LEX COUNSEL

UNDER THE UNCITRAL ARBITRATION RULES (1976) AND
SECTION B OF CHAPTER 10 OF THE DOMINICAN REPUBLIC – CENTRAL AMERICA - UNITED STATES FREE TRADE AGREEMENT

ICSID CASE No. UNCT/13/2

SPENCE INTERNATIONAL INVESTMENTS, LLC, BOB F. SPENCE, JOSEPH M. HOLSTEN, BRENDA K. COPHER, RONALD E. COPHER, BRETT E. BERKOWITZ, TREVOR B. BERKOWITZ, AARON C. BERKOWITZ AND GLEN GREMILLION

CLAIMANTS

v.

THE REPUBLIC OF COSTA RICA

RESPONDENT

EXPERT REPORT OF MIGUEL RUIZ HERRERA

LEX COUNSEL

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29 September 2014

Biographical Information

I obtained my law degree from the University of Costa Rica and then received a Graduate Fellowship to attend the University of Amsterdam. Upon completion of my studies in the Netherlands, I received a Fellowship to attend New York University, where I completed a one-year program comparing United States Common Law with the Civil Law Regime of Costa Rica. I also attended the *Academie International du Droit* (Caracas Séance) and the University of Lovain.

I have lectured at Universidad de Costa Rica, Facultad de Derecho, on Economic Integration and International Law, International Competitive Bidding, Banking Law, Securities, and Trading Enterprises. I also pioneered the University's program on Legal Issues on International Trade, in addition to its association with the United Nations International Trade Center, which was subsequently expanded to other Latin American countries. I have also lectured on Commercial Paper, Export Insurance, Securities and other Instruments, as well as on the expropriation of investments. At Harvard's sponsored INCAE, I lectured on Access to Latin American Markets from Free Zones. I have also participated as a guest speaker at international arbitration events held in Whistler, Canada; Pilanesberg, South Africa; Salzburg, Austria; Montreal, Canada; Cairo, Egypt; Boston, Massachusetts; Houston, Texas; and Malibu, California.

I have been a practicing attorney since 1974. Except for the periods during which I held appointments from the Government of Costa Rica, or when I served as Legal Counsel for the World Bank, in Washington D.C., I have been engaged in private practice. I was also Advisor to President Rodríguez on International Trade, 2000 – 2002 and Advisor to President Pacheco on International Trade, 2002 – 2006. A complete listing of the positions in which I have served the Government of Costa Rica as a public officer can be found in Appendix I to this document.

Appendix I also contains lists of my most notable achievements in litigation and arbitration, including sixteen years as counsel for the claimant in the dispute that led to the well known ICSID arbitration: *Compañía del Desarrollo de Santa Elena, S.A. v. Republic of Costa Rica*. Also in Appendix I, I have listed my most notable achievements serving in the capacity of a solicitor.[1] My notable achievements serving as counsel to international lending institutions and enterprises in large scale, local development projects; a list of my published studies; and a list of the leadership positions I have held in Non-Profit and Non-Governmental Organizations.

In addition, I have served as arbitrator in 15 cases in Costa Rica, presiding in several of them. I was selected to successfully defend an arbitration center in Costa Rica, in a difficult litigation pursued against it and against the Ministry of Justice.

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[1] I have also participated as counsel for some of the owners of lands located within this alleged park, defending them from a demand to nullify their ownership titles as duly recorded at the Public Registry. These cases are still pending resolution.

LEX COUNSEL

Assignment

Counsel has posed five questions to me, which I have answered in sequence below. In preparing to answer these questions, I reviewed the Claimants' Memorial on the Merits and documents of relevance, which were included in that submission. I have also reviewed the Respondent's Counter Memorial on the Merits and Memorial on Jurisdiction and documents of relevance, which were included in that submission. In addition and, as necessary, I have consulted the laws of Costa Rica and reviewed official documents, including those related to the Claimants' lots, which are the subject of this proceeding. It is my understanding that any of the documents I have consulted will have already been submitted by the Claimants, or will be included in their submission of the Reply Memorial on the Merits and Counter Memorial on Jurisdiction.

