

SOUTHERN PERU COPPER CORP/
Form 10-Q/A
December 03, 2002

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

2002

Third Quarter

FORM 10-Q/A

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For Quarter Ended September 30, 2002

Commission file number 1-14066

SOUTHERN PERU COPPER CORPORATION

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of
Incorporation or organization)

13-3849074

(I.R.S. Employer
Identification No.)

2575 East Camelback Rd. Phoenix, AZ

(Address of principal executive offices)

85016

(Zip Code)

Registrant's telephone number, including area code

(602) 977-6500

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes No

Edgar Filing: SOUTHERN PERU COPPER CORP/ - Form 10-Q/A

As of October 31, 2002, there were outstanding 14,107,587 shares of Southern Peru Copper Corporation common stock, par value \$0.01 per share. There were also outstanding 65,900,833 shares of Southern Peru Copper Corporation Class A common stock, par value \$0.01 per share.

This amendment to the Company's report on Form 10-Q that was filed on November 14, 2002 is being made to supplement disclosures to indicate that Deloitte & Touche LLP has not completed its review of the Company's financial statements for the quarter ended September 30, 2002, pending an investigation initiated by the Company of allegations set forth in an anonymous letter delivered to the Company. Please see Note A to the financial statements contained herein for additional information. This form 10-Q/A does not otherwise modify the disclosures in the report on Form 10-Q that was filed on November 14, 2002.

Southern Peru Copper Corporation

and Subsidiaries

INDEX TO FORM 10-Q/A

Part I. Financial Information:

Item 1.

Financial Statements (unaudited)

Condensed Consolidated Statement of Earnings

Three Months and Nine Months ended September 30, 2002 and 2001

Condensed Consolidated Balance Sheet September 30, 2002 and December 31, 2001

Condensed Consolidated Statement of Cash Flows

Three Months and Nine Months ended September 30, 2002 and 2001

Notes to Condensed Consolidated Financial Statements

Items 2.
and 3

Management's Discussion and Analysis of Financial and Condition and Results of Operations and
Quantitative and Qualitative Disclosure About Market Risk

Item 4.

Controls and Procedures

Part II. Other Information:

Item 1. - Legal Proceedings

Item 4. - Submission of Matters to a Vote of Security Holders

Item 6. - Exhibits

Signatures

Certifications

Exhibit 99.1 - Certification Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

Exhibit 99.2 - Certification Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

Part I - FINANCIAL INFORMATION

Item 1. Financial Statements

Southern Peru Copper Corporation

and Subsidiaries

CONDENSED CONSOLIDATED STATEMENT OF EARNINGS

(Unaudited)

	3 Months Ended September 30,		9 Months Ended September 30,	
	2002	2001	2002	2001
	(in thousands, except for per share amounts)			
Net sales:				
Related parties	\$	\$ 7,580	\$ 7,073	\$ 22,576
Others	169,906	163,919	492,363	474,178
Total net sales	169,906	171,499	499,436	496,754
Operating costs and expenses:				
Cost of sales	117,639	125,368	332,553	343,656
Administrative and other expenses	6,555	7,136	21,516	22,922
Depreciation and depletion	16,823	16,642	49,332	56,227
Exploration expense	2,971	2,473	6,379	5,703
Total operating costs and expenses	143,988	151,619	409,780	428,508
Operating income	25,918	19,880	89,656	68,246
Interest income	652	4,887	2,045	14,139
Other income	141	2,473	1,436	1,360
Interest expense	(2,926)	(11,433)	(10,174)	(31,778)
Earnings before taxes on income, minority interest of investment shares and extraordinary loss	23,785	15,807	82,963	51,967
Taxes on income	9,226	4,084	27,940	16,598
Minority interest of investment shares in income of Peruvian Branch	179	150	702	640
Earnings before extraordinary loss	14,380	11,573	54,321	34,729
Extraordinary loss from early extinguishment of debt, net of income tax benefits of \$3,876			8,536	

Edgar Filing: SOUTHERN PERU COPPER CORP/ - Form 10-Q/A

Net earnings	\$	14,380	\$	11,573	\$	45,785	\$	34,729
Per common share amounts:								
Earnings before extraordinary loss	\$	0.18	\$	0.15	\$	0.68	\$	0.43
Extraordinary loss, net of income tax benefits						(0.11)		
Net earnings basic and diluted	\$	0.18	\$	0.15	\$	0.57	\$	0.43
Dividends declared	\$	0.16	\$	0.05	\$	0.27	\$	0.29
Weighted average common shares outstanding (Basic)		80,005		80,001		80,005		80,001
Weighted average common shares outstanding (Diluted)		80,009		80,006		80,009		80,006

The accompanying notes are an integral part of these condensed consolidated financial statements.

