

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

Administered by the  
INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

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**LEGACY VULCAN, LLC**

*Claimant*

v.

**UNITED MEXICAN STATES**

*Respondent*

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**CLAIMANT'S ANCILLARY CLAIM MEMORIAL**

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1. In accordance with the Tribunal’s Procedural Order No. 7 of 11 July 2022 and communication of 27 July 2022,<sup>1</sup> Claimant Legacy Vulcan, LLC (“Legacy Vulcan”) hereby submits its memorial in support of its ancillary claim against the United Mexican States (“Mexico” or “Respondent”) for breach of the North American Free Trade Agreement (“NAFTA”).

2. This memorial is supported by (i) the third witness statement of [REDACTED] [REDACTED] [REDACTED] (ii) the second witness statement of [REDACTED] [REDACTED] (iii) the third expert report on environmental law issues by [REDACTED] [REDACTED] (iv) the third expert report on valuation by Darrell Chodorow and Fabricio Núñez of The Brattle Group; (v) new factual exhibits numbered C-0200 to C-0278; and (vi) one new legal authority numbered CL-0201.

## I. INTRODUCTION

3. Legacy Vulcan’s ancillary claim arises from Mexico’s wrongful shutdown of CALICA’s remaining quarrying and export operations on the order of Mexico’s President Andrés Manuel López Obrador following a politically-motivated campaign of public attacks against Legacy Vulcan and CALICA. As Legacy Vulcan demonstrated in the first phase of this arbitration, Mexico has deployed the full powers of the State to interfere with Legacy Vulcan’s integrated project to quarry limestone and produce aggregates for export to the United States (the “Project”). Mexico previously foreclosed production in two of the Project’s three quarrying lots — La Adelita and El Corchalito — through a series of wrongful measures in violation of Mexico’s obligations under NAFTA. It has now done the same in La Rosita, frustrating the Project’s purpose.

4. On 2 May 2022, President López Obrador announced that he had ordered the immediate shutdown of La Rosita, Legacy Vulcan’s only remaining operating lot and the site of its processing plant. The President’s order was promptly carried out by Mexico’s federal environmental enforcement agency, the *Procuraduría Federal de Protección al Ambiente* (“PROFEPA”), whose inspectors cordoned off CALICA’s facilities the very same day together with more than thirty heavily-armed Mexican marines in a menacing show of military force. In an effort to cloak the President’s arbitrary order with a semblance of legality, on 2-5 May 2022, PROFEPA conducted two simultaneous sham inspections of CALICA’s facilities. On 5 May 2022,

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<sup>1</sup> Procedural Order No. 7, ¶ 160(b) (11 July 2022); Email from Sara Marzal Yetano (ICSID) on behalf of the Tribunal, dated 27 July 2022 (noting the Parties’ agreed procedural calendar).

PROFEPA fully implemented the President's directive by formally shutting down CALICA's operations in La Rosita under the pretext that CALICA lacked environmental permits.

5. As Legacy Vulcan explains in Part II, the shutdown of La Rosita followed a months-long campaign of public harassment spearheaded by President López Obrador. He declared in his *Mañaneras* (morning press briefings) that he disfavors an American company "taking Mexican soil to build roads in the United States" and favors the development of a "tourism zone" in CALICA's lots and port. He falsely and repeatedly accused Legacy Vulcan and CALICA of "environmental destruction" in an effort to deflect environmental opposition to his Mayan Train project and strong-arm Legacy Vulcan into discontinuing this arbitration and accepting his preferred tourism makeover of the Project. He also dismissed Legacy Vulcan's arbitration claims and suggested that this proceeding is biased because it is the product of policies sponsored by "neoliberal governments." Following the President's public attacks and shutdown order, Mexico's customs agency also suspended the customs permit that CALICA had received as a matter of course for decades to export aggregates to the United States and threatened to revoke it based on PROFEPA's bogus, pretextual "findings" of environmental violations.

6. Mexico's accusations are false. Legacy Vulcan has openly extracted and quarried aggregates from La Rosita for over three decades under valid and long-standing government permits and in compliance with environmental laws. Indeed, PROFEPA itself certified CALICA's environmental compliance through a 2012 inspection of CALICA and six Clean Industry Certificates for outstanding environmental performance, most recently in 2016.

7. As explained in Part III, this Tribunal has jurisdiction to resolve Legacy Vulcan's ancillary claim under the Convention on Settlement of Investment Disputes between States and Nationals of Other States ("ICSID Convention") and NAFTA. As also explained in Part III, Mexico's further interference with Legacy Vulcan's investment and escalation of the dispute constitute a breach of Mexico's obligations under NAFTA, including its obligation to accord investments of U.S. investors fair and equitable treatment. Mexico's shutdown of Legacy Vulcan's remaining operations in La Rosita and suspension of Legacy Vulcan's ability to export aggregates from Punta Venado were arbitrary and contrary to CALICA's due-process rights. Mexico's actions have also frustrated Legacy Vulcan's and CALICA's legitimate expectations that they would be able to operate and benefit from the Project for as long as economically feasible. These expectations were based on specific representations made by Mexican officials in the 1986 Investment Agreement and the various endorsements, permits, and authorizations issued to CALICA over three decades.

8. Finally, as explained in Part IV, Mexico’s wrongful shutdown of Legacy Vulcan’s remaining operations in La Rosita and indefinite suspension, and potential revocation, of CALICA’s customs permit have caused additional losses to Legacy Vulcan. Based upon well-established principles of international law, Legacy Vulcan is entitled to full reparation for the losses Mexico’s wrongful measures have caused, which have been calculated by Darrell Chodorow and Fabricio Núñez of The Brattle Group in the amount of [REDACTED]

9. For the reasons set forth below, Legacy Vulcan and CALICA respectfully request that the Tribunal uphold this ancillary claim, declare Mexico in breach of NAFTA, and award Legacy Vulcan [REDACTED] in compensation for that claim plus post-Award interest and costs.

## II. STATEMENT OF FACTS

### A. LA ROSITA AND PUNTA VENADO ARE AT THE HEART OF LEGACY VULCAN’S LONG-STANDING AND DULY AUTHORIZED INVESTMENTS IN MEXICO

10. As Legacy Vulcan has already demonstrated in this arbitration, for more than three decades, Legacy Vulcan has operated a one-of-a-kind investment in Mexico for the production of high-quality aggregates — initially from a lot known as La Rosita — for export to the United States from a specially-designed and built port at Punta Venado, Quintana Roo.<sup>2</sup> The record already establishes the following facts, among others, about Legacy Vulcan’s Project:

- The Project in Mexico dates back to 6 August 1986, when Mexico entered into an agreement with CALICA (the “Investment Agreement”) (i) authorizing the Project from an environmental standpoint based on required environmental impact studies;<sup>3</sup> (ii) committing to assist CALICA in obtaining other permits required to develop

<sup>2</sup> Memorial, ¶¶ 25-38; Reply, ¶¶ 1-2, 17-19; Claimant’s Post-Hearing Brief, ¶ 45. Claimant’s and Respondent’s previous pleadings are referred to by their respective title and using the same designation conventions used in prior pleadings. See Procedural Order No. 1, Annex B (26 November 2019).

<sup>3</sup> Investment Agreement (6 August 1986) (C-0010-SPA.4, 11) (“The place where the [...] project will be developed is located in a coastal area that includes ecosystems that may be affected. For such reason, SEDUE carried out the required environmental impact studies.”) (free translation, the original text reads: “El lugar en donde se desarrollará el proyecto [...] se localiza en una zona litoral que comprende ecosistemas que pudieran ser afectados. Por tal motivo, la SEDUE realizó los estudios de impacto ambiental requeridos”); *id.* at 6, 14 (“Based on the final results of its evaluation of the Environmental Impact Statement of the Project, SEDUE, with the support of the *Instituto de Ecología, A.C.* and the *Centro de Investigaciones y Estudios Avanzados del [Instituto Politécnico Nacional de México]*, Mérida Unit, [SEDUE] considers that the [...] Project proposed by [CALICA] is feasible[.]”) (free translation, the original text reads: “La SEDUE con base en los resultados finales de su evaluación realizada a la Manifestación de Impacto Ambiental del Proyecto, con el apoyo del Instituto de Ecología, A.C. y el Centro de Investigaciones y Estudios Avanzados del [Instituto Politécnico Nacional de México], Unidad Mérida, considera factible desde el punto de vista ambiental, la realización del Proyecto propuesto por [CALICA][.]”).

the Project;<sup>4</sup> and (iii) acknowledging CALICA's right to extract its limestone reserves for as long as economically feasible.<sup>5</sup>

- Mexico granted the necessary environmental approvals in relation to La Rosita and Punta Venado, with the Investment Agreement expressly recognizing that Mexico's Ministry of Urban Development and Ecology (*Secretaría de Desarrollo Urbano y Ecología* or "SEDUE") — the predecessor to SEMARNAT and its instrumentalities PROFEPA and the National Institute of Ecology (*Instituto Nacional de Ecología* or "INE")<sup>6</sup> — had "conducted the required environmental impact assessments," taking into account that the Project would be developed "in a coastal area which contains ecosystems that may be affected."<sup>7</sup> As reflected in the Investment Agreement, "[b]ased on the final results of its evaluation of the Environmental Impact Statement of the Project, SEDUE [...] considers that the Project proposed by [CALICA] is feasible[.]"<sup>8</sup>
- CALICA acquired and developed the lots that initially comprised the Project — La Rosita and Punta Venado — relying on Mexico's express authorization in the 1986 Investment Agreement.<sup>9</sup> Mexico's then-President, Miguel de la Madrid, personally endorsed the Project in 1987 as Legacy Vulcan and Grupo ICA (Legacy Vulcan's former partner in the Project) committed to invest ██████████ to develop it.<sup>10</sup>
- Based on the Investment Agreement and related authorizations, Legacy Vulcan invested in and developed the Project, initially in La Rosita and Punta Venado.<sup>11</sup>

<sup>4</sup> *Id.* at 7, 16 ("SEDUE, the SCT and the STATE GOVERNMENT undertake, within the scope of their respective competences, to coordinate their functions and to provide the facilities to obtain the permits required to carry out the [CALICA] Project[.]") (free translation, the original text reads: "SEDUE, SCT y el GOBIERNO DEL ESTADO se comprometen, en la esfera de sus respectivas competencias, a coordinar sus funciones y a dar las facilidades para la obtención de los permisos requeridos para la realización del Proyecto [de CALICA][.]").

<sup>5</sup> *Id.* at 4, 11 ("The period of extraction shall be subject to market conditions and economic feasibility.") (free translation, the original text reads: "El tiempo de explotación estará sujeto a las condiciones de mercado y a la factibilidad económica.").

<sup>6</sup> See Expert Report-██████████-Environmental Law-Claimant's Ancillary Claim Memorial-Third Report-SPA, ¶ 5.

<sup>7</sup> Investment Agreement (6 August 1986) (C-0010-SPA.4, 11) (free translation, the original text reads: "El lugar en donde se desarrollará el proyecto [...] se localiza en una zona litoral que comprende ecosistemas que pudieran ser afectados. Por tal motivo, la SEDUE realizó los estudios de impacto ambiental requeridos."). The Investment Agreement also expressly called for the development of La Rosita, where the main quarry and the aggregates processing plant would be located, as well as Punta Venado, where the port terminal would be built. See *id.* at 4, 11; Memorial, ¶ 25.

<sup>8</sup> Investment Agreement (6 August 1986) (C-0010-SPA.6, 14) (free translation, the original text reads: "La SEDUE con base en los resultados finales de su evaluación realizada a la Manifestación de Impacto Ambiental del Proyecto, con el apoyo del Instituto de Ecología, A.C. y el Centro de Investigaciones y Estudios Avanzados del [Instituto Politécnico Nacional de México], Unidad Mérida, considera factible desde el punto de vista ambiental, la realización del Proyecto propuesto por [CALICA][.]").

<sup>9</sup> CALICA acquired these lots through a subsidiary, Rancho Piedra Caliza, S.A. de C.V. ("RAPICA"), which in turn leased the lots to CALICA. See Punta Venado Title Deed (18 December 1986) (C-0029-SPA.8); La Rosita Title Deed (22 May 1987) (C-0030-SPA.3); Memorial, ¶ 29.

<sup>10</sup> Agreement entered into between Grupo ICA and Vulcan Materials Company, witnessed by Miguel de la Madrid Hurtado, President of the United Mexican States (6 July 1987) (C-0011-SPA.4, 8-9); see also Memorial, ¶ 28.

<sup>11</sup> Memorial, ¶¶ 29-36.



- As contemplated in the Investment Agreement, CALICA subsequently acquired two additional quarrying lots, El Corchalito and La Adelita, for the purpose of expanding the Project.<sup>12</sup>



**1. CALICA Has Operated in La Rosita for Over Three Decades Under Valid and Long-Standing Government Permits**

11. La Rosita comprises an area of approximately 930 hectares,<sup>13</sup> and, as depicted in Picture 1 above, serves as the physical link connecting the Project's other quarrying lots, La Adelita and El Corchalito, to the Punta Venado port terminal.<sup>14</sup>

12. After acquiring La Rosita in May 1987,<sup>15</sup> CALICA commenced quarrying operations that same year, once all applicable environmental authorizations had been secured as reflected in the Investment Agreement.<sup>16</sup> That year, CALICA produced about 75,000 tons of

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<sup>12</sup> See Memorial, ¶ 37.

<sup>13</sup> La Rosita Title Deed (22 May 1987) (C-0030-SPA.9).

<sup>14</sup> See, e.g., Claimant's Reply on Requests for Provisional Measures and Leave to Submit Ancillary Claim, ¶ 32.

<sup>15</sup> La Rosita Title Deed (22 May 1987) (C-0030-SPA.3).

<sup>16</sup> Vulcan Materials Company, Form 10-K for the 1991 fiscal year (27 March 1992) (C-0031-ENG.6); Memorial, ¶¶ 29, 30; Witness Statement-[REDACTED]-Claimant's Memorial-ENG, ¶¶ 15-17; Witness

crushed stone base material at La Rosita using a temporary processing plant, pending completion of the permanent processing plant in that lot.<sup>17</sup>

13. By 1991, Legacy Vulcan had completed the construction of a state-of-the-art processing plant in La Rosita to process quarried stone for the entire Project.<sup>18</sup> This major investment uses a series of specially-designed crushers, filters and conveyor belts to process the extracted shot rock into sizes apt for the particular needs of customers.<sup>19</sup> Among other investments, Legacy Vulcan built a two-mile conveyor belt to transport processed aggregates to the Punta Venado port terminal, where the material is staged and fractionated (or blended) as it is loaded onto vessels through an automated shiploader for transport to the United States.<sup>20</sup>

**Picture 2 – Automated Shiploader with Legacy Vulcan’s M/V H.A. SKLENAR in Berth at Punta Venado**



14. As quarrying operations were carried out in La Rosita, vegetation was removed from the lot’s surface in phases, in order to allow extraction of reserves above the water table across the lot, before quarrying continued below the water table.<sup>21</sup>

Statement- [REDACTED] -Claimant’s Ancillary Claim Memorial-Third Statement-ENG, ¶ 6. *See also* Claimant’s Post-Hearing Brief, ¶ 45; Claimant’s Post-Hearing Brief, Appendix A - Question 7, p. 12.

<sup>17</sup> Witness Statement- [REDACTED] -Claimant’s Memorial-ENG, ¶ 17.

<sup>18</sup> *Id.*, ¶ 19; Reply on Requests for Provisional Measures and Leave to Submit Ancillary Claim, ¶ 32.

<sup>19</sup> Memorial, ¶¶ 43-46; Witness Statement- [REDACTED] -Claimant’s Memorial-ENG, ¶¶ 35-37.

<sup>20</sup> Memorial, ¶¶ 4, 44, 46-47.

<sup>21</sup> Witness Statement- [REDACTED] Claimant’s Ancillary Claim Memorial-Third Statement-ENG, ¶ 5.

15. For over three decades, CALICA continued to quarry La Rosita in compliance with Mexican laws and with full knowledge of Mexico's Ministry of the Environment and Natural Resources (*Secretaría de Medio Ambiente y Recursos Naturales*) ("SEMARNAT") and its enforcement arm (PROFEPA), as further explained in Part II.A.4 below.

**2. CALICA Has Lawfully Operated Its Port Terminal at Punta Venado Under a Port Concession Dating Back to 1987**

16. Shortly after authorizing the Project through the Investment Agreement, Mexico granted CALICA a concession to build and operate a private port terminal in Punta Venado to load aggregates for export to the United States.<sup>22</sup> Punta Venado, which comprises an area of approximately 202 hectares, is adjacent to La Rosita, as depicted in Picture 1 above.<sup>23</sup> CALICA excavated and dredged an 82,500 m<sup>2</sup> deep-water port there — the only one in the State of Quintana Roo — capable of hosting large cargo vessels. CALICA also built the dolphins and berthing necessary to load aggregates to those vessels.<sup>24</sup>

17. Under the CALICA port concession, CALICA donated to Mexico's Ministry of Communications and Transportation (*Secretaría de Comunicaciones y Transportes*) ("SCT") six hectares of land to build the public terminal, and agreed to maintain and repair both the private and the public terminals.<sup>25</sup> On 13 May 2015, the SCT extended CALICA's concession over the private terminal until 2037.<sup>26</sup> CALICA's port concession can be extended for an additional 50 years.<sup>27</sup> It has been amended four times since it was issued in 1987.<sup>28</sup>

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<sup>22</sup> Provisional Permit to Begin Building the Project No. 28/86 (10 November 1986) (C-0028-SPA.3, 7); Concession granted by the Executive Branch through the SCT to CALICA (21 April 1987) (C-0012-SPA.4); Memorial, ¶¶ 29, 62.

<sup>23</sup> Punta Venado Title Deed (18 December 1986) (C-0029-SPA.4).

<sup>24</sup> Witness Statement-██████████-Claimant's Memorial-ENG, ¶ 16; Memorial, ¶ 33; *see also* Investment Agreement (6 August 1986) (C-0010-SPA.29-32).

<sup>25</sup> Memorial, ¶ 62; Concession granted by the Executive Branch through the SCT to CALICA (21 April 1987) (C-0012-SPA.4-5, 13-18).

<sup>26</sup> Memorial, ¶ 92; Witness Statement-██████████-Claimant's Memorial-ENG, ¶¶ 28, 35.

<sup>27</sup> *See* Mexico Federal Official Gazette, Ports Act, Article 23 (19 July 1993) (C-0047-SPA.40) (providing that port concessions may be granted for a term of up to 50 years and may be renewed for an additional term of 50 years); Amendment to the Concession granted by the Federal Government through the SCT to Calica (13 May 2015) (C-0016-SPA.15, 37) (providing a term for the concession through April 2037, which may be renewed for a 50-year term).

<sup>28</sup> Amendment to the Concession granted by the Federal Government through the SCT to CALICA (13 August 1993) (C-0013-SPA); Amendment to the Concession granted by the Federal Government through the SCT to CALICA (7 June 1994) (C-0014-SPA); Amendment to the Concession granted by the Federal Government through the SCT to CALICA (C-0015-SPA); Amendment to the Concession granted by the Federal Government through the SCT to CALICA (13 May 2015) (C-0016-SPA).

**Picture 3 –Aerial View of CALICA’s Port Terminal**

**3. CALICA Has Exported Aggregates from Punta Venado Under a Customs Permit that — Before 2022 — Had Been Routinely Renewed for Decades**

18. The port terminal at Punta Venado operates as a specific purpose marine terminal. Legacy Vulcan vessels transporting aggregates from Punta Venado to the United States have been authorized to do so directly, without needing to go through a different, official Mexican customs port to clear customs.<sup>29</sup> This is so because CALICA exports aggregates produced near its port terminal and it would be economically inefficient to take them elsewhere for export.<sup>30</sup> Accordingly, Legacy Vulcan has secured and renewed, approximately every three years, a customs permit authorizing the export of production directly from Punta Venado to the United States.<sup>31</sup>

<sup>29</sup> Witness Statement- [REDACTED]-Claimant’s Ancillary Claim Memorial-Third Statement-ENG, ¶ 6. Articles 10 and 19 of the Customs Act provide that the shipment of merchandise that, due to its specific nature or volume, cannot be exported through an official Mexican customs port may be shipped through a different location than that of the designated customs port. *See* Customs Act, Articles 10, 19 (15 December 1995) (C-0278-SPA.9, 18).

<sup>30</sup> Witness Statement- [REDACTED]-Claimant’s Ancillary Claim Memorial-Third Statement-ENG, ¶ 6.

<sup>31</sup> *Id.* *See also* Customs Act Regulations, Article 11 (20 April 2015) (C-0200-SPA.5-6); Letter No. DGJA-2022-0981 from Leonardo Contreras Gómez (Agencia Nacional de Aduanas de México) to CALICA (30 March 2022) (C-0201-SPA.9) (“Calizas Industriales del Carmen, S.A. de C.V., lleva a cabo maniobras de carga de caliza triturada a granel en embarcaciones para su exportación, por tal motivo, debido a la naturaleza y volumen de las mercancías que manejamos y la necesidad de su manipulación con los equipos y sistemas mencionados, así como por razones de eficiencia y facilitación, es que requerimos que se nos

19. The Mexican customs authority had routinely renewed that permit for decades as a matter of course before 2022.<sup>32</sup> As further explained in Part II.B.1 below, CALICA's customs permit, which was due to expire on 2 January 2022, was not renewed as a matter of course in the context of a campaign of public harassment and pressure carried out by the Mexican government against Legacy Vulcan and CALICA.<sup>33</sup>

#### 4. Legacy Vulcan and CALICA Have Operated the Project in Compliance with Environmental Laws

20. For decades, CALICA has operated the Project in compliance with Mexican environmental law.<sup>34</sup> PROFEPA's conduct confirms this fact in at least two ways.

21. *First*, for over a decade, PROFEPA certified CALICA's compliance with Mexican environmental laws and requirements. It did so by issuing six Clean Industry Certificates to CALICA from 2003 to 2016, within the framework of the National Environmental Audit Program (*Programa Nacional de Auditoría Ambiental*).<sup>35</sup> This program was developed and administered by PROFEPA to audit the environmental performance of "companies in operation, which due to

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permita la extracción de las mercancías mencionadas por las instalaciones que operamos objeto de la presente petición.”).

<sup>32</sup> See Witness Statement- [REDACTED]-Claimant's Ancillary Claim Memorial-Third Statement-ENG, ¶¶ 6, 12; Vulcan Materials Co., Vulcan Reports Fourth Quarter & Full Year 2021 Results (16 February 2022) (C-0175-ENG.7) (noting that authorization to export is subject to "a historically routine three-year customs permit for our deep-water port at Punta Venado."). See also, e.g., Letter No. 326-SAT-I-32966 from Fanny Angélica Eurán Graham (Administración General de Aduanas) to CALICA (26 May 2003) (C-0202-SPA); Letter No. 326-SAT-I-26283 from Fanny Angélica Eurán Graham (Administración General de Aduanas) to CALICA (06 April 2004) (C-0213-SPA); Letter No. 326-SAT-I-83402 from Fanny Angélica Eurán Graham (Administración General de Aduanas) to CALICA (22 December 2005) (C-0203-SPA); Letter No. 800-02-05-00-00-2010-12438 from Mónica Emilia Villanueva Cruz (Administración General de Aduanas) to CALICA (27 October 2010) (C-0204-SPA); Letter No. 800-02-05-00-00-2015-13168 from Víctor Jesús del Rey García (Administración General de Aduanas) to CALICA (18 December 2015) (C-0205-SPA); Letter No. 800.02.03.00.00.18-610 from Luis Antonio Pampillón González (Administración General de Aduanas) to CALICA (19 December 2018) (C-0206-SPA); Letter No. DGJA-2022-088 from Leonardo Contreras Gómez (Agencia Nacional de Aduanas de México) to CALICA (10 February 2022) (C-0207-SPA); Letter No. DGJA-2022-0981 from Leonardo Contreras Gómez (Agencia Nacional de Aduanas de México) to CALICA (30 March 2022) (C-0201-SPA).

<sup>33</sup> Witness Statement- [REDACTED]-Claimant's Ancillary Claim Memorial-Third Statement-ENG, ¶¶ 12-22.

<sup>34</sup> See Expert Report- [REDACTED]-Environmental Law-Claimant's Ancillary Claim Memorial-Third Report-SPA, § III.

<sup>35</sup> Environmental Audit Report (March 2016) (C-0208-SPA.17-18); Clean Industry Certificate (23 June 2003) (C-0037-SPA); Clean Industry Certificate (16 December 2005) (C-0038-SPA); Clean Industry Certificate (31 July 2008) (C-0039-SPA); Clean Industry Certificate (28 February 2012) (C-0040-SPA); Clean Industry Certificate (2 June 2014) (C-0041-SPA); Clean Industry Certificate (27 July 2016) (C-0042-SPA); see also Expert Report- [REDACTED]-Environmental Law-Claimant's Ancillary Claim Memorial-Third Report-SPA, § III.B.

their location, dimensions, characteristics, and scopes can cause effects or negative impacts to the environment[.]”<sup>36</sup>

22. Environmental audits under the auspices of the National Environmental Audit Program are conducted by PROFEPA-certified auditors tasked with verifying a “company’s compliance with Federal and Local Environmental Laws, Federal and Local Environmental Regulations, mandatory technical standards issued by SEMARNAT, and applicable municipal requirements.”<sup>37</sup> The resulting diagnostic report is presented to PROFEPA for review and, if no material irregularities are found, PROFEPA may issue a Clean Industry Certificate.<sup>38</sup> As provided by the applicable regulation, “[t]hrough the [Clean Industry] Certificate, PROFEPA [...] acknowledges that at the time of its granting, the Company operates *in full compliance* with environmental regulations [...]”<sup>39</sup>

23. CALICA first participated in the National Environmental Audit Program in 2002 and obtained a Clean Industry Certificate the following year.<sup>40</sup> Since then, CALICA participated in the Program five more times, earning Certificates in 2005, 2008, 2012, 2014, and 2016.<sup>41</sup> Each Clean Industry Certificate has a two-year duration, so the 2016 Certificate expired in July 2018,<sup>42</sup> by which time PROFEPA had implemented the wrongful shutdown of El Corchalito.<sup>43</sup>

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<sup>36</sup> National Environmental Audit Program Explanatory Circular (C-0209-SPA.5) (free translation, the original text reads: “Empresas en operación, que por su ubicación, dimensiones, características y alcances puedan causar efectos o impactos negativos al ambiente[.]”); *see also* LGEEPA Regulation on Environmental Audits, Article 6 (C-0210-SPA).

<sup>37</sup> National Environmental Audit Program Explanatory Circular (C-0209-SPA.6) (free translation, the original text reads: “En la Auditoría Ambiental se verifica que la Empresa cumpla con las Leyes Ambientales Federales y Locales, los Reglamentos Ambientales Federales y Locales, las Normas Oficiales Mexicanas ordenadas por Materia (NOMs) dictadas por la SEMARNAT y los requerimientos que cada municipio aplique.”); *see also* LGEEPA Regulation on Environmental Audits, Articles 2(XXII), 6 (C-0211-SPA); Expert Report- [REDACTED]-Environmental Law-Claimant’s Ancillary Claim Memorial-Third Report-SPA, ¶ 19.

<sup>38</sup> LGEEPA Regulation on Environmental Audits, Article 16 (29 April 2010) (C-0210-SPA.8).

<sup>39</sup> *Id.* at 10, Article 23 (free translation, the original text reads: “A través del Certificado, la Procuraduría o, en su caso, la Agencia, según corresponda, reconocen que al momento de su otorgamiento, la Empresa opera en pleno cumplimiento de la regulación ambiental y que su Desempeño Ambiental es conforme con los Términos de Referencia.”) (emphasis added).

<sup>40</sup> Environmental Audit Report (March 2016) (C-0208-SPA.17); Clean Industry Certificate (23 June 2003) (C-0037-SPA).

<sup>41</sup> Clean Industry Certificate (16 December 2005) (C-0038-SPA); Clean Industry Certificate (31 July 2008) (C-0039-SPA); Clean Industry Certificate (28 February 2012) (C-0040-SPA); Clean Industry Certificate (2 June 2014) (C-0041-SPA); Clean Industry Certificate (27 July 2016) (C-0042-SPA).

<sup>42</sup> Clean Industry Certificate (27 July 2016) (C-0042-SPA.2-3).

<sup>43</sup> *See, e.g.*, Memorial, ¶ 149; Reply, ¶¶ 58-60; Claimant’s Post-Hearing Brief, § III.C.



24. CALICA's 2016 environmental audit covered its compliance with permitting obligations and with applicable standards on air, noise generation, water use and management, surface and underground contamination, hazardous waste generation and management, non-hazardous waste generation and management, handling of special waste, natural resources, wildlife, forestry resources, environmental risk, environmental management, and emergency response.<sup>44</sup> As shown in the excerpt of the 2016 environmental audit report below, in each of these categories, CALICA's operations – including in La Rosita – were found to be in full compliance with environmental regulations and parameters established under Mexican law and in good standing in respect of “each of the established auditable items:”<sup>45</sup>

**Figure 1 – Extract from CALICA's 2016 Environmental Audit Report Conclusions Chart Showing Number of Non-Conformities<sup>46</sup>**

Rubro auditado	Número de no conformidades
Aire	00
Ruido	00
Agua	00
Suelo y Subsuelo	00
Residuos Peligrosos	00
Residuos de Manejo especial	00
Residuos Sólidos Urbanos	00
Recursos Naturales	00
Vida Silvestre	00
Recursos Forestales	00
Riesgo Ambiental (Energía)	00
Gestión Ambiental	00
Emergencias Ambientales	00
<b>Total</b>	<b>00</b>

25. *Second*, confirming the findings of the PROFEPA-certified auditors within the framework of the National Environmental Audit Program, PROFEPA carried out a formal inspection of CALICA's operations in November 2012 and found CALICA to be in full compliance

<sup>44</sup> Environmental Audit Report (March 2016) (C-0208-SPA.61-385).

<sup>45</sup> *Id.* at 12, 14; *see also* Clean Industry Certificate (27 July 2016) (C-0042-SPA).

<sup>46</sup> Environmental Audit Report (March 2016) (C-0208-SPA.12).

with its obligations.<sup>47</sup> PROFEPA “detected no facts or omissions presumably constituting an infraction to environmental regulations” by CALICA.<sup>48</sup> CALICA had been quarrying La Rosita for over two decades by then. In concluding that CALICA was not violating environmental regulations, PROFEPA acknowledged that CALICA “does have the [...] prior environmental impact authorization to carry out the works and activities” undertaken in La Rosita, based on the 1986 Investment Agreement.<sup>49</sup>

## **5. Legacy Vulcan and CALICA Operated the Project in an Environmentally and Socially-Responsible Manner**

26. In contrast to the Mexican government’s recent depictions of CALICA as a destroyer of the environment (discussed in Part II.B below), CALICA has conducted its operations responsibly, with a decades-long track record of environmental sustainability and mitigation efforts. In addition to operating in compliance with environmental laws — as PROFEPA verified through 2016 — CALICA has demonstrated its commitment to environmental sustainability and impact-mitigation by spearheading multiple environmental initiatives. These initiatives include reforestation and conservation efforts both at the quarry and outside its properties, and the protection of natural areas such as underwater caves and other sanctuaries to local wildlife and plants.<sup>50</sup>

27. CALICA’s reforestation initiative encompasses a tree nursery CALICA established in 1990 and further enhanced in the following decades, part of which is pictured below. In 2016, the Wildlife Habitat Council, an international conservation non-profit organization, gave CALICA’s tree nursery the Species of Concern Project Award, which certifies excellence in corporate conservation.<sup>51</sup> SEMARNAT has also certified this nursery as an Environmental

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<sup>47</sup> PROFEPA Environmental Impact Inspection Report (10 December 2012) (C-0043-SPA.2, 56-57). (The title of this exhibit has been revised to reflect the correct title of the document).

