

Reviving Foreign Investments in the Philippines: The Case of a Mining Project in Rapu-Rapu Island

Written by

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This case was developed based mostly on the information that is in the public domain, solely for educational purposes as a contribution to the Project entitled “Capacity Building for Investment Liberalization and Facilitation” conducted under the auspices of the Asia-Pacific Economic Cooperation (APEC). The case is neither designed nor intended to illustrate the correct or incorrect management of the situation or issues contained in the case.

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Executive Summary

This case is about a mining project that was groomed as a showcase both for reviving mining investments and for responsible mining in the Philippines. The project was located in Rapu-Rapu, an island with a hilly terrain and a fragile ecosystem. The project proponent was Lafayette Mining, Ltd (LML), a publicly listed firm in Australia.

Anti-mining groups opposed the project when its proponent applied for an Environmental Compliance Certificate in 2000. In 2003, the construction of mining facilities in the island started. On the way to the project's operations, the Philippine government granted fiscal incentives and other forms of support to the flagship mining project. Ore extraction started in April 2005 while ore processing commenced in July 2005. Barely four months after ore processing operations started, the project suffered a major blow. In October 2005, two incidents of mine tailings spills occurred in the mine site. The spills, which caused fish kills and scared residents from eating seafood taken from the island's shores, prompted the Philippine government to suspend the project for an indefinite period.

In March 2006, the President of the Philippines formed a fact-finding commission to investigate the spills. Headed by an anti-mining advocate, the commission later recommended the closure of the mine. Instead of adopting the commission's recommendations, the Department of Environment and Natural Resources (DENR), which had the authority to decide the project's fate, came out with its own assessment of the project. After organizing public forums and consulting DENR and third-party experts, the DENR decided to allow the project proponent to conduct a series of test runs on the project's facilities to check the effectiveness of improvements made on environmental infrastructures. Anti-mining groups greeted the test runs with protests and petitions that permeated the cyberspace. Their campaign for the mine's closure continued even after the DENR gave the project the green light to resume operations in February 2007.

It was not a happy ending for the project proponent however. Fish kills recurred in October 2007, almost at the same time that one of its suppliers declared the firm on default for failing to settle its financial obligations. A prospective investor withdrew from the project in December 2007, prompting the LML to suspend the trading of its securities in the Australian stock exchange. In February 2008, the parent company appointed voluntary administrators to protect its assets from creditors. In the meantime, the DENR demanded that the firm allocate around US\$ 3.3 million for the rehabilitation of the Rapu-Rapu mine.

In January 2004, Philippine President Gloria Macapagal-Arroyo issued Executive Order (EO) No. 270 which aimed to revive the economy's mining industry. Three years prior to the issuance of the EO, the economic contribution of mining had plunged to 2% of export revenues, from 20% in the 1970s. The EO mandated the preparation of a Mineral Action Plan (MAP) which identified 24 high-priority mining projects that would bring in an estimated US\$ 6.7 billion in mining investments over the next 10 years. The Rapu-Rapu Polymetallic Project (RRPP) in the island of Rapu-Rapu¹ in Albay² province was one of these projects. But it differed from the rest for it was groomed as a showcase of the Philippine government's renewed drive to attract mining investments and promote responsible mining.

This case is based on the mining case series written by Julius I. Dumangas, Cristina Alarilla and Marie Kirstin De Jesus of the Ramon V. Del Rosario Center for Corporate Responsibility, Asian Institute of Management. The titles of the case series were: *Two "Mine-Tailings" Spills in Rapu-Rapu: Undermining Prospects for Sustainable Mining in the Philippines?*, *The Baptism of Fire: Resolving the Mining Controversy in Rapu-Rapu Island*, and *The Possibility and Challenge: Responsible Mining in Rapu-Rapu Island*.

In a press conference and dialogue with local government officials on 27 April 2005, Michael Defensor, then Secretary of the Department of Environment and Natural Resources (DENR), declared, “If something goes wrong with Rapu-Rapu, this would affect the entire mining investments in the country.”³

Something went wrong soon after. Two incidents of mine tailings⁴ spills occurred in the Rapu-Rapu mine on 11 and 31 October 2005. In both spills, mine tailings reached nearby creeks that drained into the sea killing fishes, crustaceans and other marine organisms. The spills created a “fish scare” that intensified the campaign of anti-mining groups for the closure of the mine. They also prompted the DENR to suspend the operation of the flagship mining project for an indefinite period.

Six months after it suspended the RRPP for polluting nearby bodies of water with cyanide-laden mine tailings, the DENR allowed Lafayette Philippines, Inc. (LPI), the proponent of the mining project, to conduct a test run of its ore processing facilities. The DENR believed that these test runs would help the agency decide whether to close the project permanently or allow it to resume operations.

Environmentalists opposed the DENR’s decision to authorize the test runs. They viewed the test run decision as a signal for the reopening of the mining project. They stressed the likelihood of environmental disasters posed by mining operations in an island with a hilly terrain and a fragile ecosystem. They asked a Philippine court to stop the test runs and also launched online campaigns to stop the conduct of the test runs.

But pro-mining groups said that the DENR’s decision would test the effectiveness of the environmental improvements done by LPI. Company representatives expressed confidence that the mining project would eventually regain its showcase stature for responsible mining in the Philippines.

The controversy behind the RRPP made the DENR very cautious in allowing the project to resume operations, thus stretching the test run for 120 days even as LPI’s financial losses mounted to Php 2.5 billion on the 15th month of the project’s suspension.

Case Background

The Philippine Mining Industry

The Philippines was the fifth most mineralized economy in the world.⁵ It had nine million hectares (ha) of mineralized land with established reserves of 13 metallic and 29 non-metallic minerals.⁶ In the 1980s, it ranked second in gold deposits, third in copper deposits, fifth in nickel deposits, and sixth in chromate deposits. The National Economic Development Authority (NEDA) estimated that the economy had Php 47.08 trillion (US\$ 840 billion) worth of mineral wealth, 10 times its annual gross domestic product (GDP) and 15 times its total foreign debt.⁷

The fall in metal prices, the lack of investments and the increased anti-mining activism of civil society reduced the economic contribution of mining. However, mining continued to generate substantial employment. In the last 25 years, the mining industry created an average of 125,000 jobs a year. In 2003, the industry paid a total of Php 5 billion in wages and benefits.⁸ The government estimated that every mining job created would generate four to ten jobs in allied industries.

The Philippine government expected that the revival of mining investments would boost its budget. Revenues would come from 15 taxes and fees, including corporate income tax, excise tax on minerals produced and royalties that mining companies must pay. From 2000 to 2004, the government collected Php 13.15 billion in taxes from the industry.

Aside from boosting government revenues and creating jobs, mining investments would generate funds for the development of local communities hosting the mines. Funds would come from the mandatory allocation of 1% of milling and mining cost of mining companies for community development.

The Department of Environment and Natural Resources (DENR)

The DENR was mandated to promote both environmental protection and sustainable commercial utilization of natural resources. The Mines and Geosciences Bureau (MGB)⁹, the Environmental Management Bureau (EMB)¹⁰, and the Pollution Adjudication Board (PAB)¹¹ were the DENR offices that promoted and regulated mining activities.

The Philippine Mining Act (PMA) of 1995

The PMA liberalized the entry of foreign investments in mining. It was regarded as the friendliest policy towards foreign investments in mining in comparison to those of the other 70 economies that liberalized their mining laws to attract foreign investors.¹² It removed the 60:40 (Filipino:foreign) ownership rule for mining firms, thus enabling foreigners to have full control of mining projects.

It changed the mode of disposing mineral lands, from the leasehold system to the financial or technical assistance agreement (FTAA),¹³ which came in the form of a mineral production sharing agreement (MPSA), co-production agreement (CA) or joint-venture agreement (JVA). Foreign companies who would invest a minimum of US\$ 50 million could explore or mine an area up to 81,000 hectares for 25 to 50 years.

While designed to spur the entry of foreign investments, PMA also promoted responsible mining, corporate responsibility and community development. It integrated the principle of social acceptability to guide the design and approval of mining projects. It required mining firms to secure prior informed consent from the communities that would directly be affected by mining operations.

The PMA likewise encouraged mining companies to use best practices in sustainable development. Mining companies were required to submit an environmental impact statement (EIS), an environmental compliance certificate (ECC), environmental protection and enhancement program (EPEP) and an environmental work program (EWP). For its part, the PMA mandated the formation of a multipartite monitoring team (MMT) to check compliance and progress of mining firms with their plans to manage environmental risks.

