

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

Red Eagle Exploration Limited

v.

Republic of Colombia

(ICSID Case No. ARB/18/12)

PROCEDURAL ORDER NO. 2

Members of the Tribunal

Dr. Andrés Rigo Sureda, President of the Tribunal
Mr. José Martínez de Hoz, Arbitrator
Prof. Philippe Sands, Arbitrator

Secretary of the Tribunal

Ms. Catherine Kettlewell

18 January 2021

1. On 4 January 2021, both Parties submitted to the Tribunal their requests for production of documents in the form of a Redfern Schedule (“**Requests for Production**”), in accordance with section 15.6 of Procedural Order No. 1 (as amended).
2. ICSID Arbitration Rule 34 provides:
 - (1) *The Tribunal shall be the judge of the admissibility of any evidence adduced and of its probative value.*
 - (2) *The Tribunal may, if it deems it necessary at any stage of the proceeding:*
 - (a) *call upon the parties to produce documents, witnesses and experts;*
and
 - (b) *visit any place connected with the dispute or conduct inquiries there.*
 - (3) *The parties shall cooperate with the Tribunal in the production of the evidence and in the other measures provided for in paragraph (2). The Tribunal shall take formal note of the failure of a party to comply with its obligations under this paragraph and of any reasons given for such failure.*
 - (4) *Expenses incurred in producing evidence and in taking other measures in accordance with paragraph (2) shall be deemed to constitute part of the expenses incurred by the parties within the meaning of Article 61(2) of the Convention.*
3. Section 15.2 of Procedural Order No. 1 (as amended) provides that the Tribunal may be guided by the International Bar Association Rules on the Taking of Evidence in International Arbitration (2010) in relation to document production.
4. Having considered the Parties’ Requests for Production, and pursuant to the abovementioned applicable rules, this Procedural Order decides on the Redfern Schedules submitted by the Parties. The reasoning of the Tribunal is included in each of the requests contained in the Redfern Schedules of each party which are attached to this Procedural Order. **Annex A** contains the Decision on the Claimant’s Requests for Production and **Annex B** contains the Decision on the Respondent’s Requests for Production.
5. This Order is made without prejudice to the operation of any applicable principles on privilege, including legal privilege.
6. Pursuant to section 15.7 of Procedural Order No. 1 (as amended), a Party shall produce documents as contained in this Procedural Order by **1 February 2021**.
7. As provided in section 15.8 of Procedural Order No. 1 (as amended), documents shall be communicated directly to the requesting Party without copying the Tribunal or the Tribunal Secretary. Documents so communicated shall not be considered to be admitted to the

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record unless and until a Party subsequently files them as exhibits in accordance with section 16 of Procedural Order No. 1 (as amended).

On behalf of the
Tribunal,

[*Signed*]

Dr. Andrés Rigo Sureda
President of the Tribunal
Date: 18 January 2021

Annex A

Decision on the Claimant's Requests for Production

Claimant's Request for Production of Documents

Red Eagle Exploration Limited herewith submits its requests for documents. As set forth herein, each of these requests relates to specific documents or specific, narrow categories of documents that are (i) relevant and material; (ii) reasonably believed to exist and to be in the possession, custody, or control of the Respondent; and (iii) not in the possession, custody, or control of Claimant. The following defined terms are used in connection with these requests:

“All” means “any and all.”

“And” and “or” mean “and/or.”

“ANLA” means the National Environmental Licensing Authority (*Autoridad Nacional de Licencias Ambientales*).

“ANM” means National Mining Agency (*Agencia Nacional de Minería*).

“Between” includes from, to and/or copying (cc'ing).

“CARs” means Regional Autonomous Corporations (*Corporaciones Autónomas Regionales*).

“CDMB” means Regional Autonomous Corporation for the Defence of the Bucaramanga Plateau (*Corporación Autónoma Regional para la Defensa de la Meseta de Bucaramanga*).

“Claimant” means Red Eagle Exploration Limited.

“CORPONOR” means Regional Autonomous Corporation of the North-Eastern Border (*Corporación Autónoma Regional de la Frontera Nororiental*).

“Council of State” means *Consejo de Estado*.

“Document” means a writing, communication, picture, drawing, program or data of any kind, whether recorded or maintained on paper or by electronic, audio, visual or by any other means.

“IAVH” means Alexander von Humboldt Institute for Biological Resources Research (*Instituto de Investigación de Recursos Biológicos Alexander von Humboldt*).

“Including” means “including, without limitation,”

“INGEOMINAS” means Colombian Institute for Geology and Mining (*Instituto Colombiano de Geología y Minería*).

“Regarding” means comprising, consisting of, concerning, referring to, reflecting, supporting, evidencing, regarding, relating to, relevant to, prepared in connection with, used in preparation for, or being in any way legally, logically, or factually concerned with the matter or document described, referred to, or discussed.

“MINERCOL” means the National Mining Corporation (*Empresa Nacional Minera Ltda.*).

“Mining Titles” means the Mining Titles acquired by Claimants between 2009 and 2013, as described by Claimant in its Memorial (Memorial, Figure 1). These include: Real Minera (0050-68), La Tríada de Oro (16725), San Bartolo (0032-68), Arias (0161-68), La Peter (17215), Santa Isabel (0308-68), El Dorado (0135-68), Los Delirios (13604), San Antonio (13477), and San Alfonso (0317-68).

“Ministry of Mines” means The Colombian Ministry of Mines and Energy (*Ministerio de Minas y Energía*).

“Ministry of Environment” means the Colombian Ministry of Environment and Sustainable Development (“*Ministerio de Ambiente y Desarrollo Sostenible*”), as well as other entities “linked” or affiliated to the Ministry, including, among others, the IAVH.

“National Authorities” means the following Colombian government entities: the Ministry of Mines, the Ministry of Environment, the ANM, ANLA, INGEOMINAS, the Colombian Geological Service, the CDMB, CORPONOR, the National Planning Department, and the IAVH.

“Respondent” means the Republic of Colombia, and all other present or former Ministries, officers, employees, partners, representatives, agents, intermediaries, government officials, agencies, who, during the relevant period, acted or purported to act on behalf the Government of Colombia.

“Santurbán Park” means Santurbán Páramo Natural Regional Park (*Parque Natural Regional Páramo de Santurbán*).

Unless otherwise indicated, capitalized terms have the meaning ascribed to them in Claimant’s Memorial on the Merits dated 16 May 2020.

CLAIMANT’S REQUEST FOR PRODUCTION OF DOCUMENTS

| 1 | 2 | 3 | | 4 | 5 | 6 |
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| Row | Documents or Category of Documents Requested | Statement of Relevance/Materiality | | Answer / Objections to the Request to Produce | Reply to Objections to the Request to Produce | Tribunal’s Decision |
| | | Reference to Memorials, Annexes, Witness Statements, or Expert Reports | Comments | | | |
| 1 | All Documents in the possession of the Ministry of the Environment, Ministry of Mines and other National Authorities regarding the scope and rationale of (a) the Preamble and Arts. 1, 2, 3 and/or 4 of Ministry of Environment, Resolution No. 769, August 5, 2002; (b) Art. 43 of Law No. 1382/2010; (c) Resolution No. 937, 25 May 2011; and (d) Arts. 202 and/or 276 of Law 1450/2011, including, without limitation, Documents relied on in the development of such provisions, Documents from the time of issuance of such provisions, or subsequent Documents regarding the interpretation of such provisions, such as memoranda, notes, studies, correspondence, position papers, reports, opinions, advisory opinions, questions, answers, meeting minutes, deliberations, expositions of motives, aide memoires, assessments, comments, and other similar documents. | <p>Claimant’s Memorial ¶¶ 57, 72-73-74, 142.</p> <p>C-16, C-17, C-571, C-576, C-584, C-655, C-660.</p> <p>Martínez ¶¶ 84-87, 89, 92, 99, 101, 106, 107, 109-111-112, 125-129, 130-138.</p> <p>Respondent’s Counter-Memorial ¶¶ 59-66, 99, 238, 248, 260, 272-318.</p> <p>R-11.</p> <p>De Vivero ¶¶ 33, 112-116, 120-138.</p> | Respondent developed a legal and policy framework to encourage investment in the mining sector. Respondent nonetheless now seeks to minimize its legal and policy framework and the protections afforded thereunder. Among other issues, Respondent contends that Resolution 769 was “the first of a series of regional and national measures strengthening the protection of the páramos,” and “[a]though Resolution No. 769 did not itself prohibit mining in páramo ecosystems (which Laws 1382 and 1450 later did), it ought to have been clear to Red Eagle that Resolution No. 769 heralded the beginning of a gradual and steady effort by Colombia further to protect the páramos;” that Resolution 937 adopted the information of the IAHV 2007 Atlas to delineate the Colombian | Colombia objects to this Request for the Production of Documents (“ Request ”), and requests that it be denied by the Tribunal, for the following reasons: <i>First</i> , the Request is excessively broad and unduly burdensome. The documents requested are not precisely defined and concern an indeterminate number of government representatives, from ten different governmental authorities, over an unlimited period of time. ¹ The Request is also formulated in vague terms, and allows neither the Tribunal nor the Respondent to ascertain which specific documents are being sought or may be responsive. It is therefore contrary to IBA Rule 3(3)(a)(i). ² Red Eagle’s failure to identify documents with particularity also means that it would be unreasonably burdensome to require the Respondent to examine potentially massive amounts of documents in a very short period of time, with the result that this | <p>1. Relevance and materiality: Respondent’s objection on relevance and materiality objection is meritless.</p> <p>In this proceeding, there is a dispute between the Parties with respect to the interpretation and impact of each of the referenced norms. In particular, Respondent contends that the subsequent measures that deprived Claimant of its investment beginning in December 2014 ought to have been clear to Claimant upon issuance of each of these norms. Claimant disagrees and maintains that there was no such clarity.</p> <p>The requested documents on the scope and rationale of each of these norms are or may be relevant and material to test Respondent’s assertions in this proceeding with respect to the impact and interpretation of each of these norms. The requested documents also are or may be relevant and material to Claimant’s expectations at the time of its investment.</p> | The request is too broad and it is denied. |

¹ See Red Eagle’s definition of “National Authorities” above, which includes “the Ministry of Mines, the Ministry of Environment, the ANM, ANLA, INGEOMINAS, the Colombian Geological Service, the CDMB, CORPONOR, the National Planning Department, and the LAVH.”

² IBA Rule 3(3)(a)(i) reads: “A Request to Produce shall contain: (a) (i) a description of each requested Document sufficient to identify it [...]”

CLAIMANT’S REQUEST FOR PRODUCTION OF DOCUMENTS

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| | | | <p>Páramos; and that that “Colombia did enforce the ban on mining in páramo ecosystems over Red Eagle’s Mining Titles upon the issuance of Laws 1382 and 1450.” The requested documents are or may be relevant and material to Respondent’s representations regarding its legal and policy framework at the time of Claimant’s investment, and interpretations prior to this proceeding.</p> | <p>Request should be rejected under IBA Rule 9(2)(c) as well.³</p> <p><i>Second</i>, the Request fails to establish the relevance of any particular documents or specific categories of documents sought by identifying with reasonable particularity what factual allegations it is intended to establish. As such, it is not “<i>carefully tailored to produce relevant and material documents</i>”,⁴ and is therefore contrary to Article 3(3)(b) of the IBA Rules. The laws that applied at the time Red Eagle invested in Colombia were and remain publicly available and are, of course, already on the record. Red Eagle has failed to offer any justification as to why the “<i>Documents relied on in the development of such provisions</i>” or “<i>regarding the scope and rationale</i>” would be relevant to the assessment of any particular disputed issue of interpretation of those laws, still less why such documents would be material to the outcome of this case.</p> <p><i>Third</i>, the rationale offered by Red Eagle does not justify the Request. Red Eagle claims that the documents may be relevant and material to “<i>Respondent’s representations regarding its legal and policy framework at the time of Claimant’s investment, and interpretations prior to this proceeding</i>”. This does not justify Red Eagle’s request for Colombia’s internal documents concerning the rationale for or development of the laws that existed at the</p> | <p><u>2. Breadth and burden:</u></p> <p>Respondent’s objection on breadth and undue burden is meritless.</p> <p>The request is narrowly tailored. Each of the National Authorities, and referenced norms, on which this request is based are specifically cited by Respondent in its Counter-Memorial.</p> <p><u>3. Possession:</u></p> <p>Respondent argues that it will not produce documents as the preparatory works for “laws,” which it contends are publicly available. This objection is meritless.</p> <p>What Claimant requests are not preparatory works for laws in Colombia, but rather the documents relied in preparation of specific resolutions and two legal provisions issued by Ministries or Congress in Colombia. Those entities are part of Colombia’s Government, and the documents requested are therefore in Colombia’s possession, custody, and control.</p> <p><u>4. Confidentiality:</u></p> <p>Respondent raises a blanket objection regarding confidentiality. It is meritless.</p> <p>Respondent’s speculation that the requested documents “may” contain information subject to legal impediment pursuant to Article 19 of Colombia’s Access to Public Information Law is</p> | |
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³ IBA Rule 9(2)(c) provides: “*The Arbitral Tribunal shall, at the request of a Party or on its own motion, exclude from evidence or production any Document, statement, oral testimony or inspection for any of the following reasons: [...] unreasonable burden to produce the requested evidence [...].*”

⁴ 1999 IBA Working Party & 2010 IBA Rules of Evidence Review Subcommittee, “Commentary on the revised text of the 2010 IBA Rules on the Taking of Evidence in International Arbitration,” (“**Commentary on the IBA Rules**”) p. 9.

CLAIMANT’S REQUEST FOR PRODUCTION OF DOCUMENTS

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| | | | | <p>time Red Eagle invested. Even if Colombia had made any representations to Red Eagle (which is denied), documents containing such representations would already be in Red Eagle’s possession.</p> <p><i>Fourth</i>, the preparatory works for laws in Colombia are publicly available at http://svrpubindc.imprenta.gov.co/senado/. Additionally, the status of the legislative process for draft bills, together with a summary of that process, can be found on the website of the Colombian Congress (http://leyes.senado.gov.co/proyectos). To the extent Red Eagle considers such documents to be relevant to any specific disputed points of interpretation of any relevant laws, it would not be unduly burdensome for Red Eagle or its Colombian legal counsel to access such documents from public sources.</p> <p><i>Fifth</i>, the requested documents may contain information that is subject to legal impediment under Colombian law. Per Article 19 of Law 1712 of 2014 (the “Access to Public Information Law”) documents recording the opinions and points of view expressed by public officials during deliberations are confidential (Annex 1). To the extent the requested documents contain such information, they would be subject to confidentiality protection under the Access to Public Information Law.⁵</p> | <p>inapposite as the cited provision relates to a domestic procedure for to the public access to information; it <u>does not apply</u> (or purport to apply) to confidentiality in other contexts or otherwise relate to the production of documents in this proceeding under the Treaty that Colombia signed.</p> <p>In addition, Respondent’s reference to the Access to Public Information Law is misleading. Article 19 provides that information containing the points of view of public officials <i>may be</i> denied in writing, provided there is a clear law or constitutional mandate that prohibits access to a particular document. Here, Colombia has not represented, let alone proven, that there is any clear law or constitutional mandate prohibiting production.</p> <p>Even if Colombia had identified a clear law or constitutional mandate that might restrict access to the requested documents (which it has not), Colombia’s own Constitutional Court has interpreted the rights to access information broadly, finding that there is a “fundamental right” to access public information, and that this right may only be limited by a “clear and precise law” that defines the specific type of information that may be the subject of confidentiality. <i>See</i> Judgment C-274 dated May 9, 2013, ¶ 3.1.3, available at https://www.corteconstitucional.gov.co/relatoria/2013/c-274-13.htm.</p> | |
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⁵ In any event, for this and Red Eagle’s other requests to which the Access to Public Information Law may restrict Colombia’s ability to disclose documents, Colombia reserves its right pursuant to Article 9.4 of the IBA Rules to request necessary arrangements to ensure the confidentiality of such documents.

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| <p>2</p> | <p>All Documents in the possession of the Ministry of the Environment, Ministry of Mines and other National Authorities regarding their interpretations of (a) Resolution 2090; and (b) Art. 173 of Law 1753, including, without limitation, Documents relied on in the development of such provisions, Documents from the time of issuance of such provisions, or subsequent Documents regarding the interpretation of such provisions, such as drafts, memoranda, notes, studies, correspondence, position papers, reports, opinions, advisory opinions, questions, answers, meeting minutes, deliberations, expositions of motives, aide memoires, assessments, comments, and other similar documents.</p> | <p>Claimant’s Memorial §§ II.C.2-3. C-17, C-580. Martínez ¶ 130. Respondent’s Counter-Memorial § VI.A, B, D. De Vivero ¶¶ 134-138.</p> | <p>Respondent contests the scope and rationale of provisions in the legal framework applicable to the development of the delimitation of the Santurbán Páramo by Resolution 2090 and Law 1753 and application to Claimant’s Mining Titles. Among other examples, Respondent contends that Claimant’s interpretation of the scope and rationale of provisions in the legal framework relating to, among other things, whether Resolution 2090 and Law 1753 were the first and second delimitations of the Santurbán Páramo, or did no more than “confirm” a pre-existing delimitation under existing norms. Respondent further contends that Resolution 2090 and Law 1753 did not “grandfather” Claimant’s Mining Titles. Respondent contests the scope of the “grandfathering” provision included in Resolution 2090. The requested documents are or may be relevant and material to Respondent’s representations regarding its legal and policy framework at the time of Claimant’s investment, and</p> | <p>Colombia objects to this Request for the Production of Documents (“Request”), and requests that it be denied by the Tribunal, for the following reasons. <i>First</i>, the Request is excessively broad and unduly burdensome. The documents requested are not precisely defined and concern an indeterminate number of government representatives, from ten different governmental authorities, over an unlimited period of time. The Request is also formulated in vague terms, and allows neither the Tribunal nor the Respondent to ascertain which specific documents are being sought or may be responsive. It is therefore contrary to IBA Rule 3(3)(a)(i). Red Eagle’s failure to identify documents with particularity also means that it would be unreasonably burdensome to require the Respondent to examine potentially massive amounts of documents in a very short period of time, with the result that this Request should be rejected under IBA Rule 9(2)(c) as well. <i>Second</i>, the Request fails to establish the relevance of any particular documents or specific categories of documents sought by identifying with reasonable particularity what factual allegations it is intended to establish. As such, it is not “<i>carefully tailored to produce relevant and material documents</i>”,⁶ and is therefore contrary to Article 3(3)(b) of the IBA Rules. Red Eagle’s Vetas Gold Project was not “<i>grandfather[ed]</i>” under any of Colombia’s laws prohibiting mining in páramo areas,</p> | <p>1. Relevance and materiality: Respondent’s objection on relevance and materiality objection is meritless. In this proceeding, there is a dispute between the Parties with respect to the interpretation and impact of each of the referenced norms, as Respondent concedes. In particular, Respondent contends that the norms in question did no more than confirm a pre-existing páramo delimitation, of which Red Eagle should have been aware. Claimant disagrees and maintains that there was no such prior delimitation. Similarly, Respondent contends that Claimant’s Mining Titles were not exempted (or “grandfathered”) from the mining restrictions in the referenced norms. Claimant disagrees. The requested documents on the interpretations of each of these norms are or may be relevant and material to test Respondent’s assertions in this proceeding with respect to the impact and interpretation of each of these norms. In interpreting these norms, the requested documents are or may also be relevant to Respondent’s representations regarding its legal and policy framework at the time of Claimant’s investment, as these norms could reasonably be expected to be interpreted in the context of the pre-existing legal framework in which Claimant invested. The requested documents also are or may be relevant</p> | <p>The request is too broad. It is uncertain whether the documents requested are relevant. Note the use of “may be relevant”.</p> |
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⁶ 1999 IBA Working Party & 2010 IBA Rules of Evidence Review Subcommittee, “Commentary on the revised text of the 2010 IBA Rules on the Taking of Evidence in International Arbitration,” (“**Commentary on the IBA Rules**”) p. 9.

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| | | | <p>interpretations prior to this proceeding.</p> | <p>including Resolution 2090 and Law 1753. That is clear on the face of those laws and confirmed by the independent expert opinion of Professor de Vivero. Red Eagle has failed to offer any justification as to why the internal interpretations of National Authorities, or any of the documents relied on in the development of Resolution 2090 and Law 1753, would be relevant to the interpretation of any particular disputed point of interpretation of those laws, still less that such documents are material to the outcome of this case.</p> <p><i>Third</i>, the rationale offered by Red Eagle does not justify its Request. Red Eagle claims that the documents may be relevant and material to “<i>Respondent’s representations regarding its legal and policy framework at the time of Claimant’s investment, and interpretations prior to this proceeding</i>”. However, the laws to which this Request relates were enacted in 2014 and 2015, years after Red Eagle acquired its Mining Titles, and are not therefore conceivably relevant to the legal policy and framework in place at the time of Red Eagle’s investment. Further, even if Colombia had made any representations to Red Eagle at the time Red Eagle invested or otherwise (which is denied), documents containing such representations would already be in Red Eagle’s possession.</p> <p><i>Fourth</i>, the preparatory works for laws in Colombia are publicly available http://svrpubindc.imprenta.gov.co/senado/. Additionally, the status of the legislative process of draft bills, together with a summary of that process, can be found on the website of the Colombian Congress</p> | <p>and material to Claimant’s claims of breach.</p> <p><u>2. Breadth and burden:</u> Respondent’s objection on breadth and undue burden is meritless. The request is narrowly tailored. Each of the National Authorities are specifically cited by Respondent in its Counter-Memorial. The request is temporally narrowed to interpretations of (a) Resolution 2090 of December 19, 2014; and (b) Law 1753 of June 9, 2015, which necessarily could not pre-date the issuance of those norms. The request is also limited to a single article in Law 1753, as well as Resolution 2090.</p> <p><u>3. Possession:</u> Respondent argues that it will not produce documents as the preparatory works for “laws,” which it contends are publicly available. This objection is meritless. What Claimant requests are not preparatory works for laws in Colombia, but rather interpretations of specific laws by Colombia’s Ministry of Environment, Ministry of Mines, and other National Authorities. Those entities are part of Colombia’s Government, and the documents requested are therefore in Colombia’s possession, custody, and control.</p> <p><u>4. Confidentiality:</u> Respondent again raises its blanket objection regarding confidentiality. It remains meritless.</p> | |
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CLAIMANT’S REQUEST FOR PRODUCTION OF DOCUMENTS

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| | | | | <p>(http://leyes.senado.gov.co/proyectos). To the extent Red Eagle considers such documents to be relevant to any specific disputed points of interpretation of any relevant laws, it would not be unduly burdensome for Red Eagle or its Colombian legal counsel to access such documents from public sources.</p> <p><i>Fifth</i>, the requested documents may contain information that is subject to legal impediment under Colombian law. Per Article 19 of the Access to Public Information Law documents recording the opinions and points of view expressed by public officials during deliberations are confidential (Annex 1). To the extent the requested documents contain such information, they would be subject to confidentiality protection under the Access to Public Information Law.</p> | <p>Claimant makes reference to its Reply with respect to Request No. 1, and reiterates its arguments on confidentiality, which are equally applicable here.</p> | |
| 3 | <p>All Documents in the possession of the National Authorities regarding the development of Law 1930 of 2018, including, without limitation, memoranda, notes, studies, correspondence, position papers, reports, opinions, advisory opinions, questions, answers, meeting minutes, deliberations, expositions of motives, aide memoires, assessments, comments, and other similar documents.</p> | <p>Martinez ¶¶ 114-116. Respondent’s Counter-Memorial ¶ 238.</p> | <p>Respondent contends that Colombia enforced a “ban on mining in páramo ecosystems over Red Eagle’s Mining Titles upon the issuance of Laws 1382 and 1450.” Yet, in 2018, Colombia passed Law 1930 providing that the Ministry of Environment would establish the delimitation of the páramos in accordance with the area identified by the IAVH. The final delimitation is still pending.</p> <p>The requested documents are or may be relevant and material to Respondent’s interpretation of the pre-existing legal framework, which it contends impacted the</p> | <p>Colombia objects to this Request for the Production of Documents (“Request”), and requests that it be denied by the Tribunal, for the following reasons.</p> <p><i>First</i>, the request is excessively broad and unduly burdensome. The documents requested are not precisely defined, and concern an indeterminate number of government representatives, from ten different governmental authorities, over an unlimited period of time. The Request is also formulated in vague terms, and allows neither the Tribunal nor the Respondent to ascertain which specific documents are being sought or may be responsive. It is therefore contrary to IBA Rule 3(3)(a)(i). Red Eagle’s failure to identify documents with particularity also means that it would</p> | <p><u>1. Relevance and materiality:</u> Respondent’s objection on relevance and materiality objection is meritless.</p> <p>In this proceeding, there is a dispute between the Parties with respect to the impact of the referenced law, as well as certain pre-existing law referenced in the prior requests. In particular, Respondent contends that the delimitation of the páramo out to have been clear to Claimant almost a decade before the issuance of Law 1930. Claimant disagrees and maintains that there was no such clarity.</p> <p>The requested documents on the development of Law 1930 are or may be relevant and material to test Respondent’s assertions in this</p> | <p>The Respondent shall produce the documents relied on by Congress to enact Law 1930.</p> |

CLAIMANT’S REQUEST FOR PRODUCTION OF DOCUMENTS

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| | | | <p>Mining Titles years before the issuance of Law 1930.</p> | <p>be unreasonably burdensome to require the Respondent to examine potentially massive amounts of documents in a very short period of time, with the result that this Request should be rejected under IBA Rule 9(2)(c) as well.</p> <p><i>Second</i>, the Request fails to establish the relevance of any particular documents or specific categories of documents sought by identifying with reasonable particularity what factual allegations it is intended to establish. As such, it is not “<i>carefully tailored to produce relevant and material documents</i>”,⁷ and is therefore contrary to Article 3(3)(b) of the IBA Rules. Red Eagle does not rely on Law 1930 of 2018 as a measure giving rise to an alleged violation of the FTA. As such, documents relating to that law are not relevant to any issue in dispute or material to the outcome of this case. Further, even if, as Red Eagle alleges, the enactment of Law 1930 of 2018 were somehow inconsistent with Respondent’s interpretation of the “pre-existing legal framework”, Red Eagle has not shown that any documents beyond Law 1930 of 2018 itself would be material to the determination of that argument. Any relevance of Law 1930 of 2018 to the interpretation of any earlier measures would be a matter for legal analysis under Colombian law, and Red Eagle has not shown that such analysis would be dependent on any of the documents requested.</p> <p><i>Fourth</i>, the preparatory works for laws in Colombia are publicly available at</p> | <p>proceeding with respect to the impact and interpretation of each of the aforementioned norms, including Ministry of Environment, Resolution No. 769; Law No. 1382/2010; Resolution No. 937; Law 1450/2011; Resolution 2090; and Law 1753. The requested documents also are or may be relevant and material to Claimant’s expectations at the time of its investment and Claimant’s claims of breach.</p> <p><u>2. Breadth and burden:</u></p> <p>Respondent’s objection on breadth and undue burden is meritless.</p> <p>The request is narrowly tailored. Each of the National Authorities are specifically cited by Respondent in its Counter-Memorial.</p> <p>The request is temporally narrowed to the development of a single law, which necessarily could not post-date the issuance of that law.</p> <p><u>3. Possession:</u></p> <p>Respondent argues that it will not produce documents as the preparatory works for “laws,” which it contends are publicly available. This objection is meritless.</p> <p>What Claimant requests are not preparatory works for laws in Colombia, but rather documents relied on by Colombia’s Congress to issue one specific law. Congress is a part of Colombia’s Government, and the documents requested are therefore in</p> | |
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⁷ 1999 IBA Working Party & 2010 IBA Rules of Evidence Review Subcommittee, “Commentary on the revised text of the 2010 IBA Rules on the Taking of Evidence in International Arbitration,” (“**Commentary on the IBA Rules**”) p. 9.

CLAIMANT’S REQUEST FOR PRODUCTION OF DOCUMENTS

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| | | | | <p>http://svrpubindc.imprenta.gov.co/senado/. Further, the status of the legislative process of draft bills, together with a summary of that process, can be found on the website of the Colombian Congress (http://leyes.senado.gov.co/proyectos). To the extent Red Eagle considers such documents to be relevant to any specific disputed points of interpretation of any relevant laws, it would not be unduly burdensome for Red Eagle or its Colombian legal counsel to access such documents from public sources.</p> <p><i>Fifth</i>, the requested documents may contain information that is subject to legal impediment under Colombian law. Per Article 19 of the Access to Public Information Law documents recording the opinions and points of view expressed by public officials during deliberations are confidential (Annex 1). To the extent the requested documents contain such information, they would be subject to confidentiality protection under the Access to Public Information Law.</p> | <p>Colombia’s possession, custody, and control.</p> <p>4. Confidentiality:</p> <p>Respondent raises a blanket objection regarding confidentiality. It is meritless.</p> <p>Respondent argues that the requested documents “may” contain information that is subject to legal impediment under Article 19 of Colombia’s Access to Public Information law. Respondent is wrong to rely on this inapposite law related to the public’s general access to documents entirely outside of this investment proceeding to seek to get out of its document production obligations in this proceeding under the Treaty that Colombia signed.</p> <p>Respondent’s argument is also misleading. What Article 19 states in full is that information containing the points of view of public officials <i>may be</i> denied in writing, provided there is a clear law or constitutional mandate that prohibits access to a particular document. Here, Colombia has not represented, let alone proven, that it has requested access to the documents that Claimant seeks, and that the request has been prohibited based on a clear law or constitutional mandate. For this reason alone, Colombia’s argument must fail.</p> <p>Further, even if Colombia could point to a law or constitutional mandate that <i>may</i> restrict access to the documents that Claimant seeks (which it has not), Colombia’s Constitutional Court has interpreted the rights to access information broadly, finding that there is</p> | |
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CLAIMANT’S REQUEST FOR PRODUCTION OF DOCUMENTS

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| | | | | | a “fundamental right” to access public information, and that this right may only be limited by a “clear and precise law” that defines the specific type of information that may be the subject of confidentiality. <i>See</i> Judgment C-274 dated May 9, 2013 (Annex 1) p. 7. | |
| 4 | All Documents dated January 1, 2007 to March 28, 2012, by, to, or in the files of the Ministry of Mines (or other National Authorities as applicable) regarding materials promoting or describing Colombia’s mining sector, including, without limitation, presentations, newsletters, road show materials, brochures, advertisements, any materials published on the “investment portfolio” created by the Ministry of Mines, and similar documents and all Documents regarding the drafting, revising, and input for those materials, including, without limitation, documents referred to, and relied upon in the creation of those materials. | Claimant’s Memorial ¶¶ 29-32, 121 C-667, 646, 648, 497, 501, 642. Respondent’s Counter-Memorial ¶¶ 189-192. | Respondent enticed investment in Colombia through its legal framework and policy for the sector, and, <i>inter alia</i> , in presentations and newsletters, road show materials, and brochures by the Ministry of Mines (and other National Authorities as applicable). Among other examples, Claimant has identified the following such documents, presentations titled “ <i>Mining in Colombia a Good Deal for Investors</i> ” Presentation (C-667), “ <i>Invest in Colombia Mining Sector</i> ” Presentation (C-646), <i>Presentation by Beatriz Duque Montoya, Director of Mines at the Ministry of Mines and Energy at the V International Mining Fair in Medellin, Colombia</i> ” (C-648); newsletters, including all issues of “ <i>Desde la Colombia Minera</i> ,” including those titled “ <i>Ministry of Mines and Energy, The Mining Opportunities of Investing in Colombia, Newsletter No. 2</i> ” (C-497), and “ <i>Ministry of Mines and Energy, International Mining Fair Bulletin, Newsletter No 1 V International Mining Fair 2009</i> ” | Colombia objects to this Request for the Production of Documents (“ Request ”), and requests that it be denied by the Tribunal, for the following reasons. <i>First</i> , the request is excessively broad and unduly burdensome. The documents requested are not precisely defined and concern an indeterminate number of government representatives from ten different governmental authorities. The Request also covers a long period of time (over five years), is excessively vague, and allows neither the Tribunal nor the Respondent to ascertain which specific documents are being sought or may be responsive. It is therefore contrary to IBA Rule 3(3)(a)(i). Red Eagle’s failure to identify documents with particularity also means that it would be unreasonably burdensome to require the Respondent to examine potentially massive amounts of documents in a very short period of time, with the result that this Request should be rejected under IBA Rule 9(2)(c) as well. <i>Second</i> , Red Eagle’s justification does not support its Request. Colombia never made any specific representations to Red Eagle, and Red Eagle has not adduced any evidence to the contrary. This Request is essentially a “fishing expedition” for any documents “ <i>promoting or describing</i> | 1. Relevance and materiality: Respondent’s objection on relevance and materiality objection is meritless. In this proceeding, there is a dispute between the Parties with respect to the representations made by Respondent in enticing Claimant’s investment. In particular, despite the multiple documents specifically cited by Claimant, Respondent claims that it never made any specific representations. Claimant disagrees. In fact, as one example, in a presentation in Canada, the Minister of Mines and Energy called mining “one of the key driver[s] of economic growth,” and encouraged investments in Colombia, including the Department of Santander. Calling the mining sector as “a good deal for investors,” he specifically highlighted the country’s mineral potential, economic stability, political and legal stability, healthy business environment and improved security as reasons for investing in Colombia (<i>see, e.g.</i> , C-667). There is also a dispute between the Parties with respect to the interpretation and impact of various legal norms issued during this time period, including, Ministry of Environment, Resolution No. 769; Law No. 1382/2010; | The request is too broad and it is denied. |

