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compliance" demonstrates respondents' defiance of the FFIB's order, despite the *volte face* of the Mayor. This conduct cannot be tolerated.

IN LIGHT OF ALL THE FOREGOING, the petition is *GRANTED*. The Decision of the Court of Appeals is *SET ASIDE*.

SO ORDERED.

Panganiban, C.J. (Chairperson), Ynares-Santiago, Austria-Martinez, and *Chico-Nazario, JJ.*, concur.

THIRD DIVISION

[G.R. No. 163509. December 6, 2006]

PICOP RESOURCES, INC., *petitioner, vs.* **BASE METALS MINERAL RESOURCES CORPORATION, and THE MINES ADJUDICATION BOARD,** *respondents.*

SYLLABUS

1. POLITICAL LAW; NATIONAL ECONOMY AND PATRIMONY; LANDS OF THE PUBLIC DOMAIN; THE POLICY OF MULTIPLE LAND USE IS ENSHRINED IN OUR LAWS; SUSTAINED. — We should state at this juncture that the policy of multiple land use is enshrined in our laws towards the end that the country's natural resources may be rationally explored, developed, utilized and conserved. The Whereas clauses and declaration of policies of PD 705 state: WHEREAS, proper classification, management and utilization of the lands of the public domain to maximize their productivity to meet the demands of our increasing population is urgently needed; WHEREAS, to achieve the above purpose, it is necessary to reassess the multiple uses of forest lands and resources before allowing any utilization thereof to optimize the benefits that can be derived therefrom; x x x Sec. 2. Policies. — The State hereby adopts the following policies: a) The multiple uses of forest lands shall be oriented to the development and

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progress requirements of the country, the advancement of science and technology, and the public welfare; In like manner, RA No. 7942, recognizing the equiponderance between mining and timber rights, gives a mining contractor the right to enter a timber concession and cut timber therein provided that the surface owner or concessionaire shall be properly compensated for any damage done to the property as a consequence of mining operations. The pertinent provisions on auxiliary mining rights state: Sec. 72. *Timber Rights*. — Any provision of law to the contrary notwithstanding, a contractor may be granted a right to cut trees or timber within his mining areas as may be necessary for his mining operations subject to forestry laws, rules and regulations: *Provided*, That if the land covered by the mining area is already covered by existing timber concessions, the volume of timber needed and the manner of cutting and removal thereof shall be determined by the mines regional director, upon consultation with the contractor, the timber concessionaire/ permittee and the Forest Management Bureau of the Department: *Provided, further*, That in case of disagreement between the contractor and the timber concessionaire, the matter shall be submitted to the Secretary whose decision shall be final. The contractor shall perform reforestation work within his mining area in accordance with forestry laws, rules and regulations. x x x Sec. 76. *Entry into Private Lands and Concession Areas*. — Subject to prior notification, holders of mining rights shall not be prevented from entry into private lands and concession areas by surface owners, occupants, or concessionaires when conducting mining operations therein: *Provided*, That any damage done to the property of the surface owner, occupant, or concessionaire as a consequence of such operations shall be properly compensated as may be provided for in the implementing rules and regulations: *Provided, further*, That to guarantee such compensation, the person authorized to conduct mining operation shall, prior thereto, post a bond with the regional director based on the type of properties, the prevailing prices in and around the area where the mining operations are to be conducted, with surety or sureties satisfactory to the regional director.

2. ID.; ID.; ID.; DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR); AGENCY CHARGED TO UNDERTAKE MINING OPERATIONS IN RESERVED LANDS OTHER THAN MINING RESERVATIONS. —

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Sec. 15(b) of DENR Administrative Order (DAO) 96-40 provides that government reservations may be opened for mining applications upon prior written clearance by the government agency having jurisdiction over such reservation. Sec. 6 of RA No. 7942 also provides that mining operations in reserved lands other than mineral reservations may be undertaken by the DENR, subject to certain limitations. It provides: Sec. 6. *Other Reservations.*— Mining operations in reserved lands other than mineral reservations may be undertaken by the Department, subject to limitations as herein provided. In the event that the Department cannot undertake such activities, they may be undertaken by a qualified person in accordance with the rules and regulations promulgated by the Secretary. The right to develop and utilize the minerals found therein shall be awarded by the President under such terms and conditions as recommended by the Director and approved by the Secretary: *Provided*, That the party who undertook the exploration of said reservations shall be given priority. The mineral land so awarded shall be automatically excluded from the reservation during the term of the agreement: *Provided, further*, That the right of the lessee of a valid mining contract existing within the reservation at the time of its establishment shall not be prejudiced or impaired.

3. **ID.; ID.; ID.; MINING OPERATIONS; CONSENT OF EXISTING LICENSEES, NOT REQUIRED; RATIONALE.** — Sec. 18 of RA 7942 allows mining even in timberland or forestry subject to existing rights and reservations. It provides: Sec. 18. *Areas Open to Mining Operations.* — Subject to any existing rights or reservations and prior agreements of all parties, all mineral resources in public or private lands, including timber or forestlands as defined in existing laws, shall be open to mineral agreements or financial or technical assistance agreement applications. Any conflict that may arise under this provision shall be heard and resolved by the panel of arbitrators. Similarly, Sec. 47 of PD 705 permits mining operations in forest lands which include the public forest, the permanent forest or forest reserves, and forest reservations. It states: Sec. 47. *Mining Operations.* — Mining operations in forest lands shall be regulated and conducted with due regard to protection, development and utilization of other surface resources. Location, prospecting, exploration, utilization or exploitation of mineral resources in forest reservations shall

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be governed by mining laws, rules and regulations. No location, prospecting, exploration, utilization, or exploitation of mineral resources inside forest concessions shall be allowed unless proper notice has been served upon the licensees thereof and the prior approval of the Director, secured. x x x Significantly, the above-quoted provision does not require that the consent of existing licensees be obtained but that they be notified before mining activities may be commenced inside forest concessions. DENR Memorandum Order No. 03-98, which provides the guidelines in the issuance of area status and clearance or consent for mining applications pursuant to RA 7942, provides that timber or forest lands, military and other government reservations, forest reservations, forest reserves other than critical watershed forest reserves, and existing DENR Project Areas within timber or forest lands, reservations and reserves, among others, are open to mining applications subject to area status and clearance.

