

RWS-002

Witness Statement of Felipe A. Ramírez Delpino

October 6, 2015

English Translation

**UNDER THE RULES OF THE INTERNATIONAL CENTER FOR SETTLEMENT
OF INVESTMENT DISPUTES**

**Bear Creek Mining Corporation
(Claimant)**

vs.

**Republic of Peru
(Respondent)**

ICSID Case No. ARB/14/21

**Witness statement of Felipe Antonio Ramírez Delpino
Ex General Director of
Mining Environmental Affairs
MINEM**

October 6, 2015

I. INTRODUCTION

1. My name is Felipe Antonio Ramírez Delpino, and I am an Agricultural Engineer from the La Molina National Agrarian University in Lima, Peru.

2. I have held different positions in Peru. I was General Director of Mining Environmental Affairs at the Peruvian Ministry of Energy and Mines from August 2009 to August 2011. During June and July 2009, I was an advisor to the Minister of Energy and Mines. Before joining the Ministry of Energy and Mines, I held the position of Institutional Relations and Communications Manager at the Yanacocha SRL mining company. In addition, I have held different positions in government entities, such as Vice-Minister of Regional Development at the Ministry of the Presidency (in charge of the Regional Governments, the National Development Institution and the Decentralization and Municipal Development Program) and President of the Specialized Technical Unit of the National Housing Fund (*Unidad Técnica Especializada del Fondo Nacional de Vivienda - UTE-FONAVI*), among others. From August 2011 to October 2014, I worked as a consultant to mining companies on social issues. From December 2014 to date, I have been the Executive Director of Marketing at the Peruvian National Health Institute.

3. As I mentioned above, I was the General Director of Mining Environmental Affairs at the Peruvian Ministry of Energy and Mines ("MINEM") from June 27, 2009 to August 24, 2011. The MINEM is the ministry of the Peruvian government in charge of supervising and regulating mining and energy developments in Peruvian territory, and the General Directorate of Environmental Mining Affairs (*Dirección General de Asuntos Ambientales Mineros* – "DGAAM"), which I headed during that period, focuses on environmental issues related to mining projects. Our task is to ensure that mining projects for the exploration or exploitation of mineral resources are implemented in accordance with the environmental and other types of standards established in Peru's laws and public policies.

4. One of the most important functions of the DGAAM is to review and, if appropriate, approve the environmental studies that must be carried out by the mining companies and be approved by the MINEM before the companies can begin to explore for or mine mineral resources. Specifically, there are two stages in the project in which a company has to assess the environmental and social impact of its activities and obtain the MINEM's approval before initiating them. The first is the exploration stage in which the company conducts tests to determine if there are viable resources at the site. Depending on the magnitude of the intended exploration activity and its potential environmental impacts, the company has to submit what is called an Environmental Impact Statement, a "semi-detailed" Environmental Impact Statement ("EIA-SD") or a complete Environmental Impact Statement. Once the company obtains the approval of the environmental impact statement, it is able to apply for all other authorizations needed to begin the exploration stage.

5. The second is the operation stage. In this stage, the company builds the mining infrastructure and extracts the mineral resources it discovered. Before the start of this stage, the

mining company has to submit the complete Environmental Impact Study ("EIA") (different than the one it submitted in the previous stage) as a requirement for beginning the proceedings for operations, or as a subsequent requirement for any modification it intends to make to the mining process that entails potential environmental impacts. In other words, if the mining company determines that there are mineral resources to be mined in the ore deposit, the first step for being able to mine those resources is the Environmental Impact Statement, which the mining company must prepare and submit to the MINEM. Only if that study is approved can the mining company apply for the other authorizations that are needed to begin mining operations, such as water use, transportation authorizations, use of controlled chemical inputs (if applicable), arranging the power supply, requesting authorization to commence operations from the Mining Office, among others.

6. As General Director, I was in charge of supervising my office's review of the mining environmental studies, both the exploration environmental studies and the project EIA (for the operation stage) submitted by Bear Creek in December 2010. For that reason, I was also involved in the MINEM's decision to suspend the EIA process in May 2011 due to the community protests.