<sup>48</sup> *Id.* at 57 (free translation, the original text reads: “se desprende no haberse detectado hechos u omisiones presuntamente constitutivos de infracción a la normatividad ambiental[.]”).

<sup>49</sup> *Id.* at 6-7 (free translation, the original text reads: “[E]n fecha seis de agosto de mil novecientos ochenta y seis se autorizó a la inspeccionada para que llevara a cabo la explotación de los predios ‘Punta Inha’ y ‘La Rosita’ sobre y bajo el nivel freático, por lo que, se desprende que la empresa [CALICA] sí cuenta con el resolutivo o la autorización previa en materia de impacto ambiental para llevar a cabo las obras o actividades que se realizan en el predio sujeto a inspección.” (emphasis added)). See also Expert Report- [REDACTED]-Environmental Law-Claimant’s Ancillary Claim Memorial-Third Report-SPA, ¶¶ 51-56.

<sup>50</sup> Memorial, ¶ 58.

<sup>51</sup> SAC-TUN, *2020 Sustainability Report* (2021) (C-0211-ENG.19, 22).



Management Unit, recognizing CALICA's work to conserve species included on the list of endangered, threatened, and at-risk flora and fauna.<sup>52</sup>

**Picture 4 – CALICA's Tree Nursery**



28. CALICA has carried out its environmental initiatives in partnership with civil society organizations, state and federal environmental authorities, and scientific institutions. For example, CALICA has worked with the State of Quintana Roo's Secretariat of Ecology and the Environment to strengthen management plans, technical and legal studies, and strategies for protected areas.<sup>53</sup>

29. Mexico has ignored these and other contributions by CALICA in its recent campaign of politically-motivated attacks against the company, leading up to the May 2022 shutdown of CALICA's remaining operations.

**B. MEXICO HAS LED A POLITICALLY-MOTIVATED CAMPAIGN OF PUBLIC ATTACKS AGAINST LEGACY VULCAN AND CALICA LEADING TO THE ARBITRARY SHUTDOWN OF THEIR OPERATIONS IN MEXICO**

30. As Legacy Vulcan showed in its request for provisional measures and for leave to submit this ancillary claim and its corresponding reply,<sup>54</sup> in early 2022, the Mexican government

<sup>52</sup> *Id.* at 18, 22; *see generally* NOM-059-SEMARNAT-2010 (30 December 2010) (C-0212-SPA).

<sup>53</sup> *See* SAC-TUN, *2020 Sustainability Report* (2021) (C-0211-ENG.26).

<sup>54</sup> Claimant's Requests for Provisional Measures & for Leave to Submit an Ancillary Claim, ¶¶ 6-17; Claimant's Reply on Requests for Provisional Measures & Leave to Submit Ancillary Claim, ¶¶ 7-19.

gradually began to threaten Legacy Vulcan's remaining operations in Mexico by delaying the renewal of CALICA's customs permit and launching a campaign of public attacks that culminated with the shutdown of La Rosita in May 2022 and the suspension of CALICA's customs permit.

**1. Mexico Unjustifiably Delayed Renewal of CALICA's Customs Permit and Later Suspended It Indefinitely**

31. As explained in Part II.A.3 above, CALICA has been able for decades to export aggregates directly from its port terminal pursuant to a customs permit that makes customs clearance at a Mexican port customs office unnecessary.<sup>55</sup> The Mexican customs authority had routinely renewed that customs permit before 2022.<sup>56</sup> In early 2022, however, CALICA's permit, due to expire on 2 January 2022, was for the first time not renewed as a matter of course, in the context of a pressure campaign by the Mexican government seemingly aimed at extracting concessions from CALICA relating to this arbitration and the future of its Mexican operations.<sup>57</sup>

32. As [REDACTED], explains in [REDACTED] third witness statement, Mexico's customs authority refused to renew CALICA's customs permit based on a purported lack of re-certification by the Mexican Navy of compliance with Mexico's International Ship and Port Facility Security Code.<sup>58</sup> But the Navy had refused to act on CALICA's multiple requests to renew that certification.<sup>59</sup> As a result of the delay in the customs permit's renewal, CALICA was unable to export aggregates for approximately six weeks, from early-January through mid-February 2022.<sup>60</sup>

33. On 2 February 2022, CALICA finally received the Navy's certification, but Mexico's customs authority continued to withhold renewal of the customs permit.<sup>61</sup> After Legacy Vulcan pleaded with Mexican authorities at the highest levels to address this delay, Mexico's customs agency granted only a temporary two-month renewal of CALICA's customs permit on 10 February 2022.<sup>62</sup> Mexican authorities placed conditions on the renewal of the customs permit that went beyond the technical or legal requirements for its renewal. As [REDACTED] explains, the Ministry

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<sup>55</sup> Customs Act Regulations, Article 11 (20 April 2015) (C-0200-SPA.5-6).

<sup>56</sup> *See supra*, ¶ 19.

<sup>57</sup> Witness Statement-[REDACTED]-Claimant's Ancillary Claim Memorial-Third Statement-ENG, ¶¶ 11-12.

<sup>58</sup> *Id.*, ¶ 12.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*, ¶ 13.

<sup>61</sup> *Id.*, ¶ 14.

<sup>62</sup> *Id.*, ¶ 17.

of the Interior demanded that CALICA refrain from carrying out quarrying operations in La Rosita in exchange for renewing the permit.<sup>63</sup> CALICA refused to give in to this demand because it was entitled to the customs permit on the merits and had every right to quarry La Rosita.<sup>64</sup>

34. To give space for then-ongoing discussions with the government and help lower the temperature after the President launched his campaign of public attacks against CALICA's operations in January 2022 (discussed below), Legacy Vulcan made "a voluntary gesture of good faith" on 11 February 2022, by temporarily "focus[ing] [CALICA's] operations" through "March 13, 2022[]" on shipping materials that have already been extracted from its quarry," rather than on quarrying more material during that month-long period.<sup>65</sup> After all, volumes had accumulated at CALICA's facilities for over a month because of Mexico's unjustifiable delay in renewing the customs permit.<sup>66</sup> After this period expired, the company restarted quarrying activities in La Rosita and communicated this fact to the Mexican government.<sup>67</sup>

35. While CALICA's customs permit was eventually renewed in April 2022 for a full three-year term, this renewal was rendered meaningless. On 10 May 2022, Mexico's customs agency suspended that permit and commenced an administrative proceeding to revoke it based on PROFEPA's pretextual "findings" that CALICA violated environmental laws.<sup>68</sup>

## **2. President López Obrador Ordered the Shutdown of CALICA's Remaining Operations, After a Months-Long Campaign of Public Attacks Against CALICA**

36. In January-May 2022, President López Obrador abruptly launched a months-long campaign of public attacks against Vulcan and CALICA during his daily morning press conferences (also known as *Mañaneras*) and announced that he had personally ordered the shutdown of CALICA's remaining operations. The President's public attacks included (i) unsupported accusations of environmental destruction to deflect criticism of his Mayan Train project, (ii) complaints about CALICA taking Mexico's soil to build roads in the United States, and (iii) censure of prior "neoliberal governments" for having authorized CALICA's activities. As the President himself all but admitted, his public bashing of CALICA, coupled with the shutdown he personally ordered, was meant to pressure Legacy Vulcan into accepting Mexico's favored tourism

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<sup>63</sup> *Id.*, ¶ 15.

<sup>64</sup> *Id.*, ¶ 16.

<sup>65</sup> Letter from ██████████ to Ambassador Esteban Moctezuma (11 February 2022) (C-0179-ENG.2).

<sup>66</sup> Witness Statement-██████████-Claimant's Ancillary Claim Memorial-Third Statement-ENG, ¶ 16.

<sup>67</sup> *Id.*

<sup>68</sup> Agencia Nacional de Aduanas de México, Oficio DGJA.2022.1658 (10 May 2022) (C-0194-SPA.21).

redevelopment of CALICA's properties and Legacy Vulcan's dismissal of this arbitration. For ease of reference, Appendix A to this memorial contains relevant excerpts of *Mañaneras* in which CALICA or Vulcan were singled out by President López Obrador.

**a) January 2022: President López Obrador Launches His Campaign of Public Attacks Against CALICA**

37. President López Obrador launched his pressure campaign against CALICA on 31 January 2022. In his *Mañanera* that day, the President falsely claimed that CALICA was “destroying the land” by extracting Mexico’s soil “to take it to the United States by ship.”<sup>69</sup> He framed this claim around the priority he placed on promoting the tourism industry near Tulum: “[t]hat is why Tulum is also going to be protected, because it belongs to the environment, but tourism is also the main economic activity, we already talked about how much tourism has given in this region, that we have to take care of this activity.”<sup>70</sup>

38. The President declared that what Legacy Vulcan was doing “cannot be allowed,”<sup>71</sup> adding that his government was proposing that Legacy Vulcan convert its lots into “a tourist area” and that the company had to dismiss this arbitration:

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<sup>69</sup> Transcript of President’s Morning Press Conference (31 January 2022) (C-0176-SPA.21-22) (free translation, the original states that CALICA is: “destruyendo el territorio [...] para [...] llevarse el material a Estados Unidos por barco.”); Andrés Manuel López Obrador, Adelanto de Programas para el Bienestar por veda electoral 2022, YouTube (uploaded 31 January 2022), <https://www.youtube.com/watch?v=kymtpvyiDEk> (C-0244-SPA) (video online begins display at 02:19:50).

<sup>70</sup> Transcript of President’s Morning Press Conference (31 January 2022) (C-0176-SPA.22) (free translation, the original text reads: “En Tulum por eso también se va a proteger, porque es del medio ambiente, pero además es la actividad económica principal el turismo, ya hablamos de cuánto ha dado el turismo de esta región, que hay que cuidar esta actividad y el medio ambiente.”); Andrés Manuel López Obrador, Adelanto de Programas para el Bienestar por veda electoral 2022, YouTube (uploaded 31 January 2022), <https://www.youtube.com/watch?v=kymtpvyiDEk> (C-0244-SPA) (video online begins display at 02:19:50).

<sup>71</sup> Transcript of President’s Morning Press Conference (31 January 2022) (C-0176-SPA.22) (free translation, the original text reads: “No voy a mencionar el nombre de la empresa, pero sí es de las más importantes en Estados Unidos. Pero podrá ser muy importante, pero esto no lo podemos permitir[.]”); Andrés Manuel López Obrador, Adelanto de Programas para el Bienestar por veda electoral 2022, YouTube (uploaded 31 January 2022), <https://www.youtube.com/watch?v=kymtpvyiDEk> (C-0244-SPA) (video online begins display at 02:19:50).

[I]n that mine, which is one of the proposals we are making, as they have already dug, the water here is turquoise because of the stone, so, with a little imagination and talent, it could be used as a tourist area, almost swimming pools, natural pools, seeking an agreement, but that it no longer be destroyed and that they withdraw their [ICSID] claim, because it has no legal basis.<sup>72</sup>

**b) February 2022: President López Obrador Intensifies His Campaign of Public Attacks Against CALICA**

39. The very next day, on 1 February 2022, the President again attacked CALICA for pursuing this arbitration, alleging that the company had sued the Mexican government and claimed “millions of dollars because they do not respect any law, any contract.”<sup>73</sup> The President asserted that CALICA’s operations led to “the destruction of 500 hectares.”<sup>74</sup> He also insisted that Legacy Vulcan should give up its investment in favor of a tourism redevelopment, noting that “if there is no agreement [to transform the Project into a tourism zone], and this is not a threat or warning, it is simply: enough with impunity.”<sup>75</sup>

40. Two days later, on 3 February 2022, seemingly referencing the 1986 Investment Agreement and related permits allowing CALICA to operate in La Rosita, President López Obrador started criticizing prior administrations for granting those permits. He complained that

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<sup>72</sup> Transcript of President’s Morning Press Conference (31 January 2022) (C-0176-SPA.22) (free translation, the original text reads: “[E]n es[t]a mina, que es una de las propuestas que les estamos haciendo, como ya escarbaron, el agua aquí es turquesa por la piedra, entonces, con un poco de imaginación y de talento se podría utilizar como zona turística, casi albercas naturales, buscando un acuerdo, pero que ya no se siga destruyendo y que retiren su demanda, porque no tiene fundamento legal.”); Andrés Manuel López Obrador, Adelanto de Programas para el Bienestar por veda electoral 2022, YouTube (uploaded 31 January 2022), <https://www.youtube.com/watch?v=kytmtpvyiDEk> (C-0244-SPA) (video online begins display at 02:19:50).

<sup>73</sup> Transcript of President’s Morning Press Conference (1 February 2022) (C-0177-SPA.16) (free translation, the original text reads: “[D]emandan al Gobierno de México, quieren no sé cuántos millones de dólares, porque no respetan ninguna ley, ningún contrato.”); Andrés Manuel López Obrador, Tendencia a la baja de cuarta ola de COVID-19 en México, YouTube (uploaded 1 February 2022), <https://www.youtube.com/watch?v=oLSkZ4e5Iho> (C-0245-SPA) (video online begins display at 02:01:40).

<sup>74</sup> Transcript of President’s Morning Press Conference (1 February 2022) (C-0177-SPA.17) (free translation, the original text reads: “Y yo estoy seguro que los accionistas principales no saben de esta tragedia, estamos hablando de la destrucción de 500 hectáreas.”); Andrés Manuel López Obrador, Tendencia a la baja de cuarta ola de COVID-19 en México, YouTube (uploaded 1 February 2022), <https://www.youtube.com/watch?v=oLSkZ4e5Iho> (C-0245-SPA) (video online begins display at 02:01:40).

<sup>75</sup> Transcript of President’s Morning Press Conference (1 February 2022) (C-0177-SPA.17) (free translation, the original text reads: “[S]i no hay acuerdo. Y no es amenaza ni advertencia, es sencillamente: ya se acabó la impunidad.”); Andrés Manuel López Obrador, Tendencia a la baja de cuarta ola de COVID-19 en México, YouTube (uploaded 1 February 2022), <https://www.youtube.com/watch?v=oLSkZ4e5Iho> (C-0245-SPA) (video online begins display at 02:01:40).

CALICA’s “concession” had no “limit,” “there is not even a [termination] date.”<sup>76</sup> The President then confirmed that he had predetermined purported violations and environmental harm by CALICA’s operations — without any support or any formal administrative act having so found. He claimed: “of course there are violations, since they are destroying the environment [...] extraction will no longer be permitted, nothing.”<sup>77</sup>

41. Where the President led, his ministers followed. On 6 February 2022, for example, SEMARNAT issued a press release that echoed the President’s assertions from days before.<sup>78</sup> After naming the Mexican officials who authorized “the exploitation of the La Rosita lot” through the 1986 Investment Agreement and of La Adelita and El Corchalito through the 2000 Corchalito/Adelita Federal Environmental Authorization, SEMARNAT alleged that these authorizations “were to the detriment of the environment” and that those officials bore “responsibility” for the resulting “environmental impacts.”<sup>79</sup>

42. The next day, on 7 February 2022, President López Obrador again alluded to Legacy Vulcan in his *Mañanera*. He alleged without a shred of evidence that the “company [...] that is suing [Mexico] [is] the one[] that is violating the law; it is them who are destroying the territory, the U.S. company that has the gravel deposit in Playa del Carmen, Quintana Roo.”<sup>80</sup>

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<sup>76</sup> Transcript of President’s Morning Press Conference (3 February 2022) (C-0178-SPA.22) (free translation, the original text reads: “Estos permisos los entregaron, el de ese predio que están explotando, lo entregaron antes del 2000. Y fíjense cómo era antes este asunto, cómo eran las cosas antes, no le pusieron ni siquiera un límite a la concesión, [...] ni siquiera hay fecha.”); Andrés Manuel López Obrador, *Baja incidencia delictiva en Hidalgo*, YouTube (uploaded 3 February 2022), <https://www.youtube.com/watch?v=OyjJQJxJtrc> (C-0246-SPA) (video online begins display at 02:13:13). While the President indicated that CALICA had a “concession” in connection with its quarry, under Mexican law, quarrying activities are not subject to concessions because the materials within a private property belong to the owner of that property, as Legacy Vulcan has established in this arbitration. *See, e.g.*, Expert Report- [REDACTED]-Environmental-Claimant’s Memorial-SPA, ¶ 20.

<sup>77</sup> Transcript of President’s Morning Press Conference (3 February 2022) (C-0178-SPA.22) (free translation, the original text reads: “Claro que hay violaciones, pues esos están destruyendo el medio ambiente. [...] [Y]a no se va a permitir nada de extracción, nada.”); Andrés Manuel López Obrador, *Baja incidencia delictiva en Hidalgo*, YouTube (uploaded 3 February 2022), <https://www.youtube.com/watch?v=OyjJQJxJtrc> (C-0246-SPA) (video online begins display at 02:13:13).

<sup>78</sup> SEMARNAT Press Release, *Las decisiones ambientales trascienden en el tiempo, caso Calica* (6 February 2022) (C-0214-SPA), <https://www.gob.mx/semarnat/prensa/las-decisiones-ambientales-trascienden-en-el-tiempo-caso-calica>.

<sup>79</sup> *Id.* at 3 (free translation, the original text reads: “[L]a responsabilidad de la Semarnap respecto a los impactos al medio ambiente es ineludible[.] [L]a autorización [de Impacto Ambiental] fue en detrimento del medio ambiente.”). The SEMARNAP was the former Mexican Ministry of the Environment, Natural Resources and Fishery.

<sup>80</sup> Transcript of President’s Morning Press Conference (7 February 2022) (C-0215-SPA.17) (free translation, the original text reads: “[L]a empresa, esta que está demandando, cuando quienes están violando la ley, destruyendo el territorio son ellos, la empresa estadounidense que tiene el banco de grava en Playa del Carmen, Quintana Roo.”); Andrés Manuel López Obrador, *Llamado al diálogo entre normalistas de*

43. A few days later, on 10 February 2022 (the same day Mexico’s customs agency issued an unprecedentedly short, two-month customs permit for CALICA, as discussed above), the President reiterated his criticism of prior administration officials, whom he suggested did the company’s bidding corruptly.<sup>81</sup> He then referenced discussions between Legacy Vulcan and Mexico to resolve their dispute, adding that the company “request[ed] that they be permitted to take out the material they have stored.”<sup>82</sup> According to the President, “[w]e said: Yes, but you will not extract more, they can no longer be deposits of material, those lots can no longer be used as deposits of material, *because they are in the middle of a tourist zone*, a kilometer from Caribbean beaches [...].”<sup>83</sup> The President went on to say that his government was proposing to transform the Project into a “tourism complex” and that the port should be converted for cruise-ships use.<sup>84</sup>

**c) March 2022: President López Obrador Uses CALICA to Deflect Environmental Criticism of His Mayan Train Project**

44. On 7 March 2022, the President again complained about CALICA having been granted permits to “destroy” the land to “take material to construct highways in the United

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Ayotzinapa y autoridades, YouTube (uploaded 7 February 2022), <https://www.youtube.com/watch?v=oBi2EPCTCKU> (C-0247-SPA) (video online begins display at 00:49:51).

<sup>81</sup> Transcript of President’s Morning Press Conference (10 February 2022) (C-0216-SPA.30) (“Ya no es el tiempo en que venían y no hacían ningún trámite, se les ponían los funcionarios públicos de tapete, ya no es así, ya no se acepta la corrupción.”); Andrés Manuel López Obrador, Justicia para jubilados de Luz y Fuerza. Acuerdo de pensiones, YouTube (uploaded 10 February 2022), <https://www.youtube.com/watch?v=UITcgvrhzRO> (C-0248-SPA) (video online begins display at 01:07:33).

<sup>82</sup> Transcript of President’s Morning Press Conference (10 February 2022) (C-0216-SPA.30) (free translation, the original text reads: “[E]stamos avanzando, llegar a un acuerdo, porque nos piden que se les permita sacar el material que tienen almacenado.”); Andrés Manuel López Obrador, Justicia para jubilados de Luz y Fuerza. Acuerdo de pensiones, YouTube (uploaded 10 February 2022), <https://www.youtube.com/watch?v=UITcgvrhzRO> (C-0248-SPA) (video online begins display at 01:07:33).

<sup>83</sup> Transcript of President’s Morning Press Conference (10 February 2022) (C-0216-SPA.30-31) (free translation, the original text reads: “Dijimos: Sí, pero ya no van a extraer más, ya no pueden ser bancos de material, no se pueden utilizar como bancos de material esos precios, porque están en plena zona turística, a un kilómetro de las playas del Caribe, del mar turquesa.”) (emphasis added); Andrés Manuel López Obrador, Justicia para jubilados de Luz y Fuerza. Acuerdo de pensiones, YouTube (uploaded 10 February 2022), <https://www.youtube.com/watch?v=UITcgvrhzRO> (C-0248-SPA) (video online begins display at 01:07:33).

<sup>84</sup> Transcript of President’s Morning Press Conference (10 February 2022) (C-0216-SPA.31) (“¿Y qué les estamos proponiendo? Se les da el permiso para que puedan utilizar, de acuerdo a la normatividad ecológica, cuidando el medio ambiente, toda esa superficie las más de cuatro mil hectáreas en un complejo turístico y que el puerto incluso sea para cruceros.”); Andrés Manuel López Obrador, Justicia para jubilados de Luz y Fuerza. Acuerdo de pensiones, YouTube (uploaded 10 February 2022), <https://www.youtube.com/watch?v=UITcgvrhzRO> (C-0248-SPA) (video online begins display at 01:07:33).

States.”<sup>85</sup> Later that month, on 23 March 2022 — with his Mayan Train project facing growing criticism from environmentalists for having been pursued without environmental impact assessments or authorizations <sup>86</sup> — President López Obrador called out these “pseudo-environmentalists” for ignoring CALICA.<sup>87</sup> “There is Calica,” he said, “a U.S. company that obtained a permit to extract construction materials, a bank of construction materials at 500, a thousand meters from the Caribbean sea, they gave them a permit in the era when Ms. Julia Carabias, an environmentalist, was the environmental secretary, for exploitation, and all of that material was taken to the United States to construct roads[.]”<sup>88</sup>

45. The President echoed these remarks the next day (24 March), griping that there had not been “even a single complaint about” CALICA’s activities from critics of the Mayan Train.<sup>89</sup> He again highlighted that CALICA had been “given a permit to extract material” for export to the United States, adding that his government was “seeking an agreement so that those lands [...] be used for tourism” and the port “be converted for a cruise-ship port because [...] there

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<sup>85</sup> Transcript of President’s Morning Press Conference (7 March 2022) (C-0217-SPA.31) (free translation, the original text reads: “Porque estamos por resolver un asunto de una empresa que tiene unos bancos de material en Playa del Carmen y que se llevan el material para construir carreteras en Estados Unidos, y les dieron permiso los que ahora están en contra de lo que estamos haciendo en el sureste.”); Andrés Manuel López Obrador, *Inicia entrega de fertilizantes nacionales en nueve estados*, YouTube (uploaded 7 March 2022), <https://www.youtube.com/watch?v=VtVoDxv3ba4> (C-0249-SPA) (video online begins display at 01:13:52).

<sup>86</sup> *See, e.g.*, CentralFM, *Famosos lanzan videos en campaña contra el Tren Maya* (22 March 2022) (C-0218-SPA), <https://centralfmequilibrio.com/index.php/home-2/cultura/famosos-lanzan-videos-en-campana-contra-el-tren-maya> (reporting on celebrities voicing their opposition to the Tren Maya project through the “*Sálvame del Tren*” campaign); Yucatan Times, *Activists protest as Train Maya construction works literally devastate protected areas in Quintana Roo* (4 March 2022) (C-0219-ENG), <https://www.theyucantimes.com/2022/03/activists-protest-as-train-maya-construction-works-literally-devastate-protected-areas-in-quintana-roo/>.

<sup>87</sup> Transcript of President’s Morning Press Conference (23 March 2022) (C-0220-SPA.21-22); Andrés Manuel López Obrador, *Sembramos árboles en toda la ruta del Tren Maya*, YouTube (uploaded 23 March 2022), <https://www.youtube.com/watch?v=xxLNbEHmR9o> (C-0250-SPA) (video online begins display at 01:07:32).

<sup>88</sup> Transcript of President’s Morning Press Conference (23 March 2022) (C-0220-SPA.22-23) (free translation, the original text reads: “Ahí está Calica, una empresa estadounidense que obtuvo permiso para extraer materiales de construcción, un banco de materiales de construcción a 500[,] mil metros del mar Caribe, les dieron el permiso en la época en que estaba la señora Julia Carabias, ambientalista, que era la secretaria de Medio Ambiente, para la explotación, y todo ese material se lo llevaban a Estados Unidos para la construcción de carreteras[.]”); Andrés Manuel López Obrador, *Sembramos árboles en toda la ruta del Tren Maya*, YouTube (uploaded 23 March 2022), <https://www.youtube.com/watch?v=xxLNbEHmR9o> (C-0250-SPA) (video online begins display at 01:07:32).

<sup>89</sup> Transcript of President’s Morning Press Conference (24 March 2022) (C-0221-SPA.44-45) (free translation, the original text reads: “Pero ni una sola denuncia sobre esto.”); Andrés Manuel López Obrador, *Acertada decisión asignar aduanas a Secretaría de Marina*, YouTube (uploaded 24 March 2022), <https://www.youtube.com/watch?v=QjSJy-5lINM> (C-0251-SPA) (video online begins display at 01:30:48).



is no cruise-ship port in this area[.]”<sup>90</sup> Notably, one of the President’s closest advisors on the Mayan Train project is the head of the Vidanta Group, a Mexican tourism company with hotel and cruise-ship interests that reportedly could benefit from the President’s proposed transformation of CALICA’s properties into a tourism project and cruise-ship port.<sup>91</sup> As one article put it: “Vidanta wants to keep Puerto Venado and CALICA’s lots to build a Caribbean Venice, both properties of Vulcan Materials, whom AMLO is pressuring to stop operating the extraction of stone material despite having all permits and concessions in order.”<sup>92</sup>

46. Again, as the President fired off assertions against Mayan-Train critics using CALICA as a ploy to deflect the substance of their criticism, SEMARNAT followed in his footsteps on 25 March 2022 with a press release entitled “Where were the pseudo-environmentalists when years ago the real devastation began in the southeast of Mexico?”<sup>93</sup> In it, SEMARNAT asserted that “permits were given” by previous administrations “without consideration to environmental harm,” using CALICA as a purported example.<sup>94</sup>

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<sup>90</sup> Transcript of President’s Morning Press Conference (24 March 2022) (C-0221-SPA.44-45) (free translation, the original text reads: “Bueno, pero allá mismo estaba esta empresa Calica, es un banco de material en Playa del Carmen. Les dieron permiso para extraer material, grava, que en barcos se llevaban a Estados Unidos para hacer caminos, carreteras, en Estados Unidos, y ahorita van a ver cómo dejaron destruido. [...] Y aquí, este es el puerto, aquí se acumulaba el material y de aquí a Estados Unidos. Estamos ahora buscando un arreglo para que estos terrenos, porque son dos mil hectáreas, sean utilizados para el turismo, que esto se pueda restaurar, son como albercas. [...] [V]amos a dar facilidades para que este puerto se convierta en un puerto de cruceros, porque tiene el calado suficiente y no hay un puerto de crucero en esta zona, está enfrente, que es la isla de Cozumel.”); Andrés Manuel López Obrador, *Acertada decisión asignar aduanas a Secretaría de Marina*, YouTube (uploaded 24 March 2022), <https://www.youtube.com/watch?v=QjSJy-5lINM> (C-0251-SPA) (video online begins display at 01:30:48).

<sup>91</sup> *El Economista*, *Vidanta, de Daniel Chávez, supervisor honorario del Tren Maya, estrenará su línea de cruceros de lujo en abril* (17 February 2022) (C-0221-SPA), <https://www.economista.com.mx/empresas/Vidanta-estrenara-en-abril-su-linea-de-creceros-de-lujo-tras-permiso-de-la-SCT-20220217-0054.html>; *Expansion*, *¿Quién es Daniel Chávez: el empresario hotelero cercano a López Obrador?* (14 February 2022) (C-0223-SPA) <https://expansion.mx/empresas/2022/02/14/quien-es-daniel-chavez-lopez-obrador-tren-maya>; *Novedades Quintana Roo*, *AMLO-Vidanta a la caza de empresarios quintanarroenses* (9 May 2022) (C-0224-SPA), <https://sipse.com/novedades/opinion-quintana-roo/francisco-armand-amlo-vidanta-caza-empresarios-quintanarroenses-424385.html>; Grupo Vidanta, *Vidanta Cruises* (last viewed 22 September 2022) (C-0225-ENG), <https://www.grupovidanta.com/vidanta-cruises.html>.

<sup>92</sup> *Novedades Quintana Roo*, *AMLO-Vidanta a la caza de empresarios quintanarroenses* (9 May 2022) (C-0224-SPA.3), <https://sipse.com/novedades/opinion-quintana-roo/francisco-armand-amlo-vidanta-caza-empresarios-quintanarroenses-424385.html>.

<sup>93</sup> SEMARNAT Press Release, *¿Dónde estaban los pseudoambientalistas cuando hace años empezó la verdadera devastación en el sureste de México?* (25 March 2022) (C-0226-SPA), <https://www.gob.mx/semarnat/prensa/donde-estaban-los-pseudoambientalistas-cuando-hace-anos-empezo-la-verdadera-devastacion-en-el-sureste-de-mexico>.

<sup>94</sup> *Id.* at 3 (free translation, the original reads: “Se dieron permisos para la explotación minera sin considerar los daños al ambiente [...] como sucedió con la empresa Calica, en Solidaridad, Quintana Roo.”).

47. Days later, on 28 March 2022, the President and his spokesperson again criticized past administrations for authorizing CALICA's activities in yet another effort to deflect public criticism of his Mayan Train project.<sup>95</sup> The President once again singled out Mexico's environmental secretary in 2000, Julia Carabias, "who is now one of the most combative defenders of the environment[] of what we are doing," as having granted CALICA a permit "to take out material, take out gravel, here next to this paradise, and they took this material to the United States for roads[.]"<sup>96</sup>

48. President López Obrador largely repeated the same talking points three days later, on 31 March 2022, calling out former Mexican officials for having granted environmental authorizations to CALICA and candidly revealing that he was pressuring the company to accept his administration's tourism-development proposal with threats:

Who are those who protest? Well, those who are linked to vested interests. It is money or conservative, retrograde thinking. [...] [T]hey are the same who have destroyed the environment in that region.