The PMA also mandated mining firms to formulate and implement a social development management program (SDMP)¹⁴ to ensure the development of communities hosting mining projects. Mining companies were required to allocate 1% of its milling and mining cost for the SDMP.

The Mineral Action Plan (MAP)

After the Philippine Supreme Court declared the constitutionality of the PMA, the government came up with the MAP which sought to reduce the constraints to the development of the mining industry. The MAP addressed concerns over the unfavorable investment climate, weak public acceptance of mining investments and inadequate transparency to stakeholders.

The Rapu-Rapu Polymetallic Project (RRPP)

The RRPP was operated by the Rapu-Rapu Processing, Inc. (RRPI), a subsidiary of Lafayette Philippines, Inc. (LPI). Lafayette Mining Ltd (LML), a publicly listed company in Australia, owned 74% of LPI while Malaysian firm Philco controlled the remaining 26%.¹⁵ LPI served as a holding company since two Philippine corporations with approved MPSAs carried out the actual mining operations. The RRPP covered a surface area of 180 hectares spanning three *barangays* (villages) in Rapu-Rapu Island.

Before the cyanide spills occurred in October 2005, the RRPP was seen as a milestone in reviving the Philippine mining industry. Identified as one of the large-scale mining investments from 2001-2010, it was one of the first new mining projects approved in the economy after 15 years. Estimated project investments would reach US\$ 42 million. The project would then produce copper, gold, zinc and silver valued at US\$ 350 million for the initial six years of mining operation.¹⁶ The government stood to earn revenues amounting to US\$ 246 million.¹⁷

Construction of mining facilities in Rapu-Rapu Island began in 2003. Initial investments for the construction of the mine reached US\$ 41 million in March 2004. By the end of 2005, total investments had increased to US\$ 75 million. These covered the exploration costs, investments in a power facility, interest costs and other expenses. The following investors provided the funds: bank syndicate (US\$ 35 million), shareholders of Lafayette Mining (US\$ 23 million), LG International & KORES (US\$ 10 million) and ANZ Bank (US\$ 7 million).¹⁸

Mining operations started in April 2005. The Rapu-Rapu Minerals, Inc. (RRMI) extracted the ores while the Rapu-Rapu Processing, Inc. (RRPI) milled and processed them. LPI, which owned 40% of RRMI and 60% of RRPI, provided mining-related financial, managerial and technical services to the two companies.

Investment Incentives¹⁹

The Philippine government gave numerous investment incentives to the RRPP. In May 2004, Presidential Proclamation No. 625 designated 41 hectares of the area covered by the project as a special economic zone. In June 2004, the RRPP was registered with the Philippine Economic Zone Authority (PEZA). The registration with PEZA meant that the RRPP was entitled to the corporate income tax holiday for four years from the start of commercial operations. Subject to PEZA approval, the tax holiday could be extended for another three years. After the lapse of the income tax holiday, the project was entitled to the following:

- Exemption from national and local taxes and, in lieu thereof, payment of 5% final tax on gross taxable income (exempted from the expanded withholding tax);
- Additional deduction for 50% of the cost of training expenses against the 5% tax on gross income earned;

- Tax and duty free importation of merchandise, including raw materials, capital equipment, machineries and spare parts;
- Exemption from wharfage dues, export tax and impost fees;
- Value Added Tax (VAT) zero-rating of local purchases;
- Exemption from payment of any and all local government imposed fees, licenses or taxes except real estate taxes; and
- Non-fiscal incentives such as permanent resident status within the special economic zone for foreign investors, employment of foreign nationals, simplified import and export procedures.

In its report, the Rapu-Rapu Fact-Finding Commission (RRFFC) formed by the President of the Philippines to investigate the October 2005 spills, narrated that LPI's then Country Manager Roderick Watt requested the President to proclaim the mining area as a special economic zone. The RRFFC alleged that Watt mentioned in his letter to the President that the US\$ 45 million in capital investments from LML of Australia and the US\$ 10 million in investments from the LG Group of Korea might be put on hold indefinitely if the mining area was not declared as a special economic zone.

The RRFFC alleged that Watt advised the President that the only requirement preventing PEZA from acting on Lafayette's request for an ecozone status was the signature of Rapu-Rapu town mayor Dick Galicia on a certificate of concurrence. A few months after Watt's appeal to the President, the Office of the President proclaimed the mining area as a special economic zone. The proclamation came out amidst accusations that Lafayette submitted a fictitious Municipal Council resolution that allegedly endorsed the company's application for an ecozone status.

In its own report to validate the RRFFC's findings, the DENR said that the sharing of project benefits became grossly unfavorable to the Philippine government as a result of the project's ecozone status.²⁰ It said that without investment incentives the sharing of project benefits was 54% for the government and 46% for the project proponent. However, with the ecozone status, the government's share went down to 23% while that of the proponent rose to 77%.

Controversies Surrounding the Project Approval Process

The Philippine government issued several permits to LPI subsidiaries before the start of mining operations. The DENR issued the project's ECC on 12 July 2001. The MGB also approved the project proponent's EPEP. Other permits that the project proponent obtained were the following: 1) Declaration of Mining Feasibility, 2) Health of Workers Study Program, 3) Coastal Management Plan, 4) Storm Water Runoff Management Plan, 5) Solid Waste Management Plan, 6) Roadway Maintenance and Transport Management Plan, 7) Action Plan for Pier Development, 8) Foreshore Lease from the DENR and 9) Certificate of Registration from the Board of Investments (BOI).

The Rapu-Rapu Fact Finding Commission (RRFFC) which later investigated the mine tailings spills, alleged that there were anomalies behind the process of securing the project permits.²¹ In its report, the RRFFC said that while the project proponent complied with the procedures in securing the legal requirements, it failed to secure the project's social acceptability. It pointed out that several local stakeholders and environmental groups opposed the issuance of these environmental permits, citing the fragile nature of the island's ecosystem, the potential for acid mine drainage (AMD) and the storms that frequented the mining area.

The RRFFC said that the DENR hastily issued the ECC to the mining proponent, despite the advice of the Philippine Senate Committee on Environment not to do so and the knowledge that some local stakeholders strongly opposed the project. The Commission said it was anomalous to hold the only public hearing on the ECC application in the premises of the mining proponent in Rapu-Rapu Island. “The Commission takes note of the sheer inaccessibility of the site, the absolute reliance on the proponent to reach the premises where the hearing was conducted and the very limited options to travel in and out of the area, so much so that anyone who participated in this public hearing must have depended entirely on LPI for transportation and accommodations.”²²

The RRFFC also made an issue of the non-inclusion of stakeholders from nearby Sorsogon province in the public consultations on the project. It said that the DENR and the mining proponent consulted only the local government units (LGUs) and stakeholders from Albay Province. The fish kills that were attributed to the mine tailings spills heavily affected the livelihood of fishermen from Sorsogon province, prompting its Representative to the Philippine Congress to seek legislative inquiries on the controversies surrounding the October 2005 spills. The Commission stressed that Philippine regulations governing applications for environmental permits concerned themselves less with the project location than with the extent of environmental impacts on one or several jurisdictions.

Philippine Government’s Actions on the Mining Controversy

The first spill occurred on 11 October 2005 due to the breakdown of the main pump that transported wastewater from a detoxification plant to a mine tailings storage dam. Pump failure caused the wastewater to flow back into an “events pond” intended to contain mine tailings spills. Because the events pond was already 40% full, an estimated 20,000 liters of cyanide-laden wastewater spilled into the premises of the gold processing plant and made its way to two nearby creeks that drained into the Albay Gulf. In the afternoon of the same day, the villagers collected two kilos of fish, crustaceans and other marine life from the mouth of the said creeks.

On 31 October 2005, heavy rainfall caused the lower tailings storage dam²³ to reach critical levels. Fearing that the dam would give way, the company diverted the accumulating wastewater to nearby creeks. In the morning of the following day, the villagers collected two sacks of dead marine life along the creeks.

The spills realized the fears of anti-mining groups on the adverse impact of mining in Rapu-Rapu Island. These spills prompted the environmental activists to intensify their campaign for the closure of the Rapu-Rapu mine. In the meantime, foreign investors closely observed the government’s actions to manage the controversy behind the flagship project that would revive the mining industry.

Indefinite Suspension of the RRPP

A day after the first spill on 11 October 2005, the DENR ordered LPI to suspend its ore processing operations and comply with nine conditions to prevent another spill. These conditions included the immediate repair of the wastewater pumps, improvement of the mill’s storm drainage to prevent the mixing of rainwater with wastewater and the regular draining of the events pond.

