

**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.**

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**WITNESS STATEMENT OF PETER M. BROWN, O.B.C., LL.D**

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## INTRODUCTION

1. My name is Peter M. Brown. I am the Founder of Canaccord Genuity Group (“Canaccord”), which, along with its affiliated entities, has financed more mining and/or exploration projects than any other company in the world. I served as President, CEO and Chairman of Canaccord for over three decades, and was involved in the financing and advising of hundreds of junior and mid-sized mining companies. I have been asked by King & Spalding LLP, on behalf of Claimant, Bear Creek Mining Corporation (“Bear Creek” or the “Company”) to provide a witness statement regarding the junior mining sector generally, and my involvement with Bear Creek in particular.

### **I. PROFESSIONAL BACKGROUND AND EXPERIENCE IN THE JUNIOR MINING SECTOR**

2. I was born in 1941 in Vancouver, British Columbia, Canada where I currently reside. I am a Canadian citizen. I attended the University of British Columbia. I joined Richardson Greenshields Inc. in Toronto as a Trainee in 1962. I then moved to the Montreal office from 1964 to 1968. In 1968, at age 27, I left Greenshields to buy a small brokerage firm named H.H. Hemsworth with Edward Turton, an investment adviser with experience in financing mining exploration projects. The then-prevailing market conditions made it very difficult for small and mid-sized mining companies to raise capital, especially for exploration and development projects. I believed that this created an opportunity to provide venture financing for these companies and I positioned our firm (which became Canaccord) to fulfill that role.

3. I have served as Chairman and CEO of Canaccord from 1968 to 2007. I completely retired from Canaccord in 2014 in order to focus exclusively on my involvement with other corporate and civic and charitable endeavors. Under my stewardship, Canaccord grew

from a small West Coast-based brokerage firm to become the largest non-bank owned, independent investment bank in Canada. While Canaccord finances companies and projects across all major economic sectors, it has remained prominently associated with mining. Over the past 45 years, Canaccord financed a myriad of mining companies and projects in every continent. In the past 15 years alone, Canaccord has financed well over 100 mining projects and companies operating in 70 or more countries. Canaccord is Canada's largest independent investment dealer with hundreds of millions of dollars in annual revenues and operates in 12 countries including Canada, United States, UK, France, Germany, Ireland, Italy, China, Hong Kong, Singapore, Australia and Barbados.

4. Canaccord's financing efforts have helped give birth to dozens of successful new mines and mining companies. A few examples include: International Corona Resources Ltd. (a Canadian junior mining company responsible for the discovery and development of a series of long-life, low-cost gold mines in the Hemlo district in Ontario); Eskay Mining Corp (a Canadian junior that discovered significant gold deposits at Eskay Creek in British Columbia); Dia Met Minerals (responsible for the first diamond discovery in Canada's Northwest Territories and the exploration of development of the Ekati diamond project in the area and was subsequently bought by BHP Billiton for over \$ 650 million in 2001); Aurelian Resources (which discovered and explored the Fruta del Norte gold project in Ecuador before selling itself to Kinross for \$ 1.2 billion in 2008); and Wheaton River Minerals (which became a leading precious metals producer with significant assets and operations in Mexico, Australia and Argentina before being acquired by Goldcorp for over \$ 2 billion in 2005). These successes have contributed to making Canaccord one of the most respected names in mining finance worldwide.

5. Canaccord has financed Arequipa Resources from its inception in 1993. I also invested in Arequipa in my personal capacity. Arequipa Resources was a Canadian junior mining company that discovered the Pierina gold mine near Arequipa, Peru. Barrick Gold acquired Arequipa for over C\$ 1.1 billion in 1996 (about US\$ 800 million at that time) and put the mine into production. Pierina became one of Peru's, and indeed South America's top gold-producing mine, and was one of the most profitable gold mines in the world. The acquisition of Arequipa also led to substantial additional investments by Barrick in Peru, including the even larger Lagunas Norte gold mine, which produced over 550,000 ounces of gold in 2014 alone. The Pierina team was led by Catherine McLeod Seltzer and J. David Lowell. Both were subsequently involved in the creation of Bear Creek and Ms. McLeod Seltzer serves as Chairman of Bear Creek's Board of Directors to this day. Arequipa was one of Peru's first success stories in international mining and exploration since over 50 years and it opened the way to many international mining companies investing in the Peruvian mining sector during the ensuing decades.

