

**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 CATHERINE MCLEOD SELTZER

December 14, 2015

INTRODUCTION

1. My name is Catherine McLeod-Seltzer. I was born in Vancouver, Canada and am a Canadian citizen. I am the Chairman of the Board of Directors of Claimant, Bear Creek Mining Corporation (“Bear Creek” or the “Company”). Over the course of my 30-year career in mining finance, I have directly raised over US\$ 600 million for mining exploration, and have been directly involved in over US\$ 4 billion in corporate transactions in the mining industry. In addition to Bear Creek, I have been involved in two highly-successful mining companies in Peru: Arequipa Resources Ltd. (“Arequipa Resources”) and Peru Copper Inc. (“Peru Copper”). I have been asked by King & Spalding LLP, on behalf Bear Creek, to provide a witness statement regarding my involvement in the Peruvian mining sector in general and in Bear Creek in particular.

I. PROFESSIONAL BACKGROUND AND EXPERIENCE IN THE PERUVIAN MINING SECTOR

2. I grew up in a mining family. My father, Donald McLeod started working with prospectors at about age 14 and he eventually worked his way up to supervisor and mine superintendent. He then became a prospector-miner turned entrepreneur. He was involved in the discovery of the Pine Point lead-zinc-silver mine in the Canadian Northwestern Territories, which Cominco (now Teck Resources) operated for several decades. He was also involved in the discovery of the Brandywine gold and silver mine near Whistler, British Columbia and the Brucejack gold deposit in Northern British Columbia which is just now being put into production by Pretium Resources Inc. I spent a lot of time in my youth in remote mining projects and surrounded by “mining people,” which later on helped me gain a deeper understanding of the mining sector. Part of my father’s responsibilities included raising financing in order to develop

mining projects and bring ore bodies into production. This is how I first got interested in the business of financing mining projects.

3. I obtained a Bachelor of Arts in Business Administration from Trinity Western University in 1984. I worked at the Royal Bank of Canada in Vancouver all through my university summers in order to learn the nuts and bolts of banking. After graduating from Trinity Western, I prepared for and passed the securities and broker exams and joined Yorkton Securities Inc. (“Yorkton”) in 1985 as trader in the Vancouver branch. With legendary mining financier Frank Giustra at the helm, Yorkton was emerging as the dominant player of that era in the field of mining finance. Vancouver has always been one of the most active hubs for the financing of exploration and mining projects worldwide, and it naturally became an important office for Yorkton.

4. At Yorkton, I was able to leverage my extensive background in mining to become an institutional broker focusing on mining stocks. In 1991, I prepared a report for one of Yorkton’s clients assessing the status and prospects of every single Canadian mining company conducting exploration work in Latin America – at that time only about 12 to 14 companies. Coincidentally, Yorkton had been considering opening an office in Santiago, Chile for some time. Chile had recently opened its mining sector to foreign investments and Yorkton was well-positioned to finance mining projects in the Andean region. Mr. Giustra asked me whether I would be interested in opening an office in Santiago for Yorkton and serving as Operations Manager of that office. I told him I would gladly do so and moved to Santiago a few months later in January 1992. I met David Lowell, with whom I would found numerous successful mining ventures – including Bear Creek – at the opening party for the Yorkton office in Chile in March 1992.

5. After opening the office, Yorkton asked me return to the head office in Vancouver at the end of 1992. I wanted to remain in Latin America and left Yorkton, which led me to forming Arequipa Resources with David Lowell in early 1993. Arequipa Resources proved to be a very successful enterprise. In August 1993, David Lowell and I raised about C\$ 5 million from Canadian financiers to explore a number of promising prospects that he had identified in southern Peru. We listed the company on the Vancouver Stock Exchange in August 1993 and sold approximately 8 million shares at an initial public offering price of C\$ 25 cents per share. In 1995 we discovered very promising gold mineralization at a project named Pierina that was located in Peru in the province of Ancash. Subsequent drilling and testing campaigns confirmed the existence of a very large and high-grade gold deposit. Numerous major mining companies expressed their interest for Arequipa Resources and the Pierina project. Barrick Gold Corporation, one of the largest gold mining companies in the world, launched a takeover bid for Arequipa Resources in July 1996. After a couple months of negotiation, Barrick agreed to pay C\$ 30 a share (over C\$ 1.1 billion or US\$ 800 million) for Arequipa Resources – less than three years after Mr. Lowell and I completed an initial public offering for the company at C\$ 25 cents a share in August 1993. Barrick went on to develop Pierina into one of the largest and most profitable gold mines in Latin America.

