

**INTERNATIONAL CENTRE FOR SETTLEMENT  
OF INVESTMENT DISPUTES**

**ICSID Case No. ARB/14/21**

**In the Matter of**

**BEAR CREEK MINING CORPORATION,**

**Claimant,**

**v.**

**THE REPUBLIC OF PERU,**

**Respondent.**

---

---

**WITNESS STATEMENT OF ANDREW T. SWARTHOUT**

---

---

## INTRODUCTION

1. My name is Andrew T. Swarthout. I currently serve as President, CEO and Director of the Claimant in this arbitration, Bear Creek Mining Corporation (“Bear Creek” or the “Company”), which I co-founded in 2000.<sup>1</sup> I have spent my entire career in the mining industry, particularly in Latin America where I have worked since 1985.

2. In my witness statement, I do not attempt to produce an exhaustive recital of Bear Creek’s discovery and development of the Santa Ana and Corani mining projects, and of the Government’s abrupt revocation of the supreme decree authorizing Bear Creek to own and operate Santa Ana. Instead, I provide my personal recollection of the key aspects of Bear Creek’s activity in Peru and of the circumstances of the present dispute, including: (i) the formation of Bear Creek and its exploration prospects in Peru prior to the Santa Ana and Corani projects; (ii) the acquisition of mineral rights over the Santa Ana project including the Government’s issuance of Supreme Decree 083-2007-EM (“Supreme Decree 083”); (iii) the discovery of substantial silver deposits at Santa Ana and Corani; and (iv) the Government’s issuance of Supreme Decree No. 032-2011-EM (“Supreme Decree 032”) and subsequent meetings between Bear Creek and the Government.

### **I. PROFESSIONAL BACKGROUND AND EXPERIENCE IN THE PERUVIAN MINING SECTOR**

3. I was born in New York on February 14, 1952 and am a U.S. citizen. I grew up in Arizona and graduated from the University of Arizona with a Bachelor of Sciences in geology and economics in 1974. After graduation, I commenced my career at Kerr McGee Corporation (by then one of the largest natural resources companies in the world) in Tucson as Exploration

---

<sup>1</sup> In my statement, Bear Creek refers to Bear Creek and all affiliated corporate entities, including its Peruvian branch (Bear Creek Mining Company Sucursal del Peru) and subsidiary (Bear Creek Mining S.A.C.) and predecessor entities.

Geologist in charge of exploration for uranium and base metals.<sup>2</sup> I worked on various projects all over the United States and was promoted Project Geologist in 1977.

4. I joined Kennecott Minerals (later a division of British Petroleum) in 1979, following Kerr McGee's decisions to divest its mineral division. I started as Project Geologist at Kennecott and, in 1981, I became Exploration Manager for the Mexico minerals division. I discovered several major minerals deposits while at Kennecott: Mulatos and El Alacran in Mexico, which respectively produced 3.7 million ounces of gold and 45 million ounces of silver; Rawhide in Nevada, which produced 1.5 million ounces of gold and 9 million ounces of silver; as well as many other projects in Mexico and the United States.

5. I left Kennecott in 1985 to start Socorro Mining Company, a private mining company focused on developing three mining projects in the United States and Mexico. As President and CEO of Socorro, I raised approximately US\$ 3 million from private investors to design, build and operate three gold and silver heap leach mines: Harquahala (Arizona), La Pinta (Mexico), and Alta (Colorado).<sup>3</sup> Socorro produced over six million U.S. dollars' worth of silver and gold at these three projects over the following years.

6. While I had directly supervised the design and development of all three projects, my day-to-day involvement with Socorro became less necessary when these projects entered into their last phases of production after 1990. Beginning in 1991, I started to accept consulting assignments for ASARCO while continuing to serve as President and CEO of Socorro. ASARCO was a large mining, smelting and refining company headquartered in New York with

---

<sup>2</sup> Base metals include aluminum, copper, lead, nickel, tin and zinc. They are widely used in commercial and industrial applications. Base metals are more abundant in nature and therefore far cheaper than precious metals such as gold, silver and platinum.

<sup>3</sup> Heap leaching is the process to extract precious metals like gold, silver, copper and uranium from their ore by placing them on a pad (a base) in a heap and sprinkling a leaching solvent, such as cyanide or acids, over the heap. This process dissolves the metals and they collect at the bottom of the pad. The Santa Ana mining project involved a similar heap leach process.

substantial copper mining interests in Latin America. ASARCO owned Southern Peru Copper Corporation (“SPCC”), one of the largest and most respected copper mining companies in Peru.

7. As a consultant for ASARCO, I participated in the valuation of numerous assets, including the Quiruvilca silver mine and Shahuindo gold deposit in Peru. These projects marked my first time working in Peru, where I visited numerous times after 1991 and moved permanently in 1994. By that time, I was wrapping up Socorro’s activities after all three of the company’s mines had been fully produced.

8. I joined SPCC as Director General of Exploration in 1995, where I was in charge of the company’s US\$ 7 million annual exploration budget, all of which was spent in Peru. Under my stewardship, SPCC’s exploration team discovered significant projects in Peru: Los Chancas (a copper molybdenum deposit currently under development) and Tantahuatay (a gold mine currently in operation). As Director General of Exploration, I was responsible for preparing and certifying the mineral reserves statements issued in conjunction with SPCC’s listing on the New York Stock Exchange in 1996—which allowed SPCC to raise US\$ 700 million in equity and debt financing. In 1997, SPCC promoted me to Vice President of Exploration and named me a Member of the Executive Committee. In this role, I also oversaw the preparation of the mineral reserves statements prepared for Toquepala and Cuajone, two of the largest open pit copper mines in Peru. I also identified the Tia Maria project, one of the largest copper deposits in Peru.

9. Grupo Mexico—Mexico’s largest mining corporation—acquired SPCC (through ASARCO) in November 1999 and quickly replaced all of SPCC’s executive management. After being released from SPCC, I founded Bear Creek along with other former SPCC and Asarco

executives.<sup>4</sup> I have served as General Partner and then CEO of Bear Creek since the Company's inception and, as such, have been in charge of numerous projects in Peru, including Santa Ana since 2004 and Corani since 2005. I have been involved in Santa Ana since the project's discovery and have direct knowledge of all the facts recounted in my statement.

## **II. BEAR CREEK'S ACTIVITIES IN PERU PRIOR TO THE SANTA ANA AND CORANI PROJECTS**

10. In June 2000, I led the group of senior geologists and mining executives who formed a limited partnership in Arizona for the purpose of acquiring, exploring, developing and selling mineral properties located principally in Peru. Most of the fourteen limited partners were former SPCC and ASARCO colleagues, including Kevin Morano (former President of ASARCO), Richard deJ. Osborne (former CEO of ASARCO) and Charles Smith (Former CEO of SPCC). We all had substantial experience in the Peruvian mining sector. From 2000 to 2002, we acquired two newly-discovered gold prospects (Lomo de Camello and Santa Rosa) and four base metal prospects in Peru.<sup>5</sup> After preliminary exploration efforts in these areas we determined that these prospects did not warrant additional exploration on our part.