Southern Peru Copper Corporation

and Subsidiaries

CONDENSED CONSOLIDATED BALANCE SHEET

(Unaudited)

	September 30, 2002	December 31, 2001
	(in thousands)	
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 126,008	\$ 212,857
Accounts receivable, net	63,339	83,812
Inventories, net	94,022	101,030
Prepaid taxes	7,649	24,794
Other assets	2,202	6,137
Total current assets	293,220	428,630
Net property	1,431,398	1,376,777
Other assets	11,829	17,995
Total Assets	\$ 1,736,447	\$ 1,823,402
LIABILITIES		
Current liabilities:		
Current portion of long-term debt	\$	\$ 122,914
Accounts payable	44,301	55,602
Accrued liabilities	47,122	44,422
Total current liabilities	91,423	222,938
Long-term debt	299,043	273,121
Deferred income taxes	89,292	88,615
Other liabilities and reserves	15,235	15,252
Total non-current liabilities	403,570	376,988
MINORITY INTEREST	7,799	14,021
STOCKHOLDERS EQUITY		
Common stock (a)	261,628	261,625
Retained earnings	972,027	947,830
Total Stockholders Equity	1,233,655	1,209,455
Total Liabilities, Minority Interest and Stockholders Equity	\$ 1,736,447	\$ 1,823,402

Edgar Filing: SOUTHERN PERU COPPER CORP/ - Form 10-Q/A

(a) Common shares: Authorized	34,099	34,099
Outstanding	14,108	14,103
Class A common shares authorized and outstanding	65,901	65,901

The accompanying notes are an integral part of these condensed consolidated financial statements.

Southern Peru Copper Corporation

and Subsidiaries

CONDENSED CONSOLIDATED STATEMENT OF CASH FLOWS

(Unaudited)

	3 Months Ended September 30,		9 Months Ended September 30,	
	2002	2001	2002	2001
	(in thousands)		(in thousands)	
OPERATING ACTIVITIES				
Net earnings	\$ 14,380	\$ 11,573	\$ 45,785	\$ 34,729
Extraordinary loss, pre-tax			12,412	
Adjustments to reconcile net earnings to net cash provided from operating activities:				
Depreciation and depletion	16,823	16,642	49,332	56,227
Remeasurement gain	(1,323)	(5,775)	(3,432)	(2,053)
Deferred income taxes	3,238	4,508	4,439	7,488
Minority interest of investment shares	179	150	702	640
Cash provided from (used for) operating assets and liabilities:				
Accounts receivable	19,458	(8,694)	7,026	61,710
Inventories	6,406	3,499	7,009	(320)
Accounts payable and accrued liabilities	(8,896)	(9,685)	987	(7,474)
Other operating assets and liabilities	1,066	7,350	17,618	9,699
Net cash provided by operating activities	51,331	19,568	141,878	160,646
INVESTING ACTIVITIES				
Capital expenditures	(27,038)	(44,311)	(105,741)	(112,056)
Sales of property	71	10	149	71
Net cash used for investing activities	(26,967)	(44,301)	(105,592)	(111,985)
FINANCING ACTIVITIES				
Cash paid for early extinguishment of debt			(11,404)	
Debt repayment		(37,708)	(122,914)	(84,993)
Proceeds from borrowings			25,922	400,000
Escrow (deposits) withdrawals on long-term loans		2,996	6,936	(29,067)
Dividends paid to common stockholders	(10,201)	(3,729)	(14,373)	(23,008)
Distributions to minority interest	(104)	(59)	(246)	(368)
Treasury stock transaction			3	
Purchases of investment shares	(8,299)	4	(8,629)	(752)
Net cash (used for) provided from financing activities	(18,604)	(38,496)	(124,705)	261,812

Edgar Filing: SOUTHERN PERU COPPER CORP/ - Form 10-Q/A

Effect of exchange rate changes on cash	202	5,959	1,570	2,813
Increase (decrease) in cash and cash equivalents	5,962	(57,270)	(86,849)	313,286
Cash and cash equivalents, at beginning of period	120,046	519,644	212,857	149,088
Cash and cash equivalents, at end of period	\$ 126,008	\$ 462,374	\$ 126,008	\$ 462,374
Supplemental disclosure of cash flow information:				
Cash paid during the year for:				
Interest	\$ 3,552	\$ 10,172	\$ 12,984	\$ 30,362
Income taxes	\$	\$ 88	\$ 31	\$ 130
Supplemental schedule of noncash operating, investing and financing activities:				
Accounts receivable from affiliate offset by accounts payable to affiliate	\$	\$	\$ 6,160	\$
Accounts receivable from shareholders offset by dividends paid	\$ 2,280	\$	\$ 7,213	\$

The accompanying notes are an integral part of these condensed consolidated financial statements.

