

**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.

REBUTTAL WITNESS STATEMENT OF ELSIARIO ANTUNEZ DE MAYOLO

1. My name is Elsiario Antunez de Mayolo. I submit this rebuttal witness statement in response to portions of the Republic of Peru's ("Peru" or the "Government") Counter-Memorial on the Merits and Memorial on Jurisdiction dated October 6, 2015 (the "Counter-Memorial"), including the Witness Statements of Luis Fernando Gala Soldevilla, Felipe A. Ramírez Delpino, and César Zegarra, and the Expert Reports of Antonio Alfonso Peña Jumpa, Luis Rodríguez-Mariátegui Canny, and SRK Consulting.

2. As I explained in my first Witness Statement of May 28, 2015, I currently serve as Chief Operating Officer of the Claimant in this arbitration, Bear Creek Mining Corporation ("Bear Creek"), and as General Manager of Bear Creek's Peruvian branch, Bear Creek sucursal del Peru ("Bear Creek Peru"). As such, I am intimately familiar with the facts and circumstances that concern the dispute referenced above.

I. BEAR CREEK HAS EXTENSIVE EXPERIENCE BUILDING AND OPERATING MINING PROJECTS

3. Peru states that Bear Creek is a company "with zero experience constructing or operating mines."¹ I disagree entirely with this characterization. I am surprised and disappointed that Peru, which has ample experience dealing with mining companies, would resort to disparaging Bear Creek in such a way. As Peru knows well, Bear Creek was created and managed by individuals who all had substantial experience in the Peruvian mining sector, in both the construction and operation of mines.

4. I had close to 30 years of mining experience, and over ten years of specific technical experience supervising the operations of some of the largest mines in Peru, when I was hired by Bear Creek as General Manager of Bear Creek Peru and Vice-President of Operations in April 2010. As I previously testified, I worked at Southern Peru Copper Corporation ("SPCC"), one of the largest and most respected copper mining companies in Peru, from 1989 to 2010.² In

¹ Respondent's Counter-Memorial on the Merits and Memorial on Jurisdiction, October 6, 2015 ("Respondent's Counter-Memorial"), ¶ 15.

² First Witness Statement of Elsiario Antunez de Mayolo, May 28, 2015 ("Antunez de Mayolo Witness Statement"), ¶ 3.

1998, I was promoted to Technical Services Manager for SPCC, where I oversaw every technical aspect of SPCC's operations. In that capacity, I was responsible for and obtained, among other licenses and permits, several water licenses for the expansion of the Toquepala mine.

5. As Technical Services Manager of SPCC, I was in charge of dealing with the local communities that lived near SPCC's mines. I worked with the high Andean communities of Moquegua-Tacna, which include Aymara and Quechua peoples, to understand the issues that were most important to them and how SPCC could help them in the most effective way. As requested by the Moquegua-Tacna communities, I implemented an extensive program aimed at developing and improving the communities' trout farming industry, which was their primary source of income. I also made sure that they would get electrical power and that qualified teachers would be hired for the local schools. I also led the team that successfully prepared the Environmental and Social Impact Assessment ("ESIA") for the expansion of the Cuajone mine, which the Government subsequently approved. The expansion included permission to divert a river over 8 km – a first in Peru. The Government granted this request and approved the expansion plan and corresponding ESIA on the basis of our detailed plan to implement best practices and minimize the socio-environmental impact of the mine expansion.

6. In 1999, I was promoted to Mine Manager for the Cuajone mine, where I was directly responsible for mining operations. In other words, I ran the Cuajone mine. I oversaw the implementation of the mining plan for Cuajone and was responsible for meeting short and long term production targets. I also dealt with employees' unions and with environmental controls in respect of the mine's operations.

7. In 2000, I was promoted to Director of Operations for the Cuajone mine. I remained in that position for 10 years, until I joined Bear Creek. As Director of Operations, I was responsible for every aspect of Cuajone, supervising over 1,100 employees and managing an annual operating budget of over US\$ 170 million per year. The Cuajone Mine Manager reported to me, and I ensured that he coordinated his work with the managers of the other elements of the Cuajone mining project (including the concentrator, the maintenance, and the logistics teams, etc.). My responsibility was to ensure that the mine operated safely and efficiently. I was also in charge of investment planning, expansions, and any reserve increases at Cuajone.

8. I also oversaw all community and public relations efforts, as well as all the environmental aspects of our Cuajone operations. I worked directly with community leaders and our community relations teams at SPCC to build a climate of mutual trust and cooperation between the company and the neighboring communities. We developed excellent relationships with community representatives and local inhabitants. Our community relations efforts helped us to achieve the complete acceptance of the project's goals by all stakeholders. This required us to work hard to identify and respond to the communities' concerns in a thorough and truthful manner. We also assisted the communities in implementing various infrastructure and training programs. For example, in Torata, a small town very similar in size to Huacullani, we helped inhabitants improve their agricultural practices, particularly with respect to oregano, a high-value crop and an economic staple in the area. Together, we were able to improve quality and output while making sure that local producers would be able to sell their crop to various buyers at the best possible price.

9. As Director of Operations, I worked directly with local, regional, and national public authorities regarding all regulatory and permitting issues that arose at Cuajone. I was involved in obtaining various permits that are renewable on an annual basis (such as permits for explosives). I also made sure that our operations complied at all times with the terms of our ESIA and of the various regulatory permits (for fuel or water, for example), which were regularly monitored by the Peruvian authorities. My role as Director of Operations at Cuajone gave me an extensive, firsthand experience at building relations with local authorities and communities. This experience would prove immensely helpful at Santa Ana and Corani.

10. Upon joining Bear Creek, I assembled a team of highly-experienced mining executives and managers:

- I hired Alvaro Diaz Castro in September 2010 as Vice President for legal matters and general counsel. He had worked for 10 years at SPCC and almost 6 years at Freeport-McMoRan on the Cerro Verde project. At SPCC, he had supervised and submitted to the Peruvian authorities the biggest compliance and environmental management program (*Programa de Adecuación y Manejo Ambiental* or "PAMA") to date, worth US\$ 1 billion

in investments. At Cerro Verde, Mr. Diaz Castro oversaw numerous environmental impact reports, applications for water permits, and community relations programs.

- I hired Martin Olano in February 2011 as engineering and construction manager. He had spent 3 years as an engineering manager at Freeport-McMoRan and another 6 at SPCC. He is now the senior engineering and construction manager at Rio Tinto in Peru, the second largest mining company in the world.
- I hired Andres Franco in April 2011 as logistics manager. He had worked for 6 years at EnerSur, a subsidiary of GDF Suez, developing and managing projects in Peru, Colombia, Brazil, and Panama. He also had experience as a mining contractor, having managed Portillo, a company that had provided services to many mining companies, including SPCC, Freeport-McMoRan, and Xstrata. He is still with Bear Creek today.
- I hired Jorge Lobato in June 2011 as environment and security manager. He had been the environmental manager at the Cerro Verde project for 3 years and, previously, had been responsible for environmental and water issues at the Yanacocha project, which was run by Newmont Mining, for 5 years. He is now the environment manager for the Pueblo Viejo project in the Dominican Republic, which is run by Goldcorp and Barrick, two of the largest mining companies in the world.

11. There is no doubt in my mind that the team that I had assembled and the people that Mr. Swarthout had hired possessed all the requisite technical, construction, and operating skills and experience to bring the Santa Ana and Corani projects successfully into production. Our first goals at Santa Ana were to complete the Feasibility Study (which we did in October 2010) and finalize the ESIA – which we submitted to the Ministry of Energy and Mines (“MINEM”) in December 2010. We then signed an EPCM agreement with one of the best

Peruvian engineering firms, Graña y Montero (“GyM”), to conduct all the detailed engineering work for the Santa Ana Project.³ In the meantime, we had successfully raised US\$ 130 million in financing to build the Santa Ana Project. Thus, we were advancing the project as far as possible so that when our ESIA was approved, we could quickly initiate construction and remain on target to begin operating Santa Ana in the last quarter of 2012, as planned in our work program. This would enable us to finance the construction and operation of Corani.

12. On the basis of our collective mining experience and the work that we had already completed, I am confident that had Peru had not taken the Santa Ana Project away from us, we would have been able to build and commission the mine on time and on budget.

II. BEAR CREEK SUCCESSFULLY WENT THROUGH THE SANTA ANA ESIA APPROVAL PROCESS UNTIL THE DGAAM SUSPENDED IT ON MAY 30, 2011

13. It is clear to me that the drafting and approval of the ESIA is one of the most important tasks in connection with the development of a mine in Peru. Indeed, the ESIA is the foundational document upon which every aspect of the mining project is built. In accordance with Peruvian regulations (which we were intimately familiar with, based on years of experience in the mining sector), the Santa Ana ESIA had multiple objectives:⁴

- develop the environmental and socioeconomic baseline of the project’s area of influence; assess the different activities of the project to determine their potential effects;
- identify the principal stakeholders and their concerns, as well as their interactions with the company and between themselves; recommend actions to prevent, control, and mitigate the project’s most relevant negative effects;

³ **Exhibit C-0144**, Letter of Intent between Bear Creek and Graña y Montero, Mar. 3, 2011.

⁴ **Exhibit C-0071**, Ausenco Vector, Environmental Impact Assessment Report for the Santa Ana Project, Dec. 2010 at 3.

- recommend measures to strengthen the project’s positive effects; develop a monitoring program to assess the mitigation measures that are implemented and verify the predictions regarding their impact;
- develop an environmental management plan to implement in an optimal manner the proposed environmental measures and practices; develop the conceptual framework for the mine closing plan for the project;
- develop a cost-benefit analysis for the project; and
- conduct “citizen participation” activities with the neighboring communities to present relevant information related to the Project, obtain feedback concerning their opinions and concerns, and inform them of the applicable legal framework, namely MINEM Resolution No. 304-2008-MEM/DM of June 24, 2008.

14. To prepare the ESIA, Bear Creek hired Ausenco Vector, one of the leading mining consultancies in Peru and the world.⁵ Ausenco Vector appears on the list published by the Peruvian government (MINEM) that identifies the consultants that are approved for the preparation of ESIA’s.⁶ Bear Creek went above and beyond the applicable legal requirements during the preparation of the ESIA, including, for example, organizing over 130 workshops with communities surrounding Santa Ana,⁷ instead of the 2 workshops required by law.⁸

15. On December 23, 2010, Bear Creek submitted its ESIA to MINEM. I wrote to Mr. Ramírez, the Director of MINEM’s General Directorate for Environmental Mining Affairs (*Dirección General de Asuntos Ambientales Mineros* or “DGAAM”) and a witness in this arbitration – to request approval of the executive summary of Bear Creek’s ESIA as well as its

⁵ See <http://www.ausenco.com/>.