This report was produced exclusively for use in the present proceedings. The report may not be distributed to, or relied upon, by other persons or entities, except for the Respondent and its Agents, or the Arbitral Tribunal, within the context of the present proceedings. The analysis, opinions and conclusions respond to my best knowledge of the law in Costa Rica, including the Ethics Code applicable to my practice as an attorney in Costa Rica.[2]

1. The Government of Costa Rica has claimed that - since 1991, it should have been obvious to any potential investor that the land at issue in this case was located inside a national park and that the claimants did not enjoy a legitimate expectation to use their property rights in the development of their lands. Do you agree with this argument?

The Government of Costa Rica cannot responsibly claim that, "*since 1991 it was obvious to any potential investor that the land at issue in this case was located inside a national park*." Nor can the Government of Costa Rica claim "*the Claimants did not enjoy a legitimate expectation to use their property rights in the development of their lands.*"

The reason is rather simple: the Government is obligated to respect its own laws. In Costa Rica, the Government is under a strict obligation to provide notice to any person (foreign investor or otherwise) when it adopts measures that affect his property rights. This obligation is important enough to be reflected in several sections of Costa Rican law. For instance, Article 239 of *Ley General de Administración Pública* (General Law for Public Administration) clearly states:

> ***Artículo 239.***
> *Todo acto de procedimiento que afecte derechos o intereses de las partes o de un tercero, deberá ser debidamente comunicado al afectado, de conformidad con esta Ley.*

[2] My opinion is limited to the reported assumptions stated herein. I reserve the right to update this Report, and any conclusions contained herein, in light of additional information, research or analysis that is provided to me.

Non-Official Translation:

Article 268.
Any procedural action that affects rights or interests of the parties or of a third party, should be duly communicated to the affected party in accordance with this law.

And Article 240, paragraph (1), of the same law provides:

Artículo 240.
1. Se comunicarán por publicación los actos generales y por notificación los concretos.

Non-Official Translation:

Article 240.
1. Communication shall be accomplished by publication for acts of general application and by notification in case of those that are of application to specific persons.

Measures of general application, such as a law, are published in *La Gaceta*, the Official Journal. For actions affecting a specific property holder, an official notification directed specifically to such party is required.

Moreover, for government acts affecting real property, the notification required is the inscription on the appropriate record housed in the Public Registry. Section 268 of the Civil Code of Costa Rica prescribes this practice, as follows:

Artículo 268.
Salvo en los casos exceptuados por la ley, cualquiera limitación de la propiedad sobre inmuebles, debe también, para perjudicar a tercero, estar inscrita en el Registro de la Propiedad.

Non-Official Translation:

Article 268.
With the exception of the cases exempted under law, any limitation placed upon property in real estate shall, to affect third parties, be recorded in the Land Registry.

Article 241 of the same General Law for Public Administration also requires that such publication take place on three consecutive occasions. Only on the third occasion would the act have binding legal effect on the property holder.

The General Law on Expropriations (Nº7495) also imposes a duty upon Government (a)

to provide such publications, (b) to notify – by means of a resolution of the Court – the interested party, and (c) to obtain the inscription in the Public Registry, also by means of a resolution of the Court:

> ***Artículo 18.***
> ***Declaratoria de Interés Público.*** *Para expropiar, sera indispensable un acto motivado, mediante el cual el bien por expropiar se declare de interés público. La declaratoria de interés público deberá notificarse al interesado o su representante legal* ***y*** *será publicada en el Diario Oficial.*
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> Non-Official Translation:
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> ***Article 18.***
> ***Declaration of Public Interest.*** *In order to expropriate, there must exist a reasoned act by which the concerned asset shall be declared of Public Interest. The declaration of public interest shall be notified to the interested party or its legal representative, and shall be published in the Official Journal.*

And Article 20 states:

> ***Artículo 20.***
> ***Mandamiento provisional de anotación.*** *En la resolución declaratoria de interés público del bien, se ordenará expedir, en el registro público correspondiente, un mandamiento provisional de anotación…. La anotación caducará y se cancelará de oficio si, dentro del año siguiente no se presentare el mandamiento de anotación definitivo, expedido por el Juzgado contencioso-administrativo y civil de hacienda.*
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> Non-Official Translation:
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> **Article 20.**
> **Provisional Annotation Requirement.** Upon the issuance of a public interest declaration for an asset, a provisional writ of entry shall be issued in the appropriate public registry… The annotation shall expire, and cancelled automatically if, within one year, an attachment order issued by *Juzgado contencioso administrativo y civil de hacienda* has not been filed.

