

**Defend Them All Foundation • MiningWatch Canada • Center for Biological Diversity  
Humane Society International, Canada • EarthWorks • YASunidos • CuencaCATCA  
Environmental and Wildlife Society • International Primate Protection League  
Humane Society International, Latin America**

Candice McGibbon  
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VIA ELECTRONIC MAIL

**Re: Ecological risks and community opposition around Loma Larga Project at Quimsacocha.**

To Mrs. Candice McGibbon, and the Executives, Board of Directors, and Shareholders of INV Metals:

We write to express our adamant opposition to the Loma Larga Project (“the Project”) located at Quimsacocha in Azuay, Ecuador. As organizations dedicated to protecting the environment and the animals that inhabit it, we urge INV Metals to respect the wishes of the Ecuadorian people and abandon this high-risk project because of the ecological risks and harm to surrounding communities. The continuation of the Project will only cause more irreparable damage to this ecologically sensitive and culturally significant area.

**Ecological Risks of the Project**

The Loma Larga Project is located in an area classified as páramo, a variety of an alpine tundra ecosystem existing exclusively in high, tropical, mountain environments between the tree line and snow line. Páramo soils have important water retention properties allowing them to act as water reservoirs. They connect lagoons and lakes, create flood buffers in rainy seasons, and provide water sources in dry seasons.

The mining practices used to conduct the Loma Larga Project pose risks of unknown magnitude – risks that INV failed to explore in its technical report. These unknowns include the extent to which:

1. Mining noise will impact surrounding species, as noise pollution from mining activities can cause “substantial changes in foraging and anti-predator behavior, reproductive success, density and community structure”,<sup>[20]</sup>
2. Wildlife could interact with toxic water treatment ponds; and
3. New infrastructure needed to operate the Project will cause range-fragmentation.

An expert report concluded that the Project will inexcusably risk the release of arsenic and other heavy metals and impact surface and subsurface water quality.<sup>1</sup> The risk for contamination of waters presented by the Project is unacceptably high and the ability to contain any pollution is greatly complicated by the complex hydrology of the Project site. Given the sensitive nature and unique properties of páramo ecosystems and their inhabitants, any amount of contamination will have devastating effects.

In September 2019, expert geologist Dr. Steven Emerman, at the request of local communities, travelled to Quimsacocha to analyze the impacts the project poses to the hydrological system. During his presentation in Giron, following a visit to the planned mine site, Dr. Emerman said “this project will pose grave ecological impacts for the hydrology of the region, since any infrastructure will require a removal of the entire cap of organic soil, resulting in irreparable impacts to the capture and flow of water for many communities downstream increasing the likelihood for droughts in the dry season, and flooding in the rainy season.” His recommendation to communities was to not allow the project to go through: the risks outweighed the benefits. We agree with his expert opinion.

According to the company’s own Feasibility Study released last year, the water discharged from the water treatment plant will exceed “the Ecuadorian Freshwater Aquatic Life and Wildlife Standards (Freshwater Standards) for some solutes including aluminum, copper, nitrate, lead, arsenic, chromium, iron, mercury, manganese, and zinc,”<sup>2</sup>. The FS also noted that all of waste rock will be acid-generating, which heightens the risk for acid-mine drainage in the long-term.

In addition to the impact on the water systems, the Project will impact the habitat, and/or nesting grounds of around 700 species. According to the Ecuadorian or IUCN Red Lists, 14 of these are endangered or critically endangered, 22 are vulnerable, and six are near-threatened. At least three endangered species have been found in the mining tailings impact area, at least two endangered species are believed to have critical habitat in the area, and fifteen species are endemic to Ecuador.

For example, tracking studies show that the Andean Condor – an iconic endangered species - relies heavily on the páramos in and around the Project Area as a place to forage for food.<sup>3</sup> Notorious for reproducing only sporadically and for needing many months and large undisturbed areas for nesting and reproduction, only 28 individuals remain in the southern Ecuador region.<sup>4</sup> Any impact on the remaining population will have widespread ecological consequences.<sup>5</sup>

### *These Impacts are Not Simply Inexcusable—They’re Likely Illegal*

Article 71 of Ecuador’s Constitution grants Nature “the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary

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<sup>1</sup> James Kuipers, “Expert Report on the Loma Larga and Rio Blanco Projects in the Province of Azuay, Ecuador” (2016), online (pdf): MiningWatch Canada <[https://miningwatch.ca/sites/default/files/informe\\_pericial\\_kuipers\\_loma\\_larga\\_rio\\_blanco.pdf](https://miningwatch.ca/sites/default/files/informe_pericial_kuipers_loma_larga_rio_blanco.pdf)> at 3.