Because precisely Calica is there, we have already seen it here, and I talked to the Calica people, and I already told them: Either there is an agreement with total clarity [...] maybe they did not like that, I am not affirming it, it is hypothetical. But I told them: If there is no end to extraction of materials from those lots, which destroy the environment, I will make it known, I will make a video and will present a complaint to international organizations and I will accuse them of destroying the environment. Then, they accepted that a different soil use be given. Because there are complaints, they

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<sup>95</sup> Transcript of President's Morning Press Conference (28 March 2022) (C-0227-SPA.48); Andrés Manuel López Obrador, Gobierno prepara plan para fortalecer economía popular, YouTube (uploaded 28 March 2022), <https://www.youtube.com/watch?v=NJQdhL7uBto> (C-0252-SPA) (video online begins display at 02:04:15); see also Transcript of President's Morning Press Conference (30 March 2022) (C-0182-SPA.3) (presidential spokeswoman asserted: "Hay explotaciones mineras sin considerar los daños al ambiente. Por ejemplo, una empresa estadounidense en, Calica, Solidaridad, Quintana Roo, destruye la selva y está explotando la piedra y arrasando con el medio ambiente. Por ahí no hay protestas de ecologistas en su contra ni nadie de Greenpeace se amarra a las máquinas para evitarlo."); Andrés Manuel López Obrador, Iniciativa de reforma electoral incluirá reducción de plurinominales, YouTube (uploaded 30 March 2022), <https://www.youtube.com/watch?v=KxdZEJos5qI> (C-0253-SPA) (video online begins display at 00:27:50).

<sup>96</sup> Transcript of President's Morning Press Conference (28 March 2022) (C-0227-SPA.48) (free translation, the original reads: "[A] una empresa estadounidense, Calica, que tienen como tres mil hectáreas, les dan el permiso para sacar material, sacar grava, aquí junto al paraíso este y este material se lo llevan a Estados Unidos para sus carreteras, un banco de material aquí. ¿Quiénes dieron los permisos? En la Secretaría de Medio Ambiente, cuando estaba la señora Julia Carabias, que ahora son de los más combativos defensores del medio ambiente, de lo que hacemos nosotros."); Andrés Manuel López Obrador, Gobierno prepara plan para fortalecer economía popular, YouTube (uploaded 28 March 2022), <https://www.youtube.com/watch?v=NJQdhL7uBto> (C-0252-SPA) (video online begins display at 02:04:15).

have sued the Mexican Government.

Who gave those permits to convert those lands, —show Calica— in banks of material? They take the gravel for U.S. roads. Who gave the permit? Ms. Julia Carabias. [...] Greenpeace, where was it? [...]

We are waiting for the board to meet. Because our proposal is: OK, your 2,400 hectares, use them for a tourism plan. There is no agreement yet.

[...] Hopefully they will accept the proposal[.] They have these 2,400 hectares, they bought them to extract material, take material to the United States; that cannot be done now, it never should have been done, never should have been authorized. Then, we are not going to cancel the project or going to expropriate lands, or going to fine you, no; change your land use, do not use this, because we are also talking about Mexico's and the world's most important touristic zone; do not use these lands as a bank of material, move a tourism development forward, we will help you with the arrangements, the port that you have to take out material, convert it to a port for cruise ships[.]<sup>97</sup>

#### **d) April 2022: President López Obrador Reiterates His Anti-CALICA Talking Points**

49. Mexico's Presidential CALICA-bashing continued in April 2022, as controversy about the government's construction of the Mayan Train without environmental authorizations continued to grab the public's attention. On 4 April, the President again asked rhetorically “[w]ho gave the permit” for CALICA's quarrying and named “Julia Carabias, who now encourages the

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<sup>97</sup> Transcript of President's Morning Press Conference (31 March 2022) (C-0183-SPA.7-8) (free translation, the original reads: “¿Quiénes son los que protestan? Pues los que está vinculados a intereses creados. Es dinero o es pensamiento conservador, retrógrado. [...] [S]on los mismos que han destruido el medio ambiente en esa región. Porque ahí está Calica precisamente, ya lo hemos visto aquí, y hablé con los de Calica, y ya les dije: O hay acuerdo con toda claridad [...] A lo mejor eso no les gustó, no lo estoy afirmando, es hipotético. Pero les dije: Si no se termina de extraer material en sus predios, que destruyen el medio ambiente, lo voy a dar a conocer, voy a hacer un video y voy a presentar una demanda en organismos internacionales y les voy a acusar de que destruyen el medio ambiente. Entonces, aceptaron de que se le dé otro uso al suelo. Porque hay denuncias, tienen demandado al Gobierno de México. ¿Quiénes dieron esos permisos para convertir esos terrenos —pon Calica— en bancos de material? Se llevan la grava para las carreteras de Estados Unidos. ¿Quién dio el permiso? La señora Julia Carabias. [...] Greenpeace ¿dónde estaba? [...] Estamos esperando de que se reúna el consejo. Porque nuestra propuesta es: A ver, tus dos mil 400 hectáreas úsalas en un plan turístico. Todavía no hay acuerdo. [...] Ojalá y ellos acepten la propuesta [...] Tienen estas dos mil 400 hectáreas, las compraron para extraer material, llevar el material a Estados Unidos; eso ya no se puede hacer ahora, no se debió hacer nunca, no se debió autorizar. Entonces, no vamos a cancelar el proyecto o te vamos a expropiar las tierras, o te vamos a multar, nada; cambia el uso del suelo, ya no utilices esto, porque además estamos hablando de la zona turística más importante de México y del mundo; no uses como banco de material estas tierras, echa andar un desarrollo turístico, te ayudamos en los trámites, el puerto que tienes para sacar el material conviértelo en un puerto para cruceros [...]”) (emphasis added); Andrés Manuel López Obrador, Aseguramiento de drogas previene daños a la población, YouTube (uploaded 31 March 2022), <https://www.youtube.com/watch?v=leo4l59MZJg> (C-0254-SPA) (video online begins display at 00:59:42).

whole movement against the Mayan Train.”<sup>98</sup> He then stated that, “because this work was shut down because they took material for U.S. roads, tremendous discomfort was generated and I therefore think that they sought to equate [things]: ‘Hey, how can you say that we are destroying the land, the environment, if you are doing the same?’”<sup>99</sup>

50. CALICA had become the President’s favorite punching bag for his political defense of the Mayan Train. On 19 April 2022, he went so far as to suggest — falsely<sup>100</sup> — that CALICA was behind the environmentalists’ criticism of his Mayan Train project and that CALICA could no longer extract material (even though it could in La Rosita under its long-standing permits):

There could be people who are worried about the environment, but generally they are people without convictions, without any moral scruples, because how is it that they now become worried about the environment? Is it that they did not see what Calica was doing? [...]

And I am now thinking that these Calica people, since they no longer can extract material that they took to the United States, I have a bad feeling, because there are more and more environmentalists who did not exist, and since the United States is financing groups that act against us in Mexico[.]<sup>101</sup>

51. The next day, 20 April, the President displayed in his *Mañanera* “a picture for the environmentalists to compare the footprint of the Mayan Train with the harm of the Vulcan

<sup>98</sup> Transcript of President’s Morning Press Conference (4 April 2022) (C-0228-SPA.26) (free translation, the original reads: “¿Quién dio el permiso? La señora Julia Carabias, que ahora alienta todo el movimiento en contra del Tren Maya.”); Andrés Manuel López Obrador, La democracia debe ser parte de la vida del país, YouTube (uploaded 4 April 2022), [https://www.youtube.com/watch?v=b\\_xqxPrB40U](https://www.youtube.com/watch?v=b_xqxPrB40U) (C-0255-SPA) (video online begins display at 01:03:00).

<sup>99</sup> Transcript of President’s Morning Press Conference (4 April 2022) (C-0228-SPA.26-27) (free translation, the original reads: “Como se clausuró esta obra porque se llevaban el material para las carreteras de Estados Unidos, se generó una molestia tremenda y entonces pienso que quisieron equiparar: ‘Oye, cómo vas a decir que nosotros destruimos el territorio, el medio ambiente, si ustedes hacen lo mismo’. Es como la máxima de los conservadores cuando no tienen argumentos, es recurrir a ‘todos son iguales, todos son iguales, todo es lo mismo.’”); Andrés Manuel López Obrador, La democracia debe ser parte de la vida del país, YouTube (uploaded 4 April 2022), [https://www.youtube.com/watch?v=b\\_xqxPrB40U](https://www.youtube.com/watch?v=b_xqxPrB40U) (C-0255-SPA) (video online begins display at 01:03:00).

<sup>100</sup> Witness Statement-██████████-Claimant’s Ancillary Claim Memorial-Third Statement-ENG, ¶ 20.

<sup>101</sup> Transcript of President’s Morning Press Conference (19 April 2022) (C-0184-SPA.7) (free translation, the original reads: “Puede ser que haya gente preocupada por el medio ambiente, pero por lo general se trata de gente sin convicciones, sin escrúpulos morales de ninguna índole, porque ¿cómo ahora les sale la preocupación por el medio ambiente? [...] Y ya estoy pensando que estos de Calica, como ya no pueden sacar el material que se llevaban a Estados Unidos, ya me da mala espina, porque ya hay cada vez más ambientalistas que no existían, que no hacían presencia, están llegando, y como el gobierno de Estados Unidos está financiando grupos que actúan en México, contrarios a nosotros[.]”); Andrés Manuel López Obrador, Baja de COVID-19 permitirá consolidar sistema de salud, YouTube (uploaded 19 April 2022), <https://www.youtube.com/watch?v=XVdZLyxsaAU> (C-0256-SPA) (video online begins display at 00:51:00).

mining company, of the United States, in Calica, where [...] more than two thousand hectares were razed, an outrage.”<sup>102</sup> The President then indicated that CALICA had three options: (i) “a shutdown, because they are no longer permitted to extract material, that can no longer be permitted;” (ii) an “agreement so that the impacted area plus another two thousand hectares they have there, can be converted into a touristic park” and “the port can be used as a port for cruise-ships;” or (iii) sell “the land in full” to the government, after it carried out “a valuation.”<sup>103</sup> The President went on to complain that the land in that zone was taken over by private interests during the “neoliberal period.”<sup>104</sup>

52. Two days later, 22 April, the President again brought up CALICA to defend his Mayan Train project from criticism and *amparo* actions that had been brought against it by different environmental activists:

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<sup>102</sup> Transcript of President’s Morning Press Conference (20 April 2022) (C-0185-SPA.8) (free translation, the original reads: “Aquí les compartimos una fotografía a los ambientalistas para que comparen la brecha del Tren Maya y el daño de la minera Vulcan, de Estados Unidos, en Calica, que fueron arrasados dos mil, más de dos mil hectáreas, una barbaridad.”); Andrés Manuel López Obrador, Seguridad y bienestar, fundamentales para instaurar la paz, YouTube (uploaded 20 April 2022), <https://www.youtube.com/watch?v=RoONYTUVQ-I> (C-0257-SPA) (video online begins display at 01:18:55).

<sup>103</sup> Transcript of President’s Morning Press Conference (20 April 2022) (C-0185-SPA.9) (free translation, the original reads: “Y en el caso de Calica, pues también ya estamos buscando un acuerdo con ellos, son tres opciones: La clausura, porque ya no se permite que extraigan material, eso ya no se puede permitir. Que tienen muchas influencias en el Departamento de Estado, porque es una empresa que se llama Vulcan, es de las empresas constructoras más importantes de Estados Unidos, pero yo creo que hasta los mismos accionistas de Vulcan van a entender que esto no es posible, no puede haber un doble discurso de decir que nos preocupa el cambio climático y que estemos haciendo esta destrucción. Entonces, si se van a tribunales, porque además hay denuncias, pues vamos a tribunales y vamos a hacer la denuncia formal en organismos internacionales. A ver qué van a hacer los de la ONU, a ver qué va a hacer Greenpeace, que nos ayuden en esto. Esa es una opción. La otra opción, que es importante para ellos y para todos, es buscar un acuerdo para que esa área impactada, más otras dos mil hectáreas que tienen ahí, se puedan convertir en un parque turístico. Tienen también pegado al mar la concesión de un puerto que puede ser utilizado como puerto de cruceros. Estamos hablando de una de las zonas más bellas del mundo en cuanto a playas, es el Caribe. Eso es lo segundo. Y lo tercero es que les compramos el terreno completo, hacemos un avalúo de cuánto cuesta y tenemos recursos para convertir esto en un parque natural.”); Andrés Manuel López Obrador, Seguridad y bienestar, fundamentales para instaurar la paz, YouTube (uploaded 20 April 2022), <https://www.youtube.com/watch?v=RoONYTUVQ-I> (C-0257-SPA) (video online begins display at 01:18:55).

<sup>104</sup> Transcript of President’s Morning Press Conference (20 April 2022) (C-0185-SPA.9) (free translation, the original reads: “Toda esta zona - esto es importante que también que la gente lo sepa - eran bienes nacionales y se crearon fideicomisos, era de la nación y en el periodo neoliberal se fueron apoderando de todos estos terrenos[...].”); Andrés Manuel López Obrador, Seguridad y bienestar, fundamentales para instaurar la paz, YouTube (uploaded 20 April 2022), <https://www.youtube.com/watch?v=RoONYTUVQ-I> (C-0257-SPA) (video online begins display at 01:18:55).

Put up the image of CALICA, what the environmentalists did not see, which I am already suspecting that these companies are promoting the *amparos* [against the Mayan Train], because we took the decision of stopping the destruction of CALICA, which has more than two thousand hectares and was using them as a bank of materials since the times of [President] Zedillo and Mrs. Carabias to take gravel to build roads in the United States, another destruction.<sup>105</sup>

**Picture 5 – Screenshot of 22 April 2022 *Mañanera***



53. President López Obrador then publicly repeated his “proposal” to Vulcan: “you will no longer be able to take out, to extract material, even if you do campaigns, even if you go to the Department of State to accuse us; that is, it will no longer be a bank of materials.”<sup>106</sup> He further acknowledged that he was demanding that CALICA “change its business activity.”<sup>107</sup> The Minister

<sup>105</sup> Transcript of President’s Morning Press Conference (22 April 2022) (C-0186-SPA.9) (free translation, the original reads: “Pon la imagen de Calica, lo que no vieron los ambientalistas, que ya estoy hasta sospechando de que estén promoviendo estas empresas los amparos, porque nosotros tomamos la decisión de detener la destrucción de Calica, que tienen más de dos mil hectáreas y estaban usando desde los tiempos de Zedillo y de la señora Carabias como banco de material toda esa área para llevarse la grava a construir caminos en Estados Unidos, una gran destrucción.”); Andrés Manuel López Obrador, *Inversión pública y privada impulsa desarrollo en Veracruz*, YouTube (uploaded 22 April 2022), [https://www.youtube.com/watch?v=8qwS\\_raNJo4](https://www.youtube.com/watch?v=8qwS_raNJo4) (C-0258-SPA) (video online begins display at 01:24:54).

<sup>106</sup> Transcript of President’s Morning Press Conference (22 April 2022) (C-0186-SPA.9) (free translation, the original reads: “les estamos haciendo la propuesta a los de Vulcan [...]: ya no van a poder, aunque hagan campañas, aunque vayan al Departamento de Estado a acusarnos, ya no van a poder sacar, extraer material, o sea, no va a ser banco de material, entonces vamos a llegar a un arreglo, es lo que estamos buscando.”); Andrés Manuel López Obrador, *Inversión pública y privada impulsa desarrollo en Veracruz*, YouTube (uploaded 22 April 2022), [https://www.youtube.com/watch?v=8qwS\\_raNJo4](https://www.youtube.com/watch?v=8qwS_raNJo4) (C-0258-SPA) (video online begins display at 01:24:54).

<sup>107</sup> Transcript of President’s Morning Press Conference (22 April 2022) (C-0186-SPA.9) (free translation, the original reads: “Les estamos proponiendo: cambien de actividad económica[.]”); Andrés Manuel López Obrador, *Inversión pública y privada impulsa desarrollo en Veracruz*, YouTube (uploaded 22 April 2022),

of the Interior [*Secretario de la Gobernación*] later asserted that “Vulcan [] had accepted the proposal” and that its lots would be “a natural park.”<sup>108</sup> This was news to Legacy Vulcan. While the Parties had been engaged in discussions amid the President’s frequent public attacks, no agreement was ever reached, a fact Legacy Vulcan’s parent company clarified in a formal press release on 25 April 2022.<sup>109</sup>

54. The President seemed to acknowledge that Legacy Vulcan had not yet accepted Mexico’s take-it-or-leave-it “proposal” in his *Mañanera* of 29 April 2022. He again mentioned CALICA to deflect from criticism of the Mayan Train: “these environmentalists did not see Calica, for example?”<sup>110</sup> He added that “there are pending issues with Calica, but an agreement is being reached, precisely the Minister of the Interior is dealing with them[.]”<sup>111</sup> The President again went on to attack previous officials for having authorized CALICA’s activities: “Mrs. Julia Carabias gave the authorization a few days before the Zedillo government ended, and it is allowing extraction of gravel, it is a bank of gravel to take that material and use it in roads in the United States.”<sup>112</sup>

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[https://www.youtube.com/watch?v=8qwS\\_raNJo4](https://www.youtube.com/watch?v=8qwS_raNJo4) (C-0258-SPA) (video online begins display at 01:24:54).

<sup>108</sup> Transcript of President’s Morning Press Conference (22 April 2022) (C-0186-SPA.10) (free translation, the original reads: “Ayer nos reunimos con el representante de Vulcan y ya aceptó la propuesta, va a ser un parque natural.”); Andrés Manuel López Obrador, *Inversión pública y privada impulsa desarrollo en Veracruz*, YouTube (uploaded 22 April 2022), [https://www.youtube.com/watch?v=8qwS\\_raNJo4](https://www.youtube.com/watch?v=8qwS_raNJo4) (C-0258-SPA) (video online begins display at 01:24:54).

<sup>109</sup> Vulcan Materials Co., *Vulcan Provides Update on Mexico Operations* (25 April 2022) (C-0180-ENG); see Witness Statement-██████████-Claimant’s Ancillary Claim Memorial-Third Statement-ENG, ¶ 22.

<sup>110</sup> Transcript of President’s Morning Press Conference (29 April 2022) (C-0229-SPA.32) (free translation, the original reads: “Hemos dicho y pues no se trata de confrontarnos con nadie, hay que convencer, hay que persuadir, pero no vieron estos ambientalistas lo de Calica, por ejemplo[.]”); Andrés Manuel López Obrador, *Comunidades confían en proyecto del Tren Maya del Gobierno de México*, YouTube (uploaded 29 April 2022), [https://www.youtube.com/watch?v=ABXBAf5I\\_JI\\_raNJo4](https://www.youtube.com/watch?v=ABXBAf5I_JI_raNJo4) (C-0259-SPA) (video online begins display at 01:12:34).

<sup>111</sup> Transcript of President’s Morning Press Conference (29 April 2022) (C-0229-SPA.64) (free translation, the original reads: “Mire, hay asuntos pendientes con Calica, pero ya se está llegando a un acuerdo, precisamente el secretario de Gobernación los ha estado atendiendo, que es un poco lo de los reclamos a los ambientalistas, que no vieron eso.”); Andrés Manuel López Obrador, *Comunidades confían en proyecto del Tren Maya del Gobierno de México*, YouTube (uploaded 29 April 2022), [https://www.youtube.com/watch?v=ABXBAf5I\\_JI\\_raNJo4](https://www.youtube.com/watch?v=ABXBAf5I_JI_raNJo4) (C-0259-SPA) (video online begins display at 01:12:34).

<sup>112</sup> Transcript of President’s Morning Press Conference (29 April 2022) (C-0229-SPA.65) (free translation, the original reads: “La señora Julia Carabias dio la autorización unos días antes de que terminara el gobierno de Zedillo, y es permitir la extracción de grava, es un banco de grava para llevar ese material y utilizarlo en las carreteras de Estados Unidos.”); Andrés Manuel López Obrador, *Comunidades confían en proyecto del Tren Maya del Gobierno de México*, YouTube (uploaded 29 April 2022), [https://www.youtube.com/watch?v=ABXBAf5I\\_JI\\_raNJo4](https://www.youtube.com/watch?v=ABXBAf5I_JI_raNJo4) (C-0259-SPA) (video online begins display at 01:12:34).

55. It was in this context of repeated, unsubstantiated assertions about CALICA and Vulcan that the President finally ordered his government to shut down CALICA's operations.

**e) May 2022: President López Obrador Announces that He Had Ordered the Shutdown of Legacy Vulcan's Remaining Operations in Mexico**

56. After months of relentless attacks against CALICA, the President doubled down and announced his shutdown order on 2 May 2022:

[I]t is another company, Calica, Vulcan, the most important construction company in the United States, which has a quarry here, and is extracting aggregates for U.S. highways and received permits from neoliberal governments, and the environmentalists never ever said anything, and it is an unprecedented destruction of the territory and they continue to do it. I was just there over the weekend. And they had deceived me saying that they were no longer extracting material, and I went there, I flew over, I always do, like three times, and, in fact, everything was stopped, the cranes stopped, everything stopped; but now I went by, maybe they didn't know or it was because we went by on Friday and I flew over and I realized that they were working with everything, extracting material and how they were loading a ship. So, *I have instructed the Secretary [of SEMARNAT] to proceed immediately.* [...]

[...] We will proceed legally because there is a violation of the laws and it is a tremendous destruction of the environment. Besides, it is audacious to mock the authorities of our country.

[...] Yes, *until the extraction is stopped.*<sup>113</sup>

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<sup>113</sup> Transcript of President's Morning Press Conference (2 May 2022) (C-0168-SPA.14) (free translation, the original reads: "[...] Calica, Vulcan, la empresa constructora más importante de Estados Unidos, que tiene un banco aquí, que está extrayendo grava para las carreteras de Estados Unidos y recibió permisos de los gobiernos neoliberales, y los ambientalistas nunca jamás dijeron nada, y es una destrucción al territorio sin precedente y lo siguen haciendo. Acabo de estar el fin de semana. Y me habían engañado en que ya no estaban extrayendo material, y pasaba yo por ahí, sobrevolaba, siempre, como tres veces, y, en efecto, estaba todo parado, las grúas paradas, todo parado; pero ahora pasé, quizá no sabían o fue porque pasamos el viernes y sobrevolé y me di cuenta de que están trabajando con todo, extrayendo material y cómo están cargando un barco. Entonces, *he dado instrucciones a la secretaria [de la SEMARNAT] para proceder de inmediato.* [...] Se va a proceder legalmente porque hay violación a las leyes y es una tremenda destrucción del medio ambiente. Además, es un atrevimiento burlarse de las autoridades de nuestro país. [...] Sí, *hasta que se detenga la extracción.*" (emphasis added); Andrés Manuel López Obrador, *Tren Maya Prioriza Cuidado de Zonas Arqueológicas y del Ambiente*, YouTube (uploaded 2 May 2022), <https://www.youtube.com/watch?v=VeiERG4QXhI> (C-0188-SPA) (video online begins display at 02:00:50).



**Picture 6 – Screenshot of 2 May 2022 *Mañanera***

57. For months, President López Obrador had remarked that CALICA could no longer extract materials, despite also recognizing that CALICA *was authorized to do so through permits granted by previous governments*.<sup>114</sup> He had claimed without evidence that CALICA was destroying the environment and violating laws in an effort to defend his Mayan Train project from mounting criticism.<sup>115</sup> And he had indicated that Legacy Vulcan had to agree to drop this arbitration and transform its aggregates business in Mexico into a tourism project — a project that would add to his favored and dominant industry in the region — and potentially benefit one of his closest advisors.<sup>116</sup> What until May 2022 had been just words uttered from the presidential bully pulpit — coupled with an unwarranted delay of a customs permit — turned into a concrete measure against CALICA through the President’s order.

58. The President suggested that his order was motivated by CALICA’s continued quarrying of La Rosita, which he alleged to be a “deception,” contrary to a supposed commitment by the company not to quarry anymore.<sup>117</sup> No such commitment had ever been made, however.<sup>118</sup> As explained in Part II.B.1, Legacy Vulcan had decided to pause quarrying for only a month

<sup>114</sup> See *supra*, Part II.B.2.

<sup>115</sup> See *supra*, Part II.B.2.

<sup>116</sup> See *supra*, Part II.B.2.

<sup>117</sup> Transcript of President’s Morning Press Conference (2 May 2022) (C-0168-SPA.14); Andrés Manuel López Obrador, *Tren Maya Prioriza Cuidado de Zonas Arqueológicas y del Ambiente*, YouTube (uploaded 2 May 2022), <https://www.youtube.com/watch?v=VeiERG4QXhI> (C-0188-SPA) (video online begins display at 02:00:50).

<sup>118</sup> Witness Statement- [REDACTED]-Claimant’s Ancillary Claim Memorial-Third Statement-ENG, ¶ 23.

— from 11 February to 13 March 2022 — while exporting only extracted material that had accumulated as a result of the delay in the customs permit.<sup>119</sup> It did so on a voluntary basis and as a good-faith gesture to assist negotiations and lower the tension raised by the President’s frequent public attacks.<sup>120</sup> That period expired without an agreement and with even more public attacks from the President. Legacy Vulcan informed Mexico that it would resume quarrying operations as a result.<sup>121</sup> CALICA was well within its rights to do so under a long-standing and still-valid environmental authorization that the President himself had acknowledged existed.<sup>122</sup> The President’s claim of “deception” was false and pretextual.

59. President López Obrador turned to familiar talking points after announcing his shutdown order. As he had done in prior *Mañaneras*, the President asserted that CALICA had caused “unprecedented environmental destruction,” without proof or regard to CALICA’s authorizations.<sup>123</sup> He again sought to discredit valid permits Mexico had previously issued, asserting that CALICA and Vulcan, “who are extracting gravel for highways in the United States,” had received those permits “from neoliberal governments.”<sup>124</sup>

60. As discussed immediately below, following the President’s announcement of his shutdown order, PROFEPA swiftly implemented it.

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<sup>119</sup> Letter from ██████████ to Ambassador Esteban Moctezuma (11 February 2022) (C-0179-ENG).

<sup>120</sup> *See id.*; Witness Statement-██████████-Claimant’s Ancillary Claim Memorial-Third Statement-ENG, ¶ 23.

<sup>121</sup> Witness Statement-██████████-Claimant’s Ancillary Claim Memorial-Third Statement-ENG, ¶¶ 16, 23.

<sup>122</sup> *See supra*, Part II.A.1.

<sup>123</sup> Transcript of President’s Morning Press Conference (2 May 2022) (C-0168-SPA.14) (“Calica, Vulcan, la empresa constructora más importante de Estados Unidos, que tiene un banco aquí, que está extrayendo grava para las carreteras de Estados Unidos y recibió permisos de los gobiernos neoliberales, y los ambientalistas nunca jamás dijeron nada, y es una destrucción al territorio sin precedente y lo siguen haciendo.”); Andrés Manuel López Obrador, *Tren Maya Prioriza Cuidado de Zonas Arqueológicas y del Ambiente*, YouTube (uploaded 2 May 2022), <https://www.youtube.com/watch?v=VeiERG4QXhI> (C-0188-SPA) (video online begins display at 2:00:50).

<sup>124</sup> Transcript of President’s Morning Press Conference (2 May 2022) (C-0168-SPA.14) (“Calica, Vulcan, la empresa constructora más importante de Estados Unidos, que tiene un banco aquí, que está extrayendo grava para las carreteras de Estados Unidos y recibió permisos de los gobiernos neoliberales, y los ambientalistas nunca jamás dijeron nada, y es una destrucción al territorio sin precedente y lo siguen haciendo.”); Andrés Manuel López Obrador, *Tren Maya Prioriza Cuidado de Zonas Arqueológicas y del Ambiente*, YouTube (uploaded 2 May 2022), <https://www.youtube.com/watch?v=VeiERG4QXhI> (C-0188-SPA) (video online begins display at 2:00:50).

### 3. PROFEPA Carried Out the President's Order to Shut Down CALICA's Remaining Operations in La Rosita

61. On 29 April 2022, the same day that the President allegedly observed CALICA's operations during a fly-over, PROFEPA issued two "extraordinary" inspection orders, one focusing on environmental impact and another on forestry and soil use.<sup>125</sup>

62. PROFEPA's inspectors first arrived on site in the evening of 2 May 2022, hours after the President's televised announcement of his shutdown order.<sup>126</sup> In an unusual and disproportionate display of force, Mexico dispatched more than thirty heavily-armed Mexican marines, armed vehicles, drones, and naval vessels to CALICA's facilities that day. These military assets were stationed at the gate and sea-harbor entrance of CALICA's facilities.<sup>127</sup> Over the next three days, and in search for a pretext to carry out the President's shutdown order, PROFEPA inspectors roamed through La Rosita.<sup>128</sup> In response to PROFEPA's efforts to carry out the President's shutdown order, CALICA promptly sought judicial protection to no avail.<sup>129</sup>

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<sup>125</sup> See Orden de inspección forestal No. OCO0158RN2022 del 29 de abril de 2022, emitida por la Dirección General de Inspección y Vigilancia Forestal de la PROFEPA (R-0127-ESP.2) (inspection order indicating that it was issued on 29 April 2022); Orden de inspección en materia de impacto ambiental No. PFFPA/4.1/2C.27.5/024/2022 del 29 de abril de 2022, emitida por la Directora General de Impacto Ambiental y Zona Federal Marítimo Terrestre de la PROFEPA (R-0128-ESP.2) (same).

<sup>126</sup> See Claimant's Requests for Provisional Measures & for Leave to Submit an Ancillary Claim, ¶ 9; Claimant's Reply on Requests for Provisional Measures & Leave to Submit Ancillary Claim, ¶ 12; Pictures of Mexico's Incursion into CALICA's Facilities, pp. 1-6 (2-5 May 2022) (C-0169-SPA); Acta de la visita de inspección No. PFFPA/4.1/2C.27.5/024/2022 del 2 de mayo de 2022 y Acta de Inspección en Materia Forestal No. AI0158RN2022 (R-0129-ESP.2, 8) (claiming that the inspectors arrived at CALICA "a las dieciocho horas con cinco minutos del día dos del mes de mayo").

<sup>127</sup> Pictures of Mexico's Incursion into CALICA's Facilities, (2-5 May 2022) (C-0169-SPA.7-11). See also Witness Statement-[REDACTED]-Claimant's Ancillary Claim Memorial-Third Statement-ENG, ¶ 25.

<sup>128</sup> See, e.g., Witness Statement-[REDACTED]-Claimant's Ancillary Claim Memorial-Third Statement-ENG, ¶ 26.

<sup>129</sup> Specifically, CALICA filed an *amparo* on 2 May 2022, seeking the provisional suspension of the government's enforcement of the President's order. Juzgado Séptimo de Distrito en el Estado de Quintana Roo, Poder Judicial de la Federación, Suspensión Provisional, Incidente de Suspensión 431/2022-I (3 May 2022) (C-0173-SPA.2) (stating that CALICA's request focused on three related acts: (a) the President's order announced on 2 May; (b) the order [to] shut down and/or suspend and/or cancel the project authorized as "Aprovechamiento de roca caliza por debajo del manto freático en los predios el Corchalito y la Adelita en Solidaridad, Quintana Roo"; and (c) the execution of such an order). On 19 September 2022, a Mexican federal court denied an injunction against the President's order without considering the 1986 Investment Agreement. See Juzgado Séptimo de Distrito en el Estado de Quintana Roo, Poder Judicial de la Federación, Suspensión Definitiva, Incidente de Suspensión 431/2022-I (19 September 2022) (C-0230-SPA). An appeal of this decision is pending.

