

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 6

HEARING ON JURISDICTION, MERITS, AND QUANTUM

Monday, May 8, 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 9:28 a.m. before:

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President of the Tribunal

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Co-Arbitrator

MR. BERNARDO M. CREMADES  
Co-Arbitrator

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1           But just for timing purposes, this is our  
2 expectation, that the Friday is really limited to the  
3 Closing Statements.

4           MR. PRAGER: Madam President, that's also  
5 our understanding.

6           I propose that we first confer with Counsel  
7 for the other side, whether we see a need for longer  
8 sessions on one or two of those days.

9           Certainly, from a preliminary calculation,  
10 we have done--in order for the Parties to use the  
11 allotted time, it would probably be necessary to have  
12 on one or two days, like, an additional hour or two,  
13 but let us first confer and then maybe get back with a  
14 joint position. And, if not, we will come to you.

15           MS. DURÁN: Madam President, that is also  
16 our understanding, and we will confer with the other  
17 side to see if we need one hour or more in the next  
18 few days so that we can accomplish that.

19           PRESIDENT HANEFELD: Perfect.

20           Then it seems that we can start. We will  
21 now continue with the cross-examination of Mr. Tovar.

22           Welcome back to the Hearing, and I hand over

1 to Claimant's Counsel.

2 CROSS-EXAMINATION (continuing)

3 BY MR. PRAGER:

4 Q. Good morning, Mr. Tovar.

5 A. Good morning. Mr. Dietmar, good morning.

6 Q. I hope you enjoyed a nice weekend here in  
7 Washington.

8 Let's travel in time to March 2005, so  
9 March 2005.

10 In March 2005, you traveled to Toronto;  
11 right?

12 A. Yes. Yes, sir.

13 Q. And the occasion for your trip was attending  
14 the PDAC conference, which is the Prospectors and  
15 Developers Association of Canada conference; correct?

16 A. Yes, sir.

17 Q. And the PDAC conference is one of the most  
18 significant annual mining conferences; right?

19 A. Yes, sir.

20 Q. And you traveled as part of a MINEM  
21 delegation; right?

22 A. Yes, sir.

1 Q. And the main--you traveled to a number of  
2 meetings with mining companies, but the main event was  
3 a panel discussion at the PDAC conference that MINEM  
4 organized for March 9; right?

5 A. That's right, yes.

6 Q. And the purpose of the presentation at the  
7 PDAC conference was to promote Perú as a destination  
8 for mining investment; right?

9 A. That is right, yes.

10 Q. And there were representatives of Xstrata,  
11 Barrick, and Phelps Dodge who agreed to give a  
12 presentation at that event; right?

13 A. Yes, that is right.

14 (Interruption.)

15 (Stenographer clarification.)

16 (Comments off microphone.)

17 Q. And the speaker for Phelps Dodge at that  
18 event was Mr. Red Conger; right?

19 A. Yes, that is right.

20 Q. And at that time he was Vice President of  
21 Phelps Dodge Corporation and a Board member of  
22 Sociedad Minera Cerro Verde; right?

1           A.    I understand he was Chairman of the Board of  
2 Cerro Verde.

3           Q.    So, before you traveled to Toronto, MINEM  
4 was preparing a legal aide-mémoire for the  
5 conversations that you would have in Toronto; right?

6           A.    That's right.

7           Q.    And that legal aide-mémoire was prepared by  
8 César Zegarra?

9           A.    That's correct.

10          Q.    And César Zegarra was the number two in  
11 the--in MINEM's General Office of Legal Affairs;  
12 right?

13          A.    That is right, yes.

14          Q.    And the number one was Mr. Isasi at that  
15 time; right?

16          A.    That is right, yes.

17          Q.    And you testified at the last Hearing that  
18 Mr. Zegarra prepared that memo and then Mr. Isasi  
19 reviewed it.

20                    Is that still your recollection?

21          A.    Yes. That was always the way it was done.

22          Q.    And Mr. Zegarra then sent you and Mr. Polo

1 the memo to Toronto; right?

2 A. The aide-mémoire, yes.

3 Q. And the topic of that aide-mémoire was the  
4 impact of Mining Royalty on Tax Stability Agreements;  
5 right?

6 A. That's right.

7 Q. And that was a topic at the time because--if  
8 we just put ourselves in the chronology because, in  
9 June 2004, the Mining Law had been passed; right?

10 A. The Mining Royalties Law had been approved  
11 at the beginning of June and officially enacted in  
12 late June.

13 Q. Yes, and let me correct myself. I meant to  
14 say the Royalty Law had been passed in June 2004, not  
15 the Mining Law.

16 A. That is right, yes.

17 Q. And at that point in time, there was still a  
18 case pending before the Constitutional Tribunal with  
19 regard to the Royalty Law which was resolved in a  
20 decision in April 2005; right?

21 A. I recall that the decision was in  
22 late--unless my memory is wrong, it was in late 2004.

1 And in 2005 there was a specification, a specification  
2 because there were certain terms that were not written  
3 adequately in 2004. This is what I recall.

4 Q. Okay. So, let's take a look at the  
5 aide-mémoire. The aide-mémoire is Respondent  
6 Exhibit 5, Tab 11.

7 Do you see it?

8 Just to confirm, when you received that  
9 aide-mémoire, you reviewed it, I imagine?

10 A. Indeed. I reviewed it even before it was  
11 sent to me, because we still were maintaining  
12 communication with Lima while we were in Toronto.

13 Q. So, is it fair to say that Mr. Zegarra,  
14 Mr. Isasi, and you, all three of you, worked on the  
15 memo, or at least reviewed it?

16 A. That is correct, completely right. The  
17 concepts that were written there merely formalized  
18 what we already knew through oral discussion, but it  
19 was always best to have a document to back things up.

20 Q. So, let's take a look at that aide-mémoire.  
21 It says in the last two bullet  
22 points: "There are mining concessionaires that have

1 signed administrative and Tax Stability Agreements  
2 with the State regarding specific Mining Projects,  
3 entered into under the Single Unified Text of the  
4 Mining Royalty law, the model agreement for which was  
5 approved by Supreme Decree Number 04-94-EM. In this  
6 respect, for purposes of enforcing the guarantees  
7 agreed to by the Peruvian State for Mining Royalties,  
8 it is the mining companies' responsibility to inform  
9 the entity tasked with managing and collecting the  
10 royalty about the Mining Projects and Concessions that  
11 would be covered by such guarantees."

12 Do you see that?

13 A. Yes, sir.

14 Q. So, let me ask you a couple of questions  
15 about that.

16 This memo doesn't talk about Investment  
17 Projects that are set forth in the Feasibility Study,  
18 does it?

19 A. That's what "specific Mining Projects"  
20 refers to. This is a file that I found among my  
21 emails, and this is precisely one of the files that I  
22 sent the lawyers as an original attachment, not in

1 Word, but the original file, and what is in boldface  
2 is from that time. "Specific Mining Projects" refers  
3 specifically to investment projects.

4 Q. Mr. Tovar, "Mining Project" refers to  
5 "Mining Units," doesn't it?

6 A. No. I don't agree. I don't agree.

7 Q. When you describe the scope of Stability  
8 Agreement in your two Witness Statements, Mr. Tovar,  
9 you use the term "Investment Project set forth in the  
10 Feasibility Study." You don't talk about Mining  
11 Projects, do you?

12 A. "Mining Projects" is a term that's an  
13 equivalent to "investment project." "Project" is  
14 something I'm planning to do. I'm planning to do  
15 something related to industry, fisheries. "Mining  
16 Project," it is an investment project in mining.

17 Q. Let's look at the Spanish version. Let's  
18 look at the last paragraph.

19 It says: "The Mining Projects and  
20 Concessions that would be covered by them." The  
21 Spanish term "cubiertas" refers to the Concessions;  
22 right?

1           A.    To the Projects.  Actually, the scope of  
2 Stability Agreements is not for the Concession.  The  
3 Concession is not what is stabilized, and that has  
4 even been written by the Constitutional Court.  In one  
5 way or another, it explains that what is stabilized is  
6 not the Concession, which is governed by its own  
7 rules.  What is stabilized is the project that gives  
8 rise to the Contract and which is set out in the  
9 Feasibility Study.

10                 It is what is said in the Mining Law and the  
11 Regulation, and when the Company in 1998 submitted its  
12 Feasibility Study, it described--it delimited in time,  
13 in tons, in type of ore to be processed, in type of  
14 waste.

15                 Indeed, there is a paragraph in that  
16 Feasibility Study in 1998 that describes what waste  
17 would never be generated, and this does--is a project  
18 that will not produce tailings.  That's what the 1998  
19 Feasibility Study says.

20                 (Overlapping interpretation and speakers.)

21           Q.    We're not at the 1998 Feasibility Study now.  
22 We are at this aide-mémoire.

1           Mr. Tovar, "cubiertas" is in feminine and  
2 refers to Concessions and not to Projects, doesn't it?

3           A.    I don't agree, Mr. Dietmar.  When one drafts  
4 in the Spanish language, one can use a neuter article  
5 or make reference to the last word when there's two  
6 words.  It's simply a way of drafting in the Spanish  
7 language.

8           Q.    So, in your reading, the Concessions are not  
9 covered by the Guarantees?  Is that what, in your  
10 reading, that sentence says?

11          A.    What is stabilized by the law, and one has  
12 to review the drafting of the Mining Law and several  
13 articles of Supreme Decree 024 of the Regulation,  
14 which does not in just one way, but in more than one  
15 way, the subject matter of or purpose of the  
16 Application for the Stability Agreement, and that is a  
17 criteria--

18                   (Overlapping interpretation and speakers.)

19          Q.    Mr. Tovar, we're not talking about the  
20 Mining Regulations which refer to the Mining Units and  
21 concessions.  We are talking about this paragraph.  
22 Are you telling me that, under your interpretation of

1 the word "estarían cubiertas," the Concessions are not  
2 included in the cubiertas? Is that your reading?

3 A. Mr. Dietmar, the mention of Concessions in  
4 the Agreement is to give it--give a geographic  
5 location to the Project. That is the purpose of  
6 mentioning the Concessions.

7 Q. Mr. Tovar, it doesn't say "the Project in  
8 the Concessions." It says "the Projects"--meaning the  
9 Mining Projects from the previous paragraph--"and  
10 Concessions"--mining concessions--"that are covered"  
11 by the guarantees.

12 Would you agree it doesn't say "the Project  
13 in the Concessions"?

14 A. But that is what the document refers to,  
15 Mr. Dietmar. That's what it refers to.

16 Q. Mr. Tovar, you would agree the Project  
17 doesn't mention anywhere Cerro Verde--the aide-mémoire  
18 doesn't mention anywhere Cerro Verde?

19 A. No, it's not specific. The application of  
20 the law is not for a particular company or project.  
21 It's of general application.

22 Q. So, the memo does not specifically address

1 whether the new Concentrator of Cerro Verde would be  
2 covered or not by the Royalties?

3 A. Mr. Dietmar, these aide-mémoires were for  
4 across the board application. They were for general  
5 application to all projects in Peru, not for a  
6 particular case.

7 Q. Mr. Tovar, you had on the 8th of March lunch  
8 with Mr. Conger and with Mr. Luis Carlos Rodrigo;  
9 correct?

10 A. Yes.

11 Q. And in your First Witness Statement at  
12 Paragraph 55, you said that you and a group of  
13 unidentified MINEM officials had traveled to Toronto,  
14 and "we had lunch." Okay?

15 In your Second Witness Statement, at  
16 Paragraph 81, you said that: "I had lunch," and "I  
17 made certain explanations at the lunch."

18 At the SMM Hearing, you said that Mr. Polo  
19 and you were at the lunch.

20 So, my question is: Do you have for us  
21 today a fourth version of who attended the lunch, or  
22 can you pick for us one of the three previous ones?

1           A.    Mr. Dietmar, the version of--there's only  
2 one version of the situations where I was present.  
3 Perhaps what we are seeing is that the First Statement  
4 that I gave in March or April of 2022 did not have so  
5 much so as to be able to refresh my memory, and for  
6 the Second Witness Statement in November, I looked and  
7 I looked thoroughly into my files so as to have  
8 greater clarity as to--even as to the name of the  
9 restaurant where we had met, because it's humanly  
10 impossible to remember the name of a restaurant where  
11 one had lunch after so many years, and I found that  
12 among my emails.

13                    So, in reviewing these emails, I found the  
14 original presentation by Phelps Dodge made by Harry  
15 Conger, and on reviewing and remembering those  
16 documents, then one begins to remember  
17 additional--particular additional details.

18           Q.    So, you're telling us today that when you  
19 wrote the First Witness Statement, you couldn't recall  
20 who else on behalf of MINEM attended the lunch?

21           A.    I vaguely remembered that it was César Polo,  
22 but when I looked at the documents more extensively, I

1 clearly remembered that it was him.

2           And that's when I found the agenda, the  
3 schedule of meetings, and that's where I remembered  
4 that we had a prior meeting at Barrick's offices which  
5 were a block away, and we got to the lunch with Phelps  
6 and Mr. Rodrigo and Mr. Harry Conger late.

7           So, one begins to remember those things once  
8 you review documents more.

9           Q.    So, when you wrote the Second Witness  
10 Statement that's in the agenda, you recalled that you  
11 had the lunch with Mr. Polo?

12           A.    Yes.

13           Q.    Yet in your Second Witness Statement you say  
14 "I had the lunch" and "I said" and "I"--you do not  
15 mention Mr. Polo in your Second Witness Statement,  
16 Mr. Tovar.

17           MS. DURÁN: Madam President, I object  
18 because he's misquoting the Second Witness Statement.

19                    In Paragraph 81 of his Second Witness  
20 Statement, he says "during this visit"--I am making my  
21 own translation because I'm looking at the  
22 Spanish--"we had lunch," (in Spanish).

1 BY MR. PRAGER:

2 Q. Well, let's look at the Second Witness  
3 Statement, Paragraph 81. It says: "During that visit  
4 I had lunch in the Far Niente restaurant with Phelps  
5 Dodge President."

6 A. It's a translation mistake in the  
7 Spanish-language version, which is what I actually  
8 wrote. It said: "During this visit we had lunch."  
9 So, there's a mistake in the translation.

10 Q. Well, you don't mention Mr. Polo in the  
11 Spanish version, either, do you?

12 There was a cross-mistranslation mistake in  
13 the Spanish, but not in the English. So, you do not  
14 mention Mr. Polo in either the Spanish version or the  
15 English version of the Witness Statement, do you?

16 A. Yes, you're right. But that doesn't give  
17 rise to any contradiction. I wasn't at the meeting  
18 alone. Indeed, I remember where I was seated at the  
19 table. It was a table where there were just four  
20 people there of all those who were invited, Mr. Harry  
21 Conger, Mr. Ricardo--Mr. Luis Carlos Rodrigo, and I  
22 was seated here, and César Polo was seated here.

1 Q. Mr. Tovar, you testified on Friday that you  
2 reviewed Mr. Polo's Witness Statements before you  
3 signed your Witness Statements.

4 Did it strike you as odd that Mr. Polo did  
5 not mention a lunch in his Witness Statement, although  
6 he talked about the application of Stability  
7 Guarantees to Cerro Verde?

8 A. To be more specific, Mr. Dietmar, while I  
9 have had the PDF when doing the final review of my  
10 First Statement, I did not study Mr. Polo's Statement  
11 in detail, just some paragraphs that the lawyers found  
12 were in agreement. They had noted that, well, these  
13 coincide. So, both remember the same.

14 But it's only normal, it's only natural, for  
15 someone to have a clearer memory than someone else  
16 regarding an event that took place many years ago,  
17 especially in my case because I was the one who was in  
18 charge of the schedule. I was the one who organized  
19 the schedules. I would put the schedules and the  
20 distance and the times together to make sure we would  
21 go from meeting to meeting and be on time.

22 Q. And when you wrote your Second Witness

1 Statement, it didn't strike you as odd that Mr. Polo  
2 didn't mention a lunch in Toronto?

3 A. I can swear to you that I have never seen  
4 that detail because I did not study César Polo's  
5 Statement. If you ask me how many pages does it have,  
6 I don't know. I haven't studied it. I took a look,  
7 but I did not review in detail what Mr. César Polo  
8 said.

9 Q. So, you mentioned that the lunch--that at  
10 the lunch--well, let's start with the Second Witness  
11 Statement, since we have it up.

12 You said: "I explained to Mr. Conger and  
13 the attorney that, because the Leaching Project was  
14 covered by the Stability Agreement, it would be exempt  
15 from royalty payments, but the Concentrator Project  
16 would not be."

17 And at the SMM Hearing, you said that, well,  
18 actually it was Mr. Polo who made that statement, and  
19 you may have helped a bit with the translation.

20 What's your recollection today about who  
21 made that statement?

22 A. I remember having said it, it's possible

1 that in--as a reply to or to support what César Polo  
2 had said at that time, but we'll understand that in a  
3 lunch, unlike a formal working meeting, one is a bit  
4 distracted eating, more than focusing exclusively on  
5 talking or discussing things with pen and paper on the  
6 Table.

7           So, it was a very friendly, cordial, and  
8 transparent meeting or lunch, but I think that I must  
9 recognize we got to the lunch late, I think more than  
10 half an hour late. So, we were a bit rushed. I do  
11 remember that.

12           But the lunch meeting, we did not ask for.  
13 We asked--and I say this because I organized those  
14 meetings at the PDAC meeting. We asked for the  
15 presentation in the ballroom at the Intercontinental.  
16 And, in exchange, the Company says, "Well, after that  
17 presentation, now that we're there, let's get together  
18 on a more social basis." That happened with Barrick.  
19 There was coordination with--and with Phelps, we got  
20 there late.

21           Q. Mr. Tovar, who gave the message? Was it  
22 Mr. Polo or you?

1           A.    I would say it was both of us.  But I do  
2 remember having said it.

3           Q.    So, in today's version, both Mr. Polo and  
4 you gave the message, at the same time, or he first  
5 and afterwards you?

6           A.    It's quite possible that César Polo may have  
7 made the first comments, and then I would have  
8 repeated it in English.

9           Q.    And, Mr. Tovar, did you have at that point  
10 in time a legal opinion from the Legal Office or from  
11 the DGM that determined that the stability benefits  
12 would not apply to the Concentrator?

13                   We saw that the aide-mémoire didn't mention  
14 Cerro Verde, so did you have any other document at  
15 that time that stated that the stability benefits, the  
16 Stability Guarantees, did not apply to Cerro Verde's  
17 Concentrator?

18                   What did you base that statement on?

19           A.    At that time, in March of 2005, the reading  
20 and knowledge of the scope of the application was  
21 quite clear, and I'll be honest with you, I did not  
22 have reports for each article or as to how each

1 article of the law would be interpreted. The reading  
2 of the Law and the Regulation, a direct reading of it,  
3 led to an understanding of the scope of coverage.

4           And my oldest memory in terms of  
5 understanding the scope of application of the  
6 Stability Agreement is from March or April of 2004,  
7 March or April of 2004, and I came into the MINEM in  
8 January. And by March, one already heard, it was  
9 already known, that there was this debate about the  
10 Royalties Law internally. We had to know how it would  
11 be applied once promulgated.

12           Q.    So, Mr. Tovar, you were basing your alleged  
13 statements on your understanding of what the  
14 application of the Stability Guarantees would be on  
15 Cerro Verde's Concentrator, and not on a legal  
16 memorandum; is that correct?

17           A.    Let's recall that every Monday at 10:00 a.m.  
18 we had a general meeting with engineers, lawyers,  
19 sociologists, and so on, and there all the opinions  
20 were shared. If you're suggesting that the opinion on  
21 coverage is my own personal one, I can confirm for you  
22 that that's not the case. It was institutional.

1           Q.    Mr. Tovar, you had a special legal  
2 aide-mémoire prepared for your meetings to address the  
3 question of whether Stability Guarantees applied  
4 to--or what the scope of Stability Guarantees was with  
5 regard to the application of the Royalty Law.

6                       That Legal Opinion did not address Cerro  
7 Verde, and yet you felt authorized without a Legal  
8 Opinion to make that alleged statement?

9           A.    You're mistaken, Mr. Dietmar, with all due  
10 respect. The fact that this aide-mémoire existed in  
11 March doesn't mean that previously there hadn't been  
12 discussions and knowledge of an official institutional  
13 position on this matter.

14           Q.    Mr. Tovar, you testified in your Second  
15 Witness Statement that MINEM officials cannot provide  
16 any oral opinions, that they can only provide opinions  
17 in writing and that it will be outside of their duties  
18 to provide any oral opinions.

19                       Did that rule not apply to you and to  
20 Mr. Polo, only to Ms. Chappuis?

21           A.    Mr. Dietmar, your question is extremely  
22 important, relevant in this general case, not just in

1 terms of the questions you are putting to me, because  
2 what I have done is to explain to all regulated  
3 Parties how the Law is read. What is totally  
4 prohibited is to suggest to the regulated Party how  
5 they should do a filing that one is going evaluate.

6 This is very important because, in the  
7 Witness Statements that I've read by the Claimant, it  
8 is written that someone in the Ministry made that  
9 suggestion as to how to establish a legal strategy for  
10 the regulated Party. And I believe that that is  
11 something that should not happen.

12 It's one of the first things that the  
13 lawyers explained to me and taught me: "Don't give  
14 ahead of time an opinion on some filing that is about  
15 to be made."

16 QUESTIONS FROM THE TRIBUNAL

17 ARBITRATOR TAWIL: You're referring to  
18 Ms. Chappuis; is that correct?

19 THE WITNESS: Yes, sir.

20 ARBITRATOR TAWIL: When you found out that  
21 Ms. Chappuis had said that one must follow this line,  
22 what did you do?

1           THE WITNESS: Mr. Santiago, during the time  
2 that Ms. Chappuis and I worked together at the  
3 Ministry of Energy and Mines, I never heard or  
4 received any sort of instruction like that from her,  
5 not orally or in writing.

6           ARBITRATOR TAWIL: So, how did you find that  
7 out and when? Because we have heard statements that it  
8 was already known that there was a different position  
9 in the Ministry.

10  
11          THE WITNESS: When I read these Witness Statements  
12 written, and that was in January or February of 2022,  
13 when I began to be a Witness in this case and once I  
14 had access to these documents, these documents and  
15 PDFs, that is where I saw that there was a version  
16 that was not shared with us.

17           In all the documents, in all of the memos,  
18 in all of the emails even, this position of  
19 Ms. Chappuis is not reflected.

20          ARBITRATOR TAWIL: You did not know that she  
21 had a different position?

22          THE WITNESS: No, sir. No, not orally or in

1 any meetings.

2           Moreover, there's a trace of a presentation  
3 by Cerro Verde from August of 2004 where, in the  
4 meeting, I mentioned that among the existing  
5 procedures of the Ministry is the possibility of them  
6 signing a new Stability Agreement. That was and could  
7 have been the moment when any of those at the table  
8 could have told me: "Why are we going to sign a new  
9 Stability Agreement if this is already stabilized?"

10           ARBITRATOR TAWIL: And you worked with the  
11 Ms. Chappuis; right? She was your direct boss?

12           THE WITNESS: Yes, she hired me.

13           ARBITRATOR TAWIL: Some Witnesses said that  
14 the disagreements were well-known in connection with  
15 Ms. Chappuis, but you said that they were not known  
16 within the Ministry. You refute those Witnesses;  
17 specifically, for example, this was indicated by  
18 Mr. Isasi. He said that the disagreements of  
19 Ms. Chappuis were well-known. But you say that they  
20 weren't.

21           THE WITNESS: I can give you an example.

22           ARBITRATOR TAWIL: No. Please answer my

1 question.

2           They were not known? It is not true that  
3 there were no differences--meaning that Ms. Chappuis  
4 opined, like you all did?

5           THE WITNESS: No. In certain cases, there  
6 were disagreements, and I had to present the case to  
7 my boss, Ms. Chappuis, and provide support for it.

8           ARBITRATOR TAWIL: No. In connection with  
9 this issue specifically, the position of Ms. Chappuis  
10 was not known?

11           THE WITNESS: No, no, no. Otherwise, there  
12 would have been a record. And in connection with the  
13 Royalties Law specifically, once the law was passed at  
14 the end of June and we had the Monday coordination  
15 meetings with the Vice Minister, she sent an email in  
16 connection with the Royalties. She said, "Well, I  
17 will not participate in the meeting in connection  
18 with the Royalties."

19           ARBITRATOR TAWIL: Thank you.

20           ARBITRATOR CREMADES: Let me ask you:  
21 Claimants asked in writing that the Ministry respond  
22 in writing that the Concentrator was covered by the

1 Stabilization Agreement. No answer was provided, and  
2 this lack of Reply by the Ministry, was that done on  
3 purpose? Was that dealt with on the Monday meeting,  
4 that there was no response? That silence, is it  
5 interpreted as a negative from the Ministry?

6 THE WITNESS: I'm sorry. I don't--I can't  
7 see your last name.

8 ARBITRATOR CREMADES: You can call me  
9 "Mr. Arbitrator."

10 THE WITNESS: Okay. Mr. Arbitrator, it is  
11 correct that Cerro Verde made presentations. I do  
12 clearly recall one in August. I don't remember the  
13 one that was mentioned in June or July. In these  
14 presentations, they said that they were going to apply  
15 for the inclusion of this Project within the  
16 Stabilization Regime. But that application I never  
17 got to know. It never came to me.

18 ARBITRATOR CREMADES: Thank you very much.

19 PRESIDENT HANEFELD: I would also ask about  
20 these presentations that Cerro Verde made in July and  
21 August 2004. As the other arbitrator has asked, they  
22 had specifically asked in the presentation for an

1 addendum of the Stability Agreement.

2           Do you remember that this presentation was  
3 held and that they showed the slide and asked for this  
4 addendum of the Stability Agreement?

5           THE WITNESS: Counsel showed me two  
6 presentations: One from June-July or--the other one  
7 from August. I remember the one from August.

8           Apologies, Madam President, I remember where  
9 I was sitting at the table in some cases, and I do  
10 remember the August presentation. The first one, the  
11 first presentation, June-July presentation, I don't  
12 recall that one. I do not recall that because when I  
13 reviewed it, there were so many issues where I would  
14 have interrupted the meeting and issued my opinion  
15 that I would remember that I would have been told to  
16 wait or to not say anything. You know, memories are  
17 reconstructed after many, many years, not only on  
18 based on a piece of paper but based on the events. If  
19 we look at the August presentation, we can see that  
20 in fact the Company has asked for the signature of an  
21 addendum and the incorporation of the Concentrator.

22           So, the text and the spirit of the August

1 presentation matches the email that Chappuis sent to  
2 the Directors in June, asking whether the  
3 incorporation of the Primary Sulfides Project is  
4 legal, incorporating that into the Contract or the  
5 Agreement.

6           So, the reading that I had in June of that  
7 email by Ms. Chappuis and the one in August, well, the  
8 presentation in August, makes me think that the  
9 Primary Sulfides Project was clearly not included in  
10 the 1998 Stabilization Agreement.

11           Now, if we go back in time and we look at  
12 the documents, the perception is clear: Ms. Chappuis  
13 and the Company were asking for the incorporation of  
14 Primary Sulfides in the Stability Agreement. There  
15 was an email that Chappuis, on 11 June, and there was  
16 also a presentation by the Company.

17           PRESIDENT HANEFELD: And do you remember  
18 that this addendum to include the Concentrator was  
19 then discussed in this meeting, and that a response  
20 was given by Ms. Chappuis or yourself or anyone else  
21 of the Ministry?

22           THE WITNESS: I do not have any personal

1 knowledge of the fact that the Company has submitted  
2 that Addendum Application. If that had come to my  
3 office, the office would have acted, because my office  
4 was the one in charge of preparing reports in that  
5 connection. More importantly, is that the work route  
6 for an application of this kind does not end at the  
7 DGM. The DGM does not sign contracts, 10-year  
8 contracts or 15-year contracts. No. That is done by  
9 the Minister and the Vice Minister.

10 If that Application had come to the office,  
11 I would have seen it as it should be done, and it  
12 would have ended up at Legal, because of the signature  
13 by the Vice Minister and by the General Secretary's  
14 office, if it's signed by the Minister.

15 PRESIDENT HANEFELD: According to my  
16 understanding of the organization, now, there was a  
17 Legal Advisor to Ms. Chappuis, and I understood you  
18 were advising on Promotion of Investment, which was  
19 more technical.

20 So, why would this Application, if it  
21 existed, have come to your attention?

22 THE WITNESS: Because the Regulations for

1 organization functions so states.

2 PRESIDENT HANEFELD: Thank you.

3 BY MR. PRAGER:

4 Q. Just a couple of follow-up questions.

5 Mr. Tovar, the suggestion in the August  
6 presentation of an addendum assumed that the  
7 Concentrator would have a separate Beneficiation  
8 Concession, didn't it?

9 A. At that time, the Company had not submitted  
10 its request for the modification of the Beneficiation  
11 Concession. So, no definition was given at that date  
12 during the Cerro Verde presentation in August.

13 Q. Mr. Tovar, Cerro Verde never requested that  
14 the Concentrator be included--that the Concentrator  
15 gets a separate beneficiation concession, did it?

16 A. That's correct.

17 Q. Cerro Verde requested that the Concentrator  
18 be included in the existing Beneficiation Concession;  
19 correct?

20 A. That's correct.

21 Q. And you approved that it be included in the  
22 existing Beneficiation Concession; correct?

1           A.    It's legal.  Its correct.

2           Q.    The August suggestion in the PowerPoint  
3 presentation, about an addendum, assumed that the  
4 Concentrator would get its own Beneficiation  
5 Concession, a separate beneficiation concession, and  
6 that then the Stability Agreement be extended to  
7 include it, didn't it?

8           A.    Can we look at that slide, in particular?

9           Q.    Yes.  Can you see here?  Separate  
10 Beneficiation Concession.

11                   (Overlapping interpretation and speakers.)

12           THE WITNESS:  Where is it?

13           BY MR. PRAGER:

14           Q.    I don't think we have it.  We don't have it  
15 in the binder, but you can see it on the screen.

16                   You see it's a separate beneficiation  
17 concession?

18           A.    There are a number of slides here, and you  
19 have to look at things in context.  You have to look  
20 at the other slides and not only this one.

21           Q.    It is Tab 34 in your binder.

22                   You said this one, the proposal--would you

1 agree with me, that you see here, assumed that the  
2 Concentrator would get its separate beneficiation  
3 concession.

4           Isn't that the case, if you look at the  
5 slide?

6           Mr. Tovar, I don't want to lose all the time  
7 for you going through all the presentation. Your  
8 Counsel for Perú can ask you some follow-up questions  
9 on that. I want you to look at that proposal here on  
10 the Slide.

11           A. Excuse me for the delay.

12           Q. (in Spanish) "Concesión de Beneficio: Planta  
13 Concentradora de Sulfuros Primarios." That would have  
14 been a separate beneficiation concession from the  
15 existing Beneficiation Concession; correct?

16           A. I had a doubt when I heard your question.  
17 That's why I looked at this Slide, but at 40, at  
18 Slide 40, the Company asks the question: "Is it  
19 necessary for the Plant to have a beneficiation  
20 concession when including the Addendum?" They did not  
21 have a position taken. Their position was not set.  
22 They were looking at possibilities.

1 Q. I think that's presentation way of  
2 saying--and then it provides the answer right beneath.

3 I focus here on Page 11. That is the  
4 proposal that you mentioned about the expansion, and  
5 this proposal assumed that the Concentrator would have  
6 a separate beneficiation concession?

7 Yes or no.

8 A. On this slide, yes. But if you look at  
9 Slide 40 in the same presentation of the same meeting,  
10 they pose the question. They are exploring  
11 alternatives. They are presenting an inquiry. If you  
12 look at the presentation in full, the Company has gone  
13 there to explore the alternatives that would be more  
14 convenient to it.

15 Q. Mr. Tovar, can a Beneficiation Plant  
16 function without a beneficiation concession?

17 A. Formally, no.

18 Q. Okay. So, you either include it in the  
19 existing beneficiation concession or you ask for a  
20 separate beneficiation concession; correct?

21 A. Well, an extension, an amendment.

22 Q. And this proposal assumed a separate

1 beneficiation concession? You still haven't answered  
2 my question. Take a look at the slide, it says  
3 "Concesión de Beneficio: Planta Concentradora de  
4 Sulfuros Primarios."

5 A. I answered that this slide is written that  
6 way. I have answered, but the spirit of the  
7 presentation is to ask questions and explore  
8 alternatives.

9 Q. And you, then, approved the inclusion of the  
10 Concentrator in the already-existing Beneficiation  
11 Concession, Mr. Tovar?

12 A. Because that's legal. We spoke about that  
13 on Friday. It is one of the two legal alternatives  
14 that we had. But I also said that these are different  
15 procedures, that are independent, and this was  
16 corroborated by one of Claimant's Witnesses. I  
17 remember a phrase that I read. These are not my  
18 words, of course. They are the Witness's words. Of  
19 course, these are independent procedures, and we can  
20 look at it if you want.

21 Q. Mr. Tovar? You also--sorry.

22 PRESIDENT HANEFELD: You just referred to

1 another slide on Page 40 to support your  
2 understanding.

3 Can we just have a quick look to the Slide  
4 Number 40? So, if you explain your understanding of  
5 this slide.

6 THE WITNESS: This presentation has been  
7 prepared by the Company, not by the Ministry. It  
8 says: "is it necessary for a Primary Sulfide Plant to  
9 have a Beneficiation Concession when including the  
10 addendum?" And this matches what we saw at Slide 11.  
11 The answer is no. This type of Agreement--and this is  
12 what the Company says--is signed before or during the  
13 accomplishment of the investment, and the  
14 beneficiation concessions are granted when completing  
15 the construction.

16 PRESIDENT HANEFELD: Thank you.

17 THE WITNESS: I insist: Stability  
18 Agreements do not stabilize Concessions, but  
19 investment projects, mining investment projects.

20 BY MR. PRAGER:

21 Q. Mr.--

22 MR. PRAGER: Sorry, Madam President.

1 BY MR. PRAGER:

2 Q. Mr. Tovar, you mentioned the consistent  
3 position of the MINEM at the time.

4 Let me just ask you, you testified on Friday  
5 that you copied the entire hard drive of the--that you  
6 had from MINEM. You have not presented a single email  
7 that would show what position the DGM or MINEM had  
8 with regard to Cerro Verde's Stability Agreement, did  
9 you?

10 A. That's correct. That's a recurring  
11 question. I answered the question when the arbitrator  
12 posed the question to me, because, as far as I'm  
13 concerned, as I am personally concerned, there was  
14 never a contrary opinion to what we understood,  
15 institutionally, as the coverage of the Stabilization  
16 Agreement. My earliest recollection in connection  
17 with the position of MINEM was March or April 2004.

18 Q. Mr. Tovar you also have not found any email  
19 describing what was being discussed at the lunch in  
20 Toronto with Phelps Dodge?

21 A. You're right. There was no aide-mémoire  
22 drawn up for that meeting, or for any of the other

1 meetings held in Toronto.

2 Q. So, there's not a single email that you  
3 could find that would anywhere state that Cerro  
4 Verde's Concentrator would not be covered by Stability  
5 Guarantees?

6 A. I haven't found any, but also there weren't  
7 any. I insist; this was an issue that was well known  
8 already. This was cross-cutting, it was that MINEM  
9 had a cross-cutting position already on it.

10 Q. So, you are telling us here today that you  
11 explained in Toronto, to Phelps Dodge, that the  
12 Concentrator would not be covered, that Cerro Verde  
13 would have to pay hundreds of millions of dollars in  
14 Royalties, that there is not a single document that  
15 you could find in your electronic records that would  
16 support that?

17 A. Sir, to be more precise, I never said  
18 hundreds of millions of dollars. I just focused on  
19 the concept and explained it. The investment project  
20 that gives rise to the Contract is stabilized. If  
21 that Project is not included in the request for the  
22 Contract, no stabilization exists.

1           Q.    You also said in your First Witness  
2 Statement that the discussion was triggered by  
3 Mr. Conger showing a letter he received from SUNAT,  
4 asking mining companies to declare which Concessions  
5 they had in order to pay Royalties; is that right?

6           A.    To be precise, he did not show me the  
7 letter. He mentioned that that letter existed. He  
8 mentioned that to me.

9                        To be doubly precise, this was not done  
10 during the Tuesday lunch, but at the end of the  
11 presentation in the board room of the Intercontinental  
12 Hotel where I was standing close to the door, the  
13 presentations were shown in the atrium and the  
14 PowerPoint was shown there, and I was standing right  
15 there. And Mr. Conger stood up, and he asked the  
16 question while standing up.

17                       And that's where I found out--and he  
18 mentioned to me the existence of this SUNAT letter.

19           Q.    Mr. Tovar, in your First Witness Statement,  
20 you didn't mention a second meeting, did you?

21           A.    I clarified that during my February  
22 testimony, the recollections I had during the

1 signature of my First Witness Statement in April were  
2 supplemented with additional information that I found,  
3 because I looked for information again, and for my  
4 Second Witness Statement in November I found more  
5 information. I found schedules, agendas, emails, an  
6 email where Cerro Verde asked for a meeting, the  
7 original presentations, I did not recall that I had  
8 those.

9 Q. So, you found all these emails--we're going  
10 to come to that, to the second meeting in a moment.  
11 But with regard to the first lunch, you found all  
12 these emails about where the meeting is going to take  
13 place, what restaurant is going to take place, agenda,  
14 et cetera, but not a single email, not a single email  
15 about what you would tell--you say that you told Cerro  
16 Verde at that meeting; is that correct?

