

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Bear Creek Mining Corporation

v.

Republic of Peru

(ICSID Case No. ARB/14/21)

PROCEDURAL ORDER NO 1

Date of Order: January 27, 2015

Professor Dr. Karl-Heinz Böckstiegel, President of the Tribunal
Dr. Michael Pryles, Arbitrator
Professor Philippe Sands QC, Arbitrator

Secretary of the Tribunal
Ms. Mercedes Cordido-Freytes de Kurowski

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Introduction

The first session of the Arbitral Tribunal was held on January 12, 2015 at 3 p.m.

Participating in the first session were:

Members of the Tribunal

Professor Dr. Karl-Heinz Böckstiegel, President of the Tribunal

Dr. Michael Pryles, Arbitrator (by video conference)

Professor Philippe Sands Q.C., Arbitrator (by video conference)

ICSID Secretariat:

Ms. Mercedes Cordido-Freytes de Kurowski, Secretary of the Tribunal

Attending on behalf of the Claimant:

Mr. Henry G. Burnett, King & Spalding LLP

Ms. Margrete Stevens, King & Spalding LLP

Mr. Louis-Alexis Bret, King & Spalding LLP

Mr. Andrew T. Swarthout, Bear Creek Mining Corporation

Attending on behalf of the Respondent:

Mr. Stanimir A. Alexandrov, Sidley Austin LLP

Ms. Marinn Carlson, Sidley Austin LLP

Ms. María Carolina Durán, Sidley Austin LLP

Dr. Juan Pazos Battistini, Estudio Navarro, Ferrero & Pazos Abogados

Dr. Carlos José Valderrama Bernal, President, Special Commission Representing the Republic of Peru in International Investment Disputes

Ms. Erika Lizardo, Embassy of Peru

The President of the Tribunal opened the session at 3 p.m. and welcomed the participants. The President of the Tribunal introduced the Tribunal and the Secretary of the Tribunal (Tribunal Secretary) and invited the Parties to introduce their respective representatives.

The President first referred procedurally to Claimant's Request for Provisional Measures of January 9, 2015, and invited the Parties to propose a procedural schedule. It was agreed that Respondent would file a Response on February 6, 2015, to be followed by a second round of submissions, with Claimant's observations to be filed on February 20, 2015, and Respondent's

rebuttal on March 6, 2015. It was further agreed that the above dates would not impact the Procedural Schedule for the Parties' main submissions.

The President then invited the Parties to present a ten-minute introductory statement of their respective positions, in accordance with the additional item that was added to the Agenda by the Tribunal on January 8, 2015, in light of Claimant's proposal of January 2, 2015. The President noted that this would be just an informal introduction, which did not prejudice the Parties' future written submissions.

The Tribunal and the Parties then considered the following:

- The Draft Agenda circulated by the Tribunal Secretary on December 11, 2014, as amended by the Tribunal on January 8, 2015.
- The Draft Procedural Order circulated by the Tribunal Secretary on December 11, 2014; and
- The Parties' comments on the Draft Procedural Order received on January 2, 2015, indicating the items on which they agreed and their respective positions regarding the items on which they did not agree.

An audio recording of the session was made and deposited in the archives of ICSID. The recording was subsequently distributed to the Members of the Tribunal and the Parties.

Following the session, the Tribunal now issues the present order:

Order

Pursuant to ICSID Arbitration Rules 19 and 20, this first Procedural Order sets out the Procedural Rules that govern this arbitration. The corresponding Procedural Schedule is attached as Annex A.

1. **Applicable Arbitration Rules**
Convention Article 44

- 1.1. These proceedings are conducted in accordance with the ICSID Arbitration Rules in force as of April 10, 2006, except as modified by Chapter Eight of the Free Trade Agreement between Canada and the Republic of Peru signed on May 29, 2008, that entered into force on August 1, 2009 (the "Canada-Peru FTA").

2. Constitution of the Tribunal and Tribunal Members' Declarations
Arbitration Rule 6

- 2.1. The Tribunal was constituted on December 3, 2014 in accordance with the ICSID Convention and the ICSID Arbitration Rules. The Parties confirmed that the Tribunal was properly constituted and that no party has any objection to the appointment of any Member of the Tribunal.
- 2.2. The Members of the Tribunal timely submitted their signed declarations in accordance with ICSID Arbitration Rule 6(2). Copies of these declarations were distributed to the Parties by the ICSID Secretariat on December 3, 2014.

