

BEFORE THE INTERNATIONAL CENTRE FOR THE SETTLEMENT  
OF INVESTMENT DISPUTES

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In the Matter of Arbitration between: :
:
FREEPORT-MCMORAN INC., :
:
Claimant, : Case No.
: ARB/20/8
v. :
:
REPUBLIC of PERÚ, :
:
Respondent. :
:
----- x Volume 2

HEARING ON JURISDICTION, MERITS, AND QUANTUM

Tuesday, May 2, 2023

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

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

MS. INKA HANEFELD  
President of the Tribunal

MR. GUIDO SANTIAGO TAWIL  
Co-Arbitrator

MR. BERNARDO M. CREMADES  
Co-Arbitrator

ALSO PRESENT:

On behalf of ICSID:

MS. MARISA PLANELLS VALERO  
ICSID Secretariat

MS. CHARLOTTE MATTHEWS  
Assistant to the Tribunal

Realtime Stenographers:

MS. DAWN K. LARSON  
Registered Diplomat Reporters (RDR)  
Certified Realtime Reporters (CRR)  
B&B Reporters/Worldwide Reporting, LLP  
529 14th Street, S.E.  
Washington, D.C. 20003  
United States of America

SR. LEANDRO IEZZI  
D.R. Esteno  
Colombres 566  
Buenos Aires 1218ABE  
Argentina  
(5411) 4957-0083

Interpreters:

MR. CHARLES ROBERTS

MS. SILVIA COLLA

MR. DANIEL GIGLIO

APPEARANCES:

On behalf of the Claimant:

MR. DIETMAR W. PRAGER  
MS. LAURA SINISTERRA  
MR. NAWI UKABIALA  
MR. JULIO RIVERA RIOS  
MR. SEBASTIAN DUTZ  
MR. FEDERICO FRAGACHÁN  
MS. MICHELLE HUANG  
MS. ASTRID MEDIANERO BOTTGER  
MS. LUCIA RODRIGO  
MR. PEDRO FERRO  
MS. MARY GRACE MCEVOY  
MR. REGGIE CEDENO  
MR. THOMAS MCINTYRE  
MR. ORRIN CASE  
MR. GREGORY A. SENN  
MR. CHRISTOPHER V. TRAN  
Debevoise & Plimpton LLP  
66 Hudson Boulevard  
New York, New York 10001  
United States of America

MR. LUIS CARLOS RODRIGO PRADO  
MR. FRANCISCO CARDENAS PANTOJA  
MR. LOURDES CASTILLO CRISOSTOMO  
MR. JOSÉ GOVEA  
MR. ALEJANDRO TAFUR  
Rodrigo, Elias & Medrano  
Av. Pardo y Aliaga 652  
San Isidro 15073  
Perú

Party Representatives:

MR. DAN KRAVETS  
MR. SCOTT STATHAM  
Freeport-McMoRan Inc.

MS. PATRICIA B. QUIROZ PACHECO  
Sociedad Minera Cerro Verde S.A.A.

APPEARANCES: (Continued)

On behalf of the Respondent:

MR. STANIMIR A. ALEXANDROV  
Stanimir A. Alexandrov, PLLC  
1501 K Street, N.W.  
Suite C-072  
Washington, D.C. 20005  
United States of America

MS. JENNIFER HAWORTH McCANDLESS  
MS. MARINN CARLSON  
MS. MARÍA CAROLINA DURÁN  
MS. COURTNEY HIKAWA  
MS. ANA MARTÍNEZ VALLS  
MS. VERÓNICA RESTREPO  
MS. ANGELA TING  
MR. NICK WIGGINS  
MS. NATALIA ZULETA  
MR. GAVIN CUNNINGHAM  
MR. KEVIN DUGAN  
MS. ARA LEE  
MS. SADIE CLAFLIN  
MR. NOAH GOLDBERG  
Sidley Austin LLP  
1501 K Street, N.W.  
Washington, D.C. 20005  
United States of America

MR. RICARDO PUCCIO  
MR. OSWALDO LOZANO  
MS. SHARON FERNANDEZ TORRES  
MS. ANDREA NAVEA SÁNCHEZ  
MR. RENZO ESTEBAN LAVADO  
Navarro & Pazos Abogados SAC  
Av del Parque 195  
San Isidro 15047  
Lima  
Perú

APPEARANCES (Continued)

Party Representatives:

MS. VANESSA DEL CARMEN RIVAS PLATA  
SALDARRIAGA

MR. MIJAIL FELICIANO CIENFUEGOS FALCON  
Ministry of Economy and Finance

MR. EDMÓSTINES MONTOYA JARA  
SUNAT, Republic of Perú

APPEARANCES: (Continued)

NON-DISPUTING PARTY:

For the United States of America:

MR. ALVARO J. PERALTA  
MR. DAVID M. BIGGE  
Attorney-Advisers  
Office of International Claims and  
Investment Disputes  
Office of the Legal Adviser  
U.S. Department of State  
Suite 203, South Building  
2430 E Street, N.W.  
Washington, D.C. 20037-2800  
United States of America

C O N T E N T S

	PAGE
PRELIMINARY MATTERS.....	373
NON-DISPUTING PARTY ORAL SUBMISSIONS.....	374
WITNESSES:	
JULIA TORREBLANCA	
Direct examination by Mr. Prager.....	382
Cross-examination by Mr. Alexandrov.....	394
Redirect examination by Mr. Prager.....	604
Recross-examination by Mr. Alexandrov.....	613
Questions from the Tribunal.....	613
RANDY L. DAVENPORT	
Direct examination by Mr. Ukabiala.....	642
Cross-examination by Ms. Carlson.....	655

1  
2  
3  
4  
5  
6  
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8  
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11  
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P R O C E E D I N G S

PRESIDENT HANEFELD: Good morning. Welcome back to Day 2 of the Hearing.

Are there any issues that the Parties wish to address before we start with the day?

Mr. Prager?

MR. PRAGER: No issues for Claimant. Thank you.

PRESIDENT HANEFELD: Thank you.

MS. HAWORTH McCANDLESS: No issues on behalf of Respondent. Thank you.

PRESIDENT HANEFELD: Thank you very much.

Then we say good morning to Mr. Bigge and Mr. Alvaro. And, please, come and take your seat in front of us.

Do you have everything you need in front of you? Water?

MR. BIGGE: I'm good.

PRESIDENT HANEFELD: So, you are representing the United States of America as a Non-Disputing Party in this Arbitration. You indicated that you wish to make an oral observation in



1 this Hearing. The Parties had received your written  
2 submissions. They had the opportunity to comment on  
3 them, and, pursuant to our Procedural Order, you had  
4 up to one hour to make your representation, but I  
5 understand that you do not intend to use the full  
6 hour. But, please, take the time that you need.

7 MR. BIGGE: Thank you, Madam President.

8 No, indeed, we will not be taking our full  
9 hour. Our presentation will frankly be relatively  
10 short.

11 NON-DISPUTING PARTY ORAL SUBMISSIONS

12 MR. BIGGE: Madam President, Members of the  
13 Tribunal, thank you so much for this opportunity. My  
14 name is David Bigge. I'm the Chief of Investment  
15 Arbitration for the U.S. Department of State, Office  
16 of the Legal Advisor.

17 Pursuant to Article 10.20.2 of the United  
18 States-Peru Trade Promotion Agreement, or TPA, I will  
19 make a brief submission on behalf of the United States  
20 addressing questions of treaty interpretation arising  
21 out of the Claimant's and Respondent's submissions  
22 dated April 7, 2023.

1           In particular, I will briefly address the  
2 scope of the obligation to provide fair and equitable  
3 treatment under Article 10.5.

4           As is always the case with our Non-Disputing  
5 Party submissions, the United States does not take a  
6 position here on how the interpretations offered apply  
7 to the facts of the case, and no inference should be  
8 drawn from the absence of comment on any issue.

9           The United States stands by its prior  
10 position on the weight due to the TPA Parties' views  
11 on matters addressed in a Non-Disputing Party  
12 submission under Article 10.20.2. Whether the  
13 Tribunal considers the interpretations presented by  
14 the TPA Parties as a subsequent agreement under  
15 Article 31(3) (a) of the Vienna Convention on the Law  
16 of Treaties, a subsequent practice under  
17 Article 31(3) (b), or both, the Tribunal must take the  
18 TPA's Parties' common understanding of the provisions  
19 of their Treaty into account.

20           I will now turn to my remarks regarding  
21 Article 10.5.

22           As the United States mentioned in its

1 written submission dated February 24, 2023, customary  
2 international law has crystallized to establish a  
3 Minimum Standard of Treatment in only a few areas.  
4 One such area, which is expressly addressed in  
5 Article 10.5.1, concerns the obligation to provide  
6 fair and equitable treatment, which, per  
7 Article 10.5.2(a): "Includes the obligation not to  
8 deny justice in criminal, civil, or administrative  
9 adjudicatory proceedings in accordance with the  
10 principle of due process embodied in the principal  
11 legal systems of the world."

12           It follows that State responsibility may be  
13 implicated by either an act of a domestic court or an  
14 Administrative Tribunal. A denial of justice may  
15 occur in instances such as when the final act of a  
16 State's judiciary or Administrative Adjudicatory  
17 Tribunal constitutes a notoriously unjust  
18 administration of justice.

19           The United States, therefore, disagrees with  
20 the assertions in this case that the customary  
21 international law Minimum Standard of Treatment  
22 protects against a denial of justice only with respect

1 to judicial measures.

2           It remains the case, however, that nonfinal  
3 adjudicatory acts cannot be the basis for claims under  
4 Article 10, regardless of whether that adjudicatory  
5 act is undertaken by a court or Administrative  
6 Tribunal. Again, that is nonfinal adjudicatory acts.

7           The United States further clarifies that an  
8 investor's claim challenging adjudicatory measures  
9 under Article 10.5.1 is limited to a claim for denial  
10 of justice. The Claimant asserts that the U.S. view  
11 is "ultimately of no assistance to the Tribunal"  
12 because treaty-based and customary international law  
13 standards of fair and equitable treatment as described  
14 in certain arbitral awards are now, in the Claimant's  
15 words, "largely coextensive."

16           However, as the United States has explained,  
17 and as set forth in the ILC Draft Conclusions on  
18 identification of customary international law, to  
19 identify a rule of customary international law, it is  
20 a: "Indispensable requirement that both a general  
21 practice and acceptance of such practice as law,  
22 opinio juris, be ascertained."

1           Decisions of international courts and  
2 Arbitral Tribunals interpreting fair and equitable  
3 treatment as a concept of customary international law  
4 are not themselves instances of State practice for  
5 purposes of evidencing customary international law,  
6 although such Decisions can be relevant for  
7 determining State practice when they include a  
8 specific examination of State practice and opinio  
9 juris.

10           In particular, Claimant relies on a decision  
11 by an investor state Tribunal as one example where an  
12 adjudicatory act was properly the basis for a NAFTA  
13 Article 1105 claim, even though it was "not cast in  
14 denial of justice terms."

15           However, this case provides little guidance,  
16 since it is not itself an instance of State practice  
17 for purposes of evidencing customary international law  
18 and does not itself examine State practice and opinio  
19 juris.

20           As a final point on Article 10.5, while  
21 customary international law has crystallized to  
22 establish a Minimum Standard of Treatment in a few

1 areas, concepts such as legitimate expectations and  
2 transparency are not components of fair and equitable  
3 treatment under customary international law that give  
4 rise to independent Host State obligations.

5           The United States is aware of no general and  
6 consistent State practice and opinio juris  
7 establishing under the Minimum Standard of Treatment  
8 an obligation of Host State transparency or an  
9 obligation not to frustrate investors' expectations.

10           The United States disagrees that such  
11 concepts are "relevant to assessing an alleged breach  
12 of the minimum standard," as Claimant asserts, unless  
13 a Claimant who bears the burden of demonstrating the  
14 elements of its claims can demonstrate such relevance  
15 through State practice and opinio juris.

16           Finally, I would emphasize that the United  
17 States stands by the interpretations set forth in its  
18 written submission, although we obviously did not  
19 address all of those issues today.

20           With that final observation, Madam  
21 President, I close my remarks. I promised you it  
22 would be brief. I thank the Tribunal for the

1 opportunity to present the views of the United States  
2 on these important legal matters.

3 Thank you.

4 PRESIDENT HANEFELD: Thank you very much for  
5 your presentation. Thank you.

6 So, we can now start with the taking of  
7 evidence. I think our first Witness is  
8 Ms. Torreblanca.

9 Can you call Ms. Torreblanca in?

10 JULIA TORREBLANCA, CLAIMANT'S WITNESS, CALLED

11 PRESIDENT HANEFELD: Good morning,  
12 Ms. Torreblanca. Welcome.

13 THE WITNESS: Thank you very much.

14 PRESIDENT HANEFELD: I will briefly  
15 introduce the Tribunal.

16 My name is Inka Hanefeld. I'm the presiding  
17 arbitrator. I'm sitting here with Guido Tawil, and  
18 now my other Co-Arbitrator, Bernardo Cremades.

19 You have been called as a Witness in this  
20 Arbitration by Claimant, and we will certify that two  
21 of the ICSID Arbitration Rules provides that you give  
22 us a declaration.

1           So, could you please make the Declaration?

2 It should be in front of you.

3           (Comments off microphone.)

4           THE WITNESS: I solemnly declare, upon my  
5 honor and conscience, that I shall speak the truth,  
6 the whole truth, and nothing but the truth.

7           PRESIDENT HANEFELD: Thank you very much.

8           Do you have your Witness Statement? It's  
9 CWS-11 and CWS-21 in front of you.

10          THE WITNESS: Yes, indeed.

11          PRESIDENT HANEFELD: Can you confirm that  
12 these are your Witness Statements and that they  
13 correspond to your recollection?

14          THE WITNESS: Yes, I do.

15          PRESIDENT HANEFELD: Okay. You will now  
16 first be questioned by Claimant and then by  
17 Respondent, and my colleagues and me may ask questions  
18 whenever we want, but I think we will wait until  
19 cross-examination is over and maybe then have some  
20 questions at the end.

21          So, now, please, Claimant, go ahead with  
22 your direct.



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DIRECT EXAMINATION

BY MR. PRAGER:

Q. Good morning, Ms. Torreblanca.

My name is Dietmar Prager, as you know. And I will ask you a couple of questions.

When did you start working at Cerro Verde?

A. In Spanish?

Q. Yes, I'm making the effort to ask you questions in Spanish.

A. I started almost 26 years ago, in October 1997.

Q. And what was your position at Cerro Verde at that time?

A. Originally, I was in-house counsel in charge of contracts. It allowed me to learn a lot about the operations to be able to draft them.

Q. And what is your current position?

A. I am the Vice President of corporate matters, and I am in charge of legal, public relations, community relations, Government relations, energy, and sustainability.

Q. And would you please explain why Cerro Verde

1 invested in the Concentrator?

2 A. The Concentrator was necessary to continue  
3 with the development of the Cerro Verde Mining  
4 Concession. That is the only one that Cerro Verde  
5 exploits: "Cerro Verde 1, 2, and 3"- And it was  
6 vital to comply with the investment commitment that  
7 Cyprus Climax undertook in the privatization, and it  
8 was key to maintain not only the work positions at  
9 that point, but also to triple the amount of work  
10 positions necessary to operate the Concentrator, to  
11 triple also the production, and also make sure that  
12 Cerro Verde operations would not come to an end  
13 originally in 2014 or 2018 with residual leaching, but  
14 that they would continue with the development as  
15 expected by Mineró Perú, even before privatization.

16 ARBITRATOR CREMADES: I apologize for the  
17 interruption.

18 For those who are not from the technical  
19 environment, why is it important--why was it important  
20 to move from leaching to the Concentrator?

21 It is given as a fact, it is taken as a fact  
22 that we understand that, but the ones sitting here are

1 lawyers. We do not understand much about technology.  
2 We want to know why it was important to move from  
3 leaching to Concentrator.

4 THE WITNESS: I can explain it to you. A  
5 Mining Concession is an area or a solid geographical  
6 area defined as--a parallel, let's say, this is as if  
7 it was a solid block--let's call it a cube or a  
8 rectangle--that is deep and that is defined based on  
9 coordinates and that is also specified on a map. This  
10 Concession is where you find the mineral that the  
11 Companies usually extract.

12 Unfortunately, the nature has various  
13 composition, and in the case of Cerro Verde, you have,  
14 like, a cake of three different colors. If that was  
15 the perfect nature, you would have the oxides on top,  
16 and usually they are sort of greenish. The nice  
17 copper color, we see it on top. We call it oxides  
18 because they are in contact with oxygen.

19 The next layer in this cake includes  
20 Secondary Sulfides, and the last one Primary Sulfides.  
21 It is not as perfect as a three-layer cake, but in the  
22 case of Cerro Verde, the great potential that Minero

1 Perú had already identified, even before  
2 privatization, was with the Primary Sulfides, the ones  
3 that are in the deepest layer.

4           So, what is leaching? Leaching is a  
5 process, a technology that is usually used to treat  
6 Oxides and Secondary Sulfides, and the floating or the  
7 Concentrator is the one that is used to treat Primary  
8 Sulfides.

9           It could be--could it be done the other way  
10 around? Yes, but it is not economically feasible. In  
11 the case of Cerro Verde, before the privatization, the  
12 Oxides had almost come to an end. The Secondary  
13 Sulfides were being leached, but, as Minero Perú had  
14 already forecasted, in order to trigger that great  
15 potential that they had with the Primary Sulfides, it  
16 was necessary to have a larger Concentrator, and I am  
17 saying "larger" because Minero Perú had already had a  
18 Concentrator prior to the privatization, and they  
19 needed this for this to be an economically viable  
20 operation.

21           Can you leach Primary Sulfides? Yes, you  
22 can, but it is not economically viable. I mean, it

1 takes a long time to obtain the value of the mineral.

2 That's why the Concentrator was vital.

3           Why didn't Minero Peru build it at the  
4 outset? Well, because they needed capital, they  
5 needed water, and they also needed energy.

6           The energy had a very high cost. In the  
7 case of water, in Arequipa--that is where Cerro Verde  
8 is, in the south of Perú, it's like part of the  
9 Atacama Desert--they had already declared that the  
10 Chili River watershed had been exhausted. So, no user  
11 had the ability to request more water for development,  
12 or even for Minero Perú.

13           So, that's why it was so important, and  
14 that's why Cerro Verde was privatized. And upon  
15 privatization, they started to prepare more  
16 Feasibility Studies. If I'm not mistaken, Minero Peru  
17 prepared four or five. And Cyprus Climax also  
18 prepared several Feasibility Studies so that this  
19 Concentrator could be built. If this wasn't done,  
20 essentially the operations would have come to an end  
21 in 2014.

22           BY MR. PRAGER:

1           Q.    Ms. Torreblanca, would you please explain  
2 what did it mean for Cerro Verde to have a Stability  
3 Agreement?

4           A.    For Cerro Verde, it was very important to  
5 have the Stability Agreement for several reasons:  
6 First, because in Perú, as you may recall, in the '80s  
7 and '90s, there was a great deal of risk. Country  
8 risk was high. There were many legislative changes.

9                    As a law student, I started studying with a  
10 Tax Code and with a Civil Code, and I ended up with  
11 different ones. And very frequently legal provisions  
12 were changed, and new taxes were created or were  
13 amended.

14                   So, it was important for the investor to  
15 know the rules, on the one hand, and also the  
16 Stability Agreement allowed Cerro Verde to have access  
17 to the profit reinvestment mechanism that was  
18 important to finance the expansion it was evaluating,  
19 because in 2000 the copper prices were lower than what  
20 we have today.

21                   As a commodity, prices go up and down, and  
22 at that time it was key to have access to the profit

1 reinvestment mechanism, and it also allowed for the  
2 operation to continue its ordinary development, as  
3 planned by Minero Perú, with clear rules.

4 Q. And did you have any discussion with the  
5 Government as to the applicability of the Stability  
6 Agreement to the Concentrator?

7 A. Yes, many. A moment ago, I was telling the  
8 Arbitrator that Cerro Verde or Minero Perú and then  
9 Cyprus Climax had already assessed the feasibility of  
10 this Concentrator for its importance for the  
11 operations, and developing this Concentrator was an  
12 investment commitment that Cyprus Climax undertook,  
13 but because the Feasibility Studies were negative,  
14 they couldn't do it sooner.

15 But in 2000, the Ministry of Energy and  
16 Mines talked again with Cyprus to try to--with the  
17 participation of Centromín Peru--to try to get to an  
18 agreement, and they did reach an agreement pursuant to  
19 which, once again, Cyprus was going to assess this  
20 Concentrator--Cerro Verde was already operated by  
21 Phelps Dodge--and accepted to invest additional  
22 \$50 million to make it feasible.

1           So, that is how we started as part of that  
2 process to work with various institutions, the  
3 Ministry of Energy and Mines, the Ministry of Economy  
4 and Finance, the Ministry of Agriculture, because of  
5 the water that was needed for that Concentrator. And  
6 in all of the conversations one of the first topics  
7 that we used as a premise, was that this investment  
8 was going to be part of the same Production Unit,  
9 which is the only Production Unit, Economic-  
10 Administrative Unit, or Mining Project that we all  
11 know in Peru as Cerro Verde, that was going to be  
12 covered by the Stability Agreement.

13           So, yes, so that's why it was so important,  
14 and that's why, as part of these conversations, we  
15 always brought this issue. Why with the Ministry of  
16 Agriculture? Because we were reviewing with them the  
17 water license that we needed, but the same occurred  
18 with the Ministry of Mines and the Ministry of Economy  
19 and Finance.

20           Q.    Could you please explain to us what the  
21 Government said as to whether the Contract, the  
22 Stability Agreement, would apply to the Concentrator?



1           A.    Yes.  The Government said yes.  The  
2 Government said that, since it was an investment in  
3 the same Mining Unit that was covered by the Stability  
4 Agreement, it would be protected by such as part of  
5 the Cerro Verde Production Unit.

6           Q.    And what happened after the commitment to  
7 invest in the Concentrator?

8           A.    What happened is--I should be specific.  We  
9 assumed that this was covered, that the Concentrator  
10 was covered, so much so that in the 2002 Feasibility  
11 Study, after the first conversations with the  
12 Government, it is established that--the  
13 Pre-Feasibility Study established that the  
14 Concentrator would be covered by stability.

15                   After that, we even met with officials from  
16 the Directorate General of Mining, the Ministry of  
17 Energy and Mines, to reconfirm the understanding, and  
18 they confirmed this.  And in addition to this, we were  
19 assessing as a very important aspect the reinvestment  
20 of profits, and we asked the Directorate General of  
21 Mining to also confirm that we were able to use the  
22 profit reinvestment.

1           The profit reinvestment was a mechanism that  
2 was available to Cerro Verde before, given the  
3 Stability Agreement. We didn't have it as of 2013,  
4 but we had it when we analyzed the expansion. But it  
5 was not available for all of the Mining Titleholders  
6 because this has been abrogated in 2000. Since Cerro  
7 Verde had stabilization, and stabilization is a  
8 snapshot of the tax regime, in our case as of 6  
9 May 1996, it did apply to us; but we had conducted an  
10 exercise before 2004--2003--I think we did it in 2002  
11 - and the Ministry had rejected that profit  
12 reinvestment filing.

13           We didn't know whether they had rejected  
14 that because of a technical issue that--they said we  
15 had started to make the investment before applying--or  
16 whether they had done it because it was no longer  
17 available for other Mining Titleholders, and they  
18 wanted to avoid any political problems.

19           So, to take into account the profit  
20 reinvestment, we needed their assurance that this was  
21 going to apply to Cerro Verde, and also--that was the  
22 other assurance they gave us--because one is only able

1 to reinvest the profits generated by a Production Unit  
2 in a new facility that is also part of the same  
3 Production Unit, or Economic-Administrative Unit, or  
4 Mining Unit. Then, when the Ministry approves this  
5 reinvestment, it gives us the assurance that the  
6 Stability Agreement was going to be approved.

7           And what happened afterwards? Well,  
8 political pressure starts to increase significantly,  
9 because the creation of a Mining Royalty begins to be  
10 evaluated and there are many discussions at the level  
11 of Congress, authorities and ministers, in which the  
12 Government was even asked to apply the new Royalties  
13 that had not been approved to the companies that were  
14 stabilized. So, we, by understanding that the  
15 Ministry was already sharing the interpretation that  
16 we had, went back to the Ministry for them to confirm  
17 that this stability would also cover the Concentrator,  
18 even though it was still in the process of being  
19 built.

20           What happened afterwards? We built. We had  
21 the certainty that the stability was going to be  
22 applied to the entire operation. We got confirmation

1 that by including it as part of our Beneficiation  
2 Concession, that would happen. It was included. We  
3 got the construction permit.

4 The operation started in November 2006.

5 In 2008 we learned, through SUNAT, that the  
6 Ministry of Energy and Mines had developed an opinion  
7 that was completely contrary to what we had  
8 understood, to what the industry and the mining  
9 practice also indicated, and also contrary to the  
10 General Mining Law. We were extremely disappointed.  
11 We felt deceived by the Government, because by then we  
12 had undertaken commitments and additional investments  
13 because we were not paying those Mining Royalties.

14 So, yes, that was our understanding at that  
15 point in time, and, also, we felt that, at the time  
16 that we were preparing this Arbitration, we were not  
17 only deceived; I also was disappointed as a Peruvian  
18 citizen, because in 2008 I sat down with many  
19 authorities, and they were never able to share this  
20 information directly with us.

21 So, it was SUNAT, the one that told us of  
22 this opinion that was not binding and that at the same

1 time that was not shared with us.

2 And, in the preparation of this Arbitration,  
3 additionally, we learned that there had also been  
4 interference with the decisions of the Tax Tribunal  
5 themselves, which to me was yet an even bigger  
6 disappointment.

7 Q. Thank you very much, Ms. Torreblanca.

8 MR. PRAGER: I have no further questions.

9 PRESIDENT HANEFELD: Thank you.

10 We turn to Respondent for cross-examination.

11 MR. ALEXANDROV: Thank you very much, Madam  
12 President.

13 CROSS-EXAMINATION

14 BY MR. ALEXANDROV:

15 Q. Good morning, Ms. Torreblanca.

16 A. Good morning, sir.

17 Q. Are you going to speak in English or in  
18 Spanish?

19 A. I've been told to do it in Spanish, and I'll  
20 try to do it in Spanish.

21 Q. I can hear you speak Spanish, yes.

22 A. I will begin speaking Spanish now.

1           ARBITRATOR TAWIL: Sorry. Perhaps, it would  
2 be better for you to listen to the translation into  
3 Spanish, to be always in the same language, because  
4 otherwise we're going to have a continuous  
5 back-and-forth.

6           THE WITNESS: I think I'd rather listen to  
7 the English directly.

8           REALTIME STENOGRAPHER: I am the Spanish  
9 Court Reporter. The problem of not using the  
10 interpretation is that we need then to have a small  
11 pause between the question and answer so that the  
12 interpreter can catch up, the interpreter comes a  
13 couple seconds behind.

14          THE WITNESS: So, you want me to use the  
15 headset? Is that what it is? Or you want me to speak  
16 slower?

17          REALTIME STENOGRAPHER: Well, if you don't  
18 want to use the headset, just leave a pause between  
19 the question and answer.

20          THE WITNESS: Okay. Very well. Thank you.

21          BY MR. ALEXANDROV:

22          Q. Ms. Torreblanca, I will repeat the same

1 thing.

2 I'll be speaking English, you will be  
3 responding in Spanish, but as Professor Tawil noted,  
4 you understand English, so your impulse will be to  
5 respond right away.

6 We need to make a pause so that the  
7 translation can catch up before you respond. When you  
8 respond, I will do my best to make a pause because  
9 I'll understand your response in Spanish, but I will  
10 make a pause to let the translation catch up before I  
11 ask you the next question.

12 My request is that, when you finish your  
13 answer, I will not immediately ask you the next  
14 question. Don't take that as an invitation to  
15 continue. Just wait patiently for the translation to  
16 catch up.

17 In addition, I ask you to keep your answer  
18 short so that I don't have to interrupt you because it  
19 is not nice to interrupt you and it is not pleasant  
20 for me to do that.

21 ARBITRATOR CREMADES: Counsel, may I ask you  
22 to speak closer to the microphone?

1 MR. ALEXANDROV: My apologies.

2 ARBITRATOR CREMADES: Thank you.

3 MR. ALEXANDROV: My apologies. I will try  
4 to do so, but please interrupt me. I want you to hear  
5 what I'm saying.

6 BY MR. ALEXANDROV:

7 Q. Ms. Torreblanca, we know each other, so I  
8 will skip the introductions. I do want to very  
9 briefly go over your background.

10 You graduated in 1995; correct?

11 A. That's correct.

12 Q. And you started working at Cerro Verde in  
13 1997; correct?

14 A. Yes, that is correct.

15 Q. And between 1995 and 1997, you worked for  
16 your grandfather's law firm; correct?

17 A. That is correct.

18 Q. And you've been with Cerro Verde since 1997,  
19 which is now 26 years; correct?

20 A. Yes, that's correct.

21 Q. So, it's fair to say that you spent your  
22 professional life at Cerro Verde; correct?



1 A. Yes, that's correct.

2 Q. And, just to be clear, you were not involved  
3 in the negotiations of the 1998 Stabilization  
4 Agreement; correct?

5 A. That is correct. I was not involved in it.

6 Q. You testified at the Hearing in the parallel  
7 case, the Cerro Verde v. Perú case; correct?

8 A. Yes, that's correct.

9 Q. That Hearing was held in February of this  
10 year; correct?

11 A. Yes, that's correct.

12 Q. Did you review the Transcript of that  
13 Hearing?

14 A. I did. I have reviewed the Transcript.

15 Q. All of it?

16 A. Just my section, the section of my  
17 Statement.

18 Q. Did you review the testimony--the Transcript  
19 of the testimony of any other Witness or Expert?

20 A. No. It wasn't shown to me. No. I wasn't  
21 given any other Transcript apart from mine.

22 Q. Did you review the Transcript of the Opening

1 Statements of the Parties?

2 A. I did not.

3 Q. Did you listen to the audio recording of the  
4 Transcript?

5 A. I did not. Not even mine.

6 Q. Did you review the video recording of the  
7 Transcript?

8 A. I did not.

9 Q. Did you review the video recording of the  
10 Transcript?

11 A. I did not.

12 Q. Not even yours?

13 A. I did not.

14 Q. Thank you.

15 In your First Witness Statement--and you are  
16 welcome to look at it. It is at Paragraph 17. You  
17 mentioned that in mid-2003 you met with officials from  
18 MINEM, and I quote, "and explained to Ms. Chappuis  
19 that Cerro Verde was considering applying the profit  
20 reinvestment benefit to finance part of the  
21 Concentrator's Capital Costs."

22 Do you see that?

1           A.    Could you please repeat the paragraph again,  
2 the paragraph number?

3           Q.    17.

4           A.    We are talking about the Witness Statement;  
5 right? The one from October; right?

6           Q.    Your First Witness Statement.

7           A.    Okay. My apologies. My apologies. Go  
8 ahead.

9           Q.    Do you see where you're saying that you  
10 explained to Ms. Chappuis that Cerro Verde was  
11 "considering applying the profit reinvestment benefit  
12 to finance part of the Concentrator"?

13          A.    I do.

14          Q.    And the reason for this meeting, or the main  
15 focus of this meeting, was: "To have certainty about  
16 whether Cerro Verde could avail itself of this  
17 benefit"; correct?

18          A.    That's correct.

19          Q.    And then in July of 2003, after that  
20 meeting, you sent two letters to Ms. Chappuis;  
21 correct?

22          A.    That is correct, yes.

1 Q. Now, just to be clear, those letters are not  
2 the actual application to take advantage of this  
3 benefit. Those letters inquire whether Cerro Verde is  
4 eligible for the benefit; correct?

5 A. Yes, that's correct.

6 Q. Let us look at the first letter. It is  
7 behind Tab 8 of your big binder.

8 (Comments off microphone.)

9 A. I know what the letter is, but I didn't  
10 understand which tab.

11 Q. Tab 8.

12 A. 8. Sorry. Okay. Thank you.

13 Q. So, this is the first letter you sent, dated  
14 July 3, 2003. And I want you to take a look and  
15 confirm, and confirm that you signed this letter.

16 A. Yes, that's correct.

17 Q. And if you can look at the second paragraph,  
18 at the end you say: "The Tax Code in force as of  
19 May 6, 1996 was stabilized in favor of my Company,  
20 which includes a system for reinvesting Nondistributed  
21 Profits."

22 Do you see that?

1           A.    Yes, that's correct.  However, we are not  
2 talking about the Tax Code.  We're talking about the  
3 Tax Regime.  That is just a clarification.

4           Q.    You're correct.  That's what it says in  
5 Spanish.  The English translation says the "Tax Code."  
6 But I accept your correction because the original is  
7 Spanish.

8                   And then if we look at the third paragraph,  
9 at the end again, you say:  "Sociedad Minera Cerro  
10 Verde would qualify to receive approval of this  
11 program, provided that we comply with the established  
12 procedure."

13                   Do you see that?

14           A.    Yes, I do see that.  That's correct.

15           Q.    And then you also say that Cerro Verde is  
16 developing a feasibility study for the Concentrator  
17 Project and that the decision to implement the Project  
18 is "directly related" to Cerro Verde's right to  
19 reinvest the Nondistributed Profits into this new  
20 Investment Program; correct?

21           A.    Yes, that's correct.

22           Q.    Then you say--I'm still on the same

1 paragraph. You say--you refer to the Concentrator  
2 Plant as "this new program"; in Spanish, "este nuevo  
3 programa."

4 Do you see that?

5 A. Yes.

6 Q. Okay. And actually, here again, we need to  
7 correct the English translation--right?--because the  
8 English says "this program" but the Spanish says "este  
9 nuevo programa," which means "this new program";  
10 correct?

11 A. Yes. In Spanish it says "new program."

12 Q. And the original is the Spanish; correct?

13 A. Yes, that's correct.

14 (Interruption.)

15 (Stenographer clarification.)

16 Q. The original is in Spanish; correct?

17 A. Yes, the original is in Spanish. Yes.

18 Q. Again, this "new program" is the Primary  
19 Sulfides Investment Program that is the Concentrator  
20 Project; correct?

21 A. Yes, that's correct.

22 Q. Because this is a new program, it was

1 not--there was no--it was not covered by the 1996  
2 Feasibility Study; correct?

3 A. Are you asking me about the letter?

4 Q. I'm asking, again, because you refer in the  
5 letter to this program as a "new program," that it  
6 follows that this new program, the Concentrator  
7 Project, was not covered by the 1996 Feasibility  
8 Study; correct?

9 A. The '96 Feasibility Study included the  
10 Concentrator as a feasibility study of the mill, or of  
11 the Concentrator. So, it is included amongst the main  
12 items listed under Annex II, which is a part of the  
13 Stability Agreement. If you are asking me about more  
14 details, I don't know, but at least in the annex, it  
15 is a feasibility study for the mill or the  
16 Concentrator.

17 Q. Are you saying that the 1996 Feasibility  
18 Study assessed the feasibility of building a  
19 Concentrator Project?

20 A. It includes it as one of the items included  
21 in the Feasibility Study, yes. And it is listed in  
22 Annex 2 of the Stability Agreement also.

1 Q. That was not my question.

2 My question is, are you saying that the 1996  
3 Feasibility Study assessed the feasibility of building  
4 a Concentrator Plant?

5 A. In point of fact, yes, because it includes a  
6 Feasibility Study for the mill and the Concentrator.  
7 Nobody knew back then what the final design was going  
8 to be, but it was included in the obligations and it  
9 was included in the Feasibility Study.

10 Q. Are you talking about an obligation to  
11 conduct a future Feasibility Study for the  
12 Concentrator Project?

13 A. Yes, also.

14 Q. Well, "also" or "only"?

15 A. Also. Because it is not the only thing  
16 included in the Feasibility Study. That Feasibility  
17 Study describes an initial investment. The General  
18 Mining Law obligates the mining titleholder to commit  
19 to an initial investment to have access to stability.  
20 Depending on the amount, the Stability Agreement can  
21 be a 10-year contract or a 15-year contract. That  
22 Feasibility Study is only an initial referential



1 investment, which allows access to stability, but once  
2 the Stability Agreement is signed, it applies to the  
3 whole Production Unit during the whole term of the  
4 Contract, and the Production Unit, the EAU, is defined  
5 under Annex I of that Contract, and this is where it  
6 is listed, in our case, the Mining Concession "Cerro  
7 Verde 1, 2, 3," and also the Beneficiation Concession  
8 named "Beneficiation Plant of Cerro Verde."