⁶ **Exhibit C-0154**, List of mining consultancies authorized by MINEM for the processing of ESIA’s.

⁷ **Exhibit C-0155**, Ausenco Vector, *Plan de Participación Ciudadana* (“PPC”) de Bear Creek, Annex 2.

⁸ **Exhibit R-153**, MINEM Resolution No. 304-2008-MEM/DM, Jun. 24, 2008, Arts. 12 and 13.

Citizen Participation Plan (*Plan de Participación Ciudadana* or “PPC”),⁹ in accordance with the applicable procedure.¹⁰

16. The executive summary of an ESIA is an exhaustive description of the contents of an entire ESIA – which can be thousands of pages long. In Bear Creek’s case, the ESIA submitted to MINEM was 2,992 pages.¹¹ More specifically, it is a comprehensive account of what the Santa Ana Project was going to entail, from baseline through to construction and operation, until closure.¹² Two conditions need to be satisfied for MINEM to approve the executive summary of an ESIA. First, the executive summary needs to be a correct reflection of the contents of the ESIA itself. Second, it also needs to contain all of the information that would properly inform the communities of the nature of the project and its components. MINEM’s approval of the executive summary thus confirmed that MINEM’s officials had actually read and compared the contents of the document with the ESIA itself and were satisfied that the information contained therein was a truthful reflection of the contents of the ESIA. That approval also signified that MINEM agreed that the information contained in the executive summary was sufficient to apprise the communities of the project.

17. The PPC, which Ausenco Vector also prepared in accordance with Peruvian mining regulations, consists of a detailed description of the citizen participation mechanisms that Bear Creek had already implemented during the preparation of the ESIA and would continue to implement during the evaluation phase of the ESIA and throughout the construction and operation of the Santa Ana Project.¹³ The objective of these citizen participation mechanisms is to inform the neighboring communities of the nature and impact of the Santa Ana Project. Examples of such informational activities include the organization of a public hearing,

⁹ **Exhibit C-0155**, Ausenco Vector, *Plan de Participación Ciudadana* (“PPC”) de Bear Creek.

¹⁰ **Exhibit C-0156**, MINEM, *Dirección General de Asuntos Ambientales Mineros, Certificación Ambiental para Actividades de Explotación Mediana y Gran Minería*.

¹¹ **Exhibit C-0072**, Request from Bear Creek Mining Corporation to DGAAM for Approval of the ESIA, Dec. 23, 2010.

¹² **Exhibit C-0071**, Ausenco Vector, Environmental Impact Assessment Report for the Santa Ana Project, Dec. 2010 at 3.

¹³ **Exhibit C-0155**, Ausenco Vector, *Plan de Participación Ciudadana* (“PPC”) de Bear Creek.

workshops, open houses, and guided visits for community members, the distribution of relevant material (including the executive summary of the ESIA), the opening of an information office, and the advertisement of the company's citizen participation mechanisms in local media (newspapers and radio). For MINEM to approve the PPC, it needs to be satisfied that the information contained in the executive summary of the ESIA would be communicated effectively to the communities.

18. In that regard, when describing the "citizen participation component," Mr. Ramírez says that the DGAAM "do[es] 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."¹⁴ I strongly disagree with this characterization. The facts are that the DGAAM was perfectly aware of the situation regarding Bear Creek and the communities surrounding the Santa Ana Project. Bear Creek regularly and thoroughly informed the DGAAM of its activities with the communities.¹⁵ Moreover, the DGAAM had staff that visited the project area, monitoring Bear Creek's relationships with the communities. DGAAM representatives, together with representatives of the Regional Directorate of Energy and Mines (*Dirección Regional de Energía y Minas* or "DREM") were also aware of and attended the workshops that Bear Creek organized with the communities.¹⁶

19. On January 7, 2011, the DGAAM approved the executive summary of Bear Creek's ESIA as well as its PPC.¹⁷ Mr. Ramírez downplays the importance of that approval: "It was not a final approval of the [ESIA] or an endorsement of the contents of the PPC or the

¹⁴ **RWS-002**, Witness Statement of Felipe A. Ramírez Delpino, Oct. 6, 2015 ("Ramírez Witness Statement"), ¶ 13.

¹⁵ **Exhibit C-0157**, Letter from C. Rios Vargas, Bear Creek, to F. Ramírez, MINEM, Jul. 6, 2009; **Exhibit C-0158**, Letter from E. Antunez de Mayolo, Bear Creek, to F. Ramírez, MINEM, Oct. 19, 2010; **Exhibit C-0159**, Letter from F. Ramírez, MINEM, to V. Paredes Argandoña, Regional Directorate of Energy and Mines (*Dirección Regional de Energía y Minas* or "DREM"), Oct. 28, 2010; **Exhibit C-0160**, Letter from E. Antunez de Mayolo, Bear Creek, to F. Ramírez, MINEM, Nov. 18, 2010.

¹⁶ **Exhibit C-0155**, Ausenco Vector, *Plan de Participación Ciudadana* ("PPC") de Bear Creek, Annexes 3 and 4.

¹⁷ **Exhibit C-0161**, *Informe No. 013-2011-MEM-AAM/WAL/AD/KVS*, Jan. 7, 2011.

Executive Summary. It simply informed the company that the 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 [ESIA]."¹⁸ Mr. Ramírez is wrong. The DGAAM is clearly aware of the importance of this milestone within the framework of the ESIA approval process, even though Peru is trying to undermine it for purposes of this arbitration. The DGAAM carefully reviewed the contents of the ESIA, the ESIA's executive summary, and the PPC and unequivocally approved the last two documents: "Based on Report No. 013-2011-MEM-AAM/WAL/AD/KVS above, and being in agreement with that which is written, **IT IS RESOLVED: TO APPROVE** the PPC and to the Executive Summary of the ESIA of the Santa Ana mining project..."¹⁹

20. I have been involved in the Peruvian mining sector for over three decades and I can confirm that the DGAAM could have decided that the information provided by Bear Creek was insufficient and requested it to provide additional material, in accordance with the applicable procedure.²⁰ However, the DGAAM did not do so with respect to the executive summary of the Santa Ana ESIA and PPC. It approved both documents instead.

21. I cannot overemphasize the fact that the DGAAM's approval of these documents constituted a critical step for Bear Creek at Santa Ana. As I explained in my first Witness Statement, it confirmed that Bear Creek had implemented adequate community relationship programs and maintained good relationships with the communities, and that no social conflicts or issues existed in connection with the Santa Ana Project.²¹

22. On January 7, 2011, the DGAAM informed Bear Creek of its approval of the ESIA's executive summary and of the PPC, and outlined the next steps that Bear Creek was

¹⁸ **RWS-002**, Ramírez Witness Statement, ¶ 18.

¹⁹ **Exhibit C-0161**, *Informe No. 013-2011-MEM-AAM/WAL/AD/KVS*, Jan. 7, 2011 (emphasis in original).

²⁰ **Exhibit C-0156**, MINEM, *Dirección General de Asuntos Ambientales Mineros, Certificación Ambiental para Actividades de Explotación Mediana y Gran Minería*.

²¹ Antunez de Mayolo Witness Statement, ¶ 12.

required to take, in accordance with the applicable procedure,²² for the public hearing to occur.²³ These included the following:

- Distributing copies of Bear Creek’s ESIA and of its executive summary to the communities, local authorities, and the Regional government.
- Advertising the existence of the ESIA and of the public participation mechanisms that Bear Creek would be implementing via different means. These included publications in local and national newspapers, broadcasts on local radios (such as Radio Wayra and other widely listened-to radio stations), and billboards in key areas of each community (such as schools, town halls, and squares).
- Informing the communities that a public hearing would be held in relation to the Santa Ana Project.

23. On January 21, 2011, I wrote to the DGAAM informing it that Bear Creek had complied with all of these requirements.²⁴ With the DGAAM’s support and authorization, we proceeded to hold the public hearing.

24. The public hearing took place on February 23, 2011. I was present, together with two DGAAM attorneys representing MINEM, Kristian Véliz Soto and Walter Alfaro Lopez, and another attorney representing the DREM, Jesus Obet Alvarez Quispe. Mr. Ramírez, Mr. Gala, Professor Peña, and Mr. Rodríguez-Mariátegui all comment on the public hearing, although none of them attended.²⁵ Mr. Rodríguez-Mariátegui speculates whether the proper materials were handed out to the participants, whether we checked that the audiovisual equipment was working

²² **Exhibit C-0156** MINEM, *Dirección General de Asuntos Ambientales Mineros, Certificación Ambiental para Actividades de Explotación Mediana y Gran Minería*.

²³ **Exhibit C-0073**, MINEM Resolution No. 021-2011/MEM-AAM, Jan. 7, 2011.

²⁴ **Exhibit C-0162**, Letter from Bear Creek to DGAAM, Jan. 21, 2011.

²⁵ **RWS-001**, Witness Statement of Luis Fernando Gala Soldevilla, Oct. 6, 2015 (“Gala Witness Statement”), ¶ 19; **RWS-002**, Ramírez Witness Statement, ¶ 20; **REX-002**, Expert Report of Antonio Alfonso Peña Jumpa, Oct. 6, 2015 (“Peña Expert Report”) ¶¶ 76 *et al.*; and **REX-003**, Expert Report of Luis Rodríguez-Mariátegui Canny, Oct. 6, 2015 (“Rodríguez-Mariátegui Expert Report”), ¶ 59.

before the public hearing began, and whether we had an Aymara translator.²⁶ I was there and I can confirm that all of this was done.

