

**PCA CASE NO. 2009-23**

**IN THE MATTER OF AN ARBITRATION BEFORE A TRIBUNAL CONSTITUTED  
IN ACCORDANCE WITH THE TREATY BETWEEN THE UNITED STATES OF  
AMERICA AND THE REPUBLIC OF ECUADOR CONCERNING THE  
ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENTS,  
SIGNED 27 AUGUST 1993 (THE “TREATY”) AND THE UNCITRAL  
ARBITRATION RULES 1976**

**BETWEEN: –**

**1. CHEVRON CORPORATION (“Chevron”)**

**2. TEXACO PETROLEUM COMPANY (“TexPet”)**

**(both of the United States of America)**

*The First and Second Claimants*

**- and -**

**THE REPUBLIC OF ECUADOR**

*The Respondent*

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**First Partial Award on Track I**

**dated 17 September 2013**

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**The Arbitration Tribunal:**

**Dr Horacio A. Grigera Naón;  
Professor Vaughan Lowe;  
V.V. Veeder (President)**

**Administrative Secretary: Martin Doe**

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*APPENDIX 1: The 1995 Settlement Agreement (Spanish original version)*

## ***PART A: THE ARBITRATION – TRACK I***

1. *Introduction:* This Partial Award addresses the Parties' dispute concerning the legal interpretation and legal effect of the 1995 Settlement Agreement made between the Second Claimant ("TexPet") and the Respondent as its signatory parties, to which the First Claimant ("Chevron") was not a signatory Party. For ease of reference, a full copy of the 1995 Settlement Agreement in its original Spanish version is appended to and forms part of this Partial Award (Appendix 1). Given the original language of this Partial Award, for convenience only, references are made below to its English translation, save where otherwise indicated.
2. Given the status of this Partial Award as the fifth award made in these arbitration proceedings, it serves no purpose here re-stating the formal parts set out in the Tribunal's earlier awards; and for simplicity's sake, the Tribunal here incorporates by reference Part I of its Third Interim Award on Jurisdiction and Admissibility dated 21 February 2012.
3. *Procedure:* In summary, applying a 'prima facie' standard appropriate to issues of jurisdiction, the Tribunal decided in that Third Interim Award that the Claimants' interpretation of the 1995 Settlement Agreement, albeit strongly disputed by the Respondent, was at least "serious"; but the Tribunal did not otherwise there finally decide on the interpretation or effect of the 1995 Settlement Agreement one way or the other. Instead the Tribunal decided, given that both were mixed questions relevant to the Respondent's disputed jurisdictional objections under Article VI(1)(a) of the BIT and to the merits of Chevron's disputed claims, to join the Respondent's jurisdictional objection to the merits of those claims under Article 21(4) of the UNCITRAL Arbitration Rules.
4. Subsequently, by its Procedural Order No 10 dated 9 April 2012, the Tribunal divided the merits of the Parties' dispute into two parts, entitled "Track I" and "Track II". Track I was to comprise preliminary legal issues arising from the 1995 Settlement Agreement, limited to its legal interpretation and legal effect as alleged by the

Claimants and disputed by the Respondent, including (in particular) whether or not Chevron is a “Releasee” under the 1995 Settlement Agreement and Article IV of the 1998 Final Release: Paragraphs 2 & 3 of the Procedural Order.

5. Given the complexities of the Parties’ overall dispute and its developing nature as this arbitration continues, the Tribunal also recognised in Procedural Order No 10 that it might not be possible or appropriate to decide these preliminary issues in full, thereby requiring the Tribunal to defer one or more decisions to Track II. Even in that event, however, the Tribunal recognised that time and expense would not necessarily be duplicated or wasted for the Parties or the Tribunal. As explained below, the Tribunal has decided that it is not appropriate in Track I to decide in full the legal effect of the 1995 Settlement Agreement, applying the legal interpretation here decided by the Tribunal.
  
6. *Written Pleadings:* Pursuant to the Tribunal’s procedural orders, the Parties submitted the following written pleadings relevant to Track I (the first two pre-dating Procedural Order No 10):
  - (i) The Claimants’ Memorial on the Merits dated 6 September 2010;
  - (ii) The Claimants’ Supplemental Memorial on the Merits dated 20 March 2012;
  - (iii) The Respondent’s Counter-Memorial dated 3 July 2012;
  - (iv) The Claimants’ Reply Memorial dated 29 August 2012; and
  - (v) The Respondent’s Rejoinder dated 26 October 2012.

Whilst the Parties have submitted during these proceedings other written pleadings touching upon issues decided in this Partial Award, the Tribunal considers that their respective written cases for Track I can fairly be taken for present purposes from the five pleadings listed above.

7. *Written Testimony:* The Claimants submitted the following written expert testimony relevant to Track I:
  - (i) The first expert report of Dr Enrique Barros (undated);

- (ii) The first and second expert reports of Dr César Coronel Jones dated 3 September 2010;
- (iii) The first expert report of Professor Ángel R. Oquendo dated 2 September 2010;
- (iv) The first expert report of Dr Gustavo Romero Ponce dated 3 September 2010;
- (v) The second expert report of Dr Enrique Barros dated 27 August 2012;
- (vi) The third expert report of Dr César Coronel Jones dated 28 August 2012;
- (vii) The expert report of Professor William T. Allen dated 27 August 2012;
- (viii) The second expert report of Professor Ángel R. Oquendo dated 28 August 2012;
- (ix) The second expert report of Dr Gustavo Romero Ponce dated 27 August 2012;
- (x) The third expert report of Dr Enrique Barros dated 19 November 2012;
- (xi) The fourth expert report of Dr Enrique Barros dated 19 November 2012; and
- (xii) The fourth expert report of Dr César Coronel Jones dated 19 November 2012.

8. The Claimants submitted the following written factual testimony relevant to Track I:

- (i) The witness statement of Mr Frank G. Soler dated 27 August 2010;
- (ii) The first witness statement of Dr Ricardo Reis Veiga dated 27 August 2012; and
- (iii) The second witness statement of Dr Ricardo Reis Veiga dated 28 August 2012.

9. The Respondent submitted the following written expert testimony relevant to Track I:

- (i) The first expert report of Professor Roberto Salgado Valdez dated 1 October 2010;
- (ii) The first expert report of Professor Genaro Eguiguren dated 2 July 2012;
- (iii) The second expert report of Professor Roberto Salgado Valdez dated 2 July 2012;
- (iv) The first expert report of Professor Gilles Le Chatelier dated 2 July 2012;
- (v) The third expert report of Professor Roberto Salgado Valdez dated 26 October 2012;
- (vi) The second expert report of Professor Genaro Eguiguren dated 26 October 2012; and
- (vii) The second expert report of Professor Gilles Le Chatelier dated 25 October 2012;

10. The Respondent submitted the following written factual testimony relevant to Track I:
  - (i) The witness statement of Mr Giovanni Elicio Mario Rosania Schiavone dated 24 October 2012.
  
11. Pursuant to the Tribunal's orders, the Parties also submitted the following joint expert reports:
  - (i) The joint expert report dated 6 August 2012 of Dr Enrique Barros, Dr César Coronel Jones and Professor Roberto Salgado Valdez;
  - (ii) The joint expert report dated 7 August 2012 of Dr Enrique Barros, Dr César Coronel Jones, Professor Genaro Eguiguren, Professor Ángel R. Oquendo and Dr Gustavo Romero Ponce; and
  - (iii) The joint expert report dated 7 August 2012 of Professor Gilles Le Chatelier and Professor Ángel R. Oquendo.
  
12. *The November Hearing*: The issues under Track I were argued by the Parties at the oral hearing in London held over three days from 26 to 28 November 2013, with the assistance of English and Spanish interpreters and recorded in the form of both English and Spanish transcripts (the "November Hearing"). The references below are made to the English version of the November Hearing's verbatim transcript, as follows: D1.10 signifies the first day, at page 10.
  
13. The Claimants and the Respondent were represented respectively at the November Hearing by those persons listed in the verbatim transcript; and it serves no purpose here listing these persons by name, save as follows: for the Claimants, opening oral submissions were made Mr Hewitt Pate [D1.8], Professor Crawford [D1.12] and Doak Bishop Esq [D1.33]; for the Respondent opening oral submissions were made by Attorney-General García Carrion [D1.60] and Professor Douglas [D1.64]; for the Claimants, closing oral submissions were made by Mr Hewitt Pate [D3.471], Professor Crawford [D3.491 & D3.545] and Doak Bishop Esq [D3.522]; and for the Respondent, closing oral submissions were made by Luis Gonzáles Esq [D3.555], Tomás Leonard Esq [D3.573] and Eric W. Bloom Esq [D3.594].

14. The Claimants tendered three oral witnesses at the November Hearing: (i) Dr Ricardo Reis Vega [D2.244x, 247xx & 283xxx]; (ii) Professor Ángel P. Oquendo [D2.298x, 299xx & 376xxx]; and (iii) Dr Gustavo Romero Ponce [D2.381 & 383xx]. The Respondent tendered two oral witnesses at the November Hearing: (i) Mr Giovanni Elicio Mario Rosania Schiavone [D1.96x, 104xx & 147 xxx]; and (ii) Professor Genaro Eguiguren [D1.155x, 173xx & 219xxx].
  
15. *Track II*: At as the date of this Partial Award, the Parties are completing their written pleadings in Track II, to be achieved by 29 November 2013, with the oral hearing in Track II fixed to start on 13 January 2014.



## ***PART B: THE PRINCIPAL DOCUMENTS***

16. *Introduction:* It is necessary at the outset to describe briefly the three principal sets of contractual documentation to which further reference is made below: (i) the 1995 Settlement Agreement, (ii) the 1996 Municipal and Provincial Releases; and (iii) the 1998 Final Release.
17. *(i) The 1995 Settlement Agreement:* On 4 May 1995, the Respondent acting by its Ministry of Energy and Mining (here for convenience called “the Ministry”) and PetroEcuador as “one Party” and TexPet as “the other party” initialed and signed a written agreement entitled “Contract for Implementing of Environmental, Remedial Work and Release from Obligations, Liability and Claims”, for ease of reference described in these arbitration proceedings as the “1995 Settlement Agreement”.
18. The 1995 Settlement Agreement was made on the Ministry’s headed note-paper with the Respondent’s coat-of-arms; and it was signed for that Ministry by the Minister of Energy and Mines. It was also signed by a senior officer of PetroEcuador and two representatives of TexPet (now, but not then, indirectly owned by Chevron), one of whom was Dr Ricardo Reis Vega, a factual witness in Track I.
19. The 1995 Settlement Agreement provided in the final two paragraphs of its preamble that TexPet agreed to undertake the “Environmental Remedial Work in consideration for being released and discharged of all its legal and contractual obligations and liability for Environmental Impact arising out of the Consortium’s operations.” By Article 1.3, the term “Environmental Impact” included: “[a]ny solid, liquid, or gaseous substance present or released into the environment in such concentration or condition, the presence or release of which causes, or has the potential to cause harm to human health or the environment.”
20. As contemplated in the earlier 1994 MOU between the same signatory parties (which was to be substituted and become void by Article 9.6 and the last paragraph of Annex “A” of the 1995 Settlement Agreement), the 1995 Settlement Agreement, subject to its terms: (i) released TexPet from the Respondent’s and PetroEcuador’s claims based

upon Environmental Impact (except for claims related to TexPet’s performance of the Scope of Work); and (ii) provided that TexPet would be released from all remaining environmental liability upon completion of the remediation obligations described in that Scope of Work.

21. Article 1.12 of the 1995 Settlement Agreement defined such release, as follows: “The release, under the provisions of Article V of this Contract, of all legal and contractual obligations and liability, towards the Government and Petroecuador, for the Environmental Impact arising from the Operations of the Consortium, including any claims that the Government and Petroecuador have, or may have against Texpet, arising out of the Consortium Agreements.” The term “Operations of the Consortium” was defined as “Those oil exploration and production operations carried out under the Consortium Agreement”, i.e. the 1973 Concession Agreement (ibid).
  
22. Article 5.1 of the 1995 Settlement Agreement (“Article V”) in turn provided (inter alia):

“On the execution date of this Contract [i.e. 4 May 1995], and in consideration of Texpet’s agreement to perform the Environmental Remedial Work in accordance with the Scope of Work set out in Annex A, and the Remedial Action Plan, *the Government and Petroecuador shall hereby release, acquit and forever discharge Texpet, Texaco Petroleum Company, Compañía Texaco de Petróleos del Ecuador, S.A., Texaco Inc., and all their respective agents, servants, employees, officers, directors, legal representatives, insurers, attorneys, indemnitors, guarantors, heirs, administrators, executors, beneficiaries, successors, predecessors, principals and subsidiaries (hereinafter referred to as ‘the Releasees’)* of all the Government’s and Petroecuador’s claims against the Releasees for Environmental Impact arising from the Operations of the Consortium, except for those related to the obligations contracted hereunder for the performance by Texpet of the Scope of Work (Annex A) ...”

The Tribunal has here emphasised the wording critical to the Parties’ disputed interpretation of the 1995 Settlement Agreement, to which the Tribunal necessarily returns below. The Government’s “claims” were addressed in Article 5.2.

23. Article 5.2 of the 1995 Settlement Agreement provided:

*“The Government and Petroecuador intend claims to mean any and all claims, rights to Claims, debts, liens, common or civil law or equitable causes of actions and penalties, whether sounding in contract or tort, constitutional, statutory, or regulatory causes of action and penalties (including, but not limited to, causes of action under Article 19-2 of the Political Constitution of the Republic of Ecuador, Decree No. 1459 of 1971, Decree No. 925 of 1973, the Water Act, R.O. 233 of 1973, ORO No. 530 of 1974, Decree No. 374 of 1976, Decree No. 101 of 1982, or Decree No. 2144 of 1989, or any other applicable law or regulation of the Republic of Ecuador), costs, lawsuits, settlements and attorneys’ fees (past, present, future, known or unknown), that the Government or Petroecuador have, or ever may have against each Releasee for or in any way related to contamination, that have or ever may arise in the future, directly or indirectly arising out of Operations of the Consortium, including but not limited to consequences of all types of injury that the Government or Petroecuador may allege concerning persons, properties, business, reputations, and all other types of injuries that may be measured in money, including but not limited to, trespass, nuisance, negligence, strict liability, breach of warranty, or any other theory or potential theory of recovery.”*

The Tribunal has here again emphasised the wording most critical to the Parties’ disputed interpretation of the 1995 Settlement Agreement.

24. The reference in Article 5.2 to Article 19-2 of the Ecuadorian Constitution (being the 1978 Constitution effective in 1979 and, as later amended, in force in 1995) signified a cause of action available to the Respondent under Title II, Section 1 (On the Rights of People/Individuals<sup>1</sup>) whereby the Ecuadorian State guaranteed to each person, inter alia (in English translation): “... the right to live in an environment that is free from contamination. It is the duty of the State to ensure that this right is not negatively affected and to foster the preservation of nature ...”. The fuller text of Article 19-2 in Spanish provides: “Sin perjuicio de otros derechos necesarios para el pleno desenvolvimiento moral y material que se deriva de la persona, el Estado le garantiza: .... El derecho de vivir en un medio ambiente libre de contaminación. Es deber del Estado velar por que este derecho no sea afectado y tutelar la preservación de la naturaleza. La ley establecerá las restricciones al ejercicio de determinados derechos o libertades para proteger el medio ambiente”. The reference to Decree No. 374 of 1976

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<sup>1</sup> The Claimants translate the Spanish term “las personas” as “people” or “persons” [D3.523]; and the Respondent as “individuals” and “persons” [D1.74 & D3.580]. In the Tribunal’s view, these differences in English translation are not material to its decisions in this Partial Award.

signified a cause of action available to the Respondent on the prevention and control of pollution. The reference to the Water Act of 1973 and Decree No. 2144 of 1989 signified causes of action available to the Respondent in regard to water resources and water contamination. The reference to ORO No 530 signified the Regulations for the Exploration and Exploration of Hydrocarbons of 9 April 1974.