7. In this witness statement, I will describe the steps that any mining company (like Bear Creek) must follow to obtain the environmental authorizations; first, to explore in the areas with mineral resources and then to mine them. Finally, I will describe the circumstances related to MINEM's decision to suspend the EIA review process for the Bear Creek project in May 2011.

II. REQUIREMENTS ESTABLISHED BY PERUVIAN LAW FOR MINE EXPLORATION AND OPERATION.

A. EXPLORATION STAGE

8. Mining exploration is the initial stage of the mining activity. It consists of identifying the areas in which the ore deposits are located. Depending on the size and composition of these deposits, as well as their economic and social viability, the exploration stage will make it possible to decide whether they will be mined in a mining project. In Peru, mining exploration requires compliance with a number of laws and regulations different than those for the mine operation stage. It is my understanding that Bear Creek got past all the steps of the exploration stage. However, I will briefly summarize these steps below to help the Tribunal understand the required process and the actions that Bear Creek has not yet completed.

9. According to Peruvian law, the subsoil and resources found in it are the property of the Peruvian State, regardless of whether the land on the surface belongs to the State or a private party.¹ Therefore, even if the State has granted a mining concession that allows a company to begin the proceedings for developing the subsoil resources, the company must have the permission of the land owner to engage in its activities in each stage. In the very early stages, the company must obtain authorization to enter and inspect the land. This does not require any approval or intervention by the Peruvian government, but it does require a private agreement with land owner(s) that allows the company to enter the area and take the required samples and measurements.

10. In the cases in which the mining company finds signs of potential ore deposits when it inspects the land and wishes to formally begin an exploration stage, it must meet a

¹ See Civil Code of Peru, December 13, 1991, Art. 954 ("The ownership of the subsoil does not include the natural resources, the deposits and the archeological remains, or other assets protected by the special laws.") [Exhibit R-033]; Consitution of Peru, 1993 Art. 66 ("The natural resources, renewable and non-renewable, are the assets of the Nation. The State is sovereign in their use.") [Exhibit R-001].

number of requirements. Among them, the company must obtain authorization from the land owner and, most importantly, the approval of an environmental study by the MINEM for exploration. Exploration can be done with excavated trenches or exploratory drilling platforms to determine the scope of the potential ore deposit. Before the company can start the application processes for obtaining exploration authorization, it has to submit the environmental study applicable to the type of exploration to be done to the MINEM. The MINEM then assesses the activity's environmental and social aspects, as well as the company's plans for managing the impact. The company submits a Declaration of Environmental Impact, a semi-detailed Environmental Impact Study ("EIA-SD") or a complete Environmental Impact Study ("EIA") for the exploration activities. The type of document to be submitted is determined based on the scope of the exploration activities, including the number of platforms, their location and the environmental management to be performed for the purpose of eliminating or minimizing the environmental impact of that activity, among others. In this case, Jenny Karina Villavicencio and Bear Creek submitted a Declaration of Environmental Impact and a semi-detailed Environmental Impact Study, both in Mrs. Villavicencio's name.

11. This Declaration of Environmental Impact or Environmental Study defines the project's territory, briefly describes the exploration plan, mentions the communities that are likely to be affected by the project, and submits a study on the area, including the potential environmental damage and social problems. According to Peruvian law, any Environmental Study is *per se* a sworn affidavit by the applicant in its entirety, under penalty of perjury. If another sector that is consulted (National Water Authority, Ministry of Agriculture, Peruvian Nuclear Energy Institute, National Service for Natural Areas Protected by the State and others), or the MINEM have questions or comments about the impacts or response measures described in

the Declaration or Study, it issues “observations” to the company. The company must respond to each of the observations to the satisfaction of the MINEM and the institution that raised the observation, in the established time period, before the EIA is approved.

12. The exploration EIA identifies the local communities “directly affected” (Direct Area of Influence) by the exploration activities, as well as the communities that are “indirectly affected” (Indirect Area of Influence). Directly affected communities are those on whose land the exploration activity will take place or those that are directly affected by the mining activity to be performed. Indirectly affected communities are those who will be affected by the project in another way. For example, the indirectly affected communities may need to share water sources with the project, which will reduce the amount of available water. They may also be affected by noise pollution or dust due to the exploratory drilling operations or by vehicles travelling over their territory. Therefore, the communities within the indirect area of influence may be significantly impaired by the activity. In my experience, when the companies have conflicts with the local communities over proposed mining projects, it is usually the indirectly affected communities that oppose the project because the project's future benefits are less likely to reach them (for example, jobs, promised construction work, or better access roads). For this reason, these communities usually contend that they are being affected by impacts not included in the environmental study and oppose the project.