On 17 October 2005, the DENR allowed the company to resume its operations after validating the company's compliance with its recommended measures to prevent the recurrence of another spill. In its later assessment of the RRPP, the DENR admitted that it focused on the immediate cause of the first spill, but failed to note deficiencies in the company's environmental infrastructures. These deficiencies led to the occurrence of the second spill on 31 October 2005.

On 7 November 2005, the agency required LPI to submit a geotechnical evaluation of the capacity and integrity of the tailings storage facility and a detailed rehabilitation plan for the affected drainage system, and to correct the deficiency in the cyanide-detoxification circuit. It reminded the company to make sure that the cyanide level of mine wastewater was always within DENR standards. At the same time, it also ordered the company to compensate the fishermen whose livelihoods were affected by the fish scare caused by the fish kills.

On 9 November 2005, the DENR suspended the company's wastewater discharge permit and use of cyanide and slapped it with a Php 300,000 fine for violating ECC conditions. In its subsequent investigations, the agency identified major lapses of LPI such as starting commercial mining operations without completing the required environmental protection dams and non-implementation of its plans to manage environmental risks.

On 9 January 2006, the PAB, a quasi-judicial body chaired by the DENR Secretary, issued a Cease-and-Desist Order (CDO) on Lafayette's mining operations. It ordered LPI to pay a fine of Php 10.4 million, the biggest fine ever imposed by the DENR on any company violating the Philippine Clean Water Act. The DENR Secretary Michael Defensor, who signed the order, explained the DENR's move. "The rationale of imposing the maximum amount of fines is to deter similar occurrences. While government recognizes and promotes the mining industry, this should not be interpreted as a license to operate in a manner that will undermine the efforts of the DENR in protecting the environment."²⁴

The DENR imposed several conditions for the lifting of the CDO. These included the submission and acceptance of a certification from the International Organization for Standardization (ISO) on the company's Environmental Management System, as well as a Comprehensive Pollution Control Program. It also required the company to employ an accredited Pollution Control Officer and to post a surety bond equivalent to 25% of the total cost of the pollution control program.

LPI's mining operations in Rapu-Rapu Island was still suspended when President Arroyo appointed retired General Angelo Reyes as new DENR Secretary in February 2006.

Formation of a Presidential Fact-Finding Commission

On 2 February 2006, President Arroyo visited Albay province and announced her plan to form a Presidential fact-finding body to investigate the spills. Her announcement followed media reports in mid-January 2006 that Bishop Arturo Bastes, an anti-mining advocate of Sorsogon, would seek the help of the influential Catholic Bishops Conference of the Philippines (CBCP) in closing the Rapu-Rapu mine. The powerful CBCP earlier raised an uproar over the two spills that disrupted the livelihood of fishermen in Albay and Sorsogon.

On 10 March 2006, President Arroyo created the Rapu-Rapu Fact Finding Commission (RRFFC) through Administrative Order 145, which mandated the commission to investigate the effects of the mining operations of LPI on people's health and environmental safety in Rapu-Rapu Island and nearby municipalities. The order also mandated the Presidential Commission to: 1) investigate the proximate and contributory causes, factors and circumstances surrounding the spills; 2) conduct baseline and social investigations; 3) assess

the effectiveness of the remedial actions undertaken by the mining proponent; and 4) recommend technical, legal and other remedial courses of actions.²⁵

Bishop Bastes chaired the RRFFC and was one of the first who opposed the mining project in Rapu-Rapu, citing its very fragile ecosystem. He earlier took the position that until a proper technology was found to ensure environmental safety, no mining should be allowed in the island.²⁶ The RRFFC held office at the CBCP building. The CBCP had articulated its anti-mining stance in various pastoral letters. Likewise, pro-mining advocates said that anti-mining individuals dominated the RRFFC's membership.

The RRFFC conducted individual and group studies for two months, from 17 March to 17 May 2006. Some of its members visited the mine site to inspect the environmental infrastructures and the creeks where the fish kills occurred. They held public hearings, inviting LPI and DENR officials, interviewed key informants, consulted various experts and reviewed studies done by independent groups. They also collectively discussed and analyzed the findings and results of the investigations.

In its report, the RRFFC questioned the MPSA between the Philippine government and LPI.²⁷ It said that the government would only gain minimal excise tax revenues from the MPSA, given LPI's investment incentives and that LPI would pay substantially less taxes than what was provided under the PMA. It noted the irregularities in getting the PEZA permit, citing that the company failed to secure the Rapu-Rapu municipal council's endorsement on its PEZA permit application.²⁸

Despite strong and urgent clamor from business groups that LPI should be allowed to resume mining operations, the then new Environment Secretary Reyes decided to wait for the results of RRFFC's report. On 19 May 2006, the RRFFC submitted its report to President Arroyo and recommended to: 1) cancel the RRMI/RRPI PEZA Registration; 2) rescind all financial and economic incentives given to the mining proponent; 3) build the DENR's capability to manage and monitor mining operations; 4) issue a moratorium on mining in Rapu-Rapu; 5) cancel the ECC of the RRMI and RRPI; and 6) review the PMA provisions on ownership and management of mining firms to protect Philippine interest.

Stakeholders' Reactions to the RRFFC Report

Environmentalists hailed the report. Greenpeace, the international environmental lobby group, said, "It was clear early on that the Rapu-Rapu mine was an ill-conceived project, putting the area's precious marine environment at risk from toxic mine waste and siltation, and being located in an area where typhoons frequently occur and geological hazards exist."²⁹

On the other hand, pro-mining groups assailed the Bastes Commission report. LPI said that the report's findings and recommendations sprang from the anti-mining bias of its members and lacked scientific bases. The Chamber of Mines of the Philippines (CMP), a lobby group for the mining industry formed in 1936, expressed dismay over the recommendations and vowed to file a petition to allow LPI to resume operations since it had complied already with government requirements.³⁰

The Office of the President, which created the RRFFC itself, rejected the recommendation to ban mining in Rapu-Rapu Island. Press Secretary Ignacio Bunye said that the government would maintain its stance not to ban mining, stressing that the government must be fair with foreign investors or risk losing job-generating mining ventures. At the same time, he emphasized that the government would strictly enforce mining laws and safety standards.³¹

Generating Options in Resolving the Mining Controversy

Reyes faced a difficult decision in resolving the controversy. Since he was new to the DENR, he spent considerable time and effort to understand the mining industry. He solicited inputs and advice from DENR experts. Because the credibility of the DENR was placed in doubt because of the RRFFC findings and recommendations, Reyes also engaged academic experts, mining engineers, environmentalists and other third-party experts to help him make a sound decision on the issue.³²

Before making a decision, he organized a public forum on 31 May 2006 at the state-owned University of the Philippines (UP), a venue deemed as a more neutral ground for discussing the issue of closing or reopening the RRPP. He invited pro-mining and anti-mining groups to this forum. LPI officials presented the company's side while a panel composed of the RRFFC members and the private sector questioned company officials. Members of the general public also asked questions during the forum.

After the UP forum, the DENR convened separate meetings with pro-mining and anti-mining groups to present and discuss DENR's options. The agency also continued to solicit additional options and added them to its list of available options which were then presented to stakeholders' groups. Reyes explained that the DENR did this to make sure that the stakeholders would not be surprised by the decision on the issue and he, in turn, would not be surprised by their reactions.

The DENR came up with its own assessment of the RRPP. In its report, the DENR pointed out that the two spills were due to human and management errors.³³ The spills could have been prevented if the company had done regular systems and equipment checks and installed the required environmental protection infrastructure before commercial operations. LPI failed to measure up to the standards of responsible mining or to use best available practices advocated by Environment Australia or by the CMP's Code of Conduct.

The DENR entertained the following five options in resolving the controversy: 1) Close the mining project, 2) Revoke the project's ECC and impose a mining moratorium in the island, 3) Maintain the temporary closure order, 4) Issue a temporary lifting order to test environmental facilities, and 5) Allow the company to resume commercial operations.

1. Close the mining project. This option was in line with the RRFFC's call. It would limit the size of the open-pit mine, reduce the area exposed to the atmosphere and thus lower the potential for AMD. It would mitigate the risk of environmental pollution from heavy metals and toxic chemicals used and generated during ore processing; reduce threats to people's health and to marine organisms; and also preserve the mineral deposits in the island for future generations.

