

BEFORE THE INTERNATIONAL CENTRE FOR THE SETTLEMENT
OF INVESTMENT DISPUTES

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In the Matter of Arbitration between: :
:
FREEPORT-MCMORAN INC., :
:
Claimant, : Case No.
: ARB/20/8
v. :
:
REPUBLIC of PERÚ, :
:
Respondent. :
:
----- x Volume 3

HEARING ON JURISDICTION, MERITS, AND QUANTUM

Wednesday, May 3, 2023

The World Bank Group
1225 Connecticut Avenue, N.W.
Conference Room C1-450
Washington, D.C. 20003

The Hearing in the above-entitled matter
came on at 9:30 a.m. before:

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- MR. GUIDO SANTIAGO TAWIL
Co-Arbitrator
- MR. BERNARDO M. CREMADES
Co-Arbitrator

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C O N T E N T S

	PAGE
PRELIMINARY MATTERS.....	684
WITNESSES:	
RANDY DAVENPORT (Continued)	
Cross-examination by Ms. Carlson.....	684
Redirect examination by Mr. Ukabiala.....	826
Questions from the Tribunal.....	828
MARIA CHAPPUIS CARDICH	
Direct examination by Mr. Prager.....	840
Cross-examination by Mr. Alexandrov.....	850

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
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21
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P R O C E E D I N G S

PRESIDENT HANEFELD: Good morning. Welcome to Day 3 of the Hearing.

Are there any housekeeping issues Claimant wants to address?

MR. PRAGER: No housekeeping issues. Good morning. I just wanted to introduce a new face at the table, Scott Statham, who is the Vice President and Deputy General Counsel of Freeport-McMoRan.

(Comments off microphone.)

PRESIDENT HANEFELD: Welcome. Good morning. Anything from Respondent's side?

MS. CARLSON: No, Madam President. No housekeeping.

PRESIDENT HANEFELD: Perfect. Then we will continue with the cross-examination of Mr. Davenport.

RANDY DAVENPORT, CLAIMANT'S WITNESS, CALLED

(CONTINUED)

MS. CARLSON: Thanks very much.

CROSS-EXAMINATION

BY MS. CARLSON:

Q. Good morning, Mr. Davenport.

1 A. Good morning.

2 Q. When we--let's see. When we left off
3 yesterday, I think we made it to 1987.

4 A. Okay.

5 Q. I'm going to ask that we both--because I'm
6 guilty of this as well--try to keep ourselves as
7 concise and focused as possible, both in the questions
8 and the answers.

9 A. And I was also--

10 Q. There's a lot to talk about. I know you
11 love this Project.

12 A. And I was also reminded by the interpreters,
13 if I could slow down, because it was hard for them.

14 Q. Right. That, too.

15 A. And please interrupt me if I'm talking too
16 fast.

17 Q. Okay. I am also guilty of talking too fast.
18 So, my apologies in advance for that.

19 But also, if we can just really try to keep
20 the answers focused on the specific questions, and if
21 there's a need to add more detail, we can talk about
22 whether it's an appropriate time to do so, but we will

1 just be able to move faster and keep to our allotted
2 time as much as possible.

3 All right. So, 1987 is when you began
4 working for Phelps Dodge; correct?

5 A. Correct.

6 Q. Okay. And your positions for the next
7 13 years or so, until April of 2000, are in Arizona;
8 is that right?

9 A. Arizona and New Mexico.

10 Q. Okay. So, you joined SMCV in April of 2000
11 as General Manager of Operations?

12 A. Correct.

13 Q. And I think we established in February that
14 that was sort of a position that had been created in
15 the wake of Phelps Dodge's acquisition of Cyprus as
16 part of a process of sort of integrating the two
17 companies. So, you had a president of the Company who
18 was already in place from Cyprus, and you were going
19 to go there as General Manager, kind of the Number 2
20 position, to sort of bring the cultures together; is
21 that right?

22 A. Yes, I did. But there was nine different

1 mines, and they tried to do that with all the
2 different mines.

3 Q. Right. So, it wasn't just this Company?

4 A. It wasn't just the Company. It was all of
5 them.

6 Q. Right. But shortly after you arrived, the
7 President actually chose to depart, and so you took on
8 the title of Interim President; is that right?

9 A. Correct.

10 Q. Okay. And then after a period--I think six
11 to nine months--you became the President?

12 A. Correct.

13 Q. Okay. And that was your first position with
14 Phelps Dodge outside the United States; correct?

15 A. That is correct.

16 Q. Okay. And just because it's relevant for
17 some of documents that we'll get to later, if I recall
18 correctly, you were not fluent in Spanish at that
19 time?

20 A. No, I wasn't.

21 Q. Okay. Although you told us that your
22 Spanish improved over the course of your five years

1 there?

2 A. I practiced a lot. I tried to talk to
3 people, even if I sounded stupid, but, yeah, I worked
4 hard at it, and it was difficult. My kids were great
5 at it, but it was difficult for me.

6 Q. All right. And, given that, I assume that
7 you relied on your staff, your team at Cerro Verde,
8 such as Ms. Torreblanca and her colleagues, to both
9 keep you up-to-date on information and explain to you
10 the Peruvian political and legal culture; is that
11 right?

12 A. Really, I had two people. I had Julia
13 Torreblanca and I had Jorge Benavente, who was the
14 Human Resources manager, and they helped a lot, and it
15 was good because they kind of had differences. You
16 know, Jorge was maybe a little bit more reserved and
17 thought differently than Julia did, and so I got a
18 little bit of both sides of it. So, it was helpful,
19 yes.

20 Q. And did you have outside sources of
21 information to help you understand what was happening
22 around you in Perú?

1 A. Yeah, sure. We had--there was a guy named
2 John Youle, who would have--he sent out a weekly email
3 talking about what's going on in Perú, and then once a
4 month he would invite a Minister or somebody in to
5 talk to the mining group.

6 I had, of course, Buenaventura, one of the
7 largest mines in Perú. When I visited Lima, I
8 generally went and talked to Don Alberto and Jorge
9 Benavides, and obviously they gave me some insight of
10 what their perspective was of what was going on in
11 Perú.

12 Q. And just to make sure that we're--for
13 context, Buenaventura was--I believe is the largest
14 Peruvian mining company operating in Perú; correct?

15 A. That's correct. And at the time they
16 owned--I think it was around 9 percent, and then they
17 later put in more equity, and I think they ended up
18 with about 20 percent--

19 Q. Okay. So, the--

20 A. --of Cerro Verde.

21 Q. Sorry. So, the largest mining company in
22 Perú is one of your Shareholders; you're in regular

1 contact with their Chairman. That was Don Alberto
2 that you referred to?

3 A. Yeah, great guy.

4 Q. Okay. And I think you told us--well, sorry,
5 one further step.

6 Was SMCV--was Cerro Verde active in the
7 National Mining Society?

8 A. Yeah. That's correct. We're in the
9 National Mining Society.

10 And also, we had the General Managers of the
11 large mines. We would meet every two or three months
12 and have discussions about that. I was also on the
13 Board of TECSUP, which is a technical college, and the
14 Board people were generally heads of the mining
15 properties. So, I also had that communication with
16 those.

17 Q. And specific to the Mining Society, you said
18 you were active in the Mining Society. I assume
19 Buenaventura was as well?

20 A. Yeah. I think Roque, I think--the CEO, I
21 think he was the head of it there for a while.

22 You know, active, yes. I more or less--you

1 know, I would maybe go to a meeting once in a while,
2 but I would read what they published or things like
3 that. And they put on, you know, seminars and that
4 type of thing, and they invited me to talk a few
5 times.

6 Q. And so, jumping ahead into the kind of 2004
7 time frame, 2003-2004, when the Royalties Law is being
8 discussed.

9 A. Umm-hmm.

10 Q. Were you active in the Mining Society's
11 efforts to lobby with respect to the proposals?

12 A. Well, I kept up with what they were doing.
13 Did I go and, you know, meet with Congress or
14 legislators? Obviously, no, I didn't, but they were
15 very involved during that time period, correct.

16 Q. Right.

17 A. As were the Ministry and the GMs at the
18 different properties.

19 Q. Right. And just for reference, I mean,
20 that's entirely consistent what you told us in
21 February, so I just want to see if we can pop up on
22 the screen briefly your testimony from Page--Day 3 of

1 the Transcript, Page 662, Lines sort of 8-18 or so.

2 Oh, dear. That's small.

3 662 on Day 3.

4 We can even look at--if we can just zoom in
5 on Page 662, I think that will make it a little easier
6 for everybody to see.

7 This was, again--I asked you at the time,
8 you know, how are you getting your information? And
9 you talk about going to Lima often, part of the Mining
10 Society, and you refer to working--communicating with
11 Don Alberto to stay on top of these things?

12 A. Yes, and Jorge Benavente and Julia
13 Torreblanca and others.

14 Q. Right.

15 A. Politics in Perú were a topic. Even my
16 kids' friends--you know, my kids were 12, 13, 14--they
17 would talk politics. It was much different than I was
18 used to in the States.

19 Q. All right. So, let's talk about--let's get
20 to the heart of it. Let's talk about the Concentrator
21 Plant.

22 In your--and let's--this is going to be a

1 couple of questions about things before you got there,
2 so outside of your direct personal knowledge, but
3 things that I think you testified about in your
4 Witness Statement and that you would have learned
5 about at the time. But if there's anything you don't
6 feel comfortable answering, just say so. Okay?

7 So, one of the--the first thing we know
8 about the idea of a concentrator in Cerro Verde is
9 that, in 1979, Minera Perú built a pilot concentrator;
10 right?

11 A. I believe that's the date. I'm not sure.

12 Q. Okay. And that was a proof of concept.
13 They were basically seeing if the ore and the
14 metallurgy and the concept would work?

15 A. My understanding was it was a pilot plant,
16 and later on they expanded to 3,000 tons a day.

17 Q. Okay. And you mentioned in your direct
18 examination with in Mr. Ukabiala yesterday that in the
19 1993-1994 time period, in the Share Purchase Agreement
20 and in the privatization process for Cerro Verde, that
21 there was discussion of developing towards a
22 Concentrator Plant in that--at that time frame; right?

1 A. Are you saying we--are you talking about the
2 Pre-Feas and the Feasibility Study? I didn't follow
3 you.

4 Q. 1993-1994.

5 A. Oh, okay. So, repeat your question.

6 Q. Right. So, the time frame is 1993-1994.

7 A. Got it.

8 Q. We're talking about Minero Perú's
9 privatization of Cerro Verde.

10 A. Okay. Okay.

11 Q. And the--you mentioned in your discussion
12 yesterday that the Share Purchase Agreement at the
13 time had a mention of the possibility of a
14 Concentrator Plant.

15 A. Well, it had four phases. Three of them had
16 do with improving the--expanding the leaching
17 operation, and the fourth one essentially said "build
18 a Concentrator."

19 Q. Right. We can actually turn to Tab 29,
20 which is the SPA, the Share Purchase Agreement. It's
21 Exhibit CE-4, for the record. And specifically, we
22 are going to look at Appendix G.

1 If you want to do the paper copy, I will say
2 that the Appendix G is about 20 pages into the
3 document. I want to say it's PDF Page 18 or so.

4 Perfect. There we go. Okay.

5 And this discussion of Phase 4, this is
6 where I find it, is in Appendix G. You have Phases 1,
7 2, and 3 on the first page, and then Phase 4 is
8 discussed in a single paragraph on the next page.

9 Right. This top paragraph where you see
10 "Phase IV" in quotation marks.

11 So, this is the discussion of the
12 Concentrator Plant that you're talking about here;
13 right?

14 A. Yes, Phase 4; correct.

15 Q. Okay. And what we see described here is
16 a--I think in this proceeding, we've talked about
17 Concentrator Plant, it's described as a "grinding and
18 conventional copper molybdenum flotation circuit
19 capable of treating 28,000 tons per day of Primary
20 Sulfide ore."

21 Flotation circuit--"flotation," as I
22 understand it, is another word for--or we can use

1 interchangeably with "Concentrator"; is that right?

2 A. Well, I thought about this yesterday. There
3 was a question about--I talked quickly yesterday--I
4 talked about SX/EW, and it was questioned exactly what
5 that is.

6 If you want to take a few minutes, I'd be
7 glad to do a real quick nontechnical explanation of
8 the way you process copper. There's two ways.
9 There's flotation, and the other way is solvent
10 extraction and electrowinning. And the way you
11 probably--

12 Q. Right, but this is--what we're talking about
13 here is--

14 A. Yeah, to answer your question--

15 (Overlapping speakers.)

16 Q. As I said, what we were talking about here
17 is flotation, or the idea of the Concentrator approach
18 to processing Primary Sulfide?

19 A. Concentrator would be called "concentrator,"
20 "mill," "flotation circuit," yeah. They're all the
21 same thing.

22 Q. And the alternative is leaching, or the

1 "SX/EW" is another terminology?

2 A. Correct. Solvent extraction and
3 electrowinning, SX/EW.

4 Q. So, what we have here is we're talking about
5 a flotation or a concentrator, and with a capacity of
6 28,000 tons; correct?

7 A. That's what it says.

8 Q. All right. What was the capacity of the
9 built--plant that was built in 2006?

10 A. The one we built?

11 Q. Yep.

12 A. 108,000 tons a day.

13 Q. So, nearly four times as large?

14 A. Yeah. I mean, when you're building a
15 concentrator, size is everything, and you want to
16 build it as much as you can, especially when you have
17 a Resource the size that Cerro Verde had. So,
18 economies of scale. Economics.

19 Q. Right. And what was the--I may mangle the
20 technical term here, but what was the grinding or
21 crushing terminology that was planned for the plant in
22 1993? Was it HPGR, high-pressure grinding rolls?

1 A. Yeah, we looked at two circuits, a
2 traditional one, which is--

3 Q. In 1993.

4 A. Oh, in--oh, 1993? No. HPGRs were
5 not--well, they were used in different processes
6 like--different kinds of mineral, but for copper, no,
7 it wasn't used.

8 Q. Okay. So, in 1993, they were not planning
9 to use the same technology that you wound up using in
10 2006; correct?

11 A. It's pretty much the same thing. You have a
12 circuit that crushes--all you're trying to do is crush
13 this material down to sand size. So, you use a
14 crusher and ball mills, or you put in the HPGR, which
15 is a relatively new technology, but it's the same
16 thing.

17 The product is the same. You're trying to
18 grind it down to sand's consistency and then float the
19 copper.

20 Q. Do we know from this description what
21 technology they were planning to use in 1993?

22 A. Yes. It says conventional copper moly

1 flotation circuit. So--

2 Q. What kind of--

3 (Overlapping speakers.)

4 Q. I'm sorry?

5 A. It would be at the time--yeah, I don't know.

6 I wasn't there, but at the time, in '93, Concentrators

7 were a typical--some might call it a semi-autogenous

8 grinding circuit. So, they have a big grinding mill;

9 then they have ball mills followed up. So, it's the

10 same.

11 I guess I'm not sure what you're driving at,

12 but--

13 Q. Well, I think, actually maybe we can--I

14 think what I heard you just say is semi-autonomous

15 ball crushers, or SABC?

16 A. It's--we call it "SAG mill," so

17 semi-autonomous grinding, yeah, like--

18 Q. Right.

19 A. Whatever they called it in the Feasibility

20 Study, you have it in front of you. So, that's--you

21 know, there was an acronym for it. I call it a sag

22 mill and a ball mill.

1 Q. Okay. So, that's the technology you assumed
2 they were using in 1993, but in 2006, you moved on to
3 the newer technology, the HPGR?

4 A. Well, we looked at both, and--all the way
5 through Feasibility Study, and the reason we--

6 Q. But you--

7 (Overlapping speakers.)

8 A. Can I answer your question?

9 The reason we selected--

10 Q. I didn't ask you why we selected it. I just
11 asked you which one you used. I'm trying to--

12 A. Used for what?

13 Q. I'm trying to be concise.

14 A. That we constructed?

15 Q. Yes.

16 A. We constructed HPGRs, correct.

17 Q. Right. And in Paragraph 28 of your Witness
18 Statement, you explain that HPGR was a relatively new
19 technology for use in large copper processing plants,
20 and that your implementation of it would be the
21 largest in the world and a showcase for the Peruvian
22 mining industry.

1 So, this was something new?

2 A. HPGRs were not new, but in a large copper
3 circuit they were.

4 Q. All right. And it was new enough that you
5 actually had to go to Australia to check it out?

6 A. Yeah. It was controversial, whether to take
7 a new technology and, you know, gamble on
8 \$850 million. So, yes, we went to Australia.

9 I think I mentioned in my Witness Statement
10 we had person at Phelps Dodge who was thought to be
11 one of the Experts in the world on SAG mills, the
12 traditional way. And, you know, once he was
13 convinced--and the reason was because the ore at Cerro
14 Verde is hard. And so, the grinding was much more
15 efficient for power consumption. So, that's the
16 reason we went to HPGRs.

17 Q. Okay. But, again, just for process, I'm
18 going to ask you to focus on the question, because my
19 question was only: Did you go to Australia to check
20 it out? Right?

21 A. I'll try to do that.

22 Q. Thank you.

1 Okay. So, taking us back to 1993, we were
2 talking about what they were planning in 1993.

3 A. Okay.

4 Q. Okay. Whatever they had in mind, we do know
5 that Phelps Dodge didn't like or didn't--didn't think
6 very much of the prospects for such a Concentrator
7 Plant in 1993; right?

8 A. Phelps Dodge did not bid on the Project, no.

9 Q. Right. And one of the reasons they did not
10 bid on the Project, meaning they did not bid to buy
11 Cerro Verde, is because, in their assessment, it was
12 not economical to build and operate a Concentrator
13 there; correct?

14 A. That's what the Report says.

15 Q. Right. And that's their evaluation--

16 A. Well, I mean, it wasn't just--I think maybe
17 you misspoke there a little bit. They thought the
18 Project was not economic, whether they--whether it was
19 Building Concentrator or fixing the leaching
20 operation. They just felt like it wasn't economic.

21 But I wasn't part of that group that
22 evaluated it.

1 Q. But you testify about that in your Witness
2 Statement at Paragraph 16, where you say that, during
3 the privatization in 1993, Phelps Dodge had declined
4 to bid on SMCV, concluding in an internal evaluation
5 that: "The economic returns" from expanding SMCV's
6 operations to process the Primary Sulfides were
7 "unacceptably low."

8 A. Okay. But they would have looked at the
9 leaching operation, because it had both. So--

10 Q. Well, they chose not to bid on the company,
11 Cerro Verde?

12 A. Correct.

13 Q. Which had leaching operations in place?

14 A. Correct. And a mill.

15 Q. And they assessed the future prospects of
16 the Concentrator Plant, and they looked at all of that
17 and said "I'm not bidding"?

18 A. They looked at the operation and said, you
19 know, "Hey, can we make this work?" And, in their
20 opinion, they said no.

21 Q. Okay. So, seven years later, though,
22 because they acquired Cyprus, it's theirs anyway?

1 A. Well, isn't that amazing? Yes.

2 Q. There had been a whole series of Feasibility
3 Studies in the 1970s, 1980s, and 1990s, which I think
4 you told us last time had sort of varying degrees of
5 rigor, but all of which had suggested that this was
6 not an economical project, to build a Concentrator?

7 A. Yeah. There were seven of them. Some of
8 them showed, you know, a return of--I don't
9 know--like, 14 percent. Some showed a return of,
10 like, 2 percent. So, they were all over the board,
11 but generally speaking, looking at them, you know, it
12 wasn't--it appeared to be not economic at the time,
13 no.

14 Q. Right. And you're aware that Cerro Verde
15 entered into the Stabilization Agreement in February
16 of 1998; right?

17 A. Correct.

18 Q. All right. And in 1998, there was even a
19 Feasibility Study that said that this was not
20 economic; correct?

21 A. I can't remember when the last one was. Was
22 that the--I think you mentioned before the Bateman

1 one?

2 Q. That's correct.

3 A. Okay.

4 Q. Yeah. So, you discuss that at Paragraph 16
5 of your Witness Statement?

6 A. Yes. I don't remember what the economics
7 were at the time.

8 Q. We can look at Paragraph 16, Page 5 of your
9 First Witness Statement, where you describe that: "A
10 Feasibility Study that Bateman Engineering conducted
11 for SMCV in 1998"--sorry, end of the next page, last
12 sentence or so--"Feasibility Study that Bateman
13 Engineering conducted for SMCV in 1998 identified the
14 lack of affordable water and power as a major
15 challenge, even for a Concentrator that was one-fifth
16 the size that we eventually built."

17 So, actually, even smaller than they were
18 thinking of in 1993; right?

19 A. Yeah. So, it also says--the next line says
20 it was a negative Net Present Value. That's what I
21 said; I didn't remember what the economics were, but
22 based on that copper price, it evidently had a

1 negative Net Present Value.

2 Q. I'm not an economist, but that sounds bad.

3 A. I'm sorry?

4 Q. I said, I'm not an economist, but that
5 sounds bad.

6 A. Well, it's just financial analysis. It's
7 not that hard.

8 Q. Gotcha. All right. And so, when you
9 arrived in 2000, you were--actually, one of the things
10 that you were worried about was that the Government
11 might make you build a Concentrator Plant, or that
12 they were trying to insist that you had to; right?

13 A. If you're referring to that they sued us
14 because we didn't meet the investment commitment--is
15 that what you're referring to?

16 Q. That's right.

17 A. Oh, yeah. Sure.

18 Q. All right. Because you did not want to
19 build a Concentrator Plant at that point?

20 A. Well, I think the way we looked at it is,
21 you know, we invested the--we met the commitment to
22 invest, and they sued us. And I think I talk about

1 it--I can't remember if I talk about it in my Witness
2 Statement or not, but, you know, if you look at the
3 language, we kind of felt like, you know, "Hey, it
4 doesn't make sense to continue trying to force us to
5 invest in a project that wasn't economic."

6 And so, we eventually got together, the Vice
7 Minister helped pull us together, and we eventually
8 met, and they agreed that we met the commitment, and
9 we agreed to spend another \$50 million.

10 And we also--they insisted on a phrase in
11 there saying that we will continue to evaluate the
12 economics of the Concentrator and look for new
13 technologies to make it economic.

14 Q. All right.

15 A. In hindsight, that's exactly what we did.

16 Q. So, as I understand the Settlement
17 Agreement, you agreed to spend another \$50 million in
18 order not to be obliged to build a Concentrator Plant?

19 A. No, that's not the way I look at. I said we
20 agreed to spend \$50 million in the operation because
21 it was a--we couldn't agree that we met the
22 investment. And we said, okay, well, we'll spend more

1 money, and you will choose what to spend that money
2 on, and we'll continue to investigate and see if we
3 can figure out the Concentrator economics.

4 Q. Right. So, you'll choose--

5 A. That's how I would word it.

6 Q. So, you'll choose--I'm going to use your
7 words here--you'll choose what to spend the money on,
8 meaning, not necessarily on a Concentrator Plant?

9 A. You know, again, we would spend it on the
10 Cerro Verde operation.

11 Q. Okay.

12 A. And so, if that involved spending money on,
13 you know, some type of analysis of the Concentrator,
14 then we would, or if it meant that we could expand
15 Cerro Verde, we would.

16 Q. Okay. Well, let's talk about some of the
17 things that were happening in the Cerro Verde Project,
18 in your first couple of years there.

19 A. Okay.

20 Q. So, you arrive in April of 2000, and at that
21 point, as we've established, the operation is focused
22 on mining and processing Secondary Sulfides; correct?

1 A. Correct. Leaching.

2 Q. Right. And you described your mandate as
3 being to optimize the leaching operations?

4 A. Optimize and look to see if we could expand
5 it at lower cost.

6 Q. Right. And that meant that, to the extent
7 that you--sorry, that the Project encountered Primary
8 Sulfides, it had to treat them as--either avoid them
9 or treat them as waste?

10 A. That's correct.

11 Q. Okay. Now, in your First Witness Statement,
12 you discuss some of the steps that you took during
13 your first few years to optimize the leaching
14 operations. And I have just a couple of quick
15 questions about those. So, I'm going to turn us to
16 Paragraph 22 of your First Witness Statement. And
17 here you explain that one of the things you did to
18 improve the leaching operations was that you increased
19 the cutoff grade so that each--as I understand it,
20 each unit of ore could be processed more efficiently.
21 You would get more copper out of it?

22 A. Well, that's not the only reason you do it.

1 I mean, you try to set a cutoff grade. That's the
2 greater copper that you're going to send to the
3 processing plant. And so, what you try to do is
4 figure out what grade that is that essentially
5 maximizes the Net Present Value.

6 And so, it's a very common analysis done by
7 Mine Planning guys. And what you're doing is
8 optimizing the operation by increasing--finding the
9 best Net Present Value of the operation.

10 Is that maybe too complicated? I don't
11 know. But--

12 Q. No. Okay--

13 A. --it's a valuation. So, you do a set of
14 Mine Plans, and you run them all the way through the
15 end of the mine life, and what's the Net Present
16 Value? This. Then you raise the cutoff grade and run
17 the set of mine plans. Pretty soon--you keep raising
18 the cutoff grade, pretty soon you have way too much
19 waste mining, and it no longer becomes as economic as
20 before.

21 Q. So, maybe to correct myself, it would have
22 been more accurate to say that you're improving the

1 Cost effectiveness of the leaching, as opposed to--I
2 think I said "improving its efficiency."

3 It's not its technical efficiency; it's its
4 cost-effectiveness. You're finding the optimal Net
5 Present Value?

6 A. Financially, yes.

7 Q. Right. Now, that did not increase the
8 overall capacity of the leaching process, though, so
9 you were not required to apply for an expansion of the
10 Beneficiation Concession; is that correct?

11 A. Well, I think I talk about two different
12 projects. The first one was--

13 Q. Yeah, I'm focused on the one in
14 Paragraph 22, the first one--

15 A. Okay.

16 Q. --which is just about the cutoff grade.

17 And you say in the last sentence that,
18 because those improvements did not require you to
19 process any more ore through the Leaching Facilities,
20 but, rather, allowed you to process the same amount of
21 ore more efficiently with a higher grade copper, you
22 did not have to seek approval from MINEM to expand the

1 capacity of the existing Beneficiation Concession?

2 A. If I believe correctly, if you increased the
3 throughput, the crusher throughput, more than
4 10 percent, you had to expand the Beneficiation
5 Concession. So, we did not raise it more than
6 10 percent, the 31,000 tons.

7 Q. Right. And that's what I'm referring--the
8 crusher throughput is what I call "capacity."

9 Is that a fair terminology?

10 A. Well, I call it "crusher throughput" because
11 that's what the regulations said.

12 Q. Right. I'm just--I'm taking "capacity" out
13 of your Witness Statement, so I want to make sure that
14 we're on the same page.

15 A. Oh, okay.

16 Q. Right? Last line of paragraph 22?

17 A. "Expand the capacity." Okay.

18 Q. Right. If you--if the steps that you
19 described in Paragraph 22 had expanded the capacity or
20 the crusher throughput, your understanding is that you
21 would have needed to apply for and obtain an expansion
22 of the Beneficiation Concession; is that right?

1 A. That's correct.

2 Q. And then in the next paragraph,
3 Paragraph 23, you talk about another set of
4 improvements that expanded one of the leaching pads,
5 and it did result in a capacity expansion, from 31,000
6 to 39,000 MT/d?

7 A. Correct.

8 Q. Okay. And so, for that one, you did have to
9 get an expansion of the Beneficiation Concession;
10 correct?

11 A. Correct.

12 Q. Okay. And for that second step, was the
13 purpose of expanding the Beneficiation Concession to
14 get--to bring that new capacity under the
15 Stabilization Agreement?

16 A. Well, at that time, in my mind, first of
17 all, it was the Regulation. If we increased the
18 capacity beyond 10 percent, we had to expand the
19 Concession.

20 Was there talk about: Does this make it
21 stabilized? No. It never came up. It didn't make
22 sense that, okay, now we're going to process 8,000

1 more tons, and these tons would not be under the
2 Stability Contract.

3 I mean, it wasn't talked about, but I guess
4 it was implied, or logically you figured it was.

5 Q. But the improvements from the first step
6 that we talked about in Paragraph 22, those didn't
7 need--didn't involve any expansion of the
8 Beneficiation Concession either; right?

9 A. I think we already decided that. It didn't
10 increase the throughput more than 10 percent, so...

11 Q. Okay.

12 A. And you know, really, I explain there's two
13 projects. They are kind of really related. You know,
14 we increase the cutoff grade, and we are probably on
15 the limit there. We did some more analysis and said,
16 you know, hey, let's just increase the crusher. We
17 can make a lot more copper. So, that's what we did.
18 They are not totally separate. In a sense they were,
19 but they are a little bit--because we did the first
20 one, it allowed us to do the second one.

21 Q. Okay. And those two, or combined projects
22 had a significant impact on the copper production of

1 the plant; right? You say that in your last sentence
2 of Paragraph 23.

3 A. Yeah. Sure. It increased the copper
4 production. I believe we were at 190 tons a day of
5 copper, and we went to 230. So, I don't know,
6 whatever percent that is. I see it right there. Oh,
7 that's operating cost.

8 Q. Okay. So, now, let's move on to sort of the
9 early stages of thinking about a concentrator project.
10 And you explained to us in your direct examination
11 with Mr. Ukabiala some of the changes in power and
12 water availability that made that an interesting
13 proposition. I want to talk about the Pre-Feasibility
14 Study.

15 So, as I understand it, you and your
16 colleagues--was it both Phelps Dodge and Cerro Verde
17 or mostly the Cerro Verde team that prepared the
18 Pre-Feasibility Study in 2002?

19 A. It was done internally with--mostly us, at
20 Cerro Verde. We had help from Phelps Dodge, Jim
21 Vanderbeek, who was our local expert on milling,
22 concentrating. He helped us figure out the cost for

1 the mill. So, most of it was Cerro Verde employees.

2 Q. Okay. And if we think of Phelps Dodge and
3 Cerro Verde sort of as together, the pre-feasibility
4 study is done in house, and then if you go on to a
5 feasibility study, you turn to an outside consultant
6 like Fluor; is that right?

7 A. That is correct.

8 Q. So, if you get a positive readout from a
9 pre-feasibility study, then you go hire the outside
10 consultants?

11 A. Exactly correct.

12 Q. Okay. And that pre-feasibility Study, as I
13 understand it from when we talked in February, defines
14 the scope of the feasibility study. You are, in
15 essence, saying, we looked at this project, we think
16 this is really interesting, we think it's worth
17 checking the feasibility. So, Fluor, please go do a
18 more detailed or a more in-depth analysis of this
19 project.

20 A. Yeah. I think I explained the purpose of a
21 pre-feasibility study is, first, to see whether it's
22 economic to go to a feasibility study, which is a lot

1 more expensive and time-consuming. The second thing
2 is define the scope because you don't want engineers
3 that you're paying on time and materials to be
4 spending a lot of money on things they should not be,
5 that is not in their scope. Then thirdly, identify
6 what you need to do additional due diligence on. So,
7 that's the three primary purposes of a pre-feasibility
8 study, and I'm starting to talk too fast, so I will
9 try to slow down.

10 Q. One question, just since you mentioned it.
11 You said that the feasibility study is a lot more
12 expensive and time-consuming. Do you recall, on an
13 order of magnitude, the cost of the Feasibility Study
14 that was done in 2004?

15 A. Yeah. In 2004, it--the Pre-Feas was--I'm
16 thinking somewhere around--it depends on what you
17 include in the cost--you know, \$300,000 or \$400,000,
18 and the Feasibility Study was about 5 million, is what
19 I kind of remember.

20 Q. Okay. That is a bit different.

21 A. So, it is significantly different.

22 Q. Right.

1 A. I mean, the accuracy of a pre-feasibility
2 study is plus--generally plus or minus 30 percent.
3 The accuracy of a feasibility study, which is also
4 called a bankable feasibility study, is plus or minus
5 15 percent.

6 So, that's why it is more expensive.

7 Q. Sure. And since the Pre-Feasibility Study
8 is important--

9 ARBITRATOR TAWIL: Sorry. Excuse me.

10 Can--because the Transcript is probably not that
11 clear. So, you say in 2004 the Pre-Feasibility Study
12 was around what? 400,000?

13 THE WITNESS: I'm sorry. Could you repeat
14 the question?

15 ARBITRATOR TAWIL: Yeah. I mean. I'm
16 reading from the Transcript. You say in 2004 the cost
17 of the Pre-Feasibility Study was around \$400,000?

18 THE WITNESS: I don't remember exactly. I
19 would say 300,000 to 400,000. It depends on whether
20 you included the exploration drilling, if you wanted
21 to include that in the cost of the Feasibility Study.
22 But--I'm speaking in generalities, it is somewhere

1 around that neighborhood.

2 ARBITRATOR TAWIL: And the Feasibility Study
3 is about 5 million?

4 THE WITNESS: Yeah, about--today it would
5 probably be 10, 12 million.

6 ARBITRATOR TAWIL: Okay. Thanks.
7 Apologies.

8 MS. CARLSON: No, thank you.

9 BY MS. CARLSON:

10 Q. So, given the purpose that you have
11 described, or the role that you have described for the
12 Pre-Feasibility Study, I assume you want those
13 expensive consultants to have all of the information
14 in the Pre-Feasibility Study?

15 A. Yeah. It is important that they have the
16 information that is related to their scope. When we
17 went to Phelps Dodge in general, most companies do,
18 when you go to a feasibility study, you generally
19 assign, in our case, about 8 to 10 people of our
20 experts, experts in crushing, experts in milling,
21 electrical instrumentation. We assign them to a
22 project team, and that project team is led by a

1 project leader, and so, their role is to keep the
2 engineering company on task, make sure they follow the
3 scope of work. So, anything done in the
4 pre-feasibility study related to their scope of work,
5 sure.

6 But, you know, again, like I said, you know,
7 a pre-feasibility study's accuracy is plus or minus
8 30 percent. So, some of the information was
9 important, like what we thought the size of the mill
10 should be. Fluor needed to know that. Some of the
11 early stuff we did, you know, they're going to do more
12 work and they are going to define that.

