

**INTERNATIONAL CENTRE FOR SETTLEMENT
OF INVESTMENT DISPUTES**

ICSID Case No. ARB/14/21

In the Matter of

BEAR CREEK MINING CORPORATION,

Claimant,

v.

THE REPUBLIC OF PERU,

Respondent.

WITNESS STATEMENT OF ELSIARIO ANTUNEZ DE MAYOLO

I. INTRODUCTION

1. My name is Elsiario Antunez de Mayolo. I currently serve as Chief Operating Officer (“COO”) of the Claimant in this arbitration, Bear Creek Mining Corporation (“Bear Creek” or the “Company”). I also serve as General Manager of Bear Creek’s Peruvian branch (*Bear Creek sucursal del Peru* or “Bear Creek Peru”). I spent my entire career working in the Peruvian mining sector.

2. I was born on January 16, 1957 in the mining town of la Oroya, where my father was employed by Cerro de Pasco Corporation, one of the largest mining companies in the world at that time. I grew up in la Oroya and then Lima, where I studied geological engineering. I graduated in geological engineering from the Universidad Nacional de Ingeniería in 1981 and started working at Compañía Minera Castrovirreyna on the same year. I was a mining geologist in charge of the operations at the underground polymetallic Pacococha mine. After that, in 1983, I left Castrovirreyna and joined Centromin Peru as mining geologist. Centromin Peru was the Peruvian national mining company, created when the Government nationalized Cerro de Pasco Corporation in 1974. At Centromin, from years 1983 to 1989, I was in charge of geological activities at the the Cobriza, Casapalca and Yauricocha mines, which Centromin owned and operated.

3. In 1989, I moved to Southern Peru Copper Corporation (“SPCC”) as structural geologist for the Toquepala copper mine, one of the largest open pit mines in the world. Five months later, I was promoted as Head of the Geology Department for the Toquepala mine. In 1993, I was promoted as Superintendent of Geology for the entire SPCC group, where I was in charge of all the ore reserves studies and reporting, and all the geological activities at Toquepala and Cuajone—another large open-pit copper mine owned by SPCC. I was also supervising

hydrogeological and hydrological studies and managing the water supply facilities for all of SPCC's operations in Peru. In 1998, I was promoted to Technical Services Manager for SPCC, where I oversaw every technical aspect of SPCC's operations, including the management of capital appropriations for SPCC's projects. In 1999, I became Mine Manager for the Cuajone mine, one of the very largest mines in Peru at that time. As Mine Manager I was directly responsible for the mining operations at Cuajone. One year later, in 2000, I was promoted to Director of Operations at the Cuajone mine. I was now in charge of every aspect of the Cuajone project, including the open-pit mine, the minerals processing plant and all supporting infrastructure. As Director of Operations, I supervised over 1,100 employees and managed an annual operating budget of over US\$ 170 million per year. At that time, operations at Cuajone involved the extraction of 320,000 tons per day of material, and the treatment of 87,000 tons of ore per day at the processing plant. At that time, Cuajone produced over 2,000 tons per day of copper concentrate and was the largest producing mine in the country and one of the largest mines in the world.

4. I spent ten years as Director of Operations at Cuajone. In addition to the functions described above, I oversaw all of SPCC's community and public relations efforts at Cuajone, as well as all the environmental aspects of our operations there. I worked directly with community leaders and community relations teams at SPCC to build a climate of mutual trust and cooperation between the company and the communities surrounding the Cuajone mine. This allowed to better understand the local communities' concerns and needs, and to quickly address socio-environmental concerns at the time when they arose. I implemented a very comprehensive environmental management program at Cuajone. I tasked a team of over fifteen employees to specifically address all environmental aspects of our operations. I also insisted on employing

state-of-the art technology to minimize the environmental impact of the mine. As Director of Operations at Cuajone, I worked directly with local, regional and national public authorities in connection with every regulatory and permitting aspect involved at Cuajone.