However, it was also risky since it would leave the open-pit mine unattended and exposed to the atmosphere, thus generating AMD. The milling plant, detoxification facilities, fuel storage facilities and environmental dams would be left to deteriorate, causing environmental problems later on. Taxpayers would shoulder the environmental costs in the long run. Expensive litigation might soon follow. Also, if the company was forced to close down, the government would have to implement expensive mine site rehabilitation and environmental mitigation measures.³⁴ Given the rising prices of gold in the market, small-scale miners who might not follow environmental laws would mine the abandoned mining area.

The closure of the mine implied a potential loss of Php 3.1 billion in government revenues, 900 jobs in the area, and at least Php 5 million funding a year for SDMP projects. It would send a negative signal to foreign investors. NEDA Secretary Romulo Neri said that the

suspension of Lafayette “may not be advantageous to the country at the time that we are trying to attract more investments into the industry.”³⁵

Neri suggested the continuing operations of Lafayette under the following conditions: 1) Securing community acceptance for its continuing operations through consultations with all stakeholders under the joint supervision of the concerned local governments units and the DENR; and 2) Graduated scale of operations commensurate to its degree of compliance with the recommended environment safeguards, i.e. its level of operations must be kept within the capacity of its installed environmental safeguard features to appropriately mitigate, if not eliminate, pollution.

Alfredo Ramos of Atlas Consolidated Mining and Development Corporation said that “closing it will send a signal that there are strong anti-mining sentiments in the Philippines, whether true or not. Rather, it’s a signal that they should find other countries to invest in. Indonesia is just nearby, Papua New Guinea, Australia. The problem is we’re in a global market; we compete with limited capital.”³⁶

Brett A. Taylor, secretary of the Mindanao Association for Mineral Industries Inc., said that the resumption of the RRPP would benefit not only the company, but also the economy and the community. He said its closure could have a major impact on the perception of the Philippines as a viable investment area for mining.

J. Paul McKibben, general manager of TMM Management Inc., warned about the negative impact of Lafayette’s closure on mining investments. “I talked with two international companies. They said they’re not inclined to invest in the Philippines if Lafayette is closed down.”³⁷ He added, “I believe that they should be given a second chance to demonstrate responsible practice. Given that they were fined [Php 10.7 million] already for their breaches and they paid the fine, and spent Php 400 million in remedial measures to meet conditions, they should be given a second chance. If another incident happens, they should be shut down.”

2. Revoke the ECC of the project and impose a mining moratorium in Rapu-Rapu until environmental concerns are addressed. This option assumed that the design of the dam and the proposed AMD control measures were flawed. A mining moratorium would prevent the possible transfer of mining rights ownership. It would provide the opportunity to review the design of the environmental protection measures of the company and clarify the project’s social acceptability, thereby raising the level of confidence of the government and of other stakeholders in the safety of mining operations in Rapu-Rapu Island. However, the company and its investors could take this decision negatively and would instead abandon the project or declare bankruptcy, leading to similar results as mine closure.³⁸

3. Maintain the temporary closure order until full compliance with conditions. If the CDO remained, it would lead to similar effect as mine closure. Prolonged suspension of mining operations would strain the company’s finances. It could lead to the company’s bankruptcy or abandonment of the project since it was losing almost US\$ 2.7 million each month in overhead costs without earning any income. It would also leave the improvements in environmental infrastructures untested.

4. Issue a temporary lifting order to test environmental facilities. The issuance of a Temporary Lifting Order (TLO) would allow the company to conduct test runs on the new base metal plant³⁹ and on the other improvements in environmental protection infrastructures put in place in compliance with government conditions. It would enable the government and other stakeholders to validate the adequacy of these improvements. The temporary resumption of the mining operations would also add to government revenues,

create jobs and produce community development benefits. It would demonstrate to foreign investors the friendliness of the Philippine investment climate.

On 5 May 2006, Hong Jong-ki, Ambassador of the Korean embassy in Manila, asked Reyes to grant a TLO on the RRPP in which two major Korean companies had an equity stake. Hong pointed out in his letter that the management of the RRPP already complied with the DENR's conditions. He said, "At present, all that is needed is the TLO that will allow LML to undertake commissioning tests, temporarily operate the plant and to take samples to determine whether the commissioning test results of the said project are within DENR environmental standards."⁴⁰

Hong noted that President Roh Moo-hyun of Korea already "had articulated Korea's commitment to invest in the Philippine mining sector during his state visit to the Philippines in December 2005." The RRPP was Korea's first mining project in the Philippines and was crucial in determining Korea's future mining investments in the economy.

Robert Gregory of the Australia-New Zealand Chamber of Commerce (ANZCHAM) said that the mining industry "would like to see Lafayette resume operations as soon as practical as further delays may have a possible negative effect on Philippine mining companies' ability to attract future investment from international capital markets."⁴¹

Alfredo Ramos, chairman of Atlas Consolidated Mining and Development Corporation, said that the test run was crucial. He said that in the interest of the industry and of the Philippines, "environment issues should be addressed." He added, "But provided it complies with environmental measures, it should be allowed a test. The first thing is to test all the equipment, make sure their performance is according to the standard. How do you know if it works if you don't allow it to run? Now that they already complied with improved standard, with proper safety measures, government should allow them a test run and then decide afterward."⁴²

However, since the equipment and environmental facilities were on a test run, the option also carried the risk of mine-tailings spills.

5. Allow the company to resume commercial operations. Adopting this option meant that revenue payments to the government would continue, aside from resuming the employment of 900 employees and producing community development benefits from SDMP funding and implementation. It would raise the confidence of foreign investors.

However, there was limited assurance of the effectiveness of the untested environmental measures and safeguards in place. There was a high risk that another mine tailings spill would recur, thus further weakening the government's credibility and lowering the public's confidence in the whole mining industry.

Test Run Decision and Its Implementation

In selecting the best option (or mix of options) to address the mining controversy, the DENR kept in mind LPI's progress in meeting the government's conditions for the resumption of mining operations. According to the DENR's report, the company substantially complied already with the 21 remedial measures and conditions, including the adoption of corrective measures to prevent future failure of wastewater pumps, detoxification plant and events pond; desilting of the polluted creeks; increase in the height of tailings storage dams; completion of the rain drainage canal; and the submission of a comprehensive EMS. There had been a complete overhaul of the company's top management and replacement of 12 out of 19 Australian executives with Filipinos.

The DENR made a cautious decision to allow the company to conduct test runs of its milling operations to determine the effectiveness of improvements in environmental facilities. It issued a 30-day TLO to determine the production efficiency of the base metal plant in processing copper and zinc, as well as to test the adequacy of remedial measures, environmental safeguards and emergency-response system. Third-party experts would observe the test run, which was also open to the public.

In justifying its decision, the DENR said, “It is the DENR’s considered judgment that this option will be the best for all concerned, particularly for the Rapu-Rapu community. An abandoned open pit mine is not an attractive proposition as it will simply cause small miners to descend on the area and operate without environmental safeguards and safety measures. Without proper decommissioning, the generation of acid mine drainage will certainly continue and worsen pollution in the area. In this case, the government and ultimately the Filipino taxpayer will have to shoulder the considerable cost of remediation and rehabilitation. Allowing Lafayette to resume operations will allow an ECC-consistent mine rehabilitation and decommissioning plan to be implemented. This will also bring about economic benefits to the host communities: 900 direct jobs, Php 3 billion in government revenues (over the life of the mine) and Php 5 million per year in project commitments.”⁴³

To address issues raised by the RRFFC, the DENR made the following commitments: 1) Create Regional Multi-Sector Environmental Councils as venues for discussing and resolving all environmental concerns; 2) Organize Provincial Multi-Sectoral Environmental Councils to augment the monitoring function of the DENR and Multi-Partite Monitoring Team; 3) Create a multi-sectoral, multi-disciplinary group that will conduct a study on the carrying capacity of Rapu-Rapu Island to determine the merit of imposing a moratorium on mining; 4) Create a working group that will study the proposal of creating an independent Mining Authority; 5) Implement measures that will strengthen permitting procedures and improve environmental monitoring systems and standards; and 6) Conduct a review of policies to enhance responsible mining, rationalize the granting of incentives to mining operations, and enable the DENR to better perform its functions.

The DENR ordered LPI to meet the following conditions before, during and after the conduct of the test runs: 1) Pay the Php 10.4 million fine; 2) Complete environmental safeguards and instrumentations prior to the test runs; 3) Institute emergency control mechanisms in order to stop or minimize damages in case of accidents during the test run; 4) Install necessary monitoring equipment to measure the levels of cyanide, pH, and other chemicals and reagents feeding at the detoxification circuit; 5) Submit the schedule of the dam build-up for the period when the test run will be conducted; and 6) Require RRPI and RRMI to execute a Memorandum of Agreement (MOA) identifying their specific accountabilities in relation to the company’s ECC conditions.