9 Q. Can we focus on my questions, please? We  
10 will get there.

11 If you're saying the 1996 Feasibility Study  
12 assessed the feasibility of building a concentrator  
13 project, what was the conclusion--what is your  
14 testimony about whether the 1996 Feasibility Study  
15 concluded that it was feasible or not feasible to  
16 build a concentrator project?

17 A. Let me correct what I said.

18 What I'm trying to explain is that the  
19 Feasibility Study of 1996 also included the assessment  
20 of the Concentrator. That is why it is listed as the  
21 assessment of the feasibility of the mill, or of the  
22 Concentrator, in that year.

1 Q. I'm sorry.

2 You say--I'm looking at the Transcript--the  
3 1996 Feasibility Study also included the assessment of  
4 the Concentrator.

5 What was the--that's what the Transcript  
6 says. Sorry.

7 What was the conclusion of this assessment,  
8 in your view? Was it feasible or not feasible,  
9 according to the 1996 Study, to build a Concentrator  
10 plant?

11 A. That is the reason why I didn't want to use  
12 the translation. I have not said "assessment" at any  
13 time. What I did say is that the Feasibility Study  
14 listed in the Stability Agreement included the review,  
15 or the study, of the feasibility of a mill or of a  
16 concentrator.

17 Q. Well, go back to the question.

18 Did the 1996 Feasibility Study assess the  
19 feasibility of building a concentrator project?

20 Yes or no.

21 A. No. It included an investment for a  
22 feasibility study to assess that Concentrator or that

1 mill.

2 Q. Okay. So, just to confirm, the 1996  
3 Feasibility Study included an investment into a new  
4 feasibility study to assess the feasibility of  
5 building a concentrator plant; correct?

6 A. Yes, that's correct.

7 Q. So, let us look at the fourth paragraph of  
8 your letter, the paragraph that begins with, in  
9 English, "Given that..." and in Spanish, "Debido a  
10 que..."

11 And here you are talking about the Primary  
12 Sulfides Project, which is the Concentrator Project;  
13 correct?

14 A. Yes, that's correct.

15 Q. Okay. And you say--the English translation  
16 is probably not the best. In English it says: "It is  
17 not confined to the Leaching Project." In Spanish it  
18 says: "No estar circunscrito al proyecto de  
19 lixiviación."

20 Is that correct?

21 A. Yes. I think the translation is correct  
22 here.

1 Q. Okay. Well, I didn't say it was incorrect.  
2 I said it was probably not the best English expression  
3 I've heard in my life.

4 But we have the Spanish and we have the  
5 English. So, let's take a closer look at this  
6 paragraph to understand what you're saying to  
7 Ms. Chappuis.

8 You're saying the Stabilization Contract  
9 refers to the Leaching Project rather than to the  
10 Cerro Verde Project; correct?

11 A. What I'm saying is that since the Stability  
12 Agreement literally has a title "Leaching  
13 Project"--that is why I say "hace referencia en su  
14 tenor," which in Spanish means literally--and not the  
15 Cerro Verde Project as originally conceived by Minero  
16 Perú, which we all knew included the subsequent  
17 development of the Primary Sulfides, and it also  
18 included those Primary Sulfides.

19 What we're saying is "Leaching Project"  
20 literally doesn't say "Leaching and Concentrator," in  
21 other words, but it also incorporates Primary Sulfides  
22 as conceived by Minero Perú. That's what we're

1 saying.

2 Q. Okay. I understand this a little bit  
3 differently, and tell me why my understanding is  
4 incorrect.

5 You're saying the Contract, the 1998  
6 Stabilization Agreement, refers, as you say in  
7 Spanish, "en su tenor" to the Leaching Project and not  
8 to the Cerro Verde Project, which--the Cerro Verde  
9 Project--would include the Concentrator Project, which  
10 is not confined to the Leaching Project.

11 The way I understand this letter is what  
12 you're saying, the reference to the Leaching Project  
13 does not include the Concentrator Plant, and the  
14 Contract does not refer to the Cerro Verde Project  
15 which, "sí," which, yes, would include the  
16 Concentrator Project.

17 Am I wrong?

18 A. Yes and no. What we are saying here is,  
19 although literally "the Project," which is capitalized  
20 as we saw in February, refers to the Cerro Verde  
21 Production Unit and to the heading of the Contract,  
22 and it doesn't refer to the Cerro Verde Project, as

1 Mineró Perú saw it. So, we wanted confirmation that  
2 the Ministry of Energy and Mines still agrees that it  
3 also includes the Concentrator in spite of the fact  
4 that in the literality of "Leaching Project," the  
5 Concentrator is not included. That's what we were  
6 asking for.

7 Q. Well, but here we are talking about a  
8 program, a benefit that allows Cerro Verde to reinvest  
9 the Nondistributed Profits free of tax; correct?

10 A. It is a program that, indeed, allows the  
11 nondistribution of a portion of the profits. This is  
12 a temporary benefit because then, thanks to that  
13 reinvestment, production increases, payment of taxes  
14 increases, number of jobs increases for the State and  
15 for Peruvians.

16 Q. And those Nondistributed Profits, part of  
17 the Nondistributed Profits are profits generated at  
18 that time by the "Leaching Project"; correct?

19 A. That is correct, yes. Understood as the  
20 Cerro Verde Production Unit described in Annex 1 of  
21 the Agreement that includes the Mining Concession  
22 "Cerro Verde 1, 2, 3," and the "Beneficiation Plant of

1 Cerro Verde," yes.

2 Q. We'll get to that.

3 But the answer to my question is, it is  
4 correct that the Nondistributed Profits that we are  
5 addressing here are profits generated at that time by  
6 the "Leaching Project"?

7 A. Yes, that's correct.

8 Q. The question is whether you can invest them,  
9 or part of them, tax free into a new Investment  
10 Program; correct?

11 A. Yes, that's correct.

12 Q. Well, so you referred in your direct  
13 examination and now to terms such as "production unit"  
14 and "mining project," and you mentioned, I think, the  
15 term "mining unit." So, let's talk briefly about  
16 those. Is the term "mining unit" defined in the law,  
17 in the Mining Law?

18 A. As "Mining Unit," it is not defined. It is  
19 not an exact concept that is in the General Mining  
20 Law, but in the industry practice, in general, well,  
21 the industry practice does define what a Mining Unit  
22 is. For example, Cerro Verde has always been a Mining

1 Unit or a Production Unit, and also known for the  
2 purpose of the Agreement as an Economic-Administrative  
3 Unit.

4 Q. We will get to the practice of the industry  
5 in a moment. Let's focus on the law first.

6 So, a mining unit is not defined in the law.

7 How about the term "a production unit"?

8 A. The law doesn't define these terms, but it  
9 uses these terms--in the General Mining Law or its  
10 Regulations they are used when referring to different  
11 facilities and installations.

12 (Overlapping interpretation and speakers.)

13 BY MR. ALEXANDROV:

14 Q. And the same answer covers the term "Mining  
15 Project"; correct?

16 A. Yes. I understand that it does. Right now  
17 I don't remember if the General Mining Law uses that  
18 term. It doesn't define it, but I'm not sure if it  
19 uses it in that manner or not. I do not recall.

20 Q. Now, the practice of the industry.

21 A. Umm-hmm.

22 Q. What are you saying is the practice of the



1 industry? The industry's practice understands what?  
2 That those three terms, "production unit," "mining  
3 project," "mining unit," are the same?

4 A. Yes, that's correct.

5 Q. And they mean what?

6 A. It means a set of Mining and Beneficiation  
7 Concessions that form part of a single Production Unit  
8 or a single mining operation.

9 In the case of the Agreements, it is an EAU  
10 as defined by Article 82.

11 Q. Well, Ms. Torreblanca, you're a lawyer. You  
12 just gave me what is referred to in legal terms "a  
13 circular definition," which they teach you in law  
14 school not to use.

15 You said "a set of Mining Concessions and  
16 benefits [sic] that are part of a single production  
17 unit or a single mining operation."

18 So, I was asking you how do you define a  
19 "production unit" or a "mining operation," and you  
20 tell me, a set of mining concessions or benefits that  
21 are part of a single production unit.

22 So, a production unit cannot be defined by a

1 production unit. What is the understanding of the  
2 industry of what is a "production unit" or a "mining  
3 project" or a "mining unit"?

4 A. The industry understands that a "Production  
5 Unit" is the unit that is geographically defined by a  
6 mining concession and generally by a beneficiation  
7 concession, so much so that the MINEM uses a map to  
8 define these "Production Units," or "Mining Projects."  
9 Cerro Verde has always had a single production unit,  
10 if that's the question also.

11 Q. So, your testimony is that the understanding  
12 of the industry is that a production unit covers the  
13 geographic area of one or more concessions and the  
14 Beneficiation Concession, as in the case of Cerro  
15 Verde; is that right?

16 A. Yes, that is right.

17 Q. And what is your--how did you come to  
18 understand that this was the practice of the industry?  
19 Did you talk to people?

20 A. Yes. I met with many people who worked in  
21 Minero Perú, in Centromín, which were the original  
22 operators of the Mining Units that existed in the

1 country before their privatization, also with  
2 ProInversión, also with the Ministry of Energy and  
3 Mines, and that is how it is understood that there's a  
4 Production Unit.

5           And it's not just that. It's actually the  
6 practice. A production unit or a mining unit or a  
7 mining project is defined by the source of the ore,  
8 which is the Concession where it is extracted and the  
9 additional facilities, which are the ones that help to  
10 process, transfer, take the ore to port, and so on.

11           Q. Is there anything in writing that confirms  
12 this understanding of the industry?

13           A. There is--I suppose--I mean, I have read not  
14 only literature, but also papers and other things by  
15 different experts in the field that have been  
16 published and are published in specialized mining  
17 journals, in the same projects or presentations that  
18 have been made by the Ministry of Energy and Mines in  
19 due course also refer to the Production Units. Also,  
20 before, they would list the stability agreements and  
21 they would reference them by and link them to  
22 Production Units; more than by the title, they would

1 list them as the stabilized Production Unit or  
2 stabilized concession. There is quite a bit of  
3 literature. It is extensive. I don't have it right  
4 here. We haven't presented it, as far as I know.

5 Q. That was going to be my question.

6 Anything in the record that confirms this  
7 understanding of the industry?

8 A. Yeah, not that I recall, but my lawyers must  
9 recall, yes.

10 Q. Well, let us look at one person's  
11 understanding of the industry.

12 Can we look at Tab 11, which is  
13 Exhibit RE--355.

14 MR. PRAGER: Madam President, I have to  
15 object. This is a letter by Southern, which is not  
16 part of her Witness testimony, and--nor did  
17 Ms. Torreblanca ever work at Southern. And Procedural  
18 Order Number 1 clearly says that matters--that the  
19 cross-examination has to be limited to matters that  
20 were addressed or presented in the Witness Statement  
21 or during direct examination. I think it would be  
22 entirely inappropriate to ask the Witness about what

1 somebody else wrote from another mining company.

2 (Overlapping speakers.)

3 PRESIDENT HANEFELD: Mr. Alexandrov,  
4 can--does it--refers to any passage in the Witness  
5 Statements which makes reference to this document?

6 MR. ALEXANDROV: Well, Madam President, she  
7 just testified about what she refers to as the  
8 "practice of the industry," and she said that she has  
9 spoken to many people from the industry, including  
10 other mining companies to confirm her understanding of  
11 what the practice of the industry is.

12 So, I want to show her a letter by another  
13 mining company, which shows what that mining company's  
14 understanding of the practice of the industry was, and  
15 ask her whether she spoke to that person, whether she  
16 has the same understanding of the practice of the  
17 industry as that person in that company.

18 Since she's testifying about the practice of  
19 industry, I'm entitled to confront her with documents  
20 authored by other mining companies and high-level  
21 executives that reflect what their understanding is of  
22 the practice of the industry.

1           PRESIDENT HANEFELD: Just give me a minute.

2           MR. PRAGER: Madam President, if you allow  
3 me just to very briefly respond to that.

4           That just cannot--this type of question just  
5 cannot allow a Party, then, to introduce all kinds of  
6 evidence that is outside of the Witness knowledge,  
7 because otherwise you can just circumvent a Procedural  
8 Order and the rules of the game by opening up an  
9 entire record that's actually not in the Witness  
10 Statement.

11           MR. ALEXANDROV: Madam President, just to  
12 respond to that briefly, if the practice of the  
13 industry is outside of her knowledge, I will take that  
14 as an admission, and I will withdraw the question, but  
15 she's testified that it is within her knowledge. So,  
16 it's either within her knowledge or outside of her  
17 knowledge. If it's outside of her knowledge, I'm  
18 fine, and I'll stop here.

19           (Tribunal conferring outside the room.)

20           PRESIDENT HANEFELD: Sorry for the short  
21 interruption, but the Tribunal wanted to take the  
22 opportunity to deliberate how we want to proceed.

1           For us, it's of utmost interest to avoid  
2 objections, objections and procedural debates all the  
3 time. We are here to hear the Witnesses, and now we  
4 have really read the record, and we now want to test  
5 the Fact Witnesses and Experts and then hear what they  
6 say.

7           In order to avoid such interruptions, we, I  
8 think, have done clear directions in the POs how we  
9 want to proceed with direct and cross-examination, and  
10 we certainly want to stick to those rules that we have  
11 ordered.

12           So, our question, would be, Mr. Alexandrov,  
13 could you maybe just rephrase the question by asking  
14 whether she has knowledge of this document, and so  
15 forth, so that we really keep it to the Factual  
16 Witness because she is a Factual Witness and her role  
17 is so limited to what she knows from her own  
18 knowledge?

19           MR. ALEXANDROV: Well, Madam President, I'm  
20 looking at Procedural Order Number 1, Section 19.7.3,  
21 and it says--let me give you a moment to take a look.  
22 It's on Page 19. It says "the adverse Party"--in this

1 case, Respondent--"may cross-examine the Witness on  
2 matters that were addressed or presented in the  
3 Witness Statement or during direct examination."

4           On direct examination, Ms. Torreblanca  
5 testified about the practice of the industry, which  
6 she learned from various sources, and I want to test  
7 her knowledge of the practice of the industry, whether  
8 or not she has seen this particular letter. This is a  
9 letter signed by Mr. Hans Flury, former Minister, who  
10 has also at the time he was the President of the--I  
11 will say it in Spanish--"Consejo Directivo de la  
12 Sociedad Nacional de Minería,"--Executive Board of the  
13 National Mining Council.

14           So, a high-level representative of the  
15 industry, and I want to show her this letter, whether  
16 or not she has seen it before, to see whether that  
17 somehow changes her view about what the practice of  
18 the industry is, which she testified in direct.

19           If you think that that's not an appropriate  
20 question, then I will, of course, withdraw it, but she  
21 discussed, on direct, her knowledge of the practice of  
22 the industry.



1           MR. PRAGER: Madam President, if I may  
2 respond to that, this letter is not an article about  
3 the practice of the industry. This is a letter about  
4 one specific project of another mining company, of  
5 which Ms. Torreblanca could not have any idea because  
6 she did not work there.

7           So, this letter cannot possibly be in any  
8 way showing the practice of the industry, and I think  
9 this would completely undermine the Procedural Order  
10 where we were very clear that we would focus on what  
11 is being--what was said in the Witness Statement and  
12 what was being said in the direct, and if you allow  
13 it, to introduce such documents with any question, we  
14 would have, like, a--open the floodgates to bringing  
15 in anything in the record.

16           MR. ALEXANDROV: Well, the letter is in the  
17 record, so it's not a matter of bringing it in the  
18 record, but I strongly object to a discussion of what  
19 this document is, and characterizing what this  
20 document is in front of the Witness, given that I want  
21 to ask the Witness questions about this document.

22           Counsel's intervention in characterizing

1 this document is essentially telling the Witness what  
2 to say. So, I don't think that's appropriate, Madam  
3 President.

4 (Tribunal conferring.)

5 PRESIDENT HANEFELD: So, Ms. Torreblanca, do  
6 you know the document?

7 THE WITNESS: I was not aware of this  
8 document until--I'm sorry. I wasn't aware of this  
9 document until this arbitration proceeding.

10 PRESIDENT HANEFELD: So, you cannot answer  
11 questions regarding this specific document?

12 THE WITNESS: I can answer questions about  
13 this document, from what I'm reading now, but I am not  
14 familiar with the case that led to it. So, I can  
15 answer based on what I read and interpret of this  
16 request or Application now, but I do not know the  
17 record or case file that accompanies it.

18 In any case, the attorney asked me about  
19 Production Units, and what I see here is an  
20 Application by a Company with respect to a Leaching  
21 Plant, which is a Beneficiation Concession.

22 Would you like me to answer?

1           PRESIDENT HANEFELD: No. I just wanted to  
2 get an idea of how familiar you are with the document.

3           I think she has answered the question, so  
4 can we then move on.

5           MR. ALEXANDROV: Thank you, Madam President.  
6 We'll take this up in our Closing, and we'll move on.  
7 I will just note Counsel's objections that we  
8 cross-examine a Witness on something that she said in  
9 direct examination.

10           BY MR. ALEXANDROV:

11           Q. I'll move on, Ms. Torreblanca.

12           MR. PRAGER: Just with your permission,  
13 Madam President, I didn't say he can't ask her about  
14 what she said on cross-examination. I was just  
15 objecting to a particular document that was not  
16 mentioned on cross-examination. Just so, that is  
17 clear.

18           PRESIDENT HANEFELD: This is understood.  
19 And this is why we now proceed with the next set of  
20 questions.

21           BY MR. ALEXANDROV:

22           Q. Ms. Torreblanca, we know you were not

1 involved in the negotiation and the signing of the  
2 1998 Stabilization Agreement; correct?

3 A. Correct.

4 Q. Did you review the file when you joined  
5 Cerro Verde, or at some point later before this  
6 arbitration?

7 A. Yes.

8 Q. Are you familiar with the Model  
9 Stabilization Agreement?

10 A. Yes.

11 Q. Can we look at it? It's behind Tab 12.  
12 It's CE-778. Can you look at Section 1.1, please.

13 A. Correct.

14 Q. Well, first, there is a blank there, which  
15 we have testimony in this Arbitration is filled in by  
16 the investor, which is the name, what you call the  
17 "label," and it was Cerro Verde that put in the words  
18 "the Leaching Project" into that blank space.

19 Did you ever inquire, somebody at Cerro  
20 Verde, why they chose these words, "the Leaching  
21 Project" and not any other words? Did you inquire?

22 A. Yes, at that time, our lawyer.

1 Q. I'm just asking whether you asked that  
2 question or not. Yes or no.

3 A. The thing is, I need to explain that the  
4 attorney who dealt with this Contract died.

5 (Overlapping interpretation and speakers.)

6 Q. --with a yes or no. Let us start first with  
7 yes or no, then you can explain. If the answer is, I  
8 didn't ask because he died, first say you didn't ask,  
9 and then you explain why.

10 A. Yes, I did ask. Do I explain why?

11 But the attorney who negotiated this  
12 Contract directly or that reviewed the terms of the  
13 Agreement with the Ministry died in a bicycle  
14 accident. The attorney, who at that time was in  
15 charge of Cerro Verde, was not the one who had the  
16 direct interaction with the Ministry. It was  
17 Mr. Alfonso Rubio, who died.

18 So, I did not know exactly why "Leaching  
19 Project" was put there, and thus reviewing the  
20 information we assumed that it was to distinguish it  
21 from the first Contract that Cerro Verde had signed,  
22 the title of which was "Cerro Verde Project."

1 Q. Well, leaving aside your assumption, you're  
2 here to testify about the facts. So, is it your  
3 testimony that Mr. Alfonso Rubio was the only person  
4 who knew why the words "the Leaching Project" were  
5 included into the Agreement by Cerro Verde? He was  
6 the only person who knew why, and he died. And after  
7 he died, nobody knows? Is that your testimony?

8 A. No. You asked me if I had inquired as to  
9 why that title was put there. Internally, there was  
10 no one to provide me that information directly.  
11 Nonetheless, with people from the Ministry, we  
12 reviewed the record at some point in time, and we saw  
13 that it was to distinguish it from the Cerro Verde  
14 Project.

15 Q. Okay. So, let's--those are two separate  
16 points. One is, you asked, but there was nobody who  
17 could give you that information; correct?

18 A. That is correct.

19 Q. Because the only person who had that  
20 information passed away; correct?

21 A. That is correct.

22 Q. And nobody else had that information;

1 correct?

2 A. That is correct because, even in the  
3 documents that are in the file at the Ministry, it  
4 doesn't say why a different title was placed there.  
5 So, there's not an exact explanation as to the title.

6 Q. And you said with people from the Ministry,  
7 you said, we reviewed the record at some point in  
8 time, and we saw that it was to distinguish this  
9 Agreement from the Cerro Verde Project.

10 You mean the 1994 Agreement; correct?

11 A. Yes, that is correct.

12 Q. And what did you review with the Ministry  
13 people to reach that conclusion?

14 A. There were some evaluations that had been  
15 done by the Ministry to see whether Cerro Verde could  
16 or could not sign an Agreement when it already had one  
17 in force, because it had a 10-year Contract in force,  
18 whose title was "Cerro Verde Project."

19 So, yes, when the Second Agreement was  
20 requested, which was also approved, and it was for  
21 15 years and with the facility for Cerro Verde to be  
22 able to have, not only more time of stability, but

1 also to be able to have its accounting in dollars and  
2 have accelerated depreciation, I reviewed the data,  
3 and, in effect, it had been accepted that there could  
4 be this Second Agreement, which replaced the tax  
5 regime that was in the previous one.

6 Q. That's fine. But we are talking about the  
7 name.

8 Are you saying that there is a Ministry  
9 document that says, this Contract should be--the words  
10 to be included in Section 1.1 are the words "Cerro  
11 Verde Leaching Project"--

12 (Overlapping interpretation and speakers.)

13 (Interruption.)

14 A. No, there is not.

15 Q. Are you saying there is a Ministry document  
16 which says this Contract should include in Section 1.1  
17 the words "Cerro Verde Leaching Project"?

18 A. No. There is no such document from the  
19 Ministry that says it like that.

20 Q. While we're still on the form Contract,  
21 Section 1.1, can you look at it, please?

22 A. Yes.



1 Q. It has the words "Economic-Administrative  
2 Unit," which were taken out when the 1998  
3 Stabilization Agreement was signed.

4 Did you ask anybody why Cerro Verde took  
5 those words out?

6 A. I did not ask, but since it has the  
7 reference to the "Cerro Verde 1, 2, and 3" Mining  
8 Concession, I understood that that was the  
9 Economic-Administrative Unit, which the Contract--or  
10 the Agreement referred.

11 Q. Well, that is your understanding, which  
12 doesn't, frankly, explain anything, because if that's  
13 the case, why not keep the words  
14 "Economic-Administrative Unit" in the Contract?

15 Do you know?

16 A. No. I wasn't there at that time. So, when  
17 one reads the Agreement--

18 Q. Let's read it in a moment. Now I'm asking  
19 about what you know.

20 So, you don't know, because you were not  
21 involved.

22 Did you ask anybody?

1 A. No.

2 Q. Did you see any document about why these  
3 words were taken out?

4 A. No, I did not.

5 Q. Did Cerro Verde, at the time, have an  
6 Economic-Administrative Unit?

7 A. At the time--Could you please specify at  
8 which time?

9 Q. 1998.

10 A. Yes, it had one de facto, which is the one  
11 that forms, or is formed, by having the Stability  
12 Agreement as defined by the Mining Law, which is  
13 different from the Economic-Administrative Unit of  
14 Article 44.

15 The one in Article 44 requires an  
16 application, an express application by the  
17 titleholder, and the Ministry of Energy and Mines then  
18 evaluates whether, because of proximity and so forth,  
19 there is an Economic-Administrative Unit, and it  
20 resolves and it formally approves it, and converts it  
21 into a mining right.

22 In the case of the definition provided by

1 the General Mining Law for Stability Agreements, it  
2 wasn't necessary to have a Resolution, nor the  
3 qualification of that title.

4 Q. Cerro Verde never went through this process  
5 to apply to create an Economic-Administrative Unit,  
6 and there was never an approval for that; correct?

7 A. Because it wasn't necessary.

8 Q. Let's first say the answer is, it's correct,  
9 Cerro Verde never went through that procedure.

10 A. Because the procedure does not exist--yes.  
11 It did not go through that procedure because that--the  
12 procedure doesn't exist for creating an  
13 Economic-Administrative Unit for purposes of the  
14 Contract.

15 (Interruption.)

16 Q. Can we just stick to my questions.

17 MR. PRAGER: Can we get her answer onto the  
18 record, please?

19 MR. ALEXANDROV: Well, I want to ask the  
20 question again, please, if I can.

21 Let's stick to my question.

22 BY MR. ALEXANDROV:

1           Q.    Is it correct that Cerro Verde never  
2 initiated the procedure to create an  
3 Economic-Administrative Unit, and, therefore, there  
4 was never an approval to create an  
5 Economic-Administrative Unit?

6                    Correct or not?

7           A.    It was not necessary.  It is correct,  
8 because it wasn't necessary.  Why?  Because for  
9 purposes of the Contract, it doesn't exist in the TUPA  
10 of the Ministry, which is the table where all the  
11 procedures to be followed are listed, it doesn't exist  
12 as a requirement that Cerro Verde form an  
13 Economic-Administrative Unit like the one detailed in  
14 Article 82, which is different from the one in  
15 Article 44.  It's for totally different purposes.

16                    When one reviews the TUPA of the Ministry,  
17 to receive a Stability Agreement the only requirements  
18 are to submit the list of Mining Concessions in which  
19 the investment is to be made and present the  
20 Feasibility Study, which is the minimal investment  
21 required to know whether it's a 10- or 15-year  
22 Contract at that time.

1           Q.    This was a long answer, so let's--one, is  
2 Cerro Verde never applied and never created an  
3 Economic-Administrative Unit. You confirmed that.

4                    Then you say, it wasn't necessary because  
5 Cerro Verde could conclude a Stabilization Agreement  
6 without having approved an Economic-Administrative  
7 Unit; correct?

8           A.    No. It is not correct, because I'm drawing  
9 a distinction. The General Mining Law speaks of two  
10 different types of Economic-Administrative Units. And  
11 Cerro Verde, at some point in the past, did have  
12 Economic-Administrative Units, as per Article 44, many  
13 years ago, that having nothing to do with this case.  
14 But, for the purposes of the stability agreements, it  
15 is said "for these purposes, one understands that  
16 "Economic-Administrative Unit" means those Concessions  
17 that are in the same production unit," or something  
18 like that--I don't remember the definition off the top  
19 of my head--that definition does exist, but there's no  
20 procedure established by the Ministry, and that is why  
21 I was saying, we had a de facto one, which was the one  
22 defined in Annex 1 to the Stability Agreement. No one

1 can define that EAU because there is no defined  
2 procedure in the TUPA. So, that one doesn't need a  
3 resolution--the other one under Article 44 does need a  
4 resolution, there's a procedure to follow, and it is  
5 established in the TUPA; but this one for the Contract  
6 is not.

7 Q. Do I understand you to be saying that  
8 Annex 1 to the Contract refers to an  
9 Economic-Administrative Unit?

10 A. Yes, or Production Unit or Mining Project,  
11 however you wish to define it, yes, as you wish to  
12 call it.

13 Q. So, Annex 1 includes the words  
14 "Economic-Administrative Unit," Annex 1 of the 1998  
15 Stabilization Agreement?

16 A. Not as "EAU"--, but for us--

17 (Interruption.)

18 PRESIDENT HANEFELD: We have to make the  
19 breaks, otherwise our Interpreters and Court Reporters  
20 are lost.

21 BY MR. ALEXANDROV:

22 Q. My question is on the record but I'll repeat

1 it.

2           So, is it your testimony that Annex 1 to the  
3 1998 Stabilization Agreement includes the words  
4 "Economic-Administrative Unit"?

5           A. Annex 1 does not include in our Contract the  
6 word "EAU," but, for us, in practice, it is an  
7 Economic-Administrative Unit, or a Production Unit, or  
8 a Mining Project. For us, it is understood as the  
9 same.

10           Q. Let's look at Tab 13, which is CE-12, which  
11 is the 1998 Stabilization Agreement.

12                   The English says Exhibit 1. The Spanish  
13 says "Anexo Uno."

14                   Is that what you're referring to?

15           A. Yes, that is correct.

16           Q. Well, let's read it. It says, with respect  
17 to the--I'll read it into the record in English. You  
18 can read it in Spanish.

19                   "With respect to the Mining Concession of  
20 Sociedad Minera Cerro Verde S.A., it is in the  
21 District of Uchumayo, Province and Department of  
22 Arequipa, name extension, Cerro Verde Number 1, 2,

1 and 3, Concession of Beneficiation, the Beneficiation  
2 Plant with the capacity of 33 thousand million per  
3 day, is located in the District of Uchumayo, Province  
4 and Department of Arequipa."

5 I don't see here--not only, I don't see here  
6 the words "Economic-Administrative Unit," I don't see  
7 the words "mining project," "production unit," or  
8 "mining unit." It just says where the Concessions are  
9 located, and where the Beneficiation Concession is  
10 located; isn't that correct?

11 A. Yes, that is correct, and that is what the  
12 TUPA of the Ministry of Energy and Mines  
13 requires--that is, the list of the Concessions where  
14 the stability will be applied.

15 MR. ALEXANDROV: Okay. I'm more or less in  
16 the middle.

17 Would you like me to take a break now, or I  
18 can continue?

19 PRESIDENT HANEFELD: I think it would be a  
20 good time for a break.

21 MR. ALEXANDROV: Thank you.

22 PRESIDENT HANEFELD: So, we have now the



1 15 minutes' break, and then we will continue.

2 MR. ALEXANDROV: Madam President, could you  
3 please instruct the Witness that she's sequestered?

4 THE WITNESS: I know.

5 PRESIDENT HANEFELD: Okay.

6 THE WITNESS: I know. Yeah, I have previous  
7 experience.

8 PRESIDENT HANEFELD: This was also my  
9 understanding. I will not repeat it to all Witnesses  
10 and Experts, but hope that Counsel have instructed the  
11 Witnesses properly. Thank you.

12 THE WITNESS: Thank you.

13 (Brief recess.)

14 PRESIDENT HANEFELD: Welcome back,  
15 Ms. Torreblanca.

16 Just for planning purposes, the Tribunal  
17 needs to have the lunch break at 10 minutes to 1:00.  
18 It may take a little bit longer than this one hour  
19 that we usually have, so that you just know for  
20 your--our questions.

21 And this will be the end for the morning,  
22 but then you can continue, certainly, afterwards.

1 MR. ALEXANDROV: Thank you, Madam President.  
2 I will stop, then, at a quarter of 1:00 p.m. And then  
3 I will resume whenever the Tribunal is back.

4 PRESIDENT HANEFELD: Perfect.

5 MR. ALEXANDROV: Thank you. And I think it  
6 was implicit in my statement that, unfortunately, I  
7 will not complete the cross-examination by quarter of  
8 1:00 p.m.

9 BY MR. ALEXANDROV:

10 Q. Okay. Welcome back.

11 So, we discussed your letter of, I think,  
12 June 3, 2003, to Ms. Chappuis asking about whether  
13 Cerro Verde qualifies for the Profit Reinvestment  
14 Program.

15 And then MINEM sends you a response on  
16 September 8, 2003, that is behind Tab 18, and it's  
17 Exhibit CE-399.

18 If you look at the first page, the reference  
19 number shows that this is a response to your June 3  
20 letter; correct?

21 A. Yes. Correct.

22 Q. I'm sorry. For the record, I misspoke. It

1 is July 3, 2003, your letter.

2 I said June, I think.

3 A. You're right. Yes. That is true. It is  
4 July 3, 2003, and it was received by the Ministry on  
5 July 7.

6 (Comments off microphone.)

7 BY MR. ALEXANDROV:

8 Q. I was wrong, but I corrected myself, thank  
9 you. Let's look at the response. It is--let's look at  
10 subject of the letter by MINEM. It says: "Requests  
11 opinion."

12 So, in response, they are giving you a legal  
13 opinion. If you look at the signatures, it is signed  
14 by two lawyers from MINEM, and then the General  
15 Director of Mining, Ms. Chappuis, says: "I've seen the  
16 Report. Found it suitable and in compliance with the  
17 law. Notify Cerro Verde."

18 So, she says send it to Cerro Verde because  
19 it's suitable and in compliance with the law.

20 Do you see that?

21 A. Yes.

22 Q. Okay. Did you review that Legal Opinion at

1 the time?

2 A. Yes.

3 Q. And we agree it's a Legal Opinion because,  
4 if you look at the first section of the Report on  
5 Page 1, it says that Cerro Verde, duly represented by  
6 you, Ms. Torreblanca, requests a Legal Opinion.

7 Do you see that?

8 A. Yes, correct.

9 Q. And they are providing in response to your  
10 letter a Legal Opinion; correct?

11 A. That's correct.

12 Q. Okay.

13 A. Yes.

14 Q. Now, let's look at how they characterize  
15 your inquiry.

16 You see Paragraph 1. They discuss the 1998  
17 Stabilization Agreement, and they say it is "for the  
18 Cerro Verde Leaching Project"

19 Do you see that?

20 A. I do read that.

21 Q. Okay. And then--so, that was Paragraph 1.

22 In Paragraph 2, the Legal Opinion

1 says: "The Company is developing a Feasibility Study  
2 for the Project for the exploitation of the Primary  
3 Sulfide for which it needs to clarify if the  
4 reinvestment of profits is applicable to this  
5 Project."

6 Do you see that?

7 A. Yes.

8 Q. So, focusing on the first paragraph, the  
9 Legal Opinion doesn't say "1998 Stabilization  
10 Agreement for the Cerro Verde mining unit," "mining  
11 project," "production unit."

12 It says "for the Cerro Verde Leaching  
13 Project"; correct?

14 Correct? And then you will explain if you  
15 wish, briefly.

16 A. It is correct, because our understanding  
17 that we all had in general, Cerro Verde and the  
18 Ministry, was that "Leaching Project," the title of  
19 the Contract covered the Concessions listed in  
20 Annex I, or "Production Unit," "EAU," or "Mining  
21 Project," and these Concessions are the Mining  
22 Concession "Cerro Verde 1, 2, 3" and the Beneficiation

1 Concession "Beneficiation Plant of Cerro Verde."

2 Q. Well, we know your view. We will see  
3 whether that's the Ministry's view.

4 But when you say the title to the Contract,  
5 the Contract is CE-12, which is behind Tab 13, again.  
6 And when I look at the title, it says something else,  
7 doesn't it?

8 It is on the first page. Tab 13, and if you  
9 look at Page 1. The title of the Contract is  
10 "Contract of Guarantees and Investment Promotion  
11 Measures"; isn't that right?

12 A. Yeah, you're right. In that sense, yes.  
13 Yes, but the Ministry always titled it "Leaching  
14 Project" to make a difference between it and the one  
15 of "Cerro Verde Project."

16 (Overlapping interpretation and speakers.)

17 (Stenographer clarification.)

18 Q. We will discuss later what the Ministry  
19 thought, whether the Ministry thought that was the  
20 title of the Contract, "Leaching Project," or whether  
21 that was the scope of the Contract, but right now  
22 we're focusing on this letter.

1           So, they described the Contract as the  
2 Contract "for the Cerro Verde Leaching Project," and  
3 then in Paragraph 2 they say the Company is developing  
4 a Feasibility Study for the Project for the  
5 exploitation of Primary Sulfide.

6           The Primary Sulfide is, again, the  
7 Concentrator Project; correct?

8           A.    Yes, correct.

9           Q.    And so, they say the Company is developing a  
10 Feasibility Study, which means the Feasibility Study  
11 is not ready; correct?

12          A.    That's correct.

13          Q.    And, in fact, it's important for the  
14 Feasibility Study, to determine whether the Project is  
15 feasible, to know whether you can reinvest part of the  
16 profits from the Leaching Project tax-free; correct?

17          A.    That's correct.

18          Q.    Okay. Then let's look at the next section  
19 of this Legal Opinion. The rubric is "the applicable  
20 law." And if you look at Item 2, that deals with  
21 Article 10 of the Regulations.

22                And the Legal Opinion here says that this

1 benefit of investing the nondistributed income will be  
2 applied in the execution of new Investment Programs;  
3 correct?

4 A. That's correct: "that increases the levels  
5 of production in the involved Mining Units."

6 In this case, you were asking a moment ago  
7 if Mining Unit was mentioned in the law.

8 Yes, it is mentioned in the law, which I now  
9 recall, for example, in Supreme Decree 024-93. So,  
10 "that increases the levels of production in the  
11 involved Mining Units," and, in the case of Cerro  
12 Verde, these were the Concessions listed in the  
13 Contract; right?