11. On May 29, 2002, we initiated the process of becoming a public company listed on the Toronto Stock Exchange Ventures ("TSXV"), the most prominent venue for junior mining companies seeking to raise capital.<sup>6</sup> As part of this process, our initial partnership converted into a Canadian company, which we named Bear Creek Mining Corporation. We raised US\$ 7

---

<sup>4</sup> Among the individuals founders of Bear Creek (as limited partnership) were: Kevin Morano (former President of ASARCO); Richard deJ Osborne (former CEO of ASARCO), Charlie Smith (Former CEO of SPCC); Keith Lloyd (former CEO of Enthone OMI Chemicals Europe, an ASARCO subsidiary); Francis McAllister (former CEO of ASARCO); and Gerald Van Voorhis (former vice-president of ASARCO).

<sup>5</sup> A prospect is a mineral occurrence that is being, or has been, explored; often restricted to mineral occurrences that have been drilled.

<sup>6</sup> A junior mining company is a mining company focused primarily on discovering mineral properties and developing (or "advancing") mining projects. Conversely, major mining companies focus primarily on producing minerals at developed mines, and rely principally on junior mining companies to discover and advance mining projects.

million on the TSXV, more than most junior mining companies at that time. More importantly, Bear Creek attracted first-tier institutional investors (including, among others, Canaccord Genuity, Haywood Securities, and Paradigm Securities) and well-known sophisticated private investors. Amongst the prominent individuals who joined Bear Creek's board of directors were Catherine McLeod-Seltzer (who had created and led numerous successful mining companies, including Arequipa Resources and Peru Copper in Peru), Tony Petrina (former CEO of Placer Dome, one of Canada's largest mining companies) and J. David Lowell (a prominent geologist, credited with over fifteen major mine discoveries worldwide and referred to in mining circles as "mining's greatest explorer"), who accepted to serve as Chairman of the Company. These prominent mining professionals were attracted by Bear Creek's management's hugely successful track record, with over ten world-class mining discoveries in Peru and elsewhere. Their commitment to Bear Creek further established the Company's strong reputation within the mining industry.

12. During the course of subsequent years, Bear Creek continued to acquire and explore additional mineral prospects (gold, silver and copper) in Peru (including the *Estrella*, *Niñobamba*, *La Pampa*, *Ataspaca*, *La Yegua*, *Cotahuasi* and *Pichacani Norte* projects). We concluded that these prospects did not warrant further exploration efforts.

13. It is fairly common for exploration companies to discard most of their early-stage prospects after performing initial exploratory work. This does not necessarily mean that the properties in question do not contain any mineralization. However, these minerals may not be present in quantities or concentrations justifying their commercial exploitation by that particular mining company. Bear Creek focuses on substantial prospects susceptible to generating strong returns over an extended period of time. Some of the opportunities that we chose not to pursue

could nevertheless present a commercial interest for smaller players with a lesser focus on generating significant returns. In other cases, the exploration effort may miss the potential mineralization which may either not be present in economic quantities or may occasionally be discovered later by others employing a different exploration strategy.

14. Minerals exploration is a very high risk business and it is rare to find a new mine. In fact, it is all too common for experienced geologists to spend significant portions of their careers exploring for economic deposits but never finding one. Very unusually, Bear Creek's extensive exploration efforts resulted in two major discoveries: Santa Ana and Corani.

### **III. BEAR CREEK'S ACQUISITION OF THE SANTA ANA CONCESSIONS**

15. In 2004, we learned of the existence of potential silver ore deposits in Santa Ana. Cesar Rios, one of our geologists, visited the area and collected some silver-bearing rock chip samples. After confirming the presence of silver in the area, we conducted a mineral title search for the area with the view of determining whether we could acquire those mineral rights.<sup>7</sup> Much to our surprise, we discovered that no one held mineral rights over the Santa Ana area. This was unusual because most of the mineralized areas in Peru had already been staked by companies or individuals. We also learned that because Bear Creek was a foreign company, we needed to obtain the Government's authorization in order to acquire mineral rights located within 50 kilometers of the Peruvian borders, as was the case of Santa Ana. Such authorization would have to take the form of a supreme decree issued by the Peruvian Government, including the Ministry of Energy and Mines ("MINEM").

---

<sup>7</sup> Specifically, we reviewed the mineral rights records filed with the *Instituto Nacional de Concesiones y Catastro Minero* ("INACC"), the government institution that handles recording of mineral rights and applications. Mineral rights and surface rights are dissociated in most jurisdictions, including Peru. Thus, while land owners hold rights over the surface of the land, any mineral rights corresponding to that land remain the property of the State. The State can in turn assign these rights to private individuals or companies, most often by granting these rights through a concession mechanism.

16. Our counsel at Estudio Grau—one of the most prominent mining law firms in Peru, with whom I had worked with for over ten years—advised that the application for a such supreme decree is a quite an involved and protracted process (possibly taking a year or longer). This situation created a substantial risk of having the potential mineral deposits we had identified be interfered with or acquired by other mining concerns while our application was pending. By applying for a supreme decree, we would effectively put the Peruvian mining community on notice of the potential existence of mineral deposits at Santa Ana, even though it would be one year or more before the Company could legally acquire those rights. This concern was especially keen because we were a well-known exploration company in Peru and if we made an application directly for the supreme decree it would increase the likelihood that other mining concerns may seek to interfere with the very rights we hoped to obtain through the application process.

17. To mitigate this vulnerability, we would normally have been able to enter into option agreements with existing concession owners, giving Bear Creek the exclusive right to purchase these concessions at a pre-determined price once we obtained the required supreme decree. However, this was not feasible at that time because no one held mineral rights over the Santa Ana area. A solution to our problem was to identify a trustworthy Peruvian citizen or company interested in applying for mineral concessions in Santa Ana and entering into an option agreement allowing Bear Creek to acquire these concessions once the Government issued the required supreme decree.

18. To that end, Cesar Rios spoke to Ms. Jenny Karina Villavicencio Gardini, a Peruvian citizen and Bear Creek employee, to determine if she would be interested in filing an application for the mineral rights over the Santa Ana area, and enter into an agreement whereby



Bear Creek would have the option to acquire the mineral rights over Santa Ana once it obtained the requisite authorizations. Cesar told us that Karina was interested. I trusted Karina entirely so I believed this to be a good course of action.

19. Options generally provide for a specific option period (a few months to several years) and for the payment of pre-determined amounts by the recipient of the option (the “optionee”) to the grantor of the option (or “optionor”), either at intervals during the option period or at the time when the optionee exercises its option. Option agreements often require the optionee to perform certain exploration work on the property, the benefit of which (drilling data and geological testing, mapping, infrastructure improvements, etc.) belongs solely to the property vendor unless and until the optionee actually exercises the option during the option period. Option agreements benefit both optionees (property holders who derive revenues from properties of uncertain mineral potential) and optionors (who will be able to acquire the property at a pre-determined price if they discover mineral deposits). As such, they are widely used in the mining industry throughout the world, including in Peru. Throughout my career, I have negotiated and concluded well over a hundred option agreements, including more than fifty option agreements in Peru alone.