Anti-mining groups criticized the DENR’s test run decision. Bacongus of Greenpeace said the 30-day test run was “a countdown to another ocean disaster.”⁴⁴ But, Carlos Dominguez, LPI’s new Chairman and President, welcomed the decision and said that the company was “determined to prove it stands for responsible mining.”⁴⁵

Stage 1 (10-13 July 2006). At 5pm of 10 July 2006, LPI started the first test run.⁴⁶ Water was circulated in the milling system to check for any leaks or blockages in the tailings line, raw water line, tailings return water line and the Base Metal Plant’s circuits for grinding, bulk flotation, copper and zinc flotation, detoxification and filtration. Personnel from the MGB and EMB observed the test run and checked LPI’s compliance with the PAB conditions. Top officials of villages directly affected by the mining project also observed the test run.

LPI opened the test run for public observation in compliance with DENR's condition. On 15 July 2006, Jesus Varela, Bishop Emeritus of Sorsogon Province, and representatives of academe, media and religious groups, toured the mine site and its facilities. LPI and the DENR monitoring team made presentations on the project to the public observers.

In his public statement, Varela said that the "DENR is the legally mandated agency of the government who will make the final decision on the fate of the company based on careful consideration of the opinion of experts, as well as the facts and scientific data that are obtained through a transparent, closely monitored and credible process, not on mere speculations and hearsay."⁴⁷ He stressed that the test run was critical in: 1) demonstrating LPI's compliance with government conditions on responsible mining; 2) showing if the objections of anti-mining groups on LPI's continued operations were valid; and 3) proving government's capability of strictly enforcing and monitoring LPI's compliance with environmental regulations and other relevant laws.

He said that the Roman Catholic Church was not against mining per se, but irresponsible mining.⁴⁸ He said that although mining was inherently risky, it could also benefit the poor. He added, "If the risks of mining in Rapu-Rapu can be reduced or substantially mitigated while the benefits can be palpably felt by its affected communities, then the company under its new Filipino management must be given a chance to conduct responsible mining; otherwise, it should be closed down."⁴⁹

Stage 2 (18-26 July 2006). This second test run was conducted to check the performance of the mill, conveyor, pumps and other electro-mechanical systems. No chemicals were used except lime and other substances that neutralized any acid in the non-ore bearing rocks.

MGB and EMB regional office personnel monitored this stage of the test run. The DENR monitoring team reported that LPI had instituted corrective measures to minimize damages in case of spills. These measures included creating an Emergency Preparedness and Response Plan (EPRP); increasing the capacity of the events pond from 660 cubic meters to 810 cubic meters; installing audible alarms when the capacity of the events pond reached 25% and 30%; and buying four emergency tailings pumps (one that runs on diesel, one on gasoline, and two electric-driven).⁵⁰ LPI also produced a copy of the MOA between RRMI and RRPI on their joint responsibility and accountability for any and all project undertakings.

Death of marine organisms. The DENR received information on 20 July 2006 that dead marine organisms were found at the shorelines of Pagcolbon village. Its investigation confirmed the presence of dead squids, fish, starfish and other marine life.⁵¹ The Pagcolbon shorelines were turbid at the time of the investigation and were very acidic (pH at 2.95).

The DENR also sought the help of the Bureau of Fisheries and Aquatic Resources (BFAR), which made its own investigation on 27 July 2006. The BFAR investigators interviewed some fishermen who said that the mining operations drove away the fish. They talked to the village head of Pagcolbon who said that people in his village were afraid to eat seafood. The DENR advised LPI to divert the flow of acidic waters from the old adit⁵² away from Pagcolbon Creek and to coordinate with village officials in coming up with precautionary measures.

Proposed injunction on the test run. On 20 July 2006, concerned artists, TV personalities and environmental activists supported the court petition of the island's residents for a Temporary Restraining Order (TRO) against LPI and the DENR in conducting the test run.⁵³ Around 800 petitioners said that a third spill occurred at the Rapu-Rapu mine site.

The petitioner's lawyer, Howard Calleja, feared another environmental disaster in the island, saying that "the permit for another test run should have no effect anymore because it shows that their promises could not be fulfilled. Now they promise to be safe, but there's a third mine spill, so what are we waiting for? Are we waiting for a disaster to happen?"⁵⁴

The TRO petition against LPI and the DENR alarmed business groups. The Federation of Philippine Industries (FPI) said that any order stopping the test run would derail the entry of foreign mining investments.⁵⁵ FPI President Jesus Arranza said that the court petition against Lafayette and the DENR "might force foreign investors to bring their money elsewhere."⁵⁶

Stage 3 (25 August - 8 September 2006). MGB and EMB technical personnel continued to monitor the third test run. On Day 6 of this test run, the milling plant processed 1,288 metric tons of ore which was 43% of the plant's rated daily capacity. There were occasional spillages observed but LPI's technical personnel regularly cleaned them.⁵⁷

Public observers. As of 1 September 2006, 111 individuals representing 25 organizations had observed the test run. Positive feedbacks were heard from some observers who said that "they were in favor of responsible mining." The observers suggested that LPI intensify the information, education and communications (IEC) campaign to counteract anti-mining sentiments.

Depletion of potable drinking water. The DENR reported that some residents of Pagcolbon village blamed the company's drilling activities for the depletion of potable drinking water. The DENR said that the company should address the complaint as a sign of goodwill to the host communities.⁵⁸

Cyber-protest. To mark the end of the test run, Greenpeace launched a "cyber-protest" against Lafayette⁵⁹ and invited environmental activists to log on to www.greenpeace.org.ph and click on a banner that said, "Stop the Mine, Save our Seas." It said that the surrounding seas of Rapu-Rapu were feeding grounds for the whale shark, the biggest fish in the world and that "Greenpeace cyber-activists, who numbered in hundreds of thousands, helped foster positive changes in international regulations and forced companies to withdraw from environmentally-damaging practices."⁶⁰

The Extended Test Run. On 11 September 2006, the PAB granted the 4 September 2006 motion of LPI to extend the test run for 60 days. Echoing the recommendation of the DENR regional offices, the PAB said that the extension would help them better assess the efficiency of the detoxification system. The PAB asked LPI to submit a schedule of activities and a list of environmental management measures during the extended test run as well as a schedule of audit of its EMS.⁶¹

DENR's decision again drew fire from anti-mining groups. Defend Patrimony, a nationwide alliance fighting the liberalization of the Philippine mining industry, said that the company should instead be required to get a new ECC to prove the reliability of its environmental structures.⁶²

A Model Mine? Government experts hoped that the RRPP could again become a model mine after paying the price for its mistake.⁶³ MGB Director Horacio Ramos said that "Lafayette was supposed to be a model mine, and then something happened, and it became an embarrassment."⁶⁴ He said that the mining controversy in Rapu-Rapu did much more damage to the image of the Philippine mining industry than to the environment. The Philippine mining industry would recover if Lafayette also recovers.

Bayani Agabin, Lafayette's senior vice president for legal affairs, said that "if you look at the structures, if you look at the scrutiny which we've been subjected to, I don't know how it cannot make a better operator out of us."⁶⁵

Towards the Green Light

Motion for Permanent Lifting Order. On 18 October 2006, LPI asked the PAB for the issuance of a Permanent Lifting Order, saying it had successfully conducted the required test runs; no adverse environmental incidents occurred during the 120-day test run.⁶⁶ It added that the quality of its water effluents were all within DENR standards during the conduct of the test run, stressing that the efficiency of its cyanide detoxification plant was 99.5% to 99.99%.⁶⁷

Some investors already expressed interest in the RRPP after the project's prospects brightened up at the conclusion of the test runs. In October 2006, LPI announced that talks with the South East Asian Strategic Assets Fund (SEASAF) and its advisor, CIMB Standard Strategic Asset Advisors Pte. Ltd, were on the pipeline. Agabin hoped that once government gives the green light to resume commercial operations, talks with interested investors would push through.⁶⁸ LPI expected to get US\$ 10 million to US\$ 15 million in fresh project funding from the proposed deal.

Another 30-Day Extended Test Run. On 6 November 2006, the PAB granted LPI's request for an extension of the TLO for 30 days. It required the company to submit a week after a copy of the TWG assessment on the structural integrity of its environmental dams and the adequacy of the measures to control AMD.