5. I left SPCC and joined Bear Creek on April 12, 2010 as General Manager of Bear Creek Peru and Vice-President of Operations. As such, I was in charge of overseeing the development of the Santa Ana and Corani projects, including the permitting process, community relations, and the preparation of the Environmental Impact Assessment (*Estudio de Impacto Ambiental* or “ESIA”) for both projects. As General Manager I reported directly to the COO of the Company at that time, Marc Leduc. I was promoted to COO in August 2013, while remaining General Manager of Bear Creek Peru. As General Manager and COO, I am in charge of every operational aspect of Bear Creek’s activities in Peru.

6. In this witness statement, I relate my involvement with the Santa Ana project, particularly the relations with local communities and preparation of the ESIA, and the aftermath of Supreme Decree 032-2011-EM (“Supreme Decree 032”) and its impact on Bear Creek’s Santa Ana and Corani projects.

II. RELATIONS WITH NEIGHBORING COMMUNITIES AND ESIA PROCESS AT SANTA ANA

7. When I joined the Company in April 2010, the Company had been working hard over the past years to build good relationships with local communities near Santa Ana. These efforts included implementing a work rotation program employing about 100 of the area’s community members to assist with infrastructure building and land reclamation work. In the months following my arrival, we began formalizing our engagement with the local communities through the preparation of an ESIA, which Peruvian law requires mining companies to produce as part as the overall socio-environmental permitting process required to build and operate a

mine in the country. To that end, Ausenco Vector was retained in 2009 to prepare a detailed ESIA for Santa Ana.

8. Along with Ausenco, we conducted numerous meetings with local communities, community leaders and elected officials, in order to determine how local communities lived. This “baseline study” allowed us to understand better how our project at Santa Ana could improve their living conditions while minimizing disruption to their ancestral lifestyle and traditions. We wanted to make sure that Santa Ana would have a minimal, yet positive social impact on the surrounding communities. As part of the ESIA process, we conducted opening workshops (*talleres de apertura*) with local communities in August 2009, informational workshops (*talleres informativos*) in November 2010, and other consultations with communities located within and outside the Project’s “area of influence.” *Talleres de apertura* aimed at formally introducing ourselves, Bear Creek and the Santa Ana project to the local communities, and to collect socio-environmental baseline information in order to determine the impact of our project in the area. *Talleres informativos* focused on informing the communities of our progress with the Santa Ana project.

9. In total, we held over 130 meetings with local communities. The communities repeatedly expressed their support for the Santa Ana Project. Of course, these meetings were also the opportunity for inhabitants of neighboring communities to ask questions and express potential concerns with respect to the Santa Ana project. As an example, some community members residing a few kilometers away from the project area inquired as to the possibility of dust being generated by our activities at Santa Ana. We successfully addressed their concern in that respect by pointing out to the very precise wind modeling studies undertaken by the Company at Santa Ana, and the sophisticated blast control techniques to be employed at the mine

site. We would thus be able to operate with hardly any dust leaving the project area.¹ Local communities were pleased that Santa Ana would have provided approximately 1,000 direct positions and 1,500 indirect jobs to local communities during the construction and production phases of the Project. After spending over a year conducting exhaustive environmental and social studies at Santa Ana, Ausenco Vector issued a detailed ESIA report in December 2010.²

10. Bear Creek and Ausenco also conducted extensive baseline environmental studies at Santa Ana in order to precisely identify the geographical, physical and environmental characteristics of the Santa Ana area. This allowed us to design the proposed mine with a view of minimizing its environmental footprint and ensuring that it would meet the highest environmental standards at the time and throughout the entire life of the mine. The mine would be designed and constructed so that no contamination to the environment will occur. The heap leach facility was carefully engineered to ensure that none of the leaching solution escapes to the surrounding environment, using a composite lining system (polyethylene and clay) acting as a double barrier. This heap leach process was developed more than 40 years ago and is currently being used in hundreds of operations world-wide.

11. We designed the heap leach system to function exclusively as a closed-circuit process, with all the leaching solution being recycled and reused at the end of each cycle. As a result, Santa Ana would consume minimum quantities of water and would not discharge any used water back into the local environment (“zero-discharge project”). This represented a substantial improvement compared to most mining projects in Peru, and helped minimizing the project’s environmental footprint. We also planned for the double containment of all pipes and

¹ **Exhibit C-0059**, Bear Creek Santa Ana Project Environmental Impact Assessment Presentation, Feb. 2011.