17 A. That's correct. I report to my boss. If my  
18 boss was with me at the meeting--and I'm trying to  
19 understand your question and look at it from different  
20 angles--what sense would it make to send me, to send  
21 my boss an email on the meeting because the--my boss  
22 was with me at the meeting.

1 (Overlapping interpretation and speakers.)

2 BY MR. PRAGER:

3 Q. Repeating the question, your boss is the  
4 Director General of Mining; right?

5 A. Yes. My boss was the person that occupied  
6 the position at the DGM. Ms. Chappuis occupied the  
7 position until December 2004. In Toronto,  
8 Ms. Chappuis was no longer there. This was  
9 December 2005. So, the Director was Mr. César  
10 Rodriguez Villanueva.

11 Q. Mr. Tovar, what was Mr. Conger's reaction,  
12 after he was supposedly told that the Concentrator  
13 would not be covered by Royalties?

14 A. He was very calm, fully calm. He was not  
15 surprised at all. I was with him, and we were a meter  
16 apart. No, there was no confusion.

17 Q. So, your testimony is that he--you were  
18 telling him that the Concentrator would not be covered  
19 by Stability Guarantees--

20 A. That's what I told him.

21 Q. --and that as a result, Cerro Verde would  
22 have to pay hundreds of millions of dollars in

1 Royalties, and he was completely "tranquilo"?

2 A. I never used that phrase. It had to pay  
3 hundreds of millions of dollars. 1 dollar, \$100,  
4 the--you know, the application is conceptual.  
5 Mr. Conger, let's recall, is an engineer. As  
6 engineers, we look at the numbers before we take a  
7 position as to the viability of projects.

8 Q. Well, Mr. Tovar, at the SMM Hearing,  
9 he--Mr. Conger was, in your recollection, at least,  
10 surprised, and pushed you to have a clear answer.

11 A. Let me tell you how that happened. I was  
12 sitting right there on that side of the room, looking  
13 at the presentation, and when I turned around  
14 Mr. Conger was--

15 Q. I'm talking at about the lunch.

16 A. My apologies.

17 Q. So, your testimony today is that he was  
18 completely quiet. Okay.

19 So, let's look at the next day.

20 Do you recall Mr. Conger having given a  
21 presentation at the Royalty Forum?

22 A. I do.

1 Q. And you--

2 (Overlapping interpretation and speakers.)

3 Q. --at that presentation, were you?

4 (Interruption.)

5 BY MR. PRAGER:

6 Q. And you were present at that presentation;  
7 right?

8 A. I was.

9 Q. And so, let's take a look at the  
10 presentation.

11 We have it in--it is Tab 14, CE-945.

12 You--you recognize that's the presentation?

13 A. I do.

14 Q. Let's go to Slide 9.

15 So, on Slide 9 of that presentation,

16 Mr. Conger explains that Cerro Verde had a

17 Pre-Feasibility Study.

18 You see that?

19 A. 2002, yes. That shows us that it was  
20 impossible for it to have been included in the 1998  
21 Contract.

22 Q. Let me first ask the question. Okay. I

1 asked you whether you see it, and my question was, do  
2 you see that it said here that Cerro Verde initiated  
3 preliminary discussions with the Government on a  
4 number of issues, such as reinvestment of profit  
5 benefit, but also on Stability Contract assurance.

6 Do you see that?

7 A. Discussions that started in 2002, and of  
8 which there are records also in 2003. At that those  
9 dates, there was no discussion of the Royalties Law.  
10 When it talks about Stability Contract assurance, no  
11 reference could have been made to the Royalties Law  
12 because it simply did not exist at that time.

13 Q. Well, here he's talking about the  
14 preliminary discussions that started in the year 2002;  
15 right?

16 A. It is in the records. There are Reports  
17 signed by the DGM in October and September 2003.

18 Q. Well, let's go to Slide 12. Here,  
19 he--Mr. Conger explains at the PDAC conference, at the  
20 MINEM event that, to make an Investment Decision,  
21 Cerro Verde and Phelps Dodge were having--do you see  
22 that third bullet point?--extensive interaction with

1 the Government, and they said "requirements to  
2 proceed," "certainty of Stability Contract."

3 Do you see that?

4 A. I see that.

5 Q. And then let me get you to the last slide  
6 that I wanted to discuss, which is Slide 16, in which  
7 Mr. Conger made his conclusions. And in the  
8 conclusions on March 9, 2005, Mr. Conger tells the  
9 PDAC conference at the MINEM event: "The Stability  
10 Contract provides certainty to make \$850 million  
11 Investment Decision."

12 Do you see that?

13 A. Of course. In both cases, the reading of  
14 this, and that anyone could have of this at that point  
15 in time is that, how is it that one can use the  
16 Stability Agreement to reinvest profits from a  
17 component that was previously stabilized under the  
18 Contract.

19 (Overlapping interpretation and speakers.)

20 Q. I was talking about Mr. Polo being present,  
21 too. But...

22 BY MR. PRAGER:

1 Q. Mr. Polo--sorry, Mr. Tovar.

2 No, Mr. Tovar, the reinvestment of profit  
3 incentive is a separate bullet point. Here, in the  
4 bullet point above the reinvestment of profit  
5 incentive, he refers specifically to the Stability  
6 Contract that provides certainty--and I say  
7 certainty--to make \$850 million Investment Decision.  
8 That was what Mr. Conger said--or presented to the  
9 audience at the PDAC conference, at an event promoting  
10 Perú. Isn't that the case?

11 A. Mr. Dietmar, nowhere Harry Conger, Phelps  
12 Dodge, or anyone in this presentation said that Cerro  
13 Verde--or felt had the certainty that they were not  
14 going to pay Royalties. So, much so that, if we look  
15 at Slide 2 of this presentation, Harry Conger invites  
16 the participants to look at the 10-K Report that was  
17 just published.

18 It had been published two days before and  
19 sent to the SEC, and, there, Phelps Dodge says in  
20 writing two days before that Phelps Dodge did not know  
21 how the Royalties Law was going to be applied to this  
22 Project.

1 Q. Mr. Tovar, you're reading the boilerplate  
2 from the first page.

3 On Page 16, in concluding his presentation,  
4 Mr. Conger showed the audience "Stability Contract  
5 provides certainty to make \$850 million Investment  
6 Decision."

7 Mr. Tovar, are you testifying here today  
8 that you or Mr. Polo told Mr. Conger the day  
9 before: "Hey, the Concentrator is not covered by the  
10 Stability Agreement," and Mr. Conger the next day goes  
11 at an event promoting Perú, in front of an audience of  
12 mining investors, and tells them "Stability Contract  
13 provides certainty to make \$850 million Investment  
14 Decision."

15 Is that your testimony?

16 A. Yes, but there is no contradiction, and I  
17 can explain.

18 The day before and after this presentation,  
19 I told Mr. Conger the Sulfide Project is not covered  
20 by the Stability Agreement, but it doesn't say here  
21 that it is covered. It says that the Stability  
22 Agreement provides certainty to make an

1 850 million investment. Why does it say so? Because  
2 it was possible to reinvest profit so as to save  
3 30 percent of the--of this value of 850 million that I  
4 signed. I signed that Profit Reinvestment.

5           And what it implies, what the reinvestment  
6 of profits implies, is that the Company saves  
7 30 percent of the investment in the form of Income  
8 Taxes. So, clearly, it was feasible. They used it,  
9 but there--it doesn't say there in the presentation,  
10 it doesn't say that it was for Royalties, and the  
11 Royalty Law was in--existing at that point.

12           Q. Mr. Tovar, the reinvestment of profit  
13 incentive is a separate bullet point. He says in the  
14 first bullet, specifically, Stability Contract  
15 provides certainty to make \$850 million Investment  
16 Decision.

17           You mentioned the Reinvestment of Profit  
18 incentive that you signed. Let's take a look at it.

19           A. Mr. Dietmar, I apologize for the  
20 interruption, but also Slide 2 invites to read 10-K to  
21 present it to SEC. So, I am asking you to read that  
22 10-K document and present it by Mr. Dodge where they

1 say that they do not know how the Royalty Law would be  
2 applied to their investment, and the whole  
3 presentation is given within that context.

4 Q. Mr. Tovar, this is the Reinvestment of  
5 Benefit Profit decision that you signed. We have it  
6 as Exhibit CE--479, which you can find in Tab 10.  
7 That is from November; right? That is from  
8 November 2004.

9 A. Yes, sir. Yes, sir.

10 Q. Do you see it? Do you see the sentence that  
11 says: "Sociedad Minera Cerro Verde enjoys tax  
12 stability, according to the Agreement signed on  
13 February 13, and it includes a special system to  
14 reinvest profits."

15 Do you see that?

16 A. Yes, sir.

17 Q. Among other benefits, it says.

18 You did not in that Resolution say anywhere  
19 that it's the Leaching Project of Cerro Verde that  
20 enjoyed benefits but not the Concentrator, did you?  
21 You said Sociedad Minera Cerro Verde?

22 A. I thank you for the question, because that

1 is clarified in the Ministerial Resolution that's  
2 signed by Mr. César Polo, Ms. Chappuis, and the  
3 Ministry, if I'm not wrong--

4 (Overlapping interpretation and speakers.)

5 BY MR. PRAGER:

6 Q. Mr. Tovar, I'm now talking about what you  
7 were writing.

8 We heard testimony from--about the other  
9 Resolution already. I'm talking about this specific  
10 Resolution. You did not say what you--you know, you  
11 testified here today that it was the well-known view  
12 that the stability benefits only apply to the Leaching  
13 Project.

14 Here, you examine in quite some detail the  
15 approval of the program for reinvestment. You did not  
16 state, did you, that the stability benefits only  
17 applied to the Leaching Plant here; right?

18 Mr. Tovar, can you answer my question? You  
19 did not state here that the reinvestment--that the  
20 Stability Agreement only applied to the leaching  
21 project. You wrote it applied to Sociedad Minera  
22 Cerro Verde, didn't you?

1           A.    This is not the only Report that I sent for  
2 signature.  I also sent a draft of a Ministerial  
3 Resolution.

4                   (Overlapping interpretation and speakers.)

5                   BY MR. PRAGER:

6           Q.    I'm not talking about the Ministerial  
7 Resolution.  We heard testimony about that.  You  
8 signed this Report, and you--and, I presume you're  
9 very careful, you were a very careful Ministry  
10 official, weren't you?

11           A.    Thank you.

12           Q.    Yes or no?

13           A.    I thank you for that compliment, because I  
14 just found it here at the beginning of the document.

15           Q.    Mr.--

16           A.    At the beginning of the document it  
17 says:  "Subject matter, request the approval of  
18 reinvestment for nondistributed profits of the years  
19 2004, 2005, '06, and '07," the years in which the  
20 Primary Sulfides was under construction.  They were  
21 not producing.  They were not invoicing or generating  
22 any profits.

1 Q. Mr. Tovar, you still have not answered my  
2 question.

3 When you described the scope of the  
4 Stability Agreement here, you did not--you did not say  
5 that it applied to a particular project. You said it  
6 applied to Sociedad Minera Cerro Verde; correct?

7 A. No. Sociedad Minera Cerro Verde is the  
8 holder of the Concession. The holder of the Contract,  
9 but the Contract defined the holder, the stabilized  
10 Project, there is the tonnage of Reserves, the years,  
11 the amounts invested. The Contract provides for many  
12 things, it does not stabilize the Concession, rather,  
13 the investment project.

14 MR. PRAGER: I don't have any further  
15 questions. Thank you.

16 PRESIDENT HANEFELD: Do you have any  
17 questions in redirect?

18 MS. DURÁN: Yes. Could I take  
19 three minutes, please?

20 (Brief recess.)

21 MS. DURÁN: May I? Thank you.

22 REDIRECT EXAMINATION

1 BY MS. DURÁN:

2 Q. Good morning, Mr. Tovar.

3 A. Very good morning to you.

4 Q. On Friday, you were asked about the number  
5 of hours used to prepare your Statement and to prepare  
6 ahead of the Hearing.

7 Are you being paid for this Statement?

8 A. No, not at all. I was paid the ticket,  
9 hotel. That's it.

10 Q. Now, if we can show on the screen RE-233.

11 On Friday, you were asked about the  
12 Roundtable Discussions, June 23, 2006?

13 MR. PRAGER: We did not discuss the  
14 Roundtable Discussions. We discussed a presentation  
15 that he said would--that he claimed was being made by  
16 Mr. Isasi.

17 MS. DURÁN: Yes--

18 MR. PRAGER: We didn't get to the Roundtable  
19 Discussion. So, I think that question is, like, out  
20 of scope for redirect.

21 MS. DURÁN: No. I will clarify.

22 BY MS. DURÁN:

1 Q. You were asked about a presentation done on  
2 June 23, 2006; correct?

3 A. Yes.

4 Q. And you mentioned that you had seen the  
5 printout of how you used to distribute this  
6 presentation--sorry, I lost my page. We are going to  
7 look at Page 4 of the document, 3.2. We are going to  
8 zoom in for the Witness and also in English.

9 Would you read the first sentence of that  
10 paragraph?

11 A. "Once the Roundtable was brought to  
12 order"--I am sorry, but who's writing this? This is  
13 not mine; correct?

14 Q. No, it's not.

15 A. "Once the Roundtable was brought to order,  
16 we were then provided with an extensive defense,  
17 referred to in the PowerPoint bound copy, attached to  
18 the Minutes, regarding the reinvestment of profits and  
19 Mining Royalties of Cerro Verde, on the first page of  
20 which we can see in the second chart the timeline  
21 explaining that from the time of signing the Legal  
22 Protection Agreement on 2/13/98 until the issuance of

1 Ministerial Resolution Number 510-2004-of December 9,  
2 Appendix to the Action 1-T, three legal rules were  
3 issued that did not impact the 1998 Legal Protection  
4 Agreement of '98. Attached to--or Appendix to the  
5 Action 1-P, without considering that the same Legal  
6 Protection Agreement expressly prohibited."

7 Q. And we now look at page--Appendix A-6, after  
8 the end of the document, Page 20 of the PDF.

9 What do you think of when you see this?

10 A. Well, what we see to the left is the type of  
11 presentation that Felipe Isasi did, not myself. My  
12 style for presentations was different. I even recall  
13 that this presentation that here is in black and  
14 white, had a dark background, possibly dark blue.

15 And this chronology was the way in which  
16 Felipe Isasi broke down the case to explain it in an  
17 easy-to-understand manner. And even though there have  
18 been claims by Mayors, Congress members, when  
19 receiving the presentation, they were able to  
20 understand it, and, therefore, not a single word was  
21 changed from the Ministerial Resolution approving the  
22 2004 Profit Reinvestment.

1           There had been claims and questions, but the  
2 Ministry never changed a single letter because this  
3 allowed them to easily understand this.

4           Q.    Thank you.

5           Now, you were asked about the exchanges you  
6 had with Harry Conger at the PDAC conference in  
7 March 2005. Do you recall those questions?

8           A.    Yes.

9           Q.    Could we please look at the first  
10 paragraph--or your First Witness Statement at  
11 Paragraph 55. And halfway down the paragraph, this is  
12 describing the lunch meeting you had, and halfway down  
13 the paragraph you describe Mr. Conger's reaction--and  
14 Mr. Rodrigo. Would you please explain what your  
15 recollection is?

16          A.    Certainly. I remember several things.  
17 First, this was one block away from our previous  
18 meeting, which was with Barrick, and we just rushed to  
19 that meeting. We were almost half an hour--more than  
20 half an hour late. At the outset, it was a lunch  
21 where Cerro Verde was inviting other public  
22 officials--the Minister Director General, members of

1 Centromín, Jorge Merino, Luis Moreno, et cetera. But  
2 finally only César Polo and myself attended, and they  
3 were a little bit hurried up at the table because we  
4 arrived late. But silence is uncomfortable, and  
5 someone usually takes the floor. César Polo is very  
6 talkative, and that's when we precisely talked about  
7 something that was up to date. What's going on with  
8 Royalties at Cerro Verde. It was a current issue.

9 Q. And then you were asked about Harry Conger's  
10 reaction as part of the second interaction on the  
11 second day. Could you please explain what Harry  
12 Conger's reaction was?

13 A. When all of the presentations at the  
14 ballroom were over at the Intercontinental Hotel--this  
15 was on the next day--Harry Conger approached me.  
16 During lunch, nothing was said about the SUNAT letter.  
17 And he approached me. Harry Conger is a very tall  
18 person. He was very surprised. He was tall in  
19 relation to me.

20 And even though he didn't show me the  
21 letter, he told me that there was a letter. We had  
22 heard about it, with Antamina, who had told us about

1 that letter. But since I knew that those letters from  
2 SUNAT had already been sent, and they were quite  
3 generic in nature, the spirit of that letter that  
4 SUNAT sent to the companies was "hey, you know what?  
5 The Ministry is telling me that you produce mineral.  
6 Please let us know if you need to declare and pay."

7           So, at that point in time, March 2005, Cerro  
8 Verde only produced Leaching Cathodes that was for a  
9 Project that was stabilized. So, in March 2005,  
10 April 2005, May, Cerro Verde was not going to pay  
11 Royalties because their operations had been stabilized  
12 up to date. But the Project that they had just  
13 started building in November, December, January,  
14 February, March, after five months of construction,  
15 upon construction, they were going to pay Royalties.

16           I mentioned that to Mr. Harry Conger. I  
17 said--I recall I said, clearly, leaching does not pay,  
18 but Primary Sulfides, since it is not part of the  
19 Contract, will have to pay Royalties in the future.  
20 He said, well, but this is not what the letter says.  
21 I said, do not worry. This is something that is being  
22 implemented right now, and eventually there are some

1 documents sent by SUNAT that could be more specific.  
2 And he said, okay. Thank you very much. And he left.

3 Q. Thank you.

4 MS. DURÁN: I have no further questions.

5 MR. PRAGER: Madam President, can I make a  
6 very brief re-redirect?

7 PRESIDENT HANEFELD: Yes, please.

8 RE-CROSS-EXAMINATION

9 BY MR. PRAGER:

10 Q. Mr. Tovar, I'm showing you a Report from  
11 El Heraldo about the June 23, 2006, meeting, that--at  
12 which you claim that Mr. Isasi made a presentation.

13 MS. DURÁN: I'm sorry. I am going to  
14 actually repeat the objection that Claimant made. I  
15 wasn't asking specifically about the June meetings. I  
16 was asking about the presentation, and that was the  
17 scope of my redirect.

18 MR. PRAGER: And I am establishing--I'm  
19 talking about the presentation here. So, no worries.  
20 We are not talking about anything else.

21 BY MR. PRAGER:

22 Q. At the SMM meeting, we established that

1 El Heraldo is the official newspaper of Congress;  
2 right?

3 A. Yes, sir.

4 Q. But we also established that this article  
5 provides a description of the meeting that took place  
6 at the Royalty Forum; right?

7 A. That is correct. Could you please tell me--

8 Q. Mr. Tovar, I'm the one who is asking the  
9 questions.

10 You would agree with me that this detailed  
11 summary of the meeting does not mention any  
12 presentation by Mr. Isasi or anyone else from the  
13 Ministry, does it?

14 A. I think, Mr. Dietmar, that we should read  
15 these documents together. There are some minutes that  
16 I would like to see on the screen too, because I think  
17 that one complements the other one. The official  
18 Minutes state that, in principle, it was at the  
19 Bolognesi meeting room--it was not at the Bolognesi  
20 meeting room, rather, at the Miguel Grau meeting room,  
21 as it says here.

22 The other Minutes also show that there were

1 some interventions or participations. I do not think  
2 that they contradict each other, but they supplement  
3 each other. And by the way, this was not--this was  
4 not the first time that we took to Congress a  
5 presentation on the scope of the Royalties and the  
6 Stability Agreement, and that was June 8, 2005.

7 And I recall because, by chance, I don't  
8 know how the audio was obtained, and the Minutes of  
9 that meeting of June 2005 that were by--they repeat  
10 exactly the same concepts. The Stability Agreement  
11 only stabilizes investment projects subject matter of  
12 the agreement.

13 Q. Mr. Tovar, this is the first meeting in  
14 which Cerro Verde participated, isn't it?

15 A. I wouldn't be able to assure that.

16 Q. My second follow-up question was, you did  
17 not--going back to the 2005 Toronto meeting, you did  
18 not mention a second meeting with Mr. Conger in the  
19 aisle after the presentation, in your First Witness  
20 Statement, did you?

21 A. That is in my Second Statement.

22 Q. And you mention in your First Witness

1 Statement that Mr. Polo--I'm confusing  
2 everyone--Mr. Conger raised the issue of the SUNAT  
3 letter at the March 8 lunch, which prompted your  
4 comment. And you testify in your Second Witness  
5 Statement that that's actually not correct, that he  
6 raised the SUNAT letter at the second meeting, isn't  
7 that the case?

8 A. That is correct. The recollection I had  
9 during my First Witness Statement was that the issue  
10 of the letter was something that came up at the table  
11 during lunch, but when I started reviewing the agenda,  
12 the invitation, email, and the presentation, when I  
13 saw this color presentation that I had there, of which  
14 I had the original copy, I recall that it was at the  
15 end of this presentation when Mr. Conger approached me  
16 and mentioned SUNAT'S letter.

17 Q. So, your testimony, Mr. Tovar, is that at  
18 the first meeting, although you claim to have  
19 discussed the scope of the stability benefits,  
20 Mr. Conger did not even raise the letter that he had  
21 received from SUNAT, and that it just occurred to him  
22 after having given the PowerPoint presentation that we

1 looked so that he felt a need to run up to you and ask  
2 you about it.

3 Is that your testimony?

4 A. There are some things that I can't say  
5 whether he felt the need. That I can't say.  
6 Mr. Conger has to say that. But at the--did he raise  
7 it at the lunch? No. The SUNAT letter was not  
8 mentioned at the Far Niente--lunch. It was at the end  
9 of the presentation at the ballroom at the  
10 Intercontinental. That is where he approached me, he  
11 looked surprised, and he said: "Mr. Tovar, how is it  
12 possible that we received this letter from SUNAT?" And  
13 I said: "Ah, yes, I remember Antamina has also  
14 received it, but, don't worry, because, since the law  
15 is just now being implemented, there surely are some  
16 informational documents." I remember that I was very  
17 calm. I knew the letter existed, even though I'd  
18 never seen it. So, I explained to Harry Conger that  
19 the Stability Agreement covered leaching but not  
20 Primary Sulfides, and that they would have to pay in  
21 the future, and his reaction was very friendly, very  
22 calm. He said thank you very much and left.

1 Q. And you had none of these detailed and vivid  
2 recollections of the second run-in of Mr. Conger when  
3 you drafted your First Witness Statement, Mr. Tovar,  
4 did you?

5 A. As of the response of the Claimant to my  
6 First Statement, for example--I'll cite--I don't  
7 recall having organized that meeting or it having  
8 taken place. That's the Claimant responded to my  
9 First Statement. Well, I don't make things up.

10 So, I reviewed the emails. I reviewed the  
11 things, dates, and that's where I reviewed the Cerro  
12 Verde email where they ask for the meeting and they  
13 ask for more officials to attend, and they raised the  
14 Agenda to the meeting.

15 MR. PRAGER: No further questions, Madam  
16 President.

17 PRESIDENT HANEFELD: The Tribunal has no  
18 questions, no additional questions. Thank you very  
19 much, Mr. Tovar. You are released now as a Witness.

20 THE WITNESS: Thank you, everybody. Thank  
21 you.

22 (Witness steps down.)

1           PRESIDENT HANEFELD: Shall we continue right  
2 away with Ms. Bedoya? Or would the Court Reporters  
3 prefer a break?

4           Okay. Then we have our 15-minute break now,  
5 and then we continue afterwards.

6           (Brief recess.)

7           GABRIELA BEDOYA, RESPONDENT'S WITNESS, CALLED

8           PRESIDENT HANEFELD: We now continue with  
9 the Witness, Ms. Bedoya.

10           Welcome to the Hearing. Just to introduce  
11 ourselves, this is the Tribunal in this case:  
12 Mr. Tawil, Mr. Cremades, and myself, Inka Hanefeld.

13           You have been called as Witness by the  
14 Respondent, and so we need you to read out the  
15 Declaration that you have in front of you.

16           THE WITNESS: Good morning.

17           I solemnly declare, upon my honor and  
18 conscience, that I shall speak the truth, the whole  
19 truth, and nothing but the truth.

20           PRESIDENT HANEFELD: Thank you very much.

21           Then we come to your Witness Statements. Do  
22 you have your two Witness Statements, RWS-4 and 11, in

1 front of you?

2 THE WITNESS: Yes, I do.

3 PRESIDENT HANEFELD: Can you confirm that  
4 these are your Witness Statements and that they  
5 correspond to your recollection, or do you have any  
6 wishes to amend or correct these Witness Statements?

7 THE WITNESS: They are correct.

8 PRESIDENT HANEFELD: Thank you.

9 Then we turn to the direct by the  
10 Respondent.

11 MS. DURÁN: Thank you, Madam President.  
12 With your permission, I will turn to Spanish.

13 DIRECT EXAMINATION

14 BY MS. DURÁN:

15 Q. Good morning, Ms. Bedoya.

16 A. Good morning.

17 Q. You were just asked about your Witness  
18 Statements. Are they based on your knowledge and  
19 personal experience?

20 A. Yes, that's right.

21 Q. What is your academic background?

22 A. I am an attorney from the University of

1 Lima. I graduated in 1999.

2 Q. And what is your current position?

3 A. At this time I am a supervisor of  
4 Division 4, of Background Analysis Management Office  
5 of the National Intendency of Challenges of SUNAT.

6 Q. When did you begin working at SUNAT?

7 A. In June of 2000.

8 Q. What positions have you held in SUNAT?

9 A. I have been Adjudicating Auditor until 2014  
10 at the Arequipa Regional Intendency in the Claims  
11 Division. Then I was temporarily assigned to be  
12 supervisor in the Intendency of Major National  
13 Taxpayers, also in the Claims Division, and that was  
14 up until 2015. And then from 2015 to 2017, I also had  
15 the temporary assignment to serve as Head of the  
16 Claims Division of the Regional Intendency of  
17 Arequipa. After that I was Adjudicating Auditor once  
18 again in the Intendency of Major National Taxpayers,  
19 and in August of last year I was once again  
20 temporarily assigned to serve as supervisor at the  
21 National--at the National Intendency of Claims.

22 Q. At Paragraph 11 of your Second Witness

1 Statement, you refer to the drawing up of "the Report  
2 on the Application of the Agreement Guarantees and  
3 Measures for the Promotion of Investments in Mining  
4 Royalty with respect to the Expansion of Cerro Verde's  
5 Current Operations, Primary Sulfide Project," which  
6 you call the 2006 internal report.

7           Why did you draw up this Report and what  
8 were your conclusions?

9           A.    In mid-2006, the intendant at the time,  
10 Mr. Haraldo Cruz, he asked that investigation be taken  
11 with respect to the Concentrator, whether the  
12 Concentrator was covered by the Tax Stability  
13 Agreement within this Guarantee of Stability that was  
14 offered pursuant to the signing of that Agreement in  
15 1998. At the time, the plant was not yet up and  
16 running. It was going to start operations at the end  
17 of that year, and so what was sought was to find out  
18 whether this plant was or was not within the stability  
19 guarantee.

20           Based on a Report that SUNAT has from 2002,  
21 that Report analyzed what was covered by the Stability  
22 Guarantee, and reviewing the investment project we

1 concluded that it was not covered by the Stabilization  
2 Guarantee. Why? Because it was a new investment,  
3 totally different, of a different amount from--which  
4 did not exist at the time the Agreement was signed in  
5 1998. Moreover, the 1998 Agreement regarding the  
6 Leaching Project, the Contract only detailed the  
7 investment related to the Leaching Project, and the  
8 amount or what product would be obtained by leaching  
9 the material, it was copper cathodes, and the purpose  
10 of the Agreement was to increase the production  
11 capacity from one given amount to another per year.

12           So, comparing the Contract with the  
13 investment in the Concentrator, we realized that it  
14 was a totally new investment, that it was different.  
15 It produces a different type of ore, which is the  
16 copper concentrate which, compared to the cathode,  
17 is--has 26 percent purity compared to 99.9 percent  
18 purity.

19           And so, the conclusion was reached that, in  
20 effect, this plant was not covered by the Agreement,  
21 because the Agreement covered only the Leaching  
22 investment project.

1 Q. At Page 5 of the 2006 internal report--and  
2 you just mentioned it, and you also mentioned it in  
3 your Witness Statement--you cite Report 263 of 2002 of  
4 SUNAT. What is the relevance of this 2002 Report?

5 A. The 2002 SUNAT Report has been issued by the  
6 National Legal Intendency, which is the entity within  
7 SUNAT that is in charge of elucidating any controversy  
8 there may be with respect to the application and  
9 general scope of the rules.

10 So, the National Legal Intendency issued  
11 this Report, which is binding and which is published,  
12 because the reports of the National Legal Intendency  
13 are published on the website of SUNAT, and here there  
14 was an analysis of the scope of stability. It was  
15 actually in response to a consultation that was of a  
16 different sort, having to do with contributions to the  
17 FONAVI, but the important thing is that it was  
18 elucidated what the guarantee covered.

19 And so, SUNAT on that occasion concluded  
20 that all that was covered was the investment, the  
21 investment project which is contained in the  
22 Feasibility Study that is part of the Agreement, and

1 nothing more.

2 Q. What use did the Arequipa Intendency make of  
3 the 2006 Report?

4 A. After the drawing up of the 2006 Report, in  
5 2008 the Audit Orders for the Mining Royalties were  
6 opened, for 2006-2007, and for 2008, and then later on  
7 the other assessments.

8 that came later.

9 Q. What was your role in the assessments made  
10 by SUNAT to Cerro Verde with regard to Royalties?

11 A. I was assigned the Request for  
12 Reconsideration. After the culmination of the Audit  
13 Orders, the assessment Resolutions were issued. The  
14 taxpayer may, as it did, challenge them, and that is  
15 called a Request for Reconsideration, and this is the  
16 first administrative stage. So, I was assigned to,  
17 once again, analyze these cases in this  
18 reconsideration stage. That's what was done.

19 The taxpayers' arguments were reviewed that  
20 they had presented in the audit and in the Request for  
21 Reconsideration, as well as all the documentation  
22 produced by the taxpayer. The matter was analyzed

1 once again, but this time it was a bit more in-depth,  
2 because we reviewed the Adhesion Contracts and the  
3 nature of these contracts. It was very important to  
4 define what were the commitments undertaken by the  
5 Parties by signing these Agreements.

6 In this case, the Company, Cerro Verde,  
7 undertook to make an investment of approximately  
8 \$230 million for the Leaching Project to expand the  
9 capacity for production of copper cathodes per year,  
10 and then the Peruvian State agreed to not change the  
11 rules of game for 15 years, which was the duration of  
12 the stability.

13 Why? So that the investor could plan the  
14 results that they had hoped to obtain over those  
15 15 years with rules of the game that would not vary.  
16 So, it's evident that what the State sought with the  
17 signing of such agreements was to protect ...

18 What was to be protected? The investment.  
19 Which one? The one that was totally detailed and  
20 indicated in the agreement, which was the Leaching  
21 Project. It could not be a carte blanche for the  
22 taxpayer to continue making any other investment

1 subsequently and claim to have the Stability Guarantee  
2 also cover that investment.

3 Q. What influence did the Ministry of Energy  
4 and Mines' opinion have in SUNAT's position in  
5 relation to these Assessments?

6 A. None whatsoever, because SUNAT reached the  
7 conclusion that the Concentrator was outside the scope  
8 of the Agreement.

9 As I explained, as from the 2002 Report and  
10 when the investigation was undertaken in 2006, as you  
11 can see in the Reports and the different Resolutions  
12 issued in respect of Mining Royalties, mention is made  
13 of the Ministry's reports, but at the end.

14 Why? Because it was important to know the  
15 sector's opinion. And it caught our attention that  
16 the sector had the same opinion that we had, and so  
17 that was helpful for reinforcing our view, which is  
18 that the Concentrator definitely could not enjoy the  
19 guarantee of tax stability. Thank you.

20 MS. DURÁN: I have no further questions.

21 Thank you.

22 ARBITRATOR CREMADES: I have a question. It

1 is quite basic, and perhaps this would be a question  
2 to be posed to any law student.

3           SUNAT also is the Superintendency of Tax  
4 Administration. Are Royalties considered taxes and  
5 SUNAT also deals with Royalties?

6           THE WITNESS: They are not considered taxes,  
7 but there is a provision that was passed specifically  
8 that gave SUNAT the powers to collect those Royalties,  
9 and also to conduct audits and oversights in this  
10 connection.

11           SUNAT does it based on a specific provision.  
12 It can also impose penalties on the basis of what the  
13 law established.

14           ARBITRATOR CREMADES: Thank you very much.

15           THE WITNESS: You're welcome.

16           PRESIDENT HANEFELD: Another, more basic,  
17 question from my end regarding the rules of the  
18 organization. Is it the regular course of action that  
19 someone who has established a report like you did in  
20 2006 on a specific question will later then be  
21 assigned now to decide on a Request for  
22 Reconsideration, or was this an exceptional

1 circumstance?

2           THE WITNESS: What happened is something  
3 that regularly happens. It is normal that the Tax  
4 Administration, before auditing a taxpayer, gets to  
5 know the taxpayer, specifically if this is an  
6 important company in the industry and in the region.

7           It was completely natural and normal for the  
8 Tax Administration, within its powers, to investigate  
9 this matter. Casually I was involved in that  
10 investigation, and a couple of years went by and the  
11 audit was conducted, and then the taxpayer challenged  
12 it. I was appointed again to look at the Request for  
13 Reconsideration, but there are no impediments. There  
14 are no limitations based on the fact that--well, since  
15 I was involved in the Report, I then could not be  
16 involved in the Request for Reconsideration. Just  
17 like I did in the following Request for  
18 Reconsideration

19           because one was in '06-'07, in the year  
20 2010, and then for 2008, in year 2011. So, there was  
21 no limitation. What is the reason? There is no  
22 conflict of interest. For an official to have a

1 conflict of interest, there has to be two different  
2 overlapping interests. In the case of SUNAT  
3 officials, that is not the case, because we only have  
4 a single interest, which is to ensure that all tax  
5 obligations are established correctly and then to  
6 conduct audits.

7           For example, a SUNAT auditor is going to see  
8 to it that the taxpayer assess the tax accordingly,  
9 pay taxes, or Royalties in this case, as appropriate.

10 As an adjudicating auditor in the Request for  
11 reconsideration files, you have to look for the  
12 material truth. You have to look at all of the  
13 arguments of the taxpayer, answer all of the questions  
14 posed by the taxpayer, and we look for the same  
15 truth--right?--for the taxpayer to pay his or her  
16 obligation. There is no conflict of interest.

17           Something else you have to take into account  
18 is that, in the 2006 Report, well, the Report is an  
19 internal report. It was an investigation conducted by  
20 the administration, and it was not communicated to the  
21 taxpayer. Why? Because this was part of its power to  
22 audit. There was no assessment, and, therefore, since

1 there is no assessment to the taxpayer, then the  
2 taxpayer doesn't have to defend itself from anything  
3 because nobody is demanding any payment from the  
4 taxpayer. This is how we work in SUNAT. It is common  
5 that a person in the request for reconsideration  
6 analyzes the matter and then in the following year, or  
7 the subsequent. It is also common for auditors to  
8 conduct audits to review a company during one fiscal  
9 year and then again, also because of specialty  
10 reasons.

11 Because this is a mining company. The  
12 mining sector is a different, new sector. It is not  
13 common in the Region of Arequipa, so it is important  
14 to become then specialized. To know their  
15 terminology. To know many issues that are very  
16 specific to the mining industry.

17 So, it is very common. It's not that this  
18 was specifically done for this Company at this point  
19 in time. This is the manner in which the Tax  
20 Administration conducts its duties.

21 ARBITRATOR CREMADES: Now, the SUNAT depends  
22 on whom?

1           Let me ask you: Do politicians have an  
2 influence in the oversight activity that SUNAT  
3 conducts?

4           THE WITNESS: SUNAT is an autonomous  
5 organization. It does not report to any other agency.  
6 It is connected to the Ministry of Economy and  
7 Finance, but it does not really report to any  
8 organization.

9           Under the power to conduct audits, we can  
10 conduct audits of any taxpayer. As the Tax Code says,  
11 we are there to make sure that legal provisions are  
12 complied with. Audits are not based on any kind of  
13 political pressure, in no way whatsoever.

14           ARBITRATOR CREMADES: Who appoints the  
15 highest authority at SUNAT, and that high authority at  
16 SUNAT, can it have an influence on your professional  
17 activity?

18           THE WITNESS: The Government appoints the  
19 Superintendent. The State, the central Government  
20 does that. The Superintendent doesn't have any kind  
21 of influence in connection with any kind of procedure.

22           The chief of the Claims Division is the one

1 that appoints me as an auditor, and he is the only one  
2 that looks at the draft that I prepare. If he is in  
3 agreement with this, or he modifies it, he can even  
4 change the criteria. That has to do with whatever the  
5 Chief of Division thinks, and in this case this  
6 Resolution was signed by the intendant.

7           So, there are a number of stages of review.  
8 First we have the request for consideration, then you  
9 go to the Intendant for him to look at things, and  
10 then, if he agrees, then the Intendant's Resolution is  
11 issued, but there is no kind of influence whatsoever.

12           ARBITRATOR CREMADES: Thank you.

13           PRESIDENT HANEFELD: Thank you very much.

14 Then we now turn to Claimant's Counsel.

15           MS. SINISTERRA: Thank you very much, Madam  
16 President. I will be conducting Ms. Bedoya's  
17 cross-examination, and with your indulgence, I will do  
18 so in Spanish.