The above provisions conclusively demonstrate that:

a. The Government is required to publish a Decree of Expropriation in the Official Journal (La Gaceta), which, in most cases, will be ratified by a Court resolution.
b. The Government also bears a definitive legal duty to ensure that a specific entry is made, in the Public Registry for each piece of real estate to be expropriated. This provisional annotation ceases to have effect if an expropriation declaration is not filed within one year.

c. To be effective, notification must also be served upon the affected party or its legal representative.

The Government is in no position to claim that the Claimants, whose lots have been subject to public interest declarations, lacked legitimate expectations about the 1991 Decree or the 1995 Law, because it appears to have failed to comply with its own notification obligations, in multiple ways. For other properties affected by this alleged national park, the Government was also obligated to issue appropriate notifications and to obtain the referred Court resolutions to obtain the publications, direct notifications and inscriptions at the Public Registry.
For instance, attached is a certified copy of a resolution by *Juzgado Contencioso Administrativo y Civil de Hacienda*, ordering notification of expropriation proceedings for one lot only one year ago: November 12, 2013.

Upon due review of the concerned properties, the following observations can be made: as explained in the charts appearing hereunder:

(a) The provisional annotation of the Declaration of Public Interest performed by the Government at the Public Registry at Property number 130543-000 (identified as B6 in your schedule), belonging to Saíno Mar Vista Estates F, S.A. whose date was December 9, 2005 (562-13469, entry 001) was the first notification. However, by operation of the laws set out above, this annotation expired one year later, because the required inscription for a Decree of Expropriation was not performed.

(b) The provisional annotation regarding the property belonging to Pochote Mar Vista Estates E, S.A., property number 130542-000 (identified as B5 in your schedule), dated December 9, 2005 (under entry 562-13467-001). As above, this annotation expired one year after and the required inscription of the Decree of Expropriation was not made.

(c) The provisional annotation of the Declaration of Public Interest performed by the Government at the Public Registry at Property number 130544-000 (identified as B7 in your schedule), belonging to Vacation Rentals, S.A. whose date was December 9, 2005 (562-13468, entry 001). In this case, the inscription of the Decree of Expropriation was achieved by the Government on December 6, 2006, before the provisional annotation expired.

(d) Next there are lots with public interest decrees dated October 9, 2007 (properties 42336-000 (V33), 42348-000 (V39), 42350-000 (V40), 42362-001 and 002 (V46), and 42634-002 (V47). In **all** of those cases, the annotation expired one year after, due to the lack of inscription of a definitive annotation: i.e. the Decree of Expropriation.

(e) There are also some properties, with public interest decree annotations dated 2007 (properties 131866-000 (SPG2) and 130544 (B7). For these cases, the

necessary inscription for the Decree of Expropriation indeed appears at the Registry. For property 131866-000 (SPGS2) on April 22, 2008, and For property 130544 (B7) on December 6, 2006.

(f) The only properties that appear in the name of the Government ("El Estado") are property registered under 042783-000 (A40), and two pieces of properties that were partitioned and the partitioned part was recorded in the name of the Government. Those are 130540-000 (B3), and 5-130545-000 (identified as B8).

(g) Finally, with respect to all of the remaining lots, there does not appear to be any annotation of a Declaration of Public Interest, nor an inscription for a Decree of Expropriation. In all of these cases, if we accept the Respondent's arguments about how the alleged park was established, then the Government has failed absolutely in performing the required annotations and inscriptions.

Therefore, only in a scarce handful of cases, the duty to inscribe and maintain the inscription at the Public Registry was fulfilled. For a better understanding of the above dates, please refer to the charts attached as Appendix II to this statement

If there were any doubt that the national Government did not possess the legal authority it says it possessed in 2004 or 2005, we only need to remember that the Municipality of Santa Cruz, where these lots are located, continued issuing building permits until 2008.

In conclusion, if the Government did not comply with the mandate of the law, and the corresponding inscriptions were not issued until many years after (or even as long as only one year ago, as demonstrated by the attached resolution), and if the Municipality – a Government agency with Constitutional special jurisdiction over the concerned county – continued giving building permits until 2008, it is an unquestionable fact that the Government cannot maintain this allegation.

2. In your opinion, when was the *Parque Nacional Marino Las Baulas* established?

A national park is legally established when the State has complied fully with any terms found in the establishing legislation. The process is not yet completed for the *Parque Nacional Marino Las Baulas ('PNMB')*.