4. **ID.; ID.; ID.; ID.; PRESIDENTIAL WARRANTY; NATURE THEREOF, CONSTRUED.** — The Presidential Warranty cannot be considered a contract distinct from PTLA No. 47 and IFMA No. 35. We agree with the OSG's position that it is merely a collateral undertaking which cannot amplify PICOP's rights under its timber license. Our definitive ruling in *Oposa v. Factoran* that a timber license is not a contract within the purview of the non-impairment clause is edifying. We declared: Needless to say, all licenses may thus be revoked or rescinded by executive action. It is not a contract, property or a property right protected by the due process clause of the Constitution. In *Tan vs. Director of Forestry*, this Court held: "x x x A timber license is an instrument by which the State regulates the utilization and disposition of forest resources to the end that public welfare is promoted. **A timber license is not a contract within the purview of the due process clause; it is only a license or a privilege, which can be validly withdrawn whenever dictated by public interest or public welfare as in this case.** 'A license is merely a permit or privilege to do what otherwise would be unlawful, and is not a contract between the authority, federal, state, or municipal, granting it and the person to whom it is granted; neither is it a property or a property right, nor does it create a vested right; nor is it taxation.' Thus, this Court held that the granting of license does not create irrevocable rights, neither is it property or property rights.

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x x x" We reiterated this pronouncement in *Felipe Ysmael, Jr. & Co., Inc. vs. Deputy Executive Secretary*: "x x x Timber licenses, permits and license agreements are the principal instruments by which the State regulates the utilization and disposition of forest resources to the end that public welfare is promoted. **And it can hardly be gainsaid that they merely evidence a privilege granted by the State to qualified entities, and do not vest in the latter a permanent or irrevocable right to the particular concession area and the forest products therein. They may be validly amended, modified, replaced or rescinded by the Chief Executive when national interests so require.** Thus, they are not deemed contracts within the purview of the due process of law clause." **Since timber licenses are not contracts, the non-impairment clause, which reads:** "SEC. 10. No law impairing the obligation of contracts shall be passed." **cannot be invoked.** The Presidential Warranty cannot, in any manner, be construed as a contractual undertaking assuring PICOP of exclusive possession and enjoyment of its concession areas. Such an interpretation would result in the complete abdication by the State in favor of PICOP of the sovereign power to control and supervise the exploration, development and utilization of the natural resources in the area.

APPEARANCES OF COUNSEL

Quasha Ancheta Peña & Nolasco for petitioner.
Pablo Ayson, Jr. for Base Metals Mineral Resources Corp.
Jose Raulito E. Paras for respondents.

D E C I S I O N

TINGA, *J.*:

PICOP Resources, Inc. (PICOP) assails the Decision[1] of the Court of Appeals dated November 28, 2003 and its

[1] *Rollo*, pp. 86-101; Penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associate Justices Eubulo G. Verzola and Eugenio S. Labitoria.

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Resolution[2] dated May 5, 2004, which respectively denied its petition for review and motion for reconsideration.

The undisputed facts quoted from the appellate court's Decision are as follows:

In 1987, the Central Mindanao Mining and Development Corporation (CMMCI for brevity) entered into a Mines Operating Agreement (Agreement for brevity) with Banahaw Mining and Development Corporation (Banahaw Mining for brevity) whereby the latter agreed to act as Mine Operator for the exploration, development, and eventual commercial operation of CMMCI's eighteen (18) mining claims located in Agusan del Sur.

Pursuant to the terms of the Agreement, Banahaw Mining filed applications for Mining Lease Contracts over the mining claims with the Bureau of Mines. On April 29, 1988, Banahaw Mining was issued a Mines Temporary Permit authorizing it to extract and dispose of precious minerals found within its mining claims. Upon its expiration, the temporary permit was subsequently renewed thrice by the Bureau of Mines, the last being on June 28, 1991.

Since a portion of Banahaw Mining's mining claims was located in petitioner PICOP's logging concession in Agusan del Sur, Banahaw Mining and petitioner PICOP entered into a Memorandum of Agreement, whereby, in mutual recognition of each other's right to the area concerned, petitioner PICOP allowed Banahaw Mining an access/right of way to its mining claims.

In 1991, Banahaw Mining converted its mining claims to applications for Mineral Production Sharing Agreements (MPSA for brevity).

While the MPSA were pending, Banahaw Mining, on December 18, 1996, decided to sell/assign its rights and interests over thirty-seven (37) mining claims in favor of private respondent Base Metals Mineral Resources Corporation (Base Metals for brevity). The transfer included mining claims held by Banahaw Mining in its own right as claim owner, as well as those covered by its mining operating agreement with CMMCI.

Upon being informed of the development, CMMCI, as claim owner, immediately approved the assignment made by Banahaw Mining in

[2] *Id.* 103-106.

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favor of private respondent Base Metals, thereby recognizing private respondent Base Metals as the new operator of its claims.

On March 10, 1997, private respondent Base Metals amended Banahaw Mining's pending MPSA applications with the Bureau of Mines to substitute itself as applicant and to submit additional documents in support of the application. Area clearances from the DENR Regional Director and Superintendent of the Agusan Marsh and Wildlife Sanctuary were submitted, as required.

On October 7, 1997, private respondent Base Metals' amended MPSA applications were published in accordance with the requirements of the Mining Act of 1995.

On November 18, 1997, petitioner PICOP filed with the Mines Geo-Sciences Bureau (MGB), Caraga Regional Office No. XIII an Adverse Claim and/or Opposition to private respondent Base Metals' application on the following grounds:

I. THE APPROVAL OF THE APPLICATION AND ISSUANCE OF THE MPSA OF BASE METALS WILL VIOLATE THE CONSTITUTIONAL MANDATE AGAINST IMPAIRMENT OF OBLIGATION IN A CONTRACT.

II. THE APPROVAL OF THE APPLICATION WILL DEFEAT THE RIGHTS OF THE HEREIN ADVERSE CLAIMANT AND/OR OPPOSITOR.

In its Answer to the Adverse Claim and/or Opposition, private respondent Base Metals alleged that:

a) the Adverse Claim was filed out of time;

b) petitioner PICOP has no rights over the mineral resources on their concession area. PICOP is asserting a privilege which is not protected by the non-impairment clause of the Constitution;

c) the grant of the MPSA will not impair the rights of PICOP nor create confusion, chaos or conflict.

