



MEMORANDUM

FOR : The Undersecretary
Legal, Administration, Human Resources and Legislative Affairs

The Undersecretary
Field Operations, Luzon, Visayas and Environment

THRU : The Regional Executive Director
DENR-MIMAROPA Region

FROM : The OIC-PENR Officer

DATE : April 13, 2022

SUBJECT : **COMPLETE STAFF WORK (CSW) WITH CATEGORICAL RECOMMENDATIONS RELATIVE TO THE EXPIRED OLPLA NO. 02 (BODEGA AND PORT FACILITIES) LEASED TO MARCOPPER MINING CORPORATION (MMC) WITH AN AREA OF 17.655 HECTARES SITUATED IN BGY. BALOGO, STA. CRUZ, MARINDUQUE**

In compliance to your verbal instruction during our meeting held on April 11, 2022, this Office hereby submitted the Complete Staff Work pertaining to Other Lawful Purposes Lease Agreement (OLPLA) no. 02 issued to MARCOPPER Mining Corporation (MMC) to include latest updates and categorical recommendations.

BACKGROUND:

During the regular monitoring conducted by PENRO Marinduque in its area of jurisdiction, it was discovered that the abandoned Bodega/Warehouse of MMC in Balogo Port, Sta. Cruz, Marinduque is within public land and allegedly under lease contract between DENR and MMC. Since the transaction of MMC was directly handled at the Central Office, old records are presumed at the FMB or Central Office. Thus, PENRO Marinduque made a formal query to FMB on November 27, 2019 as to the status of the OLPLA No. 02. Also to determine the extent and exact coverage of the leased area.

Based on the data gathered by PENRO Marinduque and records from the Forest Management Bureau (FMB), the subject land occupied by MMC located in Bgy. Balogo, Sta. Cruz, Marinduque with an area of 17.655 hectares is under Other Lawful Purposes Lease Agreement (OLPLA No. 002) which was issued in 1969 and expired on June 30, 1994. It was applied for renewal on September 9, 1993 for approval of then-Secretary Victor O. Ramos. However, the FMB is bereft of any record of its approval, hence, they presumed disapproved. Though FMB has record that payment for rental is made by MMC up to 1997 in the amount of Php 454,419.85.

Assuming however that said application for renewal was approved, the another period of twenty five (25) years to complete the maximum of fifty (50) years as allowed by the Constitution, has already been lapsed last December 31, 2020.

ACTIONS TAKEN:

- On November 27, 2019, PENRO Marinduque sent a memo to FMB regarding the status of OLPLA No. 002 (Bodega and Port Facilities Site) of MMC located in Balogo, Sta. Cruz;
- A follow-up memo regarding the previous request pertaining to the status of OLPLA No. 002 was also sent to FMB, through MIMAROPA RED Henry Adornado on March 2, 2020 and August 7, 2020;
- On September 2, 2020, this Office received an email from FMB with a memo and copies of available documents related to the status of OLPLA No. 002, including a file copy of unsigned renewal of OLPLA no. 02;
- On September 18, 2020, PENRO Marinduque recommended to MIMAROPA Region to take legal action on the matter.
- On July 14, 2021, PENRO Marinduque submitted to MIMAROPA Regional Office a Complete Staff Work (CSW), as per instruction of the RED Maria Lourdez Ferrer. That is in relation to the Letter of Intent of the Provincial Government of Marinduque to enter into a MOA over the area previously covered with OLPLA No. 002 of MMC located in Balogo, Sta. Cruz, Marinduque;
- On August 9, 2021, PENRO Marinduque, together with representatives from Provincial Government of Marinduque and PNP-Marinduque, served the *Notice to Vacate* to MMC which was received by the security guard on duty of MMC. It was reported to RED Ferrer in a memo dated August 12, 2021;
- On August 11, 2021, a survey team from Regional Office and PENRO technical personnel conducted ocular inspection and ground verification of the subject area. However, MMC's security guard on duty resisted;
- On August 27, 2021, PENRO Marinduque received a letter from MMC Lawyer, threatening OIC-PENRO Diaz that a case will be filed against her for alleged "trespass and illegal take over of MMC's property";
- On September 9, 2021, upon request by OIC-PENRO, an Asset Management Team was created thru RSO 387, to conduct an inventory and assessment of area covered with expired OLPLA. No. 002 (Bodega and Port Facilities) of MMC located in Balogo, Sta. Cruz, Marinduque; Ground assessment of the leased area was not yet done due to travel restrictions and also because of continuous occupation of MMC. The area is being secured by MMC's security personnel;
- On September 20, 2021, PENRO Marinduque sent another memo to DENR MIMAROPA Regional Office regarding MMC's continuous occupation and possession of the public land in Balogo, Sta. Cruz. OIC-PENRO Diaz requested for legal assistance and **recommended filing of Eviction Case against MMC**. Draft complaint affidavit was also forwarded to Region for comments and further instructions. She mentioned that other cases may also be filed e.g. non-payment of rental from 1998 to present;
- On September 23, 2021, a summary of actions taken was reported to USEC for Field Operations through MIMAROPA Regional Executive Director;

- In December 2021, ocular inspection was conducted by the DOTr and DPWH in the area. They were allowed by the Security Guards of MMC to enter the Balogo Port area only upon presentation of letter from the OIC-PENRO;
- On February 17, 2022, MIMAROPA Region requested for assistance from Central Office Lawyers. A response from Central Office was received on April 11, 2022;
- On April 11, 2022, USec Ernesto Adobo, Jr. called for a meeting and discussed major issues on MMC, including take over of Balogo Port. It was agreed that a ***Final Order/Demand*** will be issued by DENR to MMC to totally vacate the area in Balogo, Sta. Cruz, Marinduque. DENR Lawyers will prepare the “Order/Demand” for consideration and approval of the Secretary. The assistance from the Provincial Government of Marinduque and the Local PNP are already requested. They are just waiting for specific schedule.

