable degree of certainty. It is an assurance that the proponent has understood all of the environmental impacts and that the measures it proposed to mitigate are both effective and efficient.

Section 4 of Presidential Decree No. 1151 requires the following detailed information in the environmental impact statement:

Section 4. *Environmental Impact Statements.* . . .

(a) the environmental impact of the proposed action, project or undertaking[;]

(b) any adverse environmental effect which cannot be avoided should the proposal be implemented;

(c) alternative to the proposed action;

(d) a determination that the short-term uses of the resources of the environment are consistent with the maintenance and enhancement of the long-term productivity of the same; and

(e) whenever a proposal involve the use of depletable or non-renewable resources, a finding must be made that such use and commitment are warranted.

The IRR was more specific as to what details should be included in the environmental impact statement:

5.2.1 Environmental Impact Statement (EIS).

The EIS should contain at least the following:

a. EIS Executive Summary;

b. Project Description;

c. Matrix of the scoping agreement identifying critical issues and concerns, as validated by EMB;

d. Baseline environmental conditions focusing on the sectors (and resources) most significantly affected by the proposed action;

e. Impact assessment focused on significant environmental impacts (in relation to project construction/commissioning, operation and decommissioning), taking into account cumulative impacts;

f. Environmental Risk Assessment if determined by EMB as necessary during scoping;

g. Environmental Management Program/Plan;

h. Supporting documents, including technical/socio-economic data used/generated; certificate of zoning viability and municipal land use plan; and proof of consultation with stakeholders;

i. Proposals for Environmental Monitoring and Guarantee Funds including justification of amount, when required;

j. Accountability statement of EIA consultants and the project proponent; and

k. Other clearances and documents that may be determined and agreed upon during scoping.

Not all the details required in an environmental impact statement can be found in an EPRMP. An EPRMP only requires:

5.2.5 Environmental Performance Report and Management Plan (EPRMP).
The EPRMP shall contain the following:

a. Project Description;
b. Baseline conditions for critical environmental parameters;
c. Documentation of the environmental performance based on the current/past environmental management measures implemented;
d. Detailed comparative description of the proposed project expansion and/or process modification with corresponding material and energy balances in the case of process industries; and
e. EMP based on an environmental management system framework and standard set by EMB.

An EPRMP is not a comprehensive study of environmental impacts, unlike an environmental impact statement. It is, in essence, a description of the project and documentation of environmental performance. Based on Section 5.2.5 of the IRR, it contains no identification of critical issues. There is also no assessment of the environmental impact and risks that the project may cause.

The ponencia finds that the EIS requirement was complied with. According to the ponencia, the law does not expressly state that applications for amendments of ECCs require an EIS. Therefore, the EIS submitted prior to the amendment of the project's features was sufficient compliance with the EIS requirement under our laws.

Presidential Decree Nos. 1151 and 1586 require an EIS for every project that will substantially affect our environment. These laws do not exempt amended projects from the EIS requirement. The ponencia's finding presumes that for purposes of

compliance with this EIS requirement, the project as originally described was identical with the project after the amendment such that no new EIS was necessary to determine if the environmental impact would be different after the amendment. This is a dangerous and premature conclusion.

Any finding that the original project and the modified project are the same or different from each other in terms of environmental impact is itself a conclusion that must have scientific basis. Thus, to determine the environmental impact of projects, a different EIS should be submitted to reflect substantial modifications.

Our law requires the EIS for a purpose. It ensures that business proponents are sufficiently committed to mitigate the full environmental impacts of their proposed projects. It also ensures that the proposed mitigating measures to be applied are appropriate for the operations of an environmentally critical project. Dispensing with the appropriate EIS encourages businesses to treat the EIS requirement as a mere formality that may be obtained and later conveniently amend without the need to conduct the appropriate studies. It discourages full responsibility and encourages businesses to resort to expedient measures to secure the proper environmental clearances.