3. Fees and Expenses of Tribunal Members
Convention Article 60; Administrative and Financial Regulation 14; ICSID Schedule of Fees

- 3.1. The fees and expenses of each Tribunal Member shall be determined and paid in accordance with the ICSID Schedule of Fees and the Memorandum on Fees and Expenses of ICSID Arbitrators in force at the time the fees and expenses are incurred.
- 3.2. Under the current Schedule of Fees, each Tribunal Member receives:
 - 3.2.1. US\$3,000 for each day of meetings or each eight hours of other work performed in connection with the proceedings or *pro rata*; and
 - 3.2.2. subsistence allowances, reimbursement of travel, and other expenses pursuant to ICSID Administrative and Financial Regulation 14.
- 3.3. Each Tribunal Member shall submit his claims for fees and expenses to the ICSID Secretariat on a quarterly basis. If a Tribunal member has to pay Value Added Tax ("VAT") on his fees in his country of residence, he shall submit to each party, via the Secretariat who will forward it to them, an invoice for payment of one half of the relevant VAT amount. Each party shall pay its share of the VAT amount directly to the Tribunal member(s), using the bank details indicated on the invoice(s).
- 3.4. Non-refundable expenses incurred in connection with a hearing as a result of a postponement or cancellation of the hearing shall be reimbursed.
- 3.5. In addition, in the event of a cancellation or postponement of the hearing less than 4 weeks before the scheduled start date, or at any time during the hearing, for

reasons which are not attributable to any member of the Tribunal, the Tribunal may charge to the Parties 50% of its notional daily sitting rate, based on an 8-hour day multiplied by the number of days reserved for the hearing; and in the event of a cancellation or postponement of the hearing more than 4 weeks but less than 12 weeks before the scheduled start date, the Tribunal may charge to the Parties 30% of its notional daily sitting rate, based on an 8-hour day multiplied by the number of days reserved for the hearing.

- 3.6. If considered necessary by the Tribunal, at a later stage of the proceedings and after consultation with the Parties, the Tribunal may appoint an Administrative Assistant to the Tribunal to provide help on the logistics and management of the file. If such an appointment is made, the fees and expenses of the Assistant will be considered costs of the procedure, provided that the Assistant's hourly rate shall be reasonable, and the Assistant's expenses shall be reimbursed within the limits prescribed by Administrative and Financial Regulation 14.

4. Presence and Quorum

Arbitration Rules 14(2) and 20(1)(a)

- 4.1. The presence of two Members of the Tribunal constitutes a quorum for its sittings. Nevertheless, at all sittings of the Tribunal at which evidence is heard or submissions on jurisdiction or the merits are advanced, the physical attendance of all Members of the Tribunal is required. At meetings during which only procedural issues are addressed, a quorum is sufficient and Members of the Tribunal may be present by any appropriate means of communication.

5. Decisions and Procedural Rulings of the Tribunal

Convention Article 48(1); Arbitration Rules 16, 19 and 20

- 5.1. Decisions of the Tribunal shall be taken by a majority of the Members of the Tribunal.
- 5.2. ICSID Arbitration Rule 16(2) applies to decisions taken by correspondence, except that where the matter is urgent, the President may issue procedural decisions without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.
- 5.3. The President is authorized to issue Procedural Orders and Procedural Decisions generally on behalf of the Tribunal.

5.4. The Tribunal's rulings on procedural matters may be communicated to the Parties by the Tribunal Secretary in the form of a letter or email.

6. Power to Fix Time Limits
Arbitration Rule 26(1)

6.1. The President may fix and extend time limits for the completion of the various steps in the proceeding.

6.2. In exercising this power, the President shall consult with the other Members of the Tribunal. If the matter is urgent, the President may fix or extend time limits without consulting the other Members, subject to possible reconsideration of such decision by the full Tribunal.

7. Secretary of the Tribunal
Administrative and Financial Regulation 25

7.1. The Tribunal Secretary is Ms. Mercedes Cordido-Freytes de Kurowski, Legal Counsel, ICSID, or such other person as ICSID may notify the Tribunal and the Parties from time to time.