25. Mr. Ramírez notes that the large number of attendees at the public hearing did not mean that there was broad support within the communities for the Santa Ana Project.²⁷ Mr. Gala states, for his part, that a peaceful public hearing does not mean that the people in attendance agree with the project.²⁸ I disagree with both statements insofar as they concern the public hearing for the Santa Ana Project. I sat among the community members at the public hearing and, as I previously mentioned, I observed first hand 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.²⁹

26. At the close of the public hearing, everyone present even applauded, as can be seen in the official video that is part of the official documentation that was presented to the DGAAM. After the public hearing, the DGAAM and DREM attorneys and I visited the Challacoyo community, where the Company wanted to build wells for the Project, close to the Callacame river. We discussed this with the local inhabitants, explaining in detail all of the Project's technical aspects. They were satisfied with the clarifications that we had provided. The DGAAM and DREM attorneys and I then returned to the city of Puno. At dinner, we toasted to the success of the Santa Ana Project.

27. I also strongly disagree with Mr. Ramírez's statement that the number of questions asked at the public hearing – 103 – “indicates that the communities had significant concerns about the effects the project would have on their sources of livelihood and everyday lives.”³⁰ It is important to understand that the public hearing was Bear Creek's opportunity to present the Project in as much detail as possible. The community members, far from being

²⁶ **REX-003**, Rodríguez-Mariátegui Expert Report, ¶ 59.

²⁷ **RWS-002**, Ramírez Delpino Witness Statement, ¶ 20; Respondent's Counter-Memorial, ¶ 89.

²⁸ **RWS-001**, Gala Witness Statement, ¶ 19.

²⁹ Antunez de Mayolo Witness Statement, ¶ 15.

³⁰ **RWS-002**, Ramírez Witness Statement, ¶ 20.

worried, were curious and engaged in the process, asking, in my experience, a normal amount of questions for a project of this size.

28. Moreover, during the public hearing, the DGAAM attorneys announced that if community members believed that Bear Creek had not fully answered their questions, they were entitled to submit their questions as well as any observations that they had regarding the ESIA in writing at the end of the hearing. Such observations could include their opposition to the Project. These questions and/or observations would then be identified in the public hearing minutes and would subsequently be included in the general observations to the ESIA that MINEM would send to Bear Creek for comment. The community members did not submit a single question or observation at the end of the public hearing.³¹ To me, this shows that the communities were supportive of the Project and that they did not have any significant concerns.

29. Peru neglects to mention that only a few local Huacullani police were present at the public hearing. In my experience, this is not the norm. The Peruvian government, on its own initiative or at the request of the mining company, normally enlists the assistance of large contingents of policemen to maintain public order and guarantee the safety of all participants, as was the case for example at the public hearings for the Las Bambas, Toromocho, and Tia Maria projects. The fact that neither Bear Creek nor the Peruvian government requested the presence of any significant number of police at the public hearing for the Santa Ana Project is further evidence that Bear Creek enjoyed good relationships with the communities and that the communities supported the Project.

30. Instead, Peru disingenuously focuses on the disturbance caused at the end of the public hearing by less than 50 people out of more than 700 attendees.³² Those 50 people were brought to the public hearing in a truck by Juan Carlos Aquino Condori, the then recently elected mayor of Desaguadero, who was intent on boosting his popularity. They voiced their anti-mining stance, were ignored by the other attendees, and left. Their position was absolutely not

³¹ **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.

³² **RWS-001**, Gala Witness Statement, ¶ 19; **RWS-002**, Ramírez Witness Statement, ¶ 20; and Respondent’s Counter-Memorial, ¶ 90.

representative of the widespread support for the Project expressed by the communities at the public hearing.

31. Walter Aduviri was also present at the public hearing. He asked about environmental contamination, claiming that we would use mercury to extract gold from the project area. As I noted in my previous Witness Statement, Mr. Alvaro Diaz Castro, Bear Creek's Vice President of Legal and General Counsel, responded that Santa Ana was not a gold project and would not, in any event, be using mercury.³³ In light of that exchange and Mr. Aduviri's subsequent actions, it is clear to me that Mr. Aduviri knew that the Santa Ana Project would not harm the environment. Yet, unfortunately for Bear Creek, Mr. Aduviri brandished the legitimate, but in this case ill-founded, fear of environmental contamination in order to stoke anti-mining sentiment for his own political gains.

32. Bear Creek's public hearing was successful. The DGAAM and DREM attorneys that attended must have agreed with me because, as per the applicable procedure, if the public hearing had been unsatisfactory, the DGAAM could have either suspended or cancelled it, and scheduled a new hearing.³⁴ But it did neither. Rather, the DGAAM chose to continue with the process, admitting implicitly that the public hearing for the Santa Ana Project was satisfactory, and proceeded to evaluate the full ESIA that Bear Creek had submitted back in December 2010.

33. On April 19, 2011, MINEM sent us 157 observations on the ESIA together with 39 observations of the Ministry of Agriculture ("MINAG").³⁵ Mr. Ramírez argues that the large number of observations submitted by MINEM and MINAG implied that Bear Creek's ESIA was flawed and incomplete.³⁶ This is nonsense. As I am certain Mr. Ramírez knows, Bear Creek's ESIA was based on field studies and lab analyses that were conducted over a two-year period by Ausenco Vector, a world-renowned mining consultancy, and complied with all of the requisite

³³ Antunez de Mayolo Witness Statement, ¶ 16.

³⁴ **Exhibit C-0156**, MINEM, *Dirección General de Asuntos Ambientales Mineros, Certificación Ambiental para Actividades de Explotación Mediana y Gran Minería*.

³⁵ **RWS-002**, Ramírez Witness Statement, ¶ 25; **Exhibit R-040**, DGAAM's Observations to Bear Creek's EIA, April 19, 2011; and **Exhibit R-041**, MINAG's Observations to Bear Creek's EIA, January 2011.

³⁶ **RWS-002**, Ramírez Witness Statement, ¶ 27.

technical criteria for a study of this nature. Mr. Gala himself recognized that “Bear Creek had submitted its ESIA in accordance with all applicable legal requirements.”³⁷

34. These observations, far from suggesting that our ESIA was either flawed or incomplete, were simply part of the normal process for the approval of the ESIA and were aimed at soliciting clarifications from Bear Creek on specific points. If the ESIA had truly been flawed or incomplete, which I can assure the Tribunal was not the case, then the DGAAM would never have approved the ESIA’s executive summary in the first place. Moreover, judging the quality of an ESIA on the basis of the number of observations that it has received, as Mr. Ramírez does, is neither technically nor ethically sound. In fact, in my experience, 196 observations for a project of this size is perfectly reasonable.

35. According to the applicable procedure,³⁸ we had 60 *business* days – not calendar days – from the day of receipt of the observations submitted by MINEM and MINAG to respond to them.³⁹ Mr. Ramírez emphasizes the fact that we had not yet responded to these observations when the DGAAM enacted Resolution No. 162-2011-MEM-AAM on May 30, 2011, suspending the ESIA evaluation process for a 12-month period, and that it was consequently unable to determine whether our answers were satisfactory.⁴⁰ But we had every right to make use of the full 60 business day period at our disposal. Thus, I do not understand why Peru is attempting to blame us for not submitting our responses to the observations prior to the suspension of ESIA evaluation process, which occurred on the 22nd day of the 60 business day period, as MINEM itself confirmed,⁴¹ and not on the 41st day, as Peru now wrongly claims in this arbitration.⁴² In

³⁷ **Exhibit C-0094**, *Huelga antiminera en Puno sigue sin solución*, LA REPÚBLICA, May 21, 2011.

³⁸ **Exhibit C-0156**, MINEM, *Dirección General de Asuntos Ambientales Mineros, Certificación Ambiental para Actividades de Explotación Mediana y Gran Minería*. The 90 working days indicated in the chart is the maximum amount of time that MINEM can grant the mining company to respond to its observations.

³⁹ **Exhibit R-040**, DGAAM’s Observations to Bear Creek’s EIA for Exploitation, Report No. 399-2011-MEM-AAM/WAL/JCV/CMC/JST/KVS/AD, Apr. 19, 2011, p. 50, Recommendations.

⁴⁰ **RWS-002**, Ramírez Witness Statement, ¶ 26; Respondent’s Counter-Memorial, ¶ 182.

⁴¹ **Exhibit C-0163**, Letter from Dr. Manuel Castro Baca, DGAAM, to Elsiario Antunez de Mayolo, Bear Creek, Jul. 20, 2012.

⁴² Respondent’s Counter-Memorial, ¶ 182.

fact, we had until July 22, 2011 to submit our responses to MINEM's and MINAG's observations.

36. Mr. Ramírez also suggests that the observations presented by MINEM and MINAG would have been difficult for us to address, specifically pointing to Observations No. 155 and 7.⁴³ I strongly disagree. On July 22, 2011, *i.e.*, on the 60th business day starting from our receipt of the observations, Bear Creek submitted detailed responses to every single observation, including Observations No. 155 and 7.⁴⁴ Bear Creek entrusted its responses to a notary, given that the DGAAM had suspended the ESIA evaluation process, and requested that she safeguard the documents until such time as we could submit them to the DGAAM.⁴⁵ Moreover, after receiving the observations and until our ESIA was suspended, we met with different MINEM and MINAG representatives to discuss their comments and better understand their concerns. This was truly a collaborative effort with the different ministries and I have no doubt that MINEM and MINAG would have accepted Bear Creek's responses to their observations.

37. Mr. Ramírez's specific emphasis on Observation No. 155 is also misplaced. He claims that it required Bear Creek to organize guided visits of the project site with community members, and that this would have been hard to do within 60 business days, given that, at the time, the communities were protesting against the Project.⁴⁶ That is not correct. Observation No. 155 required Bear Creek to *prove* that it had carried out the guided visits as part of the citizen participation mechanisms that had been implemented, not to *organize* guided visits as Mr.

⁴³ **RWS-002**, Ramírez Witness Statement, ¶¶ 27-28.

⁴⁴ **Exhibit R-184**, Bear Creek's Responses to the DGAAM's Observations to the Santa Ana Project EIA, July 2011.

⁴⁵ **Exhibit C-0164**, Letter from Bear Creek to Ms. Rosalía Mejía and *Acta de Custodia*, Jul. 22, 2011.

⁴⁶ **RWS-002**, Ramírez Witness Statement, ¶ 27; **Exhibit R-040**, DGAAM's Observations to Bear Creek's EIA, April 19, 2011.