14 Q. So, the Ministry considered that a new  
15 Investment Program; correct? The Concentrator Project  
16 was considered by the Ministry a new Investment  
17 Program?

18 A. Yes, to be developed in the same Mining Unit  
19 that was generating the income that was going to be  
20 redistributed.

21 Q. We'll come to that. So, I understood your  
22 answer to mean that, because this new program is



1 developed in the involved mining units, that means  
2 it's covered by the 1998 Stabilization Agreement.

3 Is that your understanding?

4 A. Yes, that's correct.

5 Q. So, the Legal Opinion refers to "mining  
6 units" in plural.

7 How many mining units were there in  
8 Concession "1, 2, 3" and the Beneficiation Concession?

9 A. Just the one, but Cerro Verde--

10 (Overlapping interpretation and speakers.)

11 (Stenographer clarification.)

12 Q. You didn't make a pause. Start your answer  
13 again.

14 A. At that point in time, Cerro Verde only had  
15 one single Mining Unit, but we could have started,  
16 initiated, or purchased other Mining Units in the  
17 northern part of country, in the jungle, in the  
18 southern part of country, and in that case, we  
19 wouldn't have been able to reinvest the profits in the  
20 other Mining Units that weren't covered under the  
21 Contract.

22 Q. So, the Ministry, in your view, is saying

1 here you can reinvest in the new program in this  
2 mining unit or in any other mining unit that you may  
3 acquire in the future; correct?

4 A. No. The Ministry is saying that we have  
5 access to the reinvestment of profits under the  
6 Stability Agreement in force, and thus we can reinvest  
7 the profits of that Mining Unit described in the  
8 Contract in new infrastructure so long as it is in the  
9 "involved Mining Unit," the one described in the  
10 Contract.

11 Q. The mining unit that you testified was  
12 described in Annex 1 of the Stabilization Agreement;  
13 correct?

14 A. Yes, that's correct.

15 Q. Correct?

16 A. Yes, that's correct.

17 Q. This is not in your binder, so maybe we can  
18 put it on the screen. It's the Regulation, Supreme  
19 Decree 024-93, which is Exhibit CA-0432.

20 Article 10. I will pause until everybody  
21 has it.

22 A. I have a problem, because I left my glasses,

1 but can I approach the screen to read?

2 Q. We can give you a copy. I'm sorry,  
3 Ms. Torreblanca.

4 A. I left them at my room.

5 Q. We cannot give you your glasses, but we'll  
6 give you a hard copy.

7 A. Thank you.

8 Q. And I'm looking at Article 10. And look at  
9 the second paragraph of Article 10.

10 MR. ALEXANDROV: We are distributing hard  
11 copies for the Members of the Tribunal. Apologies  
12 that this is not in the binder.

13 BY MR. ALEXANDROV:

14 Q. The second paragraph reads, in  
15 English: "Nondistributed income shall be applied to  
16 the execution of new investment programs that  
17 guarantee the increase of production levels in the  
18 relevant mining units."

19 Do you see that?

20 Ms. Torreblanca, do you see that?

21 A. I do.

22 Q. Is it the case that the Legal Opinion here

1 is simply repeating the language of Article 10?

2 A. Yes, that's correct.

3 Q. So, let us look at the conclusion, which is  
4 on Page 2 of the PDF, Paragraph 1.

5 It says in English--and you will read it in  
6 Spanish, of course--"The Project for the Primary  
7 Sulfide Exploitation"--again, that is the Concentrator  
8 Plant--"could be eligible for this benefit"--"this  
9 benefit" is the Profit Reinvestment Program--"there  
10 being no requirement that the Agreement giving rise to  
11 the benefit should have previously contemplated it as  
12 a project."

13 So, the Ministry is saying here you can  
14 reinvest the profits into this new investment program,  
15 which is the Concentrator Plant. There is no  
16 requirement that the Concentrator Plant be covered by  
17 the Stabilization Agreement as a project; correct?

18 A. What the Ministry is saying is that, indeed,  
19 since it's not a requirement for the Agreement to have  
20 "contemplated it as a project," as the initial  
21 investment that gives right to the Contract, yes,  
22 that's correct.

1           Q.    So, what the Ministry seems to be saying  
2 here, it doesn't have to be covered by the Contract.  
3 It doesn't have to be contemplated as a project by the  
4 1998 Stabilization Agreement. Its understanding is  
5 that it is not contemplated as a project in the 1998  
6 Stabilization Agreement; correct?

7           A.    What it's saying is, indeed, that it is not  
8 part of the initial investment that gave rise to the  
9 Stabilization Agreement at that time, and what the  
10 provision is saying is that there's no need for it to  
11 have been previously contemplated as a project at that  
12 time. That is why it's an initial investment, and  
13 that is why it's thereafter a new investment that is  
14 done later on in the same Mining Unit.

15          Q.    Right. So, the Concentrator Project is not  
16 contemplated as a project in the 1998 Stabilization  
17 Agreement; correct?

18          A.    It was included in the Feasibility Study,  
19 yes, because we all knew that the Concentrator had to  
20 be built, but it wasn't defined as such. That was why  
21 we went to the Ministry, because before completing the  
22 Feasibility Study, we also needed to know what

1 happened--we looked at the letter a moment ago--we had  
2 to know if it was not circumscribed to the Mining Unit  
3 or the Concessions that were covered by the Contract,  
4 because we were still completing the Feasibility  
5 Study.

6           What would happen if the Concentrator,  
7 instead of being within the Mining Concession, it was  
8 to be located elsewhere, or it was going to be a  
9 little further out? That is why we needed that  
10 information.

11           Q. Well, Ms. Torreblanca, we went through your  
12 understanding of what the Feasibility Study does. We  
13 are focusing now on what the Ministry says; right?

14           So, the Ministry says, essentially, the  
15 Concentrator Project is not contemplated as a project  
16 in the 1998 Stabilization Agreement; isn't that  
17 correct?

18           A. Correct, as the initial investment that was  
19 described in the Feasibility Study originally, but we  
20 all knew that, no matter what, that Concentrator had  
21 to be built.

22           Q. But the Ministry doesn't say that when the

1 1998 Stabilization Agreement was signed, it was known  
2 that you had to build a Concentrator Project.

3           The Ministry doesn't say that, does it?

4           A.    It doesn't need to say so.  It is a  
5 commitment in the Privatization Contract for Cerro  
6 Verde.

7           Q.    In fact, again, you could not assess  
8 properly--you, Cerro Verde--could not assess properly  
9 the feasibility of building a Concentrator Project  
10 without knowing whether you qualified for the Profit  
11 Reinvest Program; correct?

12          A.    It is correct, because it was a key element  
13 that helped the economic assessment of the feasibility  
14 of the expansion.

15          Q.    Can we look at Tab 19, CE-395?

16                Again, that's the letter that you--the  
17 second letter that you sent to MINEM inquiring about  
18 the Profit Reinvestment Program.  The date is July 8.

19                Do you see that?

20          A.    I do.

21          Q.    And if you look at the third paragraph of  
22 the first page, you are asking that the Ministry

1 confirm certain aspects of the most important features  
2 of the profit reinvestment system that is applicable  
3 to Cerro Verde.

4 Do you see that?

5 A. I do.

6 Q. And then, at the bottom of the first page  
7 and the beginning of Page 2, you are developing the  
8 question. You are saying--you are asking whether the  
9 program applies. You see at the bottom of the page.

10 I will read it in Spanish: "To the extent that all of  
11 the profits that SMCV has deducted."

12 Do you see that?

13 A. Yes, correct. I see that.

14 Q. And then in the end, you say: "In other  
15 words, according to the provisions of the law, Cerro  
16 Verde would not have to pay Income Tax, interest, and  
17 penalties on the Net Revenue profits that had been  
18 deducted and that we are not in the end--and that were  
19 not in the end applied to the Investment Program."

20 Do you see that?

21 A. I do see that, yes.

22 Q. So, this is your question.



1           And then if you look at the fourth query of  
2 the letter--it's on Page 2. Give me a second to find  
3 the Spanish.

4           It's the second-to-last paragraph that  
5 begins with "finally"--or, actually, this--well, the  
6 paragraph that begins with "finally." I don't seem to  
7 be able to count the paragraphs, but do you see that?

8           A. I have found it.

9           Q. You say--you explain why the benefit exists  
10 for your company, because it was stabilized before it  
11 was repealed; correct?

12          A. Yes.

13          Q. And you say the fact that it was repealed,  
14 the benefit was repealed, but that's not applicable to  
15 our company because it was stabilized before it was  
16 repealed; correct?

17          A. Can you repeat that? I don't understand the  
18 question.

19          Q. Well, there was a benefit to reinvest part  
20 of the undistributed profits tax-free. That benefit  
21 was part of the Stabilized Regime under the '98  
22 Stabilization Agreement. The benefit was later

1 repealed, but that does not apply to Cerro Verde,  
2 because that benefit was already stabilized.

3 A. That's correct.

4 Q. Okay. And you say "to our  
5 company"; correct?

6 A. That's correct.

7 Q. Okay. Let's look at the response. Tab 20,  
8 CE-398.

9 So, again, please look at the first page  
10 just to make sure this is a response to your letter of  
11 July 8. We know that from the reference number.

12 Do you see that?

13 A. That's correct.

14 Q. Okay. So, this is, again, a Legal Opinion  
15 prepared by the lawyers at the General Directorate of  
16 Mines, if you look at the last page. And, again,  
17 Ms. Chappuis, the General Director of Mines, reviews  
18 and finds it in conformity with the law and suitable,  
19 and approves that this Legal Opinion be sent to Cerro  
20 Verde; correct?

21 A. That's correct.

22 Q. Okay. Let us look at Paragraph 4 of this

1 letter.

2 Remember, you asked whether the benefit  
3 applies to the Company, and the response by MINEM is  
4 that: "The application of the stabilized regime is  
5 granted to the Cerro Verde Leaching Project and not to  
6 the Company."

7 Do you see that?

8 A. Yes.

9 Q. So, how could you understand this to mean  
10 that the Stabilized Regime is granted to Cerro Verde,  
11 the Company, as a whole or to the mining unit or to  
12 the mining project or to the production unit?

13 It says here very clearly: "The application  
14 of the Stabilized Regime is granted to the Cerro Verde  
15 Leaching Project and not to the Company."

16 A. As I explained before, the "Leaching  
17 Project" is defined by the Concessions listed in  
18 Annex I of the Stability Agreement, and Cerro Verde  
19 could have a Production Unit or other operational  
20 concessions in the northern part of the country, in  
21 the eastern part of the country, or elsewhere.

22 So, what the Ministry is saying is Cerro

1 Verde has the right to reinvest profits because of its  
2 current production in the "Leaching Project" included  
3 in the Mining Concession "Cerro Verde 1, 2, and 3" and  
4 the Cerro Verde Beneficiation Plant, but it's not  
5 going to be able to reinvest these profits in another  
6 Production Unit that is not defined in the  
7 Stabilization Agreement. That is what they are  
8 wanting to say, basically.

9           If Cerro Verde had bought Tintaya, like we  
10 said last time, or had bought a project in the  
11 northern part of the country, in the jungle, it  
12 wouldn't be able to reinvest the profits in those  
13 other production units that are geographically  
14 separate from the one from which the profits were  
15 being reinvested.

16           The key for reinvestment is to reinvest the  
17 profits of the Mining Unit in the same Mining Unit,  
18 and the Concentrator was going to be in that same  
19 Mining Unit.

20           Q. With all due respect--basically, this is not  
21 what the Ministry is saying.

22           Let's look at the text again. It

1 says: "The Stabilized Regime"--which in this case  
2 means the benefit to not pay tax on part of the  
3 profits--applies "to the Cerro Verde Leaching Project  
4 and not to the Company," which means you can reinvest  
5 the profits from the--or part of them--from the  
6 Leaching Project without paying tax and not from  
7 anything else; isn't that right?

8 A. That is what I'm saying, precisely. If  
9 Cerro Verde had other concessions in the northern part  
10 of country, in the center of the country, elsewhere,  
11 it could not reinvest in those. You and I are saying  
12 the same thing.

13 Q. I don't think so. I think we are not at all  
14 saying the same thing. It says "the Stabilized Regime  
15 is granted to the Cerro Verde Leaching Project."  
16 Let's think of it this way.

17 Your understanding is that is there is a  
18 mining unit, even though the Stabilization Agreement,  
19 as we established in Annex I, doesn't talk about  
20 "mining unit," "production unit," or "mining project,"  
21 and even though you didn't have an  
22 Economic-Administrative Unit. We understand your view

1 on that. Actually, the annex talks about the  
2 Concessions and their geographical location. We had  
3 that debate; I don't want to go back to it.

4 My question is this: If there was another  
5 project within those Concessions other than the  
6 Leaching Project, which generated profits, you  
7 understand this Ministry's statement, the Legal  
8 Opinion, to say: "The Stabilized Regime is granted to  
9 the Cerro Verde Leaching Project and whatever other  
10 projects there may be on these Concessions that  
11 generate revenue."

12 Is that your understanding?

13 (Comments off microphone.)

14 A. I don't understand. Could you please repeat  
15 your question?

16 Q. Well, I will try to rephrase it.

17 The Ministry is saying "the Stabilized  
18 Regime is granted to the Cerro Verde Leaching Project  
19 and not to the Company." It's granted to the "Cerro  
20 Verde Leaching Project" only, which means that only  
21 the Nondistributed Profits from the "Leaching Project"  
22 can be reinvested tax-free.

1           If there was another project in those  
2 Concessions, it would not be stabilized, and its  
3 profits would not be reinvested tax-free into a new  
4 Investment Program; isn't that correct?

5           A.    No.   For us, the reinvestment that was  
6 approved was precisely for the Concessions in the  
7 Contract.  Those Concessions, Mining Concession "Cerro  
8 Verde 1, 2, 3," and the "Cerro Verde Beneficiation  
9 Plant," the first one allows us to mine the ore  
10 without any kind of limitation.

11           What does this mean?  When I get the title  
12 for the Mining Concession, I'm not being told that I  
13 can only use that ore to hold it under the leaching  
14 technology.  So, what the Stabilization Agreement is  
15 giving us is stability for all of the investments that  
16 are made in the Mining Concession "Cerro Verde 1, 2,  
17 3" and the "Cerro Verde Beneficiation Plant."

18           So, when the Ministry says, "Okay, watch  
19 out; I'm authorizing you the reinvestment of the  
20 'Leaching Plant'," understood as these Concessions  
21 because that is how it is defined in the Contract, the  
22 profits generated by these Concessions may be

1 reinvested without any problem. But if you had  
2 another Production Unit or other Concessions--because  
3 Cerro Verde had a number of Concessions that were not  
4 "Cerro Verde 1, 2, 3," we had more than 100  
5 Concessions apart from "Cerro Verde 1, 2, 3"--that  
6 become operational, well, those you will not be able  
7 to reinvest. That is what they're saying.

8           It is not talking about project, and maybe  
9 it is important to make a difference--

10           MR. ALEXANDROV: Madam President, this is  
11 going well beyond my question. She can clarify that  
12 on redirect. I want to come back to the language, if  
13 I can.

14           A.    Mm-hmm.

15           BY MR. ALEXANDROV:

16           Q.    Ms. Torreblanca, if what you're saying were  
17 correct, then the Ministry would have said the  
18 Stabilized Regime is granted to Cerro Verde's  
19 Concessions 1, 2, 3 and the Beneficiation Concession.

20                   But it did not say that in the letter. It  
21 says it's "granted to the Cerro Verde Leaching  
22 Project."



1           A.    In the understanding that this "Leaching  
2 Project" is formed by the Mining Concession "Cerro  
3 Verde 1, 2, 3" and the Beneficiation Concession  
4 "Beneficiation Plant of Cerro Verde," which was the  
5 only one that was generating profits for Cerro Verde.  
6 There was no other Concession that was operational.

7                    But if we had requested a new Beneficiation  
8 Concession outside of the Production Unit that we had,  
9 that would not apply, as the Ministry is saying.

10           Q.    And if you had developed another project in  
11 those three Concessions, do you read that language  
12 that the Stabilized Regime is "granted to the Cerro  
13 Verde Leaching Project" to mean that it would apply to  
14 any other project that existed in those three  
15 concessions?

16                    (Overlapping interpretation and speakers.)

17           A.    Cerro Verde only has one Mining Concession  
18 from the time of Minero Perú to date that is being  
19 mined. That is where all the ore comes from. It is  
20 called "Mining Concession Cerro Verde Number 1,  
21 Number 2, and Number 3." That is the title of the  
22 Mining Concession. It is not that it has three

1 Concessions. It has one Mining Concession where all  
2 the mineral comes from, the primary and secondary  
3 sulfides come from, all the oxides come from. And it  
4 also has only one beneficiation concession, which is  
5 called "Beneficiation Plant of Cerro Verde," which  
6 from the time of Minero Perú includes leaching and  
7 flotation or the Concentrator. Because we did have a  
8 concentrator back then.

9           So, when they say to us that the benefit is  
10 only to the "Leaching Project," with capital letters,  
11 which is, as the Contract defines, the Concessions  
12 that I just described, it is saying: "okay, it applies  
13 to these concessions."

14           But if you start mining Tiabaya 101, that we  
15 have or had at one time, which was a mining  
16 concession, and from Tiabaya 101 you extract ore and  
17 you sell it, and that creates profits, those profits  
18 cannot be applied because that concession, Tiabaya  
19 101, is not included in Annex I of the Stability  
20 Agreement and that the Ministry qualifies here as  
21 "Leaching Project."

22           Q. I understand your answer. It was a long

1 answer, so let's take it step by step.

2 First step, which I think is easy, is you  
3 agree that the Stabilized Regime does not apply to the  
4 Company as a whole; correct?

5 A. Yes and no, because the reinvestment of  
6 profits came with an obligation to capitalize the  
7 profits and not to approve a reduction. It does apply  
8 to the Company, but it does not apply to all of the  
9 production units of the Company and all of the Mining  
10 Concessions that the Company may have. It only  
11 applies to those covered under the Stability  
12 Agreement, which in this case are listed in Annex I,  
13 namely, "Cerro Verde 1, 2, 3" and "Cerro Verde  
14 Beneficiation Plant."

15 Q. Right. So, again, step 1, the Stabilized  
16 Regime under the 1998 Stabilization Agreement does not  
17 apply to the Company as a whole. I think this is very  
18 clear from the language. It is more limited than  
19 that.

20 A. Yes and no. Yes and no, I know it's hard.

21 (Overlapping interpretation and speakers.)

22 Q. What is the "no"? You say, yes, it doesn't

1 apply to the whole Company, because the Company may  
2 have other mining units. It doesn't apply to the  
3 whole company. What is the "no"? It applies to the  
4 whole company?

5 A. What happens is that there are accounting  
6 regulations that after the reinvestment of profits is  
7 made obligate the Company to capitalize those  
8 investments, and there is a prohibition for the  
9 Company to deduct those afterwards, to reduce its  
10 capital for four years. So, that is the reason why I  
11 say this.

12 Additionally, Clause 9 of the Contract, if  
13 memory serves, shows a number of guarantees that are  
14 offered to the Mining Titleholder. That's why I'm  
15 saying yes and no.

16 In this particular case, yes, Cerro Verde,  
17 well, if it had another operational mining concession,  
18 this would not apply to it.

19 Q. Okay. We agree on that.

20 So, the next step is, you said, well, at the  
21 time there was only the Leaching Project in those  
22 concessions, the Concession "1, 2, 3," and the

1 Beneficiation Concession.

2           You said "if we had other mining units  
3 somewhere else, this would not apply," and I'm asking  
4 you if you had another project in those concessions  
5 defined, as you say, in Annex I? If you had another  
6 project other than the Leaching Project generating  
7 revenue, would the Stabilized Regime, in your  
8 understanding, apply to that other revenue-generating  
9 project?

10           A. That's why it's important to draw the  
11 distinction on the word "project" that you're using.

12           May I draw that distinction, please?

13           Q. Please first say "yes" or "no," and then you  
14 can make the difference.

15           A. So, it would be "no." Well, your question  
16 is, if there was another project. It would depend on  
17 what project one is talking about. There was no other  
18 Mining Project. There was no other Mining Unit.

19 There were constantly investment projects which we  
20 would develop. Why? Because in order to continue  
21 exploiting the mine rationally, or the Mining  
22 Concession, Cerro Verde has made investment projects

1 from the day it was privatized going forward, and  
2 Minero Perú also did so before.

3           Why? Because when you are mining a mining  
4 concession, what happens? Well, you find material  
5 that is much harder or that has more or less copper.  
6 So, you need to make specific investments. Sometimes  
7 we need to build additional crushing facilities which  
8 were never in the initial investment that was set out,  
9 or we had to switch technology, and even to leach we  
10 would use a different type of technology without  
11 crushing the material, or we would add infrastructure  
12 in the existing plants we had.

13           (Overlapping interpretation and speakers.)

14           Q. I have to interrupt you again.

15           A. Those are investment projects.

16           Q. I have to interrupt you again. I understand  
17 your answer. Let me rephrase the question, because we  
18 are going beyond the question.

19           A. Okay.

20           Q. Let me rephrase the question. You're saying  
21 if it's a mining project, it depends on what the  
22 project is. So, let me rephrase the question to give

1 you a specific example.

2           If you had in that area that you say is  
3 defined in Annex I the Leaching Project, which we know  
4 is stabilized by the 1998 Stabilization Agreement, and  
5 let's say, a small concentrator plant, and then you  
6 want to build a second concentrator plant and use the  
7 proceeds or part of the retained earnings tax free.  
8 When the Ministry is telling you the "Stabilized  
9 Regime is granted to the Cerro Verde Leaching  
10 Project," do you understand this to mean that you  
11 could also reinvest the proceeds from that small  
12 concentrator plant into the new program, the bigger  
13 Concentrator Plant?

14           A.    If that smaller Concentrator was, as it was,  
15 included in the Beneficiation Concession guaranteed  
16 for Cerro Verde, then, yes, it was authorized.

17           Q.    So, you read those words to mean, "the  
18 Stabilized Regime is granted to the Cerro Verde  
19 Leaching Project" and any other projects that may  
20 exist in those concessions; correct?

21           A.    That is why, once again, projects that are  
22 part of the same Production Unit and which obviously

1 are authorized by the Ministry of Energy and Mines.  
2 Every time that we would build new infrastructure, we  
3 had to go to the Ministry for it to authorize us to  
4 include it in our "Cerro Verde Beneficiation Plant."  
5 So, if the Ministry authorized placing a concentrator,  
6 large or small, automatically it was included in the  
7 "Leaching Project" formed by these concessions that  
8 we've already mentioned.

9 ARBITRATOR TAWIL: Sorry, can I make a  
10 question?

11 MR. ALEXANDROV: Of course.

12 ARBITRATOR TAWIL: You're talking about a  
13 small concentrator, the one that Minero [Peru] had.  
14 Was it operational or was it just a test to see if it  
15 could be built?

16 (Overlapping interpretation and speakers.)

17 A. It was operational for many years. At the  
18 time when the application for reinvestment of profit  
19 was filed, it was closed, and we were in the process  
20 of moving the tailings to another place.

21 Q. So, going back to your earlier answer, you  
22 read this Legal Opinion to say the "Stabilization



1 Regime is granted to the Cerro Verde Leaching Project"  
2 and any other mining projects within the same mining  
3 unit; correct?

4 A. So long as they had the authorization of the  
5 Ministry, yes.

6 Q. It doesn't say that, does it?

7 A. It is not necessary because you cannot carry  
8 out mining activity without authorization. Mining is  
9 highly regulated in Perú, so every time we would  
10 expand output a little bit, then we had to turn to the  
11 Ministry for them to authorize us to make that change  
12 in output or expansion of the area or to incorporate  
13 infrastructure that wasn't originally contemplated in  
14 the Beneficiation Concession.

15 So, it's understood.

16 Q. You know, I assume, that Ms. Chappuis  
17 testified that she herself--

18 A. Can I hear this? No information has been  
19 shared with me about what she testified. I don't know  
20 what she has testified.

21 Q. You have not read her Witness Statement?

22 A. No.

1 Q. Okay. Then I'll show you. Look at Tab 5 of  
2 your binder. It is CE-1135, that is the Transcript of  
3 Cerro Verde Hearing, Day 3, at 824 in English, in  
4 Spanish at 816.

5 A. Which page?

6 Q. English, 824; Spanish, 816.

7 A. Where it says here at the end of the  
8 presentation where her signature is?

9 Q. Well, it begins with--give me a second to  
10 check the Spanish because I have the English. I will  
11 read in English the excerpt from the Transcript. If  
12 you want to look at the English, it is Page 824.

13 May I read it? Let me know when you're  
14 ready?

15 A. Only one second. Okay. 824.

16 Q. Yes. Line 21.

17 A. "You have said."

18 Q. "You have said in paragraph"--that is me  
19 speaking, asking questions of Ms. Chappuis. "You have  
20 said in Paragraph 42 of your Witness Statement: 'In  
21 hindsight, this language was not entirely clear.'"

22 I was asking her about the same paragraph

1 that we just discussed, Paragraph 4 of her letter.

2 I continue then: "You, yourself, have said  
3 it's not entirely clear, and I'm asking you, when you  
4 look at it with the benefit of hindsight, what would  
5 you have said to make it clearer?"

6 And she says: "I would not have capitalized  
7 'Stabilized Regime,' and I would put quotes around  
8 'Cerro Verde Leaching Project.'"

9 MR. PRAGER: Madam President, I think you  
10 were referring there to a different document. Can you  
11 establish that your question went to the same  
12 document?

13 MR. ALEXANDROV: Well, not to waste time  
14 going through the Transcript, I'll continue and return  
15 to that after the break and address that objection, if  
16 that's okay with Counsel.

17 MR. PRAGER: Yes. It was a request for  
18 clarification.

19 MR. ALEXANDROV: I'll provide that after the  
20 break to avoid now going through the Transcript.

21 BY MR. ALEXANDROV:

22 Q. So, can we look now--I'll come back to that

1 because Counsel is asking me to go back and establish  
2 what document this was.

3 Let's go to Tab 21. It is CE-421. And that  
4 is the application. Cerro Verde's application for the  
5 benefit of the Profit Reinvestment Program.

6 Do we agree?

7 A. Yes, that's right.

8 Q. Okay. So, just to recap, you sent two  
9 inquiries to MINEM asking, "do we qualify?" MINEM is  
10 responding, yes, you do, and to avoid a discussion, I  
11 will just read again Paragraph 4, what they are  
12 saying: "The application of the Stabilized Regime is  
13 granted to the Cerro Verde Leaching Project and not  
14 the Company." And based on those responses, you now  
15 apply to take advantage of the Profit Reinvestment  
16 Program; correct?

17 A. Yes. Based on the responses--yes, based on  
18 the responses from 2003 with the Feasibility Study  
19 further along, we asked that we be--that we are  
20 granted approval for the Profit Reinvestment  
21 Mechanism. And it is not a permanent benefit, it is  
22 just temporary, and it allows us to expand the

1 operations, generate more work, and therefore pay much  
2 more in taxes. And that's what we were also  
3 expressing to the Ministry.

4 Q. Can you confirm that you signed that letter?

5 A. Yes.

6 Q. Can we look at the first page? Just above  
7 the rubric "in light of the foregoing," which in  
8 Spanish is "por lo expuesto." I want to focus at the  
9 end of the paragraph above that, which shows what  
10 you're requesting.

11 A. Yes.

12 Q. It says: "We are requesting you to approve  
13 the Investment Program funded with Retained Earnings  
14 to be obtained in 2004 and subsequent years, to be  
15 carried out in the Cerro Verde Primary Sulfide  
16 Project"; correct?

17 A. We are asking for approval of the benefit or  
18 the mechanism of reinvestment with the profits of  
19 those years to finance the Concentrator Project, yes.

20 Q. Okay. And then there is no discussion in  
21 this application of the scope of the 1998  
22 Stabilization Agreement; correct?

1           A.    In the application?  Not that I recall, but  
2 I'd have to take a look at the exhibit.

3           Q.    I will represent that there isn't.

4           A.    Umm-hmm.

5           Q.    Let us look now at the Resolution in which  
6 the Ministry approves your application.  It is Tab 22,  
7 Exhibit CE-23.

8           A.    Excuse me.  Could we go back to your  
9 previous question, and could you repeat it, please?

10          Q.    In the application, Cerro Verde is not  
11 discussing the scope of the 1998 Stabilization  
12 Agreement; correct?

13          A.    Yes, that's correct.  That is correct.  
14 Thank you.

15          Q.    So, let's look at Tab 22, CE-23, which is  
16 the resolution with which the Ministry approves your  
17 application.  Can we start with the first paragraph?  
18 In this paragraph, the Ministry is essentially  
19 repeating or restating your request; correct?

20          A.    Yes, that's right.

21          Q.    Can we go to the third and fourth paragraph?  
22                So, there is a rubric "considerando" on

1 Page 1.

2 Do you see that? Ms. Torreblanca, do you  
3 see the word "considerando"?

4 A. Yes.

5 (Overlapping interpretation and speakers.)

6 Q. And there, four, does that begin with "que"?

7 A. Yes, there's four.

8 Q. So, the second "recital" mentions the  
9 Stabilization Agreement.

10 Do you see the second paragraph that begins  
11 with "que"?

12 A. Yes.

13 Q. It mentions the Stabilization Agreement and  
14 indicates that the profits to be reinvested come from  
15 the Leaching Project; correct?

16 A. Yes. In capital letters, thus defining the  
17 Concessions that are in the Agreement, yes.

18 Q. Okay. And then the third "recital," the  
19 third "que," says that the program complies with the  
20 requirements; correct?

21 A. Yes, that's right.

22 MR. PRAGER: Just in the Transcript the

1 answer was not fully transcribed. It says  
2 "inaudible." That's to the question.

3 (Comments off microphone.)

4 MR. PRAGER: "Mentions the Stability  
5 Agreement and indicates that the profits to be  
6 reinvested come from the Leaching Project; right?"

7 And the answer is: "Yes, in capital letters  
8 defining the..." and it says "inaudible." Perhaps you  
9 can repeat that question.

10 MR. ALEXANDROV: I think you can take--

11 (Interruption.)

12 MR. PRAGER: I was pointing out that the  
13 answer was not transcribed to the English question,  
14 "It mentions the Stabilization Agreement, and it  
15 indicates that the profits to be reinvested come from  
16 the Leaching Project; correct?"

17 And then the answer says, in Spanish, "Yes,  
18 in capital letters defining the"--and it says  
19 "inaudible"

20 (Interruption.)

21 MR. PRAGER: --"that are in the Contract as  
22 well."



1 I will say it in English. The answer  
2 says--now I lost it. The answer says that part of the  
3 answer was inaudible.

4 MR. ALEXANDROV: Madam President, may I  
5 address that?

6 PRESIDENT HANEFELD: Yes, please.

7 MR. ALEXANDROV: The English Transcript is  
8 fine, and if Counsel wants to clarify an answer, there  
9 is a redirect for that. I would like to move on  
10 without interruptions.

11 PRESIDENT HANEFELD: Mr. Prager, is the  
12 English Transcript fine indeed?

13 MR. PRAGER: Yes. The English is fine.  
14 Apologies. I was focusing on the Spanish original.

15 PRESIDENT HANEFELD: Okay. Then we can  
16 proceed on the basis of the English Transcript.

17 MR. ALEXANDROV: Okay.

18 BY MR. ALEXANDROV:

19 Q. So, let's look at the end, on Page 2, which  
20 is the actual resolution, two articles. The rubric  
21 "it is resolved," or, in Spanish--apologies to the  
22 Court Reporters--"se resuelve."

1           And let's look at Article 1. It approves  
2 the Investment Program in the amount of \$800 million  
3 for a period of implementation from October 2004 to  
4 February 2007.

5           Just to clarify, Ms. Torreblanca, that is  
6 the Concentrator Project; correct?

7           A. That's correct.

8           Q. And then it continues, "funded with retained  
9 earnings from the same financial years, which must be  
10 exclusively generated by the 'Cerro Verde Leaching  
11 Project.'"

12           Do you see that?

13           A. Yes.

14           Q. So, it doesn't say "the Cerro Verde mining  
15 unit." It doesn't say "the Cerro Verde concessions"  
16 as defined in Annex I of the Stabilization Agreement.  
17 It says "generated by the 'Cerro Verde Leaching  
18 Project'," and there is the word "exclusively."

19           When you read this, was there any question  
20 in your mind that the Ministry might mean that only  
21 the profits generated by the Leaching Project are  
22 eligible to be reinvested in the Concentrator Plant?

1           A.    No.  Because, for us, the "Leaching  
2 Project," as was understood also by the Ministry of  
3 Economy and Finance and the Ministry of Energy and  
4 Mines, included the concessions listed in the Contract  
5 and it gave them stability, and it was logical that  
6 they would tell us that we could only reinvest those  
7 profits because those are the ones that were at that  
8 time producing revenues or profits for Cerro Verde.

9                    So, it was the Mining Concession "Cerro  
10 Verde 1, 2, 3," that was generating profits, and the  
11 "Cerro Verde Beneficiation Plant," that form--that are  
12 in Annex I and are also part of the Contract.

13                   This referred to the Production Unit, not to  
14 the technology, because there are different  
15 technologies, different techniques that one could  
16 apply, and we only had a right to this reinvestment of  
17 profits by virtue of this contract, otherwise it  
18 wouldn't have been approved, it didn't exist for any  
19 mining titleholder.

20           Q.    Well, we understand your view.  You've said  
21 it many times, that when you see "the Leaching  
22 Project," you understand the mining unit, the

1 production unit, the mining project. We understand  
2 your view.

3 My question is somewhat different.

4 When you read this language, which says  
5 those retained earnings must be "exclusively generated  
6 by the 'Cerro Verde Leaching Project'," were you so  
7 certain that the Ministry meant the mining unit that  
8 you didn't even go and ask for a clarification?

9 A. That's right. We could have appealed. We  
10 could have asked. We could have sent some express  
11 request. We did not do so. For us, it was just as we  
12 anticipated it would be.

13 Q. So, you understand "the Cerro Verde Leaching  
14 Project" to be a reference to all earnings from  
15 the--what you call the "mining unit"; right?

16 A. Yes.

17 Q. And you understand the word "exclusively" to  
18 mean this mining unit and not other mining units;  
19 correct?

20 A. That is correct.

21 Q. What other mining units were there at the  
22 time?

1           A.    Of Cerro Verde?

2           Q.    Yes.

3           A.    We didn't have any other Mining Unit, but we  
4 did have many other concessions that we also had that  
5 were close to our Production Unit, but--

6           Q.    Before "pero," if I can ask you for a  
7 clarification.  You didn't have other mining units.  
8 You understood the reference to the "Cerro Verde  
9 Leaching Project" as a reference to the mining unit  
10 defined, as you say, in the '98 Stabilization  
11 Agreement.

12                    Why would MINEM use the word "exclusively"  
13 if at the time Cerro Verde did not have any other  
14 mining units?

15           A.    Because at that time in the mining industry,  
16 there were different offers of concessions or Mining  
17 Projects.  Cerro Verde could have purchased another  
18 Production Unit.  For example, it could have bought  
19 Barrick, let's say the Pierina Mining Unit, to cite  
20 one example, and if Pierina generated profits, we were  
21 not going to be able to reinvest them if they didn't  
22 have a Stability Agreement that had stabilized that

1 benefit. That's why they made the differentiation.

2 As a way of saying: if you develop tomorrow,  
3 later on, another mining unit--

4 (Interruption.)

5 Q. I understand. Other future mining units. I  
6 understand your answer. But I have two difficulties  
7 with that answer. One is we have here a time period,  
8 fixed time period, October 2004 to February 2007.

9 So, your testimony is the Ministry meant by  
10 using the word "exclusively" that, if Cerro Verde  
11 acquires other mining units within that short time  
12 period.

13 Is that your understanding?

14 A. No. What they say is that we can only  
15 reinvest during that period. That is to say, the  
16 program that they are approving only runs from October  
17 to February of 2007.

18 Q. So, your understanding that the Ministry  
19 here by using the word "exclusively" meant other  
20 mining units that Cerro Verde might acquire, well, if  
21 Cerro Verde were to acquire a mining unit after  
22 February 2007, that would not be relevant; correct?

1           A.    It could be because--after February, no.  
2 But if it were purchased--this Resolution is from 9  
3 December 2004. But if Cerro Verde were to purchase on  
4 10 December another mining unit, then we could, if we  
5 were not complying with the law we could have  
6 interpreted it differently.