13 Q. Okay. And we established, when we talked in
14 February, that you had no reason to and did not recall
15 withholding any part of the Pre-Feasibility Study from
16 Fluor. Do you recall that?

17 A. Yeah, I think--I'm sorry. Go ahead.

18 Q. I'm sorry. My question was, do you recall
19 that?

20 A. Yes. I think what I said was that anything
21 related--that was important for them or related to
22 their scope of work--I don't know if I used the word

1 "scope of work"--maybe you can pull it out on the
2 screen, but anything related to what they were
3 assigned to do, yeah, we would have shared it with
4 them.

5 Q. Well, let's look at what you did say, and
6 then I'm going to ask about the qualification that I
7 see you introducing now that you didn't introduce
8 then.

9 A. Well, I wouldn't say "qualification." But
10 go ahead.

11 Q. Okay. So, if we look at Day 2 of the
12 Transcript of the Cerro Verde Hearing, Page 655,
13 starting at Line 12. And we are going to read that
14 through to Page 656, Line 12. Starting at Line 12.
15 And let's just read through that together.

16 So, I asked you if Fluor--or I believe at
17 that point we were also talking about some other
18 consultants dealing with tailings dam and permitting,
19 would have had access to the Pre-Feasibility Study
20 analysis as well. There would have been no reason to
21 keep it from them. And you said, "There would be no
22 reason to keep it, if they needed to look at it."

1 A. That's exactly what I tried to say just now.
2 If they need to look at it, if it's within their scope
3 of work.

4 Q. And, just to finish the thought, were there
5 any parts of the--my next question was: "Were there
6 any parts of the Pre-Feasibility Study that you would
7 not have shared with those entities?" And you said,
8 "Not that I can think of, no."

9 And then we had a further exchange about
10 that at Page 771, Lines 1 to 6. Again, I asked you:
11 "Do you recall excising or removing portions of the
12 Pre-Feasibility Study or its annexes before showing
13 them to Fluor?"

14 Are you--do you wish to change that
15 testimony?

16 A. I'm not changing the testimony, no, but I
17 think I need to clarify it because I think you are
18 kind of misrepresenting what I'm talking about.

19 When you asked that question, what went
20 through my mind was, you know, if we had--for example,
21 if we had metallurgical testing that showed the ore
22 was three times as hard as what the rest of them,

1 would we hide that from Fluor? No. We would not hide
2 anything from Fluor. The point I made--I think I made
3 it in the redirect, I think that's the term, but in
4 the redirect is that, you know, first of all, Terry
5 Linde--had the day-to-day interaction with Fluor.

6 The Pre-Feasibility Study, I was pretty much
7 in charge of everything. When it goes to feasibility
8 study, I am in charge of my area, and that was the
9 environmental permitting, any type of social, any type
10 of legal things.

11 Terry Linde was in charge of Fluor. So, he
12 would have the day-to-day things. So, Terry Linde
13 would be the one that had the interaction, and he
14 would share that information with Fluor. We would not
15 hide something from Fluor, but again, these guys are
16 on a contract of time and materials, so that means
17 they have to stay on scope, and that's what I meant
18 earlier when I said, if they needed to look at it.
19 And I think in the indirect there, you know, did we
20 share confidential privileged information? Of course
21 not. We wouldn't share that with Fluor. We wouldn't
22 share it with anybody else. That was internal to

1 Phelps Dodge and Cerro Verde, so I think that's where
2 you were getting at here, and I think I clarified that
3 in my indirect.

4 Q. Okay. And if we look at the Pre-Feasibility
5 Study itself, which is--

6 A. The Pre-Feas?

7 Q. The Pre-Feas itself, yes.

8 A. Okay.

9 Q. It was going to be in Tab 8 of the binder,
10 but I realize that what is there is an excerpt, so we
11 need to actually look at the full exhibit, which is
12 not--I apologize--printed in the binders, but it is
13 Exhibit CE--928.

14 I think this is going to be okay for you,
15 because I understand you are mostly using the screen,
16 but if you need to see a hard copy, let us know and
17 we'll try to find one.

18 So, we've got--

19 A. Okay.

20 Q. So, I want to look in particular at the
21 Executive Summary, and that starts on Page 1, which is
22 PDF Page 18. Okay. And then one of the things that

1 we're talking about is if we move to Page 2, is it
2 your testimony that this is what the Pre-Feasibility
3 Study looked like when it was handed to Fluor?

4 A. I have no idea. Like I said, Terry Linde
5 would be the person that had the interaction with
6 Fluor, and again, he would give them information that
7 was relative to their scope of work. So, whether that
8 was given to Fluor, I cannot answer that.

9 Q. Do you--

10 A. I did not.

11 Q. So, you did not--

12 A. I did not hand the Pre-Feasibility to Fluor.
13 Again, that would be handled by Terry Linde, and
14 again, he would be--they are very careful in making
15 sure these engineering companies stick to their scope
16 of work, and so he would have--have done that.

17 Q. Okay. So--

18 A. I don't know if that answered your question
19 or not.

20 Q. One of the things that we've talked about
21 and we will talk about some more is the fact that the
22 Feasibility Study by Fluor assumes that the

1 stabilization will extend to the Concentrator Plant?

2 A. The Feasibility Study that Fluor helped put
3 together--I mean, it is still Phelps Dodge and Cerro
4 Verde's Feasibility Study. They are the main
5 engineers, but the one that we put together, yes.

6 Q. Right. "The one that we put together"?

7 A. "We" being Cerro Verde, Phelps Dodge, with
8 the assistance of Fluor, and other engineering
9 contractors.

10 Q. The 2004 Feasibility Study?

11 A. Correct.

12 Q. Okay. So, that--

13 A. I'm just trying to clarify. It is not
14 Fluor's Feasibility Study. It is ours.

15 Q. Okay.

16 A. I mean, Fluor helped us in the engineering.
17 We did--Cerro Verde did a lot of work. Phelps Dodge
18 did a lot of work, so it's Phelps Dodge's Feasibility
19 Study. So, it is not Fluor's.

20 Q. Okay. And that Feasibility Study assumed
21 that the stabilization extended to the Concentrator
22 Plant?

1 A. Correct.

2 Q. The 2002 Pre-Feasibility Study assumed that
3 the stabilization extended to the Concentrator Plant
4 as well; correct?

5 A. I believe the Pre-Feas, we were unsure about
6 the reinvestment of profits and how you would
7 repatriate those profits back, and so we decided to
8 show that as a sensitivity until we could do due
9 diligence during the Feasibility Study.

10 Q. I want to distinguish between the profit
11 reinvestment--

12 A. Okay.

13 Q. --and the application of the stabilization
14 to the Concentrator Plant going forward.

15 A. Okay. All right. You said "Stability
16 Contract," so I had assumed you were talking about
17 both.

18 Q. Okay.

19 A. So, I guess maybe you need to repeat the
20 question.

21 Q. Sure.

22 So, did the 2002 Pre-Feasibility Study

1 assume that stabilization extended to the Concentrator
2 Plant itself going forward?

3 A. And in the--could you define the
4 stabilization? Does that not include the reinvestment
5 of profits or not?

6 Q. So, the profit reinvestment question is, can
7 we take profits that the Company is currently making
8 from the Leaching Pad--

9 A. I know what is. I'm asking the question.

10 Q. --and use those to build the Concentrator
11 Plant? That's one question.

12 The second question is, does the
13 Stabilization Agreement apply to the Concentrator
14 Plant going forward so that, for example, its tax
15 rates are stabilized?

16 A. Okay. Yes.

17 Q. Okay. So, distinguishing those two
18 questions--

19 A. Got it.

20 Q. --are both--which or both were assumed in
21 the 2002 Pre-Feasibility Study?

22 A. From what I remember, I think it says--well,

1 maybe it's redacted. I don't know. But what I
2 remember is that the--again, you want me to separate
3 the two; correct?

4 Q. Please.

5 A. Okay. The reinvestment of profits was shown
6 as a sensitivity because we didn't fully understand
7 how we could bring the profits back--to repatriate the
8 profits back to the parent company. So, we said, hey,
9 let's show it as a sensitivity. And then during
10 feasibility where we do more due diligence, we'll
11 figure that out, how to do that.

12 Now, the second one, did it assume the tax
13 rate that was with the Stabilized Tax Regime? Yes.

14 Q. Okay. And then that same assumption, as I
15 understand it, was included in the Feasibility Study?

16 A. In the Feasibility Study we figured that
17 with clarity from the MINEM that we--how to repatriate
18 the funds so they both were shown in the Feasibility
19 Study, correct.

20 Q. Okay. So, as to the second question, the
21 application of the Stabilization Agreement, which
22 seems to have been redacted out of this document, is

1 it your testimony that Fluor came up with that
2 assumption on their own?

3 A. Can you repeat what was redacted? I
4 guess...

5 Q. We don't know.

6 A. Oh, okay.

7 Q. That's the first point.

8 A. So, you're assuming what is in there, and
9 you're asking me to assume what was in there?

10 Q. Right. So, let's assume that what's
11 redacted--because in addition to the Executive
12 Summary, I should say that we see from the appendices
13 that there is a legal opinion that has been removed
14 and that we have not received the appendix about the
15 Stabilization Agreement, stabilization law.

16 So, we are assuming, as best we can guess,
17 that what is here is the legal analysis of the
18 Stabilization Agreement.

19 A. Okay. If that's what you are assuming, it
20 is redacted, so I would also assume that is privileged
21 information, so, yeah.

22 Q. Right. So, I'm trying to figure out how it

1 is that in 2002 Fluor can come to a conclusion about
2 the application--

3 A. Wait, wait, wait. This is the
4 Pre-Feasibility Study. We--go ahead.

5 Q. Pardon me. I misspoke, and I'm going too
6 fast.

7 A. Okay. This is the Pre-Feasibility. Fluor
8 did not get involved in the Pre-Feasibility Study.

9 Q. All right. Yes.

10 (Interruption.)

11 Q. Right. I will repeat and correct my
12 question. I'm trying to figure out how in 2004,
13 without seeing this legal analysis, since you say that
14 you think it was redacted, Fluor came to the
15 conclusion or came to the assumption that the
16 Stabilization Agreement applied to the Concentrator
17 Plant. Because the suggestion is that they didn't get
18 this legal analysis. It was redacted this way.

19 A. Okay. What I'm looking at here is a
20 Pre-Feasibility study.

21 Q. Right.

22 A. Okay.

1 Q. And you're saying that--

2 A. Now could you ask that again, so I maybe
3 understand? I shouldn't be looking at this. You're
4 talking about the Feasibility Study?

5 Q. All right.

6 A. I guess I don't follow.

7 Q. Step by step. 2002, analysis of the
8 Stabilization Agreement is, we assume, redacted, not
9 given to Fluor.

10 2004, Fluor, not having received this
11 information, makes an assumption about the application
12 of the Stabilization Agreement.

13 A. I don't know that I would word it that way.
14 You know, they--Cerro Verde and Phelps Dodge, we did
15 our due diligence, and we felt that we had
16 confirmation that the new Concentrator would be
17 stabilized, so the decision was made to include it in
18 the Feasibility Study. You know, Fluor is an
19 engineering company, you know. We pay them money to
20 go help design this Concentrator. But it is our
21 Feasibility Study. It is not Fluor's.

22 Q. Okay. One--actually, while we're here and

1 because we have been talking about the Profit
2 Reinvestment Program, I want to take a look at--in
3 this same document, move on to Pages 16 and 17 of the
4 Executive Summary, and in the PDF that is Pages 35 and
5 36.

6 Here we find a nonredacted discussion of the
7 Stabilization Agreement. And this first--take the
8 time to read it if you need it.

9 A. No, I'm pretty familiar with it. Go ahead.

10 Q. Okay. So, these first paragraphs just seem
11 to describe the Stabilization Agreement, or the
12 Stabilization Agreements, I should say, in plural.
13 And then the discussion that follows on the next page
14 is all about the Profit Reinvestment Program. And if
15 we look at the first paragraph on the top of Page 17,
16 it's discussing the Profit Reinvestment Program, and
17 it's talking about the analysis of how SMCV's existing
18 profits from the leaching operations can be used
19 to--I'll summarize--pay for the new Concentrator Plant
20 in a tax-advantaged way. I'll leave it at that,
21 unless we need to go into more detail.

22 A. Well, I think that it's an incentive by the

1 Government to reinvest in your mining operation. So,
2 that's what it is for.

3 Q. Right. And this Profit Reinvestment
4 Program, this option, if we see at the third
5 paragraph, sort of the third full paragraph on
6 Page 17, indicates that the availability of that
7 benefit has a significant effect on the economics of
8 the new project; right? It has a material impact on
9 the NPV.

10 Do you recall that?

11 A. I see it right there. Correct.

12 Q. Right. And you remember that--

13 A. Oh, sure.

14 Q. --that dynamic? Okay.

15 That, though, as we said, is about the
16 Profit Reinvestment Benefit; right? That's different
17 from the question of stabilizing the tax, royalties,
18 whatever else regime, of the Concentrator Plant going
19 forward.

20 A. They both had a significant effect on the
21 economics.

22 Q. But I don't see any discussion here of the

1 economic impact of anything other than the Profit
2 Reinvestment Program.

3 A. Okay.

4 Q. And this is the Executive Summary of the
5 Stabilization Agreement and its relevance to this
6 Project. Am I missing anything? Do I see anything--
7 (Overlapping speakers.)

8 A. I don't know. I mean--but what is the
9 question? It talks about, we did not include this in
10 the economics, and so we made a statement there saying
11 that it could have a significant effect on the
12 economics, and that's what it says.

13 Q. Okay.

14 A. So...

15 Q. To be clear, the profit reinvestment would
16 have that--

17 A. Yeah, right, because we did not include it
18 in the economics.

19 Q. All right. So, we--so, this is the
20 Pre-Feasibility Study. I'm going to move on to the
21 Feasibility Study, which is in May of 2004, completed
22 in May of 2004.

1 But I want to actually ask you about
2 Paragraph 26 of your First Witness Statement because
3 there was a phrasing here that I thought was
4 interesting. And that is that you convinced Phelps
5 Dodge to hire Fluor to do the Feasibility Study.

6 Why did they take convincing?

7 A. "I ultimately convinced Phelps Dodge to hire
8 Fluor." Well, we--well, you know, Phelps Dodge is--we
9 did Pre-Feasibility Study and, you know--when we did
10 the Pre-Feasibility Study, Cerro Verde wasn't even on
11 the radar screen to have some major expansion. It was
12 actually El Abra in Chile. And so, we did the
13 Pre-Feasibility, and I think we surprised them. Like,
14 oh, God, do want to invest that much more, you know,
15 money in Perú and everything else?

16 So, that was what I meant by "convinced"
17 them--not necessarily to hire Fluor, but to convince
18 them to do a Feasibility Study. That would have been
19 better wording than "Fluor," but that's who we ended
20 up picking.

21 Was that the confusion?

22 Q. Well, I wasn't taking that as any sort of

1 condemnation of Fluor.

2 A. Okay. Right.

3 Q. I was just more interested in the fact that
4 it took some work to get them to move on to the
5 Feasibility Study.

6 A. Oh, yeah, I mean, we went to several
7 meetings and talked about it, and I said, you know,
8 we've got this opportunity here. You know, we can, we
9 can make this into a major project, a major mine. So,
10 yeah, I mean, I had a lot of discussions with them.

11 Q. All right.

12 A. And you know, of course, like I mentioned
13 before, they are somewhat of a conservative company,
14 and you know, sometimes they play the devil advocate.
15 Well, why do you want to do this? Would you invest
16 \$850 million? That type of thing. So, that's where
17 the word "convince" comes from.

18 Q. And I mean, I think that is consistent with,
19 also, how you described the process of then actually
20 moving on, of course, after the Feasibility Study, to
21 the actual decision to proceed with the Project. You
22 again use that word, "convinced."

1 A. Yeah, the biggest debate--I think they were
2 on board proceeding, but the biggest debate at that
3 time was, really, do we build a 50,000-ton?--at that
4 time we didn't--hadn't decided on HPGRs--but do we
5 build a 50,000-ton-a-day concentrator, or do we build
6 a 100,000-ton-a-day concentrator? So, that was the
7 biggest debate, really, with Phelps Dodge.

8 I think the results of the Feasibility
9 Study, they were convinced that, you know, hey, this
10 is a good project and we should do it. But they
11 didn't know if they wanted to spend that much more
12 money, and ultimately they went out for equity funding
13 and made it happen.

14 Q. All right. Right. Just to make sure that
15 we're on the same page, so if we look at your February
16 testimony, Day 3, Page 648, we had sort of a similar
17 discussion about the process of getting Phelps Dodge
18 on board.

19 Starting at Line 14 on Page 648. And my
20 question was, you know, we have the Feasibility Study,
21 and you have--at least you have Fluor's opinion that
22 it is feasible to proceed with the Concentrator

1 Project. And then you respond that you had Phelps
2 Dodge, Cerro Verde, and Fluor's opinion. That was
3 your point about this being your Feasibility Study,
4 that showed economics, and you just needed to convince
5 Phelps Dodge to agree to build the Project.

6 A. Okay.

7 Q. So, that sounds consistent with what you
8 just told me.

9 (Overlapping speakers.)

10 A. That's kind of what I said, yeah.

11 (Interruption.)

12 (Stenographer clarification.)

13 Q. I said that sounds consistent with what you
14 just explained.

15 A. Correct.

16 Q. And back to your point about Phelps Dodge
17 being sort of conservative, I think that also echoes
18 with the discussion that we had in February about--I
19 think it came up in the context of explaining why your
20 predecessor had left. I think the phrase--

21 A. Yeah. A little bit. It was more a culture
22 thing, difference in culture between Cyprus--and I

1 think maybe--let me just touch on it a little bit.

2 The predecessor left after I got there,
3 three months. You know, he--we worked together for, I
4 don't know, like 15 years, in Phelps Dodge, and we
5 were actually friends, played golf, and that type of
6 thing. And he left because he liked the culture of
7 Cyprus, and Cyprus had another guy that we used to
8 work with, Jeff Clevenger, who was the number-two guy
9 in charge. It was just a different culture, I mean,
10 it was more, let's go out and kind of figure these
11 things out and let's go have fun and do it. That was
12 the culture. That is what attracted him to Cyprus.
13 When PD bought them, he said: "I don't think I can
14 handle this. I'm going to go."

15 Q. And I think the phrase you used when we were
16 discussing this in February--just for the sake of the
17 Transcript, it is Page 606, Lines 15-18--was "old
18 fashioned." We don't need to go look at it now. Does
19 that sound right?

20 A. Yeah, I said that, and I said, you know, a
21 better word is "conservative."

22 Q. Okay. Fair enough.

1 A. And you said "fair enough" then.

2 Q. Yep. All right. Okay. So, you have
3 persuaded--we are in May of 2004. You have persuaded
4 Phelps Dodge to proceed with the Feasibility Study,
5 Fluor Canada has completed it in May of 2004 and
6 decided that it would be feasible to proceed with a
7 108,000- ton--

8 A. Metric ton.

9 Q. Metric tons--apologies--capacity
10 Concentrator Plant. And that is--well, all right.

11 So, in--to circle back, when we talked about
12 it, we talked about the fact that in the 2004
13 Stabilization Agreement--sorry, 2004 Feasibility
14 Study, both the May version and then in your Witness
15 Statement you also explained that in the update later
16 in the year in September 2004, both of those assumed
17 that the Concentrator Plant would be stabilized;
18 right?

19 A. Correct.

20 Q. Okay. And that assumption principally plays
21 in through the financial analysis; correct?

22 A. Correct.

1 Q. Okay. And that was a financial model
2 prepared by Phelps Dodge?

3 A. Correct, yes.

4 Q. Okay. So, Fluor doesn't claim to have
5 audited that or to--to separately have investigated
6 its tax treatment or accounting standards; right?

7 A. I don't remember how they mentioned it in
8 the Feasibility Study, but the financial model that
9 Phelps Dodge uses has been audited by Pricewaterhouse,
10 whether Fluor went there. I think--it seems I either
11 remember they said something about they checked to
12 make sure the numbers were calculating correctly, or
13 something along those lines, but I'd have to refer to
14 that document, exactly what they said.

15 Q. Sure. Well, we can take a quick look at it--
16 -

17 A. Okay.

18 Q. --just for the benefit of all involved.

19 That is at Tab 9, it's Exhibit CE-20, which
20 is the 2004 Feasibility Study and Page 14-1, which is
21 Page 3 in the excerpt that's in the binder. It is
22 actually Page 153 in the full PDF. Here it describes

1 that the financial analysis is an internal proprietary
2 Phelps Dodge economic model, and Fluor specifies,
3 throws in the caveat that auditing from the standpoint
4 of taxation or accounting is not within Fluor's scope
5 of services. You said in February that PwC audited
6 the financial model, but they didn't state a view on
7 the Stabilization Agreement.

8 A. You said a lot there. Could you ask a
9 question?

10 Q. Sorry. I'll break that into pieces.

11 A. Sorry.

12 Q. Sure. So, looking at this document, this is
13 Fluor's--well, this is the Feasibility Study--

14 A. Right.

15 Q. --description of the modeling question.
16 Right. So, we were saying the financial analysis
17 model is developed by Phelps Dodge. That is up in the
18 first paragraph, first line of the first paragraph.

19 Then the first line of the second paragraph
20 says that it is a proprietary, internal Phelps Dodge
21 product that has been used for project evaluations
22 since 2001. Fluor has reviewed the model and is

1 satisfied about its mathematical functions and its
2 cash flow, but that auditing from the standpoint of
3 taxation is not within Fluor's scope of services.

4 And it's been performance-tested by PwC, and
5 I think we concluded--we agreed in February that there
6 is no discussion here of PwC or Fluor having said
7 anything about the Stabilization Agreement.

8 Does that sound familiar to you?

9 A. That Fluor and Pricewaterhouse did not say
10 anything, did not say anything about the
11 stabilization?

12 Q. Well, let's take PwC, first.

13 A. Okay.

14 Q. Okay. I think for efficiency's sake, I'll
15 just throw the Transcript reference in there, because
16 I don't think we need to spend time looking.

17 A. I think I said I have no idea.

18 Q. Okay.

19 A. Is that what you want me to say?

20 (Overlapping speakers.)

21 A. Okay. I had no idea whether Pricewaterhouse
22 did anything.

1 Q. Okay.

2 A. It is out of my scope.

3 Q. That's fair.

4 And the Transcript reference I have in mind,
5 I'll put in just for the record, is Day 3, Page 652,
6 Lines 15-22.

7 So, this 2004 period, though, May to
8 September of 2004, is also when you've told us that
9 there was uncertainty and concern about the scope of
10 the Stabilization Agreement internally at Phelps Dodge
11 and, as we understand, also at Sumitomo; right?

12 A. Are you talking about the political climate
13 in 2003 and '04? Is that what you're talking about?

14 Q. Well, we know that in 2004 the Company
15 decided that you needed to seek additional
16 confirmation or assurances?

17 A. Oh, okay.

18 Q. Right. Why was that?

19 A. Why was that? That was the question?

20 Q. Briefly. Please.

21 A. That's a hard question to be brief.

22 2003 and '04, I mean, here we are--we were

1 doing the Feasibility Study. We were trying to
2 convince--my word--Phelps Dodge to invest in Perú. In
3 2003 and '04, it was a very difficult political
4 climate. Congress was--first of all, commodity price
5 is starting to rise. Congress was talking about, hey,
6 these mining companies are making a ton of money, we
7 need to put in Royalties. And there was even one
8 Congressman--I didn't even have to refresh my memory.
9 It was D. Canseco. He was a very outspoken

10 Congressman, and he had made statements that, you
11 know: "I don't care if these mining companies have a
12 Stability Contract. They need to pay us more money."

13 And so, obviously, that made us, the miners
14 in Perú, nervous. It made even the administration,
15 the ministers, nervous because they knew that if the
16 Government would not cancel the Stability Contracts,
17 you know, that would freeze future investments in
18 Perú. So, everybody was nervous.

19 And so, it even made Phelps Dodge and us
20 nervous, and so we said, okay, we need to make sure we
21 have some type of written confirmation that if we
22 build this concentrator it will be stabilized. So,

1 that was as quick as I can do.

2 Q. I appreciate that. Thank you.

3 I mentioned--and I should set the
4 stage--Sumitomo, and I think you also set the stage
5 for it when you referenced Phelps Dodge getting an
6 equity investment.

7 As I understand it, when Phelps Dodge
8 decided to seriously consider proceeding with the
9 Concentrator plant, they decided that, to help finance
10 that or to help get the capital for that, that they
11 would get equity participation from Sumitomo. Is
12 that--

13 A. Yeah, essentially sold 40 percent of Cerro
14 Verde.

15 Q. And so, that's a stage at which you need to
16 persuade Sumitomo to bring that capital in; right?

17 A. Yeah. As I think you--or I mentioned
18 someplace, so the meetings I had with Sumitomo, you
19 refreshed my memory. During the last thing is, you
20 had a couple meetings, then--and my meetings with
21 Sumitomo dealt with, okay, what's going on at the
22 site, and then, technically, what's going--what does

1 the Concentrator look like?

2 So, the financing part discussion with
3 Sumitomo I was not involved in.

4 Q. Right. But if Sumitomo isn't comfortable
5 bringing their money to the table and buying that
6 40 percent, there's no Concentrator Project here?

7 A. I can't answer that either. Whether Phelps
8 Dodge would look for additional funding someplace
9 else, or it would go to bank funding, you know, I
10 can't answer that question. I would certainly try to
11 persuade them to figure out something else, and
12 whether they would have--not, you know, it's
13 hypothetical, I guess.

14 Q. Okay. Well, I mean, in Paragraph 29 of your
15 First Witness Statement, you're talking about the
16 process of persuading Phelps Dodge, and you said that
17 the President of Phelps Dodge was skeptical about such
18 a substantial investment, but they--you decided to
19 take advantage of these economies of scale with a
20 larger capacity after securing further equity
21 partnership from Sumitomo Metal Mining and from
22 Buenaventura.

1 I had--understand that that made those
2 equity investments sort of a but-for condition or a
3 necessity for proceeding with the large plant?

4 A. Well, I think it's a little bit more than
5 that. You know, that we had two cases. We had a--at
6 that time it was 50,000 or 100,000 cases, and, you
7 know, that the 50--I think--again, Tim was--he was
8 concerned about the large capacity. He was trying to
9 go for the smaller one because it wasn't putting so
10 much money in Perú, and then I think--again, I wasn't
11 involved in their--how they figured out the equity,
12 but I think he became convinced. But he said, you
13 know, hey, we'll go out and get equity.

14 But I do remember the conversation with him
15 and others. I said, you know, "if you're going to
16 Sumitomo to get equity, it's only fair that you go to
17 our other partners, Buenaventura, and offer them the
18 same thing." And whether they had thought of that or
19 not, I don't know, but I certainly made that comment
20 to Tim and others.

21 Q. But that--those--and you're right, there are
22 two. Those equity contributions are what convinces

1 Phelps Dodge to go with the bigger plant; right?

2 A. I believe so. I mean, you know--I think
3 that was the hurdle, that to build a big plant was
4 really--they didn't want to put all that much money of
5 their own money, Phelps Dodge's money into Perú.

6 Q. Okay.

7 A. So, that was my understanding.

8 Q. All right. And so, at some level, that
9 means that you've got to not only reassure Phelps
10 Dodge, but you've also got to reassure Sumitomo that
11 they should feel comfortable, that this Project is
12 going to be fine?

13 A. Well, you know, the relationship between
14 Phelps Dodge and Sumitomo is a long relationship. You
15 know, they own 20 percent of Morenci, which is one of
16 the largest mines in the world, and they also invested
17 in Candelaria in Chile, when they--when Phelps Dodge
18 first built it.

19 So, I think Sumitomo was pretty comfortable
20 with Phelps Dodge, but the meetings I've had with
21 Sumitomo, they usually ask a, you know, a thousand
22 questions. They're very technical and very detailed

1 in their analysis.

2 Q. But we've heard testimony, and then I think
3 it's in your Witness Statement as well, that prior to
4 this time period, you already believed that the
5 Stabilization Agreement already covered the
6 Concentrator Project, if you were to proceed with it;
7 is that right?

8 A. Prior to what time frame? Where are we at,
9 time frame?

10 (Overlapping speakers.)

11 Q. So, let's talk about 2002 and 2003.

12 A. Okay.

13 Q. So, as I understand it, in that time
14 window--well, and I'm trying to get my handle--a
15 handle on it as well, because I think we've heard
16 different explanations of how stabilization is
17 achieved. So, we've heard some testimony that the
18 Company thinks that it was--everything was already
19 stabilized under the Stabilization Agreement, the way
20 it was written, from Day 1, nothing more was needed.

21 Was that your understanding?

22 A. Well, I think I explained it yesterday, to

1 me, the stabilization is pretty simple: You stabilize
2 the Concession, and in the Concession is a Mining
3 Concession and a Beneficiation Concession. As I
4 explained the reasons why, I think I had like five or
5 six of them yesterday, and, you know, the first one,
6 it's a porphyry deposit. Porphyry deposits are
7 processed either through leaching or a Concentrator or
8 both. So, I--okay.

9 Q. Right. Well, we've got those five reasons
10 on record from yesterday.

11 A. Okay. Okay. So, did I not answer the
12 question then?

13 Q. So, you said you stabilized the Concession,
14 and the Concession is Mining Concession and a
15 Beneficiation Concession.

16 So, your understanding of the Stabilization
17 Agreement is, if I get a Concession, and the
18 Concession is stabilized, everything that happens in
19 the Concession is stabilized; is that right?

20 A. That's--yes. I said what you're stabilizing
21 is the Mining Concession, which contains the porphyry
22 deposit, and the Beneficiation Concession, which

1 covers the processings.

2 Q. All right. What if, on that same property,
3 Cerro Verde had decided to build a smelter? Would the
4 smelter's profits be stabilized?

5 A. So, last time you asked me, they built a rod
6 mill; now it's a smelter, huh?

7 Q. Yeah. I thought I'd try something else.

8 A. You know, and again, I kind of answered it
9 last time, you know--

10 (Overlapping speakers.)

11 MR. UKABIALA: Just very briefly, we would
12 just object to the Witness being asked to speculate
13 about what would have happened if Cerro Verde had
14 built other types of infrastructure. It's purely
15 hypothetical.

16 MS. CARLSON: I'm asking him to explain the
17 Company's understanding of how the Stabilization
18 Agreement worked. He was the President of the
19 Company. He has an understanding of how that
20 Stabilization Agreement works. I want to test the
21 boundaries of what that means.

22 BY MS. CARLSON:

1 Q. So, if I understand correctly, you can
2 answer the question.

3 A. Okay. I explained to you last time, it's
4 hard for me to get my handle around a smelter, a rod
5 mill or anything else. I think a better example would
6 be is if we decided to leach the concentrate, and
7 that's exactly something we did.

8 You know, we looked at it during that time,
9 there was a process of Phelps Dodge was working on is
10 to actually leach the concentrate. So, you have a
11 Concentrator, your final product is a concentrate,
12 like it is today. And then we take that concentrate
13 and leach it, and turn it into copper cathode.

14 Now, to me, it is more relative to your
15 question. It makes more engineering-type sense, and I
16 say, yeah, there's no question.

17 Q. And would that require additional capital
18 investments, additional technology?

19 A. It would have been done same time, but, yes,
20 it would have cost more than \$850 million.

21 Q. Right. Would it have expanded the capacity?

22 A. No, it would be the same, because you have

1 concentrate that has X amount of pounds of copper, and
2 now you're just--you're going to leach that and make
3 those X pounds of copper.

4 Q. So, essentially anything you do--anything
5 you want to add to the plant, to the Beneficiation
6 Concession and the mining operations, that, in your
7 view, is going to be stabilized because the deposit is
8 stabilized; is that right?

9 A. Well, I guess I would word it differently.
10 The Mining Concession was stabilized. So, the mining
11 that we do inside the Concession is stabilized. The
12 Beneficiation Concession, anything we do to--in my
13 mind, anything we do in a processing plant to produce
14 a saleable product is stabilized. So, yes. That's
15 your--answers your question.

16 Q. Okay. And in your view, that was the case
17 with no further steps or permissions or approvals
18 needed from the Government? That was how the
19 Stabilization Agreement worked, as it was signed?

20 A. Well, no. You know that's not right. That
21 the--you had--if you're going to change the
22 Beneficiation Concession, if you're going to change

1 that, you have to apply for--like we did--expansion of
2 the Beneficiation Concession. And that's what we did.

3 So, I guess, maybe I misunderstood your
4 question. You don't just simply say, hey, we're
5 building a Concentrator, boom, we're stabilized. No,
6 there's a process.

7 Q. In order to expand the Beneficiation
8 Concession because you're expanding the capacity, you
9 have to get approval to expand the Beneficiation
10 Concession. But as I understand your theory,
11 that--getting the expansion of the Beneficiation
12 Concession, as you did in 2001, to your theory, that
13 doesn't affect whether it's stabilized or not?

14 A. No. Again, what I said is the Government
15 has a process, and that formal process, and a lot
16 legally allowed. And if you're going to change--if
17 you want to change, like we did for the Concentrator,
18 you know, the two steps that we looked at was amending
19 the existing Concession--the Stability Contract, or
20 expand it, and what we decided was to expand it.

21 So, that was the process we had to follow.
22 It is not automatic, unless I'm misunderstanding what

1 your question is.

2 Q. Well, let me ask a different question.

3 A. Okay.

4 Q. If you had--if there had been no
5 Stabilization Agreement in place, and you had decided
6 to build a Concentrator Plant, you would have had to
7 seek expansion of the Beneficiation Concession;
8 correct?

9 A. If you had no Stability Contract in place,
10 that means you have no Concession, I guess.

11 (Overlapping speakers.)

