



September 18, 2020

MEMORANDUM

FOR : The Regional Executive Director
DENR MIMAROPA Region

THRU : The Assistant Regional Director for Technical Services

FROM : The OIC-PENR Officer

SUBJECT : **STATUS OF OLP NO. 002 (BODEGA AND PORT FACILITIES SITE) OF MARCOPPER MINING CORPORATION LOCATED IN BRGY. BALOGO, STA. CRUZ, MARINDUQUE**

BACKGROUND:

During the regular monitoring and investigation conducted by PENRO Marinduque in the area of Brgy. Balogo, Sta. Cruz, Marinduque, it was discovered that the abandoned Bodega/Warehouse of Marcopper in Balogo Pier is within public land and allegedly under lease contract between DENR and Marcopper. Since the transaction of Marcopper was directly handled at the Central Office, old records are presumed at the FMB or Central Office. Thus, PENRO Marinduque made a query to FMB on November 27, 2019 as to the status of the OLP No. 002. Also to know the exact location of the leased area.

Other Lawful Purposes (OLP) No. 002 (Bodega and Port Facilities Site) was granted to Marcopper Mining Corporation on August 7, 1969 covering an area of 17.655 hectares of public land situated in Brgy. Balogo, Sta. Cruz, Marinduque.

Based on records, OLP No. 002 had expired on June 30, 1994. An application for renewal was filed by Marcopper Mining Corporation also in 1994 but no record whether said application was approved or not.

Further, the Provincial Government of Marinduque represented by Governor Presbitero J. Velasco, Jr., has a proposal to include the Balogo Port Area and the adjacent parcels of land claimed by Marcopper identified as Lot Nos. 5143 & 5836 in the establishment of Marinduque Economic Zone (MAREZ) under House Bill 8551 of Congressman Lord Allan Q. Velasco of the lone District of Marinduque.

FINDINGS (BASED ON AVAILABLE RECORDS OF PENRO):

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*).

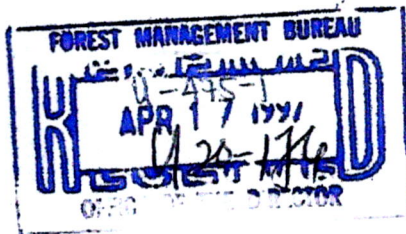
2. It is worthy to note that Director Malvas in his Memorandum dated March 11, 1998 mentioned that the Lessee (Marcopper) continued their occupation over the expired leased area even though the said renewal application is under process during that time (*Attached is the copy of memorandum for reference*).
3. That even to date, it was observed that the area covered by the said expired lease is still in the possession/occupation of Marcopper Mining Corporation 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 Marcopper 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 expired 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 Marcopper Mining Corporation 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, but as of this writing no response yet is received by this Office.
8. That due to the absence of map and technical description of the leased area, the extent of area coverage cannot be determined on the ground.
9. Regarding the adjacent parcels of land identified as Lot Nos. 5143 and 5836, Cad. 815-D located in Brgy. Balogo, it was verified based on record that both parcels of land are listed in the name of Marcopper Mining Corporation as survey claimant.
10. Based on the projection made by representative of this Office using Geographic Information System (GIS), it appeared that both parcels of land fall within Alienable and Disposable (A & D) Zone of Sta. Cruz as per LC Map 789, except the portion of Lot 5836 which falls within Timberland Block B, Project No. 5 of Santa Cruz (*Attached are A & D certifications with maps for reference*).
11. The corresponding tax declarations for Lots 5143 and 5836 reveal that both parcels of land are declared for taxation purposes as mineral lands.

RECOMMENDATION:

Based on the above findings and the fact that OLP 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

Forest Management Bureau and Environment Management Bureau before the turn-over of the area and demand MMC to settle any obligations to the government.

Likewise, concerning the intent of the Honorable Governor Presbitero J. Velasco Jr. to enter into an Agreement with DENR for Lots 5143 and 5836 both located at Brgy. Balogo, Sta. Cruz, Marinduque, declared as mineral lands under the name of Marcopper Mining Corporation, the State may directly undertake exploration, development and utilization of said natural resources as provided for under Section 2, Article XII of the Philippine Constitution, and under Section 2, RA 7942, otherwise known as the Philippine Mining Act of 1995, all mineral resources in lands privately or publicly owned within the territory and exclusive economic zone of the Republic of the Philippines are owned by the State. The intent of the President of the Philippines



15 April 1997

MEMORANDUM

FOR : The Head Executive Assistant

FROM : The Director

SUBJECT : Application for renewal of the OLP (Bodega and Fort Facilities) Lease Agreement No. 002 of Marcopper Mining Corporation situated in Balogo, Sta. Cruz, Marinduque.