7                    So, the Ministry said "only," "exclusively"  
8 those generated by the concessions that are  
9 operational today.

10           Q.    That was my first difficulty. You're saying  
11 not just any future mining units. But if your  
12 understanding is this language means the Ministry is  
13 telling you "the benefit applies exclusively to the  
14 retained earnings must be--which must be exclusively  
15 generated by the Leaching Project," and what the  
16 Ministry means "and not any other mining units that  
17 Cerro Verde might acquire that would generate earnings  
18 from October 2004 to February 2007"; correct?

19           A.    Correct.

20           Q.    Okay. The second difficulty I have is, it  
21 doesn't say that. It doesn't say "exclusively from  
22 the retained earnings, which must be generated by the

1 Cerro Verde Leaching Project," meaning exclusively  
2 from the mining unit defined in the '98 Stabilization  
3 Agreement and not any other mining unit. It doesn't  
4 say that.

5           It just says "exclusively from the Cerro  
6 Verde Leaching Project."

7           A. In capital letters, defining the Stability  
8 Agreement, because that was the only way to access  
9 reinvestment of profits, and we have discussed that  
10 the Stability Agreement stabilizes the Mining  
11 Concession "Cerro Verde 1, 2, and 3" and the  
12 "Beneficiation Plant of Cerro Verde." So, it didn't  
13 need to say so.

14           And just to add, it was publicly known that  
15 in the case of Cerro Verde, that was the only  
16 Production Unit that was being operated at that time.  
17 So, Cerro Verde didn't have any other at the time, and  
18 that's why it is "exclusively." But if we were to  
19 purchase Tintaya, then the Ministry would have to put  
20 the lock on that there.

21           (Interruption.)

22           Q. Your understanding of the meaning of this



1 language, "exclusively generated by the Cerro Verde  
2 Leaching Project," was based on your own reading of  
3 this document; correct?

4 A. Of course.

5 Q. Did you consult with others to confirm your  
6 opinion?

7 A. With our Outside Counsel at some point, yes,  
8 of course. The thing is that we are in--

9 (Interruption.)

10 Q. That's not my question. You said you  
11 consulted with external lawyers?

12 A. I'd like to specify. More than consulting,  
13 we shared all of the resolutions that we were  
14 receiving internally, yes.

15 Q. You sought advice from your Outside Counsel  
16 on the meaning of this text; correct?

17 A. No, not necessarily as to the meaning. It  
18 was shared so that it could be confirmed that we were  
19 all receiving the approval that we needed to reinvest  
20 the profits, as we had applied for.

21 Q. So, what you're saying is, you shared that  
22 document with your external lawyers; correct?

1           A.    Yes.

2           Q.    Did you ask them specifically about the  
3 meaning of their view on the meaning of this  
4 provision?

5           MR. PRAGER:  Objection.  That's a privileged  
6 question.

7           MR. ALEXANDROV:  I'm not asking about what  
8 legal advice she received.  I'm asking whether she  
9 asked--

10                   (Overlapping speakers.)

11           MR. PRAGER:  You asked what legal advice she  
12 sought.  That's also privileged.

13           BY MR. ALEXANDROV:

14           Q.    Did you ask them any questions about the  
15 meaning of this provision?

16           MR. PRAGER:  That's the same.  Sorry.  I  
17 mean, the communications that an attorney--that  
18 Ms. Torreblanca has with their Outside Counsel is  
19 privileged.  What she asked them, what the attorneys  
20 told her.

21           MR. ALEXANDROV:  I'm not asking what she  
22 asked them.

1 (Overlapping speakers.)

2 MR. PRAGER: Well, you did.

3 (Overlapping speakers.)

4 MR. ALEXANDROV: No. I'm asking now--let  
5 me--I'm asking, did you ask them any questions about  
6 this text? I'm not asking what those questions were.  
7 I'm asking whether she asked them any questions about  
8 this text.

9 MR. PRAGER: But that's--

10 MR. ALEXANDROV: Did she ask or did she not  
11 ask. The fact of whether she asked the question. I'm  
12 not asking about the content of the question.

13 MR. PRAGER: But that, alone, is also  
14 referring to the communications, whether she discussed  
15 a particular topic with outside attorneys or not  
16 reveals what kind of advice is being sought

17 (Overlapping speakers.)

18 MR. ALEXANDROV: Madam President.

19 (Overlapping speakers.)

20 MR. PRAGER: --reveals what kind of advice  
21 is being sought.

22 MR. ALEXANDROV: I'm not asking what kind of

1 advice is sought. I'm asking whether she asked for  
2 legal advice, on that text.

3 PRESIDENT HANEFELD: And I understand,  
4 Mr. Prager, that you said this is already covered by  
5 privilege?

6 MR. PRAGER: Yes, because by asking--by  
7 identifying a particular topic, and asking whether  
8 that particular topic was discussed with an attorney  
9 or not, you reveal the type of communications and your  
10 concerns, or your type of questions that you had with  
11 your attorney. And that's privileged.

12 So, by asking, you know, "did you discuss  
13 this topic with an attorney or not," in this  
14 particularity, that is privileged information because  
15 it goes to the communications that she had with her  
16 lawyers.

17 MR. ALEXANDROV: Madam President, perhaps,  
18 we can cut this debate short. I strongly disagree  
19 that the question whether she asked her attorneys is  
20 privileged because I'm not asking about the content of  
21 the question, but we can shortcut this discussion  
22 because I want to take her to the Transcript of the

1 Cerro Verde Hearing, which is Tab 4, CE-1134, and  
2 that's Day 2 of the English at 449, 450, I  
3 believe--I'm sorry. It's Day 2, 451, 52.

4 THE WITNESS: Can you repeat the number,  
5 please?

6 BY MR. ALEXANDROV:

7 Q. Day 2, Page 451, 452.

8 MR. ALEXANDROV: And the point here is,  
9 Madam President, that Ms. Torreblanca testifies that  
10 she did request advice from third parties.

11 PRESIDENT HANEFELD: Can you please  
12 highlight this in the English Transcript?

13 MR. ALEXANDROV: So, at the bottom of the  
14 page is her answer. She says, no, you're  
15 misinterpreting me. From the reading of the  
16 Resolution, I understand this, but taking into account  
17 that this mechanism was so important--and that carries  
18 on to the next page--"for us to carry on with the  
19 investment in the Concentrator, we did request advice  
20 from third parties, and we also made sure that we were  
21 on the same page with the Ministry of Energy and  
22 Mines."

1           So, she has already testified that she  
2 requested advice from third parties. So, to the  
3 extent that that's privileged, she has waived the  
4 privilege.

5           PRESIDENT HANEFELD: Mr. Prager, do you  
6 agree that this is a waiver of privilege?

7           MR. PRAGER: No, I don't.

8           PRESIDENT HANEFELD: I would like to avoid  
9 that we enter into the details of discussions on  
10 privilege. But so, Mr. Prager, what is your view on  
11 that?

12           (Overlapping speakers.)

13           MR. PRAGER: It says "advice from third  
14 parties." That's not lawyers. It doesn't say here  
15 what she discussed with a lawyer. So, I absolutely do  
16 not agree that she waived privilege.

17           (Tribunal conferring.)

18           THE WITNESS: In Spanish, I don't find what  
19 you're citing? Can you help me, please.

20           MR. ALEXANDROV: I'm waiting for a ruling.

21           THE WITNESS: Okay. Okay.

22           PRESIDENT HANEFELD: So, and now we

1 hear--you think it's not a waiver of privilege? And,  
2 in particular, maybe not in a different arbitration.  
3 So--and now, why is it, in your view, for this  
4 arbitration, a waiver of privilege?

5 MR. PRAGER: Can I just specify. So, the  
6 question of Mr. Alexandrov was--I'm reading the  
7 Spanish, I'll try to translate it, so it's not exactly  
8 what's in the English Transcript.

9 Are you basing--sorry, I'm getting here the  
10 English one, but can we just leave the Spanish, so I  
11 can now--okay.

12 It says "I'm basing that in advice received  
13 from external lawyers, and conversations with MINEM;  
14 right?" And the answer is: "No. You are  
15 misinterpreting me. From reading the Resolution and I  
16 understand it like that," et cetera, et cetera.

17 "Yes, we were asking for the opinion of  
18 third--thirds, 'terceros,' third parties, and we also  
19 were assuring ourselves that the Ministry of Energy  
20 and Mines had the same understanding, the same  
21 reading."

22 So, she was asked whether she was basing it

1 on advice of external Counsel. She said, no, you're  
2 misinterpreting me. And she said, "we had  
3 conversation with third Parties." That's--she  
4 clarified that she didn't say "we were consulting  
5 attorneys."

6 MR. ALEXANDROV: Madam President, your  
7 question was why would a waiver of privilege be  
8 relevant here in this Arbitration, if the waiver was--

9 (Overlapping speakers.)

10 PRESIDENT HANEFELD: It's two-fold. Does it  
11 constitute a waiver of privilege, and why would it be  
12 binding on us here in this arbitration?

13 MR. ALEXANDROV: Well, a waiver of privilege  
14 is a waiver of privilege. If she discloses the legal  
15 advice she received to somebody on the street, this is  
16 a waiver of privilege. It doesn't have to be in the  
17 context of a specific legal proceeding. A waiver of  
18 privilege is disclosing privileged information, in  
19 this case, advice received by lawyers to anybody.

20 And once it's disclosed to anybody,  
21 regardless of the context, the privilege is waived.  
22 It doesn't matter whether it's this arbitration,



1 another arbitration, a litigation or just a casual  
2 conversation. Once it's disclosed to somebody, who's  
3 not covered by the privilege, the privilege is waived.

4 MR. PRAGER: But she clearly did not waive  
5 the privilege. That's the point.

6 PRESIDENT HANEFELD: Because she just  
7 conveyed that she talked to third parties, and this is  
8 not a legal advice, necessarily.

9 MR. PRAGER: Yes. She didn't say--

10 (Overlapping speakers.)

11 PRESIDENT HANEFELD: I suggest that we take  
12 note of this part of the Transcript. But can--go  
13 ahead. Exactly.

14 MR. ALEXANDROV: Madam President, I'm not  
15 going to press this further. I do note that the fact  
16 that she communicated with the lawyers on this point,  
17 is not privileged. It's actually on the privilege  
18 log. We'll take that on--not with the Witness,  
19 obviously, but what Mr. Prager is claiming is  
20 privileged is actually information that had to be  
21 disclosed to show privilege.

22 And so, again, the fact that outside lawyers

1 were asked for advice is not privileged. What is  
2 privileged is the questions that were asked, the  
3 specific questions, the contents of the questions, but  
4 I'll be happy--so, we strongly disagree, and I want to  
5 register disagreement about the scope of the  
6 privilege. But we will move on to make sure we don't  
7 waste time on this point.

8 PRESIDENT HANEFELD: Thank you very much.

9 This is noted.

10 MR. ALEXANDROV: Thank you.

11 BY MR. ALEXANDROV:

12 Q. So, leaving aside lawyers, who else did you  
13 ask to confirm your understanding of this language?

14 A. This Resolution was--

15 Q. Let's hold to my question, Ms. Torreblanca.  
16 Whom did you ask?

17 I don't want to--you to answer how important  
18 this Resolution was, or anything about the Resolution  
19 other than: Did you ask anybody else, leaving lawyers  
20 aside, about their understanding of this language?  
21 And, if so, who?

22 A. Even though the Resolution was extremely

1 clear, at some point, we discussed it with individuals  
2 from the Directorate General of Mining to make sure  
3 that we were all aligned.

4 Q. Okay. Let's start first with,  
5 internally--again, leaving lawyers aside--did you  
6 discuss it within Cerro Verde?

7 A. I do not understand.

8 Q. Did you discuss the understanding of this  
9 language that we just looked at, Article 1 of the  
10 Resolution, with individuals within Cerro Verde?

11 A. I remember--well, I do not remember well,  
12 but I remember that yes, we did share this with my  
13 boss and with some other individuals.

14 Q. The question is not whether you shared the  
15 Resolution, Ms. Torreblanca. The question is whether  
16 you discussed with anybody, within Cerro Verde, your  
17 understanding of what Article 1 meant?

18 A. I believe so.

19 Q. With whom?

20 A. I do not recall at this point in time with  
21 whom we discussed this, but it was important, if you  
22 remember, because--

1 Q. I'm sorry, I'm asking you simply, did you  
2 discuss it with somebody within Cerro Verde? And, if  
3 so, with whom?

4 A. I do not recall precisely. It must have  
5 been with my boss, but truth be told, I do not recall  
6 whom. But why did we do it--did it--or why was it so  
7 important--well--because for us, it was the  
8 confirmation--

9 (Interruption.)

10 Q. You don't remember, so let's stop here. You  
11 don't remember. Now, you said you discussed it with  
12 MINEM; correct?

13 A. As part of an informal conversation, yes--

14 Q. With whom?

15 A. With individuals from the Ministry of Energy  
16 and Mines.

17 Q. With whom, specifically?

18 A. For example, with Dr. Chávez Rivas at that  
19 point, when it is notified, I asked: "is this what you  
20 mean?," and we were both aligned, yes.

21 Q. Doctor?

22 A. Chávez Rivas.

1 Q. Who was that?

2 A. He was a lawyer within the Ministry.

3 (Overlapping speakers and interpretation.)

4 Q. Within the General Directorate?

5 A. Yes, I think so.

6 Q. Did you discuss the meaning of Article 1  
7 with Ms. Chappuis?

8 A. I do not recall having done so. I do not  
9 recall.

10 (Overlapping interpretation and speakers.)

11 Q. Did you discuss the meaning of Article 1  
12 with Ms. Chappuis?

13 A. I do not recall.

14 Q. With Mr. Tovar?

15 A. I do not recall discussing this with  
16 Mr. Tovar.

17 Q. With Vice Minister Polo?

18 A. No. Not at all. Mr. Polo always sent us to  
19 the General Directorate of Mining when we had any  
20 question. I received the Resolution and we were  
21 waiting for that Resolution to start investing. So,  
22 there wasn't any major discussion in this regard,

1 beyond the conversation we had with Mr. Chávez Rivas.

2 Q. Is there any written record, any notes, any  
3 e-mails from that conversation, the informal  
4 conversation that you had with Dr. Chávez Rivas?

5 A. There were at some point, yes, but as I  
6 mentioned before, they are not available because this  
7 is more than 21 years old. It will be 20 years.

8 Q. Because you had a retention policy to  
9 destroy emails after 10 years; correct?

10 A. Yes, that is correct, that was the policy at  
11 that point in time.

12 Q. We'll come back to that retention policy.

13 (Comments off microphone.)

14 (Interruption.)

15 ARBITRATOR TAWIL: Yeah, they're not able to  
16 follow, so we need to.

17 (Comments off microphone.)

18 BY MR. ALEXANDROV:

19 Q. Which question do you want me to come back  
20 to?

21 (Comments off microphone.)

22 Q. Okay. The question was, because you do

1 have--not don't have--because you do have a retention  
2 policy to destroy emails after 10 years; correct?

3 A. The policy at that point in time was  
4 informal, now that you ask me again, but we always  
5 asked to preserve the documents for 10 years,  
6 independently of the emails, and for labor issues much  
7 more time. That was the question; right?

8 Q. Well, I asked the question whether you had a  
9 10-year retention policy. I believe you said;  
10 "correct." Now, you're saying yes, but it was  
11 informal?

12 A. But that was the policy, 10 years, and labor  
13 documents much longer.

14 Q. So, you did have written notes and emails  
15 from this conversation with Dr. Chávez Rivas, but they  
16 were destroyed.

17 Is that your evidence?

18 A. No, I'm not saying that I had an email or a  
19 document, a formal document on the conversation with  
20 Dr. Chávez Rivas. As I mentioned before, this was an  
21 informal conversation, but I may have sent an email to  
22 share this with the Corporation, but it was nothing

1 formal, as I am explaining.

2 Q. So, to wrap this up--because we need to  
3 break. I'm conscious of that--this text of Article 1  
4 of the Resolution, that says that the Concentrator  
5 Plant "must be funded with retained earnings from the  
6 same financial years, which must be exclusively  
7 generated by the Cerro Verde Leaching Project."

8 This text was so clear to you that you did  
9 not need an internal discussion to confirm your  
10 understanding, or any sort of a discussion with MINEM  
11 other than this one informal conversation with this  
12 person.

13 Is that your testimony?

14 A. The discussion was before that because, for  
15 us, this reinvestment of profits confirmed that the  
16 Concentrator was also understood by the Ministry of  
17 Energy and Mines as part of the Cerro Verde Production  
18 Unit and also part of the Mining Unit, and the  
19 Beneficiation Plant, and thus covered by the Stability  
20 Agreement. We received the Resolution, and the next  
21 day we started to spend, to invest in this important  
22 investment, that was so important for Arequipa and for



1 Peru.

2 Q. So, this discussion that you testified  
3 about, the informal discussion was before you received  
4 the Resolution; correct?

5 A. No, when I was notified of the Resolution.  
6 I was notified and I talked. The previous discussion  
7 was with the Corporation, we were waiting. What  
8 happened was that, before each procedure, I went,  
9 talked about it, and was sure before I presented the  
10 Application. I talked to the officials and asked,  
11 "this is what we are presenting," and each day I went  
12 there sometimes I left at 9:00 p.m. because I was  
13 waiting for one file to move from one section to the  
14 other; in the meantime, we were talking and  
15 confirming, and oftentimes I even looked at the drafts  
16 of what was coming.

17 Q. Okay. But I'm asking you, when you saw this  
18 text--so, I'm not asking about prior discussions when  
19 you had not yet seen this text.

20 My question is, when you saw this text, did  
21 you seek to confirm your understanding with anybody  
22 else, leaving aside the lawyers? You said,



1 Q. Before the break, I showed you a document  
2 that is behind Tab 20, which is CE-398, and I focused  
3 on the fourth paragraph. Remember, that is the Second  
4 Legal Opinion by MINEM, the General Directorate of  
5 Mines, in response to your inquiry about the  
6 application of the Profit Reinvestment Program.

7 So, please take a look at the fourth  
8 paragraph again.

9 Now, the reason I'm coming back to this is  
10 Counsel for Claimant questioned whether I wanted to  
11 show you the testimony of Ms. Chappuis about this  
12 paragraph, and Counsel questioned whether what I was  
13 asking Ms. Chappuis was about the same document. I  
14 was asking about the same document, and I will need to  
15 spend some time now to establish that, which will not  
16 be difficult, I hope.

17 We need to show you Paragraph 42 of the  
18 Witness Statement of Ms. Chappuis.

19 A. What number?

20 MR. ALEXANDROV: Which tab is it?

21 BY MR. ALEXANDROV:

22 Q. It's not in the binder, so we'll put it on

1 the screen and give you a hard copy.

2 A. Thank you.

3 Q. But we will still put it on the screen for  
4 the Tribunal's benefit.

5 So, she's referring clearly to that Second  
6 Report, and if you look at Footnote 59, she's actually  
7 referencing it. So, there is no question in  
8 Paragraph 42 she's talking about this particular  
9 document.

10 And what she's saying is, when she refers to  
11 that document in Footnote 59, she says--and I'll read  
12 into the record what she says: "Although, in  
13 hindsight, this choice of words is not entirely clear  
14 in expressing our conclusion, what we meant, referring  
15 to the language that that Stability Agreement itself  
16 uses, was that the scope of the stability applies to  
17 the Cerro Verde Mining Unit and not to the Company as  
18 such--that is, not to Cerro Verde. For example, if  
19 Cerro Verde had other Mining Units, they would not  
20 have enjoyed stability guarantees."

21 Do you see that?

22 A. I do.

1 Q. Okay. And then if you look at Tab 5, which  
2 is the Transcript of the Cerro Verde Hearing, CE-1135,  
3 Page 823-824, I was asking her about Paragraph 42 of  
4 her Witness Statement. The two Witness Statements are  
5 identical as far as Paragraph 42 goes, and I was  
6 asking: "You have said that, in hindsight, this  
7 language was not entirely clear."

8 Do you see that?

9 It's the last two lines of 823 and then it  
10 continues on Page 824.

11 A. In the English version that--I have it right  
12 here, I can't find that. There is a reference to  
13 President Blanch--

14 Q. I'm sorry. In the English version, it is  
15 the end of Page 823 where I begin, and then it  
16 continues on Page 824.

17 A. I don't have anything like that. What's the  
18 Spanish page number?

19 Q. Well, let's look at Page 823 in the English.

20 I'm referring to--do you see that I'm  
21 referring in Line 6 to the First Witness Statement,  
22 Paragraph 42?

1           A.    Yes.

2           Q.    And you say, and then I quote, and I--you  
3 see the quote on the screen--sorry. The quote is not  
4 on the screen. The Transcript is on the screen, but  
5 it's on the right-hand side. You see the  
6 quote: "Although"? You have it on the paper copy.

7                    "In hindsight, this choice of words is not  
8 entirely clear."

9                    This is what she says in the Witness  
10 Statement.

11                    "Although, in hindsight, this choice of  
12 words is not entirely clear, in expressing our  
13 conclusion, what we meant, referring to the language  
14 that the Stability Agreement itself uses, was that the  
15 scope of the stability applies to the Cerro Verde  
16 Mining Unit and not to the Company as such--that is,  
17 not to Cerro Verde. For example, if Cerro Verde had  
18 other Mining Units, they would not have enjoyed  
19 Stability Guarantees."

20                    ARBITRATOR TAWIL: Mr. Alexandrov, can I ask  
21 you a clarification? Because I'm a little bit lost.

22                    MR. ALEXANDROV: Oh, sorry.

1           ARBITRATOR TAWIL: It says Paragraph 4 in  
2 the Transcript. No? You were asking about  
3 Paragraph 4 of CE-398. That's what it says in the  
4 Transcript.

5           MR. ALEXANDROV: Are you looking at English  
6 or the Spanish?

7           ARBITRATOR TAWIL: At the English one. In  
8 824, it says: "So, you're seeing the language in  
9 Paragraph 4. You can put it back on the screen,  
10 please, Exhibit CE-398."

11           MR. ALEXANDROV: I will clarify.

12           ARBITRATOR TAWIL: So, I just cannot find  
13 it.

14           MR. ALEXANDROV: So, if you look at the  
15 English Page 823, I'm reading to Ms. Chappuis from  
16 Paragraph 42 of her Witness Statement, and this is the  
17 quote: "Although, in hindsight," et cetera. I read  
18 it. Okay.

19           ARBITRATOR TAWIL: So, it's not Paragraph 4  
20 of CE-398?

21           MR. ALEXANDROV: It is. I'm reading from  
22 Paragraph 42 of her Witness Statement where she says

1 that in footnotes--the document that is C--what was  
2 it, now?

3 ARBITRATOR TAWIL: I don't want to mix it  
4 up.

5 MR. ALEXANDROV: No, no.

6 ARBITRATOR TAWIL: Just what paragraph of  
7 the letter. Because before, you were speaking about  
8 Article 1.

9 MR. ALEXANDROV: No. If you look at CE-398-  
10 -

11 ARBITRATOR TAWIL: Yes.

12 MR. ALEXANDROV: --Paragraph 4, that's the  
13 second Legal Opinion by the Director General.

14 ARBITRATOR TAWIL: Okay. Understood.

15 MR. ALEXANDROV: And I was asking  
16 Ms. Torreblanca about--I wanted to show her the  
17 testimony of Ms. Chappuis about this paragraph,  
18 Paragraph 4, which is in Paragraph 42 of Ms. Chappuis'  
19 Witness Statement.

20 Counsel questioned whether, when I asked  
21 Ms. Chappuis the question, I was asking about this  
22 document, and I'm now first trying to establish that I



1 referred to Paragraph 42 of Ms. Chappuis' Witness  
2 Statement where, in the footnote, she refers to this  
3 document, Paragraph 4, and, therefore, I was asking  
4 her about this document and no other document.

5 ARBITRATOR TAWIL: Okay. Thanks very much.

6 MR. ALEXANDROV: That's the summary of what  
7 Counsel wanted me to do.

8 BY MR. ALEXANDROV:

9 Q. And now, let's see what I was asking  
10 Ms. Chappuis, to be clear, about this document and not  
11 about any other document.

12 And that is on Page 824 of the Transcript,  
13 and I asked her: "You yourself have said that it's  
14 not--this language is not entirely clear. And I'm  
15 asking you" because that's what she said in her  
16 Witness Statement.

17 And then I continued: "I'm asking you, when  
18 you look at it with the benefit of hindsight, what  
19 would you have said to make it clear?"

20 She says it's unclear. And I'm asking:  
21 "Now that you're looking at it, how would you change  
22 it to make it clear?"

1           And you have her answer: "I would have not  
2 capitalized 'Stabilized Regime,' and I would put  
3 quotes around 'Cerro Verde Leaching Project.'"

4           So, Ms. Torreblanca, are we on the same  
5 page? When you look at Paragraph 4 of the Legal  
6 Opinion, which is CE-398, Tab 4--I'm sorry,  
7 Tab 20--the language that is so crystal clear to you  
8 that you don't need to ask for any clarification,  
9 well, first, Ms. Chappuis says it was not entirely  
10 clear, but then when we asked her "what would you  
11 change," she says two things. She would put  
12 "Stabilized Regime"--she would not have capitalized  
13 "Stabilized Regime," and she would put quotation marks  
14 around "Cerro Verde Leaching Project."

15           What she is not saying is that we would have  
16 said "Cerro Verde's mining unit" or "Cerro Verde's  
17 mining project" or "Cerro Verde's production unit."  
18 She doesn't say that now, in retrospect, to make this  
19 crystal clear, the Report would have said "Cerro  
20 Verde's mining unit," "Cerro Verde's production unit,"  
21 "Cerro Verde's mining project." The only thing she  
22 would correct is she would put quotation marks around

1 "Cerro Verde Leaching Project" because she admits the  
2 text was not clear.

3 Do we agree with the testimony of  
4 Ms. Chappuis?

5 A. Yes, because what she's saying in her  
6 testimony is that the Stability Agreement applies to  
7 the Cerro Verde Mining Unit and not to the Company.  
8 What she's saying is correct.

9 I can't judge why she would put quotation  
10 marks or why she would capitalize, because I don't  
11 know what that means in her opinion, but I agree with  
12 what she said. Everybody understood that it was the  
13 Cerro Verde Production Unit when we spoke about the  
14 "Leaching Project." Perhaps, by capitalizing it, she  
15 thinks that ensures that it's the same "Leaching  
16 Project" included in the Stability Agreement, but I  
17 can't opine on why she thought that.

18 Q. No, to be clear, I'm not asking you to  
19 explain her thinking and why she says that. I was  
20 simply asking you whether you agree with her testimony  
21 that, by making those changes or edits, the text would  
22 be now clear or clearer?

1           A.    It is clear, in my opinion.  I don't think  
2 we would change anything by adding quotation marks or  
3 something else.

4           Q.    I understand that it was clear.

5                    I'm asking you whether you agree with her  
6 testimony that it would be clearer if she did what she  
7 proposed she would do, in retrospect.

8           A.    Not really.  I don't understand why she  
9 would use quotation marks.  Truthfully, I don't  
10 understand how that would clarify this paragraph more  
11 or less.  I don't understand.

12          Q.    Okay.  Also before the break, you mentioned,  
13 if I am correct, that there was an obligation to build  
14 a Concentrator Plant, and you suggest, to put that in  
15 context, in 1994 Cerro Verde sold to a company called  
16 Cyprus.

17                    Do you know that?

18          A.    Yes, that's correct.

19          Q.    And you are referring, I assume, to the  
20 obligation undertaken by Cyprus in that Contract to  
21 build a Concentrator Plant.  Am I correct?

22          A.    Yes, that's correct.

1 Q. Do you know that in 2001 there was a  
2 settlement between Empresa Minera del Perú, which sold  
3 Cerro Verde to Cyprus, and Cyprus?

4 Do you know that there was such a  
5 settlement?

6 A. Yes.

7 Q. And do you know that in this settlement,  
8 that obligation was removed?

9 A. Rather than removed--it wasn't removed.  
10 What Cyprus was asked--well, the investment commitment  
11 was considered fulfilled, but Cyprus is asked to  
12 continue evaluating the construction of the  
13 Concentrator.

14 Q. So, it is not that the obligation to build  
15 the Concentrator Plant remains. What remains is--and  
16 I will--it's consistent with what you said--Cyprus  
17 undertakes to continue carrying out the research and  
18 technological development as intended to continue  
19 evaluating economically reasonable ways for the  
20 exploitation and processing of Primary Sulfides at  
21 Cerro Verde. Is that consistent with your  
22 recollection?

1           MR. PRAGER: Counsel, if you ask about the  
2 Settlement Agreement, can you show it to her?

3           MR. ALEXANDROV: Can she first answer the  
4 question whether that is consistent with her  
5 recollection?

6           THE WITNESS: I would rather look at the  
7 document first, please.

8           MR. ALEXANDROV: Can we show it on the  
9 screen?

10          THE WITNESS: Yes. Thank you.

11          BY MR. ALEXANDROV:

12          Q. This is CE-0017. You get a special  
13 treatment, Ms. Torreblanca. You get a hard copy. It  
14 is Section 3.1(B). And we have highlighted on the  
15 screen.

16                 Did you find it?

17                 Ms. Torreblanca, did you find it?

18          A. What number is it?

19          Q. 3.1(B).

20          A. I don't know where it is, no.

21          Q. It is Page 9 of the PDF, if that helps.

22                 Maybe if you look at the screen it will help

1 you locate it. 3.1(B).

2 A. I found it, yes.

3 Q. So, "Cyprus undertakes to continue carrying  
4 out within the aforementioned period the research and  
5 technological development tasks intended to continue  
6 evaluating economically reasonable ways for the  
7 exploitation and processing of Primary Sulfides at  
8 Cerro Verde."

9 This is very different from an obligation to  
10 build a Concentrator Plant, isn't it?

11 It's an obligation to continue carrying out  
12 development tasks intended to continue evaluating  
13 economically reasonable ways, not an obligation to  
14 build a Concentrator Plant.

15 Am I wrong?

16 A. Technically, yes, what you're saying is  
17 okay: the commitment to assess the Concentrator is  
18 replaced, but it was still necessary to continue with  
19 the development of Cerro Verde. Even more, there is a  
20 commitment to invest money in three years in order to  
21 make this feasible and for the construction to begin.  
22 That's correct.

1 Q. Well, the commitment you say to invest money  
2 in three years in order to make this feasible, that's  
3 not what this says. That says: "We will continue  
4 evaluating whether this is feasible"; "we will  
5 continue evaluating economically reasonable ways for  
6 the exploitation and processing of Primary Sulfides."

7 It doesn't say: "We will build a plant."  
8 It may be uneconomical to build it. They commit only  
9 to continue evaluating building the plant; isn't that  
10 correct?

11 A. It's correct. We committed to continue  
12 evaluating it because it was needed for the  
13 continuation of Cerro Verde, yes or yes. That's  
14 something that was implicit. That is correct but it  
15 was implied in the commitment that was undertaken.

16 Q. It is correct, isn't it, that there was no  
17 obligation here to build the plant, the Concentrator  
18 Plant?

19 A. That's correct. The assessment continues  
20 within the terms of time stated in this document.

21 Q. Thank you. To move on, it's correct, isn't  
22 it, that Cerro Verde was looking in the period



1 2004--in the middle of 2004, Cerro Verde was looking  
2 for written assurances from MINEM that the  
3 Concentrator Project, when built, would be covered by  
4 the '98 Stabilization Agreement?

5 A. Yes, indeed.

6 Q. Okay. And it is also correct that you never  
7 obtained those written assurances?

8 A. No, that is not correct. We did obtain  
9 those assurances when we received a Directorate  
10 Resolution that expands the Beneficiation Concession  
11 "Cerro Verde Beneficiation Plant" and incorporates the  
12 Concentrator as part of that Beneficiation Concession  
13 covered by the Stability Agreement.

14 (Overlapping interpreters and speakers.)

15 Q. The documents--that means the application to  
16 extend the Beneficiation Concession to cover the  
17 Concentrator Plant and the various authorizations by  
18 MINEM--do not mention the 1998 Stabilization  
19 Agreement; isn't that correct?

20 A. Yes, that's correct: it doesn't mention it,  
21 and neither did the previous expansions of the  
22 Beneficiation Concession that were made to continue

1 the development of Cerro Verde. Cerro Verde modified  
2 its Beneficiation Concession multiple times and none  
3 of those Resolutions made reference to the Stability  
4 Agreement, and both MINEM and SUNAT respected its  
5 application to this expanded Beneficiation Concession.

6 Q. Sorry. I'm waiting for the Transcript.

7 Okay. You've testified that you had several  
8 meetings with MINEM, including with Ms. Chappuis,  
9 where you received oral assurances that the  
10 Concentrator Plant, when built, would be covered by  
11 the 1998 Stabilization Agreement; correct?

12 A. Yes, that's correct. From the time this  
13 document is signed, well, we held many meetings to  
14 confirm that all of us were in the understanding that  
15 the new Concentrator Plant was going to be included  
16 within the stabilized Production Unit.

17 Q. Many meetings?

18 A. Yes, many.

19 Q. Including with Ms. Chappuis?

20 A. Also, and with her team.

21 Q. How many meetings, more or less? We're  
22 talking about 100? A dozen? Five?

1           A.    I spent many hours at MINEM.  There were  
2 many meetings that were agreed formally, with prior  
3 phone call or a previous email through the Secretary,  
4 but there were many that were informal.

5                    At a minimum, in 2004, a minimum between  
6 five and ten, from what I recall; but I don't remember  
7 exactly.

8                    And, for many reasons, not only meetings  
9 with Ms. Chappuis, but also Mr. Tovar, with whom we  
10 were looking at matters related to the construction,  
11 observations and recommendations.  Also, during 2004,  
12 there was also a review of the observations to the  
13 file of the reinvestment of profits.

14                    There were many meetings, like we said  
15 before the break, and there were many discussions that  
16 were held to ensure that each one of the steps that we  
17 were taking were in line not only with the TUPA of the  
18 Ministry, which is the table of permits that we need  
19 to request, that all requirements were met, and that  
20 we were going to have everything done on time.

21           Q.    And how many among those many meetings were  
22 with Ms. Chappuis?

1           A.    I believe that between five--at least five.  
2 Three, five, I do not recall, it depends on the matter  
3 that was being discussed.

4           Q.    Okay. Can we go to your First Witness  
5 Statement, which is behind Tab 1?

6                    And I want to ask you to look at  
7 Paragraph 24, and in particular the last part, where  
8 you say, about six lines from the bottom: "I recall  
9 that I asked them"--"them" are all the MINEM officials  
10 you discuss in the paragraph--"whether the Government  
11 would be willing to give us a written guarantee or  
12 amend the Stability Agreement so that it made express  
13 reference to the Concentrator and to the fact that we  
14 would not pay Royalties until December 2013. Their  
15 response was generally the same, that we did not have  
16 to worry because the Agreement would protect any  
17 investment that Cerro Verde made in its Mining  
18 Concession and Beneficiation Concession during the  
19 term of the Agreement."

20                    Do you see that?

21           A.    I do.

22           Q.    So, essentially, you're saying at those

1 meetings: "We need written guarantees," and they are  
2 saying: "Don't worry. You don't have to worry. You  
3 are covered."

4           So, they are giving you, according to your  
5 testimony, oral assurances; correct?

6           A. Yes, that's correct. At the beginning, they  
7 were oral, and then they translate into this  
8 Directorate Resolution that approves the expanded  
9 Beneficiation Concession.

10          Q. And so, your testimony, then--I want to  
11 understand your testimony. You are saying the  
12 extension of the Beneficiation Concession--which we  
13 established does not mention at all the 1998  
14 Stabilization Agreement, but your testimony is the  
15 extension of the Beneficiation Concession to cover the  
16 Concentrator Plant is what extends the scope of the  
17 '98 Stabilization Agreement to the Concentrator Plant;  
18 correct?

19          A. No. It is one of the written assurances  
20 that we were asking the MINEM to give to us.

21               As I said, since this Agreement was signed,  
22 we met with many authorities, authorities from MEF,

1 MINEM, DGM, and we all were under the understanding  
2 that, when the Concentrator was built, it was going to  
3 be part of the Stability Agreement because it was part  
4 of the Cerro Verde Production Unit which was covered  
5 by the Agreement. What happens in this period, which  
6 was the second or third quarter of 2004--in 2004, in  
7 Perú, a discussion for the creation of a Royalties Law  
8 begins and it was passed or approved in June 2004, so  
9 that is why we requested to receive a written  
10 guarantee, written assurance, and that's why we met  
11 again with the Ministry.

