

Palace rules out nationwide state of calamity for El Niño

PRESIDENT Ferdinand R. Marcos, Jr. said on Monday that the government does not see the need to declare a state of calamity nationwide for El Niño, and expressed a preference for more focused local declarations.

Provinces are affected by the drought-causing weather to varying degrees, Mr. Marcos noted.

"The problem is different in every area. It can't be a shotgun, a one-size-fits-all approach," he told reporters in Bacolod City, as quoted in a transcript provided by the Palace.

"So that's the way we are handling the local states of calamity that the local governments have declared," he added.

At least 18 cities and municipalities have declared states of calamity due to El Niño, which brings about dry spells and droughts, according to the National Disaster Risk Reduction and Management Council.

Agricultural damage caused by El Niño has risen to P2.63 billion, while the government has handed out assistance worth P1.1

billion, the Department of Agriculture has said.

The number of El Niño-affected provinces could hit 80 by the end of April, with the dry spell's effects possibly lasting until June, according to the government weather service.

El Niño has triggered class suspensions in many areas, especially in the Western Visayas, due to extreme heat. — **Kyle Aristophere T. Atienza**



DENR set to cancel 3,000 water rights

THE Department of Environment and Natural Resources (DENR) said it expects to cancel 3,000 grants of water rights due to non-use, and redistribute them to new grantees.

"There are many water rights grantees that do not use the water that was granted to them," Environment Undersecretary Carlos Primo C. David told reporters on the sidelines of Israel-Philippines Water technology innovations forum last week.

Water rights are granted by the government to private and government entities.

The DENR did not discuss the combined water volume these rights cancellations would free up. It did say that the cancella-

tions will take place within the year.

"Once we cancel them, we are opening up the use of that water (to others). Because you cannot apply for a right when someone has it," Mr. David said.

Meanwhile, Mr. David said the DENR is set to meet with the water regulator to discuss the water allocation for Metro Manila from the National Water Resources Board.

"For Metro Manila, I am in charge of allocating water for the different users of Angat, and the users there are MWSS for Metro Manila, and Bulacan (province) and both have increased their demand," Mr. David said.

For April and May, irrigation water will be fully allocated, but

the water allocation for Metro Manila remains under study.

Metro Manila's demand has increased by 0.5 cubic meters per second, Mr. David said.

On Monday, the water level in Angat Dam declined to 196.50 meters from 196.82 meters on Sunday, according to the government weather service, known as PAGASA.

The dam has a minimum operating level of 180 meters and a normal high-water level of 212 meters. The latter is considered the ideal level with adequate safety margins during the dry months.

Angat Dam is the main source of water for Metro Manila, accounting for about 90% of the capital's potable water. — **Ashley Erika O. Jose**

Budget release rate hits 83.2% at end of March

THE Department of Budget and Management (DBM) said on Monday that it had released 83.2% of the 2024 national budget by the end of March.

In a Status of Allotment Releases report, the DBM said releases amounted to P4.8 trillion out of the P5.768-trillion budget.

Around P968.79 billion remains undistributed as of the end of March, the DBM said.

The release rate is ahead of the pace compared with the 81.9% rate at the end of March 2023.

Of the amount released, P3.36 trillion or 95.9% went to government agencies and departments.

Special Purpose funds releases amounted to P227.42 billion.

Automatic Appropriation releases stood at P1.17 trillion.

These include retirement and insurance life premiums for government employees as well as interest payments.

The government's 2024 spending plan is 9.5% higher than the previous year's, and is equivalent to 21.7% of gross domestic product. — **Beatriz Marie D. Cruz**

131 protected-area deals under review

THE DEPARTMENT of Environment and Natural Resources (DENR) said on Monday that it is reviewing the environmental compliance of 131 projects built in protected areas.

"There are 131 Protected Area Community-Based Resource Management Agreement (PACBRMA) in over 36 Protected Areas. All of these are now under review," Environment Secretary Maria Antonia Yulo-Loyzaga said at a briefing.

The PACBRMA is an agreement entered into by and between the DENR and organized tenured migrant communities or interested indigenous peoples in protected areas and buffer zones. They have a term of 25 years, renewable for another 25 years.

Ms. Yulo-Loyzaga added that an initial 10 to 11 agreements in Northern Luzon will be under review for compliance. The results are set to be released within the month.

"We needed to determine that those are still compliant or whether they are non-compliant and to see whether there are (grounds) for cancellation because for whatever reason *hindi ginagamit nang tama* or *hindi ginagamit* (it is not being used correctly or is not being used at all)," she said.

The DENR had ordered an inventory of all structures within protected areas, pending the review.

"All of that is being done now on satellite and on the ground," she said.