25. The references to “the Government” in Articles 1.12 and 5 of the 1995 Settlement Agreement, rather than the Ministry, is explained by the facts that the 1973 Concession Agreement was made between (inter alios) TexPet and the Respondent’s Government (albeit acting by the Ministry) and that, as appears from the 1995 Settlement Agreement, the release was directed, in substantial part, to settling claims arising from that 1973 Concession Agreement (including its section 46). Moreover, Article 9.1 of 1995 Settlement Agreement as regards notices thereunder identified the Ministry as representing the Government. In any event, the Ministry, forming part of the Government, acted for the Government in concluding the 1995 Settlement Agreement and, constitutionally, the Respondent is therefore to be treated under Ecuadorian law as a signatory party to the 1995 Settlement Agreement.
26. Article 9.3 of the 1995 Settlement Agreement contained a “Whole Contract” provision: namely:

“This Contract contains all the terms and conditions agreed upon by the Parties hereto with respect to the Environmental Remedial Work and to all matters which in any way may affect said Environmental Remedial Work. No other agreements, oral or otherwise, regarding this Contract, shall be deemed to exist or to bind the Parties hereto.”

27. Article 9.4 curtailed any benefit for “a third party”, namely (under the Parties’ different English translations from the Spanish version)<sup>2</sup>:

The Claimants: “This Contract shall not be construed to confer any benefit on any third party not a Party to this Contract, nor shall it provide any rights to such third party to enforce its provisions.”

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<sup>2</sup> As noted, the first English translation is advanced by the Claimants [D1.57-58]; and the second is advanced by the Respondent [D3.575]. In the Tribunal’s view, these differences are not material to its decisions in this Partial Award.

The Respondent: “This Contract shall not be construed to confer benefits on third parties who are not a part of this Contract, nor shall it provide rights to third parties to enforce its provisions.”

The term “third party” or “third parties” was not defined in the 1995 Settlement Agreement.

28. Annex “A” to the 1995 Settlement Agreement contained the Scope of the Environmental Remedial and Mitigation Work and Socio-Economic Compensation to be undertaken by TexPet. It was separately signed by the signatory parties. Section VII.C of Annex “A” provided:

“C. Negotiations with the Municipalities of Lago Agrio (Nueva Loja), Shushufindi, Joya de los Sachas and Francisco de Orellana (Coca).

Without prejudice to that agreed in this Scope of Remedial Work and in the Memorandum of Understanding of December 14, 1994, Texpet pledges to continue negotiations with the aforementioned Municipalities, in order to establish the participation of Texpet in the performance of the work based on projects on drinking water and/or construction of sewers and latrines in the corresponding canton seats. The results of such negotiations shall be independent from the current Scope and the Contract for Implementing the Environmental Remedial Work and Release of Obligations to be executed by the parties, nor shall they affect the performance of such Scope and Contract.

The work that cannot be covered with the funds arising from the negotiations with Texpet shall be supplemented pursuant to Art. 3 of Executive Decree 675 of April 15, 1993, published in Registro Oficial No.174 of the 22nd of the same month and year.”

29. The 1995 Settlement Agreement contained no express provision for applicable law(s), dispute settlement or forum selection. It is nonetheless common ground between the Parties (together with their respective expert witnesses) that Ecuadorian law applies to its interpretation and effect, that agreed approach being here confirmed by the Tribunal for the purpose of these arbitration proceedings under Article 33 of the UNCITRAL Arbitration Rules.
30. (ii) *The 1996 Municipal and Provincial Releases:* As provided by Annex “A” to the 1995 Settlement Agreement (cited above), TexPet subsequently settled disputes with the four municipalities of the Oriente Region (Shushufindi, Francisco de Orellana

(Coca), Lago Agrio and Joya de los Sachas), under written agreements made with these municipalities, as also the Province of Sucumbíos and the Napo consortium of municipalities (herein, for ease of reference, collectively called the “Municipal and Provincial Releases”). Under these six settlements, four of which were approved by the Ecuadorian courts owing to their nature as litigious disputes, TexPet, together with non-signatory parties (as explained below), were released from liability to these municipalities for the Consortium’s activities in the area of the concession. The Respondent, including its Ministry, were not signatory parties to these 1996 Municipal and Provincial Releases, which were of course all made after the 1995 Settlement Agreement. (The 1995 Settlement Agreement was not approved by any Ecuadorian court, not then having a litigious nature between its signatory parties).

31. The Municipal and Provincial Releases provided (inter alia) for a release in somewhat different terms from Article 5.1 of the 1995 Settlement Agreement. For example, the fifth provision of the Release of 2 May 1996 made by the Province of Sucumbíos extended to (as here translated into English): “ .... Texaco Petroleum Company, Texas Petroleum Company, Compañía Texaco de Petróleos del Ecuador, S.A., Texaco Inc., and any other affiliate, subsidiary or other related companies, and all their agents, employees, executives, directors, legal representatives, insurers, lawyers, guarantors, heirs, administrators, contractors, subcontractors, successors or predecessors ....”

32. *(iii) The 1998 Final Release: On 30 September 1998, pursuant to the 1995 Settlement Agreement, the Respondent (acting by its Minister of Energy and Mines), PetroEcuador, PetroProduccion and TexPet executed the Acta Final, certifying that TexPet had performed all its obligations under the 1995 Settlement Agreement and, in accordance with its terms, releasing TexPet from (as specified) any environmental liability arising from the Consortium’s operations.*

33. Article IV of the Final Release provided (inter alia) as follows, in English translation:

“ ... The Government and PetroEcuador proceed to release, absolve and discharge TexPet, Texas Petroleum Company, Compañía Texaco de Petróleos del Ecuador, S.A., Texaco Inc., and all their respective agents, servants, employees, officers, directors, legal representatives, insurers, attorneys, indemnitors, guarantors, heirs, administrators, executors, beneficiaries, successors, predecessors, principals and

subsidiaries forever, from any liability and claims by the Government of the Republic of Ecuador, PetroEcuador and its Affiliates, for items related to the obligations assumed by TexPet in the aforementioned Contract [the 1995 Settlement Agreement] ....”

The Tribunal notes that the critical contractual wording at issue in Article 5.1 of the 1995 Settlement Agreement is materially the same in Article IV of the Final Release; and, accordingly, the issues relating to the latter’s interpretation and effect are here treated as the same issues relating to the 1995 Settlement Agreement.

### ***PART C: THE PARTIES' RESPECTIVE CASES***

34. *Introduction:* In the Tribunal's view, as explained later in this Partial Award, the Parties' disputed interpretation turns upon a few crucial Spanish words in Article 5 of the 1995 Settlement Agreement to be construed under the relevant rules of Ecuadorian law on contractual interpretation. Although the materials submitted by the Parties are voluminous, the essential issues of legal interpretation, whilst perhaps difficult, are relatively short and uncomplicated.
35. Given also the limited approach taken by the Tribunal in this Partial Award as to the legal effect of that interpretation under Ecuadorian law, it is unnecessary here to summarise in full the Parties' respective cases relating to Track I. In particular, as explained further below, the Tribunal does not here decide the full legal effect of the 1995 Settlement Agreement (with the 1998 Final Release) as claimed in the Parties' respective claims for relief, as set out below later in this Part C.
36. The Tribunal has nonetheless considered the Parties' submissions and claimed relief at length; and the omission here of any reference to any part of such cases should not be taken as signifying otherwise. However, apart from issues and relief already reserved to Track II and given that part of the issues under Track I are here deferred to Track II by decision of the Tribunal, any part of such case not here addressed should not be taken as having been implicitly decided by the Tribunal one way or the other in this Partial Award.
37. *The Claimants' Case:* In summary, the Claimants contend that, under Ecuadorian law, Chevron is a "Releasee" under Article 5.1 of the 1995 Settlement Agreement and is also not an excluded "third party" beneficiary under Article 9.4 prevented from exercising its contractual rights in full as a Releasee, directly by itself or indirectly through TexPet. The Claimants submit that Chevron, following the 'reverse triangular merger' with Texaco Inc. ("Texaco) between 15 October 2000 and 1 November 2001, became TexPet's indirect owner, controller and ultimate parent company, thereby falling within the meaning of the Spanish term "principales" listed for release in Article 5.1 of the 1995 Settlement Agreement. The Claimants emphasise that the



contrary argument is made by the Respondent for the very first time in these arbitration proceedings.

38. The Claimants assert that Chevron, Texaco and TexPet were and remain separate and distinct corporations; and that, whilst Chevron is not the “successor-in-interest” with regard to any of liabilities of Texaco or TexPet, Chevron submits that the context of the term “principales” in Article 5.1 shows an objective intent under Ecuadorian law to release future parent corporations (such as Chevron) and does not signify only a principal in a principal-agent relationship. The Claimants invoke three particular points in support of their case.
39. First, a “holistic” reading of Article 5.1 reveals the Parties’ objective intent to release parent corporations because the long and broad list of 22 categories of Releasees establishes an intent to release broadly all individuals and companies which might ever be alleged to be responsible for the conduct of TexPet, necessarily including a future parent company of TexPet. Conversely, with such an extensive list (including expressly TexPet’s existing parent company, Texaco), there is no evidence from this contractual wording of any intent to exclude any future parent company as a Releasee.
40. Second, when coupled with “subsidiarias” in Article 5.1, the common legal and business language use of “principales” signifies a parent company. As submitted in paragraph 222 of the Claimants’ Reply Memorial - Track I:

“A grammatical analysis of the phrase *principales y subsidiarias* is revealing of their meaning and use. Linguistically, the terms *principales y subsidiarias*, as used in Article 5.1, are attributive nouns - that is, they are adjectives acting as nouns in this instance. This linguistic phenomenon, known as the “attributive noun” or “nominalization of the adjective” (in Spanish, “*sustantivación del adjetivo*”), occurs when the noun that the adjective complements is not included in the sentence, causing the adjective to become the noun in the phrase by taking the place of the missing noun. In this case, *principales y subsidiarias* is short form for *las compañías principales y subsidiarias* (principal and subsidiary companies). The parties omitted the word “companies,” thereby transforming *principales y subsidiarias* into nouns. The phenomenon of the attributive noun occurs frequently in the Spanish language, and its use is well documented [citation omitted]. It also occurs frequently in English [citation omitted]. For instance, the word *subsidiary* is an attributive noun for the full phrase *subsidiary corporation* [citation omitted]. The fact that the Spanish *subsidiarias* is in the feminine gender (which coordinates with *compañías* [companies] *corporaciones* (corporations), *sociedades* (companies or societies),

*entidades* (entities), or *empresas* (enterprises) - all feminine nouns) further supports this reading [citation omitted]. This analysis is important because, as shown below [paragraphs 220ff], in the Spanish legal and business contexts, *principales* and *subsidiarias* are often used as nouns and adjectives, always maintaining their core meaning.”

41. The Claimants therefore reject as inapposite the Respondent’s reliance upon the Ecuadorian Commercial Code which defines “principales” as a principal corresponding to agency; and they refer to the supporting expert testimony of Dr Coronel and Dr Barros to such effect. Given the common use of the term “principales” to mean a parent company when paired with the term “subsidiarias”, the Claimants submit that it would be implausible that, in drafting Article 5.1, there was any objective intention to displace its ordinary meaning with a narrow technical meaning drawn from the law of agency.
  
42. Third, the context of the word “principales” within the 1995 Settlement Agreement shows an objective intention to mean parent corporations; and, under Ecuadorian law, the interpretation of a contractual term is to be made in its contractual context, as provided by Article 1580 of the Civil Code. Such contractual context here comprises (paragraph 229, *ibid*):
  - “(i) The pairing of *principales* with *subsidiarias* (as in *principales y subsidiarias*) shows the intent to use them as correlatives;
  - (ii) The term *principales* is not coupled with *agentes*, which appears at the opposite end of the long list of Releasees (there are 15 categories of releasees separating them), which evidences an intent not to give *principales* a meaning within the agency context;
  - (iii) Article 1.12 of the 1995 Settlement Agreement shows an overall intent to cover all persons related to TexPet;
  - (iv) The Settlement Agreement’s express naming of Texaco Inc. and its successors evidences an intent to cover all present and future owners and parent companies that enter the corporate structure; and
  - (v) A harmonious and good-faith interpretation militates against an interpretation that covers only current affiliate companies in the corporate ownership structure, but excludes future companies.”
  
43. The Claimants contend that the 1996 Municipal and Provincial Releases are relevant, under Ecuadorian law, to the interpretation of the 1995 Settlement Agreement because, with the 1998 Final Release, they all form part of the same overall transaction with mutual cross-references. Under the different wording of those 1996

Releases, Chevron would manifestly benefit from a release as TexPet's parent company; and accordingly the Claimants submit that this contractual documentation evidences a common intention in related transactions to release a future parent company of TexPet in the absence of any objective evidence indicating any contrary intention.

44. The Claimants also contend that Article 9.4 of the 1995 Settlement Agreement does not preclude unnamed non-signatory "Releasees" from enforcing their contractual rights against the Respondent affirmatively. A Releasee is not a third party to the 1995 Settlement Agreement, but a party to or part of such Agreement, as the Respondent had originally conceded in Paragraph 134 of its Reply Memorial on Jurisdiction. With such contractual rights, so the Claimants contend, there is nothing in the 1995 Settlement Agreement to indicate that these rights can only be exercised by any Releasee defensively and not offensively, by way of a claim for damages, declaratory relief or specific performance against the Respondent.
45. As to the legal effect of their interpretation, it is the Claimants' case that the causes of action expressly described in Article 5.2 of the 1995 Settlement Agreement and for which Chevron is released as a Releasee include all "collective" or "diffuse" environmental rights exercisable only by the Respondent in the general public interest "on behalf of the community" (which were therefore capable of settlement and release by the Respondent under the 1995 Settlement Agreement), as distinct from causes of action available to private individuals making claims for their own personal harm caused by environmental pollution (which were not compromised under the 1995 Settlement Agreement). The Claimants' case relies (inter alia) upon the expert testimony of Dr Barros, Dr Coronel and Professor Oquendo.
46. The Claimants acknowledge that the 1995 Settlement Agreement was not intended to bar and does not bar any environmental claims by individuals for personal harm suffered by those individuals, including other so-called "cow claims". At the time when the 1995 Settlement Agreement was made, whilst collective and diffuse rights existed under Ecuadorian law, according to the Claimants, no private individual without a claim for personal harm had legal standing to bring any environmental claim (for remediation or damages) in respect of such collective or diffuse rights. As

explained by Counsel for Chevron in its closing oral submissions: "... I don't think it has to do with the nature of the right itself, because the right did exist [in 1995]. The right was there. It's that the right could be exercised by the Government on behalf of the people to protect the people but there wasn't a direct action by the people to enforce that" and "... before the EMA in 1999 [i.e. the 1999 Environmental Management Act], the Aguinda plaintiffs did not have standing to vindicate the diffuse rights of the community. That was left to the Government, the Government had that power and that standing" [D3.529 & 541].

47. The Claimants contend that the Lago Agrio Litigation, in contrast to the earlier Aguinda Litigation in New York, concerns environmental claims for collective or diffuse rights for unidentified persons which are precluded by the release in the 1995 Settlement Agreement, as a matter of res judicata and collateral estoppel under Ecuadorian law applicable to settlements (Article 2362 of the Civil Code<sup>3</sup> and/or by analogy of law under Article 18 of the Civil Code); and that none of these claims are made by private individuals for their own personal harm, in contrast to the claims by identifiable persons made in the Aguinda Litigation in New York which involved only individual rights, with claims in respect of personal harm.
48. *The Claimants' Claimed Relief:* As regards the formal relief claimed by the Claimants in regard to the 1995 Settlement Agreement, it is necessary to recite in full Paragraph 272 of the Claimants Reply Memorial – Track I, as follows:

"272. Accordingly, Claimants request a Partial Award that effectively protects Claimants' rights, and reverses (as far as possible) the harmful effects of Ecuador's breaches of the Settlement Agreements [i.e. the 1995 Settlement Agreement and 1998 Final Release] and its international-law obligations. To achieve this result, Claimants respectfully submit the following list of requests, from which the Tribunal can fashion a combination of declaratory, injunctive, and monetary relief in protection of Claimants' rights [footnote here omitted].

A. Specific Performance

1. Order that Ecuador specifically perform the Settlement Agreements.

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<sup>3</sup> Article 2362 of the Civil Code in its original Spanish provides as follows: "*La transacción surte el efecto de cosa juzgada en última instancia; pero podrá pedirse la declaración de nulidad o la rescisión, en conformidad a los artículos precedentes*".

## B. Declaratory Relief

### (i) Scope of the Settlement Agreements

1. Declare that both Claimants are “Releasees” under the Settlement Agreements, and were released from all diffuse environmental claims arising from TexPet’s operations in Ecuador; and
2. Declare that the claims pleaded in the Lago Agrio Litigation (and upon which the Lago Agrio Judgment is based) are the same diffuse environmental claims settled and released in the Settlement Agreements.