12 Q. Can you please focus on my questions and  
13 give shorter answers? My question was very specific.  
14 I think you answered it, so I'm not going to repeat  
15 it, but you're saying the Concentrator Project was  
16 always covered. The extension of the Beneficiation  
17 Concession was just a confirmation; correct?

18 A. Correct.

19 Q. Why didn't you, in your Application for the  
20 extension of the Beneficiation Concession,  
21 say--mention the 1998 Stabilization Agreement and say,  
22 by extending the Beneficiation Concession, you confirm

1 that the Concentrator Project is within the scope of  
2 the 1998 Stabilization Agreement?

3           You didn't say that in your application, did  
4 you?

5           A. No, because we didn't do it in the prior  
6 applications when we expanded that Beneficiation  
7 Concession in multiple occasions.

8           Q. Okay. Now, let's go back to your oral  
9 assurances. Apparently, it was very important for you  
10 to obtain those oral assurances in the middle of 2004  
11 because you had all those meetings, and you've  
12 testified about that.

13           When you received those oral assurances from  
14 Ms. Chappuis and others, did you record the fact that  
15 the General Director of Mines orally assured you that  
16 the Concentrator Plant would be covered by the 1998  
17 Stabilization Agreement?

18           A. Could you please repeat the question?

19           Q. You meet with Ms. Chappuis. She tells you,  
20 you testify: "Don't worry. The Concentrator Project  
21 is covered by the '98 Stabilization Agreement."

22           You go back to your office. Do you put in

1 writing that conversation? Any notes? Any emails to  
2 your colleagues, saying "today I met with Ms. Chappuis  
3 and she told me"--what she told you?

4 A. When we met with Director Chappuis and her  
5 team, originally when we wanted--when we asked for a  
6 written guarantee, we asked them and we consulted with  
7 them as to whether or not the written guarantee or  
8 written assurance, which could give our Shareholders  
9 the peace of mind that they wanted and that we needed  
10 in light of the recent events of 2004.

11 That's where we asked the Ministry whether  
12 one way to have a hundred percent assurance that they  
13 were not going to change their view in the future  
14 could be by including this Concentrator in a separate  
15 Beneficiation Concession within the Stability  
16 Agreement. That was our original approach, and for  
17 some reason--let me explain, please.

18 Q. This is not my question. I'm sorry. This is  
19 not at all my question. Let's look again at  
20 Paragraph 24 of your Witness Statement. You say: "We  
21 met with them. Their response was generally the same:  
22 That we did not have to worry because the Agreement



1 would protect any investments Cerro Verde made in its  
2 mining and Beneficiation Concession during the term of  
3 the Agreement."

4           This response that you received orally from  
5 Ms. Chappuis when you met with her, did you record it  
6 somewhere, somehow, in your notes, in an email to your  
7 colleagues? That was my question.

8           A. The answer is yes, but what I wanted to  
9 specify is that when we made the presentation and met  
10 with them, it wasn't the Director who gave the answer.  
11 They said "we're going to receive it, we'll review it,  
12 and in the next meeting we'll give you some more  
13 information." But, yes, that is correct.

14           Q. Again. This is not my question.

15           You received a response, whether at this  
16 meeting or at the next meeting, you received a  
17 response, and you testify in Paragraph 24 of your  
18 Statement what this response is.

19           So, I'm asking you again, did you record  
20 that response somehow, somewhere? Did you write a  
21 note? a memorandum? an aide-mémoire to the file? Did  
22 you send an email to your boss--

1 A. Yes--

2 (Overlapping speakers.)

3 Q. Can I finish the question?

4 Did you send an email to your boss,

5 Mr. Davenport, to say: "Today we received this

6 answer. We don't need to worry."

7 Where did you record that answer?

8 A. Yes, an email was sent at least to

9 Mr. Davenport indicating that all of the participants

10 in the meeting--that there was consensus, and that, in

11 effect, the Concentrator would be part of the same

12 Cerro Verde Production Unit.

13 Q. I heard you say in Spanish, "se envió un  
14 correo."

15 A. Yes, that's right.

16 Q. Who sent this email?

17 A. I sent an email to Mr. Davenport at some  
18 point in time, yes.

19 Q. So, the email didn't send itself.

20 You sent it?

21 A. Sí, yo.

22 Q. Okay.

1 A. Yes. It was me.

2 (Overlapping interpretation and speakers.)

3 Q. Where is this email?

4 A. We had changes in the system, and it's not  
5 available anymore. All the emails were erased.

6 Q. When was the change of system? When did it  
7 happen?

8 A. In about 2014, if my memory serves me well.

9 Q. And all the emails were deleted?

10 A. Yes, all of them.

11 Q. So, let me ask you this: You testified--and  
12 I'll take you, if I need to, in the other case, that  
13 there was a 10-year retention policy. Before lunch,  
14 you confirmed that there was a 10-year retention  
15 policy. So, why was your email deleted? Was it  
16 because there was a 10-year retention policy, or was  
17 it because you changed the system in 2014, and all  
18 previous emails were deleted?

19 A. It was a coincidence in terms of the year,  
20 but 2004 plus 10 is 2014.

21 Q. Start your answer again. "Fue coincidencia  
22 del año," you said.

1           A.    Yes.  It was a coincidence, the year, but in  
2 fact there was a change in the system that resulted in  
3 the emails that we had, in Cerro Verde, being erased.

4                    The retention of documents, for us, I had  
5 told you before the break, was an informal policy,  
6 because every time I was asked, unlike the United  
7 States, in Perú, we did not have an obligation other  
8 than what is set out in the Civil Code to preserve  
9 documents for 10 years.  That's what it says, which  
10 is--that's how long we need to maintain them for.

11                   So, every time I was asked at Cerro Verde,  
12 how long should a document be maintained or retained,  
13 well, because it was five years, I always said  
14 10 years, because that's what the Civil Code  
15 indicates, and for labor-related matters, the amount  
16 of time is forever, preferably.

17                   PRESIDENT HANEFELD:  May I ask just one  
18 question?

19                   So, if it was deleted in 2014, now, did you  
20 make use of this email earlier on, for example, in  
21 proceedings with SUNAT or so, in order to document  
22 your belief that you were exempt from the Royalties?

1           THE WITNESS: No, because, for Perú, not  
2 even for administrative or judicial processes, an  
3 internal email has no probative value vis-à-vis the  
4 administrative or other Authorities.

5           PRESIDENT HANEFELD: Thank you.

6           BY MR. ALEXANDROV:

7           Q. So, again, there is a 10-year retention  
8 policy, you say. I don't understand your point about  
9 the coincidence of years. If you have a 10-year  
10 retention policy, then in 2012, you would delete  
11 everything before 2002. In 2013, you would delete  
12 everything before 2003. In 2014, you would delete  
13 everything before 2004, et cetera.

14           Am I understanding the retention policy  
15 correctly?

16           A. We don't manage the email system. That's  
17 done by the IT department, and they are the ones who  
18 change the system and erased the emails. The  
19 retention of documents, well, since the internal  
20 documents have no probative value for us, when I was  
21 asked--

22           Q. Sorry--

1           A.  --I was referring to contracts, documents--

2           Q.  You're going beyond my question.  My  
3 question is focusing now on the retention policy.

4                   I understand you are not the one to change  
5 the system, but I don't understand what the change of  
6 system had anything to do with it.  The retention  
7 policy, I understand it works this way:  You tell your  
8 department that operates the system, on January 1 of  
9 this year, delete everything that was 10 years old or  
10 more.  On January 1 of the following year, delete  
11 everything that's 10 years older or more, and they do  
12 it, and, in fact, they do it automatically.

13                   Was that the retention policy you're talking  
14 about?

15           A.  No.

16           Q.  And what was the retention policy you're  
17 talking about?

18           A.  With respect to all of the documents that we  
19 have:  Contracts, memos, and others.  Now, in the case  
20 of emails, no one ever asked me how long should we  
21 retain emails?  And then a system change came about,  
22 and all the emails we had were automatically erased,

1 not only my own but all of those of us who worked at  
2 Cerro Verde.

3 Q. So, when you testified in Cerro Verde--and I  
4 can show you the Transcript, if you want to--when you  
5 said we have a 10-year retention policy, that was  
6 incorrect. You did not have a 10-year retention  
7 policy. You just deleted in 2014 all the prior emails  
8 because of the change of system.

9 Is that now your testimony?

10 A. No. You're misinterpreting what I'm saying.  
11 What you asked me, "do you have a retention policy?"  
12 Yes. Every time I've been asked by the different  
13 areas in Cerro Verde, how long should  
14 documents--should we hold onto the documents, because  
15 we generate a lot of paper--

16 Q. I'm not asking about paper, I'm asking about  
17 emails?

18 A. In general, documents, it was 10 years. We  
19 always said 10 years. Now, what problem happened in  
20 the email system, I don't know, but the documents were  
21 erased. It's basically that. And that is independent  
22 of the retention policy.

1 Q. So, you did have a retention policy of  
2 10 years, after all; correct?

3 A. In practice, we asked that documents be held  
4 onto for 10 years, documents generally speaking.

5 As I say, the IT department, I was not in  
6 charge of it. I don't know what happened there.

7 Q. We'll come back to the change of system in  
8 2014, but before that, can we look at Tab 5, which is  
9 the Transcript of the Cerro Verde Hearing, CE-1135,  
10 Day 3, 703, Page 703. And that's the testimony of  
11 your boss, Mr. Davenport.

12 And I begin at Line 21. Line 21, and it  
13 carries over to Page 704. Says: "So, I wanted to ask  
14 you"--this is Ms. Carlson, Counsel for Perú  
15 speaking--"did Phelps Dodge or Cerro Verde have a  
16 document retention policy to ensure that important  
17 documents were retained for the Company?

18 "Answer: Retention would be?

19 "Question: Either keeping documents or, I  
20 suppose, also getting rid of documents.

21 "Answer: Oh, not that I'm aware of.

22 "Question: So, you're not?



1           "Answer: But I don't know whether Phelps  
2 Dodge did or did not.

3           "Question: And what about Cerro Verde while  
4 you were there?

5           "Answer: No. Not that I recall."

6           So, Mr. Davenport, your boss, does not know  
7 of any retention policy.

8           So, is he right, or are you right?

9           A. I began by answering--indicating that any  
10 time anyone would ask me how long should we keep  
11 documents, I said 10 years, but there wasn't a signed  
12 policy saying this is the retention policy, if that is  
13 the question. I don't really know what you're trying  
14 to ask me.

15          Q. Okay. So, what you're saying is, as a  
16 practical matter, you kept emails for 10 years, and  
17 now you're saying there was no written policy, but  
18 when somebody asked you, can we get rid of a document,  
19 you say, "if it's more than 10 years old we can"?

20          A. Correct. And if it has to do with labor  
21 issues, then you have to preserve it, but it's not  
22 that I would go to each of the departments and tell

1 people. If I was asked, I would tell them my opinion.  
2 Accounting would come, and say we have all these  
3 documents. And I would say, "no, at least 10 years."  
4 Logistics would come, "10 years." That was in  
5 practice what we were doing.

6 Q. Understood. And so, did somebody ask you  
7 about this email that you sent about the conversation  
8 with Ms. Chappuis, saying this email is now more than  
9 10 years old, shall we delete it?

10 A. No.

11 Q. So, why was it deleted, then?

12 A. Because there was a problem in the system.  
13 Systems erased many things. That's what I was  
14 explaining.

15 Q. So, your testimony is your email that we are  
16 discussing that you say you wrote about this meeting  
17 with Ms. Chappuis was not deleted because it was  
18 10 years old, but it was deleted because of this  
19 change of the system in 2014; correct?

20 A. That is what I'm saying, yes. There was a  
21 problem. I understand they changed the system, and  
22 they erased it. But I was saying that, as a matter of

1 coincidence, that email would have been more than  
2 10 years old, so they could have erased it had they  
3 asked because it was more than 10 years old.

4 Q. When exactly in 2014 was this change of  
5 system?

6 A. I don't remember.

7 (Overlapping interpretation and speakers.)

8 Q. When exactly in 2014 did this change of  
9 system happen?

10 A. I don't remember.

11 Q. Was everything prior to that deleted when  
12 this change in system happened?

13 A. Yes.

14 Q. Ms. Chappuis, do you know what a  
15 privilege--sorry, Ms. Torreblanca.

16 I'm mentally already cross-examining  
17 Ms. Chappuis. I'm sorry.

18 Ms. Torreblanca, apologies. I know who you  
19 are. Do you know what a "privilege log" means?

20 A. "Entiendo, en general, sí."

21 (Overlapping interpretation and speakers.)

22 Q. Well, again, in general--

1 A. In--

2 Q. In general, it means that--

3 (Overlapping interpretation and speakers.)

4 Q. Can you repeat your answer?

5 Do you know what a "privilege log" means?

6 A. In general, yes.

7 Q. Can you repeat? Because you didn't wait.

8 A. In general, yes.

9 Q. Well, in general, it means that certain  
10 documents are recorded on this log, but are not  
11 disclosed because they are privileged, but they exist.  
12 And the reason a privilege log is created is because  
13 those documents are requested in document production.  
14 They do exist, but they are not produced because of  
15 privilege. Do you know that in this privilege log  
16 that your Counsel prepared in response to Perú's  
17 document production request, there are emails from you  
18 in June 2004, August 2004, and December 2004?

19 So, they were not deleted, apparently, by  
20 this change of system in 2014.

21 A. What happens is that--

22 Q. Can you just say, do you know that this

1 privilege log records such emails?

2 A. Yes. But the ones on my server were  
3 deleted, not the servers of the others.

4 Q. Sorry. Before. Do you know that those  
5 emails exist?

6 A. Yes.

7 Q. Do you know that there are many other emails  
8 before 2014 that, also according to this privilege  
9 log, exist?

10 A. Yes, but because they were erased from my  
11 system, not the system of the others. For example, I  
12 send you an email. It is erased from my server, but  
13 you can still read it. It isn't erased for you.

14 Q. Okay. So, when you send an email--sorry.  
15 Let me just understand your answer.

16 If you send Mr. Davenport--don't take me as  
17 an example. You have not been sending emails to me,  
18 for better or worse. But let's take a more realistic  
19 example.

20 You send an email to Mr. Davenport. This  
21 change of system covers the whole system of Cerro  
22 Verde, presumably your machine and his machine as

1 well, his computer.

2           So, it would be deleted if all emails are  
3 deleted by the change of system in 2014; correct?

4           A.    Mr. Davenport was no longer working at Cerro  
5 Verde in 2014.

6           Q.    No, I'm asking about 2004.

7           A.    You asked about 2014.

8                   (Overlapping interpretation and speakers.)

9           Q.    OK, let me ask again. In 2004 you send an  
10 email to Mr. Davenport.

11          A.    Several, yes.

12          Q.    Yes. Those emails would be deleted by the  
13 Cerro Verde change of system in 2014 because both your  
14 computer and his computer are part of that system?

15          A.    In 2014, Mr. Davenport was no longer working  
16 at Cerro Verde. He stopped working at Cerro Verde  
17 around 2005, and I don't know if he kept the emails.  
18 They weren't erased, but the ones from the server were  
19 erased.

20                   (Interruption.)

21          Q.    The server that he used to receive emails  
22 remained at Cerro Verde. He didn't take the server

1 with him?

2 A. But I don't know if he had a laptop or some  
3 other system that was no longer connected. He could.  
4 That's why I gave the example, if I were to send it to  
5 you, it's not going to erase because it came out of my  
6 server, and they were erased in 2014. So, you may  
7 have had them and kept them in your computer without  
8 any problem. I suppose that that's what happened with  
9 Mr. Davenport. I don't know.

10 Q. Well, we'll ask him. But you're saying if  
11 he somewhere kept the emails that he received, that's  
12 another story.

13 I'm not asking. We'll ask him whether he  
14 kept separately from the server of Cerro Verde emails  
15 and whether he shared them with Counsel. That's a  
16 separate issue. Let's talk about the emails that he  
17 received in his capacity of the--what was it  
18 "gerente," general, the General Manager of Cerro Verde  
19 in 2004. Those emails on the server of Cerro Verde  
20 would have been deleted in 2014 is your testimony;  
21 correct?

22 A. Yes, that's my testimony.

1 Q. So, you're saying those emails exist today  
2 probably because--and you're speculating--probably  
3 because he kept them somewhere else?

4 A. Or because someone else might have received  
5 them as well, someone outside the Cerro Verde server.  
6 Let me explain.

7 If the email was sent to Mr. Davenport and  
8 copied to his secretary or someone else outside of the  
9 organization of Cerro Verde, then they could also be  
10 available.

11 Q. So, all those emails that exist today prior  
12 to 2014 would be emails kept by somebody on a personal  
13 computer or a third person outside of Cerro Verde. Is  
14 that your testimony?

15 A. I'm speculating, but that's the only  
16 explanation that occurs to me right now. I'm  
17 speculating. I don't have the evidence, and I  
18 actually don't know how it is that Mr. Davenport has  
19 them. I don't know, I have not asked.

20 Q. This email, you responded to a question by  
21 the President of the Tribunal, was never used in any  
22 proceedings in Perú, even though they started much



1 before 2014; correct?

2 A. As I answered a moment ago, the internal  
3 emails of a company are not evidence in administrative  
4 procedures, nor do they have any evidentiary value in  
5 Perú, unlike in the United States.

6 Q. That's not an answer to my question.

7 I didn't ask you whether they have probative  
8 value. I asked you whether they were used or not.

9 A. No. They were not used.

10 Q. Well, this email that recorded your  
11 conversation with Ms. Chappuis, did you send it only  
12 to Mr. Davenport?

13 A. I don't recall at the time whether it was  
14 just to Mr. Davenport or whether I copied some Outside  
15 Counsel or some other person, a project manager,  
16 someone else. I don't recall.

17 Q. So, those oral assurances were apparently  
18 very important to Cerro Verde. It never occurred to  
19 you to print this email and retain it somewhere as  
20 proof of those oral assurances?

21 A. We acted in very good faith, and we trusted  
22 in the system until a short time ago, so it really did

1 not occur to me--it didn't occur to me, at least, to  
2 print it. Plus, I was handling a number of permits at  
3 the same time to secure that an expansion of more than  
4 \$800 million expansion would materialize in time and  
5 as per the time scheduled. So, it did not occur to me  
6 to print them--to print it.

7 Q. So, just to confirm, you mentioned the  
8 800 million expansion. These are oral assurances you  
9 received that the 800 million investment will be  
10 exempt from Royalties, and it is not important enough  
11 for you to print it and retain it somewhere because  
12 you relied on the good faith of the Ministry? Is that  
13 your testimony?

14 A. Yes. We work--as I had explained earlier,  
15 each of the steps we took, not only because of the  
16 expansion, but in the past and previous procedures, I  
17 had meetings with each one of the officials who would  
18 be evaluating the record or the file before going  
19 forward with it or with a procedure. So, anytime they  
20 would assure me of something, they would follow  
21 through. And that's why I had no reason to distrust,  
22 so much so that we made an investment, for example, in

1 the Presa Pillones, cofinanced by EGASA, which was the  
2 one that would bring water to the Concentrator, only  
3 with the word of the Minister of Agriculture at that  
4 time because we explained to him "we are going to  
5 cofinance a dam that is going to give us, feed us  
6 water," and he gave me nothing in writing. And then  
7 three or four years went by until the water license  
8 came through, but generally what the officials  
9 promised and asserted they would follow through on.

10 Q. There was a note by SUNAT in 2008. It did  
11 not occur to you or anybody to show SUNAT this email?

12 A. It has no probative value. It has no value.  
13 It is as if I were to send to SUNAT an email to my  
14 secretary. That is like "This is what I say," and I  
15 tell the Secretary "I met with so-and-so." SUNAT is  
16 not interested in the email. It doesn't use it as  
17 evidence.

18 Q. Understood. So, that's why you didn't show  
19 it to SUNAT; right?

20 A. Yes, that's right.

21 Q. Well, then, Ms. Torreblanca, what is the  
22 value of those oral assurances if they have no

1 probative value and you cannot use them to show SUNAT  
2 that you are exempted from Royalties, to show MINEM,  
3 to show the Tax Tribunal, to show the Peruvian Courts?  
4 If oral assurances have no probative value at all, to  
5 the extent that you don't really bother to show this  
6 email or use it anywhere in any proceedings in Perú,  
7 why do you care so much about obtaining oral  
8 assurances? They have zero probative value.

9       A. Those verbal or oral assertions by all these  
10 authorities, who were the ones responsible, in the  
11 case of the DGM, or even by the Minister of Energy and  
12 Mines himself, the Minister of Economy and Finance,  
13 were the ones that Phelps Dodge used to approve an  
14 investment of more than \$800 million with all  
15 certainty, which made it possible also to triple the  
16 number of jobs, payment of taxes, among other things,  
17 and which were confirmed, not only in the construction  
18 permit when the Beneficiation Concession was expanded,  
19 but also in the Resolution on the reinvestment of  
20 profits, which approved that the profits be reinvested  
21 in a Concentrator that was part of the same Production  
22 Unit that was covered by the Stability Agreement. So,

1 these oral assurances were not alone, or they were not  
2 isolated. All of them, including the water license  
3 that the Ministry of Agriculture gave us through the  
4 National Water Authority, were reflected later on in  
5 administrative acts or in titles, as in the case of  
6 the modified Beneficiation Concession.

7 Q. With all due respect, this is not an answer  
8 to my question.

9 Whether there were other assurances in  
10 writing, et cetera, was not what I was asking about.  
11 I was asking you about the value of the oral  
12 assurances. You just explained in your previous  
13 answer that the oral assurances recorded in your email  
14 to Mr. Davenport had zero probative value. And I want  
15 to understand why is it then that you invoke those  
16 oral assurances as proof that the Concentrator Plant  
17 is covered by the 1998 Stabilization Agreement? Those  
18 oral assurances have no value for you; isn't that  
19 correct?

20 A. No, it is not correct. I just explained to  
21 you that those oral assertions were all reflected in  
22 administrative acts that reconfirmed what we already

1 knew as investors in Perú, that the Stability  
2 Agreement covered the Mining Concession "Cerro Verde  
3 1, 2, 3" and the Beneficiation Concession "Cerro Verde  
4 Beneficiation Plant." By engaging in these  
5 conversations with the Peruvian Government, we simply  
6 achieved a reconfirmation that, by including the  
7 Concentrator in those Concessions, which already  
8 existed, they were these Concessions, and when they  
9 tell us that Concession is going to be expanded—you're  
10 going to put the Concentrator in this Concession that  
11 is already stabilized, they reconfirmed for us that  
12 that same Concentrator would have not only the benefit  
13 of reinvestment of profits, which is only accomplished  
14 when one reinvests in new infrastructure that is  
15 developed in the same Production Unit, but also that  
16 this Production Unit that was already stabilized was  
17 going to extend that stability to the Concentrator.

18           So, for us, those oral assurances were  
19 important because they were reflected in  
20 Administrative Acts and confirmations of what was  
21 already established in the General Mining Law and what  
22 the Ministry also said in its Administrative Acts.

1           Q.    So, on the one hand, they were not  
2 important, which is why you didn't print this email.  
3 On the other hand, they were very important, which is  
4 why you didn't print the email.

5                   I don't understand your testimony.

6                   On the one hand you say--which I asked you,  
7 didn't you care to print this email, to keep it,  
8 because those oral assurances were very important, you  
9 said, no, they have no probative value. That's why I  
10 didn't print the email. I didn't care to retain it.

11                  On the other hand, you are now saying those  
12 oral assurances were very important. Well, which one  
13 is it? Were they important or were they not  
14 important?

15           A.    I already told you that they were important.

16                   (Interruption.)

17           Q.    You say they are important. Why is it then  
18 that you did not print the email to retain it?

19           A.    Because the information was already  
20 conveyed. I did not need to print an email. And  
21 also, at the same time, Phelps Dodge approved this  
22 expansion for more than \$800 million precisely subject

1 to obtaining both the construction permit and the  
2 reinvestment of profits, so it was not necessary to  
3 have a printed email when everyone had knowledge,  
4 including the Peruvian State, of these assertions that  
5 were being received.

6 Q. We'll come to the understanding of the  
7 Peruvian State, but before that can we look at Tab 4,  
8 which is CE-1134, the Transcript of the Cerro Verde  
9 Hearing.

10 A. What line?

11 Q. Day 2, Page 557. Line 11, Arbitrator  
12 von Wobeser. Do you see that? He's asking you a  
13 question. He says: "Going back to the administrative  
14 act, the oral opinion is valid, equally valid in  
15 administrative law?" And you say: "By itself, no."

16 And then you can read your explanation. And  
17 you conclude: "But by itself, in a conversation, it  
18 would have no effect." That carries over to the first  
19 two lines of Page 558.

20 Do you see that?

21 A. Yes.

22 Q. Do you confirm this testimony, your response



1 to Arbitrator von Wobeser?

2 A. Yes, but as I said below--it must be  
3 somewhere--it is true, an opinion in a conversation  
4 doesn't have any value, but in our case the opinions  
5 given by the authorities to us were accompanied by  
6 administrative acts that confirmed the opinion that we  
7 were given.

8 Q. "But by itself, in a conversation, it would  
9 have no effect" are your words.

10 Do you confirm your words?

11 A. Yes, but you do need to read it with all of  
12 the statements. Can we look at the paragraphs,  
13 please?

14 Q. No. I'm just asking--the Tribunal has that  
15 Transcript. And I put it in front of you, your answer  
16 to Arbitrator von Wobeser. You say you confirm your  
17 testimony; correct?

18 A. I confirm all of the testimony, not only  
19 these two lines, but also the explanation that I give  
20 then that just one conversation with an isolated  
21 question doesn't have an absolute value, but in our  
22 case, before any procedure or step we took to

1 materialize this expansion, we had assertions and we  
2 also had conversations with various officials, not one  
3 but several officials within the Ministries, who were  
4 the ones that guided us in the process to be able to  
5 have this expansion in time and also with the  
6 assurances that our shareholder had requested.

7 (Overlapping interpretation and speakers.)

8 Q. I'm sorry, Tab 24, RE-198.

9 A. Are you talking about the email from  
10 Ms. Chappuis?

11 Q. Yes, subject, "Meeting with Cerro Verde,  
12 New" Stabilization Agreement She says: "Can you  
13 come to my office on Tuesday the 15th at 11. The  
14 matter is : "Request for inclusion of the Sulfides  
15 Project in" the Stabilization Agreement of Cerro  
16 Verde]..."is" that "legal?"

17 (Overlapping interpretation and speakers.)

18 Q. Is it your testimony, Ms. Torreblanca, that  
19 before that date, the date of this email, Ms. Chappuis  
20 already provided the written assurances to you that  
21 the '98 Stabilization Agreement is covered, covers the  
22 Concentrator Plant?

1           A.    Yes, it is correct. This email is linked to  
2 the approval of the Mining Royalties in Perú, and we  
3 requested to expressly include it in the Stability  
4 Agreement in a conversation that we had with  
5 Ms. Chappuis and her team. So, I assume that's the  
6 reason why you are asking me the question. But yes,  
7 not only Ms. Chappuis, but also the Ministers of  
8 Energy and Mines.

9           Q.    I'm not asking you—

10                   (Overlapping interpretation and speakers.)

11           Q.    Sure. I'm not asking to speculate why  
12 Ms. Chappuis sent this email. I don't believe you  
13 know that or you can know that unless she shared it  
14 with you.

15                   Did she tell you why she sent this email?

16           A.    No, she didn't.

17           Q.    Then I'm not asking you to speculate why.

18                   I just wanted to confirm that she—your  
19 testimony is she gave you oral assurances before that  
20 date, and you said, "That's correct"?

21           A.    Yes, that is correct. We had already met,  
22 as we explained, in 2003 with the team from the

1 Directorate General of Mining to review these topics  
2 and also the reinvestment of profits.

3 Q. Can we look at Tab 5?

4 Again, the Transcript of the Cerro Verde  
5 Hearing, Day 3, at Pages 902-903. So, at the bottom  
6 of Page 902, the question to Ms. Chappuis is, why are  
7 you convening a meeting in June of 2004 to now raise  
8 the question whether it's legal or not--whether it's  
9 legal to extend--to include the Concentrator Plant  
10 into the Stabilization Agreement. And she says--you  
11 see the answer on Page 903. She says: "The reply to  
12 Cerro Verde was given after that meeting."

13 "Question: So, before this meeting, you  
14 never said anything to Cerro Verde about the  
15 Concentrator Plant and whether it was stabilized or  
16 not? Is that your testimony?"

17 "Answer: Precisely. I answered the  
18 questions of the companies once I had discussed this  
19 with the entire team."

20 So, I submit to you the testimony of  
21 Ms. Chappuis is very categorical. She says before  
22 that meeting she never said anything to Cerro Verde.

1 She says, I answered the question only after I  
2 discussed with the entire team.

3 So, one of you is incorrect.

4 A. I apologize. In the questions that you  
5 asked her, did you cite that email? Because I do not  
6 see the timeline when the question is being asked,  
7 about the timeline that you're referring to in the  
8 question.

9 (Overlapping interpretation and speakers.)

10 Q. I represent to you that I was asking  
11 about--I was asking her about this email, and the  
12 meeting on June 15. And I asked her, the reply to  
13 Cerro Verde was given after that meeting?--sorry, she  
14 answered: "The reply to Cerro Verde was given after  
15 that meeting." And I asked her: "Before this  
16 meeting, you never said anything to Cerro Verde about  
17 the Concentrator Plant and whether it was stabilized  
18 or not? Is that your testimony?"

19 And she said: "Precisely. I answered the  
20 questions of the companies once I had discussions with  
21 entire team."

22 So, again, one of you is incorrect. Having

1 seen Ms. Chappuis' testimony, do you want to amend  
2 your testimony?

3 A. No. I would like to read this for a couple  
4 of minutes, please, if you'll allow me.

5 (Overlapping interpretation and speakers.)

6 Q. You will do that on redirect.

7 I'm asking you, do you maintain your  
8 testimony that Ms. Chappuis told you that the  
9 Concentrator Plant is covered by the 1998 Agreement  
10 before June 15, 2004?

11 A. Yes, during the 2003 conversations, and this  
12 was not only Ms. Chappuis but also the team of the  
13 Directorate General of Mining.

14 Q. I'm asking about Ms. Chappuis because she  
15 says the opposite. Let's move on.

16 PRESIDENT HANEFELD: Just to clarify, now,  
17 so you said that during the 2003 conversations you got  
18 this oral confirmation? I thought always it was in  
19 2004. So, maybe you can explain. In what meeting was  
20 the specific oral confirmation given that you would be  
21 exempt from Royalties or the Concentrator would be  
22 subject to the Stabilized Regime?

1           THE WITNESS: Sure. At that point in time,  
2 in 2003, when we requested the reinvestment of profits  
3 and the confirmation by the Directorate General of  
4 Mining that Cerro Verde was actually going to be able  
5 to apply for the reinvestment of profits, we explained  
6 to the Directorate General of Mining that the  
7 Concentrator was going to be part of the Production  
8 Unit and that we were looking for was for it to have a  
9 unity of treatment with respect to the tax and  
10 administrative regime, that we did not want to expand  
11 our stability but for them to confirm that it was part  
12 of the Production Unit. In those meetings we also  
13 explained the list of permits that we were looking  
14 for. One was the profit reinvestment, but we were  
15 also looking for the confirmation that they understood  
16 that that Concentrator was going to be covered by the  
17 Stability Agreement. At these meetings, the  
18 Concentrator was addressed for the first time, and  
19 that it was going to be part of the Production Unit  
20 and the Stability Agreement. That was first in 2003.

21           In 2004 we already had the certainty that we  
22 were going to apply for the profit reinvestment, but

1 political pressure begins to be mentioned and started  
2 to grow for the approval of a Royalty Law. This  
3 Royalty Law, in theory, was going to be applied only  
4 to those companies that did not have a stability  
5 agreement. So, Phelps Dodge and Cerro Verde went  
6 again--and that's why I was asking about the  
7 email--went back again to the Directorate General of  
8 Mining to explain that we needed an additional  
9 assurance to what we had understood so far and had  
10 already included in the Pre-Feasibility Study, that  
11 the Concentrator was also going to be stabilized. We  
12 approached them and said: "We would like to get  
13 confirmation that the Concentrator--please put it in  
14 writing--that the Concentrator will be stabilized."  
15 The Royalty Law was passed in June 2004. That's the  
16 reason why we were concerned and we approached them,  
17 and when we approached them to ask, they said "Well,  
18 yes, you can include it expressly," but we asked "What  
19 if we have a separate beneficiation concession and you  
20 can include this in the Stability Agreement?," and  
21 that's when they said "We think that this here is a  
22 case like that of Tintaya, which is quite similar and



1 was denied, you would need to ask for a separate  
2 Stabilization Agreement." So then, we requested a  
3 meeting, we said "No, no," we want to include this, we  
4 want all in the same Production Unit, we want to have  
5 the same Tax Regime, we do not want more years, we do  
6 not want anything different, we want everything to be  
7 treated as the Production Unit that it will be."

8 And, as a result, we started to meet again  
9 with the Directorate General Mining to see what type  
10 of certainty, written certainty, document in writing,  
11 could give us the assurance that the Shareholder  
12 requested.

13 At that point in time, we had not one, but  
14 several meetings and we also made presentations to  
15 point out the differences between Tintaya and Cerro  
16 Verde. After those meetings, they came back and said  
17 "No problem, you do not need to request a separate  
18 Beneficiation Concession to include it in the  
19 Agreement," as we thought that we needed to do to have  
20 an additional guarantee, you may expand the  
21 Beneficiation Concession as you have done in the  
22 past."

1           We had already increased the output of the  
2 Beneficiation Concession multiple times, we had  
3 included additional infrastructure, solely through  
4 this procedure to amend the Beneficiation Concession.

5           After several meetings, they said, "you can  
6 proceed with the Beneficiation Concession." We also  
7 reported this. In this case, I reported this to  
8 Randy, who I think was at the meeting, and to Phelps  
9 Dodge, and Phelps Dodge approved because it was the  
10 certainty that they were waiting to approve the  
11 investment. And how was this materialized?

12           First, in the building permit that is  
13 obtained, I believe it was in August 2004 more or less  
14 September--October, or end of September or October  
15 2004--and then the reinvestment of profits that  
16 confirmed, again, that we were receiving those  
17 certifications or assurances in writing that we were  
18 looking for as investors.

19           PRESIDENT HANEFELD: So, to sum up, it's my  
20 understanding that your testimony that you received  
21 oral assurance already in 2003 that the income of the  
22 Concentrator would be stabilized and fall under the

1 old MINEM 1998 regime? In addition, Ms. Chappuis  
2 orally confirmed in 2004 that, by extending the  
3 Beneficiation Concession, this would also cover the  
4 Concentrator?

5 So, we have two oral confirmations?

6 THE WITNESS: Yes. And more, because before  
7 we approached the Directorate General of Mining, we  
8 met with the Minister of Energy and Mines, and with  
9 the Minister of Economy and Finance, who used to be  
10 the Minister of Energy and Mines, we also met with  
11 other officers, the Minister of Agriculture, among  
12 others, and in all these meetings, we explained that  
13 the Pre-Feasibility Study considered that the  
14 Concentrator was covered by the tax stability, and we  
15 explained why, and they confirmed that our  
16 understanding was correct, irrespective of the  
17 technology that we would use.

18 Our Production Unit, including the new  
19 Concentrator, was going to enjoy tax, administrative  
20 and currency exchange stability.

21 PRESIDENT HANEFELD: One final follow-up  
22 question, and then I do not want to interrupt your

1 questioning, Mr. Alexandrov. Sorry.

2           We had discussed whether there was any  
3 written record on the oral confirmation that you say  
4 you received in 2004. Is there any written record on  
5 the oral confirmation that you received in 2003 that  
6 you just talked about?

7           THE WITNESS: I do not have it because I do  
8 not have the emails, they are no longer available.

9           BY MR. ALEXANDROV:

10          Q. If I understood you correctly,  
11 Ms. Torreblanca, you said you received oral assurances  
12 earlier. You are now seeking in the middle of 2004  
13 additional assurances; correct?

14          A. Yes, because political environment had  
15 changed and the Royalty Law was being approved and  
16 many individuals requested for it to be applied to  
17 companies with stability agreements.

18           (Overlapping interpretation and speakers.)

19          MR. ALEXANDROV: I was just saying an answer  
20 that this is correct would be sufficient.

21          BY MR. ALEXANDROV:

22          Q. And those earlier assurances, did you

1 receive them from Ms. Chappuis, among others?

2 A. People from the team in general, yes.

3 (Comments off microphone.)