**Picture 7 – Mexican Officials and Marines at CALICA’s Gate on 2 May 2022**



63. The scope of the inspections was broad. PROFEPA was armed with the authority to inspect, *inter alia*, CALICA’s compliance with *all* federal environmental laws and regulations relating to environmental impact and to soil use in force “*since the beginning of activities*” (*i.e.*, for the last thirty years).<sup>130</sup> PROFEPA deployed at least fifteen officials to scour La Rosita for potential infringements that would cloak the President’s raw order with a semblance of legality.<sup>131</sup> These inspectors worked well into the evening for several days, one day even until midnight.<sup>132</sup>

64. Unsurprisingly, PROFEPA’s inspectors purported to find that CALICA was operating in violation of environmental laws. PROFEPA claimed that CALICA was operating

<sup>130</sup> PROFEPA Inspection Report on Environmental Impact (2-5 May 2022) (C-0171-SPA.4-5) (“La visita tendrá por objeto verificar el cumplimiento de las obligaciones contenidas en [...] la normatividad ambiental federal aplicable en materia de Impacto ambiental [...] [S]e deberá verificar si [...] se ha causado pérdida, cambio, deterioro, menoscabo, afectación o modificaciones adversas y mensurables de los hábitats de los ecosistemas, de los elementos y recursos naturales, de sus condiciones químicas, físicas o biológicas, de las interacción que se dan entre éstos, así como de los servicios ambientales que proporcionan) (emphasis added); PROFEPA Inspection Report on Forestry (2-5 May 2022) (C-0172-SPA.23-25) (“Verificar el cumplimiento a la normatividad ambiental federal en materia de uso de suelo, *vigente desde el inicio de actividades* de cambio de uso de suelo a la fecha.” (emphasis added)).

<sup>131</sup> See PROFEPA Inspection Report on Environmental Impact, pp. 76-77 (2-5 May 2022) (C-0171-SPA.76-77); PROFEPA Inspection Report on Forestry, p. 69 (2-5 May 2022) (C-0172-SPA.69).

<sup>132</sup> PROFEPA Inspection Order and Report on Environmental Impact p. 9 (2-5 May 2022) (C-0171-SPA.9) (closing the report for May 3 stating “siendo las 23 horas con 59 minutos”); PROFEPA Inspection Order and Report on Forestry p. 14 (2-5 May 2022) (C-0172-SPA.14) (closing the report for May 3 stating “siendo las veintitrés horas con treinta y dos minutos”).

without (i) an environmental impact authorization, and (ii) an Authorization for Soil-Use Change in Forested Terrains (*Autorización de Cambio de Uso de Suelo en Terrenos Forestales* or “CUSTF”) to remove vegetation in La Rosita.<sup>133</sup> PROFEPA purported to conclude that the supposed lack of these permits constituted a “serious risk of environmental damage,” which served as the predicate for the total shutdown of all activities in La Rosita.<sup>134</sup>

65. As Legacy Vulcan’s environmental law expert, ██████████, explains in ██████████ third expert report, the inspections PROFEPA conducted of La Rosita in May 2022 were highly irregular,<sup>135</sup> a fact consistent with the pretextual nature of the whole exercise, the ultimate purpose of which was to execute the President’s plain order to shut down CALICA’s operations.

66. PROFEPA did just that, alleging — for example — that CALICA lacks an environmental impact authorization for its activities in La Rosita.<sup>136</sup> This is plainly false. The environmental impacts of CALICA’s activities at La Rosita had been evaluated and approved by the relevant Mexican authorities through the 1986 Investment Agreement.<sup>137</sup> This agreement contains Mexico’s approval of CALICA’s environmental impact statement, allowing CALICA to operate for decades as long as the “market conditions and economic feasibility” of the venture allowed it.<sup>138</sup> In 2000, when SEMARNAT granted CALICA the Corchalito/Adelita Federal Environmental Authorization, SEMARNAT even mentioned the 1986 Investment Agreement as the valid basis for CALICA’s operations in La Rosita.<sup>139</sup>

67. CALICA has been subject to multiple environmental audits and a formal inspection since the 1986 Investment Agreement was executed. In all of these instances, and before

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<sup>133</sup> PROFEPA Inspection Order and Report on Environmental Impact (2-5 May 2022) (C-0171-SPA.71-72); PROFEPA Inspection Order and Report on Forestry (2-5 May 2022) (C-0172-SPA.62).

<sup>134</sup> PROFEPA Inspection Order and Report on Environmental Impact (2-5 May 2022) (C-0171-SPA.69); PROFEPA Inspection Report on Forestry (2-5 May 2022) (C-0172-SPA.61-62).

<sup>135</sup> Expert Report-██████████-Environmental Law-Claimant’s Ancillary Claim Memorial-Third Report-SPA, § IV.

<sup>136</sup> PROFEPA Inspection Order and Report on Environmental Impact (2-5 May 2022) (C-0171-SPA.68-72).

<sup>137</sup> See Expert Report-██████████-Environmental Law-Claimant’s Ancillary Claim Memorial-Third Report-SPA, ¶¶ 8-15 (citing the Investment Agreement (6 August 1986) (C-0010-SPA.6, 14)).

<sup>138</sup> Investment Agreement (6 August 1986) (C-0010-SPA.4, 6, 11, 14).

<sup>139</sup> Corchalito/Adelita Federal Environmental Authorization (30 November 2000) (C-0017-SPA.3, 23) (“Considerando: Que el 6 de agosto de 1986 se autorizó [...] [que CALICA] lleve a cabo la explotación de los predios ‘Punta Inha’ y ‘La Rosita’ sobre y bajo el nivel freático.”).

PROFEPA embarked on its anti-CALICA crusade in 2017-2018, PROFEPA found CALICA to be in full compliance with its environmental obligations, including those related to La Rosita.<sup>140</sup>

68. In 2012, for example, after CALICA had spent over 20 years quarrying La Rosita, PROFEPA conducted a formal inspection of CALICA:

to verify physically and through documents that [CALICA] [...] complied with its obligations regarding environmental impact, with regard to their authorizations, permits or licenses granted by [SEMARNAT]; and if they have an environmental impact authorization in effect.<sup>141</sup>

69. During this 2012 inspection, CALICA showed its compliance with its obligations on the basis of the 1986 Investment Agreement and the Corchalito/Adelita Federal Environmental Authorization.<sup>142</sup> PROFEPA's 2012 inspection report noted that, while the 1986 Investment Agreement did not technically constitute an environmental impact authorization under the General Law on Ecological Equilibrium and Environmental Protection (*Ley General de Equilibrio Ecológico y la Protección al Ambiente* or "LGEEPA"), this was understandable because CALICA commenced operations in La Rosita *before* that law came into effect in 1988.<sup>143</sup> PROFEPA therefore considered the 1986 Investment Agreement sufficient evidence of compliance from an environmental impact standpoint with respect to La Rosita and concluded that "there are no irregularities for which [CALICA] should be charged [...] for noncompliance with its environmental impact obligations."<sup>144</sup>

70. By contrast, in May 2022 — after the President's order — PROFEPA flip-flopped and went out of its way to "find" CALICA in "non-compliance" of its environmental obligations. During PROFEPA's May 2022 environmental impact inspection, CALICA gave PROFEPA a copy

<sup>140</sup> See Expert Report- [REDACTED]-Environmental Law-Claimant's Ancillary Claim Memorial-Third Report-SPA, ¶¶ 45-65.

<sup>141</sup> PROFEPA Environmental Impact Inspection Report (10 December 2012) (C-0043-SPA.2) (free translation, the original reads: "con el objeto de verificar física y documentalmente que el o las responsables de la empresa citada [CALICA] [...] hayan dado cumplimiento con sus obligaciones ambientales en materia de impacto ambiental, en lo referente a sus autorizaciones, permisos o licencias, otorgadas por la [SEMARNAT]; y si cuenta con autorización en materia de impacto ambiental vigente.") (emphasis added).

<sup>142</sup> *Id.* at 6-7.

<sup>143</sup> *Id.* at 6. See also Environmental Audit Report (March 2016) (C-0208-SPA.21) ("la empresa inició operaciones en 1987, antes de que entrara en vigor la [LGEEPA][.]").

<sup>144</sup> PROFEPA Environmental Impact Inspection Report (10 December 2012) (C-0043-SPA.56-57) (emphasis added) (free translation, the original reads: "se desprende que [...] no existen irregularidades por las cuales se proceda a emplazar a procedimiento y en su caso, sancionar al establecimiento denominado [CALICA] por incumplimiento a sus obligaciones ambientales en materia de impacto ambiental.").

of the 1986 Investment Agreement, and relevant annexes,<sup>145</sup> to show that CALICA's activities in La Rosita were authorized from an environmental standpoint.<sup>146</sup> CALICA also, again, provided a copy of the 2000 Corchalito/Adelita Federal Environmental Authorization.<sup>147</sup> Remarkably, at the conclusion of its inspections, PROFEPA "found" that CALICA purportedly lacked an environmental impact authorization to quarry La Rosita and formally shut down all operations on that basis.<sup>148</sup>

71. PROFEPA ignored the authorizations CALICA presented and that PROFEPA had previously accepted as valid by suggesting that they would be evaluated later,<sup>149</sup> but PROFEPA did not evaluate them before shutting down CALICA's operations and — almost five months later — PROFEPA has yet to consider them.<sup>150</sup> Notably, the day after PROFEPA shut down La Rosita (6 May 2022), SEMARNAT issued a press release in which it acknowledged that, in 1986, the federal and state governments had granted CALICA an "authorization for the exploitation of limestone under the water table in La Rosita [...] without establishing a term of duration or specific volume of production."<sup>151</sup> Yet PROFEPA — an agency within SEMARNAT — claimed that no such authorization existed.<sup>152</sup>

72. As ██████████ explains, PROFEPA's environmental-impact conclusions directly contradict PROFEPA's prior findings on these same issues, without legal justification.<sup>153</sup>

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<sup>145</sup> PROFEPA Inspection Order and Report on Environmental Impact (2-5 May 2022) (C-0171-SPA.13-16, 77).

<sup>146</sup> Investment Agreement (6 August 1986) (C-0010-SPA.6, 14, 37-401) (stating, *inter alia* that "La SEDUE con base en los resultados finales de su *evaluación realizada a la Manifestación de Impacto Ambiental* del Proyecto, con el apoyo del Instituto de Ecología A.C. y el Centro de Investigaciones y Estudios Avanzados del [Instituto Politécnico Nacional] [...], considera *factible desde el punto de vista ambiental* la realización del Proyecto") (emphasis added). *See also* Expert Report-██████████-Environmental Law-Claimant's Ancillary Claim Memorial-Third Report-SPA, ¶¶ 40-41, 67-70.

<sup>147</sup> PROFEPA Inspection Order and Report on Environmental Impact (2-5 May 2022) (C-0171-SPA.16).

<sup>148</sup> *Id.* at 71-72.

<sup>149</sup> *Id.* at 16.

<sup>150</sup> Expert Report-██████████-Environmental Law-Claimant's Ancillary Claim Memorial-Third Report-SPA, ¶¶ 67-79.

<sup>151</sup> SEMARNAT Press Release (6 May 2022) (C-0174-SPA.3) (free translation, the original reads: "En 1986, la Secretaría de Comunicaciones y Transportes, la Secretaría de Desarrollo Urbano y Ecología y el Gobierno de Quintana Roo otorgaron a Calica la primera autorización para la explotación de roca caliza por debajo del manto freático en La Rosita, sin determinar un plazo de vigencia, ni volumen de explotación específico.")

<sup>152</sup> PROFEPA Inspection Order and Report on Environmental Impact (2-5 May 2022) (C-0171-SPA.71-72).

<sup>153</sup> Expert Report-██████████-Environmental Law-Claimant's Ancillary Claim Memorial-Third Report-SPA, ¶¶ 45-46, 50, 54-56, 64-65.



73. In a transparent effort to provide further “legal” cover to the President’s order to shut down CALICA’s operations, PROFEPA also purported to base its shutdown on CALICA’s failure to secure a CUSTF before removing vegetation on that lot.<sup>154</sup> As the Tribunal is aware, a CUSTF is a permit for the removal of vegetation from forested terrain, the use of which would be changed from a forestry to a non-forestry use.<sup>155</sup> This permit does not apply to La Rosita, however, because La Rosita has for decades been used for quarrying in accordance with the activities permitted in its land-use regulations; no land-use change has been necessary.<sup>156</sup>

74. As ██████████ explains in ██████ third expert report, over the last thirty years La Rosita has been subject to three different land use regulations.<sup>157</sup> In each of these, La Rosita has been categorized as suitable for mining or industrial use.<sup>158</sup> Forestry has been categorized as an *incompatible* land use for La Rosita.<sup>159</sup>

75. Not only has CALICA removed vegetation in La Rosita openly for several decades, it has even informed PROFEPA of this fact numerous times over the years.<sup>160</sup> In no instance before May 2022 has this activity led to an inspection, challenge, objection, or administrative sanction by Mexico’s environmental authorities.<sup>161</sup>

76. In its May 2022 forestry inspection, however, PROFEPA faulted CALICA for removing vegetation in La Rosita without a CUSTF and purported to “find” that this allegedly missing permit constituted *ipso iure* environmental harm.<sup>162</sup> PROFEPA again chose to ignore the

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<sup>154</sup> PROFEPA Inspection Order and Report on Forestry (2-5 May 2022) (C-0172-SPA.62); Expert Report-██████████-Environmental Law-Claimant’s Ancillary Claim Memorial-Third Report-SPA, ¶ 109.

<sup>155</sup> Expert Report-██████████-Environmental Law-Claimant’s Memorial-SPA, ¶¶ 106-107; Expert Report-██████████-Environmental Law-Claimant’s Ancillary Claim Memorial-Third Report-SPA, ¶¶ 100-106; Tr. (Spanish), Day 3, 677:5-678:3, 681:13-22, 705:12-19 (██████████ presentation and responding to questions from the Tribunal) [English, 588:17-589:16, 592:14-20, 611:9-16].

<sup>156</sup> Expert Report-██████████-Environmental Law-Claimant’s Ancillary Claim Memorial-Third Report-SPA, ¶¶ 115-122.

<sup>157</sup> *Id.*, ¶¶ 117-122.

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*, ¶¶ 123-131.

<sup>161</sup> *Id.*, ¶ 129.

<sup>162</sup> PROFEPA Inspection Order and Report on Forestry (2-5 May 2022) (C-0172-SPA.62).



1986 Investment Agreement and its annexes,<sup>163</sup> which CALICA provided during the inspection and explicitly state that CALICA would clear vegetation (*desmonte*) in La Rosita.<sup>164</sup>

77. PROFEPA’s “findings” also contradict the conclusions of multiple environmental audits. As discussed above, PROFEPA has *certified* CALICA’s compliance with its environmental obligations in La Rosita through CALICA’s participation in the Environmental Audit Program.<sup>165</sup> In the latest of these, conducted in 2016, the PROFEPA-certified auditors concluded that CALICA was in full compliance of both its environmental impact obligations as well as its forestry and land use obligations.<sup>166</sup> In its section on forestry and land use, the report of the 2016 environmental audit states that CALICA “*does not need, nor has it needed [...] Authorizations [...] for Soil-Use Change in Forested Terrains*” (*i.e.*, the CUSTF).<sup>167</sup> Based on these findings, PROFEPA awarded CALICA the 2016 Clean Industry Certificate, attesting to CALICA’s “full compliance with environmental regulations.”<sup>168</sup>

78. PROFEPA’s conduct here — specifically its about-face on these issues and the numerous irregularities in its May 2022 inspections, which ██████████ details in ██████ third report<sup>169</sup> — is easily traceable to President López Obrador’s instruction to the Secretary of SEMARNAT to put an end to CALICA’s operations at any cost.

#### **4. Mexico Has Continued Its Campaign of Public Attacks Against CALICA, Even After the Shutdown and this Tribunal’s Order Not to Aggravate the Dispute**

79. President López Obrador’s *Mañaneras* have continued to feature public attacks against CALICA since his announced shutdown order on 2 May 2022, both to deflect criticism of

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<sup>163</sup> *Id.* at 19-23.

<sup>164</sup> *Id.*

<sup>165</sup> *See supra*, Part II.A.4.

<sup>166</sup> 2016 Environmental Audit Report (March 2016) (C-0208-SPA.21) (free translation, emphasis added).

<sup>167</sup> 2016 Environmental Audit Report (March 2016) (C-0208-SPA.255) (free translation, the original reads: “La Organización no requiere ni requirió para el caso de las instalaciones auditadas de autorizaciones de aprovechamiento de recursos forestales, de cambio de uso de suelo forestal o en materia de impacto ambiental.”) (emphasis added). *See also id.* at pp. 256-261 (containing numerous references in the same vein).

<sup>168</sup> Clean Industry Certificate (27 July 2016) (C-0042-SPA.4); LGEEPA Regulation on Environmental Audits, Article 23 (29 April 2010) (C-0210-SPA.10).

<sup>169</sup> Expert Report-██████████-Environmental Law-Claimant’s Ancillary Claim Memorial-Third Report-SPA, § IV.

his Mayan Train project and to pressure Legacy Vulcan into agreeing to repurpose the Project into a tourism zone and dropping this arbitration.

80. On 4 May 2022, for example, only two days after the President announced his shutdown order, the President's *Mañanera* featured a video that harped on the President's anti-CALICA attacks from prior months.<sup>170</sup> This was the video that President López Obrador had threatened to show "[i]f there is no end to extraction of materials from those lots" in his *Mañanera* of 31 March.<sup>171</sup>

81. Lasting 3 minutes, this anti-CALICA video displayed footage of explosions that did not take place at CALICA's lots and have nothing to do with its standing procedures.<sup>172</sup> The video asserted that the Project was an example of "industrial activities that were contrary to the tourism vocation of the zone;" that, in 1986, the federal and state governments authorized extraction without time or volume limits as a "blank check to extract limestone and take a piece of our country;" and that the company had brought a NAFTA "lawsuit" against Mexico claiming over US\$1.5 billion.<sup>173</sup> All of this with somber music and sound effects in the background to enhance the dramatic nature of the audiovisual. The President played this video again in his *Mañaneras* of 25 and 31 May 2022.<sup>174</sup>

82. President López Obrador targeted CALICA again during his *Mañanera* of 31 May 2022. Echoing previous press conferences, the President displayed an image of CALICA's quarrying lots on a large screen to compare them to the path of the Mayan Train, pushing back

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<sup>170</sup> Transcript of President's Morning Press Conference (4 May 2022) (C-0187-SPA.7); Andrés Manuel López Obrador, Presentación del Paquete Contra la Inflación y la Carestía, YouTube (uploaded 4 May 2022), <https://www.youtube.com/watch?v=CSxFRoOKPfs> (C-0260-SPA) (video online begins display at 01:05:51).

<sup>171</sup> Transcript of President's Morning Press Conference (31 March 2022) (C-0183-SPA.7); Andrés Manuel López Obrador, Aseguramiento de drogas previene daños a la población, YouTube (uploaded 31 March 2022), <https://www.youtube.com/watch?v=leo4l59MZJg> (C-0254-SPA) (video online begins display at 00:59:42).

<sup>172</sup> Witness Statement- [REDACTED]-Claimant's Ancillary Claim Memorial-Third Statement-ENG, ¶ 27.

<sup>173</sup> Transcript of President's Morning Press Conference (4 May 2022) (C-0187-SPA.7); Andrés Manuel López Obrador, Presentación del Paquete Contra la Inflación y la Carestía, YouTube (uploaded 4 May 2022), <https://www.youtube.com/watch?v=CSxFRoOKPfs> (C-0260-SPA) (video online begins display at 01:05:51).

<sup>174</sup> Transcript of President's Morning Press Conference (25 May 2022) (C-0196-SPA.16-17); Andrés Manuel López Obrador, 2022, año de mayor inversión extranjera en la historia de México, YouTube (uploaded 25 May 2022), [https://www.youtube.com/watch?v=L\\_Hn23QzV5U](https://www.youtube.com/watch?v=L_Hn23QzV5U) (C-0197-SPA) (video online begins display at 01:05:52); Transcript of President's Morning Press Conference (31 May 2022) (C-0198-SPA.26); Andrés Manuel López Obrador, Firma de Decreto Que Prohíbe Venta de Vapeadores y Cigarro Electrónico, YouTube (uploaded 31 May 2022), <https://www.youtube.com/watch?v=EzcQK9QRco8> (C-0189-SPA) (video online begins display at 01:34:09).

against environmental critics of his pet project.<sup>175</sup> He went a step further by stating that “a grave environmental crime” had been committed after being prompted by his spokesman, Jesús Ramírez-Cuevas:

MR. RAMÍREZ CUEVAS: President, but what they did is a very grave environmental crime.

PRESIDENT: Very grave, it is [...] Jesús used a term, which is very correct. What did you call it? Catastrophe, an environmental ecological disaster.<sup>176</sup>

83. The President then turned his sights toward this arbitration: “Ah, because in addition [...] all of this goes to international tribunals, it was part of the reforms that were done during the neoliberal period.”<sup>177</sup> He then complained “that these cases have to be resolved in international tribunals.”<sup>178</sup>

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<sup>175</sup> Transcript of President’s Morning Press Conference (31 May 2022) (C-0198-SPA.26) (“Aquí está, este es el trazo, si no me equivoco, del tren, insignificante, ese, ese que va ahí, aquí exactamente, este es el trazo, aquí son dos mil 600 hectáreas, aquí el trazo, esto, por donde pasa, en Calica, deben de ser 20 hectáreas, 20 de dos mil 600. Miren lo que no ven los ambientalistas y lo que está en el fondo del asunto, ahora sí.”); Andrés Manuel López Obrador, *Firma de Decreto Que Prohíbe Venta de Vapeadores y Cigarro Electrónico*, YouTube (uploaded 31 May 2022), <https://www.youtube.com/watch?v=EzcQK9QRco8> (C-0189-SPA) (video online begins display at 1:34:09).

<sup>176</sup> Transcript of President’s Morning Press Conference (31 May 2022) (C-0198-SPA.35-36) (free translation, the original reads: “INTERLOCUTOR: Presidente, pero es un delito ambiental gravísimo lo que hicieron. PRESIDENTE ANDRÉS MANUEL LÓPEZ OBRADOR: Pero gravísimo, es... Usó una palabra Jesús, que es lo más correcto. ¿Cómo le llamaste? Catástrofe, desastre ecológico ambiental.”); Andrés Manuel López Obrador, *Firma de Decreto Que Prohíbe Venta de Vapeadores y Cigarro Electrónico*, YouTube (uploaded 31 May 2022), <https://www.youtube.com/watch?v=EzcQK9QRco8> (C-0261-SPA) (video online begins display at 02:21:36). Mr. Jesús Ramírez-Cuevas is the Federal Government’s General Coordinator of Social Communication and Spokesperson (*Coordinador General de Comunicación Social y Vocero del Gobierno de la República*). See generally *Presidencia de la República—Directorio*, Jesús Ramírez Cuevas, Gobierno de México (last accessed 24 September 2022), <https://www.gob.mx/presidencia/estructuras/jesus-ramirez-cuevas>.

<sup>177</sup> Transcript of President’s Morning Press Conference (31 May 2022) (C-0198-SPA.36) (free translation, the original reads: “Ah, porque además, porque además, que son de las cosas injustas, todo esto va a tribunales internacionales, fueron partes de las reformas que se hicieron durante el periodo neoliberal.”); Andrés Manuel López Obrador, *Firma de Decreto Que Prohíbe Venta de Vapeadores y Cigarro Electrónico*, YouTube (uploaded 31 May 2022), <https://www.youtube.com/watch?v=EzcQK9QRco8> (C-0261-SPA) (video online begins display at 02:21:36).

<sup>178</sup> Transcript of President’s Morning Press Conference (31 May 2022) (C-0198-SPA.36) (free translation, the original reads: “O sea, no es posible que estos casos tengan que resolverse en tribunales internacionales. Y en Estados Unidos es prácticamente imposible ganar a una empresa de estas. Por eso me decía un amigo cuando se hace un negocio con un estadounidense, dice: ‘Hay que ponerle una cláusula de que, si se presenta una irregularidad de cualquier tipo, se resuelva en tribunales mexicanos, porque allá no hay posibilidades.’”); Andrés Manuel López Obrador, *Firma de Decreto Que Prohíbe Venta de Vapeadores y Cigarro Electrónico*, YouTube (uploaded 31 May 2022), <https://www.youtube.com/watch?v=EzcQK9QRco8> (C-0261-SPA) (video online begins display at 02:21:36).

84. The President has also continued to use CALICA to deflect environmental criticism of his Mayan Train project. On 21 June 2022, for example, the President again criticized environmentalists who oppose the construction of the Mayan Train for not taking note of the “destruction by Vulcan, the American company.”<sup>179</sup> On 28 June 2022, the President again asserted that CALICA was “actively destroying the territory.”<sup>180</sup>

85. Before the shutdown, President López Obrador had threatened to bring a “complaint” against Vulcan before “international organizations” for its alleged “ecological disaster,”<sup>181</sup> a threat he repeated in June 2022, while also threatening to “notify[...] the stock exchange in which the company stock is traded.”<sup>182</sup> Again carrying out the President’s wishes, on 4 July 2022, SEMARNAT’s Minister, María Luisa Albores, tweeted that she had traveled to Geneva to file a purported “complaint” against Vulcan before the U.N. High Commissioner for Human Rights, supposedly to “defend our environment and sovereignty.”<sup>183</sup> Neither Legacy

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<sup>179</sup> Transcript of President’s Morning Press Conference (21 June 2022) (C-0231-SPA.75) (“Resulta que los ambientalistas que no quieren el Tren Maya en esa zona no vieron lo de la destrucción de Vulcan, de la empresa estadounidense, que ya estamos terminando de hacer todo el estudio para mostrarles la destrucción tremenda que causaron[.]”); Andrés Manuel López Obrador, Conferencia de prensa matutina, desde Palacio Nacional, YouTube (uploaded 21 June 2022), <https://www.youtube.com/watch?v=SCDDoOc5PAQ> (C-0263-SPA) (video online begins display at 02:30:43).

<sup>180</sup> Transcript of President’s Morning Press Conference (28 June 2022) (C-0232-SPA.65-66) (“Si no tuviésemos el problema con Calica — el problema me refiero a que están destruyendo el territorio y no vamos a cambiar una cosa por otra — pues de aquí a aquí no tendríamos problema, porque este puerto de Calica tiene calado suficiente, tiene 12 metros; pero como tenemos aquí la denuncia, porque están destruyendo, no podemos hacer tratos.”); Andrés Manuel López Obrador, Migración será tema central en reunión con Joe Biden en Washington, YouTube (uploaded 28 June 2022), <https://www.youtube.com/watch?v=MKZlFzeOx58> (C-0264-SPA) (video online begins display at 02:29:04).

<sup>181</sup> Transcript of President’s Morning Press Conference (31 March 2022) (C-0183-SPA.7); Andrés Manuel López Obrador, Aseguramiento de drogas previene daños a la población, YouTube (uploaded 31 March 2022), <https://www.youtube.com/watch?v=le04l59MZJg> (C-0254-SPA) (video online begins display at 00:59:42).

<sup>182</sup> Transcript of President’s Morning Press Conference (16 June 2022) (C-0233-SPA.41) (“A lo mejor están pensando ellos que ya va a terminar el gobierno y que van a reiniciar sus labores. Pero vamos a hacer denuncias en la ONU porque... Incluso estoy pensando también hacer una notificación a las bolsas de valores donde cotiza la empresa, porque todos tenemos que cuidar el medio ambiente de verdad, no estos ambientalistas falsos o pseudo-ambientalistas. Estamos trabajando en eso, se está haciendo toda la documentación para fundarla.”); Andrés Manuel López Obrador, Gobierno llama a Calica a frenar extracción mineral en Quintana Roo, YouTube (uploaded 16 June 2022), <https://www.youtube.com/watch?v=-2elTCHN7QU> (C-0262-SPA) (video online begins display at 01:49:35).

<sup>183</sup> See, e.g., María Luisa Albores González, Twitter (4 July 2022) (C-0234-SPA) (“El territorio es de l@s mexican@s, cuidarlo es nuestra responsabilidad. Venimos a defender la naturaleza y nuestra soberanía.”).

Vulcan nor CALICA has been formally notified about this “complaint” or has received a copy of it.<sup>184</sup>

86. In another effort to smear Legacy Vulcan and CALICA, SEMARNAT also published on its website a PowerPoint presentation and purported report on the alleged environmental impacts of CALICA’s operations, extolling the President’s “leadership” in “guaranteeing the right to a healthy environment”<sup>185</sup> and echoing the President’s claims about CALICA’s alleged illegality and purported “environmental destruction.”<sup>186</sup> CALICA was never served with this document or given an opportunity to challenge its allegations and purported “findings.” It learned of its existence through the media.

87. After a lull following the Tribunal’s order on provisional measures dated 11 July 2022, the President once again went after CALICA in *Mañaneras* earlier this month. On 13 September 2022, he brought up CALICA to deflect renewed criticism against the Mayan Train. “These ones, who before did whatever they wanted without any permit, when one looks at the CALICA thing,” he noted and asked rhetorically: “how did they authorize, who gave the permits?”<sup>187</sup> The President then answered his own question: “Well the same ones who participated in the campaign against the Mayan Train [...]”<sup>188</sup> Tackling criticism that the Train’s construction imperiled archaeological sites, the President falsely accused CALICA of having

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<sup>184</sup> Witness Statement- [REDACTED]-Claimant’s Ancillary Claim Memorial-Third Statement-ENG, ¶ 29.

<sup>185</sup> SEMARNAT, *Desastre Ambiental Violatorio del Derecho Humano a un Medio Ambiente Sano* (18 August 2022) (C-0235-SPA.2, 5).

<sup>186</sup> See generally *id.*; SEMARNAT, *Impacto ambiental SAC-TUN*, Gobierno de México (18 August 2022) (C-0236-SPA), <https://www.gob.mx/semarnat/documentos/dictamen-de-impactos-ambientales>; SEMARNAT, *Dictamen de impactos ambientales derivados del proyecto de extracción industrial de roca caliza a cargo de la empresa Calica (hoy SAC-TUN) en los municipios de Solidaridad y Cozumel, Quintana Roo* (18 August 2022) (C-0237-SPA).

<sup>187</sup> Transcript of President’s Morning Press Conference (13 September 2022) (C-0238-SPA.35) (free translation, the original reads: “Estos, que antes hacían lo que querían sin permiso de nada, cuando uno ve lo de Calica dice: ¿cómo autorizaron?, ¿quién dio los permisos?”); Andrés Manuel López Obrador, Estados Unidos respetará soberanía energética de México, YouTube (uploaded 13 September 2022), <https://www.youtube.com/watch?v=SuDe8nWujEU> (C-0265-SPA) (video online begins display at 01:16:26).

<sup>188</sup> Transcript of President’s Morning Press Conference (13 September 2022) (C-0238-SPA.35) (free translation, the original reads: “Pues son los mismos que participaron en la campaña en contra del Tren Maya, pero ya esto cambió [...]”); Andrés Manuel López Obrador, Estados Unidos respetará soberanía energética de México, YouTube (uploaded 13 September 2022), <https://www.youtube.com/watch?v=SuDe8nWujEU> (C-0265-SPA) (video online begins display at 01:16:26).