7.2. To send copies of communications by email, mail, and courier/parcel deliveries to the ICSID Secretariat, the contact details are:

Ms. Mercedes Cordido-F. de Kurowski
ICSID
MSN J2-200
1818 H Street, N.W.
Washington, D.C. 20433
USA
Tel.: + 1 (202) 473-3171
Fax: + 1 (202) 522-2615
Email: mkurowski@worldbank.org
Paralegal's email: ifernandez1@worldbank.org

- 7.3. For local messenger deliveries, the contact details are:
Ms. Mercedes Cordido-F. de Kurowski
701 18th Street, N.W.
("World Bank J Building")
2nd Floor
Washington, D.C. 20006
Tel.: + 1 (202) 473-3171

8. Representation of the Parties
Arbitration Rule 18

- 8.1. Each party shall be represented by its counsel listed below and may designate additional agents, counsel, or advocates by notifying the Tribunal and the Tribunal Secretary promptly of such designation.

For Claimant

Henry G. Burnett
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For Respondent

Mr. Carlos José Valderrama Bernal
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Fax: +51 1 4409009
Emails:
juanpazos@nfplaw.com.pe
rpuccio@nfplaw.com.pe

- 8.2. Any change or addition to a party's representatives listed above shall be promptly notified in writing by that party to the other party and the Tribunal through Tribunal Secretary.
9. Apportionment of Costs and Advance Payments to ICSID
Convention Article 61(2); Administrative and Financial Regulation 14; Arbitration Rule 28
- 9.1. The Parties shall defray the direct costs of the proceeding in equal parts, without prejudice to the final decision of the Tribunal as to the allocation of costs.
- 9.2. By letter of December 4, 2014, ICSID requested that each party pay US\$200,000 to defray the initial costs of the proceeding. ICSID received Claimant's payment on December 16, 2014 and the Respondent's payment on December 31, 2014.
- 9.3. ICSID shall request further advances as needed. Such requests shall be accompanied by a detailed interim statement of account.
10. Place of Proceeding
Convention Articles 62 and 63; Administrative and Financial Regulation 26; Arbitration Rule 13(3)
- 10.1. Washington, D.C. shall be the place of the proceeding.
- 10.2. The Tribunal may hold hearings at any other place that it considers appropriate, if the Parties so agree.

10.3. The Tribunal may deliberate at any place it considers convenient.

11. Procedural Language, Translation and Interpretation

Administrative and Financial Regulation 30(3) and (4); Arbitration Rules 20(1)(b) and 22

11.1. English and Spanish are the procedural languages of the arbitration.

11.2. Correspondence among the Parties, the Tribunal and the ICSID Secretarial shall be in English.

11.3. Pleadings, expert opinions, and witness statements (together the “Main Documents”), shall be submitted in either procedural language on the Filing Date of the submission (as defined below). For any pleadings, expert opinions, or witness statements filed in Spanish, courtesy translations into English (the “Translations”) are to be filed within 15 business days thereafter.

11.4. Exhibits, legal authorities, and annexes (together, the “Supporting Documents”) may be submitted in either procedural language (or in any other language with a translation into either procedural language). For any Supporting Documents not submitted in English, the submitting Party shall provide courtesy translations into English of those documents or portions of documents it considers to be most relevant to the presentation of its case within 15 business days thereafter—provided that the Tribunal may require additional translations of Supporting Documents at any time. For the convenience of the Tribunal, if any Supporting Document provided in a language other than English is relevant only in part, it is sufficient to translate only relevant parts, provided that the Tribunal may require a fuller or a complete translation at any time.

11.5. Translations need not be certified unless there is a dispute as to the translation provided and the party disputing the translation specifically requests a certified version. If either Party wishes to challenge the translation of a document, it may submit a new translation that clearly identifies the difference.

11.6. Documents exchanged between the Parties in a language other than English under §[15] below (Production of Documents) need not be translated.

11.7. The testimony of a witness called for examination during the hearing who prefers to give evidence other than in English shall be interpreted simultaneously into English.

- 11.8. The Parties will notify the Tribunal, as soon as possible, and no later than at the pre-hearing organizational meeting (see §[20] below), which witnesses or experts require interpretation.
- 11.9. The costs of the interpreter(s) will be paid from the advance payments made by the Parties, without prejudice to the decision of the Tribunal as to which party shall ultimately bear those costs.
- 11.10. The Tribunal shall make routine procedural orders in English.
- 11.11. The Tribunal shall render any Decision or Award in English and Spanish simultaneously. Both language versions shall be equally authentic.