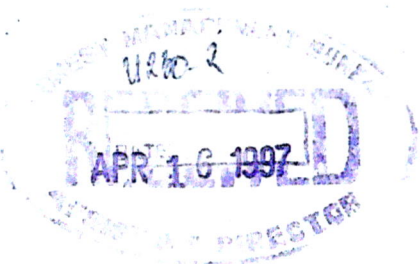
Referred herewith is the letter dated March 05, 1997 of Mr. Teodulo C. Gabor, Jr., Vice President, Marcopper Mining Corporation, following-up their above-subject application which was forwarded to the DENR Secretary under our Memorandum dated January 15, 1996 (copy attached).

Advice to the concerned party is hereby requested for their guidance.

JOSE D. MALVAS, JR.

D6-Marcopper
Ega 04/08/97

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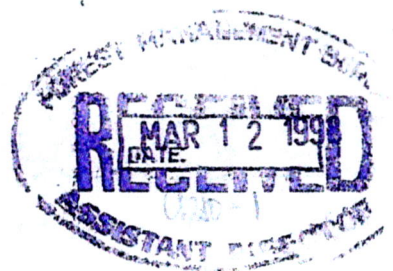
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426

364

125

FOREST	STAMP	DATE
Division	7	3/12
	3/12	
	3/12	
124-3	3/11	



11 March 1998



MEMORANDUM

FOR : THE UNDERSECRETARY FOR LEGAL AND LEGISLATIVE AFFAIRS AND ATTACHED AGENCIES

FROM : THE DIRECTOR

SUBJECT : 1998 ANNUAL RENTAL OF THE PROPOSED OTHER LAWFUL PURPOSES (BODEGA AND PORT FACILITIES) LEASE AGREEMENT NO. 0002 (RENEWAL) OF MARCOPPER MINING CORPORATION SITUATED IN STA. CRUZ, MARINDUQUE.



DOCUMENT ATTACHED : Letter dated January 13, 1997 of Mr. T.C. Gabor, President, Marcopper Mining Corporation.

This refers to the letter dated January 13, 1998 of Mr. T.C. Gabor, President, Marcopper Mining Corporation regarding the payment of the annual rental for CY 1998 of the above-subject proposed OLP Lease Agreement No. 0002 (renewal).

It is worthy to mention, that the expired OLP Lease Agreement No. 0002 of Marcopper Mining Corporation was applied for renewal and was forwarded to the Secretary for his consideration/approval/signature under our Memorandum dated January 16, 1996. To date, this Office has no record on the approval of the renewal of OLP Lease Agreement No. 0002. Despite the expiration of the lease, however, the lessee continues his occupation over the expired lease area even if the said renewal application is under process.

As a consequence of their continuous application, Marcopper Mining Corporation is requesting that the payment of the ₱454,419.85 annual rental for CY 1998 become due and demandable only on or before the end of March 1998 without surcharges, even if their renewal application has not been given due consideration. Please be informed that Paragraph VIII of the terms and conditions of the proposed OLP Lease Agreement provides, among others, that payment of annual rental shall be due on the first week of January of every year. Thereafter, the annual rental is subject to 10% surcharge from January 7 to March 31.

In view of the above considerations, the FMB Legal Division indicated that the DENR cannot effect the collection of the rental in view of the non-renewal of the Lease Agreement. We would like to seek a second opinion from your Office if DENR can collect the payment for rental by MARCOPPER Mining Corporation considering that this company continuously used and occupy the forestlands even with the expired lease agreement.