12 A. I don't follow what you're saying. Sorry.

13 Q. Well, you have a Concession. That's--you
14 have a Concession, entirely separate from the
15 existence of the--

16 A. You had no--

17 (Overlapping speakers.)

18 (Interruption.)

19 Q. So, I said, you have a Concession?

20 A. Okay.

21 Q. The existence of a Concession does not
22 depend on or cause to come into existence a

1 Stabilization Agreement.

2 So, I'm taking the Stabilization Agreement
3 off the table. There is no Stabilization Agreement.
4 You just have a--you have a Mining Concession and a
5 Beneficiation Concession.

6 A. Okay.

7 Q. Okay?

8 A. So, for example, like, in this case, you
9 know if, in 2014, the Stability Contract is gone
10 because it expired.

11 Q. Right.

12 A. So, now, something like that. Okay.

13 Q. Right. So, now you want to build a
14 Concentrator Plant. You're going to have to get a
15 Beneficiation Concession expansion; correct?

16 A. You know, I don't know. We had no Stability
17 Contract. And so, I guess, if you were going to build
18 a Concentrator, you would enter into, I guess, you'd
19 enter into a new Stability Contract to stabilize a new
20 investment you're making, but--if I'm following you
21 correctly, if you don't have a Stability Contract, you
22 can build a new Concentrator, I would imagine you

1 would go to the Government and say, you know: "Hey,
2 I'm going to spend \$850 million, and I want a
3 Stability Contract."

4 Q. Right. But the requirement to extend the
5 Beneficiation Concession or not is separate from that
6 discussion? You have a Beneficiation Concession that
7 says you can process 39,000 MT/d. You want to process
8 150. You're going to need to get an expansion of the
9 Beneficiation Concession?

10 A. Exactly what we did, yes.

11 Q. To sort of play out the logic further, you
12 said, at the time you thought either we were going to
13 amend the Stabilization Agreement, or we're going to
14 expand the Beneficiation Concession.

15 Is it your testimony that, if you had gotten
16 the amendment, you would not have needed to expand the
17 Beneficiation Concession?

18 A. You know, the amendment was to have a new
19 Concession with the Concentrator, and then the next
20 step is for them to take that new Concession and put
21 it into your existing Beneficiation.

22 Q. Why couldn't you just amend the Contract to

1 change the definition?

2 A. I'm sorry?

3 Q. It's--well, all right. I'm not going to
4 take it up with you because you're not the lawyer
5 who's coming up with the idea, as far as I know, but--

6 A. Okay. But all I'm saying is my
7 understanding, for a minute, I think I discussed it
8 yesterday, I believe, but was--anyway, so you--the
9 first step is a two-step process. The first step is
10 to create a new Beneficiation Concession that has a
11 Concentrator in it, and then the next step is to get
12 the MINEM to put that new Beneficiation Concession
13 into your existing Concession, and then it becomes
14 stabilized. That's my understanding.

15 Q. Yeah, as a lawyer, there's lots of ways to
16 amend a contract, so...

17 A. Okay.

18 (Overlapping speakers.)

19 Q. Okay. That's not your purview?

20 A. I'm just being the little technical guy.

21 Q. All right. So, but as I understand
22 it--well, again, I guess I'm still confused. In 2002

1 or 2003, did you think you needed to take an
2 additional step like expanding the Beneficiation
3 Concession or amending the Stabilization Agreement?

4 A. Okay. So, I'm back in 2003, and your
5 question is, did I think about all this stuff?

6 Q. Right. Because those are extra steps.

7 A. No, they are not. I mean, we had--when we
8 went from 31 to 39, we had to expand the Concession.
9 So, when we were going from 39 to add a Concentrator
10 in there, we had to expand the Concession.

11 I think it became more highlighted because
12 of the political climate. I mean, that's what made
13 everybody, including me, nervous because, you know,
14 some of these Congress guys would say "hey, we're not
15 going to honor this Stability Contract." So, that
16 really made it more pronounced. But the step was the
17 same. I mean, you still had to expand the Concession.

18 Q. I think we'll let the lawyers argue about
19 the consequence of expanding the Concession, but let's
20 talk about this political climate that you've referred
21 to. And again, you're getting your information about
22 the political climate from the Mining Society, in

1 which you're a participant, from your partners like
2 Buenaventura, from other mining Companies that you're
3 talking to. This is all coming to you--you're getting
4 this information in Arequipa, and you're passing it
5 back to Phelps Dodge; correct?

6 A. Yeah, I got it from a lot of sources. I
7 mean, it hit the news. I mean, I could read about it
8 in the paper. So, yeah, it was a very controversial
9 time. And I'm sure they read it too.

10 Q. Before--I lied. I said we were going into
11 2004, but let's talk about May or June of 2003.

12 A. Okay. 2003.

13 Q. So, you--May or June of 2003, the
14 Pre-Feasibility Study is completed. By this point
15 possibly the Feasibility Study is underway? Or not
16 until after, a little later?

17 A. Boy, you're testing my dates. You know,
18 we've talked so many dates. We completed the
19 feas--Pre-Feas--I don't know--2002-'03. I kind of
20 remember the years, whether--I don't remember the
21 months, for sure.

22 Q. December of 2002, on the face of the

1 document.

2 A. What is it?

3 Q. December of 2002.

4 A. Oh, okay. So, yeah.

5 And so, then the next step was to decide
6 whether we were going to go to a Feasibility Study.

7 Q. Okay.

8 A. And so--what was your question again?

9 Sorry.

10 Q. I was just getting us oriented.

11 A. Okay.

12 Q. My question was, was the Feasibility Study
13 underway, but I don't think I actually need to know
14 the answer to that, so if you don't know off the top
15 of your head, that's fine.

16 We talked about how one of the
17 important--economically important questions in the
18 Pre-Feasibility Study was the question of the Profit
19 Reinvestment Benefit.

20 A. Correct.

21 Q. Okay. And you explained in your First
22 Witness Statement that in May or June of 2003, you

1 went to talk to the Director General of Mining,
2 Ms. Chappuis, about the availability of the Profit
3 Reinvestment Benefit.

4 A. I believe so. I would think there was some
5 correspondence going on too.

6 Q. Right.

7 A. To try to understand it.

8 Q. Sure. Just to orient you, this is
9 Paragraph 33 in the First Witness Statement. Right.

10 So, you say around May or June of 2003, Julia
11 Torreblanca, then Director of Legal Affairs and I met
12 with María Chappuis, MINEM's Director General of
13 Mining. Because her office held primary
14 responsibility for supervising mining stability and
15 mineral concessions under the General Mining Law, she
16 was your main contact.

17 And then you say at that meeting,
18 Ms. Chappuis confirmed that because of the Stability
19 Agreement, SMCV was eligible to use the Profit
20 Reinvestment Benefit to construct the Concentrator, so
21 long as you complied with all the procedural
22 requirements. I'm assuming that means things like

1 Construction Permits and Environmental Permits and
2 things like that?

3 A. Yeah, it means whatever their process was to
4 do this, yes.

5 Q. Okay. So, you had--at this point, you have
6 assurances directly from the Director General of the
7 Mining Ministry, Director General of Mining at MINEM,
8 that you're fine. That economically important
9 question that you had in the Pre-Feasibility Study,
10 she's told you you're all set: "Follow the process,
11 follow the procedure. You're good."

12 A. On the reinvestment of profits?

13 Q. Right.

14 A. Yes.

15 Q. Right.

16 A. You know, again, we needed clarity. We knew
17 we were eligible for it. We just needed clarity and
18 the concern was, how do you repatriate the funds back.
19 And so, we went through, okay, if I remember right, I
20 think Julia had sent some emails or letters to them
21 saying, you know, "hey, help us out on this process
22 and how do you do this?" And I think that was a

1 clarity around it, but, yeah, we believed we had it.

2 We just didn't know how to repatriate funds.

3 Q. Well--okay. Because, I mean, you refer
4 to--sorry, emails or letters from Julia Torreblanca, I
5 assume. I think those are described in the next few
6 sentences of this paragraph, that are something that's
7 sent after this meeting; right? It says when we had
8 not received the document by July--and this was a
9 meeting you said happened in May or June--"then we
10 wrote to Ms. Chappuis."

11 So, are you saying that there were letters
12 before the meeting and letters after the meeting, or
13 were you referring to these letters after the meeting?

14 (Overlapping speakers.)

15 A. I assume I'm referring to this thing,
16 you're--you know, it's--we were always pretty--we
17 wanted things, like, yesterday and you know, the MINEM
18 doesn't operate that way. And so, we were always kind
19 of pushing them to--you know, hey, we asked you a
20 question, why don't you answer it? And so, that's
21 what I was referring to. We followed up.

22 Q. But you got an answer at the meeting. She

1 told you you're fine?

2 (Overlapping speakers.)

3 A. Well, she said, comply with the applicable
4 procedure requirements, and that's what we were trying
5 to get clarity, what the procedural requirements were,
6 is what is my memory, but what do you--what is your
7 specific question? I'll try to answer it.

8 Q. Well, I'm trying to understand why those
9 letters were sent; right? Because you have a meeting,
10 Ms. Chappuis tells you everything's good, follow the
11 process.

12 A. Yeah .

13 Q. And then you say, afterwards, we hadn't
14 heard from them, so we write twice to the office to
15 inquire whether and how to take advantage of the
16 program.

17 A. Okay. And your question?

18 Q. What's, in your view, the purpose of
19 letters?

20 A. I guess, maybe I need to look at the letters
21 and then maybe I can help.

22 Q. Okay. All right. Sure. So, let's--we can

1 take a look at the first one.

2 This is--sorry, Tab 10, Exhibit CE-394. It
3 is titled Petition Number 1418719, July 3, 2003. Now,
4 this is a letter that's in Spanish and signed by
5 Ms. Torreblanca.

6 A. Could you make it a little bit larger,
7 please.

8 Q. Yes. And what you're looking at, to be
9 clear, is the translation that's in the record for
10 this arbitration, but the original is in Spanish, and
11 it's--so, it's sent from Ms. Torreblanca to MINEM. I
12 don't know if you would have read a translation at the
13 time, or would you have just discussed the concept
14 with Ms. Torreblanca, what she was--that she was going
15 to write a letter, and what she was going to ask
16 about?

17 A. Yeah, more than likely we discussed it.
18 Yeah, we wouldn't waste the time to translate.

19 Q. Okay.

20 A. She would translate for me.

21 Q. Right. And this letter is asking for
22 clarification about whether reinvesting profits from

1 the Leaching Plant into the Primary Sulphides Project,
2 the Concentrator, would be approved; right?

3 A. Yeah. Can you get back where--what are you
4 reading?

5 Q. Move us up and down wherever you like.

6 A. No. I was just trying to move to where you
7 were reading. What paragraph was that?

8 Q. It's a one-page letter, but--

9 A. Okay.

10 Q. So--sorry, not there yet. Right.

11 So, the prior paragraph says--

12 A. Yeah, okay.

13 Q. --as you're well aware, we're conducting a
14 Feasibility Study, "the decision whether or not to
15 implement the project" is directly related to this
16 reinvestment option. "Based on the assessments
17 conducted," we think that "we meet all the
18 requirements," and "will qualify to receive approval
19 of this program," but we have a question.

20 And the question comes in the next
21 paragraph. It says: "Given that our Stability
22 Agreement refers to the Leaching Project, rather than

1 the Cerro Verde Project as a whole, which would also
2 include this new Primary Sulphides Project, we request
3 clarification that the Investment Program, using
4 nondistributed profits, the Profit Reinvestment Plan,
5 would be approved."

6 So, we want clarification, in advance, that
7 we can get this Profit Reinvestment Plan, even though
8 our Stabilization Agreement just refers to the
9 Leaching Project.

10 Is that your understanding of what the
11 question was?

12 A. Well, might as well jump to it. I mean, to
13 me was about the elephant in the room. Cyprus--they
14 did a Feasibility Study in '96. They called it the
15 Leaching Project. They did a Stability Contract in
16 the '98, they called it the Leaching Project. And,
17 you know, some people, particularly in Phelps Dodge
18 says, well, how can you build a Concentrator, it's
19 called a Stabilizing Leaching Project. I said, you
20 know, it's a name. That's all it is.

21 The stability is not defined by a process
22 and in the things I talked about yesterday. It's not

1 defined by a process. And also the Leaching Project
2 is a name they filled out, why they picked it, I don't
3 know. But, I guess, I was thinking about--you know,
4 that the Feasibility Study in '96 was called that.
5 So, I'm assuming that's why they called it the--in the
6 Stability Contract, they call it "leaching."

7 So, this was just to make sure nobody got
8 confused by that title. That's my memory of the--why
9 this letter was sent.

10 Q. Okay.

11 A. Whether it was worded the best, you know, I
12 don't know. I didn't write it, but it was about the
13 elephant in the room.

14 Q. Okay. And then there was a second letter
15 five days later, which is Exhibit CE-395. It's in the
16 binder at Tab 11. Again, we're looking at the
17 translation here, but it's Ms. Torreblanca to
18 Ms. Chappuis.

19 This one is two pages. I would summarize it
20 as saying that there's a number of more detailed
21 questions about how the Profit Reinvestment Plan
22 works. And there's a request to clarify this and

1 confirm the scope of the Profit Reinvestment Plan.

2 And so, for example, it says in the part
3 that we're just highlighting here.

4 (Interruption.)

5 Q. Sorry. For example, it says in the part
6 that we're just highlighting here on the screen, we
7 are also unclear as to whether the deadline--sorry,
8 no. Wrong text.

9 So, the request--the final request in the
10 letter is, we would appreciate if you would confirm
11 our understanding of all the features that we've just
12 specified. So, it's asked a series of detailed
13 questions about how the Profit Reinvestment Plan,
14 works and is asking for confirmation.

15 So, why did--why was the second letter
16 necessary?

17 A. I don't know. Let me--can you go up to
18 the--I'd have to read it.

19 Q. Sure.

20 A. I mean, I've looked at it before in the
21 documents that Counsel gave me, but...where does it
22 say the reason is? Does it say? "For this reason."

1 (Overlapping speakers.)

2 Q. Yes. So, let's look at the paragraph that
3 says "among the provisions"?

4 A. Okay.

5 Q. As you well--so--and then in the middle it
6 says: "As you well know, we're in the process of
7 evaluating various technical, economic, and legal
8 aspects around this possible expansion of our
9 operational activities. It's essential that we know
10 with absolute certainty the scope and characteristics
11 of the Profit Reinvestment System, and for this
12 reason, we would appreciate if you would take the time
13 to confirm certain aspects of the most important
14 features of this program, in light of the stabilized
15 tax system."

16 And I don't think it matters sort of what
17 the specific questions are from this point forward.
18 You can read them. It's only a two-page letter, so I
19 have no--but in the interest of time, I think it's
20 clear that this is saying, you know, this is really
21 important to us. Please confirm that we've got it
22 right, that we understand this correctly.

1 And you and Ms. Torreblanca, I assume, felt
2 that it was necessary to get this confirmation; right?

3 A. Well, we're doing our due diligence. I
4 mean, that's what you do when you, the--I guess, as I
5 mentioned before, you do Pre-Feasibility study, and
6 during the Feasibility Study, and you do due
7 diligence. And this was a due diligence that we
8 identified that we need, clearly needed to understand
9 exactly the procedure that MINEM required for us for
10 this benefit. So, that's my understanding of the
11 letter, that, to get--to make sure we get it right.
12 Because it's important.

13 Q. Okay.

14 MS. CARLSON: Madam President, I think this
15 might be a good time for a break, the 15-minute break.

16 PRESIDENT HANEFELD: Okay. We meet again in
17 15 minutes.

18 THE WITNESS: 15. Okay. Thanks.

19 MS. CARLSON: Thank you.

20 (Brief recess.)

21 PRESIDENT HANEFELD: Please proceed.

22 MS. CARLSON: Thank you, Madam President.

1 BY MS. CARLSON:

2 Q. All right. Mr. Davenport, I am cursed by
3 the usual problem, which is, if you give a lawyer a
4 chance to think another minute or two, they will think
5 of another question.

6 A. Shouldn't have taken a break, huh?

7 Q. But, in this case, it's one last very simple
8 factual question to finish off our discussion of the
9 interchange with Ms. Chappuis about the Profit
10 Reinvestment Program.

11 You had a meeting with her. She said:
12 "Everything's fine." You sent letters saying: "We'd
13 like your confirmation; we'd like clarification."

14 Her office answered those letters; correct?

15 A. Yes, I believe so. If you want to show me
16 the letter, I can--

17 Q. No.

18 A. Okay.

19 Q. I mean, you say so in your Witness
20 Statement, so I assume you had--

21 A. Oh, okay.

22 Q. --confirmed that as well--

1 (Overlapping speakers.)

2 (Interruption.)

3 (Stenographer clarification.)

4 Q. I just pointed out that you say as much in
5 your Witness Statement, and I'll say that that's
6 Paragraph 34 of your First Witness Statement, for the
7 record, and so I assume you would confirm that now as
8 well?

9 A. Yes.

10 Q. Okay. Thank you.

11 All right. So, I promised we would go to
12 the political context in 2003-2004, when there's the
13 discussion of the Royalties Law.

14 As I understand it, as I think you described
15 it, and as I understand--well, as I understand it,
16 there were two possible problems which was being
17 discussed in connection with the Royalty Law.

18 One was: What is this going to mean for our
19 new project, the Concentrator Project? But there was
20 also a question of: What is this political discussion
21 going to mean for our existing operations; right? Are
22 they going to, in essence, tear up our Stabilization

1 Agreement and apply the Royalty Law to our existing
2 operations anyway?

3 A. That's not quite how I explain it. You
4 know, to me, they were the same thing. You know, the
5 existing operation, we put the Concentrator--new
6 Concentrator into a Beneficiation Concession, so it
7 was the same--concern for the same thing. They
8 weren't separate.

9 Q. Okay.

10 A. Because they were talking about, hey--at
11 least early on, they were talking about, "We don't
12 care if they have a Stability Contract. We want money
13 from these mining companies." So, it was the same.

14 Q. Right. So, this was a concern for you
15 whether or not you proceeded with the Concentrator
16 Project; right?

17 A. Oh, yeah, for sure.

18 Q. Okay. Setting aside what happens with the
19 Concentrator Project, though, what was the end result
20 of the Royalty Law for all of Cerro Verde's existing
21 operations?

22 A. The end result being when it was passed?

1 Q. Exactly.

2 A. Yeah. And the end result being financially?

3 Q. Yes.

4 A. Oh. Well, they did not--they respected the
5 Stability Contract. Is that the question?

6 Q. Yes.

7 A. All right.

8 Q. So, all of that political fulmination from
9 Congressman Diez Canseco does not result in them
10 tearing up all the Stabilization Agreements?

11 A. Thanks goodness, huh?

12 Q. And as to all of your existing operations
13 apart from the Concentrator Plant, they continued to
14 be protected by the Stabilization Agreement, even
15 after the Royalty Law is put into place?

16 A. As far as I know, when I was there, yes.

17 Q. Okay. Now, you explained that there came a
18 time when you or Phelps Dodge or Sumitomo or some
19 combination thereof thought it was important to
20 find--to get some written confirmation of the
21 application of the Stabilization Agreement to the
22 Concentrator Project; correct?

1 A. Yeah. It was, like I mentioned before, the
2 political conflict going on, it just--we needed
3 more--something more written confirmation. And so,
4 yes.

5 Q. Now, if we turn to your Witness Statement at
6 Paragraph 39 in your First Witness Statement, you
7 describe there, around mid-2004, Ms. Chappuis, who we
8 determined is the Director General of Mining at MINEM,
9 "confirmed to my team that the Stability Agreement
10 covered SMCV's Mining Unit comprising its Mining
11 Concession and sole Beneficiation Concession, and
12 explained that, once the Concentrator would be
13 included in the existing Beneficiation Concession, it
14 would benefit from the Stabilization Guarantees."

15 So, you say that you--I guess, in this case,
16 your team heard from Ms. Chappuis that you were
17 covered?

18 A. Well, I think, as I explained yesterday, you
19 know, we first were looking to try to amend it, and
20 then went through that process, and then at some point
21 in time in discussions with MEM, Ms. Chappuis' office,
22 they were the ones that said, you know: "Hey, all you

1 really need to do"--I think I explained it yesterday.

2 "All you really need to do is expand the Concession."

3 And we had done that before. We knew the process.

4 And so, that was--in my mind, and I think in

5 Phelps Dodge's mind, that was a written confirmation.

6 Q. All right. But this meeting in

7 mid-2004--again, it says "confirmed to my team." So,

8 I assume this is not a meeting that you participate in

9 directly?

10 A. Yeah. I tried to remember; right? I don't

11 know whether I did or not.

12 You know, I would participate in a lot of

13 meetings. It would either be Julia Torreblanca or

14 Julia Torreblanca and myself.

15 Q. Okay. In your Second Witness Statement--and

16 we discussed this in February, however--you talk about

17 a different interaction with Ms. Chappuis that I

18 assume precedes this that was not in your First

19 Witness Statement, and that was your interaction with

20 Ms. Chappuis in June 2004.

21 In your Second Witness Statement, this is

22 Paragraph 11, where it says that your colleagues and

1 you held meetings with various MINEM officials,
2 including Ms. Chappuis and, to your surprise, they did
3 not initially confirm that the Stability Agreement
4 would apply to the Concentrator.

5 Did you think it was not relevant to include
6 the full record of Ms. Chappuis' positions in your
7 testimony?

8 A. I'm sorry. I don't understand the question.
9 "The full record"? What are you talking about?

10 Q. Well, in your First Witness Statement, you
11 say: "My team met with Ms. Chappuis and she assured
12 us everything was fine"?

13 A. Yeah.

14 Q. And in your Second Statement, you say:
15 "Well, but then in June we met with her and she did
16 not say it was fine, at least not right away."

17 A. Right. So, we had this conversation before.
18 You're penalizing me for not putting it in the first
19 one.

20 You know, what I remember in the second one
21 from talking with Counsel, it was important that I
22 responded to some of your questions from my First

1 Witness Statement. So, I believe--that was in
2 response to some of your questions, I believe, but I
3 don't know.

4 Q. So, we're--

5 A. In hindsight, you know, like I told you
6 before, I did two Witness Statements, and, to me,
7 together, they're one Witness Statement. And so,
8 whether I put it in the first one or the second one,
9 why I did that, you know, I'm not sure I really
10 remember or know.

11 Q. Well, I think it's important in one way,
12 which is that you say, in 2003, we met with
13 Ms. Chappuis. She told us that we were fine under the
14 Profit Reinvestment Program. We took comfort from
15 that. We thought we were all set.

16 In 2004, we meet with her again. Now she's
17 not sure about the extent of the stabilization
18 benefit. Then we hear from her it's going to be okay;
19 do the beneficiation expansion.

20 So, that's sort of an up and a down and an
21 up.

22 The way you first tell the story is,

1 everything's fine all the time. And I think it is
2 relevant to tell the trajectory.

3 A. Okay. Well, let me try to explain. I
4 believe, now that I think about it a little bit, that
5 my presentation, past, present, and future, had
6 several variations--versions of it, and once we were
7 told about the Tintaya thing, I included that in that
8 version. So, I'm assuming that that's what triggered
9 this to include this and have more detail so the
10 Tribunal would understand what we were doing.

11 So, you know, it wasn't up and down. I
12 mean, we would talk to them. They talked about
13 Tintaya, and, as I mentioned before, Tintaya--I talked
14 to the General Manager. I knew him. Tintaya was
15 totally different, and once they understood the
16 difference between what we were doing and what Tintaya
17 was doing, they agreed that what we were doing
18 was--was totally different.

19 Q. So, when you say in Paragraph 39 of your
20 First Witness Statement that you had confidence in
21 what Ms. Chappuis was telling you, that was after she
22 had gotten over her hesitation that you didn't tell us

1 about in the First Witness Statement?

2 A. Didn't tell you about it? Okay.

3 Q. Okay. So, timing-wise, we're right; you
4 have confidence after she first hesitates?

5 A. I think the Second Witness Statement just
6 went into more detail.

7 Q. Okay.

8 A. Expanded on the discussions.

9 Q. All right. And you were aware at the time
10 that Ms. Chappuis' view was not a uniform view in the
11 Ministry of Mines; correct?

12 A. You're talking about Vice Minister Polo?

13 Q. I am.

14 A. Okay.

15 Q. All right. So, you're aware that Vice
16 Minister Polo did not agree with Ms. Chappuis'
17 understanding; is that right?

18 A. I wouldn't word it that way.

19 I might as well get into it. Vice Minister
20 Polo, he's the mining guy like I was, or am, and we
21 had great conversations. He was supportive of the
22 Project. When I talked to him about that it was

1 important that this project was stabilized, he was
2 skeptical, and Vice Minister Polo, you know, he said,
3 you know--he never really gave me a technical reason
4 or a legal reason. He was just skeptical.

5 And I think I--I think it was in my first
6 testimony that I didn't really understand why. You
7 know, he was positive. Of course, he reports to the
8 Minister, and the Minister was--Quijandría was very
9 positive about it, but in the private meetings I had,
10 or the meetings I had with César just by himself, he
11 was skeptical.

12 And, you know, I remember him even saying
13 one time is that, you know, "You guys bought this for
14 \$39 million, and you guys are making a ton of money."
15 You know, "You don't need this." And I go, "God, you
16 know, that's kind of unfair," because Cyprus was the
17 only bidder, and they took the risk during a time when
18 Perú was not as stable as it is today. And they took
19 the risk and made this a real mine.

20 And so, I guess it was one of those things.
21 César--again, we got along. We were fine. We were
22 both mining guys, but on this, we did not agree.

1 Q. Okay. And did you report the Vice
2 Minister's--to use your phrase--"doubts" back to
3 Phelps Dodge and Sumitomo?

4 A. Probably when they came down and visited.
5 You know, I don't--I don't remember when. I'm sure I
6 mentioned that the Vice Minister had skepticism about
7 this, but I don't remember when I did it or how I did
8 it, but probably when they visited sometime.

9 Q. Okay. And--

10 A. And part of it, too, was, you know, it's not
11 his decision. You know, that decision is really done
12 by the Director General--General Director of Mining.
13 It was done by that office.

14 César--Vice Minister Polo and the Minister,
15 you know, they are political appointees. The
16 bureaucrats really handle the process of going through
17 the process and making things--getting things done.
18 So, it wasn't his decision, as far as I was concerned.
19 So, it wasn't a concern to me.

20 Q. Is it your understanding that the General
21 Directorate of Mining is outside of the hierarchy of
22 the Vice Minister and the Minister?

1 A. No, no, not at all. No. No. They go
2 up--what my point was, is that those guys are both
3 politically appointed positions. The bureaucrats
4 handle the process, and my understanding is the
5 bureaucrats--I call them "bureaucrats." I don't know
6 if that's the right word, but the technical people,
7 they handle the actual processing of the Concession
8 and the Stability Contract.

9 So, whether the Vice Minister didn't agree,
10 okay, that was important, but I knew the Minister of
11 Mining, the Minister of Agriculture, the Finance
12 Minister, who I had meetings with. They were all very
13 supportive of this. And the presentations I gave, I
14 always mentioned that, you know, the stability of this
15 Concentrator was very important to this decision by
16 Phelps Dodge.

17 Q. Vice Minister Polo, you've described him as
18 a political appointee.

19 Are you aware that he was Vice Minister
20 under multiple Ministers?

21 A. I think he was--he was the--he wasn't the
22 Vice Minister when I got there. That was Humberto

1 Montes, I believe his name was. And then I'm not sure
2 why he left, but he left, and then Polo was the Vice
3 Minister, I believe, after him, and I can't remember
4 if he was still the Vice Minister when I left in 2005
5 or not.

6 Q. Well, we can obviously explore that with
7 Vice Minister Polo, but his was not a short--

8 (Overlapping speakers.)

9 Q. I said, his was not a short career in mining
10 and--

11 A. Oh, no, not at all. He's a very technical,
12 very knowledgeable mining guy.

13 I believe at the time the--Quijandría, the
14 Minister of Mining and Energy, I believe--I know he
15 wasn't a mining engineer like Polo was. I think he
16 was an economist, but also I think his background was
17 more on the energy side of things. So, yeah, he was
18 critical for that Ministry, because he was the mining
19 guy.

20 Q. Right. And he was the author of the law
21 that we're all arguing about?

22 A. I don't know.

1 Q. Okay.

2 A. I know he was part of the--Minero Perú in
3 the privatization part of things, so...

4 Q. And you do know that he was Ms. Chappuis'
5 boss?

6 A. Yeah. That's the hierarchy, I understand,
7 and his boss was Minister Quijandría.

8 Q. All right. So, let's go into seeking
9 additional assurances, written assurances.

10 And I understand from both your testimony
11 and Ms. Torreblanca's that it was important to Phelps
12 Dodge and to Sumitomo to get something in writing;
13 right?

14 A. Yeah. It was really--and as I mentioned, it
15 was really driven by the political climate in Perú.

16 As I mentioned, I felt like all along, for
17 various reasons, the Concentrator would be stabilized,
18 but the political stuff going on in Congress made
19 everybody nervous and want more and more clarification
20 or certainty.

21 Q. And we discussed in February that this
22 wasn't just get something, it was get 100 percent

1 confirmation in writing; right?

2 A. February of--

3 Q. When we talked in February at the prior
4 Hearing.

5 A. I'm sorry. Say that again, then.

6 Q. We discussed in February that this wasn't
7 just, you know, show me a law or show me a piece of
8 paper. We want 100 percent confirmation in writing?

9 A. I don't quite remember that question in
10 February, so maybe you need to refresh my memory.

11 I remember the hundred percent came from
12 Sumitomo notes. I don't know if that's what you're
13 referring to.

14 Q. Okay. Well, let's talk about how you tried
15 to get that confirmation.

16 So, we have on the record--well, in your
17 Second Witness Statement at Paragraph 12, just to set
18 the stage, you say that SMCV, Cerro Verde, held
19 further meetings with MINEM officials in July and
20 August of 2004 where PowerPoint presentations were
21 delivered. And we will talk about those PowerPoint
22 presentations.

1 So, again, just to--"we held further
2 meetings." I assume you personally participated in
3 some of those meetings?

4 A. Yeah, I would have participated in some of
5 those meetings with MINEM, yeah.

6 Q. Do you think you probably participated in
7 most or all of them?

8 A. I don't know. Probably half. But I'm not
9 sure.

10 Q. Okay.

11 A. I was, you know, involved in a lot of
12 meetings, particularly in working on the environmental
13 permitting, so I had meetings with them, too.

14 Q. You've already referred a few times to a
15 PowerPoint presentation titled "Past, Present,
16 Future," which is on the record as Exhibit CE-450.
17 And the version that we have on the record is dated
18 July 8, 2004, and it's at Tab 15 in the binder.

19 A. July 8, 2004?

20 Q. Yes.

21 A. Okay.

22 Q. Well, so the document on its face says

1 "July 2004." There is some--I remember chasing this
2 down at one point, how the date July 8, 2004, came
3 into play, but let's just call it July 2004. No need
4 to fuss over it.

5 A. Okay, yeah. And, like I said, that was my
6 presentation. I put it together myself, and there was
7 versions of it, as I mentioned earlier. Once we had
8 the Tintaya question put in, I think I added that
9 later on just so I could get clarity around it, but,
10 yeah, there are several versions of it.

11 Q. So, if I understand what you just said,
12 there is--this is--in essence, there was sort of a
13 base deck of slides that you prepared, and then it got
14 tweaked over time?

15 A. Yeah, exactly.

16 Q. But if we see something in the record that
17 looks like this--sorry, can we show the tab, because I
18 think visually it's striking.

19 So, if we see something that looks like this
20 with the "Past, Present, Future" logo--title, it's
21 likely to be some variation of your PowerPoint; right?

22 A. Yeah. You said July 8. It says July--

1 Q. I know, but--

2 (Overlapping speakers.)

3 A. Oh, okay. July would have been--so I didn't
4 have to change the date every time I had a meeting,
5 and it said July, and so they wouldn't know that.

6 Q. Okay. Sure. For some reason it's in the
7 index as July 8, but it doesn't matter for our
8 purposes. We'll call it July.

9 A. Okay. Cool.

10 Q. Okay. So, we have this presentation, and I
11 want us to look at Slide 18. So, this is a
12 presentation that you're using in meetings with the
13 Ministry?

14 A. Correct. And whoever else would listen.

15 Q. Okay. And Slide 18 talks about the
16 feasibility analysis of Primary Sulfides, which I'm
17 going to take as the Concentrator Project.

18 And it says that this assumes--hold
19 on--"Important/Major Assumptions," so the last sort of
20 major bullet. "Important/Major Assumptions," number
21 one, the Profit Reinvestment Benefit. That was what
22 you discussed with Ms. Chappuis in 2003.

1 And then important or major assumption
2 number two, that the Primary Sulfides--I'll call it
3 "the Concentrator Project"--is stabilized under the
4 current contract.

5 I'm going to assume that the "current
6 contract" by which you mean--it's the 1998
7 Stabilization Agreement; do you think that's right?

8 A. Yeah, pretty much. I mean, is it stabilized
9 under the existing Stability Contract and concessions.

10 Q. Right. So, these are two important, major,
11 but separate assumptions; right?

12 A. Well, they are two different activities,
13 yes.

14 Q. Okay. And then this is echoed on Slide 21,
15 which is describing the investment decision. I think
16 of this as the "go/no go," and so you say the
17 Feasibility Study has been completed. I'm not sure
18 what "marginal project" is.

19 A. Marginal means it didn't have a return of
20 50 percent. It had a return of--I believe the last
21 number was, you know, somewhere around 15 or
22 16 percent, depending on how you did it. So, you

1 would say "marginal," I guess. You know, some of this
2 was--you know, I was giving this to the Ministry, and,
3 you know, it wasn't a slam dunk.

4 Q. Umm-hmm.

5 A. And so, this--it was difficult decision for
6 Phelps Dodge because it was a ton of money, and it is
7 very important that we were convinced that the
8 Concentrator would be stabilized.