12. Routing of Communications
Administrative and Financial Regulation 24

- 12.1. The ICSID Secretariat shall be the channel of written communications between the Parties and the Tribunal.
- 12.2. Each party's written communications shall be transmitted by email or other electronic means to the opposing party and to the Tribunal Secretary, who shall send them to the Tribunal. In case of urgency, such communications may be sent by email directly to each member of the Tribunal at the email addresses specified in §13.2 below, with copies to the other Party and the Secretary.
- 12.3. Electronic versions of communications ordered by the Tribunal to be filed simultaneously shall be transmitted to the Tribunal Secretary only, who shall send them to the opposing party and the Tribunal once both Parties' communications are received.
- 12.4. The Tribunal Secretary shall not be copied on direct communications between the Parties when such communications are not intended to be transmitted to the Tribunal.

13. Number of Copies and Method of Filing of Parties' Pleadings
Administrative and Financial Regulation 30; Arbitration Rules 20(1)(d) and 23

- 13.1. By the relevant filing date (the "Filing Date"), the Parties shall submit by email to the Tribunal Secretary and the opposing party an electronic version of the pleading with witness statements, expert reports and lists of exhibits and legal

authorities,¹ and shall upload the pleading with the Supporting Documentation to the “Box” (ICSID’s file sharing system) folder created for this case by the following business day.

13.1.1. The Parties shall dispatch by courier to the Tribunal Secretary by the second business day after the Filing Date:

13.1.1.1. one unbound hard copy in A4 or Letter format² of the entire submission, including signed originals of the pleading, witness statements, and expert reports, together with all Supporting Documents (but not including legal authorities);

13.1.1.2. one bound hard copy of the entire submission including the pleading, the witness statements and expert reports in A4 or Letter format (single sided), and all Supporting Documents (but not including legal authorities) in A5 or Letter format (double sided); and

13.1.1.3. three USB drives, or CD-ROMs or DVDs, with full copies of the entire submission, including the pleading, the witness statements, expert reports, and all Supporting Documents (including legal authorities).

13.1.2. At the same time, dispatch by courier to the opposing party at the address(es) indicated at §[8.1] above and to each Member of the Tribunal at the addresses indicated at §[13.2] below:

13.1.2.1. one hard copy of the entire submission including the pleading, the witness statements and expert reports in A4 format (single sided), and all Supporting Documents (but not including legal authorities) in A5 or Letter format (double sided); and

13.1.2.2. one USB drive, or CD-ROMs or DVDs, with a full copy of the entire submission, including the pleading, the witness statements, expert reports, and all Supporting Documents (including legal authorities).

¹ Please note that the World Bank server does not accept emails larger than 25 MB.

² The A4 or Letter format is required for ICSID’s archiving.

13.2. The addresses of the Tribunal Members are as follows:

Prof. Dr. Karl-Heinz
Böckstiegel
Parkstr. 38
D 51427 Bergisch-Gladbach
Frankenforst,
Germany
kh@khboeckstiegel.com
Tel: +49 (0) 2204 66268

Dr. Michael Pryles
Level 26
530 Collins Street
Melbourne, VIC 3000
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Tel: +613 8644 3880

Prof. Philippe Sands QC
Matrix Chambers
Griffin Building
Gray's Inn
London, WC1R 5LN
United Kingdom
philippesands@me.com
Tel: +44 20 7404 3447

13.3. Legal authorities shall be submitted in electronic format only, unless a hard copy is specifically requested by the Tribunal.

13.4. Electronic versions of pleadings, witness statements, and expert reports shall be text searchable wherever possible (i.e., OCR PDF or Word).

13.5. Pleadings shall be accompanied by an index hyperlinked to the Supporting Documents. Such index may be submitted at the same time that the hard copies of the Main Documents and Supporting Documents are provided as in 13.1.1 above.

13.6. The official date of receipt of a pleading or communication shall be the day on which the electronic version is sent to the Tribunal Secretary.

13.7. A filing shall be deemed timely if sent by a party by 11:59 pm, Washington, D.C. time, on the relevant date.

14. Number and Sequence of Pleadings
Arbitration Rules 20(1)(c), 20(1)(e), 29 and 31

14.1. In accordance with Arbitration Rule 29, the Parties agree that the proceeding shall consist of a written phase, followed by an oral phase.

14.2. The Parties agree that the proceeding will not include a bifurcated jurisdictional phase, but rather that any jurisdictional objections will be addressed with the merits.

14.3. The number, sequence and date of pleadings, and the time intervals between pleadings, is set forth in Annex A to this Procedural Order No. 1.