Petitioner PICOP's Reply to the Answer alleged that:

a) the Adverse Claim was filed within the reglementary period;

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b) the grant of MPSA will impair the existing rights of petitioner PICOP;

c) the MOA between PICOP and Banahaw Mining provides for recognition by Banahaw Mining of the Presidential Warranty awarded in favor of PICOP for the exclusive possession and enjoyment of said areas.

As a Rejoinder, private respondent Base Metals stated that:

1. it is seeking the right to extract the mineral resources in the applied areas. It is not applying for any right to the forest resources within the concession areas of PICOP;

2. timber or forest lands are open to Mining Applications;

3. the grant of the MPSA will not violate the so called "presidential fiat";

4. the MPSA application of Base Metals does not require the consent of PICOP; and

5. it signified its willingness to enter into a voluntary agreement with PICOP on the matter of compensation for damages. In the absence of such agreement, the matter will be brought to the Panel of Arbitration in accordance with law.

In refutation thereto, petitioner PICOP alleged in its Rejoinder that:

a) the Adverse Claim filed thru registered mail was sent on time and as prescribed by existing mining laws and rules and regulations;

b) the right sought by private respondent Base Metals is not absolute but is subject to existing rights, such as those which the adverse claimant had, that have to be recognized and respected in a manner provided and prescribed by existing laws as will be expounded fully later;

c) as a general rule, mining applications within timber or forest lands are subject to existing rights as provided in Section 18 of RA 7942 or the Philippine Mining Act of 1995 and it is an admitted fact by the private respondent that petitioner PICOP had forest rights as per Presidential Warranty;

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d) while the Presidential Warranty did not expressly state exclusivity, P.D. 705 strengthened the right of occupation, possession and control over the concession area;

e) the provisions of Section 19 of the Act and Section 15 of [the] IRR expressly require the written consent of the forest right holder, PICOP.

After the submission of their respective position paper[s], the Panel Arbitrator issued an Order dated December 21, 1998, the dispositive portion of which reads as:

> WHEREFORE, premises considered, Mineral Production Sharing Agreement Application Nos. (XIII) 010, 011, 012 of Base Metal Resources Corporation should be set aside.

The disapproval of private respondent Base Metals' MPSA was due to the following reasons:

> Anent the first issue the Panel find (sic) and so hold (sic) that the adverse claim was filed on time, it being mailed on November 19, 1997, at Metro Manila as evidenced by Registry Receipt No. 26714. Under the law (sic) the date of mailing is considered the date of filing.
>
> As to whether or not an MPSA application can be granted on area subject of an IFMA[3] or PTLA[4] which is covered by a Presidential Warranty, the panel believes it can not, unless the grantee consents thereto. Without the grantee's consent, the area is considered closed to mining location (Sec. 19) (b) (No. 2), DAO No. 96-40). The Panel believe (sic) that mining location in forest or timberland is allowed only if such forest or timberland is not leased by the government to a qualified person or entity. If it is leased the consent of the lessor is necessary, in addition to the area clearance to be issued by the agency concerned before it is subjected to mining operation.
>
> Plantation is considered closed to mining locations because it is off tangent to mining. Both are extremes. They can not exist at the same time. The other must necessarily stop before the other operate.

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[3] Integrated Forest Management Agreement.

[4] Plantation Timber License Agreement.

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On the other hand, Base Metals Mineral Resources Corporation can not insist the MPSA application as assignee of Banahaw. PICOP did not consent to the assignment as embodied in the agreement. Neither did it ratify the Deed of Assignment. Accordingly, it has no force and effect. Thus, for lack of consent, the MPSA must fall.

On January 11, 1999, private respondent Base Metals filed a Notice of Appeal with public respondent MAB and alleged in its Appeal Memorandum the following arguments:

1. THE CONSENT OF PICOP IS NOT NECESSARY FOR THE APPROVAL OF BASE METALS' MPSA APPLICATION.
2. EVEN ASSUMING SUCH CONSENT IS NECESSARY, PICOP HAD CONSENTED TO BASE METALS' MPSA APPLICATION.

In Answer thereto, petitioner PICOP alleged that:

1. Consent is necessary for the approval of private respondent's MPSA application;
2. Provisions of Memorandum Order No. 98-03 and IFMA 35 are not applicable to the instant case;
3. Provisions of PD 705[5] connotes exclusivity for timber license holders; and
4. MOA between private respondent's assignor and adverse claimant provided for the recognition of the latter's rightful claim over the disputed areas.

Private respondent Base Metals claimed in its Reply that:

1. The withholding of consent by PICOP derogates the State's power to supervise and control the exploration, utilization and development of all natural resources;
2. Memorandum Order No, 98-03, not being a statute but a mere guideline imposed by the Secretary of the Department of Environment and Natural Resources

[5] Revising Presidential Decree No. 389, Otherwise Known as the Forestry Reform Code of the Philippines.

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(DENR), can be applied retroactively to MPSA applications which have not yet been finally resolved;

3. Even assuming that the consent of adverse claimant is necessary for the approval of Base Metals' application (which is denied), such consent had already been given; and

4. The Memorandum of Agreement between adverse claimant and Banahaw Mining proves that the Agusan-Surigao area had been used in the past both for logging and mining operations.

After the filing of petitioner PICOP's Reply Memorandum, public respondent rendered the assailed decision setting aside the Panel Arbitrator's order. Accordingly, private respondent Base Metals' MPSA's were reinstated and given due course subject to compliance with the pertinent requirements of the existing rules and regulations.[6]

The Court of Appeals upheld the decision of the MAB, ruling that the Presidential Warranty of September 25, 1968 issued by then President Ferdinand E. Marcos merely confirmed the timber license granted to PICOP and warranted the latter's peaceful and adequate possession and enjoyment of its concession areas. It was only given upon the request of the Board of Investments to establish the boundaries of PICOP's timber license agreement. The Presidential Warranty did not convert PICOP's timber license into a contract because it did not create any obligation on the part of the government in favor of PICOP. Thus, the non-impairment clause finds no application.

Neither did the Presidential Warranty grant PICOP the exclusive possession, occupation and exploration of the concession areas covered. If that were so, the government would have effectively surrendered its police power to control and supervise the exploration, development and utilization of the country's natural resources.

On PICOP's contention that its consent is necessary for the grant of Base Metals' MPSA, the appellate court ruled that the

[6] *Rollo*, pp. 87-92.

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amendment to PTLA No. 47 refers to the grant of gratuitous permits, which the MPSA subject of this case is not. Further, the amendment pertains to the cutting and extraction of timber for mining purposes and not to the act of mining itself, the intention of the amendment being to protect the timber found in PICOP's concession areas.