9 Q. All right. So, were you trying to signal to
10 the Ministry that everything was kind of teetering on
11 what you were going to ask them for?

12 A. No, I don't think so. I mean, it's, like I
13 said, 14, 15 percent, you know, it's not a slam dunk.
14 Phelps Dodge was trying to decide if they wanted to
15 put \$850 million into Perú. So, there is some tough
16 decisions there. So, that's what the "marginal
17 project" means.

18 Q. Right. And then you sort of echo that by
19 saying it's a difficult decision; it's high risk?

20 A. Yeah. It is \$850 million in Perú, which is
21 clearly political risk.

22 Q. Okay. And then you say--you signal that the

1 decision is going to come in October 2004, and then
2 you identify contingencies. Are those
3 contingencies--are you explaining those contingencies
4 are the things that are going to make this Project go
5 or not go?

6 A. It was--the decision would be contingent on
7 approval of the EIA. Obviously, you can't have a
8 project if you don't have approval of the EIA. And,
9 actually, you know, we submitted an EIA. We submitted
10 it the first time and there was--they had questions on
11 it, and they actually denied it, which was a total
12 surprise to us. And so, of course we quickly answered
13 their questions and resubmitted and got it approved,
14 so I think in July that was still out there, so I
15 wanted to flag the approval of EIA, certainly with
16 respect to the Stability Agreement in force and then,
17 finally, economic indicators.

18 Q. And the risk analysis in the last bullet,
19 does that also relate to the Stability Agreement or is
20 that something else?

21 A. Well, that is risk of project, so there's
22 risk on--yeah, the stability would be one of them.

1 There would be risk on, can you really do 108,000 tons
2 a day, can you really get a 90 percent recovery. So,
3 that's the risk factor is when you do a project, you
4 identify those associated risks.

5 Q. Okay. And then if we go forward, we get
6 into some more detail on this. And Page 41 of the
7 presentation--sorry. No, Page 45. Wrong page.

8 This is your conclusions, this is your
9 wrapping up--here is what we need. And the third
10 bullet point, in particular, I'm going to point, it
11 says that "Cerro Verde requires the certainty that
12 only a Stability Agreement is able to give in order to
13 carry out this investment of more than \$800 million."

14 And then you say that the requested addendum
15 provides this certainty, "a solid legal and
16 contractual report in accordance with decisions
17 previously made by MEM."

18 Here you're proposing to amend the
19 Stabilization Agreement?

20 A. Yeah. I think I talked to you about it
21 yesterday, I think. You know, originally we were
22 going down the path of amend. And I'll explain it to

1 you, but I don't think I will, because you said I
2 don't explain it like a lawyer, but I understood it
3 being a two-step process. And again, my concern was
4 schedule. You know, when you decide to build a
5 concentrator, schedule drives everything. As soon as
6 you can get that thing built and start making a
7 profit, so schedule is very important for that.

8 So--I think I lost my train of thought.

9 Q. That's okay.

10 A. I guess it happens.

11 Q. I think we're clear there. You said your
12 main concern was timing. So...

13 A. Yeah. Oh--oh--

14 Q. And the point of that addendum was to
15 get--to make sure that the Stability Agreement
16 expressly says "this applies to the Concentrator
17 Plant"; right?

18 A. Yeah. I remember my train of thought. So,
19 we initially were looking at the addendum. We saw it
20 was a two-step process. You know, it was our legal
21 right to do it. I was just a little nervous about the
22 schedule, and then, as I explained--I think I

1 explained yesterday, you know, later on in the
2 discussions with Ms. Chappuis office, it came up as
3 you don't need to do an addendum because that requires
4 the Ministry probably to do more work--a two-step
5 process. And all you need to do is expand the
6 Beneficiation Concession. And so, that was the path
7 we took, but initially we were looking at an addendum.

8 Q. All right. One difficulty I have is that
9 this was July of 2004. You described this sort of
10 transition to switching off of the addendum or the
11 amendment to the Contract and going instead for
12 expanding the Beneficiation Concession as your path
13 forward. Sorry, haven't asked the question yet.

14 A. Okay.

15 Q. But in August of 2004, the Phelps Dodge
16 Board is still being told about modifying the
17 Agreement. Does that sound consistent with that
18 switch that you've told us about?

19 A. Not really. Not really.

20 Q. All right. Well, let's look at that.

21 A. My timetable really is in, I believe it was
22 like June 2004, we started going down the path of the

1 addendum. And then sometime in either late July or in
2 early August, we said, hey, let's do the expansion of
3 the beneficitation. That's my recollection of the
4 timing of it.

5 Q. Okay.

6 A. The Phelps Dodge Board, I guess I would have
7 to see what document you're referring to.

8 Q. Sure. So, let's actually look at that.

9 A. Okay.

10 Q. So, Exhibit RE-324 is--at Tab 18 of the
11 binder is an email from Dennis Bartlett to Timothy
12 Snider and "Red" Conger and Lowell Shonk that attaches
13 a presentation for the Board, a draft presentation for
14 the Board about the Cerro Verde Project.

15 So, what we see here is the cover email, and
16 then what I want to talk about is the draft
17 presentation that is attached to it.

18 First of all, how would Dennis Bartlett have
19 gotten the information about the Cerro Verde Project
20 to present to the Board?

21 A. So, he would either get the technical stuff,
22 probably, from Terry Linde, who was the manager--he

1 managed Fluor. If there was legal/social type things,
2 he probably would get it from me.

3 Q. All right.

4 A. Or he came down in meeting and we discussed
5 it and he drew his own conclusions.

6 Q. So, would you have been involved in the
7 preparation of this PowerPoint, or would you have been
8 giving the information to him and he makes his own
9 PowerPoints?

10 A. I probably did a few slides. I'd have to
11 look at the whole thing, you know, if it had
12 cross-sections in it, I probably provided that.

13 You know, a presentation of the Board was,
14 you know, it's a big deal.

15 Q. I would assume so.

16 A. You know, you see in August they started to
17 do it, and the Board meeting was in October. So, I
18 know there was a lot of variations of these slides.
19 But some would come from me, some from Terry Linde,
20 and then Dennis would do his own.

21 Q. Okay. So, we can flip through this, but I'm
22 headed for Slide 5. But if you just want to sort of

1 see what comes before that to get us there. So,
2 you've got some country facts about Perú.

3 A. That would have been my slide there.

4 Q. Right. The description of the Project, sort
5 of a summary of the economics that seem to be
6 projected. That is Slide 3. The next one--and here
7 we have the timeline.

8 This looks a little more detailed than what
9 Dennis would prepare himself. Is this something that
10 would have come from you?

11 A. It probably would have come out of the Fluor
12 because it is probably a spreadsheet that Fluor put
13 together in the Feasibility Study of the timeline.

14 Q. Right. I'm sorry, I should have actually--I
15 didn't do what I should have, which was to set the
16 stage. What is Dennis Bartlett's position?

17 A. At this time he was--I believe I reported to
18 "Red" Conger at this time, so he was my previous boss.
19 But he reported directly to Tim Snider, so I don't
20 remember what his title was, but he reported directly
21 to Tim Snider, and I think involved in the projects.
22 High level. High level.

1 Q. And Tim Snider is the President of Phelps
2 Dodge?

3 A. Tim Snider is--I don't remember his title.
4 I think he's President of the Mining Company. He's
5 the number two guy in Phelps Dodge.

6 Q. Okay. And Dennis reports directly to him?

7 A. Yeah. Dennis is like a senior VP of some
8 sort.

9 Q. Okay. So, on this Slide 5, we see that
10 there is--it is called "Cerro Verde Sulfide Project
11 timeline," and one of the things that is planned to be
12 accomplished in Q3 of 2004, if we go down the 2004
13 line to about the--it is actually one of the first
14 white bars down, is "modify the Stability Agreement."
15 That is under "other activities."

16 Do you see that?

17 A. Uh-huh, I see it.

18 Q. So, that sounds like that is still the
19 amend-the-Agreement plan?

20 A. Well, I don't know. Can you go back up to
21 where the key milestones are? Counsel showed some of
22 these slides, and you know, they were continually

1 updated, and some of them even said, you know, "needs
2 to be updated," that type of thing. And so, they
3 would update some slides and they wouldn't update
4 other slides.

5 So, if this was done in--if this timeline at
6 this date, then I would say this one isn't--this slide
7 hasn't been updated to the final version.

8 But there should be--if you go up, there
9 should be one that says "Milestones." I don't know
10 how it's--

11 Q. I don't think so, because I think we showed
12 you all the slides on the way here. So, we got
13 the--sorry, first, Republic of Perú--okay. Cover
14 page, Republic of Perú--

15 (Overlapping speakers.)

16 (Interruption.)

17 Q. Cover page, Republic of Perú, description of
18 the project, economic results, timeline.

19 A. That's it?

20 Q. And I'm happy to flip through, like, two or
21 three after this to see if there is more detail.

22 A. Okay. Why don't you do that?

1 Q. Okay.

2 A. Well, there is the Stability Contract.

3 Q. Sorry?

4 A. See: "The Ministry of Mines have proposed a
5 process to include the Sulfide Plant in the facility
6 covered by the existing Stability Agreement"--

7 Q. So, you take that as the--that's the
8 beneficiation expansion?

9 (Overlapping speakers.)

10 (Interruption.)

11 (Stenographer clarification.)

12 Q. Okay. So, this maybe more accurately
13 reflects--you're saying that this looks to you like
14 the plan--the new plan to expand the Beneficiation
15 Concession instead?

16 A. Yeah. I mean, I guess, what I'm saying is
17 this is a big presentation. A lot of people were
18 feeding it. I'm sure a lot of these slides were
19 updated as they went, and--but I'm pretty confident
20 that whatever they showed the Board, it included the
21 most updated information, which would have been
22 expansion of the Beneficiation Concession.

1 Q. Okay. So, the discrepancy between the two,
2 we'll just assume, is just the earlier one didn't get
3 updated?

4 A. Yeah. I think there would be no question
5 about that.

6 Q. Okay. But it is still clear that at this
7 point somebody thinks something has to happen to the
8 Stability Agreement in order for the Concentrator to
9 be stabilized?

10 A. Of course, you had to expand the
11 Beneficiation Concession.

12 Q. Okay.

13 A. And then the process after that is the
14 construction permit and build it, and then inspect the
15 construction--the final product.

16 Q. One moment, if you'll forgive me. Just a
17 second.

18 Sorry, confusion resolved.

19 All right.

20 PRESIDENT HANEFELD: May I just interrupt?

21 MS. CARLSON: Of course.

22 PRESIDENT HANEFELD: Just on this slide

1 here, when I read: "The Mines Ministry has proposed a
2 process to include Sulfide Plant in the facility
3 covered by the existing Stability Agreement. This
4 will shield the sulfide operation from the Royalty."

5 Did you include precisely this wording into the slide?

6 THE WITNESS: What was the last part?

7 PRESIDENT HANEFELD: Did you include
8 precisely this wording into the slide?

9 THE WITNESS: You know, I can't say. If
10 they are talking about the Stability Agreement, I
11 certainly had input on it. Whether that was my
12 specific words, if it wasn't, it could have been,
13 because I would agree with what they said. This
14 really is in reference to, we were doing--looking down
15 the path of addendum, and then the meeting with
16 Ms. Chappuis' office. She said, well, you don't need
17 to do an addendum. All you have to do, expand the
18 concession. So, that is what this is in reference to.
19 Whether those are my precise words, I don't know, but
20 they would have been. I would have said the same
21 thing.

22 PRESIDENT HANEFELD: So, when it states "the

1 Mines Ministry has proposed" this Beneficiation
2 Concession extension, then you mean Ms. Chappuis has
3 proposed and suggested, on your request to get
4 confirmation that the Concentrator is stabilized, to
5 do this process here?

6 THE WITNESS: What I'm saying by those
7 words--it could be my words--but what I said was we
8 were going down the route of doing the amendment to
9 the Stability Contract, and we were having discussions
10 with her office, and then through those discussions,
11 it was suggested by them. She said, you don't really
12 have to do an addendum. All you need to do is expand
13 the Concession. So, whether the word "propose" is the
14 correct word or not, they are saying this is a better
15 process--easier process--not easier process, but a
16 process that we had done before. So, "proposed," is
17 that the question? Did they propose it. Yeah, they
18 told us that you ought to do the expansion of the
19 Beneficiation Concession, rather than addendum.

20 PRESIDENT HANEFELD: And the second bullet
21 point: "This will shield the sulfide operation from
22 the Royalty." Was this your interpretation of the

1 proposal, that this was the effect of the proposal, or
2 was also the second bullet point, "this will shield
3 the sulfide operation from the Royalty," expressly
4 stated by the Mines Ministry?

5 THE WITNESS: In order to answer that
6 question is--we expand the concession, and we put the
7 new Concentrator in the Beneficiation Concession, and
8 then now it--what is--again, as I've tried to explain,
9 is that what's stabilized is the Concessions, the
10 Mining Concession and the Beneficiation Concession.

11 So, once we put the Concentrator into the
12 Beneficiation Concession, then it's stabilized and
13 that protects us from a royalty.

14 PRESIDENT HANEFELD: I know that this is a
15 position in this Arbitration, and this is the
16 assumption of today. I want to understand what the
17 assumptions at the time were and what were just in
18 your head and what has been proposed and expressed.
19 So, my question, again, was, the second bullet point,
20 that this extension of the Beneficiation Concession
21 "will shield the sulfide operation from the royalty,"
22 something that was expressed to you by the Mines

1 Ministry expressly, directly?

2 THE WITNESS: In my mind it was--again, I'll
3 try to answer the question better--is that once the
4 Concentrator is in the--the process to put the
5 Concentrator into the Beneficiation was to expand the
6 Beneficiation. You go through the paperwork, you get
7 a construction permit, and then after you built, they
8 would come back and do it.

9 That process would shield you because it's
10 in your Concession, which is stabilized.

11 PRESIDENT HANEFELD: But, Mr. Davenport, you
12 said earlier, "I'm a technical guy, not a lawyer."

13 THE WITNESS: Oh, good. I thought you said
14 you were.

15 (Overlapping speakers.)

16 PRESIDENT HANEFELD: So, it's not important
17 how you interpret it today and believe that it is from
18 a legal perspective. This is what we need to decide.

19 For me, it's really decisive what has been
20 said, what have you said, what have you heard.

21 And so, again, my question: Have you heard
22 someone expressly saying: "Okay, now, this will

1 shield the sulfide operation from the Royalty"?

2 Have you heard that?

3 THE WITNESS: Yeah. To me it was implied,
4 yes.

5 PRESIDENT HANEFELD: Have you heard that?
6 "Implied" is something different. Just who said it to
7 you?

8 THE WITNESS: Well, in the meetings we had
9 with Ms. Chappuis--what we were trying to do was
10 written confirmation, and there was--in our minds,
11 there was two ways to do that. It was the addendum
12 and the expansion of the Concession, just like the
13 expansion is just like we did before on the 31,000 and
14 39,000.

15 So, if you do that, now all the Concession
16 is implied--or the Concession is stabilized. And so,
17 if your Concentrator is in the Concession, then it's
18 stabilized. And I'm not sure I'm answering your
19 question because I kind of said the same thing.
20 But...

21 PRESIDENT HANEFELD: And here, it's about a
22 lot of money, huh? And I--if this meant that this

1 would "shield the Sulfide Operation from the Royalty,"
2 we are talking now here in 2004 about a lot of money.
3 So, if this was made express to you, this must have
4 been like the victory.

5 And was a great Report, maybe, and to Phelps
6 Dodge, we succeeded, now we are safe. And is this
7 what this presentation is about?

8 THE WITNESS: This is making the point is
9 that we are going to, again, go through the process,
10 expanding the Beneficiation Concession. And once we
11 do that, once it's approved--and it isn't actually
12 fully approved until you built the Concentrator, yes,
13 it will shield us from the royalty.

14 So, yeah, when this--when we--when the
15 discussions with MINEM, you know, once they said "all
16 you've got to do is expand it," I think I mentioned
17 yesterday, that's kind of when the lightbulb went out.
18 You know, that's what we did before. And we went from
19 31 to 39, and there's no question that that increased
20 production was stabilized. And so, to me, it was the
21 same as putting the Concentrator at--once we put it in
22 there, it was stabilized.

1 PRESIDENT HANEFELD: Sorry. I didn't want
2 to interrupt.

3 MS. CARLSON: No, it was actually excellent
4 timing, and I was clarifying something in my own head.

5 BY MS. CARLSON:

6 Q. So, the one last question I'll ask, about
7 this slide in particular, is I just want to draw the
8 contrast between the bullet right above Stability
9 Agreement, which says that "Cerro Verde's existing
10 Stability Agreement will shield the leaching operation
11 from royalty."

12 So, it seems that, at this moment--and then
13 in the second bullet below you say, well, we've got to
14 do this additional thing to shield the Concentrator
15 from Royalty.

16 So, your understanding, at this time is, if
17 we get the Beneficiation Concession expanded, then the
18 Concentrator will be shielded. But until that point,
19 only the Leaching Project is shielded?

20 A. I think the reference about the leaching was
21 in reference, really, to political--the political
22 activities going on. And I see that it shows that

1 they approved the sliding scale for the Royalties, so
2 they got off the idea of trying to cancel the
3 Stability Contracts. And so, I think it was just--the
4 Royalty for the existing operation, we weren't--we
5 didn't have to pay. It was protected.

6 And then, yes, once we do the expansion of
7 the Beneficiation Concession, then it also would be.

8 Q. Right. Because the bullet only
9 mentioned--the first bullet that we've got highlighted
10 in yellow only mentions the Leaching Project?

11 A. Yeah, it was in reference to the Mineral
12 Royalty that the Congress just passed.

13 Q. Okay.

14 A. Because I think, you know, people had to get
15 clarity, okay, they didn't cancel our Stability
16 Contract, so we're not paying Royalties.

17 Q. Okay. All right. So, having switched gears
18 to the plan to expand the Beneficiation Concession,
19 Cerro Verde made that request on August 27, 2004.

20 When they made that request, did it say
21 "we're doing this in order to expand the Stabilization
22 Agreement"?

1 A. The request that--

2 (Overlapping speakers.)

3 Q. To expand--

4 A. --the paperwork that required by MINEM?

5 Q. The paperwork to expand the Beneficiation

6 Concession.

7 A. I don't remember. If you'd showed me, maybe

8 I could. But...

9 Q. Okay. Sorry. I'm getting multiple Post-its

10 from multiple directions with contradictory

11 suggestions.

12 A. Okay. Well, don't do either one.

13 (Comments off microphone.)

14 MS. CARLSON: Yeah, that would be the

15 alternative. Would you like to say that?

16 BY MS. CARLSON:

17 Q. Okay. I'm going to process my notes here.

18 I think we're actually going to move on to

19 what you suggested, which is let's take a quick look

20 at the request to expand the Beneficiation Concession

21 itself.

22 A. Okay.

1 Q. And that is at Tab 20, which is
2 Exhibit CE-457. Its official title is "Petition
3 Number 1487019." It's dated August 27, 2004. Again,
4 the original, not surprisingly, is in Spanish, this is
5 a translation.

6 And the first paragraph identifies who's
7 asking, and the second paragraph in the middle
8 says: "I am requesting the Modification of the
9 Beneficiation Concession to expand its installed
10 capacity from 39,000 MT/d to 147, and the Modification
11 of the area of the Beneficiation Concession by 1200
12 and some odd hectares, both of which are required to
13 pursue the scheduled exploitation of our operations."

14 So, that's the request?

15 A. Okay.

16 Q. Expand our Beneficiation Concession, both in
17 terms of capacity and in terms of its geographic
18 footprint. All right?

19 A. Umm-hmm.

20 Q. It does not say "and in order to" apply the
21 stable benefits of the Stabilization Agreement to
22 those new operations, does it?

1 A. It would be probably the same wording that
2 we used in 2001, to expand from 31 to 38. And so, to
3 me, expand the Beneficiation Concession, it's implied
4 that that's required by it, and it also means it's
5 stabilized. So, we tried to follow whatever MINEM
6 said, to--their process to do the expansion. So...

7 Q. Okay.

8 A. I mean, it was the Concession that was--I
9 know we don't agree with that, but it's the
10 Concessions that are stabilized.

11 Q. Okay. All right. And MINEM answered that
12 request and granted the expansion of the Beneficiation
13 Concession; correct?

14 A. Yes.

15 Q. All right. So--and the Concentrator--so,
16 you proceed to build the Concentrator, and it's
17 completed by, I think, first quarter of 2006, if I
18 remember correctly?

19 A. It's a two-year construction, so--

20 Q. Oh, sorry, last quarter of 2006. My bad.

21 A. That makes more sense.

22 Q. All right. Now you, if I recall correctly,

1 left Perú in May of 2005. So, at a point where, I
2 guess, the construction is underway but not yet
3 completed.

4 A. Yeah. They tied me up and made me leave.
5 You know, we worked all this time to get this thing a
6 reality, and I kind of wanted to stay for a
7 construction, but generally they--you know, five years
8 is a long time to have an expat there, so in their
9 mind, they needed to move us around. So, I left, yes.

10 Q. I mean, I also had the sense from our
11 conversation in February that your next post was a
12 promotion as well.

13 A. Yeah. I mean, it was a title, I guess,
14 promotion. I don't remember them giving me a pay
15 raise, in that sense.

16 Q. Often those two things don't go together.

17 A. Yeah, I mean, it was kind of a different
18 area. It was going to the corporate office, which I'm
19 not thrilled with because I'm an operator, and it was,
20 I think, initially the title was "General Manager of
21 New Projects."

22 Q. But all of their new Projects, I mean,

1 around the world; right?

2 A. Yeah. It was fun for a while, until copper
3 prices went down, and then what projects do you have.
4 You don't have any.

5 So, corporate life was not my joy, and as
6 you can see from my Statement there, you know, I
7 left--I don't know--four years after I got there.

8 Q. Right. And I believe you indicated in your
9 First Witness Statement that, although you didn't--or
10 maybe this was from our discussion in February. So,
11 let me confirm--that you didn't have direct
12 responsibilities or oversight responsibilities for the
13 Cerro Verde Project, but that you kind of kept an eye
14 on it because I think you described it as your "baby"?

15 A. Yeah. I didn't want them to screw it up.
16 How's that?

17 Q. Okay. And--

18 A. But, you know, I say that jokingly. You
19 know, I helped Dennis put together some slides
20 sometimes. He'd say, hey, get ahold of Cerro Verde,
21 I'm--take some pictures of construction. So, I'd do
22 that type of thing. As far as direct responsibility,

1 you know, obviously, none.

2 I did help out on the--there's a completion
3 requirement when you get loans from banks, and I was
4 working on one at the--for Phelps Dodge on the Tenke
5 Project in the Congo, and so, I said, hey, why don't
6 you do this one also, because it's a technical
7 completion. So, that's about all I was involved with
8 at Cerro Verde.

9 Q. Okay. I'm going to ask to look, if we
10 could, at Tab 22 in the binder, which is
11 Exhibit CE-901, which is Phelps Dodge's 10-K form for
12 2004. So, it's their Report filed with the SEC in--on
13 March 7 of 2005, but covering the financial year of
14 2004, which is the year where you were still in place
15 in Arequipa; right?

16 A. In--yeah.

17 Q. Right. That Report, if we go to--let's
18 see--Page 80 of the document, which is Page 83 of the
19 full PDF, which is Page 5 of the excerpt that's in the
20 binder, it's a discussion of the Cerro Verde Project.
21 And we will blow it up because it is small.

22 And it's describing what is happening in

1 Perú. Let's see if we can blow up the entire
2 June--yeah, June 2004. Sorry, we're blowing up the
3 paragraph that begins "on June 24 of 2004."

4 A. Okay.

5 Q. And so, this is describing the enactment of
6 the Royalty Law, and an amendment of the Law, and
7 pointing out that the Stabilization--that there's a
8 question about the Stabilization Agreement. It
9 says: "It is not clear what effect--what, if any,
10 effect the new Royalty Law will have on operations at
11 Cerro Verde."

12 Now, this is being said--it's being written
13 in March 2005, about what happened in 2004, a point at
14 which you got your Beneficiation Concession extended.
15 You were proceeding with the Concentrator Project.
16 You had the--you say you had the written assurances
17 that you needed, but they still don't know what the
18 Royalty Law is going to do to this Project?

19 A. I didn't write it. You know, I'm not
20 involved in Phelps Dodge's 10-K. All I can speculate
21 is, you know, it's just identifying political risk,
22 you know. That statement in there--they probably do

1 that. They probably did it for the Chile operations,
2 because I think at the same time they were talking
3 about Royalties in Chile, or additional Royalties, so
4 I think it's just political risk, identifying its...

5 Q. Would it surprise you that that same kind of
6 statement shows up in the 2005--

7 (Overlapping speakers.)

8 A. It wouldn't surprise me if it showed up
9 today. You know, it's still political risk.

10 Q. Okay. So, when you left Perú, Concentrator
11 construction was underway, completed in the end of
12 2006. You're keeping an eye on your baby from afar?

13 A. Kind of.

14 Q. And at what point did you hear that not all
15 was well with the treatment of the Concentrator Plant?

16 A. You know, not sure I did. And to be honest,
17 I'm not sure I really did until these guys called me
18 and said, you know, hey, would you be willing to be a
19 Witness? I really didn't keep up on what was going on
20 with, as far as, you know, stability, and, actually, I
21 still don't even know what was done. So, no, I did
22 not keep up--I mean, nobody told me. And, again, I

1 was busy with other work, so, no, I didn't know.

2 Q. Okay. I guess, then, I'm a little puzzled
3 by the last sentence of your First Witness Statement
4 in Paragraph 44, which says that: "I was surprised to
5 learn in 2009 that the Government had refused to honor
6 the commitments we had worked so hard to obtain"?

7 A. I know. I guess I did. Learn in 2009. I
8 was getting ready to leave. Okay. I don't remember
9 that. It's in my Statement. I guess I should have,
10 but I really--maybe I heard there was problems there,
11 but I don't know the details, and I still don't know
12 the details today.

13 Q. Right. Because the Witness Statement was
14 written in--

15 A. Yeah, I know.

16 Q. --2021, October of 2021.

17 A. Right.

18 Q. So, I guess, in October 2021, you remembered
19 Hearing in 2009, but today, you don't remember hearing
20 in 2009?

21 A. It was in my Statement, so I'm surprised
22 that I didn't remember saying that in 2009. I don't

1 remember the specifics, for sure. I still don't know
2 them today what the specifics were, if they charged
3 them Royalties or what. But, yeah, I misspoke
4 earlier, based on my Statement.

5 Q. I take the fair point that you don't
6 remember today. I mean, I guess--

7 A. It's in my Statement, I should remember.

8 Q. Yeah. Well, and not only is that you
9 learned something in 2009, but it's pretty specific.
10 It says "the Government refused to honor the
11 commitments that we had worked so hard to obtain."

12 So, it's a pretty specific statement about
13 what you learned about at that time?

14 A. Yeah. It's in my Statement.

15 Q. We're just puzzled.

16 A. Huh?

17 Q. We're puzzled.

18 A. We're puzzled?

19 Q. Or should we take that out of the Statement?

20 A. No. I put it in there. So, in reviewing
21 the documents, and I must have said: "Okay, I knew
22 that in 2009," or I wouldn't have put that in my

1 Statement. So, no, don't take it out.

2 Q. Right.

3 A. I had just forgotten it.

4 Q. Okay. Give me just a second here.

5 MS. CARLSON: I have excellent news for you.

6 I'm done.

7 THE WITNESS: All right. I'm going to make
8 Cinco de Mayo in Arizona.

9 MS. CARLSON: Well, I don't know. That
10 depends on how much redirect there is, so--or how many
11 questions there might be from the Tribunal. So...

12 THE WITNESS: Okay. Thank you.

13 PRESIDENT HANEFELD: Thank you very much.

14 So, does Claimant have questions in
15 redirect?

16 MR. UKABIALA: Madam President, could we
17 have just a moment to confer? Very briefly.

18 PRESIDENT HANEFELD: Yes.

19 MR. UKABIALA: Thank you.

20 (Brief recess.)

21 PRESIDENT HANEFELD: Do you have questions
22 in redirect?

1 MR. UKABIALA: Yes. Just a very few brief
2 questions on redirect, Madam President. Thank you.

3 REDIRECT EXAMINATION

4 BY MR. UKABIALA:

5 Q. Could we just ask to go back to that
6 Exhibit RE-324, which was the draft presentation for
7 the Board in October 2004? And I believe we were
8 looking at Slide 6.

9 (Comments off microphone.)

10 Q. And so, Randy, I just wanted to come back to
11 this document, and so that there's--you can clear up
12 any ambiguity that might be remaining about your
13 discussion of what the Ministry told you about this
14 proposed process that's described here.

15 So, could you tell us exactly what the
16 Ministry told you the effect of expanding the
17 Beneficiation Concession would be?

18 A. Yeah. Like I said, the process was
19 initially to do an amendment to the Stability
20 Contract, and then we were going through that process
21 and we met with the Ministry, and they said: "Well,
22 you don't really have to do that. To stabilize a

1 Concentrator, you don't really have to do that. All
2 you have to do is expand your Beneficiation
3 Concession."

4 And that's exactly what we did in 2001.
5 And, you know, that increased production was
6 stabilized.

7 Q. And the Ministry told you that, if you
8 expand your Beneficiation Concession, the Concentrator
9 would be stabilized?

10 A. Oh, yeah. I mean, just like we did in 2001.

11 Q. And was--what was your understanding at that
12 time as what that would mean with respect to the
13 application of the Royalty to the Concentrator?

14 A. Well, it would be treated just like the
15 leaching operation. It would be stabilized, and so it
16 would not be--as the Royalty existed at that time, it
17 would not be charged Royalty. And it would have the
18 same tax and other benefits that the Stabilized Regime
19 has.

20 Q. Thank you.

21 MR. UKABIALA: No further questions, Madam
22 President.

1 PRESIDENT HANEFELD: Thank you.

2 Does Respondent have some recross questions?

3 MS. CARLSON: No, thank you, Madam
4 President.

5 PRESIDENT HANEFELD: No.

6 Then we may have some questions.

7 I turn to Mr. Cremades. Yes?

8 QUESTIONS FROM THE TRIBUNAL

9 ARBITRATOR CREMADES: Good morning, or good
10 afternoon.

11 THE WITNESS: Good afternoon.

12 ARBITRATOR CREMADES: Just one question.

13 In these proceedings, there is a lot of
14 hearsay about discussions verbally with Madam
15 Chappuis, and you in your Report said that you have
16 serious doubts about Vice Minister Polo about the
17 whole thing.

18 You have insisted on different occasions
19 having a written confirmation. You haven't got any
20 answer. You were negotiating or trying to get an
21 addendum. You didn't get that. The impression we
22 could draw about that is that the Government didn't

1 want to give you that request you wanted to stabilize
2 the Concentrator.

3 Did you--and that's my question--at any
4 moment say to the Government: "We are sorry, we know
5 that this project is very important, but we will not
6 go ahead investing if you don't give in writing
7 confirmation about what we want to be covered by this
8 Stabilization Agreement"?

9 THE WITNESS: As I tried to explain before,
10 that would have been best. I mean, clearly. And, as
11 I mentioned, with the political climate there, we are
12 not going to get that from the Minister because they
13 didn't have to.

14 And I think the Minister relied--the
15 Ministry relied on the process, and the process was
16 either you can do an addendum--and it's not like they
17 wouldn't give us an addendum. They just suggested:
18 "Hey, you can still do an addendum if you want." They
19 just suggested that, you know: "All you need to do is
20 expand the Concession."

21 But as far as to try to specifically answer
22 your question, I don't think it was possible in that

1 political climate, or maybe in any climate, because
2 these Ministers would insist that you follow the
3 process. You know: "We have the law here. Here's
4 the process, and this process is expand the--in this
5 case, the Beneficiation Concession."

6 So, that would be my response to your
7 question.

8 Did I answer it?

9 ARBITRATOR CREMADES: Thank you very much.

10 THE WITNESS: Okay. You're welcome.

11 PRESIDENT HANEFELD: Maybe some sort of a
12 follow-up question. So, when you received this
13 assurance you were just asked about in 2004 that the
14 Concentrator was stabilized by extending the
15 Beneficiation Concession, and thereby exempted from
16 Royalties, how did you report this achievement, so to
17 say, that was in Phelps Dodge? How was it
18 communicated? Do you recall some email correspondence
19 or whatever on this agreement and assurance that you
20 had received at the time?

21 THE WITNESS: I'm trying to remember if I
22 sent a specific email. Probably. You know, we had

1 conversations all the time, and so I think Phelps
2 Dodge and the people I reported to in Phelps Dodge
3 were clearly aware that the direction we were taking
4 was initially the amendment, and then once we
5 said--you know, talked with the MINEM, they said the
6 expansion.

7 How I communicated that to Phelps Dodge, I
8 don't remember. I probably either sent them an email
9 or called them or they were there. They knew that
10 that's what our direction was.

11 So, I don't remember specific--I mean, I
12 don't remember going out and saying: "Hey, let's go
13 out and have a few beers. We just succeeded in this."
14 I don't remember that part, but I'm sure I
15 communicated in some manner with them.

16 PRESIDENT HANEFELD: So, you cannot refer us
17 to any written documents and how, so to say, this
18 understanding within the company was shared and
19 celebrated?

20 THE WITNESS: Well, I guess the written
21 document is, you know, mostly, I guess, these
22 presentations that said we met with--we're doing an

1 addendum, we've met with MINEM, and they said: "Well,
2 you can do that, but here's a better path to do it
3 than the expansion."

4 Whether there was a written document--I
5 didn't see it in the materials that I reviewed. I
6 don't remember that, other than the presentations I
7 made.