19                           CROSS-EXAMINATION

20           BY MS. SINISTERRA:

21           Q. Good morning, Ms. Bedoya.

22           A. Hello.

1 Q. It's a pleasure to see you again. Thank you  
2 very much for being here.

3 Are you ready?

4 A. Yes, I am.

5 Q. Thank you for being here with us. You know  
6 the rules of the game very well. I'm going to ask you  
7 very specific questions, and I'm going to ask you to  
8 provide specific answers. And we are going to try to  
9 pace it up because of the translation. You know of  
10 these rules.

11 We are going to talk about the same issues,  
12 more or less, that we touched upon in February at the  
13 SMCV Cerro Verde Hearing, questions that the Tribunal  
14 had good reasons to ask to you back then, but we are  
15 going to talk about new topics as well. We are going  
16 to talk about the complaint that Dante Martínez placed  
17 against SUNAT in July 2006, just one month after your  
18 internal report was prepared.

19 So, we are going to talk about new issues,  
20 we are going to talk about issues we looked at before,  
21 and we have the Transcript in connection with those  
22 matters; right?

1           At the February meeting we spoke about the  
2 process that you followed to prepare your Witness  
3 Statements. To prepare your Witness Statements, you  
4 reviewed the Witness Statements of who else, what  
5 other Witnesses in Perú?

6           A. None.

7           Q. Nobody whatsoever?

8           A. Nobody whatsoever.

9           Q. For the First and the Second one?

10          A. No.

11          Q. None?

12          A. None.

13          Q. That's striking, because you are very  
14 categorical in your answer, because Mr. Cruz in  
15 February, and Mr. Polo for example and Mr. Tovar, all  
16 of them have indicated that they received a binder  
17 link or folder with all of the Witness Statements.  
18 So, were things different in your case? You never  
19 received a folder, a link with the Statements of the  
20 other Witnesses?

21          A. Let me explain how I--

22          Q. No, no, no. Please answer my question.

1           Did you receive a folder or no?

2           A.    No.

3           Q.    So, things with you were different, then.

4   The other Witnesses were given a folder with all of  
5   the Witness Statements, but you were not.  Is that  
6   what you are saying?

7           A.    The link I was given to come here and to  
8   read the documents only contained my Statement and the  
9   exhibits cited in that Statement--First Statement and  
10   Second Statement.  That's all.  That's what happened  
11   in both cases.

12           When I was about to come here, I was given a  
13   link and told, "Okay, these are the documents."  And I  
14   saw there my Statement and my exhibits.  I have had no  
15   contact with the Statements by other Witnesses.

16           Q.    And that link, I imagine, had the Memorials  
17   that the Parties have submitted; right?  The Claimant  
18   Memorial and the other Memorials.

19           A.    Yes.  Just portions of them that were  
20   translated for me to see what they said about my work.

21           Q.    Now, the portions that they sent to you, did  
22   they contain descriptions of what the other Witnesses

1 who are in Perú said in this case?

2 A. No, no. Again, they only had to do with the  
3 portions related to me and in Spanish. The full  
4 document was not there. It was very long.

5 Q. How do you know it's very long?

6 A. Well, it said there that it was a bunch of  
7 pages.

8 Q. Where did it say that?

9 A. Well, there, you can see that--you can see  
10 the number of pages there. 300-odd pages, that's what  
11 I recall. I wouldn't be able to tell you more.

12 Q. Were you given the full Memorial or just  
13 part of the Memorial?

14 A. Just part of the Memorial.

15 Q. Again, the portions you were provided, you  
16 saw what we said in connection with the other Perú  
17 Witnesses or just a little paragraph where mention was  
18 made by us of you; that was the only thing that was  
19 given to you?

20 A. Well, we're not talking about short  
21 paragraphs. There were a number of paragraphs that  
22 talked about the Royalties Reports. That is what I

1 have reviewed. I have not reviewed anything with what  
2 you had to do in connection with what you said or  
3 statements by Mr. Polo, for example.

4 Q. Ok and just to confirm, because you cite 46  
5 paragraphs, you cite first Paragraph 20 and then  
6 Paragraph 200 of our Reply. I just want to confirm  
7 that none of those paragraphs that you read, none of  
8 them whatsoever mentioned anything in connection with  
9 any other Witness. That is what you are confirming  
10 today?

11 A. Yes, because that is what I needed for me to  
12 make my Statement. I didn't need any other additional  
13 paragraphs.

14 Q. Very well. We know, because of other  
15 Witnesses, that there was a meeting in July 2022 in  
16 Lima in the Navarro offices. Navarro Counsel was  
17 present, Sidley Austin Counsel was present, and some  
18 Witnesses were present as well.

19 Were you at that meeting?

20 A. I went there in July, but I was the only one  
21 there. Counsel from the law firm were there, but just  
22 me; no other Witnesses.

1 Q. So, again they applied a different rule for  
2 you vis-à-vis other Witnesses?

3 A. You would have to ask them why.

4 Q. Well, I'm trying to understand whether  
5 you're following the narrative that was provided by  
6 other Witnesses or, in your case, it was different.

7 So, we know that in July 2022 there was a  
8 meeting in Lima at the Navarro offices with Sidley  
9 Counsel and a number of Witnesses participated in it.  
10 Some were there in person; others were there remotely  
11 via videoconference.

12 You did not attend that meeting?

13 A. No. No. I was told to go there one day at  
14 a given time, and it was just me and the lawyers. No  
15 other Witnesses were present.

16 Q. What materials did you read to prepare for  
17 this Hearing?

18 A. I read the Statements, the Reports that  
19 support the Resolutions, and the Reports that the  
20 Statement makes reference to.

21 Q. Did you read a new document, a different  
22 document, to prepare for this Hearing vis-à-vis the

1 Hearing in February?

2 A. The Transcript of my testimony at the  
3 Hearing.

4 Q. Just your Transcript, your portion of the  
5 Transcript?

6 A. Yes.

7 Q. Did you look at the video, the audio?

8 A. Well, no, it was printed out for--and it was  
9 given to me.

10 Q. When?

11 A. Now, in Washington.

12 Q. So, the first time that you read your  
13 Transcript was here in Washington?

14 A. Yeah.

15 Q. It was given to you in print form, nothing  
16 digital?

17 A. No, nothing digital.

18 Q. How many hours did you dedicate to the  
19 preparation of this Hearing?

20 A. Two hours a day. I looked at the Reports.

21 Well, this happened 20 years ago, almost, so  
22 I don't recall some of the specific points. So, these

1 things are long. You have to read. More or less--

2 Q. Yes. Yes. We all know.

3 SPANISH REALTIME STENOGRAPHER: Sorry for  
4 the interruption. You need to speak one at a time  
5 and, please, a little pause between question and  
6 answer.

7 BY MS. SINISTERRA:

8 Q. Okay. How many hours to review these long  
9 documents?

10 A. Well, maybe a couple of hours in the  
11 morning, while I have been here in Washington.

12 Q. Yes, but in total, how many hours did you  
13 devote to this?

14 A. Perhaps two hours without the weekend, I  
15 don't know, Tuesday to Friday, five, ten hours.

16 (Interruption.)

17 Q. In Lima, you did not prepare for this  
18 Hearing?

19 A. I've had almost no time for that.

20 Q. You didn't prepare?

21 A. I was able to read something, but very  
22 little. I've been very busy with work.

1 Q. In February, Ms. Bedoya, you told us, very  
2 clearly, that you had met three or four times, you  
3 said, with Mr. Cruz here in Washington, to review your  
4 Statements and to prepare for the Hearing.

5 Now, was that the case as well? Did you  
6 also meet with Dr. Cruz to prepare for the Hearing?

7 A. No, not to this time.

8 Q. So, you arrived in--this is public  
9 information, you arrived on May 1, here in DC.

10 Mr. Cruz arrived May 3, so you've been here for about  
11 a week here in Washington, D.C.

12 But this time you did not meet?

13 A. We didn't.

14 Q. What changed? What--why is it that you met  
15 three or four times before the February Hearing to  
16 review together your Statements? What changed? What  
17 is it that you didn't meet this time?

18 A. Last time around, well, we did not meet. I  
19 was present when he was looking at the Statements, but  
20 we didn't do a review together. He has not looked at  
21 my Statements. I am trying to specify things, because  
22 your statement sounded as if we prepared together.

1 That is not true.

2           And here in Washington, we have had no other  
3 contact apart from, like, crossing paths and saying  
4 hello to each other. Why was it done that way? I  
5 don't know. You would have to ask Counsel for that.  
6 They were the ones who provided instructions and let  
7 us know where we have to go and what time we have to  
8 be there.

9           Q. Two follow-up questions. First, you  
10 said--and this is on the Transcript and the video and  
11 on--in the Transcript as well. What you said and did  
12 not say in February is very clear. You said, after I  
13 asked you, did you meet with the Sidley Counsel to  
14 prepare the Hearing, you and Mr. Cruz? You said, yes,  
15 we had meetings to speak about the issue three or four  
16 times.

17           And then I asked: "Did you coordinate your  
18 Statements during those meetings?"

19           Your answer: "Basically, we reviewed what  
20 we had written in the Statements. We were reviewing  
21 our Statements, the ones that we had presented to the  
22 Tribunal."

1           So, it is clear that you had three or four  
2 meetings where Counsel was present, you were present,  
3 and Mr. Cruz was present, and at those meetings, you  
4 spoke and reviewed your Statements.

5           Are you changing your testimony in February?

6           A.    No, I'm not.

7           Q.    Okay. Now that it's clear that those  
8 meetings did indeed take place, and you and  
9 Mr. Cruz--meeting with the lawyers, you reviewed your  
10 Statements, I will ask you something else, that I  
11 asked before, why is it that this time you didn't  
12 meet? Did you coordinate everything sufficiently in  
13 February, or why the change there were three or four  
14 meetings for one hearing and no meetings for this  
15 hearing?

16          A.    There is no coordination. Each person has  
17 to read his or her own Statements. Last time around,  
18 we did it at the same room. But that does not change.  
19 But this time we did it separately. There is no  
20 change. You have to review what you wrote in your  
21 Statements and the events that you went through, and  
22 the things that you have to describe about what

1 happened back then. There was nothing wrong last time  
2 around. There was a review, but each person reviewed  
3 his or her portion.

4 Even based on what I remember, he did not  
5 listen to my Statement. It's not that I was involved  
6 at the meetings, he was looking at his own Statements.

7 Q. I'm not surprised that you're trying to put  
8 your Statements from February into context.

9 A. I feel that you were trying to say something  
10 that did not happen.

11 Q. The meaning that those meetings had, that's  
12 something that the Tribunal's going to have to assess.  
13 So, I have to show the Tribunal the facts so the  
14 Tribunal can reach the conclusion, the relevant  
15 conclusion, in connection with those events.

16 It makes no sense that you tell me that you  
17 were in the same room, and that in February you tell  
18 me that you reviewed your Statements, and then you are  
19 telling me today that you didn't hear anything in  
20 connection with Mr. Cruz. That makes, really, not a  
21 lot of sense, ma'am.

22 A. I didn't tell you that I didn't hear

1 anything. I'm just telling you what happened. This  
2 time around, that's the way things have been and it is  
3 the same as the last time, and, well, there would have  
4 been no changes, if he were present or not, it is the  
5 same.

6 Q. You said that you had heard nothing. You  
7 agree with me that that makes no sense.

8 Last question. You confirm your testimony  
9 that, in February, you met three or four times, and  
10 during those meetings you reviewed your Statement, and  
11 you reviewed the Statement of Mr. Cruz.

12 That's on the Transcript, your answer is  
13 there, confirming this, and also Mr. Cruz's answer is  
14 in there. You maintain what you said back then?

15 A. Yes, I do.

16 Q. Ms. Bedoya, let us now talk about your  
17 understanding in connection with the scope of the  
18 Stability Guarantees, in connection with the General  
19 Mining Law that was in force in 1996.

20 I'm going to ask you about your  
21 understanding and your position in June 2006. With  
22 all due respect, I don't want to know about your

1 position today after looking at our Reply, after three  
2 or four meetings with Mr. Cruz, after the July meeting  
3 with the Navarro law firm. I'm asking you about your  
4 understanding, in the year 2006, in June.

5 Agreed?

6 A. Yes.

7 Q. You worked in SUNAT as an adjudicating  
8 auditor from 2006 to 2014; right?

9 A. Yes.

10 Q. I think the Tribunal asked you questions,  
11 and they made this clear. In Arequipa, you have the  
12 Audit Division, which is the division that audits and  
13 provides Assessments, Assessment Resolutions, and also  
14 you have the Claims Division that looks at the  
15 requests for reconsideration that are submitted by  
16 taxpayers in--against those Assessments, and they  
17 said, okay, Mr. Taxpayer, you're right, you're not  
18 right. The Assessment will be maintained or not.

19 That was the Claims Division; and you were  
20 at that level, is that correct?

21 A. Yes, correct.

22 Q. As you confirmed to the Tribunal and to my

1 colleagues as well, you and an auditor from the Audit  
2 Division, César Guillén, César Guillén and yourself  
3 prepared an internal Report of June 2006. The  
4 conclusion there was that Cerro Verde had to pay  
5 Royalties for the Concentrator. We will go into the  
6 details about that Report afterwards. We're just  
7 confirming the facts.

8           So, you and Mr. Guillén prepared the  
9 internal Report; right?

10          A. Yes. But it was also a team that worked on  
11 it. I don't remember all of the people.

12          Q. How many people sign the Report?

13          A. Well, just two people.

14          Q. Okay. So, it was signed by you and  
15 Mr. Guillén; right?

16          A. Yes.

17          Q. So, you said clearly in your Statements and  
18 at the Hearing in February, that that internal Report  
19 shows that in June '06, SUNAT had taken its own  
20 position in connection with the tax situation of the  
21 Concentrator. You said that today, and you maintain  
22 your testimony; is that right?

1           A.    Yes.

2           Q.    Let us go step by step, then, to try to  
3 understand exactly what your position was and what  
4 Mr. Guillén's position was in June 2006, when you  
5 concluded that the Concentrator had to pay Royalties.

6                    First question--please be very precise,  
7 Ms. Bedoya, because there has been much confusion in  
8 connection with this issue. We hope that you're going  
9 to shed some light on this.

10                   Let us look at this folder at tab six. This  
11 is CE-12. And we are going to go to Annex 2, to the  
12 Stability Agreement. It should come up on the screen.

13                   And let us look at Annex 2. When you find  
14 it, let me know, ma'am.

15           A.    I haven't found it yet.

16           Q.    You are going to go to the back. You will  
17 see Annex 1, and then you're going to see Annex 2.

18           A.    I found it.

19           Q.    It says here "Summary of the investment  
20 requirements of the Leaching Project of Cerro Verde."

21                   This is the Investment Program, and it has a  
22 number of items.

1 Do you see those?

2 A. Yes.

3 Q. Okay. Specifically, answer, yes, or no.

4 A. Yes.

5 Q. No, no, no. I'm going to ask a question now  
6 and then you should answer yes or no.

7 A. Okay.

8 Q. Specifically, your position in '06 is that  
9 the scope of the Stability Agreement was limited to  
10 this Investment Program that we see here under  
11 Annex 2.

12 The only thing that the Stability Agreement  
13 covered was these items of the Investment Program?

14 Yes or no.

15 A. Yes.

16 The Investment Program, and well, those items say  
17 "Summary," but it is what's included in the  
18 Technical-Economic Feasibility Study

19 Q. I agree with you 100 percent, and thinking  
20 that you might respond that, at the next tab you're  
21 going to see the full investment program, but that  
22 does not change my question. I want to be more

1 specific. Here, we see a number of items, and your  
2 position in 2006 when you prepared this internal  
3 Report that established the position of SUNAT in  
4 connection with the Concentrator, well, your position  
5 was that the Contract covers only these specific  
6 investments, these items specifically. That was the  
7 position of SUNAT in 2006?

8 A. Yes, that's right. It is the Investment  
9 Program that is contained in the Agreement.

10 Q. This Investment Program is for a full  
11 investment of 237 million, as you know. So, what you  
12 are telling us is that only that  
13 237 million investment is what the Contract covered?

14 That's what you're telling us?

15 A. Yes, that's right.

16 Q. Then, two questions about this. Well, maybe  
17 three. First, we see here the item "other costs."  
18 That's one of the items that we see here. How can we  
19 apply stability to "other costs"?

20 A. Stability protects this Project. Now, how  
21 is it that stability is going to be seen in practice?  
22 Well, stability is a legal framework that is frozen at

1 a certain date. So, how do we analyze this? All the  
2 activities related to the investment project are the  
3 ones that are included within that Legal Framework  
4 during the 15 years it lasts. That is how this is put  
5 into practice. For example...

6 Q. Excuse me, ma'am. Concrete.

7 A. Well, I'm not a technical person. I don't  
8 know how other costs--

9 Q. But, yes, Madam, you set the definitive  
10 position of SUNAT. I want to know when SUNAT took  
11 this final position, what was the understanding at the  
12 time? SMCV after all these years...

13 A. I'm trying to explain this to you, Madam,  
14 that they are the activities that are executed within  
15 that Project.

16 SPANISH REALTIME STENOGRAPHER: Madam  
17 President, I'm sorry. We need to stop. I can only  
18 take one person at a time. If there is overlap, there  
19 is no way to follow the speakers.

20 BY MS. SINISTERRA:

21 Q. Okay. So, we're hearing the translation in  
22 the background, and then we're going to be able to,

1 perhaps, do this.

2           Let's be specific, ma'am. I asked you your  
3 position when you stated the position of SUNAT, when  
4 you wrote this internal Report, your position was that  
5 the Stability Agreement only covered the 236 million  
6 in the investment project, or did it cover something  
7 else? You just told me yes, only the Investment  
8 Program, you said.

9           But when you have explained your  
10 position--and I'm reading--you said "no, it covered  
11 all of the activities related to leaching," and that  
12 is contradictory.

13           Either we're talking about the 237 million  
14 and not a dollar more, or we're talking about all of  
15 the activities related to the leaching project.

16           Which one of the two positions was it?

17           A. I do not understand your question. What I  
18 understand is that the Project and this investment  
19 that is stabilized, as well as all of its stages from  
20 the exploitation of the ore, and until it goes  
21 throughout all the stages, and I end up with a Copper  
22 Cathode, and then it is sold. All of the effects of

1 that chain. For example, if there is a standard that  
2 says that I need to pay a tax or pay something to the  
3 workers, it is the workers of the Project.

4           If I have to pay a specific Income Tax  
5 that--which was of 30 at stabilization, and then it  
6 increased to 35, all of the profits will pay 30. That  
7 is the way I understand it.

8           I am an attorney, and I am not familiar with  
9 issues--technical issues. But I do understand that it  
10 is that investment and that there are disbursements by  
11 the Company that will not qualify as investments. And  
12 it is clear that a repair cost, for example, should  
13 not be questioned because I am repairing something  
14 that went wrong. So, if I do not repair it, I cannot  
15 continue. But what are those costs? I do not know. I  
16 could not answer that.

17           Q. I clearly see that you are not a technician  
18 or a technical person. It is clear in your answers,  
19 but I will continue to insist until I get an answer.

20           So, I'm asking you, if it is only  
21 237 million, if it is only the Investment Program, and  
22 you are telling me that it is more. You are telling

1 me all of the activities, you also used the word  
2 "other investments." Your position in 2006 was, we  
3 have an Investment Program, but if there are  
4 additional investments related to the leaching project  
5 that we see in the Feasibility Study, they would be  
6 covered?

7 A. No, they wouldn't be covered.

8 Q. So, no investment, whether it is related or  
9 not to the leaching project, no investment different  
10 from the one here in the Investment Program would be  
11 covered; correct?

12 A. Yes, no investment. Only this one. I can  
13 be more specific. When one--when Cerro Verde  
14 negotiated with the State, and then they wanted to  
15 know the projection of the results, of the  
16 237 million, that is what they do. It is a 15-year  
17 Project. That's why the game rules must not change,  
18 there shouldn't be any other additional investment,  
19 that would not be correct. The law at that time said  
20 that, and that is what the Contract also stated.

21 Q. We are going to refer to those projections  
22 in a minute, but let me insist, again, because this is

1 very important.

2           So, you just told us that no other  
3 investment, only the ones that we see here in the  
4 Contract that are for 237 million. That is the only  
5 portion that was stabilized when the Report was  
6 published; correct?

7           A.    Correct. Yes.

8           Q.    So, I have several questions. First, this  
9 does not seem to be what you say in your Statement, or  
10 what you said in the Internal Report, or what you said  
11 in the Intendency Resolutions rejecting SMCV's  
12 requests for reconsideration. That's not what you  
13 say.

14           So, let us look at what you say, and you are  
15 going clarify to us what is in the end your position.  
16 If it is the 237 million or something else: the  
17 Leaching Project, according to the way it is stated in  
18 the Feasibility Study, and related investments as long  
19 as they are related to the leaching. So, we're going  
20 to clarify what the position is, because there is a  
21 contradiction.

22           Let us look at your Statement. Let us look

1 at your First Statement, Paragraph 31, for example.

2 I am going to read aloud what you write  
3 there.

4 A. Just a second. I need to get to the  
5 paragraph.

6 Q. It is Paragraph 31.

7 A. Ok

8 Q. "The Stability Agreement had a limited  
9 scope: the investment in the Leaching Project that had  
10 been defined in the Feasibility Study." Paragraph 31.  
11 You can also look at it on the screen, and I can  
12 repeat my question.

13 A. Number 31, it refers to the clauses in the  
14 Stability Contract?

15 Q. Correct. That is, the last phrase: "the  
16 Stability Agreement had a limited scope: the  
17 investment in the Leaching Project that had been  
18 clearly defined in the Feasibility Study."

19 On Friday, Mr. Polo, when we attempted very  
20 hard to understand what his position was, told us  
21 something similar. He said, no, it is not only the  
22 237 million, it is the "Leaching Project as defined in

1 the Feasibility Study."

2           But here you seem to say the same, and in  
3 the internal report, you have a similar statement, and  
4 in the Intendency Resolutions you have a similar  
5 statement. So I repeat the question because here we  
6 need to be precise. We don't want vague answers. We  
7 really want to understand. What is it that you  
8 understood when you projected that Report?

9 Let me reiterate.

10 Is it the 237 million that were in the Investment  
11 Program and not a single dollar more? Or was it the  
12 "Leaching Project" which is broader in concept, "as  
13 established in the Feasibility Study." Which was it?

14           A. I understood...

15           Q. Which one?

16           A. Well, for me, they are the same. The  
17 Leaching Project for Cerro Verde, which is in the  
18 Technical-Economic Feasibility Study, ends up being  
19 the 237 million. I do not see the difference. That  
20 is what is stabilized, the Leaching Project. I do not  
21 know whether any other document has a different  
22 amount, but that is the amount, that is what is

1 included in the Contract that has been signed.

2 This does not encompass--the additional investments  
3 are something else. What you're asking me, that is  
4 different. The Leaching Project does not say that  
5 additional investments can be made.

6 Q. So, once again, step by step, it seems that  
7 you're reiterating, and you're saying: "What I meant,  
8 when I said the 'Leaching Project in the Feasibility  
9 Study', what I meant are the 237 million; not a single  
10 additional dollar," correct?

11 A. Yes. That is correct, here it says the  
12 investment in the Leaching Project.

13

14 Q. And the Leaching Project, is only  
15 237 million, according to you?

16 A. That's what the Contract states. That's  
17 what they committed to do.

18 Q. So, we agree that according to your position  
19 anything above the 237 million, anything above that  
20 would be excluded?

21 A. Correct.

22 Q. Okay. That is a position that you are

1 saying you maintained; correct?

2 A. Yes.

3 Q. So, that is not, Ms. Bedoya, what SUNAT has  
4 done, or what you, yourself, said in the Intendency  
5 Resolutions, and we are going to see what you said.

6 A. You just told me that the Statement is not  
7 what I said, but if we just read 31. Where do I say  
8 the contrary, because I have said that in the last  
9 portion of 31, I am not saying what I just said a  
10 minute ago. That's the reason, and that's why I have a  
11 doubt.

12 Q. You're telling us that when you say that the  
13 "Leaching Project is the one protected, as stated  
14 under the Stability Agreement," you are referring to  
15 the 237 million and nothing else; correct?

16 A. Yes.

17 Q. That's why I'm saying we are on the same  
18 page, as to your understanding.

19 Mr. Polo told us something different, but it  
20 doesn't matter. I want to know what you understand,  
21 then.

22 So, no more--there's nothing else more than

1 this money. That is your position, and you knew,  
2 Ms. Bedoya, that, in 2002, Cerro Verde made additional  
3 investment for 15.5 million; right?

4 A. I only...

5 Q. Did you know or not?

6 A. No.

7 Q. But you mentioned them in your Intendency  
8 Resolution.

9 A. No. I referred to the expansion for the  
10 plant, the expansion. Well, in the request for  
11 reconsideration we only had the resolution approving  
12 the authorization for the expansion—that's it—I do not  
13 have more documents to detail the amount of the  
14 investment. I didn't know that.

15 Q. Let me show you step by step. I am going to  
16 make it very easy for you, step by step.

17 Number one, in 2002 Cerro Verde made  
18 additional investments for \$15.5 million. We are  
19 going to show you the document confirming that,  
20 indeed, this is what happened. This is at Tab 10.

21 And, for the record, this is Exhibit CE-378.  
22 We are going to look at Page 3.

1           So, we are going to see an Executive Summary  
2 of the additional investments that Cerro Verde is  
3 reporting to the Ministry of Energy and Mines for an  
4 additional 15.5 million. It's very easy. I am just  
5 helping you follow this step by step. You are going  
6 to see \$15.5 million. Done.

7           I am going to show you two Resolutions by  
8 SUNAT, referring to this new investment; correct? And  
9 I'd like to understand what your position is, so I am  
10 going to take you there and show you two Resolutions  
11 referring to the new investment, and then I am going  
12 to ask you some questions for you to have it clear in  
13 your mind.

14           First, we are going to look at Tab 12. So,  
15 when you are there, please let me know, and this would  
16 be Page 62.

17           MS. DURÁN: Madam President, I think she did  
18 not participate in this.

19           MS. SINISTERRA: That is correct, Madam  
20 President, but this is the Intendency Resolution.  
21 This is the Resolution for the 2010-11 Royalty Case,  
22 which, in fact, Ms. Bedoya did not issue. But

1 Ms. Bedoya testified in the following words: "In the  
2 22 years I've been in SUNAT, this has always been the  
3 position."

4 I am entitled to ask Ms. Bedoya about a  
5 Resolution in the 2010-2011 case showing the exact  
6 opposite. This is very fair question.

7 PRESIDENT HANEFELD: Please go ahead.

8 MS. SINISTERRA: Thank you, Madam President.

9 BY MS. SINISTERRA:

10 Q. Ms. Bedoya, this is the Intendency  
11 Resolution of the 2010-2011 Royalty Case. And, as I  
12 mentioned before, this Resolution speaks about the new  
13 investments by Cerro Verde.

14 We are going to look at Page 62, third  
15 paragraph, where it says: "Note." I will be reading  
16 it aloud for the record. "Note that the Assessment  
17 Department has not observed these investments made  
18 after the accomplishment of the Stability Agreement,  
19 considering that"—and here "not observed" means that  
20 they didn't question it or include any observation  
21 about it. And here comes the important portion:  
22 "Considering that since they are linked, these

1 investments."

2           So, "since they are linked," the investments  
3 are linked to the "Cerro Verde Leaching Project,"  
4 their results fall within the scope of the Agreement  
5 for Promotion and a Guarantee of Investments signed  
6 with the Peruvian State. Based on this Intendency  
7 Resolution.

8           Based on this Intendency Resolution, those  
9 new investments--that is to say, above  
10 237 million--these new investments are linked to the  
11 "leaching project;" therefore, they are protected by  
12 the Agreement.

13           And for the record, this is Exhibit CE-150.

14           Is it not clear here, Ms. Bedoya, that the  
15 SUNAT itself--SUNAT Arequipa, as a matter of fact--is  
16 saying, yes, there were new investments above  
17 237 million as new investments, but as they are  
18 related, they are linked to the "leaching project,"  
19 they are covered?

20           So, I go back to ask you the question: Is  
21 it 237 million or is it any investment linked to the  
22 "leaching project"? They are contradictory. I just

1 showed you.

2           Let me repeat: The 237 million or any  
3 investment related to the investment project. Which  
4 of the two?

5           A. The 237 million. That's it.

6           Q. So, this Resolution by SUNAT itself is  
7 wrong? That's what you are telling us?

8           A. To begin with, this Resolution is no longer  
9 for the Regional Intendency of Arequipa. Second...

10          Q. It says--Cerro Verde is main contributor,  
11 but that is not relevant.

12          A. Second, I do not have the full context,  
13 because you are just showing me a paragraph. I do not  
14 know in particular what investment this is referring  
15 to.

16                 If this is what you just told me, that this  
17 is for those investments, I see the following: Here  
18 it says, "The Assessment Department has not observed  
19 these investments made after," and here we see the  
20 crux of the matter. When one carries out a tax audit,  
21 it is quite likely that the tax auditor may not  
22 determine or identify all of the risk situations where

1 there could be a mistake or a different interpretation  
2 of the standard by the taxpayer and by SUNAT.

3           The fact that there was an audit does not  
4 imply that the auditor had discovered all of the  
5 operations where there was a mistake, and if he didn't  
6 or she didn't do so, that doesn't mean that they are  
7 correct, and it is also not true that if I see them  
8 later on, I cannot assess it differently. That is a  
9 detection risk, as we call it, and that is what could  
10 have happened in this case.

11           I did not participate of this Resolution;  
12 therefore, I am not aware of the details or why the  
13 auditor, who I don't know who it is, may have reached  
14 that outcome.

15           Q. We are going to look at the Resolution. Let  
16 me save the time. I just want to confirm that I  
17 understand your answer.

18           Your answer is that the case, Cerro Verde  
19 case, was so important that we drafted an internal  
20 report even before the Concentrator was built, before  
21 it entered into operation, before we audit Cerro  
22 Verde. So, you had an internal report right before

1 all of that because Cerro Verde, the Concentrator, was  
2 very important for Arequipa, but you are telling us,  
3 no, what is happening here is that when they audited  
4 the--when the Auditing Department audited this, they  
5 ignored the new investments, they didn't question  
6 them, they ignored them and that's what you are  
7 telling us; right?

8 A. No. I am not saying that they ignored that  
9 or they overlooked that. I think that there wasn't  
10 even an audit back then in this year, in 2002. But it  
11 doesn't mean that this is not something that couldn't  
12 be assessed later on.

13 But here we are talking about an expansion  
14 of the Leaching Project, and here we are discussing an  
15 investment that is completely different, that is a  
16 Concentrator Plant. We are talking about copper  
17 cathodes, and then we jump--we leap-frog to copper  
18 concentrates, which is something completely different,  
19 from 270 million to 800 million.

20 So, clearly, there is--from 237 million to  
21 800 million. So, there is a great difference.

22 Q. Yes. Good news. We agree on something.

1           There is a big difference between a leaching  
2 plant and a concentrator plant. Nobody is denying  
3 this, but you are now ignoring what I'm asking you.  
4 And I am familiar with you and I know that you do  
5 this, but, once again, I am going to insist until I  
6 get an answer.

7           The Concentrator is different, 850 million.  
8 Again, I understand. But here, the words are very  
9 clear. Those investments are protected by the  
10 Contract because they are linked, they are linked to  
11 the Leaching Project. But you just said these  
12 investments or the analysis is different, because here  
13 these are investments related to leaching, and the  
14 Concentrator was a completely different investment;  
15 then it is different.

16           Let me go back and reiterate, and we are  
17 going to go back to your Intendency Resolution, but  
18 before I go back to your own words, I have a question.

19           These additional investments that were above  
20 the 237 million, those additional investments that  
21 SUNAT here is saying were covered since they were  
22 related to the Leaching Project, do you continue to

1 maintain that it is 237 million, nothing else?

2 A. Yes. It's 237 million.

3 Q. And that these investments, therefore, are  
4 not covered?

5 A. That is correct. They should not be  
6 covered.

7 Q. Okay. Let's go to your Intendency  
8 Resolution.

9 First, let it be clear: SUNAT is saying  
10 something different, and you are trying to offer some  
11 context. But let us look at the Resolution.

12 A. If you introduce that comment, let me  
13 introduce my own.

14 Here, you are showing me a document, but we  
15 do not know what was analyzed in that case because,  
16 from what I see, you said that it was the 2010-2011  
17 Royalties. So, this is an assumption that someone is  
18 introducing, but, in this case, in this audit the  
19 additional investments are not part of the analysis  
20 for 2002.

21 That is a disputed item. So, these are  
22 details that need to be borne in mind.

1           Q.    I agree, but let me represent to you that  
2 that paragraph refers to the new investment of  
3 \$15.5 million.

4           A.    Yes, but the context is different.  It is a  
5 different case.  No one has analyzed that fact.  This  
6 is an assertion by someone, but there is no underlying  
7 analysis of audit or by anyone as to determine the  
8 scope of the other investments under the Leaching  
9 Project, and that should be clear.

10          Q.    Once again, the Tribunal shall read that  
11 paragraph and reach the conclusions that they deem  
12 necessary, but why don't we look at your own  
13 Resolution?

14          A.    Let's go.

15          Q.    This is Tab 13.  For the record, this is  
16 Exhibit CE-38.  And I'd like for you to go to Page 48.

17                   And for all of us to be clear as to what we  
18 are seeing, the Intendency Resolution in the 2006-2007  
19 Royalty Case--that is to say, the Resolution rejecting  
20 the Cerro Verde's Request for Reconsideration, , and  
21 also the only auditor that signs this document is you.

22          A.    That's it.

1 Q. Okay. Let's go to Paragraph 1, 2, 3, 4, 5.

2 Perfect. It's on the screen. I will read  
3 your words aloud.

4 As it should be seen, that expansion--and,  
5 once again, let me represent to you that you're  
6 referring to \$15.5 million investment. If your  
7 Counsel would like to show otherwise, they will have  
8 the opportunity, but let me represent to you that  
9 you're referring to those investments.

10 Let me read to you: "As can be seen, this  
11 expansion corresponds to disbursements related to the  
12 Investment Program contained in the Feasibility  
13 Study."

14 And here I would like to underscore  
15 "disbursements." We are talking about new  
16 disbursements, new investments. You use the word  
17 "disbursements."

18 And then it says: "This expansion is for  
19 disbursements related to the Investment Program  
20 contained in the Feasibility Study," and then it adds,  
21 which--and since this expansion corresponds to  
22 disbursements related to the Investment Program

1 contained in the Feasibility Study. And then you say  
2 since these new disbursements were contained in the  
3 Investment Program of the Feasibility Study, that the  
4 Contract covers these disbursements does not change  
5 the object of the Contract, which is circumscribed to  
6 the expansion of their production capacity from 72,000  
7 to 105,000 pounds--that is to say, 48,000 MT/d of  
8 copper cathodes from copper ore heap leaching.

9           So, here you are not saying "it's only the  
10 237 million;" you are saying that these  
11 disbursements--and it doesn't matter which ones--it  
12 says new disbursements are covered, because they are  
13 "related to the Investment Program contained in the  
14 Feasibility Study," and because they do not distort  
15 the main purpose of the Contract, which is limited to  
16 the 48,000 MT/d.

17           So, I go back and ask you: Is this your  
18 position, that if there are disbursements "related"  
19 with the "leaching project" they are covered, or is it  
20 your position, that only the 237 million, nothing  
21 else?

22           Please be specific, Ms. Bedoya.

1           A.    When you ask the question, you include some  
2 statements that are not included there. I cannot be  
3 specific. I need to explain. Give me some time to  
4 explain so that everyone can understand, because what  
5 you do you is read this, but you have added several  
6 words that are not there.

7                    To begin with, that paragraph does not say  
8 that that expansion is covered with the Contract,  
9 so--with the Stability Contract. Here, this is a  
10 description. The idea is to respond to an argument  
11 made by the taxpayer about the expansions made under  
12 the Leaching Project.

13                   This paragraph only explains the third  
14 expansion. There were three: The first two during  
15 the Contract and this third one that is afterwards.  
16 And here it says that that expansion corresponds to  
17 "disbursements related to the Investment Program  
18 contained in the submitted Feasibility Study."

19                   This paragraph comes from a different one  
20 that also refers to the expansion, and the only thing  
21 that we had to be able to work there was a Resolution,  
22 as I said a minute ago, that modified or that

1 authorized the expansion. There was no detail as to  
2 any amounts, 1.5 million that was never filed by the  
3 taxpayer, it wasn't there within the working papers of  
4 the case file.

5           So, here it is just a statement that this  
6 expansion is related to the Investment Program, and  
7 here it doesn't say that it is covered. It says  
8 "which does not distort the object of the Contract."

9 That is true. That investment is not against the  
10 object of the Contract, because this is what I  
11 understood, too, since there was no additional  
12 documentation and the taxpayer had presented this  
13 document on the expansion, I understood that the  
14 expansion was linked to the increase in production  
15 capacity from 72,000 to 105,000 pounds. That's all it  
16 says, it says no more. I can affirm this because I  
17 participated in that case, there was no analysis as to  
18 whether these investments were inside or outside the  
19 Agreement because that was not part of the audit  
20 process.

21           As part of the request for reconsideration,  
22 we can only review what the taxpayer is questioning:

1 What is the dispute? And if these investments, new  
2 investments, were inside or outside the Project, that  
3 was not part of the dispute. So...