“destroyed archaeological zones and the [National Institute of Archaeology and History (*Instituto Nacional de Arqueología e Historia* or “INAH”)] did not intervene there.”<sup>189</sup>

88. President López Obrador took aim against CALICA in his next *Mañanera*, on 14 September 2022. Addressing questions about activists who criticized the impact that the Mayan Train would have on water-filled caverns (*cenotes*) and archaeological sites, the President asserted that “I call them pseudo-environmentalists, because they are, I do not think that living in Quintana Roo, in that zone, they did not realize the destruction that CALICA or Xcaret did and that suddenly their fervor of environmental defense sprouted, no, there are other purposes.”<sup>190</sup> He later requested to display pictures from CALICA and added:

Why don't you put up Calica again? This is in Playa del Carmen, the most important touristic zone. [...]

It is the heart of the Mayan Riviera, and archaeological zones, and no one opposed it[.] [P]ermits were even given in the era of Ms. Carabias.

Look at this, this is destruction, look, and did Greenpeace issue any press release?

And did you know that the material – let's see, there is the port – they take it away? It is a bank of material and they use the material for highways in the United States, they take sand from paradise to construct highways in the United States.

But in addition there are archaeological vestiges in this whole zone. When did the INAH do an inspection, give authorization? Nothing.<sup>191</sup>

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<sup>189</sup> Transcript of President's Morning Press Conference (13 September 2022) (C-0238-SPA.34) (free translation, the original reads: “O si se ve lo que hicieron en Calica, destruyeron zonas arqueológicas y ahí no intervino el INAH. En el Tren Maya deben de estar trabajando 200 arqueólogos y son los que van definiendo por dónde debe de ir el trazo del tren y, si hay una zona arqueológica, se libra, se cuida.”); Andrés Manuel López Obrador, Estados Unidos respetará soberanía energética de México, YouTube (uploaded 13 September 2022), <https://www.youtube.com/watch?v=SuDe8nWujEU> (C-0265-SPA) (video online begins display at 01:16:26); see Witness Statement- [REDACTED]-Claimant's Memorial-ENG, ¶ 7.

<sup>190</sup> Transcript of President's Morning Press Conference (14 September 2022) (C-0239-SPA.30) (free translation, the original reads: “[Y]o les llamo pseudoambientalistas, porque lo son, no creo yo que viviendo en Quintana Roo, en esa zona, no se hayan dado cuenta de la destrucción que hizo Calica o Xcaret y que de repente les salió ahora el fervor por la defensa del ambiente, no, son otros propósitos.”); Andrés Manuel López Obrador, Secretarías de la Defensa y de Marina contribuyen a consolidar Guardia Nacional, YouTube (uploaded 14 September 2022), <https://www.youtube.com/watch?v=MogDiMxCfqq> (C-0266-SPA) (video online begins display at 01:22:37).

<sup>191</sup> Transcript of President's Morning Press Conference (14 September 2022) (C-0239-SPA.32-33) (free translation, the original reads: “¿Por qué no vuelves a poner Calica? Esto está en Playa del Carmen, es la zona turística más importante. [...] Es el corazón de la Riviera Maya, y zonas arqueológicas, y nadie, nadie se opuso, incluso los permisos los dieron en la época de la señora Carabias. Miren esto, esto es destrucción,

89. In addition to public attacks, Mexico has also continued to deploy the military and law enforcement assets to harass CALICA. Drones have continued to be flown over CALICA's property.<sup>192</sup> Helicopters with military camouflage have continued to fly over Punta Venado and have landed twice on CALICA's property without any authorization to do so.<sup>193</sup> Not surprisingly, CALICA's employees have been intimidated and placed in a state of uncertainty.<sup>194</sup> Other quarries have been spared from this. As Mexico singled out CALICA, it has allowed other quarries to operate in Quintana Roo.<sup>195</sup>

### III. LEGAL BASIS FOR THE ANCILLARY CLAIM

#### A. THE TRIBUNAL HAS JURISDICTION TO DECIDE LEGACY VULCAN'S ANCILLARY CLAIM

90. As the Tribunal held in Procedural Order No. 7, Legacy Vulcan's "ancillary claim [is] within the scope of the consent of the Parties and within the jurisdiction of ICSID."<sup>196</sup> Legacy Vulcan's ancillary claim is within the scope of the Parties' consent to arbitrate the original claim — both of which relate to the Project.<sup>197</sup> Accordingly, "the [NAFTA] requirements of written notice of a claim, the expiry of a six-month period and the investor's consent and waiver fully apply and are covered by compliance with those requirements in relation to the original claim."<sup>198</sup> Mexico gave its consent to arbitrate the Parties' investment dispute pursuant to ICSID Article 25 and NAFTA Article 1122, and Legacy Vulcan did so pursuant to its original Notice of Intent to Submit a Claim to Arbitration, as reiterated in its instrument of consent and waiver dated 3 December

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miren, ¿y Greenpeace hizo algún comunicado? ¿Y saben que el material — a ver si está el puerto ahí — se lo llevan? Es un banco de material y usan el material para las carreteras en Estados Unidos, sacan esta arena del paraíso para construir carreteras en Estados Unidos. Pero además en toda esa zona hay vestigios arqueológicos. ¿Cuándo el INAH hizo una inspección, dio una autorización? Nada."); Andrés Manuel López Obrador, Secretarías de la Defensa y de Marina contribuyen a consolidar Guardia Nacional, YouTube (uploaded 14 September 2022), <https://www.youtube.com/watch?v=MogDiMxCfqq> (C-0266-SPA) (video online begins display at 01:22:37).

<sup>192</sup> Witness Statement- [REDACTED]-Claimant's Ancillary Claim Memorial-Third Statement-ENG, ¶ 31.

<sup>193</sup> *Id.*

<sup>194</sup> *Id.*, ¶ 32.

<sup>195</sup> See, e.g., Servicio Geológico Mexicano, *Panorama Minero del Estado de Quintana Roo: Dirección de Investigación y Desarrollo* (2021) (C-0279-SPA.29-32) (listing quarries and companies operating in Quintana Roo).

<sup>196</sup> *Id.*, ¶ 150; see also *id.*, ¶¶ 149, 151-152.

<sup>197</sup> See *id.*, ¶¶ 149-150.

<sup>198</sup> *Id.*, ¶ 149.

2018 and the Request for Arbitration.<sup>199</sup> The Tribunal therefore has jurisdiction to adjudicate Legacy Vulcan’s ancillary claim.<sup>200</sup>

**B. MEXICO HAS TREATED LEGACY VULCAN’S INVESTMENTS UNFAIRLY AND INEQUITABLY**

91. By engaging in additional arbitrary and unjust conduct in contravention of basic notions of due process as well as frustrating Legacy Vulcan’s legitimate expectations, Mexico has further breached its obligation to afford fair and equitable treatment to Legacy Vulcan’s investments, in violation of NAFTA Article 1105.

**1. The Treaty Requires Mexico to Afford Fair and Equitable Treatment to Legacy Vulcan’s Investments, Including CALICA**

92. NAFTA Article 1105 requires Mexico to “accord to investments of investors of another Party treatment in accordance with international law, including fair and equitable treatment and full protection and security.”<sup>201</sup> Both Parties agree that the applicable standard under NAFTA Article 1105 is the one articulated in *Waste Management*.<sup>202</sup> Under that standard, a host State violates Article 1105 if its treatment of an investor or investment is “arbitrary,” “grossly unfair, unjust or idiosyncratic” or “discriminatory,” or if it involves a lack of due process leading to an outcome which offends judicial propriety.<sup>203</sup> The *Waste Management* tribunal explained that, in assessing whether this standard has been met, “it is relevant that the treatment

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<sup>199</sup> *Id.*, ¶¶ 150-152.

<sup>200</sup> *Id.*, ¶ 154.

<sup>201</sup> NAFTA Art. 1105 (C-0009-ENG).

<sup>202</sup> See Tr. (Spanish), Day 1, 275:7-17 (Respondent’s Opening Statement, reciting the *Waste Management* standard: “el Tribunal está limitado a decidir si ha habido una violación del estándar mínimo de trato conforme al derecho internacional consuetudinario, es decir, si hubo una conducta que haya sido arbitraria, notoriamente injusta, antijurídica o idiosincrática y discriminatoria, si la demandante es objeto de [prejuicios] raciales o regionales, o si involucra una ausencia de debido proceso que lleva a un resultado que ofende la discrecionalidad judicial.”) [English, 228:9-18]; Respondent’s Opening Presentation, Slide 64 (RD-0001). See also Memorial, ¶ 188; Reply, ¶ 127; Counter-Memorial, ¶ 297; Rejoinder, ¶ 321.

<sup>203</sup> *Waste Management v. United Mexican States (II)*, ICSID Case No. ARB(AF)/00/3, Award, ¶¶ 98-99 (30 April 2004) (Crawford (P), Civiletti, Magallón Gómez) (CL-0007-ENG) (hereinafter “*Waste Management v. Mexico (Award)*”) (“Taken together, the *S.D. Myers*, *Mondev*, *ADF* and *Loewen* cases suggest that the minimum standard of treatment of fair and equitable treatment is infringed by conduct attributable to the State and harmful to the claimant if the conduct is arbitrary, grossly unfair, unjust or idiosyncratic, is discriminatory and exposes the claimant to sectional or racial prejudice, or involves a lack of due process leading to an outcome which offends judicial propriety [...]. In applying this standard it is relevant that the treatment is in breach of representations made by the host State which were reasonably relied on by the claimant. Evidently the standard is to some extent a flexible one which must be adapted to the circumstances of each case.”); *Merrill & Ring Forestry L.P. v. Government of Canada*, ICSID Case No. UNCT/07/1, NAFTA/UNCITRAL, Award, ¶¶ 209-210 (31 March 2010) (Orrego Vicuña (P), Dam, Rowley) (CL-0005-ENG) (hereinafter “*Merrill & Ring v. Canada (Award)*”) (“[T]he standard protects against all such acts or behavior that might infringe a sense of fairness, equity and reasonableness.”).



is in breach of representations made by the host State which were reasonably relied on by the claimant.”<sup>204</sup> That tribunal further noted that “[a] basic obligation of the State under Article 1105(1) is to act in good faith and form, and not deliberately to set out to destroy or frustrate the investment by improper means.”<sup>205</sup>

93. The tribunal in *International Thunderbird Gaming Corp. v. Mexico* affirmed the holding of *Waste Management* and confirmed that legitimate expectations is a concept recognized under NAFTA Article 1105:

Having considered recent investment case law and the good faith principle of international customary law, the concept of ‘legitimate expectations’ relates, within the context of the NAFTA framework, to a situation where a Contracting Party’s conduct creates reasonable and justifiable expectations on the part of an investor (or investment) to act in reliance on said conduct, such that a failure by the NAFTA Party to honour those expectations could cause the investor (or investment) to suffer damages.<sup>206</sup>

94. In sum, as Legacy Vulcan has demonstrated in this arbitration,<sup>207</sup> NAFTA Article 1105: (i) prohibits Mexico from acting in a manner that is “arbitrary, grossly unfair, unjust or idiosyncratic,” “discriminatory,” or “that involves a lack of due process leading to an outcome which offends judicial propriety;” (ii) requires Mexico “to act in good faith and form, and not deliberately to set out to destroy or frustrate the investment by improper means;” and (iii) obligates Mexico to honor the “reasonable and justifiable expectations” that Legacy Vulcan relied upon in making and expanding its investments. Since the Parties largely agree on the content of NAFTA Article 1105, as interpreted by *Waste Management* and its progeny,<sup>208</sup> the issue before the Tribunal is mainly a question of fact, not law.

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<sup>204</sup> *Waste Management v. Mexico* (Award), ¶ 98 (CL-0007-ENG).

<sup>205</sup> *Id.*, ¶ 138.

<sup>206</sup> *International Thunderbird Gaming Corporation v. United Mexican States*, UNCITRAL, Award, ¶ 147 (26 January 2006) (van den Berg (P), Wälde, Ariosa) (CL-0004-ENG).

<sup>207</sup> See Memorial, Part V.B; Reply, Part III.B.

<sup>208</sup> See Memorial, ¶ 188; Reply, ¶ 127; Counter-Memorial, ¶¶ 292, 297, 298; Rejoinder, ¶ 321. See also *Metalclad Corporation v. United Mexican States*, ICSID Case No. ARB(AF)/97/1, Mexico’s Counter-Memorial, ¶ 841 (22 May 1998) (Lauterpacht (P), Civiletti, Siqueiros) (CL-0042-ENG) (hereinafter “*Metalclad v. Mexico* (Award)”) (“The fair and equitable treatment standard requires the Respondent to act in good faith, reasonably, without abuse, arbitrariness or discrimination.”); Counter-Memorial, ¶ 306 (acknowledging that NAFTA tribunals have confirmed that “[o]rdinarily, reasonable or legitimate expectations of the kind protected by NAFTA are those that arise through targeted representations or assurances made explicitly or implicitly by a state party”) (internal citations omitted)); see also Claimant’s Post-Hearing Brief, ¶ 32 (explaining that Mexico “has accepted the *Waste Management* standard, which — as later summarized by another NAFTA tribunal — ‘calls for a consideration of representations made by the host state which an investor relied on to its detriment’”).

## 2. Mexico Breached the Fair and Equitable Treatment Standard

95. Mexico failed to accord fair and equitable treatment to Legacy Vulcan and its investments in violation of NAFTA Article 1105 when the President arbitrarily ordered the shutdown of CALICA’s remaining operations after a months-long campaign of politically-motivated attacks against the company aimed at deflecting domestic criticism of his Mayan Train project and pressuring Legacy Vulcan to “accept” Mexico’s terms and to dismiss this arbitration.

### a) Mexico’s Measures Were Arbitrary

96. Mexico’s shutdown of Legacy Vulcan and CALICA’s remaining operations — admittedly on the President’s own orders and following months of public attacks — was arbitrary because (1) it was politically motivated, (2) contrary to good faith, and (3) in contravention of basic notions of due process.

#### (1) Mexico’s Shutdown Was Politically Motivated

97. State conduct is arbitrary when it is based not on facts or law but rather on domestic politics and discretion.<sup>209</sup> In *Tecmed v. Mexico*, for example, Mexico’s regulatory body for environmental issues refused to renew the claimant’s permit to operate a landfill because the site had “become a nuisance due to political reasons relating to the community’s opposition.”<sup>210</sup> The tribunal held that such politically-motivated conduct amounted to a breach of the fair and equitable treatment standard.<sup>211</sup> Similarly, the tribunal in *Azurix v. Argentina* found that Argentina had breached the fair and equitable treatment standard as a result of the arbitrary actions of provincial authorities who intervened “for political gain” during a tariff dispute with the claimant’s Argentine subsidiary.<sup>212</sup>

98. As in *Tecmed* and *Azurix*, Mexico’s conduct against Legacy Vulcan in this case has been improperly driven by political reasons and discretion. President López Obrador launched a months-long media campaign against Legacy Vulcan and CALICA, using the presidential bully

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<sup>209</sup> Rudolf Dolzer, *Fair and Equitable Treatment: Today’s Contours*, 12(1) Santa Clara J. Int’l L. 7 (2014) (CL-0050-ENG.27) (hereinafter “Dolzer, FET Contours”) (“[F]air and equitable treatment will stand in the way of conduct of the host state that is driven by domestic politics instead of arising out of considerations related to the investment. Governmental action will also be suspect in case it is not based on a proper review of facts relevant to a decision.”).

<sup>210</sup> *Técnicas Medioambientales Tecmed, S.A. v. United Mexican States*, ICSID Case No. ARB (AF)/00/2, Award, ¶¶ 164, 166 (29 May 2003) (Grigera Naón (P), Fernández-Rosas, Bernal Vereza) (CL-0052-ENG) (hereinafter “*Tecmed v. Mexico* (Award)”).

<sup>211</sup> *Tecmed v. Mexico* (Award), ¶¶ 164, 166 (CL-0052-ENG).

<sup>212</sup> *Azurix Corp. v. Argentine Republic*, ICSID Case No. ARB/01/12, Award, ¶ 144 (14 July 2006) (Rigo Sureda (P), Lalonde, Martins) (CL-0028-ENG).

pulpit to deflect domestic environmental criticism against the Mayan Train project, to attack political opponents from previous “neoliberal” governments, and to pressure Legacy Vulcan into dropping this arbitration and transforming its investment into the President’s preferred industry for the area: tourism.<sup>213</sup> Mexico also withheld a customs permit CALICA was entitled to receive on the merits to pressure CALICA into “agreeing” to stop quarrying La Rosita.<sup>214</sup> All of this culminated with the President’s order to halt CALICA’s remaining operations and the execution of this order in May 2022.<sup>215</sup>

99. The President’s own public statements and conduct show that Mexico’s measures were driven by politics, bias, and prejudice, rather than the facts or the law. *First*, President López Obrador’s attacks against Legacy Vulcan and CALICA have been fueled by his nationalistic and anti-“neoliberal” agenda. Between January and September 2022, President López Obrador has referred to CALICA more than 30 times, often claiming that the company was “destroying the land” by taking Mexico’s soil to build roads in the United States.<sup>216</sup> The President has acknowledged that CALICA has permits to conduct its activities, yet dismissed those permits because prior “neoliberal governments” granted them,<sup>217</sup> as if CALICA were to blame for the political color of the administration that granted its permits.

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<sup>213</sup> *See supra*, Part II.B.2.

<sup>214</sup> *See supra*, Part I.B.1.

<sup>215</sup> *See supra*, Parts I.B.1 and I.B.3.

<sup>216</sup> *See Appendix A. See also, e.g.*, Transcript of President’s Morning Press Conference (7 March 2022) (C-0217-SPA.31) (stating that CALICA “tiene unos bancos de material en Playa del Carmen y que se llevan el material para construir carreteras en Estados Unidos, y les dieron permiso los que ahora están en contra de lo que estamos haciendo en el sureste.”); Transcript of President’s Morning Press Conference (23 March 2022) (C-0220-SPA.22-23) (“Ahí está Calica, una empresa estadounidense que obtuvo permiso para extraer materiales de construcción [...] y todo ese material se lo llevaban a Estados Unidos para la construcción de carreteras.”); Transcript of President’s Morning Press Conference (28 March 2022) (C-0227-SPA.48) (“[A] una empresa estadounidense, Calica [...] les dan el permiso para sacar material, sacar grava, aquí junto al paraíso este y este material se lo llevan a Estados Unidos para sus carreteras, un banco de material aquí. ¿Quiénes dieron los permisos? En la Secretaría de Medio Ambiente, cuando estaba la señora Julia Carabias, que ahora son de los más combativos defensores del medio ambiente, de lo que hacemos nosotros.”); Transcript of President’s Morning Press Conference (4 April 2022) (C-0228-SPA.26) (“se clausuró esta obra porque se llevaban el material para las carreteras de Estados Unidos”); Transcript of President’s Morning Press Conference (22 April 2022) (C-0186-SPA.9) (“nosotros tomamos la decisión de detener la destrucción de Calica, que tienen más de dos mil hectáreas y estaban usando desde los tiempos de Zedillo y de la señora Carabias como banco de material toda esa área para llevarse la grava a construir caminos en Estados Unidos, una gran destrucción.”); Transcript of President’s Morning Press Conference (29 April 2022) (C-0229-SPA.65) (“La señora Julia Carabias dio la autorización unos días antes de que terminara el gobierno de Zedillo, y es permitir la extracción de grava, es un banco de grava para llevar ese material y utilizarlo en las carreteras de Estados Unidos.”).

<sup>217</sup> Transcript of President’s Morning Press Conference (2 May 2022) (C-0168-SPA.14) (“Calica, Vulcan [...] recibió permisos de los gobiernos neoliberales, y los ambientalistas nunca jamás dijeron nada, y es una destrucción al territorio sin precedente y lo siguen haciendo.”); Transcript of President’s Morning Press Conference (3 February 2022) (C-0178-SPA.22) (free translation, the original reads: “Estos permisos los

100. *Second*, Mexico’s measures against CALICA and Legacy Vulcan have been geared towards favoring the tourism industry to the detriment of CALICA’s longstanding business. In his *Mañanera* of 31 January 2022, for instance, the President explicitly tied his false allegations against CALICA to the priority he placed on promoting the tourism industry near Tulum, emphasizing that “tourism is also the main economic activity, we already talked about how much tourism has given in this region, that we have to take care of this activity.”<sup>218</sup> The President also repeatedly demanded that CALICA relinquish its investment for a tourism redevelopment, stating on 1 February 2022, for example, that “they ha[d] to reach an agreement,” emphasizing that this was “one of the most important tourist zones in the world[.]”<sup>219</sup> According to the President, CALICA’s lots can “no longer be used as deposits of material, *because they are in the middle of a tourist zone*[.]”<sup>220</sup> The President has thus demanded that CALICA fundamentally change its business activity to conform to his preferred industry — tourism — in a way that reportedly may favor one of his close advisors with interests in cruise-ships and hotels.<sup>221</sup>

101. *Third*, the President has used Legacy Vulcan and CALICA as scapegoats to deflect public criticism of the President’s Mayan Train project. As the President attacked CALICA, multiple media outlets reported that the Train was being constructed without the required

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entregaron, el de ese predio que están explotando, lo entregaron antes del 2000. Y fíjense cómo era antes este asunto, cómo eran las cosas antes, no le pusieron ni siquiera un límite a la concesión, porque en otros casos, bueno, concesionaron el puerto de Veracruz, en el tiempo de Salinas, 100 años, un siglo, pero acá ni siquiera hay fecha.”).

<sup>218</sup> Transcript of President’s Morning Press Conference (31 January 2022) (C-0176-SPA.22) (free translation, the original reads: “En Tulum por eso también se va a proteger, porque es del medio ambiente, pero además es la actividad económica principal el turismo, ya hablamos de cuánto ha dado el turismo de esta región, que hay que cuidar esta actividad y el medio ambiente.”).

<sup>219</sup> Transcript of President’s Morning Press Conference (1 February 2022) (C-0177-SPA.16-17) (free translation, the original reads: “Lo mismo en el caso del muelle, tenemos que llegar a un acuerdo y ya se está viendo. [...] [S]i se observa, toda esta zona es la zona turística de las más importantes del mundo, Playa del Carmen[.]”).

<sup>220</sup> Transcript of President’s Morning Press Conference (10 February 2022) (C-0216-SPA.30-31) (emphasis added) (free translation, the original reads: “Dijimos: Sí, pero ya no van a extraer más, ya no pueden ser bancos de material, no se pueden utilizar como bancos de material esos pre[d]ios, porque están en plena zona turística, a un kilómetro de las playas del Caribe, del mar turquesa.”).

<sup>221</sup> See *supra*, ¶ 45. See also, e.g., Transcript of President’s Morning Press Conference (31 January 2022) (C-0176-SPA.22) (“[E]n es[t]a mina, que es una de las propuestas que les estamos haciendo, como ya escarbaron, el agua aquí es turquesa por la piedra, entonces, con un poco de imaginación y de talento se podría utilizar como zona turística, casi albercas naturales, buscando un acuerdo, pero que ya no se siga destruyendo y que retiren su demanda, porque no tiene fundamento legal.”); Transcript of President’s Morning Press Conference (22 April 2022) (C-0186-SPA.9) (“Adicionalmente, aparte, bueno, les estamos haciendo la propuesta a los de Vulcan, porque ellos son dueños de estos terrenos, creo que son dos mil hectáreas en total ¿no?, más de dos mil, entonces les estamos diciendo: ya no van a poder, aunque hagan campañas, aunque vayan al Departamento de Estado a acusarnos, ya no van a poder sacar, extraer material, o sea, no va a ser banco de material, entonces vamos a llegar a un arreglo, es lo que estamos buscando. Les estamos proponiendo: cambien de actividad económica [...]”).

environmental impact authorizations and using aggregates from unauthorized quarries.<sup>222</sup> In this context, the President’s spokesperson falsely accused CALICA of “destroying the jungle” and “exploiting the stone and destroying the environment,” lamenting that “there are no environmentalists protesting against it and nobody from Greenpeace is chaining themselves to the machines to prevent it.”<sup>223</sup> Over the course of several months, the President repeatedly made — and SEMARNAT echoed — similar false accusations against Legacy Vulcan and CALICA.<sup>224</sup>

102. In sum, in the context of advancing his nationalistic agenda, favoring tourism-industry interests, and defending his Mayan Train project, President López Obrador concocted false accusations that Legacy Vulcan and CALICA violated the law and destroyed the environment. The President’s allegations are at odds with the authorizations that Mexico had provided to CALICA many years ago and with SEMARNAT’s and PROFEPA’s pre-2022 conduct regarding La Rosita. Mexico’s attitude toward CALICA’s remaining operations changed suddenly when CALICA became a politically expedient scapegoat. The fact that the President himself ordered the shutdown of La Rosita, claiming an imaginary “deception,” followed by PROFEPA’s swift execution of that verbal order, says it all. Mexico’s measures were demonstrably driven by politics, bias, and prejudice, rather than facts and law, in violation of NAFTA Article 1105.

## (2) Mexico Did Not Act in Good Faith

103. Good faith is a “basic obligation of the State under Article 1105(1).”<sup>225</sup> To comply with this obligation, Mexico must “not manifestly violate the requirements of consistency,

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<sup>222</sup> *E.g.*, Rodrigo Pérez Ortega & Inés Gutiérrez Jaber, *A Controversial Train Heads for the Maya Rainforest*, Science (19 January 2022) (C-0240-ENG); Center for Biological Diversity, *Conservationists Urge Halt to Mexico’s Maya Train Project, Call for Sanctions: Project Violates Local, National Regulations, Forest Clearing Already Occurred* (9 June 2022) (C-0241-ENG); Editorial, *Tren Maya: Estas son las Polémicas que Rodean a la Obra de Seguridad Nacional*, El Financiero (18 July 2022) (C-0277-SPA). The Mayan Train has also been criticized for potentially affecting the world’s longest underground river and hundreds of unexplored caves that have been found to contain ancient Mayan ruins. *See* Maria Abi-Habib, *Over Caves and Over Budget, Mexico’s Train Project Barrels Toward Disaster*, N.Y. Times (28 August 2022) (C-0242-ENG).

<sup>223</sup> Transcript of President’s Morning Press Conference (30 March 2022) (C-0182-SPA.3) (free translation, the original reads: “[D]estruye la selva y está explotando la piedra y arrasando con el medio ambiente. [. . .] [N]o hay protestas de ecologistas en su contra ni nadie de Greenpeace se amarra a las máquinas para evitarlo.”); Andrés Manuel López Obrador, *Iniciativa de reforma electoral incluirá reducción de plurinominales*, YouTube (uploaded 30 March 2022), <https://www.youtube.com/watch?v=KxdZEJos5qI> (C-0253-SPA) (video online begins display at 00:27:50).

<sup>224</sup> *See supra*, Part II.B.2; SEMARNAT Press Release, *¿Dónde estaban los pseudoambientalistas cuando hace años empezó la verdadera devastación en el sureste de México?* (25 March 2022) (asserting that “permits were given” by previous administrations “without consideration to environmental harm,” using CALICA as a purported example) (C-0226-SPA.2).

<sup>225</sup> *Waste Management v. Mexico* (Award), ¶ 138 (CL-0007-ENG) (“A basic obligation of the State under Article 1105(1) is to act in good faith and form, and not deliberately to set out to destroy or frustrate the

transparency, even-handedness and non-discrimination.”<sup>226</sup> Good faith also requires the host State to abstain from using “legal instruments for purposes other than those for which they were created.”<sup>227</sup> While bad-faith State action against an investor is a violation of the fair and equitable treatment standard,<sup>228</sup> a showing of bad faith is not required to establish a violation of that standard.<sup>229</sup>

104. Tribunals have confirmed that state conduct is in bad faith when measures are taken for reasons that are different from those put forward by the decision maker. In *Abengoa v. Mexico*, for example, the tribunal found that Mexico failed to act in good faith when it closed an investor’s facility for political reasons rather than legitimate environmental and public health considerations.<sup>230</sup> In that case, similarly to what has occurred here, the Mexican government engaged in an active campaign to close the claimants’ plant by making unsubstantiated allegations against the plant that contradicted the views expressed on multiple occasions by Mexican authorities.<sup>231</sup> These allegations also ignored the fact that the plant had all the necessary administrative and environmental authorizations.<sup>232</sup> In explaining that Mexico’s conduct violated NAFTA Article 1105, the *Abengoa* tribunal observed:

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investment by improper means.”); *S.D. Myers, Inc. v. Government of Canada*, UNCITRAL, Partial Award, ¶ 134 (13 November 2000) (Hunter (P), Chiasson, Schwartz) (CL-0059-ENG) (hereinafter, “*S.D. Myers v. Canada* (Partial Award)”) (“Article 1105 imports into the NAFTA the international law requirements of due process, economic rights, obligations of good faith and natural justice.”); *Merrill & Ring v. Canada* (Award), ¶ 187 (CL-0005-ENG) (“Good faith and the prohibition of arbitrariness are no doubt an expression of such general principles and no tribunal today could be asked to ignore these basic obligations of international law.”) (citations omitted).

<sup>226</sup> *Saluka Investments B.V. v. Czech Republic*, Partial Award, ¶ 307 (17 March 2006) (Watts (P), Yves Fortier, Behrens) (CL-0027-ENG).

<sup>227</sup> *Frontier Petroleum Services Ltd. v. Czech Republic*, UNCITRAL, Award, ¶ 300 (12 November 2010) (Williams (P), Álvarez, Schreuer) (CL-0056-ENG) (hereinafter, “*Frontier v. Czech Republic* (Award)”); see also *Abengoa, S.A. y COFIDES, S.A. v. United Mexican States*, ICSID Case No. ARB(AF)/09/2, Award, ¶ 642 (Mourre (P), Siqueiros, Fernández-Armesto) (CL-0047-SPA) (hereinafter “*Abengoa v. Mexico* (Award)”); *Tecmed v. Mexico* (Award), ¶¶ 153-154 (CL-0052-ENG) (“The investor also expects the State to use the legal instruments that govern the actions of the investor or the investment in conformity with the function usually assigned to such instruments.”).

<sup>228</sup> RUDOLPH DOLZER & CHRISTOPH SCHREUER, *PRINCIPLES OF INTERNATIONAL INVESTMENT LAW*, 157 (Oxford University Press, 2012) (CL-0109-ENG-Am).

<sup>229</sup> See, e.g., *Mondev International Ltd. v. United States of America*, ICSID Case No. ARB(AF)/99/2, Award, ¶ 116 (11 October 2002) (Stephen (P), Crawford, Schwebel) (CL-0011-ENG) (finding that “a State may treat foreign investment unfairly and inequitably without necessarily acting in bad faith.”).

<sup>230</sup> *Abengoa v. Mexico* (Award), ¶¶ 644-652 (CL-0047-SPA).