Ramírez incorrectly asserts.⁴⁷ Accordingly, we responded to Observation No. 155 by indicating that we would be providing the required information in a separate document.⁴⁸

38. Similarly, Mr. Rodríguez-Mariátegui Canny states that many of MINEM's observations "concern issues that could be considered critical"⁴⁹ and that "it cannot be assumed that Bear Creek would have been able to address all of [MINEM's] and [MINAG's] observations in a timely and proper manner."⁵⁰ These allegations are factually incorrect and misleading. As I explain above, Bear Creek submitted detailed responses to all of the observations, together with all required technical documentation, within the allotted 60 business day period.

39. Mr. Rodríguez-Mariátegui Canny also mischaracterizes many of the observations. For example, he refers to Observation No. 114, which, according to him, involves redesigning the pit.⁵¹ This is absolutely not the case. Observation No. 114 is simply a request for additional information to help those reviewing the ESIA understand and visualize the criteria used to design the pit.⁵² In its response, Bear Creek provided the clarifications sought by MINEM, together with technical documentation and the numerical model that Bear Creek had relied upon, so that MINEM could check the method and details of the calculations.⁵³ Likewise, he describes Observation No. 34 as requiring the submission of additional feasibility studies.⁵⁴ This is not correct. Observation No. 34 requested specific clarifications regarding the practical and feasible measures that could be adopted in respect of the external geomechanics actually present in the Project area.⁵⁵ Bear Creek provided those clarifications in its response to Observation No. 34.⁵⁶

⁴⁷ **Exhibit R-040**, DGAAM's Observations to Bear Creek's EIA, Apr. 19, 2011 at 49.

⁴⁸ **Exhibit R-184**, Bear Creek's Responses to the DGAAM's Observations to the Santa Ana Project EIA, July 2011, p. 233.

⁴⁹ **REX-003**, Rodríguez-Mariátegui Expert Report, ¶ 46; Respondent's Counter-Memorial, ¶ 181.

⁵⁰ **REX-003**, Rodríguez-Mariátegui Expert Report, ¶ 46.

⁵¹ **REX-003**, Rodríguez-Mariátegui Expert Report, ¶ 46.

⁵² **Exhibit R-040**, DGAAM's Observations to Bear Creek's EIA, Apr. 19, 2011 at 45.

⁵³ **Exhibit R-184**, Bear Creek's Responses to the DGAAM's Observations to the Santa Ana Project EIA, July 2011 at 187.

⁵⁴ **REX-003**, Rodríguez-Mariátegui Expert Report, ¶ 46.

⁵⁵ **Exhibit R-040**, DGAAM's Observations to Bear Creek's EIA, Apr. 19, 2011 at 35.

⁵⁶ **Exhibit R-184**, Bear Creek's Responses to the DGAAM's Observations to the Santa Ana Project EIA, July 2011 at 84-85.

40. Finally, Mr. Rodríguez-Mariátegui Canny refers to Observations No. 23, 24, 90, 99, 111, and 141, which are all related to water resources.⁵⁷ However, he fails to mention that the Peruvian National Water Authority (*Autoridad Nacional del Agua* or “ANA”) did not submit comments to our ESIA, even though it was entitled to do so in accordance with the applicable procedure.⁵⁸ ANA actually issued a favorable opinion regarding the water resources at the Santa Ana Project.⁵⁹ This is all evidence of the fact that the water resources aspect of our ESIA was solid, and that MINEM’s observations were minor technical points requiring clarification only. In any event, we provided good answers to all water-related observations that I am certain MINEM would have accepted.

41. In conclusion, I am confident that if the DGAAM had not suspended the ESIA evaluation process on May 30, 2011, it would have ultimately approved our ESIA.

42. Bear Creek protested the DGAAM’s 12-month suspension of the ESIA evaluation process. On June 17, 2011, I wrote a letter to the DGAAM requesting that Resolution No. 162-2011-MEM-AAM be reexamined by the Mining Council (*Consejo de Minería*), MINEM’s second and highest administrative instance.⁶⁰ The DGAAM did not defend its position at that time.

43. However, the Mining Council could not rule on our appeal because it had not been fully constituted by the Peruvian government. That situation lasted until 2014. Once the Mining Council was fully constituted, it convened a hearing for Bear Creek’s appeal.⁶¹ It also informed the parties that they could, if they wished, make a 10 minute presentation to present their case.⁶² At the hearing on February 26, 2014, which I attended, Mr. Diaz Castro presented Bear Creek’s case and explained convincingly why Resolution No. 162-2011-MEM-AAM was unlawful. Again, the DGAAM did not defend its position.

⁵⁷ **REX-003**, Rodríguez-Mariátegui Expert Report, ¶ 46; Respondent’s Counter-Memorial, ¶ 181.

⁵⁸ **Exhibit C-0156**, MINEM, *Dirección General de Asuntos Ambientales Mineros, Certificación Ambiental para Actividades de Explotación Mediana y Gran Minería*.

⁵⁹ **Exhibit C-0165**, Technical Report No. 0169-2011-ANA-DGCRH/MASS, Feb. 21, 2011 at 5.

⁶⁰ **Exhibit C-0166**, Letter from Bear Creek to the DGAAM, Jun. 17, 2011.

⁶¹ **Exhibit C-0167**, Letter from the Mining Council to Bear Creek, Jan. 21, 2014.

⁶² **Exhibit C-0167**, Letter from the Mining Council to Bear Creek, Jan. 21, 2014.

44. Ultimately, on May 13, 2014, the Mining Council held that a ruling on a 12-month suspension ordered back in 2011 was no longer required, and, accordingly, returned the file to the DGAAM.⁶³ In other words, Bear Creek was deprived of a ruling on the merits on the lawfulness of the DGAAM's suspension of the ESIA evaluation process because of the Peruvian government's failure to timely constitute the Mining Council. Moreover, I find it strange that the DGAAM never once defended its position to the Mining Council.

45. As soon as we received the Mining Council's ruling, I wrote to the DGAAM, providing Bear Creek's responses to MINEM's and MINAG's observations to our ESIA, which we had timely filed back in 2011 before a notary.⁶⁴

III. BEAR CREEK'S ACTIONS DURING THE 2011 PROTESTS

46. Mr. Ramírez and Mr. Gala both state that Bear Creek never proposed any solution to the Peruvian government, or took any kind of action, to put an end to the protests that took place in the Puno region in the first semester of 2011.⁶⁵ Mr. Ramírez adds that the only thing we did was to abandon the project site.⁶⁶ These accusations are misplaced.

47. The Peruvian government never once invited Bear Creek to discuss the situation or to meet with the protesters during the numerous consultations that it organized. We were never even officially informed about any of the meetings that Mr. Gala describes in his Witness Statement.⁶⁷ Rather, during this time, it was Bear Creek that sought meetings with Peruvian government officials to talk about the protests and offer its assistance.

48. Thus, for example, on April 8, 2011, we requested a meeting with Prime Minister Rosario Fernandez.⁶⁸ We met her on April 19, 2011. We discussed with her that the protests that had just started were politically motivated and that if the Government did not quickly

⁶³ **Exhibit C-0168**, Mining Council Resolution No. 13-2014-MEM-CM, May 13, 2014.

⁶⁴ **Exhibit C-0169**, Letter from Bear Creek to the DGAAM, May 20, 2014.

⁶⁵ **RWS-001**, Gala Witness Statement, ¶ 41; **RWS-002**, Ramírez Witness Statement, ¶ 33.

⁶⁶ **RWS-002**, Ramírez Witness Statement, ¶ 33.

⁶⁷ **RWS-001**, Gala Witness Statement, ¶¶ 27-30, 33-35.

⁶⁸ **Exhibit C-0170**, Letter from M. A. Balestrini, Bear Creek, to Prime Minister Rosario Fernández, Apr. 8, 2011.

intervene, these would become much bigger and more problematic. We also told her about the Santa Ana Project, that the Huacullani communities all supported it, and that the public hearing of February 23, 2011, had gone extremely well. Finally, we assured her that Bear Creek would assist the Peruvian Government with whatever it needed in connection with the protests. Prime Minister Fernández thanked us for our presentation and guaranteed that Bear Creek's rights would be respected and that the rule of law would be maintained.

49. During this period, we also tried to schedule meetings with Minister of Energy and Mines, Pedro Sánchez. However, he refused to see us and invited us to contact Mr. Gala instead. We met with Mr. Gala a few times between March and June 2011 to discuss the situation. We reiterated what we had said to Prime Minister Fernandez, namely that the protests were politically motivated and that if the Government did not quickly intervene, these would become much bigger and more problematic. We also noted that many people were in favor of mining activities in general and of the Santa Ana Project in particular, including the communities in Huacullani and mining students.⁶⁹ At one of these meetings, Mr. Gala asked us if Bear Creek had organized the mining students' march of March 29, 2011,⁷⁰ and we responded that we had not, that this event had nothing to do with the company. I recall that Mr. Gala agreed with us that the situation was problematic and assured us that the Peruvian government would protect Bear Creek's rights and uphold the principle of legal security.

50. After Peru enacted Supreme Resolution No. 131-2011-PCM on May 21, 2011, creating a multi-sector committee that would be examining possible measures to be taken in southern Puno,⁷¹ I wrote to the Minister Sánchez, on May 27, 2011, informing him that in respect of the Santa Ana Project, Bear Creek had complied with, and had even gone above and beyond, all applicable legal requirements.⁷² I also took this opportunity to address some of the lies that the protesters from outside the area were spreading, like the fact that the Santa Ana

⁶⁹ **Exhibit C-0083**, "*Rechazan intervención de dirigentes de zonas aledañas en tema de minera Santa Ana*," LOS ANDES, Mar. 29, 2011.

⁷⁰ **Exhibit C-0078**, Ricardo Uceda, "*Puno: prueba de fuego*," Revista Poder 360°, Jun. 2011.

⁷¹ **Exhibit R-24**, Supreme Resolution No. 131-2011-PCM, May 21, 2011.

⁷² **Exhibit C-0171**, Bear Creek Letter to Pedro Sánchez, Minister of Energy and Mines, May 27, 2011.

Project would be using and contaminating the water of Lake Titicaca, which was absolutely and demonstrably false since Santa Ana is not located near the Titicaca water basin.⁷³ Minister Sánchez never responded to my letter.

51. As for Mr. Ramírez's accusation that we abandoned the project site, it is untrue. We moved our office 5 km from the project site to the center of the town of Huacullani because it was more convenient to be based there, given the upcoming construction phase of the Santa Ana Project. We informed Mr. Ramírez of the move in accordance with our obligations under the ESIA process.⁷⁴ He did not respond to our letter.