The Court of Appeals noted that the reinstatement of the MPSA does not *ipso facto* revoke, amend, rescind or impair PICOP's timber license. Base Metals still has to comply with the requirements for the grant of a mining permit. The fact, however, that Base Metals had already secured the necessary Area Status and Clearance from the DENR means that the areas applied for are not closed to mining operations.

In its Resolution[7] dated May 5, 2004, the appellate court denied PICOP's Motion for Reconsideration. It ruled that PICOP failed to substantiate its allegation that the area applied for is a forest reserve and is therefore closed to mining operations because it did not identify the particular law which set aside the contested area as one where mining is prohibited pursuant to applicable laws.

The case is now before us for review.

In its Memorandum[8] dated April 6, 2005, PICOP presents the following issues: (1) the 2,756 hectares subject of Base Metals' MPSA are closed to mining operations except upon PICOP's written consent pursuant to existing laws, rules and regulations and by virtue of the Presidential Warranty; (2) its Presidential Warranty is protected by the non-impairment clause of the Constitution; and (3) it does not raise new issues in its petition.

PICOP asserts that its concession areas are closed to mining operations as these are within the Agusan-Surigao-Davao forest reserve established under Proclamation No. 369 of then Gov. Gen. Dwight Davis. The area is allegedly also part of permanent

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[7] *Supra*, note 2.

[8] *Id.* at 533-611.

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forest established under Republic Act No. 3092 (RA 3092),[9] and overlaps the wilderness area where mining applications are expressly prohibited under RA 7586.[10] Hence, the area is closed to mining operations under Sec. 19(f) of RA 7942.[11]

PICOP further asserts that to allow mining over a forest or forest reserve would allegedly be tantamount to changing the classification of the land from forest to mineral land in violation of Sec. 4, Art. XII of the Constitution and Sec. 1 of RA 3092.

According to PICOP, in 1962 and 1963, blocks A, B and C within the Agusan-Surigao-Davao forest reserve under Proclamation No. 369 were surveyed as permanent forest blocks in accordance with RA 3092. These areas cover PICOP's PTLA No. 47, part of which later became IFMA No. 35. In turn, the areas set aside as wilderness as in PTLA No. 47 became the initial components of the NIPAS under Sec. 5(a) of RA 7586. When RA 7942 was signed into law, the areas covered by the NIPAS were expressly determined as areas where mineral agreements or financial or technical assistance agreement applications shall not be allowed. PICOP concludes that since there is no evidence that the permanent forest areas within PTLA No. 47 and IFMA No. 35 have been set aside for mining purposes, the MAB and the Court of Appeals gravely erred in reinstating Base Metals' MPSA and, in effect, allowing mining exploration and mining-related activities in the protected areas.

PICOP further argues that under DENR Administrative Order (DAO) No. 96-40 implementing RA 7942, an exploration permit must be secured before mining operations in government reservations may be undertaken. There being no exploration permit issued to Banahaw Mining or appended to its MPSA, the MAB and the Court of Appeals should not have reinstated its application.

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[9] An Act to Amend Certain Sections of the Revised Administrative Code and for Other Purposes.

[10] The National Integrated Protected Areas System Act of 1992 (NIPAS Law).

[11] The Philippine Mining Act of 1995.

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PICOP brings to the Court's attention the case of *PICOP Resources, Inc. v. Hon. Heherson T. Alvarez,*[12] wherein the Court of Appeals ruled that the Presidential Warranty issued to PICOP for its TLA No. 43 dated July 29, 1969, a TLA distinct from PTLA No. 47 involved in this case, is a valid contract involving mutual prestations on the part of the Government and PICOP.

The Presidential Warranty in this case is allegedly not a mere confirmation of PICOP's timber license but a commitment on the part of the Government that in consideration of PICOP's investment in the wood-processing business, the Government will assure the availability of the supply of raw materials at levels adequate to meet projected utilization requirements. The guarantee that PICOP will have peaceful and adequate possession and enjoyment of its concession areas is impaired by the reinstatement of Base Metals' MPSA in that the latter's mining activities *underneath* the area in dispute will surely undermine PICOP's supply of raw materials *on the surface*.

Base Metals' obtention of area status and clearance from the DENR is allegedly immaterial, even misleading. The findings of the DENR Regional Director and the superintendent of the Agusan Marsh and Wildlife Sanctuary are allegedly misplaced because the area applied for is not inside the Agusan Marsh but in a permanent forest. Moreover, the remarks in the area status itself should have been considered by the MAB and the appellate court as they point out that the application encroaches on surveyed timberland projects declared as permanent forests/forest reserves.

Finally, PICOP insists that it has always maintained that the forest areas of PTLA No. 47 and IFMA No. 35 are closed to mining operations. The grounds relied upon in this petition are thus not new issues but merely amplifications, clarifications and detailed expositions of the relevant constitutional provisions and statutes regulating the use and preservation of forest reserves, permanent forest, and protected wilderness areas given that the areas subject of the MPSA are within and overlap PICOP's

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[12] C.A.-G.R. Sp. No. 76605.

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PTLA No. 47 and IFMA No. 35 which have been classified and blocked not only as permanent forest but also as protected wilderness area forming an integral part of the Agusan-Davao-Surigao Forest Reserve.

In its undated Memorandum,[13] Base Metals contends that PICOP never made any reference to land classification or the exclusion of the contested area from exploration and mining activities except in the motion for reconsideration it filed with the Court of Appeals. PICOP's object to the MPSA was allegedly based exclusively on the ground that the application, if allowed to proceed, would constitute a violation of the constitutional proscription against impairment of the obligation of contracts. It was upon this issue that the appellate court hinged its Decision in favor of Base Metals, ruling that the Presidential Warranty merely confirmed PICOP's timber license. The instant petition, which raises new issues and invokes RA 3092 and RA 7586, is an unwarranted departure from the settled rule that only issues raised in the proceedings *a quo* may be elevated on appeal.

Base Metals notes that RA 7586 expressly requires that there be a prior presidential decree, presidential proclamation, or executive order issued by the President of the Philippines, expressly proclaiming, designating, and setting aside the wilderness area before the same may be considered part of the NIPAS as a protected area. Allegedly, PICOP has not shown that such an express presidential proclamation exists setting aside the subject area as a forest reserve, and excluding the same from the commerce of man.