4 Q. I ask the questions, and you already offered  
5 us a long explanation.

6 (Overlapping interpretation and speakers.)

7 A. But your question is not proper.

8 Q. Let me ask you a different one.

9 You are saying that this was not the subject  
10 matter of the dispute, but if you look at this first  
11 paragraph on the same page, Page 48, first paragraph,  
12 there it says: "Cerro Verde"—and you wrote the  
13 arguments for Cerro Verde. "Cerro Verde argued that  
14 no one has questioned whether those investments are  
15 covered or not by the scope of the Contract, of the  
16 Stability Agreement."

17 So, that was the dispute. It was clear. It  
18 is here on paper. It was clear that Cerro Verde had  
19 argued: "Listen, SUNAT, in the past you did not  
20 question that new investments would be covered with  
21 the scope of the Stability Agreement." Clearly, Cerro  
22 Verde said that, and you analyzed the information.

1 You referred to the various expansions, and then in  
2 this paragraph that we just saw you addressed that  
3 argument. So, you are answering to Cerro Verde,  
4 indicating that those new investments had been covered  
5 under the Contract.

6 And when you do so, once again, you repeat,  
7 "these disbursements are related to the Investment  
8 Program." "They do not distort the object of the  
9 Contract." And that justifies that they were covered.  
10 It does not distort the object of the Contract because  
11 they are related to the Leaching Project.

12 That is clearly what you are saying there,  
13 Ms. Bedoya.

14 A. That's what you understand. It's not what I  
15 understand. I understand that that point was not  
16 subject to analysis. The only thing that is being  
17 said there is that it's expansion that is related to  
18 the object, because that's what I saw.

19 Now, if it's an expansion that was not  
20 related to the subject matter of the contract and went  
21 beyond it, well, there were no more documents for  
22 verifying that.

1           And if you would allow me to, now that you  
2 are making reference to this Resolution and to the  
3 Report that I wrote, if I could please read a  
4 Report--a paragraph from that Report so that you can  
5 better understand the position I had. I have a  
6 paragraph that I could read if you would allow me to.

7           Q. Yes. Let's turn to your Report in just a  
8 second. Of course. But now I'm going to ask another  
9 question.

10           Yes or no: Are you familiar with any  
11 assessment by SUNAT for those new investments?

12           Here, you're analyzing them. Now, at some  
13 point in time, did SUNAT come up with assessments for  
14 Cerro Verde, telling them, "Look, these new  
15 investments are not covered"? Does that assessment  
16 exist? Yes or no.

17           That's my question. Does it exist? Yes or  
18 no.

19           A. No, it does not exist, because it's never  
20 been the subject matter of analysis. Responding to an  
21 argument in the request for reconsideration doesn't  
22 mean it's been analyzed. I mentioned that, here, when

1 the IRS is going to make an assessment, it reviews the  
2 record of the taxpayer.

3           Here, we are talking about what year? 2006?  
4 So, it's impossible that it's been possible to review  
5 documentation of 2002 because, in this Claim, which is  
6 based on the inspection of 2006, there was no  
7 document, nor was there any analysis, of how the taxes  
8 had been determined in 2002. That was not analyzed  
9 and it's not a subject matter of analysis in this  
10 case.

11           ARBITRATOR TAWIL: Good morning. How are  
12 you?

13           The issue has not been put forward as though  
14 there would be a possibility of SUNAT making an  
15 assessment of the--for the additional investments in  
16 the Leaching Project. So, it's important for me to  
17 know, at least, whether that still exists.

18           Is this your opinion or is it the opinion of  
19 the SUNAT that the additional investments were not  
20 covered by the Stability Agreement?

21           THE WITNESS: Okay. SUNAT and the Report of  
22 2002 and--issued another Report in 2007, and there

1 SUNAT is even clearer because in that Report it notes  
2 that what is protected by the Agreement is the  
3 investment. Indeed, it says the amount finally that  
4 the Company executes.

5 Now, in this case, I don't have the specific  
6 data, but I understand that an amount below  
7 237 million was invested. So, in that Report, SUNAT  
8 clearly says that what is invested is the--that is  
9 protected is the investment, the amount of the  
10 investment.

11 ARBITRATOR TAWIL: Ma'am, you're not  
12 answering my question.

13 My question is if there were any additional  
14 investments in the Leaching Project--and I'm sorry if  
15 I'm confused about the name--could there be a Tax  
16 Assessment by SUNAT?

17 THE WITNESS: At this time, no, because we  
18 have something called statute of limitations.

19 ARBITRATOR TAWIL: Yes, but apart from the  
20 statute of limitations, could there be an additional  
21 investment today in the original Project? Could there  
22 be an assessment?

1           SUNAT's position is that it's not  
2 covered--that additional investments in the Leaching  
3 Project are not covered?

4           THE WITNESS: That's right. They are not  
5 covered. Had there been a new one and had there been  
6 an audit and had that been analyzed, it's likely that  
7 one would have to determine an assessment there  
8 because of the additional investments in the Leaching  
9 Project.

10          ARBITRATOR TAWIL: Now, that is different  
11 from what has been put to us. Minister Polo told us  
12 that all additional investments in the Leaching  
13 Project are covered, but this is a different Project.  
14 You're telling us that SUNAT has a different position  
15 than what was conveyed to us?

16          THE WITNESS: The thing is, the position  
17 taken by SUNAT is for tax purposes.

18          ARBITRATOR TAWIL: Yes.

19          THE WITNESS: So, we analyze and that's the  
20 position. It's the investment, and there could not  
21 have been additional investments.

22          ARBITRATOR TAWIL: And is that position set

1 by SUNAT, no matter what the Ministry says?

2 THE WITNESS: Yes, because the one who is  
3 going to administer taxes is the Tax Administration,  
4 SUNAT.

5 ARBITRATOR TAWIL: Thank you very much.

6 MS. SINISTERRA: Thank you very much,  
7 Professor Tawil. I was going right there.

8 BY MS. SINISTERRA:

9 Q. Ms. Bedoya, I want to ask you once again:  
10 We're looking for the Transcript of Mr. Polo's  
11 testimony in case you want to see that, but Mr. Polo  
12 did say quite clearly that the Leaching Project, as  
13 set forth in the Feasibility Study, that, if there are  
14 additional investments related to, tied to, the  
15 Leaching Project, they may be covered as well. And  
16 the Sidley lawyers in their Memorials have said things  
17 that are similar, and we are also finding the specific  
18 quotes to show them to you because, as the arbitrator,  
19 Professor Tawil, says, we have been told different  
20 things, and it's important to know exactly what was  
21 the position.

22 So, either Mr. Polo, former Vice Minister of

1 the Ministry of Energy and Mines, is mistaken, or you  
2 and the 2010-2011 Resolution, your own Resolution in  
3 2006-2007, were saying that there are other possible  
4 investments related to leaching that could be covered.

5 Now, there could be--the Government cannot  
6 consistently have two different positions. You might  
7 say, "No, but the Ministry of Energy and Mines"--no.  
8 The Government has to have a consistent position. And  
9 Mr. Polo has told us one thing, the attorneys have  
10 told us something else, the Resolutions of the  
11 Intendency yet another, and you yet another.

12 So, I'm going to give you one more  
13 opportunity. I'm going to ask you one more time: If  
14 we were to check against one another all these  
15 different statements, an "investment related to, tied  
16 to, the Leaching Project"--"an additional investment  
17 that is tied to, related to, the Leaching Project  
18 established in the Feasibility Study," could it be  
19 covered by the Stability Agreement? Yes or no.

20 A. No. I have asked you to allow me to read a  
21 paragraph of my Report. I don't know if I can.

22 Q. We're going to get to your Report, but first

1 I would like to confirm: Your testimony here is that  
2 Mr. Polo was mistaken, or that what he said is not  
3 accurate, and that the other documents and statements  
4 in the record saying something different--that it's  
5 "not a single dollar more," what your testimony  
6 is--any declaration to that effect is mistaken; the  
7 only position is the \$237 million. Is that your  
8 testimony?

9 A. No, because I have nothing to do with and I  
10 have not heard what Mr. Polo had said, and I don't  
11 know why he said it. That matter goes to him.

12 You said I'm going to ask the question and I  
13 want to know what you think, and I'm answering what I  
14 think, and that's what I think and that's what I think  
15 is correct and what I know is correct, and what also  
16 backs up SUNAT's position in the 2002 Report and in  
17 the 2007 Report.

18 For us, additional investments are not  
19 covered.

20 Q. Very well, Ms. Bedoya. We are going to  
21 compare them once again. The Tribunal will be able to  
22 see whether or not there is consistency among the

1 members.

2 A. But it's pending for me to read the one  
3 paragraph of the Report.

4 Q. Yes, but first, it's a bit disconcerting to  
5 hear a different position depending on the Witness  
6 that we have in front of us, so I'm just trying to  
7 understand your position.

8 Cerro Verde has submitted an Investment  
9 Project for \$237 million. As you know, that program  
10 was carried out before the signing of the Stability  
11 Agreement. You know that that Investment Program was  
12 carried out, and the Ministry ratified that it was  
13 carried out, in late 1997, before the signing of the  
14 Agreement.

15 So, your position is that, from the signing  
16 of the Contract and for those 15 years, if Cerro Verde  
17 invests a single additional dollar in its Mining Unit,  
18 a single additional dollar, then that additional  
19 dollar is outside the scope of stability. That's what  
20 you're telling us happens in practice?

21 A. Yes, but now you're talking about "invest,"  
22 and we have to be careful there, because not

1 everything that is spent is investment. Because it is  
2 evident that during the 15...

3 Q. No. I'm asking about the investment. If it  
4 buys a new truck--

5 (Overlapping interpretation and speakers.)

6 . . . . Ms. Durán: She is trying to explain

7 . . . . Ms. Sinistera: Yes, but I understand the  
8 difference between investment and an expenditure.

9 . . . . Ms. Durán: Yes, but she wants to  
10 explain it for the Tribunal

11 . . . . Ms. Sinisterra: Please don't answer by  
12 telling me that there's a difference between  
13 expenditure and investment.

14 My question is: If there's a new  
15 investment--that, say, the Company buys a new  
16 truck--your position is that that truck is outside the  
17 scope of the Contract?

18 A. Yes, that's right, because the Agreement was  
19 only for the 237 million.

20 Q. So, if it buys 15 trucks, Cerro Verde has to  
21 separate it all out: 237 million, one regime, and the  
22 trucks another regime, and if there's a \$2 million

1 investment, that's outside the scope as well, a  
2 different regime.

3           So, once again, not a single additional  
4 dollar?

5           ARBITRATOR TAWIL: Excuse me. And so, it  
6 needs to maintain separate books? The accounting has  
7 to be maintained separately within the same Leaching  
8 Plant to account for the additional investments?

9           THE WITNESS: Yes. Well--so, what's the  
10 situation here, Article 25 of the Regulation of the  
11 General Law on Mining indicates that the taxpayer,  
12 when having a Stability Guarantee, must keep annexes  
13 or exhibits that are going to help them keep that  
14 separate accounting.

15           Now, what's the situation? Well, if Cerro  
16 Verde invested, say, 15 million, I don't know how much  
17 she was saying, then one would have to be careful,  
18 because where the Copper Cathodes produced with the  
19 new investment are going to be governed by the  
20 stabilized regime, and the rest by the Common Regime.  
21 So, in the case of the depreciation it is clear. The  
22 company bought 15 additional trucks, fine. Those will

1 be depreciated at a different rate than that  
2 stabilized for the goods initially purchased. That's  
3 how it works.

4 ARBITRATOR TAWIL: We understood this in  
5 relation to the Concentrator. But let us suppose that  
6 there's going to be an expansion of the Leaching  
7 Plant. And, now, instead of producing, say,  
8 100,000 tons, it produces 120,000 tons. Within the  
9 same plant, we need to keep a double accounting?

10 THE WITNESS: Yes, that's right. That will  
11 have to be done. Why? Because the effect of the  
12 output from there, well, it's going to be governed by  
13 a different common regime. And so, it is different.  
14 And some companies have done this. They expand with  
15 respect to something that could be, as in this case,  
16 guaranteed; what is a new investment has to have  
17 separate accounting so as to pay the appropriate  
18 amount with respect to the other.

19 ARBITRATOR TAWIL: Even though it's part of  
20 the same, original Project?

21 THE WITNESS: Yes. Even if it is the same  
22 original Project. That's how it should work. Why?

1 Because when one sat down with the State to negotiate,  
2 at that time, it only proposed 230. And the  
3 difference isn't whether it's \$1 or 800. The  
4 difference is that only this is what is stabilized.  
5 And the rest is to be governed by the common regime.

6 It is possible to separate out the books,  
7 and to have each part pay the corresponding tax, and  
8 it's not--there's not going to be a difficulty  
9 expanding an additional--an already-existing Project,  
10 nor if everything is being conducted within the same  
11 Concession, physically speaking.

12 BY MS. SINISTERRA:

13 Q. Ms. Bedoya, your answers are a bit  
14 disconcerting. I'd like to show you the  
15 Counter-Memorial that was presented by the Republic of  
16 Perú in this case. You see it in front of you. It's  
17 in English, but you can hear the--hear it interpreted.  
18 These are the words of the--Perú's lawyers so you can  
19 know exactly what you're looking at it. And it  
20 says: "Claimant argues that Perú treated certain  
21 investment made between 1999 and 2002 that were not  
22 included in the 1996 Feasibility Study as stabilized."

1           So, are you following me so far? It  
2 explains the context a bit, and then it says: "In  
3 fact, SUNAT determined that the investments fell  
4 within the scope of the 1996 Feasibility Study,  
5 because they were made to further the Study's goal of  
6 increasing production capacity of the Leaching Project  
7 to 48,000 MT of Copper Cathodes per year."

8           "The fact that Perú treated these subsequent  
9 investments in the Leaching Project--treated these  
10 subsequent investments in the Leaching Project"--  
11 "which were intended to further the goal of the  
12 Leaching Project, outlined in the Feasibility Study,  
13 and which Perú obtained pursuant to a Stability  
14 Agreement as stabilized"--"that Perú treated these  
15 subsequent investments in the Leaching Project as  
16 stabilized."

17           And, for the record, this is Paragraph 612  
18 of the Counter-Memorial, the Memorial that was  
19 submitted by the--Perú's lawyers to the Tribunal.

20           Ms. Bedoya, you can try to contextualize or  
21 explain what you believe the lawyers of Perú are  
22 saying, but what we see up on the screen--well, we're

1 seeing it up on the screen, and here the lawyers are  
2 clearly saying two things. First, that Perú treated  
3 these new investments as stabilized, and they're  
4 providing an explanation for that.

5           They're saying that it treated the new  
6 investments as stabilized because: "They were made  
7 further to the Study's goal," because they were made  
8 pursuant to the goals of the Feasibility Study of  
9 increasing production capacity of the Leaching Project  
10 to 48,000 MT per year."

11           So, once again, you are telling us today,  
12 here, just setting forth a position that is different,  
13 not only from what Mr. Polo described for us, not only  
14 different from the Intendency Resolution of 2010-2011,  
15 not only different from your own Resolution of  
16 2006-2007, but you have it right before you on the  
17 screen. This is what Perú's own lawyers have said.

18           So, we've devoted a lot of time to this. It  
19 is disconcerting to see changes of position. And I'm  
20 simply going to tell you one last time.

21           MS. DURÁN: Sorry Madam President but this  
22 has gone for a long time, and she has been--Counsel

1 for opposing--opposing Counsel has been testifying,  
2 and there are no questions being posed to the Witness.

3 MS. SINISTERRA: Of course. Of course,  
4 there are. That's a very important question, whether  
5 she agrees or disagrees with statements made by  
6 Counsel. And I'm very happy to ask the question  
7 again.

8 BY MS. SINISTERRA:

9 Q. Ms. Bedoya, so, I was summarizing where we  
10 stand, and my specific question is, seeing up on the  
11 screen--what you see on the screen, what the lawyers  
12 of Perú have said.

13 Seeing this up here, do you maintain that  
14 your position was 237 million, not one dollar more or  
15 less?

16 A. Yes, that is the position. But you say--"and  
17 it's against what you said in your own Resolution," as  
18 though I'd contradicted myself, and that's not so.  
19 Here, I have a paragraph that says the contrary, but  
20 the lawyer has not allowed me to read it. I don't  
21 know if the President could authorize me to do so.

22 PRESIDENT HANEFELD: May I interrupt? Are

1 you aware of the content of this Settlement Agreement,  
2 which is mentioned in Paragraph 612?

3 THE WITNESS: I honestly didn't understand  
4 so well what the lawyer read. I'm so sorry. I don't  
5 know why the attorneys for Perú, if this is what  
6 they--if what she says is, indeed, what they say  
7 there. But what I know is the position of SUNAT.

8 For me, it's quite clear, it was always  
9 consistent, and all I wanted to read is read a  
10 paragraph from the Resolution that I wrote up, so that  
11 it can be clear, because that's not an issue that was  
12 analyzed at any time, not in 2006-2007 ones, nor in  
13 the 2008 one. That's why I wanted to read this  
14 paragraph. But every time that I've told her there's  
15 a paragraph that I'd also like to read, she tells me  
16 well, we're going to get to that in just a second, but  
17 she's not allowed me, thus far, to read it.

18 PRESIDENT HANEFELD: My question was, in  
19 this Paragraph 612, in this last highlighted sentence,  
20 reference is made to a Settlement Agreement. And my  
21 question is, are you aware of the content of this  
22 Settlement Agreement?

1 THE WITNESS: I'm so sorry, but I don't know  
2 what that paragraph refers to. I'm so sorry. I  
3 didn't understand, really, what that paragraph said.

4 PRESIDENT HANEFELD: In any event, it makes  
5 express reference to a Settlement Agreement, which was  
6 concluded with Perú, and which seems to concern the  
7 Leaching Project or whatever, the goal, and I just  
8 wanted to ask is, how does it affect your question.

9 Are you aware of the Settlement Agreement,  
10 and the content of the Settlement Agreement? No?

11 THE WITNESS: No. No.

12 PRESIDENT HANEFELD: Thank you.

13 Yeah. And now my co-arbitrator suggested if  
14 you need time to read the paragraph, in order to  
15 better understand the question, you are certainly  
16 welcome to do it.

17 You have done it in the Spanish original,  
18 so, if you show her the Spanish text of the  
19 submission. Or--

20 MS. SINISTERRA: There is no Spanish text to  
21 the submission, Madam President.

22 PRESIDENT HANEFELD: No. Okay.

1 MS. SINISTERRA: I can read it out loud once  
2 more, and I would actually like to draw the Witness's  
3 attention to Footnote 1283. I agree, context is  
4 important, and that includes the Footnotes included by  
5 Counsel for Perú. So, with your permission, I will  
6 switch to Spanish, Madam President.

7 BY MS. SINISTERRA:

8 Q. Ms. Bedoya, let's go back to the arguments  
9 that have been presented to us by the attorneys in  
10 this case, because, I reiterate, consistency is  
11 important.

12 I showed you that paragraph. I read it out.  
13 I hope that the interpretation worked?

14 A. Not so well, actually.

15 Q. Would you like me to interpret it?

16 A. Sure, then I'd be able to better understand  
17 it.

18 Q. Okay. Let's go back.

19 I was showing you Footnote 1283 because the  
20 Footnote, that is, the support that was cited by your  
21 lawyers for this assertion, is your Resolution of  
22 2006-2007. Your Resolution of 2008--that has the same

1 paragraph that we've been looking at.

2           So, I will translate that Statement, the  
3 support cited by your lawyers in the Footnote 1283  
4 which is your--it's your own Resolution--that is to  
5 say, they are of the view that your Resolution  
6 supports this statement, and that's why I'm going to  
7 translate it to you:

8           "In fact, SUNAT determined that the  
9 investments fell within the scope of the 1996  
10 Feasibility Study because they were made to further  
11 the Study's goal of increasing production capacity of  
12 the Leaching Project to 48,000 MT of Copper Cathodes  
13 per year."

14           And then in the Footnote, Footnote 1283, it  
15 cites your Resolution, if we could jump to that  
16 Footnote, Footnote 1283. And what was the basis of  
17 that? Exhibit CE-46 which is the Intendency  
18 Resolution of the 2008 Royalties Case, and they cite  
19 the paragraph that I already showed you in which we  
20 discussed, and they underscore what the lawyers for  
21 Perú thought was especially important.

22           And what they underscored is that this

1 expansion, and we saw above, that it refers to the new  
2 investments, corresponds to disbursements related to  
3 the Investment Program contained in the Feasibility  
4 Study, and those disbursements do not distort the main  
5 objective of the Contract, which is limited to the  
6 expansion of the production capacity to 48,000 MT of  
7 Copper Cathodes.

8 I hope the translation has helped, and here  
9 we see your signature on this Resolution which,  
10 according to the lawyers for Perú, supports the  
11 assertion that the new investments were covered  
12 because they were done to carry out the objective of  
13 the Investment Project in the Feasibility Study.

14 So, Ms. Bedoya, everyone here in this room,  
15 we all saw in English, we heard the translation into  
16 Spanish, that the lawyers who represent the Republic  
17 of Perú in this case were saying that these--SUNAT  
18 determined that those new investments were covered  
19 because they were made to carry out the objective of  
20 the Leaching Project that was set forth in the  
21 Feasibility Study.

22 It does not say anywhere, not in the

1 Memorial by the Republic of Perú, nor in the Footnote  
2 that they cite as support, which is your own  
3 Resolution. At nowhere does it say that SUNAT did not  
4 consider this point, nor does it say anywhere, no, it  
5 was--the scope of the Contract was limited to the  
6 237 million. The lawyers did not say that, nor was  
7 that their reading of your Intendency Resolution.

8           So, for the last time, who understands--who  
9 defines the scope; the lawyers or you?

10           A. Once again, I repeat, in that paragraph, all  
11 that is described is the expansion that was done in  
12 the Leaching Project. At that time, there was no  
13 document at hand that could be analyzed to say that it  
14 was a new investment, nor does that paragraph indicate  
15 that it is a new investment that is covered. It just  
16 says that it is related to, or tied to, because at  
17 that time, since there was no documentation, it was  
18 thought that it was something that was related to the  
19 investment.

20           And that's why, for a while, I wanted to  
21 specify the difference between a new investment to  
22 different investment. Another thing is a

1 disbursement. A disbursement can be to improve or  
2 repair something that might be needed. I don't have  
3 the details as to what that expansion was, the  
4 reasons, or what the details of it were, because those  
5 documents were not submitted in that audit. That was  
6 an audit on Royalties, and it corresponded to 2006.  
7 That is my view on that.

8           Those paragraphs do not say that SUNAT  
9 confirms, after something was done because nothing was  
10 done, that those additional investments are covered by  
11 the scope of the Agreement, and, indeed, this is  
12 mentioned in the 2007 Report where SUNAT is  
13 categorical in saying that it refers to the  
14 investment.

15           Specifically, the investment made by the  
16 Company on culminating the performance of the Contract  
17 in those years prior to the beginning of the  
18 stability. So, there's not been any contradiction,  
19 and I wanted to read this paragraph of the resolution  
20 that is mentioned, a different paragraph, which is  
21 Paragraph 45.

22           Q. Paragraph 45 of what? What document are you

1 talking about?

2 A. This is the Report that supports Royalties,  
3 2006-2007, Page 45, last paragraph.

4 Q. I do not know if they did not explain the  
5 rules of the game to you, But the lawyers for Perú  
6 will have the opportunity, once I conclude, to take  
7 you to whatever paragraph that you wish, if they  
8 consider it advisable. Unfortunately, we're  
9 approaching lunch hour, and there are two points that  
10 I'd like to make. In the time of Perú's lawyers, you  
11 are welcome to, you'll certainly be able to, review  
12 other documents, other Paragraphs, but you just drew a  
13 distinction, or you're trying to explain this, at  
14 least apparent contradiction, by saying, well, one  
15 thing is a disbursement and another thing is a new  
16 investment. And so, I'd like to show you those new  
17 investments to which Perú made reference that we're  
18 talking about.

19 I showed you the document, thinking that if  
20 we look at things step by step that that would help  
21 you refresh your memory or better understand your own  
22 Resolution. But I'd like to put this up on the

1 screen.

2           The new investments that you call  
3 "disbursements," this is what we're talking about.  
4 For the record, that's at CE-378. These are the new  
5 investments that we're talking about, improving the  
6 crushing facilities, the expansion of Pad 2, and the  
7 Electrowinning Plant for a total value of  
8 15.5 million.

9           Now, for the record, it should be clear  
10 that, in your Resolutions and in the paragraph that we  
11 read by the lawyers for Perú, that of the investments  
12 we're talking about, of which there are documents in  
13 the record at least, which were said to be covered by  
14 the Stability Agreement, well, those investments come  
15 to 15.5 million in new investments. So, we're not  
16 talking about just any disbursement or expenditure  
17 that you might want to distinguish in that way.  
18 That's the point.

19           A. Yes, but those documents are not within the  
20 procedures. I had not seen them before.

21           Q. So, I'll provide them to you right now so  
22 can you see them.

1           A.    Yes, but you can't say that something I  
2 wrote 18 years ago referred to this, when I did not  
3 have this at hand.  So, we undertook an analysis, a  
4 paragraph was written up, and based on the  
5 documentation we had at that time, you cannot assert  
6 that what I was referring to was to this.  No, because  
7 I never saw this.  I was referring to the expansion of  
8 the documentation that was presented to us.

9           Q.    This is crystal clear, Madam.  
10 Unfortunately, we don't have enough time, but for the  
11 record, that Expansion Resolution that you're making  
12 reference to leaves it clear what the new investments  
13 were.  The Resolution that you saw, well, indicated  
14 clearly what investments we were talking about.  That  
15 doesn't matter now.

16                Let me ask you, let's assume that you didn't  
17 have clear in your mind what investments we're talking  
18 about.  We will give you the benefit of the doubt.  
19 You already saw the position of Perú.  We showed you  
20 the Memorial, we showed you the Footnote supporting  
21 this.  Now, it's clear.

22                This is my question: This investment,

1 15.5 million, having it clear in your mind what the  
2 investment was, and that this was crushing  
3 improvement, Expansion Pad 2, and the SX/EW Leaching  
4 Plant, for 15.5 million; having it clear in your mind  
5 that this was "related to the Leaching Project," and  
6 with clarity about what Peru said in this regard; in  
7 your understanding, this investment, in particular,  
8 once the facts are clear, this investment, in  
9 particular, would it have been covered by the  
10 Stability Agreement? Yes or no.

11 A. No. No, because the Regulations allowed for  
12 a new Contract to be entered into for this second  
13 expansion.

14 Q. Thank you very much. Thank you for your  
15 clarification and for being precise in connection with  
16 whatever your position is.

17 MS. SINISTERRA: Madam President. I'm happy  
18 to continue with my line of questioning. I'm mindful  
19 of the time. I'm very happy to continue, and we do  
20 have some time left with Ms. Bedoya. So, would you  
21 like to break for lunch, or should I continue a while  
22 further?

1           PRESIDENT HANEFELD: We can break for lunch  
2 now, if this is, for you, the perfect time.

3           MS. SINISTERRA: We're in your hands. I'm  
4 just mindful we do have significant sort of additional  
5 questions.

6           PRESIDENT HANEFELD: Yes. Let us break for  
7 lunch now, and then we continue five minutes past  
8 2:00 p.m.

9           MS. SINISTERRA: Thank you, Madam President.

10           (Whereupon, at 1:03 p.m., the Hearing was  
11 adjourned until 2:05 p.m., the same day.)

12   AFTERNOON SESSION

13           PRESIDENT HANEFELD: Before Ms. Sinisterra  
14 continues, you mentioned several times during your  
15 testimony that you would like to read out one  
16 paragraph of your 2006 Report in order to explain your  
17 answers.

18           Can you just read it out for us and then we  
19 can continue?

20           THE WITNESS: Thank you.

21           MS. DURÁN: If I may ask the other side to  
22 put it on the screen as well.

1           THE WITNESS: Let's look at Page 45. Can we  
2 put Page 45 on the screen, please? It's the last  
3 paragraph of that page.

4           Very well. It says here: "In this regard,  
5 the fact that the--in this, we see that the fact that  
6 the Stability Guarantee only protects the Leaching  
7 Project"--am I reading too fast? Okay.

8           I'll start again: "In this vein, we see  
9 that the fact that the Stability Guarantee only  
10 protects the Leaching Project leads to a situation in  
11 which, if the Appellant makes subsequent investments  
12 not contained in the Feasibility Study submitted, as  
13 occurs with the Primary Sulfide Project, they will  
14 have to be governed by the ordinary legal regime, with  
15 the application of different legal regimes depending  
16 on the Project, notwithstanding that it may be the  
17 same beneficiation concession. To that extent, we are  
18 of the opinion that Articles 82 and 83 of the General  
19 Mining Law, as well as Article 22 of the Regulations  
20 of the Ninth Title, should be interpreted in  
21 accordance with the criteria"--well, here I make  
22 reference to two authors, Marilu Pedraza and Marcial

1 García Schreck. And what I wanted to point out was  
2 the first part of the paragraph, that is SUNAT's  
3 position, and that is the position on which this case  
4 was based in reference to the expansions.

5           The paragraph that we were looking at before  
6 does not state that the expansion is within the scope.  
7 The scope of the guarantee in connection with the  
8 expansions of the Leaching Project, that was not a  
9 matter in controversy, but the matter had to do--or  
10 the controversy rose that the project of Primary  
11 Sulfides was something totally different that--whether  
12 it was included or not included. And that paragraph  
13 says that it does not, because it was not contained  
14 within the investment of the submitted Feasibility  
15 Study. And that's all.

16           Thank you.

17           PRESIDENT HANEFELD: Thank you for this  
18 clarification.

19           Then please go ahead.

20           MS. SINISTERRA: Thank you, Madam President.

21           BY MS. SINISTERRA:

22           Q. We are going to continue. Hi again.

1           We went back to your Resolution. I'm going  
2 to ask another question.

3           The paragraph that we discussed in detail  
4 this morning makes reference to the Financial  
5 Statements of Cerro Verde.

6           Do you recall that?

7           A. Yes. Yes, it makes reference to that.

8           Q. Okay. So, it does make reference to that.

9 Okay.

10           We need to try and be very brief because of  
11 time limitations.

12           Let us now look on the screen, and I'm going  
13 to tell you where exactly it is in your binder, but  
14 apparently it is now going to be turned on--the screen  
15 is. It is your Tab 11, if I'm not mistaken. Go to  
16 Page 18. For the record, this is CE-418.

17           So, these are the Financial Statements of  
18 Cerro Verde as of 31 December 2002 and 31  
19 December 2003. And we're going to look at Page 18,  
20 and we see here the production in metrics, metric tons  
21 for Cerro Verde. We see production numbers: For  
22 2003, 87,000, and for 2002, 86,000. These are the

1 Financial Statements for the years 2002 and 2003 that  
2 take into account the investments made by Cerro Verde  
3 in 2002 and 2003.

4           You mentioned in your resolution these  
5 Financial Statements. So, this is a document that you  
6 took into account, that you had top of mind. And did  
7 you know that in 2002 Cerro Verde had exceeded the  
8 48,000 metric tons for capacity, production capacity  
9 that the Feasibility Study makes reference to? Did  
10 you know this or not?

11           You can see here the Financial  
12 Statements--to refresh your memory, the Financial  
13 Statements that you mentioned--and at CE--418, well,  
14 you can see in the document, did you know that in 2002  
15 Cerro Verde had doubled--doubled--production capacity  
16 to 86,000 MT?

17           Did you know that?

18           A. I do not recall.

19           Q. Thank you. Ms. Bedoya.

20           Quick question: Have you read the Witness  
21 Statement that we prepared of Mr. Aquino?

22           A. Who?

1 Q. Did you read the Witness Statement that we  
2 submitted of Mr. Aquino?

3 A. No, I have not.

4 Q. I'm asking you because at Figure 19 of  
5 Mr. Aquino's Statement, there is a table with all of  
6 the production numbers of Cerro Verde, year after  
7 year, and all the documents that support and show how  
8 production was increasing and how it was doubling.  
9 And this would corroborate what we see here.

10 But you never saw that; right?

11 A. No, I never saw that. If it is the way you  
12 say, the fact that there was no audit, or it wasn't  
13 indicated that this was not part of the Stability  
14 Guarantee does not mean that you cannot do this in the  
15 future. If somebody does something wrong and person  
16 is not corrected and then the person is corrected  
17 later on, well, it does not mean that--

18 Q. Excuse me, Ms. Bedoya. You're talking about  
19 corrections. I've only asked about some kind of  
20 assessment by SUNAT of these 2002 investments that  
21 doubled the production capacities.

22 Have you seen that assessment?

1 A. No.

2 Q. Does that assessment exist?

3 A. No.

4 Q. Okay. No further questions on that matter.

5 Let us now look at Paragraph 26 of your

6 First Statement.

7 Have you found it?

8 A. Just one moment, please.

9 Q. Paragraph 26 at Page 13 of your First  
10 Statement. And we're going to show it on the screen.

11 Have you found it?

12 And, again, Ms. Bedoya, we're short on time,  
13 and I would be very grateful if you could be very,  
14 very specific. If you want to expand and give more  
15 details, the lawyers for Perú can then ask you  
16 questions and expand where relevant. Okay?

17 A. Okay.

18 Q. Here you say that the stability benefit was  
19 clearly delimited and agreed upon by the Parties, and  
20 the State can estimate the fiscal impact that is going  
21 to have during the years the Contract is in force.

22 Did you see that?

1 A. What number, you said? 26 or 23?

2 Q. No, I said 26. At Page 13, this is  
3 Paragraph Number 26.

4 I can read this again, if you want.

5 Since this benefit is clearly defined and  
6 agreed upon by the Parties, the State can estimate  
7 the--the fiscal impact it will have during the years  
8 the Agreement is in force.

9 Do you see that?

10 A. Yes, I do.

11 Q. Now, in this connection, you are in tune  
12 with Perú's Counsel and with the Experts Ralbovsky and  
13 Eguiguren, and they all say the same, and I would like  
14 to understand what this means.

15 The Government of Perú estimated the fiscal  
16 impact of Cerro Verde when it entered into the 1998  
17 Agreement?

18 A. I have no idea of that.

19 (Overlapping interpretation and speakers.)

20 BY MS. SINISTERRA:

21 Q. So, you did not estimate that; right?

22 A. I did not.

1 Q. Do you know--I think I know you didn't do  
2 it, but do you know what agency is in charge of  
3 conducting this estimate of the fiscal impact? Is it  
4 MINEM? Is it SUNAT? Is it the MEF?

5 Who is the agency in charge of assessing the  
6 fiscal impact mentioned by the lawyers and Experts?  
7 Who does that?

8 A. SUNAT does not have jurisdiction to do that.  
9 I don't know what agency does this.

10 Q. Just to be super clear, you never provided  
11 an estimate of the fiscal impact of the Cerro Verde  
12 Agreement? You never saw this document; right?

13 A. No.

14 Q. Why is it that you mentioned this, then?

15 A. This paragraph tries to explain what the  
16 Parties brought in to the negotiation. This is  
17 theoretical. The investor--and I have not seen a  
18 document where Cerro Verde indicates the return on  
19 investment of the investment, but I'm sure it did have  
20 it, but it's just an assertion of what the Parties can  
21 do. The investor also can do this, and it wouldn't  
22 make sense for the State to provide this benefit

1 indefinitely and unlimitedly.

2 Q. Okay. So, if you put this in your  
3 Statement, I understand that you agree and you  
4 understand what this is saying.

5 You say that the State has to estimate the  
6 fiscal impact during years the Contract is in force.  
7 This Agreement was in force for 15 years.

8 How is it that the State can estimate the  
9 fiscal impact of something 15 years going forward?  
10 How does a State know whether the taxes are going to  
11 change, if a new Royalties Law is going to be enacted,  
12 if there's going to be a tax on net assets like in  
13 2006, or a Special Mining Tax is going to be imposed  
14 in mining like in 2011?

15 How can the State make a tax projection  
16 15 years into the future? How is it that the State is  
17 going to know what's going to happen with the taxes?

18 A. I don't understand your question. The State  
19 signs with an investor, and it has a date for the date  
20 that has been established, and the legal framework is  
21 frozen 15 years into the future. So, we know what  
22 taxes are that are in force and that the Company is

1 going to have to pay for 15 years. So, I imagine that  
2 the specialists are going to be able to estimate this.  
3 There is no uncertainty as to whether this can be  
4 made.

5 Q. Did you know that the tax rate for Income  
6 Taxes stabilized by Cerro Verde and, according to you,  
7 for 237 million, did you know that that rate was  
8 30 percent?

9 A. Yes.

10 Q. Did you know that in 2001 that Income Tax  
11 rate went down to 20 percent?

12 A. Yes.

13 Q. So, Cerro Verde was paying a higher rate  
14 than the ordinary regime for this stabilized Project?  
15 Yes or no.

16 A. Well, you're saying 20 percent. It's not  
17 20. I don't know exactly what rate it is. I would  
18 have to look at the provision, but Cerro Verde--and  
19 this is true, what you said--stabilized the rules of  
20 the game at that date, and that is the game.

21 If afterwards there is a modification that  
22 worsens or improves the situation, well, that's

1 irrelevant, and the stabilized legal regime is the one  
2 that's going to be applied to it.

3 Q. Again, Cerro Verde paid a greater rate than  
4 the ordinary regime because of the application of the  
5 Stability Agreement?