² **Exhibit C-0071**, Ausenco Vector, Environmental Impact Assessment Report for the Santa Ana Project, Dec. 2010.

tanks so that if any leak occurred it would be recovered and managed correctly so that no leaching solution leaves the system. Monitoring wells would be placed around the heap leach facility and process plant to monitor the condition of the groundwater and ensure that no contamination to the groundwater occurs.

12. On December 23, 2010, we requested that MINEM's General Direction for Environmental Mining Affairs (*Direccion General de Asuntos Ambientales Mineros* or "DGAAM") approve the ESIA, including our community participation plan (*Plan de Participacion Ciudadana* or "PPC").³ This approval was necessary for Bear Creek to convene a public hearing with the local communities to discuss the scope of the ESIA. DGAAM approved Bear Creek's PPC on January 7, 2011, and instructed us to move forward with a public hearing.⁴ This approval was very important to us because it confirmed that we had implemented adequate community relations programs and maintained good relationship with the communities. It also confirmed that no social conflicts or issues existed in connection with the Santa Ana Project. As requested by DGAAM, we advertised the invitation to the public hearing in various newspapers of national, local and regional reach, posted notifications in public spaces and Government offices located in the Santa Ana Project's area of influence, and ran numerous radio announcements on the stations covering the region around Santa Ana. We also delivered copies of the complete ESIA to local authorities and communities for their review and comments prior to the public hearing.

³ **Exhibit C-0072**, Request from Bear Creek Mining Corporation to DGAAM for Approval of the ESIA, Dec. 23, 2010.

⁴ **Exhibit C-0073**, MINEM Resolution No. 021-2011/MEM-AAM, Jan. 7, 2011.

13. The public hearing took place on February 23, 2011 in a Government building in Huacullani.⁵ A total of 729 individuals, including local governmental officials and community members attended the hearing, which lasted 5 hours.⁶ Alvaro Diaz Castro, Bear Creek’s Vice President of Legal and General Counsel, represented the Company at the hearing and responded to numerous questions from the community members.⁷



Fig. 1: Public hearing in Huacullani on February 23, 2011.⁸

14. As you can see from the photo above, the high-level leaders from the communities attended the hearing. You can identify the leaders—sometimes referred to as *malku* (condor in Aymara language)—as they are dressed in black with white scarves around the

⁵ **Exhibit C-0076**, Minutes of the Public hearing – Mineral Subsector No. 007-2011/MEM-AAM – Public Hearing for the ESIA of the “Santa Ana” Project, Feb. 23, 2011.

⁶ *Id.*

⁷ *Id.*

⁸ Photograph taken at the Huacullani Government Building on February 23, 2011.

neck to represent the look of the condor, a sacred animal and symbol of the sky in Aymara culture.

15. I coordinated the preparation of the public hearing along with our employees and the Ausenco consultants who prepared the ESIA. I also reviewed Bear Creek's and Ausenco's presentations prior to the hearing. We worked together with MINEM officials to prepare the hearing and address any comment they had prior to the hearing. Since many of the participants came from communities located some kilometers away from Huacullani, we prepared and provided lunch for over 700 participants. I attended the public hearing in Huacullani. I sat among the community members in attendance to get a direct sense of their reaction to the ESIA and their expectations and potential concerns about the project. I observed firsthand that the immense majority of the individuals present strongly supported the project because they wanted Bear Creek to invest and bring economic activity and development to the local communities. I also sensed that some of the participants had some discrete concerns about the environmental aspects of the Santa Ana project, which we addressed in the ESIA. I was confident that we addressed these concerns and would be able to address them in greater details during the upcoming weeks.