### (ii) Legal Effect of the Settlement Agreements

1. Declare that Claimants have no liability or responsibility for satisfying the Lago Agrio Judgment because they were fully released for all such claims by the Settlement Agreements;
2. Declare that the claims pleaded in the Lago Agrio Litigation (and upon which the Lago Agrio Judgment were based) are barred by *res judicata* and collateral estoppel;
3. Declare that under the Settlement Agreements, Claimants have no further liability or responsibility for diffuse environmental claims in Ecuador for Environmental Impact arising out of the Consortium’s operations, or for performing any further environmental remediation;
4. Declare that Ecuador (through its various branches of Government) has breached the Settlement Agreements, *inter alia*, by refusing to specifically perform the Settlement Agreements, by refusing to ensure Claimants’ enjoyment of their releases and their right to be free of litigation, by refusing to dismiss the Lago Agrio Plaintiffs’ claims, by refusing to indemnify Chevron for the Lago Agrio Plaintiffs’ claims, by seeking to comply with this Tribunal’s Interim Awards;
5. Declare that Ecuador’s actions have breached the U.S.-Ecuador BIT, including its obligations to afford fair and equitable treatment, full protection and security, effective means of enforcing rights, and to observe obligations it entered into under the overall investment agreements;
6. Declare that enforcement of the Lago Agrio Judgment within or without Ecuador would be inconsistent with Ecuador’s obligations under the Settlement Agreements, the BIT and international law;
7. Declare that the Lago Agrio Judgment is a nullity as a matter of international law; and

8. Declare that: (i) the Judgment is not final, enforceable, or conclusive under Ecuadorian and international law, and thus, is not subject to recognition and enforcement within or without Ecuador; (ii) any enforcement of the Judgment would place Ecuador in violation of its international-law obligations; (iii) the Judgment violates international public policy and natural justice, and as a matter of international comity and public policy, the Judgment should not be recognized and enforced.

### C. Injunctive Relief

1. Order Ecuador to use all measures necessary to comply with its obligations under the Settlement Agreements to release Claimants (and to ensure that Claimants may effectively enjoy the benefits of such releases) from any liability or responsibility for the Lago Agrio Judgment in Ecuador or in any other country;

2. Order Ecuador to use all measures necessary to prevent the Lago Agrio Judgment from becoming final, conclusive, or enforceable in Ecuador or in any other country;

3. Order Ecuador to use all measures necessary to stay or enjoin enforcement of the Lago Agrio Judgment, including enjoining the Lago Agrio Plaintiffs from obtaining any related attachments, levies, or other enforcement devices in Ecuador or in any other country;

4. Order Ecuador to use all measures necessary to revoke and nullify the Judgment;

5. Order Ecuador to make a written representation to any court in which the Lago Agrio Plaintiffs attempt to recognize and enforce the Lago Agrio Judgment that: (i) the claims that formed the basis of the Judgment were released by the Government; (ii) the Lago Agrio Court had no personal or subject-matter jurisdiction over Chevron; (iii) the Judgment is a legal nullity; (iv) the Judgment is not final, enforceable, or conclusive under Ecuadorian and international law, and thus, is not subject to recognition and enforcement within or without Ecuador; (v) any enforcement of the Judgment would place Ecuador in violation of its international-law obligations; (vi) the Judgment violates international public policy and natural justice; (vii) any enforcement proceedings should be stayed pending the Tribunal's final award in this arbitration; and (viii) as a matter of international comity and public policy, the Judgment should not be recognized and enforced; and

6. Order that, in the event that any court orders the recognition or enforcement of the Lago Agrio Judgment, Ecuador must satisfy the Judgment directly.

### D. Damages, Costs and Attorneys' Fees

1. Award Claimants full indemnification and damages against Ecuador in connection with the Lago Agrio Judgment, including a specific obligation by Ecuador to pay Claimants the sum of money awarded in the Judgment;

2. Award Claimants any sums of money that the Lago Agrio Plaintiffs or others collect against Claimants or their affiliates in connection with enforcing the Judgment in any forum, with such sums to be paid by Respondent;

3. Award all costs and attorneys' fees incurred by Claimants in (i) defending the Lago Agrio Litigation, (ii) pursuing this arbitration, (iii) opposing the efforts by Ecuador and the Lago Agrio Plaintiffs to stay this arbitration through litigation in the United States; and (iv) preparing for and defending against enforcement actions brought by the Lago Agrio Plaintiffs. These amounts will be quantified at the time and in the manner ordered by this Tribunal;
  4. Award both pre- and post-award interest (compounded quarterly) until the date of payment; and
  5. Award such other and further relief that the Tribunal deems just and proper, including any specific relief appropriate to wipe out all consequences of Respondent's breaches of the Settlement Agreements and its violations of its obligations under the Interim Awards, the BIT and international law."
49. The Tribunal has here recited such relief in full, although it exceeds in part the issues intended to be addressed in Track I under the Tribunal's Procedural Order No 10. The Tribunal has also taken note of the Claimants' written requests for relief submitted by their Counsel at the November Hearing made in materially similar terms [D1.31].
50. *The Respondent's Case:* In summary, the Respondent denies that under Ecuadorian law Chevron is a "Releasee" under Article 5.1 or otherwise entitled to take advantage of the 1995 Settlement Agreement, to which it is an excluded "third party" under Article 9.4. Further, even if Chevron were a Releasee, the 1995 Settlement Agreement creates under Ecuadorian law no res judicata effect (nor any collateral estoppel) upon any of the plaintiffs' claims in the Lago Agrio Litigation.
51. As already noted, the Respondent takes issue with the Claimants' interpretation of Article 5.1 of the 1995 Settlement Agreement. The Respondent submits that the Claimants' characterisation of Chevron as TexPet's "principal" within the list of "Releasees" is misplaced because it is based only upon Chevron's indirect shareholding in TexPet, rather than on any relationship of principal and agent between Chevron and TexPet, as required by the contractual wording.
52. As to agency, the Respondent contends that Chevron has consistently denied any agency relationship with TexPet. The Respondent further contends that, even if there were any agency relationship between Chevron and TexPet following the merger between Texaco and Chevron, there could have been no agency relationship in

relation to TexPet's operations which caused environmental damage since those operations had ended in 1992, some nine years before that merger.

53. The Respondent contends that Chevron cannot therefore be a "Releasee" under Article 5.1 of the 1995 Settlement Agreement because it is not there specified by name and the relevant evidence does not establish any intention to derogate from the plain meaning of the contractual terms, to be interpreted under Ecuadorian law. Under Ecuadorian law, the word "principales" refers only to the principal in the ordinary principal-agent representative relationship, thereby excluding Chevron.
54. As to the Claimants' arguments based on the comprehensive nature of the list of Releasees in Article 5.1, the Respondent relies upon the Latin maxim 'inclusio unius est exclusio alterius' as a canon of construction under Ecuadorian law. The Respondent rejects the relevance of the 1996 Municipal and Provincial Releases as an aid to interpreting the Article 5.1 because the Respondent did not agree such a release in Article 5.1, which is differently worded and made between different signatory parties; and, in any event, such materials are excluded from consideration by virtue of Article 9.3 of the 1995 Settlement Agreement. As to the Claimants' linguistic arguments, the Respondent contends that the Spanish word "matriz" means parent company and that "principales" is not its substitute as an attributive noun; and in any event, if all parent companies had been intended to be released, that the Spanish term "las compañías" would have been used in Article 5.1. As to contractual context, the Respondent submits that there is no context in which the adjective "principales", without being further defined, could ever serve to release all future parent companies in a contract governed by Ecuadorian law. Lastly, in the event of any ambiguity in the interpretation of Article 5.1, the Respondent contends that such ambiguity must be resolved in favour of the Respondent as the obligor under Article 1582 of the Ecuadorian Civil Code, as supported by the expert testimony of Professor Salgado.
55. Even if Chevron were a Releasee within Article 5.1, the Respondent contends that Article 9.4 of the 1995 Settlement Agreement expressly prohibits any person other than the signatory parties from exercising the right, offensively, to bring a claim under the terms of the 1995 Settlement Agreement. Under its corrected translation (the second set out in Paragraph 27 above), whilst the Respondent accepts that a non-



signatory Releasee is “part of” the 1995 Settlement Agreement, the Respondent submits that such a Releasee is nonetheless a third party and, as such, acquires no rights to enforce the provisions of the 1995 Settlement Agreement, as also supported by the expert testimony of Professor Salgado.

56. This disability is not cured, according to the Respondent, by TexPet as a signatory party and the Second Claimant in these arbitration proceedings because TexPet has no standing to bring any contractual claim for breach of the 1995 Settlement Agreement. Under Article 1465 of the Ecuadorian Civil Code,<sup>4</sup> TexPet was free to contract in favour of a third person, but only that third person can sue for itself under that contract and accordingly TexPet cannot bring any claim in these proceedings for the benefit of Chevron under the 1995 Settlement Agreement; nor can TexPet bring any claim thereunder for itself not being a party to the Lago Agrio Litigation.
57. Whether or not Chevron is a Releasee, it is the Respondent’s further case that, in agreeing the releases in Article 15.2, the Respondent was not acting in any representational capacity exercising “diffuse” or “collective rights” on behalf of Ecuadorian individuals but acting only in its capacity as a co-contractual party to the 1973 Concession Agreement. As regards the former, Counsel for the Respondent explained in its closing oral submissions: “There was no law in 1995 that recognized diffuse rights. The concept of collective rights was introduced in Ecuadorian legislation for the first time in the 1998 Constitution, or the constitutional reform of 1998, and the concept of diffuse interest was defined for the first time in 1999, one year later in the Environmental Management Act referred to as EMA” [D3.579-580].
58. Further, as the laws of Ecuador stood in 1995, the Respondent submits that it had no power to represent the Ecuadorian people in regard to their individual rights and that individuals could bring personal claims and recover damages under Article 19-2 of the Ecuadorian Constitution, referring to (inter alia) the court decisions in the

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<sup>4</sup> Article 1465 of the Civil Code in its original Spanish provides as follows: “*Cualquiera puede estipular a favor de una tercera persona, aunque no tenga derecho para representarla; pero sólo esa tercera persona podrá demandar lo estipulado; y mientras no intervenga su aceptación expresa o tácita, es revocable el contrato por la sola voluntad de las partes que concurrieron a él. Constituyen aceptación tácita los actos que sólo hubieran podido ejecutarse en virtud del contrato*”.

Gutiérrez case of 29 September 1993 and, albeit after 1995, the Delfina Torres case of 19 March 2003.<sup>5</sup> As regards diffuse rights existing under Article 19-2 at the time of the 1995 Settlement Agreement, the Respondent contends that “collective” or “diffuse” environmental rights did not exist under Ecuadorian law until 1998/1999, after the 1995 Settlement Agreement and 1998 Final Release [D1.158ffx & D1.187ffxx].

59. Accordingly, the Respondent contends that the 1995 Settlement Agreement was not intended to bar and could not create any bar under Ecuadorian law to individuals later bringing claims for environmental remediation (after 1999), both as individual claims for personal harm and also as claims for “diffuse” or “collective rights” under Article 19-2 or any of the other provisions of Ecuadorian law listed in Article 5.2. The Respondent relies (inter alia) upon the expert testimony of Professors Eguiguren and Professor Le Chatelier.
60. *The Respondent’s Claimed Relief:* It is likewise necessary to set out in full below the relief requested by the Respondent in Track I, as pleaded in Paragraph 192 of its Rejoinder on the Merits – Track I (here with added paragraph numbers):

“192. Based on the foregoing, the Republic respectfully requests that the Tribunal issue an Award that:

- (i) Denies all the relief and each remedy requested by Claimants in relation to Track 1, including the relief and remedies requested in Paragraph 272 of Claimants’ Reply on the Merits [recited above];
- (ii) Declares that Chevron is not a “Releasee” under the 1995 Settlement Agreement and therefore has no basis to assert claims under Article VI(1)(a) of the Treaty;
- (iii) Dismisses Chevron’s claims under the 1995 Settlement Agreement and the 1998 Final Release on the merits, should the Tribunal find that Chevron has standing in this Arbitration as a matter of jurisdiction;
- (iv) Declares that TexPet does not have standing to assert claims under the 1995 Settlement Agreement as a matter of Ecuadorian law;
- (v) Dismisses TexPet’s claims under the 1995 Settlement Agreement and the 1998 Final Release on the merits;

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<sup>5</sup> The Angel Gutiérrez case of 29 September 1993, Quito, Judicial Gazette, Year XCIV, Series XVI, No 1, p 11 [RLA-285]; and the Delfina Torres case of 19 March 2003, Quito,, File 229, Official Register 43 [RLA-286].

- (vi) Declares specifically that the Respondent has not breached the 1995 Settlement Agreement or the 1998 Final Release;
- (vii) Dismisses all of Claimants' claims as they relate to the 1996 Local Settlements [i.e. the 1996 Municipal and Provincial Releases], both as a matter of jurisdiction and on the merits;
- (viii) Declares further that the Respondent is under no obligation to indemnify, protect, defend or otherwise hold Claimants harmless against claims by, or judgments or other relief obtained by, third parties including the claims filed by the Lago Agrio Plaintiffs, the Lago Agrio Judgment, and the enforcement thereof;
- (ix) Declares that the 1995 Settlement Agreement has no effect on third parties, and specifically, that the release of liability contained therein does not extend to rights and claims potentially held by third parties or could otherwise bar third-party claims arising from the environmental impact;
- (x) Declares that the Lago Agrio Litigation was not barred by res judicata or collateral estoppel;
- (xi) Awards Respondent all costs and attorneys' fees incurred by Respondent in connection with this phase of the proceedings; and that
- (xii) Awards Respondent any further relief that the Tribunal deems just and proper."

61. As the Respondent recognised at the time of the November Hearing, this requested relief, pleaded in direct response to the Claimants' requested relief extending beyond the issues under Track I, itself extends in part beyond Track I.

## ***PART D: THE TRIBUNAL'S ANALYSES AND DECISIONS***

62. *I Introduction – Legal Interpretation:* As already indicated above, the Tribunal considers that the relevant issues of contractual interpretation under the 1995 Settlement Agreement are, ultimately, relatively short and uncomplicated. The Tribunal sets out below the relevant Ecuadorian rules on contractual interpretation, followed by an analysis of the testimony by the Parties' expert witnesses relevant to the issues of contractual interpretation, before analyzing and deciding upon its own interpretation of the 1995 Settlement Agreement.
63. *(i) The Relevant Rules:* The Parties agree that the 1995 Settlement Agreement should be interpreted in the light of Ecuadorian law as at the time when it was executed [D3.507 & D3.577]. The Parties also referred to the joint expert report of Dr Enrique Barros, Dr César Coronel and Professor Roberto Salgado of 6 August 2012 which contains a helpful summary of the Ecuadorian legal rules of contractual interpretation relevant to the 1995 Settlement Agreement, as agreed by these Parties' three expert witnesses. The Tribunal is content to adopt and apply these rules for the purpose of this Partial Award, as follows (here translated from the original Spanish):
- “(i) For purposes of interpreting the aforementioned contract signed in Ecuador, Ecuadorian laws are the applicable laws.
- (ii) The laws in effect when the agreement was executed must also be understood to be incorporated into the contract (Article 7, number eighteen, Civil Code).<sup>[6]</sup>
- (iii) The Ecuadorian rules for interpreting the contract are those established in Title XIII of the Fourth Book of the Civil Code, Articles 1576 – 1582.
- (iv) The relevant rules ... are essentially the following:
- [a] No matter how general the terms of a contract are, they will apply only to the matter which the parties have contracted about (Article 1577).<sup>[7]</sup>

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<sup>6</sup> Article 7 of the Civil Code provides in its original Spanish, in relevant part: “*La ley no dispone sino para lo venidero: no tiene efecto retroactivo; y en conflicto de una ley posterior con otra anterior, se observarán las reglas siguientes: .... En todo contrato se entenderán incorporadas las leyes vigentes al tiempo de su celebración*”.