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| | | | <p>(C-501); and the “investment portfolio” created by the Ministry of Mines.</p> <p>Respondent contests of the meaning of such materials and the representations therein.</p> <p>The requested documents are or may be relevant and material to Respondent’s representations and its interpretation of the legal and policy framework at the time of Claimant’s investment.</p> | <p><i>Colombia’s mining sector</i>”, including all documents “<i>relied upon in the creation of those materials</i>”. Such documents go well beyond any documents containing any specific representations, directed at Red Eagle, concerning the compatibility of its Vetás Gold Project with Colombia’s laws and policies (See Counter-Memorial, Section IV.B). In any event, even if Colombia had made any such relevant representations to Red Eagle (which is denied), the documents containing such representations would already be in Red Eagle’s possession.</p> | <p>Resolution No. 937; Law 1450/2011, as described in Request No. 1.</p> <p>The requested documents are or may be relevant and material to test Respondent’s assertions in this proceeding with respect to representations made by Respondent in enticing Claimant’s investment and to the interpretation of the aforementioned norms, and are or may be relevant and material to Claimant’s legitimate expectations.</p> <p><u>2. Breadth and burden:</u></p> <p>Respondent’s objection on breadth and undue burden is meritless.</p> <p>The request is narrowly tailored. In terms of authorities, it is limited to the Ministry of Mines (or other National Authorities, as applicable). Each of the National Authorities are specifically cited by Respondent in its Counter-Memorial. The request is temporally narrowed to the period immediately prior to and during Claimant’s investment.</p> <p><u>3. Possession:</u></p> <p>Respondent presents a blanket possession objection. It is meritless.</p> <p>Respondent has made no showing that the requested documents “would already be in Red Eagle’s possession,” as it incorrectly contends. Moreover, Claimant requests documents that could not be in its possession, including internal documents regarding materials promoting or describing Colombia’s mining sector, including related to the</p> | |
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| | | | | | drafting, revising, and input for those materials. | |
| 5 | All Documents from June 16, 2011 to December 11, 2014, by, to, or in the files of the <i>Consejo de Estado</i> regarding in the development of Advisory Opinion No. 2233 of December 11, 2014, including, without limitation, Documents referred to therein and relied upon in response to Antecedent #4 with respect to the implications of Law 1450 on “vested” or “acquired” rights (<i>derechos adquiridos</i>) and any other similar document regarding the interpretation of “vested” or “acquired” rights as applied to mining titles, including, without limitation, memoranda, notes, studies, correspondence, position papers, reports, opinions, advisory opinions, questions, answers, meeting minutes, deliberations, expositions of motives, aide memoires, assessments, comments, and other similar documents. | Claimant’s Memorial ¶¶ 122, 158. C-805. Martínez ¶¶ 20, 22, 44-56, 92-93, 128, 134-136. De Vivero ¶¶ 123-126. Respondent’s Counter-Memorial ¶¶ 48, 173-177, 304-307 | Claimant acquired and maintained “vested rights” in the Mining Titles, including after Resolution 2090. Respondent disputes the scope of those “vested” or “acquired” rights, claiming that Claimant never acquired any to develop “a large-scale mining project” through the Mining Titles and cites <i>Consejo de Estado</i> Advisory Opinion No. 2233 in connection with its interpretation of “acquired rights” under Resolution 2090. The requested documents are or may be relevant the point of whether Claimant had “vested” or “acquired rights” as to the Mining Titles, which Respondent disputes. | Colombia objects to this Request for the Production of Documents (“ Request ”), and requests that it be denied by the Tribunal, for the following reasons. <i>First</i> , Red Eagle’s justification does not support its Request. There is no dispute over the <i>Consejo de Estado</i> ’s Advisory Opinion No. 2233 of December 11, 2014. That Advisory Opinion is not a measure relied upon by Red Eagle as an alleged violation of the FTA, nor does Red Eagle otherwise seek to rely on this Advisory Opinion in its Memorial in order to prove its case. ⁸ Furthermore, Red Eagle has failed to offer any justification as to why any documents “ <i>regarding in [sic] the development</i> ” of that Advisory Opinion are relevant to the interpretation of any particular disputed points concerning that Advisory Opinion or that such documents are material to the outcome of this case. <i>Second</i> , the “ <i>Documents</i> ” referred to in this Advisory Opinion are applicable laws, regulations and judicial decisions, all of which are publicly available at http://www.suin-juriscol.gov.co/ . <i>Third</i> , the requested documents may contain information that is subject to legal impediment under Colombian law. Per Article 19 of the Access to Public | <u>I. Relevance and materiality:</u> Respondent’s objection on relevance and materiality objection is meritless. In this proceeding, there is a dispute between the Parties with respect to whether Claimant’s Mining Titles were excluded from mining restrictions of Resolution 2090 under a “grandfathering” provision. In particular, Respondent contends that Resolution 2090 did not grandfather Claimant’s Mining Titles. Claimant disagrees, and maintains that the grandfathering provisions did apply to its Titles. As its sole evidence, Respondent cites <i>Consejo de Estado</i> Advisory Opinion No. 2233 of December 11, 2014, which Respondent contends “is a crucial document to understand the limited scope of Red Eagle’s rights under its Mining Titles and Colombian law.” The requested documents are or may be relevant and material to test Respondent’s assertions in this proceeding with respect to the meaning and implications of <i>Consejo de Estado</i> Advisory Opinion No. 2233 of December 11, 2014, and are or may be | The Respondent shall produce the documents referred to in the Advisory Opinion relied on in response to Antecedent #4 with respect to the implications of Law 1450 on vested rights. |

⁸ See **Annex 2**: Y. Derains, *Towards Greater Efficiency in Document Production before Arbitral Tribunals—A Continental Viewpoint*, ICC Bulletin 2006 Special Supplement: Document Production in International Arbitration, p. 87, ¶ 14: “[W]hen a document production request is disputed, the arbitrators have the responsibility of determining whether the requesting party actually needs the documents to discharge its burden of proof. If not, the request should be denied. Hence, a document production request that fails to clearly indicate the allegations the documents are supposed to prove and to explain that proof cannot be otherwise discharged should not be granted. **When assessing requests arbitrators must carefully check that the burden of proof actually lies on the requesting party. In too many cases parties request the production of documents to prove the inaccuracy of statements made by the other party [...]**” (Emphasis added)

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| | | | | Information Law documents recording the opinions and points of view expressed by public officials during deliberations are confidential (Annex 1). To the extent the requested documents contain such information, they would be subject to confidentiality protection under the Access to Public Information Law. | <p>relevant and material to Claimant’s claims of breach.</p> <p>2. Possession:</p> <p>Respondent argues that it will not produce documents as the documents referred to in the Advisory Opinion are public. This objection is meritless.</p> <p>Respondent’s objection fails because Claimant is not requesting that Respondent produce public laws, but rather the interpretations available of the laws on which the Advisory Opinion is based.</p> <p>3. Confidentiality:</p> <p>Respondent again raises its blanket objection regarding confidentiality. It remains meritless.</p> <p>Claimant makes reference to its Reply with respect to Request No. 1, and reiterates its arguments on confidentiality, which are equally applicable here.</p> | |
| 6 | All Documents from June 16, 2011, to the present in the possession of the Congress, the Ministry of Environment, or other National Authorities regarding any interpretation of “vested” or “acquired” rights (<i>derechos adquiridos</i>) as applied to mining titles under Law 1450, Resolution 2090, Law 1753 or Law 1930, including, without limitation, memoranda, notes, studies, correspondence, position papers, reports, opinions, advisory opinions, questions, answers, meeting minutes, deliberations, expositions of motives, aide memoires, assessments, comments, and other similar documents. | <p>Claimant’s Memorial ¶ 96.</p> <p>C-805.</p> <p>Martínez ¶¶ 20, 22, 4456, 92-93, 128.</p> <p>Respondent’s Counter-Memorial ¶¶ 48, 173-177, 304-307.</p> <p>De Vivero ¶¶ 123-126.</p> | <p>Claimant acquired “vested” or “acquired” rights in the Mining Titles, which it maintained even after Resolution 2090, in accordance with the legal framework that was developed, <i>inter alia</i>, by the National Authorities and Congress.</p> <p>Respondent disputes the scope of those “vested” or “acquired” but has not attached documents from those sources containing any relevant interpretations of the scope of such rights.</p> | <p>Colombia objects to this Request for the Production of Documents (“Request”), and requests that it be denied by the Tribunal, for the following reasons.</p> <p><i>First</i>, the Request is excessively broad and unduly burdensome. The Request concerns an indeterminate number of government representatives from the Colombian Congress and ten other governmental authorities. The Request also covers a long period of time (over nine years), is excessively vague, and allows neither the Tribunal nor the Respondent to ascertain which specific documents are being sought or may be responsive. It is therefore</p> | <p>1. Relevance and materiality:</p> <p>Respondent’s objection on relevance and materiality objection is meritless.</p> <p>In this proceeding, there is a dispute between the Parties with respect to whether the applicability of the mining restrictions contained Law 1450, Resolution 2090, Law 1753 or Law 1930 on Claimant’s Mining Titles, as Respondent concedes.</p> <p>Under Colombian law, “vested” or “acquired” rights (<i>derechos adquiridos</i>), “transition rules protect parties with vested rights or consolidated legal situations when new rules are put in</p> | <p>The request is too broad in terms of the documents requested and the time bracket, nearly 10 years. It is denied.</p> |

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| | | | <p>The requested documents are or may be relevant the point of whether Claimant had “vested” or “acquired rights” as to the Mining Titles, which Respondent disputes.</p> | <p>contrary to IBA Rule 3(3)(a)(i). Red Eagle’s failure to identify documents with particularity also means that it would be unreasonably burdensome to require the Respondent to examine potentially massive amounts of documents in a very short period of time, with the result that this Request should be rejected under IBA Rule 9(2)(c) as well.</p> <p><i>Second</i>, the Request fails to establish the relevance of any particular documents or specific categories of documents sought by identifying with reasonable particularity what factual allegations it is intended to establish. As such, it is not “<i>carefully tailored to produce relevant and material documents</i>”,⁹ and is therefore contrary to Article 3.3(b) of the IBA Rules. Whether Red Eagle had the “<i>vested</i>” or “<i>acquired rights</i>” to conduct the Vetas Gold Project in the páramo area of its Mining Titles is a question of Colombian law. As Colombia has established in its Counter-Memorial, supported by the independent expert opinion of Professor de Vivero, Red Eagle had no such rights, and Colombia’s measures adopted to protect the páramo from mining activities did not impact on Red Eagle’s rights under its Mining Titles. Red Eagle has failed to offer any justification as to why internal governmental documents are relevant to the interpretation of any specific disputed principles of Colombian law “<i>as applied to mining titles under Law 1450, Resolution 2090, Law 1753 or Law 1930</i>”, still less that</p> | <p>place.” (<i>See</i> Martinez ¶ 88). Accordingly, because Claimant had these vested rights in its Mining Titles, they were excluded from the mining restrictions contained in Laws 1382 (of 2010), Resolution 2090 (of 2014) and 1753 (of 2015) under such transition regimes. Law 1450 (of 2011) and Law 1930 (of 2018) did not contain such transition rules and the requested documents may reveal the decision to not include such a transition regime.</p> <p>Nonetheless, Respondent contends that Claimant “mischaracterizes the notion of ‘acquired rights’ under Colombian law” and that Claimant “never secured any ‘acquired rights’ to develop a large-scale mining project in Vetas.”</p> <p>The requested documents are or may be relevant and material to test Respondent’s assertions in this proceeding with respect to the interpretation of “vested” or “acquired” rights (<i>derechos adquiridos</i>) as applied to Claimant’s Mining Titles. The requested documents also are or may be relevant and material to Claimant’s claims of breach.</p> <p><u>2. Breadth and burden:</u></p> <p>Respondent’s objection on breadth and undue burden is meritless.</p> <p>The request is narrowly tailored. In terms of authorities, it is limited to Congress and the National Authorities, each of which are specifically cited by</p> | |
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⁹ 1999 IBA Working Party & 2010 IBA Rules of Evidence Review Subcommittee, “Commentary on the revised text of the 2010 IBA Rules on the Taking of Evidence in International Arbitration,” (“**Commentary on the IBA Rules**”) p. 9.

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| | | | | <p>such internal documents are material to the outcome of this case.</p> <p><i>Third</i>, the requested documents may contain information that is subject to legal impediment under Colombian law. Per Article 19 of the Access to Public Information Law documents recording the opinions and points of view expressed by public officials during deliberations are confidential (Annex 1). To the extent the requested documents contain such information, they would be subject to confidentiality protection under the Access to Public Information Law.</p> <p><i>Fourth</i>, to the extent the documents requested concern or are reflective of legal advice to governmental authorities, such documents are legally privileged.</p> | <p>Respondent in its Counter-Memorial. The request is temporally narrowed to the period of the issuance of Law 1450 through the other referenced norms.</p> <p>3. Confidentiality:</p> <p>Respondent again raises its blanket objection regarding confidentiality. It remains meritless.</p> <p>Claimant makes reference to its Reply with respect to Request No. 1, and reiterates its arguments on confidentiality, which are equally applicable here.</p> <p>4. Privilege:</p> <p>Respondent raises a blanket objection with regard to privilege. It is meritless.</p> <p>Respondent has not invoked, let alone proven the existence of, privilege as to any particular requested documents.</p> <p>Nor has Respondent made any attempt to show that such privilege has not been waived.</p> <p>Notably, Respondent has itself requested that Claimant produce “legal opinions,” and it would be inconsistent with the IBA Rules and fundamental rights of fairness and equality for Respondent to hide behind its own unsubstantiated contentions of privilege.</p> | |
| 7 | All Documents from June 16, 2011, to May 30, 2017, by, to, or in the files the <i>Consejo de Estado</i> , the National Authorities and/or any Regional Autonomous Corporations (<i>Corporaciones Autónomas Regionales</i>) regarding Advisory Opinions and/or interpretations of Resolution 2090. | Claimant’s Memorial § II.C.2. C-16. Martínez ¶¶ 124-129. | Respondent contends that “Resolution 2090 did not curtail Red Eagle’s Mining Rights” and that Resolution 2090 did not “grandfather” Claimant’s Mining Title rights, citing an Advisory Opinion of the <i>Consejo de</i> | Colombia objects to this Request for the Production of Documents (“ Request ”), and requests that it be denied by the Tribunal, for the following reasons. <p><i>First</i>, the Request is excessively broad and unduly burdensome. The documents requested are not precisely defined and</p> | <p>1. Relevance and materiality:</p> <p>Respondent’s objection on relevance and materiality objection is meritless.</p> <p>Claimant notes and agrees with Respondent’s comment that it has the burden of establishing the meaning of Resolution 2090 and <i>Consejo de Estado</i></p> | The request is too broad, no specific Advisory Opinion is identified. |

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| | | <p>Respondent’s Counter-Memorial §§ VI.A.-B.</p> <p>De Vivero ¶¶ 121-131.</p> | <p><i>Estado</i>, which it alleges is “critical to any interpretation of the scope” of that grandfathering provision.</p> <p>The requested documents are or may be relevant and material to the origins, context and scope of the allegedly “critical” document, including as to Respondent’s contemporaneous understanding of the scope of the grandfathering provision in Resolution 2090.</p> | <p>concern an indeterminate number of government representatives from the Regional Autonomous Corporations, the <i>Consejo de Estado</i> and ten other governmental authorities. The Request also covers a long period of time (six years), is excessively vague, and allows neither the Tribunal nor the Respondent to ascertain which specific documents are being sought or may be responsive. It is therefore contrary to IBA Rule 3(3)(a)(i). Red Eagle’s failure to identify documents with particularity also means that it would be unreasonably burdensome to require the Respondent to examine potentially massive amounts of documents in a very short period of time, with the result that this Request should be rejected under IBA Rule 9(2)(c) as well.</p> <p><i>Second</i>, Red Eagle’s justification does not establish the relevance or materiality of the documents requested. Specifically, Red Eagle has failed to offer any justification as to why documents held “<i>in the files the Consejo de Estado, the National Authorities and/or any Regional Autonomous Corporations</i>” that may concern the “<i>origins, context and scope</i>” of the <i>Consejo de Estado</i>’s Advisory Opinion No. 2233, or Resolution 2090 are relevant to any specific issues in dispute concerning the interpretation of that Advisory Opinion of Resolution 2090, still less that such documents are material to the outcome of this case.</p> <p><i>Third</i>, as noted with regard to Request No. 5 above, it is inapposite for Red Eagle to request documents not intended to prove facts put forward in support of its own case.</p> | <p>Advisory Opinion No. 2233. Notwithstanding, the requested documents are relevant and material to the outcome of the dispute.</p> <p>In this proceeding, there is a dispute between the Parties with respect to the interpretation and impact of Resolution 2090, as Respondent concedes. In particular, Respondent contends that the norms in question did no more than confirm a pre-existing páramo delimitation, of which Red Eagle should have been aware. Claimant disagrees and maintains that there was no such prior delimitation.</p> <p>Similarly, Respondent contends that Claimant’s Mining Titles were not exempted (or “grandfathered”) from the mining restrictions in the referenced norms. As its sole evidence, Respondent cites <i>Consejo de Estado</i> Advisory Opinion No. 2233 of December 11, 2014, which Respondent contends is “critical to any interpretation of the scope” and “a crucial document to understand the limited scope of Red Eagle’s rights under its Mining Titles and Colombian law.” Claimant disagrees.</p> <p>The requested documents are or may be relevant and material to test Respondent’s assertions in this proceeding with respect to the impact and interpretation of Resolution 2090 and <i>Consejo de Estado</i> Advisory Opinion No. 2233, and are or may be relevant and material to Claimant’s claims of breach.</p> | <p>The request is denied.</p> |
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| | | | | <p>Red Eagle does not rely on any Advisory Opinions in its Memorial in support of its claims.</p> <p><i>Fourth</i>, the requested documents may contain information that is subject to legal impediment under Colombian law. Per Article 19 of the Access to Public Information Law documents recording the opinions and points of view expressed by public officials during deliberations are confidential (Annex 1). To the extent the requested documents contain such information, they would be subject to confidentiality protection under the Access to Public Information Law.</p> <p><i>Fifth</i>, to the extent the documents requested concern or are reflective of legal advice to governmental authorities, such documents are legally privileged.</p> | <p><u>2. Breadth and burden:</u></p> <p>Respondent’s objection on breadth and undue burden is meritless.</p> <p>The request is narrowly tailored. Each of the National Authorities and the Regional Autonomous Corporations are specifically cited by Respondent in its Counter-Memorial, the <i>Consejo de Estado</i>, according to Respondent, is the authority that issued the document “critical to any interpretation of the scope of the “grandfathering” under Resolution 2090.”</p> <p>The request is temporally narrowed from June 16, 2011, to May 30, 2017.</p> <p><u>3. Confidentiality:</u></p> <p>Respondent raises a blanket objection regarding confidentiality. It is meritless.</p> <p>Respondent argues that the requested documents “may” contain information that is subject to legal impediment under Article 19 of Colombia’s Access to Public Information law. Respondent is wrong to rely on this inapposite law related to the public’s general access to documents entirely outside of this investment proceeding to seek to get out of its document production obligations in this proceeding under the Treaty that Colombia signed.</p> <p>Respondent’s argument is also misleading. What Article 19 states in full is that information containing the points of view of public officials <i>may be</i> denied in writing, provided there is a clear law or constitutional mandate that prohibits access to a particular</p> | |
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| | | | | | <p>document. Here, Colombia has not represented, let alone proven, that it has requested access to the documents that Claimant seeks, and that the request has been prohibited based on a clear law or constitutional mandate. For this reason alone, Colombia’s argument must fail.</p> <p>Further, even if Colombia could point to a law or constitutional mandate that <i>may</i> restrict access to the documents that Claimant seeks (which it has not), Colombia’s Constitutional Court has interpreted the rights to access information broadly, finding that there is a “fundamental right” to access public information, and that this right may only be limited by a “clear and precise law” that defines the specific type of information that may be the subject of confidentiality. <i>See</i> Judgment C-274 dated May 9, 2013 (Annex 1) p. 7.</p> <p>4. Privilege:</p> <p>Respondent again raises its objection regarding privilege. It remains meritless.</p> <p>Claimant makes reference to its Reply with respect to Request No. 6, and reiterates its arguments on privilege, which are equally applicable here.</p> | |
| 8 | <p>All Documents in the possession of the National Authorities and/or any CARs, regarding the meaning, scope and requirements of Constitutional Court Judgments C-366/11, C-035/16, and T-361, including, without limitation, any meeting minutes, reports, memoranda, correspondence, guidance documents,</p> | <p>Claimant’s Memorial § II.C.2. C-18, C-22, C-575, C-694. Respondent’s Counter-Memorial §§ VI. E-G.</p> | <p>Respondent contests the effect of certain judgments of the Constitutional Court on the legal framework applicable to the mining sector, including, for examples:</p> | <p>Colombia objects to this Request for the Production of Documents (“Request”), and requests that it be denied by the Tribunal, for the following reasons.</p> <p><i>First</i>, the Request is excessively broad and unduly burdensome. The documents requested are not precisely defined and concern an indeterminate number of</p> | <p>1. Relevance and materiality: Respondent’s objection on relevance and materiality objection is meritless.</p> <p>In this proceeding, there is a dispute between the Parties with respect to the meaning, scope and requirements of Constitutional Court Judgments C-</p> | <p>The request is too vague, no specific document is identified. The request is denied.</p> |

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| | <p>presentations, opinions, notes, drafts, and other similar documents.</p> | <p>De Vivero ¶¶ 115, 132-141.</p> | <ul style="list-style-type: none"> - The effect of Judgment C-366/11 on the transitional regime established by Law 1382; - The effect of Judgment C-035 on the “grandfathering” provisions established by Law 1753; - The implications of Judgment T-361 with regards to the delimitation of the Santurban paramo, and the requirement of compensation thereunder. <p>The requested documents are or may be relevant and material to Respondent’s interpretations of the legal framework prior to this proceeding.</p> | <p>government representatives from the Regional Autonomous Corporations and ten other governmental authorities, over an unlimited period of time and with respect to any mining title in Colombia (including those of third parties). The Request is excessively vague, and allows neither the Tribunal nor the Respondent to ascertain which specific documents are being sought or may be responsive. It is therefore contrary to IBA Rule 3(3)(a)(i). Red Eagle’s failure to identify documents with particularity also means that it would be unreasonably burdensome to require the Respondent to examine potentially massive amounts of documents in a very short period of time, with the result that this Request should be rejected under IBA Rule 9(2)(c) as well.</p> <p><i>Second</i>, Red Eagle’s justification does not establish the relevance or materiality of the documents requested. Specifically, Red Eagle has failed to offer any justification as to why the documents requested are relevant to any specific issue in dispute concerning the interpretation of Judgments C-366/11, C-035/16, and T-361, still less that such documents are material to the outcome of this case.</p> <p><i>Third</i>, to the extent any responsive documents exist specifically with respect to Red Eagle’s Mining Titles (held through Leyhat), such documents would already be in Red Eagle’s possession because they would be contained in the administrative file for the Mining Titles to which Leyhat has full access. As such, the Request is contrary to IBA Rules 3(3)(c).</p> | <p>366/11, C-035/16, and T-361. Among other examples:</p> <ul style="list-style-type: none"> - Respondent contends that Judgment C-366/11 extinguished the transitional regime of Law 1382, pursuant to which Claimant’s Mining Titles were exempted from Law 1382’s mining restrictions. Claimant disagrees and maintains that Law 1382’s transitional regime remained in force until 10 May 2013. - Respondent contends that Judgement C-035, which eliminated the pre-existing grandfathering protections for Claimant’s Mining Titles, had no impact on Claimant’s ability to develop the Project because, essentially, Claimant’s Mining Titles had not been “grandfathered” by Law 1753 and Resolution 2090 and, thus, had already been impacted by the Measures. Claimant disagrees. - Respondent contends that Judgment T-361 did not order the Ministry of Environment to “delimit the Santurbán Páramo afresh.” Claimant disagrees and maintains that Judgment T-361 The Court also ordered the Ministry of Environment to conduct a new delimitation of Santurbán Páramo and held that the new delimitation should be more expansive. Respondent also contends that Judgment T-361 did not order compensation to those affected by the delimitation of the páramo, including the Claimant. Claimant again disagrees. <p>The requested documents are or may be relevant and material to test Respondent’s assertions in this</p> | |
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CLAIMANT’S REQUEST FOR PRODUCTION OF DOCUMENTS

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| | | | | <p><i>Fourth</i>, to the extent the documents requested concern or are reflective of legal advice to governmental authorities, such documents are legally privileged.</p> | <p>proceeding with respect to the meaning, scope and requirements of Constitutional Court Judgments C-366/11, C-035/16, and T-361, and are or may be relevant and material to Claimant’s claims of breach.</p> <p><u>2. Breadth and burden:</u> Respondent’s objection on breadth and undue burden is meritless.</p> <p>The request is narrowly tailored. Each of the National Authorities and the Regional Autonomous Corporations are specifically cited by Respondent in its Counter-Memorial. The request is temporally limited by reference to Constitutional Court Judgments C-366/11, C-035/16, and T-361.</p> <p><u>3. Possession:</u> Respondent argues that to the extent that the requested documents are related to Claimant’s Mining Titles, they would be in Claimant’s possession. This objection is meritless.</p> <p>What Claimant seeks are documents not already in its possession, including, any meeting minutes, reports, memoranda, correspondence, guidance documents, presentations, opinions, notes, drafts, and other similar documents regarding the meaning, scope and requirements of the referenced Constitutional Court Judgments.</p> <p><u>4. Privilege:</u> Respondent again raises its objection regarding privilege. It remains meritless.</p> | |
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CLAIMANT’S REQUEST FOR PRODUCTION OF DOCUMENTS

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| | | | | | <p>Claimant makes reference to its Reply with respect to Request No. 6, and reiterates its arguments on privilege, which are equally applicable here.</p> | |
| <p>9</p> | <p>All Documents of the Regional Autonomous Corporation for the Defence of the Bucaramanga Plateau (<i>Corporación Autónoma Regional para la Defensa de la Meseta de Bucaramanga</i>) regarding environmental management plans for the Mining Titles of Los Delirios, La Peter, Arias, Santa Isabel, La Triada, and San Bartolo, including, without limitation, the administrative records and other deliberations, meeting minutes, reports, memoranda, correspondence, presentations, opinions, notes, drafts, and other similar documents.</p> | <p>Claimant’s Memorial ¶¶ 45, 73; Figure 1. C-282, C-264, C-270, C-288, C-294, C-466, C-473, C-644, C-472. Vásquez ¶ 22. Respondent’s Counter-Memorial § V.B, ¶¶ 311-12. De Vivero ¶¶ 102-105. Pinzón ¶¶ 10-28.</p> | <p>Respondent attempts to minimize the relevance of the CDMB’s approval of the environmental management plans for Claimants’ Mining Titles, arguing that they were “strictly limited” and not indicative of the scope of the “grandfathering” provision of Resolution 2090. The requested documents are or may be relevant and material to assessing Respondent’s interpretation of the relevant legal framework. The requested documents are or may be relevant and material to assessing the scope and context of the environmental management plans, including CDMB’s contemporaneous intentions and interpretations regarding potential applicability of Resolution 2090.</p> | <p>Colombia objects to this Request for the Production of Documents (“Request”), and requests that it be denied by the Tribunal, for the following reasons. <i>First</i>, Red Eagle’s rationale does not establish the relevance or materiality of the documents requested. As is clear on the face of the environmental management plans for the Mining Titles of Los Delirios, La Peter, Arias, Santa Isabel, La Triada, and San Bartolo, such plans were granted by the CDMB to the prior holders of those titles and authorized small-scale, artisanal mining exploitation activities only. Such plans did not authorize large-scale mining activities such as those Red Eagle contemplated for its Vetas Gold Project. (See Counter-Memorial, Section V.B.2.) Red Eagle has failed to provide any justification as to why CDMB’s “<i>administrative records</i>” or other documents concerning those plans would be relevant to the interpretation of the plans, still less that such documents would be material to the outcome of this case. Red Eagle’s assertion that such documents may provide evidence as to the “<i>CDMB’s contemporaneous intentions and interpretations regarding potential applicability of Resolution 2090</i>” is speculative. In any event, even if such documents could provide such evidence, Red Eagle has failed to explain why the CDMB’s “<i>intention</i>” or “<i>interpretation</i>” of</p> | <p>1. Relevance and materiality: Respondent’s objection on relevance and materiality objection is meritless. In this proceeding, it is undisputed that Respondent approved environmental management plans for the Mining Titles of Los Delirios, La Peter, Arias, Santa Isabel, La Triada, and San Bartolo prior to Claimant’s acquisition of these Mining Titles. There is a dispute between the Parties with respect to the scope and context of those approvals to Claimant. Respondent contends that the approvals authorized small-scale, artisanal mining exploitation activities only and that they did not form part of Red Eagle’s Vetas Gold Project. Respondent thus concludes that, because of the foregoing, Claimant’s Mining Titles were not covered by the “grandfathering” provisions discussed herein. Claimant disagrees and maintains that because environmental management plans had been approved for these Titles, they were subject to those “grandfathering” provisions. The requested documents are or may be relevant and material to test Respondent’s assertions in this proceeding with respect to the scope and context of its approval of the referenced environmental management plan approvals, and are or may be relevant</p> | <p>To the extent that the request is limited to management plans for a limited number of mining titles, the Respondent shall produce the documents requested.</p> |

CLAIMANT’S REQUEST FOR PRODUCTION OF DOCUMENTS

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| | | | | <p>Resolution 2090 is relevant or material to any issues in dispute.</p> <p><i>Second</i>, the requested documents may contain information that is subject to legal impediment under Colombian law. Per Article 19 of the Access to Public Information Law documents recording the opinions and points of view expressed by public officials during deliberations are confidential (Annex 1). To the extent the requested documents contain such information, they would be subject to confidentiality protection under the Access to Public Information Law.</p> <p><i>Third</i>, the Claimant may not request documents that are already in its possession, custody or control (IBA Rules, Art. 3(3)(c)). The administrative records regarding the environmental management plans requested by Red Eagle are already in its possession, given that these records were introduced into the record of this arbitration by Red eagle itself. Together with its Memorial, Red Eagle produced 215 exhibits numbered C-26 to C-240, containing more than 36,000 pages, which are listed in Claimant’s Appendix C as “<i>administrative records for [Red Eagle’s] mining titles</i>” and “<i>environmental records for its mining titles</i>”.¹⁰ Red Eagle’s document request shows that the Claimant has not properly reviewed the documents it has itself produced, and instead attempts to shift this task to the Respondent. Specifically, Red Eagle has already submitted the administrative records for the</p> | <p>and material to Claimant’s claims of breach, as well as legitimate expectations.</p> <p><u>2. Confidentiality:</u> Respondent again raises its blanket objection regarding confidentiality. It remains meritless. Claimant makes reference to its Reply with respect to Request No. 1, and reiterates its arguments on confidentiality, which are equally applicable here.</p> <p><u>3. Possession:</u> Respondent argues that it will not produce documents as the administrative records of the Mining Titles are already in Claimant’s possession. This objection is meritless. Claimant is not asking for the administrative records of the Mining Titles, which Claimant itself already has submitted into the record; rather Claimant is asking for deliberations, meeting minutes, reports, memoranda, correspondence, presentations, opinions, notes, drafts, and other similar documents concerning the referenced environmental management plans.</p> | |
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¹⁰ Claimant’s Memorial, Appendix C.

CLAIMANT’S REQUEST FOR PRODUCTION OF DOCUMENTS

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| | | | | <p>environmental instruments mentioned in its Request:</p> <ul style="list-style-type: none"> i. As evidence for the PMA for the Los Delirios title (Title No. 13604), Red Eagle has submitted Exhibit C-264 (<i>see</i> Claimant’s Memorial, Annex C, p. 19). Said PMA was registered under the number PM-0012-2001.¹¹ The Claimant has produced the administrative files corresponding to environmental instrument PM-0012-2001 as Exhibits C-189, C-190, C-193, C-205, C-207, C-215, C-221 (<i>see</i> Claimant’s Memorial, Annex C, pp. 12-15); ii. As evidence for the PMA for the La Peter title (Title No. 17215), Red Eagle has submitted Exhibit C-270 (CDMB, Resolution No. 001532 of 19 August 2011) (<i>see</i> Claimant’s Memorial, Annex C, p. 19). This environmental instrument appears to have been registered under the number LA-236.¹² The Claimant has produced the following administrative files that refer to environmental instrument LA-236: Exhibits C-188, C-212, C-218, C-231, C-234, C-240 (<i>see</i> Claimant’s Memorial, Annex C, pp. 12-17); iii. As evidence for the PMA for the Arias title (Title No. 161-68), Red Eagle has submitted Exhibit C-282 | | |
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¹¹ Environmental Handling Plan (*Plan de Manejo Ambiental*) of Mining Title No. 13604, Los Delirios, 12 August 2011, **Exhibit C-264**, p. 1.

¹² Environmental Handling Plan (*Plan de Manejo Ambiental*) of Mining Title 17215, La Peter, 19 August 2011, **Exhibit C-270**, p. 1.

CLAIMANT’S REQUEST FOR PRODUCTION OF DOCUMENTS

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| | | | | <p>(CDBM, Resolution No. 000468 of 9 April 2013) (<i>see</i> Claimant’s Memorial, Annex C, p. 19). This environmental instrument appears to have been registered under the number PM-0017-2012.¹³ The Claimant has produced the following administrative files that refer to environmental instrument PM-0017-2012: Exhibits C-216 and C-217, (<i>see</i> Claimant’s Memorial, Annex C, p. 15);</p> <p>iv. As evidence for the PMA for the Santa Isabel title (Title No. 0317-68), Red Eagle has submitted Exhibit C-288 (CDBM, Resolution No. 001492 of 12 August 2011) (<i>see</i> Claimant’s Memorial, Annex C, p. 20). This environmental instrument appears to have been registered under the number PM-0011-2001.¹⁴ The Claimant has produced the following administrative files that refer to environmental instrument PM-0011-2001: Exhibits C-196, C-230, C-239 (<i>see</i> Claimant’s Memorial, Annex C, p. 12, 16, 17);</p> <p>v. As evidence for the PMA for the La Triada de Oro title (Title No. 16725), Red Eagle has submitted Exhibit C-294 (CDBM, Resolution No. 000284 of 15 February 2013) (<i>see</i> Claimant’s Memorial, Annex C, p. 20). This environmental instrument appears</p> | |
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¹³ Environmental Handling Plan (*Plan de Manejo Ambiental*) of Mining Title 161-68, Arias, 9 April 2013, **Exhibit C-282**, p. 1.

¹⁴ Environmental Handling Plan (*Plan de Manejo Ambiental*) of Mining Title 0308-68, Santa Isabel, 12 August 2011, **Exhibit C-288**, p. 1.

CLAIMANT’S REQUEST FOR PRODUCTION OF DOCUMENTS

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| | | | | <p>to have been registered under the number PM-0014-01.¹⁵ The Claimant has produced the following administrative files that refer to environmental instrument PM-0014-2001: Exhibits C-210, C-220, C-223, C-224 (<i>see</i> Claimant’s Memorial, Annex C, pp. 14-16); and</p> <p>vi. As evidence for the PMA for the San Bartolo title (Title No. 0032-68), Red Eagle has submitted Exhibit C-300 (CDMB, Resolution No. 000271 of 23 April 2002) (<i>see</i> Claimant’s Memorial, Annex C, p. 20). This environmental instrument appears to have been registered under the number PM-015-01.¹⁶ The Claimant has produced the following administrative files that refer to environmental instrument PMA-015-2001: Exhibits C-228, and C-233 (<i>see</i> Claimant’s Memorial, Annex C, pp. 16-17).</p> <p>The environmental administrative records listed by Red Eagle in Annex C contain documents corresponding to the categories listed by the Claimant in its document request: (i) evidence of meetings (for example, Exhibit C-191, p. 50; Exhibit C-195, pp. 106, 145, 150, 151, 154; Exhibit C-197, pp. 33-45); (ii) reports (for example, Exhibits C-197, C-218, C-229, and C-231); (iii) memorandums and correspondence (for example, Exhibit C-191, pp. 8, 23, 25, 48-</p> | | |
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¹⁵ CDMB, Resolution 284 (Procedural Order Regarding the Approval Process of the Assignment of the La Triada de Oro Title PMA to Leyhat), 15 February 2013, **Exhibit C-294**, p. 1.

¹⁶ CDMB, Resolution 271 (San Bartolo Title PMA), 23 April 2002, **Exhibit C-300**, p. 15.