<sup>231</sup> *Id.*

<sup>232</sup> *Id.*

As part of that campaign, the municipal authorities disseminated, without having any evidence that the Plant would be a risk to the environment and public health, the idea that its operation would generate severe consequences for the population. This behavior certainly has contributed to spreading fear among the population and fomenting the climate of violence and insecurity that [the claimants] faced.<sup>233</sup>

105. Similarly, in *Bayindir v. Pakistan*, the investor claimed that its expulsion from the project site after termination of a highway construction contract was based on local favoritism and on bad faith, since the reasons given by the government did not correspond to its actual motivation.<sup>234</sup> The tribunal found that “the allegedly unfair motives of expulsion, if proven, are capable of founding a fair and equitable treatment claim under the BIT.”<sup>235</sup> The *Frontier Petroleum* tribunal likewise held that the concept of “bad faith” includes “the termination of the investment for reasons other than the one put forth by the government, and expulsion of an investment based on local favoritism.”<sup>236</sup>

106. In *Gold Reserve v. Venezuela*, the tribunal also found a breach of fair and equitable treatment because “the reasons for the termination of [the claimant’s] Concessions are not limited to those officially stated [...]. Rather, they are to be found in the change of political priorities of the Administration,”<sup>237</sup> and in particular, “the ‘recovery’ of mineral resources [...] to be exploited in accordance with ‘the new mining policy.’”<sup>238</sup>

107. As in these cases, the reasons for Mexico’s actions here “are not limited to those officially stated.”<sup>239</sup> Rather, they are to be found in the “change of political priorities of the

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<sup>233</sup> *Id.*, ¶ 648 (free translation, the original text reads: “Como parte de esa campaña, las autoridades municipales han difundido, sin disponer de evidencia alguna de que la Planta comportase cualquier riesgo al medio ambiente y a la salud pública, la idea según la cual su puesta en marcha iba a generar graves consecuencias para la población. Tal actuación ciertamente ha contribuido a difundir el miedo entre la población y a alimentar el clima de violencia e inseguridad al cual se encontraba enfrentada [las Demandantes].”). See also *Tecmed v. Mexico* (Award), ¶¶ 154, 164 (CL-0052-ENG) (noting that the closure of a facility for political reasons, without regard to whether it was being properly operated, was contrary to good faith).

<sup>234</sup> *Bayindir v. Pakistan*, ICSID Case No. ARB/03/29, Decision on Jurisdiction, ¶¶ 232-243 (14 November 2005) (CL-0201-ENG).

<sup>235</sup> *Id.*, ¶ 250.

<sup>236</sup> *Frontier v. Czech Republic*, (Award), ¶ 300 (CL-0056-ENG).

<sup>237</sup> *Gold Reserve Inc. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/09/1, Award (22 September 2014) (Bernardini (P), Dupuy, Williams) (CL-0086-ENG) (hereinafter “*Gold Reserve v. Venezuela* (Award)”).

<sup>238</sup> *Id.*, ¶ 581.

<sup>239</sup> *Id.*, ¶ 580.

Administration.”<sup>240</sup> As explained above, the President all but acknowledged in multiple *Mañaneras* that Mexico’s shutdown of Legacy Vulcan and CALICA’s remaining operations was aimed at advancing the President’s nationalist agenda, favoring the tourism industry in Quintana Roo, and defending the Mayan Train project.<sup>241</sup> The President’s repeated accusations of “environmental destruction” by CALICA were not based on any formal fact-finding or governmental proceeding — they *preceded* PROFEPA’s formal inspection, which itself *followed* the President’s instruction to SEMARNAT to proceed against CALICA to halt its operations.

108. The President’s accusations and shutdown order also served to apply pressure on Legacy Vulcan to forcibly accept the President’s “proposal” to abandon this arbitration and its current investment in favor of his tourism agenda.<sup>242</sup> The President lodged his attacks while Legacy Vulcan tried in good faith to defuse tension through dialogue and goodwill gestures.<sup>243</sup> These efforts were met by a shutdown order premised on false claims of “deception” as well as a pretextual and predetermined inspection designed to “find” the environmental violations that the President had for months been advertising.<sup>244</sup>

109. The record makes clear that the reasons officially stated by Mexico to shut down La Rosita and indefinitely suspend CALICA’s customs permit (*i.e.*, PROFEPA’s purported “findings” of environmental violations) are predetermined and pretextual, and do not correspond to the government’s actual motivation.<sup>245</sup> Mexico has therefore failed to act in good faith and with transparency in violation of NAFTA Article 1105.

### (3) Mexico’s Conduct Was Contrary to Due Process

110. Mexico’s conduct also “involve[d] a lack of due process.”<sup>246</sup> The Parties agree that the obligation to accord fair and equitable treatment requires States to act in accordance with due process.<sup>247</sup> Mexico does not dispute that a core element of due process is the right to be heard,

<sup>240</sup> *Id.*

<sup>241</sup> *See supra*, ¶¶ 98-103.

<sup>242</sup> *See supra*, Part II.B.2.

<sup>243</sup> *See supra*, Part II.B; Witness Statement- [REDACTED]-Claimant’s Ancillary Claim Memorial-Third Statement-ENG, ¶¶ 16, 21.

<sup>244</sup> *See supra*, Part II.B.2.

<sup>245</sup> *See Lemire v. Ukraine*, ICSID Case No. ARB/06/18, Decision on Jurisdiction and Liability, ¶ 262(14 January 2010) (Fernández-Armesto (P), Paulsson, Voss) (CL-0072-ENG).

<sup>246</sup> *Waste Management* (Award), ¶ 98 (CL-0007-ENG).

<sup>247</sup> *Id.*, ¶ 98 (the fair and equitable standard protects investors from “conduct [...which] is arbitrary, grossly unfair, unjust [...], or involves a lack of due process leading to an outcome which offends judicial propriety – as might be the case with [...] a complete lack of transparency and candour in an administrative process”) (emphasis added); *Frontier v. Czech Republic* (Award), ¶ 328 (CL-0056-ENG) (“procedural propriety and



which includes the right to have government bodies consider evidence presented when making decisions relating to measures affecting investments.<sup>248</sup>

111. In *Tecmed v. Mexico*, for example, the tribunal found a violation of fair and equitable treatment when Mexico’s National Ecology Institute failed to renew a permit to operate a waste site because the Mexican authority did not “report, in clear and express terms, to [the local company] or Tecmed, before issuing the Resolution” and so “prevented [the local company] from being able to express its position as to such issue and to agree with [the relevant Mexican agency] about measures required to cure the defaults.”<sup>249</sup> There was, in short, no “explicit, transparent and clear warning addressed to [the local company] from the Mexican authorities.”<sup>250</sup>

112. As in *Tecmed*, Mexico failed to comply with basic due process guarantees when the President predetermined that CALICA’s longstanding activities with respect to La Rosita were *per se* environmentally destructive and illegal, despite having been authorized — as he and his administration grudgingly acknowledged numerous times.<sup>251</sup> The absence of due process was compounded by the President’s order to halt CALICA’s activities on a whim, followed by PROFEPA’s execution of that order in complete disregard of the evidence — including the 1986 Investment Agreement — submitted by CALICA to PROFEPA’s inspectors to show that its activities were duly authorized.

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due process are well-established principles under the standard of fair and equitable treatment.”). See Counter-Memorial, ¶ 297; Rejoinder, ¶ 321.

<sup>248</sup> See *Glencore International A.G. and C.I. Prodeco S.A. v. Republic of Colombia*, ICSID Case No. ARB/16/6, Award, ¶ 1318 (27 August 2019) (Fernández-Armesto (P), Garibaldi, Thomas) (CL-0057-ENG) (hereinafter, “*Glencore v. Colombia* (Award)”) (“[t]he rule of law requires that in [...] administrative proceedings [...] due process be respected: the [...] administrative authority, must give each party a fair opportunity to present its case and to marshal appropriate evidence, and then must assess the submissions and the evidence in a reasoned, even-handed, and unbiased decision.”) (citation omitted).

<sup>249</sup> *Tecmed v. Mexico* (Award), ¶ 162 (CL-0052-ENG).

<sup>250</sup> *Id.*, ¶ 162.

<sup>251</sup> See, e.g., SEMARNAT Press Release (6 May 2022) (C-0174-SPA.3) (“En 1986, [...] otorgaron a Calica la primera autorización para la explotación de roca caliza por debajo del manto freático en La Rosita, sin determinar un plazo de vigencia, ni volumen de explotación específico.”); Transcript of President’s Morning Press Conference (3 February 2022) (C-0178-SPA.22) (“Estos permisos los entregaron, el de ese predio que están explotando, lo entregaron antes del 2000. [...] [N]o le pusieron ni siquiera un límite a la concesión, [...] ni siquiera hay fecha.”); Andrés Manuel López Obrador, Baja incidencia delictiva en Hidalgo, YouTube (uploaded 3 February 2022), <https://www.youtube.com/watch?v=OyjJQJxJtrc> (C-0246-SPA) (video online begins display at 02:13:13); Transcript of President’s Morning Press Conference (23 March 2022) (C-0220-SPA.22-23) (asserting that CALICA “obtuvo permiso para extraer materiales de construcción, un banco de materiales de construcción a 500[,] mil metros del mar Caribe, les dieron el permiso en la época en que estaba la señora Julia Carabias, ambientalista [...], para la explotación, y todo ese material se lo llevaban a Estados Unidos[.]”); Andrés Manuel López Obrador, Sembramos árboles en toda la ruta del Tren Maya, YouTube (uploaded 23 March 2022), <https://www.youtube.com/watch?v=xxLNbEHmR9o> (C-0250-SPA) (video online begins display at 01:07:32).

113. The President’s own statements before he announced his shutdown order on 2 May 2022, confirm that he had predetermined purported violations and environmental harm by CALICA. For example, as early as February 2022 the President asserted that “of course there are violations” and that, “since they are destroying the environment[,] [...] extraction will no longer be permitted, nothing.”<sup>252</sup> By April, he had threatened CALICA and Legacy Vulcan with a “shutdown, because they are no longer permitted to extract material, that can no longer be permitted.”<sup>253</sup> The President also put forth an effective ultimatum in the form of “options”: Legacy Vulcan had to either convert its investment “into a touristic park” or sell “the land in full” to the government.<sup>254</sup> All of this while Legacy Vulcan tried in good faith to promote constructive discussions to address the President’s claimed concerns.

114. President López Obrador made all of these statements and more (as described in Part II) *before* PROFEPA’s sham inspection of May 2022, at a time when PROFEPA had previously endorsed the opposite of what the President was publicly stating. Again, through multiple acts, including a formal inspection in 2012 and the issuance of Clean Industry Certificates after detailed environmental audits through 2016, PROFEPA had acknowledged that CALICA’s operations at La Rosita were properly authorized and complied with environmental regulations.<sup>255</sup> But, after the President started attacking CALICA in his *Mañaneras*, SEMARNAT disregarded what its enforcement arm had acknowledged years earlier and started echoing the President’s unfounded accusations.<sup>256</sup> PROFEPA eventually also changed its position — after the President’s shutdown order — and swiftly purported to “inspect” La Rosita and to “find”

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<sup>252</sup> Transcript of President’s Morning Press Conference (3 February 2022) (C-0178-SPA.22) (free translation, the original reads: “Claro que hay violaciones, pues esos están destruyendo el medio ambiente. [...] [Y]a no se va a permitir nada de extracción, nada.”); Andrés Manuel López Obrador, *Baja incidencia delictiva en Hidalgo*, YouTube (uploaded 3 February 2022), <https://www.youtube.com/watch?v=OyjJQJxJtrc> (C-0246-SPA) (video online begins display at 02:13:13).

<sup>253</sup> Transcript of President’s Morning Press Conference (20 April 2022) (C-0185-SPA.9) (free translation of Spanish original); Andrés Manuel López Obrador, *Seguridad y bienestar, fundamentales para instaurar la paz*, YouTube (uploaded 20 April 2022), <https://www.youtube.com/watch?v=RoONYTUVQ-I> (C-0257-SPA) (video online begins display at 01:18:55).

<sup>254</sup> Transcript of President’s Morning Press Conference (20 April 2022) (C-0185-SPA.9) (free translation of Spanish original); Andrés Manuel López Obrador, *Seguridad y bienestar, fundamentales para instaurar la paz*, YouTube (uploaded 20 April 2022), <https://www.youtube.com/watch?v=RoONYTUVQ-I> (C-0257-SPA) (video online begins display at 01:18:55).

<sup>255</sup> *See supra*, Parts II.A.1, II.A.4.

<sup>256</sup> *See supra*, Part II.B.2.

“violations” to back that order.<sup>257</sup> In doing all of this, Mexico violated CALICA’s due process rights.

115. The manner in which PROFEPA conducted itself in executing the President’s order to shut down La Rosita further shows that Mexico failed to accord Legacy Vulcan and CALICA due process when adopting that measure. *First*, over the course of the May 2022 “inspections,” PROFEPA refused to acknowledge evidence presented by CALICA — and previously validated by PROFEPA — showing that CALICA had authorization to quarry La Rosita.<sup>258</sup> This evidence included (i) the 1986 Investment Agreement, (ii) the Environmental Impact Assessment for the Project (Annex 2 to the Investment Agreement), (iii) the Mitigation Plan (Annex 4 to the Investment Agreement), and (iv) the 2000 Corchalito/Adelita Federal Environmental Authorization, which cross-references La Rosita.<sup>259</sup> As ██████████ explains, these documents show “that CALICA established its activities in a valid manner from the point of view of environmental law.”<sup>260</sup>

116. The 1986 Investment Agreement clearly states that SEDUE, the competent environmental ministry with full authority at the time, “carried out the required environmental impact studies” and that the Project was determined to be “feasible from an environmental standpoint”:

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<sup>257</sup> PROFEPA Inspection Order and Report on Environmental Impact (2-5 May 2022) (C-0171-SPA.71-72); PROFEPA Inspection Order and Report on Forestry (2-5 May 2022) (C-0172-SPA.62).

<sup>258</sup> See Claimant’s Requests for Provisional Measures & for Leave to Submit an Ancillary Claim, ¶ 11 (explaining that CALICA had the necessary authorizations to undertake the Project in La Rosita pursuant to the 1986 Investment Agreement, an official copy of which was provided to the PROFEPA inspectors, who simply ignored it).

<sup>259</sup> PROFEPA Inspection Order and Report on Environmental Impact (2-5 May 2022) (C-0171-SPA.13-16, 77); PROFEPA Inspection Order and Report on Forestry (2-5 May 2022) (C-0172-SPA.19-23).

<sup>260</sup> Expert Report-██████████-Environmental-Claimant’s Ancillary Claim Memorial-Third Expert Report, ¶ 4; see also *id.*, ¶¶ 69-79.

[B]ased on the final results of its evaluation of the Project's Environmental Impact Statement, with the support of the Ecological Institute [*Instituto de Ecología A.C.*] and the Center for Research and Advanced Studies [*Centro de Investigaciones y Estudios Avanzados del Instituto Politécnico Nacional*] [...], it considers the Project feasible from the environmental point of view.<sup>261</sup>

117. The Environmental Impact Assessment for the Project was attached as Annex 2 to the Investment Agreement.<sup>262</sup> As ██████████ explains:

The 1986 EIA contains a detailed study — in almost 400 pages — of the potential impacts that CALICA's described activity could cause on the environment. By way of illustration, among many other elements, the 1986 EIA includes a study of vibrations produced by the planned explosions, a mitigation measures program, climatological analysis, etc.<sup>263</sup>

118. The Mitigation Plan, attached to the Investment Agreement as Annex 4, contemplates the clearing of vegetation on-site (“*[e]l desmonte previsto para la preparación del sitio*”),<sup>264</sup> and explicitly provides that CALICA must comply with the mitigation plan set out in the Environmental Impact Assessment (“*propuesto[] en el Capítulo V de la Manifestación de Impacto Ambiental presentada*”).<sup>265</sup>

119. As ██████████ explains, the Corchalito/Adelita Federal Environmental Authorization “recognizes in the year 2000 that the operation on La Rosita had been duly authorized by the 1986 [Investment] Agreement, that such authorization had been duly issued by

<sup>261</sup> Investment Agreement (C-0010-SPA.6, 14) (free translation, the original reads: “[C]on base en los resultados finales de su evaluación realizada a la Manifestación de Impacto Ambiental del Proyecto, con el apoyo del Instituto de Ecología A.C. y el Centro de Investigaciones y Estudios Avanzados del [Instituto Politécnico Nacional] [...], considera factible desde el punto de vista ambiental, la realización del Proyecto.”). See also Expert Report-██████████-Environmental-Claimant's Ancillary Claim Memorial-Third Expert Report-SPA, ¶ 8.

<sup>262</sup> PROFEPA Inspection Order and Report on Environmental Impact (2-5 May 2022) (C-0171-SPA.78); Investment Agreement (6 August 1986) (C-0010-SPA.37-401).

<sup>263</sup> Expert Report-██████████-Environmental-Claimant's Ancillary Claim Memorial-Third Expert Report-SPA, ¶ 7 (citations omitted) (free translation, the original reads: “La MIA de 1986 contiene un estudio detallado —en casi 400 páginas— de los potenciales impactos que pudiere causar la actividad descrita de CALICA sobre el medio ambiente. A modo ilustrativo, entre muchos otros elementos, la MIA de 1986 incluye un estudio de vibraciones producidas por las explosiones previstas, y un programa de medidas de mitigación, un análisis climatológico, etc.”).

<sup>264</sup> Investment Agreement (6 August 1986) (C-0010-SPA.403).

<sup>265</sup> *Id.*

the competent authority in accordance with the corresponding regulations, and that it had full validity.”<sup>266</sup> The Corchalito/Adelita Federal Environmental Authorization states:

That on August 6, 1986, by means of an agreement signed by the then [SEDUE], the [SCT], the Government of the State of Quintana Roo and the company [CALICA], authorization was granted for said company to carry out the exploitation of the ‘Punta Inha’ and ‘La Rosita’ properties above and below the water table.<sup>267</sup>

120. CALICA presented each of these documents to PROFEPA’s inspectors after they showed up with Mexican marines and other disproportionate displays of military force.<sup>268</sup> Yet PROFEPA simply ignored – and continues to ignore – that evidence and asserted that CALICA lacked the requisite authorizations.<sup>269</sup> PROFEPA also purported to shut down La Rosita on an urgent though “temporary” basis to prevent alleged environmental damage, but – nearly five months later – PROFEPA has yet to prosecute the administrative proceeding, thus leaving CALICA in a procedural limbo, unable to mount an administrative defense to this intrusive act.<sup>270</sup>

121. As the tribunal in *Glencore* explained, due process requires that administrative authorities “give each party a fair opportunity to present its case and to marshal appropriate evidence” and to “assess the submissions and the evidence in a reasoned, even-handed, and unbiased decision.”<sup>271</sup> PROFEPA violated this principle by ignoring the evidence proffered by CALICA during the inspections and shutdown.<sup>272</sup>

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<sup>266</sup> Expert Report-[REDACTED]-Environmental-Claimant’s Ancillary Claim Memorial-Third Expert Report-SPA, ¶ 50; Corchalito/Adelita Federal Environmental Authorization (30 November 2000) (C-0017-SPA.23) (“Considerando: Que el 6 de agosto de 1986 se autorizó [...] [que CALICA] lleve a cabo la explotación de los predios ‘Punta Inha’ y ‘La Rosita’ sobre y bajo el nivel freático.”).

<sup>267</sup> Corchalito/Adelita Federal Environmental Impact Authorization (30 November 2000) (C-0017-SPA.23) (free translation, the original reads: “Que el 6 de agosto de 1986 se autorizó, mediante acuerdo firmado por la entonces [SEDUE], la [SCT], el Gobierno del Estado de Quintana Roo y la empresa [CALICA], la autorización para que dicha empresa lleve a cabo la explotación de los predios ‘Punta Inha’ y ‘La Rosita’ sobre y bajo el nivel freático.”).

<sup>268</sup> PROFEPA Inspection Order and Report on Environmental Impact (2-5 May 2022) (C-0171-SPA.13-16, 77); PROFEPA Inspection Order and Report on Forestry (2-5 May 2022) (C-0172-SPA.19-23).

<sup>269</sup> PROFEPA Inspection Order and Report on Environmental Impact (2-5 May 2022) (C-0171-SPA.16, 72); PROFEPA Inspection Order and Report on Forestry (2-5 May 2022) (C-0172-SPA.62).

<sup>270</sup> Expert Report-[REDACTED]-Environmental-Claimant’s Ancillary Claim Memorial-Third Expert Report-SPA, ¶¶ 155-156.

<sup>271</sup> *Glencore v. Colombia* (Award), ¶ 1318 (CL-0057-ENG).

<sup>272</sup> See PROFEPA Inspection Order and Report on Environmental Impact (2-5 May 2022) (C-0171-SPA.13-16, 71-72, 77); PROFEPA Inspection Order and Report on Forestry (2-5 May 2022) (C-0172-SPA.19-23, 62); see also Claimant’s Requests for Provisional Measures & Leave to Submit Ancillary Claim, ¶ 11 (8 May 2022).

122. *Second*, as ██████████ explains in ██████ third report, under Mexican law “[i]f the authority imposes a security measure (such as a closure), it must also indicate to the individual the actions that must be taken to lift that measure.”<sup>273</sup> Here, PROFEPA determined that CALICA is required to present an environmental impact authorization and a CUSTF.<sup>274</sup> But CALICA has already presented its valid environmental impact authorization, which PROFEPA simply ignored.<sup>275</sup> CALICA also is not subject to the requirement of a CUSTF to change the soil use of La Rosita, which has for decades been used for quarrying.<sup>276</sup> Legacy Vulcan and CALICA have been placed in a state of defenselessness as a result. ██████████ details other ways in which PROFEPA’s actions are irregular, contrary to due process, and arbitrary.<sup>277</sup>

123. *Third*, Mexico has also acted at odds with due process by unjustifiably failing to renew and then indefinitely suspending CALICA’s customs permit. Mexico first delayed renewing that permit even after CALICA had obtained the Navy certification that the customs authority deemed necessary to allow it to do so.<sup>278</sup> Mexico then granted an unprecedented two-month-long customs permit in the context of recurring attacks against CALICA by President López Obrador, whose Minister of the Interior demanded that CALICA give up quarrying in exchange for a full customs permit, regardless of the merits.<sup>279</sup> While CALICA’s customs permit was eventually renewed in April 2022 for a full three-year term, this renewal was rendered meaningless when a few weeks later Mexico suspended CALICA’s customs permit and initiated a proceeding to revoke it in light of PROFEPA’s sham “findings.”<sup>280</sup> This suspension was notified to CALICA on 12 May 2022 and became effective on 13 May 2022,<sup>281</sup> offering CALICA no effective opportunity to refute the basis for the suspension before it entered into force.

124. Under the regulations governing the issuance of CALICA’s customs permit, such a permit may be properly cancelled if the requirements for granting it are no longer met or the

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<sup>273</sup> Expert Report-██████████-Environmental-Claimant’s Ancillary Claim Memorial-Third Expert Report-SPA, ¶ 83.

<sup>274</sup> *Id.*, ¶¶ 42-43, 109.

<sup>275</sup> *Id.*, ¶ 41.

<sup>276</sup> *Id.*, ¶¶ 111-122.

<sup>277</sup> *Id.*, §§ IV.A.4, IV.B.4.

<sup>278</sup> *See supra*, Part II.B.1.

<sup>279</sup> *See id.*

<sup>280</sup> Agencia Nacional de Aduanas de México, Oficio DGJA.2022.1658 (10 May 2022) (C-0194-SPA).

<sup>281</sup> Witness Statement-██████████-Claimant’s Ancillary Claim Memorial-Third Statement-ENG, ¶ 28.

permit holder no longer complies with applicable legal obligations.<sup>282</sup> Neither condition applied to CALICA. And, despite PROFEPA's irregular shutdown, there has been no final determination that CALICA has failed to meet its legal obligations, since no formal administrative proceeding connected to PROFEPA's inspections has concluded and made such a finding. Mexico has thus hastily moved forward with its suspension of CALICA's customs permit, without a legitimate basis for doing so. By taking these steps without any formal determination that CALICA has failed to meet its legal obligations, Mexico has violated CALICA's right to due process in breach of NAFTA Article 1105.

### **b) Mexico Frustrated Legacy Vulcan's and CALICA's Legitimate Expectations**

125. By blocking Legacy Vulcan's remaining operations in Mexico and contradicting its prior representations that Legacy Vulcan and CALICA would be able to quarry La Rosita for export to the United States for as long as it was economically feasible,<sup>283</sup> Mexico has also frustrated Legacy Vulcan's legitimate expectations with regard to its investment in Mexico.

126. The obligation to protect an investor's legitimate and reasonable expectations is the touchstone of the fair and equitable treatment standard.<sup>284</sup> The Parties agree that NAFTA Article 1105 is breached where a NAFTA Party makes specific assurances or representations to an investor that cause the investor to reasonably act in reliance on those representations.<sup>285</sup> As the *Tecmed v. Mexico* tribunal explained:

The Arbitral Tribunal considers that this provision of the Agreement [concerning fair and equitable treatment], in light of the good faith principle established by international law, requires the

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<sup>282</sup> Customs Act Regulations, Article 11 (20 April 2015) (C-0200-SPA.6) (“El SAT [Servicio de Administración Tributaria] cancelará la autorización, además de lo establecido en el artículo 144-A de la Ley, cuando se dejen de cumplir los requisitos señalados para el otorgamiento de la autorización, o bien, incumplan con las obligaciones inherentes a la misma previstas en la Ley, en este Reglamento y en la autorización.”).

<sup>283</sup> Investment Agreement (C-0010-SPA.11) (“The period of extraction shall be subject to market conditions and economic feasibility.”) (free translation, the original text reads: “El tiempo de explotación estará sujeto a las condiciones de mercado y a la factibilidad económica.”).

<sup>284</sup> *El Paso Energy International Company v. Argentine Republic*, ICSID Case No. ARB/03/15, Award, ¶ 339 (31 October 2011) (Caflich (P), Stern, Avila) (CL-0153-ENG). See also *Gavrilovic v. The Republic of Croatia*, ICSID Case No. ARB/12/39, Award, ¶ 954 (26 July 2018) (Pryles (P), Alexandrov, Thomas) (CL-0154-ENG) (confirming the quoted passage from *El Paso*).

<sup>285</sup> See Claimant's Post-Hearing Brief, ¶ 32; Counter-Memorial, ¶ 306 (acknowledging that NAFTA tribunals have confirmed that “[o]rdinarily, reasonable or legitimate expectations of the kind protected by NAFTA are those that arise through targeted representations or assurances made explicitly or implicitly by a state party”) (citing *Grand River Enterprises Six Nations, Ltd., et al. v. United States of America*, UNCITRAL, Award, ¶ 141 (12 January 2011) (Nariman (P), Crook, Anaya) (CL-0018-ENG) (hereinafter “*Grand River v. United States* (Award)”)); see also Rejoinder, ¶ 326.

Contracting Parties to provide to international investments treatment that does not affect the basic expectations that were taken into account by the foreign investor to make the investment. The foreign investor expects the host State to act in a consistent manner, free from ambiguity and totally transparently in its relations with the foreign investor, so that it may know beforehand any and all rules and regulations that will govern its investments [...] The foreign investor also expects the host State to act consistently, i.e. without arbitrarily revoking any preexisting decisions [...] that were relied upon by the investor to assume its commitments as well as to plan and launch its commercial and business activities.<sup>286</sup>

127. The tribunal in *Grand River v. United States* similarly explained that “reasonable or legitimate expectations of the kind protected by NAFTA are those that arise through targeted representations or assurances made explicitly or implicitly by a state party.”<sup>287</sup> An investor may therefore legitimately expect that a State will “conduct itself vis-à-vis his investment in a manner that [is] reasonably justifiable and [does] not manifestly violate basic requirements of consistency, transparency, even-handedness and non-discrimination.”<sup>288</sup>

128. Mexico represented to Legacy Vulcan and CALICA through specific written statements and conduct over many years that CALICA would be able to quarry La Rosita while it was economically feasible to do so, causing Legacy Vulcan to rely on those representations and invest hundreds of millions of dollars in the Project.

129. *First*, as documented in the 1986 Investment Agreement, CALICA was duly authorized by the competent environmental authority at the time to quarry La Rosita.<sup>289</sup> Mexico specifically represented in that instrument that Legacy Vulcan would be able to extract aggregates at La Rosita,<sup>290</sup> and it acknowledged in Recital IV of that agreement that those aggregates were “intended primarily for export by sea”:

<sup>286</sup> *Tecmed v. Mexico* (Award), ¶ 154 (CL-0052-ENG) (emphasis added).

<sup>287</sup> *Grand River v. United States* (Award), ¶ 141 (CL-0018-ENG); see also Christoph Schreuer & Ursula Kriebaum, *At What Time Must Legitimate Expectations Exist*, in *A LIBER AMICORUM: THOMAS WALDE — LAW BEYOND CONVENTIONAL THOUGHT 1* (J. Werner & A. H. Ali eds., 2009) (CL-0074-ENG.11) (“[T]he decisive element for the protection of legitimate expectations of foreign investors is reliance on general or specific assurances given by the host State at the relevant time.”).

<sup>288</sup> *Ioannis Kardassopoulos v. Georgia*, ICSID Case Nos. ARB/05/18 and ARB/07/15, Award, ¶ 441 (3 March 2010) (Fortier (P), Vicuña, Lowe) (CL-0136-ENG).

<sup>289</sup> See Expert Report- [REDACTED] -Environmental-Claimant’s Ancillary Claim Memorial-Third Expert Report-SPA, ¶¶ 4-15.

<sup>290</sup> Investment Agreement (6 August 1986) (C-0010-SPA.4, 11) (“In the site known as Punta Inah and Ranch ‘La Rosita’ [...] there are deposits of calcareous stone materials, which can be industrially exploited. At the aforementioned location, the COMPANY [CALICA] intends to extract [...]. The time of the exploitation will



The COMPANY has prepared and presented before SEDUE and the STATE GOVERNMENT, a Project for the exploitation of the materials bank, to obtain aggregates for the manufacture of construction materials and for the direct use of limestone for the same purposes. Such products are intended mainly for their exportation by sea. The Project also includes the construction, at the same site, of the port infrastructure works and facilities necessary for the handling and exportation of the products, through the use of vessels suitable for the transportation of large volumes.<sup>291</sup>

130. *Second*, shortly after the execution of the 1986 Investment Agreement, Mexico issued the CALICA Port Concession, authorizing CALICA to build and use a port terminal to load aggregates in Punta Venado.<sup>292</sup> Legacy Vulcan and CALICA relied on these representations to purchase La Rosita and Punta Venado and to invest hundreds of millions of dollars in the excavation, construction, and dredging of the port infrastructure necessary to export CALICA's production to the United States.<sup>293</sup> For decades, Legacy Vulcan has invested in and maintained these operations, including the port terminal, as required to export CALICA's production to the United States.<sup>294</sup>

131. *Third*, consistent with Mexico's commitment in the 1986 Investment Agreement to "provide the accommodations [*facilidades*] to obtain the permits required to carry out the Project,"<sup>295</sup> Mexican authorities at the federal, state, and municipal levels issued permits and authorizations affirming time and again — from an environmental and zoning perspective — that CALICA could quarry limestone in its lots, including La Rosita.<sup>296</sup> These repeated affirmations of

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be subject to market conditions and economic feasibility.") (free translation, the original text reads: "En el sitio conocido como Punta Inah y Rancho 'La Rosita' [...] se localizan yacimientos de materiales pétreos [...] susceptibles de explotación industrial. En la zona antes mencionada la EMPRESA [CALICA] pretende explotar [...]. El tiempo de explotación estará sujeto a las condiciones de mercado y a la factibilidad económica.").