Southern Peru Copper Corporation

and Subsidiaries

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

(Unaudited)

A. In July 2002 Southern Peru Copper Corporation (the Company or SPCC) received an anonymous letter containing various allegations. The Company's Audit Committee has retained legal counsel that has initiated an investigation of the allegations made in the letter and the Audit Committee has taken other measures to investigate these allegations. The investigation is ongoing, and accordingly, the Company's independent accountants have not concluded their review of the financial statements for the quarter ended September 30, 2002, as required by Rule 10-01(d) of Regulation S-X. While the Company does not anticipate that this investigation will result in any change to its financial statements, if such investigation results in a change to the financial statements contained in this Quarterly Report on Form 10-Q/A, the Company will file an amendment to this Quarterly Report and file such revised financial statements, including a discussion of any material changes from the unreviewed financial statements originally filed.

B. In the opinion of Southern Peru Copper Corporation (the Company or SPCC), the accompanying unaudited condensed consolidated financial statements contain all adjustments (consisting only of normal recurring adjustments) necessary to present fairly the Company's financial position as of September 30, 2002 and the results of operations and cash flows for the three and nine months ended September 30, 2002 and 2001. Certain reclassifications have been made in the financial statements from amounts previously reported. The results of operations for the three and nine-month periods are not necessarily indicative of the results to be expected for the full year. The accompanying condensed consolidated financial statements should be read in conjunction with the consolidated financial statements and notes thereto included in the Company's 2001 annual report on Form 10-K.

C. Inventories were as follows:

(In millions)

	September 30, 2002	December 31, 2001
Metals at lower of average cost or market:		
Finished goods	\$ 3.3	\$ 1.8
Work-in-process	42.7	45.9
Supplies at average cost, net of reserves	48.0	53.3
Total inventories	\$ 94.0	\$ 101.0

D. At September 30, 2002, the Company has recorded sales of 9.4 million pounds of copper, at an average provisional price of \$0.65 per pound. Also the Company has recorded sales of 1.3 million pounds of molybdenum at an average provisional price of \$4.36 per pound. These sales are subject to final pricing based on the average monthly LME and COMEX copper prices and dealer oxide molybdenum prices in the month of settlement, which will occur in the fourth quarter of 2002.

E. In the first quarter 2002, the Company changed the estimated lives of certain machinery and equipment. This change was accounted for prospectively and resulted in a reduction to depreciation expense of approximately \$9.4 million in the first nine months of 2002.

F. Related Party Transactions:

As of September 30, 2002, the Company had overdue receivables of \$2.2 million from Minera Mexico International Inc. (MMI) and \$4.9 million from Americas Sales Corp. (ASC), related to sales of copper, at market prices and with customary terms to MMI and ASC, \$2.2 million in 2001 and \$4.9 million in 2002, respectively. MMI and ASC are subsidiaries of Grupo Mexico, the majority (54.2%) indirect stockholders of the Company. As of October 17, 2002, the Company collected \$0.7 million from MMI reducing the balance to \$1.5 million. The Company believes ASC and MMI intend and have the ability to pay the amounts due.

G. Purchase of Investment Shares:

In July 2002, the Company acquired 2.1 million investment shares for \$8.2 million in cash. The acquisition of the investment shares has been accounted for as the purchase of a minority interest. The excess purchase price over the cost of the share of \$6.2 million has been allocated to proven and probable copper resources. As a result of the transaction, the interest of investment shareholders in the Branch was reduced from 1.4% to 0.8%.

H. Commitments and Contingencies:

Litigation:

In April 1996, the Company was served with a complaint filed in Peru by approximately 800 former employees seeking the delivery of a substantial number of investment shares (formerly called labor shares) of its Peruvian Branch plus dividends. In December 1999, the civil court of first instance of Lima decided against the Company, ordering the delivery of the investment shares and dividends to the plaintiffs. The Company appealed this decision in January 2000. On October 10, 2000, the Superior Court of Lima affirmed the lower court's decision, which had been adverse to the Company. On appeal by the Company, the Peruvian Supreme Court annulled the proceeding noting that the civil courts lacked jurisdiction and that the matter had to be decided by a labor court. The case is now pending before a labor court of first instance in Lima.