PICOP also allegedly misquoted Sec. 19 of RA 7942 by placing a comma between the words "watershed" and "forest" thereby giving an altogether different and misleading interpretation of the cited provision. The cited provision, in fact, states that for an area to be closed to mining applications, the same must be a watershed forest reserve duly identified and proclaimed by the President of the Philippines. In this case, no presidential proclamation exists setting aside the contested area as such.

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[13] *Rollo*, pp. 613-645.

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Moreover, the Memorandum of Agreement between Banahaw Mining and PICOP is allegedly a clear and tacit recognition by the latter that the area is open and available for mining activities and that Banahaw Mining has a right to enter and explore the areas covered by its mining claims.

Base Metals reiterates that the non-impairment clause is a limit on the exercise of legislative power and not of judicial or quasi-judicial power. The Constitution prohibits the passage of a law which enlarges, abridges or in any manner changes the intention of the contracting parties. The decision of the MAB and the Court of Appeals are not legislative acts within the purview of the constitutional proscription. Besides, the Presidential Warranty is not a contract that may be impaired by the reinstatement of the MPSA. It is a mere confirmation of PICOP's timber license and draws its life from PTLA No. 47. Furthermore, PICOP fails to show how the reinstatement of the MPSA will impair its timber license.

Following the regalian doctrine, Base Metals avers that the State may opt to enter into contractual arrangements for the exploration, development, and extraction of minerals even it the same should mean amending, revising, or even revoking PICOP's timber license. To require the State to secure PICOP's prior consent before it can enter into such contracts allegedly constitutes an undue delegation of sovereign power.

Base Metals further notes that Presidential Decree No. 705 (PD 705), under which PTLA No. 47, IFMA No. 35 and the Presidential Warranty were issued, requires notice to PICOP rather than consent before any mining activity can be commenced in the latter's concession areas.

The Office of the Solicitor General (OSG) filed a Memorandum[14] dated April 21, 2005 on behalf of the MAB, contending that PICOP's attempt to raise new issues, such as its argument that the contested area is classified as a permanent forest and hence, closed to mining activities, is offensive to due process and should not be allowed.

[14] *Id.* at 651-693.

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The OSG argues that a timber license is not a contract within the purview of the due process and non-impairment clauses. The Presidential Warranty merely guarantees PICOP's tenure over its concession area and covers only the right to cut, collect and remove timber therein. It is a mere collateral undertaking and cannot amplify PICOP's rights under its PTLA No. 47 and IFMA No. 35. To hold that the Presidential Warranty is a contract separate from PICOP's timber license effectively gives the latter PICOP an exclusive, perpetual and irrevocable right over its concession area and impairs the State's sovereign exercise of its power over the exploration, development, and utilization of natural resources.

The case of *PICOP Resources, Inc. v. Hon. Heherson T. Alvarez, supra,* cited by PICOP cannot be relied upon to buttress the latter's claim that a presidential warranty is a valid and subsisting contract between PICOP and the Government because the decision of the appellate court in that case is still pending review before the Court's Second Division.

The OSG further asserts that mining operations are legally permissible over PICOP's concession areas. Allegedly, what is closed to mining applications under RA 7942 are areas proclaimed as watershed forest reserves. The law does not totally prohibit mining operations over forest reserves. On the contrary, Sec. 18 of RA 7942 permits mining over forest lands subject to existing rights and reservations, and PD 705 allows mining over forest lands and forest reservations subject to State regulation and mining laws. Sec. 19(a) of RA 7942 also provides that mineral activities may be allowed even over military and other government reservations as long as there is a prior written clearance by the government agency concerned.

The area status clearances obtained by Base Metals also allegedly show that the area covered by the MPSA is within timberland, unclassified public forest, and alienable and disposable land. Moreover, PICOP allegedly chose to cite portions of *Apex Mining Corporation v. Garcia,*[15] to make it appear that

[15] G.R. No. 92605, July 16, 1991, 199 SCRA 278.

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the Court in that case ruled that mining is absolutely prohibited in the Agusan-Surigao-Davao Forest Reserve. In fact, the Court held that the area is not open to mining location because the proper procedure is to file an application for a permit to prospect with the Bureau of Forest and Development.

In addition, PICOP's claimed wilderness area has not been designated as a protected area that would operate to bar mining operations therein. PICOP failed to prove that the alleged wilderness area has been designated as an initial component of the NIPAS pursuant to a law, presidential decree, presidential proclamation or executive order. Hence, it cannot correctly claim that the same falls within the coverage of the restrictive provisions of RA No. 7586.

The OSG points out that the Administrative Code of 1917 which RA 3092[16] amended has been completely repealed by the Administrative Code of 1978. Sec. 4, Art. XII of the 1987 Constitution, on the other hand, provides that Congress shall determine the specific limits of forest lands and national parks, marking clearly their boundaries on the ground. Once this is done, the area thus covered by said forest lands and national parks may not be expanded or reduced except also by congressional legislation. Since Congress has yet to enact a law determining the specific limits of the forest lands covered by Proclamation No. 369[17] and marking clearly its boundaries on the ground, there can be no occasion that could give rise to a violation of the constitutional provision.

Moreover, Clauses 10 and 14 of PICOP's IFMA No. 35 specifically provides that the area covered by the agreement is open for mining if public interest so requires. Likewise, PTLA No. 47 provides that the area covered by the license agreement may be opened for mining purposes.

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[16] An Act to Amend Certain Sections of the Revised Administrative Code and for Other Purposes.

[17] Entitled "An Act Instituting a New System of Mineral Resources Exploration Development, Utilization, and Conservation, otherwise known as the "Philippine Mining Act of 1995."

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Finally, the OSG maintains that pursuant to the State's policy of multiple land use, R.A. No. 7942[18] provides for appropriate measures for a harmonized utilization of the forest resources and compensation for whatever damage done to the property of the surface owner or concessionaire as a consequence of mining operations. Multiple land use is best demonstrated by the Memorandum of Agreement between PICOP and Banahaw Mining.

First, the procedural question of whether PICOP is raising new issues in the instant petition. It is the contention of the OSG and Base Metals that PICOP's argument that the area covered by the MPSA is classified as permanent forest and therefore closed to mining activities was raised for the first time in PICOP's motion for reconsideration with the Court of Appeals.

Our own perusal of the records of this case reveals that this is not entirely true.