IV. MEETINGS WITH GOVERNMENT OFFICIALS IN RELATION TO PERU'S ENACTMENT OF SUPREME DECREE 032

52. On June 22, 2011, a few days before Peru enacted Supreme Decree 032, Mr. Swarthout and I had a meeting with Mr. Gala at which he assured us that Peru would protect Bear Creek's legally acquired rights over Santa Ana.⁷⁵ Thinking back on that meeting, I am surprised that Mr. Gala did not refer to the documents that he supposedly received from Aymara leaders, or to the information that these documents allegedly contained, all of which he now describes in his Witness Statement.⁷⁶

53. Mr. Gala states that he attended meetings with Aymara leaders between June 17 and 23, 2011.⁷⁷ He explains that he was provided with documents at these meetings indicating that Bear Creek's acquisition of the Santa Ana mining concessions allegedly violated Article 71 of the Peruvian Constitution because the Company had supposedly acquired the concessions through a Peruvian citizen (Jenny Karina Villavicencio) before having obtained the requisite

⁷³ **Exhibit C-0171**, Bear Creek Letter to Pedro Sánchez, Minister of Energy and Mines, May 27, 2011. Moreover, the Santa Ana Project was designed as a zero-discharge project in which all of the water that was used throughout the mining and metallurgical processes would be recycled and reused.

⁷⁴ **Exhibit C-0172**, Letter from Bear Creek to Mr. Ramirez, May 11, 2011.

⁷⁵ Antunez de Mayolo Witness Statement, ¶ 20.

⁷⁶ **RWS-001**, Gala Witness Statement, ¶¶ 34-35.

⁷⁷ **RWS-001**, Gala Witness Statement, ¶ 34.

declaration of public necessity.⁷⁸ Mr. Gala refers to this information as constituting “new facts” that he had been unaware of.⁷⁹

54. Mr. Gala did not discuss any of this with Mr. Swarthout and I when we met on June 22. Even if he was handed these documents after our meeting, I am surprised that he didn’t call us to inform us of these “new” developments and request an explanation from Bear Creek. I am also surprised that Mr. Gala describes the facts regarding Bear Creek’s acquisition of the Santa Ana mining concessions as “new.” These were not new facts. In fact, I distinctly recall clearly explaining to Mr. Gala himself, at our meetings of March-June 2011, the precise manner in which Bear Creek had acquired the concessions. At that time, he did not voice any objection or concern whatsoever.

55. Moreover, Bear Creek has repeatedly provided this information to the Peruvian State. I know for a fact that the option agreements between Bear Creek and Ms. Villavicencio, as well as a document establishing Ms. Villavicencio as a company representative (*apoderada*), were all included in Bear Creek’s 2006 application to the Peruvian government for a declaration of public necessity.⁸⁰

56. In early 2011, misinformation regarding Bear Creek’s acquisition of the concessions was spread, which included criticism of our option agreements with Ms. Villavicencio. We decided to discuss this situation with Clara García Hidalgo, the Legal Advisor to the Minister of Energy and Mines. In addition to having extensive knowledge of, and experience with, Peruvian mining issues, she had approved the executive summary of our ESIA and our PPC. Thus, in May 2011, Mr. Swarthout, another Bear Creek executive, and I met with Ms. García.⁸¹ We discussed Bear Creek’s acquisition of the Santa Ana mining concessions, explaining the process in detail, including the fact that we had entered into option agreements

⁷⁸ **RWS-001**, Gala Witness Statement, ¶ 35.

⁷⁹ **RWS-001**, Gala Witness Statement, ¶¶ 35-36.

⁸⁰ **Exhibit C-0017**, Request from Bear Creek to MINEM soliciting the authorization to acquire mining rights located in the border area, Dec. 4, 2006.

⁸¹ **Exhibit C-0173** Email from T. Balestrini to E. Antunez de Mayolo, A. Swarthout, and M. Leduc, May 18, 2015.

with Ms. Villavicencio, who was a company representative and a Bear Creek employee. Ms. García told us that our acquisition of the concessions was proper and legal as far as she was concerned.

57. I also note that on May 30, 2011, *i.e.*, the same day that the evaluation process of our ESIA was suspended, MINEM issued Resolution No. 165-2011-MEM-DGM/V, directing Bear Creek to provide a copy of its 2006 application to the Peruvian government for a declaration of public necessity, which MINEM had apparently misplaced.⁸² I thought that this was a very strange request but we nevertheless complied with MINEM's order and sent them a copy of our application on June 3, 2011.⁸³

58. I am certain that the information that Mr. Gala describes in his Witness Statement as "new facts" was not new. It was known to the Peruvian government.

59. On June 24, 2011, there were statements and comments on several radio stations noting that Supreme Decree 083 would be derogated. Among them was Congressman Yohny Lescano's, in an interview in RPP Noticias, stating that a new supreme decree would be published on Saturday, June 25, 2011 in the official gazette El Peruano, which would revoke Bear Creek's acquired rights under Supreme Decree 083⁸⁴.

60. Ultimately, Supreme Decree 032 was issued on June 25, 2011, a Saturday. In light of Mr. Gala's testimony, the reference in the decree to "new circumstances" must have referred to the information contained in the documents that Aymaran leaders provided to Mr. Gala at some point between June 17, 2011 and June 23, 2011.⁸⁵ Yet, as I mentioned previously, when I filed a request with MINEM to obtain a copy of all documents related to the enactment of Supreme Decree 032, particularly regarding what constituted these "new circumstances,"

⁸² **Exhibit C-0174**, MINEM Report No. 442-2011-MEM-DGM-DNM and Resolution No. 165-2011-MEM-DGM/V, May 30, 2011.

⁸³ **Exhibit C-0175**, Letter from E. Antunez de Mayolo, Bear Creek, to the General Directorate of Mining, Jun. 3, 2011.

⁸⁴ **Exhibit C-0176**, "Yohny Lescano: Concesión a la minera Santa Ana quedo sin efecto," RPP NOTICIAS, Jun. 24, 2011.

⁸⁵ **RWS-001**, Gala Witness Statement, ¶¶ 35, 38.

MINEM responded that no such documents existed.⁸⁶ In fact, César Zegarra, a witness in this arbitration, specifically noted that “there is no report that served as a basis for the issuance of Supreme Decree No. 032-2011-EM.”⁸⁷ I am surprised that Peru advised us that no documentation or information whatsoever regarding the basis for the issuance of Supreme Decree 032 existed when we requested such information in August 2011.

61. As I mentioned previously, a few days after Peru enacted Supreme Decree 032, at the behest of Prime Minister Fernández, Mr. Swarthout, Miguel Grau, and I met with Minister Sánchez, Vice-Minister of Energy Luis Gonzales Talledo, and Mr. Gala.⁸⁸ Although Mr. Gala does not recall attending this meeting,⁸⁹ I can confirm that he was present. Mr. Gala denies stating at that meeting that “MINEM had no information or reason to believe that Bear Creek improperly acquired the Santa Ana Concession.”⁹⁰ He is right. As I mentioned in my first Witness Statement, it was Minister Sanchez who said this to us.⁹¹

62. Another meeting that I attended together with Mr. Diaz, and which I alluded to in my first Witness Statement,⁹² was with Vice-Minister of Energy and Mines, Guillermo Shinno, and César Zegarra. At this meeting, Messrs. Shinno and Zegarra admitted that the manner in which Bear Creek had acquired its mining concessions, through option agreements with Ms. Villavicencio, complied with applicable legal requirements. They candidly volunteered that Supreme Decree 032 had no valid legal basis and that Peru would lose if Bear Creek went to arbitration.

⁸⁶ Antunez de Mayolo Witness Statement, ¶ 23; **Exhibit C-0110**, Letter from E. Antunez, Bear Creek, to R. Wong, Secretary General of the Ministry of Energy and Mines, Aug. 10, 2011; **Exhibit C-0111**, Letter from R. Wong, Secretary General of the Ministry of Energy and Mines to E. Antunez, Bear Creek, Aug. 19, 2011.

⁸⁷ **Exhibit C-0111**, Letter from R. Wong, Secretary General of the Ministry of Energy and Mines to E. Antunez, Bear Creek, Aug. 19, 2011 at 7.

⁸⁸ Antunez de Mayolo Witness Statement, ¶ 21.

⁸⁹ **RWS-001**, Gala Witness Statement, ¶ 48.

⁹⁰ Witness Statement of Andrew Swarthout, May 28, 2015 (“Swarthout Witness Statement”), ¶ 58.

⁹¹ Antunez de Mayolo Witness Statement, ¶ 21.

⁹² Antunez de Mayolo Witness Statement, ¶ 25.

63. My Bear Creek colleagues and I met 44 times with Peruvian government officials between July 2011 and February 2014, and I attended 40 of those meetings.⁹³ These meetings were with President Humala, Minister Juan Jimenez, Minister of Energy and Mines Carlos Herrera Descalzi, Vice-Minister Susana Vilca, Minister of Energy and Mines Jorge Merino, Vice-Minister Guillermo Shinno, MINEM Legal Director César Zegarra, Minister of Energy and Mines Eleodoro Mayorga, and others. I reiterate that not once, during those 40 meetings, was it alleged that Bear Creek had improperly acquired its mining concessions or committed some other irregularity. To the contrary, the government officials that we met with were all apologetic for what had happened to Bear Creek and wanted to resolve the situation. It is frustrating to me that Peru never followed through on its promise. As a result of Peru's failure to act, Bear Creek was left with no choice but to initiate this arbitration.

V. THE COMMUNITIES SURROUNDING SANTA ANA SUPPORTED BEAR CREEK AND THE PROJECT

64. Peru suggests that Bear Creek failed to obtain the local communities' support for the Santa Ana Project. For example, Messrs. Gala and Ramírez both claim that Bear Creek did not work closely enough with the communities to let them familiarize themselves with the Project, which explains why they allegedly knew so little about it.⁹⁴ These accusations, however, do not at all reflect the reality of the situation on the ground at the time.

65. Bear Creek takes community relations very seriously and strives to develop a respectful relationship with the local communities before embarking on a mining project. In fact, the company's policy to make community relations a priority is one of the reasons that I decided to join Bear Creek. When I started in April 2010, it was clear to me that the communities surrounding Santa Ana supported Bear Creek and the Project. I traveled to the project site, spoke with community members about their expectations and concerns, and understood that they were in favor of the development of an environmentally responsible mining project to stimulate the local economy and provide much-needed jobs, which is precisely what Bear Creek intended to

⁹³ Antunez de Mayolo Witness Statement, ¶¶ 25-33.

