

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES**

*Legacy Vulcan, LLC*

v.

*United Mexican States*

**(ICSID Case No. ARB/19/1)**

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**PROCEDURAL ORDER NO. 8**

*Members of the Tribunal*

Prof. Albert Jan van den Berg, President of the Tribunal

Prof. Sergio Puig, Arbitrator

Prof. Guido Santiago Tawil, Arbitrator

*Secretary of the Tribunal*

Ms. Sara Marzal

*Assistant to the Tribunal*

Ms. Emily Hay

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22 June 2023

**I. INTRODUCTION**

1. Article 43(b) of the ICSID Convention provides:

Except as the parties otherwise agree, the Tribunal may, if it deems it necessary at any stage of the proceedings,

....

(b) visit the scene connected with the dispute, and conduct such inquiries there as it may deem appropriate.

2. ICSID Arbitration Rule 37(1) further provides:

If the Tribunal considers it necessary to visit any place connected with the dispute or to conduct an inquiry there, it shall make an order to this effect. The order shall define the scope of the visit or the subject of the inquiry, the time limit, the procedure to be followed and other particulars. The parties may participate in any visit or inquiry.

3. At ¶ 203 of its Counter-Memorial on the Ancillary Claim, Respondent requested the Tribunal to undertake a site visit of Claimant's lot La Rosita and Claimant's other lots:

*... la Demandada solicita respetuosamente al Tribunal que en ejercicio de sus facultades inherentes en la obtención de pruebas, lleve a cabo una visita in situ en La Rosita, y demás predios de la Demandante, a fin de que constate por sí mismo la dimensión de los impactos ambientales irreversibles que CALICA ha provocado.*

4. At ¶ 68, note 192 of its Reply on the Ancillary Claim, Claimant responded to Respondent's request:

While this is an unnecessary distraction that will further delay the issuance of the Award, Legacy Vulcan has no objection to such a visit if the Tribunal considers it necessary, since such a visit would not show the environmental harm Respondent alleges; just the opposite.

5. On 23 February 2023, the Tribunal advised the Parties that it considers a site visit may aid its further understanding of the Parties' dispute, and proposed two options for the timing of the visit for consideration by the Parties, with a view to avoiding delay to the proceedings.

6. On 10 March 2023, taking into account the Parties' views on the Tribunal's communication of 23 February 2023, the Tribunal proposed that a two-day site visit of all three of Claimant's lots would take place in the period 18-20 July, separate to the Hearing in this matter which would be held remotely.
7. On 13 April 2023, the Tribunal directed that the Pre-Hearing Conference would be held in person during the site visit, and the Parties were invited to factor that into the itinerary.
8. On 28 April 2023, following discussions between the Parties on a protocol for the site visit, the Parties provided a draft Site Visit Protocol in English and Spanish, including a number of disagreements and their respective positions. In accordance with paragraph 10.2 of the draft Site Visit Protocol, "[t]he Tribunal shall be requested to rule on those aspects on which there is no agreement between the Parties."
9. On 18 May 2023, the Tribunal held a case management conference with the Parties in relation to the draft Site Visit Protocol.
10. Further drafts of the Site Visit Protocol and its Annexes were submitted on 2 and 9 June 2023 respectively, in relation to which the Tribunal issued further directions on 14 June 2023.
11. On 21 June 2023, the Parties submitted the final draft Site Visit Protocol, subject to one final disagreement on the composition of the Parties' delegations for the site visit.
12. The Tribunal hereby resolves the final disagreement in relation to the draft Site Visit Protocol in favour of Claimant's proposed text, in line with the Tribunal's prior directions that admitted one PROFEPA official in Respondent's delegation, identified by the parameters specified.
13. In accordance with ICSID Arbitration Rule 37(1), the attached Site Visit Protocol sets out the scope of the visit, its timing, the procedure to be followed and other particulars.
14. As specified in paragraph 10.2 of the Site Visit Protocol, "[t]he Site Visit Protocol eventually established shall be recorded as a Procedural Order issued by the Tribunal."

**II. DECISION**

15. On the basis of the above, the Tribunal hereby decides as follows:
- (a) DIRECTS that the site visit shall take place in accordance with ICSID Arbitration Rule 37(1) pursuant to the Site Visit Protocol and its Annexes, attached hereto as part of this Procedural Order in English and in Spanish versions.
  - (b) INVITES the Parties to submit their respective lists of attendees for the site visit by Tuesday, 4 July 2023, as provided in paragraph 5.2 of the Site Visit Protocol.

On behalf of the Tribunal,



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Prof. Albert Jan van den Berg  
President of the Tribunal  
Date: 22 June 2023