13. As part of the process, the company must meet with the local communities and inform them about the proposed exploration project. This requirement, called the “citizen participation component,” is not an optional activity because it is very important for obtaining the local communities’ support for such a large project that will interfere with their everyday lives. The DGAAM’s usual practice is to approve the citizen participation component if the

company holds the necessary workshops and submits proof of having the acceptance of most of the local communities. However, we do not have the resources needed to monitor the level of acceptance in the local communities. We do not have the means for ascertaining that the company's statements and documents about the communities' support are accurate, or for determining whether other communities not mentioned by the company are also going to be negatively affected. Unfortunately, in the case of Bear Creek's Santa Ana Project, the communities had little knowledge about Project's effects (good or bad), which created dissent in the communities and rejection in many of them.

14. On June 9, 2006, Jenny Karina Villavicencio submitted a sworn statement in which she requested authorization to engage in exploratory activities for the Santa Ana mining concessions, and the MINEM approved the statement on July 11, 2006.² A mining company may only begin the proceedings before the General Mining Division to start exploration once the Environmental Impact Statement is approved. In January 2007, Mrs. Villavicencio submitted an EIA-SD for exploration purposes in her name, which the MINEM approved in September 2007.³

15. Typically, the exploration process takes place in stages. If signs of ore deposits are found, the companies use excavated trenches (ditches) and exploratory platforms for the purpose of determining the scope of the ore deposits that might exist in the area. As the exploration process continues, the company may increase the number of platforms it wishes to build. For each increase, the company has to modify its exploration EIA and submit it to the MINEM to obtain an amendment to the original approval. Bear Creek submitted three modifications to the original EIA-SD in 2008, 2009 and 2010, respectively. The MINEM

² See Resolution Approving Ms. Villavicencio's Sworn Declaration, Directorial Resolution No. 256-2006-MEM/AAM, July 11, 2006, pp. 1,7 [Exhibit R-034].

³ See Resolution Approving the Exploration EIA for Concession Karina 9A, Directorial Resolution No. 269-2007-MEM/AAM, December 4, 2007 [Exhibit R-035].

reviewed and later approved the expansions, which entailed additional exploration activities in each case. I signed the approvals given by the MINEM in 2009 and 2010. It should be noted that from June 2006, when Mrs. Villavicencio submitted her sworn exploration statement (Environmental Impact Statement) for the first time, until September 2010, when the last modification to the exploration EIA-SD was approved, the number of exploratory platforms needed by the Santa Ana project increased from the six (6) platforms described in the sworn statement initially submitted by Mrs. Villavicencio to more than 350 exploratory platforms covering almost 30,000 square meters.⁴ Although such an increase is common in large-scale projects, it should be noted that this increase meant that Bear Creek had to hold workshops with the affected communities to familiarize them with the project and its potential effects. These workshops are essential for guaranteeing the success of the project. Otherwise, it was highly likely that the communities would oppose the project, as later happened with Bear Creek when the Environmental Impact Study for exploitation purposes was under assessment.

B. EXPLOITATION STAGE

16. Once exploration is completed and a viable ore deposit has been identified, mining companies must submit and obtain the approval of a full EIA for the entire mining project (the "project's EIA") before they can initiate the proceedings for engaging in mining activities. The project's EIA includes various elements, such as:

