

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

2. TEXACO PETROLEUM COMPANY

(both of the United States of America)

The First and Second Claimants

- and -

THE REPUBLIC OF ECUADOR

The Respondent

Second Interim Award on Interim Measures

dated 16 February 2012

The Arbitration Tribunal:

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

Administrative Secretary: Martin Doe

WHEREAS:

- (A) The Tribunal made its First Interim Award on 25 January 2012, pending the oral hearing on 11 February 2012 (the “Hearing”) and this Second Interim Award;
- (B) The Claimants made their applications for further interim measures (in different terms) by letters dated 4 and 12 January 2012 and at the Hearing; and by letters dated 9, 13 and 24 January 2012 and at the Hearing, the Respondent (inter alia) disputed the Claimants’ applications;
- (C) The Hearing took place on 11 February 2012 in Washington DC, USA, attended by the Parties’ legal representatives; and
- (D) The Tribunal has considered the Parties’ several written and oral submissions made to the Tribunal in regard to interim measures and further considered all relevant circumstances current in this arbitration up to the date of the Hearing;

THE TRIBUNAL NOW MAKES THIS SECOND INTERIM AWARD AS FOLLOWS:

1. The Tribunal determines that: (i) Article 26 of the UNCITRAL Rules (forming part of the arbitration agreement invoked by the Claimants under the Treaty) permits this Tribunal, at the request of a Party, to take interim measures (established in the form of an order or award) in respect of the subject-matter of the Parties’ dispute; (ii) Article 32(1) of the UNCITRAL Rules permits this Tribunal to make (inter alia) an award in the form of an interim award; (iii) Article 32(2) of the UNCITRAL Rules provides that any award by this Tribunal is final and binding on the Parties, with the Parties undertaking to carry out such award without delay; and (iv) Article VI.3(6) of the Treaty provides (inter alia) that an award rendered by this Tribunal pursuant to Article VI.3(a)(iii) of the Treaty under the UNCITRAL Rules shall be binding on the parties to the dispute (i.e. the Claimants and the Respondent), with the Contracting Parties (i.e. here the Respondent) undertaking to carry out without delay the provisions of any such award and to provide in its territory for its enforcement;
2. The Tribunal determines further that the Claimants have established, for the purpose of their said applications for interim measures, (i) a sufficient case as regards both this Tribunal’s jurisdiction to decide the merits of the Parties’ dispute and the Claimants’ case on the merits against the Respondent; (ii) a sufficient

urgency given the risk that substantial harm may befall the Claimants before this Tribunal can decide the Parties' dispute by any final award; and (iii) a sufficient likelihood that such harm to the Claimants may be irreparable in the form of monetary compensation payable by the Respondent in the event that the Claimants' case on jurisdiction, admissibility and the merits should prevail before this Tribunal;

3. Bearing in mind the Respondent's several obligations under the Treaty and international law, including the Respondent's obligation to carry out and provide for the enforcement of an award on the merits of the Parties' dispute in these arbitration proceedings and the Tribunal's mission (required under the arbitration agreement) efficaciously and fairly to decide the Parties' dispute by a final award, the Tribunal hereby orders:

- (i) the Respondent (whether by its judicial, legislative or executive branches) to take all measures necessary to suspend or cause to be suspended the enforcement and recognition within and without Ecuador of the judgments by the Provincial Court of Sucumbíos, Sole Division (*Corte Provincial de Justicia de Sucumbíos, Sala Unica de la Corte Provincial de Justicia de Sucumbíos*) of 3 January 2012 and of 13 January 2012 (and, to the extent confirmed by the said judgments, of the judgment by Judge Nicolás Zambrano Lozada of 14 February 2011) against the First Claimant in the Ecuadorian legal proceedings known as "the Lago Agrio Case";
- (ii) in particular, without prejudice to the generality of the foregoing, such measures to preclude any certification by the Respondent that would cause the said judgments to be enforceable against the First Claimant; and
- (iii) the Respondent's Government to continue to inform this Tribunal, by the Respondent's legal representatives in these arbitration proceedings, of all measures which the Respondent has taken for the implementation of its legal obligations under this Second Interim Award;

until any further order or award made by the Tribunal in these arbitration proceedings;

4. The Tribunal determines that the Claimants shall be legally responsible, jointly and severally, to the Respondent for any costs or losses which the Respondent may suffer in performing its legal obligations under this Second Interim Award, as may be decided by the Tribunal within these arbitration proceedings (to the exclusion of any other jurisdiction); and further that, as security for such contingent responsibility the Claimants shall deposit within thirty days of the date of this Second Interim Award the amount of US\$ 50,000,000.00 (United States

Dollars Fifty Million) with the Permanent Court of Arbitration in a manner to be designated separately, to the order of this Tribunal;

5. The Tribunal dismisses the application made by the Respondent to vacate its order for interim measures of 9 February 2011;
6. The Tribunal's existing orders for interim measures (as recited in the First Interim Award) and the First Interim Award shall continue to have effect subject to the terms of this Second Interim Award;
7. This Second Interim Award is and shall remain subject to modification at any time before the Tribunal's final award in these arbitration proceedings; and, in the meantime, any of the Parties may also apply to the Tribunal for such modification upon seventy-two hours' written notice for good cause shown, including any material change in the legal or factual circumstances prevailing as at the date of the Hearing;
8. This Second Interim Award is made strictly without prejudice to the merits of the Parties' substantive and other procedural disputes, including the Respondent's objections as to jurisdiction, admissibility and merits;
9. This Second Interim Award shall take effect forthwith as an Interim Award, being immediately final and binding upon all Parties as an award subject only to any subsequent modification as herein provided, whether upon the Tribunal's own initiative or any Party's application; and
10. This Interim Award, although separately signed by the Tribunal's members on three signing pages constitutes an "interim award" signed by the three arbitrators under Article 32 of the UNCITRAL Arbitration Rules.

PLACE OF ARBITRATION: THE HAGUE, THE NETHERLANDS

DATE: 16 FEBRUARY 2012

THE TRIBUNAL:

Dr. Horacio A. Grigera Naón

Professor Vaughan Lowe

V.V. Veeder (President)



Dollars Fifty Million) with the Permanent Court of Arbitration in a manner to be designated separately, to the order of this Tribunal;

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