In its Adverse Claim and/or Opposition[19] dated November 19, 1997 filed with the MGB Panel of Arbitrators, PICOP already raised the argument that the area applied for by Base Metals is classified as a permanent forest determined to be needed for forest purposes pursuant to par. 6, Sec. 3 of PD No. 705, as amended. PICOP then proceeded to claim that the area should remain forest land if the purpose of the presidential fiat were to be followed. It stated:

> Technically, the areas applied for by Base Metals are classified as a permanent forest being land of the public domain determined to be needed for forest purposes (Paragraph 6, Section 3 of Presidential Decree No. 705, as amended) If these areas then are classified and determined to be needed for forest purpose then they should be developed and should remain as forest lands. Identifying, delineating and declaring them for other use or uses defeats the

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[18] Entitled "Amending Proclamation No. 299, dated December 21, 1951, which Reserves a Parcel of the Public Domain Situated in Davao City for Forest Station Site Purposes."

[19] MGB Records I, pp. 1-11.

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purpose of the aforecited presidential fiats. Again, if these areas would be delineated from Oppositor's forest concession, the forest therein would be destroyed and be lost beyond recovery.[20]

Base Metals met this argument head on in its Answer[21] dated December 1, 1997, in which it contended that PD No. 705 does not exclude mining operations in forest lands but merely requires that there be proper notice to the licensees of the area.

Again in its Petition[22] dated January 25, 2003 assailing the reinstatement of Base Metals' MPSA, PICOP argued that RA No. 7942 expressly prohibits mining operations in plantation areas such as PICOP's concession area. Hence, it posited that the MGB Panel of Arbitrators did not commit grave abuse of discretion when it ruled that without PICOP's consent, the area is closed to mining location.

It is true though that PICOP expounded on the applicability of RA No. 3092, RA 7586, and RA 7942 *for the first time* in its motion for reconsideration of the appellate court's Decision. It was only in its motion for reconsideration that PICOP argued that the area covered by PTLA No. 47 and IFMA No. 35 are permanent forest lands covered by RA No. 7586 which cannot be entered for mining purposes, and shall remain indefinitely as such for forest uses and cannot be excluded or diverted for other uses except after reclassification through a law enacted by Congress.

Even so, we hold that that the so-called *new issues* raised by PICOP are well within the issues framed by the parties in the proceedings *a quo*. Thus, they are not, strictly speaking, being raised for the first time on appeal.[23] Besides, Base Metals and the OSG have been given ample opportunity, by way of the pleadings filed with this Court, to respond to PICOP's arguments. It is in the best interest of justice that we settle the crucial

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[20] *Id.* at 4.

[21] *Id.* at 60-67.

[22] CA Records, pp. 10-52.

[23] *Lim v. Queensland Tokyo Commodities, Inc.*, 424 Phil. 35 (2002).

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question of whether the concession area in dispute is open to mining activities.

We should state at this juncture that the policy of multiple land use is enshrined in our laws towards the end that the country's natural resources may be rationally explored, developed, utilized and conserved. The Whereas clauses and declaration of policies of PD No. 705 state:

> WHEREAS, proper classification, management and utilization of the lands of the public domain to maximize their productivity to meet the demands of our increasing population is urgently needed;
>
> WHEREAS, to achieve the above purpose, it is necessary to reassess the multiple uses of forest lands and resources before allowing any utilization thereof to optimize the benefits that can be derived therefrom;
>
> x x x x x x x x x
>
> Sec. 2. Policies.— The State hereby adopts the following policies:
>
> a) The multiple uses of forest lands shall be oriented to the development and progress requirements of the country, the advancement of science and technology, and the public welfare;

In like manner, RA No. 7942, recognizing the equiponderance between mining and timber rights, gives a mining contractor the right to enter a timber concession and cut timber therein provided that the surface owner or concessionaire shall be properly compensated for any damage done to the property as a consequence of mining operations. The pertinent provisions on auxiliary mining rights state:

> Sec. 72. *Timber Rights.*— Any provision of law to the contrary notwithstanding, a contractor may be granted a right to cut trees or timber within his mining areas as may be necessary for his mining operations subject to forestry laws, rules and regulations: *Provided,* That if the land covered by the mining area is already covered by existing timber concessions, the volume of timber needed and the manner of cutting and removal thereof shall be determined by the mines regional director, upon consultation with the contractor, the timber concessionair/permittee and the Forest Management Bureau

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of the Department: *Provided, further,* That in case of disagreement between the contractor and the timber concessionaire, the matter shall be submitted to the Secretary whose decision shall be final. The contractor shall perform reforestation work within his mining area in accordance with forestry laws, rules and regulations.

x x x x x x x x x

Sec. 76. *Entry into Private Lands and Concession Areas.*— Subject to prior notification, holders of mining rights shall not be prevented from entry into private lands and concession areas by surface owners, occupants, or concessionaires when conducting mining operations therein: *Provided,* That any damage done to the property of the surface owner, occupant, or concessionaire as a consequence of such operations shall be properly compensated as may be provided for in the implementing rules and regulations: *Provided, further, That to guarantee such compensation,* the person authorized to conduct mining operation shall, prior thereto, post a bond with the regional director based on the type of properties, the prevailing prices in and around the area where the mining operations are to be conducted, with surety or sureties satisfactory to the regional director.

With the foregoing predicates, we shall now proceed to analyze PICOP's averments.

PICOP contends that its concession area is within the Agusan-Surigao-Davao Forest Reserve established under Proclamation No. 369 and is closed to mining application citing several paragraphs of Sec. 19 of RA No. 7942.

The cited provision states:

Sec. 19. *Areas Closed to Mining Applications.*—Mineral agreement or financial or technical assistance agreement applications shall not be allowed:

(a) In military and other government reservations, except upon prior written clearance by the government agency concerned;

x x x x x x x x x

(d) In areas expressly prohibited by law;

x x x x x x x x x

(f) Old growth or virgin forests, **proclaimed watershed forest reserves, wilderness areas,** mangrove forests, mossy forests, national parks, provincial/municipal forests, parks, greenbelts, game

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refuge and bird sanctuaries as defined by law in areas expressly prohibited under the National Integrated Protected Areas System (NIPAS) under Republic Act No. 7586, Department Administrative Order No. 25, series of 1992 and other laws. [emphasis supplied]

We analyzed each of the categories under which PICOP claims that its concession area is closed to mining activities and conclude that PICOP's contention must fail.