15. Production of Documents

Convention Article 43(a); Arbitration Rules 24 and 33-36

15.1. The Parties agree that the proceeding will not include a “document exchange and production” phase.

16. Submission of Documents

Convention Article 44; Administrative and Financial Regulation 30; Arbitration Rule 24

16.1. The Memorial and Counter-Memorial shall be accompanied by the documentary evidence relied upon by the Parties, including exhibits and legal authorities. Further documentary evidence relied upon by the Parties may be submitted in rebuttal with the Reply and Rejoinder.

16.2. The documents shall be submitted in the manner and form set forth in §[13] above.

16.3. Neither party shall be permitted to submit additional or responsive documents after the filing of its respective last written submission, save under exceptional circumstances at the discretion of the Tribunal upon a reasoned written request followed by observations from the other party.

16.3.1. Should a party request leave to file additional or responsive documents, that party may not annex the documents that it seeks to file to its request.

16.3.2. If the Tribunal grants such an application for submission of an additional or responsive document, the Tribunal shall ensure that the other party is afforded sufficient opportunity to make its observations concerning such a document.

16.4. The Tribunal may call upon the Parties to produce documents or other evidence in accordance with ICSID Arbitration Rule 34(2).

16.5. Supporting Documents shall be submitted in the following form:

16.5.1. Exhibits shall be numbered consecutively throughout these proceedings.

16.5.2. The number of each Exhibit containing a document produced by Claimant shall be preceded by the letter “C-” for factual exhibits and “CL-” for legal exhibits containing authorities etc. The number for each Exhibit containing a document produced by Respondent shall be preceded by the letter “R-” for factual exhibits and “RL-” for legal exhibits containing authorities etc.

- 16.5.3. The Exhibits shall be submitted in ring binders allowing individual documents to be taken out, and each Exhibit shall have a divider with the Exhibit identification number on the tab.
- 16.5.4. Exhibits shall also be submitted in PDF format and start with the number “C-0001” and “R-0001,” respectively.
- 16.5.5. Copies of documentary evidence shall be assumed to be authentic unless specifically objected to by a party, in which case the Tribunal will determine whether authentication is necessary.
- 16.6. The Parties shall file all documents only once by attaching them to their pleadings. Documents so filed need not be resubmitted with witness statements even if referred to in such statements.
- 16.7. Demonstrative exhibits (such as Power Point slides, charts, tabulations, etc.) may be used at any hearing, provided they contain no new evidence. Each party shall number its demonstrative exhibits consecutively, and indicate on each demonstrative exhibit the number of the document(s) from which it is derived. The party submitting such exhibits shall provide them in hard copy to the other party, the Tribunal Members, the Tribunal Secretary, the court reporter(s) and interpreter(s) at the hearing.
17. Non-Disputing Party Submissions and Amicus Curiae
Articles 832 and 836 of the Canada-Peru FTA
- 17.1. The Tribunal shall, in consultation with the Parties, establish all necessary procedures and schedules in the event that Canada files, or any person other than the Parties seeks leave to file, a written submission pursuant to Articles 832 and 836, respectively, of the Canada-Peru FTA.
- 17.2. The Parties agree that any written submissions by Canada or any person other than the Parties will take place during a dedicated procedural phase following the exchange of written submissions by the Parties and prior to the hearing, as set forth in Annex A to this Procedural Order No. 1.
18. Witness Statements and Expert Reports
Convention Article 43(a); Arbitration Rule 24
- 18.1. Witness statements and expert reports shall be filed together with the Parties’ pleadings.

- 18.2. The Tribunal shall not admit any testimony that has not been filed with the written submissions, unless the Tribunal determines that exceptional circumstances exist.
- 18.3. Each witness statement and expert report shall be signed and dated by the witness or expert.
- 18.4. All witness statements and expert reports shall comply with the relevant provisions of the IBA Rules.