JOSE D. MALVAS, JR.


d12-01/sarcop
ej11/02-25-98



MARCOPPER MINING CORPORATION
6TH FLR., V. MADRIGAL BLDG., 6793 AYALA AVENUE, MAKATI, METRO MANILA 1226, PHILIPPINES * TELS. 810-2081/810-2086

January 23, 1997

The Honorable Director
Forest Management Bureau
Department of Environment and Natural Resources
Diliman, Quezon City

S i r :

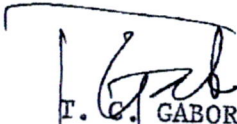
Re: 1997 Annual Rental of OLP (Bodega
and Port Facilities Site) Lease
Agreement No. 2

In compliance with the terms and conditions of the above-captioned agreement, enclosed is our Manager's Check No. 0318418 dated January 22, 1997, in the amount of ₱454,419.85 as full payment of the 1997 annual rental of the said property located at Balogo Sta. Cruz, Marinduque.

We wish to inform you also that up to this writing we have not yet received the copy of the agreement duly signed by the Secretary of DENR.

Please acknowledged receipt hereof.

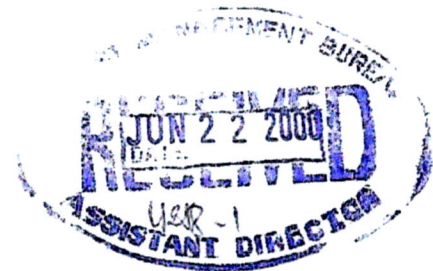
Very truly yours,


T. G. GABOR, JR.
Vice President
Legal and Human Resources
Officer-In-Charge

Encl: a/s
aoc....

FOREST LAND USE DIVISION	
ACTION SHEET	
STAMP ONLY ON FILE COPY	
INITIAL	DATE
Division Chief	<i>[Signature]</i> 6/21
Asst. Division Chief	<i>[Signature]</i>
Asst. Chief	
Asst. Chief	
Tax	120
File Ref.	500
	2280-132

21 June 2000



MR. ALBERTO O. CUARTERON

Asst. Corporate Secretary
MARCOPPER Mining Corp.
Andrews Avenue, corner
Tramo Street, Pasay City

Sir:

This is to acknowledge receipt of your letter dated 15 May 2000, informing this Office of the new address of your company and to inform you of the present arrears of your company covering an area of 17,655 ha. under Other Lawful Purposes (Bodega and Port Facilities), amounting to Two Million Three Hundred Sixty Two Thousand Nine Hundred Eighty Three Pesos & 22/100 (P 2,362,983.22) as itemized below:

Rental CY 1998	454,419.85
100% surcharge	454,419.85
Rental CY 1999	454,419.85
100% surcharge	454,419.85
Rental CY 2000	454,419.85
20% surcharge	90,883.97

TOTAL 2,362,983.22

Early settlement with this Office of the above amount will be highly appreciated.

Very truly yours,

ORIGINAL SIGNED

AL RASHID ISHMAEL, al-Hadj.

Director

Republic of the Philippines
Department of Environment and Natural Resources
OFFICE OF THE SECRETARY
Visayas Avenue, Diliman, Quezon City

OTHER LAWFUL PURPOSES LEASE AGREEMENT
(Bodega and Port Facilities)
FMB NO. 2

Of

MARCOPPER MINING CORPORATION
(Lessee)

Balogo, Sta. Cruz, Marinduque
(Location of the Area)

This Agreement made and entered into by and between the Secretary of Environment and Natural Resources for and in behalf of the Republic of the Philippines hereinafter called the LESSOR and MARCOPPER MINING CORPORATION with Office address at 6th Floor V. Madrigal Bldg., 6793 Ayala Ave., Makati, M. M. herein referred to as LESSEE.

WITNESSETH

That LESSOR, as Secretary of Department of Environment and Natural Resources, acting under the authority of Section 1838 and Act No. 2711, known as the Revised Administrative Code, as amended and Section 57 of P.D. 705 as amended, hereby issue to the LESSEE 17.655 hectares of public land for OTHER LAWFUL PURPOSES (Bodega and Port Facilities) for a period of twenty five (25) years to expire on December 31, 2020 located at Balogo, Sta. Cruz, Marinduque the description and boundaries shown in the attached sketch map which forms part of this LEASE AGREEMENT, subject to the following conditions:

I. This LEASE AGREEMENT is subject to existing pertinent Forest Laws, rules and Regulations, and those that may be promulgated hereafter;

II. The LESSEE agrees to construct on the land covered by this AGREEMENT such buildings and/or accessories pertinent to the operation or purposes for which this lease is granted;