20. Karina applied to the *Instituto Nacional de Concesiones y Catastro Minero* (“INACC”) for four mining concessions (Karina 9A, Karina 1, Karina 2 and Karina 3) on May 26, 2004 and three adjacent concessions (Karina 5, Karina 6 and Karina 7) on November 29 of the same year.<sup>8</sup> INACC registered the mining concessions on July 5, 2006 (for Karina 2 and

---

<sup>8</sup> **Exhibit C-0029**, Application for the Attribution of Karina Mining Concessions, 9A, 1, 2, and 3 submitted by J. K. Villavicencio Gardini to INACC, May 26, 2004; **Exhibit C-0030**, Application for the Attribution of Karina Mining Concessions, 5, 6, and 7 submitted by J. K. Villavicencio Gardini to INACC, Nov. 29, 2004.

Karina 3), August 8, 2006 (for Karina 1), September 26, 2006 (for Karina 9A) and February 28, 2008 (for Karina 5, Karina 6 and Karina 7).<sup>9</sup>

21. On November 17, 2004, Karina and Bear Creek entered into an option agreement for the Karina 9A, Karina 1, Karina 2 and Karina 3 mining concessions, and into a second option agreement for the three additional concessions (Karina 5, Karina 6 and Karina 7) on December 5, 2004.<sup>10</sup> Under those two option agreements, Bear Creek would have the option to acquire the Santa Ana Concessions if it obtained a supreme decree from the Peruvian Government. If Bear Creek did not obtain the necessary supreme decree within the 60-month option period, then the option would lapse and Karina would be free to do whatever she pleased with her concessions.

22. Karina had experience with option agreements because she previously administered option agreements on behalf of Global Vista (another Peruvian company involved in mining) and Bear Creek. Indeed, she could benefit from these option agreements, especially if we did not receive the necessary supreme decree or decided not to move ahead with the project. Not only would we assume all the costs associated with requesting and maintaining her mineral rights over Santa Ana, but if we did not receive a supreme decree or decided not to exercise the options, Karina would retain the concessions for her sole benefit, allowing her to sell them or to partner with a mining company to develop Santa Ana.

23. I was confident that there would be a real possibility for Bear Creek to obtain a supreme decree if we identified economic mineral resources at Santa Ana and committed to a project that would benefit the region—one of Peru's poorest. If conversely, Bear Creek did not identify sufficient mineralization to warrant exercising the options or if the Government refused

---

<sup>9</sup> **Exhibit C-0034**, Notice of Registration of the Karina 2 and Karina 3 Concessions, July 5, 2006; **Exhibit C-0035**, Notice of Registration of the Karina 1 Concession, Aug. 8, 2006; **Exhibit C-0036**, Notice of Registration of the Karina 5, Karina 6 and Karina 7 Concessions, Feb. 28, 2008.

<sup>10</sup> **Exhibit C-0016**, Contracts for the Option to Transfer Mineral Rights between Jenny Karina Villavicencio Gardini and Bear Creek Mining Company, Sucursal del Perú, Nov. 17, 2004 and Dec. 5, 2004.

to issue a supreme decree, then the area would be of no interest to the company and Karina would stand to benefit.

24. Although not required, we decided to file our option agreements with Karina with the Peruvian public registry (the *Superintendencia Nacional de los Registros Públicos* or “SUNARP”). Following Bear Creek’s June 26, 2005 petition to register the November 17, 2004 option agreement with Ms. Villavicencio, SUNARP responded on July 5, 2005 that the option agreement was invalid because Bear Creek needed to obtain a declaration of public necessity under Article 71 of the Peruvian Constitution as a precondition to entering into an option agreement with Ms. Villavicencio.<sup>11</sup> I was very surprised by that decision, which flatly contradicted my understanding of option agreements and legal advice I received in connection with such agreements, both in Peru and elsewhere. Based upon advice from counsel at Estudio Grau, we decided to appeal SUNARP’s decision before the SUNARP Registry Tribunal.

25. The SUNARP Registry Tribunal rendered its decision a few months later, confirming that the option agreement between Bear Creek and Ms. Villavicencio was valid because it did not entail a transfer of ownership until Bear Creek decided to *exercise* the option agreements.<sup>12</sup>

26. On December 5, 2006, we submitted a formal application to the Ministry of Energy and Mines for the authorization to acquire the mineral rights for Santa Ana.<sup>13</sup> Our application was well over 200 pages long and comprised numerous annexes detailing, among other things, the nature and extent of the mineral rights at issue, the existence and content of the option agreements, and Bear Creek’s plans to invest in the area. Specifically, we estimated that

---

<sup>11</sup> **Exhibit C-0039**, SUNARP Notice of Observation No. 2005-00041200, July 5, 2005.

<sup>12</sup> **Exhibit C-0038**, Resolution No. 193-2005-SUNARP-TR-A issued by the SUNARP Tribunal Registral, Nov. 7, 2005.

<sup>13</sup> **Exhibit C-0017**, Request from Bear Creek to MINEM soliciting the authorization to acquire mining rights located in the border area, Dec. 4, 2006.

we would invest over US\$ 30 million at Santa Ana. The application also included a copy of the option agreements between Bear Creek and Karina.

27. Finally, the application included a lengthy socio-economic impact assessment describing how Bear Creek's investments in the area would benefit local communities.

28. As was the case since entering into the option agreements with Karina, we did not try to conceal that she was a Bear Creek employee. Moreover, the documentation submitted in support of our application confirms that Ms. Villavicencio was representative (*apoderada*) of Bear Creek Peru and had co-signing powers on one of Bear Creek Peru's bank account as part of her duties as Bear Creek's offices manager in Lima.<sup>14</sup> I was deeply troubled when five years later, immediately after issuing Supreme Decree 032, the Government attacked our option agreements based on our relationship with Ms. Villavicencio in what appeared to be an effort to justify its revocation of our right to operate at Santa Ana.

29. On November 29, 2007, upon approval by all key governmental ministries in favor of Bear Creek's application, the Government issued Supreme Decree 083 authorizing Bear Creek to acquire the Santa Ana concessions and conduct mineral activities in the Santa Ana area.<sup>15</sup> Following the issuance of Supreme Decree 083, on December 3, 2007, Bear Creek and Karina executed a transfer of the Santa Ana Concessions, which was confirmed before a notary (*escritura publica*) on December 6, 2007.<sup>16</sup> SUNARP registered these transfer agreements on February 1, 2008 (for the Karina 9A, Karina 1, Karina 2 and Karina 3 concessions) and February

---

<sup>14</sup> *Id.*

<sup>15</sup> **Exhibit C-0004**, Supreme Decree No. 083-2007-EM, Nov. 29, 2007.

<sup>16</sup> **Exhibit C-0015**, Contracts for the Transfer of Mineral Rights between Jenny Karina Villavicencio Gardini and Bear Creek Mining Company, Sucursal del Perú, Dec. 3, 2007.

28, 2008 (for Karina 5, Karina 6 and Karina 7).<sup>17</sup> To conclude on this point, I believe that the acquisition process was legal and transparent, as evidenced by the fact that the Government issued Supreme Decree 083 after conducting a thorough analysis of Bear Creek and our projects for Santa Ana.

#### **IV. BEAR CREEK DISCOVERED WORLD-CLASS SILVER DEPOSITS AT SANTA ANA AND CORANI**

30. Bear Creek's exploration efforts in Peru started to pay off in 2004-2005 with the identification of two promising prospects at Santa Ana and Corani.