19. Examination of Witnesses and Experts

Arbitration Rules 35 and 36

- 19.1. Each witness shall be available for examination at the hearing, subject to the provisions of this Order.
- 19.2. On a date to be determined by the Tribunal after consulting the Parties which shall not be less than six weeks before any hearing, each party shall notify simultaneously the other party, with a copy to the Tribunal, which of its own witnesses and experts it wishes to examine at the hearing, and which of the witnesses and experts of the opposing party it wishes to cross-examine at the hearing.
- 19.3. Shortly after the Parties' notifications, the Tribunal will indicate the witnesses or experts not called by the Parties whom it wishes to question, if any.
- 19.4. The procedure for examining witnesses and experts at the hearing shall be the following:
 - 19.4.1. Before giving evidence, witnesses shall make the declaration in ICSID Arbitration Rule 35(2), and experts shall make the declaration in ICSID Arbitration Rule 35(3).
 - 19.4.2. The witness statement of each witness and expert report of each expert shall stand in lieu of the examination by the party producing the witness and expert ("direct examination"), subject to the provisions below and any agreement of the Parties or direction of the Tribunal.
 - 19.4.3. Witnesses giving oral testimony may first be examined in direct examination for no longer than 15 minutes. Direct examination of witnesses shall be conducted only if and as necessary to introduce the witness, confirm the accuracy of and completeness of the witness's written statement(s), offer any corrections or clarifications that may be necessary to prevent a misunderstanding of that witness's written direct testimony, to highlight

briefly the key points of his or her witness statement, and to address any relevant development that occurred after the witness signed the witness statement. Direct examination of experts shall either follow the same format as for witnesses, or the expert may provide a brief presentation of the key points of his or her report of no longer than 30 minutes, except for experts on quantum who may take up to 45 minutes.

- 19.4.4. The direct examination of a witness or expert is followed by examination by the other party (“cross-examination”), and subsequently by the party producing the witness (“redirect examination”).
- 19.4.5. The redirect examination shall be limited to matters raised in cross-examination.
- 19.4.6. The Tribunal may interject questions to the witnesses and experts at any time.
- 19.5. Unless the Parties and the Tribunal agree otherwise, experts (but not witnesses) shall be allowed in the hearing room before giving their testimony and shall be permitted to read the transcript of the hearing before testifying. As a general rule and subject to their availability, if either Party’s party representatives are called upon to be examined, they shall be heard first.
- 19.6. The party whose witness or expert has been called for cross-examination must make the witness or expert available for the hearing. In the event of a failure to do so without good cause, the Tribunal shall disregard the statement, report or opinion of the relevant witness or expert. In any case, the Tribunal shall assess the probative value of such statement, report or opinion taking into account the record and all relevant circumstances, including the fact that the statement was not confirmed orally and that the witness and/or expert was not examined.
- 19.7. Examination by video-conference may be permitted for justified reasons at the discretion of the Tribunal.
- 19.8. A party’s waiver to cross-examine a witness or expert at the hearing shall not be deemed to be an acceptance of the witness’ or expert’s written testimony.
- 19.9. The Tribunal shall determine the order in which the witnesses and experts will be called after consultation with the Parties during the pre-hearing organizational meeting in §20 below.

20. Pre-Hearing Organizational Meetings
Arbitration Rule 13

20.1. A pre-hearing organizational meeting shall be held by telephone between the Tribunal, or its President, and the Parties in order to resolve any outstanding procedural, administrative, and logistical matters in preparation for the hearing.

21. Hearings
Arbitration Rules 20(1)(e) and 32

21.1. The oral procedure shall consist of a hearing for the examination of witnesses and experts, if any, and for oral arguments.

21.2. The hearing shall be held at a place to be determined in accordance with §[10] above.

21.3. It was agreed that the Parties and the Tribunal shall reserve from Thursday, September 8, 2016 through Friday, September 16, 2016, with September 15th and 16th to be kept in reserve, as well as Saturday, September 10, 2016.

21.4. The Members of the Tribunal shall reserve at least one day after the hearing to determine the next steps and to hold deliberations.

21.5. The allocation of time for the hearing shall be decided by the Tribunal after consultation with the Parties. Without prejudice to any subsequent developments, the Parties currently estimate that at least five working days will be required for a hearing on the merits of the case, with two working days also being held in reserve.

21.6. In accordance with Article 835(1) of the Canada-Peru FTA, Hearings shall be open to the public. To the extent necessary to ensure protection of confidential information, the Tribunal may hold portions of hearings *in camera*.

21.7. Also in accordance with Article 835(2) of the Canada-Peru FTA, the Tribunal shall establish procedures for the protection of confidential information and appropriate logistical arrangements for an open hearing, in consultation with the Parties.

22. Records of Hearings and Sessions
Arbitration Rules 13 and 20(1)(g)

22.1. Sound recordings shall be made of all hearings and sessions. The sound recordings shall be provided to the Parties and the Tribunal Members.