6. Our success with Arequipa Resources helped me getting involved in the financing of numerous other junior mining companies. In 1993, I helped create and finance a company, Francisco Gold Corporation (“Francisco Gold”), to explore several gold projects in Mexico. After two years, Francisco Gold discovered the El Sauzal gold deposit in Chihuahua, Mexico. Subsequent exploration efforts revealed that El Sauzal had the potential to become a very profitable gold mine. In addition to advancing El Sauzal, Francisco Gold purchased the Marlin

gold project in Guatemala in 2000. A substantial exploration program revealed the existence of a large gold ore body at Marlin. In July 2002, Glamis Gold Ltd. (now Goldcorp Inc.) acquired Francisco Gold for C\$ 392.6 million (US \$250 million). The El Sauzal gold mine was a reliable, low cost gold producer for over a decade and an important foundation for Goldcorp becoming one of the largest gold companies in the world.

7. I partnered again with David Lowell to form Peru Copper in early 2003 to explore the Toromocho copper prospect in southern Peru. While Toromocho had been overlooked by large mining companies over the past decades, our exploration program revealed the existence of massive copper deposits. In June 2007, after a two-year due diligence process, the Aluminum Corporation of China (“Chinalco”) acquired Peru Copper for C\$ 840 million (US\$ 791.30 million). Toromocho represents one of the largest copper reserves in Peru and in the world having estimated reserves of 1.53 billion tonnes of ore grading 0.48% copper, 0.019% molybdenum and silver 6.88 gr/t and 339 million ounces of silver.

8. I have also participated in the founding and/or financing of numerous other mining companies and projects in North and South America and elsewhere in the world, including:

- *Lucara Diamond Corp.* – in 2007 I co-founded a diamond exploration company with well-known mining financier Lukas Lundin and world-renowned diamond explorer Eira Thomas. This company subsequently acquired the development stage AK6 diamond deposit in Botswana from DeBeers. This new diamond producer, whose key assets are the AK6 deposit, now renamed the Karowe mine, in Botswana and the Mothae project in Lesotho, produces approximately 400,000 carats per year of very high value diamonds that account for approximately 50% of the world’s production of diamonds over 100 carats in size and recently discovered the world’s second largest gem quality diamond ever recovered (1,111 carat) in November 2015;

- *Pacific Rim Mining Corp.* – a gold exploration company with projects in El Salvador and Nevada, USA that was acquired by Australian gold mining company Oceana Gold in 2013;
- *Stornoway Diamond Corp.* – a leading Canadian diamond exploration and development company that owns the Renard Diamond Project, now under construction and on track to becoming Québec’s first diamond mine; and
- *Miramar Mining Corp.* – A Canadian gold mining company that was acquired by Newmont in 2007 for US\$ 1.5 billion.

9. As discussed below in further detail, I am the Chairman of the Board of Directors of Bear Creek. I also serve on the Board of Directors of Lowell Copper (a junior copper mining company founded by J. David Lowell), Major Drilling Group International Inc. (one of the largest drilling service companies in the mining industry), Grenville Strategic Royalty Inc. (which funds industrial and technology companies through revenue-based royalties), and Kinross Gold Corp. (one of the largest gold mining Companies in the world).

10. Over the course of my career, I have been recognized publicly for my role in building successful mineral companies. For example, I received the “Award for Performance” from the Association of Women in Finance in 1997. I have been listed numerous times in *Financial Post’s* “Power 50” and have been included as one of Women in Mining (UK)’s 100 Global Inspirational Women in Mining since the award’s inception in 2013. In 1999 I received the great compliment of being named Mining “Man” of the Year by the Northern Miner.

II. INVOLVEMENT IN BEAR CREEK

11. I joined Bear Creek as member of the Board of Directors in 2003 in connection with the process of listing the Company on the Toronto Stock Exchange Ventures (“TSXV”). I was particularly impressed with the strength and experience of Bear Creek’s founding team, many of whom I knew from my earlier working days in Peru and was happy to contribute my own expertise building and financing exploration companies. At the time he co-founded Bear

Creek along with Gerald VanVoorhis (former Vice President, ASARCO), Kevin Morano (former President of ASARCO, SPCC's parent), and David Lowell (world renowned exploration geologist and mining executive), Andrew Swarthout had been a prominent executive with Southern Peru Copper Corporation ("SPCC") with a successful track record at finding and exploring mines in the country and elsewhere. At Bear Creek, Andrew Swarthout could rely on an all-star team of co-founders as well as prominent investors including Richard deJ. Osborne (former CEO of ASARCO) and Charles Smith (Former CEO of SPCC) with substantial experience in the Peruvian mining sector.