##### **A. Santa Ana**

31. Santa Ana initially represented a high-risk, early-stage exploration prospect for Bear Creek, with no demonstrable economic value. However, based on the previous samples taken and the high silver anomaly encountered, we believed that the area had potential to hold economic mineralization pending the results of substantial exploration activities and investments. Starting in early 2008, after concluding that preliminary exploration and drilling results looked promising, we undertook intensive exploration efforts at Santa Ana, drilling 393 drill holes by June 17, 2010.<sup>18</sup> The drilling samples revealed many "pods" of high-grade silver along with a diffuse, relatively low-grade concentration of silver mineralization spread out over a large area,<sup>19</sup> which could be economically exploited by applying a heap-leaching process.

---

<sup>17</sup> **Exhibit C-0020**, SUNARP Notice of Registration of the Transfer Agreement for Concessions Karina 9A, 1, 2 and 3, Feb. 1, 2008; **Exhibit C-0021**, SUNARP Notice of Registration of the Transfer Agreement for Concessions Karina 5, 6 and 7, Feb. 28, 2008.

<sup>18</sup> **Exhibit C-0047**, Press Release, Bear Creek Mining Corporation, *Bear Creek Announces Drilling Continues To Intersect High-Grade Silver, Mineralized Footprint Expands, And Metallurgical Testing Continues To Show High Leach Recoveries at Santa Ana, Peru*, July 21, 2008; **Exhibit C-0048**, Press Release, Bear Creek Mining Corporation, *Bear Creek Announces Infill Results At Its Santa Ana Silver Deposit; Mineralization Remains Open to North And At Depth*, June 17, 2010.

<sup>19</sup> "Grade" generally refers to the concentration of metal or valuable mineral in a body of rock, usually expressed as a percentage or in grams per ton or ounces per ton.

32. We announced the results of a positive Preliminary Economic Assessment (“PEA”) on April 20, 2009.<sup>20</sup> The PEA provided for measured and indicated resources of 97.7 million ounces silver and inferred resources of 41.4 million ounces silver, and a net present value (or NPV) of US\$ 115 million at then-current silver prices.<sup>21</sup> During that period of intensive exploration, results were being generated on a frequent basis. Because of our obligations under Canadian securities regulations and the material nature of the results, we issued numerous press releases in order to keep the market informed of our progress.

33. Drilling, metallurgical testing and engineering studies further intensified between 2009 and 2010 in preparation for a feasibility study for the Santa Ana project.<sup>22</sup> A feasibility study is a comprehensive technical and economic study assessing whether a mineral deposit can be mined profitably by estimating the capital and operating costs of a mine and the potential revenues from production. Ausenco Vector (a leading geological and mining consultancy) published a Feasibility Study and Technical Report for Santa Ana on October 21, 2010, which ascribed a pre-tax internal rate of return (or IRR) of 70.2 % and a pre-tax net present value of US\$ 341 million to Santa Ana (at a 5% discount rate and then-current silver prices of \$22.92 per ounce).<sup>23</sup> These figures were based on an eleven-year mine life. However, the drilling information used for the calculation of these reserves strongly indicates that the ore body continues both at depth and laterally. Additional exploration will certainly expand the reserves and the mine life for the Project.

---

<sup>20</sup> **Exhibit C-0136**, Technical Report – Santa Ana Resource Update and Preliminary Economic Assessment, May 26, 2009.

<sup>21</sup> *Id.* at § 1.

<sup>22</sup> **Exhibit C-0048**, Press Release, Bear Creek Mining Corporation, *Bear Creek Announces Infill Results At Its Santa Ana Silver Deposit; Mineralization Remains Open to North And At Depth*, June 17, 2010; **Exhibit C-0051**, Press Release, Bear Creek Mining Corporation, *Bear Creek Announces Updated Santa Ana Leachable Silver Resource; M&I Increased 39%*, July 12, 2010; **Exhibit C-0052**, Press Release, Bear Creek Mining Corporation, *Bear Creek Provides Project Updates; Key Surface Rights To Be Acquired At Corani And Santa Ana Silver Deposits, Peru*, Sept. 16, 2010.

<sup>23</sup> **Exhibit C-0003**, Ausenco Vector, Feasibility Study – Santa Ana Project – Puno, Perú – NI 43-101 Technical Report, Oct. 21, 2010.

34. As I explained at that time, I was very pleased with the results of the Santa Ana feasibility study as this represented a major breakthrough for Bear Creek.<sup>24</sup> Based on the excellent results of the feasibility study, we were able to raise US\$ 130 million in equity financing on November 5, 2010, less than a month after we announced the results of the feasibility study.<sup>25</sup> We intended to use part of the net proceeds of our equity financing—which was twice oversubscribed—to develop Santa Ana and bring it to production within two years. Becoming a silver producer at Santa Ana would allow us to rely on conventional lending facilities (and not only on equity financing) to finance the development of upcoming projects, including Corani.

35. Following additional metallurgical testing, we released test results showing that the silver leaching recovery process was being achieved at double the initial speed and that silver recovery rates were improving from 70% to 75%.<sup>26</sup> In April 2011, Ausenco Vector released a revised feasibility study prepared on the basis of that additional testing data.<sup>27</sup> Applying then-current silver prices of US\$ 28.19 per ounce to the improved recovery process, Santa Ana would have a pre-tax net present value of US\$ 554 million at a 5% discount rate and internal rate of return of 103.4 %<sup>28</sup> We also developed internal silver prices forecasts in connection with the preparation of these feasibility studies. Our internal forecasts were primarily based on silver future contracts prices for delivery over the two following years, as well as on the historical silver prices over the past three years; the same method we used to determine silver pricing for

---

<sup>24</sup> **Exhibit C-0053**, Press Release, Bear Creek Mining Corporation, *Bear Creek Announces Robust Santa Ana Feasibility Study; Over 63 Million Ounces of Silver Converted To Reserves*, Oct. 7, 2010.

<sup>25</sup> **Exhibit C-0054**, Press Release, Bear Creek Mining Corporation, *Bear Creek Mining Announces Closing of \$130 Million Bought Deal Financing*, Nov. 5, 2010.

<sup>26</sup> **Exhibit C-0060**, Press Release, Bear Creek Mining Corporation, *Bear Creek Announces Increased Silver Recoveries To 75% From Recent Column Tests And Official Filing Of The Project “Esia” At Santa Ana, Peru*, Jan. 19, 2011.

<sup>27</sup> **Exhibit C-0061**, Ausenco Vector, Feasibility Study – Santa Ana Project – Puno, Perú – NI 43-101 Technical Report, Update to the Oct. 21, 2010 Technical Report, Apr. 1, 2011.