6 A. Yes, that's right.

7 Q. I know you're not a technical person and you  
8 didn't do this, but this is something that the  
9 Government, in principle, has to take into account  
10 when the Government conducts this estimate of the tax  
11 impact. This is something--is this something that the  
12 Government should take into account?

13 A. My understanding is that it is. It's not  
14 only a lower rate. There are also other benefits.  
15 For example, an accelerated depreciation rate.

16 (Interruption.)

17 (Overlapping interpretation and speakers.)

18 A. Yes, ma'am.

19 SPANISH REALTIME STENOGRAPHER: Please pause  
20 between the question and answer.

21 BY MS. SINISTERRA:

22 Q. We know that there are other benefits, other

1 guarantees. That's not important. Again, please  
2 short answers. You can go over it again with your  
3 lawyers. You said that it is important that the  
4 stabilized guarantees must be clearly defined for the  
5 State to be able to estimate the tax impact, but you  
6 never...

7 SPANISH REALTIME STENOGRAPHER: Excuse  
8 me, the interpreters are asking you to repeat  
9 the question because they cannot follow you.

10 Q. Thank you. We can close this  
11 quickly. We know that there are other  
12 guarantees, that is not the point. The point  
13 is that you said in your witness statement  
14 that the stability benefit must be clearly  
15 limited so that the State can estimate the  
16 tax impact.

17 It is a curious statement and difficult to understand.

18 Did you conduct that fiscal estimate for the  
19 impact? Yes or no.

20 A. No.

21 Q. Have you ever seen a fiscal estimate before?

22 A. No.

1 Q. SUNAT, as far as you know, does not conduct  
2 this type of fiscal estimates?

3 A. There is no power of SUNAT in that regard.

4 Q. Okay. Very well. Let us now talk about  
5 something that we are all awaiting to hear, which is  
6 the internal report of June 2006. Okay?

7 You said in your Statements and you said  
8 during the February Hearing that by mid-2006 Mr. Cruz  
9 asked you and Mr. César Guillén to determine the tax  
10 situation of the Cerro Verde Concentrator, and that,  
11 on the basis of that request, you prepared with  
12 Mr. Guillén the 2006 internal Report; correct?

13 A. Correct. We also were supported by a team.

14 Q. But you and Mr. Guillén are the only ones  
15 who signed this; correct?

16 A. Yes.

17 Q. And at the February Hearing I asked you:  
18 Why is it that you didn't mention this Report in your  
19 First Statement? It is quite strange that an internal  
20 report that was so important went unmentioned in your  
21 First Statement.

22 You told me that you had not found it when

1 you submitted your First Statement and that you didn't  
2 like to cite things without the appropriate support,  
3 and that is why you didn't mention it. But after  
4 conducting a search, you found it, and that is why you  
5 did cite it in your Second Report.

6 Do you remember that exchange?

7 A. Yes, that's right.

8 Q. You told us that you ultimately found the  
9 Report and included it in your Second Report. And you  
10 said: "I found it in a box"

11 A. It was given to me by a person that had it  
12 in a file.

13 Q. You used the phrase: "I found it in a box."

14 (Overlapping interpretation and speakers.)

15 A. I cited the name of Mr. Ravines, who was the  
16 auditor who gave it to me. I didn't find it in a box.

17 Q. Okay. Roger Ravines found it in a box.

18 A. It was in a file, a file like this one.

19 Q. We're going to have to go to the Transcript,  
20 but if we look at Tab 3, we can see the Transcript.

21 You said what you said. The words at the  
22 Hearing were very clear. Let us put them on the

1 screen.

2 A. Yes, I remember that I indicated that it was  
3 in a file.

4 Q. No, ma'am. You used the word "box."

5 Okay. The important thing is the following:

6 It was said that the box was not numbered, and you  
7 said that that file did not have any numbers or codes?

8 (Interruption.)

9 (Comments off microphone.)

10 MS. DURÁN: I'm just asking her to put it on  
11 the screen because we don't know where to look.

12 MS. SINISTERRA: It will be on the screen  
13 momentarily.

14 BY MS. SINISTERRA:

15 Q. 1605. It's right here, 1601, Line 15.

16 I asked you a number of questions, but  
17 finally this very important Report, and then we have  
18 an exchange, and I say to you, finally: "Then they  
19 found them in boxes?"

20 And you said: "Yes. It was in a file."

21 Let's go down a little bit. Scroll down.

22 "In which box specifically?" That was my

1 question.

2 1602, Line 2: "In what box specifically?"

3 Your answer: "They don't have a number.

4 They don't have a code. They do not have it. I

5 wouldn't be able to give you that information. I do

6 not know."

7 Do you recall that?

8 A. Yes, perfectly well.

9 Q. And you maintain this; right?

10 A. Of course.

11 Q. What we have here on the record a

12 photocopy--that is to say, the original copies, the

13 original file was not found; is that correct?

14 A. That is correct. But it wasn't really a  
15 case file. It was just the report with some exhibits.

16 Q. Okay. It wasn't a file, but it was just a  
17 report, a report with exhibits; right? And the  
18 exhibits were not found?

19 A. Correct.

20 ARBITRATOR TAWIL: Quick question. What is  
21 a report outside of a file? I don't understand that.

22 THE WITNESS: This was an internal

1 investigation only for purposes of the audit—for the  
2 Intendant, he was the one that asked for this--to give  
3 it the use that it wanted him to give to it. This was  
4 internal. So, this is not part of a file. It doesn't  
5 go to the taxpayer. No audit had begun, and of course  
6 there was no Request for Reconsideration.

7 ARBITRATOR TAWIL: Okay. But there is an  
8 internal file as a consequence of the request of the  
9 person that asked for the Report. That's an internal  
10 file?

11 THE WITNESS: Well, a file is part of a  
12 proceeding that has been established already. This  
13 was just an investigation that was printed out.

14 ARBITRATOR TAWIL: But somebody asked for  
15 the investigation. Is there an email about that?

16 THE WITNESS: No. Everything was done  
17 orally. There is nothing.

18 ARBITRATOR TAWIL: Okay.

19 THE WITNESS: We're talking about 2006.

20 ARBITRATOR TAWIL: Okay. It doesn't matter  
21 the year.

22 THE WITNESS: Well, but those orders could

1 be given like that. We didn't need anything more  
2 formal because this was an internal investigation.

3 ARBITRATOR TAWIL: And the Report is not  
4 recorded anywhere?

5 THE WITNESS: No.

6 ARBITRATOR TAWIL: Thank you.

7 THE WITNESS: Okay.

8 BY MS. SINISTERRA:

9 Q. Precisely in connection with my questions,  
10 you confirm the instructions--that the instructions  
11 that Mr. Cruz got were verbal?

12 A. Yes.

13 Q. We saw that this internal report was signed  
14 by two people: Mr. Guillén and you, Ms. Bedoya.

15 What portions of the Report were prepared by  
16 you and which portions of the Report were prepared by  
17 Mr. Guillén?

18 A. He was an auditor, and he was the one who  
19 explained to the team how the company worked, what  
20 these investments consisted of.

21 Q. Who wrote it?

22 A. I did.

1 Q. The whole thing?

2 A.. I wrote the whole thing, but with his help.

3 We met. He explained things to me. He is  
4 an accountant auditor, and I'm a lawyer auditor, so I  
5 had to transcribe the ideas.

6 Q. You both signed it; right--because you both  
7 agreed?

8 A. Yes, that's right.

9 Q. Going back to the question by the Tribunal,  
10 the words that you used in February were the  
11 following: "The internal report was not part of any  
12 administrative proceeding."

13 Those were the words that you used, and you  
14 ratify those; right?

15 A. Yes.

16 Q. And you also said at the February  
17 Hearing--and we see here it's not part of any  
18 administrative proceeding.

19 A. Yes, correct.

20 Q. You also said in February at the Hearing  
21 that in June 2006, when this Report was prepared,  
22 there was no meeting with Cerro Verde to hear your

1 position at the time, whether the Concentrator was  
2 covered or was not covered. No meetings were held at  
3 that time with Cerro Verde.

4 Do you maintain your testimony?

5 A. Yes.

6 Q. You also said in your Second Statement that,  
7 "given the conclusions of the internal report, SUNAT  
8 issued the Audit Orders for Cerro Verde for 2006-2007,  
9 and 2008." So, what motivated SUNAT to start the  
10 audits and issue these Orders, in your words, were the  
11 conclusions of the internal report.

12 Do you maintain your testimony?

13 A. Yes, that's correct.

14 Q. I think this is clear, but I wanted to make  
15 it very clear for the record.

16 In the cases of the--the Royalties Case for  
17 2006-2007, and 2008, was the Report the motivation for  
18 this?

19 A. Well, the audit takes place after  
20 programming, and, of course, the person responsible  
21 had considered the conclusion as valid to start the  
22 audit.

1 Q. Okay. That is my question. Don't worry.  
2 We're going to go step by step. You will have time to  
3 go over this with your lawyers.

4 If it makes you feel more  
5 comfortable, the words you used were that  
6 SUNAT issued the Audit Orders for Cerro Verde  
7 for 2006-2007, 2008 on the basis of the  
8 conclusions of the internal report; is that  
9 correct?

10 A. Yes, that's correct.

11 Q. You also said very clearly in the February  
12 hearing that the Cerro Verde auditor in the Royalties  
13 Case for 2006-07, and '08, was Mr.--

14 A. Just one moment.

15 MS. SINISTERRA: I understand this is not on  
16 our time.

17 (Interruption.)

18 (Comments off microphone.)

19 MS. SINISTERRA: We're very happy to be  
20 patient. Just make sure it's not on our time. Thank  
21 you.

22 THE WITNESS: Apologies. Please.

1 BY MS. SINISTERRA:

2 Q. It's not a problem. Don't worry about it.

3 A. It's just an alarm.

4 Q. It's not an urgent call or anything like  
5 that?

6 A. No, it's not.

7 Q. We can go on, then?

8 A. Yes.

9 Q. You just confirmed to me that the reason for  
10 the Audit Orders for Cerro Verde for 2006-2007, and  
11 2008 was the internal report.

12 And, Ms. Bedoya, you said this already, but  
13 for the record, the auditor in the Royalties Case  
14 2006-2007, and 2008 in Cerro Verde was Mr. Guillén; at  
15 least in one of them, Mr. Guillén?

16 A. Yes, that's correct.

17 Q. And also we saw this a number of times  
18 today, but the auditor that rejected the Request for  
19 Reconsideration in the 2006-2007, and 2008 cases was  
20 you; it was just one auditor, the only one that  
21 rejected this. Your signature is the only one that  
22 appears in the document?

1           A.    Yes, that's right.

2           Q.    So, for everyone to have this very clear as  
3 to what happened, perhaps I think we are going to  
4 share with you a demonstrative, and here we have the  
5 exhibits on which you rely, and we are going to  
6 provide a copy to everyone. And we are also going to  
7 give a copy to the Tribunal.

8                    And this is just to confirm the facts that  
9 you just confirmed to us.

10                   So, in the Audit Division you have César  
11 Guillén, who is the one that issued the Assessment for  
12 Cerro Verde in 2006-2007, and 2008, as you just told  
13 us, and Gabriela Bedoya.

14                   Ms. Gabriel Bedoya--that is yourself--is the  
15 one who rejected the requests for reconsideration in  
16 the 2006-2007 and 2008 Royalties cases. And César  
17 Guillén and Ms. Bedoya are the two authors of this  
18 June 2006 internal report. We all agree on this.

19                   So, I'm asking about the facts. Do we agree  
20 on the facts?

21           A.    No, I do not agree.

22           Q.    You don't agree on the facts?

1           A.    No.  I do not agree because it is very  
2 small, but if you look at the Resolution, it is signed  
3 by the intendant and it is also signed by the Chief of  
4 Claims. It has another signature that is not mine. I  
5 only project the Report supporting the Resolution.

6                    You are saying that, in the facts, I am the  
7 one who rejected it as Gabriela Bedoya, but that is  
8 not right.

9           Q.    You offered me the same answer in February.  
10 So, we agree.  But the person who drafted the  
11 justification saying we reject the Request for  
12 Reconsideration, I know that it was later on approved,  
13 but who signed as the deciding auditor?  That is one  
14 person, and that is you.

15           A.    The Report, yes, but not the Resolution.

16           Q.    Okay.  We agree.

17                    The Tribunal's President asked an important  
18 question.  She asked you:  Is it normal for SUNAT to  
19 draft this type of Internal report?  And based on what  
20 you told us, it is an Internal report beyond an  
21 administrative proceeding, without any record number,  
22 prior to the construction of the Concentrator, prior

1 to the time it entered into operation, before any  
2 consultation with Cerro Verde, before any type of  
3 audit.

4           So, did I understand correctly that this is  
5 the norm? You said this practice is quite regular.  
6 You said it is quite regular, very common?

7           A. Yes, it is. Correct.

8           Q. So, within SUNAT, I imagine that there are  
9 many other internal reports that SUNAT prepared  
10 without knowledge of the taxpayer before overseeing it  
11 and also in writing?

12           THE WITNESS: I am just turning off my  
13 phone.

14           (Comments off microphone.)

15           BY MS. SINISTERRA:

16           Q. So, let me repeat my question.

17           You tell me today that it is common for  
18 SUNAT and that SUNAT has other boxes with internal  
19 reports on other taxpayers stating a tax position  
20 without the investment having been made, without the  
21 taxpayer knowing, beyond an administrative proceeding,  
22 in writing, and then those auditors--also issue the

1 Assessments--reject the Request for Reconsideration.

2 Did I understand you correctly that, in your  
3 opinion, that is quite regular or even normal?

4 A. It is not only normal, but it is part of our  
5 responsibility, because it would be irresponsible to  
6 go audit a taxpayer without knowing the operations.  
7 It is normal to be able to investigate with the  
8 documentation presented by the taxpayer himself before  
9 initiating an audit.

10 We are not violating any taxpayer's right,  
11 because there is no assessment. Here the taxpayer may  
12 defend himself or herself against an assessment when  
13 the assessment has been issued when we are at the  
14 audit stage, when there is a request. That's when  
15 they have the option to answer.

16 But prior to that, we knew that the  
17 Concentrator was under construction. There are some  
18 requirements requests by SUNAT asking for  
19 documentation in 2005, 2006, to get to know what the  
20 operations were. And this is normal because, at the  
21 end of the day, this is going to give rise to an  
22 impact not only on the taxpayer, but on others. And

1 it is totally normal.

2           It is not always done in writing, that is  
3 true. And this is the way it was done this time. It  
4 is quite common, and those meetings are maintained  
5 within the Administration.

6           This is part of their duty to get to know  
7 the taxpayer, to audit.

8           ARBITRATOR TAWIL: But is this Internal  
9 Report made known to the taxpayers so that that party  
10 may question it or respond?

11           THE WITNESS: No. SUNAT will report on  
12 their position whenever the assessment is finally  
13 made. The Report indicates that the Concentrator will  
14 be within the regular tax regime, so it had many  
15 impacts.

16           ARBITRATOR TAWIL: But do you provide the  
17 Internal Report once--when you make the assessment?

18           THE WITNESS: No. Because it was a prior  
19 analysis made with internal documentation. No, it is  
20 not given to the taxpayer, as I said before, it is not  
21 part of...

22           ARBITRATOR TAWIL: Is the taxpayer informed

1 that the Report existed?

2 THE WITNESS: No, because it is the Opinion.  
3 It is SUNAT's Opinion.

4 ARBITRATOR TAWIL: But you said it was  
5 binding.

6 THE WITNESS: No, it is not binding. But it  
7 is the legal interpretation of the standard, and this  
8 is not going to change. What is binding is the  
9 interpretation SUNAT had regarding the scope in  
10 another circumstance.

11 ARBITRATOR TAWIL: But if it is not going to  
12 change, and it is not given to the taxpayer, what can  
13 the taxpayer do so as to question or challenge it?

14 THE WITNESS: Well, they have the  
15 opportunity to do so when the Assessment is presented.  
16 It cannot be before. It could have been the case that  
17 SUNAT does not go after Royalties and did not audit  
18 it. That it did no auditing because time could have  
19 elapsed, and SUNAT did not use their power. So, how  
20 could I share in 2006 a Report with the taxpayer if I  
21 do not know if in the future he will be actually  
22 audited. That is how things work. First comes the

1 assessment and then the taxpayer can defend itself...

2 ARBITRATOR TAWIL: But then you're telling me that  
3 they never get to see the Report.

4 THE WITNESS: Correct.

5 BY MS. SINISTERRA:

6 Q. We are going to explore this in further  
7 detail but before that I have three specific  
8 questions. Once again, you told us in your Statements  
9 and also in February that that Report established the  
10 tax position of the Concentrator as of June 2006.

11 And I understand you maintain your position?

12 A. Yes.

13 Q. Second, you referred to 2005-2006. You were  
14 not very specific, but I think that you are referring  
15 to the request for information by SUNAT in 2005 and  
16 2006 to Cerro Verde. We already discussed this in  
17 February. Those requests had to do with the  
18 reinvestment of profits--not about the scope of the  
19 Agreement, or if the Concentrator was covered or not;  
20 correct?

21 A. Correct.

22 Q. So, those requests did not inquire

1 any--about Cerro Verde's position or opinion as to  
2 whether the Concentrator was included under the  
3 Contract?

4 A. Yes. These were Reports just requesting  
5 information.

6 Q. The facts are very important here. The last  
7 fact I would like to verify with you before we go back  
8 to that, in February you told us--and if you need to  
9 see this, we will show it to you.

10 You told us in February that it was the norm  
11 for SUNAT's officials to meet colloquially,  
12 informally, to talk about their assumptions, to  
13 brainstorm ideas, that it was the norm for them to  
14 meet and have discussions, but you told us that  
15 usually they do not conclude with a conclusion that is  
16 shown in a document. But in the case of Cerro Verde,  
17 you said that it was a complicated case. So, you  
18 said, it's better to put it in writing since it will  
19 be useful to make decisions.

20 It's on the screen, and this is your  
21 Statement?

22 A. Yes, that is correct. And there it says it

1 was said. I was only the person who received  
2 instructions. But, yes, I do understand that that was  
3 the idea, to put it in writing and to put it as an  
4 Appendix because it was quite complex. There was a  
5 good deal of terminology that we were not familiar  
6 with. That's why we had the Investment Contract and  
7 the Concentrator Investment and other documents.

8 Q. Very well. I just want to highlight here  
9 and confirm that you uphold that you said: "We met  
10 informally." There is a brainstorm--and you are  
11 saying that that is normal, but "in this case it was  
12 asked that it be in writing because of the fact that  
13 it was a case that had many different facets, many  
14 technicalities and details." It was not simply  
15 applying the law or not. It was a complex issue, many  
16 technicalities and details.

17 So, "that's why it was said it's better to  
18 put it in writing, and it will be used for making  
19 decisions."

20 Do you maintain what you said?

21 A. Yes.

22 Q. Perfect. And just for the record, to be

1 clear, this is the Transcript of the Hearing held in  
2 February, 1568, Lines 2 to 10. In English it's 1528,  
3 Lines 4-17, more or less.

4 Ms. Bedoya, when you confirmed in the  
5 February Hearing--and I thank you for the consistency.

6 When you confirmed that this internal Report  
7 established the tax position of the Concentrator  
8 according to SUNAT, and that it also encouraged the  
9 audit by SUNAT to Cerro Verde, when you confirmed  
10 that, and when you confirmed that the Report was  
11 written by César Guillén and you--Gabriela Bedoya, and  
12 that the assessments were made by one of the auditors,  
13 César Guillén, and that that Report was signed only by  
14 you, and that this was outside of an administrative  
15 process, and without knowledge of Cerro Verde, when  
16 all of this was clear, I asked you a question.

17 I asked you, Ms. Bedoya, under Peruvian Law  
18 and under basic rules of justice for the taxpayer,  
19 isn't it clear that there is a conflict of interest?  
20 Isn't it clear that, first, there is a final position  
21 on the Concentrator, in this Internal report, and  
22 later on, both authors of that Report assess and

1 reject the Request for Reconsideration?

2           Isn't there a conflict of interest,  
3 Ms. Bedoya? Isn't it obvious that you should have  
4 abstained from participating, under Peruvian law and  
5 under Peruvian rules, but also out of basic rules of  
6 justice for taxpayers.

7           Do you recall that exchange?

8           A. Is that your question, whether I recall that  
9 exchange? The answer is yes.

10          Q. And I am going to show you the rule that I  
11 showed you back then. For the record, this is Exhibit  
12 CA-231. And for the record, this is the consolidated  
13 text of the Law on General Administrative Procedure,  
14 and we are going to look at Article 97. And I will  
15 read it to you.

16           Article 97 reads: "The Authority that has  
17 decision-making power," and you told us that, as an  
18 auditor, you do have that power, "or whose opinions on  
19 the merits of the procedure may have an impact in the  
20 Resolution, should abstain from participating in  
21 issues on which it has a mandate, if it has had any  
22 intervention, or if, as Authority, it had stated

1 previously their opinion on the issue so that it could  
2 be understood that he or she has issued an opinion on  
3 the subject matter"

4 We see the rule; right?

5 A. Yes.

6 Q. And I asked you again, I think it is  
7 obvious, Ms. Bedoya, that there was a conflict of  
8 interest here, since, once again, the two authors of  
9 the Report expressed an opinion as to whether the  
10 Concentrator had to pay Royalties or not, they set  
11 what you have mentioned a thousand times is the final  
12 position on the Concentrator, those two authors were  
13 the ones that issued the Assessment, audited it, and  
14 because of the Report, issued the Assessment.

15 And then the other author rejects or  
16 projects the Report rejecting this request for  
17 reconsideration against the Assessment, and that this  
18 is made by the two authors of the Report is a clear  
19 conflict of interest.

20 MS. DURÁN: Madam President, I need to  
21 object.

22 Sorry. I need to object.

1           Counsel for Claimant is, again, testifying,  
2 and I need--and I would like to state for the record  
3 that Claimant received the 2006 Report in document  
4 production before their Reply, and this is the first  
5 time they're making this argument here.

6           MS. SINISTERRA: Excuse me? I apologize,  
7 Ms. Bedoya. We have a procedural discussion that  
8 doesn't include you.

9           This Internal Report was presented by the  
10 Republic of Perú with their Rejoinder, and the  
11 arguments were presented in the February Hearing, and  
12 it is the first time that there is an objection. And  
13 in your direct, you asked Ms. Bedoya about the Report,  
14 so beyond any other fact, by asking you in the direct,  
15 I have the right to refer to this.

16           Madam President, I'm just saying that the  
17 objection is unfounded, among other things, because in  
18 their direct, they asked Ms. Bedoya about this  
19 Internal report. We discussed the Internal report  
20 extensively at the SMM Cerro Verde Hearing in  
21 February. The Transcript of that Hearing is in the  
22 record, so I'm puzzled at the idea or suggestion that

1 we never raised these arguments, including at the  
2 opening last week, or that for some reason we  
3 shouldn't be able to ask Ms. Bedoya questions about  
4 this Report.

5 MS. DURÁN: If I may.

6 Respondent produced this document on  
7 July 25, 2022, in this Arbitration, months before the  
8 Reply, so Claimant could have raised this argument in  
9 this Arbitration. It was not produced in the Cerro  
10 Verde Arbitration because it was not responsive to the  
11 document request from Claimant. It was responsive to  
12 Document Request 1D. We did produce it on  
13 July 25, 2022. Claimant did not raise any arguments.

14 They did not submit the document on the  
15 record with their Reply, and this is the first time  
16 they are making this--arguments in this Arbitration.  
17 They did it on the Opening, we did not want to  
18 interrupt their Opening, but we want to set the marker  
19 here that they had this document since document  
20 production, and this is the first time they're raising  
21 this argument in this Arbitration. The Cerro Verde  
22 Arbitration is a different situation.

1           PRESIDENT HANEFELD: But as it has been now  
2 already addressed in the Direct, please go ahead with  
3 your questions.

4           MS. SINISTERRA: Thank you very much, Madam  
5 President.

6           And just for the record, the first time the  
7 Respondent made arguments about this Report was in the  
8 Rejoinder, so we're entitled to make arguments in  
9 response.

10           Thank you, Madam President.

11           BY MS. SINISTERRA:

12           Q. I apologize for the unnecessary  
13 interruption, but sometimes procedural issues do come  
14 up.

15           I need to sort of sum up and come back to  
16 what we were discussing, the facts and the  
17 circumstances when this Report was prepared, and it  
18 was shared again, key issues, it says the position of  
19 the Concentrator, that Cerro Verde was not consulted,  
20 that Cerro Verde learned last year, 16 years after its  
21 existence, all of this is clear.

22           And I said, Ms. Bedoya, by reading this

1 rule, it seems clear that there is a conflict of  
2 interest. And your answer was that there was none,  
3 that, in your opinion, there was no conflict of  
4 interest, that, in your opinion, it wasn't necessary  
5 to recuse yourself from the case, but as part of your  
6 answer, it is important to hear your explanation. You  
7 said that you don't think there is a conflict of  
8 interest.

9           You said--and one of the reasons that you  
10 offered for why there was no conflict of interest, was  
11 that any other auditor would have reached the same  
12 conclusion.

13           Do you recall making that statement? And I  
14 think that you made a similar statement in connection  
15 with a question by the Tribunal. That is an important  
16 topic, and if you wish, we can show it on the screen,  
17 but I would like to, again, go back to that part of  
18 your answer.

19           You said that there was no conflict of  
20 interest, because any other auditor would have reached  
21 the same conclusion. And, as a matter of fact, you  
22 said this in response to a question by the Tribunal in

1 the Hearing in February, after an exchange, all of  
2 these facts were clear, and the Tribunal asked you a  
3 question. I will read it to you, and we can also show  
4 the video so that we do not leave any doubt.

5 First, I am going to read it to you.

6 Co-arbitrator Garibaldi told you:

7 "So, are you saying that this position was  
8 a position that had already been adopted at the SUNAT,  
9 internally, and, therefore, anyone who was the  
10 resolving auditor would have made the same decision?"

11 And you answer: "Of course, that is the  
12 case." And we can play the video for you.

13 (Video played.)

14 BY MS. SINISTERRA:

15 Q. --Members' response by now. So, if it's a  
16 problem, we can move on. Let's just do--play briefly  
17 and if not, I can also show her the Transcript or put  
18 it into the record.

19 (Video played.)

20 BY MS. SINISTERRA:

21 Q. So, again, you don't think that due process  
22 was violated, that the taxpayer was in a defenseless

1 situation, that there was a conflict of interest, but  
2 you answer clearly to the question: "Any person within  
3 SUNAT would have--any person who was the auditor,  
4 would have solved the issue the same way," and your  
5 answer was "yes, of course."

6 Do you maintain your testimony?

7 A. Yes. Anyone could have solved this in this  
8 fashion, because SUNAT had already set a position as  
9 to the interpretation of the Rule. When we're talking  
10 about something that is of an evidentiary nature, with  
11 facts or documents that may change, but when it is an  
12 interpretation, this was not going to change. It  
13 doesn't mean that all of the processes are the same.

14 ARBITRATOR TAWIL: But when you are saying  
15 that it had already set a position, is that in the  
16 Internal Report?

17 THE WITNESS: Well, position here, here  
18 we're talking about a legal interpretation. Yes, the  
19 internal report already had a legal interpretation of  
20 the scope of the benefit. When there was the audit,  
21 the documents were reviewed with the Concentrator in  
22 2006-2007 and 2008. The same conclusion was reached

1 because we are talking about the legal interpretation  
2 SUNAT had. This was not going to change over time.

3 ARBITRATOR TAWIL: But that is what I do not  
4 understand.

5 If there is an Internal report with a legal  
6 position that is not shared with the taxpayer, how can  
7 the taxpayer refute that position, that, in your  
8 opinion, was already set, and that no inspector was  
9 going to change?

10 THE WITNESS: That is an interpretation on  
11 the legal scope of a specific topic. It could have  
12 been verbal. Let us imagine that it was not in  
13 writing, but SUNAT had already analyzed the topic and  
14 said the Concentrator is beyond the scope because of  
15 the Report that they had as a background issued in  
16 2002.

17 The moment when the taxpayer can  
18 present its arguments is when it is informed  
19 that it has to pay Royalties because the  
20 Concentrator is outside of the scope. That is  
21 the moment, which occurred in 2008, when the  
22 Company could have replied, and pointed out,

1 and in the request for reconsideration  
2 something else could have happened.

3 ARBITRATOR TAWIL: Yes, but you did not  
4 provide the Report when you conducted the audit.

5 And, you said, the position--has already  
6 been defined. If there is a Legal Opinion that they  
7 are not aware of, how can they revert it?

8 THE WITNESS: Well, there is a part there  
9 that you do not understand. With the beginning of the  
10 audit in 2006 or 2007, the request is issued,  
11 explaining the position, and there it is stated  
12 at--under Article 85 of the General Law on Mining,  
13 says this, article 22 of the Regulations says that,  
14 your Agreement only says leaching, it details the  
15 position, , and that's the point when we give time to  
16 the taxpayer to refute and also indicate the arguments  
17 against that.

18 ARBITRATOR TAWIL: And that's when you  
19 attach the Report?

20 THE WITNESS: Well, that Report was just a  
21 legal analysis.

22 ARBITRATOR TAWIL: But is the legal

1 analysis attached?

2 THE WITNESS: No, it is not

3 attached.

4 ARBITRATOR TAWIL: Well, then the Party does  
5 not have all of the elements?

6 THE WITNESS: Yes, they have the elements  
7 because the elements are in the letter of the Law.  
8 For example, this Article, that Article. So, if you  
9 review the Report, the Report is a summary of the Law,  
10 the Regulations, and the Contract, it is the same, so  
11 there was no difference, and this was indicated at  
12 that moment. There was no violation of rights.

13 It is similar to having the IRS review a  
14 specific sector, to investigate and also to use public  
15 information to get to a conclusion before auditing.  
16 Do they need to communicate all of the taxpayers  
17 that--what they are doing? I don't think so. That is  
18 part of SUNAT's audit power. They do have that power.

19 BY MS. SINISTERRA:

20 Q. Ms. Bedoya, I don't think IRS drafts final  
21 Reports on taxpayers without consultation, but that is  
22 not the case.

1           In your Witness Statement, here, there it  
2 clearly states that with the Internal report of 2006,  
3 SUNAT already had a position, given the tax situation  
4 of the Concentrator. That is, this is your Second  
5 Statement, Paragraph 14. And, if necessary, we will  
6 play the video again.

7           But let me reiterate, do you maintain your  
8 Statement at Paragraph 14? Do you maintain what you  
9 said at the February Hearing, when Co-Arbitrator  
10 Garibaldi told you: "Then, you're saying that this  
11 was a position already taken within SUNAT, and that  
12 any who was the resolving auditor was going to resolve  
13 in the same fashion," and your answer was "of course.  
14 Of course. Certainly that's the way it is."

15           Do you understand that?

16           A. I do, and the thing is, there is no improper  
17 procedure there. Nothing at all has been violated.  
18 It was only logical that SUNAT had to find out what  
19 was going on with the Company, what was happening with  
20 that Concentrator Plant, and particularly to know  
21 whether it was or was not with--under the Stability  
22 Agreement.

1           You are making statements when you ask me  
2 questions, quite extensively, and you want me to  
3 answer with yes or no, and that's not possible.

4           Q.    The thing is, whether or not a right was  
5 violated is a decision that will be made by the  
6 Tribunal.

7           Let us go back to the Transcript of the  
8 Hearing.  You're going to see it up on the screen.  
9 You're still in Tab 3.  This is CE-1138, and we are  
10 going to see--in principle, we are going to be looking  
11 at Page 1570:14.

12           Sorry.  We're having some technical  
13 difficulties.

14           Yes, if we could put it up, please.  1570 is  
15 the page number, Line 14.  Here we are.  Line 14.

16           This is the question.  I'm going to read to  
17 you a question that I asked you.  I'm going to read  
18 your answer as well.  And I'd like to emphasize  
19 whether I'm understanding something you said.  My  
20 question was as follows--CE-1138, Page 1570, Line 14.

21           My question was as follows:  "Ms. Bedoya,  
22 what sense does it make for Cerro Verde to guarantee,

1 to be guaranteed and be told that it had due process,  
2 that its arguments would be heard, if it was clear  
3 that SUNAT was going to reach the same conclusion--to  
4 be more specific, that you individually in the  
5 requests for reconsideration was going to reach the  
6 exact same position you had already had in 2006? So,  
7 my question: What happened to due process for Cerro  
8 Verde, Ms. Bedoya?"

9 Well, now let's look at your answer. And,  
10 once again, you repeat that you consider that due  
11 process was not violated, but you say something that I  
12 find curious and which I would like to understand.  
13 You say--and this is at Line--further down. Let's  
14 start at Line 11.

15 So, once again, I say: "Where is Cerro  
16 Verde's due process, Ms. Bedoya?"

17 You provide an explanation, and then you  
18 continue, saying: "SUNAT has to think not only about  
19 the taxpayer, but also about what this investment is  
20 going to imply for the Arequipa Region."

21 MS. DURÁN: Madam President, she is reading  
22 one line in a 22-line answer.

1 MS. SINISTERRA: You can take her to the  
2 answer if you wish. She said these words. I'm  
3 entitled--

4 MS. DURÁN: These words are completely taken  
5 out of context.

6 MS. SINISTERRA: No. She said these words,  
7 and I'm entitled to ask what she meant by those words.  
8 If you want to take her to the other 22 lines, be my  
9 guest on redirect.

10 BY MS. SINISTERRA:

11 Q. Ms. Bedoya, I have to repeat: You say  
12 there, after I say: "What about due process for Cerro  
13 Verde?" And you say: "I don't think there's been a  
14 violation," and you explain why you think so. And  
15 then you say: "Moreover, SUNAT has to think not only  
16 about the taxpayer, but also about what this  
17 investment is going to imply for the Arequipa Region."

18 I'm struck by this, that it has to think not  
19 only about the taxpayer, but also about the  
20 implications for the Arequipa Region.

21 So, my question is quite specific. Is there  
22 any rule of--governing SUNAT that says that, to

1 determine whether an investment is or is not  
2 guaranteed, that the auditors must consider the impact  
3 of the investment for the region? Does that provision  
4 exist? Yes or no.

5 A. What I am referring to there--

6 Q. Does such a provision exist?

7 A. I'm not going to answer, because the way  
8 you're asking me--

9 Q. Is there some provision that says this is a  
10 relevant factor or is there not?

11 A. You're taking what I said there out of  
12 context.

13 Q. But I want to know if such a rule exists.

14 (Overlapping interpretation and speakers.)

15 Q. Excuse me. I'd like to know whether there  
16 is some provision in Perú or an internal rule within  
17 SUNAT that says that, in order to be able to determine  
18 whether an investment enjoys stability, that one of  
19 the factors that should be taken into account by the  
20 auditors is not only the taxpayer, but also what that  
21 investment is going to imply for the region.

22 Is there such a provision? Yes or no. It's

1 a simple question.

2 A. The audit power and the prerogatives that  
3 the Regional Intendant for Arequipa has, which  
4 includes protecting the proper determination of  
5 taxpayers' tax obligations within the power of the  
6 intendant, the intendant can order that investigations  
7 be undertaken that imply a specific point, as in this  
8 case, or points or implications for other taxpayers.

9 This question is related to the 2006 Report.  
10 When the 2006 Report was done, it was to identify  
11 implications at all levels.

12 So, what is it that's being said there?  
13 Cerro Verde is a large company, and all companies that  
14 provide services to Cerro Verde--well, if it was going  
15 to have an \$800 million investment, everything in the  
16 region would have greater movement. There would be  
17 more people providing more services. So, it was  
18 evident and it was fine, and there is nothing bad  
19 about it, that SUNAT said, "Let's investigate this  
20 scope and this provision."

21 So, I don't see what the difficulty is.  
22 That's why that has been said there.

1 Q. I understand, Ms. Bedoya, but, once again,  
2 there is no provision that says SUNAT, in order  
3 determine whether or not an investment is stabilized,  
4 take into account the fiscal impact of that  
5 investment?

6 A. No, it doesn't, but the audit powers of the  
7 auditors enable them to inquire, and it's totally  
8 valid for them--to inquire into a taxpayer and the  
9 implications for other taxpayers. That is within  
10 their power.

11 Q. It's good to know that that is your  
12 position. You confirm that there are no rules?

13 A. I didn't say that there are no rules.

14 (Overlapping interpretation and speakers.)

15 (Interruption.)

16 (Stenographer clarification.)

17 BY MS. SINISTERRA:

18 Q. Let me ask my question.

19 You already answered that there is no rule  
20 saying, "Gentlemen of SUNAT, to determine whether an  
21 investment is or is not stabilized, you not only need  
22 to think about the taxpayer, but also what that

1 investment will imply for the region." There is no  
2 provision that says that this is one of the  
3 considerations that an auditor should look at in order  
4 to determine whether an investment is or is not  
5 stabilized.

6 And you just told me, no, that provision  
7 does not exist, and that's the point; correct?  
8 Correct?

9 A. No, it is not correct, because there are no  
10 specific provisions for each sector. What exists are  
11 general provisions. So, specifically, if you're going  
12 to look for it, you're not going to find it, because  
13 there are not specific ones. That's impossible.  
14 Imagine if you are going to regulate everything  
15 specifically.

16 Q. Nor a general provision, nor a specific one?

17 A. No, I have not said that. I have said that  
18 there are general provisions on audit.

19 Q. And these say, "SUNAT, in order to determine  
20 whether something enjoys stability, think not only"--

21 A. You're repeating the same thing again, and I  
22 just said--I said that there are general provisions,

1 and not specific ones--

2 (Overlapping interpretation and speakers.)