III. The LEASE herein granted shall be confined within the perimeter of the parcel of land described herein and no other parcel of public forest land shall be utilized by the herein LESSEE without first securing therefor the prior permission of

Marcopper Mining Corporation

by:

John E. Loney
JOHN E. LONEY
President & CEO

LESSEE

VICTOR O. RAMOS
Secretary

Witness

Witness

Witness

Witness

the LESSOR or the Director of Forest Management Bureau. Communal Forest, Communal Pasture and other especially reserved forest lands are excluded from this lease and shall not be used even if found inside the area covered by this LEASE AGREEMENT;

IV. The area leased herein is a public forest land to the best knowledge and belief of the parties herein and accordingly, the LESSOR shall not be responsible for any loss suffered by the LESSEE in case the land is declared private property of another or otherwise reduced, modified, amended or cancelled as result of prior existing valid private claims or interest therein;

V. The decision of the Director of Forest Management Bureau as to the exact location and boundaries of the area covered by this LEASE AGREEMENT shall be final;

VI. Before constructing any building of permanent character on the area granted, permission must be first secured from the Director of Forest Management Bureau, who shall prescribe the conditions under which it shall be constructed;

VII. The annual rental shall be ₱454,419.85 effective CY 1995 until December 31, 2000; THEREAFTER, the rental charge shall be based on the assessment/reappraisal of the land under lease and its improvements to be determined by the Director of Forest Management Bureau for the first 5-year period and every five years thereafter; PROVIDED, that the annual rental shall not be less than 3% and 1% of the assessed/reappraised value of the land and improvements therein, respectively;

VIII. The annual rental shall be paid by the LESSEE without waiting for any call therefor, on or before the first week of January of each year after the execution and during the continuance of this LEASE AGREEMENT. For failure to pay annual rental on the date due, the LESSEE shall be penalized by additional charges as follows:

Rentals paid within January 8 to March 31 -	10% surcharge
Rentals paid within April 1 to June 30 -	20% surcharge
Rentals paid within July 1 to September 31 -	30% surcharge
Rentals paid within October 1 to December 31 -	50% surcharge
Rentals paid one year after due date -	100% surcharge

IX. Failure to pay the rental and surcharges within one year after the regular rental had come due and payable without justifiable cause shall be sufficient reason for the cancellation of the LEASE AGREEMENT;

Marcopper Mining Corporation

by:

John E. Loney
JOHN E. LONEY
President & CEO

LESSEE

[Signature]
Witness

[Signature]
Witness

VICTOR D. RAMOS
Secretary

[Signature]
Witness

[Signature]
Witness

X. No refund shall be made on the annual rentals as covered by this LEASE AGREEMENT due to its cancellation before its expiration either through the request of the LESSEE or for violation of any of the terms and condition of the LEASE AGREEMENT or of the Forest Laws and Regulations;

XI. As a guarantee of the faithful performance of and/or compliance with the Forest Laws and Regulations and the terms and conditions of the LEASE AGREEMENT and the payment of the rental charge thereof, the LESSEE shall post a cash bond in the amount of NINE HUNDRED EIGHT THOUSAND EIGHT HUNDRED THIRTY NINE PESOS AND 70/100 (9908,839.70) and agrees that the said bond, upon his failure to fulfill all and singular the condition and requirements herein set forth or made part thereof, be confiscated by the Republic of the Philippines;

XII. The LESSEE shall not cut trees within the leased area specially within thirty (30) meters along banks of rivers/creeks;

Tree planting shall be done twenty (20) meters strip along banks of rivers/creeks; Protect water resources in the area from all forms of pollution, protect unique and endangered species of plants and animals;

XI. Complete sanitary measures within the leased area should be strictly observed to insure protection of watershed values.

XII. This LEASE AGREEMENT shall terminate upon the abolition of the Corporation;

XIII. The LESSEE upon the expiration or cancellation of this lease, shall not acquire any right by virtue of the said lease of claim or whatever kind the lessee has introduced upon the land.