The ponencia ruled that a holistic reading of the IRR shows that the environmental impact assessment process allows for flexibility in the determination of the appropriate documentary requirements. The ponencia cites Section 8.3 of the IRR which states that the processing requirements for ECC amendments are focused only on necessary information. Thus:

> **8.3 Amending an ECC**
>
> Requirements for processing ECC amendments shall depend on the nature of the request but shall be focused on the information necessary to assess the environmental impact of such changes.
>
> 8.3.1. Requests for minor changes to ECCs such as extension of deadlines for submission of post-ECC requirements shall be decided upon by the endorsing authority.
>
> 8.3.2. Requests for major changes to ECCs shall be decided upon by the deciding authority.
>
> 8.3.3. For ECC's issued pursuant to an IEE or IEE checklist, the processing of the amendment application shall not exceed thirty (30) working days; and for ECC's issued pursuant to an EIS, the processing shall not exceed sixty (60) working days. Provisions on automatic approval related to prescribed timeframes under AO 42 shall also apply for the processing of applications to amend ECC's.

The ponencia also cites the Revised Procedural Manual for DAO 03-30's (Revised Manual) "Flowchart on Request for ECC Amendments" (flowchart) and the "Decision Chart for Determination of Requirements for Project Modification" (decision chart).[47]

The first step in the flowchart states that "[w]ithin three (3) years from ECC issuance (for projects not started) OR at any time during project implementation, the Proponent prepares and submits to the ECC-endorsing DENR-EMB office a LETTER-REQUEST for ECC amendments including data information, reports or documents to substantiate the requested revisions."

Meanwhile, the decision chart states that an EPRMP will be required for "[i]ncrease in capacity or auxiliary component of the original project which will either exceed PDR (non-covered project) thresholds, or EMP & ERA cannot address impacts and risks arising from modification."[48]

According to the ponencia, these portions of the flowchart and the decision chart show that the ECC amendment process also applies to non-operating projects, and that the Department of Environment and Natural Resources correctly required an EPRMP to support the first of RP Energy's requested amendment.

However, to interpret the rules in a manner that would give the Department of Environment and Natural Resources the discretion whether to require or not to require an environmental impact statement renders the rules void. As an administrative agency, the Department of Environment and Natural Resources' power to promulgate rules is limited by the provisions of the law it implements. It has no power to modify the law, or reduce or expand its provisions. The provisions of the law prevail if there is inconsistency between the law and the rules promulgated by the administrative agency.

In *United BF Homeowner's Association v. BF Homes, Inc.*:[49]

> As early as 1970, in the case of Teoxon vs. Members of the Board of Administrators (PVA), we ruled that the power to promulgate rules in the implementation of a statute is necessarily limited to what is provided for in the legislative enactment. Its terms must be followed for an administrative agency cannot amend an Act of Congress. "The rule-making power must be confined to details for regulating the mode or proceedings to carry into effect the law as it has been enacted, and it cannot be extended to amend or expand the statutory requirements or to embrace matters not covered by the statute." If a discrepancy occurs between the basic law and an implementing rule or regulation, it is the former that prevails.

. . . .

> The rule-making power of a public administrative body is a delegated legislative power, which it may not use either to abridge the authority given it by Congress or the Constitution or to enlarge its power beyond the scope intended. Constitutional and statutory provisions control what rules and regulations may be promulgated by such a body, as well as with respect to what fields are subject to regulation by it. It may not make rules and regulations which are inconsistent with the provisions of the Constitution or a statute, particularly the statute it is administering or which created it, or which are in derogation of, or defeat the purpose of a statute.
>
> Moreover, where the legislature has delegated to an executive or administrative officers and boards authority to promulgate rules to carry out an express legislative purpose, the rules of administrative officers and boards, which have the effect of extending, or which conflict with the authority-granting statute, do not represent a valid exercise of the rule-making power but constitute an attempt by an administrative body to legislate. "A statutory grant of powers should not be extended by implication beyond what may be necessary for their just and reasonable execution." It is axiomatic that a rule or regulation must bear upon, and be consistent with, the provisions of the enabling statute if such rule or regulation is to be valid.[50]

In this case, the IRR implements Presidential Decree No. 1586 which in turn is based on Presidential Decree No. 1151. In Presidential Decree No. 1151, an environmental impact statement is required for all projects that have a significant impact on the environment. The IRR cannot provide for exemptions from the requirement of environmental impact statement for all environment-related actions or projects more than those covered by the exception provided in Presidential Decree No. 1586.

Thus, a project description also does not supplant the requirement of an environmental impact statement. RP Energy only submitted a project description to support its request for second amendment of the ECC to change the design of the coal plant from 2 x 150 MW to 1 x 300 MW.