A Week Before DENR's Final Lifting Order. LPI promised to secure the required ISO certification for its EMS as one of the DENR conditions for the resumption of commercial operations. Carmelita Pacis, LPI's Pollution Control Officer, said that the company already initiated the process of securing the certification to "make sure its systems are in synch with existing government rules and standards especially those in relation to the environment."⁶⁹ DENR reports also revealed that LPI had been conducting consultations and workshops on needs reassessment and its SDMP for 2007 with directly or indirectly affected villages.

On 6 February 2007, two days before the DENR's final decision, the DENR-TWG endorsed to Reyes a report on the current status of the RRPP. It recommended that "full mining and milling operations be allowed."⁷⁰ On the same day, Reyes was scheduled to visit the mine site but his helicopter was unable to land because of bad weather. He just spoke to reporters in nearby Legazpi City saying, "We went here to see to it that the tests being conducted are run with full transparency."⁷¹

Dominguez said that LPI successfully hurdled the DENR requirements related to reengineering works, test runs and trial operations. He said that the company's expenses for rehabilitation rose to US\$ 5 million from the original estimate of US\$ 2.8 million because "we even went beyond what were being asked."⁷² Manuel Agcaoili, president of LPI subsidiary RRPI, said that the company's losses already reached Php 2.25 billion since the project's suspension.⁷³ He disclosed that the company was incurring around Php 150 million in operational losses.

Fatal Mysterious Disease. On the day Reyes was set to make a final decision, newspapers reported the deaths of five residents of Rapu-Rapu Island.⁷⁴ Anti-mining activists went to the DENR central office in Quezon City to ask Reyes to defer the decision and to investigate whether the mining operations caused those mysterious deaths. Clemente Bautista of

Kalikasan-PNE said that high fever or infection preceded the deaths and the victims suffered sudden and unexplained swelling of their bodies.

LPI branded the allegations as “baseless and irresponsible”⁷⁵ and that Kalikasan-PNE was desperate in stopping the RRPP from resuming operations. According to LPI, the Mananao village, where the deaths occurred, was 15 km away from the mine and was on the island’s other side. The deaths happened two weeks before when no mining operations took place.⁷⁶ Anti-mining groups had to be blamed for using the media in unnecessarily scaring people, with “dire consequences for the poor.”⁷⁷ In the past, environmental activists falsely accused the company of contaminating the coastal waters of Sorsogon province with mercury. The scare was a hoax but some 5,000 fishermen lost their livelihood overnight because people were told not to buy fish from the area.⁷⁸

LPI said that under its new all-Filipino management, it had become “very transparent” in its efforts to meet the government’s conditions for the resumption of mining operations. It appealed to the media and the public “to see through the efforts of a few misguided anti-mining advocates and not fall easily for their baseless allegations.”⁷⁹

The Green Light

Final Lifting Order. Despite calls for the investigation on the mysterious deaths in the island, Reyes finally lifted the project’s suspension order on 8 February 2007.⁸⁰ He said the deaths occurred in an area far away from the Rapu-Rapu mine. He said that LPI had complied with DENR conditions and the test runs showed improvements in its systems for managing environmental risks.

Reyes also emphasized, “Lafayette had undergone rigid scrutiny. It is the only mining company to have undergone such very tight monitoring. The mine was closed for 15 months and it has gone through a 120-day test run. Lafayette went through the proverbial needle’s eye before getting the DENR’s lifting order.”⁸¹

The PAB order signed by Reyes stated: “Respondent’s pollution case must necessarily come to an end at one point after it has complied with all the requirements imposed by the government to guard against similar untoward incident. The environmental safeguard may not be a foolproof guaranty, but the same can be considered as more than sufficient to establish with a technical degree of certainty that incidents similar to the spill that occurred last 11 and 31 October 2005 will not happen in the future.”⁸²

The PAB order mandated the immediate expansion of the existing Multi-partite Monitoring Team (MMT) to include representatives from the academe, NGOs and other interested stakeholders. The expanded MMT should continuously and closely monitor the mining and milling operations of LPI.

Stakeholders’ Reactions to the Government’s Final Decision

Anti-Mining Groups. Anti-mining groups protested the DENR’s final decision ordering the resumption of mining operations in Rapu-Rapu. Bishop Bastes condemned the decision for its “blasphemous disregard” of the findings of the Presidential Fact-finding Commission he headed.⁸³ Baconguis of Greenpeace said that while the decision was good for Lafayette, “it is a grim one for the coastal communities within and around Rapu-Rapu Island.”⁸⁴ Bautista of Kalikasan-PNE said that “we condemn in the strongest possible terms the decision of Environment Secretary Angelo Reyes to allow Lafayette to continue its mining operations.”⁸⁵

To protest the DENR's decision, the anti-mining groups launched an international petition and "massive shame campaign" aimed at convincing Lafayette's corporate financiers to withdraw from the firm.⁸⁶ They addressed their petition to ANZ of Australia, KFSC of Korea, ABN-AMRO of the Netherlands and Standard Chartered Bank of United Kingdom.

Antonio Casetas, leader of Sagip Isla (Save the Island), said that 1,384 Rapu-Rapu residents and 60 international organizations signed the petition. He said the petition was based on Lafayette's lack of "social license"—a requirement in investment decisions under the Equator Principles, a financial industry benchmark for determining, assessing and managing social and environmental risks in project financing.⁸⁷

Trixie Concepcion, a geologist and spokesperson for Defend Patrimony, vowed, "The fight against the Lafayette's mining reopening is far from over. We are not least appeased by Reyes's public reassurances that Lafayette Mining will no longer cause environmental damage. We'll be closely monitoring the situation in Rapu-Rapu and will continue to work for Lafayette's permanent pullout from the island."⁸⁸

Residents and Local Officials. Villagers living near the mining site said they remained vigilant. Milo Asuncion, a village official of Pagcolbon, said, "Maybe there's nothing more we could do to oppose the mining. But we would be in favor of it, only if the mining process is done correctly."⁸⁹ Aladin Valenzuela of Linao village said he was in favor of mining because it gave jobs to the villages.

Leaders of Albay and Sorsogon provinces thanked Reyes. Albay Congressman Carlos Imperial, Albay Governor Fernando Gonzales, Sorsogon Governor Raul Lee and Sorsogon City Mayor Sally Lee said the mining project was a much-needed growth catalyst for Bicol, a region battered by three successive strong typhoons in 2006.⁹⁰ However they said that they would remain vigilant to make sure that LPI, the region's biggest investor, practices responsible mining.⁹¹ Governor Gonzales said the resumption would generate much-needed revenues for the local and national government and position Albay as an investment destination.⁹²

Lafayette Philippines. In a media statement, Dominguez said, "Our workers, suppliers and other business partners can now also look forward to the company's stability. The whole mining industry here and abroad have been watching and monitoring our progress and will definitely show heightened interest in the Philippines as an investment area."⁹³ He praised Reyes for the decision. "What Secretary Reyes has done is open the floodgates to investments and prosperity. This is one single official act that will have immense immediate and long-term benefits to the economy and the poor especially in the countryside where mining ventures are located."⁹⁴

He added, "We worked long and hard for this day. It's been more than a year since we, an all-Filipino team, took over management of the Rapu-Rapu project to institute all the needed reforms to transform it into a model of responsible mining."⁹⁵ He added that the company would hire more people in preparation for increasing production and resuming mineral exports. LPI was finalizing its SDMP to improve education, sanitation, health and infrastructure, and other basic services in the project's host communities.

Prologue

Fish Kill Recurred in October 2007

In October 2007, another fish kill occurred in Rapu-Rapu. The Municipal Council of Rapu-Rapu declared the island under a state of calamity as a result of the fish kill, which affected not only the fishermen but also 80% of the town residents who got scared eating seafood from the area.⁹⁶ This fish kill was again attributed to the mining operations. However, the DENR cleared the company from any liability although it could not establish the cause of the fish kill that recurred.⁹⁷ LPI's spokesperson and legal counsel said that the dates of the reported fish kill coincided with the days when the mining operations were put on hold because of maintenance work.

Major restructuring of the project

Also in October 2007, LPI announced a major restructuring plan of the RRPP. The plan was like a buyout of the project by a banking lending group owned by Cornerstone Investors and SEASAF, a Malaysian private investment firm. As reported in the media, the initial agreement was for the new investor to buy all outstanding debt, capital interest and fees owed by the project for US\$ 123 million. But in the same month, Lafayette's supplier and contractor, Leighton Contractors Philippines Inc, billed Lafayette for an outstanding debt amounting to US\$ 870,000 and declared the mining proponent in default two weeks later.