<sup>2</sup> INV Metals, “Feasibility Study Technical Report: Loma LARGA Project”, (January 2019) p. 305.

<sup>3</sup> Interview with Ernesto Arbeláez, Biologist, Executive Director of Bioparque Amaru Cuenca, 7/8/19.

<sup>4</sup> Janet Gailey & Niels Bolwig, “Observations on the Behavior of the Andean Condor (*Vultur gryphus*)” (1973) 75:1 *The Condor* 60; Sergio A Lambertucci & Orlando A Mastrantuoni, “Breeding behavior of a pair of free-living Andean Condors” (2008) 79:2 *Journal of Field Ornithology* 147; Martha A Whitston & Paul D Whitston, “Breeding Behavior of the Andean Condor (*Vultur gryphus*)” (1969) 71:1 *The Condor* 73.

<sup>5</sup> *Ibid.*

processes.”<sup>6</sup> For Nature to persist, ecosystems must maintain their biodiversity. For biodiversity to persist, individual species must continue thriving. For species to thrive, individual members of those species must have an ecosystem that supports their welfare. This interrelated well-being – from individual organisms to entire ecosystems – is the “vital cycles, structure, [and] functions” that Nature has a right to maintain.

As Ecuador’s Constitutional Court has said, rights of nature are transversal, affecting all other constitutional rights.<sup>7</sup> Infringements of Nature’s rights therefore affect citizens’ rights to participate in political processes. Article 71 states that “every...community...can demand of public authorities the fulfillment of the rights of nature.”<sup>8</sup> Other constitutional articles<sup>9</sup> and Ecuador’s Penal Code<sup>10</sup> further make it apparent that the Ecuadorian government can – and often must – use its powers to defend biodiversity and individual organisms.<sup>11</sup>

### **Harm to Surrounding Communities**

In addition to, and because of, the risks to nature, the Project threatens to infringe on various human rights and faces strong community opposition. The páramo provides clean, filtered drinking water to all its downstream communities, many of which are subsistence farmers, relying on this essential water source for their farming activities. The almost inevitable contamination of this water through the mining project would be a violation of Ecuadorians’ constitutionally protected rights to water and to priority use of water for food sovereignty.<sup>12</sup>

#### *Infringement of Indigenous Rights - Pachamama & Informed Consent*

The Loma Larga mine presents a grave threat to Pachamama – a central figure in the Cañari indigenous culture and beliefs. The Cañari community in the area believe that Quimsacochoa is a source of sacred energy – energy that is essential to healing and cleansing rituals for all peoples and for Pachamama herself. Continuation of the Project presents a threat to local indigenous communities’ constitutionally guaranteed right to continue practicing their ancestral traditions and to the very well-being of their community.<sup>13</sup>

In addition to the impact on Pachamama, the Project infringes on the indigenous right to prior informed consultation. This right is guaranteed in the Ecuadorian Constitution, which further incorporates international law and principles to strengthen the interpretation of the right.<sup>14</sup> Both Ecuador and Canada are signatories to the United Nations Declaration on the Rights of Indigenous Peoples, which requires prior, informed consent and gives indigenous communities the right to conserve and protect their environment.<sup>15</sup> This suggests that consultation be more

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<sup>6</sup> Constitución de la República del Ecuador, Registro Oficial 449: 20/10/2008, art 71.

<sup>7</sup> Corte Constitucional del Ecuador. Sentencia No. 166-15-SEP-CC. Caso No. 0507-12-EP. Registro Oficial, Suplemento, No. 575: 28/08/2015.

<sup>8</sup> *Supra* note 24.

<sup>9</sup> *Ibid*, art 14 (“Environmental conservation, the protection of ecosystems, biodiversity and the integrity of the country’s genetic assets, the prevention of environmental damage, and the recovery of degraded natural spaces are declared matters of public interest”).

<sup>10</sup> Código Orgánico Integral Penal. Registro Oficial Suplemento No. 180: 10/02/2014, art 247.

<sup>11</sup> Craig M Kauffman & Pamela L Martin, “Testing Ecuador’s Rights of Nature: Why Some Lawsuits Succeed and Others Fail” (Paper Presented at the International Studies Association Annual Convention, Atlanta, 18 March 2016).

<sup>12</sup> *Supra* note 24, arts 12, 318.

<sup>13</sup> *Ibid*, art 57.1.

<sup>14</sup> *Ibid*, art 57.7.