CLAIMANT’S REQUEST FOR PRODUCTION OF DOCUMENTS

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| | | | | <p>49, 111; Exhibit C-192, pp. 34, 69, 104; Exhibit C-194, pp. 23, 26, 150; Exhibit C-232, pp. 58, 105, 205-206).</p> <p>Considering that the environmental administrative records contain an expansive and complete record of all relevant environmental instruments, and that these records have already been presented as exhibits by the Claimant itself, the requested documentation are already in the possession of Red Eagle and the Request should thus be rejected. To the extent Red Eagle contends that any documents beyond these extensive administrative records should be produced (such as, for example, “notes, drafts, and other similar documents”), such request is overbroad, unduly burdensome and not justified by any valid rationale as to the relevance or materiality of such documents.</p> | | |
| 10 | <p>All Documents of the National Authorities, CDMB, CORPORNOR, and Corporación Autónoma Regional de Santander, regarding delimitations of the páramo by the IAVH delimitation for the 2007 Páramo Atlas, the update of the Páramo Atlas in 2013, the delimitation adopted in Resolution 2090, and the Draft 2019 delimitation, including, without limitation, communications with environmental authorities, methodologies, classification proposals, all “technical, environmental, and social studies” referenced in the 2007 Páramo Atlas, economic studies, and other supporting materials referenced in IAVH reports, and other similar documents.</p> | <p>Claimant’s Memorial § II.C.1. C-508. Martínez ¶ 112.</p> <p>Respondent’s Counter-Memorial §§ III.F., VI.B., ¶¶ 234, 246-247, 270, 272-278, Table 4.</p> <p>R-92, R-94, R-96.</p> <p>De Vivero ¶ 112.</p> | <p>The delimitation of the Santurbán Páramo was a long process with changing maps, studies, and legal norms, and no delimitation was established until Resolution 2090. Respondent nonetheless argues that the delimitation of the Santurbán Páramo in Resolution 2090 was “nearly identical” to prior delimitations, and that it was known before Resolution 2090 that mining in that area would never be possible.</p> <p>The requested documents are or may be relevant and material to assessing Respondent’s development and contemporaneous interpretation</p> | <p>Colombia objects to this Request for the Production of Documents (“Request”), and requests that it be denied by the Tribunal, for the following reasons.</p> <p><i>First</i>, the Request is excessively broad and unduly burdensome. The documents requested are not precisely defined and concern an indeterminate number of government representatives from three Regional Autonomous Corporations and eight other governmental authorities, over an unlimited period of time. The Request is excessively vague, and allows neither the Tribunal nor the Respondent to ascertain which specific documents are being sought or may be responsive. It is therefore contrary to IBA Rule 3(3)(a)(i). Red Eagle’s failure to identify documents with</p> | <p><u>1. Relevance and materiality:</u> Respondent’s objection on relevance and materiality objection is meritless.</p> <p>There is a dispute between the Parties with respect to development and status of the Santurbán Páramo delimitation that spans the delimitation for the 2007 Páramo Atlas, the update of the Páramo Atlas in 2013, the delimitation adopted in Resolution 2090, and the Draft 2019 delimitation.</p> <p>In particular, Respondent contends that the Resolution 2090 was “nearly identical” to prior delimitations and that through the draft 2019 delimitation, “[i]n the municipality of Vetás, the area of the páramo identified remained largely the same.” Respondent further contends that</p> | <p>The Respondent shall produce the documents showing the four delimitations of the páramo in question.</p> |

CLAIMANT’S REQUEST FOR PRODUCTION OF DOCUMENTS

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| | | | <p>of the delimitation of the Santurbán Páramo.</p> | <p>particularity also means that it would be unreasonably burdensome to require the Respondent to examine potentially massive amounts of documents in a very short period of time, with the result that this Request should be rejected under IBA Rule 9(2)(c) as well.</p> <p><i>Second</i>, the Request fails to establish the relevance of any particular documents or specific categories of documents sought by identifying with reasonable particularity what factual allegations it is intended to establish. Red Eagle’s Request is essentially a “fishing expedition” for any documents relating to the delimitation of the páramo. Red Eagle has failed to focus its Request on any documents pertaining to any specific disputed issues in relation to the delimitation, instead, stating that the documents “<i>are or may be relevant and material to assessing Respondent’s development and contemporaneous interpretation of the delimitation of the Santurbán Páramo</i>”.</p> <p><i>Third</i>, the requested documents may contain information that is subject to legal impediment under Colombian law. Per Article 19 of the Access to Public Information Law documents recording the opinions and points of view expressed by public officials during deliberations are confidential (Annex 1). To the extent the requested documents contain such information, they would be subject to confidentiality protection under the Access to Public Information Law.</p> | <p>“Red Eagle knew, or ought to have known, that mining in the areas subject to these bans overlapping with its Mining Titles would never be possible” because “the subsequent final re-delineation of the páramo, effected through Resolution 2090 ... did not change Red Eagle’s position or impact its rights with respect to its proposed large-scale mining Vetas Gold Project.” Claimant disagrees and maintains that Respondent’s various delimitations differed significantly and were unclear.</p> <p>The requested documents are or may be relevant and material to test Respondent’s assertions in this proceeding with respect to the relationship between the various referenced delimitations, and are or may be relevant and material to Claimant’s claims of breach.</p> <p><u>2. Breadth and burden:</u></p> <p>Respondent’s objection on breadth and undue burden is meritless.</p> <p>The request is narrowly tailored. Each of the National Authorities and the Regional Autonomous Corporations are specifically cited by Respondent in its Counter-Memorial. The request is temporally limited by reference to the relevant delimitations.</p> <p><u>3. Confidentiality:</u></p> <p>Respondent raises a blanket objection regarding confidentiality. It is meritless. Respondent argues that the requested documents “may” contain information that is subject to legal impediment under</p> | |
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CLAIMANT’S REQUEST FOR PRODUCTION OF DOCUMENTS

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| | | | | | <p>Article 19 of Colombia’s Access to Public Information law. Respondent is wrong to rely on this inapposite law related to the public’s general access to documents entirely outside of this investment proceeding to seek to get out of its document production obligations in this proceeding under the Treaty that Colombia signed.</p> <p>Respondent’s argument is also misleading. What Article 19 states in full is that information containing the points of view of public officials <i>may be</i> denied in writing, provided there is a clear law or constitutional mandate that prohibits access to a particular document. Here, Colombia has not represented, let alone proven, that it has requested access to the documents that Claimant seeks, and that the request has been prohibited based on a clear law or constitutional mandate. For this reason alone, Colombia’s argument must fail.</p> <p>Further, even if Colombia could point to a law or constitutional mandate that <i>may</i> restrict access to the documents that Claimant seeks (which it has not), Colombia’s Constitutional Court has interpreted the rights to access information broadly, finding that there is a “fundamental right” to access public information, and that this right may only be limited by a “clear and precise law” that defines the specific type of information that may be the subject of confidentiality. <i>See</i> Judgment C-274 dated May 9, 2013 (Annex 1) p. 7.</p> | |
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CLAIMANT’S REQUEST FOR PRODUCTION OF DOCUMENTS

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| <p>11</p> | <p>All Documents from July 1, 2012, to December 19, 2014, in the possession of the National Authorities, or any CARs regarding an assessment, analysis, or reaction to the Guayacanal Report.</p> | <p>Claimant’s Memorial ¶ 69. C-540. Vásquez ¶¶ 39, 42. Respondent’s Counter-Memorial ¶¶ 294-298.</p> | <p>The Guayacanal Foundation delimitation of the Santurbán Páramo relates to contemporaneous expectations regarding the official delimitation and overlaps with the Mining Titles. Respondent contests the reliability and significance of the Guayacanal Report. The requested documents are or may be relevant and material Respondent’s arguments as to the origins, methodology, scope and findings of the Guayacanal Report, and the reasonableness of its delimitation of the Santurbán Páramo.</p> | <p>Colombia objects to this Request for the Production of Documents (“Request”), and requests that it be denied by the Tribunal, for the following reasons. <i>First</i>, the Request is excessively broad and unduly burdensome. The documents requested are not precisely defined and concern an indeterminate number of government representatives from all Regional Autonomous Corporations and eight other governmental authorities. Red Eagle has offered no justification as to why such governmental authorities could reasonably be expected to have assessed, analyzed or reacted to the Guayacanal Report. As such, it would be unreasonably burdensome to require the Respondent to examine potentially massive amounts of documents in a very short period of time, with the result that this Request should be rejected under IBA Rule 9(2)(c) as well. <i>Second</i>, the documents requested are irrelevant to any issue in dispute in this case and immaterial to its outcome. Red Eagle cannot show that any relevant authorities were required to “<i>assess</i>” the Guayacanal Report (an industry lobbying document) in the preparation of the páramo delimitation. (See Counter-Memorial, Section VI.A). Further, Red Eagle’s contention that documents held by Colombia would somehow assist the Tribunal in shedding light on “<i>the origins, methodology, scope and findings of the Guayacanal Report</i>” is without merit. That report was authored by the Guayanacal Foundation at the instigation of mining companies including Red Eagle, not by</p> | <p>1. Relevance and materiality: Respondent’s objection on relevance and materiality objection is meritless. The Guayacanal Report was prepared by the NGO Guayacanal Foundation, which issued its first delimitation of the Santurbán Páramo and its final report in July 2012 and May 2013, respectively, before the delimitation included in Resolution 2090. The Guayacanal Report was shared with Respondent while Respondent was in the process of setting the delimitation. Accordingly, it is reasonable to assume that it was assessed by relevant governmental authorities. There is a dispute between the Parties with respect to the origins, methodology, scope and findings of the Guayacanal Report, and the reasonableness of its delimitation of the Santurbán Páramo. In particular, Respondent contends that Claimant “could not reasonably have expected that the IAVH would adopt a different delimitation” included in the Guayacanal Report. Claimant disagrees and maintains that the delimitation of the Santurbán adopted in the Guayacanal Report, which resembled the CDMB’s delimitation of the Santurbán Páramo Park and, accordingly, left Claimant’s Project largely unaffected by the Páramo, was relevant to its expectation that the delimitation of the Park and the Páramo would be similar. The requested documents are or may be relevant and material to test Respondent’s assertions in this</p> | <p>There is no certainty that any assessment of the report by the government authorities was required. The request is denied.</p> |
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CLAIMANT’S REQUEST FOR PRODUCTION OF DOCUMENTS

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| | | | | <p>Colombia. Red Eagle, and not Colombia should therefore be in possession of such documents.</p> <p><i>Third</i>, the requested documents may contain information that is subject to legal impediment under Colombian law. Per Article 19 of the Access to Public Information Law documents recording the opinions and points of view expressed by public officials during deliberations are confidential (Annex 1). To the extent the requested documents contain such information, they would be subject to confidentiality protection under the Access to Public Information Law.</p> | <p>proceeding with respect to the relationship between the various referenced delimitations, and are or may be relevant and material to Claimant’s claims of breach.</p> <p>2. Breadth and burden: Respondent’s objection on breadth and undue burden is meritless.</p> <p>The request is narrowly tailored. Each of the National Authorities and the Regional Autonomous Corporations are specifically cited by Respondent in its Counter-Memorial. The request is temporally limited from July 1, 2012 (the issuance of the Guayacanal draft), to December 19, 2014 (the issuance of Resolution 2090).</p> <p>3. Confidentiality: Respondent again raises its blanket objection regarding confidentiality. It remains meritless.</p> <p>Claimant makes reference to its Reply with respect to Request No. 1, and reiterates its arguments on confidentiality, which are equally applicable here.</p> | |
| 12 | <p>All Documents from January 1, 2002, through January 16, 2013, in the possession of the National Authorities, CDMB, CORPORNOR, or Corporación Autónoma Regional de Santander regarding the development of the delimitation of the Santurbán Páramo Park through CDMB Resolution No. 1236/2013, including, without limitation, administrative records of the delimitation procedure and other correspondence, meeting minutes, reports,</p> | <p>Claimant’s Memorial ¶¶ 67-68. C-578. Vásquez ¶¶ 40-41. Respondent’s Counter-Memorial ¶¶ 291-292.</p> | <p>Claimant’s expectations as to the eventual delimitation of the Santurbán Páramo were informed by the delimitation of the Santurbán Páramo Park.</p> <p>Respondent argues that the creation of the park was a “different exercise” from the delimitation of the páramo, and makes representations as to the</p> | <p>Colombia objects to this Request for the Production of Documents (“Request”), and requests that it be denied by the Tribunal, for the following reasons.</p> <p><i>First</i>, the Request is excessively broad and unduly burdensome. The documents requested are not precisely defined and concern an indeterminate number of government representatives from three Regional Autonomous Corporations and eight other governmental authorities. The</p> | <p>1. Relevance and materiality: Respondent’s objection on relevance and materiality objection is meritless.</p> <p>The Santurbán Park was delimited by Respondent in 2013. It overlapped partially with only two of Claimant’s Titles, as Respondent concedes, and, indeed, Respondent cites to support its (erroneous) contention that Claimant should have known its Project was</p> | <p>The Respondent shall produce the specific documents listed in the request and referred to in Resolution 1236/2013.</p> |

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| <p>memoranda, correspondence, guidance documents, presentations, opinions, notes, drafts, and any submissions, and other similar documents and the following, all specifically referred to in Resolution No. 1236/2013:</p> <p>(a) The CDMB and CORPONOR’s Strategic Framework for the Formulation of an Environmental Management Plan for Páramos, Subpáramos and Andine Forests (¶ 21);</p> <p>(b) The “Biophysic and Economic Characterization of the Páramo Santurbán” study prepared by the CDMB, CORPONOR, UAESPNN, and Conservation International Colombia in 2008 (¶ 23);</p> <p>(c) The Complementary Study for the Declaration of a Protected Area of the Subregion Páramo Santurbán (¶ 24);</p> <p>(d) The social, technical, and environmental studies that led the CDMB to declare an area as part of the Santurbán Páramo Park (¶ 26);</p> <p>(e) Previous concepts issued by the IAVH on the declaration of the Natural Regional Park of the Páramo Santurbán dated October 12, 2010; January 23, 2011; January 6, 2011, and November 24, 2012 (¶ 29); and</p> <p>(f) The Ministry of Mines previous concept on the declaration of the Santurbán Park dated December 22, 2011 (¶ 30).</p> | | <p>CDMB’s intent in establishing the park.</p> <p>The requested documents are or may be relevant and material to assessing Respondent’s assertions regarding the process for developing the Park as well as to the CDMB’s intent.</p> | <p>Request also covers a long period of time (11 years), is excessively vague, and allows neither the Tribunal nor the Respondent to ascertain which specific documents are being sought or may be responsive. It is therefore contrary to IBA Rule 3(3)(a)(i). Red Eagle’s failure to identify documents with particularity also means that it would be unreasonably burdensome to require the Respondent to examine potentially massive amounts of documents in a very short period of time, with the result that this Request should be rejected under IBA Rule 9(2)(c) as well.</p> <p><i>Second</i>, the documents requested are irrelevant to any specific issue in dispute in this case and immaterial to its outcome. Red Eagle does not (and cannot) allege that the delimitation of the Santurbán Páramo Park amounted to a breach of the FTA. As explained in Respondent’s Counter-Memorial, the Santurbán Park and the Santurbán Paramo delimitations were distinct exercises. (See Counter-Memorial, ¶ 289) In these circumstances, Red Eagle’s request for documents concerning the delimitation of the Santurbán Park is a “fishing expedition”. Further, even if the delimitation of the Santurbán Park had any relevance to, or somehow could have informed Red Eagle’s expectations as to the delimitation of the Santurbán Páramo, the Santurbán Park was delimited in January 2013, <u>after</u> Red Eagle had acquired its Mining Titles. As such, the delimitation of the Santurbán Park could not possibly have informed “<i>Claimant’s expectations as to the eventual delimitation of the Santurbán</i></p> | <p>impacted by the delimitation prior to the issuance of Resolution 2090.</p> <p>There is a dispute between the Parties with respect to the relevance of the delimitation of the Santurbán Páramo Park to the subsequent delimitation of the Santurbán Páramo.</p> <p>Respondent contends that the “creation of a natural regional park was an entirely different exercise from the Ministry of Environment’s delimitation of Colombia’s páramos” and that Claimant’s expectation that the 2090 Delimitation would have similar boundaries than the Santurbán Park created by the CDMB in 2013 was “unfounded.”</p> <p>Claimant disagrees. In fact, as Claimant witness Ms. Ana Milena Vasquez explained, Claimant expected that the delimitation of the páramo would be similar to the delimitation of the Park, an expectation that was confirmed in a contemporaneous meeting with Colombian officials in which “ they explained that, in their view, the Park’s delimitation should be identical or, at least, very similar to the future delimitation of the Paramo, since the Park had been delimited at the same scale as required for Paramo delimitation.” (See Vasquez ¶ 41).</p> <p>The requested documents are or may be relevant and material to test Respondent’s assertions in this proceeding with respect to the relevance of the delimitation of the Santurbán Páramo Park on the delimitation of the</p> | |
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CLAIMANT’S REQUEST FOR PRODUCTION OF DOCUMENTS

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| | | | | <p><i>Páramo</i>” at the time Red Eagle made its investment.</p> <p><i>Third</i>, the requested documents may contain information that is subject to legal impediment under Colombian law. Per Article 19 of the Access to Public Information Law documents recording the opinions and points of view expressed by public officials during deliberations are confidential (Annex 1). To the extent the requested documents contain such information, they would be subject to confidentiality protection under the Access to Public Information Law.</p> | <p>Santurbán Páramo, and are or may be relevant and material to Claimant’s claims of breach.</p> <p>2. Breadth and burden:</p> <p>Respondent’s objection on breadth and undue burden is meritless.</p> <p>The request is narrowly tailored. Each of the National Authorities and the Regional Autonomous Corporations are specifically cited by Respondent in its Counter-Memorial. The request is temporally limited from January 1, 2002 (when, according to Respondent, it started to engage in “engaged in significant efforts to protect” the Santurbán Páramo), through January 16, 2013 (the date of CDMB Resolution No. 1236/2013 establishing the delimitation of the Santurbán Páramo Park).</p> <p>Moreover, the request expressly includes six specific identifications of documents (a)-(f), undermining the lack of good faith efforts by Respondent in the document production phase of the proceeding, including even crafting its objections to Claimant’s requests.</p> <p>3. Confidentiality:</p> <p>Respondent again raises its blanket objection regarding confidentiality. It remains meritless.</p> <p>Claimant makes reference to its Reply with respect to Request No. 1, and reiterates its arguments on confidentiality, which are equally applicable here.</p> | |
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| <p>13</p> | <p>All Documents in the possession of the National Authorities or any CARs regarding the development of the delimitation of the Santurbán Páramo included in Resolution 2090, including, without limitation, the administrative record, and all other Documents, including, without limitation, other interim updates, correspondence, meeting minutes, reports, memoranda, correspondence, guidance documents, presentations, opinions, notes, drafts, maps, methodologies, and any submissions, and other similar documents, and the following:</p> <p>(a) Documents regarding the “zoning exercise” undertaken in connection with the development of the delimitation of the Santurbán Páramo included in Resolution 2090 (<i>See</i> Respondent’s Counter-Memorial ¶ 272);</p> <p>(b) Documents containing the “technical, economic, social, and environmental” studies prepared by CDMB and/or CORPORNOR referenced in Resolution 2090/14, and/or filed under numbers 4120-E1-75045, and 4120-E1-57719 (<i>See</i> C-16, Preamble);</p> <p>(c) Documents referenced on page 38 of Ministry of Environment Presentation, Delimitation of Páramo de Santurbán of December 19, 2014 (<i>See</i> C-515) as “studies” and “social and economic variables,” and all other studies undertaken with respect to “social and economic variables” regarding the development of the</p> | <p>Claimant’s Memorial § II.C.2.</p> <p>C-16, Preamble, C-515.</p> <p>Respondent’s Counter-Memorial ¶¶ 60, 272.</p> <p>R-96.</p> | <p>Resolution 2090 was, among other things, not adequately based on economic, social, and environmental studies, and the studies on which it relied were flawed.</p> <p>Respondent alleges that the delimitation was the result of a long process involving diverse entities. Yet, Respondent has put only a single technical report into the record, which itself refers to other documents not in the record or otherwise available to Claimant, including without limitation documents such as those indicated in this request.</p> <p>The requested documents are or may be relevant and material to assessing Respondent’s development of the delimitation of the Santurbán Páramo and its allegations regarding contemporaneous expectations.</p> | <p>Colombia objects to this Request for the Production of Documents (“Request”), and requests that it be denied by the Tribunal, for the following reasons.</p> <p><i>First</i>, the Request is excessively broad and unduly burdensome. The documents requested are not precisely defined and concern an indeterminate number of government representatives, from all Regional Autonomous Corporations and eight other governmental authorities, over an unlimited period of time. The Request is excessively vague, and allows neither the Tribunal nor the Respondent to ascertain which specific documents are being sought or may be responsive. It is therefore contrary to IBA Rule 3(3)(a)(i). Red Eagle’s failure to identify documents with particularity also means that it would be unreasonably burdensome to require the Respondent to examine potentially massive amounts of documents in a very short period of time, with the result that this Request should be rejected under IBA Rule 9(2)(c) as well.</p> <p><i>Second</i>, the Request fails to establish the relevance of any particular documents or specific categories of documents sought by identifying with reasonable particularity what factual allegations it is intended to establish. As such, it is not “<i>carefully tailored to produce relevant and material documents</i>”,¹⁷ and is therefore contrary to Article 3(3)(b) of the IBA Rules. Rather, like Red Eagle’s Request No. 10 above, this request is essentially a “fishing expedition”</p> | <p>1. Relevance and materiality: Respondent’s objection on relevance and materiality objection is meritless.</p> <p>There is a dispute between the Parties with respect to development of the Santurbán Páramo delimitation, including the impact of the delimitation included in Resolution 2090 in the context of pre-existing norms. In particular, Respondent contends that Resolution 2090 did no more than confirm a pre-existing páramo delimitation, of which Red Eagle should have been aware. Claimant disagrees and maintains that there was no prior delimitation.</p> <p>Respondent contends that it undertook a long and complex process to delimit the Santurban Paramo, including the development and implementation of “a methodology for the delimitation of the different specific páramo complexes throughout Colombia” and the establishment of “appropriate criteria for the delimitation.” In connection with this process, Respondent refers to “existing studies and publications,” “several workshops with experts from multiple backgrounds,” a “zoning exercise,” “technical, economic, social, and environmental” studies, and “joint working sessions.” Yet, Respondent has failed to produce these documents.</p> | <p>The Respondent shall produce documents (a) to (e) listed in the request.</p> |
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¹⁷ 1999 IBA Working Party & 2010 IBA Rules of Evidence Review Subcommittee, “Commentary on the revised text of the 2010 IBA Rules on the Taking of Evidence in International Arbitration,” (“**Commentary on the IBA Rules**”) p. 9.

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| <p>delimitation of the Santurbán Páramo included in Resolution 2090;</p> <p>(d) Documents regarding any “joint working sessions” held by the Ministry of Environment, together with the Ministry of Mines, the Ministry of Agriculture, the ANM, the Unit of Planning and Rural Lands, among other public entities, referenced in the Preamble of Resolution 2090/2014, including, without limitation, ANM Document No. ANM20041000413491 (<i>See</i> C-16, Preamble, p. 5);</p> <p>(e) Documents referenced on page 6 of the “Memoria técnica para la gestión integral del Territorio para la conservación de Páramo Jurisdicciones - Santurbán - Berlín. Incorporación de aspectos sociales y económicos,” prepared by the Ministry of Environment (<i>See</i> R-96, p. 6) regarding any analysis of “land coverage in the date closes to years 2010 and 2011” by the Ministry of Environment.</p> | | | <p>for any documents held by any governmental authority relating to the delimitation. Red Eagle has failed to put forward any specific justification for this Request tied to any particular disputed issues concerning the delimitation, instead, stating that the documents “<i>are or may be relevant and material to assessing Respondent’s development of the delimitation of the Santurbán Páramo and its allegations regarding contemporaneous expectations</i>”.</p> <p><i>Third</i>, the requested documents may contain information that is subject to legal impediment under Colombian law. Per Article 19 of the Access to Public Information Law documents recording the opinions and points of view expressed by public officials during deliberations are confidential (Annex 1). To the extent the requested documents contain such information, they would be subject to confidentiality protection under the Access to Public Information Law.</p> | <p>The requested documents are or may be relevant and material to test Respondent’s assertions in this proceeding with respect to the development of Resolution 2090, and are or may be relevant and material to Claimant’s legitimate expectations and claims of breach.</p> <p><u>2. Breadth and burden:</u></p> <p>Respondent’s objection on breadth and undue burden is meritless.</p> <p>The request is narrowly tailored. Each of the National Authorities and the Regional Autonomous Corporations are specifically cited by Respondent in its Counter-Memorial. The request is temporally limited to the date of the issuance of Resolution 20990. Moreover, the request expressly includes six specific identifications of documents (a)-(e), undermining the lack of good faith efforts by Respondent in the document production phase of the proceeding, including even crafting its objections to Claimant’s requests.</p> <p><u>3. Confidentiality:</u></p> <p>Respondent raises a blanket objection regarding confidentiality. It is meritless.</p> <p>Respondent argues that the requested documents “may” contain information that is subject to legal impediment under Article 19 of Colombia’s Access to Public Information law. Respondent is wrong to rely on this inapposite law related to the public’s general access to documents entirely outside of this investment proceeding to seek to get out</p> | |
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CLAIMANT’S REQUEST FOR PRODUCTION OF DOCUMENTS

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| | | | | | <p>of its document production obligations in this proceeding under the Treaty that Colombia signed.</p> <p>Respondent’s argument is also misleading. What Article 19 states in full is that information containing the points of view of public officials <i>may be</i> denied in writing, provided there is a clear law or constitutional mandate that prohibits access to a particular document. Here, Colombia has not represented, let alone proven, that it has requested access to the documents that Claimant seeks, and that the request has been prohibited based on a clear law or constitutional mandate. For this reason alone, Colombia’s argument must fail.</p> <p>Further, even if Colombia could point to a law or constitutional mandate that <i>may</i> restrict access to the documents that Claimant seeks (which it has not), Colombia’s Constitutional Court has interpreted the rights to access information broadly, finding that there is a “fundamental right” to access public information, and that this right may only be limited by a “clear and precise law” that defines the specific type of information that may be the subject of confidentiality. <i>See</i> Judgment C-274 dated May 9, 2013 (Annex 1) p. 7.</p> | |
| 14 | All correspondence between and/or among the the Constitutional Court, the National Authorities, and/or any CARs regarding the development or interpretation of the delimitation of the Santurbán Páramo included in Resolution 2090. | Claimant’s Memorial ¶ 72. C-16. Martínez § IV.D. Vásquez ¶¶ 44-48. | Respondent confirms that the referenced entities are the “relevant governmental authorities responsible for the regulation of mining and environmental activities in Colombia” and refers to “close coordination between regional and national | Colombia objects to this Request for the Production of Documents (“ Request ”), and requests that it be denied by the Tribunal, for the following reasons. <i>First</i> , the Request is excessively broad and unduly burdensome. The documents requested are not precisely defined and | <p>1. Relevance and materiality: Respondent’s objection on relevance and materiality objection is meritless. In this proceeding, there is a dispute between the Parties with respect to the interpretation and impact of Resolution 2090, as Respondent concedes. In</p> | The request is denied; it is too broad. |

CLAIMANT’S REQUEST FOR PRODUCTION OF DOCUMENTS

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| | | <p>Respondent’s Counter-Memorial § IVA-B.</p> <p>De Vivero § IV.B.</p> | <p>environmental Authorities” with respect to páramo studies and development.</p> <p>Respondent has not confirmed or represented that it has provided all such documents.</p> <p>The requested documents are or may be relevant and material to assessing Respondent’s development and subsequent application of the delimitation of the Santurbán Páramo.</p> | <p>concern an indeterminate number of government representatives, from all Regional Autonomous Corporations, eight other governmental authorities and the Constitutional Court, over an unlimited period of time. Red Eagle has offered no justification as to why all such governmental authorities could reasonably be expected to be in possession of “correspondence” (still less any relevant correspondence) regarding the delimitation of the Santurbán Páramo. As such, it would be unreasonably burdensome to require the Respondent to examine potentially massive amounts of documents in a very short period of time, with the result that this Request should be rejected under IBA Rule 9(2)(c) as well.¹⁸</p> <p><i>Second</i>, the Request fails to establish the relevance of any particular documents or specific categories of documents sought by identifying with reasonable particularity what factual allegations it is intended to establish. As such, it is not “<i>carefully tailored to produce relevant and material documents</i>”,¹⁹ and is therefore contrary to Article 3.3(b) of the IBA Rules. In particular, Red Eagle has failed to offer any reason why documents exchanged between different authorities “<i>with respect to páramo studies and development</i>” would be relevant to any specific issues in dispute or material to the outcome of this case. Accordingly, Red Eagle’s contention that “<i>Respondent has not confirmed or</i></p> | <p>particular, Respondent contends that Resolution 2090 did no more than confirm a pre-existing páramo delimitation, of which Red Eagle should have been aware. Claimant disagrees and maintains that there was no such prior delimitation.</p> <p>In addition, Respondent contends that the process of delimiting the Santurbán páramo was “complex and lengthy” and “required close coordination between regional and national environmental authorities.” Yet, Respondent has not confirmed nor represented that it has provided documents that support this allegation.</p> <p>The requested documents are or may be relevant and material to test Respondent’s assertions in this proceeding with respect to the development and interpretation of Resolution 2090, and are or may be relevant and material to Claimant’s legitimate expectations and claims of breach.</p> <p><u>2. Breadth and burden:</u></p> <p>Respondent’s objection on breadth and undue burden is meritless.</p> <p>The request is narrowly tailored. Each of the National Authorities, the Constitutional Court, the CARs, and the referenced norm (i.e. Resolution 2090) on which this request is based are</p> | |
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¹⁸ IBA Rule 9(2)(c) reads: “*The Arbitral Tribunal shall, at the request of a Party or on its own motion, exclude from evidence or production any Document, statement, oral testimony or inspection for any of the following reasons: [...] unreasonable burden to produce the requested evidence [...].*”

¹⁹ 1999 IBA Working Party & 2010 IBA Rules of Evidence Review Subcommittee, “Commentary on the revised text of the 2010 IBA Rules on the Taking of Evidence in International Arbitration,” (“**Commentary on the IBA Rules**”) p. 9.

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| | | | | <p><i>represented that it has provided all such documents” does not justify this Request.</i></p> <p><i>Third</i>, the requested documents may contain information that is subject to legal impediment under Colombian law. Per Article 19 of the Access to Public Information Law documents recording the opinions and points of view expressed by public officials during deliberations are confidential (Annex 1). To the extent the requested documents contain such information, they would be subject to confidentiality protection under the Access to Public Information Law.</p> | <p>specifically cited by Respondent in its Counter-Memorial.</p> <p>The request is also temporally limited to the development or interpretation of the delimitation of the Santurbán Páramo included in Resolution 2090.</p> <p>3. Confidentiality:</p> <p>Respondent again raises its blanket objection regarding confidentiality. It remains meritless.</p> <p>Claimant makes reference to its Reply with respect to Request No. 1, and reiterates its arguments on confidentiality, which are equally applicable here.</p> | |
| 15 | <p>All Documents regarding mapping of the Santurbán Páramo by the Ministry of the Environment prior to December 19, 2014, including, without limitation, interim updates, correspondence, meeting minutes, reports, memoranda, correspondence, guidance documents, presentations, opinions, notes, drafts, maps, methodologies, and any submissions, and other similar documents.</p> | <p>Claimant’s Memorial ¶¶ 70-72. C-16, C-528. Vásquez ¶¶ 42-43. Respondent’s Counter-Memorial ¶¶ 283-285.</p> | <p>Prior to the flawed delimitation of the Santurbán Páramo in December 2014, the Ministry of Environment published different versions of the delimitations, including in April 2014.</p> <p>Respondent contends that “Resolution 2090 was “nearly identical to the 2007 Páramo Atlas delineation”; and also the páramo was delineated on several occasions over time relying on “increasingly sophisticated technological tools and ... advanced scientific information”; and that the map published in April 2014 was “an update” but did not a “preliminary delimitation.”</p> <p>The requested documents are or may be relevant and material to assessing Respondent’s process of</p> | <p>Colombia objects to this Request for the Production of Documents (“Request”), and requests that it be denied by the Tribunal, for the following reasons.</p> <p><i>First</i>, the Request is excessively broad and unduly burdensome. The documents requested are not precisely defined and concern an indeterminate number of government representatives, from the Ministry of Environment, over an unlimited period of time. The Request is excessively vague, and allows neither the Tribunal nor the Respondent to ascertain which specific documents are being sought or may be responsive. It is therefore contrary to IBA Rule 3(3)(a)(i). Red Eagle’s failure to identify documents with particularity also means that it would be unreasonably burdensome to require the Respondent to examine potentially massive amounts of documents in a very short period of time,</p> | <p>1. Relevance and materiality:</p> <p>Respondent’s objection on relevance and materiality objection is meritless.</p> <p>There is a dispute between the Parties with respect to the Santurbán Páramo delimitation, including whether the Santurbán páramo had been delimited by the time Claimant invested in Colombia. In particular, Respondent contends that Resolution 2090 did no more than confirm a pre-existing páramo delimitation made in 2007, of which Red Eagle should have been aware.</p> <p>Claimant disagrees and maintains that there was no prior delimitation. Indeed, the Ministry of Environment published different versions of delimitations, including in April 2014 prior to Resolution 2090.</p> <p>While Respondent does not deny that other maps containing delimitations of</p> | <p>The Tribunal has ordered the production of the four delimitations in request No. 10. The Tribunal confirms that order.</p> |

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| | | | <p>delimitation of the Santurbán Páramo, and its characterization of its publications prior to the issuance of Resolution 2090.</p> | <p>with the result that this Request should be rejected under IBA Rule 9(2)(c) as well.</p> <p><i>Second</i>, the Request fails to establish the relevance of any particular documents or specific categories of documents sought by identifying with reasonable particularity what factual allegations it is intended to establish. As such, it is not “<i>carefully tailored to produce relevant and material documents</i>”,²⁰ and is therefore contrary to Article 3(3)(b) of the IBA Rules. Rather, like Red Eagle’s Requests Nos. 10 and 13 above, this request is essentially a “fishing expedition” for any documents relating to the delimitation process.</p> <p><i>Third</i>, any documents regarding the map published by the IAVH in April 2014 should already be in the possession of the Claimant. Red Eagle’s witness, Ana María Vásquez, stated in her witness statement, that “<i>Red Eagle examined that map and, based on that examination, our geology department concluded that, as per such map, San Bartolo, La Triada de Oro, Los Delirios, San Alfonso, Arias, Santa Isabel and La Peter were not within the boundaries of the Santurbán Paramo</i>” (Witness Statement of Ana Milena Vásquez, ¶ 43). Red Eagle’s witness has thus confirmed that Red Eagle and its geology department had access to said that map.</p> <p><i>Fourth</i>, the requested documents may contain information that is subject to legal impediment under Colombian law. Per</p> | <p>the Santurbán páramo exist, Respondent claims that these maps, including one published in April 2014, did not contain a preliminary delimitation of the páramo, but merely “update[d]” the 2007 pre-existing version. Yet, Respondent has failed to produce any documents that support this claim.</p> <p>The requested documents are or may be relevant and material to test Respondent’s assertions in this proceeding with respect to the development of Resolution 2090 and the April 2014 delimitation, and are or may be relevant and material to Claimant’s legitimate expectations and claims of breach.</p> <p><u>2. Breadth and burden:</u></p> <p>Respondent’s objection on breadth and undue burden is meritless.</p> <p>The request is narrowly tailored. The relevant government entity and the referenced norm on which this request is based are specifically cited by Respondent in its Counter-Memorial.</p> <p>The request is also temporally limited encompassing all maps created up to the issuance of Resolution 2090.</p> <p><u>3. Possession:</u></p> <p>Respondent argues that it will not produce the requested documents because they “should already be in the possession of the Claimant.” This objection is meritless.</p> | |
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²⁰ 1999 IBA Working Party & 2010 IBA Rules of Evidence Review Subcommittee, “Commentary on the revised text of the 2010 IBA Rules on the Taking of Evidence in International Arbitration,” (“**Commentary on the IBA Rules**”) p. 9.