The project suffered a major blow in December 2007, barely 10 months after its reopening. A major investor pulled out of the project,⁹⁸ dealing what appeared to be a fatal blow to the government's flagship mining project to revive the Philippine mining industry.

Environmentalists hailed the news of an investor pullout and the decision of publicly listed Australian firm LML to suspend the trading of its securities. They said that their local, national and international lobbying struggles against the flagship mining project were finally bearing fruit.

LML entered into voluntary administration to explore all options for either the sale of the mining operations or a restructuring and capitalization of the project.⁹⁹ Company executives denied speculations that they were closing the company and said that they would continue to operate.

In February 2008, the proponents of the RRPP filed a petition for corporate rehabilitation with a Philippine court, citing that the move was meant to conserve the company's assets in the face of outstanding debts.¹⁰⁰ The project incurred huge debts after it ceased operations for more than a year and could not support the scheduled payment of its loans.

In the meantime, a new DENR Secretary, Lito Atienza, replaced Reyes who became the Secretary of the Department of Energy. Atienza ordered the RRPP proponents to set aside at least Php 137 million for the environmental rehabilitation and social development of the affected areas, based on its contract commitments with the government.¹⁰¹

Abbreviations

AMD	Acid Mine Drainage
ANZCHAM	Australia New Zealand Chamber of Commerce
BOI	Board of Investments
BFAR	Bureau of Fisheries and Aquatic Resources
CBCP	Catholic Bishops Conference of the Philippines
CDO	Cease-and-Desist Order
CMP	Chamber of Mines
DENR	Department of Environment and Natural Resources
ECC	Environmental Compliance Certificate
EIA	Environmental Impact Analysis
EIS	Environmental Impact Statement
EMB	Environmental Management Bureau
EMS	Environmental Management System
EO	Executive Order
EPEP	Environmental Protection and Enhancement Program
EWP	Environmental Work Program
FPI	Federation of Philippine Industries
FTAA	Financial or Technical Assistance Agreement
GDP	Gross Domestic Product
ITH	Income Tax Holidays
IEC	information, education and communications
ISO	International Organization for Standardization
LML	Lafayette Mining Limited
LPI	Lafayette Philippines, Inc.
MAP	Mineral Action Plan
MGB	Mines and Geosciences Bureau
MMT	Multipartite Monitoring Team
MOA	Memorandum of Agreement
MPSAs	Mineral Production Sharing Agreements
NEDA	National Economic Development Authority
PAB	Pollution Adjudication Board
PEZA	Philippine Economic Zone Authority
PMA	Philippine Mining Act
TLO	Temporary Lifting Order
TRO	Temporary Restraining Order
RPPI	Rapu-Rapu Processing, Inc.
RRFFC	Rapu-Rapu Fact Finding Commission (RRFFC)
RRPP	Rapu-Rapu Polymetallic Project
RRMI	Rapu-Rapu Minerals, Inc.
SDMP	Social Development Management Program
SEASAF	South East Asian Strategic Assets Fund
TWG	Technical Working Group
UP	University of the Philippines
VAT	Value Added Tax

Endnotes

¹ Rapu Rapu is a 4th class island municipality consisting of three small islands, namely, Rapu Rapu, Batan and Guinangayan. It is the only island municipality in the province of Albay. It shares municipal fishing grounds with the municipalities of Prieto Diaz and Bacon in Sorsogon.

² Albay is a province of the Philippines located in the Bicol Region. Its capital is Legazpi City and the province borders the Camarines Sur to the north and Sorsogon to the south.

³ AS Araya, "Defensor cites importance of mining project in Albay," PIA Press Release 04/27/05, 27 April 2005. Accessed at < <http://www.pia.gov.ph/default.asp?m=12&sec=reader&rp=1&fi=p050427.htm&no=1&date=>>.

⁴ Mine tailings are waste products from the mining industry that are finely ground material left over in containment areas or discharged to receiving waters after valuable metals are extracted.

⁵ Senate Economic Planning Office, *Extracting Growth from Mining*, Senate Economic Planning Office: Policy Insights PI-06-05, November 2005.

⁶ *Ibid.*

⁷ *Ibid.*

⁸ Angelo Reyes, "Mining: Flagship Industry on the Philippines," Speech delivered by Secretary Angelo T. Reyes of the Department of Environment and Natural Resources during the Prospectors and Developers Association of Canada (PDAC) 2006 International Convention, Trade Show & Investors Exchange at the Mining Investment Show on 7 March 2006, Toronto, Canada. Accessed at <<http://www.mgb.gov.ph/presentations/2006-0317pdac.htm>>

⁹ Under the DENR, MGB is directly in charge of the administration and disposition of the economy's mineral lands and mineral resources. It recommends to the DENR Secretary the granting of Mineral Agreements and endorses to the DENR Secretary, for approval by the President, the granting of Financial or Technical Assistance Agreements (FTAA).

¹⁰ Under the DENR, EMB, headed by the Director and Assistant Director, advises the DENR Secretary on matters relating to environmental management, conservation, and pollution control. It also recommends legislation, formulates environment quality standards, recommends rules and regulations for environmental impact assessments, and provides technical assistance for implementation and monitoring.

¹¹ The PAB, a quasi-judicial body under the Environmental Management Bureau (EMB) of the DENR, oversees the adjudication of pollution cases. It is composed of the Secretary as Chairman, two (2) Undersecretaries as may be designated by the Secretary, the Director of Environmental Management Bureau, and three (3) others to be designated by the Secretary as members.

¹² Structural Adjustment Participatory Review International Network (SAPRIN), "Impact of Investment Liberalization and the Mining Act of 1995 on Indigenous Peoples, Upland Communities, and Rural Poor, and on the Environment: A Summary Report." Accessed at < http://www.saprin.org/philippines/research/phi_mining_sum.pdf>

¹³ Financial or technical assistance agreement means a contract involving financial or technical assistance for large-scale exploration, development, and utilization of mineral resources. Mining companies enter into the agreement with the Philippine government.

¹⁴ Social Development Management Program (SDMP) refers to the comprehensive five-year plan of a Contractor/Permit Holder/Lessee authorized to conduct mining and milling operations towards the sustained improvement in the living standards of the host and neighboring communities by creating responsible, self-reliant and resource-based communities capable of developing and implementing activities in a manner consistent with the principle of people empowerment. It is a tool for the development and implementation of community programs/activities in consultation and in partnership with the host and neighboring communities.

¹⁵ Findings and Recommendations of the Fact-Finding Commission on the Mining Operations in Rapu-Rapu Island, 19 May 2006, p. 26.

¹⁶ Felipe F. Salvosa, "Lafayette's Rapu-Rapu mining gets special ecozone recommendation," *BusinessWorld Online*, 24 April 2004.

¹⁷ *Ibid.*, p. 27.

¹⁸ Profundo, "The Financing of Rapu-Rapu Project: A research paper prepared for BankTrack," 8 September 2005. Accessed at <www.banktrack.org/.../060912%20The%20financing%20of%20Rapu%20Rapu%20mine.doc>

¹⁹ DENR Assessment of the Rapu-Rapu Polymetallic Project, p. 5.

²⁰ DENR Assessment of the Rapu Rapu Polymetallic Project, p. 7.

²¹ *Ibid.*, p. 109.

²² *Ibid.*, p. 110.

²³ The lower-tailings storage facility is where the dam mine tailings are stored and are further detoxified. In the

facility, mine tailings are exposed to sunlight for four to five days, which reduces the cyanide levels in compliance with the DENR standard.

²⁴ Mines and Geosciences Bureau, "Defensor Imposes Biggest Environmental Fines and Penalties on Lafayette," 2006. Accessed at <<http://www.mgb.gov.ph/news/2006-0109fines.htm>>

²⁵ Rapu-Rapu Fact Finding Commission Report, 2006.

²⁶ Interview with Bishop Arturo Bastes.

²⁷ A Mineral Production Sharing Agreement (MPSA) is one of the modes of mineral agreements under the Philippine Mining Act of 1995. The government grants to the contractor the exclusive right to conduct mining operations within a contract area and shares in the gross output. The contractor shall provide the financing technology, management and personnel necessary for the implementation of this agreement.