Firstly, assuming that the area covered by Base Metals' MPSA is a government reservation, defined as proclaimed reserved lands for specific purposes other than mineral reservations,[24] such does not necessarily preclude mining activities in the area. Sec. 15(b) of DENR Administrative Order (DAO) 96-40 provides that government reservations may be opened for mining applications upon prior written clearance by the government agency having jurisdiction over such reservation.

Sec. 6 of RA No. 7942 also provides that mining operations in reserved lands other than mineral reservations may be undertaken by the DENR, subject to certain limitations. It provides:

Sec. 6. *Other Reservations.*— Mining operations in reserved lands other than mineral reservations may be undertaken by the Department, subject to limitations as herein provided. In the event that the Department cannot undertake such activities, they may be undertaken by a qualified person in accordance with the rules and regulations promulgated by the Secretary. The right to develop and utilize the minerals found therein shall be awarded by the President under such terms and conditions as recommended by the Director and approved by the Secretary: *Provided,* That the party who undertook the exploration of said reservations shall be given priority. The mineral land so awarded shall be automatically excluded from the reservation during the term of the agreement: *Provided, further,* That the right of the lessee of a valid mining contract existing within the reservation at the time of its establishment shall not be prejudiced or impaired.

Secondly, RA No. 7942 does not disallow mining applications in all forest reserves but only those *proclaimed as watershed*

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[24] Department of Environment and Natural Resources Administrative Order No. 96-40 (1997), Chapter 1, Sec. 5.

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forest reserves. There is no evidence in this case that the area covered by Base Metals' MPSA has been proclaimed as watershed forest reserves.

Even granting that the area covered by the MPSA is part of the Agusan-Davao-Surigao Forest Reserve, such does not necessarily signify that the area is absolutely closed to mining activities. Contrary to PICOP's obvious misreading of our decision in *Apex Mining Co., Inc. v. Garcia, supra,* to the effect that mineral agreements are not allowed in the forest reserve established under Proclamation 369, the Court in that case actually ruled that pursuant to PD No. 463 as amended by PD No. 1385, one can acquire mining rights within forest reserves, such as the Agusan-Davao-Surigao Forest Reserve, by initially applying for a permit to prospect with the Bureau of Forest and Development and subsequently for a permit to explore with the Bureau of Mines and Geosciences.

Moreover, Sec. 18 of RA 7942 allows mining even in timberland or forestry subject to existing rights and reservations. It provides:

> Sec. 18. *Areas Open to Mining Operations.*— Subject to any existing rights or reservations and prior agreements of all parties, all mineral resources in public or private lands, including timber or forestlands as defined in existing laws, shall be open to mineral agreements or financial or technical assistance agreement applications. Any conflict that may arise under this provision shall be heard and resolved by the panel of arbitrators.

Similarly, Sec. 47 of PD 705 permits mining operations in forest lands which include the public forest, the permanent forest or forest reserves, and forest reservations.[25] It states:

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[25] Presidential Decree No. 705 (1975) SECTION 3 (a). Public forest is the mass of lands of the public domain which has not been the subject of the present system of classification for the determination of which lands are needed for forest purposes and which are not

(b) Permanent forest or forest reserves refer to those lands of the public domain which have been the subject of the present system of classification and determined to be needed for forest purposes

x x x x x x x x x

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Sec. 47. *Mining Operations.*— Mining operations in forest lands shall be regulated and conducted with due regard to protection, development and utilization of other surface resources. Location, prospecting, exploration, utilization or exploitation of mineral resources in forest reservations shall be governed by mining laws, rules and regulations. No location, prospecting, exploration, utilization, or exploitation of mineral resources inside forest concessions shall be allowed unless proper notice has been served upon the licensees thereof and the prior approval of the Director, secured.

x x x x x x x x x

Significantly, the above-quoted provision does not require that the consent of existing licensees be obtained but that they be notified before mining activities may be commenced inside forest concessions.

DENR Memorandum Order No. 03-98, which provides the guidelines in the issuance of area status and clearance or consent for mining applications pursuant to RA No. 7942, provides that timber or forest lands, military and other government reservations, forest reservations, forest reserves other than critical watershed forest reserves, and existing DENR Project Areas within timber or forest lands, reservations and reserves, among others, are open to mining applications subject to area status and clearance.

To this end, area status clearances or land status certifications have been issued to Base Metals relative to its mining right application, to wit:

II. MPSA No. 010

1. Portion colored green is the area covered by the aforestated Timberland Project No. 31-E, Block A and Project No. 59-C, Block A, L.C. Map No. 2466 certified as such on June 30, 1961; and

2. Shaded brown represent CADC claim.[26]

(g) Forest reservations refer to forest lands which have been reserved by the President of the Philippine for any specific purpose or purposes.

[26] MGB Records I, p. 22.

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III. MPSA No. 011

1. The area applied covers the Timberland, portion of Project No. 31-E, Block-E, L.C. Map No. 2468 and Project No. 36-A Block II, Alienable and Disposable Land, L.C. Map No. 1822, certified as such on June 30, 1961 and January 1, 1955, respectively;

2. The green shade is the remaining portion of Timber Land Project;

3. The portion colored brown is an applied and CADC areas;

4. Red shade denotes alienable and disposable land.[27]

IV. MPSA No. 012

Respectfully returned herewith is the folder of Base Metals Mineral Resources Corporation, applied under Mineral Production Sharing Agreement (MPSA (XIII) 012), referred to this office per memorandum dated August 5, 1997 for Land status certification and the findings based on available references file this office, the site is within the unclassified Public Forest of the LGU, Rosario, Agusan del Sur. The shaded portion is the wilderness area of PICOP Resources Incorporated (PRI), Timber License Agreement.[28]

V. MPSA No. 013

1. The area status shaded green falls within Timber Land, portion of Project No. 31-E, Block-A, Project No. 59-C, Block-A, L.C. Map No. 2468 certified as such on June 30, 1961;

2. Colored brown denotes a portion claimed as CADC areas;

3. Violet shade represent a part of reforestation project of PRI concession; and

4. The yellow color is identical to unclassified Public Forest of said LGU and the area inclosed in Red is the wilderness area of PICOP Resources, Inc. (PRI), Timber License Agreement.[29]

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[27] *Id.*, at 21.

[28] *Id.* at 20.

[29] *Id.* at 19.