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| | | | | <p>Article 19 of the Access to Public Information Law documents recording the opinions and points of view expressed by public officials during deliberations are confidential (Annex 1). To the extent the requested documents contain such information, they would be subject to confidentiality protection under the Access to Public Information Law.</p> | <p>Claimant is not asking for the administrative records of the Mining Titles, which Claimant itself already has submitted into the record; rather Claimant is asking for documents regarding the mapping of the Santurbán Páramo by the Ministry of the Environment prior to December 19, 2014, including, without limitation, interim updates, correspondence, meeting minutes, reports, memoranda, correspondence, guidance documents, presentations, opinions, notes, drafts, maps, methodologies, and any submissions, and other similar documents, which are not in Claimant’s possession.</p> <p>4. Confidentiality:</p> <p>Respondent again raises its blanket objection regarding confidentiality. It remains meritless.</p> <p>Claimant makes reference to its Reply with respect to Request No. 1, and reiterates its arguments on confidentiality, which are equally applicable here.</p> | |
| 16 | <p>All Documents produced or received by the CDMB related to CDMB actions with respect to the approval of any and all assignments of environmental management plans by CDMB from 2011 to 2013 for Mining Titles La Peter, Arias, Los Delirios, and Santa Isabel, including, without limitation, assessments of Law 1382, assessments of Law 1450, assessments of Resolution 937, correspondence, meeting minutes, reports, memoranda, presentations,</p> | <p>Memorial ¶¶ 45, 73; <i>see also id.</i> Figure 1. C-288, C-466, C-644, C-472. Vásquez ¶ 22. Counter-Memorial ¶¶ 98, 106, 309, 311-12. De Vivero ¶¶ 102-105.</p> | <p>Between 2011 and 2013, Respondent approved the “cesiones” of environmental management plans for the Mining Titles, facilitating the advancement of mining activities. Respondent nonetheless contends that by June 2011 it was “clear that the 2007 IAVH Páramo Atlas delineation already served as an immediately effective minimum delineation” and that Claimant</p> | <p>Colombia objects to this Request for the Production of Documents (“Request”), and requests that it be denied by the Tribunal, for the following reasons.</p> <p><i>First</i>, the Request is excessively broad and unduly burdensome. The documents requested are not precisely defined and the Request allows neither the Tribunal nor the Respondent to ascertain which specific documents are being sought or may be responsive. It is therefore contrary to IBA Rule 3(3)(a)(i). Red Eagle’s failure to</p> | <p>1. Relevance and materiality:</p> <p>Respondent’s objection on relevance and materiality objection is meritless.</p> <p>There is a dispute between the Parties regarding the delimitation of the Santurbán páramo, in the context of pre-existing norms.</p> <p>In particular, Respondent contends that there was a pre-existing páramo delimitation made in 2007, of which Red Eagle should have been aware.</p> | <p>The Respondent shall produce the minutes referred to by Mr. Pinzón.</p> |

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| <p>maps, methodologies, and material regarding the preparation of the following:</p> <ul style="list-style-type: none"> - CDMB Resolution No. 1532 dated August 19, 2011 (La Peter); - CDMB Resolution No. 517 dated August 12, 2011 (Los Delirios); - CDMB Resolution No. 468 dated April 9, 2013 (Arias); and - CDMB Resolution No. 4192 dated August 12, 2011 (Santa Isabel). <p>Among other responsive Documents, any record, including, without limitation, the meeting minutes, of the meeting of May 17, 2011 referenced in the witness statement of Juan Pinzón ¶ 25.</p> | <p>Pinzón ¶¶ 10-28.</p> | <p>“Red Eagle knew (or should have known) that 85.5% [of the Mining Titles] fell within the Santurbán Páramo” and, therefore, “could not reasonably have expected to conduct mining activities in that area.”</p> <p>The requested documents are or may be relevant and material to the scope of the approvals and Respondent’s contemporaneous interpretations of the relevant legal framework.</p> | <p>identify documents with particularity also means that it would be unreasonably burdensome to require the Respondent to examine potentially massive amounts of documents in a very short period of time, with the result that this Request should be rejected under IBA Rule 9(2)(c) as well.</p> <p><i>Second</i>, the Request fails to establish the relevance of any particular documents or specific categories of documents sought by identifying with reasonable particularity what factual allegations it is intended to establish. As such, it is not “<i>carefully tailored to produce relevant and material documents</i>”,²¹ and is therefore contrary to Article 3(3)(b) of the IBA Rules. Rather, this Request is essentially a “fishing expedition” for any documents relating the CDMB’s approval of the transfer of the Mining Titles. Such documents are not relevant to any issues in dispute as none of the administrative acts effecting the transfers are measures complained of by Red Eagle, nor can Red Eagle show that the documents requested would be material to the resolution of this case.</p> <p><i>Third</i>, the Request is inapposite because Red Eagle cannot request documents that are already in its possession, custody or control (IBA Rules, Art. 3(3)(c)). As explained above with regard to Red Eagle’s Document Request No. 9, Red Eagle already has, and has put in evidence with its Memorial an extensive copy of the administrative records for the environmental instruments held by the</p> | <p>Claimant disagrees and maintains that there was no prior delimitation. This is evidenced by the approved the “cesiones” of environmental management plans for the Mining Titles after the alleged 2007 delimitation.</p> <p>The requested documents are or may be relevant and material to test Respondent’s assertions in this proceeding with respect to the delimitation of the santurbán páramo prior to 2014. They also are or may be relevant and material to Claimant’s legitimate expectations and claims of breach.</p> <p><u>2. Breadth and burden:</u></p> <p>Respondent’s objection on breadth and undue burden is meritless.</p> <p>The request is narrowly tailored. The referenced government entity, and the referenced resolutions on which this request is based are specifically cited by Respondent in its Counter-Memorial.</p> <p>The request is temporally limited by the specific resolutions referenced herein.</p> <p>Moreover, the request contains a specific identification of one document mentioned by Pinzón in his witness statement, undermining the lack of good faith efforts by Respondent in the document production phase of the proceeding, including even crafting its objections to Claimant’s requests.</p> <p><u>3. Confidentiality:</u></p> | |
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²¹ 1999 IBA Working Party & 2010 IBA Rules of Evidence Review Subcommittee, “Commentary on the revised text of the 2010 IBA Rules on the Taking of Evidence in International Arbitration,” (“**Commentary on the IBA Rules**”) p. 9.

CLAIMANT’S REQUEST FOR PRODUCTION OF DOCUMENTS

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| | | | | <p>mining titles La Peter, Los Delirios, Arias and Santa Isabel. It is noteworthy that the resolutions listed by Red Eagle in this Request appear to have been extracted from the environmental administrative records for Red Eagle’s Mining Titles. With regard to the following resolutions, for example, the Claimant has presented not only standalone exhibits, but also the environmental administrative records containing the resolutions and its context:</p> <ul style="list-style-type: none"> i. CDMB Resolution No. 1532 of 19 August 2011 (La Peter) was produced by Red Eagle as Exhibit C-270, but is also included in the Claimant’s exhibit titled “<i>File I Environmental Licenses Mining Society Santa Isabel Titulo 17215 LA-236</i>”.²² ii. CDMB Resolution No. 517 of 12 August 2011 (Los Delirios) was produced by Red Eagle as Exhibit C-264, but is also included in the Claimant’s exhibit titled “<i>File VII Environmental Licenses - Environmental Management Plan, 072-044 PM-0012 for 2001</i>”;²³ and iii. CDMB Resolution No. 468 of 9 April 2013 (Arias) was produced by Red Eagle as Exhibit C-282, but is also included in the Claimant’s exhibit titled “<i>File I Report Environmental Management</i> | <p>Respondent again raises its blanket objection regarding confidentiality. It remains meritless.</p> <p>Claimant makes reference to its Reply with respect to Request No. 1, and reiterates its arguments on confidentiality, which are equally applicable here.</p> <p><u>4. Possession:</u></p> <p>Respondent argues that it will not produce documents as the administrative records of the Mining Titles are already in Claimant’s possession. This objection is meritless.</p> <p>Claimant is not asking for the administrative records of the Mining Titles, which Claimant itself already has submitted into the record; rather Claimant is asking for assessments of relevant norms, correspondence, meeting minutes, reports, memoranda, presentations, maps, methodologies, and material regarding the preparation of the referenced resolutions, which are not in Claimant’s possession.</p> <p><u>5. Privilege:</u></p> <p>Respondent again raises its objection regarding privilege. It remains meritless.</p> <p>Claimant makes reference to its Reply with respect to Request No. 6, and</p> | |
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²² Autonomous Regional Corporation for the Development of the Bucaramanga Plateau (Corporación Autónoma Regional para la Defensa de la Meseta de Bucaramanga “CDMB”) File I Environmental Licenses Mining Society Santa Isabel Titulo 17215 LA-236 , 4 March 1996, **Exhibit C-240**, pp. 243-266.

²³ Autonomous Regional Corporation for the Development of the Bucaramanga Plateau (Corporación Autónoma Regional para la Defensa de la Meseta de Bucaramanga “CDMB”) File VII Environmental Licenses - Environmental Management Plan, 072-044 PM-0012 for 2001 , 13 August 2010, **Exhibit C-205**, pp. 209-233.

CLAIMANT’S REQUEST FOR PRODUCTION OF DOCUMENTS

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| | | | | <p><i>Deyhat Colombia PM-017-2012, code 8-2605” .²⁴</i></p> <p>As a result, Red Eagle is already in possession of the administrative files containing the resolutions mentioned and their context. In any event, the Claimant has already presented a large number of administrative records, demonstrating that those documents are public and at Red Eagle’s disposal. Red Eagle should not be allowed to shift the task of identifying (within publicly available records already in its possession) documents it believes will support its own case onto the Respondent.</p> <p><i>Fourth</i>, the requested documents may contain information that is subject to legal impediment under Colombian law. Per Article 19 of the Access to Public Information Law documents recording the opinions and points of view expressed by public officials during deliberations are confidential (Annex 1). To the extent the requested documents contain such information, they would be subject to confidentiality protection under the Access to Public Information Law.</p> <p><i>Fifth</i>, to the extent the documents requested concern or are reflective of legal advice to governmental authorities, such documents are legally privileged.</p> | reiterates its arguments on privilege, which are equally applicable here. | |
| 17 | All Documents produced or received by the ANM related to ANM actions with respect to the Mining Titles after December 19, 2014, including, without limitation, assessments of Resolution 2090, | Claimant’s Memorial ¶¶ 82-84, 142. | Following Resolution 2090 of December 2014, and Judgment C-35, the ANM sent a series of documents to Minera Vetas making reference to that | Colombia objects to this Request for the Production of Documents (“ Request ”), and requests that it be denied by the Tribunal, for the following reasons. | 1. Relevance and materiality: Respondent’s objection on relevance and materiality objection is meritless. | The Respondent shall produce documents that contain |

²⁴ Autonomous Regional Corporation for the Development of the Bucaramanga Plateau (Corporación Autónoma Regional para la Defensa de la Meseta de Bucaramanga “CDMB”) File I Report Environmental Management Deyhat Colombia PM-0172012, code 8-2605 , 2 February 2003, **Exhibit C-199**, pp. 214-227.

CLAIMANT’S REQUEST FOR PRODUCTION OF DOCUMENTS

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| <p>assessments of Constitutional Court Judgment C-35, correspondence, meeting minutes, reports, memoranda, presentations, maps, methodologies, and material regarding the preparation of the following:</p> <p>(a) ANM Technical Concept No. GSC-ZN 004 dated January 7, 2015 (El Dorado) (C-810);</p> <p>(b) ANM Technical Concept dated January 23, 2015 (San Bartolo) (C-421);</p> <p>(c) ANM Technical Concept from January 29, 2015 (Santa Isabel) (C-809)</p> <p>(d) ANM Technical Concept dated February 2, 2015 (La Peter) (C-556);</p> <p>(e) ANM Technical Concept of March 3, 2015 (Arias) (C-759);</p> <p>(f) ANM Technical Concept No. 000033 dated June 2, 2015 (Real Minera) (C-519);</p> <p>(g) ANM Letter to Claimant No. 20162200179621 dated May 17, 2016 (C-21) (Real Minera);</p> <p>(h) ANM Letter to Claimant No. 20162200179401 dated May 17, 2016 (C-490) (La Triada);</p> <p>(i) ANM Auto No. 00026, December 20, 2016 (La Vereda) (C-729);</p> <p>(j) ANM Letter to Claimant No. 20163320414591, December 22, 2016 (C-751) (Real Minera);</p> | <p>C-21, C-490, C-751, C-19, C-20, C-462, C-596.</p> <p>Vásquez ¶¶ 56-60.</p> <p>Martínez ¶¶ 15, 137.</p> <p>Respondent’s Counter-Memorial §§ VI.F.1-3.</p> <p>R-16.</p> | <p>Resolution and Judgment, and the impact of the delimitation of the Santurbán Páramo on Claimant’s Mining Titles.</p> <p>Respondent asserts that Resolution 2090, and the Constitutional Court Judgment C-35 of February 8, 2016 “had no impact on the Vetas Gold Project” and argues that the ANM communications “changed nothing” and/or “simply reiterated” the existing state of the law as applied to the Mining Titles.</p> <p>The requested documents are or may be relevant and material to ANM’s contemporaneous interpretations of Resolution 2090, the Constitutional Court Judgment C-35 and the application of these measures as to the Mining Titles.</p> | <p><i>First</i>, the Request is excessively broad and unduly burdensome. The documents requested are not precisely defined, covers a period of over six years, and the Request allows neither the Tribunal nor the Respondent to ascertain which specific documents are being sought or may be responsive. It is therefore contrary to IBA Rule 3(3)(a)(i). Red Eagle’s failure to identify documents with particularity also means that it would be unreasonably burdensome to require the Respondent to examine potentially massive amounts of documents in a very short period of time, with the result that this Request should be rejected under IBA Rule 9(2)(c) as well.</p> <p><i>Second</i>, the Request fails to establish the relevance of any particular documents or specific categories of documents sought by identifying with reasonable particularity what factual allegations it is intended to establish. As such, it is not “<i>carefully tailored to produce relevant and material documents</i>”,²⁵ and is therefore contrary to Article 3(3)(b) of the IBA Rules. Rather, this request is essentially a “fishing expedition” for any documents relating the “<i>ANM actions with respect to the Mining Titles</i>”. Red Eagle’s general contention that the requested “<i>documents are or may be relevant and material to ANM’s contemporaneous interpretations of Resolution 2090, the Constitutional Court Judgment C-35 and the application of these measures as to the Mining Titles</i>” does not justify the request by reference to any</p> | <p>There is a dispute between the Parties regarding the impact that Resolution 2090, Judgment C-35, and several ANM letters sent to the Claimant between 2016 and 2017, had on the Mining Titles.</p> <p>In particular, Respondent asserts that these measures did not impact the Vetas Gold Project, as they simply “reiterated” the existing law as applied to the Mining Titles.</p> <p>Claimant disagrees, and argues that Resolution 2090, Judgment C-35, and the ANM letters changed the legal framework applicable to the titles and/or impaired Claimant’s acquired rights vis-à-vis the Mining Titles.</p> <p>The requested documents are or may be relevant and material to test Respondent’s assertions in this proceeding regarding the contemporaneous understanding of relevant norms. The requested documents also are or may be relevant and material to Claimant’s claims on damages.</p> <p><u>2. Breadth and burden:</u></p> <p>Respondent’s objection on breadth and undue burden is meritless.</p> <p>The request is narrowly tailored. The request is limited to a single entity and refers to specific documents. It is temporally limited to the preparation of those specific documents.</p> | <p>an ex-post assessment of the Resolutions and Constitutional Court Judgments.</p> |
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²⁵ 1999 IBA Working Party & 2010 IBA Rules of Evidence Review Subcommittee, “Commentary on the revised text of the 2010 IBA Rules on the Taking of Evidence in International Arbitration,” (“**Commentary on the IBA Rules**”) p. 9.

CLAIMANT’S REQUEST FOR PRODUCTION OF DOCUMENTS

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| <p>(k) ANM Letter to Claimant No. 20173320097991 dated April 26, 2017 (C-19) (Real Minera);</p> <p>(l) ANM Letter to Claimant No. 20173320245101, dated August 31, 2017 (C-20) (Real Minera); and</p> <p>(m) CDMB Letter to Minera Vetas, dated December 6, 2019 (C-462) (La Vereda).</p> | | | <p>specific issue on dispute, still less establish the materiality of the documents requested.</p> <p><i>Third</i>, the Request is inapposite because Red Eagle cannot request documents that are already in its possession, custody or control (IBA Rules, Art. 3(3)(c)).As explained with regard to Red Eagle’s Document Request No. 9 above, Red Eagle has already submitted an extensive copy of the “<i>administrative records for [Red Eagle’s] mining titles</i>”, including records of the mining authority concerning Red Eagle’s Mining Titles El Dorado, San Bartolo, Santa Isabel, La Peter, Arias, Real Minera, La Triada and La Vereda mentioned in this Request No. 17.²⁶ As a result, Red Eagle has made clear that it has full access to the administrative records for its mining titles. Consequently, this Request No. 17 serves no other purpose than to shift the task of reviewing administrative records for evidence that Red Eagle considers to be relevant onto the Respondent. Furthermore, document (m) listed by Red Eagle (“<i>CDMB Letter to Minera Vetas, dated December 6, 2019</i>”) is not a document of the ANM. There is therefore no reason to assume that the documentation related to its elaboration is relevant and material to ANM’s interpretation of Resolution 2090 and Judgment C-35, or that it would be a document produced or received by the ANM.</p> <p><i>Fourth</i>, the requested documents may contain information that is subject to legal impediment under Colombian law. Per</p> | <p><u>3. Confidentiality:</u> Respondent again raises its blanket objection regarding confidentiality. It remains meritless. Claimant makes reference to its Reply with respect to Request No. 1, and reiterates its arguments on confidentiality, which are equally applicable here.</p> <p><u>4. Possession:</u> Respondent argues that it will not produce documents as the administrative records of the Mining Titles are already in Claimant’s possession. This objection is meritless. Claimant is not asking for the administrative records of the Mining Titles, which Claimant itself already has submitted into the record; rather Claimant is asking for assessments of relevant norms, correspondence, meeting minutes, reports, memoranda, presentations, maps, methodologies, and material regarding the preparation of the referenced documents, which are not in Claimant’s possession.</p> <p><u>5. Privilege:</u> Respondent again raises its objection regarding privilege. It remains meritless. Claimant makes reference to its Reply with respect to Request No. 6, and reiterates its arguments on privilege, which are equally applicable here.</p> | |
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²⁶ Claimant’s Memorial, Appendix C.

CLAIMANT’S REQUEST FOR PRODUCTION OF DOCUMENTS

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| | | | | <p>Article 19 of the Access to Public Information Law documents recording the opinions and points of view expressed by public officials during deliberations are confidential (Annex 1). To the extent the requested documents contain such information, they would be subject to confidentiality protection under the Access to Public Information Law.</p> <p><i>Fifth</i>, to the extent the documents requested concern or are reflective of legal advice to governmental authorities, such documents are legally privileged.</p> | | |
| 18 | <p>All Documents produced or received by the ANM related to ANM actions with respect to the approval of any and all concession contracts for the San Bartolo, Santa Isabel, La Peter, El Dorado, and Los Delirios Mining Titles in 2015, including, without limitation, assessments of Resolution 2090, correspondence, meeting minutes, reports, memoranda, presentations, maps, methodologies, and material regarding the preparation of the following:</p> <p>(a) ANM Resolution No. 492 of March 26, 2015 (San Bartolo)</p> <p>(b) ANM Resolution No. 416 of March 13, 2015 (Los Delirios)</p> <p>(c) ANM Resolution No. 419 of March 13, 2015 (La Peter)</p> <p>(d) ANM Resolution No. 417 of March 13, 2015 (Santa Isabel)</p> <p>(e) ANM Resolution No. 418 of March 13, 2015 (El Dorado)</p> | <p>Claimant’s Memorial ¶ 79, Figure 3.</p> <p>C-685, C-418, C-419, C-420, C-519, C-421, C-759, C-556, C-809, C-810, C-729.</p> <p>Martínez ¶ 14.</p> <p>Vásquez ¶ 50.</p> <p>Annexes 73-79</p> <p>Respondent’s Counter-Memorial ¶¶ 195, 419, 431 (c).</p> <p>R-54.</p> <p>De Vivero ¶¶ 18, 22.</p> | <p>Following the issuance of Resolution 2090, Respondent arbitrarily enforced restrictions on the Mining Titles. While Claimant did not agree with the Ministry of Environment’s delimitation of the páramo, Claimant expected it to be final. Notably, before Respondent modified its stance on mining restrictions in páramos, ANM approved of the conversion of several of Claimant’s Mining Titles into concession contracts.</p> <p>Respondent contends that the ANM’s representations to Claimant constituted “benign administrative acts” and that none of its communications “made any pronouncement as to which mining activities were or were not subject to the transitional regime.”</p> <p>The requested documents are or may be relevant and material to</p> | <p>Colombia objects to this Request for the Production of Documents (“Request”), and requests that it be denied by the Tribunal, for the following reasons.</p> <p><i>First</i>, the Request is excessively broad and unduly burdensome. The documents requested are not precisely defined and concern an unlimited period of time, and the Request allows neither the Tribunal nor the Respondent to ascertain which specific documents are being sought or may be responsive. It is therefore contrary to IBA Rule 3(3)(a)(i). Red Eagle’s failure to identify documents with particularity also means that it would be unreasonably burdensome to require the Respondent to examine potentially massive amounts of documents in a very short period of time, with the result that this Request should be rejected under IBA Rule 9(2)(c) as well.</p> <p><i>Second</i>, the Request fails to establish the relevance of any particular documents or specific categories of documents sought by identifying with reasonable particularity what factual allegations it is intended to</p> | <p>1. Relevance and materiality:</p> <p>Respondent’s objection on relevance and materiality objection is meritless.</p> <p>There is a dispute between the Parties regarding Respondent’s enforcement of mining restrictions on Claimant’s Mining Titles following Resolution 2090.</p> <p>In particular, Respondent attempts to represent that its agencies acted consistently in enforcing mining restrictions in Claimant’s Mining Titles after Resolution 2090. It contends that while the ANM approved the modification of Claimant’s Mining Titles into concession contracts, such acts constituted “benign administrative acts.”</p> <p>Claimant disagrees and argues that Respondent acted inconsistently in enforcing mining restrictions.</p> <p>The requested documents are or may be relevant and material to test Respondent’s assertions in this</p> | <p>The request is denied; it is too broad.</p> |

CLAIMANT’S REQUEST FOR PRODUCTION OF DOCUMENTS

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| | | | <p>Respondent’s contemporaneous interpretations of the relevant legal framework.</p> | <p>establish. As such, it is not “<i>carefully tailored to produce relevant and material documents</i>”,²⁷ and is therefore contrary to Article 3.3(b) of the IBA Rules. Rather, this Request is essentially a “fishing expedition” for any documents “<i>related to ANM actions with respect to the approval of any and all concession</i>”. Red Eagle’s general contention that the documents requested “<i>are or may be relevant and material to Respondent’s contemporaneous interpretations of the relevant legal framework</i>” does not justify the request by reference to any specific issue on dispute, still less establish the materiality of the documents requested.</p> <p><i>Third</i>, the Request is inapposite because Red Eagle cannot request documents that are already in its possession, custody or control (IBA Rules, Art. 3(3)(c)).As explained with regard to Request No. 18 above, all the documentation related to the technical reports and administrative acts regarding the mining titles is in the records of each mining title to which Claimant has full access and has already presented as exhibits.</p> <p><i>Fourth</i>, the requested documents may contain information that is subject to legal impediment under Colombian law. Per Article 19 of the Access to Public Information Law documents recording the opinions and points of view expressed by public officials during deliberations are confidential (Annex 1). To the extent the requested documents contain such</p> | <p>proceeding regarding the consistent application of mining restrictions on Claimant’s Mining Titles. The requested documents also are or may be relevant and material with regards to Claimant’s claims of breach.</p> <p><u>2. Breadth and burden:</u> Respondent’s objection on breadth and undue burden is meritless. The request is narrowly tailored. The request is limited to a single entity and refers to specific documents. It is temporally limited to the preparation of those specific documents. The request is also temporally limited to documents created or analysed around the dates in which each of the resolutions or letters were issued.</p> <p><u>3. Confidentiality:</u> Respondent again raises its blanket objection regarding confidentiality. It remains meritless. Claimant makes reference to its Reply with respect to Request No. 1, and reiterates its arguments on confidentiality, which are equally applicable here.</p> <p><u>4. Possession:</u> Respondent argues that it will not produce documents as the administrative records of the Mining Titles are already in Claimant’s possession. This objection is meritless.</p> | |
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²⁷ 1999 IBA Working Party & 2010 IBA Rules of Evidence Review Subcommittee, “Commentary on the revised text of the 2010 IBA Rules on the Taking of Evidence in International Arbitration,” (“**Commentary on the IBA Rules**”) p. 9.

CLAIMANT’S REQUEST FOR PRODUCTION OF DOCUMENTS

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| | | | | <p>information, they would be subject to confidentiality protection under the Access to Public Information Law.</p> <p><i>Fifth</i>, to the extent the documents requested concern or are reflective of legal advice to governmental authorities, such documents are legally privileged.</p> | <p>Claimant is not asking for the administrative records of the Mining Titles, which Claimant itself already has submitted into the record; rather Claimant is asking for assessments of Resolution 2090, correspondence, meeting minutes, reports, memoranda, presentations, maps, methodologies, and material regarding the preparation of the referenced documents, which are not in Claimant’s possession.</p> <p>5. Privilege:</p> <p>Respondent again raises its objection regarding privilege. It remains meritless.</p> <p>Claimant makes reference to its Reply with respect to Request No. 6, and reiterates its arguments on privilege, which are equally applicable here.</p> | |
| 19 | <p>All Documents produced or received by the CDMB related to CDMB actions with respect to any and all requests for any and all environmental mining guidelines in connection with Mining Titles Real Minera, San Alfonso, La Vereda, El Dorado, San Antonio, La Triada, and San Bartolo submitted between 2010 and 2013, including, without limitation, assessments of the relevant legal framework, including, among others, Law No. 1382 Resolution No. 937; Law 1450, Resolution 2090; Law 1753; and Law 1930, correspondence, meeting minutes, reports, memoranda, presentations, maps, methodologies, and other similar documents.</p> | <p>Claimant’s Memorial ¶¶ 22, 45, Figure 1.</p> <p>Martínez ¶¶ 9, 69, 74.</p> <p>Vásquez ¶¶ 22, 29.</p> <p>C-460, C-469, C-778, C-779, C-463, C-263.</p> <p>Respondent’s Counter-Memorial ¶ 325, § III.A.</p> <p>Pinzón ¶ 9.</p> | <p>Respondent contends that the approval of environmental mining guidelines is pro forma, only requiring that title holders “simply agree in writing to abide.”</p> <p>In fact, the CDMB has held that it does not recognize the environmental mining guideline presented by Claimant in at least one case (<i>see, e.g.,</i> C-95, p. 165), calling into question the process by which Respondent considers and acts upon requests for environmental mining guidelines, as well as Respondent’s characterization thereof in this proceeding.</p> | <p>Colombia objects to this Request for the Production of Documents (“Request”), and requests that it be denied by the Tribunal, for the following reasons.</p> <p><i>First</i>, the Request is excessively broad and unduly burdensome. The documents requested are not precisely defined and covers an unlimited period of time, and the Request allows neither the Tribunal nor the Respondent to ascertain which specific documents are being sought or may be responsive. It is therefore contrary to IBA Rule 3(3)(a)(i). Red Eagle’s failure to identify documents with particularity also means that it would be unreasonably burdensome to require the Respondent to examine potentially massive amounts of documents in a very short period of time,</p> | <p>1. Relevance and materiality:</p> <p>Respondent’s objection on relevance and materiality objection is meritless.</p> <p>There is a dispute between the Parties regarding the CDMB’s actions approving environmental permits necessary to undertake various mining activities.</p> <p>In particular, Respondent contends that the approval of environmental mining guidelines is pro forma.</p> <p>However, despite Respondent’s assertions, the CDMB has in at least one occasion rejected one of Claimant’s environmental mining guidelines.</p> <p>Accordingly, the requested documents are or may be relevant and material to</p> | <p>The request is denied; it is too broad.</p> |

CLAIMANT’S REQUEST FOR PRODUCTION OF DOCUMENTS

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| | | | <p>The requested documents are or may be relevant and material to Respondent’s contemporaneous interpretations of the relevant legal framework.</p> | <p>with the result that this Request should be rejected under IBA Rule 9(2)(c) as well.</p> <p><i>Second</i>, the Request fails to establish the relevance of any particular documents or specific categories of documents sought by identifying with reasonable particularity what factual allegations it is intended to establish. As such, it is not “<i>carefully tailored to produce relevant and material documents</i>”,²⁸ and is therefore contrary to Article 3.3(b) of the IBA Rules. Rather, this request is essentially a “fishing expedition” for any documents relating the “<i>CDMB actions with respect to any and all requests for any and all environmental mining guidelines</i>”. Red Eagle’s general contention that the requested documents “<i>are or may be relevant and material to Respondent’s contemporaneous interpretations of the relevant legal framework</i>” does not justify the Request by reference to any specific issue in dispute, still less establish the materiality of the documents requested.</p> <p><i>Third</i>, the Request is inapposite because Red Eagle cannot request documents that are already in its possession, custody or control (IBA Rules, Art. 3(3)(c)).As explained with regard to Red Eagle’s Document Request No. 9 above, Red Eagle has already submitted an extensive copy of the administrative records for the environmental instruments held by Red Eagle’s Mining Titles. As a result, Red Eagle is already in possession of the administrative files containing all the</p> | <p>test Respondent’s assertions in this proceeding the approval of environmental mining guidelines and/or Respondent’s contemporaneous interpretations of the relevant legal framework.</p> <p>The requested documents also are or may be relevant and material with regards to Claimant’s legitimate expectations and claims of breach. he requested documents are or may be relevant and material to testing Respondent’s assertions about the transparency and consistency of the acts of its environmental agencies. The requested documents also are or may be relevant and material to understanding Respondent’s contemporaneous interpretations of the relevant legal framework.</p> <p><u>2. Breadth and burden:</u></p> <p>Respondent’s objection on breadth and undue burden is meritless.</p> <p>The request is narrowly tailored. The request is limited to a single entity.</p> <p>The request is also temporally limited to the years 2010 to 2013.</p> <p><u>3. Confidentiality:</u></p> <p>Respondent again raises its blanket objection regarding confidentiality. It remains meritless.</p> <p>Claimant makes reference to its Reply with respect to Request No. 1, and reiterates its arguments on</p> | |
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²⁸ 1999 IBA Working Party & 2010 IBA Rules of Evidence Review Subcommittee, “Commentary on the revised text of the 2010 IBA Rules on the Taking of Evidence in International Arbitration,” (“**Commentary on the IBA Rules**”) p. 9.

CLAIMANT’S REQUEST FOR PRODUCTION OF DOCUMENTS

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| | | | | <p>documents in possession con the CDMB regarding the environmental mining guidelines in connection with the mining titles listed by Claimant (<i>See</i>, for example, Exhibits C-200, C-201, C-202, C-222, C-225, C-227). In any event, Red Eagle has already presented a large number of administrative records, confirming that those documents are public and at Red Eagle’s disposal.</p> <p><i>Fourth</i>, the requested documents may contain information that is subject to legal impediment under Colombian law. Per Article 19 of the Access to Public Information Law documents recording the opinions and points of view expressed by public officials during deliberations are confidential (Annex 1). To the extent the requested documents contain such information, they would be subject to confidentiality protection under the Access to Public Information Law.</p> <p><i>Fifth</i>, to the extent the documents requested concern or are reflective of legal advice to governmental authorities, such documents are legally privileged.</p> | <p>confidentiality, which are equally applicable here.</p> <p>4. Possession: Respondent argues that it will not produce documents as the administrative records of the Mining Titles are already in Claimant’s possession. This objection is meritless.</p> <p>Claimant is not asking for the administrative records of the Mining Titles, which Claimant itself already has submitted into the record; rather Claimant is asking for assessments of the relevant legal framework, correspondence, meeting minutes, reports, memoranda, presentations, maps, methodologies, and other similar documents, which are not in Claimant’s possession.</p> <p>5. Privilege: Respondent again raises its objection regarding privilege. It remains meritless.</p> <p>Claimant makes reference to its Reply with respect to Request No. 6, and reiterates its arguments on privilege, which are equally applicable here.</p> | |
| 20 | All Documents from August 5, 2002, to December 19, 2014, in the National Authorities’ possession regarding an assessment, evaluation, oversight, review, study, opinion, of any or all of potential mineral resources available at Claimant’s Mining Titles, including, without limitation, studies and analysis conducted or received by Colombia. | <p>Claimant’s Memorial ¶¶ 41, 47-55.</p> <p>C-560, C-561, C-658, C-658.</p> <p>Vásquez ¶¶16, 25-27.</p> <p>Versant ¶¶ 11, 27, 39-41.</p> | Respondent alleges that Claimant’s Mining Titles had “insufficient mineral resources” which caused the “failure” of Claimant’s investment, and depressed its fair market value, which Respondent contends is the appropriate measure of damages in this case. | <p>Colombia objects to this Request for the Production of Documents (“Request”), and requests that it be denied by the Tribunal, for the following reasons.</p> <p><i>First</i>, the Request is excessively broad and unduly burdensome. The documents requested are not precisely defined and concern an indeterminate number of government representatives from ten governmental authorities. Red Eagle has</p> | <p>1. Relevance and materiality: Respondent’s objection on relevance and materiality objection is meritless.</p> <p>There is a dispute between the Parties regarding the value of Claimant’s investment in Colombia and regarding whether Respondent’s acts and omissions violated Claimant’s rights under the Treaty.</p> | The request is denied; it is too broad. |

CLAIMANT’S REQUEST FOR PRODUCTION OF DOCUMENTS

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| | | <p>VP-06, VP-14, VP-15.</p> <p>Respondent’s Counter-Memorial ¶¶ 239-244, §§ VII.C.2, VIII.A.3.</p> <p>R-15, R-26, R-27.</p> <p>Brattle ¶ 133.</p> <p>BR-64, BR-66.</p> | <p>The requested documents are or may be relevant and material to Respondent’s independent assessment of the mineral resources available at Claimant’s Mining Titles and to establishing how Respondent’s acts and omissions violated Claimant’s rights under the Treaty and may have impacted the fair market value of Claimant’s investment.</p> | <p>offered no justification as to why all such governmental authorities could reasonably be expected to be in possession of documents concerning “<i>potential mineral resources available at Claimant’s Mining Titles</i>”. The Request also covers a long period of time (over 12 years), is excessively vague, and allows neither the Tribunal nor the Respondent to ascertain which specific documents are being sought or may be responsive. It is therefore contrary to IBA Rule 3(3)(a)(i). Red Eagle’s failure to identify documents with particularity also means that it would be unreasonably burdensome to require the Respondent to examine potentially massive amounts of documents in a very short period of time, with the result that this Request should be rejected under IBA Rule 9(2)(c) as well.</p> <p><i>Second</i>, the Request fails to establish the relevance of any particular documents or specific categories of documents sought by identifying with reasonable particularity what factual allegations it is intended to establish. As such, it is not “<i>carefully tailored to produce relevant and material documents</i>”,²⁹ and is therefore contrary to Article 3(3)(b) of the IBA Rules. Rather, the Request is essentially a “fishing expedition” for documents regarding mineral resources available at Claimant’s Mining Titles, which Claimant – and not Colombia – was responsible for establishing. Colombia’s case, supported by the independent expert report of Brattle,</p> | <p>In particular, Respondent contends that Claimant’s Mining Titles had “insufficient mineral resources,” which depressed the fair market value of Claimant’s investment. Yet, Respondent has proffered no documents to support this claim. Claimant disagrees and maintains that Respondent’s acts and omissions violated Claimant’s rights under the Treaty.</p> <p>The requested documents are or may be relevant and material to test Respondent’s assertions in this proceeding regarding Claimant’s mineral resources. The requested documents also are or may be relevant to Claimant’s claims of breach and damages.</p> <p><u>2. Breadth and burden:</u></p> <p>Respondent’s objection on breadth and undue burden is meritless.</p> <p>The request is narrowly tailored. The referenced National Authorities are specifically cited by Respondent in its Counter-Memorial.</p> <p>The request is also temporally limited to the period from August 2002 to December 19, 2014.</p> <p><u>3. Possession:</u></p> <p>Respondent argues that it will not produce documents as the administrative records of the Mining Titles are already in Claimant’s possession. This objection is meritless.</p> | |
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²⁹ 1999 IBA Working Party & 2010 IBA Rules of Evidence Review Subcommittee, “Commentary on the revised text of the 2010 IBA Rules on the Taking of Evidence in International Arbitration,” (“**Commentary on the IBA Rules**”) p. 9.