A project description is described in the IRR as follows:

> x. Project Description (PD) - document, which may also be a chapter in an EIS, that describes the nature, configuration, use of raw materials and natural resources, production system, waste or pollution generation and control and the activities of a proposed project. It includes a description of the use of human resources as well as activity timelines,

during the pre-construction, construction, operation and abandonment phases. It is to be used for reviewing co-located and single projects under Category C, as well as for Category D projects.

It shall contain the following information:

5.2.6. Project Description (PD)

The PD shall be guided by the definition of terms and shall contain the following:

a. Description of the project;
b. Location and area covered;
c. Capitalization and manpower requirement;
d. For process industries, a listing of raw materials to be used, description of the process or manufacturing technology, type and volume of products and discharges;
e. For Category C projects, a detailed description on how environmental efficiency and overall performance improvement will be attained, or how an existing environmental problem will be effectively solved or mitigated by the project;
f. A detailed location map of the impacted site showing relevant features (e.g. slope, topography, human settlements); [and]
g. Timelines for construction and commissioning

Based on the IRR, therefore, the project description also does not contain the features of an environmental impact statement. It is merely a descriptive of the project's nature and use of resources. It does not contain details of the project's environmental impact, critical issues, and risks.

We usually defer to the findings of fact and technical conclusions of administrative agencies because of their specialized knowledge in their fields. However, such findings and conclusions must always be based on substantial evidence, which is the "relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[51] Because of the risks involved in environmental cases, the evidence requirement may be more than substantial. The court has more leeway to examine the evidence's substantiality.

Judicial review of administrative findings or decisions is justified if the conclusions are not supported by the required standard of evidence. It is also justified in the following instances as enumerated in *Atlas Consolidated Mining v. Factoran, Jr.*:[52]

> . . . findings of fact in such decision should not be disturbed if supported by substantial evidence, but review is justified *when there has been a denial of due process, or mistake of law or fraud, collusion or arbitrary*

> *action in the administrative proceeding. . . where the procedure which led to factual findings is irregular; when palpable errors are committed; or when a grave abuse of discretion, arbitrariness, or capriciousness is manifest.*[53] (Emphasis supplied)

Thus, when there are procedural irregularities that lead to the conclusions or factual findings, the court may exercise their power of judicial review. In this case, the Department of Environment and Natural Resources issued an amended ECC based on an environmental impact assessment that does not correspond to the new design of the project.

An environmental impact statement is a comprehensive assessment of the possible environmental effects of a project. The study and its conclusions are based on project's components, features, and design. Design changes may alter conclusions. It may also have an effect on the cumulative impact of the project as a whole. Design changes may also have an effect on the results of an environmental impact assessment.

For these reasons, the amended ECCs issued without a corresponding environmental impact statement is void. A new ECC should be issued based on an environmental impact statement that covers the new design proposed by RP Energy.

However, a Writ of Kalikasan is not the proper remedy to question the irregularities in the issuance of an ECC. Casiño, et al. should have first exhausted administrative remedies in the Department of Environment and Natural Resources and the Office of the President before it could file a Petition for certiorari with our courts. Essentially, it could not have been an issue ripe for litigation in a remanded Petition for Issuance of a Writ of Kalikasan. Thus, the Court of Appeals committed grave abuse of discretion in acting on the nullification of the ECC. More so, it is improper for us to make any declaration on the validity of the amended ECCs in this action.

III

Local government consent under Sections 26 and 27 of the Local Government Code is not a requisite for the issuance of an ECC. The issuance of an ECC and the consent requirement under the Local Government Code involve different considerations.

The Department of Environment and Natural Resources issues an ECC in accordance with Presidential Decree Nos. 1151 and 1586. It is issued after a proposed project's projected environmental impact is sufficiently assessed and found to be in accordance with the applicable environmental standards. A Department of Environment and Natural Resources' valid finding that the project complies with environmental standards under the law may result in the issuance of the ECC. In other words, an ECC is issued solely for environmental considerations.

Although Section 26 of the Local Government Code requires "prior consultation" with local government units, organizations, and sectors, it does not state that such consultation is a requisite for the issuance of an ECC. Section 27 of the Local Government Code provides instead that consultation, together with the consent of the local government is a requisite for the **implementation** of the project. This shows that the issuance of the ECC is independent from the consultation and consent requirements under the Local Government Code. Sections 26 and 27 of the Local Government Code provide:

> **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 crop land, 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.
>
> **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. (Emphases supplied)

Further, the results of the consultations under Sections 26 and 27 do not preclude the local government from taking into consideration concerns other than compliance with the environmental standards. Section 27 does not provide that the local government's prior approval must be based only on environmental concerns. It may be issued in light of its political role and based on its determination of what is economically beneficial for the local government unit.