16. Also present at the hearing were a handful of anti-mining activists who had come from other parts of the region and the country to voice their anti-mining stance at the hearing. Walter Aduviri, a relatively unknown politician from Puno who went on to form the "*Frente de Defensa de los Recursos Naturales de la Zona Sur de Puno*" (the "*Frente de Defensa*") a few months later, was seated a few chairs away from me. He publicly spoke at the hearing, claiming that Santa Ana would use mercury in the process of extracting gold from the area. Alvaro Diaz Castro, our General Counsel, responded that his concerns were misplaced since: (i) Santa Ana

was a silver mining project with no commercial quantities of gold present at the site; and (ii) Bear Creek will not use any mercury at all at Santa Ana. I was quite surprised by his comments, which clearly demonstrated that he had not read the ESIA (which was available to the public and the local authorities in every neighboring community for 40 days prior to the hearing) and didn't know anything about Santa Ana. In retrospect, it is clear to me that Mr. Aduviri had come only to the hearing to gain political exposure and prepare his upcoming political campaign to unseat the incumbent regional government.

III. AFTERMATH AND IMPACT OF SUPREME DECREE 032

A. The Government expropriated Santa Ana for no valid reason and Improperly Commenced a Civil Lawsuit Against Bear Creek

17. Starting April 2011, Walter Aduviri and his *Frente de Defensa* sought to impose a moratorium on all extractive industries projects in the Puno area, in an effort to agitate the region and gain political advantage in preparation of the upcoming regional elections. The *Frente de Defensa* organized various demonstrations in the Puno region, which progressively escalated over the following months into violent protests, road blockades, and an indefinite strike. None of these protests ever took place in the project area, which remained calm during this time period. Throughout these protests and ensuing strike, various Government officials denounced the political nature of the *Frente de Defensa's* demands, and confirmed that it would be illegal to rescind existing mining concessions and that mining rights in the area must be respected.⁹ Mr. Aduviri and others from the *Frente de Defensa* who led these disruptive and violent actions in Puno were criminally charged as a result and their cases have been pending since 2011.

⁹ See, e.g., **Exhibit C-0092**, Press Release, Presidencia del Consejo de Ministros, *Premier califica de inadmisibles bloqueos de carreteras en Puno y pide deponer acciones violentas*, May 18, 2011; **Exhibit C-0093**, *Comuneros exigen pronunciamiento de PCM*, LA REPÚBLICA, May 19, 2011; **Exhibit C-0096**, *MEM: Ejecutivo sigue abierto al diálogo con población de Puno*, RPP NOTICIAS, May 27, 2011.

18. On May 30, 2011, DGAAM issued a resolution suspending the Santa Ana ESIA for a period of 18 months.¹⁰ The DGAAM's decision was not based on socio-environmental concerns, but rather on the climate of political agitation that existed in the Puno region at that time. This political agitation took place in the context of the presidential elections held in Peru, and opposed natural resources projects in general, not Santa Ana in particular. It was not a permissible ground to suspend the ESIA process and we thus immediately appealed that decision.

19. On June 24, 2011, some protesters were shot by the police while marching onto the Juliaca airport, 185 kilometers north of Santa Ana. Their protest had nothing to do with Santa Ana. Instead, they were protesting against the illegal gold mining activity that was taking place at *La Rinconada*, where illegal gold miners used mercury to extract gold and poisoned the water flowing further north from Juliaca.¹¹ The departing Garcia administration thought that canceling the Santa Ana project would placate the *Frente de Defensa* and bring the protests to an end. To that effect, on June 25, 2011, MINEM revoked Bear Creek's authorization to explore and exploit Santa Ana by issuing Supreme Decree 032.¹²

20. I was shocked by the Government's about-face regarding Santa Ana. Only a few days prior to the enactment of Supreme Decree 032, Andy Swarthout (Bear Creek's President and CEO) and I had met with Vice Minister of Mines Fernando Gala at his offices in Lima. Vice-Minister Gala confirmed that the Government would protect Bear Creek's legally-acquired rights over Santa Ana. We had always maintained a positive working relationship with MINEM

¹⁰ **Exhibit C-0098**, DGAAM Resolution 162-2011-MEM-AAM, May 30, 2011.

¹¹ **Exhibit C-0104**, *Quitan concesión a minera en Perú; inversionistas en alerta*, EL ECONOMISTA, Jun. 26, 2011; **Exhibit C-0105**, *'Juliacazo': seis muertos por protestas*, PERÚ 21, June 25, 2011; **Exhibit C-0106**, *Cinco muertos y 25 heridos en el intento de toma de aeropuerto en el sur del Perú*, IBEROAMÉRICA, June 25, 2011; **Exhibit C-0107**, *Al menos un muerto en intento de toma de aeropuerto en Perú*, EXTRA.EC, June 24, 2011.

