

- JULY 14, 2021



Republic of the Philippines
Department of Environment and Natural Resources
MINES AND GEOSCIENCES BUREAU

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JUN 07 2019

IN RE: DENIAL OF THE APPLICATION FOR
MINERAL PRODUCTION SHARING
AGREEMENT OF NORTHERN LUZON
EXPLORATION AND MINING CO., INC.
DENOMINATED AS APSA NO. 051

X-----X

NOTICE OF ISSUANCE OF DECISION

The President

Northern Luzon Exploration and Mining Co., Inc.
Philex Building, No. 27 Brixton St.
1600 Pasig City

Reg. Mail

The Regional Director

Mines and Geosciences Bureau
Cordillera Administrative Region
Diego Silang Street
2600 Baguio City

Reg. Mail

Please be notified that a Decision was issued by this Office on even date on the subject, a copy of which is attached.



ATTY. WILFREDO G. MONCANO
Acting Director

Handwritten initials and marks below the signature.



**"MINING SHALL BE PRO-PEOPLE AND PRO-ENVIRONMENT
IN SUSTAINING WEALTH CREATION AND IMPROVED QUALITY OF LIFE."**



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**IN RE: DENIAL OF THE APPLICATION FOR
MINERAL PRODUCTION SHARING
AGREEMENT OF NORTHERN
LUZON EXPLORATION AND
MINING CO., INC. DENOMINATED
AS APSA NO. 051**

X-----X

DECISION

Before this Office is the Appeal dated September 23, 2011 filed by Philex Mining Corporation (Philex), in behalf of Northern Luzon Exploration and Mining Co., Inc. (NLEMCI), to the Orders dated August 24, 2011 and June 24, 2011 of the Mines and Geosciences Bureau (MGB) Cordillera Administrative Region (CAR) denying the application for Mineral Production Sharing Agreement (MPSA) of NLEMCI denominated as APSA No. 051.

Records of this Office bear the following antecedent facts:

On January 20, 1995, Mr. James D. Brett filed APSA No. 051 in MGB CAR covering an area of 973 hectares located in Tuba, Benguet.

On May 13, 1999, the *Extrajudicial Settlement of Estate with Simultaneous Waiver of Rights* (EJS) was executed by and among June Prill Brett, James Wallace P. Brett, Jr., Sigrid P. Brett and Heather Brett Jovero, the Heirs of the late James D. Brett who died intestate in Baguio City on September 1998. The said document indicates that the estate of the late James D. Brett consists of his rights over the MPSA applications denominated as APSA Nos. 051, 072 and 065 filed in MGB CAR, and that June Prill Brett, Sigrid P. Brett and Heather Brett Jovero are waiving their rights with regard to APSA No. 051 in favor of James Wallace P. Brett, Jr.

On June 17, 1999, the EJS was registered in MGB CAR.

On July 30, 1999, the *Deed of Assignment with Royalty Agreement* (DOA) was executed by and between Mr. James Wallace P. Brett, Jr. and Philex, wherein the former (a) assigns to the latter all his rights and interest in APSA No. 051, and (b) gives consent to the latter to assign and convey his rights and interest to such Joint Venture Corporation which should be bound by said DOA, formed and organized by Philex and MINORCO Exploration, Phil., B.V.

On August 17, 1999, the DOA was registered in MGB CAR.

Through the Letters dated January 20, 2000 and August 31, 1999, Philex confirmed that APSA No. 051 shall be assigned to NLEMCI.

On February 08, 2000, MGB CAR issued the Order approving the assignment of APSA No. 051 from Mr. James Wallace P. Brett, Jr. to Philex/NLEMCI.



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00-187927

On January 12, 2001, MGB CAR endorsed to the National Commission on Indigenous Peoples (NCIP) the request of NLEMCI for the issuance of the NCIP Certification.