The issuance of the ECC, therefore, does not guarantee that all other permits for a project will be granted. It does not bind the local government unit to give its consent for the project. Both are necessary prior to a project's implementation.

Similarly, the requirement of certificate of non-overlap under Section 59 of the Indigenous Peoples' Rights Act[54] is independent from the issuance of an ECC. This requirement is a property issue. It is not related to environmental concerns under

the Department of Environment and Natural Resources' jurisdiction.

IV

The question relating to the validity of the agreement between the SBMA and RP Energy is independent from the questions relating to whether the proper permits have been issued as well as whether the consent of the local government units have been properly secured.

The ponencia makes the claim that the SBMA's power to approve or disapprove projects in territories covered by the SBMA is superior over the local government units'. This is based on Section 14 of Republic Act No. 7227,[55] which provides:

> Sec. 14. *Relationship with the Conversion Authority and tthe Local Government Units.*
>
> (a) The provisions of existing laws, rules and regulations to the contrary notwithstanding, the Subic Authority shall exercise administrative powers, rule-making and disbursement of funds over the Subic Special Economic Zone in conformity with the oversight function of the Conversion Authority.
>
> (b) In case of conflict between Subic Authority and the local government units concerned on matters affecting the Subic Special Economic Zone other than defense and security, the decision of the Subic Authority shall prevail.

I disagree.

Interpreted this way, this provision may not be in accordance with our Constitution. It violates the provisions relating to the President's supervision over local governments and the principle of local government autonomy.

It is our basic policy to ensure the local autonomy of our local government units.[56] Under the Constitution, these local government units include only provinces, cities, municipalities, barangays, and the autonomous regions of Muslim Mindanao and the Cordilleras.[57] Provinces, cities, municipalities, and political subdivisions are created by law based on indicators such as income, population, and land area.[58] Barangays are created through ordinances.[59] Aside from the law or ordinance creating them, a local government unit cannot be created without the "approval by a majority of the votes case in a plebiscite in the political units directly affected."[60]

The Subic Bay Metropolitan Authority is not a local government unit. It is a corporate body created by a law.[61] No plebiscite or income, land area, and

population requirements need to be reached for its creation. SBMA is merely the implementing arm of the Bases Conversion Development Authority, which is under the President's control and supervision.[62] It does not substitute for the President. It is not even the alter ego of the Chief Executive.

Article X, Section 4 of the Constitution provides that the President's power over our local government units is limited to general supervision, thus:

> **Section 4**. The President of the Philippines shall exercise general supervision over local governments. Provinces with respect to component cities and municipalities, and cities and municipalities with respect to component barangays, shall ensure that the acts of their component units are within the scope of their prescribed powers and functions.

In *The National Liga ng mga Barangay v. Paredes,*[63] this court differentiated between "control" and "supervision":

> In the early case of Mondano v. Silvosa, et al., this Court defined supervision as "overseeing, or the power or authority of an officer to see that subordinate officers perform their duties, and to take such action as prescribed by law to compel his subordinates to perform their duties. Control, on the other hand, means the power of an officer to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter. In Taule v. Santos, the Court held that the Constitution permits the President to wield no more authority than that of checking whether a local government or its officers perform their duties as provided by statutory enactments. Supervisory power, when contrasted with control, is the power of mere oversight over an inferior body; it does not include any restraining authority over such body.[64]

Section 14 of Republic Act No. 7227 cannot be interpreted so as to grant the Subic Bay Metropolitan Authority the prerogative to supplant the powers of the local government units.

Local autonomy ensures that local government units can fully developed as self-reliant communities. The evolution of their capabilities to respond to the needs of their communities is constitutionally guaranteed. In its implementation and as a statutory policy, national agencies must consult the local government units regarding projects or programs to be implemented in their jurisdictions. Article X, Section 2 of the Local Government Code provides:

Section 2. *Declaration of Policy. –*

(a) It is hereby declared the policy of the State that the territorial and political subdivisions of the State shall enjoy genuine and meaningful local autonomy to enable them to attain their fullest development as self-reliant communities and make them more effective partners in the attainment of national goals. Toward this end, the State shall provide for a more responsive and accountable local government structure instituted through a system of decentralization whereby local government units shall be given more powers, authority, responsibilities, and resources. The process of decentralization shall proceed from the national government to the local government units.