¹² **Exhibit C-0005**, Supreme Decree No. 032-2011-EM, June 25, 2011.

up until the issuance of Supreme Decree 032. This made the Government's decision to abruptly cancel Santa Ana without notice or an opportunity for Bear Creek to be heard even more disturbing. I was also dismayed to see that Supreme Decree 032 did not contain any explanation as to why the Government had decided to cancel our project. Instead, it merely referred to changed circumstances, but did not explain these circumstances and how they could affect the project.

21. A few days after MINEM issued Supreme Decree 032, Miguel Grau (a member of Bear Creek's Board of Directors) inquired with Prime Minister Rosario Fernández as to why MINEM issued that decree without providing any justification or opportunity for Bear Creek to present its case against the revocation. Prime Minister Fernández mentioned that she too was surprised by the way MINEM handled this situation. She said that Minister of Energy and Mines Pedro Sanchez would contact us to explain the supreme decree. Minister Sanchez contacted Bear Creek and asked to have a meeting with Andy Swarthout, Miguel Grau and I on the next day. We met with Minister Sanchez. Also present at the meeting were Vice-Minister Gala and the Vice-Minister of Energy, Luis Gonzales Talledo. Minister Sanchez told us that MINEM had no information or reason to believe that Bear Creek improperly acquired the Santa Ana Concession. He added, however, it would be better for the judiciary to examine the legality of that process in order to placate the public opinion. We expressed our disagreement with the Minister's views at that meeting.

22. On July 5, 2007, two weeks after Peru enacted Supreme Decree 032, MINEM commenced a civil lawsuit (the "MINEM Lawsuit") against Bear Creek and Ms. Villavicencio before the Civil Court Lima.¹³ MINEM sought to annul Bear Creek's rights over the Santa Ana

¹³ **Exhibit C-0112**, Claim filed by MINEM against Bear Creek and Ms. Villavicencio before the Civil Court of Lima, July 5, 2011.

Concessions and their reversion to the State, by arguing that the option agreements and transfer agreements between Ms. Villavicencio and Bear Creek were simulated or illegally obtained. It was clear to me that the MINEM Lawsuit is not a legitimate inquiry into the circumstances surrounding Bear Creek's acquisition of the Santa Ana Concessions, but rather a disingenuous attempt to retroactively justify Supreme Decree 032. This was consistent with what Minister Sanchez had told us only a few days earlier.

23. Shortly thereafter, I filed a request with MINEM on behalf of Bear Creek to obtain a copy of all public records connected with the issuance of Supreme Decree 032, and particularly, to what could possibly constitute new "circumstances" justifying the revocation Supreme Decree 083, except for a one page-long *exposición de motivos* paraphrasing the language of the decree itself.¹⁴ MINEM responded that no such documents or records existed in all the directorates of the Ministry.¹⁵ It was clear to me, based on MINEM's response, that no such new circumstances ever existed. This also confirmed my belief that Supreme Decree 032 was exclusively motivated by political considerations, since it was enacted hastily, without engaging in any sort of prior study or consultation within the Government.

24. On July 12, 2011, we filed a constitutional *amparo* action against Supreme Decree 032 because it violated Bear Creek's fundamental rights to legal security, freedom of industry and the prohibition against arbitrariness. We also requested that the court declare (i) that Bear Creek's private investment in Santa Ana is a public necessity and (ii) that its title over the Santa Ana Concessions remains in force. On May 12, 2014, after three years of proceedings and numerous interlocutory appeals filed by the Government, the Constitutional Court issued a

¹⁴ **Exhibit C-0110**, Letter from E. Antunez, Bear Creek Mining Company, to the Secretary General of MEM, August 10 2011.