⁴ See Resolution Approving Ms. Villavicencio's Sworn Declaration, Directorial Resolution No. 256-2006-MEM/AAM, July 11, 2006, p. 2 (approving 6 platforms) [Exhibit R-034]; Resolution that Approved EIA for Exploration for the Santa Ana Project, Directorial Resolution No. 269-2007-MEM/AAM, September 4, 2007, p. 4 (approving 20 platforms) [Exhibit R-035]; Resolution Approving First Amendment to the EIA for Exploration for the Santa Ana Project, Directorial Resolution No. 216-2008-MEM/AAM, September 5, 2008, pp. 7-8 (approving 80 additional platforms) [Exhibit R-036]; Resolution Approving Second Amendment to the EIA for Exploration for the Santa Ana Project, Directorial Resolution No. 310-2009-MEM/AAM, October 6, 2009 pp. 8-9 (approving 140 additional platforms) [Exhibit R-037]; Resolution Approving Third Amendment to the EIA for Exploration for the Santa Ana Project, Directorial Resolution No. 280-2010-MEM/AAM, September 8, 2010, pp. 8-9 (approving 115 additional drilling platforms covering only 500 square meters) [Exhibit R-038]. See Resolution that Approved EIA for Exploration for the Santa Ana Project, Directorial Resolution No. 269-2007-MEM/AAM, September 4, 2007, p. 4 (approving 20 platforms) [Annex R-035].

- A description of the proposed activities;
- Identification and characterization of the environmental impacts during the entire project's cycle;
- The environmental management plan or the definition of environmental goals, including, if applicable, the environmental management plan, the contingencies plan, the compensation plan and the mine closure plan;
- The Citizen Participation Plan ("PPC") proposed by the applicant, including the supervision, oversight and control plans;
- An easy-to-understand executive summary; and
- The baseline study. This study, which gives the background information on the area of influence, allows MINEM to understand the environmental condition of the project site before operations initiate, and will make it possible to measure any environmental degradation that occurs during the term of the project.

17. If any of these elements is incomplete, the MINEM cannot study, much less approve, the project's EIA.

18. Bear Creek submitted its project's EIA to the MINEM for review in December 2010. On January 7, 2011, the General Directorate of Environmental Mining Affairs informed the company that the Executive Summary and PPC had been approved, as it usually occurs when there are no major preliminary observations. With these documents, the company would be able to proceed with the Public Hearing proposed as part of the PPC. As established in the official letter from the MINEM, the approval was made after an initial evaluation of these documents only—the PPC and the Executive Summary—and not of the entire EIA.⁵ The approval of the PPC and the Executive Summary does not represent any approval beyond authorizing a company to carry out the citizen participation actions it proposed, and only means that the case file has been admitted for evaluation. It was not a final approval of the EIA or an endorsement of the contents of the PPC or the Executive Summary. It simply informed the company that the

⁵ See Resolution No. 021-2011/MEM-AAM, January 7, 2011, p. 1 [Exhibit C-073].

documents allowed the case file to be admitted for review and that the required documents had been received. This is not a significant or substantive step in the approval process for the project's EIA.

19. In fact, the official letter of January 7, 2011 describes a number of additional steps that Bear Creek had to complete before the MINEM could approve the project's EIA. These steps included publishing the executive summary in the local communities, broadcasting announcements on public radio, circulating written notices that described the project, and additional community contact initiatives (such as public hearings), among others. It should be made clear that neither the submission of Bear Creek's EIA nor the initial approval of the PPC and the executive summary by the MINEM gave Bear Creek any rights or authorized it to mine mineral resources in anyway.⁶ This was simply a step in the EIA review process.

20. After the MINEM issued Official Letter No. 021-2011/MEM-AAM accepting the Executive Summary and PPC, Bear Creek had to hold a public hearing with the local communities to address any concerns they might have. In its Memorial, Bear Creek attempted to assert that the local communities were almost unanimously in favor of the Santa Ana Project. As proof, it submitted a picture of the hearing held on February 23, 2011 and a one-page form that describes the meeting schedule and mentions some of those who attended.⁷ However, the number of attendees - 729 at the public hearing for the Santa Ana project - does not indicate the community's support. To the contrary, even the document submitted by Bear Creek indicates that the communities posed 83 written and 20 oral questions, which indicates that the communities had significant concerns about the effects the project would have on their sources of livelihood

⁶ See Supreme Decree No. 019-2009-MINAM, September 25, 2009, Arts. 22, 55 [Exhibit R-039].