On March 12, 2010, Department of Environment and Natural Resources (DENR) Memorandum Order (DMO) No. 2010-04¹ was issued providing, among others, for policy directives in cleansing mining applications in all the ROs of MGB. Section B thereof clearly provides the grounds for the denial of mining applications, as follows:

B. *Cleansing of Mining Applications*

1. x x x.
2. x x x.
3. *Grounds for denial of mining applications:*

*Mining applications that have not complied with any of the following requirements shall also be denied:*²

- a. *Securing the NCIP Certificate of Non-Overlap within 1 year and NCIP Certification Precondition (Compliance Certificate) within 3 years from the date of NCIP's receipt of the pertinent letter-request from MGB.*
- b. x x x.
- c. x x x."

On April 01, 2010, DMO No. 2010-04 took effect after publication in a newspaper of general circulation and registration in the Office of the National Administrative Register.

On February 8, 2011, MGB Memorandum Circular No. 2011-2 was issued stating, among others, that "*The deadlines set under Section B.3 of DMO No. 2010-04 in re: 'Reforms in the Department Mining Tenement System', in connection with the compliance of mining applicants with the [NCIP], Sanggunian, and the posting, publication and radio announcement requirements are **fixed and non-extendible.***"

On June 24, 2011, MGB CAR issued the Order denying APSA No. 051 for failure of NLEMCI to comply with the provisions of Section B.3 (item a) of DMO No. 2010-04 within the prescribed period.

On July 27, 2011, Philex submitted to MGB CAR its Letter requesting for reconsideration on the denial of APSA No. 051 "*on the grounds that the applicant should not be affected on the failure of NCIP to act on the documents forwarded to their office.*"

On August 24, 2011, MGB CAR issued the Order denying the request for reconsideration of Philex.



¹ Reforms in the Department Mining Tenement System.
² Subject to exceptions due to *force majeure* or justifiable causes.

On October 11, 2011, Philex submitted to this Office its Letter-Appeal dated September 23, 2011 to the August 24, 2011 and June 24, 2011 Orders of MGB CAR, arguing that *"the applicant should not be affected on the failure of NCIP to act on the documents forwarded to their office."*

Our evaluation shows the following:

1. NLEMCI still failed to secure the pertinent NCIP Certification, which is a ground for the denial of mining applications pursuant to Section B.3 (item a) of DMO No. 2010-04.
2. The argument of appellant does not constitute *force majeure* or justifiable causes that warrant this Office to relax the implementation of DMO No. 2010-04.

As the mining applicant, it is the obligation of NLEMCI to comply with all the requirements for its MPSA application. However, more than ten years has lapsed since the endorsement to the NCIP of the request for Certification on January 12, 2001 up to the denial of APSA No. 051 on June 24, 2011, yet NLEMCI still failed to secure the required Certification.


If NLEMCI has been in good faith in complying with the requirements of their MPSA application, they should have turned over every stone to clear procedural hurdles to secure the approval of APSA No. 051 and would not take a long period of time, i.e., more than ten years, to act on the requirements. Jurisprudence has it that *"Applied to possession, one is considered in good faith if he is not aware that there exists in his title or mode of acquisition any flaw which invalidates it."*³ In precept, *"Indeed, the law helps the vigilant but not those who sleep on their rights. For time is a means of destroying obligations and actions, because time runs against the slothful and contemners of their own rights."*⁴

Thus, the instant Appeal is bereft of merit.

NOW, WHEREFORE, the foregoing premises considered, the Appeal of Philex Mining Corporation dated September 23, 2011 in connection with the denial of the application for Mineral Production Sharing Agreement of Northern Luzon Exploration and Mining Co., Inc. denominated as APSA No. 051 is hereby **DENIED** and the Orders dated August 24, 2011 and June 24, 2011 of the Mines and Geosciences Bureau Cordillera Administrative Region **AFFIRMED**.

SO ORDERED.

Quezon City, Philippines, JUN 07 2019


ATTY. WILFREDO S. MONCANO
Acting Director



³ Florentino, Troadio and Pedro, all surnamed Ochoa, v. Mauro Apeta and Apolonia Almaza G.R. No. 146259, September 13, 2007, citing Article 526 of the Civil Code.

⁴ Gonzales v. Intermediate Appellate Court, 157 SCRA 597, January 29, 1988, citing Republic v. Fangonil, 133 SCRA 513.