12. From its inception in 2000 to 2002, Bear Creek had acquired two newly-discovered gold prospects and four base metal prospects in Peru, which, after preliminary exploration, were determined to not warrant additional investments on our part. It is more the rule than the exception for exploration companies to discard most of their early-stage prospects after performing initial exploratory work since the minerals encountered may not be present in the nature, quantity or concentration justifying their commercial exploitation by that particular mining company. Exploration is a high risk business which is what makes an eventual discovery so rare and so valuable.

13. Bear Creek raised US\$ 6 million on the TSXV (much more than most junior mining companies at that time, in my opinion due directly to the quality, track record and reputation of the founders and management team) in 2003, mostly from first-tier institutional investors (such as Canaccord Genuity, Haywood Securities and Paradigm Securities) and well-known sophisticated private investors. David Lowell (with whom I had partnered to create Arequipa Resources) accepted to serve as Chairman of the Company and Tony Petrina (former CEO of Placer Dome, one of Canada's largest mining companies) joined the Board of Directors.

I know these men very well and they were clearly attracted by the successful track record of Bear Creek's management, and their commitment to Bear Creek further established the Company's strong reputation within the mining industry.

14. During the course of subsequent years, Bear Creek continued to acquire and explore additional mineral prospects (gold, silver and copper) in Peru, including the Santa Ana project (the "Santa Ana Project" or "Santa Ana") and the Corani project (the "Corani Project" or "Corani"). Starting in early 2008, after concluding that preliminary exploration and drilling results looked promising, Bear Creek undertook intensive exploration efforts at Santa Ana, which revealed the presence of high-grade silver along with a diffuse, relatively low-grade concentration of silver mineralization spread out over a large area, which could be economically exploited by applying a heap-leaching process. We announced the results of a positive Preliminary Economic Assessment ("PEA") on April 20, 2009.¹

15. The PEA provided for measured and indicated resources of 97.7 million ounces silver and inferred resources of 41.4 million ounces silver. We went ahead with the preparation of the feasibility for the Project. Bear Creek retained Ausenco Vector (a leading geological and mining consultancy) to prepare a Feasibility Study and Technical Report for Santa Ana that we released on October 21, 2010 (the "Feasibility Study"). The Feasibility Study ascribed a pre-tax internal rate of return (or IRR) of 70.2 % and a pre-tax net present value of US\$ 341 million to

¹ Exhibit C-0136, Technical Report – Santa Ana Resource Update and Preliminary Economic Assessment, May 26, 2009.

Santa Ana (at a 5% discount rate and then-current silver prices of \$22.92 per ounce), with potential for expansion of the reserves and the mine life for the Project.²

16. Based on the excellent results of the Feasibility Study, we were able to raise US\$ 130 million in equity financing on November 5, 2010, less than a month after we announced the results of the Feasibility Study.³ I personally handled that equity financing, along with Andrew Swarthout. The financing was twice oversubscribed, demonstrating the market's confidence in the Company and its prospects. The proceeds from the financing were to be applied to the development of Santa Ana and Corani. In April 2011, Ausenco Vector released a revised feasibility study prepared on the basis of additional testing data.⁴ Applying then-current silver prices of US\$ 28.19 per ounce to the improved recovery process, Ausenco calculated that Santa Ana would have a pre-tax net present value of US\$ 554 million at a 5% discount rate and internal rate of return of 103.4 %.⁵

17. Bear Creek also acquired a 70% interest in Corani from Rio Tinto in January 2005, and acquired the remaining 30% in June 2008. The Corani silver-lead-zinc deposit is located approximately 350 kilometers north of Santa Ana, also in the Puno region. Starting in 2006, Bear Creek performed extensive exploration, drilling and testing at Corani, which quickly revealed the existence of extensive silver, lead and zinc mineralization. In September 2009, we announced the results of a pre-feasibility study which revealed the existence of measured and

² **Exhibit C-0003**, Ausenco Vector, Feasibility Study – Santa Ana Project – Puno, Perú – NI 43-101 Technical Report, Oct. 21, 2010.

³ **Exhibit C-0054**, Press Release, Bear Creek Mining Corporation, *Bear Creek Mining Announces Closing of \$130 Million Bought Deal Financing*, Nov. 5, 2010.