⁷ See Claimant's Memorial, May 29, 2015, para. 63; also see Minutes of the Public Hearing No. 007-2011/MEM-AAM, February 23, 2011 [Exhibit C-076].

and everyday lives. After Bear Creek's public hearing had concluded, I was informed that some groups such as members of the Kelluyo communities, representatives of the *Frente de Defensa de Recursos Naturales* of the Puno Southern Zone and the mayor of Desaguadero categorically rejected the project. These individuals indicated that what was presented at the Public Hearing was a lie and that in the end, the communities would be affected by the pollution created by the mining activity.

21. The purpose of the PPC provided in Peruvian law is to announce the mining project to the population in the project's area of influence and, to the extent possible, address all concerns about it. In my experience, most of the people who attend those meetings are skeptical about the plans and have questions they would like to have answered by the company. The members of the local communities do not attend the public hearing to show their support for the project. They mainly attend to know if they will be affected by the mining project or if they will directly benefit from it. If they do not receive a direct benefit or if they feel affected, the communities generally oppose the project. They usually do not state this at the hearing, but rather after the communities have adopted their decisions when they meet following the hearing. As I will explain below, in its observations on the EIA, the MINEM noted problems in the way that Bear Creek defined the Project's indirect area of influence.

22. It should be noted that there is a mechanism in Peruvian law through which an individual or legal entity or the communities can file complaints against a mining company for pollution caused by a mining project with the Environmental Assessment and Oversight Agency ("OEFA"), attached to the Ministry of the Environment. Although this never happened with the communities surrounding the Santa Ana Project, we note that it is difficult for the most remote communities to follow these procedures due to their distance, unfamiliarity with the laws and

illiteracy, which reaches almost 15%⁸ in the Project area. The fact that such complaints were not filed does not mean that there were no environmental problems or community concerns about the project.

23. The Santa Ana project is located in a particularly conflicting area of Peru. The Aymara people, natives of the Puno region, part of Bolivia and northern Argentina and Chile, primarily (although not exclusively) identify themselves as members of the Aymara population; for them, Peruvian nationality is secondary. The Aymaras are dedicated to agriculture and cattle raising, activities that can be seriously affected by a large-scale mining operation. In addition, they are not accustomed to dealing with these mining operations, because they are quite rare in the region. The Aymaras also engage in trade in the border region with Bolivia and the neighboring countries, which sometimes falls outside the scope of Peruvian law. For this reason, a greater presence on or near their lands would have encountered a certain degree of skepticism. It is my understanding, based on what I was told by officials from my Office, that the local Aymara communities were not aware of the magnitude of the Santa Ana project. Their opposition grew as the information about the project and its size began to come out, and even more so with the Public Hearing that was held as one of the requirements for the project's EIA.

24. At the MINEM, we viewed the growing discontent among local communities with great concern. It seemed to us that many local Aymara communities, especially those indirectly affected by the project (those that were somewhat distant) believed that they would not benefit if the project became operative. They felt excluded from the process and therefore opposed the project once its scope was disclosed at the Public Hearing held as part of the PPC, which is a requirement for EIAs. Walter Aduviri, activist and local politician, was able to make use of this

⁸ See Request from Bear Creek to MINEM soliciting the authorization to acquire mining rights located in the border area, December 4, 2006, p. 15 (the illiteracy rates of the population 15 years of age and older in the Huacullani and Kelluyo districts are 14.6% and 16.3%, respectively) [Exhibit C-017].

growing discontent and led violent protests in the region. Despite Bear Creek's attempt to make it look like Aduviri is a political opportunist who incited the population, his message only resonated in the local communities because of the latent feelings that existed long before Aduviri took any action. In other words, Aduviri alone could not have incited or fanned the protests; the population protested because of its discontent with the mining activity.

25. After reviewing the project's EIA, MINEM issued a directive on April 19, 2011 ordering Bear Creek to respond to several observations on the EIA, including observations from the Ministry of Agriculture ("MINAG"), the local and political authorities of the towns and rural communities in the Pomata, Zepita and Kelluyo districts, and the *Frente de Defensa de Recursos Naturales* of the Southern Puno Region.⁹ In other words, the MINEM identified 157 technical observations on the project EIA that had to be corrected or added.¹⁰ The observations submitted by the MINAG contained 39 additional observations.¹¹ Bear Creek had the obligation to respond to each of those observations within a 60 days before the MINEM would reconsider the project's EIA. If Bear Creek did not comply with this obligation, the project would be deemed abandoned.¹²

26. It is my understanding that Bear Creek did not respond to the observations of the Peruvian government and other social groups before the EIA assessment process was suspended. It was a little after the MINEM presented the observations to Bear Creek that the community

⁹ See MINEM Observations on the Bear Creek Environmental Impact Study, Report No. 399-2011-MEM-AAM/WAL/JCV/CMC/JST/KVS/AD, April 19, 2011, pp. 29-32, 49-50 [Exhibit R-040].