For instance, Article 36 of the *Law of the Environment* lists some of the requirements, which must be satisfied for any protective area to be established – from national parks to forestry reserves to protective zones to biological reserves to wildlife protection areas and to mangroves. These requirements include:

Preliminary physio-geographic studies, studies of biologic diversity, and socioeconomic studies that will justify the specific area to be protected;
Definition of objectives for, and boundaries of, the protected area;

Demonstration of technical feasibility and occupation of the land;
Minimal financing required for acquiring the area, protecting and managing it;
Sufficient elaboration of the plans for the protected area; and
Proclamation of the establishing law or decree.

In addition, under the second paragraph of Article 37, rights to land which has been deemed by the establishing instrument to prospectively fall within the newly declared protected area, must be acquired by the State through "purchase, expropriation, or both of those proceedings". This is known as the **prior indemnity obligation**, where "prior indemnity" means the payment of the "repossession value" as provided for in the Law on Expropriations, and as defined by the Courts as "the value determined by free negotiation between a willing buyer and a willing seller."

Reinforcing the fact that the prior indemnity obligation must be satisfied, as a necessary precondition for the establishment of a national park, the third paragraph of Article 37 provides that affected areas of privately held lands within the prospective park zone can only be considered as having been comprised with State owned lands "upon the moment in which its payment due to expropriation is effected" [emphasis added]

The State is not permitted to diverge from strict adherence to the obligation of prior indemnification, as mandated in Section 45 of Costa Rica's Constitution, which provides:

> ***Artículo 45.*** *La propiedad es inviolable; a nadie puede privarse de la suya si no es por interés público legalmente comprobado, previa indemnización conforme a la ley.*
>
> Non-Official Translation:
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> **Article 45.** Property is inviolable; no one can be deprived of his property rights except for a legally proven public interest, and subject to compensation in accordance with the law.

It is obvious that the Government of Costa Rica has thus far failed to satisfy all of these conditions, most notably the failure to acquire property rights in all relevant land and its failure to pay appropriate compensation to the investors of the repossession value for the land that has been confiscated from them.

Therefore, it is not correct to claim that the PNMB Park has already been established. The great majority of private lands affected in the Law for the Creation of the Creation of the Parque Nacional Marino Las Baulas de Guanacaste ('PNMB Law') –assuming the interpretation of the Government of "tierras adentro" instead of "", are still owned by private persons, not the State.

In addition, the General Law of Expropriations also provides:

> *"**Artículo 16. Restitución.***
> *Transcurridos diez años desde la expropiación, el expropiador devolverá, a los dueños originales o a los causahabientes que lo soliciten por escrito, las propiedades o las partes sobrantes que no se hayan utilizado totalmente para el fin respectivo.*
> *El interesado deberá cubrir, al ente expropiador, el valor actual del bien, cuya valoración se determinará de acuerdo con los trámites previstos en esta ley."*
>
> Non-Official Translation:
>
> **Article 16. Restitution.**
> If ten years has elapsed since the expropriation, the expropriator shall return to the original owners or their descendants that will request it in writing, the real estate properties or the remaining parts that have not been totally utilized for the respective purpose.
> The interested party shall cover, to the expropriating agency, the actual value of the asset, whose valuation will be determined in accordance with the procedures provided for in this law.

Article 2 of the PNMB Law also rarifies the obligation to pay the price ordered by the Expropriation Law before those pieces of real estate would be considered part of the Park, which reinforces the rule of Article 16 of the General Law of Expropriations. The PNMB Law was proclaimed in 1995. The Constitutional Court of Costa Rica ordered that this law required the Government to expropriate all of the lands inside an area of 125 meters of the medium line for high tide (File No. 07-005611-0007-CO, dated 11 December 2008). If the Constitution (Article 45), the Law (article 16 of the General Law on Expropriations and even Article 2 of the PNMB Law are respected, the Government is out of time to created the PNMB.

It has now been 19 years since the law was proclaimed and all of the land specified for incorporation into the PNMB has not been acquired by the State. Therefore, the people who have been paid compensation for their land to be incorporated into the PNMB are permitted to demand ownership to be returned to them.