²⁸ *Ibid.*

²⁹ www.greenpeace.org/international/

³⁰ J. Panares and R. dela Cruz, "Probers Hit Lafayette, but NEDA Protests," 2006. Accessed at <<http://www.manilastandardtoday.com>>

³¹ G. Kabling, "Palace Firm on Rejecting Mining Ban, Bunye Says," *Philippines: Manila Bulletin*, 2006.

³² Based on the Meeting with Secretary Angelo Reyes, May 2007.

³³ DENR Assessment of the Rapu-Rapu Polymetallic Project.

³⁴ *Ibid.*

³⁵ Letter of Romulo Neri to Secretary Angelo Reyes, May 2006.

³⁶ M. Aguiba, *Manila Bulletin Online*, 2006. Retrieved from <<http://www.mb.com.ph/issues/2006/06/05/BSNS2006060566022.html#>>

³⁷ *Ibid.*

³⁸ DENR Assessment of the Rapu-Rapu Polymetallic Project.

³⁹ The Base Metal Plant was created after the incident in place of the Cyanide Detoxification Facility where the pumps failed in the 11 October spill.

⁴⁰ Letter of Ambassador Honh Jong-ki to Secretary Angelo Reyes, May 2006.

⁴¹ M. Aguiba, *Manila Bulletin Online*, 2006. Retrieved from <<http://www.mb.com.ph/issues/2006/06/05/BSNS2006060566022.html#>>

⁴² *Ibid.*

⁴³ DENR Assessment of the Rapu-Rapu Polymetallic Project.

⁴⁴ Nonoy Espina, "Greenpeace Slams Lafayette Reopening," *Inquirer*, 11 July 2006. Accessed from <http://newsinfo.inquirer.net/topstories/topstories/view_article.php?article_id=9226>

⁴⁵ *Ibid.*

⁴⁶ *Memorandum of MGB Regional Director Reynulfo Juan to Secretary Angelo Reyes*, 14 July 2006.

⁴⁷ Report of EMB Regional Director Gilbert Gonzales, 4 August 2006, pp. 4-5.

⁴⁸ EMB Region V, *Monitoring Report on the RRPP*, 10-16 July 2006, p. 1.

⁴⁹ *Ibid.*, Annex A.

⁵⁰ *Memorandum of EMB Regional Director Gilbert Gonzales to Secretary Angelo Reyes*, 17 August 2006.

⁵¹ Report of EMB Regional Director Gilbert Gonzales, 4 August 2006, p. 10.

⁵² Opening of the mine pit.

⁵³ "Group seeks injunction vs Lafayette," *Inquirer*, 21 July 2006. Accessed from <http://newsinfo.inquirer.net/breakingnews/metroregions/view_article.php?article_id=10987>

⁵⁴ *Ibid.*

⁵⁵ "Suit vs Lafayette alarms business group," *Inquirer*, 25 July 2006. Accessed from <http://business.inquirer.net/money/breakingnews/view_article.php?article_id=11618>

⁵⁶ *Ibid.*

⁵⁷ Report prepared by Voltaire Villadolid in behalf of the TWG, 1 September 2006.

⁵⁸ Report prepared by Voltaire Villadolid and Ramon Parafina III, 2 September 2006.

⁵⁹ Nonoy Espina, "Greenpeace launches cyber-protest vs Lafayette Mining," *INQ7.net*, 11 August 2006. Accessed from <http://newsinfo.inquirer.net/breakingnews/metroregions/view_article.php?article_id=14765>

⁶⁰ *Ibid.*

⁶¹ Blanche Rivera, "Gov't gives Lafayette test 60-day extension," *Inquirer*, 14 September 2006. Accessed from <http://newsinfo.inquirer.net/breakingnews/metroregions/view_article.php?article_id=20913>

⁶² *Ibid.*

⁶³ Blanche Rivera, "Polluter or Model Mine: Lafayette close to getting back in business," *Philippine Daily*

Inquirer, 8 September 2006, p. A5. Accessed from <http://newsinfo.inquirer.net/inquirerheadlines/nation/view_article.php?article_id=19734>

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ *RRPI's Motion for the Issuance of a Permanent Lifting Order*, 18 October 2006.

⁶⁷ According to LPI, under PAB Rules, where there is a definite finding that the respondent's effluents have passed allowable DENR standards, the board may, upon proper motion, issue a resolution formally lifting the Cease and Desist Order and terminating the case.

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

⁷⁰ The report was signed by Horacio Ramos, MGB Director; Gilbert Gonzales, EMB Regional Director; Reynulfo Juan, Regional Executive Director of DENR and Concurrent Regional Director of MGB B, Michael Cabalda, Science Research Specialist of the MGB, and Juancho Pablo Calvez, Chief Metallurgist of the MGB Central Office.

⁷¹ Reuters, "Rapu-Rapu ruling expected Thursday," *BusinessWorld*, 6 February 2007, p. S1-1.

⁷² Othel Campos, "Rapu-Rapu ruling out shortly," *Manila Standard Today*, 6 February 2007, p. B3.

⁷³ Othel Campos, "Lafayette losses hit P2b," *Manila Standard Today*, 8 February 2007, p. B3.

⁷⁴ Jonathan Mayuga, "Mystery disease kills 5 on Rapu-Rapu island," *Business Mirror*, 8 February 2007, p. A3.

⁷⁵ The Philippine Star, "Anti-mining group's claims baseless, says Lafayette," 8 February 2007, p. A18.

⁷⁶ Mark Ivan Roblas, "Lafayette outfit probes death," *BusinessWorld*, 8 February 2007, p. 12.

⁷⁷ "Anti-mining group's claims baseless, says Lafayette," *The Philippine Star*, 8 February 2007, p. A18.

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*

⁸⁰ Jonathan Mayuga, "Lafayette gets DENR clearance," *Business Mirror*, 9 February 2007, p. A1.

⁸¹ *Ibid.*

⁸² Final Lifting Order of the DENR, p. 3.

⁸³ Jonathan Mayuga, "Environmental Time Bomb, Insist Groups," *Business Mirror*, 9 February 2007, p. A1.

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*

⁸⁶ Mark Ivan Roblas, "Financiers asked to withdraw from Lafayette," *BusinessWorld*, 15 February 2007.

Accessed from <http://codex.bworldonline.com/php/new_webget.php?htm=07/07021544.htm&uid=aimlibrary>

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*

⁸⁹ Ephraim Aguilar, "Villagers watchful of Lafayette mining," *Philippine Daily Inquirer*, 15 February 2007, p. A15.

⁹⁰ "Albay, Sorsogon bullish on Lafayette's operations," *The Philippine Star*, 15 February 2007, p. A23.

⁹¹ "Local execs bullish as Lafayette mine restarts," *Philippine Daily Inquirer*, 14 February 2007, p. A-11.

⁹² *Ibid.*

⁹³ Ephraim Aguilar, "Villagers watchful of Lafayette mining," *Philippine Daily Inquirer*, 15 February 2007, p. A15.

⁹⁴ Mark Ivan Roblas, "Lafayette details terms of loan from Singaporean investor," *BusinessWorld*, 22 February 2007.

⁹⁵ Ephraim Aguilar, "Villagers watchful of Lafayette mining," *Philippine Daily Inquirer*, 15 February 2007, p. A15.

⁹⁶ Gina Rodriguez, "Bishop seeks aid for villages hit by Rapu-Rapu 'fishkill'". Accessed from <http://newsinfo.inquirer.net/breakingnews/regions/view_article.php?article_id=103011>

⁹⁷ "DENR clears mine firm in fishkill," *Inquirer*. Accessed from <http://newsinfo.inquirer.net/inquirerheadlines/regions/view_article.php?article_id=98237>

⁹⁸ "Investors back out of Rapu-Rapu mining," *BusinessWorld*, 5 December 2007. Accessed from <http://codex.bworldonline.com/php/news_webget.php?htm=07/07120511.htm&uid=aimlibrary>

⁹⁹ Accessed from <<http://www.delisted.com.au/Company/4793/LAFAYETTE%20MINING%20LIMITED>>

¹⁰⁰ Eric Dorente, "Rapu-Rapu firms file rehabilitation plea at Pasig RTC." Accessed from <http://codex.bworldonline.com/php/new_webget.php?htm=08/08020746.htm&uid=aimlibrary>

¹⁰¹ Eric Dorente, "Rapu-Rapu proponents told to set aside P137 million for environment, social development," 23 February 2008. Accessed from <http://codex.bworldonline.com/php/new_webget.php?htm=08/08022306.htm&uid=aimlibrary>. The new Environment Secretary is Lito Atienza. He replaced retired Gen. Angelo Reyes who ordered the project's re-opening in February 2007.