- [b] The meaning in which an article can produce some effect must take precedence over that in which it cannot produce any effect at all (Article 1578).<sup>[8]</sup>
- [c] In those cases where there is no contrary intent, the interpretation that best squares with the nature of the contract must be adhered to (Article 1579).<sup>[9]</sup>
- [d] The articles of a contract will be interpreted in light of the others, according to each the meaning that best suits the contract as a whole (Article 1580, first subsection).<sup>[10]</sup>
- [e] If none of the above rules of interpretation are applicable, ambiguous articles will be interpreted in favor of the obligor. But the ambiguous articles that have been drafted or dictated by one of the parties, whether obligee or obligor, will be interpreted against that party, provided that the ambiguity stems from a lack of an explanation that that party should have provided.<sup>[11]</sup>”

64. (ii) *The Expert Testimony*: The Tribunal here addresses (in summary) the expert testimony on the contractual meaning of the word “principales” under Ecuadorian law in Article 5.1 of the 1995 Settlement Agreement.
65. The written reports of the Claimants’ expert witnesses, principally the Second Expert Report of Dr Barros (the “Barros Report”) and the Second Expert Report of Dr Coronel (the “Coronel Report”), support the Claimants’ case that “principales” means a parent company in Article 5.1. Since Chevron is a legal person indirectly controlling

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<sup>7</sup> Article 1577 of the Civil Code in its original Spanish provides as follows: “*Por generales que sean los términos de un contrato, sólo se aplicarán a la materia sobre que se ha contratado*”.

<sup>8</sup> Article 1578 of the Civil Code in its original Spanish provides as follows: “*El sentido en que una cláusula puede surtir algún efecto deberá preferirse a aquél en que no sea capaz de surtir efecto alguno*”.

<sup>9</sup> Article 1579 of the Civil Code in its original Spanish provides as follows: “*En los casos en que no apareciere voluntad contraria, deberá estarse a la interpretación que más bien cuadre la naturaleza del contrato. Las cláusulas de uso común se presumen aunque no se expresen*”.

<sup>10</sup> Article 1580 of the Civil Code in its original Spanish provides as follows: “*Las cláusulas de un contrato se interpretarán unas por otras, dándose a cada una el sentido que mejor convenga al contrato en su totalidad. Podrán también interpretarse por las de otro contrato entre las mismas partes y sobre la misma materia. O por la aplicación práctica que hayan hecho de ella ambas partes, o una de las partes con aprobación de la otra*”.

<sup>11</sup> Article 1582 of the Civil Code in its original Spanish provides as follows: “*No pudiendo aplicarse ninguna de las reglas precedentes de interpretación, se interpretarán las cláusulas ambiguas a favor del deudor. Pero las cláusulas ambiguas que hayan sido extendidas o dictadas por una de las partes, sea acreedora o deudora, se interpretarán contra ella, siempre que la ambigüedad provenga de la falta de una explicación que haya debido darse por ella*”.

and owning TexPet and is therefore to be regarded as a parent company, these two expert witnesses conclude that Chevron is a Releasee under Article 5.1 of the 1995 Settlement Agreement (and also Article IV of the Final Release).

66. The Barros Report (paragraphs 23 to 35) places special emphasis on the fact that the terms “principales y subsidiarias” are used jointly in the same phrase in Article 5.1, lines 8-9, of the 1995 Settlement Agreement. Dr Barros takes the view that in such a context “principales” refers not to any principal-agent relationship under agency law, but to the parent or controlling company/subsidiary relationship from the perspective of company law.
67. Amongst other factors, Dr Barros indicates that: (a) if the parties had wished to use the term “principales” within the context of an agency relationship, they would have mentioned it together with the terms “agentes” or “mandatarios” found at line 6 of Article 5.1, which was not the case (paragraph 26 of the Barros Report); and (b) a harmonious interpretation (paragraph 31 of the Barros Report) and a good faith interpretation (paragraph 33 of the Barros Report) of the 1995 Settlement Agreement and its Article 5.1 militate against construing the release as only covering companies or persons in the ownership structure (including TexPet), as such structure then was and not also companies or persons that come into that same structure at a later date (after 1995). Dr Barros points out that a contrary interpretation of Article 5.1 would mean that officers in charge of TexPet when the release was agreed would be covered as Releasees but not its future officers who could be still held liable (paragraph 29); and that such an interpretation would not make any sense.
68. This contextual interpretation is supported by the Coronel Report. Dr Coronel expresses the view that, through the linkage between the words “principales” and “subsidiarias”, Article 5.1 should be interpreted to mean that companies above and below those there mentioned by name are covered as Releasees, thereby including Chevron (paragraph 19). In this respect, Dr Coronel also refers specifically to the

provisions of the Civil Code: Article 1465, Article 1562,<sup>12</sup> Article 1576, Article 1578 and Article 1580 (Coronel Report, paragraphs 11-15).

69. By relying upon Articles 1576 and 1580 of the Civil Code, Dr Coronel concludes that a joint reading of the definition of the release in Articles 1.12 and 5.1 of the 1995 Settlement Agreement confirms the signatory parties' intention not only to release TexPet but also "all persons and entities related to TexPet" (Coronel Report, paragraph 20). He testifies that Article 1.12 broadly extends the release to both legal and contractual obligations and responsibility to the Government and PetroEcuador resulting from the Consortium's Operations and relating to the environment (not limited to TexPet), and that the broad listing of related entities covered by Article 5.1 evinces an intention to extend the release broadly to companies, entities and persons not expressly mentioned or identified by name in Article 5.1.
70. In particular, Dr Coronel concludes as regards Article 5.1 that: (a) the release covers Texaco, which was then the indirect controlling and owning parent of TexPet, which means that it should also extend to companies becoming in the future the indirect controlling and owning parent of TexPet; and (b) the reference to "successors" indicates that entities not expressly listed by name in its text could still benefit from the release. Dr Coronel states that when the 1995 Settlement Agreement was executed it was impossible to know or even to predict that Chevron (or any other person or company) would become the controlling and/or owning parent of TexPet. Since the highest parent corporation at that time was expressly covered by the release (i.e. Texaco), a logical approach to this provision requires its meaning to cover within the release any future company replacing Texaco as TexPet's parent (Coronel Report, paragraph 20). In that sense (and only in that sense), according to Dr Coronel, Chevron is a "successor" of Texaco; i.e., Texaco was replaced with Chevron as an indirect controlling shareholder and parent of TexPet.

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<sup>12</sup> Article 1562 of the Civil Code in its original Spanish provides as follows: "*Los contratos deben ejecutarse de buena fe, y por consiguiente obligan, no sólo a lo que en ellos se expresa, sino a todas las cosas que emanan precisamente de la naturaleza de la obligación, o que, por la ley o la costumbre, pertenecen a ella*".

71. Neither Dr Barros Report nor Dr Coronel Report denies that the term “principales”, outside the specific context in which such term is used in Article 5.1 but within the context of an agency relationship, can mean a principal or “mandante”. In this connection, as earlier noted in its Third Interim Award (paragraph 4.48), the Tribunal records that the Diccionario de la Real Academia Española defines “principal” as follows: (i) 19<sup>th</sup> Edition (1970): “For. El que da poder a otro para que lo represente, poderdante”; and (ii) 22<sup>nd</sup> (last) Edition (2001): “Der. Poderdante”. In other words, within a technical legal context (this is what the references For. or Der. stand for) “principal” means: who grants a power of attorney in fact).
72. The Tribunal notes that examples in which such term has been used differently in the technical context of Ecuadorian corporate law (Barros Report, paragraph 25) are exceptional, as shown in the reports of the Respondent’s expert witness, Professor Roberto Salgado Valdez, in particular his first report (the “Salgado Report”).
73. However, the Salgado Report does not go much beyond pointing out the technical legal meaning of the term “principal”; and, in the Tribunal’s view, there is no compelling argument refuting the contextual interpretation advanced in the Barros and Coronel Reports. Professor Salgado limits himself to denying that interpretation (e.g. paragraph 20 of the Salgado Report), without addressing the analysis advanced in the Coronel and Barros Reports. Professor Salgado’s subsequent testimony does not materially alter the position.
74. *(iii) The Tribunal’s Analysis as to Legal Interpretation:* The Tribunal considers that it falls within its task to interpret for itself the contractual wording applying the relevant rules under Ecuadorian law and not merely to adopt the conclusions reached by any one or more of the Parties’ expert witnesses. Moreover, the Tribunal notes that there may be differences in approach taken by certain of these expert witnesses and the cases advanced by the Parties presenting them as expert witnesses.
75. As with all issues of contractual interpretation, it is necessary to start with the actual wording at issue, as here expressly required by Article 33(3) of the UNCITRAL Arbitration Rules. Moreover, in the Tribunal’s view, that contractual wording, being



agreed by all three signatories, is by far the best objective evidence of their common intentions under Ecuadorian law.

76. *Article 9.3*: The Tribunal first takes account of the whole agreement provision in Article 9.3 of the 1995 Settlement Agreement. Its terms are unambiguous (recited in Part B above, in English translation). For these reasons, in regard to the interpretation of the 1995 Settlement Agreement, the Tribunal derives no material assistance from Dr Veiga's testimony or from the terms of the release contained in any of the 1996 Municipal and Provincial Releases, as invoked by the Claimants.
77. *The Release*: From the 1995 Settlement Agreement itself, the Tribunal notes that it takes the form of a bipartite and not a tripartite agreement, notwithstanding its three signatories. Its signatories are the same signatory parties to the 1973 Concession Agreement (as modified with PetroEcuador's novation in 1976) and the 1994 MOU. In the Tribunal's view, it is clear from this background (as expressly set out in its preamble and terms) that the 1995 Settlement Agreement (with the 1998 Final Release) was intended to address "forever" all possible environmental claims by the Respondent and PetroEcuador on the one side against TexPet on the other side which had arisen or could conceivably arise from the Consortium's operations under the 1973 Concession Agreement in the Oriente region of Ecuador, together with the other nine agreements listed in its Annex B.
78. Given the nature of environmental claims, these claims could not be limited to contractual claims against TexPet but extended to all "legal" claims, thereby including non-contractual claims, as described in the preamble's last paragraph: "... Texpet agrees to undertake such Environmental Remedial Work in consideration for being released and discharged of all its legal and contractual obligations and liability for Environmental Impact arising out of the Consortium's operations; ...". Further, Article 1.12 defines the release in Article 5 as extending to "all legal and contractual obligations and liability, towards the Government and Petroecuador ..."; and Article 5.2 addresses "any and all claims, rights to claims, debts, liens, common or civil law or equitable causes of actions and penalties, whether sounding in contract or tort, constitutional, statutory, or regulatory causes of action and penalties ...". Whilst the Tribunal accepts the Respondent's submission that the 1995 Settlement Agreement

addressed for the most part contractual claims against TexPet, its object was not limited to contractual claims by the Respondent and Petro-Ecuador as co-contractors, but included expressly non-contractual claims by the Respondent in its other capacities with non-contractual rights and remedies.

79. The Tribunal notes that there is nothing in the express wording of the 1995 Settlement Agreement which contains any 'hold harmless' provision, indemnity or duty to defend by the Respondent or PetroEcuador in the event that TexPet was sued for any legal obligation or liability for Environmental Impact arising from the Consortium's operations. The release assumes that all claims falling within the scope of the release could only be made by the Respondent (with or without PetroEcuador), thereby making such provisions inapplicable to a non-contractual claim made by a third person in its own right. Moreover, there is a significant difference between a release and an indemnity for a State: the former is usually quantifiable at the time of the release and may cost the State little or nothing, whereas the latter, lying in the future and dependent upon a third person's claim, is usually unquantifiable and potentially costly to the State.
80. At the time of the 1995 Settlement Agreement, TexPet was facing separate claims from the Municipalities, four of which had brought legal proceedings against TexPet in Ecuador. The 1995 Settlement Agreement provided no relief to TexPet in regard to such claims. To the contrary, Annex A required TexPet to negotiate settlements with these Municipalities (which it did in the form of the 1996 Municipal and Provincial Releases, as recited above). The 1995 Settlement Agreement also makes no mention of the Aguinda Litigation then pending in New York, to which the Respondent was not a party.
81. From the express terms of the 1995 Settlement Agreement, therefore, the Tribunal concludes that the release for any non-contractual claim made by the Respondent was applicable to claims in which the Respondent was asserting its own rights (in one or more of its capacities) and not to claims made by other third persons acting independently of the Respondent and asserting rights separate and different from the rights of the Respondent.

82. *Article 5:* Under Article 5.1, TexPet and its then parent company (Texaco) were expressly named as “Releasees” in the 1995 Settlement Agreement. The Tribunal considers that the description of “all” the subsequent categories of unnamed Releasees was generally intended to be as broad as was then conceived to be possible, covering both all existing and future persons associated with TexPet who might conceivably be the subject of any environmental claim by the Respondent and PetroEcuador. That general intent, however, must yield to the specific contractual wording agreed by the signatory parties.
83. It is common ground between the Parties that the crucial wording appears in Article 5.1 of the 1995 Settlement Agreement: “principales y subsidiarias”. The Parties’ respective arguments have been summarised above, as also the conclusions reached by the Parties’ respective expert witnesses. It is ultimately a short point, in the Tribunal’s view; and it is therefore unnecessary for the Tribunal here to belabour it unduly.
84. In brief, the Tribunal accepts the grammatical, contextual and common-sense approach to this wording proposed by the Claimants and their two expert witnesses, Dr Barros and Dr Coronel; and it does not accept the approach taken by the Respondent and its expert witness, Professor Salgado, based on the application of Ecuadorian law on agency. The Tribunal also considers that if the issue had arisen at the time the 1995 Settlement Agreement was being signed, both sides would have reacted similarly, to the effect that the wording “principales y subsidiarias” was an obvious shorthand term, requiring no additional wording, for “las compañías principales y subsidiarias”; and that neither side would have suggested then that their chosen wording referred to a principal-agent relationship.
85. In the Tribunal’s view, the Respondent’s interpretation, as now advanced in this arbitration, would have been and remains materially inapposite, ineffective and inconsistent under the rules for contractual interpretation under Ecuadorian law listed in Paragraph 63(iv)(a)-(d) above. Moreover, with such a general intention attributable to the signatory parties to compromise such extensive classes of claims against such broad categories of potential defendants, with Texaco expressly included as TexPet’s existing parent, it would be an extreme oddity if the signatory parties had intended,

without the clearest wording, to exclude a future parent of TexPet because any future parent of TexPet (after Texaco) was the most obvious potential defendant with the deepest pockets. The Tribunal decides that there is no such objective intention evident from the terms of the 1995 Settlement Agreement.

86. Accordingly, for these reasons, the Tribunal decides that Chevron is a “Releasee” under Article 5.1 of the 1995 Settlement Agreement and Article IV of the Final Release. It follows from the Tribunal’s decision that Chevron is contractually privy to the 1995 Settlement Agreement; in other words Chevron is “party”, albeit not a signatory party such as TexPet.
  
87. *Article 9.4*: The next issue of interpretation arises from Article 9.4 of the 1995 Settlement Agreement, invoked by the Respondent. In the Tribunal’s view, this issue raises also a short point of contractual interpretation. For ease of reference, the Tribunal here sets out the Spanish text of Article 9.4, with the two relevant phrases highlighted: “No se deberá inferir que este Contrato conferirá beneficios *a terceros que no sean parte de este Contrato*, ni tampoco que proporcionará derechos *a terceros para hacer cumplir sus provisiones*”. (The Parties’ rival English translations of this Spanish text are set out above in Part B, paragraph 27).
  
88. The Tribunal decides that the wording of Article 9.4 addresses “third parties” who are not parties or part of the 1995 Settlement Agreement. That much is readily apparent from the first phrase in the Spanish version and indeed in both Parties’ English disputed translations. The issue only arises from the second phrase in Article 9.4 which, so the Respondent contends, addresses more generally third parties, here including third parties which are also party to or part of the 1995 Settlement Agreement described in the first phrase of Article 9.4.
  
89. In the Tribunal’s view, the second shorter phrase is intended as an abbreviated form of the first phrase. In other words, both phrases address third parties which are not party to or part of the 1995 Settlement Agreement. The Tribunal arrives at this interpretation as a matter of grammar, semantics and contextual consistency, but also, above all, as a matter of common sense and effectiveness under the rules for contractual interpretation under Ecuadorian law listed in Paragraph 63(iv)(a)-(d)

above. It would make no sense whatever to attribute to the signatory parties a common intent to include a person as a Releasee with ostensible contractual rights under Article 5 but then to exclude that same person from any benefit to enforce those rights under Article 9.4. If such an absurd result had been intended by the signatory parties, it would take much clearer wording than is expressed in Article 9.4; and, in the Tribunal's view, such wording is significantly absent to establish any such intention.