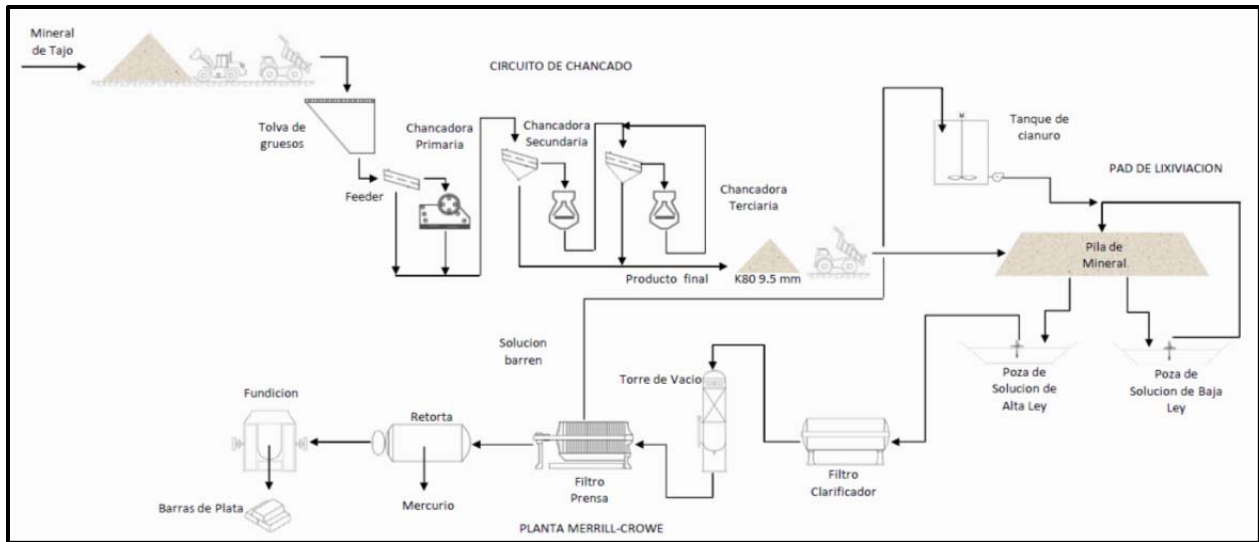
<sup>28</sup> *Id.*

use in feasibility studies financial models. Futures prices represent the only objective forward-looking assessment of silver prices available at a given time. Relying on silver futures prices made particular sense in the case of Santa Ana where we primarily sought to generate steady cash flows (by selling forward 30% to 50% part of our production) in order to finance the construction of Corani.

36. The Project design for the mining and recovery of precious metals was based on practices utilized safely for approximately 40 years. Traditional open pit mining methods extract the ore. The mine operations at Santa Ana would involve drilling the rock with large mechanical drilling machines. The holes are filled with ammonium nitrate explosives and the rock broken using controlled-blasting techniques. The broken rock is excavated by wheel loaders and hauled from the pit by large trucks. The ore is then sent to an on-site crushing plant, which is similar but larger than the equipment used in rock quarries throughout the world. The crushed ore is placed on an impermeably lined pad where a dilute cyanide solution is then applied, which dissolves the silver into the leaching solution.

37. The silver-bearing solution drains by gravity to collection reservoirs, which are lined with impermeable clay and high-density polyethylene. The system is designed as a closed-circuit, zero-discharge, facility, meaning that no solution would be released into the environment. Instead, the silver-bearing solution is processed in what is called a Merrill-Crowe Plant where it is precipitated and the silver collected before being recirculated to the leaching pad. The integrity of the zero-discharge system is continually tested throughout the life of the mine. The silver precipitate is melted and poured into doré bars (a mixture of iron, silica and approximately 80% silver), which are then shipped off-site to a silver refinery to produce pure silver.

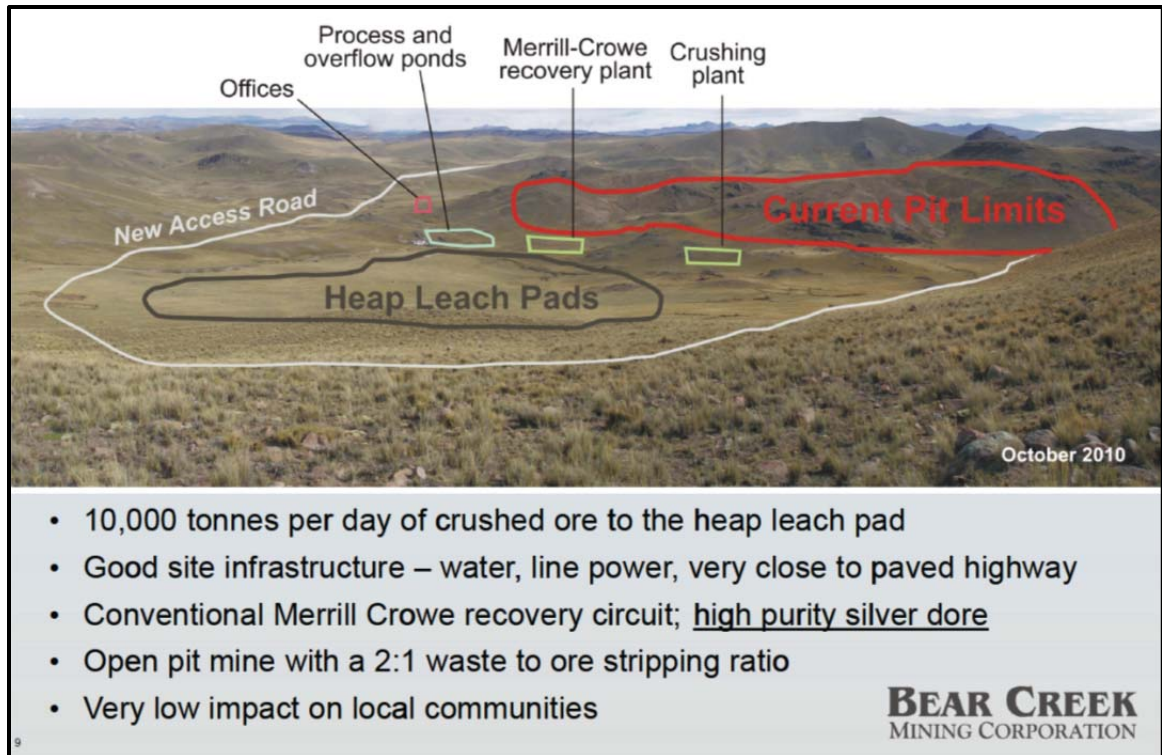




**Fig. 1: Diagram of the heap-leach mineral treatment process at Santa Ana.<sup>29</sup>**

38. The design of the Santa Ana project is a very conventional design for a bulk tonnage, heap leach facility. I can think of at least six very similar mines that are built and safely operating in Peru including the Barrick's Pierina mine and the Tucari mine, which is located 30 kilometers west of Santa Ana in the Department of Puno and has been operating for over ten years using the exact same processes described above. Santa Ana is actually a very favorable site on which to build a heap leach project. The project area includes a large, somewhat flat area where the leach pad can be built. It is also located far away from human habitations and visually isolated by surrounding hills. The geological formation and soils are ideally suited to building the leach pads because the soil is very stable and impermeable. Finally, the project area is very favorable from a hydrological standpoint because virtually no surface water flows throughout the project, which ensures that none of the leaching solution is released in the environment.

<sup>29</sup> Exhibit C-0059, Bear Creek Santa Ana Project Environmental Impact Assessment Presentation, Feb. 2011 at 35.