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Thirdly, PICOP failed to present any evidence that the area covered by the MPSA is a protected wilderness area designated as an initial component of the NIPAS pursuant to a law, presidential decree, presidential proclamation or executive order as required by RA 7586.

Sec. 5(a) of RA No. 7586 provides:

> Sec. 5. *Establishment and Extent of the System.*— The establishment and operationalization of the System shall involve the following:
>
> (a) All areas or islands in the Philippines **proclaimed, designated or set aside, pursuant to a law, presidential decree, presidential proclamation or executive order as** national park, game refuge, bird and wildlife sanctuary, **wilderness area**, strict nature reserve, watershed, mangrove reserve, fish sanctuary, natural and historical landmark, protected and managed landscape/seascape as well as identified virgin forests before the effectivity of this Act are hereby designated as initial components of the System. The initial components of the System shall be governed by existing laws, rules and regulations, *not inconsistent with this* Act. [Emphasis supplied]

Although the above-cited area status and clearances, particularly those pertaining to MPSA Nos. 012 and 013, state that portions thereof are within the wilderness area of PICOP, there is no showing that this supposed wilderness area has been proclaimed, designated or set aside as such, pursuant to a law, presidential decree, presidential proclamation or executive order. It should be emphasized that it is only when this area has been so designated that Sec. 20 of RA 7586, which prohibits mineral locating within protected areas, becomes operational.

From the foregoing, there is clearly no merit to PICOP's contention that the area covered by Base Metals' MPSA is, by law, closed to mining activities.

Finally, we do not subscribe to PICOP's argument that the Presidential Warranty dated September 25, 1968 is a contract protected by the non-impairment clause of the 1987 Constitution.

An examination of the Presidential Warranty at once reveals that it simply reassures PICOP of the government's commitment

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to uphold the terms and conditions of its timber license and guarantees PICOP's peaceful and adequate possession and enjoyment of the areas which are the basic sources of raw materials for its wood processing complex. The warranty covers only the right to cut, collect, and remove timber in its concession area, and does not extend to the utilization of other resources, such as mineral resources, occurring within the concession.

The Presidential Warranty cannot be considered a contract distinct from PTLA No. 47 and IFMA No. 35. We agree with the OSG's position that it is merely a collateral undertaking which cannot amplify PICOP's rights under its timber license. Our definitive ruling in *Oposa v. Factoran*[30] that a timber license is not a contract within the purview of the non-impairment clause is edifying. We declared:

Needless to say, all licenses may thus be revoked or rescinded by executive action. It is not a contract, property or a property right protected by the due process clause of the Constitution. In *Tan vs. Director of Forestry,* this Court held:

> "x x x A timber license is an instrument by which the State regulates the utilization and disposition of forest resources to the end that public welfare is promoted. **A timber license is not a contract within the purview of the due process clause; it is only a license or a privilege, which can be validly withdrawn whenever dictated by public interest or public welfare as in this case.**
>
> 'A license is merely a permit or privilege to do what otherwise would be unlawful, and is not a contract between the authority, federal, state, or municipal, granting it and the person to whom it is granted; neither is it a property or a property right, nor does it create a vested right; nor is it taxation' (37 C.J. 168). Thus, this Court held that the granting of license does not create irrevocable rights, neither is it property or property rights (*People vs. Ong Tin*, 54 O.G. 7576). x x x"

We reiterated this pronouncement in *Felipe Ysmael, Jr. & Co., Inc. vs. Deputy Executive Secretary:*

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[30] G.R. No. 101083, July 30, 1993, 224 SCRA 792.

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> "x x x Timber licenses, permits and license agreements are the principal instruments by which the State regulates the utilization and disposition of forest resources to the end that public welfare is promoted. **And it can hardly be gainsaid that they merely evidence a privilege granted by the State to qualified entities, and do not vest in the latter a permanent or irrevocable right to the particular concession area and the forest products therein. They may be validly amended, modified, replaced or rescinded by the Chief Executive when national interests so require.** Thus, they are not deemed contracts within the purview of the due process of law clause [*See* Sections 3(ee) and 20 of Pres. Decree No. 705, as amended. *Also, Tan v. Director of Forestry*, G.R. No. L-24548, October 27, 1983, 125 SCRA 302]."

Since timber licenses are not contracts, the non-impairment clause, which reads:

"Sec. 10. No law impairing the obligation of contracts shall be passed."

cannot be invoked.[31] [emphasis supplied]

The Presidential Warranty cannot, in any manner, be construed as a contractual undertaking assuring PICOP of exclusive possession and enjoyment of its concession areas. Such an interpretation would result in the complete abdication by the State in favor of PICOP of the sovereign power to control and supervise the exploration, development and utilization of the natural resources in the area.

In closing, we should lay emphasis on the fact that the reinstatement of Base Metals' MPSA does not automatically result in its approval. Base Metals still has to comply with the requirements outlined in DAO 96-40, including the publication/posting/radio announcement of its mineral agreement application.

IN VIEW OF THE FOREGOING, the instant petition is *DENIED*. The Decision of the Court of Appeals November 28, 2003 is *AFFIRMED*. No pronouncement as to costs.

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[31] *Id.*, at 811-812.

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SO ORDERED.

Quisumbing (Chairperson), Carpio, Carpio Morales, and *Velasco, Jr., JJ.,* concur.

THIRD DIVISION

[G.R. No. 164575. December 6, 2006]

ROBERT P. WA-ACON, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; MALVERSATION; ELEMENTS. — The elements to constitute malversation under Article 217 of the Revised Penal Code are as follows: The elements common to all acts of malversation — under Article 217 are: (a) that the offender be a public officer; (b) that he had custody or control of funds or property by reason of the duties of his office; (c) these funds were public funds or property for which he was accountable; and (d) that he appropriated, took, misappropriated or consented or through abandonment or negligence, permitted another person to take them.

2. ID.; ID.; WHEN COMMITTED BY PUBLIC OFFICER; PROOF OF ACTUAL APPROPRIATION, NOT REQUIRED; EXPLAINED. — Article 217, as amended by Republic Act 1060, no longer requires proof by the State that the accused actually appropriated, took, or misappropriated public funds or property. Instead, a presumption, though disputable and rebuttable, was installed that upon demand by any duly authorized officer, the failure of a public officer to have duly forthcoming any public funds or property — with which said officer is accountable — should be *prima facie* evidence that he had put such missing funds or properties to personal use. When these circumstances are present, a "presumption of law" arises that there was malversation of public funds or properties as decreed