⁹⁴ **RWS-001**, Gala Witness Statement, ¶¶ 24, 40; **RWS-002**, Ramírez Witness Statement, ¶ 13.

do. In addition, Bear Creek had already signed agreements with some communities, which formalized their support for the Santa Ana Project as well as Bear Creek's commitment to provide them with jobs, assist them in the development of sustainable projects, and respect their way of life.⁹⁵

66. My view of the situation regarding the communities' relationship with Bear Creek was confirmed when the Ministry of Environment's *Organismo de Evaluación y Fiscalización Ambiental* ("OEFA") visited the project site in December 2010, and produced a report summarizing its findings in January 2011.⁹⁶ OEFA reported that there was no social conflict between the communities and Bear Creek; to the contrary, it described their relationship as "harmonious."⁹⁷

67. Mr. Ramírez refers to OEFA and acknowledges that the communities never filed a formal complaint against Bear Creek before that body.⁹⁸ But he also notes that it is allegedly difficult for the communities to do so because of their remoteness, their ignorance of the law, and their illiteracy.⁹⁹ I disagree. The purpose of OEFA's visit was to interview community members who live close to the Project and get their impressions of the Project itself and of the Company. Thus, if community members had had any complaint relating to the Project, I am sure that they would have said something to OEFA.

68. On November 25 and 26, 2011, after Peru had enacted Supreme Decree 032, OEFA decided to return to the project site to verify that Bear Creek had properly complied with exploration closure procedures in light of the drilling program that it had implemented two years earlier.¹⁰⁰ As part of the process, OEFA again interviewed the local communities. In its

⁹⁵ See, e.g., **Exhibit C-0177**, Agreement between Condor Ancocahua and Bear Creek, May 23, 2009; and **Exhibit C-0178**, Agreement between Ancomarca and Bear Creek, Jul. 2, 2009.

⁹⁶ **Exhibit C-0143**, OEFA Report No. 008-2010 MA-SE/EP&S regarding the Santa Ana Project, Jan. 2011.

⁹⁷ **Exhibit C-0143** OEFA Report No. 008-2010 MA-SE/EP&S regarding the Santa Ana Project, Jan. 2011 at 4, 31. The OEFA Report describes Bear Creek's community relations as "good." The other categories are "bad" and "regular."

⁹⁸ **RWS-002**, Ramírez Witness Statement, ¶ 22.

⁹⁹ **RWS-002**, Ramírez Witness Statement, ¶ 22.

¹⁰⁰ **Exhibit C-0179**, *Acta de Supervisión Ambiental*, Nov. 25, 2011.

December 31, 2011 report summarizing its findings and providing its recommendations , OEFA concluded that the local communities had a good relationship with Bear Creek, and that Bear Creek was diligently following the required closure procedures.¹⁰¹ OEFA specifically noted that certain inhabitants of the Concepción de Ingenio community appeared to ignore that Peru had enacted Supreme Decree 032, and had asked OEFA inspectors when Bear Creek would be returning to the Santa Ana Project, expressing their hope that the company would soon return.¹⁰² In fact, when I visited the Santa Ana Project in April 2015, along with Bear Creek’s counsel in this arbitration, we were approached by community members who asked us why Bear Creek had left and when it would be coming back.

69. This is a far cry from the highly speculative picture that Peru tries to paint, insinuating that Bear Creek somehow lost the support of the communities and would not have been able to gain the social license to successfully develop the Santa Ana Project, even if MINEM had not suspended the ESIA evaluation process and Peru had not enacted Supreme Decree 032.¹⁰³ I disagree with that view entirely, and do not believe that it is accurate.

70. Peru alleges that the communities did not all support the Santa Ana Project, referring to two sets of letters submitted to the President, the Minister of Energy and Mines, and Congress on March 9 and 10, 2011.¹⁰⁴ But, in my opinion, those letters do not show any opposition from the communities that would have been directly impacted by the Project.

71. The first set of letters was drafted by the *Frente de Defensa de Recursos Naturales de la Región de Puno* (“FDRN”), an organization led by Walter Aduviri. The FDRN alleged that “[t]he mining company Santa Ana in Huacullani, upon initiating the mining

¹⁰¹ **Exhibit C-0179**, *Acta de Supervisión Ambiental*, Nov. 25, 2011; and **Exhibit C-0180**, OEFA Report No. 0011-2011 MA-SR/CONSORCIO STA regarding the Santa Ana Project, Dec. 31, 2011 at 15.

¹⁰² **Exhibit C-0180**, OEFA Report No. 0011-2011 MA-SR/CONSORCIO STA regarding the Santa Ana Project, Dec. 31, 2011 at 15.

¹⁰³ Respondent’s Counter-Memorial, ¶¶ 137-138, 183.

¹⁰⁴ Respondent’s Counter-Memorial, ¶ 92; **Exhibit R-15**, Memorials submitted by the Frente de Defensa and Kelluyo’s *Comunidades Campesinas* to Congress, Memorial No. 0005-2011-CO-FDRN-RSP, Mar. 10, 2011; **Exhibit R-16**, Memorials submitted by the Frente de Defensa and Kelluyo’s *Comunidades Campesinas* to the President of Peru, Memorial No. 0001-2011-CO-FDRN-RSP, Mar. 9, 2011; and **Exhibit R-17**, Memorials submitted by the Frente de Defensa and Kelluyo’s *Comunidades Campesinas* to the Minister of Energy and Mines, Memorial No. 0002-2011-CO-FDRN-RSP, Mar. 10, 2011.

operations, will have a direct impact on the rivers of Callacami, Mal Paso, Arenales and the nearby Mauri Grande and Mauri Chico rivers; and consequently the Bi-National Desaguadero River and our sacred lake, Titicaca.”¹⁰⁵ It also accused Bear Creek of the following:

One.- For this reason we request that **the Environmental Impact Analysis – EIA, submitted by the mining company, Santa Ana (Bear Creek Mining Company – Santa Ana Mining Project) be rendered null and void**, as it was overwhelmingly rejected by the population of the affected districts and provinces due to the eminent contamination of their areas and the jeopardization of the Titicaca-Desaguadero-Poopó-Salar de Coipasa Water System, in this case the sacred Lake Titicaca, the Desaguadero River feeding into Lake Poopó, thereby violating the bilateral treaties between Peru and Bolivia. Furthermore, it will have a direct impact on the agricultural, livestock and fishing industries of the southern Puno-Peru region and the entire area around the Desaguadero River in both Peru and Bolivia. It should also be mentioned that there will be a direct impact on the water resources throughout all above-mentioned jurisdictions of the affected provinces since the mine mentions the drilling of wells from which it will extract more than 35 liters per second (l/s) which will be used for the mining operations. In addition, we bring to your attention that they plan to use highly polluting chemicals such as cyanide, mercury and others.¹⁰⁶

72. The FDRN was described by Prime Minister Fernández as an extremist organization with political motivations.¹⁰⁷ She also characterized Mr. Aduviri as “a nefarious leader” who “has very bad intentions and deceives peoples,” and “takes advantage of the

¹⁰⁵ **Exhibit R-15**, Memorial submitted by the Frente de Defensa, Mar. 10, 2011, Whereas; **Exhibit R-16**, Memorial submitted by the Frente de Defensa, Mar. 9, 2011, Whereas; and **Exhibit R-17**, Memorial submitted by the Frente de Defensa, Mar. 10, 2011, Whereas.

¹⁰⁶ **Exhibit R-15**, Memorial submitted by the Frente de Defensa, Mar. 10, 2011, One; **Exhibit R-16**, Memorial submitted by the Frente de Defensa, Mar. 9, 2011, One; and **Exhibit R-17**, Memorial submitted by the Frente de Defensa, Mar. 10, 2011, One.

¹⁰⁷ **Exhibit C-0092**, Press Release, Presidencia del Consejo de Ministros, *Premier califica de inadmissible bloque de carreteras en Puno y pide deponer acciones violentas*, May 18, 2011.

situation.”¹⁰⁸ I agree with the Prime Minister, and do not believe that the FDRN or Mr. Aduviri should be considered as representing the Kelluyo, Desaguadero, Zepita, and Pisacoma communities. Communities are perfectly capable of making their voice heard on their own, without organizations like the FDRN ostensibly speaking for them. Moreover, the accusations contained in the letters, such as the claim that the Santa Ana Project would contaminate various rivers and Lake Titicaca, are demonstrably false, as we indicated in our responses to the observations of MINEM and MINAG to our ESIA,¹⁰⁹. To me, the letters do not show that the communities did not support the Santa Ana Project, but instead establish that Mr. Aduviri manipulated the communities by continuing to peddle baseless accusations.

73. The second set of letters was drafted by the *Comunidad Campesina* of Alto Aracachi, located in the Kelluyo District. The root cause of that community’s petition was a dispute with the Huacullani District over a piece land called “Ingenio,” which the Alto Aracachi community claims as theirs.¹¹⁰ However, the Huacullani District has repeatedly stated that the Santa Ana Project is located entirely on lands that belong to the district.¹¹¹ This land dispute predated Bear Creek’s involvement in the area and has nothing to do with the Santa Ana Project. Officially, the land belongs to the Huacullani District, which is why Bear Creek engaged with them, and not with the Alto Aracachi community¹¹².

74. The communities that form part of the Huacullani District, on which the Santa Ana Project was located, continued to support Bear Creek and the Project, despite the protests

¹⁰⁸ **Exhibit C-0097**, *Interview of Prime Minister Rosario Fernández*, Mira Quién Habla, Willax TV, May 31, 2011, [03:48] – [05:00] and [05:34] – [07:38].

¹⁰⁹ **Exhibit R-184**, Bear Creek’s Responses to the DGAAM’s Observations to the Santa Ana Project EIA, July 2011.