4 A. I was going to explain that the meetings  
5 were attended by Ms. Chappuis and her team.

6 (Overlapping interpretation and speakers.)

7 Q. But she was there?

8 A. Yes.

9 ARBITRATOR TAWIL: To clarify, because I  
10 don't know if it is completely clear, what you are  
11 saying is that you received oral assurances. The  
12 email that was lost, the email where you recorded  
13 those oral assurances and you sent that to your boss.  
14 But they are not emails from the Government; correct?

15 THE WITNESS: That is correct. They are  
16 internal pieces of email.

17 ARBITRATOR TAWIL: That's why you are saying  
18 that they are not valid, because they are your  
19 internal emails?

20 THE WITNESS: Yes, indeed.

21 ARBITRATOR TAWIL: Thank you.

22 ARBITRATOR CREMADES: I apologize for asking

1 you again, but as Vice President of Corporate Affairs,  
2 you have as part of your team legal advisory or legal  
3 counsel. Who is providing you with legal services?  
4 How many attorneys do you have? How does this legal  
5 department work?

6 THE WITNESS: Nowadays, we have a legal  
7 manager who has two legal superintendents, and each  
8 has their own team. But in 2004 I was in charge of  
9 everything, all of the legal topics of Cerro Verde.  
10 At that point we only had 480 workers, and I did  
11 permits, I looked into contracts, and I did have an  
12 attorney that worked--that entered the Company before  
13 me, and then there was another attorney, but that was  
14 it. I had an administrative assistant and as Cerro  
15 Verde grew, we grew too.

16 So, we did not have the same team as  
17 nowadays. Now I have more than 50 or 60 people that  
18 report to me. Before, I only had an assistant.

19 ARBITRATOR CREMADES: And since you're a  
20 lawyer, why is it that you did not recommend the  
21 Company to make such an important investment without  
22 putting it in writing, without putting those

1 guarantees in writing? This is administrative law of  
2 the metaverse because we all know that with public  
3 administration, and mainly in a country such as Perú,  
4 everything is very--works very formally in writing.

5           So, why didn't you demand those commitments?  
6 When you are saying that between 2004, 2006, and 2008  
7 you did not insist because it was just a technicality,  
8 don't you think that that is not very reliable?

9           THE WITNESS: I don't understand what you  
10 told me about the technicality.

11           ARBITRATOR CREMADES: What I'm asking is: you  
12 were in charge of Legal back then, do you think that  
13 it was credible for you to say that you would not  
14 require in writing any assurances about the tax  
15 benefits?

16           THE WITNESS: What happens is that, in our  
17 case, we did not only have the mining industry  
18 practice as to how the stability agreements were  
19 applied, that they extended to concessions that were  
20 included in the stability agreement, but we also had,  
21 that the understanding of the officers of the Ministry  
22 of Energy and Mines was always that it was going to be

1 applied to Cerro Verde as a single Production Unit,  
2 including the Concentrator. And we also had the  
3 confirmation that by reinvesting the profits of Cerro  
4 Verde--and this was in writing--in the same Mining  
5 Unit, even though the Concentrator would have not been  
6 specified before, it was going to be part of the same  
7 Production Unit that was stabilized. Those were  
8 assurances in writing.

9           And when this is approved, this was  
10 documented by the Shareholder. When this \$800 million  
11 expansion was approved--actually, it was an expansion  
12 for almost 900 million- all of this is explained and  
13 the Shareholder knew this, and it is said "The  
14 Ministry of Energy and Mines has confirmed that by  
15 including the Concentrator in the Beneficiation  
16 Concession, the Concentrator is also covered by the  
17 Stability Agreement," and that's the reason why we did  
18 not need an additional confirmation in writing. So,  
19 we did have these written confirmations, which are the  
20 titles as such of the Beneficiation Concession, which  
21 had already been expanded in the same way in the past,  
22 and it was never questioned by the Ministry of Energy



1 and Mines or SUNAT. And they had already recognized  
2 that these additional investments were part of the  
3 Production Unit and had the same legal treatment.

4           What's more, the reinvestment itself was  
5 approved in December of 2004, and those were the  
6 permits that Phelps Dodge was waiting for. That's why  
7 it approves subject to the condition to obtain, first,  
8 the construction permit and, second, the reinvestment  
9 of profits. -So, this is not that we were not serious  
10 enough, in fact, we were acting in good faith, guided  
11 by the Ministry of Energy and Mines. So much so, that  
12 our officers were invited to tell what a good story  
13 Perú was despite the rumors and despite the Royalty  
14 Law approved in 2004, to tell how is it that together  
15 we were making this investment to be favorable to the  
16 country, with more taxes, more work, more jobs, and  
17 other additional contributions that we made knowing  
18 that we would not have to pay Royalties.

19           For example, we committed during a working  
20 roundtable that was investigating the reinvestment of  
21 profits and royalties, we announced publicly that, as  
22 we do not pay Royalties, we are going to build a plant

1 for drinking water in Arequipa, a plant which cost for  
2 us was USD 120 million but that is currently giving  
3 water to more than 350,000 people from Arequipa.

4 Arequipa is the second-largest city in the country.

5 After that, we have continued building infrastructure  
6 and we have also invested more than USD 30 million in  
7 piping, and we have continued with the Infrastructure  
8 Works, and we go beyond Water Works and we go beyond  
9 what the law provides for, and many of these

10 agreements were made verbally, some of them have been  
11 reflected in minutes, others have not, and we have  
12 always honored them. And us acting in good faith, we  
13 also expected the Government to comply with them.

14 That's why we were extremely disappointed when we  
15 found out that the Ministry waited for us to start  
16 building the Concentrator, and when we were well  
17 advanced into this path, they issued different  
18 opinions that we discovered after 2008.

19 ARBITRATOR CREMADES: And as Legal Advisor,  
20 legal counsel, what did you tell the Shareholders when  
21 you told them, for example, of the problems that you  
22 had with Diez Canseco, that it seemed to be the

1 beginning of a war, the shareholder, and even more  
2 being a foreign shareholder, did it not request to you  
3 what assurances do we have that we are going to be  
4 covered in the tax guarantee process? What did you  
5 respond to them? Just good faith?

6 THE WITNESS: No, at that time we went to  
7 the Ministry of Energy and Mines and we met with the  
8 Minister and in some occasions with the Vice Minister,  
9 and we said: "Look at what is going on," and we were  
10 told "There is no problem." We know that there is a  
11 lot of political pressure in Perú, and sometimes the  
12 newspapers show headlines similar to the ones that we  
13 saw with Diez Canseco.

14 Yes, we raised the flag and said "Look at  
15 what Mr. Diez Canseco said"; but at the same time, we  
16 had resolutions from the Ministry of Energy and Mines  
17 that confirmed that we were going to have that  
18 stability by having the Concentrator within the  
19 Beneficiation Concession. But, yes, this was already  
20 mapped. Moreover, Diez Canseco was not the only one.  
21 In Arequipa, we also had Mr. Martinez, who constantly  
22 pressured SUNAT and also sent letters to the Ministry

1 of Energy and Mines.

2           And in addition to this, and in spite of the  
3 commitments that we had accepted already, there was an  
4 association that blocked the road from time to time,  
5 FREDICON, demanding, for example, that we sign the  
6 Voluntary Contributions Agreement prepared by the  
7 Peruvian Government. We had a lot going on at the  
8 same time, and all of this while we were making an  
9 investment of more than 800 million. So, it was an  
10 everyday affair.

11           ARBITRATOR CREMADES: Thank you very much.

12           MR. ALEXANDROV: Madam President, I know we  
13 are approaching a break, but I would like a few  
14 minutes to complete a line of questions, and I have a  
15 question to the Secretary.

16           I hope my understanding is correct that  
17 those speeches are not on Respondent's time.

18           SECRETARY PLANELLS VALERO: No.

19           BY MR. ALEXANDROV:

20           Q. I want to go back to your Statement that you  
21 received oral assurances earlier, and that in third  
22 quarter--I'm tempted to say the summer, but it's not

1 necessarily the summer in Perú--in the middle of 2004,  
2 those were additional assurances that you are seeking.

3           And I want to take you, again, to the  
4 testimony of Ms. Chappuis that we saw already, Tab 5,  
5 CE-1135, Day 3. At 9:03, where we were talking to  
6 Ms. Chappuis about this email of 11 June 2004. She  
7 says the reply to Cerro Verde was given after that  
8 meeting.

9           "Question: Before this meeting, you never  
10 said anything to Cerro Verde about the Concentrator  
11 Plant and whether it was stabilized or not? Is that  
12 your testimony?

13           And she says: "Precisely."

14           So, she says she never said anything to  
15 Cerro Verde about the Concentrator Plant and whether  
16 it was stabilized or not before the meeting on June 15  
17 with her team.

18           So, is her testimony incorrect, or is your  
19 testimony incorrect?

20           A. I apologize. I do not see the reference to  
21 email of June 2004.

22           Q. I can represent to you that I'm asking her

1 questions about this email, and if there is any doubt  
2 about that, we can go later through the Transcript,  
3 but I represent to you--and Counsel will correct me if  
4 it's wrong--that I'm asking her about that email.

5           And the meeting she had with her team on  
6 15 June 2004, she says: "The reply to Cerro Verde was  
7 given after that meeting."

8           "Question: So, before that meeting, you  
9 never said anything to Cerro Verde about the  
10 Concentrator Plant and whether it was stabilized or  
11 not? Is that your testimony?"

12           "Precisely."

13           And so, I'm asking you, she testifies what  
14 she says here. This is not consistent with your  
15 testimony. Is she misremembering or are you  
16 misremembering? You're not misremembering; correct?

17           A. I recall that the DGM, in general, had  
18 explained to us that their understanding was that the  
19 Agreement covered our Concentrator. What happened in  
20 the interim probably was the matter related to  
21 Tintaya, that is why I was trying to explain this--  
22 that they did mention that this case could be similar

1 to Tintaya and that is perhaps why she is not  
2 remembering exactly, but that's all I can say. I  
3 can't say anything else.

4 Q. What does Tintaya have to do with her  
5 answer? She is saying--the question is: "You never  
6 said anything to Cerro Verde about the Concentrator  
7 Plant and whether it was stabilized or not."

8 And she says: "Precisely."

9 I don't understand what Tintaya has anything  
10 to do with this answer.

11 A. In fact, when we approached them to ask for  
12 a written confirmation, I was telling you before that  
13 somebody at the DGM mentioned that there was a request  
14 by Tintaya that had been rejected, and that they  
15 thought it was the same as Cerro Verde's. That is why  
16 we came back to explain to them the differences  
17 between the Cerro Verde Case and the Tintaya Case,  
18 that we didn't want a new, separate Stability  
19 Agreement, but we wanted them to confirm that the  
20 Concentrator would be covered by the Stability  
21 Agreement, and that is why it's important to  
22 contextualize this, because of the dates.

1 Q. So, you are saying that, when Ms. Chappuis  
2 says, "I never said anything to Cerro Verde about the  
3 Concentrator Plant and whether it was stabilized or  
4 not," she was confusing Cerro Verde with Tintaya?

5 Is that your testimony?

6 A. No. That's not my testimony. No.

7 Q. Okay. Let us look at what else she's  
8 saying.

9 So, if you can look at Tab 5. That's the  
10 same document. CE-1135, Day 3, Page 871. And I begin  
11 with--I begin at Line 3.

12 You told them: "Don't worry, you are  
13 already covered, the Concentrator Plant is already  
14 covered. You don't need either written assurances or  
15 an amendment to the Stabilization Agreement."

16 And I'm asking you--that's a question to  
17 Ms. Chappuis--"and I'm asking you, do you remember  
18 when you made that statement? If you don't remember,  
19 you say so. And I'm asking you, was it one meeting or  
20 two meetings or three meetings or more, when you made  
21 that statement?"

22 She says: "I recall having met at my office



1 and the legal team was there and an engineer as well.  
2 And Ms. Torreblanca had come with someone else, and we  
3 had already analyzed the request, and we told them,  
4 this complies with your Contract."

5 "Question: So, was it one meeting or more."

6 "Answer: One meeting."

7 So, Ms. Chappuis here is testifying again in  
8 no unambiguous terms that there was one meeting when  
9 she gave you those oral assurances. Again, that's  
10 inconsistent with your testimony.

11 Does that refresh your recollection? Do you  
12 wish to change your testimony?

13 A. There was one meeting to deal with this  
14 topic probably, but we met on several occasions to  
15 look at other issues: The reinvestment of profits,  
16 the Stability Agreement, this presentation that was  
17 made with respect to the difference with Tintaya. So,  
18 I'm not sure to which meeting she's making reference  
19 to when you're asking the question to Ms. Chappuis.

20 Q. You're talking about meetings, and you  
21 testified there were several meetings--five--with  
22 Ms. Chappuis and her team, where she and her team gave

1 you oral assurances that the Concentrator Plant is  
2 covered by the 1998 Stabilization Agreement.

3 Here she says "yes, I told them that," and  
4 that was "one meeting."

5 And I'm asking you, whether you wish to  
6 change your testimony that it was one meeting only  
7 when Ms. Chappuis gave you those oral assurances?

8 A. I have not said that there were five  
9 meetings where oral assurances were given to me. You  
10 asked me before, if I understood you correctly, how  
11 many times we met with the DGM and how many meetings  
12 we held. I said "in general."

13 Q. I was not asking you in general. But let me  
14 ask you again to avoid--how many meetings did you have  
15 with Ms. Chappuis and her team during which she and  
16 her team gave you oral assurances that the  
17 Concentrator Plant is covered by the 1998  
18 Stabilization Agreement?

19 A. There were several prior meetings, but it is  
20 true that in one meeting they respond to us, but  
21 before getting that answer in that meeting, we had  
22 prior meetings and we made presentations as well.

1 Q. We know that you had many meetings and gave  
2 presentations.

3 My question is, you say they gave you oral  
4 assurances, and I repeat: The oral assurances, you  
5 say, were that the Concentrator Plant was covered by  
6 the 1998 Stabilization Agreement. Those oral  
7 assurances, that you have discussed extensively in  
8 your Witness Statement, were given to you at one  
9 meeting, five meetings, 500 meetings?

10 A. In '04, it was in one meeting. In 2003,  
11 during the review of the reinvestment of profits as  
12 well.

13 Q. So, there was another meeting--

14 A. In '03.

15 Q. And that's not what Ms. Chappuis says.

16 So, she's misremembering, you think?

17 A. Perhaps.

18 Q. You maintain your testimony?

19 A. That they gave to us, yes - Sir, what  
20 happens is that--well, I just want this to be clear:  
21 We held a number of meetings, many meetings, not only  
22 with the DGM, with the Ministers of Energy and Mines,

1 et cetera.

2 (Overlapping interpretation and speakers.)

3 Q. I am talking about MINEM.

4 A. MINEM is the Minister of Energy and Mines,  
5 also, just in case.

6 Q. Can we look at the same document, the  
7 Transcript, Tab 5, CE-1135, Day 3.

8 A. Page?

9 Q. 3. And let's begin at Page 716. It's a  
10 question by Arbitrator von Wobeser to Mr. Davenport.

11 715--my apologies--Line 20.

12 Arbitrator von Wobeser says: "Mr. Davenport, at the  
13 time, in considering that this paragraph you just  
14 read, did you consider getting a written confirmation  
15 at a certain stage, a written confirmation for that  
16 understanding, instead of a verbal confirmation from  
17 the Government? Wouldn't you think that a written  
18 confirmation would be more firm, stronger, better for  
19 making sure that everybody understood what it was?"

20 Mr. Davenport says: "Yes, and no question.  
21 I think it felt like--and I think Phelps Dodge did,  
22 too--that once we got--the written confirmation was

1 the expansion of the Concession, and including the  
2 Concentrator in the Concession. It was the Concession  
3 that was stabilized. To me, that was the written  
4 confirmation."

5 "Arbitrator von Wobeser: But a written  
6 confirmation specifically saying that stabilization  
7 would apply?"

8 "The Witness: You know, again, I guess, I  
9 can just answer, when we did the expansion in 2001, it  
10 stabilized the increase and the crusher's output and,  
11 to me, the written confirmation is that we include the  
12 Concentrator in the Beneficiation Concession. To me,  
13 that was written confirmation that it was stabilized."

14 [Arbitrator von Wobeser:] "Even though the--but didn't  
15 say--the document didn't say "stabilization"; right?  
16 There was no written confirmation specifically saying  
17 there was--that the price would be stabilized, the  
18 Concentrator?"

19 "Mr. Davenport: No. As far as somebody  
20 saying "the Concentrator is stabilized" in a document,  
21 no."

22 "Arbitrator von Wobeser: You didn't

1 consider that as prudent of?"

2 "Mr. Davenport: Well, as I explained  
3 before, and I tried to explain to Phelps Dodge, I  
4 wasn't going to get that from a Minister. You know,  
5 they just weren't going to get out on the line and say  
6 that. We had to go through the process, and then,  
7 once we understood that, if we included the  
8 Concentrator in the Concession, that it would be  
9 stabilized. But getting them to say "the Concentrator  
10 is stabilized" in a document, to me, that wasn't going  
11 to happen."

12 "Arbitrator von Wobeser: You would have  
13 preferred it to happen?"

14 "Mr. Davenport: Yeah, I suppose. I would  
15 have preferred it to happen, but, you know, based on  
16 my experience in Perú, it wasn't going to happen."

17 You see that testimony?

18 A. Yes.

19 Q. Okay. Now, let me ask you this: Going back  
20 to 2003, you ask twice. You send two letters. You  
21 asked twice in writing whether Cerro Verde qualifies  
22 for the Profit Reinvestment Program. You get two

1 Legal Opinions that confirm, and then you apply.

2           Why wouldn't you do the same here, send a  
3 written request saying--asking the question: Is the  
4 Concentrator Project stabilized by the 1998  
5 Stabilization Agreement? Had you done that, the  
6 General Director of Mining would have given you a  
7 legal opinion. We don't know what it would have said,  
8 but they would have given you an answer in writing.  
9 Yes, you are covered, or, no, you are not covered.

10           Why didn't you do the same? Why didn't you  
11 do what you did in 2003 in relation to the Profit  
12 Reinvestment Program, sometime in 2003 or in 2004 when  
13 the political situation got tense. Why didn't you  
14 send a letter in writing, ask the question, and you  
15 would have received Legal Opinion, which would have  
16 been a document with a lot of probative value?

17           A. In the case of the profit reinvestment, we  
18 did make an inquiry in writing because it had been  
19 repealed in 2000, and we wanted the Government to put  
20 this in writing. It is not usual for the Ministry to  
21 answer these types of questions, or to issue these  
22 kinds of opinions. That's my first explanation.

1 Q. Well, whether it was usual or not is beside  
2 the point. You did it in relation to the Profit  
3 Reinvestment Program because it was important for you  
4 to know, even though you believed you qualified, you  
5 still asked the question before you applied.

6 If you wanted so much to receive assurances  
7 in writing that the Concentrator Project was covered  
8 by the 1998 Stabilization Agreement, why didn't you  
9 ask in writing, and you would have received a legal  
10 opinion? Usual or unusual, if you sent a request in  
11 writing, you would have received a response in  
12 writing.

13 A. Correct. But before, when we started  
14 looking at this expansion, we had already held  
15 discussions with the Ministers at the time, and all of  
16 them had assured to us that the Agreement was going to  
17 cover the Concentrator as well. So, for us, it wasn't  
18 necessary up until 2004, when Phelps Dodge says, okay,  
19 put this in writing, it wasn't necessary for us to go  
20 to the Ministry and ask the Ministry for this kind of  
21 opinion.

22 However, as Davenport says, in 2004, the



1 Minister had said this orally, but there was political  
2 pressure already, and the issue was growing because of  
3 the Royalties matter, so, when we wanted them to give  
4 us something in writing---well, we wanted to go even  
5 further, we wanted to include the Concentrator as a  
6 separate Beneficiation Concession," and the answer  
7 from the DGM was "No, no, do it like you did before,  
8 that is, expand the Beneficiation Concession, and the  
9 title is going to include a Directorate Resolution  
10 that has more value than a legal opinion." And it was  
11 going to be signed, also, by more people that assessed  
12 this request.

13 Q. You keep talking about the expansion of the  
14 Beneficiation Concession, which we established does  
15 not mention the 1998 Stabilization Agreement. I'm  
16 asking you, in 2004, when the political situation got  
17 worse, from your perspective, and you wanted to  
18 receive written assurances, why didn't you ask in  
19 writing for written assurances, and you would have  
20 received a response in many writing? Why not?

21 A. Just like we did in '03, before sending the  
22 letters, we went to the DGM to explain that we were

1 going to send those letters, and to explain to them  
2 what we needed. And we did the same thing. I think  
3 that email has to do with that meeting. We did the  
4 same thing with the DGM. We told them, okay, we need  
5 something in writing.

6           So, considering the same political  
7 environment and other issues, we proposed, as I  
8 mentioned a moment ago, creating a separate  
9 Beneficiation Concession and including it in the  
10 Stability Agreement. However, the response by the DGM,  
11 after assessing the issue, because it wasn't an  
12 immediate response obviously, was: "No, expand the  
13 Beneficiation Concession and with that you have the  
14 guarantee that this is going to be covered under the  
15 Stability Agreement."

16           Q. Can you look at Tab 6, which is CE-1136.  
17 That's, again, the Transcript, Day 4.

18           A. Page?

19           Q. I'll give you the page number in a second.

20           So, it's Page 943, and it's the second line.  
21 You see the question, "but I'm asking you." Again,  
22 this is the examination of Ms. Chappuis:

1           "Why don't you, Ms. Chappuis, the Director  
2 of Mining, send Cerro Verde a letter putting in  
3 writing what you told them in this one meeting?"

4           She answers--Ms. Torreblanca, are you there?

5           A.    Yes.

6           Q.    She answers: "I produced letters for the  
7 Mining Titleholders in response to applications or  
8 requests."

9           "Question: So, you did not put these  
10 assurances in writing because they didn't make a  
11 request, and, I assume, by the word in Spanish  
12 "solicitud," because she used that word--"you mean a  
13 formal written request; correct?"

14          She says: "Exactly."

15          "Question: So, they need to make a formal  
16 written request for you to respond in writing with  
17 those assurances; correct?"

18          "Answer: Precisely, as we saw this when we  
19 discussed the 2003 issue."

20          The 2003 issue being the reinvestment issue.

21          "[Question:] Had they submitted a formal  
22 request, you would have had to go through a process

1 within MINEM with lawyers and engineers to consider it  
2 and to have them prepare a report or an opinion in  
3 writing before you notify Cerro Verde; correct?"

4           And the answer is: "Correct."

5           So, what she's saying is, I wouldn't have  
6 given written assurances if there was no request in  
7 writing? Correct?

8           A. That is what I read, yes.

9           Q. Now, let us look at Page 946, and look--the  
10 question begins on--at Line 16. "My question is more  
11 focused that than that."

12           Are you with me?

13           A. Yes.

14           Q. "You say"--you meaning Ms. Chappuis--"You  
15 say "I confirmed to Ms. Torreblanca and Mr. Davenport  
16 that Cerro Verde did not need a separate written  
17 assurances." Did you tell them that or not?"

18           "Answer: No, they asked whether if they  
19 could send a letter, and I said I think not."

20           So, she denies that she told you and  
21 Mr. Davenport that Cerro Verde did not need a separate  
22 written assurance. She says you asked whether you

1 could send a letter and she, Ms. Chappuis, says, "I  
2 think not."

3           So, Ms. Chappuis didn't want you--she didn't  
4 say, "you don't need to send a letter, it's not  
5 necessary." She essentially told you "do not send a  
6 letter."

7           Is it possible, Ms. Torreblanca, that she  
8 told you don't send a letter because then I have to  
9 respond in writing, and my response is not a response  
10 that you would like?

11           A. Just one moment. I'm looking at the Spanish  
12 as well. One moment. No, that is not possible. As  
13 Ms. Chappuis says right here, she says: "It was clear  
14 to me and for the whole team, and all the ones that  
15 were going to draft the Response letter were before  
16 Mr. Davenport, and we all agreed. We all said we were  
17 in agreement," and it's understood that the  
18 Concentrator was going to be included.

19           And you asked her: "You answered my  
20 question, which was fine. Was Mr. Tovar one of those  
21 persons, the "todos," "all," that you refer to?," and  
22 she said, "I recall that Mr. Tovar never objected to

1 the Legal or technical decisions obtained. He never  
2 did."

3           Then you asked: "You said you would have  
4 responded in writing with a report if they had  
5 submitted a formal request in writing. But you  
6 yourself told them they did not need to do that,  
7 didn't you?"

8           "A: We were in a meeting where the  
9 individuals in charge of drafting the Legal Report  
10 were present: Dra. Padilla was there, Dra. Menendez,  
11 Engineer Luis Saldarriaga, and we had already decided,  
12 all of us, in a collegiate way, that the Concentrator  
13 could go on. And they saw that we were all in  
14 agreement, and we said, okay, if you want, you could  
15 send a letter, but, if not, we are all here, and we  
16 all agree."

17           Indeed, she is saying that if we want--she  
18 didn't say this to us, but they thought "if they send  
19 a letter, we will answer it." But because all the  
20 evaluating team was there and in agreement, we didn't  
21 see the need, but rather to submit the amendment to  
22 the Beneficiation Concession. That is why we did not

1 turn to--it would have taken more time and we were in  
2 mid-2004, and we needed to move forward quickly, and  
3 we devoted ourselves to also building the file for the  
4 Beneficiation Concession as well.

5 Q. We'll ask her again, but look at what she's  
6 saying, which is on the screen. I quoted--I  
7 quoted: "[Q:] "I confirmed to Ms. Torreblanca and  
8 Mr. Davenport that Cerro Verde did not need a separate  
9 written assurance." Did you tell them that or not?"

10 She said: "No."

11 She didn't tell you that.

12 She says: "They asked whether they could  
13 send a letter and I said 'I think not'."

14 In Spanish--you see Spanish. The Spanish is  
15 not incorrect. "[A:] They asked if they could send a  
16 letter and I said, I think not."

17 And then she explains who else was at the  
18 meeting. So, you're saying that testimony by  
19 Ms. Chappuis is incorrect?

20 A. I'm not saying that it is incorrect. I'm  
21 saying that at the meeting all of the individuals that  
22 were to make the decision were there. That is why we

1 did not send a letter later on.

2 MR. ALEXANDROV: I think it's a good time  
3 for a break, if that's okay with the Tribunal.

4 PRESIDENT HANEFELD: Yes. Thank you very  
5 much.

6 So, we have a 15-minute coffee break.

7 (Brief recess.)

8 PRESIDENT HANEFELD: Before we continue with  
9 the cross-examination, can I just briefly ask Counsel  
10 how they intend to spend the rest of the day?

11 How much time do you anticipate will you  
12 need for further cross-examination of Ms. Torreblanca?

13 Then the question would be to Mr. Prager and  
14 his colleagues whether you wish redirect so that we  
15 understand whether we start with Mr. Davenport today  
16 or start with him tomorrow because we need to conclude  
17 today at 6:00 p.m.

18 MR. ALEXANDROV: I'm hoping that we can  
19 start with Mr. Davenport today, unless Counsel has a  
20 long redirect for Ms. Torreblanca.

21 PRESIDENT HANEFELD: We have also some  
22 questions.



1 MR. PRAGER: We probably have a few  
2 questions on redirect, but we have to see how it goes.

3 PRESIDENT HANEFELD: Then we just, please,  
4 go ahead.

5 MR. ALEXANDROV: Thank you very much, Madam  
6 President.

7 BY MR. ALEXANDROV:

8 Q. Ms. Torreblanca, can we look at Tab 32 of  
9 your binder. That is Exhibit CA-4. That's the  
10 Peruvian Tax Code, and I ask you to look at  
11 Article 93. I will read it for the record.

12 Article 93, the title is "Institutional  
13 Inquiries," and it says: "Entities representing  
14 economic, labor, and professional activities, as well  
15 at entities of the National Public Sector, may prepare  
16 inquiries pertaining to the meaning and scope of the  
17 tax regulations."

18 Do you see that?

19 A. Yes.

20 Q. And the National Mining Society--in Spanish,  
21 Sociedad Nacional de Minería y Petróleo, was that one  
22 of the entities representing economic, labor, and

1 professional activities?

2 A. Yes.

3 Q. Thank you. Can we look at your Second  
4 Witness Statement, Tab 2, Paragraph 25? You're  
5 testifying here about the meeting in March of 2005  
6 between Mr. Harry Conger and Mr. Tovar. And you say  
7 you don't recall asking about that specific meeting,  
8 nor do you recall, you say, that it took place.

9 Do you see that?

10 A. Yes, that's correct.

11 Q. Can we look now at Tab 33, Exhibit RE-206.  
12 This is an email from you to Alicia Polo La Borda.

13 Who is this person?

14 A. Alicia La Borda, was the Director of Mining  
15 Promotion, if I'm not mistaken, at this time.

16 Q. Director of Mining Promotion, you said?

17 A. If I remember well, she was the Director of  
18 Mining Promotion or worked in the Mining Promotion  
19 Directorate. Yes.

20

21 Q. In which company?

22 A. Ministry of Energy and Mines.

1 Q. In the Ministry?

2 A. Yes.

3 Q. And you're sending her an email saying:

4 "Alicia, I hope you're well." I'm reading from the  
5 English, but you have the Spanish. "Could you please  
6 confirm the name of the restaurant in Canada where on  
7 March 8 lunch will take place between Mr. Red Conger  
8 and Minister Engineer Polo, General Manager and  
9 Director of Promotion. Mr. Conger would also like to  
10 invite Luis Morán and Jorge Merino from Centromín.  
11 Please confirm me the place, address, the time of the  
12 lunch, and if you can contact all the guests.

13 Finally, let me know if you will introduce  
14 Mr. Conger if you require his curriculum, time of his  
15 participation, and all the other details that he must  
16 know in order not to have any mishap. Thank you,  
17 Julia."

18 Does that email refresh your recollection  
19 that you knew about that lunch on March 8?

20 A. In my Statement, I answer regarding a formal  
21 meeting, not a lunch, and the meeting to which  
22 reference is made is a meeting of Mr. Conger and Dr.

1 Rodrigo with the Minister. This is a lunch, and in  
2 addition it's addressing a presentation that  
3 Mr. Conger would make at PDAC the next day, if I  
4 understand correctly, say, two days about after the  
5 lunch or something like that.

6 Q. So, you're saying you don't recall a meeting  
7 between Mr. Conger and the Minister, but you knew  
8 about the lunch with Mr. Conger and Vice Minister  
9 Polo. Is that your testimony?

10 A. What I'm saying is that I did not recall or  
11 I do not recall any formal meeting between Mr. Conger  
12 and the Minister at the time when I saw this email.  
13 When I saw this email, I see that a lunch was being  
14 coordinated, and also the presentation that Mr. Conger  
15 would make, as I also testify, in which Mr. Conger  
16 discusses all the steps that have already been taken  
17 with the Peruvian State to guarantee the expansion.  
18 The Ministry of Energy and Mines invited Mr. Conger to  
19 PDAC to make a presentation about the expansion that  
20 was underway.

21 Q. So, you remember a lunch with the  
22 participation of Mr. Conger and Vice Minister Polo;

1 correct?

2 A. I don't remember the lunch, I am reading  
3 about it right here in this email. I did not go to  
4 Toronto.

5 Q. I know. But--I know you were not in  
6 Toronto, but before you saw this email, you did not  
7 remember that you coordinated a lunch with the  
8 participation of Mr. Conger and Vice Minister Polo.  
9 Is that your testimony?

10 A. My testimony is that I did not remember this  
11 lunch, nor did I remember any other meeting, because  
12 that was the original question.

13 Q. Now that you see this email, do you agree  
14 that there was a lunch, a lunch on March 8 with the  
15 participation of Mr. Conger and Vice Minister Polo?

16 A. I cannot confirm whether the lunch happened  
17 or not. What I can confirm is that there was a  
18 presentation by Mr. Conger at PDAC before a large  
19 audience in which there was discussion of all the  
20 steps that were being taken for the expansion.

21 Q. Let us focus on the lunch.

22 So, you essentially coordinated the lunch

1 and requested information in advance, specific  
2 information about the restaurant, the time, who'd be  
3 invited, how can you contact? You did not remember  
4 that until you saw this email; right?

5 A. Yes. That's right.

6 Q. And you are saying you cannot confirm that  
7 the lunch actually happened because you didn't receive  
8 anything, any feedback from that lunch?

9 A. Because I don't remember. I don't recall  
10 whether or not it happened. What I do recall, now  
11 that I read the email, that there were coordinations  
12 to find out where the lunch was going to be. Because I  
13 asked here, it is not that I'm inviting to a lunch. I  
14 asked where is the lunch going to take place. And  
15 that is the part--it is to that extent that this email  
16 helped refresh my memory. I understand that a  
17 presentation was indeed made, no doubt about that,  
18 what I don't recall is information about the lunch.

19 Q. Let's put the presentation aside for a  
20 moment. Nobody is disputing the presentation. The  
21 question is the lunch. So, you coordinated the lunch  
22 in some detail, including address, name of restaurant,

1 who will participate, what time, et cetera. Didn't  
2 you receive any communication back after that lunch  
3 about what was discussed?

4 A. I don't remember there being any specific  
5 report by Mr. Conger about the lunch because his  
6 communication mostly had to do with the presentation,  
7 which was the important part. Nonetheless, as I say,  
8 I don't have any more information about the lunch. I  
9 wasn't there.

10 Q. So, you don't remember whether you received  
11 any feedback about what was discussed at the lunch;  
12 correct?

13 A. That's right. I don't remember what was  
14 discussed at the lunch, but had it been important, no  
15 doubt Mr. Conger would have mentioned it to me.

16 Q. Can we show you Mr. Tovar's First Witness  
17 Statement, Paragraph 55?

18 A. Which tab?

19 Q. We don't have it in the binder, so we will  
20 find other means to show it to you. Can you put it on  
21 the screen? Actually, the end of Paragraph 54 and the  
22 beginning of 55.

1 MR. ALEXANDROV: With apologies to the  
2 Tribunal, we will show it on the screen because we  
3 didn't have a hard copy.

4 BY MR. ALEXANDROV:

5 Q. So, on Page 27, the last sentence of  
6 Paragraph 54 he says--I'll read it in Spanish because  
7 I have it in front of me in Spanish. He says: "I  
8 specifically recall that on Julia Torreblanca's  
9 request, we met with Mr. Harry (Red) Conger, President  
10 of Phelps Dodge mining corporation, to have lunch at  
11 the Far Niente Restaurant in Toronto on March 8,  
12 2005."

13 And then he continues: "The lunch was  
14 attended by Mr. Conger" et cetera and "Dr. Luis Carlos  
15 Rodrigo from the Rodrigo Law Firm."

16 I didn't want to disrespectfully not mention  
17 the name of Dr. Rodrigo as one of the participants.

18 So, Mr. Tovar is testifying about the lunch  
19 and what was discussed at that lunch.

20 You respond in Paragraph 25 of your Second  
21 Witness Statement, and essentially you say Mr. Tovar  
22 is wrong. But Mr. Tovar--Mr. Tovar is testifying



1 about the lunch that you coordinated. He specifically  
2 says "lunch" here.

3 A. Where are you? I'm sorry.

4 Q. Paragraph 25. Your Second Witness  
5 Statement, Paragraph 25. It is at Tab 2.

6 So, Mr. Tovar says there is lunch and this  
7 is what was discussed at the lunch. And you're  
8 saying--are you saying he was wrong?

9 A. What I said is that I did not recall this  
10 meeting. Moreover, when you showed me the email, I  
11 said that with the email, I have recalled that there  
12 was that coordination, but I did not remember that.  
13 But had a topic been addressed such as what Mr. Tovar  
14 says, that the Concentrator had to pay Royalties  
15 because it was not stabilized, not only Dr. Rodrigo  
16 and Mr. Conger would have told me that, but Mr. Conger  
17 would not have made the presentation the next day, the  
18 presentation he was working on and everything was  
19 going well with the presentation, that is not  
20 consistent.

21 So what I'm saying is, I wasn't there at the  
22 meeting with Mr. Tovar, but Dr. Rodrigo or Mr. Conger

1 would have informed me, and I suppose he's referring  
2 to the lunch because--the lunch that I discussed in  
3 the email. Here it doesn't say "lunch," I think.

4 Q. You don't say "lunch," but Señor Tovar does  
5 say "lunch." And so, now, having looked at your  
6 email, do you have any reason to say Mr. Tovar was  
7 wrong when he said there was a lunch meeting the way  
8 he describes it.