There was also pending against the Company a similar lawsuit filed by 127 additional former employees. In December 1999, the civil court of first instance of Lima dismissed the complaint against the Company. Plaintiffs appealed this decision in January 2000 before the Superior Court. By the end of 2000, the Superior Court rejected the appeal. Plaintiffs filed an extraordinary appeal before the Supreme Court. In July 2002, the Company was notified that the Supreme Court of Peru had affirmed the decision of the lower court dismissing the case. Therefore, the case has been resolved favorably for the Company.

In February 2002, the Company received notice that approximately 3,000 additional former employees intended to file a similar lawsuit, for unspecified amounts, seeking the delivery of a substantial number of investment shares. The conciliation hearing took place and was concluded when no agreement was reached. In August 2002, the Company was notified that these former workers had filed a lawsuit before the labor court in Lima. The labor court rejected the complaint due to procedural defects. The plaintiffs appealed this decision before the Superior Court of Lima.

On December 28, 2000, a lawsuit styled Flores v Southern Peru Copper Corporation was filed against the Company in federal court in New York City. The Flores lawsuit sought unspecified compensatory and punitive damages for alleged personal injuries to eight persons resident in Peru arising from alleged releases into the environment from the Company's operations in Peru. The lawsuit invoked the jurisdiction of the court under the federal Alien Tort Claims Act, claiming violations of customary international law. The Flores lawsuit is similar to a suit filed in 1995 in Texas, for unspecified amounts, which was dismissed in 1996 by a U. S. district judge. That ruling was affirmed unanimously by a three-judge federal appeals court. The court made it clear that the claims of Peruvian residents should be tried in the courts of Peru, not in the United States. On July 16, 2002, the United States District Court for the Southern District of New York dismissed the complaint in the Flores lawsuit. In its decision, the district court ruled that it lacked jurisdiction under the Alien Tort Claims Act because the Peruvian plaintiffs had failed to allege a cognizable claim that international law had been violated. In the alternative, the district court stated that, even if it had jurisdiction, it nonetheless would dismiss the Flores lawsuit on the basis of the doctrine of forum non conveniens, because the dispute should be litigated in the courts of Peru, not in the United States. On August 28, 2002, the Flores plaintiffs filed a notice of appeal to seek review of the district court decision by the United States Court of Appeals for the Second Judicial Circuit. No briefing schedule has yet been established for the appeal.

Income Taxes - United States:

The Internal Revenue Service (IRS) has completed the fieldwork phase of their audit of the Company for the years 1994 through 1996. In September 2002, the IRS issued a Notice of Proposed Adjustment, which among other things challenged the Company's method of valuation of leach dumps. The Company will file a protest with the Appeals Office of the IRS and will vigorously defend its position. The Company believes that in all material respects the positions taken in reporting to the IRS are correct and appropriate.

Income Taxes - Peru:

The Company received assessments from SUNAT (the Peruvian tax department) for years 1996 to 1999, in which several deductions taken were disallowed. SUNAT has challenged the Company's depreciation methods, the deduction of certain interest expense and other expenses related to charges incurred outside of Peru. The Company has appealed these assessments. The assessments for years 1996 and 1997 are currently being contested in the Peruvian Tax Court. The assessment for years 1998 and 1999 are presently being contested by the Company before SUNAT. The Company believes that in all material respects the positions taken in reporting to SUNAT are correct and appropriate.

It is the opinion of management that the outcome of the legal proceedings and tax contingencies above mentioned, as well as other miscellaneous litigation and proceedings now pending, will not materially adversely affect the financial position of the Company and its consolidated subsidiaries. However, it is possible that the tax contingencies and litigation matters could have a material effect on quarterly or annual operating results, when they are resolved in future periods.

I. Impact of New Accounting Standards:

In August 2001, the Financial Accounting Standards Board (FASB) issued SFAS No. 143 Accounting for Asset Retirement Obligations , which will be required to be adopted effective January 1, 2003. SFAS No. 143 establishes standards for accounting for an obligation associated with the retirement of long-lived tangible assets. Management is assessing the impact of this statement on the results of operations and financial condition.

In April 2002, the FASB issued SFAS No. 145 to rescind FASB Statement No. 4, Reporting Gains and Losses from Extinguishment of Debt , and an amendment of that Statement, FASB Statement No. 64, Extinguishments of Debt Made to Satisfy Sinking-Fund Requirements . This statement also rescinds FASB Statement No. 44, Accounting for Intangible Assets of Motor Carriers . This statement, which shall be applied in fiscal years beginning after May 15, 2002, amends FASB Statement No. 13, Accounting for Leases , to eliminate an inconsistency between the required accounting for sale-leaseback transactions and the required accounting for certain lease modi