6. I have attached my Resume and Awards for review.

## **II. INVOLVEMENT WITH BEAR CREEK**

7. Canaccord Financial has been an active and continuous supporter of Bear Creek Mining from its inception to today. On the research side, Bear Creek is one of only four emerging-producer precious metals companies covered by Canaccord's research department – a testament to the high regard our firm and the market hold for Bear Creek's projects and management. In addition, Canaccord has participated to a significant degree in every one of Bear Creek's rounds of financing since the company's listing in 2003. Our firm's interest in Bear Creek is based, in large part, on the individual and collective strength of its founders and

management team, and on their exceptional track record discovering, financing and developing mines in Latin America. Canaccord's confidence in Bear Creek also derived from the fact that the Company's projects are located in Peru, a country recognized for its rich mineral endowment, long-standing mining tradition, and political stability and respect for the rule of law. These factors have made Peru a key destination for mining investments over the past decades, which is why Canaccord has raised several billion dollars in financing over the past 15 years for mining exploration and development projects in the country. Obviously, the Peruvian Government's decision to abruptly expropriate the Santa Ana project, and its subsequent failure to rectify the situation have caused many analysts and investors to reassess their views on Peru's investment climate.

8. In addition to Canaccord's support of Bear Creek, I have personally followed the Company from its inception in 2003. My interest in Bear Creek is founded on my long-standing acquaintance and personal knowledge of its primary founders, Catherine McLeod Seltzer (Chairman of Bear Creek's Board of Directors) and Andrew Swarthout (Bear Creek's President and CEO), whom I knew from past experiences to be highly-successful and well-respected mining industry professionals. Both Ms. McLeod Seltzer and Mr. Swarthout have an exceptional track record of attracting and assembling competent teams that have again and again resulted in significant ore body discoveries and successful exploration and mining ventures. These two professionals have demonstrated repeatedly that they have the necessary expertise and ethical background to attract the best skills in their fields in order to finance, explore, and discover economic ore deposits and build mines throughout the Western Hemisphere. It is widely recognized in mining circles that, collectively, Ms. McLeod Seltzer and Mr. Swarthout have directly contributed to the discovery of at least ten world-class ore bodies during their careers,

many of which are still producing mines today. Furthermore, both Ms. McLeod Seltzer and Mr. Swarthout have extensive experience and a proven track record of success in Peru, which gave me further confidence that Bear Creek's trajectory would also have excellent odds for success.

9. Having been involved in the securities industry for over 40 years, and having had the opportunity to back hundreds of mineral company ventures, I have come to understand that it is rare to find a corporate team with the unique combination of skills that portend success in the high risk business of mineral exploration and mining; the ability to make discoveries, understand complex science and engineering, access capital, exercise good corporate governance, navigate government regulations and relationships, and prioritize communities and the environment. Bear Creek has everything it takes to move from exploration to development and from development to production. This is Bear Creek's current plan with the Corani project and was the plan for Santa Ana before the Government's taking.

10. Canaccord has helped raise over \$232M for Bear Creek Mining over the past 13 years. Significantly, Canaccord was the co-lead underwriter (alongside the Bank of Montreal) in Bear Creek's November 5, 2010 equity financing wherein \$130M was raised. This equity offering was twice oversubscribed, reflecting the market's strong endorsement of the Company and its management, and the excellent results of the Santa Ana feasibility study that had been released by Bear Creek in October of that year. The proceeds of this large financing were to be primarily applied towards building the Santa Ana silver mine. The underwriting syndicate (comprised of Canaccord, BMO, Scotia Bank, Paradigm, and Cormark Securities) performed rigorous due diligence in respect of this bought-deal financing, satisfying itself that the 2010 Santa Ana Feasibility Study, completed by Vector Engineering, amply demonstrated the project's viability and that the permitting and construction completion expectations were

reasonable as represented by Bear Creek. Canaccord was further satisfied that management team, led by Mr. Swarthout was adequately equipped to bring the Santa Ana project to production within two years and continue advancing the Corani project in the meantime. Canaccord strongly endorsed the Company's management strategy to have Bear Creek first become a silver producer at Santa Ana in order to rely on conventional lending (as opposed to equity financing) to finance the development of Corani.

### **III. PERU MISCHARACTERIZES BEAR CREEK AND THE SANTA ANA MINING PROJECT**

11. I have reviewed portions of Respondent's Counter-Memorial on the Merits and Memorial on Jurisdiction in this case and disagree with the way Peru mischaracterizes the nature and role of junior mining companies, and the evolution of mining projects.<sup>1</sup> Peru's assertion that "Bear Creek is not a 'mining' company at all" does not comport with reality. Contrary to what Peru suggests, mining companies not only build and operate mines, they also explore to identify mineral deposits, undertake extensive testing and analysis to determine whether these deposits can be converted into economical ore bodies, conduct substantial engineering studies to determine how to recover the ore in the most efficient and least disruptive manner, and work with governmental authorities and local communities to ensure that the proposed mine gains the approval of the local population and complies with all applicable regulatory and industry standards. Only then can a mining company "build and operate" a mine.