8 PRESIDENT HANEFELD: And did you--as a
9 nonlawyer, did you at that time seek legal assurance
10 from Outside Counsel that this oral commitment was
11 enough to--

12 THE WITNESS: Well, we used Outside Counsel.
13 Luis Carlos Rodrigo was my main contact there, and we
14 were working with them to what--what process do we
15 need to do to make sure the Concentrator is
16 stabilized? And so, it was in discussions with them:
17 Well, let's do an addendum. And then--

18 MR. UKABIALA: If we could just interrupt
19 very briefly.

20 THE WITNESS: I'm sorry.

21 MR. UKABIALA: The Witness should only
22 answer to the extent that it's--we believe that he

1 should only answer to the extent he doesn't disclose--

2 (Comments off microphone.)

3 PRESIDENT HANEFELD: I don't hear.

4 MR. UKABIALA: I'm sorry. We would just
5 submit that the Witness should only answer to the
6 extent that he doesn't disclose privileged
7 information.

8 PRESIDENT HANEFELD: So, you invoke
9 privilege? So, he should not--does anyone--as a
10 technician, what he can say or not?

11 MR. UKABIALA: I'm sorry, Madam President.
12 I think that your question was completely appropriate,
13 and we just wanted to--for the Witness to be aware
14 that his answer should be limited to the question of
15 whether he sought legal advice and not stray into what
16 the content of that legal advice was.

17 PRESIDENT HANEFELD: Okay. Then I'm fine.
18 I just wanted to get confirmation on that, and I think
19 this is a proper question; right? Okay.

20 MR. UKABIALA: Yes.

21 THE WITNESS: That was, to me--because I got
22 the idea--sometimes I talk too long. Yeah, our

1 Outside Counsel was the Rodrigo firm, and certainly we
2 work with them on all this path to confirmation that
3 the Concentrator would be stabilized.

4 PRESIDENT HANEFELD: Now, let me jump back
5 in time, my last question, and now to the time of the
6 Pre-Feasibility Study, 2002. Did I understand you
7 correctly that you were, so to say, in charge of
8 everything for the Pre-Feasibility Study? That was
9 your baby?

10 THE WITNESS: Pretty much. I mean, we had
11 some help from Phelps Dodge. We had help from the
12 Santiago office, which is--they were over South
13 America, and their help was mainly the financial
14 model. But other than that, we did the mine plans,
15 you know, the mine plans were the driver of the
16 economics. Jim Vanderbeek, the guy from Phelps Dodge
17 in Phoenix, did the work on the Concentrator. But we
18 did the rest, yes. And we used some outside
19 engineering companies when we needed to.

20 PRESIDENT HANEFELD: And did I understand
21 you correctly that in the financial model, you assumed
22 that the Stabilized Tax Regime would apply to the

1 Concentrator?

2 THE WITNESS: Is it the model for the
3 Pre-Feas or the Feasibility Study?

4 PRESIDENT HANEFELD: For the Pre-Feas.

5 THE WITNESS: Yeah. We--if I remember
6 correctly, we assumed, yes, that the Concentrator
7 would be treated the same as the leaching operation.
8 We did not, as I mentioned before, for the
9 reinvestment of profits we were unsure about
10 repatriating those funds back to the States, and so we
11 left that as a sensitivity until we figured that out.
12 But, yeah, it was--in the economics of the Pre-Feas it
13 was assumed the Concentrator would be stabilized.

14 PRESIDENT HANEFELD: Was there also an
15 alternative calculation based on the assumption that
16 the Concentrator would not be stabilized? I do not
17 talk about the reinvestment of profit. I talk about
18 the Concentrator and income.

19 THE WITNESS: Would there not be an--I
20 didn't catch that word. Would there not be another
21 what?

22 PRESIDENT HANEFELD: We distinguished

1 earlier on two things, and now one thing is the
2 reinvestment of profit.

3 THE WITNESS: Umm-hmm. PRESIDENT

4 HANEFELD: And the other one, whether the
5 Concentrator, when it starts to operate, is subject to
6 the old Stabilized Regime. And I want to better
7 understand for the second part, stabilization of the
8 Concentrator in operation, was there an alternative
9 calculation made, or was there only calculations in
10 the financial model based on the assumption that the
11 Concentrator was stabilized?

12 THE WITNESS: So, your question is, did we
13 do sensitivity on--

14 PRESIDENT HANEFELD: On that point. Yes,
15 financial.

16 THE WITNESS: I'd have to look at the
17 Pre-Feasibility to remember. More than likely, if it
18 wasn't in the Pre-Feas, I'm sure we did it because
19 somebody probably asked that question. I'd have to
20 look at the Pre-Feasibility document to be certain
21 whether it was in there or not. I don't remember.

22 PRESIDENT HANEFELD: So, you assume that

1 such alternative calculations were made?

2 THE WITNESS: Well, you do sensitivities on
3 a lot of things. You do sensitivities on copper
4 price. You do sensitivities on the throughput, the
5 recovery, all those. Whether it was--we did it with
6 the stabilization, I don't remember doing it, but
7 probably somebody asked the question, and so we said,
8 yeah, this is the effect it will have on it.

9 PRESIDENT HANEFELD: And you said probably
10 someone has asked the question. Is this what you
11 earlier referred to, because there was this elephant
12 in the room?

13 THE WITNESS: I don't know if the elephant
14 was there at that time or it became--or the elephant
15 became more clear in the Feasibility Study. But the
16 elephant in the room was always people, and Phelps
17 Dodge, I think, was the first one that always said,
18 you know, it's called the "Leaching Project." And I
19 would respond, you know, that's just a name. That's
20 what they called the Feasibility Study. It doesn't
21 mean that that project--it doesn't mean anything to do
22 about stabilization, what is stabilized or the

1 Concessions. So, the elephant in the room was, why in
2 the heck did they call it the "Leaching Project."

3 PRESIDENT HANEFELD: And as you are a
4 nonlawyer, just also I think it's a proper question,
5 now, do you recall that you obtained legal advice at
6 the time of the Pre-Feasibility Study on this very
7 question that we just discussed?

8 THE WITNESS: Oh. Sure. Yes.

9 PRESIDENT HANEFELD: Now, this is the
10 redacted part in the Pre-Feasibility Study?

11 THE WITNESS: I believe so, in
12 Appendix--whatever it was, G or H or something. Yes.

13 PRESIDENT HANEFELD: Okay. E.

14 THE WITNESS: Yes.

15 PRESIDENT HANEFELD: Thank you.

16 ARBITRATOR TAWIL: I don't have any.

17 PRESIDENT HANEFELD: Then you are released
18 as a Witness, Mr. Davenport. Thank you very much. We
19 have no further questions.

20 THE WITNESS: Thank you.

21 PRESIDENT HANEFELD: Thank you.

22 THE WITNESS: Thanks.

1 MS. CARLSON: Thank you.

2 (Witness steps down.)

3 PRESIDENT HANEFELD: So, probably it would
4 be a good time for a lunch break; right?

5 (Whereupon, at 12:35 p.m., the Hearing was
6 adjourned until 1:35 p.m., the same day.)

7 AFTERNOON SESSION

8 MARÌA CHAPPUIS CARDICH, CLAIMANT'S WITNESS, CALLED

9 PRESIDENT HANEFELD: Welcome back. We will
10 now continue with the Witness testimony of
11 Ms. Chappuis.

12 Welcome, Ms. Chappuis.

13 I'll introduce ourselves. My name is Inka
14 Hanefeld. I'm the presiding arbitrator in this
15 Arbitration. I'm here with my co-arbitrators,
16 Professor Tawil and Dr. Cremades.

17 You have been called as a Witness in these
18 proceedings by Claimant, and so I need you to read out
19 the Declaration that you should have in front of you
20 under Rule Number 35(2) of the ICSID Arbitration
21 Rules. Can you please read it out?

22 THE WITNESS: Good afternoon. I'll read it

1 in Spanish. Good afternoon, everyone.

2 Witness Declaration: I solemnly declare,
3 upon my honor and conscience, that I shall speak the
4 truth, the whole truth, and nothing but the truth.

5 PRESIDENT HANEFELD: Thank you very much,
6 Ms. Chappuis.

7 Do you have your Witness Statements in front
8 of you? It should be CWS-3 and 14.

9 THE WITNESS: Yes, I have my Witness
10 Statements right here of 19 October 2021 and 13
11 September 2022.

12 PRESIDENT HANEFELD: Can you confirm that
13 these are your Witness Statements and that they
14 correspond to your recollection, or do you have any
15 corrections to make?

16 THE WITNESS: I think these are them, yes.

17 PRESIDENT HANEFELD: Perfect. Then we can
18 proceed.

19 You will first briefly be questioned by
20 Claimant's Counsel and then the Respondent will
21 continue.

22 DIRECT EXAMINATION

1 BY MR. PRAGER:

2 Q. Good afternoon, Ms. Chappuis.

3 I'm going to put some questions to you.

4 The first is: Could you explain when you
5 began to work at MINEM for the first time?

6 A. I began to work there in August of 1990. I
7 was assigned to the Ministry of Energy and Mines by
8 the Tintaya Special Mining Company, a State
9 enterprise.

10 Q. And could you explain for us your role in
11 the drafting of Legislative Decree 708?

12 A. Based on the experience I'd had at Tintaya,
13 I wrote, together with Mr. César Polo, all or most of
14 the Articles in Legislative Decree 708, especially
15 those having to do with the Tax Stability Agreements.

16 I had worked for three years at the Tintaya
17 Special Mining Company, dedicated exclusively to
18 implementing the Stability Agreement that we had. And
19 my task was every afternoon to meet with two
20 inspectors from the Ministry of Energy and Mines who
21 were in an office within our company and to review
22 with them all of the investments that we had made to

1 build Tintaya eight years earlier.

2 In addition, we reviewed the investments
3 that we were continuously making in the mine. We were
4 exploring; we were making changes in the Concentrator.
5 All of that I would review with the Ministry of Energy
6 and Mines' inspectors, who were in constant contact
7 with the SUNAT.

8 Q. Going back to the Ministry and the first
9 time you were there, could you describe for us the
10 conversations that you had with Mr. Polo regarding the
11 scope of the Stability Guarantees?

12 A. Mr. Polo had come from Centromín, a
13 State-owned mining company that did not have a Tax
14 Stability Agreement. Moreover, it had only seven
15 underground mines, old ones, with a lot of labor
16 problems.

17 I had come from large-scale copper mining
18 with a contract at that time--an agreement at that
19 time. I told him of all our experience, and also the
20 advantages, as well as the fragile aspects of the
21 Agreements under Legislative Decree 109.

22 Q. Well, here in the Arbitration we talked

1 quite a bit about what became the fourth paragraph of
2 Article 83 of the General Law on Mining, which says
3 that stability applies exclusively to the activities
4 of the mining company in whose favor the investment is
5 made.

6 Did you have conversations with Mr. Polo
7 about this provision at that time?

8 A. Well, let me clarify that "activities," as
9 Decree 708 says and as other mining laws say, refers
10 exclusively to the mining activities that are
11 exploration, mining, processing, or beneficiation, and
12 marketing as well, and transport and mining work.

13 So, I sat down with Mr. Polo, and together
14 we would write. We would sit down at a table. He was
15 here; I was here. We would exchange information and
16 would go forward in the drafting process. Then we had
17 decided to include the medium-sized companies, those
18 that could only make an investment of 2 million; the
19 existing companies; and the companies that were
20 State-owned and were entering into privatization
21 processes.

22 So, Mr. Polo--and here I'm talking about

1 1990. We didn't have laptops. He was writing, and he
2 told me: "So, all of the Companies that are going to
3 be privatized are included here. Centromín as well.
4 But Centromín, no, it has factories."

5 So, in Perú, since we've had Tax Stability
6 Agreements, and we have had them since 1890, Tax
7 Stability Agreements were only given to mining. And
8 he said, "No. If we are doing that, it could be that,
9 when Centromín is privatized, the factories would also
10 receive a Tax Stability Agreement." Now, and he
11 corrected it and wrote that phrase, which said this
12 would be only for mining activities of the mining
13 company. And in this way, he sought to exclude the
14 factories.

15 Now, I must clarify that the legislative
16 decrees are signed by the Minister and the President,
17 but afterwards they need to be ratified by the
18 Congress, and what Minister Sánchez Albavera did not
19 want was to have any objection whatsoever by Congress.
20 That's why we included that paragraph at Article 11, I
21 think it was, of Legislative Decree 708.

22 Q. And do you have any recollection as to

1 whether at that time Mr. Polo mentioned that the scope
2 of stability would be limited to an investment
3 project?

4 A. No. Never. He never mentioned that.
5 Moreover, had he mentioned it, I would have told him:
6 "You're crazy. You're totally wrong. That's
7 impossible."

8 Mining activities, as we had written even in
9 708, everything is governed by concessions. If we
10 were signing an agreement for mining activities, that
11 agreement, based on the Articles of the General Law on
12 Mining, had to be based on concessions, and that is so
13 because we decided that they had to be adhesion
14 contracts, and that Article 3 was going to make
15 reference to Annex 1, where we were going to indicate
16 the Concessions covered by the Stability Agreement.

17 And, also, as we included in 708, for
18 investments of over 50 million, it was going to be
19 15 years and not one more day.

20 Q. And when did you leave MINEM for the first
21 time?

22 A. In February of 1993.

1 Q. And when did you return to MINEM?

2 A. 2001. I went back after eight or 10 years,
3 together with Mr. Polo, who called me to come back.

4 Q. And what were your functions at that time as
5 Director General of Mining?

6 A. 10 years had gone by. The law had been
7 published. Many tax stability agreements had been
8 signed. Perú, even though the copper prices were not
9 helping us, the international price was 80, 85, 90,
10 and it--but investment had come to Perú, and so we had
11 to continuously review studies, applications; plus, I
12 was in charge of the environmental aspect as well as
13 the mining security aspect.

14 Q. Could you explain, during the time that you
15 were the Director of the DGM, what was MINEM's
16 understanding as to the scope of the tax stability
17 agreements?

18 A. The understanding, the criterion, has always
19 been that it's based on concessions. Several
20 stability agreements had been signed, more than 20 of
21 them, and you can review them. They are available at
22 the website of the Ministry, and they all have the

1 same text, because it's an adhesion contract, and they
2 all refer to certain Concessions which are in Annex 1.

3 Q. Could you describe the conversations that
4 you had with Cerro Verde in 2003 regarding
5 reinvestment of profits?

6 A. In 2003, copper prices were \$0.90 per pound,
7 and then the officials of Cerro Verde came to my
8 office and they said that the Oxides had been depleted
9 and they were thinking about finally building the big
10 Concentrator that was needed to process the Primary
11 Sulfides. First, I was glad to hear it and, second,
12 they sent me two communications where they asked
13 whether the reinvestment of profit was in force.

14 Now, that tax provision had been derogated
15 in 2000. We were in the year 2003. It was no longer
16 the Fujimori Administration. It was the Toledo
17 Administration.

18 My answer in the meetings we had was that
19 "the Peruvian State will honor, to you, the Agreements
20 that had been signed." They sent two letters with
21 some inquiries. We answered them, and I think that's
22 here in the record.

1 Q. And what conversations did you have in 2004
2 with Cerro Verde regarding application of the
3 Stability Agreement to the Concentrator?

4 A. In 2004, copper prices began to climb
5 slightly. It was at \$1.20, and that gave us some
6 breathing room. The mining company's situation was
7 not so difficult, and so they came and they said: "We
8 have undertaken our Feasibility Study in respect of
9 the Concentrator, and we want to know if it's going to
10 be covered." So, we had a meeting with them where, as
11 always, the meetings were my team with the mining
12 companies. I never met with them alone.

13 So, we spoke, and they put it to us, and we
14 told them two things: "The Peruvian State is going to
15 respect this. It's an investment. There's no
16 restriction in the law based on size of the
17 investment. This has been something our country has
18 longed for since 1979, and, finally, it is so good
19 that the Concentrator Plant is finally going to be
20 built."

21 So, we said, "Well, how is this is going to
22 be formalized." And so, they told me that, well, they

1 were going to file an application, that perhaps they
2 were going to ask for an additional Beneficiation
3 Concession." So, we told them: "You, since the Cerro
4 Verde Mining Unit began, had a Beneficiation
5 Concession where there was a Leaching Plant and a
6 Concentrator. Why not include this new plant in the
7 area of this Beneficiation Concession?

8 As you know, Cerro Verde had, like this
9 table, 7,000 hectares in mining concessions, and it
10 had a small concession of 450 hectares here that was
11 on top of the 7,500, and that was the Beneficiation
12 Concession where all of its treatment plants were
13 grouped together.

14 And so, we told them that it could be
15 included. All of this was, the Mining Concession and
16 the Beneficiation Concession, were covered by the
17 Agreement up until 2013 and not one more day.

18 Q. Thank you very much.

19 MR. PRAGER: I don't have any further
20 questions.

21 PRESIDENT HANEFELD: Thank you.

22 Mr. Alexandrov, will you do the cross,

1 please? Please go ahead.

2 MR. ALEXANDROV: Thank you very much, Madam
3 President.

4 CROSS-EXAMINATION

5 BY MR. ALEXANDROV:

6 Q. Good afternoon, Ms. Chappuis.

7 A. Good afternoon.

8 Q. I'll be speaking English.

9 A. Okay.

10 Q. You'll be listening to the Spanish
11 translation, I understand.

12 A. Okay.

13 Q. You'll be responding in Spanish; correct?

14 A. Yes, that's right.

15 Q. Then I will ask you, when I ask you the
16 question in English, make a pause before you respond
17 so that the interpreters can catch up.

18 A. Fine.

19 Q. Once you respond, I'll do my best to make a
20 pause myself, again, for the interpreters to catch up.
21 I ask you that you don't take my pause as an
22 invitation to continue talking. I will just make a

1 pause for the interpreters to catch up.

2 A. Fine.

3 Q. I'll also ask you to keep your answers brief
4 to the extent possible.

5 You testified at the Hearing in the parallel
6 case, the Cerro Verde Case, in February; correct?

7 A. Yes.

8 Q. Did you review the Transcript of that
9 Hearing?

10 A. Yes. I reviewed my Transcript.

11 Q. When you say--when you say your Transcript,
12 do you mean the Transcript of your testimony?

13 A. I only reviewed my testimony.

14 Q. And nothing else?

15 A. Nothing else.

16 Q. How about the Opening Statements?

17 A. I did not review them.

18 Q. Okay. You will recall that you testified at
19 that Hearing that you were paid for the time spent to
20 prepare your Witness Statements and for the time spent
21 to prepare for your testimony at the Hearing and your
22 testimony at the Hearing. And you testified that you

1 charged a fee of \$250 per hour.

2 Do you remember that?

3 A. Yes.

4 Q. Are you paid the same rate to prepare your
5 Witness Statements and prepare for and testify at the
6 Hearing in this case?

7 A. Yes.

8 Q. How much total have you charged Cerro Verde
9 and/or Freeport so far for preparing for
10 the--preparing your testimony in the Cerro Verde Case
11 and preparing your testimony and for the Hearing in
12 Freeport v. Perú?

13 A. Several hours. I don't recall the exact
14 number of hours, so I could not give you an exact
15 figure.

16 I work for other institutions and other
17 consultancies, and I have a weekly time sheet. And
18 there I note how many hours, and I give that time
19 sheet to my accountant.

20 At this time, I wouldn't want to give you an
21 answer, because I might end up telling you a figure
22 that's not correct.

1 ARBITRATOR TAWIL: I almost can't hear you.
2 Could you speak a little closer to the microphone or
3 speak up a bit?

4 THE WITNESS: Okay. My apologies.

5 BY MR. ALEXANDROV:

6 Q. Now, Ms. Chappuis, we all know how this
7 works. We record our time and then give the number
8 of hours to an accountant who prepares the invoices.
9 So, you have to know how many hours you've spent or
10 how many hours you've charged Cerro Verde and/or
11 Freeport. Your accountant cannot come up with that
12 number. You feed that number to the accountant.

13 So, you've got to know when you give those
14 time sheets to your accountant how much time, how
15 many hours, you've spent and you've charged for Cerro
16 Verde and/or Freeport; isn't that right?

17 A. As I told you, I work for other institutions
18 and I do consultancies for other companies. And each
19 week I prepare a time sheet that indicates the number
20 of hours that I spent on each job, and I give that to
21 my accountant.

22 It's my understanding that in respect of

1 this Hearing, I have to--that in this Hearing, I need
2 to give exact, precise answers, so I could tell you at
3 this point in time, 20 hours.

4 Q. And when you say "20 hours," you mean in
5 preparing for this Hearing; correct?

6 A. I would like to make a note.

7 Q. Can you just answer my question, please?

8 (Overlapping speakers.)

9 Q. Sorry. You said: "It is my understanding
10 that in respect of this Hearing, I have--that in this
11 Hearing, I need to give exact, precise answers. I
12 could tell you at this point in time, 20 hours."

13 So, I'm just asking you to confirm: Is it
14 your testimony that you have spent and been paid for
15 20 hours for the time that it took you to prepare for
16 this Hearing?

17 A. What I wanted to say, Mr. Alexandrov, is
18 that I'm not getting the translation.

19 Q. Okay. Did they translate my last question?

20 A. Perhaps I need to press another button.

21 MR. ALEXANDROV: Can somebody help to make
22 sure she's on the right channel, please?

1 PRESIDENT HANEFELD: Yes.

2 You will receive assistance. My apologies
3 if you don't receive the translations.

4 BY MR. ALEXANDROV:

5 Q. Do you hear the Spanish translation now?

6 A. Yes, now I do.

7 Q. So, you said: "In respect of this Hearing,
8 if I need to give an exact, precise answer, I could
9 tell at this point in time 20 hours."

10 So, I was just asking you to confirm that
11 you spent 20 hours in preparing for this Hearing.

12 Can you confirm that?

13 A. Yes. More or less 20 hours.

14 Q. Ms. Chappuis, do you review the invoices
15 that your accountant sends to your various clients?

16 A. Yes.

17 Q. Do you have any idea about the amounts of
18 your invoices to Cerro Verde and/or Freeport so far?

19 A. I'm going to be very sincere with you,
20 Mr. Alexandrov. I'm more concerned about the invoices
21 that other clients delay in paying.

22 Q. Well, I'm glad that Cerro Verde and Freeport

1 are paying you promptly and you're not concerned about
2 that. Nevertheless, since you review your invoices,
3 you must know--and you may not remember now the
4 precise number in terms of cents, but you must have a
5 general idea of what is the total amount of your
6 invoices issued so far to Cerro Verde and Freeport.

7 So, what is it?

8 A. I wouldn't dare give an exact number. As I
9 said for these last ones, 20 hours, at \$250, \$5,000.

10 Q. Well, but--I understand your math exercise.
11 You're multiplying 20 hours by 250, but the 20 hours,
12 I understood, was just to prepare for this Hearing.
13 And I'm asking you for the total amount that you have
14 invoiced so far. Just give me a ballpark.

15 A. Perhaps \$7,000.

16 Look, sir, Mr. Alexandrov, you have to
17 recognize that, in Perú, we pay taxes. Consultants
18 pay taxes, and we have rates, and right now I'm having
19 an issue trying to think how much I ended up charging,
20 because, in Perú, we do pay taxes, high taxes.

21 Would you like the gross or the net amount?

22 PRESIDENT HANEFELD: Sorry. Maybe I just

1 misunderstood the numbers that were stated. Was it
2 right on the Transcript? Perhaps USD 7,000? I
3 understood something differently.

4 (Comments off microphone.)

5 PRESIDENT HANEFELD: Okay. 7,000 so far.

6 MR. ALEXANDROV: That's what she said, but
7 I'm going to pursue that a little bit.

8 BY MR. ALEXANDROV:

9 Q. Well, first of all, Ms. Chappuis, I
10 understand you pay taxes in Perú. So, I'm not
11 questioning that. In response to your request for
12 clarification, I'm asking you how much you have been
13 paid so far before taxes.

14 So, if you want--"bruto," if you will--but
15 let me ask you about the number \$7,000, because you
16 just said that you spent 20 hours preparing for this
17 Hearing, which is \$5,000. Are you saying that for
18 preparing your written statements in the other case
19 and in this case and preparing and testifying at the
20 Hearing in the other case, you are only paid an
21 additional \$2,000?

22 A. No, Mr. Alexandrov. My understanding is that

1 you asked me: How many hours did you take to prepare
2 this Hearing today? I haven't invoiced Cerro Verde
3 yet.

4 Q. Well, what I'm asking you--let's then split
5 it into two questions.

6 My first question is how many hours, more or
7 less, you have spent preparing your written Witness
8 Statements in the other case, preparing for and
9 testifying in the other case, preparing your Witness
10 Statements in this case, and preparing to appear at
11 this Hearing. Total, how many hours so far?

12 A. Okay. Let's split these things up.

13 You have asked how many hours I took to
14 prepare this, this, and today's.

15 Q. I will repeat my question.

16 The two Witness Statements you submitted in
17 the case of Cerro Verde v. Perú, your preparation for
18 the Hearing that we conducted in February, your time
19 at the Hearing, and then, in addition, how many hours
20 you spent preparing those two Witness Statements in
21 this case and how many hours you spent preparing for
22 this Hearing total.

1 A. Well, let us say that I have not submitted
2 the time sheet for this week where I have reviewed all
3 these documents, my testimonies, and right now I am
4 now testifying at a hearing.

5 Now, if we exclude this, I think that, after
6 taxes, Cerro Verde has paid around \$7,000.

7 Q. I'm just waiting for the Transcript to show
8 what you said.

9 Now, if I'm not mistaken--Ms. Chappuis, I'm
10 not asking you after taxes, because I don't know and I
11 don't want to know what taxes you are paying.

12 I'm asking you, before taxes, what you were
13 paid by Cerro Verde and/or Freeport, not what you end
14 up after paying taxes on those amounts.

15 So, can you answer that question, please?

16 A. I would have to think about a more imprecise
17 calculation. Taxes are not based on flat figures.
18 You know, as figures go up, the tax rate goes up.
19 Let's just say that perhaps \$10,000, that could be an
20 amount.

21 I also need to make another clarification,
22 Mr. Alexandrov, as you are very interested in this.

1 Cerro Verde covers my trip, hotel, flight, food when I
2 am away from my country being at a hearing. So, the
3 amount is much higher; right?

4 Q. To be clear, I'm not asking about your
5 costs, your hotel and your travel. I'm asking about
6 the remuneration you receive for your time, which you
7 said you charge \$250 per hour.

8 And so, if you received \$10,000 so far, that
9 by my calculation is 40 hours at the rate of 250. You
10 said that you spent 20 hours preparing for this
11 Hearing. It seems to me difficult to understand how
12 you spent 20 hours preparing for this Hearing and then
13 you spent just 20 more hours preparing your four
14 Witness Statements and preparing for the other
15 Hearing.

16 Can you explain that?

17 A. Mr. Alexandrov, let's see. First, this last
18 stage, well, I haven't charged Cerro Verde anything
19 for it. I have my time sheet that I have kept day by
20 day, and I have written on there how much time I
21 spent. I have not collected anything.

22 In connection with the 7,000, or 10,000

1 before taxes, I have not included this last stage. We
2 have not finished with Cerro Verde. My time sheet
3 will end when I arrive on Friday at my place. And I
4 said, okay, I used up so many hours for Cerro Verde,
5 and I go day by day. That last calculation I have not
6 performed yet.

7 Q. Okay. So, what I understand is this: You
8 were paid \$10,000, which is 40 hours of your time
9 before you started preparing for this Hearing. For
10 the time you spent preparing for this Hearing, you
11 estimated 20 hours. I'm still having some difficulty
12 understanding how is it that you spent 20 hours
13 preparing for this Hearing, but you spent a total of
14 40 hours preparing for the February Hearing and then
15 preparing four Witness Statements.

16 Can you explain?

17 A. I'm sorry, could you tell me what are the
18 four Witness Statements that you're referring to?

19 Q. Well, two in the other case and two in this
20 case.

21 A. No, sir. I am saying that whatever has to
22 do with this stage that started in April and that we

1 are concluding today, for me, at the Hearing, well,
2 then I'm going to leave here, got to the airport,
3 arrive at my place, and then, and only then, am I able
4 to calculate how many hours I used. That has not been
5 invoiced yet.

6 The time sheet is not completed yet. I
7 still have to add this Hearing and my return to Lima.

8 Q. No, I understand that. You're saying you
9 haven't invoiced the time you spent preparing for this
10 Hearing. I understand that. I also understand you
11 said you spent 20 hours preparing for this Hearing,
12 but what you have invoiced already must be your two
13 Witness Statements in the other case, your two Witness
14 Statements in this case--that is four Witness
15 Statements--plus the time you prepared for the Hearing
16 in February and the time you spent at the Hearing in
17 February. My question to you is: If just preparing
18 for this Hearing took you 20 hours, which you have not
19 yet invoiced, isn't 40 hours spending on all the rest,
20 four Witness Statements and preparing for the other
21 Hearing, a fairly low number?

22 A. Sir, I know that this is being translated,

1 but I do not understand, I have only prepared this,
2 this, and I have looked at this, which was my
3 presentation, or my Statement at the February meeting
4 where you and I met, and I started preparing for this
5 about two weeks ago and I haven't finished completing
6 my time sheet, and when I get to my house, I'm going
7 to conclude filling out the time sheet. I'm going to
8 send the invoice to Cerro Verde, including my
9 expenses. I have to put together all my expenses,
10 taxis, hotels, meals, et cetera.

11 Q. So, are you saying that the \$10,000 cover
12 the invoiced amounts in this case only, your two
13 Witness Statements, and whatever else you did for the
14 purposes of this case and you do not include in that
15 number the compensation you received in preparing your
16 two other Witness Statements in the Cerro Verde Case
17 in your preparation for and participation in the
18 Hearing in that case?

19 Is that your testimony?

20 A. As I said, you asked me how much Cerro Verde
21 had already paid. From what I recall, up until
22 February, and I was at a Hearing in February and you

1 were also involved in that Hearing, well, up until
2 February, the amount is around \$10,000. That's just
3 my fees, because then I have charged Cerro Verde all
4 of the expenses related to hotels, flights, taxis,
5 meals.

6 Q. Ms. Chappuis, I'm having some difficulty
7 trying to understand how much you've been paid, and I
8 don't know if it's my difficulty or you're not being
9 straightforward.

10 Do you believe there is anything wrong that
11 you were paid for your testimony in this case?

12 A. I do not, in no way.

13 Q. Then why don't you just say, this is what
14 I've been paid so far, and I expect I'll be paid for
15 the rest of my time when I invoice it?

16 A. I have not yet calculated how many hours.
17 We have not finished this, Mr. Alexandrov. If you are
18 going to ask me questions for two more days, I'm going
19 to have to invoice two more days to Cerro Verde.

20 Q. Well, I was asking you what you have
21 invoiced so far. I understand that you are yet to
22 submit invoices. I can see that Cerro Verde is

1 thrilled with anticipation to receive those, but in
2 the meantime, I was asking how much you've invoiced so
3 far. And I understand that there is some time that
4 you have not yet invoiced, but again, how much you
5 have invoiced in both cases so far?

6 A. Let me explain this to you, Mr. Alexandrov.
7 When was the Hearing? February 5; right? February 3,
8 February 5. Let's just say February 4 or 5. Then the
9 Hearing ended by midday. I went to the hotel, I
10 packed, and then I went to Lima. I arrived in Lima
11 and I put together my invoices, all my time sheets and
12 I sent the invoices to Cerro Verde. All of the
13 expenses that I had made: Hotel, meals, flights, I
14 added everything.

15 Now, that, of course, is taxed in a special
16 manner. Then I included my hours Day so-so, Day
17 such-and-such, a Hearing, we ended at 11 in the
18 morning, so I wrote "11 in the morning," et cetera,
19 et cetera. And I invoiced the amounts to Cerro Verde.
20 I think I would have invoiced everything by
21 February 15. If we look at February 15, backwards, I
22 calculate that with the preparation of this Witness

1 Statement and the other about \$7,000. After taxes.

2 Q. So, Ms. Chappuis, your First Witness
3 Statement in the Cerro Verde Case was submitted on 27
4 August 2001, not this one, not the other one, but the
5 Witness Statements in the Cerro Verde Case, 27
6 August 2021.

7 MR. PRAGER: Madam President, the Witness
8 Statement is not on the record here, so she can't
9 verify that.

10 MR. ALEXANDROV: She can take my
11 representation for that, and I'm sure you'll correct
12 me if I get the date wrong.

13 BY MR. ALEXANDROV:

14 Q. 27 August 2021.

15 So, let me ask you, then, this: You're
16 paying taxes in Perú. How much were you paid by Cerro
17 Verde for your participation in both cases in 2021?

18 A. Let's see. Let's clarify something,
19 Mr. Alexandrov. Here we have a witness statement. It
20 appears to be the first, 19 October 2021. That's the
21 date it appears, a year and a half ago. Then there is
22 another Witness Statement that is a response to what

1 other Witnesses were saying--

2 Q. Ms. Chappuis, sorry to interrupt, I may not
3 have been clear. I'm not talking now about those two;
4 right? I'm talking about your testimony in the other
5 case in which you testified, in February. And there
6 you also submitted two Witness Statements, and the
7 first one was in August of 2021, not this one. Not
8 this one, in the other case. You submitted the first
9 one in the other case in August of 2021, so you must
10 have done some work in August of 2021.

11 How much you were paid total, "brugal,"
12 (phonetic) in 2021?

13 A. Now I understand, Mr. Alexandrov. Just now.
14 My apologies. Here this is a witness statement for
15 Freeport, and the other one was a witness statement
16 for Sumitomo. So, what I recall is that, practically
17 speaking, they are the same. I do not recall having
18 prepared four different Witness Statements.

19 Q. I understand now. Nevertheless, could you
20 please answer the question: How much were you paid by
21 Cerro Verde or Freeport? Who is paying your invoices?
22 Is it Cerro Verde?

1 A. SMCV because I issue my invoices in Perú,
2 and that is the mining company, the Peruvian mining
3 company that I can issue invoices to because they have
4 a taxpayer number in Perú.

