



09 June 2016

To the Honourable members of the International Arbitral Tribunal:

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Re: *Bear Creek Mining Corporation* (Claimant) against Republic of Peru (Respondent) Case ICSID No. ARB/14/21- Request leave to file a brief of Amicus curiae as a third non/disputing party.

Honourable Members of the Arbitral Tribunal,

The Applicants very respectfully request leave from the Arbitral Tribunal in ICSID Case No. ARB / 14/21, to file a brief as non-disputing Parties (Amici curia). The letter is attached to this application. Applicants include the civil association Human Rights and Environment (DHUMA) of Puno, Peru, and Dr Carlos Lopez PhD, Senior Legal Adviser to the International Commission of Jurists in Geneva, Switzerland. DHUMA is represented by Patricia Lee Ryan and Christopher Yugra Villanueva, president and executive director respectively. DHUMA is duly registered with Partida Registration No. 11063494 in the Register of Legal Persons Puno, Peru.

DHUMA was born in 1988 as a Vicariate of Solidarity of the Prelature of Juli, starting its activities since 1989. On June 20, 2007 it becomes the "Association for Human Rights and the Environment"; a non-profit organization in order to promote the defense of life, based on respect for human dignity and the common good. DHUMA's mission is the promotion and protection of human rights and the environment of rural communities (indigenous peoples) Aymara and Quechua in the region of Puno. Dr.

Carlos Lopez-Hurtado is a Peruvian lawyer who works in the non-governmental organization International Commission of Jurists, coordinating the program on business and human rights. Dr. López-Hurtado holds the degree of Doctor in Public International Law from the University of Geneva (Graduate Institute of International Studies) has extensive knowledge and experience on international standards on social responsibility of business and human rights and its application to specific cases.

Applicants consider that the present arbitration proceeding between Bear Creek and the Republic of Peru presents elements of public nature and interest that go beyond the particular interest of the disputing parties. This application is made under i) Procedural Order No. 1 of the Tribunal of 27 January 2015 (in particular sections 17.1, 17.2 and Annex A); ii) Articles 832, 835 and 836 (and its annex Article 836.1) of the Free Trade Agreement between Canada and Peru, in force since 1 August 2009; and iii) Rule 37 of the Rules of arbitration of ICSID. Applicants are convinced that their application meets all the requirements of these rules and regulations.

Applicants are totally independent from the disputing parties: Bear Creek Mining Corporation (Claimant) and the Republic of Peru (respondent), and from any other person connected to the disputing Parties and will remain independent at all relevant times. The applicants have not received any financial or other support from the disputing Parties or other person related to them that might compromise their independence. The Human Rights and Environment -DHUMA Association is a private non-profit organization established under Peruvian law. Its activities and staff are funded by contributions and donations from organizations of the Catholic Church, and independent foundations for the promotion of development, human rights and environmental protection. Dr. Carlos Lopez - Hurtado is part of the staff of the International Commission of Jurists.

The interest of the amici in this arbitration process flows from the eminent public interest of the dispute over the facts and decisions that took place in Puno in 2011 and before. The decision on the dispute between Bear Creek and the Republic of Peru will have natural implications for the people and communities of the region of Puno, and for the respect for their rights to land, water and to be informed and consulted on the use of these resources. Amici have a particular interest to convey to the Tribunal different, reliable and direct information from people close to the facts and the region.

Amici will provide, if the Tribunal allows, a unique vision and information on the events in Puno. This unique contribution is the result of our experience, extensive work in the region of Puno and with peasant communities, knowledge of the Aymara culture and our participation in some events involving the mining company and the communities around the mining project Santa Ana. DHUMA participated in the committee for Dignity and Social Peace, formed by various private, public and church institutions in the region in order to seek peaceful solutions to the socio-environmental conflict between communities and the Peruvian government. Amici also have a deep and close knowledge of international human rights standards and their application to business. Amici considers it important that the Arbitral Tribunal has the views, information and analysis from organizations with long experience in the Puno region,

and have a close and direct knowledge of the events that took place between the Aymara communities and Bear Creek Mining Company.

If the Tribunal accepts their request, Amici will address issues of fact and law that are relevant to the present dispute between Bear Creek and the Republic of Peru and to the deliberations of the Tribunal. Amici will present a different and detailed account of the social protest movements in 2011 and of the relations between communities and the company Bear Creek in previous years. The existence or not of consent and social support from the communities to the Santa Ana project is an important element in the dispute. So is the social sometimes violent opposition of the population to this and other mining projects in the region. The links between the community assent or rejection and the business conduct are relevant to this Tribunal. The conduct and practices of Bear Creek with regard to the communities should be evaluated in the light of international standards in this area which Amici will bring to the attention of the Tribunal. The disputing Parties hold opposing views on these facts and their implications for the dispute, the views of Amici can help the Tribunal to form a balanced judgment on all.

Amici will address the relationship between international standards of human rights due diligence applicable to business, including investors, their links to the need for the investor to obtain a "social license to operate" and the relevance of all this in relation to article 810 on "social responsibility of business" and other standards of the Free Trade Agreement between Canada and Peru. Amici will also address the relevance of international standards on free, prior and informed consent of the indigenous peoples of southern Puno who are Aymara.

Amici is convinced that its application meets the requirements of Article 836.4 of the Free Trade Agreement between Canada and Peru and, therefore, the Tribunal should grant it. The brief of Amici provides the Tribunal with a unique and different perspective from that of the disputing Parties based Amici's own position and experience. These elements will assist the Tribunal in their understanding and evaluation of the disputing Parties' conduct and in its final decision.


Amici will address issues that are part of the dispute and they also have a significant interest in the arbitration process because of its implications for the region of Puno and the rights of peasant communities to their land and natural resources. The disputing Parties hold opposing views on events and the social protest in Puno and its significance for the dispute. Bear Creek holds that its investment in Santa Ana project has been unlawfully expropriated without any requirements of object or public interest, due process and non-discrimination (Article 812.1 FTA, paras 135 et seq). Bear Creek also argues that Peru has violated the standard of fair and equitable treatment in the Free Trade Agreement (paras 145, 179-181 Complainant memorial). Peru argues against by providing a detailed account of the social and political events that took place between 2008 and 2011 in the region (paras 58 to 150 of the memorial of response from the defendant). Both disputing Parties link their arguments to the political and social protest that took place in Puno involving local actors, which are presented by Bear Creek as alien to its operations in Santa Ana. Peru, from its side, argues that these events were

immediately linked to the Santa Ana mine and explains its actions by the urgency to counter the protests and maintain security in the area. The disputing Parties also hold opposing positions on whether or not the Santa Ana project had social and popular support

If the Tribunal allows, Amici seeks to provide insight and first-hand information on these events to illustrate the Tribunal about what really happened.

For these reasons, eventual Amici request the Tribunal to grant their request and authorize them to submit an amicus curiae as non-disputing Parties. They also offer to the Tribunal to provide copies of documents referenced in their brief and others on request by the Tribunal.

Sincerely.

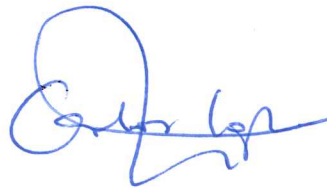


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