FINDINGS BASED ON AVAILABLE RECORDS:

1. In a Memorandum dated March 11, 1998 by then Forest Management Bureau Director Jose D. Malvas, Jr., it was mentioned that OLP No. 002 (renewal) was forwarded to the Office of then DENR Secretary Victor O. Ramos for his approval under Memorandum dated January 16, 1996. It was mentioned also that no record on the approval of renewal of said Lease Agreement (*Copy of the memorandum is attached for reference*).
2. It is worthy to note that Director Malvas in his Memorandum dated March 11, 1998 mentioned that the Lessee (MMC) continued their occupation over the expired leased area even though the said renewal application is under process during that time (*Attached is the copy of memorandum for reference*).
3. That even to date, it was observed that the area covered by the said expired lease is still in the possession/occupation of MMC or its authorized caretaker.
4. In a letter dated January 23, 1997 of Mr. T. C. Gabor, Jr., Vice President and Legal and Human Resources Officer-In-Charge of MMC addressed to the Director of Forest Management Bureau, he mentioned that the company had paid in full the 1997 Annual Rental in the total amount of Four Hundred Fifty Four Thousand Four Hundred Nineteen Pesos & 85/100 (Php 454,419.85) for the area covered by the lease agreement (*Copy of the letter is attached for reference*).
5. Further, our records show that then FMB Director Al Rashid Ishmael, al-Hadj. made a Demand Letter dated June 21, 2000 addressed to Mr. Alberto O. Cuarteron, Assistant Corporate Secretary of Marcopper to pay the 1998, 1999 and 2000 Annual Rental including surcharges in the total amount of Two Million Three Hundred Sixty Two Thousand Nine Hundred Eighty Three Pesos & 22/100 (Php 2,362,983.22). No record of proof of payment is available on file (*Please see attached letter of Director al-Hadj. for reference*).
6. That due to mine waste spillage incident that happened on March 24, 1996, the corresponding permits issued by DENR to MMC e.g. Permit to Operate and Mining Lease Agreement were **cancelled**.
7. That this Office sent several official requests to the Forest Management Bureau (FMB) requesting status of OLP No. 002, however the FMB admitted in their memo that they do not have copy of approved renewal of OLPA no. 02, thus presumed disapproved;

8. Based on the projection made by Technical personnel of this Office using LC Map 789, it appeared that Lot No. 5143 and Lot no. 5836 fall within Timberland Block B, Project No. 5 of Santa Cruz. Cadastral lot no. 5143 has Tax Declaration under MMC while Cadastral Lot no. 5836 is the location of Bodega/Warehouse and other facilities of MMC and it is within the vicinity of Balogo Port Area (refer to *Attached map of Balogo Port Area*).
9. The corresponding tax declarations for Lots 5143 and 5836 reveal that both parcels of land are declared for taxation purposes as mineral lands.
10. In a certification issued by the Land Registration Administration – Registry of Deeds, Marinduque, it is ascertained that no title has been issued to MMC for the 2 parcels of land covered by CLN 5143 and 5836.

RECOMMENDATIONS:

Based on the above findings and the fact that OLPLA No. 002 of Marccopper had already expired on June 30, 1994 and seemingly no renewal is made yet, the government or the DENR has jurisdiction over the leased area (Bodega and Port Facilities) located in Brgy. Balogo, Sta. Cruz, Marinduque. It is our policy that once the lease contract is cancelled or expired, the DENR has to take over the area covered by the expired lease. Hence, it is highly recommended that necessary legal action be undertaken by DENR. There are two (2) options to take-over the possession in the area, such as: 1) DENR to File Eviction case against MMC and demand MMC to settle any obligations to the government; and 2) DENR to issue FINAL ORDER/DEMAND to MMC to vacate the area, and adherence to the provisions of the OLPLA no. 2. The Government through DENR must take possession and be in control over the area. The Port Area and its vicinity should be secured by the government.

It is imperative to conduct final assessment and inspection preferably by a composite team from MIMAROPA Regional Office, PENRO-Marinduque, Mines and Geo-Sciences Bureau, Forest Management Bureau and Environment Management Bureau to determine its best use or potential development and management.

Concerning the intent of the Honorable Governor Presbitero J. Velasco Jr. to apply for tenurial instrument or to enter into an Agreement with DENR to utilize subject parcels of land, for purposes of rehabilitation and development of Balogo Port Area, the objective of the Provincial Government of Marinduque is deemed within the purview of the provisions of the law. In fact, it is really necessary to develop and manage that area which became idle and unproductive for the longest time only for the interest of MMC.

For your information, consideration and further instruction.

IMELDA M. DIAZ

Enclosures: OLPLA no. 2 (issued in 1969), OLPLA no. 2 (Renewal, unsigned),
Letter from MMC Vice President, Letters of FMB Directors, Internal MEMOs,
Notice to Vacate issued by PENRO, Letter from MMC Lawyer, Map of Balogo Port area,
Aerial photos (drone shots), Photos taken on August 9, 2021, Certifications, other related documents.

Copy furnished: Director for Legal Services, DENR Central Office
Chief, Legal Division, MIMAROPA