9 A. Your question has two parts.

10 Q. No, there is one part. Do you have any  
11 reason to believe there was no lunch in spite of what  
12 Mr. Tovar is saying?

13 A. I have no reason to believe that there was  
14 no lunch.

15 Q. Okay.

16 A. That, first of all. I haven't finished.

17 Q. Let's stop it there, I'll ask you the second  
18 question.

19 The second question is you didn't even  
20 remember that you coordinated this lunch before seeing  
21 this email, but you remember what was not discussed at  
22 the lunch; correct?

1           A.    What I was specifying is that I did not  
2 recall coordinating the lunch, and I'm not sure if  
3 that lunch is the same meeting that Mr. Tovar cites.  
4 This first of all.

5                        Second, had there been such a meeting--and  
6 it seems that it did take place--Mr. Conger or  
7 Mr. Rodrigo would have informed me if Mr. Tovar had  
8 made an assertion such as that which today--or what he  
9 now says that he would have said.  And had he done so,  
10 Mr. Conger would not have been making a presentation  
11 at PDAC in March of 2005 thanking the Ministry of  
12 Energy and Mines for its work, knowing that at that  
13 moment he had been told that he was going to have to  
14 pay Royalties for the Concentrator, which was  
15 something that was not discussed at any time.

16           Q.    Well, you said they would have informed you,  
17 Mr. Conger and Mr. Rodrigo.  But just a few minutes  
18 ago, you said you did not remember whether or not you  
19 received any feedback.  Is it possible that you--

20           A.    No.

21           Q.    Sorry.  Is it possible that you did receive  
22 some feedback that you did not remember?

1           A.    What I said is that I did not have a  
2 confirmation as to whether the lunch took place or  
3 not. I was just talking about the lunch.

4           Q.    No, no, no. You said, and I will find it in  
5 the Transcript, I asked you, did you receive any  
6 feedback from the lunch, and you said "I do not  
7 remember."

8           A.    You can review the Transcript because I said  
9 "I do not know whether the lunch took place or not."  
10 I do not recall whether the lunch took place or not.  
11 And I'm establishing a difference between the meeting  
12 and the lunch because I do not know whether they were  
13 the same or not.

14          Q.    Let me ask you again, then. Did you receive  
15 any feedback about what was discussed at the lunch?

16          A.    No. And I was never told, just in case, the  
17 lunch, I don't know--but I was never told that  
18 Mr. Tovar had made an assertion such as the one  
19 included here.

20          Q.    Again, I'm asking about the lunch. Okay?  
21                And do you remember now categorically that  
22 you did not receive any feedback about the lunch, or

1 do you not remember whether you received or not?

2 A. I do not recall having received information  
3 as to the lunch itself. As to the conversation that  
4 Mr. Tovar is mentioning, I do not recall it either,  
5 because since it's such an important issue, Mr. Conger  
6 and Mr. Rodrigo would have mentioned it, and  
7 Mr. Conger would not have made a presentation the next  
8 day praising the Peruvian Government.

9 Q. You did not remember whether there was a  
10 lunch in the first place, but you do remember now what  
11 could not have been said at the lunch. Is that your  
12 testimony?

13 A. No. My testimony is that I did not recall  
14 having coordinated this lunch as we see it in the  
15 emails. I have recalled this as a result of this  
16 Arbitration when I was shown the email. That's the  
17 first part.

18 The second one is that, if a Government  
19 official, in this case Mr. Tovar, would have made such  
20 a statement, Mr. Rodrigo or Mr. Conger would have told  
21 me. That's what I'm saying.

22 Q. Is it possible that they mentioned it to you

1 and you forgot?

2 A. No, there is no way.

3 Q. You forgot about coordinating the lunch, but  
4 you would not have forgotten any information about the  
5 lunch; correct?

6 A. Indeed, I was in charge of a hundred permits  
7 in different institutions. I was in charge of  
8 negotiating an electrical transmission line, and also  
9 I was in charge of my three daughters, my husband, and  
10 other issues, but I would never have forgotten if Mr.  
11 Tovar would have made an assertion like this, because  
12 it was a key issue for Phelps Dodge. I could have  
13 forgotten the school meeting for my daughter, but  
14 there is no way I would have forgotten this.

15 MR. ALEXANDROV: Madam President, this  
16 concludes the cross-examination at the moment. Thank  
17 you.

18 PRESIDENT HANEFELD: Thank you very much.  
19 Does Claimant wish some redirect?

20 MR. PRAGER: Yes, but can we have a very  
21 short break just so we can coordinate and sort of  
22 minimize the amount of questions.

1           PRESIDENT HANEFELD: How short? Five  
2 minutes.

3           MR. PRAGER: Five minutes.

4           (Brief recess.)

5           MR. PRAGER: Ms. Torreblanca, I have a few  
6 questions for you.

7                               REDIRECT EXAMINATION

8           BY MR. PRAGER:

9           Q. You will recall that towards the beginning  
10 of your cross-examination, you were asked whether  
11 Cerro Verde had an Economic-Administrative Unit, and  
12 you responded that, yes, there were two types of  
13 Economic-Administrative Units under the Mining  
14 Law--Economic-Administrative Units under the Mining  
15 Law, one under Article 44 that did require approval,  
16 and another one under specific for Stability  
17 Guarantees.

18                               Can you explain to us the difference between  
19 these two types of Economic-Administrative Units?

20           A. Yes. Article 44 of the General Mining Law  
21 allows mining companies to unify Mining Concessions  
22 that are within a specific distance to create a

1 specific new mining right, basically. That is an  
2 Economic-Administrative Unit in which the companies  
3 follow a procedure, the companies submit an  
4 application to MINEM, the Ministry assesses the  
5 application, and if the requirements established in  
6 the TUPA are complied with--the TUPA is this table of  
7 permits with the requirements, timing and others which  
8 I explained--a Resolution is issued for the creation  
9 or formation of this Economic-Administrative Unit.

10 In the case of Economic-Administrative Units  
11 within stability agreements, those are understood to  
12 be all the Concessions, Beneficiation Concessions and  
13 others that given their proximity and because they are  
14 linked in their operation they form one single  
15 Production Unit. And that's how they are defined  
16 expressly under the law. For these ones, there is no  
17 specific procedure; it is enough for them to be in the  
18 stability agreement to be understood as such.

19 Q. You also discussed or answered several  
20 questions from Mr. Alexandrov regarding the  
21 reinvestment of profit benefit, and Mr. Alexandrov  
22 showed you MINEM's approval of the profit reinvestment



1 benefit and asked you whether Cerro Verde had other  
2 mining units at the time, and you responded that there  
3 were several mining units being offered and that Cerro  
4 Verde could have purchased other mining units during  
5 the period, the relevant period being October 2004 to  
6 February 2007.

7 Now, let me ask you: During that time  
8 period, October 2004 to February 2007, did Cerro Verde  
9 consider acquiring other mining units?

10 A. Yes. We did due diligence process to  
11 acquire Tintaya, for example. It was being offered on  
12 sale.

13 [Switches to Spanish] I apologize, I forgot.  
14 Yes, during that period of time, Cerro Verde assessed  
15 the possibility of buying Tintaya, which was at that  
16 moment being offered. We had a duty of  
17 confidentiality at that point, but now I can say it.

18 Q. Staying with the topic of the profit  
19 reinvestment benefit and the resolutions of the MINEM.  
20 You will recall you were shown two resolutions of  
21 MINEM, CE-398 and CE-399, and there was quite a bit of  
22 discussion about the term "Leaching Project" that was

1 written in capital letters.

2 MR. ALEXANDROV: I apologize for  
3 interrupting. Those were not resolutions.

4 MR. PRAGER: Opinions. Yeah, accepted.

5 BY MR. PRAGER:

6 Q. So, two MINEM opinions, and there was quite  
7 a bit of discussion regarding the term "Leaching  
8 Project" in capital letters.

9 If you want, you can look at one of them.  
10 You have it. I don't recall the tab number.

11 A. 18.

12 MR. ALEXANDROV: Which one?

13 (Comments off microphone.)

14 MR. PRAGER: Yes, 18 and 20.

15 MR. ALEXANDROV: Which one do you want to  
16 look at and we'll give you the tab number.

17 PRESIDENT HANEFELD: Can you also put it  
18 back on screen, please?

19 MR. PRAGER: Yes. Let me just pick one of  
20 them.

21 MR. ALEXANDROV: They are at Tabs 18 and 20.  
22 I don't know which one you want to show.

1 MR. PRAGER: One second, please.

2 (Comments off microphone.)

3 BY MR. PRAGER:

4 Q. Okay. Let's pick this one, which one is  
5 that? That is Tab 18, CE-399. Apologies for that.

6 PRESIDENT HANEFELD: May I ask Claimant's  
7 Counsel to put it on the screen as well?

8 BY MR. PRAGER:

9 Q. Well, let me just ask the question like  
10 this. You will recall that in the resolutions, the  
11 term "Proyecto de Lixiviación de Cerro Verde," the  
12 Leaching Project, was written in capital letters, and  
13 you testified about that.

14 What was your understanding why the two  
15 MINEM opinions used capital letters to refer to the  
16 Cerro Verde Leaching Project?

17 A. Because that was the title. They understood  
18 that that was the title to the Agreement, and also  
19 comprised the Cerro Verde Production Unit as described  
20 in Annex 1 of this Agreement, including the Mining  
21 Concession "Cerro Verde 1, 2, 3" and the Beneficiation  
22 Concession that is called "Cerro Verde Beneficiation

1 Plant." That is the reason.

2 Q. You also mentioned in answer to questions  
3 from Mr. Alexandrov that Cerro Verde made in the  
4 course of the years a number of investments that were  
5 not included in the original Feasibility Study. Can  
6 you explain us what those investments were?

7 A. Certainly. Cerro Verde--that's why I was  
8 talking about the projects--Cerro Verde had several  
9 additional investments since the beginning of its  
10 operations, because mining companies are very  
11 capital-intensive, and they do need to adjust their  
12 operations, as I was saying before.

13 In the case of Cerro Verde, for example, we  
14 expanded the Beneficiation Concession to increase  
15 production from 33,000 metric tons to 39,000 metric  
16 tons in general for copper; we also expanded the  
17 solvent-extraction plant, including some warehouses to  
18 be able to treat and produce more copper; we  
19 implemented a crusher and many others; we implemented  
20 a ROM platform that treats the ore that has not been  
21 crushed, among others. And for each of these  
22 additional investments, we had to request an amendment

1 to the Beneficiation Concession, whether to increase  
2 facilities with respect to the introduction of new  
3 facilities, areas, or to increase production. And in  
4 all cases--everything that we introduced was under the  
5 same Production Unit treated under the same stabilized  
6 regime, without comparing it to the initial investment  
7 that was the requirement to access the Stability  
8 Agreement.

9 Q. And when did that happen?

10 (Overlapping interpretation and speakers.)

11 BY MR. PRAGER:

12 Q. My question was, when were those expansions  
13 of the Beneficiation Concession made to include the  
14 investments?

15 A. There were several. In 2001, 2002, 2004,  
16 2006, et cetera, and they have continued.

17 (Overlapping interpretation and speakers.)

18 Q. And did SUNAT ever challenge the application  
19 of the 1998 Stability Agreement to those new  
20 investments?

21 A. No, never.

22 Q. There was a long discussion about the

1 assurances that were being sought from the Government  
2 which you will recall from this afternoon.

3           Let me just ask you this one question: With  
4 everything that we heard today about that, what gave  
5 Cerro Verde in the end the assurance that the  
6 \$850 million investment in the Concentrator would be  
7 stabilized?

8           A. Two different documents. First of all, the  
9 inclusion of the Concentrator in the Beneficiation  
10 Concession as part of the Cerro Verde Production Unit,  
11 which was, moreover, covered by the Stability  
12 Agreement, and also the Reinvestment of Profits  
13 itself, because profit reinvestment for the  
14 Concentrator was only feasible if it was part of the  
15 same Production Unit. And, once again, this  
16 Production Unit was covered by the Stability  
17 Agreement. And when I'm talking about the Production  
18 Unit, or EAU, Mining Unit or Mining Project, I'm  
19 talking about the Mining Concession "Cerro Verde 1, 2,  
20 3," and the Beneficiation Concession, that included  
21 within its limits this new facility, that is, the  
22 Concentrator.

1 (Overlapping interpretation and speakers.)

2 BY MR. PRAGER:

3 Q. Why did that give Cerro Verde the  
4 confidence--the assurance to make the \$850 million  
5 investment?

6 A. Because it not only confirmed the  
7 understanding of the industry, as well as the  
8 application itself and what the General Mining Law and  
9 its Regulations establish with respect to stability  
10 agreements, but because it was a title, it was a  
11 resolution--in the case of the Beneficiation  
12 Concession, a Directorate Resolution, which is a title  
13 that included the Concentrator in this Beneficiation  
14 Concession; and in the case of the Reinvestment of  
15 Profits, it was a Ministerial Resolution that  
16 confirmed that the Concentrator was part of the same  
17 Mining Unit, as well.

18

19 MR. PRAGER: Okay, thank you. I don't have  
20 any further questions.

21 MR. ALEXANDROV: Madam President, will you  
22 allow recross with respect to questions that arose

1 during the redirect? I have one question.

2 PRESIDENT HANEFELD: Yes.

3 RECROSS-EXAMINATION

4 BY MR. ALEXANDROV:

5 Q. In response to the last question, you said  
6 two things gave you assurances that the Concentrator  
7 Plant was covered, and one was the expansion of the  
8 Beneficiation Concession to cover the Concentrator  
9 Plant.

10 You needed an expansion of the Beneficiation  
11 Concession to cover the Concentrator Plant whether or  
12 not you had a stabilization agreement; correct?

13 A. Yes, but if the Ministry of Energy and Mines  
14 had considered that the Concentrator was not covered  
15 by the Stability Agreement or that it was not part of  
16 the same Production Unit, they would have asked us to  
17 request a separate, independent Beneficiation  
18 Concession.

19 MR. ALEXANDROV: Thank you.

20 QUESTIONS FROM THE TRIBUNAL

21 PRESIDENT HANEFELD: Ms. Torreblanca, I  
22 would have a set of questions relating to what you



1 testified that you were convinced, had the firm belief  
2 that the Concentrator was covered by the Stability  
3 Agreement, and this was then later on in 2003 and 2004  
4 confirmed by the Government. And I would like to  
5 better understand, now, your belief or the Company's  
6 belief in this interpretation, so to say, of the  
7 Stability Agreement and its scope.

8           And when I tried to get a better  
9 understanding of it, I reviewed the documentary  
10 evidence on record, and in particular, preceding, so  
11 to say, the discussions in 2003 and before the  
12 investment, and in particular, I had a look at the  
13 2002 Pre-Feasibility Study. I understand that this is  
14 the study--end of December of 2002--in which  
15 internally you and your Company analyzed everything  
16 relevant for the decision.

17           Is this correct, that this is a  
18 determinative or very important document?

19           THE WITNESS: Yes. That Pre-Feasibility  
20 Study not only expresses that the Concentrator would  
21 be stabilized, but it also reflects the understanding,  
22 our understanding of the interpretation of the General

1 Mining Law and that of the industry, which,  
2 furthermore, in practice understood that any  
3 investment made in the concessions that were listed in  
4 Annex I of the Agreement had the same fate and the  
5 same stability. That is correct.

6 PRESIDENT HANEFELD: And I think this is  
7 what you also expressed in Paragraph 7 of your Second  
8 Witness Statement where you stated: "The 2002  
9 Pre-Feasibility Study assumed that the Stability  
10 Agreement applied to the Concentrator, for example,  
11 the study considered the Stability Agreement's  
12 depreciation rate of 20 percent as the base assumption  
13 for the cash flow projection." So, this is your  
14 testimony. And I think it would be helpful for the  
15 Tribunal if we would put this 2002 Pre-Feasibility  
16 Study on screen and go a little bit in further detail  
17 and add to the study, and, for me, it was quite  
18 difficult to get the whole content because I  
19 understand that Claimants submitted only parts of the  
20 study in Exhibit CE-928, whereas, Respondent also  
21 submitted only parts of the study and different parts,  
22 and in particular, the appendices. And so, I don't

1 know how we want to technically proceed.

2 I would have a specific set of questions,  
3 but I do not know which document now to put on screen.

4 Maybe we start with what Claimant has now  
5 submitted, and then Ms. Torreblanca can guide us to  
6 the specific provisions on she wishes to rely, and  
7 then we would have a look at Respondent's document,  
8 and I would have some questions as to those.

9 MS. HAWORTH McCANDLESS: I think that makes  
10 sense, Madam President, and ours is a complementary  
11 submission to that which is put on the record by  
12 Claimant.

13 PRESIDENT HANEFELD: This was my  
14 understanding. And if I understand it correctly, this  
15 Pre-Feasibility Study constituted or comprised two  
16 volumes, so there was a lot in. And I'm interested in  
17 what was in and what supports or maybe contradicts  
18 your testimony that it was based on the firm belief or  
19 conviction that the Stability Agreement applied to the  
20 Concentrator. So, I would like to be shown some  
21 calculation, maybe alternative calculations, whatever  
22 the details of your assumptions at the time.

1 MR. PRAGER: Yeah, just to clarify, I  
2 understand that our Exhibit, Number 928, which has the  
3 Pre-Feasibility Study, contains the Volume 1 minus  
4 certain redactions that have been made for privilege,  
5 but does not include the annexes that are in Volume 2.  
6 So, the main body of the Feasibility Study is in  
7 there, about 308 pages on my iPad, and the various  
8 attachments that the Feasibility Study has is not in  
9 there.

10 PRESIDENT HANEFELD: Okay. Then let us talk  
11 first to your document. And now, because this was  
12 exactly the difficulty I had when I read it, that  
13 there were so many redactions in it, and also I wanted  
14 to ask Ms. Torreblanca whether she recalls another  
15 document and has some recollections on the background  
16 of these redactions--I don't know whether this has  
17 been subject to the privilege log--and whether you can  
18 comment on; the documents, because even in the  
19 Executive Summary, there are parts redacted; right?

20 MR. PRAGER: Yeah, I understand that  
21 privileged information was redacted, so legal advice  
22 that is reflected in the document.

1           PRESIDENT HANEFELD: And this is--if I'm not  
2 mistaken, the legal advice that was given by the  
3 Peruvian law firm, and it was advice on the scope of  
4 the Stability Agreement? Am I correct?

5           MR. PRAGER: That's correct, yes.

6           PRESIDENT HANEFELD: Okay. Then I will not  
7 ask questions, but this is what I understood, that  
8 this Feasibility Study did not only deal with the  
9 reinvestment of profits, but also with the review of  
10 the Stability Agreement. But because of privilege  
11 we--

12           (Overlapping speakers.)

13           MR. PRAGER: Just to clarify for the record,  
14 the redactions not only relate, or generally relate,  
15 to the investments. There are a lot of different  
16 legal issues being discussed and legal advice  
17 reflected that don't necessarily go to the question of  
18 stability, but there are other legal questions as  
19 well.

20           PRESIDENT HANEFELD: Then the question that  
21 I can only ask you is, in light of another advice that  
22 you got, were you convinced that it was clear--and I

1 mean I ask you now as a witness in these  
2 proceedings--were you and your Company convinced that  
3 the Concentrator and the income generated by the  
4 Concentrator would be stabilized under the 1998  
5 Agreement? Or was there some uncertainty?

6 THE WITNESS: We were convinced that it was  
7 going to apply, the stability was going to have the  
8 same regime to the Concentrator as to the rest of the  
9 Production Unit, considering that we had also had  
10 previous investments in the same unit that had not  
11 been challenged and were applied with the same regime.

12 In 2004, because of all the noise that was  
13 being produced, okay, by different politicians, yes,  
14 some concern arose, and that's why we approached the  
15 Ministry of Energy and Mines for confirmation, yes.

16 PRESIDENT HANEFELD: But I'm now--and I  
17 would like to stay focused, really, on the time period  
18 of the Pre-Feasibility Study. So, at the time of the  
19 end of 2002, was there uncertainty that another income  
20 of the Concentrator would be stabilized?

21 THE WITNESS: There was no uncertainty. We  
22 were positive it was covered by the Stability

1 Agreement.

2 PRESIDENT HANEFELD: Was legal analysis on  
3 this issue undertaken? I do not ask for the content,  
4 but just for the question of whether analysis was  
5 undertaken as to this question?

6 THE WITNESS: I'm not sure if I'm  
7 understanding your--your question.

8 PRESIDENT HANEFELD: You say you were  
9 convinced.

10 My question is, did you instruct Counsel to  
11 analyze the question of whether the income of the  
12 Concentrator would be stabilized?

13 THE WITNESS: We asked our lawyers, not only  
14 to them, but we asked them to review whether the  
15 Concentrator, not only the income of the Concentrator,  
16 but the Concentrator itself was going to be included  
17 in the Stabilization Agreement.

18 PRESIDENT HANEFELD: I understand. For me,  
19 these are three different aspects. For me, it's--the  
20 reinvestment of profit is one aspect, and then the  
21 stabilization of the income of the Concentrator is one  
22 aspect, and the extension of the Beneficiation

1 Concession. And I just want to know about the second  
2 aspect I just addressed, whether--was there any  
3 uncertainty, now, that the income of the Concentrator  
4 to be generated would be stabilized?

5 THE WITNESS: Not that I recall.

6 PRESIDENT HANEFELD: Not that you know.

7 Okay. Let's look into the exhibit presented  
8 by the Respondent, now, which is this Exhibit RE-351.  
9 I understand that there you have supplemented the  
10 appendices, now, to the Pre-Feasibility Study, and I  
11 noted that there is one section, Appendix D, which  
12 concerns the reinvestment of profits law, and another,  
13 Appendix E, on the review of the Stability Agreement.

14 And is my understanding correct that you  
15 treated both aspects separately, as I also just  
16 described, that I thought this may be different  
17 aspect? So, we have Appendix D, Stability Agreement,  
18 Reinvestment of Profits Law, and then you see in  
19 Appendix E, review of Stability Agreement by Rodrigo,  
20 Elías, Medrano. So, I understood from this  
21 distinction that you also considered this to be two  
22 separate aspects.



1 Am I correct? Or...

2 THE WITNESS: In reality, no, because both  
3 are dealt with in connection with the subject matter  
4 of the Stability Agreement, but these are two  
5 procedures that are defined separately in the TUPA of  
6 the Ministry. So, the chapter was "Stability  
7 Agreement in general," because the reinvestment of  
8 profits was only available if the infrastructure was  
9 stabilized.

10 And the review of the Stability Agreement  
11 by--that was a different opinion by Rodrigo, Elías  
12 & Medrano, but, in fact, everything had to do with the  
13 Stability Agreement.

14 MS. HAWORTH McCANDLESS: Just for the  
15 record, and we--the Claimant did not produce to us  
16 Appendix D, so we haven't seen that. We did not put  
17 it on the record because we did not receive it in  
18 production.

19 PRESIDENT HANEFELD: So, this was my--was  
20 also not produced because of privilege.

21 MS. HAWORTH McCANDLESS: I don't know why it  
22 wasn't produced. I don't think it was an issue of

1 privilege, because they produced E, which was  
2 redacted. They think they said it was just the laws,  
3 but we haven't seen it.

4           PRESIDENT HANEFELD: Okay. Then I cannot  
5 ask you further questions. But I just note now from  
6 this Appendix D and Appendix E, that it could have  
7 been that now both issues, reinvestment and scope of  
8 Stability Agreement were distinct issues, but that is  
9 just my reading of the type of content.

10           Then, maybe one final question. One of the  
11 recommendations of this study states: "Determine the  
12 opportunities to take advantage of the reinvestment,"  
13 and then it goes on saying--and then "immediately  
14 negotiate with the Government to ensure the  
15 reinvestment of profit tax credit, and announcing PD's  
16 intent to proceed with the Feasibility Study would  
17 strongly facilitate all negotiations with the  
18 Government."

19           Now, do you remember what these negotiations  
20 with the Government were supposed to be about?

21           THE WITNESS: I don't, but I think I  
22 understand they have to do with all of the steps and

1 the permits that had to be obtained. At the time in  
2 Perú, there was a feeling of doubt in connection with  
3 mining investments, and some projects had been  
4 canceled because environmental impact studies have not  
5 been approved, but I do not know what negotiations  
6 they're making reference to.

7           PRESIDENT HANEFELD: We talked about today  
8 that you had tried to obtain assurance--for the  
9 assurance from the Government, and that you talked  
10 about an amendment to the Stability Agreement, an  
11 amendment to its Appendix, whatever, and you  
12 considered at the time. Could this have been this  
13 type of negotiations that were addressed in this  
14 Pre-Feasibility Study, or not to your knowledge?

15           THE WITNESS: Not that I know of, because at  
16 the time we had certainty that the Agreement was  
17 covering any future investment in the Production Unit  
18 that was stabilized.

19           PRESIDENT HANEFELD: And, again, what  
20 assurance were these? Because we have here now  
21 another Pre-Feasibility Study of 2002, end of 2002.  
22 So, it cannot be the later assurances of 2003. It

1 cannot be the later assurances of 2004.

2 So, about what assurances do you speak here?

3 THE WITNESS: I'm referring to the General  
4 Mining Law, to the Regulations of the law, and I also  
5 refer to the industry practice, in addition to all of  
6 those prior meetings that we held with the Ministry of  
7 Economy and Finance, the Ministry of Energy and Mines,  
8 where they expressed that they were in agreement with  
9 the interpretation that we had.

10 PRESIDENT HANEFELD: But when the  
11 Concentrator--just help me, and I'll try to  
12 understand.

13 But now, when the Concentrator was not yet  
14 feasible before, why had your discussions with the  
15 Government on--now the scope of the Stability  
16 Agreement for the Concentrator, and can you specify  
17 when these discussions took place, and who gave these  
18 assurances?

19 THE WITNESS: Well, because, as we saw a  
20 moment ago, Cyprus had committed itself to continue  
21 with the investment commitment of the privatization,  
22 and to assess the viability of a Concentrator.

1           So, for the assessment of the Concentrator,  
2 we needed to find water, we needed to ensure power  
3 contracts, and we needed other permits and other  
4 issues to know whether it was feasible or not. During  
5 this process of being able to review everything that  
6 we had to do, we met with the Minister of Economy and  
7 Finance, with the Minister of Energy and Mines, on the  
8 one hand, and, on the other hand, with the Minister of  
9 Agriculture, with the National Water Authority, with  
10 the Vice Ministers for Energy and others to look at  
11 electricity issues, and in the context of those  
12 meetings, in which we were trying to understand which  
13 were the permits and the steps that we had to take, we  
14 presented Cerro Verde's intention, and we explained  
15 that we had a Stability Agreement, what the Agreement  
16 said, and we told them "We understand that the  
17 Agreement covers the Cerro Verde Production Unit and  
18 all of the investments that we're going to make, and  
19 that we are making up to now," and we received the  
20 confirmation that that was the case, that that was the  
21 understanding, that the Concessions listed in the  
22 Agreement were the ones covered by the administrative,

1 tax and currency exchange stability that the  
2 Government had offered.

3           PRESIDENT HANEFELD: But maybe let us be a  
4 little more precise. If I recall correctly, there was  
5 this 2001 Settlement Agreement with Cyprus, which,  
6 according to my reading, stipulated that there was no  
7 longer an obligation to build a Concentrator, but an  
8 obligation to explore the Feasibility Study of the  
9 Concentrator.

10           And so, from that moment on, until the  
11 Pre-Feasibility Study now was issued, end of 2002,  
12 have you received in between assurance now of your  
13 understanding that the Concentrator would be fully  
14 covered in terms of also the income generated by the  
15 Concentrator?

16           THE WITNESS: Our consultation to the  
17 Ministry was always that--in the discussions that we  
18 had even with the Ministers--was "This Agreement is  
19 going to cover the Concentrator." We never talked  
20 only about the income from the Concentrator - we were  
21 never saying "of the income of the Concentrator." We  
22 focused on the infrastructure that was going to be

1 built within the same Production Unit.

2           It went without saying that that was also  
3 with all the income that the Concentrator could  
4 generate as well. We did not make a distinction "the  
5 income from the Concentrator is going to be  
6 stabilized," we did not because this was implied in  
7 the Agreement, in the guarantees that are granted to  
8 the mining titleholder under Article 9 of the  
9 Stability Agreement.

10           PRESIDENT HANEFELD: Any additional  
11 questions by my co-arbitrators?

12           ARBITRATOR CREMADES: In connection with the  
13 questions that were posed to you by the Respondent,  
14 mention was made to the institutional consultations,  
15 specifically those under Article 93 of the single  
16 consolidated text of the Tax Code.

17           In other countries--and I don't know about  
18 this in Perú and that is why I ask--when somebody tries  
19 to make such a substantial investment like the one  
20 posed here, there is a binding consultation that is  
21 supposed and has binding effects for the Tax Authority  
22 in connection with the tax system.

1           Was this done? Was a consultation like this  
2 done? Not only by the Company, but we also talked  
3 about representative entities. Comments were made in  
4 this connection, but no question was posed to you.

5           In connection with the investment related to  
6 the Concentrator, has there been any inquiry that was  
7 binding, not binding, et cetera, whether it's  
8 institutional or not?

9           THE WITNESS: There were many inquiries and  
10 conversations, not only with the National Society of  
11 Mining, but also with representatives of other  
12 Companies, including Centromín Perú and Minero Perú,  
13 who were the ones that originally administered the  
14 mining companies, and also we had consultations with  
15 representatives of mining companies that had one or  
16 two executed Stability Agreements to understand how  
17 they applied it.

18           An institutional inquiry was not made to  
19 SUNAT, because, as we have well read in Article 93,  
20 SUNAT only accepts institutional inquiries and they  
21 don't answer all of them, not even when it comes from  
22 the National Mining Society. So, when we made this



1 presentation about how our project was designed,  
2 before the National Mining Society, the Companies also  
3 understood that this was in accordance with the  
4 practice of the industry as well. So, we didn't see  
5 the need to go, as Cerro Verde, to make the inquiry,  
6 and neither did we think about the National Mining  
7 Society making that inquiry.

8           And, as I have specified, we know of  
9 inquiries made by AMCHAM, the National Mining Society,  
10 and others, that have been received by SUNAT and those  
11 inquiries have gone unanswered up until today. That's  
12 why we didn't see the need to do that.

13           ARBITRATOR CREMADES: Thank you very much.

14           ARBITRATOR TAWIL: I have one question. If  
15 I understand correctly, both Minero Perú and the  
16 Government of Perú had the Concentrator as an  
17 important element of the original Project. This was  
18 not included at the beginning, because the Feasibility  
19 Studies did not conclude that this was economically  
20 feasible.

21           Had the Feasibility Studies been positive,  
22 would there have been any doubt that this would have

1 been included in the Stability Agreement? In other  
2 words, in the original Stability Agreement, if  
3 feasibility concluded it was possible to do so, would  
4 there have been any doubt that the Concentrator was  
5 included in the Stability Agreement? I'm talking  
6 about the Concentrator.

7 THE WITNESS: I don't think that doubt  
8 existed in any of the two cases because, even though  
9 there was a commitment to make the Feasibility Study,  
10 if the Feasibility Study had been positive, I believe  
11 that things would have been done as they were done in  
12 2004. That would have been the result, the  
13 Beneficiation Concession would have had to be  
14 expanded, and then the same steps would have been  
15 taken as they were taken later.

16 ARBITRATOR TAWIL: So, there was no  
17 discussion about the Concentrator and the stability,  
18 at least in the origin of the discussion. What removed  
19 it, at least literally, is that the feasibility was  
20 not positive, in other words, it was not feasible at  
21 that time. That is why it is not mentioned in the  
22 original moment.

1           THE WITNESS:     What I think happened is  
2 that the initial investment considers feasibility, and  
3 it does not describe, expressly, the Concentrator.  
4 That is why the doubt arose, and that is why the whole  
5 thing by the Ministry starts after it was built in  
6 2006.

7           ARBITRATOR TAWIL:   But the original Project  
8 from Minero Perú included the Concentrator, right?

9           THE WITNESS:   Yes.   Yes.   From the very  
10 beginning. It was known that the Concentrator was  
11 needed to continue the development of the Mining  
12 Concession, otherwise, as I have explained before,  
13 Cerro Verde would have closed its operations in 2014  
14 or, with luck, in 2018.

15          ARBITRATOR TAWIL:   Thank you.

16          ARBITRATOR CREMADES:   I do have an  
17 additional question.

18                I understand that there have been three  
19 Stability Agreements within--with Cerro Verde.   The  
20 latest was in 2012, I believe.   Isn't this  
21 contradictory with the story that you have shared with  
22 us, that they did not want to take those initiatives

1 because they didn't see it clearly? But one can see  
2 that there had been three Agreements. Isn't this  
3 contradictory with what you have told us?

4 THE WITNESS: No, not really. We wanted the  
5 Stability Agreement to guarantee clear rules for Cerro  
6 Verde. In the case of the last Agreement, the one  
7 signed on July 17<sup>th</sup>, 2012, it was signed on that date,  
8 but the stability came into force on January 1<sup>st</sup>, 2014.

9 In the three cases, in the three Agreements  
10 that Cerro Verde had, we always sought to have the  
11 Production Unit under the same Stability Regime. Our  
12 intention was not to extend the stability, or to have  
13 a more beneficial regime, vis-à-vis, another regime.  
14 What the Shareholder wanted was to have clear rules  
15 for all the Production Units considering that all of  
16 the ore comes from the same Mining Concession,  
17 regardless of what technology is used to process it.  
18 That was the intention. And the last Agreement was  
19 entered into in 2012, but, anyway, according to the  
20 Regulations of the Ministry, we gave notice that  
21 stability would come into force on January 1<sup>st</sup>, 2014.  
22 We didn't want one single day without a stability for

1 our Production Unit.

2 ARBITRATOR CREMADES: Thank you very much.

3 PRESIDENT HANEFELD: Then just a final  
4 question coming from the economic--on our side of  
5 things as here, are very high, some stake. I  
6 understood that the reinvestment of profits was one  
7 of the very decisive economic decisions whether to  
8 build a Concentrator or not; right?

9 THE WITNESS: Yes. Even though not too much  
10 importance is originally given to it in the  
11 Pre-Feasibility Study, the copper prices started going  
12 down, and, therefore, yes, it was important for the  
13 Shareholder to have the reinvestment of profits to  
14 finance this project.

15 PRESIDENT HANEFELD: And now, was the tax  
16 stability for the Concentrator--for the income  
17 generated by the Concentrator also an important  
18 economic factor--and now for the question of whether  
19 to build a Concentrator or not?

20 THE WITNESS: Can you repeat please?

21 PRESIDENT HANEFELD: Now, the question of  
22 whether the income generated by the Concentrator would

1 be stabilized or not under the old 1996 regime, also  
2 an economic factor which was decisive for the decision  
3 to build a Concentrator or not?

4 THE WITNESS: As far as I know, no, what was  
5 important was to have the Production Unit under the  
6 same tax regime, the same administrative and exchange  
7 regime. And, in connection with the income, the part  
8 that was indeed important was the issue that the rules  
9 had to be clear and they had to be respected, but to  
10 us, and in the Feasibility Study, it is assumed that  
11 there was going to be accelerated depreciation and  
12 others, which, of course, has an impact on the income,  
13 definitely, and on the moment on which the income  
14 starts happening. But that was not the more weighty  
15 thing for the Shareholder at that time.

16 PRESIDENT HANEFELD: At that time. And now  
17 I'll conclude my questions. Then later in point in  
18 time when the Royalty Law was under discussion, did it  
19 then become an important issue, and were, then,  
20 alternative calculations made?

21 THE WITNESS: When the Royalties Law was  
22 discussed, the matter was not how much one had to pay.

1 The important thing for the Shareholder was for the  
2 Stability Agreement to be respected. That was the  
3 most important thing for the Shareholder.

4 The discussions in connection with the  
5 Royalties were of all sorts. Initially, they said  
6 Royalties were going to be imposed on companies that  
7 already had a Stability Agreement, and that was the  
8 concern that existed; more than the payment of the  
9 royalty, it was the conservation of the Production  
10 Unit as a stabilized unit.

11 PRESIDENT HANEFELD: Okay. From my side, no  
12 further questions.

13 Do you want to continue?

14 ARBITRATOR CREMADES: I do have a question.  
15 Let's go back to the Stability Agreement of 2012.

16 I was surprised when I read that mention is  
17 made of the leaching process and also of the  
18 Concentrator. Why did you think that it was not  
19 necessary before? Because, it was included and it is  
20 evident that you had to admit it; however, in 2012,  
21 you realized that this was necessary, and you agree to  
22 expressly mention the activity--I don't know. That's

1 why I understood before that there was a certain  
2 contradiction, but even in the terms of the Contract  
3 itself, of the Agreement, I see that there is a  
4 certain contradiction that has surprised me.