CLAIMANT’S REQUEST FOR PRODUCTION OF DOCUMENTS

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| | | | | <p>that Red Eagle’s Vetas Gold Project failed because Red Eagle’s exploration efforts failed to reveal sufficient mineral resources in the area of its Mining Titles is based on Red Eagle’s own documents and views as to the volumes of mineral resources available. (See Counter-Memorial, Section VIII.A.3; Brattle Report, Section V.B.4). As Red Eagle well knows, Colombia’s authorities did not independently carry out exploration works in order to assess the mineral resources available. Conducting exploration works and evaluating the volume of available resources is incumbent upon the holder of the mining titles, not the State. For this reason, even if any Colombian authorities held any documents falling within the scope of this Request, such documents would not be relevant to any issues in dispute or material to its outcome.</p> <p><i>Third</i>, the Request is inapposite because Red Eagle cannot request documents that are already in its possession, custody or control (IBA Rules, Art. 3(3)(c)). As explained above, with regard to Request No. 18 above, all documentation related to the technical reports and administrative acts regarding the Mining Titles can be found in the records of each mining title to which Claimant has full access. Such documents have already been submitted as exhibits by Red Eagle itself. These administrative files include reports of assessments of potential mineral resources conducted by the holder of the mining titles. For example, those records contain the Mining Works Programs (“PTOs”) of the title holder (e.g. C-85), the final reports of Exploration and Works and</p> | <p>Claimant is not asking for the administrative records of the Mining Titles, which Claimant itself already has submitted into the record; rather Claimant is asking for studies and analysis conducted or received by Colombia of any or all of potential mineral resources available at Claimant’s Mining Titles, which are not in Claimant’s possession.</p> | |
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CLAIMANT’S REQUEST FOR PRODUCTION OF DOCUMENTS

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| | | | | Investments Programs (e.g. C-166), and adjustments to the PTOs (e.g. C-171) which include an evaluation of the project. Moreover, Red Eagle already has in its possession, and has already submitted in evidence, the evaluations conducted on 31 May 2010 and 5 December 2012 (C-538 and C-557). | | |
| 21 | All Documents regarding any site visits conducted at any of Claimant’s Mining Titles from April 19, 2010, to present, including, without limitation, records and other updates, correspondence, meeting minutes, reports, memoranda, correspondence, guidance documents, presentations, opinions, notes, drafts, maps, methodologies, and other similar documents. | Claimant’s Memorial ¶¶ 66, 123. Respondent’s Counter-Memorial ¶ 518; § V.B. | Respondent conducted site visits Claimant’s Mining Title sites, which it alleges were to “monitor compliance with existing obligations under the titles.” The requested documents are or may be relevant and material to Respondent’s contemporaneous interpretations of such obligations and their application as to the Mining Titles. | Colombia objects to this Request for the Production of Documents (“ Request ”), and requests that it be denied by the Tribunal, for the following reasons. <i>First</i> , the Request is excessively broad and unduly burdensome. The documents requested are not precisely defined and concern an indeterminate number of government representatives from all governmental authorities, over a 10-year period (during part of which Red Eagle was not even the owner of the Mining Tiles). The request is excessively vague, and allows neither the Tribunal nor the Respondent to ascertain which specific documents are being sought or may be responsive. It is therefore contrary to IBA Rule 3(3)(a)(i). Red Eagle’s failure to identify documents with particularity also means that it would be unreasonably burdensome to require the Respondent to examine potentially massive amounts of documents in a very short period of time, with the result that this Request should be rejected under IBA Rule 9(2)(c) as well. <i>Second</i> , Red Eagle has not even attempted to justify this Request by reference to any issue that is in dispute, still less show that the documents requested are material to the outcome of the case. This dispute does not | <u>1. Relevance and materiality:</u> Respondent’s objection on relevance and materiality objection is meritless. There is a dispute between the Parties regarding the contemporaneous understanding and interpretation of relevant norms and obligations, including as evidenced during site visits. In particular, Respondent asserts that while the ANM visited the Mining Titles to monitor compliance with existing obligations under the titles, it did not monitor the “progress with the development of the Project.” Claimant disagrees and maintains that ANM’s site visits furthered Claimant’s expectations to develop the project. The requested documents are or may be relevant and material to test Respondent’s assertions in this proceeding regarding Respondent’s contemporaneous interpretations of existing norms and obligations and their application as to the Mining Titles. The requested documents also are or may be relevant and material to assessing Claimant’s legitimate expectations. <u>2. Breadth and burden:</u> | The request is denied; it is too broad. |

CLAIMANT’S REQUEST FOR PRODUCTION OF DOCUMENTS

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| | | | | <p>concern Red Eagle’s compliance with its existing obligations under the titles, whether in connection with the exploration activities conducted by Red Eagle or otherwise. As such, the documents requested are not relevant to the Tribunal’s assessment of Red Eagle’s claims.</p> <p><i>Third</i>, to the extent the documents requested concern or are reflective of legal advice to governmental authorities, such documents are legally privileged.</p> <p><i>Fourth</i>, the Request is inapposite because Red Eagle cannot request documents that are already in its possession, custody or control (IBA Rules, Art. 3(3)(c)). As explained with regard to Request No. 18 above, all the documentation related to the technical reports and administrative acts regarding the Mining Titles is in the records of each mining title to which Claimant has full access and have already been presented as exhibits. As a result, Red Eagle already has in its possession the documents related to site visits including records, reports, correspondence, notes, photographs, and maps. In fact, the administrative records that have already been presented as exhibits by Red Eagle contain, among other documents related to the site visits, their technical reports, as well as the forms signed by the representatives of the title holder and the mining authority during the conduct of each visit, and the final administrative act (See e.g. Exhibits C-30, pp. 130-157; C-44, pp. 175-208, C-43, pp. 174-191 and 262-264, C-217, pp. 264, 286-290).</p> | <p>Respondent presents a blanket breadth and undue burden objection. It is meritless.</p> <p>The request is narrowly tailored. Although not mentioned in Claimant’s request, this request concerns only one government agency (the ANM) as the ANM is the sole government entity in charge of conducting site-visits to the Mining Titles, as Respondent has specified in its Counter-Memorial. ¶ 418. Respondent’s refusal to agree to search for responsive documents in the possession of the ANM undermines the lack of good faith efforts by Respondent in the document production phase of the proceeding, including even crafting its objections to Claimant’s requests.</p> <p>The request is also temporally limited to the period from April 19, 2010 to present.</p> <p><u>3. Possession:</u></p> <p>Respondent argues that it will not produce documents as the administrative records of the Mining Titles are already in Claimant’s possession. This objection is meritless.</p> <p>Claimant is not asking for the administrative records of the Mining Titles, which Claimant itself already has submitted into the record; rather Claimant is asking for records and other updates, correspondence, meeting minutes, reports, memoranda, correspondence, guidance documents, presentations, opinions, notes, drafts, maps, methodologies, and other similar</p> | |
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CLAIMANT’S REQUEST FOR PRODUCTION OF DOCUMENTS

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| | | | | | <p>documents, which are not in Claimant’s possession.</p> <p>4. Privilege:</p> <p>Respondent again raises its objection regarding privilege. It remains meritless.</p> <p>Claimant makes reference to its Reply with respect to Request No. 6, and reiterates its arguments on privilege, which are equally applicable here.</p> | |
| 22 | <p>All Documents regarding any methodologies for Respondent’s valuation of mining titles including, without limitation, records correspondence, meeting minutes, reports, memoranda, correspondence, guidance documents, presentations, opinions, notes, drafts, maps, calculations, and other similar documents.</p> | <p>Claimant’s Memorial § IV.</p> <p>Versant § III.</p> <p>Brattle § IV.A.1.</p> <p>Respondent’s Counter-Memorial § VIII.B.</p> | <p>Respondent contests Claimant’s method of valuing the Mining Titles in this proceeding and provides a methodology to perform a fair market value calculation of damages for damages in this proceeding.</p> <p>The requested documents are or may be relevant and material to Respondent’s contemporaneous interpretations of the proper methodologies for valuing mining titles under the relevant framework.</p> | <p>Colombia objects to this Request for the Production of Documents (“Request”), and requests that it be denied by the Tribunal, for the following reasons.</p> <p><i>First</i>, the Request is excessively broad and unduly burdensome. The documents requested are not precisely defined and concern an indeterminate number of government representatives from all governmental authorities, over an unlimited period of time, in relation to the valuation of all mining titles in Colombia. The Request is excessively vague, and allows neither the Tribunal nor the Respondent to ascertain which specific documents are being sought or may be responsive. It is therefore contrary to IBA Rule 3(3)(a)(i). Red Eagle’s failure to identify documents with particularity also means that it would be unreasonably burdensome to require the Respondent to examine potentially massive amounts of documents in a very short period of time, with the result that this Request should be rejected under IBA Rule 9(2)(c) as well.</p> <p><i>Second</i>, the documents requested are not relevant or material to the assessment of the</p> | <p>Claimant objects to Respondent’s lack of good faith participation in the document production process. Respondent has issued a blanket objection to all of Claimant’s document requests and offered to produce no documents, presenting a series of baseless objections.</p> <p>Claimant reiterates its document request and addresses Respondent’s objections as follows:</p> <p>1. Relevance and materiality:</p> <p>Respondent’s objection on relevance and materiality objection is meritless.</p> <p>There is a dispute between the Parties concerning the appropriate methodology to value Claimant’s Mining Titles.</p> <p>In particular, Respondent contends that fair market value is the appropriate measure of valuing Claimant’s Mining Titles. Claimant disagrees and maintains that sunk costs is the appropriate method.</p> <p>The requested documents are or may be relevant and material to test Respondent’s assertions in this</p> | <p>The request is denied; it is too broad.</p> |

CLAIMANT’S REQUEST FOR PRODUCTION OF DOCUMENTS

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| | | | | appropriateness of the methodology adopted by Colombia’s independent valuation experts, Brattle, to value Red Eagle’s alleged loss. Even if Colombia had adopted different methodologies for valuing mining in other contexts, documents “ <i>regarding</i> ” any such methodologies would not be relevant to the assessment of Red Eagle’s loss, if any, caused by the measures in this case, still less material to the outcome of this case. | proceeding regarding Respondent’s methodologies for valuation of the Mining Titles. The requested documents also are or may be relevant and material to assessing Claimant’s claims for damages. <u>2. Breadth and burden:</u> Respondent’s objection on breadth and undue burden is meritless. It is limited to the sole issue of valuation of mining titles. | |
| 23 | All Documents regarding the rules, guidelines, protocols, limitations, or procedures applicable to the administrative actions with respect to the Mining Titles as of 2015, including, without limitation, with respect to the following: (a) ANM Technical Concept No. GSC-ZN 004 dated January 7, 2015 (El Dorado); (b) ANM Technical Concept dated January 23, 2015 (San Bartolo); (c) ANM Technical Concept from January 29, 2015 (Santa Isabel); (d) ANM Technical Concept dated February 2, 2015 (La Peter); (e) ANM Technical Concept of March 3, 2015 (Arias); (f) ANM Resolutions No. 416 and 417 dated March 13, 2015; (Santa Isabel); (g) ANM Resolution No. 418 of March 13, 2015 (El Dorado); | Claimant’s Memorial ¶ 79, Figure 3. C-519, C-421, C-759, C-556, C-809, C-810, C-729, C-21C-691, C-490, C-751, C-19, C-20, C-462. Martínez ¶ 14, Vásquez ¶ 50. Respondent’s Counter-Memorial ¶¶ 418(f)(vi), 431(c). R-54. De Vivero ¶¶ 18, 22. | Following the issuance of Resolution 2090, Respondent arbitrarily enforced restrictions on the Mining Titles. Notwithstanding Respondent’s prior conduct, it issued a series of Resolutions and communications to Minera Vetas restricting mining activities. Respondent contests the relevance of these materials, which it considers were issued pursuant to the legal framework. The process followed by ANM and CDMB in preparing and issuing these materials is or may be relevant to proving that Respondent’s acts and omissions through the ANM and CDMB with respect to the Mining Titles following the issuance of Resolution 2090 were unlawful, non-transparent, unreasonable, arbitrary, disproportionate, and/or discriminatory. | Colombia objects to this Request for the Production of Documents (“ Request ”), and requests that it be denied by the Tribunal, for the following reasons. <i>First</i> , the documents requested are publicly available, referenced in the decisions or administrative acts themselves, and exhibited to Respondent’s Counter-Memorial. <i>See</i> Counter-Memorial, Section VI.B.3. <i>Second</i> , the Request fails to establish the relevance of any particular documents or specific categories of documents sought by identifying with reasonable particularity what factual allegations it is intended to establish. As such, it is not “ <i>carefully tailored to produce relevant and material documents</i> ”, ³⁰ and is therefore contrary to Article 3.3(b) of the IBA Rules. The request is essentially a “fishing expedition”, and is not based on any justification as to why any of the documents sought are relevant to any particular allegations of | <u>1. Relevance and materiality:</u> Respondent’s objection on relevance and materiality objection is meritless. There is a dispute between the Parties regarding Respondent’s enforcement of restrictions on the Mining Titles following the issuance of Resolution 2090. In particular, Respondent contends that “Colombia did not take adverse actions against Red Eagle’s Titles after Judgment C-35”, and that in any event, the additional restrictions that it enacted against Claimant’s Mining Titles were in line with Colombia’s legal framework because the letters were “purely informative” and specified “the extent of the overlap of the titles with [the paramo] ecosystems.” Claimant disagrees, and considers that these actions were unreasonable, arbitrary, disproportionate, non-transparent, and/or discriminatory. | The Respondent shall produce the listed documents (a) to (p) to the extent that they are requested by the Claimant but this order does not extend to the disclosure of rules, guidelines, protocols, limitations and procedures. |

³⁰ 1999 IBA Working Party & 2010 IBA Rules of Evidence Review Subcommittee, “Commentary on the revised text of the 2010 IBA Rules on the Taking of Evidence in International Arbitration,” (“**Commentary on the IBA Rules**”) p. 9.

CLAIMANT’S REQUEST FOR PRODUCTION OF DOCUMENTS

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| | <p>(h) ANM Resolution No. 419 of March 13, 2015 (La Peter)</p> <p>(i) ANM Resolution No. 492 dated March 26, 2015 (San Bartolo);</p> <p>(j) ANM Technical Concept No. 000033 dated June 2, 2015 (Real Minera);</p> <p>(k) ANM Letters No. 20162200179621 and 20162200179401 dated May 17, 2016 (Real Minera and La Triada de Oro);</p> <p>(l) ANM Auto No. 00026, December 20, 2016 (La Vereda);</p> <p>(m) ANM Letter No. 20163320414591 dated December 22, 2016 (Real Minera);</p> <p>(n) ANM Letter No. 20173320097991 dated April 26, 2017 (Real Minera);</p> <p>(o) ANM Letter No. 20173320245101 dated August 31, 2017 (Real Minera); and</p> <p>(p) CDMB Letter dated December 6, 2019 (La Vereda).</p> | | | <p>breaches of Colombia or international law with respect to the “<i>administrative actions</i>” adopted with respect to the Mining Titles.</p> <p><i>Third</i>, the Request is inapposite because Red Eagle cannot request documents that are already in its possession, custody or control (IBA Rules, Art. 3(3)(c)). As explained with regard to Request No. 18 above, all of the documentation related to the technical concepts and administrative acts regarding the mining titles is in the records of each mining title to which Red Eagle has full access and has already submitted as exhibits. As a result, Red Eagle already has in its possession the documents related to site visits including records, reports, correspondence, notes, photographs, and maps.</p> | <p>The requested documents are or may be relevant to test Respondent’s assertions in this proceeding and to Claimant’s claims of breach.</p> <p><u>2. Breadth and burden:</u></p> <p>Respondent’s objection on breadth and undue burden is meritless.</p> <p>The request is narrowly tailored. The referenced resolutions, letters, and the authorities that issued them, on which this request is based are specifically cited by Respondent in its Counter-Memorial.</p> <p>The request is also temporally narrowed to the specific documents referenced.</p> <p><u>3. Possession:</u></p> <p>Respondent argues that it will not produce documents as they are publicly available or exhibited to Respondent’s Counter-Memorial or are in the administrative records of the Mining Titles already in Claimant’s possession. This objection is meritless.</p> <p>Claimant is not asking for publicly-available documents, or those already in its possession; rather Claimant is asking for the rules, guidelines, protocols, limitations, or procedures applicable to the administrative actions with respect to the Mining Titles.</p> | |
| 24 | <p>All Documents from December 1, 2009 to May 31, 2011 regarding the drafting, revising, and input, including, without limitation, documents referred to, and relied upon in the creation of the following documents:</p> | <p>Claimant’s Memorial ¶¶ 39, 41.</p> <p>Respondent’s Counter-Memorial ¶¶ 87-95.</p> | <p>Respondent contends that Claimant’s treatment by Colombia is comparable to Colombia’s treatment of Eco Oro Minerals Corp., which, according to Respondent, is “a large-scale mining project located in close</p> | <p>Colombia objects to this Request for the Production of Documents (“Request”), and requests that it be denied by the Tribunal, for the following reasons.</p> <p><i>First</i>, the documents requested are not relevant to any issue in dispute or material</p> | <p><u>1. Relevance and materiality:</u></p> <p>Respondent’s objection on relevance and materiality objection is meritless.</p> <p>There is a dispute between the Parties regarding whether, at the time of Claimant’s investment, Claimant should</p> | <p>The request is too broad and it is denied.</p> |

CLAIMANT’S REQUEST FOR PRODUCTION OF DOCUMENTS

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| | <p>- Ministry of Environment, Order No. 1241, 20 April 2010</p> <p>- Ministry of Environment, Resolution No. 1015, 31 May 2011; and</p> <p>- Any other actions taken of the National Authorities or any CARs with respect to any environmental license applications submitted by Eco Oro Minerals Corp. (previously known as Greystar Resources).</p> <p>These documents include any administrative records and other assessments, evaluations, reviews, studies, updates, correspondence, meeting minutes, memoranda, guidance documents, presentations, opinions, reports, notes, drafts, maps, methodologies, and any submissions, and other similar documents.</p> | <p>R-43, R-50.</p> | <p>proximity” to the Mining Titles, and specifically that Colombia’s denial of an environmental license to Eco Oro “ought to have [made it] clear” that “obtaining an environmental license for a large-scale mining project in proximity to the Santurbán Páramo was highly unlikely, if not impossible.” Claimant is not equally positioned to assess such allegation, nor is the full Tribunal equally positioned to assess such allegation.</p> <p>The requested documents are or may be relevant and material to understanding evaluating the similarities of Eco Oro’s project, and the reasons for Respondent’s denial of an environmental license to Eco Oro.</p> | <p>to the outcome of this case. In its Memorial, Red Eagle exhibited Eco Oro’s Request for Arbitration and stated that the existence and “<i>development</i>” of Eco Oro’s project, located ten kilometres from Vetás, was one of the characteristics that “<i>made Vetás suitable for developing a large-scale mining project</i>”. Red Eagle also contended that Eco Oro’s project had yielded “<i>favorable results</i>”. (See Memorial, ¶ 41) Colombia responded to those misleading and inaccurate statements by reference to the publicly available (and widely reported) decisions of the Ministry of Environment from 2010 and 2011, of which Red Eagle ought to have been aware at the time of its investment in Colombia, denying the only environmental license for exploitation activities ever sought by Eco Oro. (Counter-Memorial, Section III.H) Any documents “<i>regarding the drafting, revising, and input, including, without limitation, documents referred to, and relied upon in the creation of</i>” those two decisions or any “<i>other actions</i>” taken with respect to Eco Oro’s application are therefore irrelevant to the Tribunal’s assessment of whether the publicly available information concerning Eco Oro’s project “<i>ought to have [made it] clear</i>” that “<i>obtaining an environmental license for a large-scale mining project in proximity to the Santurbán Páramo was highly unlikely, if not impossible.</i>” (Counter-Memorial, ¶ 95) Further, even if such documents were of any relevance, Red Eagle has not shown, and cannot show that such documents would be material to the outcome of this case.</p> | <p>have been aware, based on Respondent’s treatment of Eco Oro’s project, that it would not be able to develop the Vetás Gold Project.</p> <p>In fact, Respondent attempts to treat Claimant’s project similar to Eco Oro’s, and argues that Respondent’s treatment of the Eco Oro’s Project “ought to have [made] it clear” that “obtaining an environmental license for a large-scale mining project in proximity to the Santurbán Páramo was highly unlikely, if not impossible.” Claimant disagrees and maintains that no mining restrictions existed until years later, when Resolution 2090 was issued in December 2014.</p> <p>The requested documents are or may be relevant and material to test Respondent’s assertions on the status of existing norms in this proceeding and to Claimant’s legitimate expectations.</p> <p><u>2. Breadth and burden:</u></p> <p>Respondent’s objection on breadth and undue burden is meritless.</p> <p>The request is narrowly tailored. The referenced resolutions on which this request is based are specifically cited by Respondent in its Counter-Memorial.</p> <p>The request is also temporally narrowed from December 1, 2009 to May 31, 2011; and refers to specific documents, including documents referred to, and relied upon in the creation of (a) Ministry of Environment, Order No. 1241, 20 April 2010 (b) Ministry of</p> | |
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CLAIMANT’S REQUEST FOR PRODUCTION OF DOCUMENTS

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| | | | | <p><i>Second</i>, the Request is excessively broad and unduly burdensome. The documents requested are not precisely defined and concern an indeterminate number of government representatives from the Ministry of Environment, all CARs and eight other governmental authorities in relation to all “<i>actions</i>” taken with respect to any environmental license applications submitted by Eco Oro. The request is excessively vague, and allows neither the Tribunal nor the Respondent to ascertain which specific documents are being sought or may be responsive. It is therefore contrary to IBA Rule 3(3)(a)(i). Red Eagle’s failure to identify documents with particularity also means that it would be unreasonably burdensome to require the Respondent to examine potentially massive amounts of documents in a very short period of time, with the result that this Request should be rejected under IBA Rule 9(2)(c) as well.</p> <p><i>Third</i>, the requested documents may contain information that is subject to legal impediment under Colombian law. Per Article 19 of the Access to Public Information Law documents recording the opinions and points of view expressed by public officials during deliberations are confidential (Annex 1). To the extent the requested documents contain such information, they would be subject to confidentiality protection under the Access to Public Information Law.</p> | <p>Environment, Resolution No. 1015, 31 May 2011, cited by Respondent.</p> <p>3. Confidentiality:</p> <p>Respondent raises a blanket objection regarding confidentiality. It is meritless.</p> <p>Respondent argues that the requested documents “may” contain information that is subject to legal impediment under Article 19 of Colombia’s Access to Public Information law. Respondent is wrong to rely on this inapposite law related to the public’s general access to documents entirely outside of this investment proceeding to seek to get out of its document production obligations in this proceeding under the Treaty that Colombia signed.</p> <p>Respondent’s argument is also misleading. What Article 19 states in full is that information containing the points of view of public officials <i>may be</i> denied in writing, provided there is a clear law or constitutional mandate that prohibits access to a particular document. Here, Colombia has not represented, let alone proven, that it has requested access to the documents that Claimant seeks, and that the request has been prohibited based on a clear law or constitutional mandate. For this reason alone, Colombia’s argument must fail.</p> <p>Further, even if Colombia could point to a law or constitutional mandate that <i>may</i> restrict access to the documents that Claimant seeks (which it has not), Colombia’s Constitutional Court has interpreted the rights to access information broadly, finding that there is</p> | |
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| | | | | | a “fundamental right” to access public information, and that this right may only be limited by a “clear and precise law” that defines the specific type of information that may be the subject of confidentiality. See Judgment C-274 dated May 9, 2013 (Annex 1) p. 7. | |
| 25 | The full record of the case styled as <i>Eco Oro Minerals Corp. v. Republic of Colombia</i> , ICSID Case No. ARB/16/41, including, without limitation, all pleadings, witness statements, expert reports or opinions, and transcripts. | Counter-Memorial ¶¶ 87-95, 360, 370, 403, 411, 418, 456, 496, 536. | In this proceeding, Respondent has relied on the <i>Eco Oro v. Colombia</i> case and may continue to do so. Respondent may also have made submissions in <i>Eco Oro v. Colombia</i> case that may impact the understanding of relevant facts by Respondent’s party-appointed arbitrator, who Claimants respectfully note sits in both that proceeding and this proceeding. Neither Claimant nor the other arbitrators have access to the record of that case. The requested documents are or may be relevant and material to this proceeding and are in the possession of Respondent and Professor Sands. | Colombia objects to this Request for the Production of Documents (“Request”), and requests that it be denied by the Tribunal, for the following reasons. <i>First</i> , the Request fails to establish the relevance of any particular documents or specific categories of documents sought by identifying with reasonable particularity what factual allegations it is intended to establish. Rather, it is essentially a fishing expedition based on the broadest possible rationale that the documents requested “are or may be relevant and material to this proceeding”. As such, it is not “carefully tailored to produce relevant and material documents”, ³¹ and is therefore contrary to Article 3(3)(b) of the IBA Rules. <i>Second</i> , the Request is premised on the speculative and baseless assertion that Colombia “may also have made submissions in <i>Eco Oro v. Colombia</i> case that may impact the understanding of relevant facts by Respondent’s party-appointed arbitrator”. Red Eagle has failed to provide any basis for this assertion. As such, this assertion cannot serve as a valid justification for the Request. | 1. Relevance and materiality: Respondent’s objection on relevance and materiality objection is meritless. The case styled as <i>Eco Oro Minerals Corp. v. Republic of Colombia</i> (ICSID Case No. ARB/16/41) relates to claims under the Treaty arising from a mining project located approximately 10 kilometres from Claimant’s Project. Respondent has relied on <i>Eco Oro</i> in the instant proceeding. Moreover, in its Counter-Memorial on the Merits, Respondent has referred to its actions with respect to the <i>Eco Oro</i> ’s Project to support its current contention that “a large-scale mining project in proximity to the Santurbán Páramo was highly unlikely, if not impossible.” Respondent has selectively produced limited documents related to the <i>Eco Oro</i> proceeding. Moreover, the two documents produced are submitted out of context. Respondent and Professor Sands both have full access to the entire record of the <i>Eco Oro</i> proceeding; Claimant and the other arbitrators do not, which Respondent does not (and cannot) | The Tribunal notes that part of the material is publicly available on the ICSID website: https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/16/41 . |

³¹ 1999 IBA Working Party & 2010 IBA Rules of Evidence Review Subcommittee, “Commentary on the revised text of the 2010 IBA Rules on the Taking of Evidence in International Arbitration,” (“Commentary on the IBA Rules”) p. 9.

CLAIMANT’S REQUEST FOR PRODUCTION OF DOCUMENTS

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| | | | | <p><i>Third</i>, it is highly egregious for Red Eagle, having introduced the Request for Arbitration in <i>Eco Oro v. Colombia</i> into the record through its Memorial, now to suggest that it ought to be entitled to all documents from the <i>Eco Oro v. Colombia</i> case because Professor Sands is also an arbitrator in that case. Further, it is a matter of public record (on the ICSID website³²) that Professor Sands was appointed in the <i>Eco Oro v. Colombia</i> on 27 April 2017, before Red Eagle commenced this arbitration. Red Eagle did not raise any objection to Professor Sands’ appointment in this arbitration or otherwise suggest that the full case record from the <i>Eco Oro v. Colombia</i> case ought to be shared with Red Eagle. For the avoidance of doubt, Colombia does not rely on any non-public submissions from the <i>Eco Oro v. Colombia</i> case in in the present arbitration, and cites only to Canada’s Non-Disputing Party Submission in <i>Eco Oro</i>, which Red Eagle also relies on, is publicly available, and the function of which is to inform other tribunals’ interpretations of the FTA.</p> <p><i>Fourth</i>, while the FTA and Procedural Order No. 1 in <i>Eco Oro v Colombia</i> (which is publicly available on the ICSID website³³) provide for the publication of the award, the Tribunal’s procedural orders, the Notice of Intent, and the Request for Arbitration,³⁴ Colombia is not permitted to disclose the remainder of the case record.</p> | <p>dispute. This includes, among other things, documents directly relevant and material to the instant case. In <i>Eco Oro</i>, for example, Respondent submitted a witness statement of Brigitte Baptiste, the Director of the IAVH, who testified on the delimitation of the Santurbán páramo was delimited.</p> <p>Respondent’s argument that the documents should not be produced because Claimant knew that Professor Sands was a party-appointed arbitrator in the <i>Eco Oro</i> arbitration is inapposite. Respondent chose to appoint Professor Sands in both proceedings, and fairness demands production of these documents.</p> <p>The requested documents are or may be relevant and material to test Respondent’s assertions in this proceeding with respect to the relevance and materiality of the <i>Eco Oro</i> case, as well as to Claimant’s legitimate expectations and claims of breach. This full picture is available, however, to both Colombia and Professor Sands, and should be available to all as the requested documents are or may be relevant and material to test Respondent’s assertions in this proceeding with respect to the relevance and materiality of the <i>Eco Oro</i> case, as well as to Claimant’s legitimate expectations.</p> | |
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³² <https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/16/41>

³³ <https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/16/41>

³⁴ See ¶ 24 of Procedural Order No. 1 in *Eco Oro v Colombia*, available here: <https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/16/41>.

Annex B

Decision on the Respondent's Requests for Production

RESPONDENT'S REQUEST FOR PRODUCTION OF DOCUMENTS

1. Colombia requests that Red Eagle Exploration Limited (“**Red Eagle**” or the “**Claimant**”) produce the documents or categories of documents identified below.
2. For the purpose of this Request for Production of Documents:
 - (a) “Document” means a writing, communication, picture, drawing, maps, program or data of any kind, whether recorded or maintained on paper or by electronic, audio, visual or any other means of storing or recording information.
 - (b) “Red Eagle” shall be understood as Red Eagle, its subsidiaries, affiliates, branches, or any employee, consultant, agent, director, shareholder or authorised representative of Red Eagle.
 - (c) “and” and “or” shall be construed conjunctively and disjunctively as necessary to make the requests inclusive rather than exclusive.
 - (d) “any” and “all” mean “all”.
 - (e) “include” and “including” means “including but not limited to.”
 - (f) Any reference to one or more of the words “address,” “refer to,” “reflect,” “concern,” “constitute,” “discuss,” “evidence,” “demonstrate,” “comprise,” “contain,” or any like word shall be deemed to incorporate all such words and, accordingly, be construed inclusively.
 - (g) Use of the singular includes the plural, and vice versa.

RESPONDENT'S REDFERN SCHEDULE

3. For each of the documents or categories of documents requested, Red Eagle is asked to produce all responsive documents within its possession, custody or control. For the avoidance of doubt, such documents include any Document that is in the possession, custody or control of any other person and that Red Eagle is entitled, legally, contractually or otherwise, to obtain upon request, in the original or in copy form.
4. Red Eagle is requested to arrange its production of responsive Documents in an orderly manner. Where practicable, Documents produced are to be grouped according to the numbered Document requests set forth.
5. Colombia confirms that, to the best of its knowledge and belief, none of the Documents requested below are in its possession, custody or control.
6. Colombia reserves the right to request the production of additional Documents at a later date, including but not limited to Documents whose existence and/or relevance becomes known to it on the basis of Documents that are produced by Red Eagle.
7. Each document request seeks production of documents in their entirety, without abbreviation, expurgation or redaction, and together with any attachments, enclosures and annexes.
8. These document requests are continuing, such that Red Eagle should produce any additional responsive documents that come to its attention or come into its possession, custody or control after the date of the initial production.
9. Unless indicated otherwise, the defined terms used in the present document have the same meaning as those used in prior submissions made by the Parties in the course of the present arbitration.

RESPONDENT’S REDFERN SCHEDULE

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| Row | Documents or Category of Documents Requested | Statement of Relevance/Materiality | | Answer / Objections to the Request to Produce | Reply to Objections to the Request to Produce | Tribunal’s Decision |
| | | Reference to Memorials, Annexes, Witness Statements, or Expert Reports | Comments | | | |
| 1. | <p>Documents from the period 21 September 2017 to 21 September 2018 confirming or reflecting, as of 21 March 2018:</p> <p>a) the identity of Red Eagle’s direct, indirect and/or ultimate legal or beneficial shareholders or other persons with legal or <i>de facto</i> control over Red Eagle including any persons or entities with an ability to exercise substantial influence over Red Eagle’s management, operation and the selection of members of its</p> | <p>Respondent’s Memorial on Jurisdiction, ¶¶ 61-66.</p> <p>Claimant’s Memorial, ¶ 9 and footnote 83</p> | <p>The documents requested are relevant and material to confirm that Colombia was entitled to deny the benefits of Chapter 8 of the FTA to Red Eagle because Red Eagle was not ultimately owned or controlled by nationals of a Party to the FTA at the time Red Eagle submitted its Request for Arbitration.</p> <p>In order to determine whether Red Eagle was “<i>owned or controlled</i>” by nationals of third States under Article 814(2) of the FTA, the Tribunal must determine the identity and nationality of all indirect and/or ultimate owners of Red Eagle and parties that controlled Red Eagle as of the date Red Eagle</p> | <p><u>1. Lack of relevance & materiality:</u> This request underscores Respondent’s lack of evidence to support its efforts to deny Claimants benefits under the Treaty. Claimant has already established that it is a Canadian-owned company, and that Red Eagle Mining Corporation of Canada owned 76.43% of its shares on March 21, 2018. (<i>see, e.g.</i>, Claimant’s Memorial ¶¶ 4, 35, n.83). Respondent does not explain how the information it purports to seek (e.g. names, addresses, share classes, and nationality of <i>all</i> direct, indirect and/or ultimate legal or beneficial shareholders or other persons with legal or <i>de facto</i> control) with respect to other shareholders is relevant or material to the ownership and control of Red Eagle or to whether Colombia can deny benefits under the Treaty.</p> | <p><u>Request maintained.</u></p> <p>Respondent respectfully seeks an order from the Tribunal that the Claimant produce all documents responsive to this request. For the reasons set out below, the Claimant’s objections to this request are without merit and the Claimant’s limited undertaking to produce responsive documents is unduly narrow and selective.</p> <p><u>1. The documents requested are relevant and material</u></p> <p>Claimant has not disputed that the documents requested are relevant and material to Colombia’s pleaded case on denial of benefits. In its justification for this Request, the Respondent explained that the documents requested are relevant and material to the Tribunal’s assessment of ultimate or <i>de facto</i></p> | <p>The Tribunal notes that the Claimant has undertaken to conduct a good faith search. Production of confidential documents subject to a reasonable confidentiality undertaking of the Respondent.</p> |

RESPONDENT’S REDFERN SCHEDULE

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| | <p>board of directors or any other managing body;</p> <p>b) the number of shares of each class or series of shares held directly or indirectly by each of those direct, indirect and/or ultimate legal or beneficial shareholders or other persons with legal or <i>de facto</i> control over Red Eagle;</p> <p>c) the nationality of each of those direct, indirect and/or ultimate legal or beneficial shareholders or other persons with legal or <i>de facto</i></p> | | <p>submitted its Request for Arbitration.¹ To date, Red Eagle has failed to disclose the identity or nationality of such persons or entities.</p> <p>Documents containing information on Red Eagle’s shareholders must be in Red Eagle’s possession, custody and control. Pursuant to Article 49 of the Business Corporations Act of British Columbia, any company registered in British Columbia must be able to provide a list of shareholders detailing (i) their names and last known addresses, and (ii) the number of shares held by those shareholders.²</p> <p>Further, Red Eagle must be in possession or control of documents confirming the identity of the persons or entities with ultimate legal</p> | <p>2. Overly broad: The request is not limited to documents relevant to ownership and control of Claimant but rather seeks information pertaining to non-parties to this proceeding, including ultimate legal or beneficial shareholders of minority interests in the Claimant. Moreover, although Respondent states that the relevant date is one day (<i>i.e.</i> 21 March 2018) it seeks documents covering a period of a year.</p> <p>3. Good Faith Production:</p> <p>Notwithstanding the foregoing, Claimant will conduct a reasonable search of its files and produce relevant documents as of the date of the Notice of Arbitration located in response to this request, if any, provided that they are not otherwise in Colombia’s custody or control, not subject to privilege, and that any confidential information is subject to</p> | <p>ownership of control of Claimant as of the date it submitted its Request for Arbitration, which, in Colombia’s submission (and in accordance with established authority) must be the focus of the Tribunal’s analysis in its assessment of Colombia’s denial of benefits objection. Claimant has failed entirely to engage with this argument, and cannot credibly deny that the documents requested are relevant and material to the issue of denial of benefits as pleaded by Colombia.</p> <p>2. The request is not overly broad</p> <p>Claimant’s objection that the request is “overly broad” is also based on Claimant’s assertion that the Tribunal need only focus on immediate legal ownership of the Claimant. For the reasons set out in the justification for this request and in the Respondent’s Memorial on Jurisdiction (¶¶ 61-66), it is</p> | |
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¹ See *Plama Consortium Limited v. Republic of Bulgaria*, ICSID Case No. ARB/03/24, Decision on Jurisdiction, 8 February 2005, **RL-12**, ¶ 170: “[ownership] includes indirect and beneficial ownership; and control includes control in fact, including an ability to exercise substantial influence over the legal entity’s management, operation and the selection of members of its board of directors or any other managing body”.