¹⁵ **Exhibit C-0111**, Letter from R. Wong, Secretary General of MEM, to E. Antunez, Bear Creek Mining Company, August 19, 2011.

ruling (the “Amparo Decision”) that completely vindicated Bear Creek’s claims in the *amparo* action.¹⁶

B. The Government Repeatedly Assured Bear Creek that it wanted to Resolve the Situation at Santa Ana, But Never Did

25. Overall, my Bear Creek colleagues and I met 44 times with Government officials between July 2011 and February 2014 (when Bear Creek delivered a Notice of Intent to the Government under the FTA), including three meetings with President Humala, three meetings with Prime Minister Jimenez, eleven meetings with the Ministers of Energy and Mines and fourteen meetings with the Vice-Ministers of Mines. I personally participated in 40 of these 44 meetings. During all these meetings, all the government officials we met with, including President Humala, Prime Minister Jimenez, Ministers Castilla, Merino, Mayorga and Vice-Minister Shinno never once alleged any irregularity regarding the acquisition of the Santa Ana Concessions. The mere fact that we were able to meet repeatedly with such high-level officials of the Peruvian Government confirms to me that the Government was well-aware that Bear Creek had acted appropriately all along, and that Peru would need to do something to address the situation at Santa Ana.

26. Andy Swarthout and I met with President Humala and Carlos Herrera Descalzi (Minister of Energy and Mines) in Lima on September 27, 2011. President Humala indicated that he wished that we focus on Corani first and leave discussions regarding Santa Ana to a later date. He particularly insisted on the necessity to implement a strong social program at Corani because Corani was such a great project for Bear Creek and Peru. Andy Swarthout and I explained that while we were fully committed to building a strong socioeconomic development platform at Corani and help the local communities as much as we could, it would unfortunately

¹⁶ **Exhibit C-0006**, Amparo Decision No. 28 rendered by the Lima First Constitutional Court, May 12, 2014.

not be possible to develop Corani into a producing mine if we could not go back to Santa Ana in the meantime. This was because it was critically important for us to have Santa Ana up and running in order to be able to finance and develop Corani. President Humala responded that he understood the issue faced by the Company, and that we should all work towards finding a constructive solution.

27. On March 27, 2012, I met again with President Humala, along with Andy Swarthout and Kevin Morano, Catherine McLeod-Seltzer, Miguel Grau, Nolan Watson and Frank Tweddle (all Members of Bear Creek's Board of Directors). Minister of Energy and Mines Jorge Merino was also present at the meeting. I described our community relationship programs and socioeconomic development efforts at Corani, and expressed our belief that we would successfully implement similar undertakings at Santa Ana if we were allowed to get the project back. President Humala again offered his support but did not offer any concrete solution, indicating instead that Minister Merino had full authority to resolve our situation.

28. It is important to note in this context that since the Government had abruptly cancelled the project, local communities near Santa Ana have issued several resolutions or formal communications to the Company and the Government stating their desire to see Bear Creek return to Santa Ana and move the Project forward.¹⁷

29. Together with officers from Bear Creek Alvaro Diaz (General Counsel) and Andres Franco (Manager Corporate Affairs), I met once again with President Humala and Minister Merino on October 23, 2012. The meeting lasted nearly an hour. We spent the larger part of the meeting discussing Bear Creek's strong social support for the Corani communities.

¹⁷ **Exhibit C-0118**, Memorandum from Members of the Huacullani District to the Prime Minister of Perú, MINEM and Bear Creek Mining, *Memorial Por El Desarrollo y La Inclusión*, May 15, 2013; **Exhibit C-0119**, Memorandum from Members of the Huacuallni District to MINEM, *Reactivación del Proyecto Santa Ana*, Oct. 27, 2013; **Exhibit C-0120**, Memorandum from Members of the Huacuallni District to Prime Minister of Perú, MINEM and Bear Creek Mining, *Reiterativo Por El Desarrollo y La Inclusión*, Jan. 24, 2014.

President Humala and Minister Merino both expressed their appreciation for Bear Creek's work in the area and their support for the Corani project. I also explained again how it was necessary for Bear Creek to get back to Santa Ana in order to be able to finance and build Corani to its fullest potential. Again, President Humala said that he understood our plight and instructed Minister Merino to come up with a solution to the problem.