(b) It is also the policy of the State to ensure the accountability of local government units through the institution of effective mechanisms of recall, initiative and referendum.

(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.

In *San Juan v. Civil Service Commission,*[65] this court emphasized that laws should be interpreted in favor of local autonomy:

Where a law is capable of two interpretations, one in favor of centralized power in Malacañang and the other beneficial to local autonomy, the scales must be weighed in favor of autonomy.

. . . .

The exercise by local governments of meaningful power has been a national goal since the turn of the century. And yet, inspite of constitutional provisions and, as in this case, legislation mandating greater autonomy for local officials, national officers cannot seem to let go of centralized powers. They deny or water down what little grants of autonomy have so far been given to municipal corporations.

. . . .

In his classic work "Philippine Political Law" Dean Vicente G. Sinco stated that the value of local governments as institutions of democracy is measured by the degree of autonomy that they enjoy. Citing Tocqueville, he stated that "local assemblies of citizens constitute the strength of free

> nations. x x x A people may establish a system of free government but without the spirit of municipal institutions, it cannot have the spirit of liberty." (Sinco, Philippine Political Law, Eleventh Edition, pp. 705-706).
>
> Our national officials should not only comply with the constitutional provisions on local autonomy but should also appreciate the spirit of liberty upon which these provisions are based.[66]

Thus, Republic Act No. 7227 has not granted the SBMA with powers superior to those of local government units. The power of local governments that give consent to national government projects has not been supplanted.

Final note

The state's duty to "protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature"[67] can be accomplished in many ways. Before an environmentally critical project can be implemented or prior to an activity in an environmentally critical area, the law requires that the proponents undergo environmental impact assessments and produce environmental impact statements. On this basis, the proponents must secure an ECC which may outline the conditions under which the activity or project with ecological impact can be undertaken. Prior to a national government project, local government units, representing communities affected, can weigh in and ensure that the proponents take into consideration all local concerns including mitigating and remedial measures for any future ecological damage. Should a project be ongoing, our legal order is not lacking in causes of actions that could result in preventive injunctions or damages arising from all sorts of environmental torts.

The function of the extraordinary and equitable remedy of a Writ of Kalikasan should not supplant other available remedies and the nature of the forums that they provide. The Writ of Kalikasan is a highly prerogative writ that issues only when there is a showing of actual or imminent threat and when there is such inaction on the part of the relevant administrative bodies that will make an environmental catastrophe inevitable. It is not a remedy that is availing when there is no actual threat or when imminence of danger is not demonstrable. The Writ of Kalikasan thus is not an excuse to invoke judicial remedies when there still remain administrative forums to properly address the common concern to protect and advance ecological rights. After all, we cannot presume that only the Supreme Court can conscientiously fulfill the ecological duties required of the entire state.

Environmental advocacy is primarily motivated by care and compassion for communities and the environment. It can rightly be a passionately held mission. It is founded on faith that the world as it is now can be different. It implies the belief that the longer view of protecting our ecology should never be sacrificed for short-term convenience.

However, environmental advocacy is not only about passion. It is also about responsibility. There are communities with almost no resources and are at a disadvantage against large projects that might impact on their livelihoods. Those that take the cudgels lead them as they assert their ecological rights must show that they have both the professionalism and the capability to carry their cause forward. When they file a case to protect the interests of those who they represent, they should be able to make both allegation and proof. The dangers from an improperly managed environmental case are as real to the communities sought to be represented as the dangers from a project by proponents who do not consider their interests.

The records of this case painfully chronicle the embarrassingly inadequate evidence marshalled by those that initially filed the Petition for a Writ of Kalikasan. Even with the most conscientious perusal of the records and with the most sympathetic view for the interests of the community and the environment, the obvious conclusion that there was not much thought or preparation in substantiating the allegations made in the Petition cannot be hidden. Legal advocacy for the environment deserves much more.

ACCORDINGLY, I vote to **DENY** the Petition in G.R. No. 207282. I also vote to **DENY** the Petitions in G.R. No. 207257 and 207276 insofar as the issue of the validity of the ECCs is concerned.

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[1] RULES OF PROCEDURE FOR ENVIRONMENTAL CASE, Rule 7, sec. 1.

[2] Pres. Decree No. 1151 (1979), Philippine Environmental Policy.