**Fig. 2: Santa Ana Mine Site and Proposed Infrastructure Under the feasibility study.<sup>30</sup>**

39. At the end of mine life, the project would be reclaimed in accordance with the conditions set forth in the permits issued by the Peruvian Government. Being a sophisticated mining jurisdiction, Peru requires state-of-the-industry reclamation processes. In the case of Santa Ana, this would include the total destruction of cyanide solution, dismantling and removing all mining and processing equipment, and adding top soil and vegetation to affected areas. We would also monitor water quality for many years following mine closure. These requirements are similar to those required in the United States and Canada.

40. I have been active in Peru for over two decades and have always been proud to be part of the Peruvian mining community. An important objective of our corporate social responsibility (“CSR”) and sustainable development strategy at Bear Creek was to build positive working relationships with communities near our active projects and thereby gain a “social

<sup>30</sup> Exhibit C-0058, Bear Creek Corporate Presentation, Oct. 7, 2010 at 9.

license” to operate.<sup>31</sup> We engaged in extensive discussions and consultations with the communities surrounding Santa Ana. I personally met with community leaders and elected officials at regular intervals. Their principal concern related to the lack of sustainable jobs in the area. To this end, we established a large-scale rotational work program allowing the Company to employ over 100 local community members to assist with the exploration activities, particularly with infrastructure building and drill site reclamation work. We would also have provided approximately 1,000 direct positions and 1,500 indirect jobs to local communities during the construction and production phases of the Project. At the time when the Government issued Supreme Decree 032, we were in the process of negotiating land occupation agreements and “life-of-mine” agreements whereby local communities would receive a portion of Santa Ana’s revenues throughout the life of the mine.

41. Peruvian law requires that mining companies produce an *Estudio de Impacto Ambiental* (“ESIA”) as part as the overall socio-environmental permitting process necessary to build and operate a mine in the country. I hired Elsiario Antunez de Mayolo in March 2010 as General Manager of our Peruvian branch to oversee the development and permitting work at Santa Ana and Corani, including the ESIA process at Santa Ana. Elsiario had thirty years of experience in the Peruvian mining industry in all areas of mine development including community relations, environmental permitting, mine planning and operations, hydrogeology/water resources, reserves expansion and exploration. I had worked with him at SPCC and was very pleased to bring him on board.

---

<sup>31</sup> Social License does not refer to any formal authorization process but rather to the general acceptance of the project by the relevant communities, which can only be achieved through open and detailed discussions with community members and representatives and a genuine effort by the mining company to address any questions or concerns that may arise in that context.

42. We also retained Ausenco Vector in early 2009 to conduct the ESIA studies for Santa Ana. As part of the ESIA process, we conducted numerous meetings and workshops with local communities. On January 7, 2011, MINEM's General Direction for Environmental Mining Affairs (*Dirección General de Asuntos Ambientales Mineros* or "DGAAM") approved Bear Creek's community participation plan (*Plan de Participación Ciudadana* or "PPC").<sup>32</sup> I was very satisfied with this step since the Government confirmed that Bear Creek had implemented adequate community relationship programs and maintained good relationships with the communities. As part of the ESIA process, a public hearing regarding the project took place on February 23, 2011 in Huacullani.<sup>33</sup> Over 700 individuals, including members of neighboring communities, attended. This hearing confirmed the communities' unambiguous support of our efforts at Santa Ana.

## **B. Corani**

43. Approximately 350 kilometers north of Santa Ana is the Corani silver-lead-zinc deposit, also located in the Puno region. Bear Creek acquired a 70% interest in Corani from Rio Tinto in January 2005, and acquired the remaining 30% in June 2008. Starting 2006, we performed extensive exploration, drilling and testing works at Corani, which quickly revealed the existence of extensive silver, lead and zinc mineralization. In September 2009, we announced the results of a Pre-Feasibility Study ("PFS") which revealed the existence of measured and indicated resources of 258 million ounces silver, 2.9 billion pounds lead and 1.4 billion pounds zinc, and a NPV of US\$ 348 million.<sup>34</sup> Our exploratory efforts culminated with the release of a

---

<sup>32</sup> **Exhibit C-0073**, MINEM Resolution No. 021-2011/MEM-AAM, Jan. 7, 2011.

<sup>33</sup> **Exhibit C-0076**, Minutes of the Public hearing – Mineral Subsector No. 007-2011/MEM-AAM – Public Hearing for the ESIA of the "Santa Ana" Project, Feb. 23, 2011.

<sup>34</sup> **Exhibit C-0137**, Press Release, Bear Creek Mining Corporation, *Bear Creek Announces Robust Corani Prefeasibility Study; Over 250 Million Ounces of Silver Converted to Reserves*, Sept. 14, 2009.

feasibility study on November 8, 2011.<sup>35</sup> The Corani feasibility study defined a significant undeveloped silver deposit containing proven and probable mineral reserves of 270 million ounces silver (more than four times the silver reserves at Santa Ana), 3.1 billion pounds lead and 1.7 billion pounds zinc.<sup>36</sup> At then-current metals prices (\$34.64/oz silver, \$0.89/lb zinc, \$0.90/lb lead on November 8, 2011), Corani had an after-tax net present value of approximately US\$1.5 billion at a 5% discount rate and a 38% internal rate of return (\$2.7 billion NPV and 60% IRR on a pre-tax basis).<sup>37</sup> Even under the then-conservative assumptions used in the Corani feasibility study, the Corani Project had an after-tax IRR of 17.6% and a NPV of \$463 million at a 5% discount rate based on metal prices of \$18/oz silver, \$0.85/lb lead and \$0.85/lb zinc.<sup>38</sup>

44. The Corani mine design is a conventional open pit mine with a flotation method to recover the economical minerals.<sup>39</sup> The ore will be hauled from the open pit to a crusher and mill where it will be ground down to a fine powder, which is mixed with water to form what we call slurry. The slurry is pumped from the grinding mills to flotation tanks where chemicals are added that make the valuable metal containing minerals float. In addition, air is added into these tanks so bubbles pass through the tank. The valuable minerals float to the top where they are collected. The valuable minerals contain the silver, lead and zinc and these form a concentrate which is sold and is the final product of the process. The barren rock from the process plant is then pumped to a tailings impoundment where it is stored. The tailings storage facility is designed so that any seepage from the pond is collected at the toe of the facility and this water is

---

<sup>35</sup> **Exhibit C-0066**, M3 Engineering, Corani Project Form NI 43-101F1 Technical Report Feasibility Study, Dec. 2011 (*hereinafter*, "Corani Feasibility Study").

<sup>36</sup> *Id.* at § 1.14.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> Flotation differs from heap leaching (to be used at Santa Ana) in that it incurs significantly higher cost and requires higher ore grades. Flotation requires much finer grinding followed by passing through cells filled with water and reagents where air is introduced and the different minerals are floated (separated due to differing specific gravity or density) producing a concentrate for shipment to a smelter.

recirculated back to the process plant. The pond is carefully designed so it will be stable and will not contaminate the environment.

45. We developed strong relationships with the communities surrounding the Corani project. We successfully negotiated and implemented a “life-of-mine” agreement whereby local communities would be entitled to a portion of Corani’s revenues throughout the life of the mine and with payments beginning pre-production. We negotiated land occupation and purchase agreements with these communities in order to acquire the footprint of the project. We also invested in community programs that directly involve citizens in their development, delivery and management. These programs included the creation of a highly-successful independent cooperative to improve alpaca fiber quality and reach consumer markets directly and the construction of three schools. Our sensitivity to these communities’ lives and needs ensured that our role remains supportive and encourages citizen engagement in building stronger and more sustainable communities.