Due to the Government's failure to acquire (having paid the price imposed by the law) of all the land required and, moreover, if these original owners can reacquire their lands, it becomes impossible for the Government to achieve the intended purpose of the expropriation: establishing a park based on the land boundaries it demands today. Therefore, the expropriations cannot continue according to the law. This is true both for the Claimants and for the owners of land originally mentioned in the 1995 PNMB Law (e.g. Cerro el Moro).

My conclusion is that the National park has not been legally established and, moreover, according to Article 16 of the General Law on Expropriations, this park is not legally feasible to exist.

3. In your opinion, was anything unusual or unorthodox about the three, letters of opinion (two of which were almost identical) that were, issued from the Office of the Attorney General in 2004 and 2005?

Yes. Indeed, because of the bias of the author of those letters, one could even say that writing them represents unprofessional conduct for lawyers.

First of all, Mr. Julio Jurado, its author, was in a conflict of interest position, as he was an active, official member of CEDARENA when he wrote those letters. CEDARENA is a NGO that was promoting ecologic issues at that time, including expanding the park beyond the boundary lines fixed in the PNMB Law of 1995. According to the law, he should have excused himself or else face sanctions like imprisonment (Articles 331, 348, 350 of the Penal Code, Articles 3, 5, 38 paragraph "m", 48, 52, 58 of Law 8422, among others).

Moreover, in my opinion those letters are an example of a malicious action by a government official, which should have been punished. In fact, as explained below, I think penal sanctions could be applied for this conduct, as provided under *Ley General de Administración Pública* (General Law on Public Administration) and in the Penal Code of Costa Rica. Also, according to articles 3 and 4 of *Ley contra la Corrupción y el Enriquecimiento Ilícito* (Law against Corruption and Illicit Enrichment), Mr. Jurado should have been dismissed for this conduct.

It can be said that he did not lose his job for writing the two letters in 2004, as the Law Against Corruption was proclaimed a few months after he wrote them. As for the letter he prepared in 2005, there was no excuse for him not to be punished.

I will now address the contents of these letters, starting with the letter dated 10 February 2004. To avoid repetition, I will canvass the shared elements of these letters in the first section, below.

The first letter, issued on February 10, 2004:

Article 4 of the Organic Law of the Attorney General's Office provides:

> ***Articulo 4.***
> ***Consultas:***
> *Los órganos de la Administración Pública, por medio de sus jerarcas de los diferentes niveles administrativos, podrán consultar el criterio técnico jurídico de la Procuraduría, debiendo, en cada caso, acompañar la opinión de la asesoría legal respectiva.*
>
> Non-Official Translation:
>
> **Article 4.**

> **Consultations:**
> The agencies of the Public Administration, by means of its hierarchy heads of the different administrative levels, may be able to consult the technical juridical criteria of the Attorney General's Office, having, in each case, accompany the opinion of the respective legal advisory (directorate).

Any opinion issued at the request of an agency of the government must be accompanied by a legal opinion provided by the agency's respective legal advisors. There are no exempts from this requirement.

In his letter, Jurado acknowledged that no such legal opinion was attached to the consultation request, but yet he provided the opinion requested nonetheless. He was thus acting in a very unorthodox manner. Instead of rejecting the consultation request – which is what the Attorney General's Office does all the time in such cases (in order to abide by the law), Jurado issued his opinion notwithstanding the fact that this fundamental requirement had not been met by the Environment Ministry. He wrote that he was proceeding anyway because of the "importance" of the opinion. He had no authority to make that exception.

Jurado also tried to excuse his action by softening the opinion – indicating that it would be "non-binding." The law does not allow for such a decision. Both binding and non-biding (or formal and informal) opinions are supposed to be written in response to the agency's request, based upon an analysis of the legal opinion that must always be attached.

Moreover, if the matter was of such "importance," as Jurado claimed, it was all the more important for the correct procedures to be observed. The Ministry of the Environment should have instructed to immediately provide a legal opinion issued by its own legal directorate. Jurado could have accomplished this with a simple phone call to the Ministry. Jurado also could have asked the Internal Auditor for the Environment Ministry to present the consultation request instead of the Office of the Minister, because internal auditors can obtain opinions from the Attorney General's Office directly, without the legal opinion of the concerned agency of the Government.