5 Q. How much did Cerro Verde pay you in 2021?

6 A. I do not recall. That is why I said that up
7 until February, around February 15, 2023, for
8 everything that I had done, all of these Witness
9 Statements that you say that they are four--okay. No,
10 now I realize that they are four. Two for Freeport
11 and two for Sumitomo, but really there are two. There
12 are two that are the same.

13 So, the approximate amount is \$10,000, and
14 after taxes, \$7,000.

15 Q. Okay. You have testified and you responded
16 to questions by Dr. Prager that you first joined MINEM
17 in 1990; correct?

18 A. That's exactly right, August 1990--30 August
19 1990. 33 years ago.

20 Q. In your Witness Statement, you say you were
21 a secondee to Vice Minister Polo; correct?

22 A. I was an advisor of the Vice Minister of

1 Mines.

2 Q. And the Vice Minister was Mr. Polo?

3 A. Exactly. Right.

4 Q. Before that, you had no Government
5 experience; correct?

6 A. My experience was having worked for
7 three years for the State mining company, Tintaya.

8 Q. So, you worked for a State-owned company,
9 but, to respond to my question, you did not work for
10 the Government; correct?

11 A. No. I worked for a private law State-owned
12 company.

13 Q. Okay. Now, your first job as a junior
14 engineer was for Compañía Buenaventura; correct?

15 A. No. I was an intern. I hadn't really
16 obtained my title as an engineer, as a mining
17 engineer. I was a few months away from it.

18 Q. Okay. But that was your first job?

19 A. Yes. It was my first job in an underground
20 mine that was very small in the Huancavelica Region in
21 Perú.

22 Q. And Compañía de Buenaventura is the same

1 company that in 1994 participated, together with
2 Cyprus Minerals, in the privatization of Cerro Verde;
3 correct?

4 A. That is exactly right.

5 Q. And you're aware, aren't you, that Compañía
6 Buenaventura acquired 9.2 percent of the Shares in
7 Cerro Verde at the time; correct?

8 A. In November 1994, yes.

9 Q. Okay. And you're also aware that the same
10 company, Buenaventura, owns 40 percent in Yanacocha;
11 correct?

12 A. That's exactly right.

13 Q. And the founding President of the
14 Buenaventura is Mr. Alberto Benavides de la Quintana;
15 correct?

16 A. That's exactly right. Well, he passed away
17 already.

18 Q. Yes, the late--I should have said?

19 A. Yes. He died a while ago.

20 Q. You know his youngest son, Mr. Raúl
21 Benavides; correct?

22 A. Raúl Benavides studied Mining Engineering at

1 the Catholic University with me. He was also a
2 student of mining engineering up until the third year,
3 and then he left the Catholic University and he came
4 to the U.S. to finish his engineering studies.

5 Q. Right. See, if I remember correctly, he was
6 expelled, and so he came to the United States to
7 complete his education.

8 Am I right?

9 A. At the Catholic University, you could not
10 repeat a class a third time, because this entailed
11 being expelled, and he repeated a class three times,
12 so he had to leave the Catholic University.

13 Q. You keep in touch with him on a regular
14 basis, don't you?

15 A. No, I do not.

16 Q. Well, you had a chat group called
17 "Huascaminas" in which he participates; correct?

18 A. The School of Mines of the Catholic
19 University is very, very small. The School of Mines
20 is very, very small. All of the graduates, about 180
21 people so far, 180 professionals, well, when WhatsApp
22 came up, we got together in a WhatsApp group that is

1 called Huascaminas, and we exchanged news and notices.

2 Q. Well, in addition to interchanging
3 communications, you also had regular meetings at the
4 rate of once a month; correct?

5 A. We now hold meetings, because 20 years ago
6 all of us were working in different mines. We were
7 spread around throughout the country. We are now
8 retired. We have more time.

9 Q. So, you do have meetings once a month;
10 correct?

11 A. Well, we could say every one or two months,
12 well, those who are able to go to the meetings go,
13 those that are free. But it's not only meetings we
14 hold. We also go to funerals.

15 Q. Unfortunately, that's life, but I'm not
16 going to focus on that at the moment because we have
17 more pressing things to do.

18 I want to show you your testimony at the
19 Hearing in the other case, which I referred to as the
20 Cerro Verde Case, and it is Tab 5, CE-1135. That's
21 Day 3 of the Transcript at Page 789-790 of the
22 English. The Spanish is 779, Lines 2-16. We will

1 show it on the screen, if that's easier. Whatever is
2 easier for you.

3 And I was asking you--I'll read from the
4 English: "Can you tell us a little bit about this
5 group, which I think you called--it's not in the
6 translation, but you called 'Huascaminas'?" And you
7 answered: "Yes. We were all graduates of the
8 Catholic University, from the School of Mines. We
9 call ourselves the Huascaminas, and we meet once a
10 month. We have ceviche together."

11 Do you confirm your testimony?

12 A. I apologize. What page is that?

13 Q. In the Spanish it is 779, Lines 2 to 16.

14 It's also on the screen to help you orient,

15 Ms. Chappuis.

16 A. I found it.

17 Q. Well, do you confirm your testimony?

18 A. Yes.

19 Q. And then--

20 ARBITRATOR TAWIL: Mr. Alexandrov, when you
21 say "you confirm your testimony," specifically of what
22 you have asked? Because we are--at least I'm not

1 aware of all her testimony, you know.

2 MR. ALEXANDROV: Right.

3 BY MR. ALEXANDROV:

4 Q. So, do you confirm your testimony that
5 Mr. Raúl Benavides is a member of that group called
6 the "Huascaminas," and you meet--that group: "We meet
7 once a month and we have ceviche together."

8 Do you confirm that?

9 A. Yes, but let me clarify that this is an open
10 meeting and oftentimes I do not have time, and I do
11 not attend.

12 Q. Understood. And then I asked you--I asked
13 you--and it's Day 3 at 790, and the Spanish, it's the
14 same document, Page 780, Lines 1-4--I asked you: "Are
15 you still in contact with him"--"him" meaning Mr. Raúl
16 Benavides--"through this professional group or
17 otherwise," and you answered: "Yes, I see him at
18 meetings generally."

19 Can you confirm this testimony?

20 A. Yes.

21 Q. Did you know during your tenure at the
22 Ministry, the second one, from 2001 to 2003, that he,

1 Mr. Raúl Benavides, was a member of the Board of
2 Directors of Cerro Verde?

3 A. I did not know that. I learned through you
4 because you showed a Board resolution and he was the
5 Director at that point.

6 Q. You didn't know that when you were at the
7 MINEM?

8 A. As to the information as to who are the
9 members of the Board, it is not something that we saw
10 in the information that we reviewed in the Directorate
11 General of Mining.

12 Q. Well, let me show you a document which is
13 behind Tab 13 of your binder, which is Exhibit CE-470.
14 This is a meeting of the Board of Directors of Cerro
15 Verde. And when I refer to "Cerro Verde," I mean
16 Sociedad Minera Cerro Verde.

17 And you see that this is Meeting Minutes of
18 the Board of Directors of Cerro Verde, and the fifth
19 name down the list of participants is Mr. Raúl
20 Benavides Ganoza.

21 Do you see that?

22 A. Yes. This was the document that you showed

1 me at the last Hearing in February. And that's when I
2 learned that.

3 Q. And during your preparation for any of the
4 two Hearings, you did not see that document?

5 A. No, I did not.

6 Q. And during your regular meetings, it never
7 came up that Mr. Raúl Benavides is a member of the
8 Board of Directors of Cerro Verde. Is that your
9 testimony?

10 A. To begin with, based on the document that
11 you presented, he was Director in October 2004; and,
12 at that point in time, I was working at the Ministry,
13 and I did not have time to attend any meeting.

14 Q. Well, my question was a little bit
15 different.

16 You testified that you learned for the first
17 time that Mr. Raúl Benavides was a member of the Board
18 of Cerro Verde when I showed you this document at the
19 February Hearing.

20 So, my question is slightly different: Is
21 it your testimony that during all those regular
22 meetings which you attended, it never came up in any

1 conversation that Mr. Raúl Benavides was a member of
2 the Board of Cerro Verde?

3 A. The periodic meetings of the group
4 "Huascaminas" started when the WhatsApp appeared and a
5 group was organized with the 180 graduates from Mining
6 Engineering. So, generally, now, when there is a good
7 number of people who are retired, meetings are
8 organized at some restaurant and the opportunity is
9 open so that whoever wants to go, goes. I have
10 attended some, but not all, because I am short of time
11 too.

12 Q. That group was organized in 1976; correct?

13 A. No. This is a WhatsApp group. When was
14 WhatsApp created? I don't have it fresh in my mind.
15 I guess five, six years ago.

16 Q. I'm not talking about the WhatsApp chat
17 group. I'm talking about the group of graduates who
18 started regular meetings.

19 A. As I mentioned before, until a few years
20 ago, we were all working, we are all--most of us are
21 at 66, 67 years of age, and we have been working until
22 recently. We just started, a great deal of us started

1 to retire and to have time to be able to meet. Before
2 then, they were all over the country working for
3 mines.

4 Q. Well, Ms. Chappuis, this is not an answer to
5 my question.

6 Just to give you the background of why I'm
7 asking, and then I will repeat my question.

8 We established, and you testified in the
9 February Hearing--and you confirmed this testimony
10 today--that there were regular meetings once a month
11 where you had ceviche. And I'm asking you--you are
12 giving me answers about people don't have time to go
13 to those meetings. I'm asking you, you attended--I'm
14 not saying you attended all of those meetings. You
15 did testify there were regular monthly meetings. You
16 attended--I'm not asking how many of them, you
17 probably won't remember. But you attended at least
18 some of those meetings, and my question was a bit more
19 specific than what you answered.

20 My question was, is it your testimony that
21 during those meetings it never came up in your
22 conversations with Mr. Raúl Benavides that he was a

1 member of the Board of Cerro Verde?

2 A. Mr. Alexandrov, Mr. Benavides, according to
3 this document--

4 (Overlapping interpretation and speakers.)

5 Q. Can you just answer my question, yes or no,
6 then you explain.

7 My question is, again, is it your testimony
8 that during those meetings, it never came up in your
9 conversations with Mr. Raúl Benavides that he was a
10 member of the Board of Cerro Verde?

11 A. Mr. Benavides was Director of Cerro Verde in
12 2004 when I was the General Director of Mining, and I
13 did not have time. Then there was no WhatsApp. There
14 was no "Huascaminas" chat group.

15 At that point in time, I did not have the
16 time to attend meetings. I stated in February that
17 now, over the last recent months, there were some
18 monthly meetings, and sometimes--I'm talking about
19 2023, when many of my colleagues have already retired.
20 We are 66, up to 68 years of age, and we have started
21 with these meetings. I am not talking about 2004.

22 As you may imagine, this meeting is held in

1 Lima. We are Mining Engineers and 20 years ago we
2 were 40, 45 years of age, and we were working in a
3 mine somewhere in Perú, far from Lima.

4 MR. ALEXANDROV: Ms. Chappuis, I'm making a
5 pause simply to let the Interpreters catch up. Please
6 don't take that as an invitation to continue your
7 answer. Thank you for your answer.

8 BY MR. ALEXANDROV:

9 Q. So, let's go to the same--actually, can we
10 go to the same document, CE-470. I apologize for my
11 voice. Again, this is a meeting of the Board of Cerro
12 Verde, dated 11 October 2004, and look at Section 1.
13 And you see that at that meeting, the Board approved
14 the investment of \$850 million for the Primary
15 Sulfides Project, which is the Concentrator Plant.

16 Do you see that, Ms. Chappuis?

17 A. Yes.

18 Q. So--and we know from that same document,
19 that Mr. Benavides was one of the five Directors who
20 participated in that decision.

21 Did you know that the Board of Directors of
22 Cerro Verde approved the investment into the

1 Concentrator Plant in October of 2004?

2 A. I was not aware of that. I learned that at
3 the February Hearing in 2023.

4 Q. Can we look at the testimony of
5 Ms. Torreblanca, Second Witness Statement, CWS-21, at
6 Paragraphs 16 and 17. And that's behind Tab 15.

7 (Pause.)

8 BY MR. ALEXANDROV:

9 Q. So, can we look at Ms. Torreblanca's Second
10 Witness Statement, Paragraphs 16 and 17. You have
11 them behind Tab 15. I'll refer to them in English.
12 You can look at the Spanish.

13 So, here is what she says in Paragraph 16.
14 She says: "Director Chappuis and other MINEM
15 officials were sufficiently persuaded that Cerro
16 Verde's case was distinguishable from that of Tintaya.
17 Director Chappuis explained that, since the new
18 Concentrator investment would form part of Cerro
19 Verde's existing integrated Mining Unit, it would be
20 covered by the existing Stability Agreement.

21 She told us that there was no need for an
22 amendment to the Stability Agreement to include an

1 additional Beneficiation Concession. Rather, since
2 the investment in the Concentrator would be made
3 within Cerro Verde's existing Mining Unit, Cerro Verde
4 could simply apply for the expansion of the existing
5 Beneficiation Concession that was already covered by
6 the Stability Agreement."

7 Then, she continues in Paragraph 17: "In
8 light of the DGM's confirmation that the Concentrator
9 would be covered by the Stability Agreement if it was
10 included in the existing Beneficiation Concession,
11 Cerro Verde no longer saw the need to press for
12 additional written guarantees. On 11 October 2004,
13 Cerro Verde's Board of Directors met by telephone
14 conference to determine whether it would approve the
15 \$850 million investment to build a Concentrator."

16 Then she talks about her participation. She
17 says: "the Board of Directors decided to approve the
18 investment, conditionally, noting that the Meeting
19 Minutes--in the Meeting Minutes, that the final
20 approval 'would depend on obtaining the required
21 permits and the financing necessary for the project'."

22 Do you see that?

1 A. Yes.

2 Q. So, it was on the basis of your oral
3 assurances that the Board conditionally approved the
4 \$850 million investment in the Concentrator Plant.

5 Did you know that at the time?

6 A. I did not have any idea as to the steps to
7 be followed within the Board of -Sociedad Minera Cerro
8 Verde.

9 Q. Do you know that subsequently, shortly after
10 that, Compañía Buenaventura increased its
11 participation in Cerro Verde to about 20 percent?

12 A. I did not know.

13 Q. Can we look at Paragraph 6 of your First
14 Witness Statement. You say, the second sentence:
15 "Between July 1993 and November 1997, I engaged in
16 consulting work for mining companies, including the
17 Phelps Dodge Corporation. None of my private
18 consulting has involved Cerro Verde."

19 Do you see that?

20 A. Yes.

21 Q. Let me show you Document RE-200, which is
22 behind Tab 9. And this is your curriculum vitae; in

1 the Spanish on Page 4, English Page 3. You explain
2 what you have been doing under the rubric, in
3 English--technical economic evaluations for Investment
4 Decisions, permit management. In
5 Spanish--technical-economic evaluation for Investment
6 Decisions. You list several companies, including
7 Phelps Dodge USA, 1993-1997.

8 Do you see that?

9 A. Yes.

10 Q. According to your CV, you worked on
11 Technical-Economic Assessments for the purposes of
12 Investment Decisions for Phelps Dodge between '93
13 to '97.

14 So, for four years, you were consulting
15 Phelps Dodge on Investment Decisions. That's what
16 your curriculum vitae says; correct?

17 A. During those years, yes.

18 Q. Can we look at Tab 18, and that is CE-318.

19 It is a document of Phelps Dodge, and the
20 heading is "1993 Cerro Verde Evaluation."

21 Do you see that?

22 A. Yes.

1 Q. And then when you turn the page to the page
2 after the title page and the Table of Contents, you
3 see Section 1, Executive Summary, and I'll read the
4 paragraph in English.

5 "Phelps Dodge Mining Company, consistent
6 with strategic plan objectives, is interested in
7 acquiring and developing quality mining properties in
8 mining regions throughout the world." Phelps Dodge
9 "initially became interested in the Cerro Verde
10 open-pit Mineral Property in Perú because of its large
11 copper ore reserves, the privatization of the
12 State-owned mining concern known as Minero Perú, and
13 the improving investment climate in Perú." A Phelps
14 Dodge "evaluation team visited the Cerro Verde data
15 room in Lima and the mine site in southern Perú, near
16 the City of Arequipa in May 1993."

17 And then I want to show you another
18 document, Tab 19, CE-367, which is Phelps Dodge SEC
19 Form 10-K of the year 2000. And it's Page 38, which
20 is the last page of the excerpt. On the PDF, it's
21 Page 44 in the full Exhibit. It's the rubric--the
22 heading is "PD Mining-Operations Update."

1 And you see Phelps Dodge's reporting to the
2 Securities and Exchange Commission, that: "On
3 October 16, 1999, Phelps Dodge acquired Cyprus Amax
4 Minerals Company." And then under rubric (v), "an
5 82 percent interest in the Cerro Verde Mine in Perú,
6 consisting of two open-pits, a heap leach operation
7 and an SX/EW Plant."

8 Do you see that?

9 A. Yes.

10 Q. So, what's happening is, Cerro Verde
11 expresses a strong interest--I'm sorry, Phelps Dodge
12 expresses a strong interest in Cerro Verde in 1993, to
13 the point of entering the data room in Lima and
14 visiting the site, and then which culminates in 1999
15 with the acquisition of 82 percent interest in Cerro
16 Verde.

17 You were a consultant of Phelps Dodge on
18 Investment Decisions, and your testimony is, this one
19 big investment by Phelps Dodge in Perú, that was very
20 seriously considered during those years, never came up
21 in your work for Phelps Dodge; is that correct?

22 A. Yes. In 1993, as I mentioned before, I left

1 the Ministry in February 1993, and approximately in
2 June/July 1993, I was called by Phelps Dodge
3 Exploration, Santiago de Chile office. I was called
4 to conduct some assessments, in particular, for
5 Tintaya, since I had worked there, and another mine,
6 Chapi, which was a private mine.

7 At that meeting, Engineer Francisco Caichac
8 from Phelps Dodge told me: "We have totally discarded
9 Cerro Verde, because it is a disaster of a Project.
10 The Peruvian Government would have to pay us
11 \$30 million if they want Phelps Dodge to go into that
12 mine."

13 And in November that year, the privatization
14 happened, and only Cyprus presented an offer for
15 \$30 million. Phelps Dodge did not present any offer,
16 and none of the other 18 mining companies that had
17 acquired documents for the privatization submitted any
18 bid. The only one that presented a bid was Cyprus,
19 and it was awarded the privatization.

20 Six years later, Phelps Dodge bought Cyprus,
21 and those are the typical mergers among mining
22 Companies, and Cyprus arrived with all of their

1 assets. One of them was Cerro Verde.

2 Q. Well, we know those facts that Cyprus was
3 the only one who submitted the bid, and that Phelps
4 Dodge at that time did not.

5 My point is slightly different: Cerro Verde
6 expressed a strong interest, including access in the
7 data room and sending a team on-site.

8 So, clearly there was an Investment Decision
9 to be made, whether in 1993-1994, they made a decision
10 not to participate, it was still an Investment
11 Decision. Eventually, they made an Investment
12 Decision to obtain over 80 percent of Cerro Verde.

13 And my question is, you were their
14 consultant on Investment Decisions. You were based in
15 Perú. You knew the Peruvian mining sector, as you
16 have testified, upside down, and you never advised
17 Phelps Dodge on this Investment Decision, whether or
18 not to acquire Cerro Verde?

19 Is that your testimony?

20 A. As I told you, Engineer Francisco Caichac
21 called it a disaster in July 1993, and told me "It's a
22 deposit that does not have either water or

1 electricity."

2 Q. And who was that person again?

3 A. Francisco Caichac, who was from the
4 engineering area in Phelps Dodge, and worked in the
5 Santiago office. He came from Bechtel, which is one
6 of the largest engineering firms, and he was the one
7 who interviewed me, and in a conversation talking
8 about Tintaya and Chapi, it came up, and he told me
9 "Cerro Verde is totally discarded. The Peruvian
10 Government would have to pay \$30 million to Phelps
11 Dodge for us to take on that mine, which is a
12 disaster."

13 Q. So, you learned that from Phelps Dodge
14 person in Santiago de Chile. Nobody from Phelps Dodge
15 ever approached you in Perú to consult you on that
16 decision? Is that your testimony?

17 A. Exactly. That was the only time when I
18 heard about Cerro Verde.

19 Q. So, you were their advisor on Investment
20 Decisions, and you're saying you only advised them on
21 an Investment Decision in Chile and that was all;
22 correct?

1 A. No, none in Chile. I said in Tintaya and in
2 Chapi, which is in Arequipa. Plus, I was one of the
3 consultants. These are very large companies, these
4 are investment decisions that entail more than
5 \$100 million, and as you could imagine, I was not the
6 only consultant who decided whether such an investment
7 might be made by Phelps Dodge. It was the exploration
8 office in Santiago, and they have their base in
9 Phoenix, I believe, where the headquarters is, and
10 that's where all the decisions are made.

11 Q. Well, I understand, of course, that you are
12 not the only consultant of Phelps Dodge. I just find
13 it somewhat strange that they would consult you with
14 respect to Tintaya and Chapi, but not with respect to
15 Cerro Verde. You didn't find that strange, that they
16 never talked to you about Cerro Verde, other than your
17 conversation with the person in Chile?

18 A. As I say, that was July 1993, and it was
19 already discarded, and that is confirmed because, in
20 November of 1993, they did not present any bid.

21 Q. What happened in '95, '96, '97, when you
22 were still their consultant on investment decisions?

1 They never talked to you about Cerro Verde?

2 A. As I say, Engineer Francisco Caichac told me
3 that that Project was a disaster. It had no water and
4 no electricity.

5 Q. In 1993. I'm asking you, how about
6 the-years '95, '96, '97, when you continued working as
7 a consultant on investment decisions for Phelps Dodge.

8 Did anybody from Phelps Dodge talk to you
9 about Cerro Verde during those years?

10 A. No one. That Project had been completely
11 discarded.

12 MR. ALEXANDROV: Madam President, this may
13 be a good time for a break.

14 PRESIDENT HANEFELD: Yes. Then we have a
15 15-minute break. Thank you.

16 (Brief recess.)

17 PRESIDENT HANEFELD: I think we can proceed.

18 MR. ALEXANDROV: Thank you, Madam President.

19 BY MR. ALEXANDROV:

20 Q. Ms. Chappuis, I want to talk a little bit
21 about your position from 1990 to 1993 as an advisor to
22 Vice Minister Polo, and in particular your role in

1 drafting Decree 708, which was the Mining Law.

2 So, can we look at your Witness Statement,
3 your Second Witness Statement, at Paragraph 5, which
4 is in your--well, you have it in front of you, but for
5 everybody else, it's behind Tab 2 of the big binder.

6 You can read it for yourself first,
7 Ms. Chappuis, so that I don't read it into the record.
8 Everybody has it. Your Second Witness Statement--it's
9 probably easier to look at one of those, yes. 13
10 September 2022. Can you take a look at Paragraph 5,
11 and then I'll ask you--Paragraph 6.

12 So, Paragraph 6, you say: "First of all, I
13 was surprised to learn that Perú claims Mr. Polo's
14 testimony in this Arbitration is 'determinative'
15 because he supposedly 'spearheaded the drafting of the
16 provisions of Legislative Degree 708.' This is not
17 correct, you say. As I explained in my First Witness
18 Statement, President Fujimori's first Minister of
19 Energy and Mines, Fernando Sánchez Albavera, was in
20 charge of drafting Decree 708. Around August 1990,
21 after a few days in office, Minister Sánchez Albavera
22 asked Mr. Alejandro Portal, financial manager for

1 Empresa Minera Especial Tintaya, to provide a secondee
2 with relevant experience in mining and finance to
3 advise Vice Minister Polo on various issues, including
4 the drafting of provisions related to the stability
5 agreement in the Mining Reform, and Mr. Portal asked
6 me to take that role, and I accepted."

7 Do you see that?

8 A. Excuse me. What is your question?

9 Q. I just want to make sure you've seen that,
10 and then I'll proceed.

11 A. Yes.

12 Q. Well, let us look at the Transcript of the
13 February Hearing, which is behind Tab 5,
14 Exhibit CE-1135, which is the Transcript of Day 3, at
15 Page 780 in the English and 864 in the Spanish. And
16 in English, it begins on Line 6 with my question.

17 Oh, sorry. I apologize. It was Mr. Prager
18 who asked that question. I'm sorry. I'm honored to
19 be confused with you, but I'm not sure you're honored
20 to be confused with me.

21 (Comments off microphone.)

22 Q. Apologies. Mr. Prager is asking the

1 question, and the question is--and I'll read it into
2 the record: "Could you describe for us the
3 conversations that you had with Cerro Verde as to
4 whether the Stability Agreement would apply to the
5 Concentrator?"

6 And you say: "Yes. I spoke with the
7 technical-legal team. There was no objection
8 anywhere. Plus, I had written the law. I understood
9 perfectly well what the spirit of it was."

10 Okay. So, then, we'll look at another
11 portion of the Transcript, and it's in the English
12 782. Again, Day 3, Page 782. And it begins with the
13 question again by Mr. Prager: "You said that it was
14 clear. Can you explain what was clear?"

15 I'm waiting for this to appear on the screen
16 and then I will read it into the record.

17 So, Line 17: "You said it was clear. Can
18 you explain what was clear?"

19 And your answer is: "Well, as I have
20 explained, I wrote this law, so I knew quite clearly
21 that what the Company had to show was that it had
22 complied with the \$50 million investment as a

1 minimum."

2 Then let us look at Page--I believe it's
3 806. And on Page 806, this is now me asking the
4 question. And I say, beginning at Line 5: "Now, you
5 said, you testified in your Witness Statement, that
6 you drafted the Mining Law, and, in particular,
7 Decree 708 that became the Mining Law. And, in fact,
8 you said twice during your direct examination: 'I
9 wrote this law.'"

10 And I asked you: "Do you confirm that
11 testimony?" And you said "yes."

12 Now, during your direct examination this
13 afternoon in response to questions by Mr. Prager, you
14 explained that you and Mr. Polo, sitting together at
15 the table next to each other, drafted the law
16 together.

17 So, I want--my first question is: Which one
18 is it? In February you said three times: "I wrote
19 the law." Now you're saying: "Mr. Polo and I sat
20 down at the table and together wrote the law."

21 Which one is it?

22 A. Mr. Alexandrov, you might recall that in the

1 February Hearing, I said--I said "Mr. Polo was sitting
2 here, and I was sitting here. There were no laptops."
3 This was back in 1990, and he wrote things, and we
4 discussed things constantly, article by article of the
5 law.

6 As you can see if you read 708, these are
7 very precise and very short provisions. And that's
8 natural. A civil engineer was writing this with me, a
9 mining engineer.

10 In February, at the Hearing, I also said
11 that what we were writing was submitted to the
12 consideration of Mr. Sánchez Albavera, who was the
13 Minister. He was the one who decided what changes,
14 what improvements, what things need to be added.

15 Q. So, if I understood your answer correctly,
16 the statement you made three times in February, "I
17 wrote the law," is an overstatement. You and Vice
18 Minister Polo together participated in drafting the
19 law; correct?

20 A. That's exactly right. He participated, and
21 this legal provision was sent to the Minister, who
22 also had a group of lawyers that were going--that was

1 going to review what we were doing.

2 We spent months together every afternoon,
3 sitting next to each other and incorporating, article
4 by article.

5 Q. So, now you're saying it was not just Vice
6 Minister Polo and yourself, but he consulted a group
7 of lawyers; correct?

8 A. What I said at the Hearing in February, and
9 I confirm that now, is that Mr. Sánchez Albavera had a
10 team of lawyers who came from the private sector and
11 they met every afternoon.

12 Not only did they review what we were doing
13 about mining, but also about electricity, oil, gas,
14 privatization. And evidence of this is the book of
15 Mr. Sánchez Albavera. He tells us about that with all
16 detail.

17 (Interruption.)

18 (Stenographer clarification.)

19 Q. Yes, the Minister describes that, and we'll
20 get to that in a moment. But, for now, first of all,
21 I don't recall you saying anything in February about
22 the participation of private lawyers.

1 Am I misremembering?

2 A. Yes. I mentioned that, and that is also
3 clearly stated in the book by Mr. Sánchez Albavera,
4 where he says this law had the consensus of Congress
5 and of the Mining Society, and those lawyers came
6 appointed by the Mining Society.

7 Q. Well, we're not talking about what the
8 Minister has written in his book. We're talking
9 about--the point I'm making is that you did not
10 mention the participation of private lawyers when you
11 testified in February.

12 And I understand now that you're saying the
13 statements you made then, "I wrote the law," that was
14 an overstatement; correct?

15 A. I've always said in February, and I say it
16 now, that we were writing the first draft. Mr. Polo
17 sitting here and I was sitting right here. And,
18 starting at 4:00 in the afternoon, we spent all
19 afternoons drafting the law.

20 Q. In the Transcript, again, behind Tab 5,
21 CE-1135, Day 3, at Page, I believe, 814--I think it's
22 Line 11--this is a question by Arbitrator Garibaldi.

1 I will read it into the record.

2 A. Could you please tell me what page number in
3 Spanish?

4 Q. I'm sorry. We overlapped. In Spanish, it's
5 805, Line 4, Page 809, and it's a question to you by
6 Arbitrator Garibaldi. And he says: "I have a
7 question. Mr. Polo was a civil engineer, and you are
8 a mining engineer. Mr. Sánchez Albavera"--that's the
9 Minister--"what was his position?"

10 Your answer: "Economist."

11 "Arbitrator Garibaldi: Economist. Now, the
12 team that drafted, I'm going to ask you a question,
13 but first I'd like to introduce it. Nothing that I
14 say or ask should be understood in a negative light in
15 any way. It's merely a question of fact. The team
16 that drafted this law, did it include any lawyer or
17 not?"

18 And your answer: "The process was as
19 follows: We would sit down for 708, and Mr. Polo
20 would sit down with me. Mr. Polo--well, there were no
21 laptops. Mr. Polo had a tablet and a pen, and he
22 would write. Then he would call this that he had

1 written in handwriting, he would take it and he would
2 hand it to the secretary, who would go away to a
3 computer and type it up. Then she would come back
4 with a typed-up version. We would make corrections,
5 and that is what we did. That was the process, he and
6 me."

7 "Arbitrator Garibaldi: So, you are saying
8 you participated in the drafting or not?"

9 "The Witness"--that's you: "Yes."

10 "Arbitrator Garibaldi: Both of you did?"

11 "The Witness"--you: "Yes. As I tell you,
12 708, if you reread it, it's a very short provision.
13 And if you realize--or if you look carefully, the
14 articles are very short. Very typical of the form of
15 discourse of an engineer to use very short sentences,
16 because it was written by a civil engineer, Mr. Polo,
17 together with a mining engineer, myself."

18 "Arbitrator Garibaldi: So, I must
19 understand, then, that no lawyer participated in the
20 drafting and not in the review of the text, either."

21 [The Witness]: "Subsequently, because it's a
22 Legislative Decree, it has to go through the Office of

1 Legal Counsel, but from what I recall, they did not
2 make major changes."

3 Do you see that?

4 A. Yes. That's here.

5 Q. So, what you're saying here was it was just
6 you and Vice Minister Polo. No lawyers were involved
7 in that process of drafting. Only subsequently, it
8 had to go through the Office of Legal Counsel, but
9 they made only minor changes.

10 What I understand you to be saying now is
11 that lawyers, including private lawyers, were involved
12 in the actual drafting process, "private" meaning
13 outside lawyers.

14 So, which one is correct, Ms. Chappuis?

15 A. You are confusing "drafting" with
16 "revision." I ratify what I said in February of this
17 year: We both sat down to draft the law, and then
18 obviously this has to go through the Legal Counsel
19 Office of the Ministry.

20 Some minor changes were made to the draft.
21 Mr. Sánchez Albavera also met with a group of lawyers
22 who reviewed the drafts that we were preparing.

1 Q. Well, the Office of the Legal Counsel is
2 within MINEM. We understand that, and we see that in
3 your testimony in the response to Arbitrator
4 Garibaldi. It is the first time, after four Witness
5 Statements and one Hearing, that you are saying that
6 private lawyers were consulted.

7 Did you not remember to say that in
8 February?

9 A. I thought I had said it, but I'm not going
10 to be able to at this point in time review everything.
11 But I think I said it.

12 Q. I don't think so. And it's not in the
13 Transcript, and if I am mistaken, I'm sure I'll be
14 corrected by your lawyers.

15 Now, let's see. You have tried to minimize,
16 with all due respect, the role of Vice Minister Polo
17 in drafting that law, and I think you repeated that in
18 your direct examination, that he did not have the
19 relevant experience because he had no experience with
20 stabilization agreements.

21 So, let's go to the--to see what Minister
22 Sánchez Albavera said about the drafting of the law.

1 And we'll start with the March mining forum where
2 then-former Minister Sánchez Albavera was invited to
3 explain the Mining Law that was enacted in '91, and
4 please look at Tab 20, RE-183.

5 And if you pick up somewhere, there is a
6 paragraph that begins with: "Dr. Fernando Sánchez
7 Albavera," and in the sixth or seventh line, he
8 says: "I feel responsible, together with the Engineer
9 César Polo, who was the Vice Minister of Mining. In
10 fact, we defend the validity of Law 708 because we are
11 the authors of that law."

12 Do you see that?

13 A. I do.

14 Q. And then let's look at his book, former
15 Minister Fernando Sánchez Albavera's book, which is
16 Tab 21, CE-311. It's Pages 27-30, which is Page 25 to
17 28 of the PDF.

18 And it's only in Spanish. So, I will read
19 it into the record, and you'll have to bear with me.

20 Let's focus on Page 26 of the PDF in the
21 full exhibit, the paragraph that begins with: "La
22 primera dificultad." It's Page 28 of the book. So,

1 the pagination is off a little bit between the PDF and
2 book, but the paragraph is highlighted on the screen.

3 And here, I'm not going to test everybody's
4 ears and read it in Spanish, but the gist of it is
5 that the Minister is speaking very highly of the
6 qualifications of Vice Minister Polo; correct?