[3] Pres. Decree No. 1586 (1978), Establishing an Environmental Impact System, Including Other Environmental Management Related Measures and for Other Purposes.

[4] DENR Adm. Order No. 2003-30 (2003), Implementing Rules and Regulations of Presidential Decree No. 1586.

[5] Rep. Act No. 7160 (1991), An Act Providing for a Local Government Code of 1991.

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 crop land, 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.

[6] Rep. Act No. 7160 (1991), An Act Providing for a Local Government Code of 1991.

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.

[7] Rep. Act No. 8371 (1997), An Act to Recognize, Protect and Promote the Rights of Indigenous Cultural Communities/Indigenous Peoples, Creating a National Commission on Indigenous Peoples, Establishing Implementing Mechanisms, Appropriating Funds Therefor, and for Other Purposes.

[8]RULES OF COURT, Rule 3, sec. 2; See also *Stronghold Insurance Company Inc., v. Cuenca*, G.R. No. 173297, March 6, 2013, 692 SCRA 473 [Per J. Bersamin, First Division].

[9] *See Consumido v. Ros,* 555 Phil. 652, 658 (2007) [Per J. Tinga, Second Division].

[10] See *Stronghold Insurance Company Inc., v. Cuenca*, G.R. No. 173297, March 6, 2013, 692 SCRA 473 [Per J. Bersamin, First Division].

[11] Id. *See also De Leon v. Court of Appeals,* 343 Phil. 254 (1997) [Per J. Davide, Jr., Third Division], citing *Columbia Pictures, Inc. v. Court of Appeals,* 329 Phil. 875, 900–902 (1996) [Per J. Regalado, En Banc].

[12] *See Consumido v. Ros,* 555 Phil. 652, 658 (2007) [Per J. Tinga, Second Division]; *See also Ang v. Ang,* G.R. No. 186993, August 22, 2012, 678 SCRA 699, 707 [Per J. Reyes, Second Division].

[13] *De Leon v. Court of Appeals*, 343 Phil. 254 (1997) [Per J. Davide, Jr., Third Division] citing 1 M. Moran, Commentaries on the Rules of COurt 154 (1979).

[14] Concurring Opinion of J. Leonen in *Arigo v. Swift,* G.R. No. 206510, September 16, 2014, [Per J. Villarama, Jr., En Banc].

[15] G.R. No. 101083, July 30, 1993, 224 SCRA 792 [Per J. Davide, Jr., En Banc].

[16] Id. at 802-803.

[17] Concurring Opinion of J. Leonen in *Arigo v. Swift,* G.R. No. 206510, September 16, 2014, [Per J. Villarama, Jr., En Banc].

[18] Id.

[19] Id.

[20] Concurring Opinion of J. Leonen in *Arigo v. Swift,* G.R. No. 206510, September 16, 2014, [Per J. Villarama, Jr., En Banc].

[21] Rules of Procedure for Environmental Cases, Rule 7, sec.1.

[22] RULES OF COURT, Rule 130, sec. 49.

[23] Decision, pages 29-30.

[24] Id. at 32-33.

[25] Id. at 38.

[26] Concurring Opinion of J. Leonen in *Arigo v. Swift,* G.R. No. 206510, September 16, 2014, [Per J. Villarama, Jr., En Banc].

[27] Pres. Decree No. 1151 (1977), sec. 1.

[28] Pres. Decree No. 1151 (1977), sec. 2.

[29] Pres. Decree No. 1151 (1977), sec. 2.

[30] Pres. Decree No. 1586 (1978), sec. 2.

[31] Pres. Decree No. 1586 (1978), sec. 4.

[32] DENR Adm. Order No. 2003-30 (2003), sec. 3(f).

[33] Pres. Decree No. 1586 (1978), sec. 5.

[34] Ponencia, pp. 5-6.

[35] Id. at p. 6.

[36] Id.

[37] Id.

[38] Id.

[39] Id.

[40] Id. at 7.

[41] Id. at 14 and 16.

[42] Id. at 14.

[43] Id.

[44] DENR Adm. Order No. 2003-30 (2003), sec. 2.

[45] Proc. No. 2146 (1981), Proclaiming Certain Areas and Types of Projects as Environmentally Critical and Within the Scope of the Environmental Impact Statement System Established under Presidential Decree No. 1586.

[46] DENR Adm. Order No. 2003-30 (2003), sec. 3(k).

[47] *Ponencia*, 66-671.