90. *Legal Ambiguity:* In the Tribunal's view, although highly disputed between the Parties at great length, the terms of Articles 1.12, 5.1, 5.2, 9.3 and 9.4 are ultimately not legally ambiguous under Ecuadorian law. The mere fact that the interpretation of a contractual term is disputed by parties and subjected to their exhaustive submissions and materials does not make it ambiguous. Accordingly the Tribunal does not invoke the rule of contractual interpretation relevant to ambiguity under Ecuadorian law listed in Paragraph 63(iv)(e) above, including Article 1582 of the Civil Code.<sup>13</sup>
91. *Decisions – Interpretation:* Accordingly, for these reasons, the Tribunal decides that Chevron, as a party to and “part of” the 1995 Settlement Agreement, can enforce its contractual rights under Article 5 of the 1995 Settlement Agreement as an unnamed Releasee (as also under Article IV of the Final Release), in the same way and to the same extent as TexPet as a signatory party and named Releasee. Moreover, the Tribunal decides that Chevron and TexPet can exercise those rights both defensively and offensively, as claimant or respondent in legal or arbitration proceedings seeking in both any appropriate relief under Ecuadorian law. In the Tribunal's view, nothing in the 1995 Settlement Agreement supports the contention that the manner in which those rights may be exercised is limited, as submitted by the Respondent.
92. *II Introduction - Legal Effect:* The Tribunal has here experienced several problems in deciding in full the respective submissions made by the Parties as to the legal effect of

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<sup>13</sup> Article 1582 of the Civil Code provides that, if none of its preceding rules of interpretation apply, ambiguous clauses shall be interpreted in a favour of the obligor. (In Spanish: “No pudiendo aplicarse ninguna de las reglas precedentes de interpretación, se interpretarán las cláusulas ambiguas a favor del deudor. Pero las cláusulas ambiguas que hayan sido extendidas o dictadas por una de las partes, sea acreedora o deudora, se interpretarán contra ella, siempre que la ambigüedad provenga de la falta de una explicación que haya debido darse por ella”).

the 1995 Settlement Agreement. Quite apart from the Parties' attempts to introduce into Track I submissions already reserved for Track II, the Tribunal considers that other parts of the Parties' submissions overlap significantly with issues falling under Track II and that still other parts originally intended for Track I can now only be decided by the Tribunal with Track II, particularly in the light of the Parties' written pleadings in Track II (which are still incomplete as at the date of this Partial Award). As Counsel for the Respondent rightly cautioned the Tribunal in its closing oral submissions at the November Hearing, there could be a risk of procedural unfairness if the Tribunal decided too much under Track I when one or more Parties were still pleading their full cases in Track II, particularly the Respondent [D3.625-626].

93. For these reasons, the Tribunal declines to decide in this Partial Award under Track I: (i) whether or not the Respondent has breached Article 5 of the 1995 Settlement Agreement and Article IV of the Final Release; and, if so, precisely what remedies are available to Chevron and/or TexPet against the Respondent in respect of any such breach (i.e. damages, declaratory relief or specific performance); (ii) whether or not the claims pleaded by the Lago Agrio Plaintiffs rest upon individual rights, as distinct from "collective" or "diffuse" rights (in whole or in part) and whether or not those claims are materially similar to the claims made by the Aguinda Plaintiffs in New York; and (iii) the specific effect of any changes in Ecuadorian law taking place after the execution of the 1995 Settlement Agreement and the 1998 Final Release, including the interpretation and application of the 1999 Environmental Management Act. These issues are hereby reserved to further decisions by the Tribunal in a later award; and none are decided by the Tribunal in this Partial Award.
94. (i) *Analysis – Legal Effect*: Nonetheless, there are certain other issues which the Tribunal can here fairly decide as to the legal effect of its interpretation of Article 5 of the 1995 Settlement Agreement, as regards Chevron and the Respondent, as at the time of its execution by the signatory parties. (The positions of TexPet and PetroEcuador, whilst not ignored, can here be set aside for present purposes; and, as already indicated, no separate consideration is here required as regards Article IV of the 1998 Final Release).

95. First, the Tribunal decides that the release granted to Chevron by the Respondent under Article 5 covers claims made by the Respondent (with or without PetroEcuador). As worded, the release does not extend to any claims made by third persons in respect of their own individual rights separate from the Respondent under Ecuadorian or other laws. In the Tribunal's view, this factor is not materially disputed by the Parties. The Claimants recognise that the release does not affect such individual rights, both for personal harm claimed by an individual and also the personal claims made by the identifiable Aguinda Plaintiffs in New York.
96. Second, the Tribunal decides that the release in Article 5 by the Respondent does not amount, from its own wording and under Ecuadorian law, to a settlement with a general "erga omnes" effect as res judicata upon any claims made by third persons in respect of their own individual rights separate from the Respondent under Ecuadorian or other laws. Under Ecuadorian law, in order to settle a claim, a person must have the ability to dispose of that claim; and the Respondent had no right to dispose of such an individual claim by a third person: Articles 2349 and 2354 of the Civil Code.<sup>14</sup> This issue is different from and not to be confused with the next issue regarding the capacity of the Respondent in regard to "diffuse" or "collective" rights at the time of the 1995 Settlement Agreement.
97. The words "diffuse" and "collective" do not appear in the 1995 Settlement Agreement. However, as recorded in Paragraph 63 above, the Parties' expert witnesses agree that the laws of Ecuador when the 1995 Settlement Agreement was executed are incorporated into the Settlement Agreement pursuant to Article 7, number eighteen, of the Civil Code.<sup>15</sup> In their joint expert report dated 7 August 2012, Professors Le Chatelier and Oquendo agreed the following legal definition of diffuse rights: "Diffuse rights are indivisible entitlements that pertain to the community as a whole,

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<sup>14</sup> Article 2349 of the Civil Code provides that the only person who can settle a claim is the person who is able to dispose of the objects covered by the settlement (In Spanish: "*No puede transigir sino la persona capaz de disponer de los objetos comprendidos en la transacción*"). Article 2354 of the Civil Code provides that a settlement regarding the rights of others is not valid (In Spanish: "*No vale la transacción sobre derechos ajenos o sobre derechos que no existen*").

<sup>15</sup> Article 7 of the Civil Code provides, in relevant part: "*La ley no dispone sino para lo venidero: no tiene efecto retroactivo; y en conflicto de una ley posterior con otra anterior, se observarán las reglas siguientes: .... En todo contrato se entenderán incorporadas las leyes vigentes al tiempo de su celebración*".

such as the community's collective right to live in a healthy and uncontaminated environment ...". Although these two experts cite as references (inter alia) Ecuadorian laws subsequent to 1995 (including the 1999 Environmental Management Act), the Tribunal considers that this agreed definition is equally appropriate at the time when the 1995 Settlement Agreement was made as regards Ecuadorian law incorporated into the 1995 Settlement Agreement. For present purposes, the Tribunal sees no material distinction between the terms "diffuse" and "collective" rights, here preferring to use the former term only.

98. (ii) *Article 19-2*: This issue of diffuse rights concerns, above all, the nature of the legal rights expressed in Article 19-2 of the Ecuadorian Constitution in force when the 1995 Settlement Agreement was made by the signatory parties. That constitutional provision is expressly cited in Article 5.2 of the 1995 Settlement Agreement, as well as incorporated under Ecuadorian rules of contractual interpretation (for its relevant Spanish text and English translation, see Part B above).
99. Although Article 19-2 is not framed in terms that explicitly confer any right of action, it is common ground between the Parties that it did confer a right to a pollution-free environment guaranteed by "the State". Constitutionally, the "State" in Article 19-2 is of course the Respondent. Although there is no record (as at 1995) of the Respondent ever itself resorting to legal proceedings to make an environmental claim against any person pursuant to Article 19-2, it is clear from the wording of Article 5.2 of the 1995 Settlement Agreement that such a possibility was objectively considered to exist by its signatory parties (including the Respondent), however remote the likelihood of it occurring in practice. Moreover, the Respondent's expert witness, Professor Eguiguren, acknowledged in his oral testimony at the November Hearing that the Respondent could make such a claim in 1995 [D1.208-209]. Hence, the Tribunal concludes that Article 5 was intended to preclude the Respondent from itself making any claim against a Releasee (now including Chevron) under Article 19-2 of the Constitution (or its subsequent constitutional equivalent).
100. On the other hand, as decided above, the contractual wording also records an intention by the signatory parties not to affect claims made separately by other third persons with their own individual rights; nor could it affect those separate third-person rights



as a matter of Ecuadorian law: see Article 2363 of the Civil Code.<sup>16</sup> The Tribunal therefore concludes that, as at 1995, such an individual claiming damages for personal harm remained free to do so, notwithstanding the Respondent's release in Article 5, even where that person invoked Article 19-2 of the Constitution in support of an individual claim for damages in respect of personal harm (actual or threatened) separate from the Respondent. The Tribunal notes the decision in the Gutiérrez case of 29 September 1993 where the individual plaintiff was awarded damages against the defendant pig farmer for personal harm to him, his wife and their property based (inter alia) upon a claim under Article 19-2 of the Constitution.<sup>17</sup>

101. However, the issue is not whether such an individual could make such a claim in respect of his or her personal harm, but rather whether such an individual could make a claim in respect of harm arising out of the alleged violation of a diffuse right under Article 19-2 of the Constitution without claiming to have suffered any personal harm. The Tribunal considers that, as at 1995, such a claim by such an individual was not possible under Ecuadorian law, that cause of action being confined under Article 19-2 to the Respondent alone. It is here helpful to set out the rival approaches taken by the Parties' respective expert witnesses, as largely recorded in their joint expert report dated 7 August 2012.
102. In summary, the Claimants' experts (Dr Barros, Dr Coronel, Professor Oquendo and Dr Romero) testified that the constitutional right under Article 19-2 was a diffuse and indivisible right because the owner of that right was the entire community of Ecuadorian citizens (not individuals or groups of individuals); the Ecuadorian Government asserted this right for the benefit of the entire community of Ecuadorian citizens in the 1995 Settlement Agreement, in the exercise of the Respondent's duty to vindicate the right of its citizens to live in an environment free from contamination and to foster the preservation of nature; and, accordingly, the 1995 Settlement

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<sup>16</sup> Article 2363 of the Civil Code provides that a settlement shall only be effective as between the parties to such settlement (In Spanish: "*La transacción no surte efecto sino entre los contratantes. Si son muchos los principales interesados en el negocio sobre el cual se transige, la transacción consentida por uno de ellos, no perjudica ni aprovecha los otros; salvo, empero, los efectos de la novación, en el caso de solidaridad*"). Article 297 of the Code of Civil Procedure requires the common identity of (i) parties, (ii) causa petendi (as to facts and legal basis); and (iii) object.

<sup>17</sup> The Angel Gutiérrez case of 29 September 1993 (ibid).

Agreement (with the Final Release) extinguished any possible environmental claim against the Releasees arising from the alleged violation of this diffuse right under Article 19-2, whether made by the Respondent or any third person.

103. In summary, the Respondent's expert witnesses (Professor Eguiguren, supported by Professor Le Chatelier), whilst acknowledging that a diffuse right was indivisible, testified that, in order to settle any right, the settling party must have the capacity to dispose of that right under Ecuadorian law; the Ecuadorian Government acted in the 1995 Settlement Agreement to settle only its own rights arising from the 1973 Concession Agreement; the Government did not have any capacity: (i) to dispose of the rights of individuals or (ii) to represent individuals for the purpose of settling in their name rights conferred upon them by Ecuadorian law, including rights under Article 19-2 of the Constitution; and for this purpose the nature of the right is irrelevant (i.e. whether diffuse or otherwise) because a settlement, according to Ecuadorian law, can affect only the parties to that settlement and cannot affect the rights of third persons.
104. As already noted above, the first of these propositions concerning 'individual' rights is common ground between the Parties' expert witnesses and is not disputed by the Claimants. It is the second proposition concerning Article 19-2 which divides the Parties' expert witnesses.
105. From the materials adduced by the Parties and their expert witnesses in these arbitration proceedings, the Tribunal concludes that the diffuse and indivisible right under Article 19-2 of the Constitution was the same before and after the 1995 Settlement Agreement. In particular, Professor Eguiguren testified at the November Hearing that "... the right remains the same. The right to live in a healthy environment is the same of [in] 1995. In reality, since 1983, when it was introduced in the Ecuadorian Constitution, it's the same of [in] 1998 and 2008 ...." [D1.199]. What changed under Ecuadorian law after 1995 was the legal standing of a private individual to bring a claim under Article 19-2 asserting a diffuse constitutional right (not being a claim in respect of that individual's personal harm). That new legal standing was subsequently confirmed by the 1999 Environmental Management Act.

106. In the Tribunal's view, under Ecuadorian law as at the time when the 1995 Settlement Agreement was executed (i.e. before the 1999 Act), only the Respondent could bring a diffuse claim under Article 19-2 to safeguard the right of citizens to live in an environment free from contamination. At that time, no other person could bring such a claim. No instance of the Respondent bringing or settling such a claim (other than this case) and no decisive provision of Ecuadorian law was brought to the attention of the Tribunal. Nonetheless, it must follow from the circumstances prevailing in 1995 that the Respondent, and only the Respondent, had the legal capacity to make and settle a diffuse claim under Article 19-2. If the Respondent could not make and then settle a diffuse claim under Article 19-2, no-one else could. The Tribunal is therefore persuaded by the analysis submitted by the Claimants' expert witnesses on this point, namely that in 1995 the Respondent (acting by its Government) could settle a diffuse claim under Article 19-2 "forever" against the Releasees; and that accordingly no such diffuse claim could be made in the future against any Releasee.
107. After 1995, the Tribunal considers that the same situation prevailed: the right to make an environmental claim based upon the diffuse right under Article 19-2 against the Releasees remained settled "forever". The new factor, confirmed by the 1999 Environmental Management Act, that one or more private individuals now had standing to bring a claim asserting diffuse rights could not revive the diffuse right under Article 19-2 which had already been extinguished by the 1995 Settlement Agreement. It is not juridically possible for a person to exercise a right which no longer exists, even if, were that right to remain in existence, that person has newly acquired the right to exercise it. As agreed by the Parties' experts, that diffuse right under Article 19-2 was "indivisible": it was either settled in full or not at all. The Tribunal has rejected the latter possibility; and it decides upon the former. It rejects entirely the third possibility that the same diffuse right in Article 19-2 can exist in separate parts, to be exercised by multiple claimants at different times with successive diffuse claims, thereby making any effective final settlement or adjudication of such claims illusory.
108. *(iii) Decisions - Legal Effect:* Accordingly, for these reasons, the Tribunal concludes that, under Ecuadorian law, Article 5 of the 1995 Settlement Agreement and Article IV of the Final Release preclude any claim by the Respondent against any Releasee

invoking the diffuse constitutional right under Article 19-2 of the Constitution, but that these releases also preclude any third person making a claim against a Releasee invoking the same diffuse constitutional right under Article 19-2, not being a separate and different claim for personal harm (whether actual or threatened).

109. It will be noted that the Tribunal has not considered the other statutory provisions listed in Article 5.2 of the 1995 Settlement Agreement, particularly the Decree No. 374, the Water Act of 1973 and Decree No. 2144. The Tribunal has heard much less about these provisions so far; and it is therefore reluctant to make any final decisions in their regard before satisfying itself that there are no material differences between the nature of the legal rights under these provisions and the rights under Article 19-2. The Tribunal will if necessary request further submissions from the Parties on this point.
110. Lastly, the Tribunal has not here decided the nature and scope of popular actions under Articles 990 and 2236 of the Civil Code. From the Parties' expert witness reports, there appears to be common ground that a claimant could not bring any environmental claim as a popular action without (inter alia) claiming actual or threatened personal harm. The Tribunal has again heard much less about these popular actions (both before and after the 1995 Settlement Agreement); and, whilst it seems at present that these actions are unlikely to be decisive one way or the other in this case, the Tribunal again prefers to defer its decision for the time being. Similarly, the Tribunal will if necessary request further submissions from the Parties on these popular actions.

***PART E: THE OPERATIVE PART***

- 111. This Partial Award, although separately signed by the Tribunal’s members on three signing pages, constitutes a “Partial Award” signed by the three arbitrators under Article 32 of the UNCITRAL Arbitration Rules.**
- 112. For the reasons set out above, the Tribunal finally decides and awards as follows in Track I of these arbitration proceedings:**
- (1) The First Claimant (“Chevron”) and the Second Claimant (“TexPet”) are both “Releasees” under Article 5.1 of the 1995 Settlement Agreement and Article IV of the 1998 Final Release;**
  - (2) As such a Releasee, a party to and also part of the 1995 Settlement Agreement, the First Claimant can invoke its contractual rights thereunder in regard to the release in Article 5.1 of the 1995 Settlement Agreement and Article IV of the 1998 Final Release as fully as the Second Claimant as a signatory party and named Releasee;**
  - (3) The scope of the releases in Article 5 of the 1995 Settlement Agreement and Article IV of the 1998 Final Release made by the Respondent to the First and Second Claimants does not extend to any environmental claim made by an individual for personal harm in respect of that individual’s rights separate and different from the Respondent; but it does have legal effect under Ecuadorian law precluding any “diffuse” claim against the First and Second Claimants under Article 19-2 of the Constitution made by the Respondent and also made by any individual not claiming personal harm (actual or threatened); and**

- (4) Save as aforesaid, the Tribunal does not here decide (one way or the other) any part of the formal relief claimed by the Parties respectively in regard to Track I, reserving to itself its full powers and discretion to do so in one or more later awards.