² Business Corporations Act of British Columbia, SBC 2002, Chapter 57, Part 2 – Incorporation, Division 5 – Company Records, List of shareholders, § 49.1: “A person may apply to a company, or to the person who has custody or control of its central securities register, for a list setting out the following:

(a) the names and last known addresses of the shareholders;

(b) the number of shares of each class or series of shares held by each of those shareholders.”

RESPONDENT’S REDFERN SCHEDULE

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| | <p>control over Red Eagle.</p> | | <p>and/or <i>de facto</i> control over Red Eagle in light of those persons’ likely involvement in the governance, funding and/or management of Red Eagle.</p> <p>Colombia has limited its request to documents from the 6 month periods prior to and after the date of submission of Red Eagle’s Request for Arbitration (21 March 2018), which is the relevant date for the Tribunal’s assessment.</p> | <p>a reasonable confidentiality undertaking by Respondent.</p> | <p>Colombia’s case that the Tribunal must assess indirect, ultimate and de facto ownership of the Claimant. While the request naturally seeks documents “pertaining” to non-parties to this proceeding (i.e., Claimant’s ultimate, indirect or <i>de facto</i> shareholders), the request concerns only documents in the possession, custody or control of the Claimant. Similarly, while the request specifically seeks documents reflecting indirect, <i>de facto</i> or ultimate shareholding of the Claimant “as of 21 March 2018”, Documents reflecting the position as of that date could reasonably be expected to have been created at an earlier or later date, given that such Documents are not necessarily updated on a daily basis. The Respondent has limited its request to the six-month periods prior to and following 21 March 2018. The Claimant has not suggested that it would be unduly burdensome for Claimant to conduct a search for such documents falling within this narrow, one-year timeframe.</p> <p><u>3. Claimant’s “good faith production” undertaking is unduly narrow and selective</u></p> <p>Colombia notes the Claimant’s undertaking to produce certain</p> | |
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RESPONDENT’S REDFERN SCHEDULE

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| | | | | | <p>documents in response to this request. However:</p> <ol style="list-style-type: none"> 1. The Claimant has sought to limit its production to “<i>documents as of the date of the Notice of Arbitration</i>”. This limitation is unjustified because documents reflecting the position as of 21 March 2018 could reasonably be expected to have been created at an earlier or later date, and the Respondent has limited its request to a narrow date range for such documents of six months prior to and after 21 March 2018. 2. The Claimant has asserted that responsive documents may be subject to privilege. While the basis on which the Claimant could claim privilege over the documents requested is entirely unclear, the Respondent requests that any claim to privilege over a document be accompanied by a privilege log setting out the date and description of the document and the basis on which the Claimant | |
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RESPONDENT’S REDFERN SCHEDULE

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| | | | | | <p>considers it to be privileged.</p> <p>3. Finally, the Claimant has sought to condition its production of responsive documents on “<i>any confidential information [being] subject to a reasonable confidentiality undertaking by Respondent</i>”. There is no basis for the imposition of such a condition. In any event, in accordance with IBA Rule 9.2(e), to the extent Claimant considers that there are “<i>compelling</i>” grounds of commercial or technical confidentiality, the Claimant should provide a log setting out the date and description of the document and the basis on which the Claimant considers it (or information contained within it) to be subject to such grounds.</p> <p>Colombia therefore respectfully seeks an order from the Tribunal that the Claimant produce all documents responsive to this request.</p> | |
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RESPONDENT'S REDFERN SCHEDULE

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| 2. | <p>Documents sent to or created by Red Eagle addressing the effects or potential impact of the following measures or communications on Red Eagle's mining titles, the Vetas Gold Project or any other project in the area of Red Eagle's mining titles, whether before or after such measures were enacted or such communications were reviewed by Red Eagle:</p> <p style="margin-left: 20px;">a) Law 1382 of 2010, (including all drafts and legislative bills leading to the enactment of Law 1382, including Draft Laws Nos. 010 and 042 of 2007 of the Senate, and Draft Law No. 334 of 2008 of the House)</p> <p style="margin-left: 20px;">b) Resolution 937 of 2011</p> <p style="margin-left: 20px;">c) Law 1450 of 2011</p> | <p>Respondent's Memorial on Jurisdiction, Sections III and IV.B.1</p> <p>Respondent's Counter-Memorial, Section VII.B.5.(i) and VII.C.3</p> | <p>The documents requested are relevant and material to the assessment of the Tribunal's jurisdiction <i>ratione temporis</i> and whether the claims were brought within the FTA's Limitation Period.</p> <p>The FTA does not apply to any act or fact occurring prior to its entry into force on 15 August 2011.³ Further, the FTA precludes the submission of a claim if more than 39 months has passed from the date on which a disputing investor knew, or should have known, of the breaches or resulting loss or damage.⁴</p> <p>In Colombia's submission, Red Eagle's claims fall outside of the Tribunal's temporal jurisdiction and are time-barred because they arise out of Colombia's prohibition on mining in páramo areas enacted through Law 1382 of 2010 prior to the FTA's entry into</p> | <p><u>1. Lack of relevance & materiality:</u></p> <p>Respondent does not explain how the documents sent or created by Red Eagle are relevant and material to determining whether measures by Respondent are time-barred by the Treaty.</p> <p>Respondent also does not explain how the documents are relevant and material to the existence of legitimate expectations, which Claimant has already established (<i>see, e.g.</i>, Claimant's Memorial § III.B.1.b), and the requested documents are not necessary to discharge Respondent's burden of proof.</p> <p>Respondent also does not explain how documents from "before ... such measures were enacted or such communications were reviewed by Red Eagle" can possibly be relevant to Claimant's knowledge of the effects or impact of such measures and communications or to its legitimate expectations with regards to the legal framework.</p> <p>Respondent also does not explain how documents assessing impacts on</p> | <p><u>Request maintained.</u></p> <p>Respondent respectfully seeks an order from the Tribunal that the Claimant produce all documents responsive to this request. For the reasons set out below, the Claimant's objections to this request are without merit and the Claimant's limited undertaking to produce responsive documents is unduly narrow and selective.</p> <p><u>1. The documents requested are relevant and material</u></p> <p>The Claimant's assertion that the Respondent "does not explain" the relevance of the documents requested is without merit. The Respondent has explained why the documents requested are relevant and material both to Claimant's lack of any legitimate expectations at the time of its investment and to the claims being time-barred because of Claimant's knowledge of the alleged breaches or alleged resulting loss or damage to its investment more than 39 months before it commenced this arbitration: the laws and regulations</p> | <p>The Tribunal notes that the Claimant will conduct a good faith search. Production of confidential documents subject to a reasonable confidentiality undertaking of the Respondent.</p> |
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³ FTA, Article 801.2.

⁴ FTA, Article Article 821(2)(e)(i).

RESPONDENT'S REDFERN SCHEDULE

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| | <p>d) CDMB, Resolutions Nos. 1532, 1517, 1492 of 2011</p> <p>e) CDMB, Resolution No. 468, of 2013</p> <p>f) ANM's letter to Leyhat of 19 September 2013</p> <p>g) Resolution 2090 of 2014</p> | | <p>force on 15 August 2011, and that ban was applied as against Red eagle's titles before the cut-off date for claims under the FTA (21 December 2014) by both Colombia's environmental authority (the CDMB) and mining authority (the ANM) as confirmed in their respective decisions and communications.</p> <p>The requested documents are relevant and material to establish Red Eagle's knowledge of Colombia's application of the prohibition on mining in páramo areas before the FTA's entry into force and/or cut-off date for claims.</p> <p>In addition, the documents requested are also relevant and material to confirm Red Eagle's lack of any legitimate expectation that it would be permitted to conduct a large-scale mining project in the páramo area of its mining titles. This issue is relevant to Red Eagle's claims for alleged violations of Articles 805 of the FTA (which Red Eagle asserts</p> | <p>other "other projects" (<i>i.e.</i> not Claimant's investment) are relevant and material.</p> <p>Respondent also does not explain how documents assessing effects and impacts of measures and communications predating the delimitation of the paramo would be relevant to expectations with regards to an investment that was not in the paramo.</p> <p><u>2. Overbreadth and speculative nature:</u> The request in question is unduly broad and speculative as it concerns not only seven laws, resolutions and a letter, but also refers to "all drafts" and various "legislative bills." The request is also speculative because it is not based on any evidence. It is apparent that Colombia is not seeking specific documents but that it really wants "all documents confirming any understanding that Red Eagle may had had of the legislative framework that applied prior to and at the time Red Eagle invested." In addition, the request has no time limitations whatsoever.</p> <p><u>3. Undue Burden:</u> The request is unduly burdensome because it lacks any evidentiary value that could outweigh the time, cost, and other</p> | <p>to which the documents requested pertain prohibited mining in the páramo area of Red Eagle's Mining Titles before Red Eagle acquired its Mining Titles, before the cut-off date for claims under the FTA's Limitation Period, and before any of the measures complained of in this arbitration. Importantly, Respondent's expressed position is that "[b]ecause Red Eagle had not obtained an environmental licence or an equivalent environmental management instrument for the <i>Vetas Gold Project</i> prior to 9 February 2010, Red Eagle was precluded, from 9 February 2010, from developing such a project in the <i>Santurbán Páramo</i>" (Respondent's Memorial on Jurisdiction, ¶ 17). Documents confirming Red Eagle's knowledge and understanding of such laws and regulations are therefore relevant and material to what, if anything, Red Eagle expected, and to its knowledge of the prohibition on mining in páramo areas that it claims only took effect as against its project (or any other project that could be undertaken on the area of its Mining Titles) at a later date and thereby caused it alleged loss and damage.</p> | |
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RESPONDENT’S REDFERN SCHEDULE

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| | | <p>protects against the frustration of “<i>legitimate expectations</i>”) and Article 811 of the FTA (which requires a factual assessment of “<i>the extent to which the measure or series of measures interfere with distinct, reasonable investment-backed expectations</i>”⁵).</p> <p>In Colombia’s submission, Red Eagle could not have had any such expectations because mining was already prohibited in páramo areas and the transitional regime did not “grandfather” any large-scale mining project in the area of the titles acquired by Red Eagle. Red Eagle asserts the contrary but has failed to produce any contemporaneous documents confirming its alleged understanding of, or any evidence that it conducted any due diligence into the legal framework applicable to its mining titles.</p> <p>Red Eagle should be ordered to produce all documents</p> | <p>burdens that searching and producing such information would entail.</p> <p><u>4. Good Faith Production:</u> Notwithstanding the foregoing, Claimant will conduct a reasonable search of its files and produce relevant documents from between six months before and six months after the referenced measures located in response to this request, if any, provided that they are not otherwise in Colombia’s custody or control, not subject to privilege, and that any confidential information is subject to a reasonable confidentiality undertaking by Respondent.</p> | <p><u>2. The request is not overly broad or speculative</u></p> <p>The request is neither overly broad nor speculative. It is focused on documents pertaining to Claimant’s knowledge and understanding of a narrow set of measures and a communication in light of which, in Colombia’s submission, Red Eagle could not possibly have held any reasonable expectation that its project would be permissible within the páramo area of its Mining Titles.</p> <p><u>3. The request is not unduly burdensome</u></p> <p>Claimant contends that the evidentiary value of the documents requested would be outweighed by the “<i>time, cost, and other burdens that searching and producing such information</i>”. However, Claimant has failed to explain what “time”, “cost” or “other burdens” would be involved in searching for the narrow category of documents requested, which concerns a targeted list of relevant and material laws and regulations of which Red Eagle ought to have been aware.</p> | |
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⁵ See FTA, Annex 811(a)(ii).

RESPONDENT’S REDFERN SCHEDULE

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| | | | <p>confirming any understanding that Red Eagle may had had of the legislative framework that applied prior to and at the time Red Eagle invested.</p> | | <p><u>4. Claimant’s “good faith production” undertaking is unduly narrow and selective</u></p> <p>Colombia notes Claimant’s undertaking to produce certain documents in response to this request. However:</p> <ol style="list-style-type: none"> 1. The Claimant has sought to limit its production to “<i>documents from between six months before and six months after the referenced measures</i>”. Given that the request focuses on a specific set of measures and a letter, it would not be unduly burdensome for the Claimant (a company that was created for the purpose of acquiring the Mining Titles and conducting exploration activities in their area) to conduct a search of its records for documents addressing the effects or potential impact of such measures or letter, rather than a subset of such records over a self-selected period of time. 2. For the reasons set out in the Respondent’s reply to | |
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RESPONDENT’S REDFERN SCHEDULE

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| | | | | | <p>Claimant’s objections to Request No. 1 above, the Respondent requests that any claim to privilege over a document be accompanied by a privilege log setting out the date and description of the document and the basis on which the Claimant considers it to be privileged.</p> <p>3. As set out above with respect to Request No. 1, there is no basis for the Claimant to condition its production on Respondent giving a “<i>reasonable confidentiality undertaking</i>”. In accordance with IBA Rule 9.2(e), to the extent Claimant considers that there are “<i>compelling</i>” grounds of commercial or technical confidentiality, the Claimant should provide a log setting out the date and description of the document and the basis on which the Claimant considers it (or information contained within it) to be subject to such grounds.</p> | |
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RESPONDENT’S REDFERN SCHEDULE

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| | | | | | Colombia therefore respectfully seeks an order from the Tribunal that the Claimant produce all documents responsive to this request. | |
| 3. | <p>Documents sent to or created by Red Eagle addressing the environmental permitting requirements and applicability of any prohibition on mining in páramo areas within the areas of the mining titles acquired by Red Eagle, including:</p> <p>a) The legal opinions authored by Cardenas & Cardenas Abogados Ltda referenced in the report prepared by Scott Wilson RPA (C-538) at page 86, including the following: (i) Cardenas, Legal Opinion on Vetas Mining Titles to Mr. F. Capponi of CB Gold, 29 April 2010, and (ii) Cardenas, Purchase and Sale Agreement for Mineral</p> | <p>Respondent’s Memorial on Jurisdiction, Sections III and IV.B.1</p> <p>Respondent’s Counter-Memorial, Section VII.B.5.(i) and VII.C.3</p> <p>C-538, p. 86</p> | <p>The Respondent repeats the rationale set out above with respect to Request No. 2.</p> <p>In addition, the Respondent notes that the report prepared by Scott Wilson RPA (C-538), on which Red Eagle relies, contains references and quotations from legal opinions interpreting Law 1382 of 2010 and other legislation applicable to the mining titles acquired by Red Eagle. Red Eagle relies on the selective quotation of those opinions set out in the Scott Wilson RPA report but has failed to put the underlying opinions in evidence.</p> <p>Those opinions, together with any other opinions or documents prepared in connection with any due diligence conducted by Red Eagle into the environmental permitting requirements and applicability of any prohibition on mining in</p> | <p><u>1. Lack of relevance & materiality:</u> Claimant makes reference to its comments with respect to Request No. 2. In addition, Respondent does not explain why two documents included as references to a technical report and not by Claimant are relevant to Claimant’s understanding of “the environmental permitting requirements and applicability of any prohibition on mining in páramo areas” or its legitimate expectations. Contrary to Respondent’s assertion, Claimant has not quoted these opinions or corresponding portions of C-538 in its submission. Claimant has already addressed this and the requested documents are not necessary to discharge Respondent’s burden of proof.</p> <p><u>2. Overbreadth and speculative nature:</u> The request in question is unduly broad and speculative as it concerns not only the two documents referenced in the technical report, but also “any other legal opinions or other Documents prepared in connection with any due diligence…” and is not date limited.</p> | <p><u>Request maintained.</u></p> <p>Respondent respectfully seeks an order from the Tribunal that the Claimant produce all documents responsive to this request. For the reasons set out below, the Claimant’s objections to this request are without merit and the Claimant’s limited undertaking to produce responsive documents is unduly narrow and selective.</p> <p><u>1. The documents requested are relevant and material</u></p> <p>The Respondent repeats its reply to Claimant’s objections to Request No. 2. In addition, the Respondent notes that this request concerns legal opinions sought and received by the Claimant with respect to the applicable legal framework to its investment, including the prohibition on mining in the páramo areas of the Mining Titles acquired by the Claimant. The Claimant cannot credibly deny that such documents are relevant to its legitimate expectations.</p> | <p>The Claimant shall produce the legal opinions of Cárdenas Abogados and responsive documents found in the good faith search. Production of confidential documents subject to a reasonable confidentiality undertaking of the Respondent.</p> |

RESPONDENT’S REDFERN SCHEDULE

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| | <p>Concessions in the Republic of Colombia: Legal Opinion by Cardenas & Cardenas Abogados Ltda, 9 October 2009.</p> <p>b) Any other legal opinions or other Documents prepared in connection with any due diligence conducted by Red Eagle into the environmental permitting requirements and applicability of any prohibition on mining in páramo areas within the mining titles acquired by Red Eagle prior to, at the time of or after entering into agreements to acquire its mining titles.</p> | | <p>páramo areas within the mining titles acquired by Red Eagle are relevant and material to Red Eagle’s assertions that it held legitimate expectations that it would be permitted to carry out a large-scale mining project in the páramo area of its titles.</p> | <p><u>3. Privilege:</u> This request is seeking documents that could be subject to the attorney-client and attorney work product privileges.</p> <p><u>4. Good Faith Production:</u></p> <p>Notwithstanding the foregoing, Claimant will conduct a reasonable search of its files and produce relevant documents from 2009 and 2010 located in response to this request, if any, provided that they are not otherwise in Colombia’s custody or control, not subject to privilege, and that any confidential information is subject to a reasonable confidentiality undertaking by Respondent.</p> | <p>Remarkably, the Claimant contends that it should not be required to disclose the opinions referenced in Exhibit C-538 because the Claimant has not specifically relied on them (or portions of Exhibit C-538 referring to them). This argument is circular and does not justify the withholding of the relevant documents. The reference to such opinions in Exhibit C-538 confirms that the Claimant was advised with respect to the environmental permitting requirements and applicability of any prohibition on mining in páramo areas within the mining titles acquired by Red Eagle. The Claimant should now be required to disclose such opinions in order for the Tribunal and the Respondent to be able to assess the Claimant’s understanding of the applicable environmental regulatory framework.</p> <p><u>2. The request is not overly broad or speculative</u></p> <p>The request is narrow and specific. It concerns two legal opinions obtained by the Claimant and any other legal opinions or Documents prepared in connection with any due diligence conducted by the Claimant into the environmental permitting requirements and applicability of any prohibition on</p> | |
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| | | | | | <p>mining in páramo areas within the Mining Titles acquired by the Claimant. As only the Claimant has knowledge of when it obtained such opinions or created such other Documents, the Respondent is unable to provide a specific date range for such documents. However, it would not be unduly burdensome for the Claimant to conduct a search of its records for such documents, and indeed the Claimant has not suggested that such a search would be unfeasible or overly costly.</p> <p><u>3. Privilege</u></p> <p>Claimant cannot credibly claim that “attorney-client” or “attorney work product privileges” applies over the opinions authored by Cardenas Abogados Ltda. Those opinions were disclosed to Scott Wilson RPA and excerpts from those opinions are published in the Scott Wilson RPA Report itself. Any applicable privileged would therefore have been waived.</p> <p>In any event, for the reasons set out in the Respondent’s reply to the Claimant’s objections to Request No. 1 above, the Respondent requests that any claim to privilege over any other responsive document be accompanied by a privilege log setting out the date and description</p> | |
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| | | | | | <p>of the document and the basis on which the Claimant considers it to be privileged.</p> <p><u>4. Claimant’s “good faith production” undertaking is unduly narrow and selective</u></p> <p>Colombia notes the Claimant’s undertaking to produce certain documents in response to this request. However:</p> <ol style="list-style-type: none"> 1. The Claimant has sought to limit its production to “<i>documents from 2009 and 2010</i>”. There is no basis for Claimant to withhold relevant documents created prior to 2009 or after 2010. The Claimant has provided no justification for this limited date range, and has not suggested that it would be unduly burdensome for it to conduct a search of its records for responsive documents beyond this period. 2. For the reasons set out in the Respondent’s reply to the Claimant’s objections to Request No. 1 above, the Respondent requests that any claim to privilege over a document be | |
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| | | | | | <p>accompanied by a privilege log setting out the date and description of the document and the basis on which the Claimant considers it to be privileged.</p> <p>3. As set out above with respect to Request No. 1, there is no basis for the Claimant to condition its production on Respondent giving a “<i>reasonable confidentiality undertaking</i>”. In accordance with IBA Rule 9.2(e), to the extent the Claimant considers that there are “<i>compelling</i>” grounds of commercial or technical confidentiality, the Claimant should provide a log setting out the date and description of the document and the basis on which the Claimant considers it (or information contained within it) to be subject to such grounds.</p> <p>Colombia therefore respectfully seeks an order from the Tribunal that the Claimant produce all</p> | |
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| | | | | | documents responsive to this request. | |
| 4. | <p>(a) Any Documents created by Red Eagle assessing the impact, if any, of the preliminary map of the Santurbán Páramo published by the Ministry of Environment in April 2014 referenced in Ana Milena Vásquez’s witness statement at ¶ 43; and</p> <p>(b) The map published on Red Eagle’s website www.cbgoldinc.com on or before 2 April 2014, as referenced in the Claimant’s press release “Colombian Ministry of Environment Releases Boundaries of the Paramo of Santurban – Development of the Vetas Gold Project Doesn’t Appear to be Affected” (BR-36)</p> | <p>Witness Statement of Ana Milena Vásquez, ¶ 43</p> <p>Memorial, ¶ 71</p> <p>Brattle Report, ¶¶ 90 and 101</p> <p>BR-36, ‘Colombian Ministry of Environment Releases Boundaries of the Paramo of Santurban – Development of the Vetas Gold Project Doesn’t Appear to be Affected’</p> | <p>The documents requested are relevant and material to the assessment of Red Eagle’s contention that the delimitation issued on 19 December 2014 through Resolution 2090 was materially different to the preliminary map published in April 2014.</p> <p>In her witness statement, Ms. Vásquez states that: “<i>In April 2014, MADS published the boundaries of the Santurbán Paramo on its web page. Red Eagle examined that map and, based on that examination, our geology department concluded that, as per such map, San Bartolo, La Triada de Oro, Los Delirios, San Alfonso, Arias, Santa Isabel and La Peter were not within the boundaries of the Santurbán Paramo. Then, Real Minera and El Dorado looked to be marginally affected, with San Antonio and La Vereda showing an even greater overlap. (Annex 90).</i>” (¶ 43) The document appended as “Annex 90” to</p> | <p><u>1. Lack of relevance & materiality:</u> Respondent has denied the existence of a “preliminary delimitation” in April 2014, and asserted that the map published by the Ministry of Environment was “providing an update on its work mapping the páramo.” (Counter-Memorial ¶ 431). Respondent does not explain how the requested documents are relevant and material to the Tribunal’s assessment of Ms. Vasquez’s testimony or of the impact of Resolution 2090 and subsequent measures by Respondent. Claimant has already addressed this and the requested documents are not necessary to discharge Respondent’s burden of proof.</p> <p><u>2. Overbreadth and speculative nature:</u> The request in question is unduly broad and speculative because part (a) has no date limitations and part (b) appears to be speculating as to the existence of mapping other than what is already in Colombia’s possession.</p> <p><u>3. Good Faith Production:</u> Notwithstanding the foregoing, Claimant will conduct a reasonable search of its files and produce relevant documents from April 2014</p> | <p><u>Request maintained.</u></p> <p>Respondent respectfully seeks an order from the Tribunal that the Claimant produce all documents responsive to this request. For the reasons set out below, the Claimant’s objections to this request are without merit and the Claimant’s limited undertaking to produce responsive documents is unduly narrow and selective.</p> <p><u>1. The documents requested are relevant and material</u></p> <p>The Claimant’s assertion that Respondent “<i>does not explain</i>” the relevance and materiality of the documents requested is without merit. As explained in the Respondent’s justification for this request, the documents requested are directly relevant to the Tribunal’s assessment of whether, as Claimant and its witness Ms. Vásquez contend, prior to Resolution 2090, Claimant reasonably believed that the páramo delimitation would not materially impact on its project based on the map published by the Ministry of Environment in April 2014. Documents reflecting Red Eagle’s assessment of the impact of the</p> | <p>The Tribunal notes that the Claimant has undertaken to conduct a good faith search. Production of confidential documents subject to a reasonable confidentiality undertaking of the Respondent.</p> <p>The Claimant shall produce the map published on the Red Eagle website on or before April 2014.</p> |

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| | | | <p>Ms. Vásquez’s statement appears to be a press release issued by Red Eagle that does not relate to the April 2014 publication by the Ministry of Environment.</p> <p>The documents requested are relevant to the Tribunal’s assessment of Ms. Vásquez’s testimony in relation to the impact of the preliminary map of the delimitation published in April 2014. Red Eagle relies on Ms. Vásquez’s testimony in this regard in support of its position that the delimitation issued on 19 December 2014 through Resolution 2090 was materially different to preliminary map published in April 2014 in terms of overlap with Red Eagle’s intended project in the area of its mining titles.</p> | <p>located in response to this request, if any, provided that they are not otherwise in Colombia’s custody or control, not subject to privilege, and that any confidential information is subject to a reasonable confidentiality undertaking by Respondent.</p> | <p>páramo delimitation on its project, as well as the map to which Ms. Vásquez refers are indisputably relevant and material to that issue.</p> <p><u>2. The request is not overly broad or speculative</u></p> <p>The request is not overly broad or speculative. The request seeks a specific category of documents relating to a preliminary map issued by the Ministry of Environment in April 2014. The Claimant has not suggested that it would be unduly burdensome for it to conduct a reasonable search for such documents. Nor has the Claimant provided any reason why the request involves “<i>speculating as to the existence of mapping other than what is already in Colombia’s possession</i>”. Without verifying the map in Claimant’s possession, the Respondent has no way of knowing whether the map referenced in the Claimant’s own press release and published on its website (but since removed) is the same as any map produced by the Ministry of Environment.</p> <p><u>3. Claimant’s “good faith production” undertaking is unduly narrow and selective</u></p> <p>Colombia notes the Claimant’s undertaking to produce certain</p> | |
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| | | | | | <p>documents in response to this request. However:</p> <ol style="list-style-type: none"> 1. The Claimant has sought to limit its production to documents "<i>from April 2014</i>". There is no basis for Claimant to limit its production of responsive documents to those from April 2014, nor would it be unduly burdensome for the Claimant to conduct a reasonable search of its records for responsive documents beyond that month. 2. For the reasons set out in the Respondent's reply to Claimant's objections to Request No. 1 above, the Respondent requests that any claim to privilege over a document be accompanied by a privilege log setting out the date and description of the document and the basis on which the Claimant considers it to be privileged. 3. As set out above with respect to Request No. 1, there is no basis for the Claimant to condition its | |
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| | | | | | <p>production on Respondent giving a “<i>reasonable confidentiality undertaking</i>”. In accordance with IBA Rule 9.2(e), to the extent the Claimant considers that there are “<i>compelling</i>” grounds of commercial or technical confidentiality, the Claimant should provide a log setting out the date and description of the document and the basis on which the Claimant considers it (or information contained within it) to be subject to such grounds.</p> <p>Colombia therefore respectfully seeks an order from the Tribunal that the Claimant produce all documents responsive to this request.</p> | |
| 5. | <p>a) Any consultancy agreement or other Document memorializing the terms on which Ana Milena Vásquez provides “<i>independent consulting services</i>” to Minera Vetas Limited as referenced in her witness statement at ¶ 2;</p> | <p>Witness Statement of Ana Milena Vásquez, ¶ 2</p> | <p>The documents requested are relevant and material to the Tribunal’s assessment of the credibility of Red Eagle’s sole fact witness, Ana Milena Vásquez.</p> <p>In her witness statement, Ms. Vásquez states that she currently provides “<i>independent consulting</i></p> | <p><u>1. Lack of relevance & materiality:</u> Respondent does not explain how the terms of the requested documents are relevant or material to the Tribunal’s assessment of the credibility of Ms. Vazquez. Respondent does not refer to anything in Ms. Vazquez’s statement or otherwise that would give the Tribunal reason to question</p> | <p><u>Request maintained.</u> The Respondent respectfully seeks an order from the Tribunal that the Claimant produce all documents responsive to this request. For the reasons set out below, the Claimant’s objections to this request are without merit.</p> | <p>The Claimant shall produce the documents showing the terms of service of Ms. Vásquez.</p> |

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| | <p>b) Any Documents conferring or memorializing any monetary or other benefit that Ms. Vásquez stands to gain from any award issued in favour of Red Eagle in this arbitration.</p> | | <p><i>services</i>” to Minera Vetas Limited, which is indirectly wholly owned by Red Eagle. The terms of that arrangement have not been disclosed by Red Eagle, yet are relevant to the Tribunal’s assessment of Ms. Vásquez’s credibility as a witness in this arbitration. Similarly, whether Ms. Vásquez otherwise stands to benefit from an award in favour of Red Eagle is also relevant to the Tribunal’s assessment of Ms. Vásquez’s credibility.</p> | <p>her credibility, and this request is nothing but a fishing expedition.</p> <p><u>2. Overbreadth and speculative nature:</u> The request in question is unduly broad and speculative because Respondent does not refer to any evidence that would suggest that Ms. Vazquez stands to gain from any award issued in favor of Red Eagle in this arbitration. Respondent is inappropriately using this document production phase to call into question Ms. Vazquez’s credibility absent any evidence.</p> | <p><u>1. The documents requested are relevant and material</u></p> <p>Contrary to the Claimant’s assertions, the Respondent has provided a very specific reason why the credibility of Claimant’s sole witness, Ms. Vásquez, is open to question: Ms. Vásquez states that she currently provides “<i>independent consulting services</i>” to Minera Vetas Limited, which is indirectly wholly owned by Red Eagle, yet Ms. Vásquez provides no details of the terms on which those services are provided, or whether such services involve anything other than acting as a witness for the Claimant in this arbitration. The terms of any remuneration provided to Ms. Vásquez in exchange for her testimony, and any benefit that Ms. Vásquez stands to derive from a monetary award in this arbitration are highly relevant to Ms. Vásquez’s credibility.</p> <p><u>2. The request is not overly broad or speculative</u></p> <p>Claimant does not deny that Ms. Vásquez stands to benefit from any award issued in favour of Red Eagle, but claims that the request is speculative because Respondent “does not refer to any evidence”. Respondent’s request is not</p> | |
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| | | | | | speculative. Given that, to the Respondent’s knowledge, Ms. Vásquez’s professional current occupation is that of Senior Vice-President, External Affairs and Sustainability at Continental Gold Inc. (<i>i.e.</i> , another mining company unconnected with the Claimant), it stands to reason that, pursuant to the “ <i>independent consultancy</i> ” arrangement to which Ms. Vásquez refers in her witness statement, Ms. Vásquez may be in receipt of remuneration in exchange for her testimony in this arbitration and/or entitled to a share of the proceeds of any award. It would not be unduly burdensome for the Claimant to disclose such arrangements so that the Tribunal may assess the credibility and weight to be placed on Ms. Vásquez’s testimony accordingly. | |
| 6. | Documents reflecting or concerning any analyses that Red Eagle conducted in or before August 2017 on the basis of which Red Eagle concluded, as of “ <i>late August 2017</i> ” that “ <i>because of the reduction of the Mining Title areas, combined with the fact that the new páramo delimitation would be more extensive than the previous one, it</i> | Witness Statement of Ana Milena Vásquez, ¶ 60 Memorial, ¶ 85 Brattle Report, ¶¶ 113-132 | The documents requested are relevant and material to the assessment of Ms. Vásquez’s assertion that in “ <i>late August 2017</i> ” Red Eagle concluded that it would not be possible to develop the “ <i>large-scale mining project it had initially anticipated in Vetás</i> ”. (Witness Statement | <u>1. Lack of relevance & materiality:</u> Respondent does not explain how the terms of the requested documents are relevant or material to determining the occurrence of an expropriation or violation of the FET standard. Claimant has already addressed this issue and the requested documents are not necessary to discharge Respondent’s burden of proof. Ms. Vasquez has addressed impacts on | The Claimant’s objections to production fail to engage with the Respondent’s justification for the request and are without merit. However, as the Claimant has agreed to produce responsive documents from May 2016 to August 2017, Colombia will await Claimant’s production in accordance with its undertaking. For the avoidance of doubt: | The Tribunal notes that the Claimant has undertaken to conduct good faith search. Production of confidential documents subject to a reasonable confidentiality |

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| | <p>would not be possible to develop the large-scale mining project it had initially anticipated in <i>Vetas.</i>” (Vasquez WS, ¶ 60)</p> | <p>BR-54, CB Gold Inc., Management's Discussion and Analysis for the First Quarter of 2016, dated 30 May 2016, p. 3.</p> <p>BR-182, Brattle Workpaper A - Timelines of Claimant’s Statements includes a comprehensive list of statements by Claimant and its majority owner, Red Eagle Mining, concerning the impact of the Measures on the Vetas Gold Project</p> | <p>of Ana Milena Vásquez, ¶ 60)</p> <p>Red Eagle relies on this assertion as the basis for its claim in the arbitration that Colombia’s measures “<i>rendered the Project unviable</i>” and thereby constituted an indirect expropriation and violation of the FET standard under the FTA. (See <i>e.g.</i> Memorial, ¶ 85) However, this position is wholly inconsistent with Red Eagle’s own contemporaneous public statements that Colombia’s measures had “<i>a relatively minor impact on the Vetas Gold Project</i>” (BR-54, p. 3 and the other statements referenced in BR-182). Similarly, Red Eagle’s claim that the measures rendered a large-scale project in the area of its titles economically unviable are irreconcilable with the conclusions reached by Red Eagle’s own technical consultant Giovanni J. Ortiz. (See Brattle Report, ¶¶ 113-132 and BR-49 at pp. 77-78)</p> | <p>the project from May 2016 to August 2017.</p> <p>2. Overbreadth and speculative nature: The request in question is unduly broad and speculative because Respondent is fishing for documents to support its own contentions. In addition, there is no date limitation.</p> <p>3. Good Faith Production:</p> <p>Notwithstanding the foregoing, Claimant will conduct a reasonable search of its files and produce relevant documents from May 2016 to August 2017 located in response to this request, if any, provided that they are not otherwise in Colombia’s custody or control, not subject to privilege, and that any confidential information is subject to a reasonable confidentiality undertaking by Respondent.</p> | <ol style="list-style-type: none"> 1. For the reasons set out in the Respondent’s reply to Claimant’s objections to Request No. 1 above, the Respondent requests that any claim to privilege over a document be accompanied by a privilege log setting out the date and description of the document and the basis on which the Claimant considers it to be privileged. 2. As set out above with respect to Request No. 1, there is no basis for the Claimant to condition its production on Respondent giving a “<i>reasonable confidentiality undertaking</i>”. In accordance with IBA Rule 9.2(e), to the extent the Claimant considers that there are “<i>compelling</i>” grounds of commercial or technical confidentiality, the Claimant should provide a log setting out the date and description of the document and the basis on which the Claimant considers it (or information contained | <p>undertaking of the Respondent.</p> |
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| | | BR-49 , Ortiz 12 June 2017 Technical Report, pp. 77-78. | Red Eagle has failed to adduce any documents supporting Ms. Vásquez’s statement. To the extent that any such documents exist, Red Eagle should be ordered to produce them. | | within it) to be subject to such grounds. | |
| 7. | Documents, including presentations that Red Eagle delivered to potential investors, including at industry conferences (for example, the Prospectors & Developers Association of Canada (PDAC) conference) or similar events after 21 December 2014, reflecting any valuation analyses prepared by or for Red Eagle as to the value of its mining titles or project in Colombia notwithstanding Colombia’s measures. | Brattle Report, Section VI.B.2. BR-54 , CB Gold Inc., Management's Discussion and Analysis for the First Quarter of 2016, dated 30 May 2016, p. 3. | The Respondent repeats the rationale set out above with respect to Request no. 6. The documents requested are relevant and material to confirm that Claimant itself determined that Colombia’s measures did not materially impact on the value of its Vetas Gold Project or mining titles and made representations to this effect to potential investors and other industry participants at the time. | <u>1. Lack of relevance & materiality:</u> Claimant makes reference to its comments with respect to Request No. 6. Respondent does not explain how the documents dating as of December 2014 are relevant and material to the assessment of Ms. Vásquez’s statement with respect to 2017. Respondent also does not explain how documents “reflecting any valuation analysis” are relevant and material to whether Colombia’s actions constitute violations of the Treaty. Claimant has already addressed this and the requested documents are not necessary to discharge Respondent’s burden of proof. <u>2. Overbreadth and speculative nature:</u> The request in question is unduly broad and speculative as it concerns not only referenced presentations but also analyses of “as to the value of [Claimant’s] mining titles or project in Colombia | <u>Request maintained.</u> The Respondent respectfully seeks an order from the Tribunal that the Claimant produce all documents responsive to this request. For the reasons set out below, the Claimant’s objections to this request are without merit. <u>1. The documents requested are relevant and material</u> The Claimant’s objections are premised on a mischaracterization of the rationale for this request. The request does not seek documents that relate to issues of liability under the FTA. Rather, the request seeks documents that are relevant and material to the issues of causation and valuation of the Claimant’s losses. The Claimant cannot credibly dispute that the documents requested, reflecting Claimant’s own valuation analyses and presentations to prospective investors with respect to such analyses, are relevant to the | The Claimant shall produce any presentation after December 21, 2014 showing valuation of titles or project, except those which are in the public domain. |