3 PRESIDENT HANEFELD: We have to really ask  
4 questions, make a pause, and then the response,  
5 because our Court Reporter here is really otherwise  
6 unable to do his job.

7 MS. SINISTERRA: I think the record is clear  
8 on the answer, Madam President.

9 PRESIDENT HANEFELD: Is the record clear?

10 MS. SINISTERRA: Not on, perhaps, the last  
11 exchange, but on her answer to the question.

12 I'll ask it again.

13 BY MS. SINISTERRA:

14 Q. Ms. Bedoya, once again--and you can try to  
15 go off on a tangent if you'd like. Once again, I'm  
16 asking you a very specific question.

17 I asked you, given the circumstances that  
18 were in evidence at the Hearing in February, I told  
19 you, Ms. Bedoya, it was evident that Cerro Verde's due  
20 process rights were being violated. And your answer  
21 was: "I don't think so."

22 And one of the reasons that you gave to

1 justify your answer was, in addition, SUNAT has to  
2 think not only about the taxpayer, but also about what  
3 this investment is going to imply for the Arequipa  
4 Region.

5           Now, in this Arbitration, we have discussed  
6 in extenso the Mining Law, the Regulation, Resolutions  
7 of the SUNAT, of the Tax Tribunal, of the MINEM,  
8 extensively, and we have never seen a general or  
9 specific provision that says that when SUNAT engages  
10 in an audit to determine what does and does not fall  
11 under the Stability Agreement, one of the factors that  
12 it must consider is not the taxpayer, but rather the  
13 implications of the investment for the region.

14           Can you tell us specifically if there is any  
15 specific provision that says that, as auditor, I had  
16 to take this into account, please tell me what it is.  
17 Otherwise, I understand that there is no provision,  
18 whether general or specific, that states this exactly.

19           Is there or is there not?

20           A.   Only general provisions about how to carry  
21 out oversight and what should be taken into account.  
22 Nothing more.

1 Q. Fine. Now, that is a clear answer.

2 Now, one more aspect of your answer that we  
3 want to pick up on or go back to. We will see it on  
4 the screen.

5 Now, for the record, this is Page 1571 of  
6 the Transcript. It's Exhibit CE-1138, Page 1572, and  
7 we will begin reading--I'm sorry, 1571, and we begin  
8 reading at Line 18: "Yes, it is logical to think that  
9 SUNAT wanted to know how it was going to act."

10 It's talking about Cerro Verde.

11 "And for that, it was fundamental"--and this  
12 is what I'd like to highlight and understand: "It was  
13 fundamental because the taxpayer's position was  
14 already known."

15 So, here you're saying that when you  
16 prepared that Report in 2006, the taxpayer's position  
17 was already known. And then you say it was  
18 fundamental to find out whether the Concentrator was  
19 going to fall under the Stability Guarantee or not,  
20 because it was known that the taxpayer was intending  
21 to have what finally happened happen, to include the  
22 plant within the benefit of stability.

1           So, when you projected this Report, or when  
2 you did this Report, it was fundamental to know that  
3 the Cerro Verde position was that the Concentrator was  
4 covered. It's clear there. You knew that that was  
5 the position, and so you thought it was fundamental to  
6 write the Report.

7           So, my question is very specific, and you  
8 already gave us the answer, and I would ask if you  
9 could reiterate it once again.

10           Considering that it was fundamental to write  
11 that Report, that you knew that Cerro Verde understood  
12 that the Concentrator was going to be covered, neither  
13 you nor, as far as you knew, SUNAT informed Cerro  
14 Verde: "Cerro Verde, you're wrong. The Concentrator  
15 is not covered, and here there is an internal report  
16 explains why."

17           You never told this to Cerro Verde or give  
18 them the internal report; correct?

19           A.    Could you repeat the question once again?

20           Q.    I'd be delighted to do so. You say here in  
21 the Transcript--

22           A.    Could you put the specific question? I

1 understood what you read.

2 Q. Okay. So, the specific question is, as you  
3 say, for you it was fundamental to know that--Cerro  
4 Verde's position--or that Cerro Verde wanted that the  
5 Plant be included within the stability benefit,  
6 knowing that that was Cerro Verde's position, then you  
7 put together an internal Report saying the contrary.  
8 So, I'd like to confirm, once again. At that time no  
9 one told Cerro Verde: "You're mistaken. The  
10 Agreement doesn't cover the Concentrator."

11 You didn't tell Cerro Verde this, and nor  
12 did you give them the Internal report; is that right?

13 A. Yes, that is right. Because that was not  
14 the appropriate thing to do. At that time, the  
15 analysis was undertaken, and it's true, when they said  
16 "investigate," they told us orally that it was known  
17 that that was the Company's position. And that's why  
18 it was done. That is this really covered or not  
19 covered by the Guarantee, and that's why we undertook  
20 the analysis.

21 But once again the same response: One  
22 cannot give--notify the taxpayer of that document

1 because it's an internal document, and it was not  
2 giving rise to an Assessment at that time. Now, it  
3 could be that subsequently--well, there couldn't even  
4 be an audit, that's why we were told.

5 MS. DURÁN: Let her respond.

6 THE WITNESS: It's informed--the taxpayer is  
7 informed when there's going to be an Assessment, right  
8 until before that I cannot. I cannot tell the  
9 taxpayer: "I think you're doing this wrong." "I'm  
10 thinking that it's like this, and then later on I'm  
11 going to confirm it to you?" No.

12 When a--the request is put forward, that is  
13 when it is done. In that moment the taxpayer is told  
14 everything. And the Request is complete. The reason  
15 is explained, the provision is explained, and the  
16 Agreement is explained. That is the moment.

17 BY MS. SINISTERRA:

18 Q. Ms. Bedoya, in the Request did you  
19 specifically mention the Internal report? Yes or no?

20 A. No.

21 QUESTIONS FROM THE TRIBUNAL

22 ARBITRATOR CREMADES: I'd like to put a

1 question to you.

2 THE WITNESS: Of course.

3 ARBITRATOR CREMADES: The question that is  
4 being put to you time and again this afternoon, do you  
5 understand that there's some confusion as between the  
6 competence of SUNAT for tax issues and Royalties  
7 issues with the competence of the MINEM, because  
8 clearly the MINEM is the one that would set, according  
9 to one criterion, whether or not there's coverage.  
10 And then you draw out the tax consequences thereof.

11 Isn't there a certain confusion in the  
12 question being put to you?

13 THE WITNESS: Well, the thing is, from what  
14 I'm understanding, it's thought that the taxpayer's  
15 right was violated because the preliminary  
16 investigation that was undertaken was not communicated  
17 to it. But that's not right, because SUNAT within its  
18 powers can carry out an investigation and can reach a  
19 preliminary conclusion.

20 That conclusion is what gave rise to the  
21 verifications that were carried out subsequently.  
22 That is right, and that's how work is done. Nothing

1 of the taxpayer's has been violated because it's only  
2 when the Assessment is going to be imposed that the  
3 effect is communicated to the taxpayer: You know  
4 what, we've analyzed the Agreement, and we are  
5 reaching this conclusion, and at--that is the moment  
6 when, because of the operations for 2006 and 2007, you  
7 have to pay the Mining Royalty.

8           Then it's been done for other years and for  
9 other taxes, because since the Concentrator is in the  
10 common regime, it implied many things that were not  
11 stabilized. But nothing's been violated, because our  
12 procedures, well, the first is the audit. It was  
13 notified, the challenges were indicated to the  
14 taxpayer. The taxpayer then responded. And in the  
15 First Administrative Instance, that's where the  
16 request for reconsideration can be made, where the  
17 arguments were heard and everything else.

18           ARBITRATOR CREMADES: Mention is made  
19 repeatedly of a due process violation. Now, in the  
20 administrative jurisdiction, and in the SUNAT, before  
21 the Decision is made, to speak of due process as  
22 though it were a Tax Court, isn't that some confusion?

1           THE WITNESS: Not only that, but confusion  
2 is created by the fact that when the 2006  
3 investigation is undertaken, there was no procedure  
4 whatsoever. What procedure has been violated if there  
5 was none? Nothing. It was merely an investigation.

6           Evidently, since this is an issue having to  
7 do with an interpretation of a provision, well, over  
8 time, it's not going to change. And it's not going to  
9 change because SUNAT has to be consistent with what it  
10 says as well.

11           So, we had a Report from the national legal  
12 intendency that established the scope of the  
13 Guarantee. One could not move far from that Report,  
14 because it's binding on us and it's public.

15           Cerro Verde was familiar with that Report.  
16 Now, if Cerro Verde had such a big doubt as to whether  
17 the Concentrator fell under the Agreement or not.  
18 Then it could have consulted SUNAT through its  
19 association, and that consultation would have yielded  
20 the same response. It did not do so.

21           Cerro Verde thought and assumed that  
22 everything was covered when that wasn't so, and when

1 the audit was carried out, then it was said right then  
2 and then--well, there it indicated its arguments, but  
3 here no process was violated because there was no  
4 process. The process began in 2008, that there was a  
5 preliminary investigation, and that is why all these  
6 questions are now being raised. Doesn't mean that  
7 there's been a due process violation, nor that there's  
8 been any violation of the taxpayer's rights.

9           The taxpayer had the opportunity. Well, in  
10 due course, it understood why the misgiving was being  
11 raised, and that's when they could respond. But  
12 absolutely nothing was violated.

13           ARBITRATOR CREMADES: I understand that in  
14 your response, you're saying at that time there was no  
15 process yet, and, therefore, there's no violation of  
16 due process because there's no process. The process  
17 began once--the consequences of all the investigation  
18 carried out or communicated. Is that your answer?

19           THE WITNESS: Yes. But I must specify that,  
20 in such an audit Study, the reason why SUNAT considers  
21 this is so, is communicated. Here, it's not a  
22 question of us reaching a conclusion in 2006, and

1 everything else is just a procedural claim. That the  
2 audit and request for reconsideration are going to  
3 have the same conclusion. It is not like this.  
4 There is a conclusion that is reached initially, to  
5 simply review the Agreement and the legal provisions,  
6 and, subsequently, this was in the wake of the  
7 analysis, the operations that we're talking about, the  
8 operations that came from the Cerro Verde  
9 Concentrator, which is what was not stabilized.

10 ARBITRATOR CREMADES: Your answer is very  
11 clear. Thank you very much.

12 THE WITNESS: And so, nothing has been  
13 violated. Thank you.

14 PRESIDENT HANEFELD: Please, allow me a  
15 follow-up question, and that which concerns the  
16 question of how you or SUNAT acted in comparable cases  
17 where the scope of Stability Guarantees signed another  
18 mining law was an issue. And maybe we can put on  
19 screen, Exhibit RE-175.

20 This was, in my understanding, the list that  
21 MINEM provided to SUNAT, which listed all the--now  
22 Companies and Projects affected by the Royalty Law.

1 This tab that we had a couple times in front of us.

2 I'm looking for the chart.

3 MS. SINISTERRA: It will be up momentarily,  
4 Madam President. There we go.

5 PRESIDENT HANEFELD: There it is. And if we  
6 could also have the English version, and I would...

7 Are you familiar with this list of  
8 Agreements of Guarantees, now, Ms. Bedoya?

9 THE WITNESS: Yes, I've reviewed that Report  
10 at some point in time, but this list of  
11 Agreements--the truth is, I don't remember it. I know  
12 those are the Contracts that were in force at that  
13 time.

14 PRESIDENT HANEFELD: But--now, you know the  
15 Report in which this list was included; correct?

16 THE WITNESS: The truth is, I'd have to  
17 review it because this is from some time ago, and I  
18 don't remember so well, but, at any rate, what is your  
19 question?

20 PRESIDENT HANEFELD: My question is, have  
21 you been involved in establishing a Report in other  
22 cases that are listed here? Or have you served as an

1 auditor in another case that is established here?

2 THE WITNESS: No, in--none, just in the case  
3 of Sociedad Minera Cerro Verde.

4 PRESIDENT HANEFELD: Because I wondered, and  
5 Claimant's Counsel has also alerted to this paragraph.  
6 In Paragraph 40 of your Second Witness Statement, you  
7 state that, during the 22 years that you have worked  
8 for SUNAT, you have not known of any case in which a  
9 different interpretation has been adopted regarding  
10 the scope of the Stability Guarantees signed under the  
11 Mining Law.

12 And I wondered, now, whether you can refer  
13 us to any specific examples which support this  
14 testimony. But now I understand, and now for this  
15 kind of Guarantees, Stability Agreements, you were not  
16 involved? But these were the ones affected by the  
17 Royalty Law; right?

18 So, what was the basis for your testimony in  
19 Paragraph 40 of your Second Witness Statement? Just  
20 have a look at it, and then explain to me what the  
21 basis of the Statement was.

22 THE WITNESS: Yes, please.

1           PRESIDENT HANEFELD: Please take your time.

2           THE WITNESS: Thank you.

3           I have not participated in other cases.

4 Those Agreements that are listed there, I don't know  
5 if they've had some sort of tax implication or  
6 Assessment, but I have not participated because at  
7 that time I worked in the Arequipa regional office,  
8 and Cerro Verde is a mining Company there. There are  
9 not others. Well, there may be others, but with  
10 different cases.

11           This case regarding the scope of the  
12 Stability Agreement, I just examined in relation to  
13 this Company. What I do recall, and what the list of  
14 companies indicates, I cite it as an example, the case  
15 of Yanacocha, because it seemed to me very  
16 illustrative. The Company always noted that the  
17 benefit goes to the Concession, but I found in the  
18 Yanacocha Case that a Concession is part of two  
19 different Stability Agreements at the same time.

20           So, that example takes apart the Company's  
21 position, which is that the Guarantee encompasses the  
22 Concession, because actually the Concession is simply

1 a mining right and nothing more. So, that is the  
2 example, when I was shown the list, I thought that  
3 that's--the Yanacocha Projects were there as well.  
4 And that's the only thing I understand about, that I  
5 know about that. I don't have information about  
6 another company.

7 PRESIDENT HANEFELD: Thank you.

8 MS. SINISTERRA: Thank you, Madam President.  
9 Just very brief follow-up questions.

10 RE CROSS-EXAMINATION

11 BY MS. SINISTERRA:

12 Q. Just to confirm this statement in  
13 Paragraph 40, Ms. Bedoya, that says: "During the  
14 22 years that I've worked at SUNAT, I've not known of  
15 any case in which a different interpretation has been  
16 adopted," that is mainly based on Yanacocha, based on  
17 what you just told us; right?

18 A. No. That's my experience as an adjudicating  
19 auditor. I have not seen other cases.

20 Q. Yes, but the list that the President  
21 indicated, you said you don't know those cases?

22 A. No. No.

1 Q. And you did not write internal reports about  
2 those other companies; correct?

3 A. No, and they're not even under the  
4 jurisdiction of the Intendency.

5 Q. So, you didn't write such a Report?

6 A. No.

7 Q. And you've never seen, you don't know of any  
8 internal report about these other companies; correct?

9 A. No.

10 Q. And you worked directly in the Yanacocha  
11 Case?

12 A. No. No. I just mentioned it because it  
13 struck me--the question--the Concessions just struck  
14 me.

15 Q. But you don't work on that case directly?

16 A. No. No.

17 Q. And one last question.

18 Arbitrator Cremades asked you a very  
19 specific question. He said, Ms. Bedoya, MINEM sets  
20 the criteria in--regarding coverage, whether or not  
21 something enters into or is covered by a Stability  
22 Agreement. So, I would ask, MINEM--or who set that

1 position as to whether the Concentrator was or was not  
2 covered? MINEM or SUNAT or both?

3 A. Both in their respective fields, because  
4 SUNAT has to see whether the taxpayer is paying the  
5 proper tax--or the correct tax payments--and needs to  
6 verify. And they--evidently, it needs to verify  
7 whether the Leaching Investment is the only one that  
8 is covered, or whether there's some other. And in  
9 this case, it was verified that the Concentrator was  
10 outside and, therefore, its--the Assessments that were  
11 reviewing came out.

12 ARBITRATOR TAWIL: Now, I got confused.  
13 Either I misunderstood or you told us before that it  
14 was SUNAT that determined whether or not it was  
15 covered by stability.

16 THE WITNESS: For tax purposes, SUNAT, but  
17 MINEM might have its own opinion on it, and that's  
18 totally valid, but for tax purposes, in terms of how  
19 much has to be paid in taxes and Royalties, it's  
20 SUNAT.

21 ARBITRATOR TAWIL: But not how much, but,  
22 rather, if it's covered. If MINEM says it's covered

1 by the Stability Agreement, that's fine, and you say  
2 no. Is there a determination for taxes?

3 THE WITNESS: Yes.

4 ARBITRATOR TAWIL: Well, then it is SUNAT.

5 THE WITNESS: SUNAT is the one that has to  
6 interpret everything. In this case, happily, we were  
7 both looking at the same thing.

8 ARBITRATOR TAWIL: So, it doesn't matter  
9 what MINEM says in order to determine whether there is  
10 a tax liability?

11 THE WITNESS: That's right. Because the Tax  
12 Administration is the only one that can determine  
13 taxes.

14 ARBITRATOR TAWIL: Okay.

15 MS. SINISTERRA: On that answer, I have no  
16 further questions, Madam President.

17 Thank you very much, Ms. Bedoya.

18 I should add I reserve my right to recross  
19 just in case of doubts, depending on any questions  
20 from Counsel or any further questions from the  
21 Tribunal.

22 Thank you, Madam President.

1           Thank you very much, Madam Bedoya, for your  
2 testimony.

3           THE WITNESS: Thank you.

4           PRESIDENT HANEFELD: Do you have questions  
5 on redirect?

6           MS. DURÁN: Probably, if I may take like a  
7 three-minute break.

8           PRESIDENT HANEFELD: Sure.

9           MS. DURÁN: Thank you.

10          (Brief recess.)

11          MS. DURÁN: Thank you.

12                               REDIRECT EXAMINATION

13          BY MS. DURÁN:

14           Q. Ms. Bedoya, what opportunities does the  
15 taxpayer have to challenge the Assessments made by  
16 SUNAT in connection with the payment of taxes or  
17 Royalties?

18           A. The tax contentious proceeding has two  
19 parts: First the request for reconsideration, and  
20 then you have the appeal. The Request for  
21 Reconsideration is looked at in Perú by the Tax  
22 Administration also, so then you--and then you also go

1 to Request for Reconsideration. I work for the  
2 Request for Reconsideration Division. Then the  
3 Resolution is issued, and then the taxpayer can go to  
4 the Tax Tribunal via an appeal.

5 Q. What recourse does it have against the  
6 Decisions by the Tax Tribunal?

7 A. The taxpayer, if it disagrees, can file a  
8 Contentious-Administrative Lawsuit, which goes to the  
9 Judiciary in Perú. So, there are a number of stages  
10 there until you get to the Supreme Court in a  
11 cassation appeal.

12 Q. What did the Supreme Court to conclude, and  
13 the other courts in Perú conclude, in connection with  
14 the SUNAT's interpretation in connection with the  
15 Stability Agreement of Cerro Verde?

16 A. Starting at the Tax Tribunal, they agreed  
17 with SUNAT. They reached the same conclusion: That  
18 the legal interpretation that SUNAT had was the  
19 correct one.

20 Q. You were shown this document. I don't know  
21 if you recall.

22 A. Yes.

1 Q. Mr. César Guillén was the only auditor for  
2 Cerro Verde?

3 A. No. There were others. There were a number  
4 of auditors. I do not remember the name. A lot of  
5 time has gone by.

6 Q. Let's put on the screen RE-26. You talked a  
7 number of times about a 2002 Report. It's on the  
8 screen. Let us look at Paragraph 5.

9 What is the nature of this Report?

10 A. This Report, as I said, was issued by the  
11 Legal Intendency, and it is binding. It is public as  
12 well. It is published in SUNAT's webpage and it is  
13 binding. That means that, as public officials, we  
14 cannot really drive away from what this Report says.

15 Q. When you say it's public, what do you mean?

16 A. These are reports that are published in the  
17 webpage of SUNAT, and they answer inquiries by the  
18 trade unions or entities in Perú. Generally these  
19 have to do with the general scope of the Regulations.

20 Q. Has SUNAT issued other reports such as this  
21 in connection with the scope of the legal  
22 Stabilization Agreements?

1           A.    Yes.  There is a 2007 Report--166 is the  
2 number.  That Report concludes more precisely--well,  
3 because here, in order to answer an inquiry that had  
4 to do with a contribution to FONAVI, they analyzed  
5 first what the Agreement protects.  And as you can see  
6 here at Number 5, it says here--let's see.

7                   They say here: "As can be seen in the  
8 above-mentioned provisions, the benefits granted  
9 through the Tax Stability Contracts under Title Nine  
10 of the General Mining Law apply to the Mining  
11 Titleholders, and even though they temporarily  
12 stabilize the tax regime in effect as of the date of  
13 the approval of the Investment Program, said benefits  
14 must only apply to the activities involved in the  
15 investment made in a given Concession or  
16 Administrative-Economic Unit.  In such regard, if the  
17 taxpayer engages in other activities"--and then, for  
18 example, I was talking about an expansion of the  
19 Leaching Plant--"these will be subject to taxation  
20 under the regular regime, unless they also enjoy tax  
21 stability and simultaneously with the activities for  
22 which the stability exists, as long as the stability

1 remains in effect."

2           So, when it talks about investment-related  
3 activities, what investment? The investment that is  
4 contained in the Stability Agreement and limited by  
5 the technical-economic Feasibility Study.

6           And, if we look at Number 6, we see that  
7 this perspective is corroborated by Article 25. I  
8 also mentioned Article 25. It says that companies  
9 must have exhibits for any new investment or  
10 expansions that are stabilized.

11           The other Report you were asking me about  
12 was the 166, 166/2006. That's even more precise.

13           Q. Can we put it on the screen? It's RE-27.  
14 RE-27.

15           A. Here you can see in the summary at Number 1,  
16 it says here: "The tax stability guaranteed through  
17 an Agreement signed with the State under Title Nine of  
18 the Single Unified Text of the General Mining Law  
19 benefits the Titleholder of the mining activity for a  
20 period of 15 years only for the investment activities  
21 that are subject -that are foreseen in the Feasibility  
22 Study, taking into account the definitive amount

1 required for its performance in a given Concession or  
2 Administrative-Economic Unit."

3           That is why subsequent investments, if they  
4 happened, those were not contained. They were not  
5 covered. This is definitive: Only those investments  
6 in the Contract.

7           ARBITRATOR TAWIL: The previous Report was  
8 making reference to a Concession, it didn't talk about  
9 Feasibility Study.

10           THE WITNESS: Here it says "investment  
11 activities contained in the Contract"--that is to say,  
12 the activities have to be carried out in some place.  
13 So, that is why they say that they have to be  
14 developed in a Concession or in an EAU. So, the  
15 Concession is only a right to do something. It cannot  
16 be benefited by a guarantee. It's just a Concession.

17           BY MS. DURÁN:

18           Q. Thank you.

19           MS. DURÁN: I have no further questions.

20           MS. SINISTERRA: I do, Madam President. We  
21 are getting the exhibits ready. If we can get one  
22 second, I would be grateful. Thank you.

1           PRESIDENT HANEFELD: Sure.

2           (Pause.)

3           MS. DURÁN: Madam President, to avoid any  
4 interruptions, this is a document I did not talk about  
5 in my redirect.

6           MS. SINISTERRA: I think you should hear the  
7 question before you make an objection, and I have  
8 three questions. This concerns the third of my  
9 questions.

10           So, Madam President, with your permission,  
11 with regard to my first question.

12           BY MS. SINISTERRA:

13           Q. Ms. Bedoya, you were shown this slide; is  
14 that correct?

15           And I can show you the exhibit, if you want.  
16 It is RE-190. But you knew that in the 2008 Royalties  
17 Case, there was one auditor, and that auditor was  
18 César Guillén.

19           In the 2008 case, there was one auditor, and  
20 it was César Guillén. Did you know that?

21           A. I know that there are a number of them.

22           Q. Did you know that in the 2008 case, there

1 was only one auditor, and it was César Guillén. Did  
2 you know that?

3 A. No.

4 Q. For the record, this can be seen in RE-190.

5 Second question: You spoke about the 2002 SUNAT  
6 Report. You knew--and we don't have time to discuss  
7 this--did you know--this is the 2002 Report.

8 Did you know that SUNAT reports only become  
9 binding in 2007, when Article 94 of the Tax Code was  
10 amended? Did you know that?

11 A. Yes, but let me clarify something here.

12 The provision says that it's binding since  
13 then, but this does not mean that, for us SUNAT  
14 officials, we failed to consider what the Report says.

15 The article did this starting on that year,  
16 but, to us, it is still binding, because if we say  
17 something that is contrary to what a SUNAT Report  
18 says, the consequences are serious.

19 We could be talking about the application of  
20 Article 170 that talks about double criteria by SUNAT.  
21 So, for us, in 2002, that provision was indeed not  
22 binding, but for us it was.

1           Also, when Requests for Reconsideration are  
2 addressed, there was a provision that said that the  
3 provision was binding from 2007 onwards.

4           Q.    But the provision that said that it will be  
5 binding for the Tax Authorities, that was from 2007,  
6 do you agree?

7           A.    Yeah, but the Requests for Reconsideration  
8 were after.

9           Q.    Well, yes, but this is before the 2007  
10 reform that said expressly that they were binding.  
11 So, in 2002, this provision that says that they are  
12 binding was not in force at the time?

13          A.    Yes.  Yes.

14          Q.    Third question.  We are going to show a 2002  
15 SUNAT Report.

16                You spoke, Ms. Bedoya, of a 2002 Report.  
17 The Parties profoundly disagree on what the Report  
18 says or it doesn't say, but you spoke about a 2007  
19 Report.  The Parties agree, this is after 2006.  We  
20 don't have time to talk about this Report.

21                I will talk about this Report.  It is a 2012  
22 Report.  This is CE-883, Page 3, Paragraph 3.

1 MS. DURÁN: I'm sorry. I have to object  
2 again. How is this document related to my redirect?

3 MS. SINISTERRA: Madam President, they asked  
4 her--it's relevant in two ways.

5 First, this whole discussion is based on the  
6 premise that Ms. Bedoya stated in her Witness  
7 Statement that, in her 22 years at SUNAT, this has  
8 always been SUNAT's position.

9 To test that, you asked her about two  
10 Reports from SUNAT, which is a selective choosing. I  
11 am entitled to ask her about another SUNAT report  
12 about the exact same issue.

13 So, with your permission, Madam President, I  
14 think my question about a SUNAT Report that relates to  
15 the same point we are discussing is entirely  
16 appropriate.

17 And, again, for the record, I am asking  
18 about CE-883, Paragraph 3.

19 PRESIDENT HANEFELD: Please go ahead.

20 MS. SINISTERRA: Thank you, Madam President.

21 BY MS. SINISTERRA:

22 Q. This is a 2012 Report, a SUNAT Report of

1 2012, so the provision that talks about this being  
2 binding was already in force. The provision was from  
3 2007 and this is a 2012 Report; correct?

4 A. Correct.

5 Q. And SUNAT says: "As a consequence, and as  
6 applicable to the first question asked, since the  
7 mining activity owner is an Income Taxpayer"--well,  
8 I'm going to read everything to avoid objections.

9 "As a consequence, and as applicable to the  
10 first question asked, since the mining activity  
11 Titleholder is an income taxpayer, without limitation  
12 to the obligation of determining results for each  
13 Concession or Unit, abiding by the terms of the tax  
14 system that had been stabilized, it shall be taxed on  
15 its total net income of the fiscal year, without any  
16 impediment to its offsetting tax losses from one or  
17 more of its Concessions or Economic-Administrative  
18 Units."

19 You did not mention this 2012 Report in your  
20 Statements; right?

21 A. It's in my Second Report in answer to  
22 arguments posed by you.

1 Q. I'm going to read another paragraph out of  
2 this Resolution. Can we look at two paragraphs above  
3 where it says--"as it flows from the above," "as a  
4 result of the above" in English?

5 Thank you.

6 "As a result of the above," it says, "mining  
7 activity Titleholders that have signed Agreements on  
8 Guarantees and Measures to promote investment under  
9 the General Mining Law will enjoy a stabilized tax  
10 system applicable solely to the concession or  
11 Economic-Administrative Unit for which said Agreement  
12 has been signed."

13 Again, it says here: "Applicable to the  
14 Concession or Economic-Administrative Unit for which  
15 said Agreement has been signed."

16 Clearly, SUNAT is not saying that this is  
17 limited to the amount of the Investment Program, or  
18 not even the Investment Program.

19 Here, they're talking about Concession or  
20 Economic-Administrative Unit.

21 Do you see that, Ms. Bedoya?

22 A. Yes, I do. This inquiry comes from: What

1 is it that a company must do when they have a number  
2 of Stability Agreements and they have concurrent  
3 regimes that are different amongst themselves? So,  
4 how can they determine the tax for income and how can  
5 they apply losses between the different projects? The  
6 question made in this Report, in my opinion, is poorly  
7 formulated because it talks here about Concessions and  
8 EAUs. That is why the answer goes along those terms.

9           In this case, no discussion is made of the  
10 scope of the Stability Agreements such as in the other  
11 two Reports that we have mentioned. Here, a response  
12 is given to an inquiry about: What do we do with the  
13 losses? And the answer being provided is this one.

14           My understanding is that this is a response  
15 to a question that was ill-made because, for practical  
16 effect, it could have been used, but the Guarantee  
17 covers the Investment Contract included in the  
18 investment project included in the Agreement.

19           Q. Luckily, this is in the record, and the  
20 Tribunal may make its own determinations.

21           MS. SINISTERRA: I have no further  
22 questions. Thank you.



1 scope of the Guarantee.

2 This Report, the 2012 one, is not relevant,  
3 in my opinion.

4 PRESIDENT HANEFELD: And can you refer us to  
5 any specific language in this Report which shows that  
6 it did not discuss the scope of guarantees?

7 Is there any specific language to this  
8 effect, or is it just your personal opinion that it  
9 does not deal with it?

10 THE WITNESS: Is the Report here? If we  
11 could show it so that we can show the President,  
12 please.

13 PRESIDENT HANEFELD: Yeah, it's Exhibit  
14 CE-883. And I saw one provision, but I'm not--it's  
15 your testimony, which could confirm what you just  
16 said, but...

17 THE WITNESS: This is the one from 2002.  
18 You're making reference to Report 84.

19 Yes. Can we just show it on the screen?  
20 One moment.

21 MS. SINISTERRA: I'm not sure how we lost  
22 control of the monitors.

1 (Overlapping speakers.)

2 PRESIDENT HANEFELD: I don't know. I want  
3 to ask about the 2012 Report.

4 MS. SINISTERRA: We have it already, if we  
5 can please put up CE-883.

6 MS. DURÁN: That's exactly what we were  
7 doing. If we can see the whole document, please.

8 And show her the first page.

9 THE WITNESS: Okay. Let's see.

10 First, you must understand the subject  
11 matter of this inquiry. It's right here. It  
12 says: "With respect to mine activity Titleholders  
13 that have signed Agreements on Guarantees and Measures  
14 for the Promotion of Investments with the Peruvian  
15 State for one or more of the Concessions or  
16 Economic-Administrative Units in connection with  
17 promotion activities."

18 So, the premise here is that this is a  
19 company that has a number of stabilized projects.  
20 They say, it is true, the word "Concessions or EAUs,"  
21 but in this Report the scope is not examined.

22 The premise is that this is a company with a

1 number of projects, and the question is asked. To  
2 determine the Income Tax, can it compensate tax losses  
3 for one or more of its concessions or  
4 Economic-Administrative Units to be offset against the  
5 profits of the others? When determining payments on  
6 account of Income Taxes, should their determination be  
7 made according to the preceding item? And then they  
8 talk about General Sales Tax and the application of  
9 the balance in favor. If I have a GST that has a  
10 certain rate and another one that has a different  
11 rate, how is it that we can use the balance if the  
12 General Sales Tax is just the one? That is why the  
13 inquiry was made.

14           So, the Report examines these matters. So,  
15 they look at what they're going to do with the losses  
16 and what's going to happen with the balance, but it  
17 does not examine the scope of the stability. It stems  
18 from these premises; that is why the paragraphs read  
19 by Counsel show the answer, the answer to the question  
20 as it was formulated. The question had to do with  
21 Concessions, and the answer will be done accordingly.

22           But this is no implication. Here, they are

1 not saying that the Stability Guarantees, the  
2 Concession. Nowhere in this Report it says that.

3 PRESIDENT HANEFELD: Thank you.

4 THE WITNESS: You're welcome.

5 PRESIDENT HANEFELD: Additional questions?

6 MS. SINISTERRA: Madam President, as much as  
7 I would love to take Ms. Bedoya through various  
8 paragraphs and footnotes in the document, I think in  
9 the interest of time we will not ask further questions  
10 about this particular document.

11 PRESIDENT HANEFELD: And any other  
12 questions?

13 MS. DURÁN: None from us.

14 MS. SINISTERRA: Not from us, Madam  
15 President. Thank you.

16 PRESIDENT HANEFELD: Okay. We also do not  
17 have any further questions.

18 So, thank you very much. You are released  
19 as a Witness.

20 (Witness steps down.)

21 PRESIDENT HANEFELD: Then we should now have  
22 our 15-minute break, and then we continue with

1 Mr. Cruz.

2 (Brief recess.)

3 PRESIDENT HANEFELD: Then we will continue  
4 with the examination of Mr. Cruz.

5 COLÓN HARALDO CRUZ NEGRÓN,  
6 RESPONDENT'S WITNESS, CALLED

7 PRESIDENT HANEFELD: Welcome, Mr. Cruz.

8 I'll introduce the Members of the Tribunal.  
9 I'm sitting here with Professor Tawil and  
10 Dr. Cremades. My name is Inka Hanefeld, and you have  
11 been called as a Witness in this Arbitration by the  
12 Respondent, so I have to ask you to read out the  
13 Declaration under Rule 35(2). It should be in front  
14 of you.

15 THE WITNESS: Good afternoon.

16 I solemnly declare, upon my honor and  
17 conscience, that I shall speak the truth, the whole  
18 truth, and nothing but the truth.

19 PRESIDENT HANEFELD: Thank you very much.  
20 Do you have your Witness Statements? It's RWS-7 and  
21 14 in front of you.

22 THE WITNESS: Correct.

1           PRESIDENT HANEFELD: Can you confirm that  
2 these are your Witness Statements and that they  
3 correspond to your recollection, or do you have  
4 anything to amend or correct?

5           THE WITNESS: Yes. These are my Statements.

6           PRESIDENT HANEFELD: Perfect. Then we hand  
7 over to Respondent's Counsel for a short direct.

8           MS. DURÁN: Thank you, Madam President.

9                                 DIRECT EXAMINATION

10           BY MS. DURÁN:

11           Q. Mr. Cruz, you were just asked about your  
12 Witness Statements, and they are based on your  
13 knowledge and personal experience; is that correct?

14           A. Yes, it is.

15           Q. What is your training, academic training?

16           A. I have a bachelor's degree in  
17 administrative sciences from the National  
18 University of Piura, and I have a master's  
19 degree in the international finance, and also  
20 human resources.

21           Q. What is your current position?

22           A. I am a specialist at Position 5 with the

1 management of strategies in the National Offices for  
2 Risk Management of SUNAT.

3 Q. What have been your positions within SUNAT?

4 A. I have been professional analyst, section  
5 chief, division chief, regional intendent, intendent  
6 of Lima, intendent for the major national taxpayers,  
7 and also I have been intendent for human resources.

8 Q. You explain in your Statements that the tax  
9 system in Perú is based on self-determination. Could  
10 you please explain this concept?

11 A. As many countries, in Perú, the  
12 determination of the tax is the responsibility of the  
13 taxpayer. The taxpayer determines the taxable base,  
14 determines the tax to be paid, deducts credits, makes  
15 the tax return and presents and pays in the terms and  
16 conditions established by the SUNAT.

17 And after that, SUNAT has the power to audit  
18 if these returns have been presented based on the  
19 existing regulation, and as part of an audit process  
20 it can make some assessments in case there is a  
21 violation.

22 Q. In both of your Statements, you mentioned

1 sending Cerro Verde a communication on February 17,  
2 2005.

3 A. That is correct.

4 Q. Why did you send this letter and what was  
5 the purpose of this communication?

6 A. This communication was given in the  
7 framework of the approval of the Royalty Law,--at a  
8 regulatory level, at the central level, SUNAT  
9 developed a plan to help taxpayers, and they sent a  
10 communication to the Regional Intendencies for them to  
11 communicate their taxpayers within their jurisdiction.  
12 And these communications were basically a reminder  
13 that the Royalty Law had been approved and that an  
14 online form had been approved for payment to be made  
15 in case the taxpayer had to pay Royalties.

16 Those communications were sent nationally to  
17 all of the taxpayers that had a mining concession.

18 Q. Would you please explain to the Tribunal the  
19 meeting that you held with representatives of Cerro  
20 Verde in March 2005?

21 A. In March 2005, the taxpayer Cerro Verde,  
22 through their legal representative, requested a

1 meeting, which was granted, and they basically  
2 presented the scope of their stability agreement as a  
3 result of their royalty-related issue.

4 Q. Did you confirm Cerro Verde that they were  
5 not going to pay Royalties for the Concentrator?

6 A. No. At no time did I do that.

7 Q. Could you have confirmed that to Cerro  
8 Verde?

9 A. But at that type of meetings, in general,  
10 the taxpayer presents whatever they consider to be of  
11 help or the interpretation that they give to a  
12 regulatory issue. What SUNAT does at these kinds of  
13 meetings is basically to take notes as a way of  
14 background, so, in case of a verification process,  
15 more emphasis would be given to those issues that are  
16 indicated.