XIV. Upon cancellation of the lease through fault of the LESSEE, the improvements existing thereon shall revert to, and become the property of the Government. In case the same is granted to another permittee or lessee, such improvement shall be appraised accordingly and new grantee shall either rent or pay the government the corresponding price thereof;

XV. Upon the expiration or cancellation of this LEASE, the LESSEE may at the discretion of the Director of Forest Management Bureau or the Secretary of Environment and Natural Resources be allowed to hold the land for the period of not exceeding ninety (90) days only for the purpose of removing temporary improvements and putting the land to its original conditions;

VICTOR O. RAMOS
Secretary

Witness

Marcopper Mining Corporation
by:

John E. Loney
JOHN E. LONEY
President & CEO

LESSEE

Witness

XVI. The privilege granted as well as terms and conditions thereof shall be subject to any and all modifications or alterations which Congress may adopt pursuant to Sec. 2, Art. 12 of the 1987 Constitution:

XVII. This LEASE CONTRACT may be terminated earlier than the date indicated wherein upon violation of any of the above cited terms and condition or in the interest of the public:

XVIII. This LEASE AGREEMENT is non-transferable and non-negotiable except as provided in Presidential Degree No. 705 as amended.

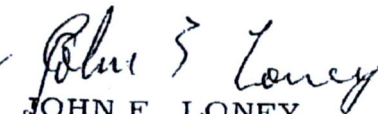
Quezon City, Philippines. _____, 19____.

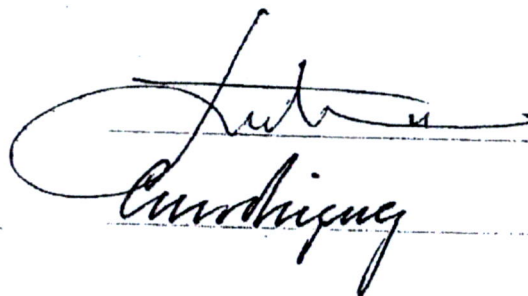
For in behalf of the
Republic of the Philippines

VICTOR O. RAMOS
Secretary

WITNESSES:

Marcoopper Mining Corporation
By:


JOHN E. LONEY
President & CEO
LESSEE



Recommended By:

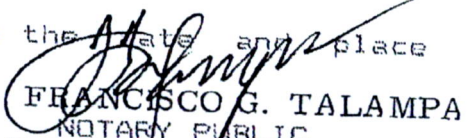

JOSE D. MALVAS, JR.
Director

REPUBLIC OF THE PHILIPPINES)
CITY OF MAKATI : S.S.
)


In the City of Makati this 14th. day of September 19 95
before me a Notary Public for and in the City appeared JOHN
E. LONEY with Residence Certificate No. 5601589
issued on January 28 19 95 at the City of Makati, xx
personally known to me to be the one who executed the foregoing
and who acknowledge to me that the same is his free act and deed.

This document is an Other Lawful Purposes Lease Agreement
FMB No. covering hectares parcel of public forest land
consisting of five (5) pages, including one (1) sketch and each
page is signed by the LESSEE and his witnesses; and bears my
Notarial Seal.

Witness my hand and Official Seal, on the date and place
first above written.


FRANCISCO G. TALAMPA
NOTARY PUBLIC
Until Dec. 31, 1996
PTR No. 9453117
Makati City
Jan. 31, 1995

DOC. NO. 85
PAGE NO. 18
BOOK NO. X
SERIES OF 1995

Marcopper Mining Corporation
By: 
JOHN E. LONEY
President & CEO
LESSEE

REPUBLIC OF THE PHILIPPINES)
QUEZON CITY : S. S.
)

In Quezon City, this day of 19, a Notary
Public for and in the City, personally appeared VICTOR O. RAMOS
Secretary of Environment and Natural Resources with Residence
Certificate No issued on 19 at
on, Philippines personally known to me
and known to be the one who executed the foregoing instrument and
who acknowledge to me that the same is his free act and deed on
behalf of the government he represents.

This document is OTHER LAWFUL PURPOSES LEASE AGREEMENT
FBM NO. covering hectares parcel of public forest
lands consisting of four (4) pages including one (1) sketch plan
and each page is signed by the LESSOR and his witnesses and bears
my Notarial Seal

Witness my hand and Official Seal on the date and place
first above written.

NOTARY PUBLIC

DOC. NO. _____
PAGE NO. _____
BOOK NO. _____
SERIES OF _____

VICTOR O. RAMOS
Secretary