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| | | | | <p>notwithstanding Colombia’s measures” over a period of more than five years.</p> <p><u>3. Undue Burden:</u> The request is unduly burdensome because it lacks any evidentiary value that could outweigh the time, cost, and other burdens that searching and producing such information would entail.</p> | <p>Tribunal’s assessment of the issue of valuation of Claimant’s alleged losses.</p> <p>Further, the documents requested concern documents dated “after 21 December 2014”, being the cut-off date for claims under the FTA’s Limitation Period. As such, the request is tailored to produce only documents that would reflect the Claimant’s own assessment of the impact, if any, of Colombia’s measures adopted after that date on the value of the Claimant’s project or mining titles.</p> <p><u>2. The request is not overly broad or speculative</u></p> <p>The request is not overly broad or speculative. The Respondent has limited its request to the period following the cut-off date for claims under the FTA’s limitation period, and focused it on documents reflecting the Claimant’s own assessment of the value of the Claimant’s project or mining titles.</p> <p><u>3. The request is not unduly burdensome</u></p> <p>The Claimant contends that the evidentiary value of the documents requested would be outweighed by the “<i>time, cost, and other burdens that searching and producing such</i></p> | |
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| | | | | | information”. However, the Claimant has failed to explain what “time”, “cost” or “other burdens” would be involved in searching for the narrow category of documents requested, which concerns specific valuation-related documents which the Claimant has likely already identified and segregated in the context of the preparation of its case on valuation. | |
| 8. | Analyses and supporting Documents on which Red Eagle relied to reach the conclusions included in the public statements issued after 21 December 2014 in the documents listed in BR-182 in relation to the impact of the Páramo delimitation on the Vetás Gold Project and Red Eagle’s mining titles | Brattle Report, ¶¶ 107, 127-131. BR-182 , Brattle Workpaper A - Timelines of Claimant’s Statements | The Respondent repeats the rationale set out above with respect to Requests no. 6 and 7. After 21 December 2014 through at least September 2017, the Claimant made numerous statements concerning the impact of the Páramo delimitation on the Vetás Gold Project. Those statements are listed in BR-182 and cannot be reconciled with the position taken by Red Eagle in this arbitration that Colombia’s measures rendered the Vetás Gold Project or any other project on the area of its mining titles unviable (See e.g. Memorial, ¶ 85). | 1. Lack of relevance & materiality: Claimant makes reference to its comments with respect to Requests No. 6 and 7. Respondent does not explain how the requested analyses and supporting documents with respect to statements cited by its valuation expert are relevant and material to assessing whether Colombia’s measures constitute a Treaty violation. Claimant has already demonstrated the impact of the measures on Claimant’s Project. (see, e.g., Claimant’s Memorial ¶¶ 79-87; Vasquez ¶¶ 56-60) and the requested documents are not necessary to discharge Respondent’s burden of proof. 2. Overbreadth and speculative nature: The request in question is unduly broad and speculative as it concerns not only the documents | Request maintained. The Respondent respectfully seeks an order from the Tribunal that the Claimant produce all documents responsive to this request. For the reasons set out below, the Claimant’s objections to this request are without merit. <u>1. The documents requested are relevant and material</u> The Claimant’s objections are premised on a mischaracterization of the rationale for this request. The request does not seek documents relevant to issues of liability under the FTA. Rather, the request seeks documents that are relevant and material to the issues of causation and valuation. Specifically, the documents underpinning the Claimant’s contemporaneous public statements as to the impact of the Páramo | The Claimant shall produce documents underpinning public statements, except those which are in the public domain. |

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| | | | | <p>referenced in BR-182, but also analyses and supporting documents predating such statements.</p> | <p>delimitation on the Vetás Gold Project and Red Eagle's mining title are relevant and material to the Tribunal's assessment of whether the Páramo delimitation had a material impact on the value of the Claimant's Project (as the Claimant now contends, contrary to its own contemporaneous public statements listed in Exhibit BR-182), and if so, to the extent of that impact. The Claimant has not disputed this, and instead seeks to rely on its own conclusory statements in its Memorial and witness's statement. In order to allow the Respondent and the Tribunal to assess the true position, the Claimant must be ordered to disclose its contemporaneous analyses in relation to the impact of the Páramo delimitation on the Vetás Gold Project and Red Eagle's mining titles.</p> <p><u>2. The request is not overly broad or speculative</u></p> <p>The request is focused on analyses and documents relied upon by the Claimant to produce the documents specifically listed in Exhibit BR-182 (each of which was published on SEDAR and thereby disclosed to the stock market), which contain a series of statements as to the lack of material impact of the páramo</p> | |
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| | | | | | <p>delimitation on the Claimant’s Project and Mining Titles. It is reasonable to assume that in arriving at the conclusions expressed in those public statements, the Claimant prepared analyses and other supporting Documents. Indeed, the Claimant had an obligation, as a publicly listed company, to ensure that it did not make false or misleading statements to investors.</p> <p>Finally, it would not be unduly burdensome for the Claimant to search its records for such documents with respect to each of the specific published documents listed in Exhibit BR-182.</p> | |
| 9. | <p>Any internal memoranda, minutes of meetings of the Board of Directors, communications with auditors or other Documents concerning any impairment analyses that the Claimant or its advisors conducted to determine that it would be appropriate for financial reporting purposes not to write down the carrying value of the Vetás Gold Project (or any of individual titles comprising the Vetás Gold Project).</p> | <p>Brattle Report, ¶ 132.</p> | <p>The Respondent repeats the rationale set out above with respect to Request no. 6. The documents requested are relevant and material to confirm that Claimant’s own view, as reflected in Red Eagle’s decision not to record any impairment as against the Vetás Gold Project or any of the mining titles comprising the Vetás Gold Project, was that Colombia’s measures did not materially impact on Red Eagle’s Vetás Gold Project.</p> | <p><u>1. Lack of relevance & materiality:</u> Claimant makes reference to its comments with respect to Request No. 6. Respondent does not explain how a determination of not to write down carrying value is relevant and material to the assessment of Ms. Vásquez statement with respect to 2017 or to assessing whether Colombia’s measures constitute a Treaty violation. Claimant has already demonstrated the impact of the measures on Claimant’s Project, and the requested documents are not necessary to discharge Respondent’s burden of proof.</p> | <p><u>Request maintained, as narrowed below.</u> Respondent respectfully seeks an order from the Tribunal that the Claimant produce all documents responsive to this request, but agrees to narrow the request to responsive documents dated after 21 December 2014. For the reasons set out below, the Claimant’s objections to this request are without merit and the Claimant’s limited undertaking to produce responsive documents is unduly narrow and selective.</p> | <p>The Tribunal notes that the Claimant has undertaken to conduct a good faith search. Production of confidential documents subject to a reasonable confidentiality undertaking of the Respondent.</p> <p>The Claimant shall conduct the</p> |

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| | | | | <p><u>2. Overbreadth and undue burden:</u> The request in question is unduly broad and burdensome because there is no date limitation and because it lacks any evidentiary value that could outweigh the time, cost, and other burdens that searching and producing such information would entail. .</p> <p><u>3. Good Faith Production:</u> Notwithstanding the foregoing, Claimant will conduct a reasonable search of its files and produce relevant documents as of 21 December 2014 through September 2017 located in response to this request, if any, provided that they are not otherwise in Colombia’s custody or control, not subject to privilege, and that any confidential information is subject to a reasonable confidentiality undertaking by Respondent.</p> | <p><u>1. The documents requested are relevant and material</u></p> <p>The Claimant’s objections are premised on a mischaracterization of the rationale for this request. The request does not seek documents relevant to issues of liability under the FTA. Rather, the request seeks documents that are relevant and material to the issues of causation and valuation. Specifically, the documents requested are relevant and material to the assessment of Ms. Vasquez’s assertion, on which Claimant relies in support of its case on causation, that the “<i>large-scale mining project devised</i>” was no longer economically feasible as a result of Colombia’s measures. If that were true, it is reasonable to infer that the value of the Project would have been affected, potentially requiring an impairment of its carrying value in accordance with applicable accounting standards. The documents requested would therefore confirm Claimant’s own assessments, as well as those of its auditors, as to the impact of the measures on the Vetas Gold Project’s value, if any. The Claimant has not disputed this, and instead seeks to rely on its own conclusory statements in its</p> | <p>search for – and disclose - documents generated after December 21, 2014.</p> |
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| | | | | | <p>Memorial and witness’s statement. In order to allow the Respondent and the Tribunal to assess the true position, the Claimant must be ordered to disclose all documents responsive to this request.</p> <p><u>2. The request is not overly broad or unduly burdensome</u></p> <p>The Respondent agrees to limit its request to documents dated after 21 December 2014, the cut-off date for claims under the FTA. Accordingly the request would only concern documents reflecting any impairment analyses with respect to measures adopted after that date.</p> <p>The Claimant contends that the evidentiary value of the documents requested would be outweighed by the “<i>time, cost, and other burdens that searching and producing such information</i>”. However, the Claimant has failed to explain what “time”, “cost” or “other burdens” would be involved in searching for its impairment analyses that it and its auditors are required to carry out by law.</p> <p><u>3. Claimant’s “good faith production” undertaking is unduly narrow and selective</u></p> <p>Colombia notes the Claimant’s undertaking to produce certain</p> | |
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| | | | | | <p>documents in response to this request. However:</p> <ol style="list-style-type: none"> 1. The Claimant has sought to limit its production to documents “<i>as of 21 December 2014 through September 2017</i>”. While the Respondent agrees with the Claimant’s proposal to produce documents from 21 December 2014, there is no basis for Claimant to withhold documents dated after September 2017. Because impairment analyses are conducted once a year (or at most quarterly), in connection to the preparation of audited financial statements, it is reasonable to assume that any potential impairment with respect to events occurring in September 2017 may not have been considered until later in the year or early in the following year. 2. For the reasons set out in the Respondent’s reply to Claimant’s objections to Request No. 1 above, the Respondent requests that any claim to privilege over | |
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| | | | | | <p>a document be accompanied by a privilege log setting out the date and description of the document and the basis on which the Claimant considers it to be privileged.</p> <p>3. As set out above with respect to Request No. 1, there is no basis for the Claimant to condition its production on Respondent giving a “<i>reasonable confidentiality undertaking</i>”. In accordance with IBA Rule 9.2(e), to the extent the Claimant considers that there are “<i>compelling</i>” grounds of commercial or technical confidentiality, the Claimant should provide a log setting out the date and description of the document and the basis on which the Claimant considers it (or information contained within it) to be subject to such grounds.</p> <p>Colombia therefore respectfully seeks an order from the Tribunal that the Claimant produce all documents responsive to this</p> | |
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| | | | | | request, subject to a date range of 21 December 2014 to present. | |
| 10. | Documents recording any submissions or other representations made to or in connection with the Colombian Constitutional Court <i>tutela</i> challenge decided in Judgment T-361 of 30 May 2017 by Red Eagle or Minera Vetas | Memorial, ¶¶ 74-76 Counter-Memorial, ¶ 342 C-22, Constitutional Court, Judgment T-361, 30 May 2017, pp. 52-54. | The documents requested are relevant and material to the credibility of Red Eagle’s contention in this arbitration that Resolution 2090 “ <i>was arbitrary and failed to comply with the applicable requirements</i> ” (Memorial, ¶ 74). In stark contrast with this unsubstantiated statement, in the Colombian court proceedings leading to Judgment T-361, Red Eagle (through Minera Vetas) represented to the Court that the delimitation of the Santurbán Páramo had been conducted properly and that the consultation process undertaken by the Ministry of Environment had ensured the participation of the communities located in the páramo. This is recorded in Judgment T-361. (See C-22, Constitutional Court, Judgment T-361, 30 May 2017, pp. 52-54) Red Eagle should now be ordered to produce the submissions or other | <u>1. Lack of relevance & materiality:</u> The Constitutional Court proceeding referenced by Respondent confirmed that Resolution 2090 was unconstitutional (Memorial ¶77). Respondent does not explain how the requested submissions are relevant to assessing whether Colombia’s measures constitute a Treaty violation. Claimant has already demonstrated the impact of the measures on Claimant’s Project, and the requested documents are not necessary to discharge Respondent’s burden of proof. <u>2. In Respondent’s Possession:</u> The Constitutional Court is part of the Colombian State, and therefore submissions to the Court are already in the possession of Respondent. | <u>Request maintained.</u> The Respondent respectfully seeks an order from the Tribunal that the Claimant produce all documents responsive to this request. For the reasons set out below, the Claimant’s objections to this request are without merit. As explained in the justification for this request, the Claimant has adopted contradictory positions in this arbitration and the Colombian court proceedings leading to Judgment T-361. The Claimant now seeks to disassociate itself from its own submissions made in the Colombian court proceedings and to withhold them from production, even though they concern the very same measure that the Claimant now asserts was “ <i>arbitrary</i> ”. The Claimant must not be permitted to rely on its self-serving, conclusory statement that “Claimant has already demonstrated the impact of the measures on Claimant’s Project”. Fairness requires that it disclose its prior submissions in the Colombian courts in order for the Tribunal to assess the credibility of Claimant’s position in this arbitration. | The Claimant shall produce the documents requested. |

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| | | | <p>representations that it filed (or that were filed on its behalf) in those proceedings in order for the Tribunal fully to assess the extent of Red Eagle’s contradictory positions with respect to Resolution 2090 on the credibility of its claims in this arbitration.</p> | | <p>Finally, as to the Claimant’s contention that the documents are already in the possession of the Respondent, the records of concluded <i>tutela</i> proceedings (such as those relating to Judgment T-361) are not stored in the archives of the Constitutional Court but instead in the archives of the <i>tutela</i> court of first instance (in this case, the Administrative Tribunal of Bucaramanga). It would be impractical for the Respondent’s counsel in this arbitration to retrieve such documents from the archives of the Administrative Tribunal of Bucaramanga (where thousands of <i>tutela</i> records spanning nearly thirty years are stored) in time for their submission in this arbitration. Given that the Claimant is in possession of the documents and can readily produce them promptly and at no material cost, the Tribunal is respectfully requested to order that the Claimant produce all documents responsive to this request.</p> | |
| 11. | <p>Documents reflecting or confirming Red Eagle’s cost allocation policies used to determine, in its financial statements, which costs are reported as “<i>exploration expenses</i>” associated with</p> | <p>Counter-Memorial, ¶ 569(b) Versant Report, ¶ 67</p> | <p>If the Tribunal were minded to award Red Eagle damages assessed on the basis of Red Eagle’s costs incurred in connection with the exploration project conducted on the area of its</p> | <p><u>1. Lack of relevance & materiality:</u> Respondent does not explain why any distinction between “exploration expenses” and “general and administrative expenses” is relevant and material. Respondent also does</p> | <p>The Claimant’s objections to production fail to engage with the Respondent’s justification for the request and are without merit. However, as the Claimant has agreed to produce responsive documents, Colombia will await</p> | <p>The Tribunal notes that the Claimant has undertaken to conduct a good faith search. Production of</p> |

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| | <p>the Vetas Gold Project and La Vereda, and which are reported as “<i>general and administrative expenses</i>”.</p> | <p>Brattle Report, ¶¶ 140-143</p> <p>VP-09: CB Gold Inc., Consolidated Financial Statements for Year 2011, note 8, p. 22</p> | <p>mining titles, Red Eagle should not be awarded any costs that were incurred for other purposes. (See Counter-Memorial, ¶ 569(b)) The documents requested are relevant and material to the assessment of Versant’s assumption that “<i>general and administrative expenses</i>” reported by Red Eagle in its financial statements were incurred for the purpose of the exploration project that Red Eagle conducted on the area of its mining titles (See Versant Report, ¶ 67), notwithstanding that the “exploration costs” in Red Eagle’s financial statements already include non-exploration items allocated to Red Eagle’s Project such as staff and general services, and legal and consulting fees (see e.g. VP-09, CB Gold Inc., Consolidated Financial Statements for Year 2011, note 8, p. 22; see further Brattle Report, Brattle Report, ¶¶ 140-143)</p> | <p>not provide any basis to challenge Claimant’s damages claims for costs supported by Claimant’s audited financial statements. Respondent does not explain why Claimant’s “cost allocation policies” are relevant and material to assessing the reasonableness of Red Eagle’s costs. Claimant has already demonstrated the reasonableness of its damages claims (see, e.g., Claimant’s Memorial ¶¶ 201-205; Sequeira ¶¶ 67-70) and the requested documents are not necessary to discharge Respondent’s burden of proof.</p> <p><u>2. Overbreadth and speculative nature:</u> The request in question is unduly broad and speculative as it concerns not the actual costs on which Claimant claims damages but any “cost allocation policies.” In addition, the request has no time limitations whatsoever.</p> <p><u>3. Good Faith Production:</u> Notwithstanding the foregoing, Claimant will conduct a reasonable search of its files and produce relevant materials located in response to this request, if any, provided that they are not otherwise in Colombia’s custody or control, not subject to privilege, and that any confidential information is subject to a reasonable</p> | <p>Claimant’s production in accordance with its undertaking. For the avoidance of doubt:</p> <ol style="list-style-type: none"> 1. For the reasons set out in the Respondent’s reply to Claimant’s objections to Request No. 1 above, the Respondent requests that any claim to privilege over a document be accompanied by a privilege log setting out the date and description of the document and the basis on which the Claimant considers it to be privileged. 2. As set out above with respect to Request No. 1, there is no basis for the Claimant to condition its production on Respondent giving a “<i>reasonable confidentiality undertaking</i>”. In accordance with IBA Rule 9.2(e), to the extent the Claimant considers that there are “<i>compelling</i>” grounds of commercial or technical confidentiality, the Claimant should provide a log setting out the date and description of the document and the basis | <p>confidential documents subject to a reasonable confidentiality undertaking of the Respondent.</p> |
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| | | | | confidentiality undertaking by Respondent. | on which the Claimant considers it (or information contained within it) to be subject to such grounds. | |
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| 12. | Annual and interim financial statements of Leyhat Colombia Sucursal (or those of Minera Vetas Ltd) for all reporting periods ending between 11 May 2009 and 31 December 2017. | Brattle Report, ¶ 143 | The Respondent repeats the rationale set out above with respect to Request no. 11. In its assessment of Red Eagle’s costs allegedly incurred in connection with its project, Versant relies on the financial statements of Red Eagle but fails to adduce any of the financial statements of Minera Vetas Ltd’s Colombian Branch, Leyhat Colombia Sucursal. As explained in the Brattle Report, the financial statements of Claimant’s Colombian branch, Leyhat Colombia Sucursal, would also contain evidence about the costs associated with the project that may not be contained in Red Eagle’s statements, including which costs were actually incurred in connection with the project. (See Brattle Report, ¶ 143) | <p>1. Lack of relevance & materiality:</p> <p>Claimant makes reference to its comments with respect to Request No. 11. Respondent does not explain any reason to question Claimant’s audited financial statements. Respondent also does not explain why “the financial statements of Claimant’s Colombian branch, Leyhat Colombia Sucursal, would also contain evidence about the costs associated with the project that may not be contained in Red Eagle’s statements.” Claimant has already demonstrated the reasonableness of its damages claims (<i>see, e.g.</i>, Claimant’s Memorial ¶¶ 201-205; Sequeira ¶¶ 67-70) and the requested documents are not necessary to discharge Respondent’s burden of proof.</p> <p>2. Overbreadth and speculative nature: The request in question is unduly broad and speculative as it concerns not only the annual financial statements of Leyhat Colombia Sucursal and Minerea</p> | <p>The Claimant’s objections to production fail to engage with the Respondent’s justification for the request and are without merit. However, as the Claimant has agreed to produce responsive documents, Colombia will await the Claimant’s production in accordance with its undertaking. For the avoidance of doubt:</p> <ol style="list-style-type: none"> 1. For the reasons set out in the Respondent’s reply to Claimant’s objections to Request No. 1 above, the Respondent requests that any claim to privilege over a document be accompanied by a privilege log setting out the date and description of the document and the basis on which the Claimant considers it to be privileged. 2. As set out above with respect to Request No. 1, there is no basis for the Claimant to condition its production on the | The Tribunal notes that the Claimant has undertaken to conduct a good faith search. Production of confidential documents subject to a reasonable confidentiality undertaking of the Respondent. |

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| | | | | <p>Vetas Ltd but “interim” financial statements.</p> <p>3. Good Faith Production: Notwithstanding the foregoing, Claimant will conduct a reasonable search of its files and produce relevant materials located in response to this request, if any, provided that they are not otherwise in Colombia’s custody or control, not subject to privilege, and that any confidential information is subject to a reasonable confidentiality undertaking by Respondent.</p> | <p>Respondent giving a “reasonable confidentiality undertaking”. In accordance with IBA Rule 9.2(e), to the extent the Claimant considers that there are “compelling” grounds of commercial or technical confidentiality, the Claimant should provide a log setting out the date and description of the document and the basis on which the Claimant considers it (or information contained within it) to be subject to such grounds.</p> | |
| 13. | <p>Monthly financial statements of Red Eagle and Leyhat Colombia Sucursal (or those of Minera Vetas Ltd) for the months of January 2010 and February 2010.</p> | <p>Counter-Memorial, ¶ 567</p> <p>Brattle Report, ¶ 204.</p> | <p>In Colombia’s submission, should the Tribunal be minded to issue an award of damages on the basis of sunk costs, such costs should only include costs incurred prior to 9 February 2010, the date on which Law 1382 was enacted and prohibited mining in páramo areas.</p> <p>As explained in Brattle’s Expert Report, such costs amount to approximately \$1,005,978. In estimating this amount, for the 39-day period between 1 January</p> | <p>1. Lack of relevance & materiality: Respondent does not establish that Claimant’s damages should be limited to costs incurred prior to 9 February 2010. Claimant has already demonstrated the reasonableness of its damages claims (<i>see, e.g.</i>, Claimant’s Memorial ¶¶ 201-205; Sequeira ¶¶ 52-70) and the requested documents are not necessary to discharge Respondent’s burden of proof.</p> <p>2. Good Faith Production: Notwithstanding the foregoing, Claimant will conduct a reasonable</p> | <p>The Claimant’s objections to production fail to engage with the Respondent’s justification for the request and are without merit. However, as the Claimant has agreed to produce responsive documents, Colombia will await Claimant’s production in accordance with its undertaking. For the avoidance of doubt:</p> <ol style="list-style-type: none"> 1. For the reasons set out in the Respondent’s reply to Claimant’s objections to Request No. 1 above, the Respondent requests that | <p>The Tribunal notes that the Claimant has undertaken to conduct a good faith search. Production of confidential documents subject to a reasonable confidentiality undertaking of the Respondent.</p> |

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| | | | <p>and 8 February 2010, Brattle pro-rate the exploration and administrative costs for the first quarter of 2010 as reported in Red Eagle's annual financial statement for 2010 by the number of days included in the damages period. Red Eagle's monthly financial statements for the months of January and February 2010 would allow Brattle to quantify the costs that Red Eagle incurred prior to Law 1382 in the first 39 days of 2010 more precisely.</p> | <p>search of its files and produce relevant documents located in response to this request, if any, provided that they are not otherwise in Colombia's custody or control, not subject to privilege, and that any confidential information is subject to a reasonable confidentiality undertaking by Respondent.</p> | <p>any claim to privilege over a document be accompanied by a privilege log setting out the date and description of the document and the basis on which the Claimant considers it to be privileged.</p> <p>2. As set out above with respect to Request No. 1, there is no basis for the Claimant to condition its production on Respondent giving a "<i>reasonable confidentiality undertaking</i>". In accordance with IBA Rule 9.2(e), to the extent the Claimant considers that there are "<i>compelling</i>" grounds of commercial or technical confidentiality, the Claimant should provide a log setting out the date and description of the document and the basis on which the Claimant considers it (or information contained within it) to be subject to such grounds.</p> | |
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| <p>14.</p> | <p>(a) Any communications or other Documents concerning any attempts by Red Eagle to sell its project or any of its mining titles after 21 December 2014.</p> <p>(b) Any Documents concerning any inquiries received from third parties about purchasing the project or any of the mining titles after 21 December 2014.</p> | <p>Brattle Report, Section VI.B. at ¶ 83</p> <p>Counter-Memorial, Section VII.C.2</p> | <p>The documents requested are relevant and material to confirm that Red Eagle’s mining titles retained value after Colombia’s measures.</p> <p>It is Colombia’s submission, supported by the Brattle Report, that the measures did not cause Red Eagle loss, and that, in any event, the measures did not amount to an indirect expropriation of Red Eagle’s mining titles in Colombia because those titles retained substantial value after the measures on any view (See Brattle Report, Section VI.B; and Counter-Memorial, Section VII.C.2).</p> <p>As explained in the Brattle Report, on the basis of publicly available information, Red Eagle received three takeover offers after 21 December 2014, of between \$7.9 million and \$9.8 million (Brattle Report, ¶ 83). The documents requested are relevant to confirm whether any further offers were made or inquiries received from third parties that could serve as a further indication of the</p> | <p><u>1. Lack of relevance & materiality:</u></p> <p>Respondent does not explain how the request for documents “concerning attempts any attempts by Red Eagle to sell its project or any of its mining titles” or “inquiries received from third parties” are relevant and material to determining whether measures by Respondent violated the Treaty. Claimant has already demonstrated that Respondent’s Measures breached the Treaty and caused it to incur damages. (<i>see, e.g.</i>, Claimant’s Memorial ¶¶ 193-205; Sequeira ¶¶ 47-70) and the requested documents are not necessary to discharge Respondent’s burden of proof.</p> <p>Respondent also does not explain how the documents requested have probative value with regards to the project’s FMV. Respondent’s reference to the Brattle Report is inapposite, as it refers to “takeover attempts” by two entities in 2015, and states that “these transactions did not close and therefore do not necessarily reflect the Project’s FMV.” Respondent does not explain why any attempts or inquiries with regards to the project or mining titles would reflect the FMV.</p> | <p><u>Request maintained, as narrowed below.</u></p> <p>Respondent respectfully seeks an order from the Tribunal that the Claimant produce all documents responsive to this request, but agrees to narrow the request to responsive documents (a) dated between 21 December 2014 and 31 December 2017 and (b) reflecting any valuation of Red Eagle, its project or its Mining Titles.</p> <p>For the reasons set out below, the Claimant’s objections to this request are without merit and the Claimant’s limited undertaking to produce responsive documents is unduly narrow and selective.</p> <p><u>1. The documents requested are relevant and material</u></p> <p>The Claimant’s objections are premised on a mischaracterization of the rationale for this request. The request does not seek documents that relate to issues of liability under the FTA. Rather, the request seeks documents that are relevant and material to the issues of causation and valuation of the Claimant’s losses. The Claimant cannot credibly dispute that the documents requested, reflecting the valuation placed on Red Eagle, its</p> | <p>The Request is refused as the Tribunal is not convinced of the documents’ relevance, in the absence of evidence that the Claimant had sold the investment.</p> |
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| | | | <p>fair market value of Red Eagle or its project after Colombia’s measures.</p> | <p><u>2. Overbreadth and speculative nature:</u> The request in question is unduly broad and speculative as Respondent does not establish the existence of any “attempts” or “inquires;” this is a fishing expedition “to confirm whether any further offers were made or inquiries received,” as Respondent states. Moreover, the request is unduly broad even for the purposes Respondent purports to want them insofar as it is not limited to documents demonstrating the “value” of the project or mining titles in the hypothetical transactions. Moreover, the request is overly broad as it has no end date limitation whatsoever.</p> <p><u>3. Undue Burden:</u> The request is unduly burdensome because it lacks any evidentiary value that could outweigh the time, cost, and other burdens that searching and producing such information would entail.</p> <p><u>4. Good Faith Production:</u> Notwithstanding the foregoing, Claimant will conduct a reasonable search of its files and produce relevant documents from 2015 as to the transactions referenced in Brattle Report, ¶ 83, if any, provided that they are not otherwise in Colombia’s custody or control, not subject to privilege, and that any confidential</p> | <p>project or its Mining Titles by potential third party purchaser, are relevant to the Tribunal’s assessment of the issue of valuation of Claimant’s alleged losses. While an offer price quoted during an acquisition attempt does not necessarily reflect the FMV of the project, it has probative value because the potential acquirers may reasonably believe to have conducted due diligence and the offers they made reflected that due diligence effort and their analysis of the valuation of the assets the subject of their offer.</p> <p><u>2. The request is not overly broad or speculative</u></p> <p>The request is not overly broad, particularly as the Respondent agrees to narrow the request to responsive documents (a) dated between 21 December 2014 and 31 December 2017 and (b) reflecting any valuation of Red Eagle, its project or its Mining Titles.</p> <p>Nor is the request speculative. Rather, it is based on evidence that Red Eagle received three takeover offers after 21 December 2014, of between \$7.9 million and \$9.8 million (Brattle Report, ¶ 83). It is reasonable to assume that Red</p> | |
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| | | | | <p>information is subject to a reasonable confidentiality undertaking by Respondent.</p> | <p>Eagle received other enquiries or potential offers during this period.</p> <p><u>3. The request is not unduly burdensome</u></p> <p>The Claimant contends that the evidentiary value of the documents requested would be outweighed by the “<i>time, cost, and other burdens that searching and producing such information</i>”. However, the Claimant has failed to explain what “time”, “cost” or “other burdens” would be involved in searching for these valuation-related documents to which Claimant must readily have access in its records.</p> <p><u>4. Claimant’s “good faith production” undertaking is unduly narrow and selective</u></p> <p>Colombia notes the Claimant’s undertaking to produce certain documents in response to this request. However:</p> <ol style="list-style-type: none"> 1. The Claimant has sought to limit its production to “<i>documents from 2015 as to the transactions referenced in Brattle Report, ¶ 83</i>”. There is no basis for the Claimant to withhold documents relating to other potential transactions, which would | |
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| | | | | | <p>also be relevant and material evidence in relation to valuation. Nor is there any basis for the period 21 to 31 December 2014 to be excluded given Red Eagle’s reliance on Resolution 2090 of December 2014 as an alleged violation of the FTA.</p> <p>2. For the reasons set out in the Respondent’s reply to Claimant’s objections to Request No. 1 above, the Respondent requests that any claim to privilege over a document be accompanied by a privilege log setting out the date and description of the document and the basis on which the Claimant considers it to be privileged.</p> <p>3. As set out above with respect to Request No. 1, there is no basis for the Claimant to condition its production on Respondent giving a “<i>reasonable confidentiality undertaking</i>”. In accordance with IBA Rule 9.2(e), to the extent the</p> | |
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| | | | | | <p>Claimant considers that there are “<i>compelling</i>” grounds of commercial or technical confidentiality, the Claimant should provide a log setting out the date and description of the document and the basis on which the Claimant considers it (or information contained within it) to be subject to such grounds.</p> <p>Colombia therefore respectfully seeks an order from the Tribunal that the Claimant produce documents responsive to this request (a) dated between 21 December 2014 and 31 December 2017 and (b) reflecting any valuation of Red Eagle, its project or its Mining Titles.</p> | |
| 15. | (a) Documents concerning the conduct of negotiations between Red Eagle and the sellers of each of the eleven mining titles with respect to (i) the purchase price and other terms of the acquisitions of Red Eagle’s mining titles, and (ii) the subsequent adjustments to the purchase price and other | Brattle Report, Section VII and ¶ 170 | The documents requested are relevant and material to confirm that Red Eagle acquired the eleven mining titles on terms consistent with the Fair Market Value (“FMV”) standard, and therefore that the terms of such acquisitions, and the adjustments to such terms following the delineation of the páramo, provide a reliable basis for the | <p><u>1. Lack of relevance & materiality:</u></p> <p>Respondent does not explain how the terms of Red Eagle’s acquisitions and whether they were completed are relevant and material and gives no basis for questioning whether they are “consistent with fair market value.” Respondent also does not explain how Brattle being “in a position fully to assess the process” behind such transactions is relevant and material. Moreover the request is</p> | <p><u>Request maintained, as narrowed below.</u></p> <p>Respondent respectfully seeks an order from the Tribunal that the Claimant produce all documents responsive to this request, subject to part (b) of this request being narrowed to documents relating to valuation.</p> <p>For the reasons set out below, the Claimant’s objections to this request are without merit and the</p> | The Tribunal is not convinced of the relevance of the documents requested since the Claimant’s damage is based on sunk costs. |