¹¹⁰ **Exhibit R-15**, Memorials submitted by the Frente de Defensa and Kelluyo’s *Comunidades Campesinas* to Congress, Memorial No. 0005-2011-CO-FDRN-RSP, Mar. 10, 2011 at 19/24, *Segundo*; **Exhibit R-16**, Memorials submitted by the Frente de Defensa and Kelluyo’s *Comunidades Campesinas* to the President of Peru, Memorial No. 0001-2011-CO-FDRN-RSP, Mar. 9, 2011 at 23/28, *Segundo*; and **Exhibit R-17**, Memorials submitted by the Frente de Defensa and Kelluyo’s *Comunidades Campesinas* to the Minister of Energy and Mines, Memorial No. 0002-2011-CO-FDRN-RSP, Mar. 10, 2011 at 19/24, *Segundo*.

¹¹¹ **Exhibit C-0181**, Letter from the *Primer Teniente Gobernador* of the Huacullani District to Juan José Alvarez Delgado, Puno Regional Council, Apr. 4, 2011; and **Exhibit C-0182**, Letter from the *Primer Teniente Gobernador* of the Huacullani District to Mauricio Rodriguez Rodriguez, President of the Puno Regional Government, Apr. 4, 2011.

¹¹² **Exhibit C-0183**, Ausenco Vector, Plano del Área de Influencia Social del Proyecto Santa Ana.

related to natural resource projects, led by Walter Aduviri, that took place in the first semester of 2011. For example, at the end of March 2011, Huacullani District representatives publicly denounced the protests, as well as the March 20, 2011 ordinance approved by the Puno Regional Council that purported to prohibit all mining activities in Puno.¹¹³ Braulio Morales Choquecahua, the Huacullani District mayor, stated that the ordinance would affect the development of the Santa Ana Project, which was the only source of jobs for the local communities in the area.¹¹⁴ He added that the communities were in constant contact with Bear Creek regarding the Project,¹¹⁵ contrary to what Messrs. Gala and Ramírez are now suggesting.¹¹⁶ In early April 2011, the *Primer Teniente Gobernador* of the Huacullani District reiterated his district's opposition to the protests and violence, which, he wrote, went against the development and progress of the community.¹¹⁷

75. It is also between March and May 2011 that Bear Creek began to finalize agreements with the landowners and possessors. Bear Creek had initiated these negotiations in 2010, and they had proceeded harmoniously throughout this time. On April 2, 2011, the Concepción de Ingenio community organized an extraordinary general assembly to discuss the transfer of land to Bear Creek.¹¹⁸ The general assembly reviewed a draft contract for that purpose, which more than two thirds of the voting members approved.¹¹⁹ Bear Creek was also negotiating agreements with the communities of Aconcagua, Challacollo, and Ancomarca. Thus,

¹¹³ **Exhibit C-0184**, “Comunidades de Huacullani Apoyan a Minera Santa Ana,” CORRO PUNO PRENSA PERU, Mar. 23, 2011; **Exhibit C-0185**, “Huacullani en contra de marcha antiminera,” LA REPÚBLICA, Mar. 29, 2011; **Exhibit C-0083**, “Rechazan intervención de dirigentes de zonas aledañas en tema de minera Santa Ana”, LOS ANDES, Mar. 29, 2011.

¹¹⁴ **Exhibit C-0185**, “Huacullani en contra de marcha antiminera,” LA REPÚBLICA, Mar. 29, 2011.

¹¹⁵ **Exhibit C-0083**, “Rechazan intervención de dirigentes de zonas aledañas en tema de minera Santa Ana”, LOS ANDES, Mar. 29, 2011.

¹¹⁶ **RWS-001**, Gala Witness Statement, ¶¶ 24, 40; **RWS-002**, Ramírez Witness Statement, ¶ 13.

¹¹⁷ **Exhibit C-0181**, Letter from the *Primer Teniente Gobernador* of the Huacullani District to Juan José Alvarez Delgado, Puno Regional Council, Apr. 4, 2011; and **Exhibit C-0182**, Letter from the *Primer Teniente Gobernador* of the Huacullani District to Mauricio Rodriguez Rodriguez, President of the Puno Regional Government, Apr. 4, 2011.

¹¹⁸ **Exhibit C-0186**, *Acta de Asamblea General Extraordinaria de la Comunidad Campesina de Concepción de Ingenio*, Apr. 2, 2011.

¹¹⁹ **Exhibit C-0186**, *Acta de Asamblea General Extraordinaria de la Comunidad Campesina de Concepción de Ingenio*, Apr. 2, 2011 at 14.

Peru is wrong to argue that Bear Creek had lost the support of the communities surrounding the Santa Ana Project.¹²⁰ To the contrary, the communities were supportive of Bear Creek to the very end, until we were forced to leave the area after Peru enacted Supreme Decree 032. In fact, the communities still support us and would like nothing more but for Bear Creek to return and continue with the development of the Santa Ana Project.

VI. PERU’S EX POST FACTO CRITICISMS OF BEAR CREEK’S RELATIONSHIP WITH THE COMMUNITIES SURROUNDING SANTA ANA ARE UNFOUNDED

76. Not only does Peru attempt to undermine, for purposes of this arbitration, the communities’ very real support for Bear Creek and the Santa Ana Project, Peru also criticizes Bear Creek’s community relations program. But these criticisms should be disregarded because Peru approved our PPC and the manner in which we were communicating with the communities regarding the Santa Ana project. Peru should not be afforded the opportunity to criticize Bear Creek’s methods four years after the fact, especially when it could have – and if it had had any legitimate concerns, would have – done so at the time, through the proper channels and in accordance with the applicable procedure. Indeed, Peru had the authority and the mechanisms, such as the OEFA reports, for example, to inform Bear Creek of any concern that it may have had regarding the company’s community relations. Yet, Peru never voiced any concerns regarding our community relations.

77. For example, Peru blames Bear Creek for awarding job posts to workers from the affected communities “without making comparable or even other beneficial arrangements with closely neighboring communities,” and that this had the divisive effect of alienating some communities from others.¹²¹ This comment reveals an obvious lack of experience in mineral project development. Given the relatively small size of the Santa Ana Project, the few available jobs that we could provide to the local communities during the exploration phase – when the drilling was taking place – had to be given to members of the communities on whose land we were drilling. Indeed, the communities agreed to grant the company access to their land for

¹²⁰ Respondent’s Counter-Memorial, ¶¶ 137-138, 183.

¹²¹ Respondent’s Counter-Memorial, ¶¶ 78, 86.

drilling purposes, provided that we employed their members. This is a normal arrangement in a mining project, especially at such an early stage where few personnel are required. The employment benefits to the neighboring communities would, as is typical, come once the Santa Ana Project was up and running. In any event, MINEM never once commented on our jobs program or suggested that our activities would have the effect of dividing the communities amongst themselves.

78. Similarly, Mr. Ramírez alleges that MINEM was very worried about the growing discontent among the local communities with respect to the Project, reporting that many of them, especially those that would be indirectly affected by Santa Ana, considered that they would not benefit from the Project, and felt excluded from the process.¹²² If what Mr. Ramírez is saying was true, the DGAAM, of which Mr. Ramírez was the Director General, had at its disposal the necessary authority, mechanisms, and professionally qualified staff to advise Bear Creek of its “worries” and to require the company to make any adjustments to the PPC that it saw fit. However, the DGAAM never spoke to Bear Creek or sent it any written communication in that regard.

79. After the DGAAM approved the executive summary of our ESIA and our PPC, I sent a letter to Mr. Ramírez himself at the beginning of every month informing him of the community relations activities that Bear Creek had carried out in compliance with the schedule set out in the PPC.¹²³ I never received any response or comment from Mr. Ramírez, or from anyone else at MINEM, regarding “concerns” related to Bear Creek’s community relations program.

80. Mr. Ramírez also suggests that Bear Creek should have organized workshops as a result of the expansion of our drilling campaign during the exploration phase.¹²⁴ I am surprised

¹²² **RWS-002**, Ramírez Witness Statement, ¶ 24.

¹²³ **Exhibit C-0187**, Letter from E. Antunez, Bear Creek, to F. Ramírez, DGAAM, Feb. 1, 2011; **Exhibit C-0188**, Letter from E. Antunez, Bear Creek, to F. Ramírez, DGAAM, Mar. 1, 2011; **Exhibit C-0189**, Letter from E. Antunez, Bear Creek, to C. García, DGAAM, Apr. 1, 2011; and **Exhibit C-0190**, Letter from E. Antunez, Bear Creek, to F. Ramírez, DGAAM, May. 3, 2011.

¹²⁴ **RWS-002**, Ramírez Witness Statement, ¶ 15.

by Mr. Ramírez’s statement in light of the fact that Bear Creek organized more than 130 workshops from the exploration phase of the Project until the submission of the PPC. These workshops are duly reported at Annex 2 of the PPC.¹²⁵ Mr. Ramírez’s allegations are factually incorrect and misleading.

81. Peru contends that it is not enough for Bear Creek to have complied with all applicable legal requirements, but that it should have taken additional measures, beyond what the law requires, to win the support of the communities.¹²⁶ For example, it refers to MINEM’s Guide to Community Relations and assumes, groundlessly, that Bear Creek failed to review and implement the recommendations contained therein.¹²⁷ It does not make sense to me that Peru is arguing in this arbitration that Bear Creek should be held to a higher standard than what the law requires. The community relations framework for mining projects in Peru is embodied in the mining company’s PPC and includes all legally relevant bases, including MINEM’s Resolution No. 304 on citizen participation in the mining sector and MINEM’s Guide to Community Relations. Bear Creek’s PPC was officially approved by the DGAAM and that is the roadmap that Bear Creek followed to strengthen community relations and develop the Santa Ana Project. As is obvious from the ESIA and PPC, Bear Creek went above and beyond what was legally required of it in terms of community relations.

82. Resolution No. 304 requires that a mining company must organize, in addition to a public hearing, at least one workshop before initiating the preparation of the ESIA,¹²⁸ and at least one workshop during the preparation of the ESIA.¹²⁹ Bear Creek organized 5 workshops before, and 5 workshops after, the preparation of the ESIA.¹³⁰ Bear Creek also organized more than 120 other workshops, from the exploration phase of the Project until the submission of the

¹²⁵ **Exhibit C-0155**, Ausenco Vector, *Plan de Participación Ciudadana* (“PPC”) de Bear Creek, Annex 2.

¹²⁶ Respondent’s Counter-Memorial, ¶ 61.

¹²⁷ Respondent’s Counter-Memorial, ¶ 63.

¹²⁸ **Exhibit R-153**, MINEM Resolution No. 304-2008-MEM/DM, Jun. 24, 2008, Art. 12.