46. Since their respective inceptions, Santa Ana and Corani have always been closely intertwined in the eyes of the market. With Corani shaping up to become a substantially larger project than Santa Ana, we decided to bring Santa Ana to production before commencing construction at Corani. Developing the smaller Santa Ana Project before Corani would allow us to capture the added value associated with being a producer before we tapped the equity and debt markets to finance Corani. More importantly, Bear Creek would have been able to use the substantial cash flows generated by Santa Ana during the first years of production (estimated at US\$ 68 million per year in the revised feasibility study) to cover or finance part of the substantial \$574 million initial capital cost to bring Corani into production. With this understanding of the interdependence of the two projects, any obstruction at Santa Ana would necessarily impact

Corani. The Government's expropriation of Santa Ana has had and continues to have serious economic repercussions on Corani by compromising Bear Creek's ability to use cash flows from Santa Ana to develop Corani. The expropriation will undoubtedly make it extremely difficult for Bear Creek to obtain financing for Corani, which resulted in a significant delay in the Corani Project's development schedule pending resolution of the Santa Ana situation. Furthermore, the Government's expropriation of Santa Ana has substantially raised the risk profile associated with Corani in the eyes of mining investors because Corani is located approximately 350 kilometers away from Santa Ana where the Government demonstrated its willingness to sacrifice an advanced mining project to appease political activists.

**V. RELATIONS WITH THE GOVERNMENT FOLLOWING SUPREME DECREE 032**

**A. The Government Abruptly Enacted Supreme Decree 032 For No Valid Reason**

47. In early 2011, while the communities surrounding Santa Ana demonstrated their support for the Company, a relatively obscure political operator named Walter Aduviri was trying to foment opposition against mining and natural resources projects in the Puno region in an effort to achieve political notoriety and electoral success in that part of Peru. To that end, he formed the "*Frente de Defensa de los Recursos Natutrales de la Zona Sur de Puno*" (the "*Frente de Defensa*") to run against the incumbent regional government. Mr. Aduviri and his *Frente de Defensa* sought to impose a moratorium on all natural resources and mining projects in the Puno area, including the Inambari hydroelectric project and Bear Creek's proposed silver mine at Santa Ana. Starting April 2011, the *Frente de Defensa* organized various protests and then an indefinite strike in May of the same year. Mr. Aduviri called on his supporters to block major roads in the Puno region (including at the border with Bolivia). None of these protests ever took

place in the project area, which remained calm during that time period. Throughout these protests and ensuing strike, various Government officials denounced the political nature of the *Frente de Defensa's* demands, and confirmed that it would be illegal to rescind existing mining concessions and that mining rights in the area must be respected.

48. On May 27, 2011, Minister of Energy and Mines Pedro Sanchez condemned the violence in Puno and confirmed that the *Frente de Defensa's* request to annul mining concessions in the Puno area was unconstitutional.<sup>40</sup> Nevertheless, on May 30, 2011, DGAAM issued a resolution suspending the Santa Ana ESIA for a period of 12 months.<sup>41</sup> The DGAAM's decision was not based on environmental concerns, but rather on the climate of political violence in the Puno region. This was not a permissible ground to suspend the ESIA process because Bear Creek had nothing to do with the violent protests in the Puno area. Bear Creek thus immediately appealed that decision.

49. I must set the record straight on some of the disingenuous rumors spread by Mr. Aduviri about Santa Ana, as part of his campaign of misinformation devised to achieve political notoriety at the expense of the many communities who depended on natural resources projects throughout the region. Notably, Mr. Aduviri and his *Frente de Defensa* asserted that Bear Creek was currently producing silver in Santa Ana and contaminating local lands in the process. This is utterly false: we had never produced any silver at Santa Ana, and the exploratory work performed in the area had never resulted in environmental pollution of any sort. Even more puzzlingly, the *Frente de Defensa* claimed that Santa Ana would "contaminate" Lake Titicaca on the border of Peru and Bolivia. This contamination of Lake Titicaca was also a misconception as Lake Titicaca is located within an entirely separate water-drainage basin than the Santa Ana

---

<sup>40</sup> **Exhibit C-0096**, MEM: *Ejecutivo sigue abierto al diálogo con población de Puno*, RPP NOTICIAS, May 27, 2011.

<sup>41</sup> **Exhibit C-0098**, DGAAM Resolution 162-2011-MEM-AAM, May 30, 2011.



Project, which, under any circumstances, would have been a state-of-the-industry designed, zero-discharge facility.

50. This agitation took place in the context of the presidential elections held in Peru at that time, and did not include the participation of the communities located in the project area. On June 14, 2011, the Government announced that it had “cancelled” the Inambari hydroelectric project. On June 24, 2011, protesters marched onto the Juliaca airport, located 185 kilometers north of Santa Ana, to demonstrate their opposition to the illegal gold mining activity that was taking place at *La Rinconada*, where illegal gold miners used mercury to extract gold and poisoned the water flowing further north from Juliaca. Fighting with police forces ensued, resulting in loss of several lives. This tragic incident had nothing to do with Bear Creek or Santa Ana, and involved instead a completely different issue that arose at a location several hundred kilometers and a five-hour drive from Santa Ana.

51. Under political pressure to resolve the protests in Puno, it appears that the Garcia Administration simply panicked and decided to sacrifice the Santa Ana project in order to appease the *Frente de Defensa*. On June 25, 2011, without any notice or opportunity for Bear Creek to be heard, MINEM abruptly issued Supreme Decree 032 revoking Supreme Decree 083. Supreme Decree 032 did not provide any motivation for the decision to reverse the declaration of necessity which allowed Bear Creek to acquire Santa Ana four years earlier. I never expected that the Government would abruptly cancel Santa Ana in such a hasty and grossly irregular manner. A few days later, I heard for the first time the Government suggesting that this measure was justified because of the existence of option agreements between Bear Creek and Ms. Villavicencio. I was completely astonished by this explanation—obviously a pretext—since these option agreements had been registered many years prior and were thus a matter of public

record. Further, the Government had granted Supreme Decree 083 in 2007 with full knowledge of these option agreements and at no time did Bear Creek conceal that Ms. Villavicencio was our employee. We wrote to the Ministry of Energy and Mines and requested any information related to the basis for revoking our rights, but were advised that no such information existed.<sup>42</sup> I was even more disturbed to see that the Government would continue its attack on Bear Creek by filing a civil lawsuit awkwardly alleging that we inappropriately acquired the concessions many years before.<sup>43</sup>

52. I felt vindicated when the Constitutional Court subsequently ruled that Supreme Decree 032 was not properly motivated, that the Government had violated Bear Creek's constitutional rights by enacting Supreme Decree 032, and that our rights over Santa Ana must be unconditionally returned as stipulated under Supreme Decree 083.<sup>44</sup>

**B. The Government Repeatedly Confirmed the Necessity to Restore our Rights over Santa Ana**

53. After the Government's actions against Bear Creek at Santa Ana, I met briefly with newly-elected President Humala and Minister of Economy and Finances Luis Castilla on September 21, 2011 at a reception of Peruvian Business Council in New York. I congratulated President Humala and briefly mentioned that I was CEO of Bear Creek and would like to get together in order to discuss resolution of the expropriation.