[48] *Ponencia*, p. 70.

[49] 369 Phil. 568 (1999) [Per J. Pardo, First Division].

[50] Id. at 579–580.

[51] *Ang Tibay v. Court of Industrial Relations*, 69 Phil. 635, 642-645 (1940) [Per J. Laurel, En Banc].

[52] 238 Phil. 48 (1987) [Per J. Paras, First Division].

[53] Id. at 57.

[54] Rep. Act No. 8371 (1997), An Act to Recognize, Protect and Promote the Rights of Indigenous Cultural Communities/Indigenous Peoples, Creating an National

Commission on Indigenous Peoples, Establishing Mechanisms, Appropriating Funds Therefor, and for Other Purposes. Indigenous Peoples Rights Act.

Section 59 – Certification Precondition. All departments and other governmental agencies shall henceforth be strictly enjoined from issuing, renewing, or granting any concession, license or lease, or entering into any production sharing agreement, without prior certification from the NCIP that the area affected does not overlap with any ancestral domain. Such certification shall only be issued after a field based investigation is conducted by the Ancestral Domains Office of the area concerned: Provided, That no certification shall be issued by the NCIP without the free and prior informed and written consent of ICCs/IPs concerned: Provided, further, That no department, government agency or government-owned or controlled corporation may issue new concession, license, lease, or production sharing agreement while there is a pending application for a CADT: Provided, finally, That the ICCs/IPs shall have the right to stop or suspend, in accordance with this Act, any project that has not satisfied the requirement of this consultation process.

[55] Rep. Act No. 7227 (1992), An Act Accelerating the Conversion of Military Reservations into Other Productive Uses, Creating the Bases Conversion and Development Authority for this Purpose, Providing Funds Therefor and for Other Purposes.

[56] Const. (1987), art. II, sec. 25. The State shall ensure the autonomy of local governments; art. X, sec. 2. The territorial and political subdivisions shall enjoy local autonomy.

[57] Const. (1987), art. X, sec. 1. The territorial and political subdivisions of the Republic of the Philippines are the provinces, cities, municipalities, and barangays. There shall be autonomous regions in Muslim Mindanao and the Cordilleras as hereinafter provided.

[58] Rep. Act No. 7160 (1991), An Act Providing for a Local Government Code of 1991.

Section 6. *Authority to Create Local Government Units*. - A local government unit may be created, divided, merged, abolished, or its boundaries substantially altered either by law enacted by Congress in the case of a province, city, municipality, or any other political subdivision, or by ordinance passed by the sangguniang panlalawigan or sangguniang panlungsod concerned in the case of a barangay located within its territorial jurisdiction, subject to such limitations and requirements prescribed in this Code.

Section 7. *Creation and Conversion.* - As a general rule, the creation of a local government unit or its conversion from one level to another level shall be based on verifiable indicators of viability and projected capacity to provide services, to wit:

(a) Income. - It must be sufficient, based on acceptable standards, to provide for all essential government facilities and services and special functions commensurate with the size of its population, as expected of the local government unit concerned;
(b) Population. - It shall be determined as the total number of inhabitants within the territorial jurisdiction of the local government unit concerned; and
(c) Land Area. - It must be contiguous, unless it comprises two or more islands or is separated by a local government unit independent of the others; properly identified by metes and bounds with technical descriptions; and sufficient to provide for such basic services and facilities to meet the requirements of its populace.

Compliance with the foregoing indicators shall be attested to by the Department of Finance (DOF), the National Statistics Office (NSO), and the Lands Management Bureau (LMB) of the Department of Environment and Natural Resources (DENR).

[59] Rep. Act No. 7160 (1991), sec. 6.

[60] Const. (1987), art. X, sec. 10. No province, city, municipality, or barangay may be created, divided, merged, abolished, or its boundary substantially altered, except in accordance with the criteria established in the local government code and subject to approval by a majority of the votes cast in a plebiscite in the political units directly affected.

[61] Rep. Act No. 7227(1992), sec. 13.

[62] Rep. Act No. 7227(1992), sec. 13 and 17.

[63] 482 Phil. 331 [Per J. Tinga, En Banc].

[64] Id. at 355–356.

[65] G.R. No. 92299, April 19, 1991, 196 SCRA 69 [Per J. Gutierrez, Jr., En Banc].

[66] Id. at 75–80.

[67] CONST. (1987), art. II, sec. 16.