17 In addition to that, at these kind of  
18 meetings, usually no answer is provided because  
19 clearly, any situation will require a deeper analysis,  
20 and in connection with that, my Opinion as official,  
21 or the Opinion of any of the officials participating  
22 at the meeting, is not binding. Whatever is stated

1 there is not what may be determined at a later audit.  
2 SUNAT's binding position used to be given through  
3 Reports that were published based on the taxpayers'  
4 questions that were presented through a representative  
5 trade union or body.

6 Q. Thank you.

7 MS. DURÁN: I have no further questions.

8 PRESIDENT HANEFELD: And, Mr. Cruz, do you  
9 remember that you ever received a formal or official  
10 request by Cerro Verde to determine the application to  
11 pay Royalties or not, or would there have been a  
12 chance to ask for such an official Opinion from SUNAT  
13 at this early stage, in March 2005?

14 THE WITNESS: No. Cerro Verde did not  
15 present an application.

16 PRESIDENT HANEFELD: But would there have  
17 been the chance to submit such a formal Application  
18 for a binding Opinion on this issue?

19 THE WITNESS: If they had any doubts, they  
20 could have gone through a union so that SUNAT, through  
21 its National Legal Intendency, may issue an Opinion  
22 and determine the scope of the regulation about which

1 they had had any doubts.

2           PRESIDENT HANEFELD: And is this commonly  
3 done when such meetings happen and there is  
4 significant doubt that then such a legal binding  
5 Opinion or Resolution is sought by SUNAT?

6           Is this common practice, that companies ask  
7 for such a binding legal resolution if they have  
8 doubts as to certain significant payment obligations?

9           THE WITNESS: Taxpayers, whenever they have  
10 doubts about the scope of a rule, they resort--or at  
11 least back then, but now they can do it directly--they  
12 resorted - through a trade union, and they requested  
13 an explanation or more specification about the scope  
14 of the rule. And, given that, SUNAT would issue  
15 Reports that are binding and public. During the  
16 meetings held in any Intendency with any taxpayer, it  
17 was part of the attention procedure of the taxpayer  
18 and the taxpayers' indicated positions that they may  
19 have had, and also the SUNAT basically reflected  
20 whatever they said.

21           But it is not the norm to share a position  
22 at that point in time, because SUNAT's position - of

1 the operative entities is expressed through the  
2 assessment reports--that is to say, after an audit or  
3 verification process. In that moment, the opinion was  
4 issued, that was the chance that the taxpayer had to  
5 express any comments or concerns in case they don't  
6 agree with any assessment SUNAT issued.

7           PRESIDENT HANEFELD: Then I turn to  
8 Claimant to ask further questions. We may  
9 come to questions later.

10           MS. SINISTERRA: Thank you, Madam President.

11                           CROSS-EXAMINATION

12           BY MS. SINISTERRA:

13           Q. Good afternoon, Mr. Cruz. As you may  
14 recall, my name is Laura Sinisterra, and I represent  
15 Claimant, and my duty is to ask you some questions  
16 about your Statements.

17                           We will try to speak slowly because of  
18 interpretation purposes, but we hope to be specific,  
19 given how late it is today.

20                           And the President asked you an important  
21 question, so we are going to explore this topic  
22 regarding the consultation that Cerro Verde could have

1 or could have not presented.

2 THE WITNESS: Ok.

3 Q. Let's be specific. Here we are talking about  
4 Article 93 of the Tax Code; correct?

5 A. Yes.

6 Q. Article 93 refers to consultations that  
7 could be held by means of representative entities.  
8 You call them unions; correct?

9 A. Yes, representative entities or unions.

10 Q. In March 2005, you had a meeting with  
11 Ms. Torreblanca, and you just said that you didn't say  
12 one thing or the other. You didn't tell her "you are  
13 going to be covered" or not. You did not express an  
14 opinion or position in that regard, but you told her  
15 or suggested, "Ms. Julia Torreblanca, I recommend you  
16 to hold a consultation under Article 93 of the Tax  
17 Code."

18 Did you make that suggestion at that meeting  
19 in March 2005 to Ms. Torreblanca?

20 A. Not that I recall.

21 Q. And according to Article 93, which we just  
22 saw, as you confirm, it would have to be done through

1 associations.

2 That means Cerro Verde as a company, Cerro  
3 Verde directly could not submit a consultation to  
4 SUNAT; correct?

5 A. Yes, that is correct. It's through a  
6 representative entity.

7 Q. And since it's through a representative  
8 entity, it's a general inquiry?

9 A. Correct.

10 Q. Cerro Verde could not make a specific  
11 inquiry into its Contract and its Concentrator;  
12 correct?

13 A. Yes. That's right. That is what the  
14 provision says.

15 PRESIDENT HANEFELD: And the trade union, is  
16 it, for example, the Mining Association, or what would  
17 be the proper body to make such a request?

18 THE WITNESS: The Mining Society or some  
19 Chamber of Commerce, associations that bring together  
20 a group of taxpayers.

21 BY MS. SINISTERRA:

22 Q. Now that you mention those two examples, you

1 say that the inquiry could have been made by the  
2 National Mining society or the Chamber of Commerce of  
3 Lima?

4 A. For example.

5 Q. For example, but let's take those two  
6 examples.

7 Do you know how many mining companies are  
8 part of the National Mining Society, approximately?

9 A. No, I have no idea.

10 Q. About 50?

11 A. May well be.

12 Q. And do you know how many members are in the  
13 Chamber of Commerce of Lima, more or less?

14 A. No.

15 Q. 13,500 members of the Chamber of Commerce of  
16 Lima.

17 These entities represent a variety of  
18 interests; correct?

19 A. Yes. And there was also Chamber of Commerce  
20 of Arequipa in Arequipa.

21 Q. So, it doesn't depend on a taxpayer. These  
22 activities don't--it doesn't depend on Cerro Verde for

1 the National Mining Society or the Chamber of commerce  
2 to make an inquiry or not. In other words, as I said,  
3 it doesn't depend on Cerro Verde that such an inquiry  
4 be made.

5 A. Well, the members can make a petition  
6 through the association, and as you can see, over time  
7 there are many Reports that the SUNAT has published  
8 that are responses to associations who--which were  
9 basically questions from one of the members. That was  
10 the mechanism.

11 Q. At the end of the day, it's the  
12 association--for example, the Chamber of Commerce of  
13 Lima, which has 13,000 members. At the end of the  
14 day, it's the association who decides whether or not  
15 the inquiry is made. It's not a particular taxpayer;  
16 correct?

17 A. Yes, that's what I've said. It is through  
18 an association.

19 But, just to specify, we understand that the  
20 members, precisely as they are part of some  
21 organization, well, they are there to be helped as  
22 well, right?

1 Q. Yes, but the associations don't have any  
2 obligation to engage in inquiries that a taxpayer  
3 might request. At the end of the day, it's the  
4 association's decision, and they have several members,  
5 each member with their--its own interest.

6 So, at the end of the day, it's the  
7 association's decision and not the taxpayers'.

8 Do we agree?

9 A. What you had at that time was that option,  
10 and, I repeat, over time this was the practice, and  
11 SUNAT has published many reports precisely because  
12 taxpayers, through the association, would make the  
13 inquiry.

14 Q. But do we agree it doesn't depend  
15 exclusively on the taxpayer? Right?

16 A. Well, very well. Agreed.

17 Q. We're talking about 2005, Mr. Cruz. We're  
18 talking about the time when you met with Julia  
19 Torreblanca.

20 A. That's right.

21 Q. You are very familiar with the provisions  
22 applied by SUNAT, so no doubt you'll know the answer

1 to this question.

2 In 2005, had Cerro Verde carried out or made  
3 the inquiry through an association, and if it agreed  
4 to make a general inquiry and if SUNAT had answered  
5 that, in 2005, it would not have been binding;  
6 correct?

7 A. If it had answered in 2005? Well, once it's  
8 published it becomes binding.

9 Q. In 2005--according -- and I can be specific--  
10 --according to Article 94 of the Tax Code, in 2005  
11 those inquiries were not binding. Did you know that?

12 A. Yes, I recall that.

13 Q. So, an inquiry in 2005 would not have been  
14 binding; correct?

15 A. Once it was published, it was considered  
16 binding by all the operators.

17 Q. Mr. Cruz, the provision is very clear, and I  
18 ask you to be just as clear.

19 A. I'm telling you what we did in practice.  
20 When the National Legal Intendency set a position,  
21 that position was considered by us as binding.

22 Q. According to Article 94 of the Tax Code, an

1 inquiry in 2005, according to the law, was not  
2 binding; correct?

3 A. That is what the law says.

4 Q. Correct. Thank you.

5 Nor there was a provision that stipulated  
6 the legal term for the SUNAT to answer those  
7 inquiries; correct?

8 I'm talking about 2005. There was no  
9 provision setting a maximum time frame for responding;  
10 correct?

11 A. From I recall, there was no such term  
12 established.

13 Q. Thank you very much, Mr. Cruz. It was  
14 important to clarify those points.

15 So, now, I'm going to put some questions to  
16 you on your preparation for this Hearing, and I'm  
17 going to ask you a couple of questions about the  
18 February Hearing, when we already had a conversation,  
19 and I'd be happy to show you your answers on the  
20 screen. You also have a copy of the Transcript in the  
21 binder.

22 You gave several answers to several

1 questions, and then we're going to go through them  
2 together to begin.

3 A. Okay. Fine.

4 Q. So, with respect to your preparation for  
5 this Hearing, you mentioned that you had read the  
6 Statements by Ms. Bedoya. You referred to her as  
7 "Gabby," but we all know that you're talking about  
8 Ms. Bedoya.

9 Do you recall that?

10 A. Are we talking about the previous Hearing?

11 Q. Yes. Correct.

12 You confirmed for us at the previous Hearing  
13 that you had read the Statements by Ms. Bedoya.

14 My question is: You have read her  
15 Statements; correct?

16 A. For the first Hearing, yes.

17 Q. For the first Hearing, yes.

18 And you told us at that Hearing that--you  
19 had received, you said, a file: "They gave me a link  
20 to download. From the link, I downloaded the  
21 Statements that were there. There were those by  
22 Gabby, my own, those of Ms. Torreblanca, those of the

1 Expert that you had sent." And this was for the  
2 Second Statement.

3 Do you recall that?

4 A. Yes, that's what I said.

5 Q. Now, that link that you received - I just  
6 want to be specific--that link that you received, you  
7 said, was for the Second Statement?

8 A. No. This was after my Statements.

9 Q. But you filed two. So, I just want to  
10 know--

11 A. It was after the second one.

12 Q. After the second one, but before the  
13 Hearing?

14 A. Before the Hearing, yes.

15 Q. Before the Hearing, you received a link that  
16 had the Statements of all of the Fact Witnesses.

17 A. Not all of them. Just some.

18 Q. Some, including Ms. Bedoya?

19 A. Yes, Ms. Bedoya's Statements were there.

20 Q. Do you recall a meeting with the Sidley  
21 lawyers at the offices of the Navarro law firm in  
22 July 2022 in Lima?

1 A. Yes.

2 Q. Were you there?

3 A. Well, I've been to some meeting, but I don't  
4 recall the exact date. But I did go to a meeting in  
5 San Isidro where I was convened by the lawyers for the  
6 defense.

7 Q. I'm specific about the date because several  
8 Witnesses have mentioned it, but I understand that you  
9 don't remember the exact date?

10 A. I don't remember the exact date, but I did  
11 attend a meeting there.

12 Q. Now, I understand that at that meeting,  
13 other Witnesses were present, and some joined by  
14 videoconference or Zoom.

15 A. When I was talking with the lawyers, it was  
16 just me. Before that, Mr. Camacho had been talking  
17 with them. He left and I went in.

18 Q. And did anyone connect by videoconference?

19 A. Not that I recall.

20 Q. In the sessions you had to prepare for the  
21 February Hearing, you met three or four times,  
22 Ms. Bedoya told us, with her and with the lawyers here

1 in Washington.

2 Do you remember those meetings?

3 A. Yes, I do.

4 Q. And you told us that at that meeting you  
5 reviewed the Statements once again, with Ms. Bedoya,  
6 with the Sidley lawyers, and with you.

7 Do you remember those meetings?

8 A. Yes, I do.

9 Q. For this Hearing, did you also meet with  
10 Ms. Bedoya?

11 A. No.

12 Q. You met three or four times before the  
13 February Hearing, but you did not meet for this one?  
14 What changed?

15 Why did you no longer want to--well, you met  
16 three or four times before the February Hearing. At  
17 the February Hearing, we learned about this, and I  
18 asked you--and you honestly answered to my questions  
19 that, yes, this became a matter of knowledge for all,  
20 and now for this Hearing you have not been meeting.

21 What changed? Why the change?

22 A. Well, I attended the meetings at the law

1 firm. When I went, there were the lawyers of the firm,  
2 and Gabriela was in another room, preparing.

3 Q. Ok, so you don't know why you met with  
4 Gabriela to prepare one Hearing and not for the other.

5 A. It wasn't to prepare the Hearing. At the  
6 meeting, as I mentioned at the last meeting, each  
7 person reviewed their own Statement. That was it.  
8 And the lawyers wanted to make sure that we are clear  
9 about everything we had said in the event that the  
10 Tribunal might seek some clarification of the  
11 different elements to be able to clear up any doubts  
12 that anyone might have. That was the gist of each  
13 meeting.

14 Q. Yes, but that was done at a meeting where  
15 Ms. Bedoya, you, and the lawyers were all physically  
16 present; correct?

17 A. Yes, at one meeting at least.

18 Q. Did you review your Transcript from  
19 last--from the February Hearing?

20 A. Yes.

21 Q. What other parts of the Transcript did you  
22 review?

1           A.    No other.  Just my own.

2           Q.    Your own.  And did you see the video or  
3 audio of any other section?

4           A.    No.  None.

5           Q.    I'm pleased to know that you reviewed your  
6 Transcript, Mr. Cruz.  It might make life easier for  
7 both of us, because you must remember what you told me  
8 at that Hearing, and, as I said, we're going to review  
9 a couple of answers that you gave me, and I'm going to  
10 ask whether you confirm or do not confirm your  
11 testimony on that occasion.

12                    So, as you'll recall, no doubt, one of the  
13 issues that we discussed at that Hearing was:  What  
14 are the criteria used by SUNAT to determine whether an  
15 investment is or is not stabilized under an agreement?

16                    Do you remember that discussion?

17           A.    Yes, I do, but if we could see it, the text  
18 of the Transcript, that would be better.

19           Q.    Yes, we are going to take it step by step  
20 and we'll see that.  I wanted to know if you remember  
21 the discussion in general—It was an extensive  
22 discussion, but we're going to look at certain of your

1 answers.

2           So, the first: At the Hearing, I asked you,  
3 and you confirmed, that each Stability Agreement  
4 stabilizes an Investment Project. Your word was:  
5 "Each Contract stabilizes an Investment Project."

6           I suppose you still agree with that  
7 statement; correct?

8           A. Yes.

9           Q. And I told you one thing we discussed was  
10 that the mining companies, the mining industry, is the  
11 second-most capital-intensive industry. Ms. Chappuis  
12 said that after aviation, mining is the second-most  
13 capital-intensive industry. In other words, mining  
14 companies are constantly making investments.

15           So, I said, well, let's understand, when the  
16 mining companies assessed by SUNAT make investments  
17 constantly, how does SUNAT know when an investment is  
18 or is not covered? And the question that I asked you  
19 was: "How does SUNAT know whether an investment was  
20 stabilized or not?" And your answer was: "One must  
21 analyze several aspects."

22           Do you maintain that position? One must

1 analyze various aspects in order to know whether or  
2 not a given investment is or is not stabilized;  
3 correct?

4 A. What I recall is that you were asking me  
5 about an additional investment, not about a Stability  
6 Agreement. The Stability Agreement, according to what  
7 is established, is the Feasibility Study that  
8 determines the scope of stability.

9 The context of that question was related to  
10 some hypotheticals that you put forward, as far as I  
11 recall.

12 Q. Yes, exactly. We are talking about new  
13 investments and whether new investments are or are not  
14 stabilized and the analysis undertaken by SUNAT, and  
15 you said one must analyze several aspects.

16 It's up on the screen. And I ask if you  
17 agree one must analyze several aspects.

18 Let's look at which aspects we looked at at  
19 the Hearing. But the premise you gave me--and I'm  
20 simply confirming this--is that one must analyze  
21 several aspects; correct?

22 A. It's just what I was saying, that we started

1 from a hypothetical that you put forward at the  
2 previous Hearing.

3 Q. That's right, in a hypothetical--I did put a  
4 hypothetical to you, and I said: "In this case, this  
5 new investment, would it be covered or would it not be  
6 covered?"

7 And you told me: "Well, one must always  
8 analyze several aspects in order to figure it out."

9 That's what we're analyzing; agreed?

10 A. Yes. And that was the response to your  
11 question at the previous hearing.

12 Q. And, as regards that discussion, you said  
13 specifically--and, for the record, this is at CE-1138,  
14 Page 1666, after Line 22--we will show it up on the  
15 screen in just a second.

16 You said: "In other words, there are  
17 several factors on which one can make an investment  
18 without it implying that it be outside the scope of  
19 the Contract."

20 We can see it here in English and in  
21 Spanish.

22 At Line 6, you say: "That is, there are

1 several factors about which one can make an investment  
2 without it implying that it's outside the Contract."

3 Do you see that?

4 A. Yes, I do.

5 Q. "And so, that means there are investments  
6 that," I asked, "that might not be outside the scope  
7 of the Contract?"

8 And you said: "Correct. One must look at  
9 it on a case-by-case basis"?

10 A. Correct.

11 Q. So, I am confirming your response that one  
12 must look at it on a case-by-case basis, but there may  
13 be new investments that don't escape the scope of the  
14 contract. Those were your words?

15 A. Yes. In the context at the meeting, it was,  
16 for example, if there were a change in machinery--say  
17 the machinery was lost because of an act of God.  
18 Well, one would change the machinery. Evidently, it  
19 was like a new investment, but in fact it was  
20 replacing the machinery. In that context, I gave the  
21 responses.

22 Q. Yes, but the words you used were

1 "investment" and that there are new investments that  
2 might not be outside the scope of the Agreement.

3 I'm showing you your words, and I'm simply  
4 asking whether you remember and confirm your opinion,  
5 and I understand your answer is, yes. Indeed, your  
6 answer was: "Yes. It depends on a case-by-case  
7 basis."

8 Yes or no. So, yes, it's yes or no: There  
9 are new investments that continue to be covered and  
10 there are others that are not covered. That's the  
11 position that you explained to us; correct?

12 A. Yes, but there we're talking about the  
13 investment with those already there because Cerro  
14 Verde--at the end of the day, the Concentrator  
15 investment was another distinct and bigger issue.

16 Q. Yes. We're not talking about the Cerro  
17 Verde Concentrator. We're talking in general terms.

18 A. Hypothetical with respect to the same plant?

19 Q. Yes, in a hypothetical, but based, of  
20 course, on your understanding of the rules in Perú,  
21 the General Mining Law, the Regulation in terms of--to  
22 figure out what is stabilized and what's not.

1           So, as you told us, there are several  
2 factors that need to be analyzed. There may be  
3 investments that are covered. There may be other  
4 investments not covered. It depends, case by case,  
5 and I asked who performs that analysis. Who  
6 determines whether--this investment yes and the other  
7 investment no? And you told me the SUNAT auditors in  
8 the audit phase; correct?

9           A. Where there is verification of compliance  
10 with the provisions.

11           Q. And that's the SUNAT auditor?

12           A. Well, it depends on the scope of the  
13 Stability Agreement, and they have to look at what is  
14 and what is not stabilized.

15           Q. That's the SUNAT auditor; correct?

16           A. The SUNAT auditors do that work.

17           Q. And to try to nail down what your position  
18 is or was, one of the questions I put to you is: To  
19 determine whether a new investment is or is not  
20 covered, is the amount a relevant criterion?

21           And you answered: "Yes, the amount is  
22 relevant for determining whether an investment is or

1 is not covered."

2 Do you maintain that position, that the  
3 amount is one of the relevant criteria?

4 A. Yes. That's the same position. The  
5 amount--well, if I have an investment for \$250 million  
6 and there's an investment's expansion with  
7 \$800 million, then it's clear that it's outside the  
8 scope of the Agreement.

9 Q. Yes, that's what you told me. If it's  
10 850 million, you said that would fall outside. If  
11 it's less than 850 million, it's case-by-case or it  
12 depends on the amount.

13 In other words, the amount is a criterion?

14 A. It is one of the criterion that is analyzed.

15 Q. So, let's say that the amount is only  
16 1 million. I understand for you, 850 million, the  
17 answer is no, but if the amount is just 1 million, it  
18 could be covered--that new investment could be  
19 covered; correct?

20 A. As I had said, it's true, if there is a  
21 change of machinery, the example I gave you, and it  
22 cost a million, then it's likely that it's stabilized.

1 Q. Likely that it's stabilized. Okay.

2 And let's look at a different hypothetical,  
3 a mining company--I'm the one who's asking the  
4 questions, not your lawyers, and there's nothing up on  
5 the screen yet. I'm going to ask you a hypothetical,  
6 and the answer is not on the screen.

7 I'm just asking you this today, we've seen  
8 you say that it's a case-by-case analysis, that there  
9 are several factors to be considered, the amount is  
10 one of the relevant factors.

11 So, let me cite an example. Let's talk  
12 about Cerro Verde. It presented a Feasibility Study  
13 for the Leaching Project; correct?

14 A. Yes.

15 Q. And you say that the Leaching Project which  
16 was in the Feasibility Study is what was covered by  
17 the stability; correct?

18 A. I didn't understand the question.

19 Q. Let's talk specifically about the case of  
20 Cerro Verde.

21 Do we agree that Cerro Verde presented a  
22 Feasibility Study in 1996?

1           A.    Yes.

2           Q.    And Perú's lawyers and you have said that  
3 this Feasibility Study was for a Leaching Project, and  
4 that the Leaching Project is what is covered or  
5 encompassed by the Stability Agreement; correct?

6           A.    The scope of the Agreement is set forth in  
7 it. You asked me if I said that. I did not say that.  
8 I believe the attorneys as part of the defense have  
9 put that forward, but you said that I said that.

10          Q.    Well, let me ask you the question once  
11 again, if you will.

12                   Speaking of a hypothetical, you told me, to  
13 know whether a new investment is or is not stabilized,  
14 one must consider several factors; one must look at it  
15 on a case-by-case basis?

16          A.    That's right.

17          Q.    And the amount is one relevant factor, and  
18 it's the SUNAT auditor who at the end of the day  
19 decides whether or not the investment is covered or  
20 not.

21                   We're on the same page; right?

22          A.    Yes, that's right. That's what I said.

1 Q. And now my question is: Let's now bring  
2 this down to the case of Cerro Verde. Let's talk  
3 specifically about Cerro Verde. You were the Intendant  
4 of SUNAT Arequipa at relevant points in time, so let's  
5 talk about Cerro Verde.

6 Cerro Verde was one of the largest taxpayers  
7 in Arequipa; correct?

8 A. It was the major--a major taxpayer in that  
9 Intendency.

10 Q. Yes, in Arequipa.

11 So, my question: Understanding your answer  
12 in a hypothetical case, let's apply it to the case of  
13 Cerro Verde.

14 Cerro Verde presented a Feasibility Study in  
15 1996 for what was called in that Feasibility Study  
16 "Leaching Project." It explains that it includes an  
17 Investment Program that is approved. The Investment  
18 Program is carried out and the Stability Agreement  
19 signed in 1998, as it's been described by the lawyers  
20 for Perú.

21 So far we're on the same page?

22 A. Yes.

1 Q. Now, if Cerro Verde were to build an  
2 additional leaching pad related to, tied to the  
3 leaching, and its value is, say, \$2 million, would  
4 that be stabilized or not, in your understanding?

5 A. It is likely that it is and it's likely that  
6 it's not. It depends on what it's used for and all of  
7 that.

8 Q. Well, I'm giving you a specific example:  
9 Leaching pad tied to the Leaching Project.

10 You say it depends, but I'm telling you,  
11 according to your understanding--well, let's suppose  
12 it's a \$2 million investment. Would it be covered or  
13 not?

14 A. If it were outside the scope of the  
15 Feasibility Study, then it should not be covered.

16 Q. But you just told me that there are new  
17 investments that could be covered and that you have to  
18 look at it on a case-by-case basis, that it depends on  
19 several factors, and the amount is one factor?

20 A. And the use, what the money is for.

21 Q. Yes. Okay. You said amount is one of the  
22 relevant factors; correct?

1           A.    Yes.

2           Q.    So, once again, I'm asking you:  If a  
3 \$2 million investment is made related to or associated  
4 with the Leaching Project--or let's say it's 1 million  
5 that is tied to the Leaching Project.

6                    Might it be or might it not be covered?

7           MS. DURÁN:  Sorry, if I may object.

8                    He just said that that determination is made  
9 by the auditors.  He was not an auditor in SUNAT.  And  
10 this is outside the scope of his Witness Statement.

11                   He's a supervisor only.  He wasn't involved  
12 in any of those facts.

13           MS. SINISTERRA:  Madam President, he was the  
14 head of SUNAT Arequipa at relevant times, including  
15 when he ordered Ms. Bedoya to prepare the internal  
16 report in June 2006.

17                   How is asking him his understanding about  
18 the Stability Agreement not relevant or outside the  
19 scope of his Witness Statement?  I'm not sure--I'm  
20 quite puzzled, once again, by your objection, Counsel.

21           MS. DURÁN:  I'm just saying, he specified  
22 that that determination is made specifically by the

1 auditors. He may be the head of the whole SUNAT of  
2 Arequipa, but, of course, he did not make those  
3 determinations by himself, and that was outside the  
4 scope of his functions. He did not participate in the  
5 audits.

6 MS. SINISTERRA: Is your position that the  
7 understanding of the Head of Arequipa, SUNAT, about  
8 the scope of Stability Agreements is not relevant?

9 Is that what you're saying, Counsel?

10 MS. DURÁN: It's outside the scope of his  
11 role as a head of SUNAT and also outside the scope of  
12 his Witness Statement, which is against Section 19.7.3  
13 of Procedural Order Number 1, which was the duplicated  
14 in Procedural Order 4.

15 PRESIDENT HANEFELD: Understood. But on the  
16 other hand, if you understand it correctly, it was you  
17 who asked Ms. Bedoya to establish this 2006 Report; is  
18 that correct?

19 THE WITNESS: Yes. In 2006 I charged a  
20 group of persons with performing an analysis of the  
21 scope of the Cerro Verde Agreement, this in relation  
22 to Royalties to be paid by the new Concentrator Plant.

1           PRESIDENT HANEFELD: So, I think it is now  
2 really fair to establish the factual basis of the  
3 witness knowledge on everything related to this issue  
4 in March 2005 and mid-2006.

5           So, please go ahead.

6           MS. SINISTERRA: Thank you, Madam President.

7           BY MS. SINISTERRA:

8           Q. Sorry for the interruption, Mr. Cruz.

9           So, let me ask you the question once again.  
10 It is very simple.

11           You told us and in your Statements you say  
12 that you clearly understand SUNAT's position regarding  
13 the scope of the Stability Agreement, and you told us  
14 that it was the Leaching Project included in the  
15 Feasibility Study, and I want to understand what that  
16 means. If there's an investment of just \$1 million,  
17 according to SUNAT, according to your understanding,  
18 could that or would it not be covered by the  
19 Agreement?

20           A. It might not be covered by the Agreement.

21           Q. But would it or would it not be?

22           A. What would the usage be?

1 Q. For a leaching pad.

2 A. What does that imply?

3 Q. That the leaching process would be more  
4 efficient, among other things.

5 A. Is it just to change the machinery? What  
6 aspects?

7 Q. Well, let's say, yes, but--

8 What I see is that it depends on a case-by-case  
9 basis.

10 It is not a clear-cut yes or no but, rather, it  
11 needs to be analyzed, and, perhaps, because of that  
12 you said one needs to analyze it on a case-by-case  
13 basis. It's not absolute. You cannot tell me:  
14 Definitely yes or Definitely no.

15 The auditor or the respective person has to step  
16 in and examine it?

17 A. That's right.

18 Q. To be able to say yes or no.

19 A. Yes, but there is always the basis of the  
20 agreement--the basis of a Feasibility Study. That's  
21 the basis for the auditor's evaluation.

22 Q. Yes, SUNAT has to bear in mind the Stability

1 Agreement, the General Mining Laws, the Regulation, no  
2 doubt.

3 But once, once again, Mr. Cruz, your answer is  
4 not clear-cut. It's not a definitive yes or a  
5 definitive no. You have to look at it on a  
6 case-by-case basis; correct?

7 A. Yes.

8 Q. Yes. Thank you. I wanted to have your  
9 position clear.

10 Next question: Would you be surprised if I  
11 told you, no, Mr. Cruz, the position is wrong. The  
12 right position of SUNAT is that no new investment can  
13 ever be covered ever?

14 Would you be surprised if I told you that  
15 according to what we just discussed?

16 A. There was a SUNAT position in that regard in  
17 connection with what the Stability Contract covered.

18 Q. Here, we are talking about your  
19 understanding. You were the Regional Intendent of  
20 Arequipa, and you asked for a report in June 2006. We  
21 are interested in knowing your understanding. You met  
22 with Julia Torreblanca in 2005. We want to know your

1 understanding at the time.

2 A. When? What time? '05-'06?

3 Q. Yes, '05, '06.

4 A. When I asked for a report to be prepared in  
5 connection with the scope of the Contract, I was  
6 indicating that I needed more knowledge than I had in  
7 order to have clear the position of the Intendency and  
8 the time the Intendency had to act. If things had  
9 been very clear in my mind, I wouldn't have had to set  
10 up this Working Group.

11 ARBITRATOR TAWIL: So, the situation was not  
12 clear in 2006?

13 THE WITNESS: Well, when the Royalties Law  
14 was enacted in 2004, there were some situations in  
15 which the role of SUNAT wasn't clearly established,  
16 whether SUNAT was going to be able to assess or not  
17 assess.

18 In 2005, as far as I can recall, the issue  
19 was that SUNAT was only going to receive the payment.  
20 SUNAT was going to be able to conduct audits, and  
21 then, by law, SUNAT is empowered to audit taxes. So,  
22 was a royalty a tax or not? That was a discussion at

1 the time. That is why in 2007, only in 2007, SUNAT is  
2 given the authority to audit contributions.

3 That is what the issue was at the time, from  
4 a timeline viewpoint.

5 BY MS. SINISTERRA:

6 Q. Mr. Cruz, just to clarify the question posed  
7 by Mr. Tawil, you mentioned 2007, but we are  
8 interested in 2005 and 2006. In '05 and '06, your  
9 testimony is that the position of SUNAT was not  
10 absolutely clear as to which new investments could or  
11 could not be covered under a Stability Agreement.

12 It wasn't crystal clear at that time; right?

13 A. SUNAT's position was established in 2002  
14 with a report prepared by a taxpayer related to mining  
15 through a representative association, and an answer  
16 had been provided and the issue of FONAVI came up, and  
17 I think things were clarified what was stabilized, the  
18 investment amount.

19 Q. You said something different, Mr. Cruz. And  
20 this reminds me--

21 A. Excuse me, ma'am. You're talking about my  
22 understanding back then.

1 Q. I'm talking about '05 and '06.

2 A. Yes. Okay. '05-'06, at that time. Just to  
3 provide context here, I've been a Regional Intendent  
4 in Arequipa since 2004. I worked in other offices,  
5 where taxpayers had no Stability Agreement where I was  
6 working before. So, this was a new issue for me.

7 So, all of this is part of the learning  
8 process at the time. That is why what we're talking  
9 about--we're talking about my understanding. We're  
10 talking about my experience at the time.

11 Q. I want to go back to the transcript where  
12 you say here on the Transcript when you were asked why  
13 did you ask for the preparation of that internal  
14 report in mid-2006, you said: Obviously, if I had had  
15 things so clear in my mind, I wouldn't have done that.  
16 I wouldn't have set up that Working Group to look at  
17 Cerro Verde.

18 Mr. Cruz, we ask you to be honest, be  
19 precise in your answer. In 2005-2006, my  
20 understanding is that it wasn't absolutely clear,  
21 which was the understanding--your understanding, at  
22 least--in connection with the Stability Agreement or

1 the scope of new investments; correct?

2 A. For me?

3 Q. For you?

4 A. At the time, probably not.

5 Q. Okay. Probably not. It wasn't clear?

6 A. Not totally clear.

7 Q. Okay. Not totally clear, sir.

8 Mr. Cruz, thank you for your honesty. It  
9 wasn't totally clear at the time.

10 If I tell you that the position of SUNAT in  
11 2005 or 2006 of Arequipa, the position of SUNAT in  
12 Arequipa was that the Stability Agreements only cover  
13 the amount in the Investment Program. In the case of  
14 Cerro Verde was 237 million. According to SUNAT,  
15 Arequipa in 2005 and '06, Stability Agreements only  
16 covered 237 million and not \$1 more, not a truck more  
17 or a dollar more.

18 The understanding there--I understand your  
19 answer would be, no, it wasn't clear. You, as an  
20 intendent of Arequipa, you were looking at that and  
21 you were saying that, no, it wasn't clear?

22 A. Yes, that's what I was saying. It was clear

1 for SUNAT, and it was clear for--

2 Q. But you were the Regional Intendent of  
3 Arequipa. You said that it wasn't clear for you. It  
4 wasn't clear for you, you said.

5 As a Regional Intendent of Arequipa, you  
6 were the highest authority in Arequipa--you said in  
7 '05 and '06 things weren't clear; correct?

8 A. Well, I explained the context, and I was  
9 looking at the issues.

10 Q. Correct.

11 A. Yes, but what you were saying is that the  
12 position of SUNAT was clear, and the taxpayer knew  
13 this as well.

14 Q. Sir, we're going to talk about the taxpayer  
15 next. It is very important here to understand what  
16 the position of SUNAT Arequipa was. There are a  
17 number of contradictions, and when we had a similar  
18 discussion in February, the President of that Tribunal  
19 asked you: "Mr. Cruz, your answers are fluffy. It's  
20 not this. It's not this either. So we are trying to  
21 understand."

22 Okay. You said this, and it's on the record

1 that you were the highest authority of SUNAT Arequipa,  
2 and these things were not clear in your mind in '05  
3 and '06?

4 MS. DURÁN: Claimant's Counsel is, again,  
5 testifying, and she's not asking any questions of the  
6 Witness.

7 PRESIDENT HANEFELD: Can you rephrase your  
8 question and ask the question?

9 MS. SINISTERRA: Absolutely, Madam  
10 President.

11 BY MS. SINISTERRA:

12 Q. Mr. Cruz, if the position was not completely  
13 clear for you at the time, well, why is it that you  
14 said in your Witness Statement--and we can show it to  
15 you on the screen--you just said your position was not  
16 absolutely clear. But in your Witness Statement you  
17 say that the position of Perú and your position has  
18 always been--you used the word "always," it has always  
19 been that Stability Agreements only cover the initial  
20 Investment Project included in the Feasibility Study.  
21 Always.

22 MS. DURÁN: What exactly are you talking

1 about? She said Witness Statement, so...

2 BY MS. SINISTERRA:

3 Q. It is in his Witness Statement, but we are  
4 just going to refer to the Transcript, given it's up  
5 on the screen.

6 MS. DURÁN: No, you just read his Witness  
7 Statement, so you can point him to what paragraph  
8 you're reading.

9 BY MS. SINISTERRA:

10 Q. I'm going to restate my question, Mr. Cruz.  
11 We have a document here on the screen.

12 At the Hearing, the February Hearing, you  
13 told us the position of Perú has always been that the  
14 Stability Agreements only cover the initial Investment  
15 Project included in the Feasibility Study.

16 You used the word "always." A moment ago  
17 you just said that, you, as the highest authority of  
18 SUNAT Arequipa in '05 and '06--you did not have these  
19 things clear in your mind.

20 What's it's going to be, Mr. Cruz, at the  
21 end?

22 (Overlapping interpretation and speakers.)

1           A.    Could you please go back?

2           MS. DURÁN: If I may point out. You are  
3 reading, you are reading from your question.

4           BY MS. SINISTERRA:

5           MS. SINISTERRA: And his response was  
6 "correcto, sí."

7           BY MS. SINISTERRA:

8           Q.    Mr. Cruz, sir, apparently there's a  
9 confusion here because we have heard every day a  
10 different version as to what a Stability Agreement  
11 covers and what it doesn't cover. We are trying to  
12 understand. A few moments ago you said honestly that  
13 in '05 and '60 you did not have a clear position and  
14 that is why you set up a Working Group and you asked  
15 that a report be prepared on Cerro Verde. But in  
16 February, two months ago, you said that the position  
17 had always been clear.

18                   Which one is it? What you said in February  
19 or what you are saying now, Mr. Cruz? What is the  
20 position that you maintain?

21           A.    I'm just trying to understand the full  
22 context of the question, but from what I recall, you

1 were making reference to what Mrs. Bedoya was saying.  
2 And you said that I had said that the position of Perú  
3 had been that "always," but from what I recall, I was  
4 saying that it hasn't been like that for the whole  
5 time, but it has been like that ever since I gained  
6 knowledge of that. That was the context of the  
7 question I was answering.

8 Q. So, the position of SUNAT has not always  
9 been that?

10 A. Well, what I have told you, from the time  
11 the Report was published, then that is the time in  
12 which the position was established by SUNAT, the  
13 position of SUNAT. You were asking there about the  
14 position of SUNAT.