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| <p>terms with the sellers, including:</p> <ol style="list-style-type: none"> Any communications or agreements between Red Eagle and the sellers of the San Bartolo title (Rafael Constantino Landazabal and Pedro Antonio Landazabal Suarez) or their representatives concerning the payment of \$1.4 million and 1,500,000 shares pursuant to clauses 1.2 and 2 of the San Bartolo purchase agreement (C-296). Any communications or agreements between Red Eagle and the sellers of the La Vereda title (Humberto Rangel Lizcano and Luis Edgar Rangel Lizcano) concerning the payment of any amounts under | | <p>valuation of any damages for the loss in FMV of the mining titles (See Brattle Report, ¶ 170).</p> <p>Red Eagle should be ordered to produce these documents in order for Brattle to be in a position fully to assess the process by which the Claimant and the sellers of each mining title arrived at the agreed upon transaction prices and adjustments thereto, and thus to confirm that the acquisitions and adjustments were completed on FMV terms.</p> | <p>not relevant and material to Claimant’s damages claim, which is based on sunk costs.</p> <p>Respondent also does not explain how the advice or opinions of any mineral appraiser or other advisors is relevant and material to determining whether the acquisitions reflect a fair market value.</p> <p><u>2. Overbreadth and speculative nature:</u> The request in question is unduly broad and speculative as it concerns any “documents concerning the conduct of negotiations between Red Eagle and the sellers of each of the eleven mining titles” and “subsequent adjustments to the purchase price and other terms with the sellers,” which potentially might encompass documents that do not concern the valuations Respondent purports to seek.</p> <p>The request in question is unduly broad and speculative as it also concerns not only any documents related to valuation but also “documents reflecting the advice or opinions of any mineral appraiser” and “other advisors” retained by Red Eagle in connection with such negotiations, without any limitation whatsoever.</p> | <p>Claimant’s limited undertaking to produce responsive documents is unduly narrow and selective.</p> <p><u>1. The documents requested are relevant and material</u></p> <p>The Claimant’s assertion that Respondent “<i>does not explain</i>” the relevance and materiality of the documents requested is without merit. As explained in the Respondent’s justification for this request, the documents requested are directly relevant to the issue of valuation.</p> <p>While the Claimant contends that the documents requested are not relevant to its damages claim (which is based on sunk costs), the Respondent disputes the appropriateness of sunk costs as a measure of damages.</p> <p>The documents requested are relevant and material to Brattle’s valuation of Claimant’s alleged loss. In particular, the terms of the respective acquisitions of the Mining Titles, and related communications between the Claimant and the sellers, are relevant to the calculation of the FMV, which is a cash equivalent price at which the asset would trade (or has traded). The purchase agreements contain multiple types</p> | |
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| | <p>clauses 1.4 and 2 of the La Vereda purchase agreement (VP-08).</p> <p>3. Any Documents reflecting the terms pursuant to which Red Eagle acquired the remaining 20% of La Vereda following Red Eagle’s initial acquisition of 80% of La Vereda, including any cash, shares, and royalty payments.</p> <p>4. The agreement that Red Eagle negotiated with the seller of Real Minera in December 2015 concerning the payment of royalties, as disclosed in Red Eagle’s Consolidated Financial Statements for Year 2015, p. 19 (VP-25).</p> <p>(b) Documents reflecting the advice or opinions of any</p> | | | <p>3. Undue Burden: The request is unduly burdensome because it lacks any evidentiary value that could outweigh the time, cost, and other burdens that searching and producing such information would entail.</p> <p>4. Good Faith Production: Notwithstanding the foregoing, Claimant will conduct a reasonable search of its files and produce relevant documents dated 2010 to 2015 in response to part (a)(1), (2), (3) and (4) of this request, if any, provided that they are not otherwise in Colombia’s custody or control, not subject to privilege, and that any confidential information is subject to a reasonable confidentiality undertaking by Respondent.</p> | <p>of payments, in cash and shares, some of which are immediate and others of which are conditional on future events. While some of those payments were made, others were not. The requested documents would shed light on the parties’ understanding on the conditions precedent to the conditional payments being made, as well as the rationale for the price adjustments that Claimant agreed with the sellers of San Antonio, San Bartolo, and La Triada de Oro. Regarding La Vereda specifically, the record is incomplete as to the price that Claimant paid for 20% of the Mining Title. The Claimant’s exhibits contain only the terms of the Claimant’s initial purchase of 80% of La Vereda (See Exhibits C-253, C-254, VP-08).</p> <p><u>2. The request is not overly broad or speculative</u></p> <p>The Respondent agrees to narrow its sub-request (b) to cover only documents relating to valuation. Accordingly, the documents requested would only cover documents relating to valuation, in accordance with the rationale for this request.</p> <p>The Claimant contends that the request is “speculative” but provides no justification for this</p> | |
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| | <p>mineral appraiser or other advisors retained by Red Eagle in connection with such negotiations.</p> | | | | <p>contention. The request is based on the reasonable premise that Claimant’s acquisition of its Mining Titles were the result of negotiations and valuations provided by mineral appraisers or other advisors.</p> <p><u>3. The request is not unduly burdensome</u></p> <p>The Claimant contends that the evidentiary value of the documents requested would be outweighed by the “<i>time, cost, and other burdens that searching and producing such information</i>”. However, the Claimant has failed to explain what “time”, “cost” or “other burdens” would be involved in searching for these valuation-related documents to which Claimant must readily have access in its records.</p> <p><u>4. Claimant’s “good faith production” undertaking is unduly narrow and selective</u></p> <p>Colombia notes the Claimant’s undertaking to produce certain documents in response to this request. However:</p> <ol style="list-style-type: none"> 1. The Claimant has sought to limit its production to documents “<i>dated 2010 to 2015 in response to part (a)(1), (2), (3) and (4) of</i> | |
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| | | | | | <p><i>this request</i>". There is no basis for the Claimant to withhold documents relating to the negotiations of the purchase price of Mining Titles not captured in part (a)(1), (2), (3) and (4) of this request, which are also relevant and material to the issue of valuation. Further, there is no basis for limiting the request to the period 2010 to 2015, particularly as amendments to the purchase agreements for the San Bartolo and San Antonio titles were signed in 2017.</p> <p>2. For the reasons set out in the Respondent's reply to Claimant's objections to Request No. 1 above, the Respondent requests that any claim to privilege over a document be accompanied by a privilege log setting out the date and description of the document and the basis on which the Claimant considers it to be privileged.</p> <p>3. As set out above with respect to Request No. 1,</p> | |
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| | | | | | <p>there is no basis for the Claimant to condition its production on Respondent giving a “<i>reasonable confidentiality undertaking</i>”. In accordance with IBA Rule 9.2(e), to the extent the Claimant considers that there are “<i>compelling</i>” grounds of commercial or technical confidentiality, the Claimant should provide a log setting out the date and description of the document and the basis on which the Claimant considers it (or information contained within it) to be subject to such grounds.</p> <p>Colombia therefore respectfully seeks an order from the Tribunal that the Claimant produce documents responsive to this request subject to part (b) being narrowed to documents relating to valuation.</p> | |
| 16. | (a) Any communications between Red Eagle and Giovanni J. Ortiz concerning the changes made to the Technical Report authored by Mr. Ortiz dated 8 June 2017 (the | Brattle Report, ¶¶ 117-118 BR-179 , Ortiz 8 June 2017 | The documents requested are relevant and material to the assessment of whether Colombia’s measures rendered Red Eagle’s mining project economically | <u>1. Lack of relevance & materiality:</u> Respondent does not explain how the requested documents are relevant and material to determining “whether Colombia’s measures rendered Red Eagle’s mining project economically | <u>Request maintained.</u> Respondent respectfully seeks an order from the Tribunal that the Claimant produce all documents responsive to this request. | The Tribunal notes that the Claimant has undertaken to conduct a good faith search. Production of |

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| <p>“8 June Report”, BR-179) reflected in the revised Technical Report issued on 12 June 2017 (the “12 June Report”, BR-49), including with respect to the removal of Section 6.2 and modifications made to Section 14.</p> <p>(b) Any communications between the British Columbia Securities Commission and Red Eagle concerning the 8 June Report.</p> <p>(c) The letter of instruction, engagement letter or any other communication by which Red Eagle conveyed to Mr. Ortiz the scope of his engagement that resulted in the 8 June and 12 June 2017 Reports.</p> <p>(d) The communications between the Claimant and Mr. Ortiz related to Mr. Ortiz’s work and conclusions expressed in the 8 June and 12 June 2017 Reports.</p> | <p>Technical Report</p> <p>BR-49, Ortiz 12 June 2017 Technical Report</p> | <p>unviable as Red Eagle alleges.</p> <p>Red Eagle instructed Mr. Ortiz to prepare a technical report . After publishing an initial report on 8 June 2017 referring to the historical Mineral Resource that Red Eagle had declared based on the SRK 2014 Technical Report (see BR-179, § 6.2 and 14), on 12 June 2017, Red Eagle then published a further report by Mr. Ortiz making material changes to the 8 June Report, including deleting any reference to the historical Mineral Resource (see BR-49, § 6.2 and 14).</p> <p>In Brattle’s evaluation of Red Eagle’s alleged loss of its investment, Brattle relies on the 12 June Report as the basis for evaluating the remaining potential of the Project after Colombia’s measures, and with this the extent of the damages due to the Measures. However, Red Eagle should now disclose the Documents and other communications in connection with this radical change in Mr. Ortiz’s opinion in order for Brattle</p> | <p>unviable.” Claimant has already demonstrated the impact of the measures on Claimant’s Project. (see, e.g., Claimant’s Memorial ¶¶ 79-87; Vasquez ¶¶ 56-60).</p> <p>Respondent does not explain why it is relevant and material for Brattle and the Tribunal to “assess the validity and credibility” of the two reports put in the record by Respondent on which Brattle relies, or how the requested documents are relevant to assessing how the requested documents are relevant to assessing the alleged “changes” to the first report. Respondent also does not explain how the requested communications with the British Columbia Securites Commission are relevant and material to such reports, or how the terms of any letter of instruction, engagement letter or any other communication by which Red Eagle conveyed to Mr. Ortiz the scope of his engagement, or any subsequent communications relating to Mr. Ortiz’s work and conclusions are relevant and material to the alleged change.</p> <p><u>2. Overbreadth and speculative nature:</u> The request in question is unduly broad and speculative as it concerns documents that go far beyond the alleged change between two documents already in the record.</p> | <p>For the reasons set out below, the Claimant’s objections to this request are without merit and the Claimant’s limited undertaking to produce responsive documents is unduly narrow and selective.</p> <p><u>1. The documents requested are relevant and material</u></p> <p>The Claimant’s assertion that Respondent “<i>does not explain</i>” the relevance and materiality of the documents requested is without merit. As explained in the Respondent’s justification for this request, the 8 June and 12 June Reports evaluate the technical aspects of the Vetas Gold Project after the Measures were enacted. The technical aspects influence the economic feasibility of the Vetas Gold Project, which the Claimant alleges was destroyed by the Measures. Being the most recently available technical reports prior to the date on which the Claimant states it determined that the Project was unfeasible, the validity and credibility of the 8 June and 12 June Reports is indisputably relevant and material. The documents requested in parts (b) to (d) of this request are relevant to assessing the significance of the</p> | <p>confidential documents subject to a reasonable confidentiality undertaking of the Respondent.</p> |
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| | | | <p>and the Tribunal to assess the validity and credibility of Mr. Ortiz’s opinions as expressed in the 12 June Report.</p> | <p>Respondent is fishing for documents to support its own contentions. In addition, there is no date limitation.</p> <p><u>3. Undue Burden:</u> The request is unduly burdensome because it lacks any evidentiary value that could outweigh the time, cost, and other burdens that searching and producing such information would entail.</p> <p><u>4. Good Faith Production:</u> Notwithstanding the foregoing, Claimant will conduct a reasonable search of its files and produce communications between the Claimant and Mr. Ortiz with respect to the removal of Section 6.2 and modifications made to Section 14, if any, provided that they are not otherwise in Colombia’s custody or control, not subject to privilege, and that any confidential information is subject to a reasonable confidentiality undertaking by Respondent.</p> | <p>changes between the 8 June and 12 June Reports, in particular:</p> <ul style="list-style-type: none"> (i) whether any of the changes to the 8 June Report were the result of notices or requests from the British Columbia Securities Commission associated with flaws in the 8 June Report; (ii) whether the scope of Mr. Ortiz’s engagement included an evaluation of the Vetás Gold Project’s Mineral Resources, and accordingly whether his reports can be understood to contain any independent opinion as to the existence and extent of such Mineral Resources; and (iii) whether the changes were requested by the Claimant or were initiated by Mr. Ortiz himself. <p><u>2. The request is not overly broad or speculative</u></p> <p>The request is targeted to produce relevant and material documents relating to the significant change between the 8 June and 12 June Reports. The request focuses on four narrow and specific categories of documents, the disclosure of</p> | |
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| | | | | | <p>which is necessary for the Tribunal and the Respondent to form a fair understanding of the reasons for and significance of the changes between the two Reports.</p> <p>While only the Claimant has knowledge of the dates on which Mr. Ortiz was engaged to prepare his Reports and the Claimant communicated with the British Columbia Securities Commission in relation to them, the request focuses on the significant change between the 8 June and 12 June 2017 Reports and does not therefore concern documents covering an overly broad period of time.</p> <p><u>3. The request is not unduly burdensome</u></p> <p>The Claimant contends that the evidentiary value of the documents requested would be outweighed by the “<i>time, cost, and other burdens that searching and producing such information</i>”. However, the Claimant has failed to explain what “time”, “cost” or “other burdens” would be involved in searching for these documents relating to a significant incident concerning the Claimant’s public disclosures and results of its exploration activities, and to which the Claimant must readily have access in its records.</p> | |
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| | | | | | <p><u>4. Claimant’s “good faith production” undertaking is unduly narrow and selective</u></p> <p>Colombia notes the Claimant’s undertaking to produce certain documents in response to this request. However:</p> <ol style="list-style-type: none"> 1. The Claimant has sought to limit its production to “<i>communications between the Claimant and Mr. Ortiz with respect to the removal of Section 6.2 and modifications made to Section 14.</i>” There is no basis for the Claimant unilaterally to narrow the scope of this request in this manner, and thus withhold documents that are potentially significant with regards to the reasons for, and context of the change made by Mr. Ortiz. 2. For the reasons set out in the Respondent’s reply to Claimant’s objections to Request No. 1 above, the Respondent requests that any claim to privilege over a document be accompanied by a privilege log setting out the date and description of | |
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| | | | | | <p>the document and the basis on which the Claimant considers it to be privileged.</p> <p>3. As set out above with respect to Request No. 1, there is no basis for the Claimant to condition its production on Respondent giving a “<i>reasonable confidentiality undertaking</i>”. In accordance with IBA Rule 9.2(e), to the extent the Claimant considers that there are “<i>compelling</i>” grounds of commercial or technical confidentiality, the Claimant should provide a log setting out the date and description of the document and the basis on which the Claimant considers it (or information contained within it) to be subject to such grounds.</p> <p>Colombia therefore respectfully seeks an order from the Tribunal that the Claimant produce all documents responsive to this request.</p> | |
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| <p>17.</p> | <p>Documents relating to Red Eagle’s decisions as to the type of exploration work conducted after the passage of Decision C-35, which the Versant Report classifies as “mitigation” (see Versant Report, ¶ 64).</p> | <p>Versant Report, ¶ 64</p> <p>Brattle Report, ¶¶ 145-149</p> | <p>The documents requested are relevant and material to confirm that costs incurred by Red Eagle after Colombia’s measures were adopted were not expended for the purposes of “mitigating” Claimant’s losses, as Versant asserts in its Report.</p> <p>As explained in the Brattle Report, on the basis of the available information concerning Red Eagle’s expenditure after Decision C-35 of 8 February 2016, the exploration work that Red Eagle conducted subsequently was consistent with the recommendations of the SRK 2014 Technical Report and would have been performed regardless of whether the measures had been adopted or not (Brattle Report, ¶¶ 145-149).</p> <p>Red Eagle’s materials documenting the rationale for its decision to conduct that work are directly relevant to the assessment of Red Eagle’s contention that those costs were expended in “mitigation” of Red Eagle’s alleged losses.</p> | <p><u>1. Lack of relevance & materiality:</u> Respondent does not explain how documents relating to Claimant’s “decisions as to the type of exploration work conducted after the passage of Decision C-35” are relevant and material to challenging the costs incurred by Claimant in connection with its damages claims. Claimant has already demonstrated the impact of the measures on Claimant’s Project and the reasonableness of its damages claims, including some incurred following the Constitutional Court’s decision No. C-035/16 (“Decision C-035/16”) declaring the unconstitutionality of certain portions of Article 173 of Law No. 1753 (<i>see, e.g.</i>, Sequeira ¶¶ 46-48, 64, 68).</p> <p><u>2. Overbreadth and speculative nature:</u> The request in question is unduly broad and speculative as it concerns documents that go far beyond the costs that Respondent is seeking to challenge but also includes “decisions as to the type of exploration work conducted after the passage of Decision C-35.”</p> <p><u>3. Good Faith Production:</u> Notwithstanding the foregoing, Claimant will conduct a reasonable search of its files and produce relevant materials after the passage of</p> | <p>The Claimant’s objections to production fail to engage with the Respondent’s justification for the request and are without merit. However, as the Claimant has agreed to produce responsive documents, Colombia will await Claimant’s production in accordance with its undertaking. For the avoidance of doubt:</p> <ol style="list-style-type: none"> 1. For the reasons set out in the Respondent’s reply to the Claimant’s objections to Request No. 1 above, the Respondent requests that any claim to privilege over a document be accompanied by a privilege log setting out the date and description of the document and the basis on which the Claimant considers it to be privileged. 2. As set out above with respect to Request No. 1, there is no basis for the Claimant to condition its production on Respondent giving a “<i>reasonable confidentiality undertaking</i>”. In accordance with IBA Rule 9.2(e), to the extent the | <p>The Tribunal notes that the Claimant has undertaken to conduct a good faith search. Production of confidential documents subject to a reasonable confidentiality undertaking of the Respondent.</p> |
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| | | | | Decision C-35, if any, provided that they are not otherwise in Colombia’s custody or control, not subject to privilege, and that any confidential information is subject to a reasonable confidentiality undertaking by Respondent. | Claimant considers that there are “ <i>compelling</i> ” grounds of commercial or technical confidentiality, the Claimant should provide a log setting out the date and description of the document and the basis on which the Claimant considers it (or information contained within it) to be subject to such grounds. | |
| 18. | Documents, including internal memoranda, minutes of meetings of the Board of Directors, and communications with auditors concerning any impairment analyses that Red Eagle conducted, or any other analyses as a result of which Red Eagle decided to write off (a) the carrying value of the La Vereda mining title and (b) the contingent liability associated with the purchase agreement with respect to the La Vereda title. | Memorial, ¶¶ 6, 94 and 160 BR-81 , CB Gold Inc., Management’s Discussion and Analysis for the Second Quarter of 2014, dated 15 August 2014, pp. 5-6. | The documents requested are relevant and material to the assessment of Red Eagle’s claim that Colombia’s measures rendered its Project “ <i>economically unviable</i> ” (see e.g. Memorial, ¶¶ 6, 94 and 160). Red Eagle has made such claim with respect to all of its mining titles, including La Vereda, even though Red Eagle itself wrote off the La Vereda title in April 2014 (see BR-81 , pp. 5-6), before any of Colombia’s measures were adopted. Red Eagle should now disclose its documents reflecting its analysis | <u>1. Lack of relevance & materiality:</u> Respondent does not explain how a request premised on its contentions regarding La Vereda accounting treatment is relevant or material to determining the occurrence of an expropriation or violation of the FET standard. Respondent also does not explain how a request premised on alleged terms of a private contract to which it is not a party is relevant or material to determining the occurrence of an expropriation or violation of the FET standard. Claimant has addressed this and the requested documents are not necessary to discharge Respondent’s burden of proof. <u>2. Overbreadth and speculative nature:</u> The request in question is unduly broad and speculative as it | <u>Request maintained.</u> The Respondent respectfully seeks an order from the Tribunal that the Claimant produce all documents responsive to this request. For the reasons set out below, the Claimant’s objections to this request are without merit. <u>1. The documents requested are relevant and material</u> The Claimant’s objections are premised on a mischaracterization of the rationale for this request. The request does not seek documents that relate to issues of liability under the FTA. Rather, the request seeks documents that are relevant and material to the issues of causation and valuation of the Claimant’s losses. The Claimant cannot credibly dispute that the | The Claimant to produce analysis to write- off La Vereda. |

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| | | | <p>leading to this write-off in order to allow the Tribunal to assess the veracity of Red Eagle’s claim that the measures somehow impacted on the la Vereda mining title even though Red Eagle had already written it off.</p> | <p>concerns internal and other documents relating to “impairment analyses ... or any other analysis” and is not based on any evidence. This is a fishing expedition to support its own contentions. In addition, there is no date limitation.</p> <p><u>3. Undue Burden:</u> The request is unduly burdensome because it lacks any evidentiary value that could outweigh the time, cost, and other burdens that searching and producing such information would entail.</p> | <p>documents requested, reflecting Claimant’s own determination that its La Vereda mining title was to be written off in April 2014 is relevant to such issues. In particular, the documents requested are relevant to establishing any loss in the FMV of the La Vereda property, which is the basis for Brattle’s assessment of damages should the Tribunal find that Colombia breached the FTA and that such breaches caused loss to the Claimant’s investment.</p> <p><u>2. The request is not overly broad or speculative</u></p> <p>Contrary to the Claimant’s assertions, the request is based on the Claimant’s own published document confirming that the Claimant wrote off the La Vereda title in April 2014 (see BR-81, pp. 5-6). As only the Claimant knows when it analysed whether to make such a write-off, the Respondent is not in a position to provide a specific date range for the request. However, given that the request focuses on impairment analyses leading to write-off in April 2014, the scope of the request is limited in time.</p> <p><u>3. The request is not unduly burdensome</u></p> | |
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| | | | | | The Claimant contends that the evidentiary value of the documents requested would be outweighed by the “time, cost, and other burdens that searching and producing such information”. However, the Claimant has failed to explain what “time”, “cost” or “other burdens” would be involved in searching for these documents relating to its significant determination that one of its Mining Titles should be written off. | |
| 19. | Documents confirming, for each of Red Eagle’s mining titles, Red Eagle’s commitments to issue shares and pay cash pursuant to Acquisition and Option Agreements, as disclosed in the aggregate in the notes to its financial statements and as listed in Table C-16 of BR-184 : Brattle Workpaper C – FMV Analyses. | Brattle Report, ¶¶ 80, 190-191 and footnote 223 BR-184 : Brattle Workpaper C – FMV Analyses, Table C-16. | The documents requested are relevant and material to the valuation of any loss in the FMV of Red Eagle’s mining titles resulting from Colombia’s measures. In order to estimate such loss, as a first step, Brattle relies on the Enterprise Value (the “EV”) of the Claimant to estimate the total FMV of the Project (see Brattle Report, § VI.A.2). As explained by Brattle at ¶ 80 of the Brattle Report, in order to calculate Red Eagle’s EV, it is necessary to take into account all liabilities, including contingent liabilities. In addition, Brattle’s calculation of | <u>1. Lack of relevance & materiality:</u> Respondent’s expert created table C-16 (Quarterly Contingent Cash and Shares) of BR-184, and Respondent does not explain why it is relevant and material (or appropriate) that Claimant produce documents to confirm Brattle’s table. Respondent also does not explain how its request is relevant and material to Claimant’s damages claim of sunk costs or why Brattle’s estimate of EV is relevant and material. Claimant has already demonstrated the reasonableness of its damages claims (<i>see, e.g.</i> , Claimant’s Memorial ¶¶ 193-205; Sequeira ¶¶ 47-70) and the requested documents are not necessary to discharge Respondent’s burden of proof. | <u>Request maintained.</u> The Respondent respectfully seeks an order from the Tribunal that the Claimant produce all documents responsive to this request. For the reasons set out below, the Claimant’s objections to this request are without merit. <u>1. The documents requested are relevant and material</u> While the Claimant contends that the documents requested are not relevant to its own case on valuation, the Claimant does not (and cannot) dispute that the documents requested are relevant to the Respondent’s pleaded case on valuation. In particular, Brattle’s estimate of EV is relevant and material to the calculation of damages under the FMV standard, | The Claimant shall produce the documents requested. They are already in the aggregate in the financial statements. |

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| | | | <p>damages under the FMV standard requires it to estimate the Claimant’s but-for equity share price (Brattle Report, ¶¶ 190-191), which in turn also depends on the composition of Red Eagle’s contingent liabilities, as Brattle explains in footnote 223 and in the notes to Tables C6, C7, C8 in BR-184: Brattle Workpaper C – FMV Analyses. Red Eagle should now disclose this specific information in order to allow Brattle to confirm or (if necessary) adjust their calculation of Red Eagle’s EV.</p> | <p><u>2. Overbreadth and speculative nature:</u> The request in question is unduly broad and speculative as it is fishing for documents to confirm figures compiled by Respondent’s expert.</p> <p><u>3. Undue Burden:</u> The request is unduly burdensome because it lacks any evidentiary value that could outweigh the time, cost, and other burdens that searching and producing such information would entail.</p> | <p>because it provides an upper bound on the FMV of Claimant’s loss in respect nine of its eleven Mining Titles (see Brattle Report, ¶ 199). Further, the requested documents are directly relevant to Brattle’s calculation of damages because the information contained in such documents impacts the calculation of Claimant’s but-for equity share price, a necessary component in Brattle’s calculation of the FMV of the portions of the Mining Titles that were allegedly impacted by the Measures (as summarized in Column 3 of Table C-16 of Exhibit BR-184).</p> <p>In any event, Brattle’s estimate of EV is also relevant to the Claimant’s calculation of sunk costs because it demonstrates that the amount of sunk costs sought by the Claimant greatly exceeds the market value of what Claimant may have lost as a result of the Measures (See Brattle Report, Section VI.A).</p> <p><u>2. The request is not overly broad or speculative</u></p> <p>The documents requested are documents that the Respondent reasonably believes to exist on the basis of the Claimant’s own financial statements, specifically listed in Table C-16 of Exhibit BR-</p> | |
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| | | | | | <p>184: Brattle Workpaper C – FMV Analyses.</p> <p><u>3. The request is not unduly burdensome</u></p> <p>The Claimant contends that the evidentiary value of the documents requested would be outweighed by the “<i>time, cost, and other burdens that searching and producing such information</i>”. However, the Claimant has failed to explain what “time”, “cost” or “other burdens” would be involved in searching for these documents that should be part of the Claimant’s financial records.</p> | |
| 20. | <p>Documents provided by SRK to Red Eagle (then CB Gold) detailing technical information and studies conducted in support of the SRK 2014 Technical Report (VP-07), authored by SRK or its third party contractors, and transmitted to Red Eagle prior to or around Red Eagle’s press release issued on April 2, 2014 regarding the 2014 Mineral Resource Estimate (BR-113).</p> | <p>Brattle Report, ¶¶ 60, 61, 122, 129, 147, 148, 184, 185, 186</p> | <p>The documents requested are relevant to the issue of valuation because such documents would have been obtained by and evaluated by any potential purchaser of the Red Eagle’s prior to Colombia’s measures.</p> <p>The documents provide details as to the location of the Mineral Resource on the claims, its prospects for economic extraction, and the extent to which the Páramo delimitation may have affected access to the Mineral Resource or its prospects for economic extraction, all of which is</p> | <p><u>1. Lack of relevance & materiality:</u></p> <p>Respondent does not explain how its request is relevant and material to Claimant’s damages claim of sunk costs. Respondent also does not explain how documents predating Colombia’s measures in violation of the Treaty are relevant and material to determining the existence or amount of those damages. Respondent has also not explained how “the location of the Mineral Resource on the claims, its prospects for economic extraction” or the “location of a “conceptual pit shell” are relevant and material. Respondent also does not explain how documents predating the delimitation of the paramo are</p> | <p><u>Request maintained, as narrowed below.</u></p> <p>Respondent respectfully seeks an order from the Tribunal that the Claimant produce all documents responsive to this request, subject to a date range of 1 October 2013 to 30 June 2014.</p> <p>For the reasons set out below, the Claimant’s objections to this request are without merit and the Claimant’s limited undertaking to produce responsive documents is unduly narrow and selective.</p> <p><u>1. The documents requested are relevant and material</u></p> | <p>The Claimant shall produce the documents. They are specific and relevant.</p> |

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| | | | <p>relevant to Brattle’s determination of the loss in fair market value allegedly suffered by Red Eagle due to Colombia’s measures.</p> <p>Further, the location of the “<i>conceptual pit shell</i>” referenced but not identified in the SRK 2014 Technical Report is relevant to Brattle’s assessment of the material uncertainties that existed prior to the enactment of Colombia’s measures. The location of prior exploration would inform and confirm Brattle’s assessment that the areas of the titles within the Páramo had not changed in prospectivity since their acquisition. This assessment is a material component to Brattle’s calculation of damages.</p> | <p>relevant and material to the impact of Respondent’s subsequent measures.</p> <p><u>2. Overbreadth and speculative nature:</u> The request in question is unduly broad and speculative as it is fishing for documents to confirm Brattle’s assessments and as it concerns documents not only from SRK but from “third party contractors” and is insufficiently specific in terms of a date range, ranging from “prior to or around Red Eagle’s press release issued on April 2, 2014” without any additional date limitations.</p> <p><u>3. Good Faith Production:</u> Notwithstanding the foregoing, Claimant will conduct a reasonable search of its files and produce relevant documents from Q1-2 2014, if any, provided that they are not otherwise in Colombia’s custody or control, not subject to privilege, and that any confidential information is subject to a reasonable confidentiality undertaking by Respondent.</p> | <p>While the Claimant contends that the documents requested are not relevant to its own case on damages, the Claimant does not (and cannot) dispute that the documents requested are relevant to the Respondent’s pleaded case on valuation.</p> <p>Further, as is clear from the Brattle Report, documents predating Colombia’s measures are relevant and material to determining the existence or amount of those damages if they contain information relevant to the FMV of the project before the measures allegedly impacted it.</p> <p><u>2. The request is not overly broad or speculative</u></p> <p>The Claimant’s objection that the request is “unduly broad and speculative” is primarily based on its contention that the documents requested are relevant to Brattle’s assessments of the Claimant’s alleged loss, rather than the Claimant’s case on damages. However, that the Claimant has chosen to claim damages on the basis of “sunk costs” rather than FMV does not mean the request is “overly broad” or “speculative”.</p> <p>Further, the Claimant objects that the request includes documents “<i>not</i></p> | |
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| | | | | | <p><i>only from SRK but from ‘third party contractors’</i>”. However, the request only seeks documents provided by SRK to Red Eagle.</p> <p>Finally, as to the date range, the Respondent agrees to narrow its request to the period of 1 October 2013 (when SRK was commissioned to conduct its Technical Report) to 30 June 2014 (i.e., the end of Q2 2014, for which the Claimant has agreed to produce responsive documents).</p> <p><u>3. Claimant’s “good faith production” undertaking is unduly narrow and selective</u></p> <p>Colombia notes the Claimant’s undertaking to produce certain documents in response to this request. However:</p> <ol style="list-style-type: none"> 1. The Claimant has sought to limit its production to “<i>documents from Q1-2 2014.</i>” There is no basis for the Claimant unilaterally to narrow the scope of this request in this manner, and thus to exclude documents from the period 1 October 2013 (when SRK was commissioned to produce | |
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| | | | | | <p>its Report) to 31 December 2013.</p> <p>2. For the reasons set out in the Respondent’s reply to Claimant’s objections to Request No. 1 above, the Respondent requests that any claim to privilege over a document be accompanied by a privilege log setting out the date and description of the document and the basis on which the Claimant considers it to be privileged.</p> <p>3. As set out above with respect to Request No. 1, there is no basis for the Claimant to condition its production on Respondent giving a “<i>reasonable confidentiality undertaking</i>”. In accordance with IBA Rule 9.2(e), to the extent the Claimant considers that there are “<i>compelling</i>” grounds of commercial or technical confidentiality, the Claimant should provide a log setting out the date and description of the document and the basis on which the Claimant</p> | |
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| | | | | | <p>considers it (or information contained within it) to be subject to such grounds.</p> <p>Colombia therefore respectfully seeks an order from the Tribunal that the Claimant produce all documents responsive to this request, subject to a date range of 1 October 2013 to 30 June 2014.</p> | |
| 21. | <p>(a) Documents provided by Giovanni J Ortiz to Red Eagle reflecting the technical information and studies conducted in support of his two 2017 Technical Reports (BR-49 and BR-179), whether authored by Mr. Ortiz or third party contractors, transmitted to Red Eagle prior to or around Red Eagle’s first press release of June 8, 2017 regarding the 2017 Mineral Resource Estimate (BR-177).</p> <p>(b) Metallurgical testwork report of Inspectorate Exploration & Mining Services Ltd. (“Inspectorate”) of Richmond, British Columbia, dated 7 August</p> | <p>Brattle Report ¶¶ 60, 61, 122, 129, 147, 148, 184, 185, 186</p> | <p>The documents requested are relevant and material to Red Eagle’s assertions that Colombia’s measures rendered any project in the area of Red Eagle’s mining titles “<i>economically unviable</i>” (see e.g. Memorial, ¶¶ 6, 94 and 160). Specifically, the documents requested would clarify the reasons for Mr. Ortiz’s statements that “<i>the historic resource is no longer relied upon as an important part of the near surface stockwork resources lie in recently defined Páramo area</i>” (BR-179, p. 67) that “[t]here is no current and valid mineral resource estimate associated with this Project.” (BR-49, p. 66; BR-179, p. 67), and that</p> | <p><u>1. Lack of relevance & materiality:</u></p> <p>Respondent does not explain how the requested documents are relevant and material to understanding “the reasons” for the referenced quotations from reports put into the record by Respondent, or how such reasons are relevant and material to assessing the impact of Colombia’s measures or to determining the occurrence of an expropriation or violation of the FET standard. Claimant has already addressed this and the requested documents are not necessary to discharge Respondent’s burden of proof.</p> <p><u>2. Overbreadth and speculative nature:</u> The request in question is unduly broad and speculative as it is insufficiently specific in terms of a date range, ranging from “prior to or around Red Eagle’s first press release of June 8, 2017” without any</p> | <p><u>Request maintained.</u></p> <p>The Respondent respectfully seeks an order from the Tribunal that the Claimant produce all documents responsive to this request. For the reasons set out below, the Claimant’s objections to this request are without merit.</p> <p><u>1. The documents requested are relevant and material</u></p> <p>The Claimant’s objections are premised on a mischaracterization of the rationale for this request. The request does not seek documents that relate to issues of liability under the FTA. Rather, the request seeks documents that are relevant and material to the issues of causation and valuation of the Claimant’s losses. The Claimant cannot credibly dispute that the documents requested, reflecting Claimant’s own technical analyses</p> | <p>The Claimant shall produce the documents. They are specific and relevant.</p> |

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| <p>2013, and referenced in Section 12 of the SRK 2014 Technical Report (VP-07), Mineral Processing and Metallurgical Testing, and referenced as “Beland, S. (2013) 2013 Project Report for Metallurgical Testing on Samples from the CB GOLD Inc. Vetas Gold Project, Inspectorate Exploration & Mining Services Ltd.” in the References section of the SRK 2014 Technical Report.</p> | | <p>“[i]n 2013, the company performed a preliminary metallurgical testing but Red Eagle considers that they are not reliable and are not representative of the project and the results of the study are not presented in this report.” (BR-49, p. 65; BR-179, p. 66).</p> | <p>additional date limitations. Respondent is fishing for documents to support the contentions of its expert.</p> <p>3. Undue Burden: The request is unduly burdensome because it lacks any evidentiary value that could outweigh the time, cost, and other burdens that searching and producing such information would entail.</p> | <p>of the resources available within its Mining Titles and metallurgical composition of such resources are relevant and material to the Tribunal’s assessment of Red Eagle’s claim that the areas of its Mining Titles that remain available for mining activities do not contain any “economically viable” mining project. The existence and amount of any mineral resources on the respective areas are directly relevant to whether economically viable projects may exist, as are the results of metallurgical test work. (For example, a Mineral Resource is defined as “a concentration or occurrence of solid material of economic interest in or on the Earth’s crust in such form, grade or quality and quantity that there are reasonable prospects for eventual economic extraction” (CIM Definitions, Exhibit BR-6); metallurgical factors are among the Modifying Factors that are relevant to converting Mineral Resources into Mineral Reserves, and therefore establishing economic feasibility – see Brattle Report, ¶ 55). The 8 and 12 June Reports authored by Mr. Ortiz state that no valid mineral resources exist, but do not provide any explanation as to why the mineral resources declared based on the SRK 2014 Technical</p> | |
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| | | | | | <p>Report were no longer valid. Likewise, the 8 and 12 June Reports authored by Mr. Ortiz do not explain why Red Eagle considers that previously conducted metallurgical test work is no longer reliable and representative of the project. The requested Documents are relevant to establishing whether these changes can be attributed to Colombia’s measures or to unrelated causes.</p> <p><u>2. The request is not overly broad or speculative</u></p> <p>The request is tailored to produce relevant and material documents pertaining specifically to the 8 and 12 June Reports authored by Mr. Ortiz and to the report of Inspectorate dated 7 August 2013 referenced in Section 12 of the SRK 2014 Technical Report. As such, the request is focused on documents from a specific time period and subject matter, and is does not involve any speculation.</p> <p><u>3. The request is not unduly burdensome</u></p> <p>The Claimant contends that the evidentiary value of the documents requested would be outweighed by the “<i>time, cost, and other burdens that searching and producing such information</i>”. However, the</p> | |
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| | | | | | Claimant has failed to explain what "time", "cost" or "other burdens" would be involved in searching for these documents that should be part of the Claimant's records of its exploration activities. | |
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