¹⁰ See MINEM Observations on the Bear Creek Environmental Impact Study, Report No. 399-2011-MEM-AAM/WAL/JCV/CMC/JST/KVS/AD, April 19, 2011, pp. 29-32, 49 [Exhibit R-040].

¹¹ Ministry of Agriculture, Observations to the Environmental Impact Study, Technical Opinion No. 016-11-AG-DVM-DGAA-DGA, January 2011 [Exhibit R-041].

¹² See MINEM Observations on the Bear Creek Environmental Impact Study, Report No. 399-2011-MEM-AAM/WAL/JCV/CMC/JST/KVS/AD, April 19, 2011, p. 51 [Exhibit R-040]. After the 60 days, Bear Creek could restart the EIA process with a new EIA that would respond to all observations.

protests against the mining projects, including Bear Creek's Santa Ana project, rapidly and violently escalated. The MINEM was forced to suspend the project EIA review process to protect public order, which I will explain in the next section of my statement. It is important to note that before this suspension, Bear Creek did not submit any of the required responses to the observations on the EIA. Therefore, those responses were not evaluated by MINEM to determine whether or not they were sufficient.

27. The number of observations for the Santa Ana Project (157 by MINEM and 39 by MINAG) shows that, in reality, Bear Creek's EIA had shortcomings and that Bear Creek had not submitted a complete EIA. In particular, it should be pointed out that it would be very difficult for Bear Creek to respond to the observations concerning social issues during a time of social unrest in the Puno region. For example, observation No. 155 stated that Bear Creek had to implement "Guided Visits" of the project sites with members of the communities.¹³ This would be very difficult when the communities were protesting against the project itself.

28. Even more important, according to observation No. 7, Bear Creek incorrectly defined the limits of the indirect area of influence.¹⁴ Bear Creek included the entire Puno department as indirect area of influence because Bear Creek had to pay mining royalties to the department's government. But such a broad criterion for defining the indirect area of influence ignores significant differences between the various communities within the Puno department. The definition of the indirect area of influence is vital for improving community relations, an essential element for approval of the EIA. This means that Bear Creek had to modify the scope

¹³ See MINEM Observations on the Bear Creek Environmental Impact Study, Report No. 399-2011-MEM-AAM/WAL/JCV/CMC/JST/KVS/AD, April 19, 2011, p. 49 [Exhibit R-040].

¹⁴ See MINEM Observations on the Bear Creek Environmental Impact Study, Report No. 399-2011-MEM-AAM/WAL/JCV/CMC/JST/KVS/AD, April 19, 2011, p. 30 [Exhibit R-040].

of application of the PPC and the EIA and include more specific plans for working with the communities before MINEM would approve the EIA.

29. MINEM never approved the EIA for Bear Creek's Project and Bear Creek therefore never met this essential prerequisite for constructing the Santa Ana Project or extracting any ore found there. In fact, the EIA submitted by Bear Creek was incomplete and Bear Creek had to submit additional information before the MINEM could reconsider it in order to evaluate and possibly approve it. And, even if the MINEM had approved the project EIA, Bear Creek would still have had to apply for and obtain a number of additional permits—such as the water use, energy use and equipment installation permits, authorization to start works, among others. My office would not have been involved in these other permits, but some of them would have been reviewed by other MINEM offices and other government entities. In other words, Bear Creek still had many steps to complete before it could build or operate a silver mine in Peru. In each of these steps, the MINEM and other government agencies would have had the power to deny Bear Creeks' applications within the limits of Peruvian law.