15 Q. So when you said "always" here, "always" is  
16 wrong here. In your experience as the highest  
17 authority of SUNAT Arequipa, it is erroneous to say  
18 that the position had always been clear in connection  
19 with the scope of the Stability Agreement; correct?

20 A. As I said, ever since SUNAT ruled on the  
21 matter in 2002, SUNAT had a position on the matter.  
22 If you're asking my understanding of the thing at the

1 time as an intendent, that's how I understood things.  
2 And then the auditors cleared up the situation in the  
3 Working Group.

4 Q. Again, Mr. Cruz, you said a moment ago that  
5 your position was not clear. In February you said  
6 that it had always been clear.

7 I want to know which one of these two is the  
8 correct one.

9 A. What I am telling you is that in 2002, the  
10 position of SUNAT was clear. In my understanding--you  
11 have asked me about my understanding at the time. My  
12 understanding at the time was not crystal clear to me,  
13 and that is why I ordered an evaluation by the  
14 specialists from the Intendency.

15 Q. Let us try and understand this testimony.  
16 You were telling me now that from 2002, things were  
17 clear; is that correct?

18 A. Again, since the Report was published,  
19 SUNAT's position was that one.

20 Q. You're talking about the 2002 Report?

21 A. Yes. Since that time--

22 Q. What is that time, sir?

1           A.   Well, formally there is an official position  
2 of SUNAT.

3           Q.   What time?

4           A.   After the 2002 Report.

5           Q.   Why did you say a few moments ago then that  
6 in 2006, you set up a Working Group to look at the  
7 Cerro Verde Case because it wasn't clear?

8           A.   You were asking me about my understanding,  
9 my understanding at the time. I am answering about my  
10 understanding at the time.

11          Q.   You were the highest authority of SUNAT  
12 Arequipa.

13          A.   I was a Regional Intendent, but I am not the  
14 specialist in Income Tax or other taxes. I managed  
15 all of the office in connection with performance. I  
16 had teams that were specialists in connection with  
17 Assessments. I don't make the determinations. I'm  
18 not the one who audits a taxpayer. I have never done  
19 it so far.

20          Q.   So, if for the highest authority of SUNAT  
21 Arequipa the issue was not clear, how could it be  
22 clear for the taxpayers?

1           A.    Because SUNAT had already published this.

2           Q.    But for the highest authority for SUNAT  
3 Arequipa, you, it wasn't clear for you.

4                   How could this be clear for a taxpayer,  
5 Mr. Cruz?

6           A.    Let us go back to this issue of  
7 understanding. The word highest authority, Madam  
8 President, well, that's a hierarchy in a regional  
9 office. SUNAT is a national agency. It has a  
10 superintendent, and it has National Intendency  
11 offices, and then you have under those the Regional  
12 Intendent's Office. I managed an Intendent's office,  
13 and we managed objectives. We had centralized--and  
14 decentralized audit plans, and we managed things in  
15 order to see things done. But I am not a specialist  
16 in Income Tax. I do not conduct determinations.

17                   There are teams that are dedicated to that,  
18 there are audit teams with specialized auditors, and  
19 there are teams made up in accordance with the  
20 different sectors. That is how an Intendency works.  
21 As, I repeat, I arrived at Arequipa in 2004. I came  
22 from the Regional Intendency Tacna. I had no

1 taxpayers with Stability Contracts.

2           This issue was new to me. So, what we did  
3 is, well, we set up teams. What the taxpayer is  
4 guaranteed is that the auditor conducting the audit is  
5 specialized, and it's a suitable person in whatever it  
6 is that is done. It is not that I conducted the  
7 audits or that I assessed the taxes.

8           Q. So I cannot say "highest authority of the  
9 Arequipa office." I can call you Regional Intendency  
10 of Arequipa?

11           A. Yes.

12           Q. Okay. Regional Intendent of Arequipa. You  
13 said it wasn't clear but there was a 2002 Report that  
14 established the position of SUNAT.

15           When you met with Mr. Torreblanca in  
16 March 2005, why didn't you just tell her: "Julia,  
17 refer to the 2002 Report. The position that you're  
18 saying that the Concentrator is going to be covered,  
19 that's not clear to me. Why don't you go look at 2002  
20 Report?"

21           Why didn't you just ask her to look at the  
22 2002 Report if SUNAT's position were so clear?

1           A.    I do not recall that a mention was made of  
2 the Concentrator at the meeting.

3           Q.    In that meeting--We can go back to the  
4 documents. In that meeting--and you had made this  
5 clear before.

6           A.    Royalties was discussed, not Concentrator.

7           Q.    Well, yes, if Cerro Verde was going to pay  
8 Royalties or not. Correct?

9           A.    Well, but let's look at the context, 2005--

10          Q.    But let me ask you an easier question.

11          A.    Excuse me, ma'am. I think timelines are  
12 important.

13                    In 2005 when the meeting was held, Cerro  
14 Verde sent a letter saying that they were not going to  
15 pay the Royalties because they were covered under the  
16 Stability Agreement. That is the answer by Cerro  
17 Verde to that initial communication that was mentioned  
18 at the beginning of the Hearing.

19                    At the time, Cerro Verde was sent a payment  
20 schedule for 2005. And it was related to Royalties  
21 for 2004 and 2005, and then Cerro Verde said: "We're  
22 not going to pay."

1           Cerro Verde has not paid so far for  
2 those years. It hasn't paid Royalties. The Royalties  
3 were assessed for Cerro Verde when the Concentrator  
4 Plant started production, and then in 2005, there was  
5 no Concentrator Plant. So, we are talking about a  
6 point in time, and the lawyer infers that I should  
7 have told Torreblanca that she should have looked at--

8           Q. Well, my question is different.

9           Did you mention to Ms. Torreblanca at the  
10 meeting the 2002 Report?

11          A. No.

12          Q. We're going to talk about that meeting  
13 further. Perhaps, we can put on the screen the  
14 document behind Tab 3. This is the Transcript of the  
15 February Hearing, CE-1138. 1711 is the page, Line 21,  
16 or thereabouts.

17                   At that Hearing something similar happened.  
18 It was a bit disconcerting to try to understand the  
19 position, and the President of that Tribunal asked you  
20 a question that I wanted to look. President Blanch  
21 asked you: "Were you given then some guidelines in  
22 writing to SUNAT, or were there internal guidelines

1 that SUNAT had to help determine if the nature of the  
2 Contract was distorted or not? If there is a new  
3 investment, is it included? Is it not included? Does  
4 it distort the Contract? Are there guidelines,  
5 written guidelines to SUNAT?"

6 Your answer is that: "No, there were no  
7 guidelines."

8 Do you maintain that testimony that there  
9 were no guidelines to help an auditor with this  
10 confusion or with this lack of certainty that you've  
11 described? Was there any guidelines, any written  
12 guideline for the auditors to know how to analyze this  
13 issue?

14 A. Well, the question doesn't really say  
15 whether these guidelines were given to the auditors.  
16 It talks about guidelines to SUNAT. If SUNAT was  
17 given guidelines, and I said, no, SUNAT was given no  
18 guidelines.

19 Q. Again, CE-1138, 1711, 21. And you are  
20 saying, no, SUNAT had no guidelines written, no  
21 written guidelines to have an auditor to determine in  
22 a specific case if an investment was or was not

1 covered.

2 A. The answer to my question is in a different  
3 context. If the Ministry of Energy and Mines  
4 establishes the guidelines for SUNAT, well, that is  
5 the context of that question. That's how I understood  
6 it, and that's why I answered it in that way.

7 Q. Sir, you were the Regional Intendent of  
8 Arequipa at that time. Did you ever see guidelines,  
9 written guidelines to help an auditor to understand  
10 this situation specifying whether a new investment was  
11 or was not covered? Did you ever see guidelines such  
12 as this that were written? Yes or no.

13 A. All of the auditors have at hand the  
14 internal regulations and the regulations related to  
15 the cases that they are auditing. So, if there was a  
16 report by Legal, they would have access to it. They  
17 would have had access to it, internal inquiries as  
18 well. That is the way in which the SUNAT acted.

19 Q. Apart from the Regulations that there were  
20 no specific guidelines?

21 A. Well, yes, the Legal Reports that are taken  
22 into account. When an auditor examines everything,

1 even, the Decisions from the Tax Tribunal, that is  
2 background information to look at the criteria there  
3 and to know whether positions are maintained or not.

4 Q. Mr. Cruz, I don't know if you are hearing  
5 the translation. I have to let the translation end.  
6 This is not an invitation for you to continue your  
7 statement.

8 I like specific questions. Ms. Blanch asked  
9 you in February because we were having a similar  
10 discussion and it was difficult to understand things,  
11 and she asked where there written guidelines to SUNAT?  
12 And you're saying, we have a law. There are reports,  
13 inquiries, the Decision of the Fiscal Tribunal, but  
14 there are no specific guidelines that would help an  
15 auditor to determine if a new investment is or is not  
16 covered; right?

17 A. Express guidelines on the case that you are  
18 putting forth? No.

19 Q. Thank you, Mr. Cruz.

20 We're going to talk about this meeting with  
21 Ms. Torreblanca again. It's an important meeting. In  
22 February 2005--and Counsel for Respondent asked you

1 about this--SUNAT Arequipa sent a communication to all  
2 of the mining companies, including Cerro Verde, in  
3 connection with the Mining Royalties.

4           You're saying this was a general  
5 communication with general instructions, but you  
6 signed this and you sent this to the mining companies;  
7 correct?

8           A.    Yes.

9           Q.    And Cerro Verde answered this specific  
10 communication, and we can show it to you, but in that  
11 communication, Cerro Verde said: "I am not obligated  
12 to pay Royalties because I have a Stability  
13 Agreement"; correct?

14          A.    Can we look at it?

15          Q.    Yes, of course.

16                It's CE-486.

17                It's a communication from 4 March 2005.

18                MS. DURÁN: Which tab?

19                BY MS. SINISTERRA:

20          Q.    It is Tab 5, Mr. Cruz.

21                Do you recall this letter?

22                We also talked about it in February.

1           A.    Yes.  Mention is made here that if they have  
2 to pay Royalties, they have to submit a return on the  
3 basis of the letter that was sent.

4           Q.    It's not that visible but I'm going to read  
5 the last paragraph, if you want.

6           A.    I was reading the first paragraph, ma'am.

7           Q.    I'm going to read you the last paragraph.  
8 It says:  "In connection with all of the above, we  
9 respectfully inform you that Cerro Verde is not  
10 subject to the obligation to file any return or make  
11 payments related to the Mining Royalty approved by  
12 law."

13                   Okay.  So you sent a communication to all  
14 mining companies on the basis of the Mining Royalty,  
15 and Cerro Verde says:  "I am not obligated to make  
16 payments or make any returns in connection with the  
17 Mining Royalty."

18                   In your Statement and at the Hearing, you  
19 confirmed that you received this letter; correct?

20           A.    Correct.

21           Q.    And so I was clear, for you, in March 2005  
22 that at least in the judgment of Cerro Verde, Cerro

1 Verde had to pay no Royalties.

2 A. That is what they said, and SUNAT didn't  
3 assess Royalties for 2005.

4 Q. But the position of Cerro Verde, you knew,  
5 and you knew it in March 2005?

6 A. In 2005 they said that they were not going  
7 to pay Royalties, and SUNAT didn't assess Royalties  
8 for that period.

9 Q. To be precise, they said they were not  
10 subject to the obligation.

11 A. During that time. Perhaps, there is an  
12 obligation one year, and there is no obligation in  
13 another year.

14 Q. SUNAT never replied in writing to this  
15 letter of Cerro Verde?

16 A. No, there was no reason to reply. They said  
17 they were not going to pay and they didn't pay.

18 Q. So, no response was provided by SUNAT. So,  
19 a few days after this letter was sent by Cerro Verde  
20 saying Cerro Verde is not subject to the obligation to  
21 pay Royalties, you and Ms. Julia Torreblanca met; is  
22 that correct?

1           A.    Yes.  There was a meeting with the  
2 representatives of Cerro Verde.

3           Q.    As you well say in your Statement at that  
4 meeting, Ms. Torreblanca said, again to you, what this  
5 letter says, that Cerro Verde is not subject to the  
6 payment of Royalties; correct?

7           A.    That is what I recall, yes.  That was  
8 basically the tenor of the conversation.

9                   PRESIDENT HANEFELD:  Mr. Cruz, did she  
10 expressly say to you "and this applies specifically  
11 also for the Concentrator when the construction is  
12 ready in two years," or did she just broadly state  
13 that Cerro Verde would not pay Royalties?

14                           How specific was it related to the  
15 Concentrator, the conversation in your recollection?

16                           THE WITNESS:  There was nothing related to  
17 the Concentrator.  Mention was made of Royalties that  
18 had been approved at that point in time generally.

19                           ARBITRATOR TAWIL:  And you knew that the  
20 Concentrator was being built?

21                           THE WITNESS:  At the time, yes, I did know  
22 about that.  Yes, I did.

1           PRESIDENT HANEFELD: And how did you prepare  
2 for another meeting? So, you joined in the region in  
3 2004, and then you had received this letter of 1st of  
4 March 2005. So, you were aware that Royalties for one  
5 of your biggest taxpayers is an issue, so how did you  
6 prepare for the meeting?

7           What did you review, or did you not prepare?  
8 I just wanted to understand what is behind the letter?  
9 What was the meeting about?

10           THE WITNESS: If we're trying to understand  
11 this letter, this letter was a general communication.  
12 It was only for informational purposes. The letter  
13 was not saying: "You have to pay Royalties." It  
14 reminds the taxpayer that, if payment is made, this is  
15 the schedule.

16           Now, for the meeting, what we usually do is  
17 we listen to the position of the taxpayer, but no  
18 decision is going to be made at the meeting. Then  
19 what we do is we talk to the heads of division that  
20 work with me, and then you listen to the position of  
21 the taxpayers, but no determination is made on the  
22 inquiry. You just go there; you listen to the

1 position of a taxpayer in connection with a given  
2 subject. It is not that we will answer the inquiry  
3 directly there.

4 My opinion was not binding. Hypothetically  
5 speaking, if I had said "no" or "yes," and the auditor  
6 later on goes in and examines things, the auditor can  
7 determine something different from what I have said.  
8 So that is why when SUNAT formally rules on things, it  
9 does so after the audit of the determination.

10 So, you ask for general background, and then  
11 you work with your support team at the Office of the  
12 Intendants. That's how things happened.

13 PRESIDENT HANEFELD: But, more specifically,  
14 and at this very meeting and not yet about how you  
15 responded, but what the questions were that were posed  
16 and discussed.

17 Again, not were the payment of Royalties for  
18 the Concentrator, when ultimately ready to produce in  
19 two years, was this an issue or was a royalty as a  
20 general topic an issue, or was royalty for the  
21 Leaching Facility an issue?

22 What was the topic of this meeting as

1 Ms. Torreblanca explained it to you in the meeting?

2 THE WITNESS: The meeting took place because  
3 the Royalty Law had been published in 2004 and also  
4 because of the communication that they received, they  
5 understood that they were not going to pay. So, it  
6 was about whether or not they were going to pay  
7 royalties. They said they were covered, but, in  
8 particular, nothing was said about the new  
9 construction, the Concentrator.

10 It was a topic about a position they had  
11 that they were shielded from the Royalties. That was  
12 basically the tenor of the discussion, or, rather,  
13 what the company told us. Once again, we take note,  
14 and whenever there is a verification process, this is  
15 analyzed in further detail. And in this case, this  
16 was taking us background information.

17 ARBITRATOR TAWIL: However, I don't think I  
18 understand the situation very well. Were you by  
19 yourself at the meeting with Ms. Torreblanca...?

20 THE WITNESS: No.

21 ARBITRATOR TAWIL: You were with part of  
22 your team?

1 THE WITNESS: Yes.

2 ARBITRATOR TAWIL: You said that SUNAT's  
3 position was clear as of 2002. Part of your team of  
4 technical in nature. So you just said that you knew  
5 that they were building the Concentrator, and I  
6 imagine that, for Arequipa, it was a very extremely  
7 important plant?

8 THE WITNESS: Yes.

9 ARBITRATOR TAWIL: So how could it be that  
10 at a meeting where your team is attendance, the  
11 situation is clear to the team in 2002. You know that  
12 the Concentrator has been built and you go there, and  
13 you they tell you: "We're not going to pay  
14 Royalties," and you kept quiet and didn't say  
15 anything. You didn't say: "But what's going on with  
16 the Concentrator?" Nothing. You didn't even refer to  
17 this?

18 THE WITNESS: No.

19 ARBITRATOR TAWIL: Was it just a  
20 protocol- based meeting? What was it?

21 THE WITNESS: But we need to have a clear  
22 idea of the timing.

1           ARBITRATOR TAWIL: But clearly the  
2 obligation was not accrued. It was not in production,  
3 but you knew that the Concentrator was there, and  
4 apparently you had a clear position as of 2002.

5           So, how could it be that during that meeting  
6 the topic didn't come up? "Look, you have the  
7 Concentrator."

8           THE WITNESS: Let me go back to what I said  
9 and the topics that were being discussed. The topics  
10 were unclear, if SUNAT was going to determine or  
11 not--in 2004, when the law was approved, it wasn't  
12 clear. There is a big discussion as to whether SUNAT  
13 had the mandate for the Assessments. And this was  
14 with another law of that was modified in 2007.

15           ARBITRATOR TAWIL: But the meeting was held  
16 in 2005. Because our discussion here also has to do  
17 with 2004. So, in 2005, wasn't it clear whether it  
18 was going to be assessed or not?

19           THE WITNESS: Whether SUNAT was going to  
20 assess Royalties? No, it wasn't clear.

21           PRESIDENT HANEFELD: But then let us move a  
22 little bit in time. What happened in

1 between--according what you can recollect--between  
2 this March 2005 meeting and the point in time in  
3 mid-2006 where you requested Ms. Bedoya to establish  
4 this SUNAT report on royalties on the Concentrator  
5 Plant? It's a long time period.

6           Were there any further discussions or any  
7 instructions from MINEM on this point? So what  
8 happened in between these two points in time?

9           THE WITNESS: After 2005, in 2005 we  
10 requested information in connection with the Cerro  
11 Verde suppliers. We wanted to make an audit plan at a  
12 local level, and we wanted to see the providers that  
13 were included as part of those who provided Cerro  
14 Verde for our auditing plan.

15           In 2006, we heard by the end of the year the  
16 Concentrator will start production. That was in 2006.  
17 So we started to look at the scope as to whether Cerro  
18 Verde was already covered by the Contract. I ordered  
19 to the Chief of the Division, and said: "Put together  
20 a team, and I want to have some clarity." I, rather,  
21 asked the Chief of the Division--not myself. I asked  
22 the Division Chief to put together a team to analyze

1 the situation and, also, depending on the result, we'd  
2 prepare the teams to be able to act properly.

3           And based on this, I met with the Division  
4 Chief to get a team put together and get a report on  
5 the subject matter.

6           PRESIDENT HANEFELD: And just to better  
7 understand, was the report due to an additional or  
8 further or specific request of Ms. Torreblanca or  
9 Cerro Verde relating specifically now to the payment  
10 of Royalties for the Concentrator, or was it just  
11 prompted because you knew the Concentrator was about  
12 to be completed so that topic would arise?

13           THE WITNESS: Your second option, the  
14 latter.

15           So, this was close to finishing the  
16 construction of the Concentrator, and it was going to  
17 be operational in the short term, we needed to have a  
18 clear idea as to the new investments, issues  
19 surrounding the new investment.

20           PRESIDENT HANEFELD: And when this Report  
21 was finally issued by Ms. Bedoya, were there any  
22 remaining controversies or uncertainties with regard

1 to the correctness of this Report, or was it just the  
2 clarity that everyone accepted as being the final  
3 clarity of the issue?

4 THE WITNESS: The Report was drafted by a  
5 team of workers, and it was a position that was being  
6 developed, and it also allowed us to better understand  
7 the stabilization of the Contract and whether the  
8 Concentrator was included or not, and that was the  
9 topic of the Report.

10 PRESIDENT HANEFELD: And as you may know,  
11 and now serious concerns of due process have been  
12 raised here in these proceedings by Claimant.

13 So, according to your practice, was it a  
14 normal, regular thing to do to put up a team to  
15 establish such a report, or was it an extraordinary  
16 thing to do when the Concentrator Project was about to  
17 be completed?

18 Was it standard practice, or was it an  
19 exceptional measure of yours to let this Report be  
20 established?

21 THE WITNESS: Usually when there is such a  
22 controversial issue, this is done, but it is not usual

1 to have a report for each case. But in some cases,  
2 one has the ability to ask a group of workers to draft  
3 a report as to the understanding of the Regulatory  
4 Application that has taken place.

5 PRESIDENT HANEFELD: And you just said it  
6 was such a controversial issue. Why was it so  
7 controversial at this time, from your point of view?

8 I had asked, had Cerro Verde specifically  
9 put up this topic again, or why was it, for you, such  
10 a controversial topic?

11 THE WITNESS: It was controversial because  
12 there was an initial comment that they were covered by  
13 the Stability Contract, and they just wanted to have  
14 the certainty that that was the case.

15 PRESIDENT HANEFELD: So, at that point in  
16 time, you considered the letter of the 4th of March,  
17 which expressed the general refusal of Cerro Verde to  
18 pay Royalties, to also address specifically the  
19 Royalties for the Concentrator, and, therefore, you  
20 wanted now internal insurance within SUNAT that it was  
21 not covered, or what was your testimony?

22 THE WITNESS: Cerro Verde had sent a letter

1 stating their position, and since it was close to  
2 having the Concentrator operational, we wanted to have  
3 the certainty--they wanted to have the certainty  
4 whether the Contract also covered the Concentrator.  
5 So, I instructed for a team to be put together to have  
6 some clarity around this.

7           PRESIDENT HANEFELD: So, it was they--it was  
8 Cerro Verde who wanted this certainty and asked for  
9 certainty, and asked for certainty?

10           THE WITNESS: No, we needed the certainty.

11           ARBITRATOR CREMADES: Is it normal for a  
12 taxpayer to tell SUNAT: "I am not going to pay a  
13 royalty?"

14           THE WITNESS: The taxpayer at the end of the  
15 day expresses their acts through its own returns. So,  
16 the taxpayers have their obligations in the law, and  
17 based on that regulatory interpretation, they present  
18 their interpretation, and SUNAT later on carries out  
19 an audit to determine that will happen or not.

20           It is not that a taxpayer may say ahead of  
21 time, "I am going to pay or not." It doesn't exist  
22 like that. The obligation is there for the taxpayer

1 to state how much to pay, and then SUNAT conducts a  
2 random verification.

3 ARBITRATOR CREMADES: Let's say that there  
4 is a taxpayer, and the lawyer--and it is a lawyer,  
5 that taxpayer. And that taxpayer tells you: "I am  
6 not going to pay taxes in Arequipa." Is this  
7 acceptable?

8 THE WITNESS: No, no one says that they are  
9 not going to pay taxes. They are not going to send a  
10 letter saying they were not going to pay taxes. There  
11 is an obligation to present a return on a monthly  
12 basis. So, if the monthly tax return is not  
13 presented, and SUNAT, as part of the verification,  
14 determines that the taxpayer had to present a tax  
15 return but they didn't do it, then SUNAT will let that  
16 person know that there is a violation.

17 ARBITRATOR CREMADES: So, basically, once  
18 the Concentrator starts producing, you tell Cerro  
19 Verde: "Okay. It's up to if you do not present the  
20 returns and don't pay"?

21 THE WITNESS: Yes. That's the procedure.  
22 The return is the act which initiates the

1 verification, if the taxpayer is complying with their  
2 tax obligations.

3           ARBITRATOR CREMADES: In the meantime, you  
4 study the situation, and you have no reason to  
5 communicate the taxpayer, your studies on coverage or  
6 not. You just wait for the taxpayer to present the  
7 tax return whenever it is due because the Concentrator  
8 would be operational.

9           THE WITNESS: That's the way the  
10 Administration worked. They verify after the recent  
11 taxpayer's obligation is generated. Otherwise, there  
12 is no--they do not tell the taxpayer you have to pay  
13 such and such a tax.

14           ARBITRATOR CREMADES: Sorry. You do not  
15 tell them you need to pay? So, at the end of the day  
16 you are not there to write reports. You just wait for  
17 the taxpayer to present the tax return?

18           THE WITNESS: Yes. Out of the set of tax  
19 return presented, an analysis is conducted to  
20 determine who will be audited and who will not, and  
21 whoever has not presented their tax return, we  
22 notified them so they regularize their situation.

1           ARBITRATOR CREMADES: Now, changing  
2 scenarios, we heard a lot about the intervention of  
3 Congress member such as Diez Canseco and other noises  
4 that took place in Arequipa.

5           Did you suffer any of the impacts of this?

6           THE WITNESS: Well, we have a large team  
7 that is independent, and I have been the Intendent in  
8 Arequipa in 2006, 2008, and I did not receive--2004,  
9 2008. I did not receive any situation in which a  
10 Congressperson telling me what to do. And I would  
11 have paid no attention to that, if that happened  
12 because we just follow the laws, the legislation on  
13 taxes. And as to my actions and my practice at SUNAT,  
14 I have never received an indication by any other  
15 person to indicate that to do something that is not.

16           ARBITRATOR CREMADES: What would have  
17 happened if Cerro Verde said, if you do not give me  
18 the coverage--if they said this before 2004: "If you  
19 don't give me coverage, I will not invest"? The  
20 President of the Republic also says that this was a  
21 highly important investment.

22           THE WITNESS: SUNAT only sees contracts as

1 signed. SUNAT does not participate in the  
2 negotiations.

3 ARBITRATOR CREMADES: So you are there after  
4 MINEM has already negotiated? You are just there from  
5 the tax point of view?

6 THE WITNESS: Yes.

7 ARBITRATOR CREMADES: So implement the  
8 legislation from the point of view of taxes?

9 THE WITNESS: Correct.

10 ARBITRATOR CREMADES: Thank you very much.

11 MS. DURÁN: If you allow me.

12 MS. SINISTERRA: I have not concluded my  
13 cross-examination.

14 MS. DURÁN: No, I just want to correct  
15 something on the translation that is not reflected in  
16 the Transcript.

17 In response to Arbitrator Cremades'  
18 question, Mr. Cruz answered regarding Congressman  
19 Canseco, Mr. Cruz answered in Spanish, "in absoluto,"  
20 and he gave the explanation. The "in absoluto" was  
21 not translated and is not reflected in the Transcript.  
22 So I'm just making the marker so it needs to be

1 corrected.

2 In English, it is Line 68:20, which is  
3 missing the translation; and in Spanish it is 57:19.

4 PRESIDENT HANEFELD: This is noted. Please  
5 go ahead.

6 MS. SINISTERRA: Thank you, Madam President.

7 BY MS. SINISTERRA:

8 Q. Mr. Cruz, you just had a very important  
9 exchange with the Tribunal. We are going to review  
10 some of the topics arising from the questions by the  
11 Tribunal, and we are going to look at the documents on  
12 the record.

13 First, this letter. We are looking at this  
14 letter. That is the letter sent by Julia Torreblanca  
15 to address your communication to the mining companies  
16 addressing their Royalties, and we see the last  
17 paragraph that reads: "Given all of the above, we  
18 respectfully communicate Cerro Verde is not bound to  
19 present any return in connection with the Royalties,  
20 or payments made for Royalties."

21 Now, let's look what it means "given all of  
22 the above." Let us look at Paragraph 2 of that

1 letter.

2 MS. DURÁN: Can you remind us which tab it  
3 is on, please?

4 MS. SINISTERRA: Again, for the record, this  
5 is CE-486, Exhibit 486. This is at Tab 5.

6 BY MS. SINISTERRA:

7 Q. Let us see the above-mentioned.

8 Here Cerro Verde is clearly telling that  
9 they are hereby indicating that "the date of  
10 February 13, 1998, as the date that Cerro Verde signed  
11 an agreement of guarantees and Investment Promotion  
12 Measures with the Peruvian State by virtue of which it  
13 obtained various Stability Guarantees, including those  
14 related to tax and administrative regime."

15 Do you see that?

16 A. Yes

17 Q. In two paragraphs below, it says: "Given  
18 the aforementioned, we let you know that Cerro Verde  
19 is not bound to pay the Mining Royalty." They are  
20 clearly talking about the Stability Contract. They  
21 mention that in the letter. Correct?

22 A. Yes

1           Q.    Now, let us see what was written in this  
2 statement that is in the First Statement,  
3 Paragraph 17, your First Statement, Paragraph 17. Let  
4 us look at Paragraph 17. There you state: "After  
5 receiving the letter from Cerro Verde of March 4,  
6 2005, I met with Ms. Julia Torreblanca at her request.  
7 Ms. Torreblanca requested this meeting for the purpose  
8 of discussing the scope of the Stabilization Agreement  
9 and reiterating her position that Cerro Verde was not  
10 subject to the payment of Mining Royalties."

11                    It was clear from the meeting held with  
12 Julia Torreblanca on March 4, 2005, that Cerro Verde  
13 told you they were not bound, they were not bound by  
14 the payment of the Royalties, given their Stability  
15 Contract.

16                    Is this correct?

17           A.    Yes, that is what was said.

18           Q.    You told us twice today here, and you also  
19 said it in February, that you knew at that point--in  
20 time in March 2005, you knew that Cerro Verde had just  
21 started investment. They were going to have an  
22 investment on the Concentrator that was very important

1 for Arequipa.

2           You knew of that Concentrator; correct?

3           A.    Yes.

4           Q.    Now, let's make it clear for the record.

5           In March 2005, you did not tell Ms. Julia  
6 Torreblanca the Contract does not cover a new  
7 investment? You did not tell her?

8           A.    She didn't ask me.

9           Q.    You didn't tell her?

10          A.    She didn't ask; I didn't say.

11          Q.    At that point in time, they were starting to  
12 build the Concentrator. If you had told her,  
13 Ms. Torreblanca--

14          A.    Let me insist on something. SUNAT does not  
15 have any obligation to tell the taxpayer what the  
16 obligations are. The obligations are stated under the  
17 law. That's where each taxpayer finally makes their  
18 own assessment and return. That is a concept. It is  
19 not that SUNAT has to tell a taxpayer what they have  
20 to do or not.

21          Q.    Is that your position? So that's your  
22 position, I think. So clearly we are talking about

1 the fact, but at that point in time, it is very clear  
2 you never said it to her?

3 A. I had no reason to tell her.

4 Q. Now, we are going to look at the Report of  
5 2006, the internal report. For the record, this is  
6 RE-179. We are going to read the title of this  
7 internal report that you asked Ms. Bedoya and  
8 Mr. Guillén to prepare.

9 This is a report on the "Application of the  
10 Contract of Guarantees and Measures for the Promotion  
11 of Investments in the Mining Royalty with respect to  
12 the expansion of Cerro Verde's Current Operations,  
13 Primary Sulfides Project."

14 It is very specific, and now we are going to  
15 look at Page 4 of this Report.

16 MS. DURÁN: Which tab?

17 MS. SINISTERRA: I believe we don't have a  
18 printed copy in his binder, Madam President. But it's  
19 on the screen, and, if needed, we will print it out.

20 PRESIDENT HANEFELD: I have a printed  
21 version. I don't need it.

22 MS. DURÁN: Well, the witness might need it

1 printed out.

2 MR. RIVERA: We will get him one.

3 MS. SINISTERRA: This is a clean copy. So,  
4 this is a copy that has the underlined paragraph that  
5 we would like to discuss.

6 BY MS. SINISTERRA:

7 Q. Here it says, again, this is the Report that  
8 you requested Ms. Bedoya and Mr. Guillén in mid-2006  
9 to be prepared. It reads: "Bearing in mind the  
10 aforementioned background, it is now necessary to  
11 analyze the tax implications of the 'expansion of  
12 Cerro Verde's current operations-Primary Sulfides  
13 Project,' on the understanding that we have found out  
14 about the SMCV's position on this matter, which  
15 is--again, we have found out about the Sociedad Minera  
16 Cerro Verde's position, which is aimed at considering  
17 said investment, such said investment, the Primary  
18 Sulfide Project--that is to say, the Concentrator, as  
19 part of the Agreement of Guarantees and Measures for  
20 the Promotion of Investments signed with the Peruvian  
21 State."

22 So, it was absolutely clear, and this Report

1 is supposedly dated June 2006. Cerro Verde's position  
2 was absolutely clear, and that Cerro Verde understood  
3 that their Contract covered the investment in the  
4 Concentrator. It was absolutely clear. Wasn't it  
5 like that, Mr. Cruz?

6 A. That's what the Report states.

7 Q. Okay. That's what the Report states.

8 Another question, and if I am not wrong you  
9 answered this to the President. In February 2005, you  
10 didn't tell anything to Ms. Torreblanca. In  
11 June 2006, when this Report was issued, did you tell  
12 anything to Mrs. Torreblanca?

13 A. No.

14 Q. Did you provide a copy of the Report?

15 A. No, not at all.

16 Q. So, you left Cerro Verde in their position  
17 with their understanding; correct?

18 A. Yes. SUNAT does not tell taxpayers how and  
19 when to pay, what they need to pay. There are  
20 conditions to make the declaration.

21 Q. So you didn't tell them. You didn't give  
22 them a copy of the Report? You didn't tell Julia

1 Torreblanca--correct?--or anyone at Cerro Verde.

2 A. Correct.

3 Q. A final question: You also told us that it  
4 was clear that in June 2006, even while the  
5 Concentrator was being built; correct?

6 A. Yes. They were in the final stage.

7 Q. It wasn't in operation; correct?

8 A. Not yet.

9 Q. So, Cerro Verde did not have an obligation,  
10 in your mind, to present a return and pay Royalties?

11 A. Correct.

12 Q. Why the rush? Why the rush to define the  
13 position in June 2006? Why did SUNAT need to have in  
14 writing that SUNAT was going to charge Royalties to  
15 Cerro Verde in June 2006 when the Concentrator was not  
16 even built?

17 Why the rush in June 2006, Mr. Cruz?

18 A. As I was explaining, we were analyzing all  
19 together the whole topic related to the Concentrator,  
20 basically suppliers looking at our audit plan, and we  
21 wanted to be certain about the issues raised by Cerro  
22 Verde at some point in time.

1 Q. And why in June 2006 and not July of 2005,  
2 for example?

3 A. Because the approach to the operation was in  
4 2006, and we were approaching the start-up of  
5 operations.

6 Q. But the Concentrator had not yet begun to  
7 operate, as you told us, and Cerro Verde was under no  
8 obligation to present a declaration until  
9 February 2027. But, in any event, SUNAT, as of  
10 June 2006 had to define its position about the  
11 Concentrator.

12 A. That is when the Decision was made.

13 Q. And, once again, you didn't tell Cerro Verde  
14 anything?

15 A. No, there was no reason to inform them.

16 MS. SINISTERRA: No further questions, Madam  
17 President. Thank you.

18 QUESTIONS FROM THE TRIBUNAL

19 ARBITRATOR CREMADES: I'd like to ask you,  
20 with respect to other taxpayers, these internal  
21 reports, were they communicated?

22 THE WITNESS: No, not at all. The analysis

1 was--is internal, and it's used as an antecedent when  
2 there's verification.

3 ARBITRATOR CREMADES: So it is purely  
4 internal?

5 THE WITNESS: Yes.

6 ARBITRATOR CREMADES: And it's only for the  
7 inspector's knowledge?

8 THE WITNESS: Yes, that's right.

9 ARBITRATOR CREMADES: Thank you.

10 PRESIDENT HANEFELD: Respondent, any  
11 questions in redirect?

12 MS. DURÁN: No questions from our side.

13 PRESIDENT HANEFELD: Also no additional  
14 questions from the Tribunal's side.

15 Thank you very much, Mr. Cruz. You are  
16 hereby released as a witness. Thank you.

17 THE WITNESS: Thank you very much.

18 (Witness steps down.)

19 PRESIDENT HANEFELD: Which concludes our  
20 Day 6, unless the Parties have any issues they want to  
21 raise.

22 MR. PRAGER: No issues from Claimant's side.

1 Thank you, Madam President.

2 PRESIDENT HANEFELD: Thank you.

3 MS. DURÁN: No issue from our side.

4 PRESIDENT HANEFELD: Then our Secretary will  
5 circulate later today the time block so that you have  
6 certainty on the remaining time.

7 For our last Hearing day, which is devoted  
8 only to the Closing Statements of 1.5 hours each per  
9 Party, we would suggest that we start already at  
10 9:00 a.m. on Friday so that we can conclude at  
11 lunchtime, around about 1:00, and thereby have, in any  
12 event, sufficient time to ask questions and discuss  
13 procedural things and the like. So, if the Parties  
14 and everyone could be prepared to start on Friday  
15 already at 9:00, this would be highly appreciated, and  
16 then we will conclude at 1:00 p.m.

17 MS. SINISTERRA: Absolutely, Madam  
18 President. We would be happy to.

19 PRESIDENT HANEFELD: Thank you.

20 MS. DURÁN: Yes, we are in your hands.

21 PRESIDENT HANEFELD: Okay. Perfect. Okay.  
22 Marisa, will you circulate the remaining

1 times on the basis the Parties can discuss  
2 arrangements; right?

3 Thank you very much for the long intense  
4 day. Good evening. See you tomorrow.

5 MS. SINISTERRA: Thank you, Madam President.  
6 Good evening.

7 MS. DURÁN: Thank you.

8 (Whereupon, at 6:03 p.m., the  
9 Hearing was adjourned until 9:30 a.m. the following  
10 day.)

11

12

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