- 22.2. The Tribunal Secretary may prepare summary minutes of hearings and sessions upon request.
- 22.3. Verbatim transcript(s) in the procedural language(s) shall be made of any hearing and session other than sessions on procedural issues. Unless otherwise agreed by the Parties or ordered by the Tribunal, the verbatim transcripts shall be available in real-time using Live Note or similar software and electronic transcripts shall be provided to the Parties and the Tribunal on a same-day basis.
- 22.4. The Parties shall agree on any corrections to the transcripts within 20 business days of the later of the dates of the receipt of the sound recordings and transcripts. At the request of either Party, the agreed corrections shall be entered by the court reporter in the transcripts (“revised transcripts”). The Tribunal shall decide upon any disagreement between the Parties and any correction adopted by the Tribunal shall be entered by the court reporter in the revised transcripts.
23. Post-Hearing Memorials and Statements of Costs
Convention Article 44; Arbitration Rule 28(2)
- 23.1. At the hearing, after consulting with the Parties and taking into account their views (particularly in respect of any cost implications), the Tribunal shall decide whether it believes it to be necessary for the Parties to file Post-Hearing Memorials.
- 23.2. Each party will submit its Statement of Costs within 4 weeks after the hearing or the final exchange of Post-Hearing Memorials (if any).
24. Publication and Public Access to Documents-
Article 835 of the Canada-Peru FTA; Convention Article 48(5), Administrative and Financial Regulation 22, Arbitration Rule 48(4)
- 24.1. The Parties confirm the applicability of Article 835 of the Canada-Peru FTA with respect to public access to documents, including without limitation the provisions related to (a) publication and disclosure of documents, and (b) the safeguarding of confidential information.
- 24.2. In accordance with Article 835(3) of the Canada-Peru FTA, the ICSID Secretariat will publish all Main Documents (but not the Supporting Documents) submitted to, and all Procedural Orders issued by, the Tribunal, unless the Parties otherwise agree, as part of the Procedural Details on the ICSID web site, subject to the

deletion of confidential information.

- 24.3. Notwithstanding para 24.2 *supra*, and in accordance with Article 835(4) of the Canada-Peru FTA, the Award shall be publicly available and will therefore be published by the ICSID Secretariat, subject to the deletion of confidential information.
- 24.4. The Parties shall seek to agree upon, and shall present to the Tribunal their agreement and any disagreements with respect to, a draft procedural order governing (i) the designation and protection of confidential information and (ii) the preparation of redacted copies of documents for disclosure under Article 835 of the Canada-Peru FTA.

Other Matters

The session was adjourned at 4:15 p.m.

An audio recording of the session was made and deposited in the archives of ICSID. The recording was subsequently distributed to the Members of the Tribunal and the Parties.

[signed]

Prof. Dr. Karl-Heinz Böckstiegel
President of the Tribunal
Date: January 27, 2015

BEAR CREEK MINING CORPORATION

v.

REPUBLIC OF PERU

(ICSID CASE NO. ARB/14/21)

ANNEX A. TO THE PROCEDURAL ORDER NO. 1

PROCEDURAL SCHEDULE

Procedural Steps	Time Periods (days)	Dates (mm/dd/yyyy)
Start Date ¹		01/19/2015
Memorial on the Merits	130	05/29/2015
Counter-Memorial on the Merits & Memorial on Jurisdiction (if any)	130	10/06/2015
Reply on the Merits & Counter-Memorial on Jurisdiction (if any)	94	01/08/2016
Rejoinder on the Merits & Reply on Jurisdiction (if any)	94	04/13/2016
Rejoinder on Jurisdiction (if any)	45	05/26/2016
Petition to submit submission by non-disputing party (if any)	14	06/09/2016
Parties' comments on petition by non-disputing party (if any)	28	07/07/2016
Tribunal's decision on non-disputing party petition (if any)	14	07/21/2016
Parties' notification of witnesses pursuant to § 19.2 of PO1		07/22/2016
The Tribunal may send to the Parties a draft Procedural Order regarding details of the hearing, inviting comments within one week		08/12/2016
Parties' comments on submissions by non-disputing party (if any)	28	08/18/2016
Hearing (five full days with three additional days being held in reserve)	28	09/8/2016 – 09/14/2016 with 09/15/2016 and 09/16/2016 held in reserve, as well as 09/10/2016

¹ The start date is one week after the First Session of the Arbitral Tribunal.