<sup>15</sup> United Nations Declaration on the Rights of Indigenous Peoples, UNGAOR, 61st Sess, Annex, Agenda Item 68, UN Doc A/RES/61/295 (2007), arts. 19, 29(1).

than a mere presentation of the project to the indigenous community. Recent case law from Ecuador and the Inter-American Court of Human Rights supports this interpretation.<sup>16</sup>

The Ecuadorian Constitution also guarantees that communities be consulted before the state authorizes a project that could affect the environment. Neither the State nor INV satisfactorily carried out this consultation process. Had they engaged in adequate consultation, they would have found widespread opposition to mining in the sensitive páramo region. Concrete evidence of this opposition is presented by the popular referendum held in the canton of Giron, where 87% of voters were against mining at Quimsacocha.<sup>17</sup> Even the parish of San Gerardo, where INV claimed to have strong support for the project, voted no.<sup>18</sup> Furthermore, the current Prefect of the province where the project is proposed was elected on a platform of protecting water by opposing mining in the páramos.<sup>19</sup> The process of informing indigenous communities as carried out by INV was not widespread, in-depth, nor meaningful enough to meet the definition of consultation if challenged in court.

INV has stated that the project will benefit Ecuador and that it has the support of the country. These statements are misleading or overly optimistic at the very least. Even if there will be temporary jobs created, and giving these programs the benefit of the doubt, local communities are not willing to trade these short-term benefits for long-term damage to the environment, health, and their livelihoods.

On a national level, it is true that the Ecuadorian government has supported the Loma Larga project, promoting mega-mining as the solution to the country's debts. However, given the extreme incentives provided to attract mining to the country, Ecuador will not see nearly as much benefit from the project as is claimed.<sup>20</sup> The estimates of revenue to be collected also fail to factor in the environmental and social harm that the country will be left to deal with after the exit of INV.

### **Respecting the needs of the land and the people – cessation of the Loma Larga Project**

INV claims that environmental stewardship is a main component of its vision statement. INV states that its “mining dissemination program ensures that up-to-date and most importantly, accurate, information is provided to local and international stakeholders with regards to water quality and the potential impact on native flora and fauna.” However, the Project has been met

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<sup>16</sup> Acción Constitucional de Protección No. 21333-2018-00159, Corte Provincial de Justicia de Sucumbios, Sentencia de 3 de agosto de 2018, No. 21333201800266; Acción Constitucional de Protección No. 00001-2019, Corte Provincial de Justicia de Pastaza, Sentencia de 9 de mayo de 2019, No. 16171201900001; Corte Interamericana de Derechos Humanos. Caso Pueblo Indígena Kichwa de Sarayaku vs Ecuador. Fondo y Reparaciones. Sentencia de 27 de junio de 2012. Serie C No. 245 at 177.

<sup>17</sup> Kristen Francescone, “Overwhelming ‘No’ Vote in Southern Ecuador Referendum Targets INV Metals Project” (3 April 2019), online (blog): *MiningWatch* <<https://miningwatch.ca/blog/2019/4/3/overwhelming-no-vote-southern-ecuador-referendum-targets-inv-metals-project>>.

<sup>18</sup> *Ibid.*

<sup>19</sup> Cuenca High Life, “Night of upsets: Surprise candidates Palacios and Perez elected Cuenca mayor and Azuay prefect” (25 March 2019), online (news): <<https://cuencahighlife.com/night-of-upsets-surprise-candidates-palacios-and-perez-elected-cuenca-mayor-and-azuay-prefect/>>.

<sup>20</sup> Jefferson Mecham et al, “Ecuador Endangered by Extreme Extractivism” (17 December 2017), online (pdf): *Rainforest Information Centre* <<https://ecuadorendangered.com/wp-content/uploads/2018/04/Ecuador-Endangered-ERIC-Report-final.pdf>>; Alberto Acosta & John Cajas-Guijarro, “Mega-mining in Ecuador: the dream of a naive milkmaid – The false hope of a broken pitcher” (3 August 2018), online: *Rainforest Action Group* <<https://rainforestactiongroup.org/mega-mining-ecuador-alberto-acosta-dream-naive-milkmaid/>>.

with ardent opposition by local communities that is tied to environmental degradation resulting from the Project. The continuation of the Project will only cause more irreparable damage to the ecologically sensitive and culturally significant area of Quimsacocha.

Given the unacceptably high risk the Loma Larga Project presents and the undeniable, persistent opposition expressed by those who will be directly affected, we urge INV Metals to respect the Ecuadorian peoples' rights to nature, to water, and to a fair democratic process for deciding what is in their best interests. As international organizations concerned with the health and well-being of all living things, we further stand behind the biodiversity in danger at Quimacocha and implore INV Metals to abandon this project before more damage is done to this unique and valuable ecosystem.

Sincerely,

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