Last week, the DENR suspended the processing of all environmental compliance certificates (ECCs) by its regional offices.

She had ordered that all ECC applications be submitted

to the Environmental Management Bureau, the Biodiversity Management Bureau, and the Office of the Secretary for final review and approval.

"We are also engaging our multisectoral advisory council... they will be working with us on the comprehensive evaluation of the status of these protected areas," Ms. Yulo-Loyzaga said.

The DENR has canceled the PACBRMA of the Socorro Bayanihan Services, Inc. due to the misuse of the protected area. The agreement spans 353 hectares in Socorro, Surigao del Norte.

She said that violations include the establishment of residences, the construction of checkpoints, and failure to submit the required monthly, quarterly, or annual reports about the implementation of its Community-based Resource Management Plan.

Among the other findings were the construction of infrastructure like access roads, checkpoints, and a radio station.

The Senate has investigated allegations of human trafficking, exploitation, forced labor, and child sexual abuse at the site.

"The DENR has been working with the Department of Justice, the Department of Social Welfare and Development and the provincial government since the suspension of the PACBRMA in September 2023," she said.

She added that the agencies are working to reintegrate and resettle the affected occupants.

"There are 404 households of tenured migrants in the PACBRMA area that will be relocated," she said. — **Adrian H. Halili**

Retiree visa investigation initiated before Senate revelations — regulator

THE Philippine Retirement Authority (PRA) said it had sought the assistance of government investigative agencies to look into irregularities in the issuance of retiree visas before the Senate brought up the matter.

PRA General Manager and Chief Executive Officer Roberto Z. Zozobrado said that he had asked the National Intelligence Coordinating Agency, Bureau of Immigration (BI), Department of Interior and Local Government,

and Philippine Amusement and Gaming Corp. to look into the improper issuance of Special Resident Retiree Visas (SRRVs).

"These four agencies I was (asking to meet) precisely because I wanted to strengthen the protection and the security measures we have," Mr. Zozobrado told *BusinessWorld* on the sidelines of an event on Monday.

"Now that this thing blew up, the more now that I will really push through with this meet-

ing" sometime this month, he added.

Senator Maria Lourdes Nancy S. Binay raised concerns about the screening and vetting of visa applications, claiming that a so-called "Chinese mafia" was able to obtain such visas.

Mr. Zozobrado said that the requirements for SRRV applicants include a police clearance from their country of origin that is apostilled by the Philippine embassy or consulate serving their

location, and National Bureau of Investigation (NBI) clearance after staying in the Philippines for more than 90 days.

"We also have access to the Interpol data... the moment we get a new retiree, we check right away in the Interpol database if they have any derogatory record," he said.

"Those are the things (we require). Now, I don't know what else we can do to determine if these people are legit. So, we'll have to think of more ways," he added.

Ms. Binay had raised concerns about the issuance of SRRVs to individuals as young as 35.

Mr. Zozobrado said the minimum age had been raised to 50 three years prior due to the growth of offshore gaming companies.

Another issue that has arisen, according to Mr. Zozobrado, involves a PRA staffer who was allegedly granting fake visas and victimizing retirees at visa renewal time.

"Actually, he was a clerk at our satellite office in Clark. He

resigned, and after he resigned, he continued to issue fake SRRV identification cards (IDs)," he said.

"We have coordinated with the NBI, and we are producing all the witnesses in order to put this person in jail," he added.

He also said that the PRA is also reaching out to BI to slash the penalty for retirees who were not able to renew their visas after being issued fake SRRVs. — **Justine Irish D. Tabile**

OPINION

The effect of a new assessment in the Final Decision on Disputed Assessment

Today is Araw ng Kagitingan, in which we respectfully honor all the gallant Filipino and American soldiers as well as civilians who gave their lives to protect Bataan against the Japanese soldiers in the defense of freedom during World War II. RA No. 3022 proclaimed the ninth day of April as Bataan Day, and all public officials and citizens of the Philippines are urged to observe one minute of silence at 4:30 in the afternoon and to hold appropriate rites in honor of the heroic defenders of Bataan and their parents, wives, and families. EO No. 203, s. 1987, then renamed Bataan Day to Araw ng Kagitingan, and retained the provisions of the Administrative Code of 1987.

In tax assessment, the Bureau of Internal Revenue (BIR) and the taxpayers will likewise protect and defend their duties and rights based on laws, rules and regulations, and jurisprudence. The BIR must ensure that taxpayers are declaring and paying the correct amount of taxes based on their valid examination of the books of account and collect payment, upon notice and demand, of any deficiency due to the government. Whereas the taxpayers need to exhaust all administrative remedies to challenge any alleged tax deficiency before seeking relief from the courts.