⁴ **Exhibit C-0061**, Ausenco Vector, Feasibility Study – Santa Ana Project – Puno, Perú – NI 43-101 Technical Report, Update to the Oct. 21, 2010 Technical Report, Apr. 1, 2011.

⁵ *Id.*

indicated resources of 258 million ounces silver, 2.9 billion pounds lead and 1.4 billion pounds zinc, and a NPV of US\$ 348 million.⁶ Our exploratory efforts continued with the preparation and publication of a feasibility study on November 8, 2011.⁷ The Corani Feasibility study defined a significant undeveloped silver deposit containing proven and probable mineral reserves of 270 million ounces silver (more than four times the silver reserves at Santa Ana), 3.1 billion pounds lead and 1.7 billion pounds zinc.⁸ At then-current metals prices (US \$34.64/oz silver, \$0.89/lb zinc, \$0.90/lb lead on November 8, 2011), Corani had an after-tax net present value of approximately US\$ 1.5 billion at a 5% discount rate and a 38% internal rate of return (US\$ 2.7 billion NPV and 60% IRR on a pre-tax basis).⁹

18. As the Chairman of the Board, I can attest that Santa Ana and Corani have always been closely intertwined in the eyes of the mining finance community and market. Because of the massive size of the Corani deposit, we decided to develop the smaller Santa Ana Project before Corani. Bringing Santa Ana to production before commencing construction at Corani would allow us to use the cash flows generated by Santa Ana during the first years of production (estimated at US\$ 68 million per year in the revised feasibility study) to cover or finance part of the substantial US\$ 574 million initial capital cost to bring Corani into production. Becoming a producer would also bring significant advantages in the eyes of the equity and debt markets. For instance, it would allow Bear Creek to arrange for debt financing to develop Corani, something that is generally not available to exploration companies. With this understanding of the

⁶ **Exhibit C-0137**, Press Release, Bear Creek Mining Corporation, *Bear Creek Announces Robust Corani Prefeasibility Study; Over 250 Million Ounces of Silver Converted to Reserves*, Sept. 14, 2009.

⁷ **Exhibit C-0066**, M3 Engineering, Corani Project Form NI 43-101F1 Technical Report Feasibility Study, Dec. 2011 (*hereinafter*, "Corani Feasibility Study").

⁸ *Id.* at § 1.14.

⁹ *Id.*

interdependence of the two projects, it is obvious that any obstruction at Santa Ana would necessarily impact Corani.

19. This is why the Government's expropriation of Santa Ana has compromised and continues to compromise Bear Creek's ability to obtain financing for Corani pending resolution of the Santa Ana situation. Furthermore, the Government's expropriation of Santa Ana has substantially raised the risk profile associated with Corani in the eyes of mining investors because Corani is located approximately 350 kilometers away from Santa Ana, in the same region (Puno), where the Government demonstrated its willingness to sacrifice an advanced mining project to placate political constituencies.

III. RELATIONS WITH THE GOVERNMENT FOLLOWING SUPREME DECREE 032

20. As someone with over 20 years of experience working in the Peruvian mining sector, I was more than disappointed to see Peru sacrifice a mining project such as Santa Ana to appease political activists. Peru has become one of the most important mining jurisdictions in the world by enacting a fair and balanced legal framework for mining investment, and protecting lawfully-acquired rights. Nevertheless, Peru chose to ignore any modicum of due process and legal security when it decided to strip Bear Creek of its rights to the Santa Ana Project.

21. Executives at Bear Creek met dozens of times with Peruvian government officials since the Government issued Supreme Decree No. 032-2011-EM ("Supreme Decree 032"). Through my discussions with Andy Swarhout and others, I understand that at no time during any of the meetings did anyone from the Government assert that Bear Creek obtained the concessions in an improper way nor did they attempt to explain why the Santa Ana project was somehow no longer in the public's interest.

22. On March 27, 2012, for example, I met with President Ollanta Humala, accompanied by Andy Swarhout, Elsiario Antunez de Mayolo (the General Manager of Bear Creek's Peruvian operations), and most of the members of Bear Creek's Board of Directors (Kevin Morano, Miguel Grau, Nolan Watson and Frank Tweddle). Then Minister of Energy and Mines Jorge Merino also attended the meeting. Andrew Swarhout reiterated our position that the Government's termination of Santa Ana had placed Bear Creek in an extremely serious situation and jeopardized the development of Construction of Corani – which President Humala regarded as a strategic project. Andrew Swarhout and I conveyed that Bear Creek had been unfairly wronged by the Government's decision and that we needed to have Santa Ana returned in order to be in a position to build and operate Corani. President Humala offered his support (as he had done in prior occasions), but did not suggest any concrete solution. President Humala advised us that Minister Merino had full authority to fashion a resolution to our situation but Minister Merino never used this authority to resolve the issue.