*PLACE OF ARBITRATION: THE HAGUE, THE NETHERLANDS*

*DATE: 17 SEPTEMBER 2013*

*THE TRIBUNAL:*

*Dr Horacio A. Grigera Naón:*

*Professor Vaughan Lowe;*

*V.V. Veeder (President:)*

*V.V. Veeder*

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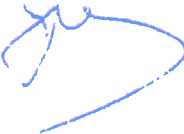
- (4) Save as aforesaid, the Tribunal does not here decide (one way or the other) any part of the formal relief claimed by the Parties respectively in regard to Track I, reserving to itself its full powers and discretion to do so in one or more later awards.

*PLACE OF ARBITRATION: THE HAGUE, THE NETHERLANDS*

*DATE: 17 SEPTEMBER 2013*

*THE TRIBUNAL:*

*Dr Horacio A. Grigera Naón:*



*Professor Vaughan Lowe;*

*V.V. Veeder (President):*



- (4) Save as aforesaid, the Tribunal does not here decide (one way or the other) any part of the formal relief claimed by the Parties respectively in regard to Track I, reserving to itself its full powers and discretion to do so in one or more later awards.

*PLACE OF ARBITRATION: THE HAGUE, THE NETHERLANDS*

*DATE: 17 SEPTEMBER 2013*

*THE TRIBUNAL:*

*Dr Horacio A. Grigera Naón:*



*Professor Vaughan Lowe:*



*V.V. Veeder (President:)*




*APPENDIX 1*

*THE 1995 Settlement Agreement*

*(Spanish original version)*



REPUBLICA DEL ECUADOR  
MINISTERIO DE ENERGIA Y MINAS

EL ECUADOR HA DICO  
ES Y SERA PAIS AMAZONICO

Ecuador Remediation

File: XI.A.l.b.iv 1

**CONTRATO PARA LA EJECUCION DE  
TRABAJOS DE REPARACION MEDIOAMBIENTAL Y  
LIBERACION DE OBLIGACIONES, RESPONSABILIDADES Y DEMANDAS**

ESTE CONTRATO para la Ejecución de Trabajos de Reparación Ambiental y Liberación de Obligaciones, Responsabilidades y Demandas, se celebra entre el Gobierno del Ecuador, representado por el Ministro de Energía y Minas, Dr. Galo Abril Ojeda, al que se denominará "el Gobierno", y la Empresa Estatal Petróleos del Ecuador, PETROECUADOR, representada por su Presidente Ejecutivo, Dr. Federico Vintimilla, a la que se denominará "PETROECUADOR", por una parte; y por otra, Texaco Petroleum Company, una Corporación de Delaware, con oficinas en la Ave. 6 de Diciembre 2816 y James Orton, Quito, Ecuador, representada por su Vicepresidente, Sr. Ricardo Reis Veiga, y su Representante Legal, Dr. Rodrigo Pérez Pallares, a la que se denominará "TEXPET".

CONSIDERANDO que, Texas Petroleum Company firmó un contrato de concesión de derechos para la exploración y explotación de hidrocarburos con el Gobierno el 5 de marzo de 1964 y, por el mismo instrumento, con aprobación del Gobierno, dicho contrato fue transferido a la Compañía Texaco de Petróleos del Ecuador, C. A. y a Gulf Ecuatoriana de Petróleo, S.A., contrato que fue registrado en el Ministerio de Minas el 14 de marzo del mismo año;

CONSIDERANDO que, la Compañía Texaco de Petróleos del Ecuador, C.A. y Gulf Ecuatoriana de Petróleo S.A. firmaron un contrato ampliatorio y modificatorio con el Gobierno el 27 de junio de 1969, el mismo que fue registrado en el Ministerio de Industrias y Comercio el 30 de junio del mismo año;

CONSIDERANDO que, con la aprobación del Gobierno constante en la Resolución Ministerial No. 844 del 20 de diciembre de 1965, la Compañía Petrolera Pastaza, C.A. y la Compañía Petrolera Aguarico, S.A., obtuvieron una concesión para la exploración y explotación de hidrocarburos por medio del traspaso efectuado por Minas y Petróleos del Ecuador, Sociedad Anónima;

CONSIDERANDO que, las Compañías Petrolera Pastaza, C.A. y Petrolera Aguarico, S.A., firmaron un contrato ampliatorio y modificatorio con el Gobierno el 27 de junio de 1969, el mismo que se registró en el Ministerio de Industrias y Comercio el 30 de junio del mismo año;

CONSIDERANDO que, la Compañía Texaco de Petróleos del Ecuador, C.A. y Gulf Ecuatoriana de Petróleo S.A., a las cuales sucedieron finalmente TEXPET y PETROECUADOR (de aquí en adelante denominadas "Consortio"), firmaron un Acuerdo de Operación Conjunta con TEXPET el 1 de enero de 1965, que cubre la operación de las instalaciones del Consortio (de aquí en adelante denominado "Convenio Napo");

*[Handwritten signature]*

*[Handwritten signature]*



REPÚBLICA DEL ECUADOR  
MINISTERIO DE ENERGÍA Y MINAS

EL ECUADOR HA SIDO,  
ES Y SERÁ PAÍS AMAZÓNICO

Página 2

**CONSIDERANDO** que, la unificación de los contratos y/o la duración de los mismos, así como la simplificación de la estructura corporativa de las diferentes concesionarias era necesaria para la reorganización de las obligaciones contratadas para el desarrollo de la Industria Petrolera Ecuatoriana, como lo establece el Decreto Supremo No. 516 de mayo 11 de 1973;

**CONSIDERANDO** que, el Gobierno, dando cumplimiento a las provisiones del Decreto Supremo No. 516/73, autorizó la unificación, reemplazo y modificación de los contratos firmados con anterioridad con la Compañía Texaco Petróleos del Ecuador, C.A., con Gulf Ecuatoriana de Petróleo, S.A., y sus respectivas compañías afiliadas, Compañía Petrolera Pastaza C.A., y Compañía Aguarico, S.A., en un solo contrato para la exploración y explotación de hidrocarburos, el mismo que se firmó el 6 de agosto de 1973 por y entre el Gobierno, TEXPET y Ecuadorian Gulf Oil Company (a la que se denominará "Gulf"), el mismo que fue debidamente aprobado por el Decreto Supremo 925, del 4 de agosto de 1973 (al que se le denominará el "Contrato de 1973");

**CONSIDERANDO** que, la Corporación Estatal Petrolera Ecuatoriana (CEPE), hoy PETROECUADOR, adquirió el 6 de junio de 1974 un 12.5% de participación indivisible de los derechos y obligaciones de TEXPET y un 12.5% de participación indivisible de los derechos y obligaciones de Gulf, en el contrato de 1973 y convenios y acuerdos relacionados;

**CONSIDERANDO** que, CEPE, que fue reemplazada por PETROECUADOR, adquirió el 27 de mayo de 1977, los intereses, derechos y obligaciones indivisibles restantes de Gulf en el contrato de 1973, y convenios y acuerdos relacionados;

**CONSIDERANDO** que, CEPE adquirió el 100% de propiedad del Oleoducto Transecuatoriano el 1 de marzo de 1986 y PETROECUADOR se convirtió en el único operador del mismo el 1 de octubre de 1989;

**CONSIDERANDO** que, PETROECUADOR ejerció sus derechos estipulados en el Convenio Napo y reemplazó a TEXPET como operadora del Consorcio el 1 de julio de 1990;

**CONSIDERANDO** que, el contrato de 1973 expiró el 6 de junio de 1992 y el Gobierno, PETROECUADOR y TEXPET han emprendido negociaciones para determinar el Impacto Ambiental potencial resultante de las operaciones del Consorcio en la Región Oriental del Ecuador;



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**CONSIDERANDO** que, como se describe en este Contrato, **TEXPET**, el Gobierno y **PETROECUADOR** han determinado y convenido en el alcance del Trabajo de Reparación Ambiental a ser realizado por **TEXPET** para descargo de todas sus obligaciones legales y contractuales y sus responsabilidades por el Impacto Ambiental resultante de las operaciones del Consorcio;

**CONSIDERANDO** que, **TEXPET** conviene en emprender dicho Trabajo de Reparación Ambiental en consideración a que será liberada y descargada de todas sus obligaciones legales y contractuales y responsabilidades por el Impacto Ambiental resultante de las operaciones del Consorcio;

**EN VIRTUD DE LO CUAL**, las partes convienen en lo siguiente:

#### ARTICULO I

#### DEFINICIONES

- 1.1 Convenios del Consorcio.- Aquellos acuerdos relacionados con la exploración y producción, transporte y manejo del petróleo del Consorcio listados en el Anexo B de este documento.
- 1.2 Operaciones del Consorcio.- Aquellas operaciones de exploración y producción de petróleo llevadas a cabo de acuerdo con los convenios del Consorcio.
- 1.3 Impacto Ambiental.- Cualquier sustancia sólida, líquida o gaseosa presente o liberada en el ambiente a tal concentración o condición, cuya presencia o liberación causa o tiene el poder de causar daño a la salud de los humanos o al medioambiente.
- 1.4 Contratista.- La Compañía seleccionada por **TEXPET** para realizar el Trabajo de Reparación Ambiental de una lista de contratistas internacionales de servicios ambientales, aprobada por el Ministerio de Energía y Minas a nombre del Gobierno y **PETROECUADOR** mediante el Memorandum 005-SMA-95 de 7 de febrero de 1995, suscrito por el Subsecretario de Medioambiente, de acuerdo con este Contrato.

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- 1.5 Arbitro Técnico Independiente.- La entidad seleccionada por las Partes de una lista de especialistas internacionales de servicios ambientales, aprobada por el Ministerio de Energía y Minas a nombre del Gobierno y PETROECUADOR, mediante el Oficio # 066-95-DINAMA-SMA-951125 de 28 de abril de 1995, para resolver cualesquiera disputas con respecto a si el Trabajo de Reparación Ambiental, en la forma en que se lo haya realizado, contiene o no un Cambio Sustancial al Alcance del Trabajo establecido en el Anexo A, complementado en el Plan de Acción de Reparación. Esta resolución será definitiva y obligatoria para las partes.
- 1.6 Plan de Acción de Reparación.- El plan detallado para realizar el Trabajo de Reparación Ambiental preparado por la Contratista luego de la celebración del Contrato de Prestación de Servicios y aprobado por TEXPET y el Ministerio de Energía y Minas a nombre del Gobierno y PETROECUADOR, que será complementario al Alcance del Trabajo adjunto como Anexo A.
- 1.7 Alcance del Trabajo.- El alcance del conjunto de trabajos y acciones para la reparación convenido entre las partes y establecido en el Anexo A que se requiere para descargar y liberar a TEXPET, frente al Gobierno y PETROECUADOR, de todas las obligaciones legales y contractuales, y de la responsabilidad del Impacto Ambiental resultante de las Operaciones del Consorcio.
- 1.8 Trabajo de Reparación Ambiental.- Todos los trabajos y acciones a cargo de TEXPET, su Contratista o los subcontratistas de éste, que deberán ser ejecutados de acuerdo con el Alcance del Trabajo establecido en el Anexo A y el Plan de Acción de Reparación y bajo los términos de este Contrato.
- 1.9 Contrato de Servicios.- El contrato entre TEXPET y la Contratista que fija los términos y condiciones para la preparación del Plan de Acción de Reparación y la realización del Trabajo de Reparación Ambiental contemplado en este Contrato.
- 1.10 Notificación de Cambio Sustancial.- Notificación a TEXPET por parte del Ministerio de Energía y Minas a nombre del Gobierno y PETROECUADOR, señalando la opinión del Ministerio en el sentido de que el trabajo de Reparación Ambiental, en la forma que ha sido realizado, contiene un Cambio Sustancial a lo estipulado en el Alcance del Trabajo establecido en el Anexo A, complementado por el Plan de Acción de Reparación.



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- 1.11 Cambio Sustancial.- Una desviación significativa del Alcance del Trabajo establecido en el Anexo A, complementado por el Plan de Acción de Reparación, resultante de acciones u omisiones en la ejecución por parte de la Contratista del Trabajo de Reparación Ambiental, y que causare que este Trabajo de Reparación Ambiental no cumpla con lo fijado en el Alcance del Trabajo y en el Plan de Acción de Reparación.
- 1.12 Liberación.- La liberación, bajo las provisiones del Artículo V de este Contrato, de todas las obligaciones legales y contractuales y de la responsabilidad, frente al Gobierno y PETROECUADOR, por Impacto Ambiental resultante de las Operaciones del Consorcio, incluyendo cualesquiera demandas que tengan o puedan tener tanto el Gobierno como PETROECUADOR contra TEXPET, como resultado de los Convenios del Consorcio.

## ARTICULO II

### ALCANCE DEL TRABAJO

Las partes convienen en que el Trabajo de Reparación Ambiental en el Area del Consorcio que se requiere para satisfacer y liberar de obligaciones a TEXPET bajo los Convenios del Consorcio, debe concordar con el Alcance del Trabajo descrito en el Anexo A, a complementarse en el Plan de Acción de Reparación, a ser preparado por la Contratista seleccionada por TEXPET, según lo aprobado por las Partes.

## ARTICULO III

### REALIZACION DEL TRABAJO

- 3.1 TEXPET deberá emprender el Trabajo de Reparación Ambiental, a su solo costo y bajo su sola y exclusiva responsabilidad. Si TEXPET así lo desea, podrá realizar el Trabajo de Reparación Ambiental a través de una Contratista calificada y seleccionada por TEXPET, de la lista de compañías aprobadas por el Ministerio de Energía y Minas a nombre del Gobierno y PETROECUADOR, mediante el Memorandum 005-SMA-95 de 7 de febrero de 1995, suscrito por el Subsecretario de Medioambiente, sin que esta aprobación libere a TEXPET de su responsabilidad directa por el completo y cabal cumplimiento del Trabajo de Reparación Ambiental que, mediante este instrumento, se



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compromete a efectuar. El Plan de Reparación Ambiental debe ser realizado de acuerdo con el Alcance del Trabajo, leyes y reglamentos ambientales vigentes en el Ecuador a la fecha de la firma del presente Contrato, especialmente las Regulaciones Ambientales para las Actividades Hidrocarburíferas (Acuerdo Ministerial No. 621 de 1992) y, como complemento a ellas, las prácticas y los estándares internacionales actualmente vigentes para la industria petrolera, especialmente los consignados en la "Guía Operacional de la Industria Petrolera en Selvas Tropicales" del Foro E&P, de abril de 1991 y la "Guía para el Manejo de Desechos de Exploración y Producción (E&P)", de septiembre de 1993.

- 3.2 En el caso de que TEXPET decida ejecutar el Trabajo de Reparación Ambiental a través de una Contratista, TEXPET celebrará con dicha Contratista un Contrato de Servicios para la realización del Plan de Reparación Ambiental. Una vez que se haya firmado el Contrato de Servicios entre TEXPET y la Contratista, la Contratista deberá preparar el Plan de Acción de Reparación para su revisión y aceptación por parte de TEXPET y el Ministerio de Energía y Minas a nombre del Gobierno y de PETROECUADOR. Esta aceptación del Ministerio de Energía y Minas a nombre del Gobierno y PETROECUADOR o su objeción, total o parcial, del Plan de Acción de Reparación deberán ser hechos en un plazo no mayor a quince (15) días hábiles, contados a partir de la fecha de su presentación al Ministerio de Energía y Minas. En caso de objeción total o parcial, las partes negociarán de buena fé la resolución de esas discrepancias en un término de otros quince (15) días hábiles.

- 3.3 (a) El Gobierno y PETROECUADOR convienen en permitir al personal de la Contratista, incluyendo a sus subcontratistas, el acceso a los sitios donde se realizará el Trabajo de Reparación Ambiental, durante un período razonable de tiempo, que le permita preparar el Plan de Acción de Reparación y llevar a cabo el Trabajo de Reparación Ambiental.