<sup>291</sup> Investment Agreement (6 August 1986) (C-0010-SPA.4, 12) (free translation).

<sup>292</sup> Provisional Permit to Begin Building the Project No. 28/86 (10 November 1986) (C-0028-SPA.3); Concession granted by the Executive Branch through the SCT to CALICA (21 April 1987) (C-0012-SPA.4).

<sup>293</sup> See Agreement entered into between Grupo ICA and Vulcan Materials Company, witnessed by Miguel de la Madrid Hurtado, President of the United Mexican States (6 July 1987) (C-0011-SPA.8-9) (through which CALICA committed to invest ██████████ in the Project); Vulcan Materials Company, Form 10-K for the 1989 fiscal year (30 March 1990) (C-0027-ENG.6, 105, 107, 151).

<sup>294</sup> See Witness Statement-██████████-Claimant's Ancillary Claim Memorial-Third Statement-ENG, ¶¶ 4, 7, 9.

<sup>295</sup> Investment Agreement (6 August 1986) (C-0010-SPA.16) ("SEDUE, the SCT and the STATE GOVERNMENT undertake, within the scope of their respective competences, to coordinate their functions and to provide the accommodations [*facilidades*] to obtain the permits required to carry out the [CALICA] Project." (free translation)).

<sup>296</sup> Expert Report-██████████-Environmental-Claimant's Ancillary Claim Memorial-Third Expert Report-SPA, ¶¶ 4-15, 36.

CALICA's rights and authorization to quarry that lot reinforced CALICA's expectations that it would be able to do so. For example, in November 2000, the Federal Government issued the Corchalito/Adelita Environmental Authorization, which explicitly mentions CALICA's right to extract limestone above and below the water table at La Rosita based on the 1986 Investment Agreement.<sup>297</sup> Similarly, in May 2011, the State of Quintana Roo renewed the Corchalito/Adelita State Environmental Authorization, which plainly recognizes CALICA's authorization to quarry La Rosita:

El Corchalito, La Adelita, and La Rosita are regulated by [UGA 19 and 30] of the [POET] [...] published on 16 November 2001, so it is determined that the exploitation of stone materials in those lots is feasible in accordance with the policy for Exploitation and predominant use for mining of (UGA 19), as well as conditioned Mining of (UGA 30).<sup>298</sup>

132. *Fourth*, before 2018, PROFEPA further affirmed that CALICA's operations, including those in La Rosita, complied with all necessary environmental regulations necessary to continue operations. PROFEPA awarded CALICA six Clean Industry Certificates, starting in 2003 and most recently in 2016.<sup>299</sup> As previously discussed, these certificates are issued following extensive environmental audits and represent legal certification by PROFEPA that CALICA was in compliance with its environmental obligations as of the issuance of the certificate.<sup>300</sup>

133. Additionally, in November 2012, PROFEPA confirmed through a formal inspection of CALICA that the company complied with its environmental obligations.<sup>301</sup> In respect of La Rosita, PROFEPA inspectors concluded that CALICA was in full compliance, finding

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<sup>297</sup> See *supra*, ¶ 131; Corchalito/Adelita Federal Environmental Authorization (30 November 2000) (C-0017-SPA.23) (“Considerando: Que el 6 de agosto de 1986 se autorizó [...] [que CALICA] lleve a cabo la explotación de los predios ‘Punta Inha’ y ‘La Rosita’ sobre y bajo el nivel freático.”).

<sup>298</sup> Second Amendment to the Corchalito/Adelita State Environmental Impact Authorization (19 May 2011) (C-0075-SPA.26-27) (free translation, the original reads: “El Corchalito, La Adelita y La Rosita, se encuentran regulados por las Unidades de Gestión Ambiental diecinueve y treinta (UGA 19 y 30) del Programa de Ordenamiento Ecológico Territorial de la Región Denominada Corredor Cancún- Tulúm ver figura 2, publicado mediante decreto en el Periódico Oficial del gobierno del Estado el dieciséis de Noviembre del año dos mil uno, por lo que se determina que el aprovechamiento de los materiales pétreos en dichos predios es factible de acuerdo a la política de Aprovechamiento y uso predominante para la minería de la (UGA 19), así como al uso condicionado para la Minería de la (UGA-30)[.]” (emphasis added).

<sup>299</sup> Clean Industry Certificate (23 June 2003) (C-0037-SPA); Clean Industry Certificate (16 December 2005) (C-0038-SPA); Clean Industry Certificate (31 July 2008) (C-0039-SPA); Clean Industry Certificate (28 February 2012) (C-0040-SPA); Clean Industry Certificate (2 June 2014) (C-0041-SPA); Clean Industry Certificate (27 July 2016) (C-0042-SPA).

<sup>300</sup> Expert Report- [REDACTED]-Environmental Law-Claimant's Ancillary Claim Memorial-Third Report-SPA, § III.B.

<sup>301</sup> PROFEPA Environmental Impact Inspection Report (10 December 2012) (C-0043-SPA.57).

no “facts or omissions that are presumptively constitutive of violation of environmental law.”<sup>302</sup> Legacy Vulcan and CALICA legitimately relied on these representations to continue investing in the Project, including in connection with the shift of production towards greater below-water extraction in La Rosita after Mexico foreclosed quarrying in La Adelita and El Corchalito.<sup>303</sup> CALICA’s extraction, processing, and export activities with respect to La Rosita at the time of the 2012 inspection and the 2016 environmental audit did not materially vary from the activities carried out at the time PROFEPA shut down La Rosita in May 2022. The only material difference is that, soon before the May 2022 shutdown, Mexico’s President publicly admitted that he instructed PROFEPA’s head agency (SEMARNAT) to put a stop to CALICA’s activities.<sup>304</sup>

134. *Fifth*, for more than three decades, CALICA openly cleared vegetation and conducted quarrying activities in La Rosita without a CUSTF, and Mexico knew it. As ██████ explained at the Hearing, “[w]e carried out quarrying operations in La Rosita and El Corchalito without [a CUSTF] for decades in the full knowledge of both SEMARNAT and PROFEPA without any objection having ever been raised.”<sup>305</sup> Despite knowing this for years, including through a formal PROFEPA inspection in 2012, Mexican authorities never indicated (until post-hearing briefs were filed in this arbitration) that a CUSTF was required for operations in La Rosita.<sup>306</sup>

135. The fact that no Mexican authority has ever enforced the federal forestry law against CALICA while knowing what CALICA was doing in La Rosita strongly indicates that no

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<sup>302</sup> PROFEPA Environmental Impact Inspection Report (10 December 2012) (C-0043-SPA.57) (free translation, the original reads: “Del análisis a los hechos circunstanciados en el acta de inspección [...] iniciada en fecha cinco de noviembre de dos mil doce y concluida el día seis del mismo mes y año, levantada a la empresa [CALICA], se desprende no haberse detectado hechos u omisiones presuntamente constitutivos de infracción a la normatividad ambiental, que deriven de la visita de inspección realizada a la citada empresa.”); *see also id.* at 5-6 (stating that quarrying was occurring in La Rosita and El Corchalito, though not in La Adelita).

<sup>303</sup> Witness Statement-██████████-Claimant’s Ancillary Claim Memorial-Third Statement-ENG, ¶ 9.

<sup>304</sup> Transcript of President’s Morning Press Conference (2 May 2022) (C-0168-SPA.14) (“So, I have instructed the Secretary [of SEMARNAT] to proceed immediately. [...] Yes, until the extraction is stopped.”) (free translation, the original reads: “Entonces, he dado instrucciones a la secretaria [de la SEMARNAT] para proceder de inmediato. [...] Sí, hasta que se detenga la extracción.”); Andrés Manuel López Obrador, *Tren Maya Prioriza Cuidado de Zonas Arqueológicas y del Ambiente*, YouTube (uploaded 2 May 2022), <https://www.youtube.com/watch?v=VeiERG4QXhI> (C-0188-SPA) (video online begins display at 02:00:50).

<sup>305</sup> Tr. (English), Day 2, 303:4-7 (██████████ cross-examination).

<sup>306</sup> Tr. (English), Day 2, 303:12-15 (██████████ cross-examination: “we carried out activities in [...] La Rosita for many years, 2000 onwards, without anyone requesting us for [a CUSTF].”); Second Amendment to the Corchalito/Adelita State Environmental Authorization (19 May 2011) (C-0075-SPA.28-30) (Considerando 14 states that inspection visits were carried out at La Rosita and maps out the areas where extraction — and thus, vegetation removal — was taking place, without referencing any missing authorizations) (*see pp. 8-10 for clearer legibility*).

such permit was required. Furthermore, throughout much of this arbitration, Mexico also repeatedly highlighted that CALICA preserved the ability to continue operating in La Rosita despite the measures taken with respect to CALICA's other two quarrying lots. To defend its measures involving La Adelita and El Corchalito, Mexico asserted in its Rejoinder, for example, that "other aspects of the project were never shut down, such as processing in La Rosita," adding that Legacy Vulcan was "able to continue operating its business project and its operation was never completely affected[.]"<sup>307</sup> Mexico could not have reasonably taken that position in this proceeding if it were true that CALICA's operations in La Rosita were unauthorized.

136. Mexico's decades-long representations and conduct — including assertions in this proceeding — created reasonable and justifiable expectations for Legacy Vulcan and CALICA that CALICA would be allowed to quarry La Rosita and export aggregates to the United States for as long as it was economically feasible to do so, in accordance with the 1986 Investment Agreement. CALICA relied on these representations and continued to invest in its operations in La Rosita.<sup>308</sup> By shutting down CALICA's remaining quarrying operations and foreclosing its ability to export aggregates, Mexico frustrated Legacy Vulcan's and CALICA's legitimate expectations, in breach of NAFTA Article 1105. Mexico has caused significant losses to Legacy Vulcan and CALICA as a result, as discussed next.

#### IV. COMPENSATION

137. As Legacy Vulcan's damages experts Darrell Chodorow and Fabricio Núñez ("Brattle") explain in their third report and as summarized below, Mexico's latest wrongful measures have severely impacted Legacy Vulcan's investments in Mexico by preventing Legacy Vulcan from generating revenue from its aggregates reserves at La Rosita and from monetizing the value of previously quarried aggregates held in inventories.<sup>309</sup> Brattle has quantified these

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<sup>307</sup> Rejoinder, ¶ 70 ("[N]unca se clausuraron otros aspectos del proyecto, como fue el procesamiento en La Rosita. [...] [L]a Demandante pudo seguir operando su proyecto de negocio y nunca se vio afectada por completo su operación, situación que se encuentra en el mismo estado y respecto de la cual la empresa tiene total control sobre su negocio."). *See also* Tr. (Spanish), Day 1, 252-253 (Respondent's Opening Statement) ("Cabe precisar que esta clausura no es total, ya que únicamente se centró en el área de extracción excedida y nunca se clausuraron -- perdón, clausuraron otros aspectos del proyecto. Por ejemplo, el procesamiento que hacen en el predio La Rosita. De este modo la demandante pudo seguir operando su proyecto de negocio sin verse afectada por completo en sus operaciones.").

<sup>308</sup> *See* Witness Statement- [REDACTED]-Claimant's Ancillary Claim Memorial-Second Statement-ENG, ¶ 12.

<sup>309</sup> *See* Expert Report-Darrell Chodorow and Fabricio Núñez-Claimant's Ancillary Claim Memorial-Third Report-ENG, ¶ 51.

losses at [REDACTED], including interest as of 30 September 2022, and an adjustment to avoid double taxation, as summarized in the table below:<sup>310</sup>

[REDACTED]

[REDACTED]

138. The following sections address: (A) the applicable standard of compensation; (B) the quantum of compensation owed to Legacy Vulcan under its ancillary claim; (C) pre-award and post-award interest; (D) adjustment to prevent double taxation; and (E) costs and expenses.

**A. NAFTA AND CUSTOMARY INTERNATIONAL LAW REQUIRE FULL REPARATION**

139. The applicable standard of compensation under the Treaty and international law is “full reparation” for the losses suffered by Legacy Vulcan as a result of Mexico’s violation of Article 1105.<sup>311</sup> Under that standard, “reparation must, as far as possible, wipe out all the

<sup>310</sup> See *id.*, ¶ 171.

<sup>311</sup> While Mexico agreed throughout most of this proceeding that full reparation is the applicable standard under NAFTA, in its Post-Hearing Brief, Mexico argued that NAFTA deviates from the full reparation standard under customary international law. See Counter-Memorial, ¶ 446 (“*La Demandada está de acuerdo que el estándar de compensación aplicable bajo el TLCAN por violaciones distintas a la expropiación es el de reparación plena, y que el caso Chorzow Factory correctamente articula ese estándar.*” (emphasis added)); Post-Hearing Brief-Respondent-SPA, ¶ 123 (stating that “las disposiciones del TLCAN que limitan los daños indemnizables [...] prevalecen sobre las disposiciones del derecho internacional consuetudinario, incluido el estándar de reparación plena del caso Chorzów Factory”). Mexico’s latest position is at odds not only with Mexico’s position throughout this arbitration, but with the view of many NAFTA tribunals, the International Law Commission’s Articles on State Responsibility, and legal scholars. See, e.g., *S.D. Myers v. Canada* (Partial Award) (CL-0059-ENG); *Archer Daniels Midland Co. v. United Mexican States*, ICSID Case No. ARB(AF)/04/05, Award, ¶¶ 278-282 (21 November 2007) (Cremades (P), Siqueiros, Rovine) (CL-0082-ENG) (hereinafter “*Archer v. Mexico* (Award)”); *Metalclad Corporation v. The United Mexican States*, ICSID Case No. ARB (AF)/97/1, Award, ¶ 122 (30 August 2000) (Lauterpacht (P), Siqueiros, Civiletti) (CL-0019-ENG); ILC Draft Articles, Articles 31, 36 (C-0139-ENG) (providing that “[t]he responsible State is under an obligation to make full reparation for the injury caused

consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed.”<sup>312</sup>

140. The customary international law standard is not limited to reparation for unlawful expropriation; it also applies to other treaty breaches.<sup>313</sup> The purpose of an award of damages is the same irrespective of the nature of Mexico’s Treaty breaches: to fully wipe out the consequences of the unlawful acts and to provide full reparation so as to place Legacy Vulcan in the same position it would have been in had Mexico not violated the Treaty.<sup>314</sup>

**B. LEGACY VULCAN IS ENTITLED TO COMPENSATION IN AN AMOUNT EQUAL TO THE DIMINUTION OF ITS FAIR MARKET VALUE**

141. Full reparation requires Legacy Vulcan to be compensated for the diminution in its Fair Market Value (“FMV”) resulting from its loss of access to La Rosita’s reserves and its inability to export CALICA’s aggregates held in inventories, reduced by the value of Legacy Vulcan’s ability to mitigate those losses.<sup>315</sup> Since the value of an asset should reflect the cash flows that it is expected to generate, damages to Legacy Vulcan materialize as the expected loss of profits due to the impact of Mexico’s new measures, which reduce the FMV of the CALICA Network and CALICA, and thus the FMV of Legacy Vulcan.<sup>316</sup>

142. The Parties agree that FMV reflects the price that a willing buyer would pay to a willing seller for the valued business or asset on a particular date, in circumstances in which each has good information, each desires to maximize financial gain, and neither is under duress or

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by the internationally wrongful act” and that such “compensation shall cover any financially assessable damage including loss of profits insofar as it is established”); Patrick Dumberry, *THE FAIR AND EQUITABLE TREATMENT STANDARD: A GUIDE TO NAFTA CASE LAW ON ARTICLE 1105, 301* (Kluwer Law International 2013) (CL-0149-ENG) (stating that “[NAFTA] tribunals have generally turned to customary international law [...] to determine appropriate compensation in cases not involving expropriation. The starting point of their analysis is [...] the *Chorzow Factory* case and the relevant provisions of the ILC Articles on State Responsibility.”).

<sup>312</sup> *Case Concerning the Factory at Chorzów*, PCIJ Judgment No. 13, Decision on the Merits, p. 46 (13 September 1928) (CL-0080-ENG) (hereinafter, “*Chorzów Factory* (Judgment)”).

<sup>313</sup> Patrick Dumberry, *THE FAIR AND EQUITABLE TREATMENT STANDARD: A GUIDE TO NAFTA CASE LAW ON ARTICLE 1105, 301* (Kluwer Law International 2013) (CL-0149-ENG) (stating that “[NAFTA] tribunals have generally turned to customary international law [...] to determine appropriate compensation in cases not involving expropriation. The starting point of their analysis is [...] the *Chorzow Factory* case and the relevant provisions of the ILC Articles on State Responsibility.”).

<sup>314</sup> See Memorial, ¶ 254.

<sup>315</sup> Expert Report-Darrell Chodorow and Fabricio Núñez-Claimant’s Ancillary Claim Memorial-Third Report-ENG, ¶¶ 53-55.

<sup>316</sup> See Expert Report-Darrell Chodorow-Damages-Claimant’s Memorial-ENG, ¶ 70.

threat.<sup>317</sup> As Legacy Vulcan has demonstrated, whether the relevant business for the purposes of the FMV calculation is the CALICA Network or CALICA, the compensation Mexico owes is the same.<sup>318</sup> This is because, as Brattle explained at the Hearing, “the true source of value to the CALICA Network is attributable to its reserves.”<sup>319</sup> Because CALICA’s highest value is as part of a network that enables distributing those reserves to the highly profitable U.S. Gulf Coast market,<sup>320</sup> no rational seller would sell CALICA for a price that does not account for the profits that can be derived from this use.<sup>321</sup> This is consistent with Mexico’s instruction to its damages experts that the “FMV analysis should be based on the impact on the valuation of a hypothetical sale of the investment in Mexico, the CALICA business unit.”<sup>322</sup>

143. As Brattle explains, the most appropriate methodology for determining the FMV of the CALICA Network or CALICA is the income approach, which values an asset based on the stream of income that the asset is expected to generate in the future using a discounted cash flow analysis (“DCF”).<sup>323</sup> Mexico agrees that “the DCF analysis is reliable for estimating damages” in this case.<sup>324</sup> As Brattle further explains, the FMV of CALICA reflects the “netback value” of its reserves and inventory as of 5 May 2022, the day that Mexico shut down CALICA’s operations (the “Valuation Date”).<sup>325</sup> Because CALICA’s reserves are sold after they have been produced and

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<sup>317</sup> See First Credibility Report, Definition of “FMV” (RE-002) (“The price that a property would sell for on the open market. It represents the price of an asset under the following set of conditions: prospective buyers and sellers are reasonably knowledgeable about the asset, behaving in their own best interests, free of undue pressure to trade, and given a reasonable time period for completing the transaction.”).

<sup>318</sup> See Claimant’s Post-Hearing Brief, ¶¶ 169-180.

<sup>319</sup> Tr. (English), Day 5, 989:20-22 (Chodorow presentation).

<sup>320</sup> See Tr. (English), Day 1, 135: 7-15 (Claimant’s Opening Statement).

<sup>321</sup> See Expert Report-Darrell Chodorow-Claimant’s Reply-Second Report-ENG, ¶ 15 n.15 (“Sales in the US Gulf Coast reflect the highest and best use of Calica Mexico’s aggregates.”).

<sup>322</sup> First Credibility Report, ¶ 21 (RE-002).

<sup>323</sup> See Expert Report-Darrell Chodorow and Fabricio Núñez-Claimant’s Ancillary Claim Memorial-Third Report-ENG, ¶ 63.

<sup>324</sup> Claimant’s Post-Hearing Brief, Appendix B: Response to the Tribunal’s Question No. 15, item 2; Tr. (English), Day 1, 131:18-20 (Claimant’s Opening Statement); Expert Report-Darrell Chodorow-Claimant’s Memorial-ENG, ¶ 74 (“The DCF approach is the most appropriate method to quantify the impact of lost profits on the value of the Calica Network.”); First Credibility Report, ¶¶ 122-23 (RE-002). A DCF analysis is implemented in two steps. The first step projects the future net cash flows that a business is expected to generate. The second step discounts these cash flows to determine the present value of the cash flows at a discount rate that accounts for the time value of money and risks associated with those cash flows. See Expert Report-Darrell Chodorow and Fabricio Núñez-Claimant’s Ancillary Claim Memorial-Third Report-ENG, ¶ 67.

<sup>325</sup> See Expert Report-Darrell Chodorow and Fabricio Núñez-Claimant’s Ancillary Claim Memorial-Third Report-ENG, ¶ 57; see also Tr. (English), Day 5, 989:7-18 (Chodorow presentation) (“To figure out the value of those reserves in the ground, you start with the realized price or the expected realized price, and then you deduct off the costs in order to get those reserves to market—that’s the transportation costs and the

transported to the U.S. Yards, their value is best determined by applying the “netback method,” a common technique for valuing natural resources.<sup>326</sup> To calculate the netback value of CALICA’s reserves, Brattle first determined the market price of the aggregates at the U.S. Yards,<sup>327</sup> and then subtracted all of the costs associated with getting the aggregates to market; that is, the costs to extract and process the aggregates and to transport them to the U.S. yards where they are sold, as depicted below.<sup>328</sup>

**Figure 2: CALICA’s Reserves Netback Value**



144. In accordance with the full reparation standard and the Parties’ agreed-upon methodology, Brattle calculated the FMV of CALICA as of the Valuation Date using the DCF method. To calculate the impact of Mexico’s wrongful measures, Brattle conducted two DCF analyses: (i) one centered on projected and expected future cash flows assuming Mexico did not breach its Treaty obligations (the “But-For Scenario”), and (ii) another centered on projected future cash flows reflecting the impact of Mexico’s breaches (the “Actual Scenario”).<sup>329</sup> In the But-For Scenario, Brattle calculated the FMV of CALICA assuming it would have been able to quarry La Rosita until the reserves were depleted and to export that production and CALICA’s existing inventories.<sup>330</sup> In the Actual Scenario, Brattle calculated the FMV of CALICA assuming that it is no longer able to quarry La Rosita and export CALICA’s aggregates held in inventories.<sup>331</sup>

production costs—and the rest of the value, that’s the netback value associated with the reserves themselves, which really create the value in this process.”).

<sup>326</sup> See Expert Report-Darrell Chodorow and Fabricio Núñez-Claimant’s Ancillary Claim Memorial-Third Report-ENG, ¶ 58.

<sup>327</sup> See *id.*, ¶ 59.

<sup>328</sup> See *id.*, ¶ 60.

<sup>329</sup> See *id.*, ¶ 68.

<sup>330</sup> See *id.*, ¶ 22.

<sup>331</sup> See *id.*, ¶ 23.



145. The difference between the But-For and Actual Scenarios provides the measure of damages arising from Mexico's wrongful conduct, reduced to account for Legacy Vulcan's ability to mitigate some of those losses.<sup>332</sup> The calculation of the difference in the FMV of the CALICA Network in both scenarios is the same. As Brattle explains, the FMV of the CALICA Network is equal to the FMV of CALICA plus the FMV of Vulica and the U.S. Yards. Brattle's analysis reflects this by valuing the FMV of CALICA in the But-For Scenario and the Actual Scenario, while deducting out the FMV of the vessels and the U.S. Yards in their mitigation adjustment.<sup>333</sup>

**1. But-For Value of CALICA (Without Mexico's Wrongful Measures)**

146. To calculate the FMV of CALICA in the But-For Scenario as of the Valuation Date, Brattle: (1) determined the production and sales volumes that CALICA would have achieved absent Mexico's wrongful measures;<sup>334</sup> (2) calculated future revenues based on expected production levels and expected prices;<sup>335</sup> (3) calculated net cash flows by subtracting from these revenues the expected operating costs, capital expenditures, and other costs associated with CALICA's supply chain;<sup>336</sup> (4) applied other forecasts, including depreciation, working capital, and income taxes;<sup>337</sup> (5) applied an additional adjustment to the projected cash flows to account for country risk;<sup>338</sup> and (6) determined the net present value of these cash flows using an appropriate discount rate.<sup>339</sup> Brattle deducted decommissioning costs and assumed that the La Rosita lot is sold once its reserves are exhausted.

147. In conducting this analysis, Brattle accounted for the fact that CALICA's operations in recent years have been adversely affected by a combination of the COVID-19 pandemic and restrictions imposed by Mexico on CALICA's ability to export aggregates to the U.S. Gulf Coast.<sup>340</sup> Each element is discussed in turn.

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<sup>332</sup> See *id.*, ¶ 168.

<sup>333</sup> See *id.*, ¶¶ 61, 156-163.

<sup>334</sup> See *id.*, ¶¶ 80-87.

<sup>335</sup> See *id.*, ¶¶ 88-92.

<sup>336</sup> See *id.*, ¶¶ 93-113.

<sup>337</sup> See *id.*, ¶¶ 114-119.

<sup>338</sup> See *id.*, ¶¶ 123.

<sup>339</sup> See *id.*, ¶ 121.

<sup>340</sup> See *id.*, ¶ 73.

**a) Forecast Production and Sales Volume**

148. To forecast CALICA’s production in the But-For Scenario, Brattle relied on CALICA’s 2021 quarrying plan, which was prepared in the ordinary course of business in May 2021 and updated in November 2021 by Vulcan’s Geological Services.<sup>341</sup> CALICA prepares its quarrying plans to ensure extraction activities meet sales targets in an economically efficient way, while taking into account technical, operational, and regulatory constraints.<sup>342</sup> Based on CALICA’s 2021 quarrying plan, Brattle concluded that CALICA [REDACTED]

149. To forecast CALICA’s sales in the But-For Scenario, Brattle relied on CALICA’s 2022 production budget, which was prepared by Legacy Vulcan in the ordinary course of business in December 2021. CALICA’s 2022 production budget [REDACTED]

[REDACTED] For years after 2022, Brattle [REDACTED]

150. Legacy Vulcan’s sales forecast for years 2022 and beyond is reasonable because [REDACTED]

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<sup>341</sup> See *id.*, ¶ 80.

<sup>342</sup> See *id.*

<sup>343</sup> See *id.*, ¶ 81.

<sup>344</sup> See *id.*, ¶ 82.

<sup>345</sup> See *id.*, ¶ 82.

<sup>346</sup> See *id.*, ¶¶ 80, 85.

<sup>347</sup> See *id.*, ¶ 81.

<sup>348</sup> See *id.*, ¶¶ 84-86.

<sup>349</sup> See *id.*, ¶ 81.

sales volumes lost during the pandemic have returned as construction markets have recovered and large infrastructure projects resumed or increased activities.<sup>352</sup> This is consistent with Legacy Vulcan's business strategy to continue production and build up inventories when the demand of aggregates dropped during the COVID-19 pandemic, with the expectation that demand in Gulf Coast markets would pick up in 2022, as in fact was the case.<sup>353</sup>

### b) Forecast Prices and Revenue

151. To project CALICA's revenues in the But-For Scenario, Brattle forecasted prices based on expectations as of the Valuation Date.<sup>354</sup> Their analysis relied on CALICA's historical aggregate prices for local and export sales from 1999 to the present.<sup>355</sup> Consistent with CALICA's real price growth shown in Figure 3 below, Brattle's analysis assumed that the price of exports to the U.S. will grow at a rate of 1.6% above inflation.<sup>356</sup> For CALICA's local sales, Brattle forecasted prices at the 2021 price, adjusted for inflation minus 1%.<sup>357</sup>

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<sup>350</sup> See *id.*, ¶ 83.

<sup>351</sup> See *id.*; Witness Statement-[REDACTED]-Claimant's Ancillary Claim Memorial-Second Statement-ENG, ¶ 22.

<sup>352</sup> See Expert Report-Darrell Chodorow and Fabricio Núñez-Claimant's Ancillary Claim Memorial-Third Report-ENG, ¶ 83; Witness Statement-[REDACTED]-Claimant's Ancillary Claim Memorial-Second Statement-ENG, ¶ 22.

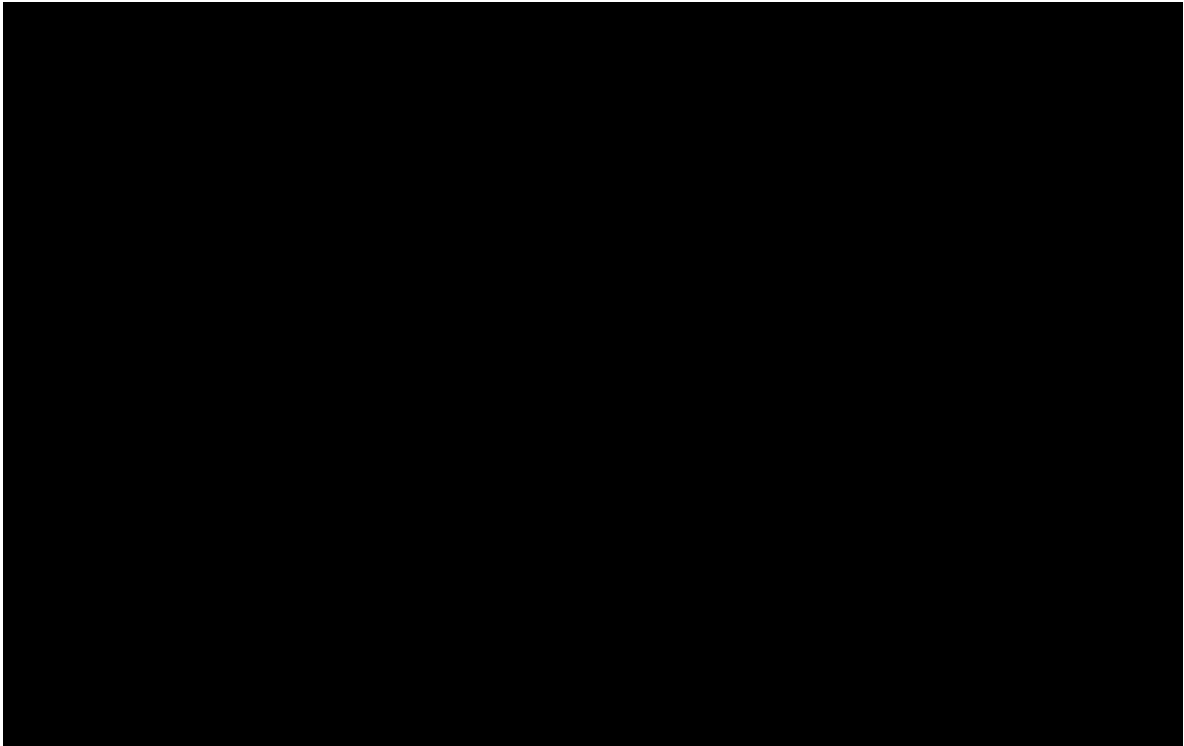
<sup>353</sup> See Witness Statement-[REDACTED]-Claimant's Ancillary Claim Memorial-Second Statement-ENG, ¶ 22.

<sup>354</sup> See Expert Report-Darrell Chodorow and Fabricio Núñez-Claimant's Ancillary Claim Memorial-Third Report-ENG, ¶ 88.

<sup>355</sup> See *id.*, ¶ 89.

<sup>356</sup> See *id.*, ¶ 92.

<sup>357</sup> See *id.*, ¶ 90.