5 THE WITNESS: What happens is that when the  
6 2012 Stability Agreement was entered into, we already  
7 understood which were the concerns that SUNAT had in  
8 connection with the prior Agreement. So, we took all  
9 the necessary precautions to include appropriate  
10 language and broad language as far as we could, to  
11 prevent the application being put into question.

12 The Ministry of Energy and Mines' officials  
13 that worked there in '03, '04, '05, who understood the  
14 Stability Agreements' rules well because most of them  
15 were executed during that time, they were no longer  
16 there. Not all of them were still working at the  
17 Ministry of Energy and Mines, and this change in  
18 personnel led us to think that, in the future, perhaps  
19 another discrepancy could crop up in connection with  
20 the description given in the Agreement. That is why  
21 we used a language that took into account those  
22 concerns that we learned after as we went forward.



1           ARBITRATOR CREMADES: That learning that you  
2 talk about cannot be understood as a recognition of  
3 2012 in connection with a prior mistake made--that is,  
4 to say, a lack of due diligence when the investment is  
5 introduced of not having obtained that type of  
6 stabilization guarantee?

7           The reading of the 2012 Agreement is not--is  
8 it not a recognition of a previous error or omission?

9           THE WITNESS: No, to the contrary, these are  
10 additional safeguards that are taken, recognizing that  
11 the practice of the mining industry was being, in a  
12 discriminatory fashion, applied to Cerro Verde in a  
13 different manner. But this is something that we have  
14 learned recently and confirmed in 2019--and in 2021,  
15 during the preparation of this arbitration. Because I  
16 knew--what we spoke with the mining companies is that  
17 the stability was being applied to them to all of the  
18 investments they made; for an investment in a chimney,  
19 stability was applied to them for the entire  
20 concession, and they wanted to restrict that stability  
21 to us and that's why we made sure to have a very broad  
22 language to be able to incorporate all this in the

1 Stability Agreement.

2 ARBITRATOR CREMADES: Thank you very much.

3 PRESIDENT HANEFELD: This then concludes the  
4 questions also from the Tribunal side. Thank you very  
5 much for--Ms. Torreblanca. You are released as a  
6 Witness now.

7 THE WITNESS: Thank you very much.

8 PRESIDENT HANEFELD: Thank you.

9 (Witness steps down.)

10 PRESIDENT HANEFELD: So, the question is  
11 whether--we have now half past 5:00 p.m., whether we  
12 should start with Mr. Davenport?

13 MR. ALEXANDROV: Madam President, if the  
14 Tribunal can stay--excuse me, I've lost my voice  
15 cross-examining Ms. Torreblanca. Thank you very much.

16 (Comments off microphone.)

17 MR. ALEXANDROV: If the Tribunal can stay  
18 until 6:00 p.m., as you mentioned earlier, we have a  
19 bit more than half an hour. We are ready to proceed  
20 with Mr. Davenport, his direct, and then perhaps begin  
21 his cross.

22 PRESIDENT HANEFELD: Perfectly fine with us.

1 (Brief recess.)

2 MS. CARLSON: Madam President, just one  
3 item. Just a procedural matter, because in the prior  
4 hearing we did not have the phenomena of witnesses  
5 staying in the room after their testimony, if we can  
6 just have it clear for the record that any Witness who  
7 does so should, of course, not talk to any witness who  
8 has not testified.

9 To be clear--sorry, to be clear, we don't  
10 object to the witness who has testified staying in the  
11 room, so long it is clear they may not interact with  
12 any witness has not yet come.

13 PRESIDENT HANEFELD: This is our definite  
14 understanding, and we trust that Counsel ensures that.

15 MR. PRAGER: It is the Claimant's definite  
16 understanding as well.

17 (Comments off microphone.)

18 RANDY DAVENPORT, CLAIMANT'S WITNESS, CALLED

19 PRESIDENT HANEFELD: Mr. Davenport, thank  
20 you for being here with us, and our third arbitrator  
21 will join in a minute, but he gave me permission to  
22 welcome you already and clear formalities.

1           So, now, I introduce another Tribunal. I'm  
2 here with now Mr. Cremades. My co-arbitrator and  
3 Mr. Tawil is just joining. My name is Inca Hanefeld.  
4 I'm the presiding arbitrator in this arbitration.

5           You have been called as witness in this  
6 proceeding by Claimant, and Rule 35(2) of the ICSID  
7 Arbitration Rules requires that you make a declaration  
8 that you will say the truth, so I would kindly request  
9 you to read out the statement that you have in front  
10 of you.

11           THE WITNESS: Okay. Thanks. It's in  
12 Spanish. And my Spanish is not great--oh, there it  
13 is. I thought it was a test.

14           I solemnly declare, upon my honor and  
15 conscience, that I shall speak the truth, whole truth,  
16 and nothing but the truth.

17           PRESIDENT HANEFELD: Thank you.

18           And do you have your Witness Statements,  
19 CW-5 and CW-16, in front of you?

20           THE WITNESS: Yes, I do.

21           PRESIDENT HANEFELD: Perfect. Can you  
22 confirm that these are your Witness Statements and

1 that they correspond to your recollection?

2 THE WITNESS: Yes, I can confirm that.

3 PRESIDENT HANEFELD: Then we will start with  
4 a short direct by Claimant's Counsel and see whether  
5 we start with cross-examination by Respondent's  
6 Counsel, and then we will have to continue your  
7 testimony tomorrow.

8 THE WITNESS: Okay.

9 DIRECT EXAMINATION

10 BY MR. UKABIALA:

11 Q. Good afternoon, Mr. Davenport. Thanks for  
12 joining us today. I'm just going to ask you a couple  
13 questions to get started.

14 So, you testified in your Witness Statement  
15 that when you were--

16 (Interruption.)

17 MR. UKABIALA: Apologies. Can you hear me  
18 better now?

19 BY MR. UKABIALA:

20 Q. I'll just ask you a few questions to get  
21 started today. You testified in your Witness  
22 Statement that when you arrived at Cerro Verde, you

1 were aware about the potential for a Primary Sulfide  
2 expansion, but you didn't believe it was yet feasible.

3           Can you tell us about the developments that  
4 led to that investment becoming feasible?

5           A.    Sure.  I came in early 2000 as a General  
6 Manager, and I quickly looked at opportunity to  
7 improve and optimize the operation at Cerro Verde.  It  
8 was run very well at the time.

9           I think we were successful.  We had a couple  
10 projects.  We eventually increased production about  
11 20, 25 percent, the copper production.  And during  
12 that time Jim Jones, who is a Chief Geologist at Cerro  
13 Verde, came into my office, and he was carrying a cash  
14 flow.  And I always kind of smile when I say that  
15 because geologists aren't really known for carrying  
16 cash flows.  They are more interested in exploration  
17 drilling and what happened a long time ago.

18           So, again, the cash flow was for the Primary  
19 Sulfide Study.  And so we sat down and talked about  
20 it, and we both knew there had been previous studies  
21 done--I believe at least seven of them--and they all  
22 kind of--some of them were not quite economic, and

1 some they thought were, but it really boiled down to  
2 me--the review, the quick review I had done was that  
3 there was, you know, really two big issues: One was  
4 water and one was power.

5           And when Jim and I talked about it, we knew  
6 that just recently the Government had connected a  
7 transmission line from the central Perú to the south  
8 where the mine is located. And what that did, that  
9 allowed inexpensive hydropower from the north to come  
10 down to the south. So that kind of solved the power  
11 problem. You still had the water issue.

12           And then later on, you know, we found out  
13 that EGASA--EGASA is the local power producer in  
14 Arequipa that is owned by the Government. They had a  
15 power plant that had four turbines, and only two of  
16 them ran because they didn't have enough water. So,  
17 we went and talked to the EGASA, and they understood  
18 what these projects were. They had had projects for a  
19 long time, but the Government did not fund them the  
20 money to do it.

21           So, you know, we got to talking to them. I  
22 got pretty excited about it because here was a pretty

1 unique opportunity to take water--they had the water  
2 right and no use because this water, during the snow  
3 melt and the rain, would go all the way to the ocean.

4           So here is a private company that could  
5 invest with the Government to build a reservoir. They  
6 could make more power, and then if we could prove up  
7 the Concentrator to be economic, we would use part of  
8 that water, approximately 40 percent. And what's also  
9 really neat about it is that the other 60 percent  
10 would be available for agriculture. So, this was a  
11 unique solution and, you know, it was a key  
12 sustainability projects because here we had a new  
13 water source.

14           The Ministers were behind it because the  
15 Agriculture Minister brought more water for  
16 agriculture, and certainly Arequipa brought benefits  
17 to Arequipa to reduce the flooding.

18           So, after understanding that, I went to  
19 Phelps Dodge and proposed that we do a pre-feasibility  
20 study, thinking that maybe we could figure out--

21           Q. That's perfect because that was my next  
22 question.



1           You also testified about the 2002  
2 Pre-Feasibility Study, what you just mentioned. And  
3 that--in that study, you assumed that the Stability  
4 Agreement would apply to the Concentrator.

5           Could you tell us a bit about the basis for  
6 that assumption in that study?

7           A. Sure. You know, from the very beginning, I  
8 believed it was stabilized and for several reasons.  
9 You know, the first one was, it's a Primary Sulfide  
10 deposit, and Primary Sulfide generally has oxide,  
11 Secondary Sulfides and Primary. The first two can be  
12 processed through leaching, and the third one can be  
13 processed only through Flotation Concentrators.

14           So, you know, it didn't make sense that you  
15 were going to stabilize a process. You were  
16 stabilizing a deposit, a concession.

17           The second one, it was clear the intent of  
18 the Government when they sold it. You know, they at  
19 the time had a leaching operation and they had a  
20 milling operation. Unfortunately they didn't have the  
21 capital to make that economic, and so the Government  
22 was out to get a foreign company or another company to

1 invest in this potential project, particularly the  
2 Primary Sulfide where in their information they said  
3 it was--had resources of 600 million to a billion  
4 tons, very large deposit. So, their intent clearly  
5 was to figure out how to grow this, and, in doing so,  
6 that they would stabilize this investment.

7 Thirdly, if you look at the Share Purchase  
8 Agreement between Cyprus and the Government, Minera  
9 Perú, there is a couple things that stand out. One is  
10 that on their balance sheet, they showed about  
11 \$8 million of an asset for prestripping the sulfide.

12 Secondly, there were four phases in the  
13 Share Purchase Agreement. First three had to deal  
14 with optimizing, leaching optimizing, and expanding  
15 the leaching operation, and the fourth one was to  
16 build a concentrator. So, again it shows the intent  
17 of what the Government wanted to do in the Share  
18 Purchase Agreement. Again, there they talked about  
19 you invest in this Project; we will stabilize that  
20 investment. Because they had to. I mean, nobody was  
21 going to go to Perú in '94 without some type of  
22 Stability Agreement.

1           The fourth one was they sued us. They sued  
2 us in 2001 for--saying we did not meet the investment  
3 commitment and--because we didn't build a  
4 Concentrator. And so through negotiations with the  
5 Government, Minera Perú, we came to a settlement.  
6 They agreed we met the investment commitment. We  
7 agreed we would spend another \$50 million on Cerro  
8 Verde operation.

9           And even then they insisted that there was a  
10 clause in there that said Cerro Verde will continue to  
11 investigate how to figure out how to make the  
12 Concentrator economic.

13           And then lastly, it was in 2001, we expanded  
14 the crushing facility for the operation from 31,000 to  
15 39,000 tons per day.

16           And so we expanded it, and it didn't even  
17 come up in conversation for us, particularly for me,  
18 that there was no question that other additional  
19 8,000 tons would not be stabilized. It was part of  
20 the same operations, part of same mine. So I think  
21 those were the reasons that I felt very strongly that  
22 the Concentrator was stabilized.

1 Q. Thanks, Randy--or Mr. Davenport. Sorry.

2 In your Witness Statements, you also  
3 testified about the additional efforts that you made  
4 in 2004 to obtain additional confirmation that the  
5 Stability Agreement would apply to the Concentrator  
6 investment leading up to that investment.

7 Can you tell us a bit about those efforts  
8 and also why they were so important for that  
9 investment?

10 A. Yeah. I think it is important to understand  
11 the difference between a pre-feasibility and a  
12 Feasibility Study. A Pre-feasibility usually has an  
13 accuracy around plus or minus 30 percent. A  
14 Feasibility is much more detailed and generally has an  
15 accuracy around 15 percent.

16 So, when you go from Pre-feas to Feasibility  
17 Study, there is due diligence that you have to do.  
18 Obviously you have to design a concentrator, but there  
19 is due diligence. And I was responsible for the due  
20 diligence of ensuring that the reinvestment of profit  
21 was available to us, and if we built the Concentrator,  
22 that it would be stabilized. That was important to

1 the cash flow.

2           So it was in 2003 and 2004, you know, this  
3 necessity for due diligence even became compounded  
4 because Congress was in the middle of trying to say:  
5 "Hey, we need to put Royalties on the mining  
6 companies," you know. There was an uptick in the  
7 commodity prices. Congress was talking about putting  
8 Royalties because, you know: "These guys are making a  
9 lot of money. We should be getting some of that."

10           So, that made us miners in Perú very  
11 nervous. It certainly made Phelps Dodge nervous  
12 because they were contemplating building a  
13 \$850 million Concentrator, and, frankly, it made the  
14 Ministries nervous. Toledo's Administration at that  
15 time because you had some Congressmen saying: "I  
16 don't care if these mining companies are stabilized.  
17 They are making a lot of money, and we need to get  
18 some."

19           And so obviously the Administration and  
20 Ministry did not want that because that would stifle  
21 any future investments. You know, if an investor came  
22 in and said: "Hey, I can't trust the Government of

1 Perú. They gave me a Stability Agreement and now they  
2 are neglecting on it."

3 And so, it was clear, because of that  
4 political climate, we felt we had to have some type of  
5 written confirmation that the Concentrator would be  
6 stabilized, and I knew at the time and it was pretty  
7 obvious that, you know, a Minister, Mining Minister or  
8 Finance Minister, if they didn't have to, they are not  
9 going to go on a limb and say: "You build a  
10 Concentrator. You're stabilized." They are not going  
11 to do that.

12 They are a political signed position. You  
13 know, there could be repercussions along the way. It  
14 happens. As a matter of fact, the previous president  
15 was actually in jail at the time. So, a Minister is  
16 not going to do that. So, it was clear to us that we  
17 had to follow a formal process to make sure we got  
18 that written guarantee or confidence that the  
19 Concentrator would be stabilized.

20 So, I don't know, probably like around  
21 June 2004, we approached the Ministry about: "Okay.  
22 You know, we have the legal right to do an addendum to

1 the Stability Contract." And we thought that was the  
2 path to go, and we continued down that path.

3 I was a little hesitant at first because an  
4 addendum is really a two-step process, you know.  
5 First you have to get a new concession for the  
6 Concentrator, and then the second step is--which has  
7 to be approved through MINEM, and then the second  
8 step, you have to have that new concession put into  
9 your Stability Contract.

10 And the concern I had was not that it  
11 wouldn't get approved, but the concern I had was  
12 really schedule. When you decide to build a  
13 Concentrator, schedule is everything. You want to get  
14 that built as quickly as you can. And so we went down  
15 that path and talked with MINEM, and the first time I  
16 remember talking with them, they brought up Tintaya.  
17 And they said: "You know, I'm not sure we can do that  
18 because we just denied Tintaya's proposal to amend  
19 their Stability Contract."

20 And so, that was news to me. I knew Tintaya  
21 and didn't know what the issues were. I followed up.  
22 I knew the General Manager of Tintaya very well, and I

1 called him up and said: "Hey, what were you guys  
2 trying to do?"

3           Once I understood what they were trying to  
4 do, it was clearly different than what Cerro Verde was  
5 doing. What they were doing was they were building a  
6 new SX/EW plant, and they were going to process an old  
7 stockpile and run it through that plant. They already  
8 had an existing Concentrator that was stabilized. So,  
9 they wanted a new Stability Agreement for the new  
10 SX/EW, and then put the Concentrator into--

11           ARBITRATOR TAWIL: Sorry, sir. We are  
12 losing--we didn't have a transcript. It disappeared.  
13 Sorry.

14           THE WITNESS: Okay.

15           ARBITRATOR TAWIL: What's a new SX/EW plant?

16           THE WITNESS: I'm sorry. It's a solvent  
17 extraction, electrowinning. That's where you make the  
18 copper cathode. That's the operation we initially had  
19 at Cerro Verde, and I believe they still do. So there  
20 is two processes: Solvent extraction and then there's  
21 the Concentrator.

22           ARBITRATOR TAWIL: Thank you.



1           THE WITNESS: So, they were building a new  
2 solvent extraction plant processing an old stockpile,  
3 and then they have a new Stability Agreement. And  
4 then the old Concentrator was already stabilized and  
5 they wanted to put it in the new one. That was  
6 clearly different.

7           So, we went back to MINEM and used--the  
8 presentation I used a lot is past, present, future,  
9 and one of those shows why the Tintaya was much  
10 different than Cerro Verde. We convinced MINEM and we  
11 went there and started continually going down the path  
12 for the amendment of the Stability Contract. And one  
13 of the meetings, I believe, was like probably around  
14 August or so--late July, August. And at a meeting  
15 with MINEM, the conversation came up, and they said,  
16 you know: "You don't really need an amendment. All  
17 you need to do is expand your Concession."

18           To me, that's kind of when the lightbulb  
19 went off. You know, that's what we did in 2001. We  
20 expanded the crushing facility from 31,000 to 39,000,  
21 and it was stabilized. And so, once they put us on  
22 that path--in hindsight, I probably should have come

1 on that path sooner, but I didn't--we didn't. And  
2 once we came on that path, we felt at that point in  
3 time that we had written confirmation that the new  
4 Concentrator would be stabilized.

5 BY MR. UKABIALA:

6 Q. Thank you, Mr. Davenport.

7 MR. UKABIALA: That's all the questions I  
8 have at the moment.

9 PRESIDENT HANEFELD: Thank you.

10 MS. CARLSON: Thank you, Madam President  
11 I'll go ahead.

12 CROSS-EXAMINATION

13 BY MS. CARLSON:

14 Q. Mr. Davenport, good to see you again.

15 A. Likewise, of course.

16 Q. Just to refresh, so my name is Marinn  
17 Carlson representing the Republic of Perú. I don't  
18 know you as well as Counsel does, so I'm not going to  
19 refer to you as "Randy." Sorry.

20 A. You could, though.

21 Q. I appreciate that, but I'll stick to  
22 "Mr. Davenport." Thank you.

1           I think actually the last time we saw you,  
2 you were headed out for a plane to go make sure you  
3 got to Phoenix in time for the Super Bowl.

4           A.    Yeah.  And you know what's coming up this  
5 week?  Cinco de Mayo.

6           Q.    True that.  I didn't realize that was as big  
7 of deal.

8           A.    I'm just kidding.  I'm just kidding.

9           Q.    Well, you, at least, got a good game to  
10 watch.

11          A.    Yes, I did.

12          Q.    Did you actually go?

13          A.    No.  No.  No.  I can't afford to go to  
14 those.

15          Q.    Gotcha.

16          A.    It is more fun to watch on TV anyway.

17          Q.    You see better.

18                So, I'm actually going to resort to a  
19 different sport to start off, which is just a warning  
20 that comes from Yogi Berra, which is:  "This is going  
21 to be déjà vu all over again."

22          A.    Yeah.

1 MR. UKABIALA: I'm sorry to interrupt. Will  
2 there be binders for the Counsel team?

3 MS. CARLSON: I believe they are in motion.

4 MR. UKABIALA: Thanks.

5 BY MS. CARLSON:

6 Q. No, but what I mean by that, I think you  
7 already appreciate that most of the people in this  
8 room have run this show once before, but, of course,  
9 the Tribunal has not had the benefit of your testimony  
10 and has not had the benefit of us probing some of the  
11 issues in your testimony.

12 So, apologies if it really does feel like  
13 we're repeating ourselves.

14 A. Okay. No problem.

15 Q. But we will go through some of the same  
16 things again.

17 A. Okay.

18 Q. Where I can shortcut it and show you  
19 dialogue or exchanges from the prior testimony, I  
20 will. There might be some topics we skip over. There  
21 might be some new things, but I feel sort of odd about  
22 it as I go through what I'm planning to ask. I

1 imagine it feels very odd on your end as well.

2 A. Yes, I'm sure.

3 PRESIDENT HANEFELD: For us, it is really  
4 important to hear your answers. We were provided with  
5 a transcript, but I only found the time to--and I  
6 looked at the questions that were asked but not at the  
7 answers. So, for us, you need to do it anew. I'm  
8 sorry.

9 THE WITNESS: Frankly, I mean, I love  
10 talking about this Project. It is something I'm  
11 pretty proud of, so I--probably you'll cut me off  
12 because I'm talking too much.

13 BY MS. CARLSON:

14 Q. Well, we will both get cut off by the Court  
15 Reporter from time to time when we go too fast.

16 A. Right.

17 Q. And that will happen.

18 So, yes, we will be retreading some ground.

19 In connection with that, though, just a  
20 quick question about your preparation for your  
21 testimony here.

22 I assume that you saw the Transcript from

1 your prior testimony?

2 A. Yes. I saw the Transcripts of my testimony,  
3 and I couldn't believe I said "you know" so many  
4 times.

5 Q. We all do that.

6 A. Okay. Yes, I did. I read it. It was  
7 interesting.

8 Q. Got it. And you may or may not have had the  
9 pleasure of the audio and the video recordings.

10 A. No, I didn't see that. Wow.

11 Q. Okay. It is usually not anybody's favorite  
12 exercise to watch themselves again.

13 A. Well. Okay. Will I get to see that  
14 sometime? Okay.

15 Q. Okay. And were you--did you review the  
16 Transcript of other Witnesses' testimony?

17 A. No, I didn't.

18 Q. Okay. And did you talk about it with other  
19 witnesses after the Hearing?

20 A. No, I didn't.

21 Q. Okay.

22 A. I only talked--like I said, when I left last

1 time, you know, some of these people from Perú, you  
2 know I haven't seen in 10 or 12 years, and I asked  
3 permission, can I at least talk to them. I can't talk  
4 about this, but can I at least say hello and how is  
5 your family and kids, things like that. So, other  
6 than that, that is all I did talk to them about.

7 Q. Okay. You can talk to them about the Super  
8 Bowl. That's fine.

9 A. Yeah. They know nothing about the Super  
10 Bowl.

11 Q. Fair that.

12 All right. And so let's dive on in then.

13 All right. So, taking your Witness  
14 Statements as our starting point, both Witness  
15 Statements, which I think you have in front of you,  
16 they are also--should you need yet another copy--they  
17 are also in Tabs 1 and 2 of the large binder to your  
18 left.

19 In both of those Witness Statements, you  
20 indicate that Claimant's Counsel assisted you in  
21 preparing those Witness Statements; correct?

22 A. That's correct.

1 Q. Fine. But you adopt the text that is in  
2 them, whether you were the one to first put fingers to  
3 keyboard or not, I assume; correct?

4 A. Yeah. I mean, the first one was actually  
5 two years ago. It's hard to believe. But they put  
6 together a draft, and, you know, some of it was a  
7 little bit too much lawyer talk for me for a draft.  
8 So, obviously I put in my own words. I made sure that  
9 it was the--the technical part was correct. And so,  
10 we went through several iterations of my Witness  
11 Statement.

12 Q. Right. I mean, if we look at--there is  
13 boilerplate in both of them, I think it's fair to say.  
14 If we look, for example, at your First Witness  
15 Statement--let's say Paragraph 1 of the First Witness  
16 Statement, which is at Tab 1. You talk about the fact  
17 that--you confirm that the facts and matters you  
18 describe are within your own knowledge and that they  
19 are true, correct, and materially complete, to the  
20 best of your recollection.

21 And then at the same paragraph in the Second  
22 Witness Statement, for example, we see that same



1 sentence plus an explanation that, if you testify on  
2 subjects beyond your knowledge, you will identify the  
3 source and the information and the basis for your  
4 understanding.

5 A. Correct.

6 Q. That sounds lawyerly. That doesn't sound  
7 like a mining professional.

8 A. Which part? "To the best of my knowledge."

9 Q. Well, all right. So if it was your phrasing  
10 and your choice to add that, what did you mean to  
11 signal to us when you said that, if you testify on  
12 subjects beyond your knowledge, you will identify the  
13 source of the information and the basis of your  
14 understanding?

15 A. We were talking about--where I testify about  
16 subjects beyond my personal knowledge...

17 (Reading to self.)

18 A. And your question is? I'm sorry.

19 Q. The sentence that begins "whenever."

20 A. Oh, okay.

21 Q. That appears in the Second Witness  
22 Statement, not the first one. I'm wondering why you

1 chose to add it.

2 A. Well, you know, I think it was more along  
3 the lines--this happened 20 years ago, and in--when  
4 they first called me, I said: "Hey, guys, you know,  
5 I'll help if I can, but I don't remember a lot." So,  
6 they provided me with a lot of documents to review,  
7 and so I did. And what I was trying to identify is,  
8 yeah, I can remember that part of it, but I didn't  
9 remember it until I read the documents. So, I think  
10 it was along those lines that this phrase made sense  
11 to me anyway, and I identified what maybe refreshed my  
12 memory of that.

13 Q. Okay. The process you just described though  
14 was presumably when you were first contacted and asked  
15 to prepare a witness statement.

16 Was that in 2020?

17 A. The First Witness was finalized in 2021,  
18 October. Yeah, probably. I don't remember the exact  
19 date, I'm sorry, how long it took. I know it took a  
20 long time from the very beginning of the phone call to  
21 this final product.

22 Q. Right. So, that process of talking with the

1 Counsel team or what have you, moving your way towards  
2 preparing a witness statement, you had said you asked  
3 for documents to help you refresh your memory. That  
4 helped you remember what had happened.

5 All of that happened before your First  
6 Witness Statement; right?

7 A. It happened before my First Witness  
8 Statement, and it happened during my Second Witness  
9 Statement too. If there was things that I wanted to  
10 talk about or felt was important to talk about based  
11 on, you know, your responses to my First Witness  
12 Statement, they would supply me with documents. And,  
13 you know, I said: "Hey, what about this document? I  
14 don't really remember this." And they would provide  
15 additional documents.

16 Q. Okay. And then I'm curious to why this  
17 sentence that we looked at didn't appear in the First  
18 Witness Statement.

19 A. I thought you said I was looking at the  
20 First Witness Statement.

21 Q. Sorry.

22 A. This is the second one.

1 Q. You're looking at your second one right now.

2 A. Oh, you confused me there.

3 Q. Sorry. I took you to both paragraphs.

4 A. I don't know. How is that?

5 Q. Okay.

6 A. Okay. To me, they kind of say the same  
7 thing, but I guess maybe, to a lawyer, they don't.  
8 But to me, they say the same thing, you know, that  
9 this is based on my memory, and I had documents to  
10 refresh that memory, and that that was important for  
11 me to do it. And I think the documents--whether I  
12 remembered or not, the documents helped me to remember  
13 a lot of things.

14 Q. Okay.

15 A. And even going to the Second Witness  
16 Statement, I think I started remembering more things.  
17 And I can remember a question from you, and, oh, and  
18 then afterwards, I remembered things. So, all these  
19 little things kind of trigger your memory about what  
20 happened 20 years ago.

21 Q. But unless you've told us in the Witness  
22 Statement that some particular statement comes from

1 reviewing documents, we should assume it's from your  
2 personal knowledge?

3 A. If you--if I say--would you repeat that  
4 please? I'm sorry.

5 Q. Just to make sure, again, I understand what  
6 the sentence means--

7 A. We're talking about the Second Witness  
8 Statement?

9 Q. The one in yellow.

10 A. Okay.

11 Q. Unless you signal somehow in the text of the  
12 Witness Statement that something you are talking about  
13 comes only from documents, I should assume that it's  
14 in your personal knowledge; is that right?

15 A. If it's not in a document, then I guess I'm  
16 not still following what you're trying to get at.

17 Q. Okay. Second sentence says: "Everything is  
18 within--that I testify about is within my personal  
19 knowledge."

20 A. We're on the First or Second?

21 Q. Second sentence, Second Witness Statement.

22 A. Okay.

1 Q. It's the second sentence in both Witness  
2 Statements.

3 A. Okay. I confirm the facts and matters that  
4 I describe within my own knowledge. Okay.

5 Q. Okay.

6 A. Got it.

7 Q. So, you're saying everything I say is  
8 something I know about personally, I lived through  
9 personally.

10 A. Yeah. And when I testify on something that  
11 is beyond my personal knowledge, I identify the  
12 source. But even the first one, you know, the  
13 documents helped me remember. So, I'm not sure if  
14 that is what you are trying to get at or not.

15 Q. Well, there seems to be a second category of  
16 information that might be in this Witness Statement;  
17 that is, things you didn't know about personally and  
18 didn't live through personally, but that you learned  
19 about only from documents. That's what I understand  
20 the third sentence to be talking about.

21 And it seems to say that you're going to  
22 signal that. You're going to wave a flag and tell us

1 the source of the information if that happens anywhere  
2 in this Witness Statement.

3 A. I didn't realize this statement would be so  
4 complicated. But, again, all I can say is that I  
5 remembered a lot of things as I reviewed documents.  
6 It triggered a lot of memories, and then somewhere  
7 maybe it got a little muddled that: Did I read that  
8 or I did remember it, or did a little bit of both?

9 You know, we are talking 20 years ago. So,  
10 I think what I'm describing here is how I prepared  
11 these Witness Statements, either based on what I  
12 remember or documents that triggered it, and whether I  
13 remember reading that document at the time. Sometimes  
14 yeah; sometimes not. Sometimes--you know, I don't  
15 know. It gets muddled when you start trying to think  
16 back 20 years ago what came first.

17 Q. Okay. While we're here--

18 A. We're still here.

19 Q. No. I'll go on the next paragraph. How is  
20 that?

21 A. Which one?

22 Q. Second Witness Statement, second paragraph.

1           A.    Okay.

2           Q.    Just to clarify something that I think we  
3 sorted out in the Cerro Verde Hearing, but for the  
4 benefit of the record here, the last sentence of the  
5 second paragraph says: "I've received no compensation  
6 for my time in preparing this Witness Statement beyond  
7 my regular salary for my work for SMCV."

8                    Are you a salaried employee of SMCV?

9           A.    No, I'm not.  The salary I'm talking about  
10 is my consultant--excuse me, my consultant salary.

11          Q.    And are you paid on an hourly basis for your  
12 work?

13          A.    Yes.  Yes.

14          Q.    Okay.  What's your hourly rate?

15          A.    \$300.

16          Q.    Okay.  And that consulting work, you do that  
17 through a company?

18          A.    Well, I originally, when I did my  
19 consulting--I've been consulting for about 10 years.  
20 And I don't automatically look for consulting work.  
21 People just contact me for doing things like due  
22 diligence or feasibility studies or Pre-feas, and so.



1 Originally I had an S-Corp. So I did it through an  
2 S-Corp., and now I just do it through myself.

3 Q. Okay. And for your consulting business this  
4 year, 2023, do you have clients other than the  
5 Claimant in this arbitration?

6 A. At this point in time, no.

7 Q. Okay. And what about in 2022?

8 A. You know, you asked me that question last  
9 time.

10 Q. I did.

11 A. As a matter of fact, I did my taxes, so now  
12 I know exactly what that answer is. So, in 2022,  
13 approximately 20 percent of my consulting income was  
14 from the Cerro Verde Project.

15 Q. Okay. And you had other consulting work  
16 from companies other than Freeport, Sumitomo, or SMCV?

17 A. Correct. Yeah. When we're talking about  
18 Cerro Verde, it is Sumitomo or Freeport, yes.

19 Do you want me to talk about those?

20 Q. No.

21 A. Oh, okay.

22 Q. I'll take you for it. So...

1           But at the time you testified in February,  
2 and as you're sitting here now, this is your only  
3 client; right?

4           A.    From January until now?  Yes.

5           Q.    Okay.  All right.

6           Okay.  Let's go through just a little bit of  
7 sort of stage-setting with your professional  
8 background.

9           So, you began working for Phelps Dodge in  
10 1987; is that right?

11          A.    Correct.

12          Q.    Okay.  And that was five years after you got  
13 your BS degree.  What was in the in-between years?

14          A.    I got out '83.  You know, back then, you  
15 know, I had a TRSW computer and a dot-matrix printer,  
16 and I typed out--it was over 100 letters to mining  
17 companies.  And if you know the mining industry in  
18 '83, you know, Phelps Dodge--the mines of Phelps Dodge  
19 were on strike or they were shutting down.

20                So it was a very difficult time, and I  
21 was--I even got letters from the people that  
22 eventually hired me in Phelps Dodge.  I couldn't find

1 a mining job, mining engineering, couldn't find one.

2 I was raised in Nebraska and happened to go back and  
3 visit my parents.

4           There was a pretty large construction  
5 company in Cozad, Nebraska, and the construction  
6 company had a gravel operation, aggregate. And I  
7 said: "Well, I never really thought that was mining,"  
8 but they offered me a job, and I wasn't crazy about  
9 going back to my small hometown, but I did; a job is a  
10 job. And then my wife, at the time she was a school  
11 psychologist, she also got a job back there.

12           I was there, I don't know, about a year and  
13 a half or so, and, you know, I wasn't feeling like--I  
14 went to school, and now I'm kind of working in a  
15 gravel pit.

16           And so, my wife had an opportunity to get a  
17 job in Morenci, Arizona, and she went for the  
18 interview as a school psychologist. And Morenci,  
19 Arizona--the Morenci Mine was one of the largest mines  
20 in the world at that time. I said, you know, I'll go  
21 and maybe something will happen.

22           So, she started working; nothing happened.

1 So actually I went back to school to get a master's  
2 degree in teaching. And I actually started doing my  
3 student teaching. I was going to be a math teacher,  
4 and, you know, it was kind of fun. I did a lot of  
5 substitute teachings while we had two little kids.

6 And I was just about done with the teaching  
7 part of it, and the mine called me and said, you know:  
8 "Hey, why don't you come in for an interview?" And  
9 so, I went in for an interview. They didn't really  
10 ask me too many tough questions, and it was almost  
11 like somebody kind of laid a path for me, and they  
12 eventually offered me a job. And at the time it was  
13 \$30,000 a year, and the teacher's salary was--I don't  
14 know, like about 15. So, it wasn't a real hard  
15 decision. So, that's how I--that's when I joined  
16 Phelps Dodge in '87 at Morenci.

17 Q. Okay. I actually realized I probably  
18 shouldn't have started down the path of your  
19 background because I'm reminded that we are at  
20 6:00 p.m. I know the Tribunal said they needed us to  
21 wrap up.

22 So, I'm happy to stop there, except can I

1 just correct one--check one date for the record?

2 I think you said that you got your degree in  
3 '83, and I just wanted to check that against your  
4 Witness Statement, which says '82.

5 A. Yeah. It was actually mid-semester, so it  
6 was in December of '82.

7 Q. Okay. Thank you.

8 A. And then I went another semester in graduate  
9 school, and I thought I was going to do something  
10 else. So, it was actually December of '82.

11 Q. Okay. Thank you.

12 MS. CARLSON: I'm happy to stop there, Madam  
13 President.

14 PRESIDENT HANEFELD: Thank you very much.

15 So for today, you are released, and we will  
16 continue tomorrow morning at 9:30, and have a good  
17 night not talking to anyone. I'm sorry about that--

18 THE WITNESS: I understand.

19 PRESIDENT HANEFELD: --but that's the rule.

20 THE WITNESS: I'm kind of glad about that  
21 sometimes.

22 MS. CARLSON: You may have had to wait a

1 full day, but you got another lawyer-free evening.

2 PRESIDENT HANEFELD: Any housekeeping  
3 matters? Claimant?

4 MR. PRAGER: None from Claimant. Thank you.

5 PRESIDENT HANEFELD: Thank you. Respondent?

6 MS. CARLSON: None from Respondent. Hold  
7 on, let me double-check. None from Respondent. Thank  
8 you.

9 PRESIDENT HANEFELD: We wish you good  
10 evening and see you tomorrow.

11 THE WITNESS: Thank you.

12 (Whereupon, at 6:02 p.m., the Hearing was  
13 adjourned until 9:30 a.m. the following day.)

CERTIFICATE OF REPORTER

I, Dawn K. Larson, RDR-CRR, Court Reporter, do hereby certify that the foregoing English-speaking proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the English-speaking proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.

  
Dawn K. Larson