30. I also met with Prime Minister Juan Jimenez on May 23, 2013. Also present at the meeting were Andy Swarthout, Alvaro Diaz and Andres Franco. In that meeting, we explained again the necessity to resolve the situation at Santa Ana in order to be in a position to move forward at Corani. Prime Minister Jimenez asked us what in our opinion would constitute the best way to resolve this issue. We responded that the best way to resolve this issue would be to return the Santa Ana project to Bear Creek. We told Prime Minister Jimenez that local communities and the mining community both supported a solution where the Government would return the project to Bear Creek and thus repair the situation caused by the previous administration's hasty decision. The Government was working hard to attract foreign investments in Peru and returning Santa Ana would be a positive step in this respect.

31. As we mentioned in many of our previous meetings with the Government, we told Prime Minister Jimenez that Bear Creek would continue to work closely with the local communities to further strengthen social support for the Santa Ana Project. Of course, if the local communities—who had expressed their support to the Company—changed their minds and went on to oppose the Project, we would act accordingly and withdraw from the area. As experienced miners, we knew well that it would be unrealistic and unadvisable to move forward with a project without obtaining the required "social license" to do so from the local communities. Prime Minister Jimenez expressed his appreciation at the Company's commitment

to social responsibility, and said that he would work with the ministers in his government to find a solution to the problem.

32. As part of our effort to work with the Government in order to resolve the situation at Santa Ana, Alvaro Diaz and I met with Minister Merino on December 13, 2013. During that meeting, Minister Merino told us that he had “received the order to resolve the Santa Ana case from the highest authorities in the Government.” He added that MINEM officials, in conjunction with Ministry of Justice officials, had devised a legal framework to resolve the issue and return the Santa Ana Concessions to Bear Creek. He handed us a document outlining the procedure to resolve the issue, starting with a formal request from Bear Creek to the Government and culminating with the issuance of a Supreme Decree reinstating Bear Creek’s rights over Santa Ana.¹⁸ He advised us to propose a formal request containing the points he outlined in the draft letter he gave us. This document contained precise dates and timeframes for the completion of these steps. We thanked Minister Merino for this initiative and told him that we would act as instructed by the Government. We were hopeful that this would allow resolving the situation.

33. Days after, on December 17, 2013, as instructed by Minister Merino, we sent a letter to the Government containing the points Minister Merino suggested we include in order to resolve the situation at Santa Ana.¹⁹ Specifically, we requested the institution of formal consultations to discuss: (i) the issuance of a derogation to Article 1 of Supreme Decree 032; (ii) the mutual termination of Bear Creek’s amparo proceeding and the MINEM’s lawsuit; and (iii) the execution of a settlement agreement putting an end to the dispute over the Santa Ana

¹⁸ **Exhibit C-0121**, Draft letter Remitted by Minister J. Merino to E. Antunez de Mayolo outlining the Government’s proposed steps to resolve Bear Creek’s situation at Santa Ana, Dec. 11, 2013.

¹⁹ **Exhibit C-0122**, Letter from E. Antunez de Mayolo, Bear Creek, to J. Merino, Minister of Energy and Mines, and D. Figallo, Minister of Justice, Dec. 17, 2013.

concessions.²⁰ We did not receive any formal response from the Government and the resolution framework promised by the Government never came to see the light of the day. We realized that the possibility of resolving the issue amicably was becoming increasingly remote and thus we had no choice but to serve a Notice of Intent pursuant to the Canada-Peru Free Trade Agreement on February 6, 2014.²¹

34. I am deeply saddened by the Government's inability to work with the company to resolve this issue. I remain convinced to this day that the Santa Ana Project would have brought much needed investments and development to one of the most remote and destitute areas of Peru. The Government's expropriation of the project has dealt a severe blow to Bear Creek, and has jeopardized our ability to develop the Corani project.

* * *

I have prepared this witness statement with the assistance of counsel, but the facts and circumstances recounted in it reflect the best of my knowledge and recollection of the relevant events.

Lima, Peru

May 28, 2015

[Signature]

Elsario Antunez de Mayolo

²⁰ *Id.*

²¹ **Exhibit C-0007**, Notice of intent to submit a Claim to Arbitration under the Free Trade Agreement between Canada and the Republic of Peru, Feb. 3, 2014.