Filing a protest to a Formal Letter of Demand (FLD) and Final Assessment Notice (FAN), which may either be a request for reconsideration or a request for

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reinvestigation, is among the administrative remedies available to taxpayers. The assessment then becomes a disputed assessment, and the Commissioner of Internal Revenue (CIR) or a duly authorized representative has a duty to resolve and decide on the disputed assessment. This decision is known as the "Final Decision on Disputed Assessment (FDDA)." Section 3.1.6 of Revenue Regulations (RR) No. 12-99, as amended, provides that the decision of the Commissioner or his duly authorized representative must (a) state the facts, the applicable law, rules and regulations, or jurisprudence on which such a decision is based; otherwise, the decision is deemed void, in which case it cannot be considered a decision on a disputed assessment; and (b) that the same is his final decision.

The Supreme Court (SC) enunciated the requirements of a valid FDDA in Commissioner of Internal Revenue v. Manila Medical Services, Inc., G.R. No. 255473, citing the case of CIR v. Liquigaz Philippines Corp., which stresses the importance of providing the taxpayer with an adequate written notice of their tax liability. Section 228 of the NIRC declares that an assessment is void if the taxpayer is not notified in writing of the

facts and law on which it is based. Additionally, Section 3.1.4 of RR No. 12-99, as amended, requires that the FLD state the facts and law on which it is based; otherwise, the FLD/FAN itself is considered void. Meanwhile, Section 3.1.6 of the regulations specifically requires that the decision of the CIR or a duly authorized representative on a disputed assessment state the facts, law, and rules and regulations, or jurisprudence on which the decision is based. Failure to do so would invalidate the FDDA.

As such, incorporating a new assessment in the FDDA not covered by Preliminary Assessment Notice and FAN/FLD would render the decision void in violation of the requirements under Section 228 of the NIRC, as amended, and Section 3.1.6 of Revenue Regulations No. 12-99, as amended.

In CIR v. First Sumiden Circuits, Inc. (FSCI), C.T.A. EB Case No. 1831, the Court of Tax Appeals (CTA) En Banc canceled the assessment on realized forex gain not subjected to tax based on the violation of due process. Since an entirely new assessment item in the form of "realized forex gain not subjected to tax" was included in the FDDA, FSCI was not given the chance to refute within the administrative level the assessment.

Similarly, the CTA En Banc has ruled in CIR v. BPI-Philam Life Assurance Corp. (BPLAC), C.T.A. EB Case No. 1240, that the change of the nature of the assessment from deficiency VAT to deficiency

premium tax only upon the issuance of the FDDA unduly deprives BPLAC of an opportunity to be heard and to dispute the new assessment at the administrative level. It bears stressing that the FDDA constitutes the CIR's final decision on BPLAC's administrative protest. To allow the BIR to change the nature of the assessment or to surprise the taxpayer with a new assessment at such a late stage would certainly render the protection afforded by Section 228 of the 1997 NIRC meaningless.

Moreover, the CTA had the same pronouncement in Fluor Daniel, Inc.-Philippines (FDIP) v. Commissioner of Internal Revenue, C.T.A. Case No. 7793, and elucidated that the change of assessment from EWT to FWT in the FDDA is considered a new assessment. FDIP's defense in its protest letter focused on its non-liability to EWT. However, such changes from EWT to FWT in the FDDA clearly deprived FDIP of a chance to refute the same at the administrative level.

Notably, administrative due process is anchored on fairness and equity in procedure, as the SC emphasized in Commissioner of Internal Revenue v. Avon Products Manufacturing, Inc., G.R. Nos. 201398-99 & 201418-19. The SC further held that administrative due process is satisfied if the party is properly notified of the charge against it and is given a fair and reasonable opportunity to explain or defend itself.

Thus, the BIR acts as the soldier of the government in collecting the tax

deficiencies from the people in accordance with their official duties. Nonetheless, taxpayers will protect their property in any case, especially when their right to due process enshrined under the 1987 Philippine Constitution is unduly set aside.

Therefore, incorporating new assessments into the FDDA would completely deprive the taxpayer of the right to due process. As such, the FDDA should be made in strict compliance with the due process requirements; otherwise, the decision is deemed void. In effect, such a decision rendered by the CIR or a duly authorized representative may not be considered a decision on a disputed assessment and should be considered as not having been assessed within the prescriptive period. Hence, a void FDDA bears no fruit and, consequently, bars the BIR's right to collect.

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PENELOPE GERMAINE D. SERNANDE is a senior associate from the Tax Advisory & Compliance division of P&A Grant Thornton, the Philippine member firm of Grant Thornton International Ltd.
pagranthornton@ph.gt.com