7 A. Yes, that's true.

8 Q. I'm reminded that--

9 A. They were friends.

10 Q. Okay. I'm reminded that I have to test
11 everybody's ears and read it in Spanish so that it
12 appears in English into the record, because otherwise
13 we don't have it in English.

14 So, Ms. Chappuis, for the record, I'll read
15 it in Spanish so I can get it translated. Please bear
16 with me.

17 "The first difficulty that we faced was to
18 convince two high-level officials to occupy the Vice
19 Ministries of Mining and Energy, and Secretary General
20 that would put things in order and would streamline as
21 fast as possible the Administration of the Ministry.
22 César Polo Robilliard and Ricardo Giesecke Sara-La

1 Fosse accepted the challenge of leading the Vice
2 Ministries of Mines and Energy respectively." "The
3 former"--that is, César Polo--"started his
4 professional life in the Central Bank of Reserve and
5 garnered valuable experience later on in the National
6 Institute for Planning."

7 I want to move on to another paragraph,
8 which is the bottom of Page 28 of the book or Page 26
9 of the PDF. You see it at the bottom there: "César
10 Polo was part of the generation which was also my
11 generation. He garnered valuable experience in the
12 assessment and preparation of investment projects. He
13 participated also in a number of international
14 negotiations."

15 And then we can skip a little bit in that
16 paragraph to the phrase that begins with "Cuando":
17 "When I asked him to come to the Vice Ministry of
18 Mining, he had spent almost 10 years of his
19 professional life in this mining colossus of the
20 Centro. He knew mining problems in depth, and his
21 experience in Centromín had convinced him that the
22 corporate activity of the Government had to change

1 radically and that its modernization required
2 necessarily private sector assistance."

3 He talks about another Vice Minister, and
4 then he says: "The Vice Ministries were in good
5 hands, not only because of the professional quality
6 that Giesecke and Polo had shown for many years, but
7 also because they had vocation of service, and also
8 they had solid morals that tested any kind of
9 challenge."

10 So, it's correct, isn't it, that the former
11 Minister here is, to use an English somewhat
12 colloquial expression, "singing the praises" of Vice
13 Minister Polo.

14 Do you agree?

15 A. Yes.

16 Q. Let's see what he says about you. I think
17 it's the same document, Page 28 of the full exhibit.
18 It's, I think, the second paragraph from the top.

19 He says: "César Polo recruited María
20 Chappuis, who was specialized in mining economics from
21 the Colorado School of Mines, to assist him in the
22 Vice Ministry." The same thing happened to other

1 individuals he is listing here.

2 Ms. Chappuis, he doesn't say more, and he
3 doesn't say--he doesn't say anything about your
4 contribution to drafting the law; isn't that correct?

5 A. Yes. That's how it is.

6 Q. Let us look at what Vice Minister Polo
7 himself says about the process of drafting the law,
8 and that is Tab 7, CE-1137. That's Day 5 of the
9 February Hearing, and we will look at page, in the
10 English--in English--

11 A. In the Spanish, what is it?

12 Q. I will tell you in a moment.

13 In English, it's 1190. It begins on 1190,
14 and I'll go through 1190-1194.

15 In the Spanish, it begins at Page 1212, so
16 1,212. I believe it's Line 5 of the Spanish. But I
17 will read it in English. So, the question to
18 Mr. Polo--the question to Mr. Polo is: "So, Mr. Polo,
19 is it fair to say that you drafted those provisions of
20 the Ley 708 that were later incorporated into what
21 became Title Nine of the Mining Law?"

22 And he says: "Yes, and some others."

1 And then the question is: "Can you describe
2 to us who the others were?"

3 And so, let's look at his answer. He
4 says: "In this area of the investment projects, which
5 was my specialty, I think it was only myself and the
6 Minister. In these matters of investment, I discussed
7 it with the Minister because we spoke the same
8 language. Maybe there were some contributions by
9 María." He later clarifies that this is you. "Bernuy
10 did the whole part of the grids with Dr. Lastres of
11 the private sector, the part of the grids, the part of
12 how obligations were to be complied with, etc., etc."

13 "Then who else intervened? Dr. Jorge Price,
14 who is also dead now. And he was my lawyer, because
15 I'm an engineer. So, I was always supported by
16 lawyers. He was my own lawyer in 1991. At that time,
17 he was my trusted lawyer, and I named him Concessions
18 Director, so I had all the trust, because in
19 concessions there were problems. Now, who else?"

20 He talks about Oscar Bernuy. "Who else?
21 Maybe Juan Carlos Barcellos, who also died. [] He was
22 a geologist." He says: "I hope I'm not leaving

1 anybody out." Here is where he clarifies that when he
2 refers to "María," he means you.

3 "Question: Dr. Lastres came up several
4 times. Can you explain who Dr. Lastres was?

5 "Answer: Enrique Lastres was a top lawyer
6 in the private mining sector. We listened to the
7 opinions of the private mining sector, and he had
8 important contribution in that management of
9 concessions and to order these concessions, to put it
10 simply."

11 Then "Question: Did the Mining Society have
12 any involvement, Sociedad de Minería?

13 "Answer: Well, under the chairmanship of
14 the Minister, we met with them several times. Many
15 representatives came to the Ministry. They discussed
16 their point of view. Oh, and I also forgot
17 Dr. Alfonso Rubio, may God rest his soul. I forgot
18 about him, big mistake. He was a person who had a
19 great deal of experience. I think he designed the
20 part of the stability agreements of 109"--which is a
21 mistake, but--"And he had his experience. He
22 explained his experience. It was difficult, because

1 he was very fast, but I took notes and I absorbed
2 everything. Then I went home and I began to rewrite
3 and put down my ideas. I wrote how I thought things
4 were, and that is the version that I presented to the
5 Minister, and then the Minister approved it and
6 supported it in the presentation to the Council of
7 Ministers."

8 And he talks more about this, but my
9 question to you is this: What Mr.--what Vice Minister
10 Polo describes is a much more inclusive process. He
11 and the Minister talked to the industry: The Mining
12 Society, industry representatives, private lawyers
13 representing the private companies, lawyers that he
14 hired specifically to assist him with the drafting
15 law. He listened to those ideas, he put them in
16 writing, and then he presented that version to the
17 Minister, and the Minister approved.

18 And that's very different from the process
19 that you described, that you sat down with Mr. Polo,
20 you prepared the draft, and then eventually that draft
21 was submitted to the Legal Department of MINEM, they
22 had very few comments, and that was it.

1 So, is the testimony of Vice Minister Polo
2 incorrect?

3 A. I told Mr. Polo: "There are contracts that
4 are like this [making hand gesture of "short] and
5 others that are like this [making hand gesture of
6 "long"]." And he said: "Okay. Then we name them
7 adhesion contracts." Then, while I was sitting
8 there--

9 Q. Can I repeat my question? My question was--
10 (Overlapping interpretation and speakers.)

11 Q. Sorry. Ms. Chappuis, my question was--I
12 read to you the testimony of Vice Minister Polo, who
13 describes the drafting process, and my question to you
14 is: It's very different from your testimony and the
15 way you describe the drafting process, so, is Vice
16 Minister Polo's testimony incorrect? Yes or no.

17 A. Mr. Polo's testimony is partial. He did not
18 know about any tax stability agreement. He did not
19 know how these contracts were put into practice.

20 In Centromín, they hadn't signed a single
21 agreement. That Company was in full bankruptcy, and
22 that is why the only thing he was interested in was a

1 privatization. When we sat down, I started to tell
2 him what the problems were with the tax stability
3 agreement. SUNAT did not like the agreements signed
4 under 109, because they didn't have a specific term.

5 So, he listened to me, and he said: "Okay.
6 10 years for those of 2 [million] and 15 years for the
7 others, not a single day more." And I tell him: "All
8 the agreements are different. Ones are like this
9 [making hand gesture of "long"] and others are like
10 this [making hand gesture of "short"]."

11 And he responded: "Let's make adhesion
12 contracts."

13 And then I tell him: "In Chile, they are
14 based in agreements with an amount starting at
15 \$50 million." So, he wrote down that figure,
16 \$50 million.

17 That afterwards, what I wrote with him, he
18 submitted to all these lawyers: yes, of course. But
19 he talks about certain portions of the law, but the
20 part about tax stability agreements, that part is
21 practically mine.

22 Q. Well, we'll get to that part in a

1 moment. But first, let me ask--

2 (Overlapping interpretation and speakers.)

3 Q. We'll get to the provisions of the law
4 dealing with the stabilization agreements in a moment.

5 Let me just, while we are on it, ask you
6 again about Exhibit CE-1137, the testimony of
7 Mr. Polo, Vice Minister Polo, at the February Hearing,
8 Tab 7 of your binder. And I believe this part in
9 English is at Page 1139, beginning Line 11.

10 A. In the Spanish?

11 Q. I will tell you in a moment.

12 It is 1215, Line 2.

13 A. What number did you say in Spanish?

14 Q. Spanish is 1215, Line 2. Now I want to
15 focus on: "Oh, and I also forgot."

16 So, in Spanish--yes. So, he says: "Oh, and
17 I also forgot Dr. Alfonso Rubio, may God rest his
18 soul. I forgot about him, big mistake. But he was a
19 person who had a great deal of experience. I think he
20 designed the part of the stability agreements of 109.
21 And he had his experience. He explained his
22 experience."

1 Did you know that Dr. Alfonso Rubio was the
2 one who negotiated the 1998 Stabilization Agreement on
3 behalf of Cerro Verde?

4 A. Is that true?

5 Q. Well, that's what Ms. Torreblanca told us
6 yesterday, so I'm asking you: Did you know?

7 A. Alfonso Rubio was the most famous person
8 mining taxation lawyer in Peru.

9 Q. Ms. Chappuis, answer my question.

10 Did you know that Dr. Alfonso Rubio
11 negotiated the 1998 Stabilization Agreement on behalf
12 of Cerro Verde?

13 A. I apologize, Mr. Alexandrov, I am going to
14 correct you: the tax stability agreements are not
15 negotiated. They are adhesion contracts.

16 Q. Well, we know that in the form contract,
17 there are blanks that are to be filled in by the
18 Company. So, at least to that extent, there is a role
19 for the Company to play.

20 So, I'm repeating my question. Did you know
21 that Dr. Alfonso Rubio negotiated the
22 Stabilization--the 1998 Stabilization Agreement on

1 behalf of Cerro Verde?

2 A. No, I did not know, and I demand that the
3 word "negotiate" be withdrawn.

4 Q. We have your testimony. I'm not going to
5 withdraw it. But if you want me to--if that's the
6 reason why you hesitate to respond to my question, let
7 me then ask it differently.

8 Did you know that Dr. Alfonso Rubio was
9 involved in the--in the 1998 Stabilization Agreement
10 on behalf of Cerro Verde?

11 A. I was not at the Ministry in 1998. I am
12 totally unaware of that.

13 Q. I know that.

14 A. I do not know.

15 Q. I know that you were not in the Ministry.
16 I'm asking you: Did you know that fact or not?

17 A. No, I did not know.

18 Q. But it is significant, isn't it, that Vice
19 Minister Polo, when drafting the Mining Law, consulted
20 this very famous lawyer, as you said, who, on top of
21 that, later was involved in advising Cerro Verde on
22 the 1998 Stabilization Agreement?

1 That means, doesn't it, that Vice Minister
2 Polo drew on the best resources in Perú in drafting
3 the law?

4 A. I am going to answer.

5 First, attorneys issue opinions. The
6 decision makers are the clients. The client was the
7 Minister and Vice Minister. Mr. Rubio may have
8 presented many suggestions, but the decisions were
9 made by the Minister and the Vice Minister.

10 In his book, Dr. Sánchez Albavera clearly
11 said that he wanted to issue an impeccable Mining Law,
12 so he had all the right to formulate consultations to
13 counsel that he considered appropriate and the most
14 well-known. But we make the decisions at the level of
15 the Ministry.

16 Q. Can we look at your First Witness Statement,
17 Paragraph 21? And you say: "We [] included an
18 additional provision to Articles 7 and 11 of
19 Legislative Decree 708 (which as noted above, were
20 equivalent to Articles 79 and 83 of the Mining Law,
21 respectively) regarding the scope of the 10- and
22 15-year stability agreements. In particular, I

1 distinctly recall that Vice Minister Polo suggested
2 that we include a provision to make clear that the
3 'effect of the contractual benefit'--that is, a
4 stability agreement's guarantees--'will accrue
5 exclusively to the activities of the mining company
6 for which the investment is made."

7 So, contrary to what you just said a few
8 minutes ago, you testify in writing here that Vice
9 Minister Polo actually drafted some of the provisions
10 relating to the stability agreements, and, in
11 particular, Article 83; isn't that correct?

12 A. Could you repeat the question?

13 Q. So, contrary to what you said just a few
14 minutes ago, here in your Witness Statement you
15 testify in writing that Vice Minister Polo actually
16 drafted some of the provisions relating to
17 stabilization agreements in the law, and, in
18 particular, Article 83; isn't that correct?

19 A. Could you please show Article 83 on the
20 screen?

21 Q. Of course. Give us a moment, Ms. Chappuis,
22 and we'll do it.

1 (Comments off microphone.)

2 A. Or maybe better Article 11 of 708.

3 Q. Well, you are saying in your Witness

4 Statement that Article 8 is equivalent to Article 83

5 of the Mining Law, so I think we'll put Article 83 of

6 the Mining Law on the screen.

7 A. That is the original version without

8 changes; correct?

9 Q. We are putting it on the screen,

10 Ms. Chappuis, Article 83.

11 A. Let us read together. That article starts

12 by indicating who will have the right to enter into

13 the agreements, and we referred to a figure of

14 \$20 million for the start of any of the mining

15 activities.

16 In the second one, we are already referring

17 to the existing companies, and there we increase the

18 requirement to \$50 million. Then we move on to the

19 third paragraph, and we state: "Shall also have the

20 right to access these Contracts, the persons who make

21 investments of \$50 million in State-owned companies

22 that are subject to the privatization process under

1 Legislative Decree 674."

2 And then we move on to the fourth paragraph,
3 whereby we clarify, because Engineer Polo clarified to
4 me and tells me "Centromín has factories, this benefit
5 cannot be given to the non-mining activities of the
6 Centromín holding."

7 I should clarify that Centromín was the only
8 State-owned mining company that had factories.
9 Tintaya only had mining activities.

10 Q. Let's focus on the factories. "The effect
11 of the contractual benefit shall apply exclusively to
12 the activities of the Mining Company in whose favor
13 the investment is made."

14 And in Spanish, you can read it better than
15 I can: "The effect of the contractual benefit shall
16 apply exclusively to the activities of the Mining
17 Company in whose favor the investment is made." You
18 have that in front of you.

19 And what you're saying in Paragraph 21 of
20 the Witness Statement--you distinctly recall--I'm
21 quoting: "I distinctly recall that Vice Minister Polo
22 suggested that we include a provision to make clear

1 that 'the effect of the contractual benefit'"--the
2 same words as in the law--"that is, a Stability
3 Agreement's guarantees--'will accrue exclusively to
4 the activities of the Mining Company for which the
5 investment is made.'"

6 That, is, again, a quote from the provision
7 of the law.

8 So, you distinctly remember that it was Vice
9 Minister Polo who suggested including this particular
10 language, the fourth paragraph of Article 83, in the
11 Mining Law; correct?

12 A. Yes. Because both of us were sitting there.
13 We were talking about the mining companies, the
14 State-owned mining companies, and he recalls:
15 "Centromín has factories." It was the only Mining
16 Company owned by the State that had factories, and the
17 factories could not--

18 (Overlapping speakers.)

19 Q. Ms. Chappuis, the factories of Centromín
20 were not part of my question.

21 MR. PRAGER: Can she finish the question?
22 She was just in the middle of the explanation.

1 MR. ALEXANDROV: I'm sorry, but she is not
2 answering my questions, and--

3 MR. PRAGER: She was answering.

4 MR. ALEXANDROV: No, she wasn't. I asked
5 her whether she confirms her testimony that she
6 distinctly remembers that that provision was included
7 in Article 83 by Vice Minister Polo. The factories of
8 Centromin have nothing to do with that, or, if they
9 do, you will take this up on redirect.

10 THE WITNESS: Can we go back to Article 83,
11 Article 11 of 708?

12 BY MR. ALEXANDROV:

13 Q. It's the same as Article 83, and if it's
14 not, Counsel will take you to Article 11--

15 (Overlapping interpretation and speakers.)

16 Q. Sorry.

17 A. I have explained how we drafted this. We
18 gave the mining companies that were in the
19 privatization process--Polo finished writing this and
20 he realizes and says: "The holding Centromin has
21 factories, those factories cannot receive a tax
22 stability agreement."

1 So, he wrote and says: "This is only going
2 to be for mining activities." And I have explained
3 that the tax stability agreements were only received
4 by the mining sector in Perú.

5 After those years, the Ministry of Economy
6 and Finance changed the criterion and extended
7 stability agreements for all of the sectors, but up to
8 that point in time, only mining. And I already said
9 that as from November 8, 1890, Perú is entering tax
10 stability agreements with the mining companies.

11 Q. Ms. Chappuis, my question was-I was simply
12 asking you to confirm your testimony in writing, which
13 is that it was Vice Minister Polo who included this
14 particular provision in Article 83 of the Mining Law.

15 Can you please confirm that? Or, if not,
16 you will explain why your testimony today differs from
17 your testimony in your Witness Statement.

18 A. He finished writing and he told me:
19 "Centromín has factories." He looked at me, and I
20 didn't know that Centromín had factories.

21 Q. Ms. Chappuis, was it him who proposed that
22 this provision be included in Article 83 of the Mining

1 Law? Yes or no.

2 A. Yes. As I mentioned before, it happened
3 like this: he told me "Centromín has factories, we
4 need to correct this," with that fourth paragraph.

5 Q. Can we look at Tab 25, which is CE-395? I'm
6 sorry, Tab 26, which is CE-398.

7 So, Ms. Chappuis, to give you some
8 background, you'll remember the question of the
9 application of the Nondistributed Profits of Cerro
10 Verde to invest, in part tax-free, into a new
11 Investment Project. And they sent you two letters in
12 July, and you responded to both letters on
13 September 8, and this is one of the two letters that I
14 want us to look together-to look at together.

15 First I want to establish that this is a
16 Legal Opinion or a Legal Report signed by two lawyers,
17 and then it's signed by you. You find it in order and
18 authorized that this Report be sent to Cerro Verde.

19 Do you see that?

20 A. Yes.

21 Q. And, of course, your signature means you
22 agree with the legal report?

1 A. Yes.

2 Q. Okay. So, can you look at Paragraph 4?

3 A. Yes.

4 Q. Where the Report says: "The application of
5 the Stabilized Regime is granted to the Cerro Verde
6 Leaching Project and not to the company."

7 Do you see that?

8 A. Yes. The "Cerro Verde Leaching Project" is
9 in capital letters, corresponds to a name, and that
10 was the name of the Stability Agreement that had been
11 signed by Cerro Verde.

12 Q. Right. So, your testimony is, when this
13 refers to the "Cerro Verde Leaching Project," your
14 testimony now is that this means the 1998
15 Stabilization Agreement; is that right?

16 A. Even though it may sound paradoxical, every
17 contract had a name, such as "Cajamarquilla y Otros,"
18 "Minsur," "Ampliación," and this Agreement that Cerro
19 Verde had, and the reason why we are here, was called
20 "Cerro Verde Leaching Project." That was the name of
21 the Agreement.

22 Q. Let's look at your First Witness Statement,

1 Paragraph 42. You see that you're saying: "In the
2 Second Report"-that is the document we're looking at-
3 "we addressed other questions that Cerro Verde had
4 asked and stated that 'the application of the
5 Stabilized Regime is granted to the Cerro Verde
6 Leaching Project and not to the company.'" You refer
7 to that Report in a footnote, so we know it's the same
8 document.

9 And then you say: "Although in hindsight
10 this choice of words is not entirely clear in
11 expressing our conclusion, what we meant, referring to
12 the language of the Stability Agreement itself uses,
13 was that the scope of the stability applies to Cerro
14 Verde Mining Unit and not to the company as such-that
15 is, not to Cerro Verde. For example, if they had
16 other Mining Units, they would not have enjoyed
17 Stability Guarantees."

18 You see that statement you've made in your
19 First Witness Statement?

20 A. The tax stability agreements were always
21 referred to a Mining Unit.

22 Q. At the moment, I'm simply asking whether you

1 see your written testimony.

2 A. I'm reading that, and at that point in time,
3 Cerro Verde did not have another Mining Unit. They
4 had one Mining Unit, Cerro Verde, which was comprised
5 of one Mining Concession and one Beneficiation
6 Concession that were in Annex I of Article 3.

7 Q. You see here that, in hindsight, the choice
8 of words is not entirely clear in expressing your
9 conclusion; correct?

10 A. Yes, they should have put - but I understand
11 it - but it could have been said: "the Tax Stability
12 Agreement called or named 'Cerro Verde Leaching
13 Project'," they could have put it like that, in
14 quotation marks, but it is understood. I think it is
15 indeed understood. And it was part of the jargon that
16 we used within the Ministry.

17 Q. Could you repeat? In hindsight, what words
18 would you have used to make this clear?

19 A. The jargon typical of the Ministry is used.
20 We called the stability agreements by the name they
21 had; in other words, the agreement "Cajamarquilla and
22 others," we referred to it as the "Cajamarquilla and

1 others," or "Milpo expansion," "San José,"
2 "Carachugo," and this was "the Cerro Verde Leaching
3 Project."

4 Q. But my question is, it says: "In hindsight,
5 the choice of words is not entirely clear in
6 expressing our conclusion."

7 So, I'm asking you, in hindsight, what
8 choice of words--now that you've seen that, what is
9 the choice of words that would be entirely clear?
10 What would you have said to make this entirely clear?

11 A. Well, that's the reason why we are here--
12 that jargon, that name given to an agreement--most of
13 you are lawyers--must sound strange to you that the
14 agreements have a name, but, yes, they did have a
15 name, and in the case of this Agreement of Cerro Verde
16 that brings us here, it was called "Cerro Verde
17 Leaching Project."

18 Q. Yes. We understand that. But my question
19 is a bit more specific than that.

20 You say--you yourself say in your Witness
21 Statement the choice of words in Paragraph 4 of this
22 document "is not entirely clear in expressing our

1 conclusion." And I'm asking you, if you're
2 drafting--if you were drafting this today, what words
3 would you choose to make your conclusion entirely
4 clear?

5 A. I would have--
6 (Overlapping interpretation and speakers.)
7 (Interruption.)
8 (Stenographer clarification.)

9 A. I would have changed that way to call the
10 agreements (Interruption)

11 Q. Could you start your answer again, please?

12 A. I would have changed the way to call the
13 agreements by using a name, "Cajamarquilla and
14 others," "Expansion." I would have assigned to each
15 agreement a number, and when writing this, I would
16 have answered: "In accordance with your Tax Stability
17 Agreement Number 002224," whatever that number would
18 be, and I would continue with my sentence.

19 Q. Okay. But you have the 1998 Stabilization
20 Agreement, and it is what it is. You cannot go and
21 change it. You cannot go back and change it. And
22 we've established that it is up to the investor to

1 fill in the blank in the model contract. And my
2 question is not about what you would have changed in
3 the 1998 Stabilization Agreement. My question is
4 specific with respect to Paragraph 4, and I'm asking
5 you because you said in your testimony this choice of
6 words is not entirely clear in expressing our
7 conclusion. And I'm asking you, if you were drafting
8 Paragraph 4 today, what words would you have chosen to
9 express your conclusion so that it is entirely clear?

10 A. I would have added what I say here: "The
11 scope of Stability applies to the Cerro Verde Mining
12 Unit rather than to the company as such."

13 Q. Okay. So, you would have said the
14 application of the Stabilized Regime applies to the
15 mining unit rather than to the company itself.

16 Well, let's look at--before we look at the
17 next document, you testified that you always believed
18 that the 1998 Stabilization Agreement applied to the
19 entire Cerro Verde mining unit.

20 Why didn't you say so in Paragraph 4? I
21 mean, this text was not something written on the spur
22 of the moment. The letter to which you were

1 responding was sent to you in early July. I think it
2 was July 8. And you respond on September 8, so two
3 months later. It is prepared by legal department and
4 signed by two senior lawyers. So, it's not a text
5 that is prepared in haste and somehow not well thought
6 over, and you reviewed it carefully and found it
7 suitable and in order.

8 So, why didn't you at the time say, the
9 application of the Stabilized Regime is granted to
10 Cerro Verde's mining unit and not to the company?

11 A. Because it was an adhesion contract. What
12 does it mean? It means that this agreement, the text
13 with the blanks, the template with the blanks, was
14 published in a Supreme Decree. Then the only
15 variation was the name of the agreement and Annex I
16 where we included the concessions. So, my lawyers
17 simply said: "You have signed an agreement." What
18 agreement? All agreements were the same. "But your
19 Agreement is called "Cerro Verde Leaching
20 Project."" It applies to the Cerro Verde Mining Unit,
21 which had a Mining Concession and a Beneficiation
22 Concession. And what is the tax regime? The one that

1 is thereby established. So, it was clear to them, and
2 also to me, because since it was an Adhesion Contract
3 it was clear, there was no additional clause, no
4 specific article, nothing. All of the agreements were
5 the same.

6 PRESIDENT HANEFELD: Mr. Alexandrov, may I
7 step in for a second on this Adhesion Contract?

8 MR. ALEXANDROV: Of course.

9 PRESIDENT HANEFELD: Have you been involved
10 in the development of this Model Stability Agreement
11 in the development of this adhesion contract? I think
12 we have on the record a Model Stability Agreement of
13 1994. It is Exhibit CE-778. Have you developed this
14 adhesion contract, or are you familiar with it?

15 THE WITNESS: We drafted the law, and I told
16 Polo: "There are some stability agreements under 109
17 that are like this [hand gesture of "short"] and
18 others that are like this [hand gesture of "long"]."
19 Then Polo told me: "To avoid problems, for us to avoid
20 being accused of corruption when signing an agreement,
21 we'll have an adhesion contract." That was
22 1991--1992. I left in February 1993, and I understand

1 that in 1994, before the signing of the Cyprus
2 purchase, the Supreme Decree with the text of the
3 agreements that were going to be signed is published.
4 I did not participate there, I was no longer with the
5 Ministry. However, when I reviewed it, that text is
6 quite similar to the text of the Stability Contract
7 for Tintaya, where I worked for three years, and that
8 was my Bible with the inspectors of the Ministry.

9 PRESIDENT HANEFELD: Maybe we can look to
10 this Exhibit CE-778, which is this 1994 Model Adhesion
11 Contract. And you explained to me how--whether I read
12 it correctly or not, and what is your view on that.

13 I understand that there are some clauses
14 that--on which the mining company has to insert
15 wording. For example, Clause 3. Is my understanding
16 correct?

17 THE WITNESS: Yes, but if you're
18 referring--let's take it slowly. What the company has
19 to insert is not very relevant information. For
20 example, I don't know, what is the article?

21 PRESIDENT HANEFELD: I thought for example
22 about Clause 3, but also Clause 1.3, 1.4, about the

1 background. So, I understand there are a couple of
2 provisions that need to be filled in by the applicant,
3 the mining company. Is this correct? Or who fills in
4 the form?

5 THE WITNESS: Yes. Actually, I've never
6 intervened, but the company fills it out and the
7 Ministry reviews it. But that is background.

8 So, it talks a little bit about what the
9 project is about, a technical description.

10 PRESIDENT HANEFELD: Yeah, but for me, in
11 particular if we look to Paragraph 1.1, my
12 understanding was that the company could choose, now,
13 what they applied for. So, whether it was in relation
14 to an operational start-up or investment in, and also
15 whether it's concessions consisting of or
16 administrative units.

17 So, my impression was when reading this
18 options that it was for the mining company to decide
19 for what it applied, and so it could choose. That is
20 only my understanding, and I asked you, as a witness
21 and expert at the time, how you read it, that the
22 mining company could make a choice whether they

1 applied for stability for an administrative unit, for
2 a specific whole concession, or for a specific
3 investment.

4 THE WITNESS: No. It gave you the mining
5 concession--The tax stability agreement was for all of
6 the concessions indicated in that Annex I, all of
7 them, completely all of them. And then I can explain
8 to you why: because mining is a sector that deals with
9 or manages natural resources. So, today you are
10 extracting copper, and no one can say within two years
11 you might change all the technology you are using and
12 you start extracting rare-earth metals at Cerro Verde.
13 No one can assure that that would not be possible.

14 Now, if you have read the Financial Times
15 two days ago, Germany is going to reopen all of its
16 mines to re-process them, seeking rare-earth metals
17 because they don't want to be subject to China and
18 Russia. That came out in the Financial Times
19 three days ago.

20 So, we had a stability agreement that
21 covered the entire concession, we granted it for
22 15 years, and one could not attach it to a specific

1 investment. As I was saying, the investments covered
2 all types of investments that the company might make
3 over a 15-year period in that concession that had been
4 put there as Annex 3, in all of the investments.

5 ARBITRATOR TAWIL: Excuse me. You're
6 saying--when you say "concession" you're referring to
7 a geographic area? This is in order to understand
8 "concession."

9 THE WITNESS: Yes. It is a geographic area.
10 In mining, if you review the whole law, everything
11 refers to concessions. If you review Article 19 of
12 Legislative Decree 708, and it clearly says "All of
13 the activities in the mining sector are carried out
14 through concessions."

15 ARBITRATOR TAWIL: Now, what you just said,
16 if I understood properly, they might get a different
17 ore, and they would be protected as well?

18 THE WITNESS: If it's within the time frame,
19 yes, and it has happened. We have the largest tin
20 mine, that was copper before. We had a coalmine, and
21 then gold was extracted from it afterwards. And, as I
22 say, at present Germany is going to go and get rare-

1 earths metals from all the mines it has. You can read
2 that in the Financial Times.

3 ARBITRATOR TAWIL: And the stability has not
4 been called into question despite changing from one
5 ore to another?

6 THE WITNESS: No, it is not called into
7 question. This is 15 years, and 15 years it is. Just
8 because I switched, I'm now getting rare earths, I
9 want additional time, no.

10 PRESIDENT HANEFELD: So, just to come back
11 to my original question, we will have other Witnesses
12 and Experts on that question, so just--I want to
13 understand how you understand it.

14 So, your testimony is that this adhesion
15 contract does not provide for any options by the
16 mining company for what specific investment it applies
17 stability, but it automatically and mandatorily
18 extends to the entire concession.

19 So, whatever will be invested at whatever
20 point in time during the 15 years is covered. This is
21 your testimony?

22 THE WITNESS: Yes. You have to recall two

1 things. Mining is the second most capital-intensive
2 activity after aviation. Changes are being made,
3 technological changes are being made constantly.
4 Large-scale investments are being made constantly.

5 Second, it is an industry that--it's a
6 price-taking industry. If we ask Freeport today
7 "what's going to be the price of copper in November?,"
8 it can't answer that.

9 So, since it is an activity involving
10 natural resources that you are extracting, you have
11 another system or another approach. These mines in
12 Germany, in Schwarzwald, in the Black Forest, were
13 extracting feldspar, and now it seems that they are
14 flooded, they are closed, and now simply they are
15 going to be reopened to look for something else, which
16 is rare-earth minerals, for which there is a
17 sophisticated processing plant and totally different
18 one from what is situated at those mines.

19 That's why I say these agreements based on
20 the Mining Law cover the entirety of the Concession
21 for 15 years for all investments, technologies,
22 changes, if they found coal, if they found gold, if

1 they found molybdenum, if they found whatever.

2 Cerro Verde is a copper deposit that's very
3 large. So, at the top there are 30-meter layers of
4 oxides, and then you go further down and you find
5 transitional material. But below that you have one
6 kilometer of Primary Sulfides. One kilometer.

7 Cerro Verde is now one of the largest mines
8 in the world, and it plans to close in 2040, or
9 something like that.

10 Time was taken to start it up, to get it
11 operating, because it didn't have water or
12 electricity. As I noted, it was totally discarded by
13 Phelps Dodge in 1993. It didn't have water. It is in
14 the middle of the desert. If you are somewhat
15 familiar with Northern Chile, where the copper mining
16 companies are, it is--this is the Atacama Desert,
17 which goes north and reaches Cerro Verde. So, Cerro
18 Verde is a desert.

19 And the water is brought from a treatment
20 plant of wastewater from the City of Arequipa. That's
21 the solution they found.

22 PRESIDENT HANEFELD: But, again, just to

1 verify that I properly understand you, so your
2 position is, when we look at these adhesion contracts,
3 at the moment the company decides to enter into this
4 adhesion contract, then it is stuck with it. And then
5 it freezes and--at the time it becomes applicable, it
6 freezes the regime for the company, whatever it will
7 do in the future within 15 years, so even if the tax
8 regime becomes more favorable over time and the
9 company wishes to make a new huge investment, it would
10 be stuck with the old regime because it's not
11 optional. It is just fixed in stone in the moment you
12 enter into it, regardless of how you define your
13 investment. It is just for the Concession. This is
14 your testimony?

15 THE WITNESS: Yes. And I could narrate the
16 cases to you in which companies have come to us and
17 they have said "I'm going to make another large
18 investment and I want to terminate this Agreement that
19 has five years and start again the 15 years." And we
20 have told them: "No. You have your tax stability
21 agreement. There is no termination or succession of
22 contracts."

1 PRESIDENT HANEFELD: Thank you. This
2 answers my question for the moment. Sorry for the
3 interruption.

4 MR. ALEXANDROV: Thank you, Madam President.

5 And I'll continue with the Reinvestment
6 Program, but since I had this line of questions, I
7 will follow up on the question of the President of the
8 Tribunal while we're still on this document, which is
9 the Model Stabilization Agreement, and it is--if you
10 want to look at your binder it is Tab 28. You can
11 look at the screen or your binder, and I want to look
12 at Clause 4, the fourth clause. It talks about the
13 Investment Plan, and it says: "The Investment Plan
14 included in the Feasibility Study referred to in
15 Article 85 of the Mining Law includes in detail the
16 works, labor, and purchases necessary for the
17 commissioning or start-up of the production process or
18 the actual operation of the Project and also defines
19 the benefit or the approximate additional production
20 volume to be obtained. The Investment Plan duly
21 approved by the General Mining Bureau for the purpose
22 of signing this instrument is an integral part of it

1 as Annex II."

