

October 23, 2015

Members of the Tribunal
c/o Natalí Sequeira
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The Renco Group, Inc. v. Republic of Peru (UNCT/13/1)

Dear Members of the Tribunal:

Further to the Tribunal's communication of October 18, 2015, Peru very briefly underscores the agreement between Peru and the United States regarding the waiver requirement at Article 10.18 of the Treaty, as indicated in the Third Submission of the United States, and taking into account Article 31(3) of the Vienna Convention.

- The Parties to the Treaty agree that “[t]o determine whether a waiver complies with the requirements of Article 10.18 and thus may be considered effective, a tribunal must evaluate whether a claimant’s waiver meets *both* the formal and material requirements.” (¶ 6).
- The Parties to the Treaty agree that “the waiver must be in writing and must be ‘clear, explicit and categorical,’” and accompany the notice of arbitration (¶ 6). Renco failed to satisfy this requirement with its Notice of Arbitration or Amended Notice of Arbitration.
- The Parties to the Treaty agree that “a tribunal itself cannot remedy an ineffective waiver,” or “rely on a purported ‘principle of severability.’” (¶¶ 4-5). Moreover, Peru has not agreed to disregard the violation of the waiver requirement.
- The Parties to the Treaty agree that “[t]he waiver provision is designed to avoid the need for a respondent to litigate concurrent and overlapping proceedings in multiple forums with respect to the same measure,” among other things. (¶ 7). Claimants were in material violation of the Treaty at the time of the Notice of Arbitration, and violations have been ongoing.
- The Parties to the Treaty agree that “if all formal and material requirements are not met, the waiver shall be deemed ineffective and will not engage the respondent’s consent to arbitration to the Agreement, and the tribunal will lack jurisdiction.” (¶ 8)

Respectfully,



Jonathan C. Hamilton
Andrea J. Menaker