- 3.3 (b) Tanto el Gobierno como PETROECUADOR y sus subsidiarias harán los mejores esfuerzos para que sus propias operaciones no interfieran en lo posible con la ejecución del Trabajo de Reparación Ambiental, de conformidad con el Alcance del Trabajo establecido en el Anexo A y el Plan de Acción de Reparación. PETROECUADOR deberá proveer a TEXPET, a su Contratista o a los subcontratistas de éste, cuando fuere necesario y en medida de las disponibilidades, transportación adecuada, hospedaje, instalaciones, apoyo logístico y seguridad de su personal, equipo y materiales empleados para la ejecución del Trabajo de Reparación Ambiental que TEXPET se compromete a realizar.

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- 3.3 (c) Los proyectos de compensación socioeconómica previstos en el Alcance del Trabajo establecido en el Anexo A serán financiados por TEXPET según lo acordado en dicho Alcance del Trabajo, y sin que TEXPET tenga responsabilidad alguna por la ejecución de dichos proyectos.

#### ARTICULO IV.

#### CERTIFICACION Y ACEPTACION DEL TRABAJO

TEXPET debe asegurarse que el Trabajo de Reparación Ambiental sea llevado a cabo de acuerdo con el Alcance del Trabajo, a complementarse en el Plan de Acción de Reparación aprobado por las Partes.

- 4.1 Una vez que se haya completado el Trabajo de Reparación Ambiental en cada sitio, TEXPET deberá notificar, de inmediato y por escrito, al Ministerio de Energía y Minas que será el único receptor a nombre del Gobierno y PETROECUADOR, que su obligación de llevar a cabo el Trabajo de Reparación Ambiental ha sido satisfecha, bajo los términos de este Contrato. El Ministerio tendrá quince (15) días calendario contados a partir de la fecha en que se haya efectuado la indicada notificación para inspeccionar el Trabajo de Reparación Ambiental en el sitio y para notificar a TEXPET de cualquier Cambio Sustancial con respecto al Alcance del Trabajo o Plan de Acción de Reparación Ambiental. Si no se hace ninguna notificación de Cambio sustancial durante el indicado término, se considerará que el Gobierno y PETROECUADOR han aceptado que el Trabajo de Reparación Ambiental ha sido ejecutado bajo los términos de este Contrato. Con la aceptación del Trabajo de Reparación Ambiental por parte del Ministerio a nombre del Gobierno y PETROECUADOR, TEXPET habrá satisfecho sus obligaciones con respecto a aquel sitio y la liberación establecida en el Artículo V de este Contrato se hará efectiva.
- 4.2 En el caso de que el Ministerio notifique a TEXPET su opinión en el sentido de que se ha dado lugar un Cambio Sustancial en ese sitio, TEXPET y el Ministerio tienen quince (15) días calendario contados a partir de la fecha de la notificación de Cambio Sustancial para negociar en buena fe la resolución de la disputa. Si las Partes no llegan a un acuerdo dentro de ese término, cada Parte tendrá cinco (5) días calendario para remitir su posición por escrito al Arbitro Técnico Independiente para su resolución.

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### ARTICULO V LIBERACION DE LAS DEMANDAS

- 5.1 A la fecha de suscripción de este Contrato y en consideración al acuerdo de TEXPET de realizar el Trabajo de Reparación Ambiental de acuerdo con el Alcance del Trabajo establecido en el Anexo A y el Plan de Acción de Reparación Ambiental, el Gobierno y PETROECUADOR liberarán, absolverán y descargarán para siempre a TEXPET, Texas Petroleum Company, Compañía Texaco de Petróleos del Ecuador S.A., Texaco Inc., y a todos sus respectivos agentes, sirvientes, empleados, funcionarios, directores, representantes legales, aseguradores, abogados, indemnizadores, garantes, herederos, administradores, ejecutores, beneficiarios, sucesores, predecesores, principales y subsidiarias (a las que se denominará "Las Exoneradas") de cualquier otra demanda del Gobierno y PETROECUADOR en contra de Las Exoneradas por Impacto Ambiental, resultante de las Operaciones del Consorcio, a excepción de aquellas relacionadas con las obligaciones contraídas en este Contrato para la ejecución por TEXPET del Alcance del Trabajo (Anexo A), las cuales serán liberadas conforme se vaya ejecutando el Trabajo de Reparación Ambiental a satisfacción del Gobierno y PETROECUADOR, de conformidad con las cláusulas 5.3 y 5.4 de este Contrato. El Gobierno y PETROECUADOR convienen en que sus demandas son demandas genuinamente disputadas y que TEXPET niega cualquier responsabilidad sobre estas demandas. Adicionalmente, el Gobierno y PETROECUADOR convienen en que esta Liberación de Demandas y compromisos no será nunca ofrecida o admitida como evidencia contra TEXPET o interpretada como confesión o admisión de responsabilidad en cualquier juicio o procedimiento legal.
- 5.2 El Gobierno y PETROECUADOR entienden por demandas cualquiera y todas las demandas, derechos de demandas, deudas, embargos, acciones y multas por causas de orden común, de derecho civil o de equidad, basadas en contratos o hechos dolosos, causas de acción y penalidad constitucionales, estatutarias, regulatorias (incluyendo, pero no limitándose a causas de acción bajo el Artículo 19-2) de la Constitución Política de la República del Ecuador, Decreto No. 1459 de 1971, Decreto No. 925 de 1973, la Ley de Aguas, R.O. 233 de 1973, ORD No. 530 de 1974, Decreto No. 374 de 1976, Decreto No. 101 de 1982 o Decreto No. 2144 de 1989, o cualquier otra ley o regulación de la República del Ecuador que sea pertinente), costos, juicios, liquidaciones, y honorarios de abogados (pasados, presentes, futuros, conocidos o desconocidos), que el Gobierno o PETROECUADOR tengan o puedan tener en contra de cada liberación relacionados de alguna manera con la contaminación, que exista o pueda surgir, directa o indirectamente, de las Operaciones del Consorcio, incluyendo, pero no limitándose, a consecuencias de todos los tipos de daños que el Gobierno o PETROECUADOR

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podieran alegar con respecto a las personas, propiedad, negocios, reputaciones, y todos los otros tipos de perjuicios que se puedan medir en términos de dinero, incluyendo, pero no limitándose a transgresiones, molestias, negligencia, responsabilidad estricta, incumplimiento de garantía, o cualquier teoría o teoría potencial de recuperación.

5.3 Con respecto al Trabajo de Reparación Ambiental a ser ejecutado de acuerdo con el Alcance del Trabajo establecido en el Anexo A, a complementarse con el Plan de Acción de Reparación, la Liberación para cada sitio se hará efectiva inmediatamente y de forma definitiva, bajo:

- a) la aceptación del Ministerio de Energía y Minas a nombre del Gobierno y de PETROECUADOR, según el Artículo 4.1 de este Contrato, de la notificación de TEXPET de que el Trabajo de Reparación Ambiental requerido para un sitio ha sido completado en su totalidad de acuerdo con el Alcance del Trabajo y el Plan de Acción de Reparación aprobado; o
- b) la determinación del Arbitro Técnico Independiente de que el Trabajo de Reparación Ambiental, según el Artículo 4.2 de este Contrato, requerido para un sitio ha sido completado en su totalidad de acuerdo con el Alcance del Trabajo, y el Plan de Acción de Reparación aprobado y que no ha existido ningún Cambio Sustancial; o
- c) la ejecución por parte de TEXPET o de su Contratista o de los subcontratistas de éste, a costo de TEXPET, de todos los trabajos requeridos para que el Trabajo de Reparación Ambiental sea complementado en su totalidad de acuerdo con el Alcance del Trabajo establecido en el Anexo A y el Plan de Acción de Reparación aprobado por las partes, en el caso de que el dictamen del Arbitro Técnico Independiente confirme, total o parcialmente, las objeciones que el Ministerio de Energía y Minas haya formulado a la ejecución del Trabajo de Reparación Ambiental realizado por TEXPET, su Contratista o los subcontratistas de éste en un sitio que haya sido objeto de una notificación expedida por TEXPET.

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- 5.4 La liberación de las responsabilidades de TEXPET respecto a los Proyectos de Compensación Socioeconómica contemplados en el Alcance del Trabajo establecido en el Anexo A, será efectiva, de forma inmediata y definitiva, en el momento en que TEXPET efectúe los respectivos desembolsos, hecho que se producirá a la aprobación por parte del Ministerio de Energía y Minas del Plan de Acción de Reparación.

#### ARTICULO VI

#### TERMINACION

- 6.1 Una vez que se haya firmado el Convenio de Prestación de Servicios, TEXPET puede dar por terminado este Contrato sin tener la obligación de realizar el Plan de Reparación Ambiental en el caso de que:
- a) el Ministerio de Energía y Minas a nombre del Gobierno y PETROECUADOR no apruebe el Plan de Acción de Reparación; o
  - b) el Gobierno se rehuse a aceptar la certificación de TEXPET de que el Trabajo de Reparación Ambiental ha sido completado en un sitio, una vez que se ha remitido la disputa al Arbitro Técnico Independiente y se ha encontrado que el Trabajo ha sido llevado a cabo adecuadamente.

#### ARTICULO VII

#### SEGUROS

TEXPET y PETROECUADOR deben obtener y mantener vigentes seguros que los protejan contra cualquier pérdida resultante de la realización del Trabajo de Reparación Ambiental o de cualquier otra actividad realizada bajo los términos y condiciones de este Contrato. Cada una de las dos citadas Partes deberá nombrar a la otra como coasegurada en su póliza de seguros y proporcionará a la otra parte copias de dichas pólizas.



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### ARTICULO VIII

#### FUERZA MAYOR

- 8.1 Ninguna de las partes será responsable por demoras o incumplimiento de los términos de este Contrato siempre y cuando el incumplimiento se deba a Fuerza Mayor. Para los efectos de este Contrato la "Fuerza Mayor" comprende eventos o circunstancias más allá del control razonable de la Parte, que prevenga o impida la debida realización de este Contrato y que a pesar de sus esfuerzos la Parte no puede evitar, incluyendo caso fortuito, terremotos, incendios, inundaciones, o elementos de mala conducta, insurrección, revueltas, huelgas, paros, boicots, motines, disturbios laborales, enemigo público, guerra (declarada o no declarada), cumplimiento de cualquier ley o regulación, o cualquier causa fuera del control de cualquiera de las partes, similar o no a las causas aquí enumeradas.
- 8.2 La Parte que no pueda realizar el trabajo debido a Fuerza Mayor, inmediatamente deberá notificar por escrito a la otra Parte sobre las circunstancias que constituyan la Fuerza Mayor y su alcance, y deberá ser excusada de la realización o puntual realización de tales obligaciones si las condiciones de Fuerza Mayor continúan. La Parte afectada por la Fuerza Mayor deberá hacer todo el esfuerzo posible para minimizar sus efectos y deberá reiniciar los trabajos tan pronto como sea posible, una vez que las circunstancias de la Fuerza Mayor hayan sido eliminadas. Bajo ninguna circunstancia, ninguna de las Partes deberá ser responsable por lucro cesante, o daños especiales, indirectos o consiguientes, resultantes de cualquier demora causada por un evento de Fuerza Mayor.

### ARTICULO IX

#### MISCELANEOS

- 9.1 Notificaciones - Todas las notificaciones requeridas o permitidas bajo este Contrato deberán enviarse por escrito y ser entregadas durante horas hábiles de trabajo, en persona o por correo, o por cualquier medio electrónico de transmisión de comunicación escrita



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que proporcione la confirmación de recibo de transmisiones completas y dirigidas a las Partes, como se describe a continuación:

**GOBIERNO (REPRESENTADO POR EL MINISTERIO DE ENERGÍA Y MINAS)**

Dirección: Santa Prisca 223 y Manuel Larrea, Quito

Atención: Señor Ministro de Energía y Minas  
cc: Subsecretario de Medioambiente

**PETROECUADOR:**

Dirección: Alpallana y 6 de Diciembre, Quito

Atención: Presidente Ejecutivo  
cc: Jefe de la Unidad de Protección Ambiental

**TEXPET:**

Dirección: Ave. 6 de Diciembre 2816 y James Orton, Quito

Atención: Dr. Rodrigo Pérez P.  
cc: Sr. E. O. Wakefield

- 9.2 **Representante de Texaco.**- TEXPET deberá designar por escrito a una o más personas que representen a TEXPET en lo relacionado con el Trabajo de Reparación Ambiental, que deberá realizarse de acuerdo con este Contrato.
- 9.3 **Contrato Completo.**- Este Contrato contiene todos los términos y condiciones acordados por las Partes con respecto al Trabajo de Reparación Ambiental y con todos los asuntos que de alguna manera puedan afectar dicho Trabajo de Reparación Ambiental. No se considerará la existencia de ningún otro convenio, verbal o de otra índole, en relación con este Contrato o que comprometan a las Partes.
- 9.4 **Beneficios para Terceros.**- No se deberá inferir que este Contrato conferirá beneficios a terceros que no sean parte de este Contrato, ni tampoco que proporcionará derechos a terceros para hacer cumplir sus provisiones.



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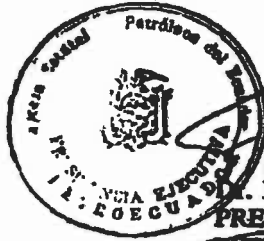
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- 9.5 **Subtítulos.**- Se utilizarán únicamente para referencia o conveniencia y no definirán, limitarán o describirán la intención de ningún Artículo o especificación de este Contrato.
- 9.6 **Substitución** - Este contrato sustituye y deja sin efecto el Memorando de Entendimiento suscrito por las partes el 14 de diciembre de 1994, en concordancia con lo estipulado en el último párrafo del Alcance del Trabajo de Reparación Ambiental suscrito por las partes el 23 de marzo de 1995.

EN VIRTUD DE LO CUAL, las PARTES firman este Contrato en Quito, a **04 MAY 1995**

Dr. Galo Abril Ojeda  
MINISTRO DE ENERGÍA Y MINAS



Federico Vintimilla Saicedo  
PRESIDENTE EJECUTIVO DE  
PETROECUADOR

Dr. Rodrigo Pérez Pallares  
REPRESENTANTE LEGAL DE  
TEXACO PETROLEUM COMPANY

Sr. Ricardo Reis Veiga  
VICEPRESIDENTE DE  
TEXACO PETROLEUM COMPANY



REPUBLICA DEL ECUADOR

MINISTERIO DE ENERGIA Y MINAS

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## ANEXO "A"

### ALCANCE DEL TRABAJO DE REPARACION AMBIENTAL

De conformidad con las cláusulas I.a), II y V del Memorando de Entendimiento entre el Estado Ecuatoriano, Petroecuador y Texaco Petroleum Company (Texpet), firmado el 14 de diciembre de 1994, las partes han acordado establecer el siguiente Alcance del Trabajo de Reparación Ambiental y Mitigación y Compensaciones Socioeconómicas:

#### I. Cierre de Piscinas en las Locaciones de Pozos

Serán taponadas todas las piscinas existentes y situadas en las locaciones de pozos del antiguo Consorcio Petroecuador-Texaco, a la fecha del 30 de junio de 1990 y que se encuentran identificadas en el inventario Oficial (Anexo 1). Dicho taponamiento consistirá en lo siguiente:

1. Se hará la recuperación del crudo, el mismo que será entregado en el lugar a Petroecuador para su uso posterior, sin que Texpet tenga responsabilidad alguna respecto al destino y utilización de ese crudo.
2. El crudo que no se incorpore a la producción nacional será tratado y entregado al Ministerio de Obras Públicas a través de Petroecuador, el que será usado en las vías de la Amazonía en los sectores de afectación.
3. El crudo que no pudiere ser recuperado será tratado en la propia piscina o ex-situ.
4. Toda el agua residual será igualmente tratada y desechada.
5. Cuando el caso lo amerite, se taponará la piscina con tierra, de forma de evitar la erosión.
6. Una vez taponada la piscina se procederá a la revegetación del área taponada.



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7. Si en la realización de los trabajos de remediación se encontraren otras piscinas relacionadas con los sitios de perforación basados en el Inventario Oficial (Anexo 1), pero fuera de aquellos sitios, y que sean de responsabilidad del antiguo Consorcio Petroecuador- Texaco a la fecha del 30 de junio de 1990, serán incluidas en los trabajos a efectuarse.