¹²⁹ **Exhibit R-153**, MINEM Resolution No. 304-2008-MEM/DM, Jun. 24, 2008, Art. 13.

¹³⁰ **Exhibit C-0161**, *Informe No. 013-2011-MEM-AAM/WAL/AD/KVS*, Jan. 7, 2011.

PPC,¹³¹ in addition to numerous guided visits and participatory monitoring events. We truly put community relations at the front and center of the Project's development to ensure that the affected communities would support the Project, which they did. Peru is simply wrong to suggest that we did not take this aspect of the Project seriously.

VII. BEAR CREEK WOULD HAVE BEGUN CONSTRUCTION OF THE SANTA ANA MINE AT THE END OF 2011 AND THE MINE WOULD HAVE ENTERED INTO PRODUCTION IN THE FOURTH QUARTER OF 2012

83. Peru suggests that Bear Creek had to obtain other permits in addition to the ESIA before being able to operate a mine at Santa. I agree with that statement as well as with the chart included in Peru's Counter-Memorial indicating the permits that Bear Creek still required.¹³² However, I disagree with Peru's exaggerated allegation that among these permits, "there are many key authorizations that represent complex, discretionary regulatory decision-making points."¹³³ It is also not true, as Peru suggests, that "Bear Creek had made little progress toward obtaining the necessary permits and authorizations to start construction and operation of the mine."¹³⁴

84. Bear Creek had entered into an EPCM agreement with GyM related to the engineering, logistics, and construction management of the Santa Ana Project.¹³⁵ We had begun to work together and GyM had completed approximately 26% of its engineering work.¹³⁶ Bear Creek had already paid over half a million US dollars to GyM in that connection. Thus, the Santa Ana Project was in the EPCM/Construction/Commissioning phase, as per Table 4-2 of SRK Consulting's Expert Report,¹³⁷ *i.e.*, the Project's last phase prior to operation.

85. The remaining permits that Bear Creek needed in order to construct and operate the Santa Ana mine were not complicated to obtain. We had already submitted with the ESIA

¹³¹ **Exhibit C-0155**, Ausenco Vector, *Plan de Participación Ciudadana* ("PPC") de Bear Creek, Annex 2.

¹³² Respondent's Counter-Memorial, ¶ 185.

¹³³ Respondent's Counter-Memorial, ¶ 168.

¹³⁴ Respondent's Counter-Memorial, ¶ 193.

¹³⁵ **Exhibit C-0144**, Letter of Intent between Bear Creek and Graña y Montero, Mar. 3, 2011.

¹³⁶ **Exhibit C-0191**, Graña y Montero, Valuation of Works, Jun. 17, 2011.

¹³⁷ **REX-005**, Expert Technical Report of SRK Consulting, Oct. 6, 2015, ¶ 58, Table 4-2 at 12.

many of the documents that were required. Nor was their acquisition dependent on the discretion of Peruvian officials. These were technical permits that the administration had an obligation to deliver, provided that Bear Creek complied with the relevant requirements. In fact, I am not aware of a single mining company in Peru that had its ESIA approved but was later forced to cancel its project because it was unable to obtain one of the outstanding permits that Peru refers to in this arbitration. It is highly improbable that this would have occurred in Bear Creek's case.

86. It is also important to understand that Bear Creek could not begin the process of obtaining the majority of these remaining permits until its ESIA was approved. I note that Mr. Rodríguez-Mariátegui appears to agree with me on this point.¹³⁸ Thus, Peru's insinuations that Bear Creek had not done anything in respect of these additional permits are misleading.¹³⁹ Bear Creek did all it could prior to ESIA approval, and was well-prepared to file permit and license applications upon receiving such approval. Most of the information required for the submission of the outstanding permits and licenses is contained in the ESIA itself, so to suggest, as Peru does, that Bear Creek was somehow unprepared to move forward, is false.

87. Peru alleges that Bear Creek did not have permission from owners of the land to build and operate the mine.¹⁴⁰ But that is not true. In April 2011, the Concepción de Ingenio community approved entering into a land transfer agreement with Bear Creek. Bear Creek was also negotiating agreements with the communities of Aconcagua, Challacollo, and Ancomarca. I have no reason to believe that we would not have completed this process. We were dealing with community members that had a longstanding relationship with us. They were willing to do business with Bear Creek and supportive of the Santa Ana Project in general. Moreover, in my experience, if a mining company is able to successfully negotiate agreements with some of the owners or possessors, as we had done with the Concepción de Ingenio community, it incentivizes the rest into quickly entering into deals with the company. For example, for our Corani mining project, we bought the land where the ore-body was located in July 2011. In October of that

¹³⁸ **REX-003**, Rodríguez-Mariátegui Expert Report, ¶¶ 47-48, 108.

¹³⁹ Respondent's Counter-Memorial, ¶¶ 164, 185, 193.

¹⁴⁰ Respondent's Counter-Memorial, ¶¶ 186 *et seq.*

year, we had purchased the remaining land that we needed to develop the project. We were using the same action plan at Santa Ana, and I am confident that it would have worked, but for the DGAAM's suspension of the ESIA evaluation process and Peru's subsequent enactment of Supreme Decree 032.

88. Peru argues that Bear Creek had not yet obtained a Certificate of Non-Existence of Archaeological Remains ("CIRA") from the Ministry of Culture.¹⁴¹ Mr. Rodríguez-Mariátegui also claims in his Expert Report that when MINEM suspended the ESIA evaluation process, "it was unknown whether there existed any archaeological remains in the area."¹⁴² Mr. Rodríguez-Mariátegui is mistaken. The ESIA must include a report regarding the existence of archaeological remains in the project area. The report that we included in the ESIA identified nine archaeological sites, none of which were located in the areas of the principal components of the Santa Ana Project, *i.e.*, the pit, the plant, the waste rock deposits, and the leaching pad.¹⁴³ If any of the nine identified sites had later been confirmed to have been archaeological in nature, works would have been undertaken to ensure their isolation but, regardless, they would not have been affected by the operation of the Project. Considering that there were no archaeological sites within the Project's principle components, obtaining the CIRA would not have been a complicated matter.

89. Peru refers to the fact that Bear Creek would have had to develop a Mining Plan that MINEM would have had to subsequently review and approve.¹⁴⁴ Again, Bear Creek was prepared to submit its Mining Plan to MINEM upon approval of the ESIA. Bear Creek's Mining Plan was ready, given that the documents that make it up were already included in the ESIA and in the Feasibility Study, both of which had been completed.

¹⁴¹ Respondent's Counter-Memorial, ¶ 189. .

¹⁴² **REX-003**, Expert Report of Luis Rodríguez-Mariátegui Canny, ¶ 73.

¹⁴³ See **Exhibit C-0192**, ESIA Map 2.31.

¹⁴⁴ Respondent's Counter-Memorial, ¶ 190.

90. Peru refers to the fact that Bear Creek needed to build an electric transmission line and its own electric station, and adds that we had not done anything in that regard.¹⁴⁵ That last allegation is false. The construction of those two items required its own ESIA, and Bear Creek had initiated the process of obtaining the requisite approval for it. For example, we conducted community workshops in Huacullani and Pomata in connection with the electric transmission line.¹⁴⁶ At the same time, we were in discussions with ElectroPuno regarding the possibility for them to take care of the entire procedure, which was permissible.¹⁴⁷

91. Finally, Peru notes that Bear Creek still needed to identify a water supply source and apply for the corresponding licenses.¹⁴⁸ Bear Creek had identified an adequate water supply source with no adverse impacts on the environment. However, once again, Bear Creek could not apply for the corresponding licenses until its ESIA was approved.

92. In sum, until MINEM approved its ESIA, Bear Creek could not apply for the majority of the remaining licenses and permits that were required prior to the construction and operation of the Santa Ana Project. However, Bear Creek had progressed with the preparation and collection of the information that was required to obtain the remaining permits. Once its ESIA was approved, Bear Creek would have quickly been granted the outstanding permits, enabling it to commence construction of the Project by the end of 2011, and production in the fourth quarter of 2012.

93. Peru describes the above timeline as being “overly ambitious.”¹⁴⁹ I disagree. On the basis of my own mining experience in Peru, I firmly believe that, but for the DGAAM’s suspension of the ESIA evaluation process and Peru’s issuance of Supreme Decree 032, we would have begun construction on the Santa Ana mine by the end of 2011 and production in the last quarter of 2012. That timeline corresponds to the work schedule that GyM had drawn up in

¹⁴⁵ Respondent’s Counter-Memorial, ¶ 191.

¹⁴⁶ **Exhibit C-0193**, *Acta de Primer Taller Participativo, Línea de Transmisión*, Huacullani, Sept. 2, 2010; and **Exhibit C-0194**, *Acta de Primer Taller Participativo, Línea de Transmisión*, Pomata, Sept. 2, 2010.

¹⁴⁷ *See, e.g.*, **Exhibit C-0195**, Letter from E. Antunez, Bear Creek, to C. Falconi Salazar, ElectroPuno, Mar. 28, 2011.

¹⁴⁸ Respondent’s Counter-Memorial, ¶ 192.

¹⁴⁹ Respondent’s Counter-Memorial, ¶¶ 346 *et seq.*

its Technical and Commercial Proposal.¹⁵⁰ It is also in line with the development of other mining projects in Peru. For example, it took 20 months from the submission of its ESIA for the La Arena Project, which is a very similar project to Santa Ana in terms of capacity and process, to start the production phase (the pour of first gold). Likewise, as from the submission of the ESIA for the Corani project, it took nine months, from December 2012 to September 2013, for MINEM to approve it. The Corani project is a much bigger and more complex project than Santa Ana in terms of location, construction, metallurgy, environmental footprint, and a host of other factors.

94. As a result, given that Bear Creek had submitted its ESIA to MINEM in December 2010, our estimate that we would begin construction of the Santa Ana Project at the end of 2011 was reasonable, and in fact quite conservative.

* * *

I have prepared this witness statement in Spanish 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. Should my presence be required at the evidentiary hearing, I anticipate that I will give my testimony in Spanish.

Lima, Peru

January 8, 2016

Elsiario Antunez de Mayolo

¹⁵⁰ **Exhibit C-0196**, Graña y Montero Technical and Commercial Proposal for Bear Creek Mining Corporation's Santa Ana Project, Apr. 5, 2011, Master Schedule.