12. Contrary to what Peru (one of the most developed and sophisticated mining jurisdictions in the world) ignores, the past 50 years have witnessed a growing dissociation between the exploration and exploitation functions of a mining enterprise. While large mining

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<sup>1</sup> Peru Counter-Memorial, ¶¶ 1-3, 22-23.

companies (the so-called majors) have focused their efforts on building and operating mines, they have largely ceased to explore for new ore bodies and develop mining projects. This is because these majors understand that nimbler, more specialized enterprises (the junior mining companies) are substantially more efficient and successful in identifying ore bodies. Instead of exploring for mines themselves, mining majors will frequently acquire mining projects identified by junior miners, or simply acquire or joint venture with the juniors that are of interest to them. As a result, a very active and sophisticated market has developed for the purchase and sale of early-stage mining projects and junior mining companies.

13. The junior mining sector has become a vibrant segment of the mining industry, where experienced geologists and exploration teams raise equity from investors to identify and develop mining projects around the world. I have been directly or indirectly involved in the financing of hundreds of junior mining companies, and certainly agree that juniors are responsible for the vast majority of significant discoveries that took place over the past fifty years. Junior mining companies have been active in Peru for many years and have invested billions of dollars in the country's mining sector. Some of the largest and most profitable mines of the country have been discovered and developed by juniors. I am puzzled to read in Peru's legal submission the claim that juniors are not mining companies at all. This is simply untrue. Virtually every mining company that has ever existed (regardless of its eventual size) started with one project in one location. Peru seems to suggest that these companies would only become "mining companies" by the time they complete construction and operate a mine. This is not correct.



14. Peru also describes the Santa Ana project as in “nascent” stage of development.<sup>2</sup> Again, Peru professes to ignore that it takes years of extensive exploration, drilling, geological and metallurgical testing, and detailed engineering, socio-environmental and infrastructure studies - together costing tens of millions of dollars – for a mining company to prepare a detailed feasibility study such as the one released by Bear Creek for Santa Ana.<sup>3</sup> A feasibility study is a comprehensive analysis describing in detail every technical and economic aspects of a given mining project. Detailed feasibility studies are sometimes described as “bankable” feasibility studies because they provide a detailed picture of a project’s value and prospects, and therefore constitute one of the most important factors that investors and banks will consider when deciding whether to finance the construction of a mining project. The fact that Bear Creek was able to raise US\$ 130 million from sophisticated institutional investors for the construction of Santa Ana demonstrates the quality of its feasibility study for Santa Ana and the exceptional potential of the Santa Ana project. Bear Creek would never have been able to raise US\$ 130 million if it had not previously invested years and millions of dollars in exploring and developing the Santa Ana project. It is thus patently wrong for Peru to describe Santa Ana as in a “nascent” stage of development.

15. Finally, Peru’s suggests that Bear Creek could never have been able to complete the permitting and construction processes for Santa Ana because it had been in existence for less than a decade and had not previously built.<sup>4</sup> Again, the reality of the mining industry is different than the reality Peru professes to portray. As I mention above, one of the most critical factors for

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<sup>2</sup> Peru Counter-Memorial, ¶ 2.

<sup>3</sup> **Exhibit C-3**, Ausenco Vector, Feasibility Study – Santa Ana Project – Puno, Perú-NI 43-101 Technical Report dated October 21, 2010; **Exhibit C-0061**, Ausenco Vector, Revised Feasibility Study – Santa Ana Project – Puno, Perú – NI 43-101 Technical Report, Update to the October 21 2010 Technical Report, Apr. 1, 2011.

<sup>4</sup> Peru Counter-Memorial, ¶¶ 22-23.

a junior mining company's success is the experience and integrity of its management team. Mr. Swarthout previously held executive positions with Southern Peru Copper, the largest mining company in Peru, where he was directly responsible for the discovery, development and construction of major mines. Likewise, Ms. McLeod Seltzer has been involved in numerous mining companies (junior, mid-sized and majors) where she oversaw the development and operation of many mines. Mr. Swarthout's and Ms. McLeod Seltzer's success and sterling reputation also allowed them to attract senior industry figures as directors or executives of Bear Creek. Most of Bear Creek's directors are former executives of Southern Peru Copper and its parent company Asarco, where they oversaw various aspects of the development, construction and operations of major mines in Peru and elsewhere. Likewise, Bear Creek's Chief Operating Officer and General Manager, Elsiario Antunez de Mayolo, previously managed some of the largest mines in the country. It is simply preposterous for Peru to suggest that Bear Creek has no experience developing and operating mines when its principals, directors and key executives all spent decades doing precisely that in Peru and elsewhere. Peru's rhetoric is a blatant attempt to try to smear Bear Creek and its personnel to divert the Tribunal's attention from its own misconduct.

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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, British Columbia

Date: DECEMBER 14, 2015



Peter M. Brown