III. SUSPENSION OF THE REVIEW OF THE BEAR CREEK EIA

30. On May 30, 2011, MINEM suspended its review of the EIA for Bear Creek's Project.¹⁵ Suspension is one of the measures we may adopt under Peruvian administrative law to protect the integrity of the government's decision-making process. The government may not adopt measured and well-thought out decisions in a context dominated by chaos. Bear Creek was informed of the MINEM's decision to suspend the process and of the grounds for that decision, *i.e.* the massive public opposition to the project. It is my understanding that after the suspension

¹⁵ See MINEM Resolution Suspending the EIA, Report No. 522-2011-MEM-AAM/ACHM, May 30, 2011 [Exhibit C-098].

was ordered, Bear Creek formally asked MINEM for a copy of the Report supporting the Suspension Resolution, and that MINEM provided it.

31. Around the same time that MINEM informed Bear Creek of its observations on the company's EIA, intense and violent protests broke out in Puno. As explained in MINEM's report dated May 30, 2011, which served as a basis for the resolution to suspend the review of the Santa Ana EIA,¹⁶ the protesters blocked an entry point between Peru and Bolivia (a bridge in the border city of Desaguadero). These acts had a negative impact on the transportation of both merchandise and passengers between the countries, and created international tension. The protesters expressly objected to the possible approval of the Santa Ana EIA, which would open the way for the mining project. The concern most often voiced by the communities was the potential pollution of the adjacent lands and the water supply, especially given the environmental degradation suffered by other communities elsewhere in Peru due to mining. Other Puno mining projects have not provoked the same violent reaction as the Santa Ana project, which indicates that the protests were strongly linked to Santa Ana and not just to mining in general.

32. At that time, we understood that although suspending the EIA process was legal, of course, it was an exceptional measure that should not be adopted without careful analysis. However, as my office explained in the report in which it recommended suspending the project's EIA, we were facing a situation "of social unrest, violence and instability" in the areas surrounding the Santa Ana Project, which included "an undefined strike as well as the threat of acts of violence to public and private property in opposition to the processing of the environmental impact study of the Santa Ana mining project."¹⁷ Several people died or were

¹⁶ See MINEM Resolution Suspending the EIA, Report No. 522-2011-MEM-AAM/ACHM, May 30, 2011, paragraph 3.1 [Exhibit C-098].

¹⁷ See MINEM Resolution Suspending the EIA, Report No. 522-2011-MEM-AAM/ACHM, May 30, 2011, paragraph 3.5 [Exhibit C-098].

injured during the protests. And so it was that we looked into the available legal options. We believed that such an extreme situation justified a delay in the EIA review process in order to allow the tension to dissipate and to restore order. Thus, we concluded that “taking into account the violence and social instability in the area,”¹⁸ it would be better to suspend the review of the EIA for a period of twelve (12) months. We did not make this decision lightly or without legal advice.

33. It is important to highlight the fact that, as far as I know, when the protests occurred, the mining company took no action whatsoever. To the contrary, the company abandoned the project site.

34. It should also be noted that Santa Ana is not the only mining project in Peru whose legal review process has been suspended due to social unrest. The government review of the Tía María project in Arequipa and execution of the Conga project in Cajamarca were also suspended due to social problems. The balance between mining development and social and environmental problems is an important issue that the Peruvian government must take into account and one that is taken very seriously. Sometimes it is better to suspend the process and restore order and a calm environment before deciding how best to proceed.

IV. CONCLUSION

35. As a MINEM official involved in the review of the Santa Ana EIA, I can say that the Peruvian government did not deal with Bear Creek's potential mining operation arbitrarily. We received the information from the company and proceeded to review it within the normal time periods, until the local communities began a number of protests, sometimes violent, against the Santa Ana Project and other mining operations. Faced with this difficult and dangerous

¹⁸ See MINEM Resolution Suspending the EIA, Report No. 522-2011-MEM-AAM/ACHM, May 30, 2011, paragraph 3.7 [Exhibit C-098].

situation, we suspended the review of the project EIA in an early stage. We made this decision based on what we believed was the higher interest of the Peruvian people. If the Santa Ana Project had been approved under the circumstances of social turmoil described above, the magnitude of the social protest would have been greater and it is unlikely that the company would have been able to carry out the project, even if its EIA had been approved.

The information contained in this statement is true to the best of my knowledge and belief.

_____ [signature]

Felipe Antonio Ramírez Delpino

Date: October 6, 2015