**c) Forecast Costs**

152. Having estimated production volumes and sales, as well as the revenues that would be derived from them based on price forecasts, Brattle next forecasted the operating costs CALICA would incur to produce those volumes and monetize the value of La Rosita's reserves.<sup>358</sup> These operating costs fall into four categories: (i) production costs incurred at the CALICA site to extract, process, stockpile, and load the aggregates onto trucks or ships, as well as the management and oversight of the CALICA quarry and marine terminal operations;<sup>359</sup> (ii) marine transport costs of shipping aggregates from the Punta Venado port terminal to the U.S. Yards aboard Legacy Vulcan's ships or on vessels chartered from Canada Steamship Lines ("CSL");<sup>360</sup> (iii) yard costs of running and operating the U.S. Yards and the costs of unloading the aggregates;<sup>361</sup> and (iv) overhead costs for Vulica and CALICA.<sup>362</sup>

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<sup>358</sup> See *id.*, ¶¶ 93-109.

<sup>359</sup> See *id.*, ¶¶ 95-98.

<sup>360</sup> See *id.*, ¶¶ 99-105.

<sup>361</sup> See *id.*, ¶¶ 106-107.

<sup>362</sup> See *id.*, ¶ 108. For each category, Brattle took into consideration fixed costs and variable costs. See *id.*, ¶ 94.

153. Brattle assessed fixed production costs (such as inspection, supervision, safety, and environmental costs) and variable production costs (such as drilling, blasting, shipping, and dragline costs) based on CALICA's actual performance.<sup>363</sup> To project fixed costs, Brattle started with 2021 historical costs and projected them into the future. To project variable costs, Brattle forecasted costs on a per-unit of production basis (in \$/ton).<sup>364</sup> Both projections took into account the mix of above-water and below-water production, and the expected growth of fixed and variable per-ton production costs relative to inflation.<sup>365</sup> Noting that the production costs for aggregate inventories as of the Valuation Date had already been incurred, Brattle excluded CALICA's aggregates held in inventories from these calculations.<sup>366</sup> Brattle also reduced costs to account for shot rock that was already drilled, blasted and excavated, but was not run through the crushing plant and turned into finished inventories before Mexico shut down CALICA's operations.<sup>367</sup>

154. Brattle forecasted variable marine transportation costs (such as fuel costs and port fees), and fixed costs (such as crew payroll, provisions, and insurance) based on historical data and the 2022 Vulica budget.<sup>368</sup> Brattle's forecast also included the cost of chartering CSL vessels as necessary to provide supplemental capacity based on the 2022 contractual rate and terms.<sup>369</sup> Brattle also estimated that, from 2005 to 2021, yard costs per ton increased at a rate of 2.3%, while the average inflation rate was 1.9%.<sup>370</sup> Therefore, Brattle projected that variable yard costs would grow at the rate of inflation plus 0.4%.<sup>371</sup> Brattle considered that fixed costs, including rent or throughput fees (*i.e.*, lease costs) will increase at the U.S. inflation rate.<sup>372</sup> Brattle similarly projected that overhead costs for Vulica and CALICA would increase at the U.S. inflation rate.<sup>373</sup>

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<sup>363</sup> See *id.*, ¶ 95.

<sup>364</sup> See *id.*, ¶ 96.

<sup>365</sup> See *id.*

<sup>366</sup> See *id.*, ¶ 97.

<sup>367</sup> See *id.*, ¶ 98.

<sup>368</sup> See *id.*, ¶ 100.

<sup>369</sup> See *id.*, ¶ 105.

<sup>370</sup> See *id.*, ¶ 107.

<sup>371</sup> See *id.*

<sup>372</sup> See *id.*

<sup>373</sup> See *id.*, ¶ 108.

**d) Forecast Capital Expenditures (“Capex”)**

155. Brattle next projected the capex (*i.e.*, investments in physical assets necessary to grow or maintain productive capacity) that would be necessary to achieve the forecasted sales volumes in the But-For Scenario.<sup>374</sup> *First*, Brattle assumed that no further capex was required to grow production and distribution capacity, since CALICA already has the capacity to supply forecasted volumes.<sup>375</sup>

156. *Second*, Brattle estimated operating capex (*i.e.*, investments needed to sustain operations) and vessel capex (*i.e.*, investments needed to sustain Vulica’s vessels) required to meet production and sales volumes in the But-For Scenario.<sup>376</sup> Brattle relied on the latest capital expenditure program that Legacy Vulcan prepared in the ordinary course of business in 2020 and updated in May 2022 for planned investments through the rest of the year. Using historical data, [REDACTED].<sup>377</sup> Because Legacy Vulcan’s capital expenditure plan covers the quarry but not the U.S. Yards, Brattle relied on historical yard investments to arrive at [REDACTED].<sup>378</sup> Relying on the expected dry dock expenditures for 2023, Brattle projected that no further maintenance would be required on any of the Vulica ships before 2026, the last year of production at La Rosita in the But-For Scenario.<sup>379</sup>

**e) Other Forecasts**

157. To calculate future net cash flows, Brattle also projected: (i) depreciation; (ii) changes in working capital; (iii) proceeds from the sale of La Rosita; and (iv) income taxes.<sup>380</sup> Relying on Legacy Vulcan’s standard depreciation practice, Brattle projected depreciation of most existing assets using a 10-year straight line depreciation schedule, while the original cost of the vessels was depreciated on a 20-year schedule and dry-dock capex was depreciated on a 5-year schedule.<sup>381</sup> Brattle relies on Legacy Vulcan’s past experience to estimate working capital as a percentage of revenues, with one exception: Brattle excludes inventories in the working capital

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<sup>374</sup> See *id.*, ¶¶ 110-113.

<sup>375</sup> See *id.*, ¶ 110.

<sup>376</sup> See *id.*, ¶¶ 111-113.

<sup>377</sup> See *id.*, ¶ 111.

<sup>378</sup> See *id.*, ¶ 112.

<sup>379</sup> See *id.*, ¶ 113.

<sup>380</sup> See *id.*, ¶¶ 114-119.

<sup>381</sup> See *id.*, ¶ 115.

estimation because those are accounted separately.<sup>382</sup> Given that La Rosita can be sold once the reserves are exhausted, Brattle estimated [REDACTED]

[REDACTED] Finally, Brattle calculated the weighted-average income tax rate [REDACTED] for the entire CALICA Network based on the percentages used in 2021 to allocate income for tax purposes in Mexico (CALICA), the Bahamas (Vulica), and the United States (Legacy Vulcan's U.S. Yards).<sup>384</sup>

#### f) Risk Adjustments

158. The second step of the DCF method discounts cash flows to determine the present value of the cash flows at a discount rate that accounts for risks associated with those cash flows and the time value of money.<sup>385</sup> *First*, consistent with Brattle's prior reports, Brattle applied an additional reduction to account for the country risk associated with having operations in Mexico.<sup>386</sup> In doing so, Brattle excluded political risks protected by NAFTA<sup>387</sup> and accounted for the fact that, as an export-oriented project, CALICA is insulated from many country-risk factors that would affect other types of businesses operating in Mexico.<sup>388</sup> Brattle estimated a country risk adjustment for Mexico of 0.77%.<sup>389</sup>

159. *Second*, Brattle applied a discount rate to calculate the net present value of CALICA's cash flows to account for the time value of money and systematic risk (*i.e.*, the general, economy-wide risk that cannot be avoided through diversification).<sup>390</sup> As Brattle explains, the appropriate discount rate in this instance is the opportunity cost of capital (otherwise known as the "weighted average cost of capital" or "WACC"), which reflects the returns that debt and equity

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<sup>382</sup> See *id.*, ¶ 116.

<sup>383</sup> See *id.*, ¶ 118.

<sup>384</sup> See *id.*, ¶ 119.

<sup>385</sup> See *id.*, ¶ 120.

<sup>386</sup> See *id.*

<sup>387</sup> See *id.*, ¶ 123. These include risks related to unilateral contract modifications and expropriation, profits repatriation, and corruption. See Expert Report-Darrell Chodorow-Damages-Claimant's Memorial-ENG, ¶ 155.

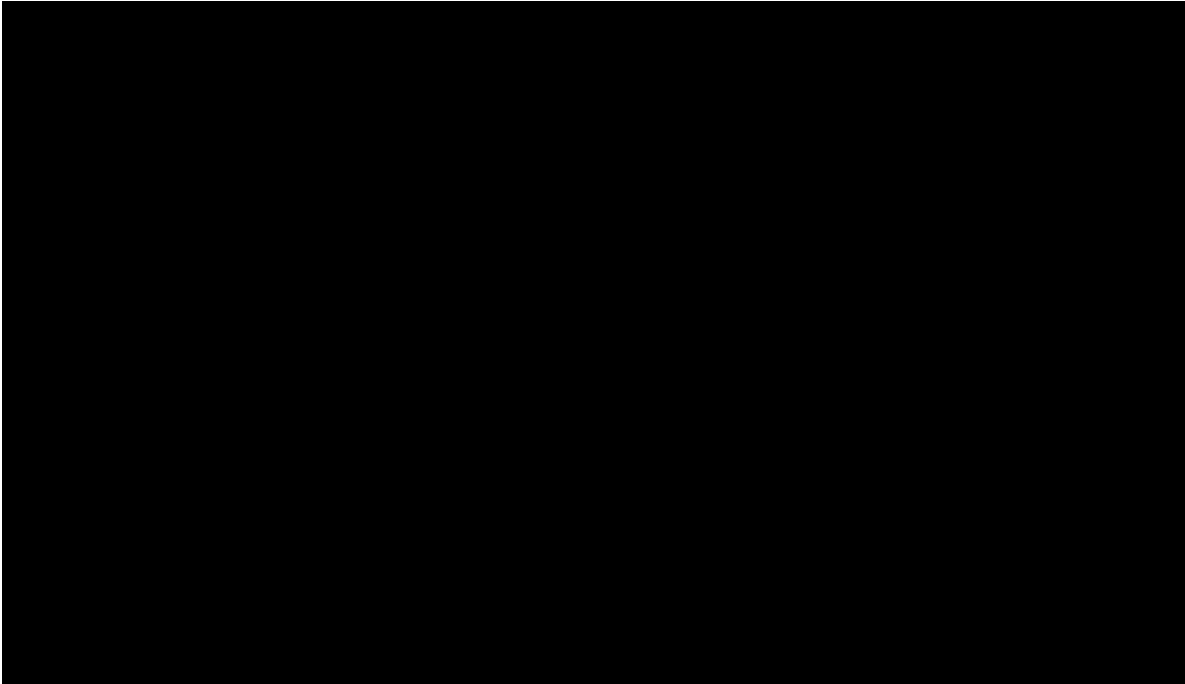
<sup>388</sup> See Expert Report-Darrell Chodorow and Fabricio Núñez-Claimant's Ancillary Claim Memorial-Third Report-ENG, ¶ 123.

<sup>389</sup> See *id.*

<sup>390</sup> See *id.*, ¶¶ 120-123.







### **3. Mitigation of Damages From the Inability to Quarry La Rosita and Export Aggregates**

163. As with Brattle's previous analysis of damages arising from the inability to quarry La Adelita and El Corchalito, there is some potential for Legacy Vulcan to mitigate its losses from Mexico's shutdown of CALICA's remaining operations.<sup>400</sup> As Brattle explains, any mitigation analysis must account for (i) the need to replace lost profits, not just lost volumes,<sup>401</sup> (ii) the opportunity cost of replacing lost CALICA aggregates,<sup>402</sup> and (iii) economic and technical constraints to replacing lost volumes.<sup>403</sup> With these considerations in mind, Brattle calculated the value of mitigation and reduced damages to account for Legacy Vulcan's ability to mitigate the loss in the FMV of CALICA resulting from Mexico's measures.

164. *First*, Brattle considered whether lost sales volume in the Actual Scenario could be replaced with aggregates from other sources.<sup>404</sup> As [REDACTED], explains, the shutdown of La Rosita [REDACTED]

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<sup>400</sup> See Expert Report-Darrell Chodorow and Fabricio Núñez-Claimant's Ancillary Claim Memorial-Third Report-ENG, ¶¶ 4, 128.

<sup>401</sup> See *id.*, ¶ 130.

<sup>402</sup> See *id.*, ¶ 131.

<sup>403</sup> See *id.*, ¶ 132.

<sup>404</sup> See *id.*, ¶¶ 134-147.

██████████,” but ██████████  
██████████.”<sup>405</sup> Brattle accounted for the possibility of replacing some lost CALICA sales with aggregates from three alternative sources: ██████████

██████████.<sup>406</sup>

165. ██████████ Brattle assumed that, ██████████

██████████

██████████ This reflects ██████████

██████████

██████████

██████████ Brattle adjusted these mitigation proceeds to account for ██████████, taxes, and escalation of margins at the same growth rate that their DCF analysis implies for CALICA profit margins.<sup>409</sup> As Figure 4 below shows, ██████████

██████████

██████████

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<sup>405</sup> See Witness Statement-██████████-Claimant’s Ancillary Claim Memorial-Second Statement-ENG, ¶ 12.

<sup>406</sup> See Expert Report-Darrell Chodorow and Fabricio Núñez-Claimant’s Ancillary Claim Memorial-Third Report-ENG, ¶¶ 134-147; Witness Statement-██████████-Claimant’s Ancillary Claim Memorial-Second Statement-ENG, ¶ 14.

<sup>407</sup> See Expert Report-Darrell Chodorow and Fabricio Núñez-Claimant’s Ancillary Claim Memorial-Third Report-ENG, ¶ 139.

<sup>408</sup> See Witness Statement-██████████-Claimant’s Ancillary Claim Memorial-Second Statement-ENG, ¶ 16.

<sup>409</sup> See Expert Report-Darrell Chodorow and Fabricio Núñez-Claimant’s Ancillary Claim Memorial-Third Report-ENG, ¶ 139.



166. [REDACTED] Brattle accounted for Legacy Vulcan's purchase of approximately [REDACTED] of aggregates from [REDACTED]. However, [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] as depicted in Figure 4 above. [REDACTED] [REDACTED]

167. [REDACTED]. Brattle also accounted for the possibility of replacing the lost CALICA sales with aggregates from [REDACTED].<sup>413</sup> As [REDACTED] explains, deliveries from [REDACTED]

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<sup>410</sup> See Witness Statement-[REDACTED]-Claimant's Ancillary Claim Memorial-Second Statement-ENG, ¶ 17.  
<sup>411</sup> See *id.*, ¶ 18.  
<sup>412</sup> See Expert Report-Darrell Chodorow and Fabricio Núñez-Claimant's Ancillary Claim Memorial-Third Report-ENG, ¶ 137.  
<sup>413</sup> See *id.*, ¶¶ 140-147.

[REDACTED].<sup>444</sup> As [REDACTED] further explains, [REDACTED]  
[REDACTED]  
[REDACTED]

168. These findings are consistent with historical analysis by Legacy Vulcan demonstrating that [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

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<sup>444</sup> See Expert Report-Darrell Chodorow and Fabricio Núñez-Claimant's Ancillary Claim Memorial-Third Report-ENG, ¶ 145; Witness Statement-[REDACTED]-Claimant's Ancillary Claim Memorial-Second Statement-ENG, ¶¶ 19-20.

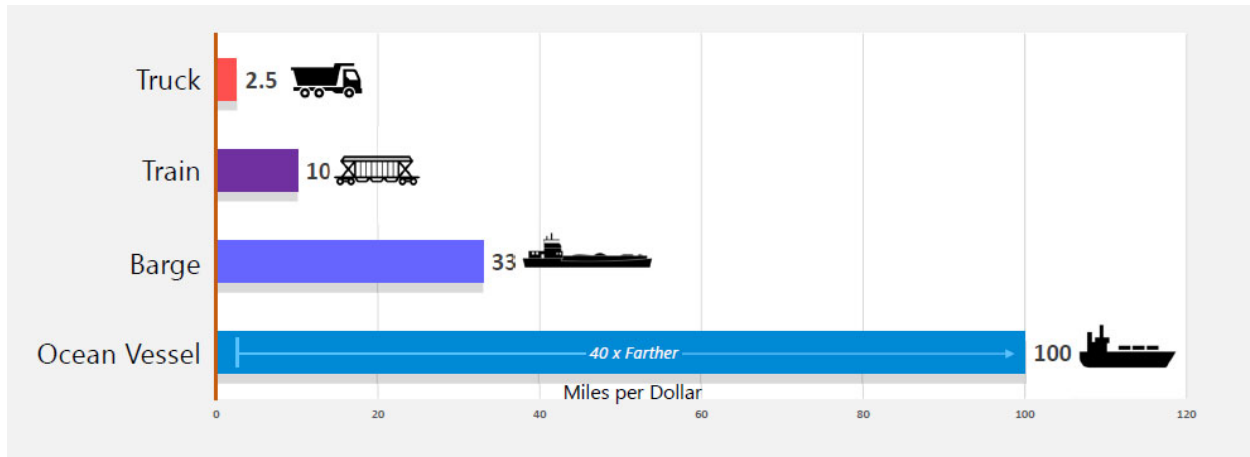
<sup>445</sup> See Witness Statement-[REDACTED]-Claimant's Ancillary Claim Memorial-Second Statement-ENG, ¶ 13.

<sup>446</sup> See Expert Report-Darrell Chodorow and Fabricio Núñez-Claimant's Ancillary Claim Memorial-Third Report-ENG, ¶¶ 141-147; Claimant's Post-Hearing Brief, ¶ 165.

<sup>447</sup> See Expert Report-Darrell Chodorow and Fabricio Núñez-Claimant's Ancillary Claim Memorial-Third Report-ENG, ¶ 143; Claimant's Post-Hearing Brief, ¶ 165; Expert Report-Darrell Chodorow-Claimant's Memorial-ENG, ¶ 161.

<sup>448</sup> See Expert Report-Darrell Chodorow and Fabricio Núñez-Claimant's Ancillary Claim Memorial-Third Report-ENG, ¶ 143. [REDACTED]

[REDACTED] See Expert Report-Darrell Chodorow and Fabricio Nunez-Claimant's Ancillary Claim Memorial-Third Report-ENG, ¶ 148.

**Figure 5 - Comparative Aggregate Shipping Costs**

169. In short, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

170. *Second*, [REDACTED]

[REDACTED]

[REDACTED]

171. With respect to vessel capacity, Brattle considered potential opportunities for mitigating losses to the Vulica shipping business.<sup>421</sup> Vulica has shipping capacity on its own vessels and through its charter contract with CSL.<sup>422</sup> Following Mexico's wrongful shutdown of La Rosita, [REDACTED]

[REDACTED]

[REDACTED]

<sup>419</sup> Authorization for Expenditure (AFE) Project Description, Plant 4511 Sac Tun, MX, Supplemental Plant, dated 24 April 2015, p. 9 (C-0089-ENG).

<sup>420</sup> See Witness Statement-[REDACTED]-Claimant's Ancillary Claim Memorial-Second Statement-ENG, ¶ 23.

<sup>421</sup> See Expert Report-Darrell Chodorow and Fabricio Núñez-Claimant's Ancillary Claim Memorial-Third Report-ENG, ¶¶ 153-161.

<sup>422</sup> See *id.* ¶ 154; Witness Statement-[REDACTED]-Claimant's Ancillary Claim Memorial-Second Statement-ENG, ¶ 23.

<sup>423</sup> See Expert Report-Darrell Chodorow and Fabricio Núñez-Claimant's Ancillary Claim Memorial-Third Report-ENG, ¶ 156; Witness Statement-[REDACTED]-Claimant's Ancillary Claim Memorial-Second Statement-ENG, ¶ 23.

[REDACTED]

172. Brattle explains that, if CALICA's operations had continued unimpeded by Mexico's wrongful conduct, Legacy Vulcan expected [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

173. Additionally, Brattle's analysis of replacement aggregates in the Actual Scenario assumes that [REDACTED]. The profits earned from transporting these shipments are already accounted for in the analysis of replacement aggregates above.<sup>431</sup> Including the profits from Vulica's transport of alternate aggregate sources in the mitigation analysis would double-count the impact of those measures. For that reason, Brattle did not separately count such profits.<sup>432</sup>

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<sup>424</sup> See Expert Report-Darrell Chodorow and Fabricio Núñez-Claimant's Ancillary Claim Memorial-Third Report-ENG, ¶ 157; Witness Statement-[REDACTED]-Claimant's Ancillary Claim Memorial-Second Statement-ENG, ¶ 23. Brattle estimated that the vessel capacity used to transport the [REDACTED]

[REDACTED] See Expert Report-Darrell Chodorow and Fabricio Nunez-Claimant's Ancillary Claim Memorial-Third Report-ENG, ¶ 157.

<sup>425</sup> See Expert Report-Darrell Chodorow and Fabricio Núñez-Claimant's Ancillary Claim Memorial-Third Report-ENG, ¶ 158; Witness Statement-[REDACTED]-Claimant's Ancillary Claim Memorial-Second Statement-ENG, ¶ 23.

<sup>426</sup> See Expert Report-Darrell Chodorow and Fabricio Núñez-Claimant's Ancillary Claim Memorial-Third Report-ENG, ¶ 159.

<sup>427</sup> See Witness Statement-[REDACTED]-Claimant's Ancillary Claim Memorial-Second Statement-ENG, ¶¶ 14-15.

<sup>428</sup> See Expert Report-Darrell Chodorow and Fabricio Núñez-Claimant's Ancillary Claim Memorial-Third Report-ENG, ¶ 159.

<sup>429</sup> See *id.*

<sup>430</sup> See *id.*, ¶ 160.

<sup>431</sup> See *id.*

<sup>432</sup> See *id.*

174. [REDACTED]

175. With respect to capacity at the U.S. Yards, [REDACTED]

176. Based on the analysis summarized above, Brattle concluded that the present after-tax value of these potential mitigation opportunities is equal to [REDACTED] and thus reduce the damages accordingly.<sup>438</sup>

177. Brattle's valuation does not take account of the significant reputational damage to Legacy Vulcan as a result of Mexico's actions. [REDACTED]

[REDACTED] Legacy Vulcan reserves its rights to quantify and claim damages for reputational harm.

\* \* \*

178. In sum, accounting for steps Legacy Vulcan could take to mitigate its losses, damages are equivalent to the decrease in the FMV of Legacy Vulcan resulting from the loss in

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<sup>433</sup> See *id.*, ¶ 161.

<sup>434</sup> *Id.*

<sup>435</sup> See *id.* Because the profits from out-chartering are generated in the Bahamas, they are not taxed, so the pre-tax and after-tax profits from mitigation are the same. See *id.*

<sup>436</sup> See Witness Statement-[REDACTED]-Claimant's Ancillary Claim Memorial-Second Statement-ENG, ¶ 24; Expert Report-Darrell Chodorow and Fabricio Núñez-Claimant's Ancillary Claim Memorial-Third Report-ENG, ¶ 162.

<sup>437</sup> See Expert Report-Darrell Chodorow and Fabricio Núñez-Claimant's Ancillary Claim Memorial-Third Report-ENG, ¶ 163.

<sup>438</sup> See *id.*, ¶ 164.

<sup>439</sup> See Witness Statement-[REDACTED]-Claimant's Ancillary Claim Memorial-Second Statement-ENG, ¶ 25.

CALICA's FMV caused by Mexico's unlawful conduct, as shown in Table 3 below. In total, damages to Legacy Vulcan before pre-award interest were [REDACTED],<sup>440</sup>

[REDACTED]

[REDACTED]

179. As explained below in Part IV.C-E, Legacy Vulcan is entitled to additional compensation including an adjustment to avoid double taxation in the United States, plus pre-award and post-award interest, and arbitration costs. Total compensation including damages, the adjustment to avoid double taxation, and pre-award interest through 30 September 2022 is [REDACTED] as shown in Table 4 below.

[REDACTED]

[REDACTED]

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<sup>440</sup> See Expert Report-Darrell Chodorow and Fabricio Núñez-Claimant's Ancillary Claim Memorial-Third Report-ENG, ¶ 168.



**C. LEGACY VULCAN IS ENTITLED TO PRE-AWARD AND POST-AWARD INTEREST**

180. By depriving Legacy Vulcan of the compensation owed as a result of Mexico's wrongful measures, Legacy Vulcan has effectively become a forced lender of Mexico, financing its conduct from the date of the wrongful measures to the date of payment of the Award. Under the principle of full reparation, this loss must be compensated by awarding pre-award interest, compounded annually, at a rate that compensates Legacy Vulcan for the time value of money and the risk that it bore as an effective forced lender to Mexico.<sup>441</sup> To arrive at a suitable rate, Brattle used the average interest rate that the Government of Mexico pays to borrow U.S. dollars in markets.<sup>442</sup> Pre-Award interest for Legacy Vulcan's ancillary claim through 30 September 2022, as a placeholder for interest that Mexico will owe at the time of the Award, amounts to [REDACTED].<sup>443</sup>

181. Mexico also should be ordered to pay post-Award interest on the quantum of the Award until it is actually and fully paid, even if the Award is converted into a judgment of a court of a State party to the ICSID Convention. Post-Award interest should also be calculated on a compound basis, in accordance with the prevailing practice of international tribunals.<sup>444</sup>

**D. THE AWARD MUST BE ADJUSTED TO AVOID DOUBLE TAXATION**

182. Full reparation also requires that the Award should protect Legacy Vulcan against taxes that would prevent it from being restored to the economic equivalent of its position had the

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<sup>441</sup> *LG&E Energy Corp., et al. v. Argentine Republic*, ICSID Case No. ARB/02/1, Award, ¶ 55 (25 July 2007) (de Maekelt, (P), van den Berg, Rezek) (CL-0098-ENG) (“[I]nterest is part of the ‘full’ reparation to which the Claimants are entitled to assure that they are made whole. In fact, interest recognizes the fact that, between the date of the illegal act and the date of actual payment, the injured party cannot use or invest the amounts of money due.”). Throughout these proceedings Mexico has not disputed that full reparation requires that Legacy Vulcan receive pre- and post-award interest to fully compensate it for Mexico's breaches of NAFTA. Further, as multiple tribunals have recognized, applying compound interest is necessary to achieve the full reparation standard and ensures that a respondent in breach of international law does not enjoy a windfall from its wrongful conduct by benefiting from the time value of money caused by any delay in the payment of the award. *See, e.g., Azurix v. Argentina* (Award), ¶ 440 (CL-0028-ENG); *Víctor Pey Casado and President Allende Foundation v. Republic of Chile*, ICSID Case No. ARB/98/2, Award, ¶¶ 709, 712 (8 May 2008) (Lalive (P), Gaillard, Chemloul) (CL-0099-SPA); *Continental Casualty Company v. Argentine Republic*, ICSID Case No. ARB/03/9, Award, ¶¶ 308-313 (5 September 2008) (Sacerdoti (P), Nader, Veeder) (CL-0100-ENG) (hereinafter, “*Continental Casualty v. Argentina* (Award)”); *RREEF Infrastructure et al. v. Kingdom of Spain*, ICSID Case No. ARB/13/30, Award, ¶ 67 (11 December 2019) (Pellet (P), Nikken, Volterra) (CL-0101-ENG).

<sup>442</sup> *See* Expert Report-Darrell Chodorow and Fabricio Núñez-Claimant's Ancillary Claim Memorial-Third Report-ENG, ¶ 168.

<sup>443</sup> *See id.*, ¶ 170.

<sup>444</sup> *Perenco Ecuador Limited v. Republic of Ecuador*, ICSID Case No. ARB/08/6, Award, ¶ 1023 (27 September 2019) (Tomka (P), Kaplan, Thomas) (CL-0102-ENG); *9REN Holdings S.A.R.L. v. Kingdom of Spain*, ICSID Case No. ARB/15/15, Award, ¶¶ 427-428 (31 May 2019) (Binnie (P), Veeder, Haigh) (CL-0103-ENG).

unlawful measures not occurred. Legacy Vulcan should be protected from the consequences of taxes that would not have been payable in the absence of Mexico's wrongful measures.<sup>445</sup>

183. Brattle explains that they performed their DCF-damages analysis on an after-tax basis.<sup>446</sup> Accordingly, the damages arising out of Mexico's wrongful measures must be adjusted by ██████████ to avoid double taxation and ensure that Legacy Vulcan receives compensation representing the same after-tax income it would have received absent Mexico's violation of NAFTA.<sup>447</sup> The compensation determined in the Award should be calculated, and should be payable by Mexico, in an amount that eliminates the effect of double taxation.

#### **E. LEGACY VULCAN IS ENTITLED TO ARBITRATION COSTS AND EXPENSES**

184. Full reparation also requires that Legacy Vulcan be made whole for costs incurred in prosecuting this ancillary claim, including attorneys' fees and legal expenses. Tribunals have increasingly recognized that the principle of full reparation requires that a non-prevailing respondent should bear the costs of the arbitration and the prevailing claimant's reasonable costs of representation.<sup>448</sup> Legacy Vulcan will submit a statement of its fees and costs for this ancillary claim at an appropriate time, as the Tribunal may determine.

### **V. REQUEST FOR RELIEF**

185. For the foregoing reasons, Legacy Vulcan respectfully requests that the Tribunal render an Award in its favor:

- a. Upholding Legacy Vulcan's ancillary claim;
- b. Declaring that Mexico has breached NAFTA and applicable principles of international law by failing to accord Legacy Vulcan's investments, including CALICA, fair and equitable treatment in violation of Article 1105;
- c. Determining that this breach has caused damages to Legacy Vulcan;
- d. Ordering Mexico to pay to Legacy Vulcan compensation, in accordance with NAFTA and customary international law, in an amount sufficient to provide full reparation to Legacy Vulcan for the damages incurred as a result of the wrongful conduct at issue regarding this ancillary claim, including:

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<sup>445</sup> See, e.g., Memorial, ¶¶ 342-345; Reply, ¶¶ 283-286.

<sup>446</sup> See Expert Report-Darrell Chodorow and Fabricio Núñez-Claimant's Ancillary Claim Memorial-Third Report-ENG, ¶ 171.

<sup>447</sup> See *id.*

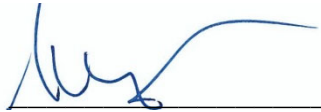
<sup>448</sup> See, e.g., *British Caribbean Bank Ltd v. Government of Belize*, PCA Case No. 2010-18, Award, ¶¶ 317, 325 (19 December 2014) (van den Berg (P), Oreamuno Blanco, Beechey) (CL-0104-ENG) (holding that "the general principle should be that the 'costs follow the event,' save for exceptional circumstances" and awarding claimant costs of arbitration and costs of legal representation and assistance in the arbitration proceedings).

- i. Compensation for damages arising out of Mexico's wrongful measures in the amount of [REDACTED]
  - ii. Compensation of [REDACTED] to account for the double taxation that would result on a portion of this Award;
  - iii. Pre-Award compound interest at a rate reflecting the cost of short-term borrowing by the Government of Mexico from the date of the breach to the date of the Award, and post-Award compound interest also reflecting the cost of short-term borrowing by the Government of Mexico from the date of the Award until actual and full payment by Mexico, even if the Award is converted into a judgment of a court of a State party to the ICSID Convention;
- e. Ordering Mexico to pay all costs and expenses of this arbitration proceeding (including this ancillary claim), including the fees and expenses of the Tribunal and the cost of legal representation, plus interest thereon; and
  - f. Such other or additional relief as may be appropriate under the applicable law or that may otherwise be just and proper.<sup>449</sup>

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<sup>449</sup> Legacy Vulcan reserves its right to pursue additional claims that may arise out of retaliatory measures by Mexico.

Respectfully submitted,



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