



March 16, 2022

MEMORANDUM

FOR : The Regional Executive Director
DENR MIMAROPA Region

FROM : The OIC – PENR Officer

SUBJECT : REITERATING THE PREVIOUS RECOMMENDATION
OF PENRO – MARINDUQUE TO FILE AN ACTION FOR
UNLAWFUL DETAINER FOR THE RECOVERY OF
POSSESSION OF PUBLIC FOREST LAND SUBJECT OF
THE LEASE CONTRACT ENTERED INTO BETWEEN
DENR AND MARCOPPER MINING CORPORATION
(MMC, *for brevity*)

This is to reiterate our letter-recommendation as regards the filing of a Civil Case for Unlawful Detainer against MMC which has been occupying and possessing public lands in bad faith.

Pursuant to Section 2, Article XII of the Constitution as implemented by P.D. 705 (*Revised Forestry Reform Code*) and other existing laws and implementing rules and regulations, the Republic of the Philippines (hereinafter referred to as *the Republic*), through the DENR, shall have the power and authority to lease forest lands for a period not exceeding twenty-five (25) years, renewable upon the expiration thereof for a similar period to qualified juridical persons. In furtherance of the existing laws, the DENR Administrative Order (DAO) No. 2020-09 (*Guidelines on the Management of Cancelled or Terminated, Expiring, and Expired Tenurial Instruments*) and Regional Special Order (RSO) No. 387 (*Creation of Asset Management Team*) authorized the DENR as represented by PENRO to recover the leased forest lands by initiating for and on behalf of the Republic appropriate actions sanctioned by law for the protection and management of the lands of public domain.

Factual Antecedents:

By virtue of Sec. 57 of P.D. No. 705, as amended, the Republic, represented by the DENR, leased parcels of public forest lands situated in Brgy. Balogo, Sta. Cruz, Marinduque to MMC as evinced in the "*OTHER LAWFUL PURPOSES LEASE AGREEMENT*" (hereinafter referred to as *OLPLA No. 2*) executed on August 7, 1969 covering a total land area of 17.655 hectares comprising of public lands which expired on June 30, 1994. It prompted MMC to apply for the renewal of the lease agreement, however, there were no available records of the approval of the same at the Forest Management Bureau (FMB).

As per available records, DENR and MMC entered into an annual lease agreement subsequent to the expiration of the original agreement for the calendar years of 1995 until December 31, 2000. No record shows that the subject renewal of OLPLA No. 2 was approved by the DENR Secretary nor any contract entered into by the parties subsequent thereto. Hence, it can be presumed that an implied annual lease agreement has been entered into between DENR and MMC, subject to the provisions of Sec. 2, Article XII of the Constitution and other existing laws which prescribe a renewal lease period of not exceeding twenty-five (25) years.

Actions Taken by PENRO-Marinduque:

A Notice to Vacate was personally served to and was received by MMC, through the security guard on duty on August 9, 2021 which was issued by the PENRO-Marinduque by virtue of the power and authority vested in DAO 2020-09 and RSO 387, headed by OIC-PENR Officer Imelda M. Diaz, with the assistance of the representatives from the Provincial Government of Marinduque and the Philippine National Police - Marinduque. Furthermore, this Office, through the Asset Management Team, inspected the areas and improvements covered by the cancelled/terminated/expired tenurial instruments and put up a signage on the subject property as authorized by DAO 2020-09 and RSO 387. The Team conducted actual ground verification to determine the exact location, classification, and status of the leased property wherein it was determined that the property occupied by MMC comprise of timberlands. The subject property is currently relinquished with an old steel structure warehouse located therein with several unlabeled drum barrels wherein chemicals are stored as well as haul trucks and heavy machineries which were used by MMC for its mining activities. Despite such notice from this Office, MMC failed to vacate, and thus, continued to occupy and possess the property to this day.

Resolution:

This Office, through the undersigned, respectfully reiterates and resolves:

- 1) That MMC was granted under the Notice to Vacate the right to hold the leased property for a period not exceeding thirty (30) days from receipt thereof for the purpose of removing improvements, structures, and installations introduced in the area and thereby reverting the land to conditions as the DENR may deem proper, which MMC failed to do so.
- 2) That despite the grace period agreed upon and the incessant demands by this Office to vacate the same, MMC continued to enjoy possession and occupation of the subject property without any legal permit or tenurial instrument and which has become illegal upon the lapse or expiration of the lease agreement on December 31, 2020. Ergo, contrary to law.
- 3) That MMC, through its counsel, sent a letter on August 24, 2021 with the subject "*Re: Trespass upon and illegal takeover of Marcopper's Property*" addressed to this Office through the undersigned. The contents of the letter to wit:

xxx "*Our client takes exception to your illegal acts and note the following:*

FIRST: We are not able to find any provision in the FLC that gives the PENRO, the DENR or any government entity to take over private property and claim that it is by authority of an expired FLC.

SECOND: Plotting of the area covered by the FLC is just 13,216.3655 square meters or just about 1.32 hectares and not the 17 hectares claimed by your August 06, 2021 letter.


THIRD: Plotting of the FLC area shows that it has a length of 1,105.41 meters on the West side and 1,102.89 meters on the East side. The width of the area ranges from 6.3234 meters to 22.8993 meters on its widest part until the borders are joined in the Northern Point 19 and the Southern Point 26. Simple logic will show that the FLC area can only be about 23 meters from the water's edge at its widest point.

FOURTH: You trespassed and took over the private property with the use of persons armed with assault rifles without any Court Order or due process in violation of Section 1. Article III, Bill of Rights, of the 1987 Constitution. xxx

xxx We thus put you on notice that the appropriate charges are being prepared for filing against you and whoever provided the means to trespass, take over the property of our client by armed force and violate its constitutional right to property and due process, among others" xxx.

- 4) That as can be inferred in the letter of MMC's counsel, the latter is challenging the authority of the DENR in implementing the provisions and the guidelines provided for in the DAO 2020-09 and RSO No. 387.
- 5) That the Republic, as represented by the DENR, has a profound cause of action to file a civil action for unlawful detainer against the MMC and as settled by jurisprudence, the power to determine who has the actual, physical possession or occupation or the better right of possession over public land remains with the courts.

For your consideration and further instruction.


IMELDA M. DIAZ