## II. Estaciones de Producción

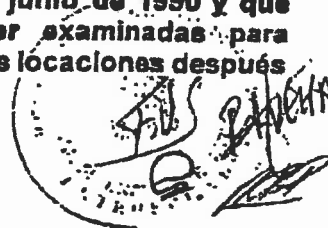
Se deben realizar modificaciones a las descargas de aguas de producción en nueve estaciones de producción que son: Aguariño, Atacapi, Yuca, Auca Sur, Lago Agrilo Norte, Shushufindi Sur, Shushufindi Sur Oeste, Guanta y Cononaco; y en cuatro locaciones de pozos en las que se descargaba agua de producción, que son: Auca Sur 1, Durano 1, Culebra 1 y Yulebra 1, a fin de que las descargas cumplan con las limitaciones de calidad del agua existentes en Regulaciones Medioambientales Ecuatorianas actuales (Acuerdo Ministerial No. 621 y Decreto Ejecutivo 1802). Las modificaciones deberán incluir extensión de la desembocadura en cuerpos de agua más grandes que podrían cumplir con las limitaciones o, donde no sea posible la extensión de la desembocadura en manantiales de recepción más grandes y cuando sea hidrológicamente práctico, se debe reinyectar, como solución definitiva, las aguas de producción en el subsuelo.

La revisión de la operación de las piscinas de aguas de producción y su capacidad debe incluir mejoras y ampliaciones potenciales a las operaciones actuales (ejem., uniones inferiores en las tuberías de entrada para las aguas de producción, mantenimiento adecuado del proceso de desnatado, etc.).

La tecnología será basada en la cláusula III del Memorando de Entendimiento.

## III. Instalaciones Abandonadas

Las instalaciones del antiguo Consorcio que han sido abandonadas con anterioridad al 30 de junio de 1990 y que constan en el Anexo 2, deberán ser examinadas para establecer si necesitan restauración de las locaciones después de la evaluación.







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**IV. Reparación de Suelos Contaminados por Hidrocarburos**

La contaminación de suelos por hidrocarburos presente en las facilidades del antiguo Consorcio como resultado de las operaciones anteriores al 30 de junio de 1990, debe ser remediada. Los suelos contaminados como resultado de las operaciones posteriores al 30 de junio de 1990, no serán reparados como parte de este trabajo. La restauración de los suelos contaminados se ceñirá a la limpieza de:

1. Derrames de fluidos producidos
2. Aquellos asociados con los pozos, de conformidad con el Anexo 3.
3. Derrames de separadores y ramales, tanques de compensación y de lavado
4. Derrames producidos por bombas y compresores y aquellos provenientes de desagües y sumideros
5. Derrames relacionados con generadores, producidos en fosas de estaciones de producción y aquellos ocurridos en tuberías secundarias.

**Nota:** Referencia a la cláusula III del Memorando de Entendimiento.

**V. Relembra**

Tanto en los sitios de perforación (Anexo 1) como en las instalaciones abandonadas (Anexo 2) se relembra el suelo con vegetación propia del lugar y utilizando la técnica apropiada.

**Nota:** Referencia a la cláusula V del Memorando de Entendimiento.





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**VI. Diques de Contención**

Se construirá diques de contención alrededor de los tanques situados en las estaciones de producción que constan en el Anexo 4, conforme al Acta de Entrega-Recepción del Antiguo Consorcio PETROECUADOR-TEXACO, aplicando la cláusula III del Memorando de Entendimiento.

**VII. Compensaciones Socioeconómicas**

Por pedido del Ministerio de Energía y Minas y de Petroecuador, las partes han acordado sustituir los proyectos de Compensaciones Socioeconómicas que estaban identificados en el llamado "Borrador Final-Propuesta para Reparación Ambiental" a que hace referencia la Cláusula II (Alcance del Trabajo) del Memorando de Entendimiento firmado el 14 de diciembre de 1994, por los siguientes:

**A. Recursos Naturales**

Texpet establecerá un fondo de US\$ 1'000.000 para proyectos a ser ejecutados por las organizaciones indígenas y campesinas (FOISE y FCUNAE), bajo la coordinación del Ministerio de Energía y Minas (Subsecretaría del Medio Ambiente) y Petroecuador (Unidad de Protección Ambiental). Este fondo será entregado a nombre del Ministerio de Energía y Minas, el cual lo administrará de conformidad con lo establecido en la presente cláusula.

Este fondo será utilizado para la rehabilitación de las zonas afectadas estableciendo conjuntamente con la población sistemas de aprovechamiento sustentable de los recursos naturales renovables, y su ejecución se orientará a estimular el fomento forestal, agroforestal y agropecuario, fomentando alternativas de producción y buscando elevar la calidad de vida.





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## B. Infraestructura Comunitaria

Texpet financiará los proyectos que a continuación se detallan:

- B.1** Se construirá cuatro Centros Educativos Matrices (CEM) y cuatro Dispensarios Médicos adyacentes, con apoyo logístico de dos ambulancias fluviales en total, y una avioneta que estarán ubicados en los lugares a ser determinados por el Ministerio de Energía y Minas en coordinación con los Ministerios de Educación y de Salud y del Fondo de las Naciones Unidas para la Infancia (UNICEF).

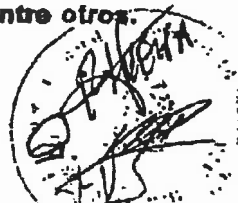
**Nota:** La Avioneta se entregará a la Misión Capuchina de Francisco de Orellana, (Coca) bajo su responsabilidad, sin que Texpet tenga obligación ni responsabilidad alguna respecto al uso y operación de la aeronave.

- B.2** Entrenamiento y material didáctico para programas de educación ambiental, a través de UNICEF y de acuerdo al Memorando de Entendimiento y para promotores de salud.

En el orden pedagógico, el proyecto tiene el propósito de fomentar el desarrollo de la educación cualitativa.

Desde el punto de vista de desarrollo comunitario, el proyecto de los CEMS se centra en los aspectos siguientes:

1. Entregar mensajes educativos adicionales a los miembros de la comunidad sobre aspectos de salud, medio ambiente, mejoramiento de la producción, nutrición de los niños, entre otros.





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2. **Contribuir a mejorar las condiciones de salud en la población de mayor riesgo: niños y niñas, adolescentes de ambos sexos y mujeres embarazadas.**
3. **Apoyar actividades para el mejoramiento del estado nutricional en menores de 5 años y en mujeres embarazadas.**

Además de financiar la construcción de los cuatros CEMS y los cuatro dispensarios médicos y la compra de las dos ambulancias fluviales y una avioneta, Texpet suministrará a UNICEF los fondos necesarios para la normal operación de estos CEMS (a establecerse con UNICEF).

La ejecución total de este proyecto estará a cargo de UNICEF, en coordinación con los Ministerios de Energía y Minas, Educación y Salud.

- C. **Negociaciones con las Municipalidades de Lago Agrio (Nueva Loja), Shushufindi, Joya de los Sachas y Francisco de Orellana (Coca).**

Sin perjuicio de lo acordado en el presente Alcance de Trabajo de reparación ambiental y en el Memorando de Entendimiento del 14 de diciembre de 1994, Texpet se compromete a continuar las negociaciones con las Municipalidades arriba mencionadas, tendientes a establecer la participación de Texpet en la ejecución de obras en base a proyectos de agua potable y/o alcantarillado y letrinización para las correspondientes cabeceras cantonales. Los resultados de estas negociaciones serán independientes del presente Alcance y del Contrato de Reparación Ambiental y de Liberación de Obligaciones que suscribirán las partes, ni afectarán la ejecución de dichos Alcance y Contrato.



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Los trabajos que no pudieren ser cubiertos con los fondos resultantes de las negociaciones con Texpet serán complementados mediante la aplicación del Art. 3 del Decreto Ejecutivo 675 de 18 de abril de 1993, publicado en el Registro Oficial No. 174 del 22 de los mismos mes y año.

Las partes declaran que el Memorando de Entendimiento firmado el 14 de diciembre de 1994 seguirá vigente hasta la fecha en que se suscriba el Contrato para la Ejecución del Trabajo de Reparación Ambiental y Liberación de Obligaciones a que se refiere la Cláusula VI de dicho Memorando. Queda también entendido que Texpet iniciará la ejecución del presente Alcance del Trabajo de Reparación Ambiental luego de la firma del referido Contrato.

Para constancia de que las Partes aceptan las estipulaciones que anteceden, firman el presente Alcance del Trabajo en Quito, a

22 MAR 1995

Dr. Galo Abril  
MINISTRO DE ENERGIA Y MINAS



Dr. Federico Vintimilla Salas  
PRESIDENTE EJECUTIVO DE  
PETROECUADOR

Dr. Rodrigo Pérez Pallares  
REPRESENTANTE LEGAL DE  
TEXACO PETROLEUM COMPANY

Dr. Ricardo Reis Velga  
VICEPRESIDENTE DE TEXACO  
PETROLEUM COMPANY

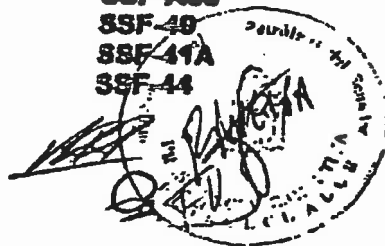


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**ANEXO 1  
LISTA DE SITIOS DE PERFORACION  
PARA EL CIERRE DE PISCINAS**

- |       |         |
|-------|---------|
| AG-1  | SA-84   |
| AG-2  | SA-85   |
| AG-3  | SA-88   |
| AG-6  | SA-88   |
| AG-8  | SA-89   |
| AG-9  | SA-102  |
| AG-10 | SA-103  |
| AT-5  | SA-104  |
| AU-6  | SA-106  |
| AU-17 | SA-107  |
| GU-1  | SA-108  |
| GU-3  | SA-110  |
| GU-4  | SA-111  |
| GU-5  | SSF-W1  |
| LA-1  | SSF-6   |
| LA-2  | SSF-7A  |
| LA-5  | SSF-8   |
| LA-6  | SSF-9   |
| LA-10 | SSF-10A |
| LA-16 | SSF-13A |
| LA-31 | SSF-15A |
| LA-32 | SSF-16  |
| PA-3  | SSF-18  |
| SA-1  | SSF-20  |
| SA-3  | SSF-21  |
| SA-6  | SSF-22A |
| SA-10 | SSF-23  |
| SA-11 | SSF-A24 |
| SA-18 | SSF-25  |
| SA-20 | SSF-27  |
| SA-21 | SSF-29  |
| SA-22 | SSF-30A |
| SA-33 | SSF-B31 |
| SA-38 | SSF-A33 |
| SA-49 | SSF-49  |
| SA-51 | SSF-41A |
| SA-52 | SSF-44  |



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ES Y SERA PAIS AMIGO



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ANEXO 1  
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SA-63  
SA-66  
SA-68  
SA-69  
SA-63  
SA-65  
SA-71  
SA-74  
SA-76  
SA-84  
SA-86  
SA-88  
SA-88  
SA-89  
SA-90  
SA-91  
SA-93

SSF-48A  
SSF-48  
SSF-48  
SSF-B49  
SSF-50  
SSF-B51  
SSF-B57  
SSF-58  
SSF-59  
SSF-62  
SSF-63  
SSF-B64  
SSF-B66  
SSF-67  
SSF-70  
YUL-2  
AUCA SUR 1





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**ANEXO 2**

**INSTALACIONES ABANDONADAS**

- AUCA-19
- AUCA-23
- ENO-1
- PALO ROJO-1
- PUMA-1
- RON-1
- SACHA-4
- SACHA-64
- SACHA-67
- SACHA-86
- SACHA-67
- SACHA-69
- SACHA-79
- SACHA-84
- SACHA-SW-1
- SHUSHUFINDI-6A
- SHUSHUFINDI-16
- SHUSHUFINDI-15B
- SHUSHUFINDI-34
- SHUSHUFINDI 37
- SHUSHUFINDI-39
- SHUSHUFINDI-55
- VISTA-1
- YUCA-2
- YUCA-7
- YUCA-10

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**ANEXO 3**

**LISTA DE SITIOS DE PERFORACION  
PARA LA REPARACION DE SUELOS  
CONTAMINADOS CON HIDROCARBUROS**

AG-4  
AG-5  
AG-6  
AG-7  
AG-8  
SA-15 (WIW2)  
SA-25  
SA-35  
SA-55  
AT-5  
AT-6  
SA-80 (WIW8)  
SA-89  
SA-111  
CO-2  
CO-3  
CO-11  
LA-6  
LA-7  
PA-3  
SSF-17 (WIW11)  
SSF-37  
SSF-40 (WIW8)  
SSF-43  
SSF-50  
SSF-WIW2  
SSF-WIW4



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**ANEXO 4**

**LISTA DE SITIOS PARA CONSTRUCCION DE DIQUES  
PARA TANQUES DE CONTENCION**

**SACHA NORTE 1 (POZO 36)**

**CULEBRA 1**

**AUCA SUR**





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## ANEXO "B"

### ACUERDOS O CONVENIOS RELACIONADOS CON LA EXPLORACION, PRODUCCION, TRANSPORTE Y MANEJO DEL PETROLEO DEL CONSORCIO

1. Contrato de concesión de derechos para la exploración y explotación de hidrocarburos suscrito entre Texas Petroleum Company y el Gobierno del Ecuador el 5 de Marzo de 1964 y, por el mismo instrumento, con aprobación del Gobierno, este contrato fue transferido a la Compañía Texaco de Petróleos del Ecuador, C.A. y a Gulf Ecuatoriana de Petróleo, S.A., contrato que fue registrado en el Ministerio de Minas el 14 de Marzo de 1964.
2. Contrato ampliatorio y modificatorio firmado entre Texaco de Petróleos del Ecuador, C.A. y Gulf Ecuatoriana de Petróleo S.A. y Gulf Ecuadorian de Petróleo S.A., con el Gobierno el 27 de Junio de 1969, el mismo que fue registrado en el Ministerio de Minas el 30 de Junio de 1969.
3. Resolución Ministerial No. 844 del 20 de Diciembre de 1965, mediante la cual la Compañía Petrolera Pastaza C.A. y la Compañía Petrolera Aguarico, S.A., obtuvieron una concesión para la exploración y explotación de hidrocarburos por medio del traspaso efectuado por Minas y Petróleos del Ecuador, Sociedad Anónima.
4. Contrato ampliatorio y modificatorio suscrito entre el Gobierno Nacional y las Compañías Petrolera Pastaza, C.A. y Petrolera Aguarico, S.A., el 27 de Junio de 1969, el mismo que se registró en el Ministerio de Minas el 30 de Junio de 1969.
5. Contrato suscrito el 6 de Agosto de 1973 entre el Gobierno del Ecuador y las compañías Texaco Petroleum Company y Ecuadorian Gulf Oil Company, para la exploración y explotación de hidrocarburos en las entonces provincias del Napo y Pastaza.
6. Actas suscritas el 14 de Junio de 1974 entre el Gobierno del Ecuador, la Corporación Estatal Petrolera Ecuatoriana, CEPE, y las compañías Texaco Petroleum Company y Ecuadorian Gulf Oil Company, por medio de las cuales CEPE hizo efectiva la opción de participación en el 25% de los derechos y acciones prevista en la Cláusula 52 del Contrato del 6 de Agosto de 1973.

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7. **Convenio celebrado el 27 de Mayo de 1977 entre el Gobierno de la República del Ecuador, la Corporación Estatal Petrolera Ecuatoriana, CEPE, y las compañías Ecuadorian Gulf Oil Company, por medio del cual se hace efectiva la transferencia a favor de CEPE del 37.5% de los derechos y acciones en el Contrato del 6 de Agosto de 1973 que poseía esta compañía extranjera.**
8. **Acuerdo de Operación conjunta denominado Convenio Napo "Napo Joint Operation Agreement" suscrito entre las compañías Texaco Petróleos del Ecuador C.A. y Gulf Ecuatoriana de Petróleos S.A.**
9. **Acta de Entrega-Recepción del Oleoducto Transecuatoriano y de su Operación, suscrita el 1ro. de Octubre de 1989 a las 00h00, entre los señores: Ing. Ernesto Grijalva Haro, Gerente General de Petrotransporte; Dr. Rodrigo Pérez Pallares, Representante de Texaco Petroleum Company y el Ing. Carlos Loor, Director Nacional de Hidrocarburos, Encargado.**
10. **Acta de Entrega-Recepción de las Operaciones del Consorcio Petroecuador, suscrita el 1ro. de Julio de 1990, a las 00h00, entre los señores: Dr. Juan M. Quevedo, Mandatario de Texaco Petroleum Company; Sr. Wilson Pástor Morris, Gerente General, Encargado de Petroamazonas; y, el Ing. Fernando Albuja, Director Nacional de Hidrocarburos.**

*RP F.V.S*

*Rafael*