54. I met again with President Humala in Lima on September 27, 2011. Also in attendance were Carlos Herrera Descalzi, the newly-appointed Minister of Energy and Mines, Elsiario Antunez de Mayolo and Tony Ballestrini, Bear Creek's Manager for Corporate Affairs.

---

<sup>42</sup> **Exhibit C-0110**, Letter from E. Antunez, Bear Creek Mining Company, to the Secretary General of MEM, Aug. 10 2011; **Exhibit C-0111**, Letter from R. Wong, Secretary General of MEM, to E. Antunez, Bear Creek Mining Company, Aug. 19, 2011.

<sup>43</sup> **Exhibit C-0112**, Claim filed by MINEM against Bear Creek and Ms. Villavicencio before the Civil Court of Lima, July 5, 2011.

<sup>44</sup> **Exhibit C-0006**, Amparo Decision No. 28 rendered by the Lima First Constitutional Court, May 12, 2014.

The purpose of our meeting was to discuss and try to reach a solution to the problem caused by the Government's abrupt termination of the Santa Ana project. President Humala indicated that he wished to focus on Corani first because Corani was such a great project for Bear Creek and Peru, and leave discussions regarding Santa Ana to a later date. I explained that it was unfortunately not possible because it was critically important to have Santa Ana up and running in order for us to be able to develop Corani. As I described to President Humala, we raised over one hundred million US dollars from institutional and mining investors to develop Santa Ana and the project was taken away from us a few months later. We now had to raise more than five times that amount from essentially the same investors in order to develop Corani, which is located only a few hundred kilometers from Santa Ana. I explained that the expropriation of Santa Ana deprived us of the credibility necessary to do so, and made it virtually impossible to build Corani until the Government did something to resolve the situation at Santa Ana. President Humala responded that he understood the issue faced by the Company, and that we should all work towards finding a constructive solution. I thanked him and added that it was also in Peru's interest to resolve the issue since the expropriation of Santa Ana significantly affected the country's standing as a safe jurisdiction for mining investments.

55. A few weeks prior to this meeting, Mr. Herrera Descalzi—who was by then not yet Minister of Energy and Mines but an advisor to then President-Elect Humala—gave a televised interview where he said that Supreme Decree 032 was a grave and bad development for the Peruvian mining sector because it undermined the Government's credibility and deterred new investments.

56. I met with Jorge Merino—who had replaced Mr. Herrera Descalzi as Minister of Energy and Mines—on January 13, 2012 to discuss the problem at Santa Ana. Minister Merino

was very clear that it was the Government's desire to amicably resolve the Santa Ana situation. We requested another meeting with President Humala. On March 27, 2012, I met again with President Humala, accompanied by most of the members of Bear Creek's Board of Directors (Kevin Morano, Catherine McLeod-Seltzer, Miguel Grau, Nolan Watson and Frank Tweddle) and Elsiario Antunez de Mayolo. Minister Merino was also present at the meeting. I reiterated our position that the Government's termination of Santa Ana had placed Bear Creek in an extremely serious situation and jeopardized our plans at Corani. I conveyed that Bear Creek had been unfairly wronged by the Government's decision and that we needed to have Santa Ana back in order to be in a position to build and operate Corani. President Humala again offered his support, but did not offer any concrete solution. However, President Humala advised us that Minister Merino had full authority to fashion a resolution to our situation.

57. Along with Elsiario and two other colleagues, I met with Prime Minister Juan Jimenez on May 23, 2013. The Minister expressed a desire to resolve the problem and asked for our thoughts on how best to do so. We responded that we needed the Government to return our rights and that we would then proceed to complete the ESIA process for Santa Ana. I explained that we had strong community support and would be willing to demonstrate such by agreeing to hold new public hearings prior to the approval of the ESIA, despite the overwhelming success of the prior public hearing. I further explained that this would be an ideal solution for the Government, as Bear Creek would have to complete the permitting process, which necessarily requires social license. I viewed this as a positive meeting because Prime Minister Jimenez seemed to appreciate the gravity of our situation and the necessity to reach a solution, as well as our suggested path forward. Prime Minister Jimenez also confirmed that he would work with the ministers in his government to resolve the situation. In December 2013 Minister Merino

provided us with a document outlining the Government's proposed steps to resolve the problem, and instructed us to send those steps back to MINEM on our letterhead, which we did.<sup>45</sup> However MINEM never responded to that communication.

58. Overall, my Bear Creek colleagues and I met 44 times with Government officials between July 2011 and February 2014 (when Bear Creek delivered a Notice of Intent to the Government under the FTA), including three meetings with President Humala, three meetings with Prime Minister Jimenez, eleven meetings with the Ministers of Energy and Mines and fourteen meetings with the Vice-Ministers of Mines. During all these meetings, all the Government officials we met with, including President Humala, Prime Minister Jimenez, Ministers Sanchez, Castilla and Merino and Vice-Ministers Shinno, Galva and Talledo never once alleged any irregularity regarding the acquisition of the Santa Ana Concession. In fact, Minister of Mines Pedro Sanchez, Vice-Minister Fernando Galva, and Vice Minister of Energy Luis Talledo, in response to our direct question, informed Miguel Grau, Elsiario, and I that MINEM had no information or reason to believe that Bear Creek improperly acquired the Santa Ana Concession. Furthermore, no government officials ever attempted to explain to us during the numerous meetings why the Santa Ana project supposedly and abruptly was not in the public interest. The same Government officials in these numerous meetings repeatedly assured us of the Government's desire to resolve the Santa Ana situation, which they confirmed in interviews with Peruvian newspapers.<sup>46</sup> In spite of these repeated assurances, the Government never took

---

<sup>45</sup> **Exhibit C-0121**, Draft letter Remitted by Minister J. Merino to E. Antunez de Mayolo outlining the Government's proposed steps to resolve Bear Creek's situation at Santa Ana, Dec. 11, 2013; **Exhibit C-0122**, Letter from E. Antunez de Mayolo, Bear Creek, to J. Merino, Minister of Energy and Mines, and D. Figallo, Minister of Justice, Dec. 17, 2013.

<sup>46</sup> **Exhibit C-0014**, *Minera Bear Creek amenaza con millonaria demanda a Perú*, NO A LA MINA, Feb. 8, 2014; **Exhibit C-0124**, *Peru dice tiene voluntad de llegar a acuerdo con Bear Creek para evitar arbitraje internacional – RTRS*, THOMPSON REUTERS, Mar. 19, 2014; **Exhibit C-0125**, *El gobierno quiere evitar el arbitraje con Bear Creek*, EL COMERCIO, Mar. 21, 2014; **Exhibit C-0126**, *Gobierno peruano y Bear Creek avanzan en negociaciones con comunidades por Santa Ana*, GESTIÓN, Aug. 15, 2014.


any measures to reinstate our rights over Santa Ana or to compensate us for the loss of the project.

\* \* \*

I have prepared this witness statement with the assistance of counsel, but the facts and circumstances recounted in it reflect the best of my knowledge and recollection of the relevant events.

Tucson, Arizona

May 28, 2015

  
Andrew T. Swarthout