2 "The total term for the accomplishment of
3 the Investment Plan is--blank--months, which will
4 expire on--blank. If any change is required, this may
5 be done regarding the works and tasks yet to be
6 accomplished, provided the final purpose of the
7 Investment Plan is not affected and also provided that
8 the owner of the mining company first files with the
9 General Mining Bureau the application for approval of
10 these amendments and/or the expansions and also
11 without prejudice to approval by the General Mining
12 Bureau so the amendments and/or expansions made will
13 be validated and included in the Investment Plan."

14 And then 4.3 says: "Among the main works
15 and tasks contained in the Investment Plan are the
16 following." There is one, two, three, four, five,
17 six, seven.

18 So, I have several questions on that. One,
19 you kept saying "this is an adhesion contract, there
20 is nothing even objected," you asked me to withdraw
21 the word "negotiate." But we see here is that this
22 Contract, this Stabilization Agreement, requires that

1 the company submit a fairly detailed Investment Plan
2 that is to be approved. So, there is something, at
3 least here, to negotiate because the plan may not be
4 approved or the General Directorate of Mining may
5 request changes to the plan. And it requires a fairly
6 detailed description of the works and the tasks to be
7 performed. And my second question is, if, as you say,
8 once you enter--let's say Cerro Verde enters into a
9 stabilization agreement as it did in 1998, and it
10 covers concession, the mining unit, why does it need
11 to prepare such a detailed Investment Plan? All it
12 needs to do is, say, prove with documents that it had
13 made the minimum investment to qualify, and then it
14 gets a stabilization agreement that covers all of its
15 mining unit, whatever investment plans there are
16 there, now or in the future.

17 Why is it necessary to present such a
18 detailed Investment Plan that needs to be approved by
19 what, I assume, is your Directorate? It frankly makes
20 no sense that this requirement is there if, once you
21 make the minimum investment required, you have an
22 adhesion contract that automatically applies to the

1 whole mining unit?

2 A. I reject the qualifying adjective
3 "detailed," and I would ask you to show the Tax
4 Stability Agreement of Cerro Verde and see what was
5 included in the Investment Plan.

6 Q. We can do that, but you know that the
7 Feasibility Study is attached and an integral part of
8 that Contract, and it is quite voluminous. I don't
9 think we have time to review the whole Feasibility
10 Study.

11 Do you want to see just Section 4?

12 A. Section 4? Well, let's put it up. The
13 Feasibility Study, to begin with--well, you know that
14 the Feasibility Study has a 60-70 percent probability.
15 Second, what is presented here is not detailed. It's
16 an investment of \$130 million.

17 As you can imagine, not all of the studies
18 for an investment of 130 million are put here. So,
19 I'd like to see what was put here. Would you be able
20 to show that?

21 Q. Well, I never said all the studies for an
22 investment of 130 million are put here. But there is

1 a feasibility study in this particular case, a
2 feasibility study that is an integral part of the 1998
3 Stabilization Agreement, and it is--I'll check in a
4 moment how many pages. It is--

5 A. You could put this up and you will realize--

6 (Overlapping interpretation and speakers.)

7 Q. We could put Section 4 of the 1998
8 Stabilization Agreement, what we cannot put because it
9 is hundreds of pages is the Feasibility Study.

10 (Overlapping interpretation and speakers.)

11 Q. Yes, give us a moment.

12 A. While you find the page, let me explain.

13 Q. Okay.

14 A. This is copper porphyry, and up above, there
15 is a layer of oxides. And I've already said that this
16 layer up above is only 30 meters deep. There is then
17 transitional ore 50 meters, but here below it are the
18 primary sulfides, which are one kilometer deep.

19 So, the project economics is you have to
20 remove what is up above in order to reach this immense
21 volume that is one kilometer deep where the primary
22 sulfides are. But Cerro Verde began to remove these

1 oxides. Those oxides had a very high copper content.
2 You can imagine that these are machines that are
3 removing and removing the land. It's very costly, but
4 then Cerro Verde takes those oxides and processes them
5 in a plant dedicated to oxides--the leaching
6 plant--and sells the copper.

7 Q. Ms. Chappuis, we have on the screen
8 Section 4 of the 1998 Stabilization Agreement.

9 A. I'd like to see--there's the Investment Plan
10 and then there's the list of the investments, which
11 I'd like to see.

12 Q. Is that what you want to see? 4--

13 A. There was another one that had some numbers.

14 Q. Well, I'm not sure--I'm not sure what you
15 want to see. So, tell us what you want to see, and
16 we'll show it to you. This is Section 4.

17 A. If you tell me the page or where the
18 Contract is here, I can tell you.

19 (Interruption.)

20 Q. The 1998 Stabilization--oh, sorry.

21 I thought this was the model.

22 Tab 29. And Clause 4 that you wanted to see

1 is on page--it begins on Page 6.

2 A. Well, to begin with, that Feasibility Study
3 is reviewed at the DGM for a maximum period of three
4 month, and there is positive administrative silence,
5 and here under 4.3 it says "among the main works."
6 So, among the main works is the "leaching system," the
7 "installation and infrastructure of the mine,"
8 "installation to increase the crushing," "expansion of
9 the processing plant," "studies, construction, and
10 sewage." Because it is as I've explained, they begin
11 to extract the oxides, they process them by leaching,
12 but this is also a stripping away to get to the layer
13 of primary sulfides, which is immense.

14 Q. Ms. Chappuis, that is not what I'm asking
15 you.

16 If you look at this Clause 4, 4.1, at the
17 very end it says that the Investment Plan is an
18 integral part of the Stabilization Agreement as
19 Annex II.

20 Do you see that?

21 A. Yes, but we need the company to--if we were
22 going to sign a 15-year stability agreement, we needed

1 the company to present a study of at least something
2 greater than 50 million that it was going to do. And
3 this study presented by Cerro Verde was of works
4 already executed.

5 Q. Yes.

6 A. And if we examine that, any mining engineer
7 will realize that this was a stage to seek the primary
8 sulfides.

9 Q. So, my question is, if you need the
10 Feasibility Study only to demonstrate that the company
11 has invested 50 million, why do you need the whole
12 Feasibility Study to be an integral part of the
13 Agreement and why do you need the description of the
14 works in the subsequent subsections of Clause 4? All
15 you need, if your testimony is correct--all you need
16 is proof that the company has invested 50 million, and
17 then you grant a stabilization agreement for the whole
18 mining unit.

19 You are not interested in whether it is,
20 according to your testimony, whether it is a Leaching
21 Project or a stabilization plant or whatever it is.
22 As far as they invest 50 million in the mining

1 unit--is what your testimony means--then they have
2 that mining unit stabilized for this investment and
3 any future investment.

4 Why would you need a detailed description of
5 what the investment is? It could be any investment in
6 the mining unit that you refer to, as far as it is
7 50 million or more.

8 A. In part, you're right, one could make any
9 investment. But for our purposes of the work of
10 inspection of the Ministry, we had to have at least a
11 study covering the initial investment that qualifies
12 so as to then move on to the signing of the agreement.
13 This study is submitted. It is analyzed, and then
14 subsequently there are officials of the Ministry who
15 go to the mine and check.

16 "You said here that a feasibility study was
17 going to be undertaken for the Sulfide Plant. Where
18 is that study?"

19 Here.

20 "You said that you were going to strip the
21 top--or clear the top layers with 40 trucks, 80
22 shovels. Where is that?"

1 Okay. It is here.

2 "You said you were going to build a water
3 plant? Where is that?"

4 It is there.

5 So, everything is reviewed.

6 Q. Okay.

7 A. We have to have something on paper so that
8 the person who is going to review it says: "Well,
9 where is it? You made an investment of 120 million,
10 where is it?" This, this, and this. In three days,
11 everything is reviewed.

12 (Interruption.)

13 Q. I told you the Feasibility Study is over 100
14 pages. In fact, it is 223 pages, this particular
15 Feasibility Study that became--sorry, I haven't--

16 (Overlapping interpretation and speakers.)

17 A. And I told you that it is 60 percent
18 credible because it's not a detailed study.

19 Q. I am not finished. Sorry. I was just
20 correcting the number that I gave you. And just for
21 the record, the resubmitted Feasibility Study is
22 CE-009.

1 Is it your testimony that the investor--in
2 this case Cerro Verde--could have made any investment
3 in the mining unit that exceeded the minimum amount
4 required to qualify for a stabilization agreement, and
5 then automatically all the mining unit and all present
6 and future mining activities in the mining unit would
7 be stabilized?

8 Is that your testimony?

9 A. Yes. Once we verify that the works were
10 there, and that that minimum amount of investment was
11 complied with, then one proceeded to grant them a
12 contract that stabilized for 15 years for all of the
13 investments they might make.

14 Q. And the 220 pages were necessary to
15 demonstrate that the minimum investment was made. Is
16 that your testimony?

17 A. That 223-page study was reviewed, and there
18 was a 90-day review period, and there was the rule of
19 positive administrative silence. Plus, the mine would
20 be visited.

21 Q. Right. But my question was, is it your
22 testimony that the only purpose of this Feasibility

1 Study was to demonstrate that the minimum investment
2 required for the company to qualify for a
3 stabilization agreement was made?

4 A. Exactly. For the studies for 10-year
5 agreements, a feasibility study was not required. It
6 was--it was simply required to submit an Investment
7 Plan.

8 Q. Okay. So, Ms. Chappuis, to go back to where
9 we were before we engaged in this line of questions
10 about the Stabilization Agreement, we were talking
11 about the Legal Opinion of September 8, 2023, on
12 the--I'll point you to the document. I was just
13 giving you the context of where we were. We looked at
14 the Legal Opinion, the second one, of September 8,
15 2023, and you and I had a short discussion about, in
16 hindsight, what you would have improved, if anything,
17 to make the language clearer.

18 I now want to show, to show you--just to
19 give you a bit more context, so after those two
20 inquiries of July 2023, and the two Legal Opinions
21 issued by the General Directorate of Mining, in
22 January of 2004, Cerro Verde applies for the Profit

1 Reinvestment Benefit. And that application is
2 approved by a resolution, the document reference is
3 CE-23, December of 2004, and it is behind Tab 27 of
4 your binder. And I will be asking you questions about
5 that document.

6 You approved that resolution, didn't you?

7 A. I did.

8 Q. Let's look at Article 1. Article 1 talks
9 about the Investment Program--that is, the
10 Concentrator Plant.

11 It refers to the amount to be invested. It
12 refers to the pre-period of implementation, and it
13 says, the last two lines: "Funded with retained
14 earnings from the same financial years, which must be
15 exclusively generated by the Cerro Verde Leaching
16 Project."

17 So, in February, I asked you: "In
18 hindsight, would you make any changes to that language
19 to make it clearer?" And your answer was: "I cannot
20 change the language because this is the standard
21 language, the language is standard."

22 Do you confirm that testimony now? In

1 hindsight, you would not have changed anything in that
2 language?

3 MR. PRAGER: Could you, just for the record,
4 provide a quote to where in the Transcript she said
5 that?

6 BY MR. ALEXANDROV:

7 Q. Can you look at Tab 5, CE-1135? That is Day
8 3. In English, it is 834. In Spanish--sorry, in
9 Spanish--do you have the Spanish? Counsel wanted me
10 to show you the language. So, Spanish, it's 826:15,
11 carrying over to 827.

12 And your answer, which begins in the English
13 text on Line 9, is--

14 A. In Spanish?

15 Q. It is on the screen.

16 A. What I told you--

17 (Overlapping interpretation and speakers.)

18 Q. Sorry, I'm not finished yet. Let me make
19 sure you find the language. Line 15 in the Spanish.
20 You can see it on the screen to get--to orient
21 yourself, if you want. In English, you say: "I
22 cannot change the language because this is the

1 standard language, language is standard."

2 And I assure Counsel that I faithfully
3 quoted before I showed the Transcript.

4 Do you confirm that testimony?

5 A. I confirm what Page 827 says, that this
6 Ministerial Resolution has to be read by first reading
7 Article 2, because Article 2 is the important Article.
8 It says here that this Ministerial Resolution has to
9 be sent to SUNAT. After reading this, Article 1 is
10 understood, which says that the Reinvestment Program
11 is approved--I don't see the copy here--filed by
12 Sociedad Minera Cerro Verde," and it says here "funded
13 with retained earnings from the same financial years,
14 which must be exclusively generated," by whom?, "by
15 the Cerro Verde Leaching Project." What is that? And
16 it's capitalized. That is the Tax Stability
17 Agreement.

18 This tax provision--in December '04--was
19 repealed since 2000, but it is being given to Cerro
20 Verde. But why is it being given to it? Because of
21 what we always told them: "The Government is going to
22 honor, to you, the Tax Stability Agreement." And when

1 they signed this Agreement, they were allowed to
2 reinvest their profits in the same Unit, to expand
3 production in the same Stabilized Unit, and in none
4 other.

5 Q. So, your testimony is, first, you wouldn't
6 have changed anything. You point to Article 2,
7 because this Resolution must be sent to SUNAT. And
8 so, your evidence is that, when SUNAT reads
9 the phrase--when the SUNAT officials read the phrase,
10 "funded with retained earnings from the same
11 financial years, which must be exclusively generated
12 by the Cerro Verde Leaching Project," SUNAT will
13 understand this to mean, "which must be exclusively
14 generated by the Cerro Verde mining unit."

15 Is that your evidence? Yes or no first?
16 And then--

17 A. When a Stability Contract is entered into.
18 (Interruption.)

19 PRESIDENT HANEFELD: We cannot--we have no
20 interpretation, and we cannot.

21 MR. ALEXANDROV: Sorry. Yeah, well--

22 PRESIDENT HANEFELD: So, maybe you'll repeat

1 the question and then you repeat the answer.

2 MR. ALEXANDROV: I apologize for
3 interrupting, but I have a strong incentive to
4 complete as soon as possible, and I want--I don't mind
5 the Witness giving a brief explanation after she
6 answers my question, but I'd like first to hear the
7 answer.

8 BY MR. ALEXANDROV:

9 Q. And my question was, is it your evidence
10 that when SUNAT officials read the language that the
11 retained earnings "must be exclusively generated by
12 the Cerro Verde Leaching Project," is it your evidence
13 that they will understand this to mean that the
14 retained earnings must be exclusively generated by the
15 Cerro Verde mining unit?

16 A. When a tax stability agreement is entered
17 into, in this case it is called "Cerro Verde Leaching
18 Project," SUNAT receives a copy of it.

19 In this Resolution, what we are saying in
20 the resolved Section, we're saying to SUNAT in the
21 operative part: "SUNAT, we are granting this
22 reinvestment benefit that had been repealed in 2000.

1 We are here in December 2004. We're going to give
2 this to Cerro Verde. Why? Because Cerro Verde has a
3 Stability Agreement that is called "Cerro Verde
4 Leaching Project."

5 We are going to grant it to it because of
6 that reason, and because of the fact that that profit
7 reinvestment--and, as you know, when you have a
8 Stabilized Unit that creates income, you have a tax
9 provision, and they can reserve that income for
10 four years to reinvest in the same stabilized Mining
11 Unit. So, we are saying to SUNAT, they had that tax
12 provision, and that is why we are approving this.

13 Q. You need to speak closer to the microphone.

14 So, in brief, Ms. Chappuis, what you're
15 saying is SUNAT, or anybody who has the 1998
16 Stabilization Agreement and sees this language will
17 understand that the profits must be generated
18 exclusively from the Cerro Verde mining unit, when
19 they see the language that says "exclusively from the
20 Cerro Verde Leaching Project."

21 If that is the case--if that is the case,
22 then my question is--I have two questions. One, my

1 question is--my first question is, why didn't you just
2 say the Cerro Verde mining unit?

3 A. Because between the Ministry and SUNAT, we
4 speak on the basis of the names of the agreements
5 signed. This was a provision that had been repealed
6 in 2000, and we are at December 2004 here. SUNAT had
7 a copy of that Stability Agreement that it received in
8 '96--'98.

9 And we told SUNAT: "Today, we are granting
10 this tax benefit to Cerro Verde because those profits
11 that are going to be retained and reinvested, they are
12 consequence of the "Cerro Verde Leaching Project," the
13 Contract known as "Cerro Verde Leaching Project," that
14 it is made up of the Cerro Verde Mining Unit.

15 Q. Okay. Can you go to Tab 29 in your binder?
16 And that is the Stabilization Agreement CE-12.

17 I'm looking at the title of the Contract, or
18 the name of the Contract.

19 It's not the "Cerro Verde Leaching Project."
20 It says: "Contract of Guarantees and Investment
21 Promotion Measures Granted by the Peruvian State in
22 favor of Sociedad Minera Cerro Verde."

1 I understand that to be the title of the
2 Contract. Am I wrong?

3 A. Let me read it and then I'm going to try to
4 find it. Just a couple of minutes, please.

5 Q. Well, yes, but we are a little bit pressed
6 for time, so, just look at the first page and the
7 title of the Contract. You say the name of the
8 Contract is the "Cerro Verde Leaching Project," and
9 I'm looking at the Contract, and I see a name that
10 says something different, which is "Contract of
11 Guarantees and Investment Promotion Measures."

12 Isn't that the name of the Contract?

13 Ms. Chappuis, can you please answer the
14 question because we are pressed for time.

15 A. What was your question, please.

16 Q. Please look at Page 1. The name of the
17 Contract is "Contract of Guarantees and Investment
18 Promotion measures granted by the Peruvian State in
19 favor of Sociedad Minera Cerro Verde."

20 The name of the Contract is not what you
21 refer to in the Resolution, which is the "Cerro Verde
22 Leaching Project."

1 Again, can you confirm, please, when you
2 read this, that this is--this language is there? We
3 don't have time for you to read the whole Contract.
4 If you have a question, let me know. We will point
5 you to a provision. But I'm sorry, we don't have time
6 for you to review the Stabilization Agreement, which
7 you've testified you know, upside down.

8 A. Mr. Alexandrov, if we had signed this in
9 accordance with the 1890 law, this Contract would be
10 called "Contract of Tax Immutability." So, that name
11 "Contract of Guarantees," "Tax Stability Agreement, or
12 "Contract of Tax Immutability," all is the same.

13 Q. Well, let's go back to--let's go to one of
14 the Ministerial Resolution, Tab 27, CE-23. "The
15 retained earnings which must be exclusively generated
16 by the Cerro Verde Leaching Project," and you said
17 everybody would understand that by the "Cerro Verde
18 Leaching Project," you meant the "Cerro Verde mining
19 unit." In that case, why the word "exclusively"?

20 Everything within the mining unit is covered
21 by the Stabilization Agreement, isn't it, according to
22 your testimony?

1 A. Mr. Alexandrov, I found the figures that I
2 was looking for. I was speaking to you about figures,
3 and I've found it.

4 Q. Where are you, Ms. Chappuis? So we can,
5 perhaps, put it on the screen, which page or which
6 clause of the Contract are you looking?

7 A. I'm looking at Annex 2.

8 Q. Yes. We will put it on the screen.

9 And what did you want to say about it?

10 A. This Annex 2 proves what I was
11 saying.

12 (Overlapping interpretation and speakers.)

13 (Interruption.)

14 Q. It's not your fault.

15 A. What I want to say is that in this Exhibit 2
16 shows what I was saying: that mine equipment for over
17 \$40 million was included in the project. Why?
18 Because they were stripping everything, they were
19 stripping all of the Oxides to get to the great
20 deposit of Primary Sulfides, that as I told you has
21 goes one kilometer deep. And here we look at the
22 amount of mine equipment that is being purchased. We

1 look at crushing, all big figures. Then you have
2 "Environmental" --it says here--and this is the
3 "Feasibility Study of the mill." This is poorly
4 translated: it is the Feasibility Study of the
5 Concentrator. And also it talks about exploration.
6 It's a big figure as well.

7 If we look at the Feasibility Study, it is
8 shown there the geology that says clearly: "We are
9 going to go to the Primary Sulfides area."

10 Now, I'm going to answer your question, but
11 please ask the question again, sir?

12 Q. Well, my question was on Article 1 of the
13 Resolution, approving the--thank you for that
14 clarification, by the way.

15 So, my question went back to Article 1 of
16 the Ministerial Resolution that approved the Profit
17 Reinvestment Program. And your testimony was that
18 when the Resolution said "the profits must be
19 generated--must be exclusively generated by the Cerro
20 Verde Leaching Project," anybody who had the 1998
21 Stabilization Agreement would know that this means the
22 profits exclusively generated by the Cerro Verde

1 mining unit.

2 So, I'm asking you, then, why the word
3 "exclusively" if we're talking about Cerro Verde's
4 mining unit as a whole and all the profits generated
5 by the mining unit?

6 A. Because we are talking so that SUNAT reads
7 us. We're saying: "SUNAT, we're not allowing this
8 Company to bring in income that will benefit from this
9 tax benefit from a Concession that is not stabilized."
10 This was a tax regulation, a tax benefit, that had
11 been repealed. So, to avoid problems with SUNAT, we
12 specified this to SUNAT. We said, this is
13 nondistributed profits that are going to come from a
14 Stability Agreement called "Cerro Verde Leaching
15 Project."

16 Q. So, your testimony is that by saying
17 exclusively generated by--

18 PRESIDENT HANEFELD: Sorry for the
19 interruption, but we are just wondering whether your
20 intention is to finish with Ms. Chappuis today?

21 MR. ALEXANDROV: Can I ask just this last
22 question, which is the end of my line of questions,

1 and then I want to talk to you about going forward.

2 But I'm hoping with this last question to
3 complete this line of questions.

4 PRESIDENT HANEFELD: Okay.

5 BY MR. ALEXANDROV:

6 Q. Ms. Chappuis, so, to summarize your
7 evidence, when one reads the words "exclusively
8 generated by the Cerro Verde Leaching Project," one
9 would understand this to mean exclusively generated by
10 the Cerro Verde Concessions or mining unit, and not
11 any other Concessions or any other mining units?

12 Is that your testimony?

13 A. Cerro Verde had this benefit in 2004, from
14 this repealed law, because Cerro Verde had a Stability
15 Agreement called "Cerro Verde Leaching Project," then
16 it had this benefit. And that Mining Unit generated
17 income, and that income was going to be used. If
18 Cerro Verde had had another Mining Unit, those--that
19 income would not have received that tax benefit.

20 That is what we wanted to say in these two
21 Articles.

22 Q. If they had other plants in this mining

1 unit, in this Concession, would the nondistributed
2 profits from all those other plants, other than the
3 Leaching Project, would they also be reinvested in the
4 construction of the Concentrator Plant, free of tax?

5 A. I don't understand your question. Could you
6 please repeat it?

7 Q. Yes. In this mining unit, in the
8 Concessions that we are talking about that are
9 described in Annex 1 of the 1998 Stabilization
10 Agreement, Cerro Verde had a leaching plant. The
11 profits from that leaching plant could be reinvested,
12 without tax, into the construction of the Concentrator
13 Plant.

14 And I'm asking you, based on your testimony,
15 if there is, in addition to the Leaching Plant, if
16 there was another plant operating in that, what you
17 refer to "mining unit," in that Concession, would the
18 Nondistributed Profits from that other plant, could
19 they also be reinvested into the Concentrator Plant,
20 tax free?

21 A. Yes. I'm going to explain. All of this,
22 the Mining Unit—which in the States is known as Mine

1 Site--was stabilized. They were producing in a
2 leaching plant, as I said, they were stripping
3 everything, stripping all the top layers to get to the
4 Primary Sulfides.

5 If at that time, let's imagine, they had
6 placed a plant to recover rare-earth minerals, that
7 plant that was treating the stabilized mineral, and
8 that was located within these stabilized Concessions,
9 would have been stabilized. And the benefit would
10 have been received by the leaching plant and by the
11 rare-earths plant.

12 Q. And that would be the case even though that
13 other plant would not be mentioned in the Feasibility
14 Study that is an integral part of the Agreement, it
15 would not be mentioned in Clause 4 of the Agreement,
16 or any other clause of the Agreement; correct?

17 A. Repeat your question, please.

18 Q. The proceeds from that other plant, in the
19 same Concession, would benefit from the 1998
20 Stabilization Agreement, you say, even though that
21 other plant is not covered by the Feasibility Study
22 that is an integral part of the 1998 Stabilization

1 Agreement, and that investment in that other plant is
2 not mentioned anywhere in the 1998 Stabilization
3 Agreement; correct?

4 A. Mr. Alexandrov, throughout this afternoon, I
5 have tried for you lawyers to understand something
6 from me, the mining engineer.

7 (Interruption.)

8 Q. Sorry to interrupt, if you could please say
9 first yes or no, and then explain. It will help us a
10 lot to understand your testimony.

11 A. First, you need to understand what I'm
12 saying. We are talking about natural resources, today
13 I am taking out Oxides. Then, of course, they run
14 out. Oxides run out. I'm taking these out of a hole,
15 and then it's better to have a Concentrator Plant.

16 So, I start getting things out through the
17 Concentrator Plant, and then the price of lithium
18 shoots up, and then I have lithium, and I said, okay,
19 let's set up a lithium plant. And I mine lithium.

20 That is how mining works. I want you to
21 understand this. That is why these agreements covered
22 all types of investments: Copper, rare earths,

1 lithium, whatever you want, for 15 years, and placing
2 any kind of plant you want during 15 years, but not a
3 day over.

4 It was not "just this little plant," "rare
5 earths, no," "lithium, no." No, it is all the plants.
6 Why? Because these are Beneficiation Plants. I drill
7 a hole, I have no power whatsoever on the prices set
8 by London. Today, copper is \$4 and lithium \$20,000.
9 I can say, okay, and lithium goes up to 80,000. So,
10 then I'm going to say: "Okay, I will mine lithium, and
11 I will set up a lithium plant here. That is what
12 mining is. That is how mining works.

13 Also, mining works with great investments,
14 it is very capital intensive.

15 MR. ALEXANDROV: Madam President--I need to
16 interrupt, I'm sorry.

17 (Interruption.)

18 MR. ALEXANDROV: I am running out of time.

19 BY MR. ALEXANDROV:

20 Q. I understand your position, and I'm asking,
21 then, that your testimony is that this is the case,
22 even though this other investment is not covered by

1 the Feasibility Study, which is an integral part of
2 the Agreement, and is nowhere mentioned in the
3 Agreement.

4 And you can just confirm that this is the
5 case, even though the Agreement doesn't say anywhere,
6 including in the Feasibility Study, anything about
7 this other investment.

8 Am I correct in understanding your
9 testimony?

10 A. The Feasibility Study indicates very clearly
11 in the geology "we're going to the Primary Sulfides
12 area," and then during the mining stage, it says, very
13 clearly, "we're going to conduct pushbacks," this year
14 and this year and this year, in Cerro Verde, et
15 cetera.

16 (Interruption.)

17 Q. With all due respect, this, is again, not an
18 answer to my question. My question was--

19 (Overlapping interpretation and speakers.)

20 A. Yes, I'm answering your question.

21 Q. No, it is not.

22 (Interruption.)

1 (Overlapping interpretation and speakers.)

2 A. I'm a Mining Engineer. I read "pushbacks"
3 and that means that the mine is expanded like this
4 [hand gesture of "wide"], because we're going
5 downward--

6 (Interruption.)

7 Q. It's not an answer to my question.

8 MR. ALEXANDROV: I'm sorry.

9 PRESIDENT HANEFELD: I don't get a
10 translation.

11 BY MR. ALEXANDROV:

12 Q. Yeah, I want to repeat my question.

13 My question was, if this other investment is
14 not covered by the Feasibility Study, and is nowhere
15 mentioned in the Stabilization Agreement, is it still
16 your view that this other investment, because it is in
17 the same Concession or the same mining unit, is
18 covered by the Stabilization Agreement?

19 A. What you're saying is not true. The
20 Feasibility Study in several parts mentions the
21 Sulfide Project. I'm explaining the geology.

22 Q. I'm asking you a different question.

1 (Overlapping interpretation and speakers.)

2 A. I am explaining this to you. There are
3 pushbacks that are included in the Mining Plan. I'm
4 explaining that when in the sections of power and
5 energy, it says clearly "We need 800 liters per second
6 for the sulfides, and we only have a license for water
7 for 100 liters per second. We don't have water."

8 Then you cannot say that in the Feasibility
9 Study there is no mention to the sulfides project.

10 Yes, it does mention the sulfides project.

11 Q. So, your evidence is that the Concentrator
12 Plant is covered by the 1998 Stabilization Agreement
13 because there is a reference to it in the 1996
14 Feasibility Study.

15 Do I understand you correctly?

16 A. The reference of the Primary Sulfides study
17 was found in 1979 by Parsons. So, we always knew, and
18 you know very well that Cerro Verde already had a
19 Concentrator for 3,000 tons since 1974. So, always,
20 always, it was known, it was not something that came
21 out of thin air.

22 Q. All right. But your evidence is that

1 because of that, it was because it was always known,
2 you say, that there will be a Concentrator--

3 (Overlapping interpretation and speakers.)

4 A. But you cannot tell me that it hasn't been
5 mentioned. I am a mining engineer, and I read
6 geology. I read pushback, and there is sulfide below.

7 Q. Can I ask you a question, though?

8 I understand you now to be saying that
9 because it was always known that there will be a
10 Concentrator Plant in the Concession, this is why the
11 1998 Stabilization Agreement covered the Concentrator
12 Plant; correct?

13 A. What I'm saying is that, if one looks at
14 this, it was there, and when I mention the figures, I
15 say "This is the mine equipment in a large quantity
16 because they are doing stripping." What are they
17 doing the stripping for? For the Primary Sulfide.
18 They're taking advantage of that stripping to send it
19 to a plant, these were Oxides, and they were processed
20 there. Tintaya carried out the stripping and piled up
21 its Oxides in a corner. So, it is a different way to
22 process. I want you to understand. This is a hole

1 like this, and you start to remove from top whatever
2 you have on top, that is the Oxides that have copper,
3 a very high copper content. You move it on to the
4 leaching plant. You take out the copper, and you
5 continue to go down to get to the Primary Sulfides.

6 And those Sulfides need to be processed in
7 the Concentrator.

8 Q. I do not find in that long, long answer
9 anything that related to my question.

10 MR. ALEXANDROV: But, Madam President, I'm
11 coming back now to your point.

12 I'm not going to complete today. So, we can
13 stop now, or at any point convenient to the Tribunal.
14 I'm happy to stop now and continue tomorrow.

15 (Tribunal conferring.)

16 PRESIDENT HANEFELD: We note that Respondent
17 needs more time for cross-examination, or requires
18 more time so that we cannot complete today. Our
19 general understanding was that we try to avoid in our
20 Hearing Witnesses--now, and now also the next day.
21 So, we hope that within the next days we will catch up
22 a little bit again with our Hearing schedule, and

1 keep--stick to the agenda as originally agreed between
2 the Parties. I think now it is what it is.

3 Now, we will also have some questions to
4 Ms. Chappuis, and so maybe you can tell us tomorrow
5 morning what your plan is in terms of timing.

6 MR. ALEXANDROV: Well, Madam President, so I
7 was hoping to complete tonight, but it turned out to
8 be impossible. I'm sure you and your colleagues have
9 heard that many times, and that Counsel blames the
10 Witness, but we received some long answers that I
11 don't believe were answers to my questions, so I had
12 to repeat questions over and over again.

13 I'm--if Ms. Chappuis--and I'm asking her to
14 cooperate with me and provide short answers, I'm
15 hoping to complete within one hour tomorrow. But, of
16 course, there will be redirect and questions from the
17 Tribunal. But I'm hoping that I can complete within
18 one hour tomorrow, on the assumption that Ms. Chappuis
19 cooperates with me. I'm trying to ask specific
20 questions, and I will ask her, I will plead with her,
21 to provide short answers.

22 PRESIDENT HANEFELD: This is understood.

1 Any comments from Claimant's side?

2 MR. PRAGER: No. My only comments are that
3 experience from the previous arbitration shows that
4 Respondent's Witnesses are also very talkative. So,
5 we will have to deal with that.

6 But each--look, each side has an equal
7 amount of time, and each side can spend it the way
8 that they want. So, I can't promise that just because
9 Mr. Alexandrov chooses to cross-examine Ms. Chappuis
10 for longer, that just to catch up with the daily
11 schedule, we will be shorter with our Witnesses.

12 But in the end, we all are going to catch up
13 because we all have the same amount of time, and it's
14 Respondent's choice to spend more time on Fact
15 Witnesses. They're going to have less on the Experts.
16 That's a strategy choice that they have to make.

17 PRESIDENT HANEFELD: And we certainly
18 respect the strategy choice. We just wanted to make
19 the point that we want to progress.

20 MR. ALEXANDROV: Yes. Madam President, and
21 we--or maybe we misunderstood the Tribunal. We
22 understood the schedule to be tentative, in the sense

1 of, we may decide to take more time with one Witness
2 and less time with another.

3 PRESIDENT HANEFELD: And yes, it was
4 tentative.

5 (Overlapping speakers.)

6 MR. ALEXANDROV: But yes, it's the chess
7 clock, we know we have a limited amount of time. So,
8 we'll have to catch up at some point in time, and we
9 will, of course, not only try to do that, but we will
10 have to do that.

11 PRESIDENT HANEFELD: Then we wish all a
12 peaceful evening, good rest, and see us tomorrow.

13 (Whereupon, at 5:37 p.m., the Hearing was
14 adjourned until 9:30 a.m. the following day.)

CERTIFICATE OF REPORTER

I, Dawn K. Larson, RDR-CRR, Court Reporter, do hereby certify that the foregoing English-speaking proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the English-speaking proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.


Dawn K. Larson