23. In September 2012, I was in New York City and arranged meetings with Luis Castilla, then Peru's Minister of Economy and Finance, and Guillermo Shinno, Vice Minister of Energy and Mines, to discuss the Santa Ana issue. These meetings took place on September 26, 2012.

24. I first met with Minister Castilla. We discussed the fact that I have been working in Peru for 20 years, have been involved in successful projects in Peru, and have always had the highest respect for Peru as a mining jurisdiction that is supportive of foreign investment. However, I advised him that because of what the Peruvian government did with respect to Bear Creek's Santa Ana project many large international investors were making it clear that they viewed the situation in Peru as much riskier than before, that the cost of capital for Peru was

going up, and that boards of directors were under the same pressure when deciding where to invest. Minister Castilla told me that he and President Humala were very concerned and that Stephen Harper, then Prime Minister of Canada, specifically mentioned the Santa Ana project as a concern for Canada. I further explained Bear Creek's social programs, the amount of revenue that would be generated and the total amount of taxes and royalties Bear Creek would be paying on both projects. I also discussed the significant benefits Santa Ana would bring to the Puno Region, one of Peru's poorest. Minister Castilla said he was familiar with the "outside pressures" that had influenced the decision to revoke Bear Creek's rights to the Santa Ana project. He told me that the Santa Ana situation was different than Conga, where he believed Newmont was, at least in part, responsible for what happened, whereas Bear Creek was in no way responsible for what happened in Puno. Minister Castilla even told me twice during the meeting that I could assure investors that he personally said that the Santa Ana problem would be resolved. He told me he was going to discuss our meeting with President Humala, then Minister of Energy & Mines, Jorge Merino, and Vice Minister of Mines, Guillermo Shinno. He also told me that he and President Humala had an official visit to Canada planned within the next six months and that it would be good to have a resolution to Santa Ana to announce during that trip. Unfortunately, while I was, at the time, very encouraged that the situation would be resolved, the Peruvian government did not follow through despite Minister Castilla's words.

25. Later that day, I met with Vice Minister Shinno. He said he recognized me from the annual PDAC conference in Toronto, Canada. The Vice Minister too said Peru and Bear Creek "are on the same page" as far as an agreement to ensure Santa Ana could move forward. Minister Shinno said that we needed more "outside the box" creative lawyers to help the legal issue go away as there were various pending legal proceedings and that so far he had not seen

that. He ended by telling me that Peru was morally and ethically obligated to provide a smooth permitting process on the Corani project, based on what happened with Santa Ana and that he would try to expedite the process. I thanked him very much and was encouraged by the conversation. However, despite a “creative” and detailed proposal eventually made by Minister Merino in December 2013, which he gave to Mr. Antunez de Mayolo in draft form, and instructed him to send back on Bear Creek letterhead, no resolution was reached. In my view, there seemed too much inertia and dysfunction within the government itself to finalize Peru’s proposed solution.

26. Unfortunately, after three years plus of discussions with the Peruvian government at all levels, Bear Creek was forced to commence international arbitration against Peru within the time set forth in the Canada-Peru Free Trade Agreement. Needless to say, the taking away of all of the company’s rights with respect to Santa Ana, without compensation, has caused serious damage to Bear Creek. Not only did it lose the Santa Ana project, but Peru’s actions have negatively impacted the Corani project in the following ways: Bear Creek’s (and Peru’s) damaged credibility has raised questions in the financial markets regarding our ability to execute the Corani project, which is also located in Puno; raised concerns in the financial markets regarding the cost of capital increase almost certainly to occur as a result of the taking of Santa Ana; and, finally, caused Bear Creek to dramatically reduce its exploration expenditures in Peru, causing damage to both Peru’s and Bear Creek’s future economic growth potential.

27. In sum, Peru’s taking of the Santa Ana project was a shock to the Company. I never would have imagined Peru would ignore the rule of law and deprive Bear Creek of a tier-one mining project that would bring economic opportunity to the region of Southern Puno, including jobs, taxes, development of infrastructure and other significant benefits.

* * *

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.

Vancouver, Canada
December 14, 2015



Catherine McLeod Seltzer