One of the reasons that the requirement to present the agency's legal opinion along with any request is to prevent agencies from obtaining an opinion from the Attorney General's Office that was not originally supported by their own legal advisors. It could be that, in this case, a legal opinion was impossible to obtain because the Environment Ministry's legal advisors were not prepared to ignore the plain text of the PNMB Law, as issued by Congress. Based upon my review of the contents of this letter, I understand why the Legal Directorate at the Ministry of the Environment would have refused to issue their required legal opinions.

Jurado recognizes that the Law clearly states: *"aguas adentro"*, (meaning "inside the waters" or "with the direction of deep waters." This is obviously a term that could only

be interpreted as indicating that the relevant area of protection (for this part of the PNMB) was intended by Congress to be within the waters, starting from the high tide line.

Article 9 of the Constitution of Costa Rica expressly states that no branch of government (legislative, executive or judicial) may delegate the performance of functions enjoyed by that branch to another branch of government. Contrary to this rule, Jurado has clearly exercised the power to "legislate," in order to correct a "mistake" that he thinks Congress committed. Based upon the contents of this letter, it appears that Jurado did not even consult the Official Minutes of Congress to learn if the term could really have been an error.

In fact, it seems like Jurado deliberately avoided referring to those Official Minutes at all. In my opinion, a neutral and professional lawyer would have included the following as part of his analysis:

> In the last days of the Calderon Administration (1990-1994) the then Minister of the Environment presented to Congress a Bill for the creation of the PNMB. In one version of the bill, the Minister asked legislators to include a strip of beachfront land in the park, which would run parallel to the high tide, measured in 75 meters towards inland. However a majority of Congressmen rejected this formulation for the bill. When the Congressmen Committee in charge of processing this bill was informed that the intention was to protect the turtles in the water, all of them instead asked for a technical study to be presented for their consideration and, upon receiving the results of such study, decided that a marine park should be located in water. In particular, they focused on an area known as *"mar interno"* (intern or confined sea) and/or *"mar interior"* (interior sea) or *aguas interiores"* (interior waters), which was not protected under the laws of Costa Rica, nor covered under the 1982 United Nations Convention on the Law of the Sea (the latter of which refers to *"mar territorial"* (territorial sea). To ensure that the area of water that serves as the place where the turtles approach the beach (interior waters), Congressman Hernán Fournier Origgi proposed to amend the text proposed by the Ministry, so that it would read "*aguas adentro"* (into the waters).

In addition, Jurado should have taken note of the fact that Congress unanimously approved the PNMB Law in 1995. Had he properly consulted the legislative record, he would have also been forced to acknowledge how the leader of the opposition party, Dr. Saul Weisleder, made a long speech, in which he specifically explained why Congress chose to use the term "*aguas adentro*" instead.

Another problem concerns Jurado's incorrect use of the term *"antinomia"* (antinomy, conflict of authority). An *antinomia* can only exist as between two conflicting rules of the same rank. In his letter, Jurado argued that *antinomia* existed between (a) the terms of

1995 PNMB Law and the "spirit" (purpose) of said law or with other parts of the same law (the description by coordinates). Jurado justified his opinion by deciding that the text of the PNMB Law contradicted the object and purpose of said law *("los motivos")* and other part of the same law. A conflict between the express text of a law and its purpose, or a conflict between part of one article of the law and another part of the same does not constitute an antinomy.

In these cases, the only legal solution would have been a formal amendment of the law proclaimed by Congress. Therefore, one of the fundamental flaws in Jurado's opinion concerns the way in which he explains "interpretation." In this section, he even recognizes that the lawful interpretation of a statute must be performed by Congress; not by the executive – either with a "*fe de errata*," for cases of a clear simple mistake of form (not substance) or by amending the relevant law (in cases were substantive errors must be corrected). That should have been the end of his analysis. Instead, Jurado unaccountably raised his own analysis, based upon the alleged existence of an *"antinomia"* – which he says the Executive possesses the power to "interpret."

While he might have used the term "interpret," it is apparent that what Jurado did was nothing less than an "amendment" to the PNMB Law. He thus violated, by interpreting against the text of the law, by adopting an interpretation of legislation that was inconsistent with the plain and ordinary meaning of its text (*contra leggem*).

This case is an example of an abuse of power because the intent of the law was rendered *"ineficaz"* ("ineffective") by changing the meaning of the term "*aguas adentro*," no matter if the coordinates mentioned in the law ***could*** allow a different interpretation. Whenever an official changes the meaning of a law to serve his own personal policy goals (such as expanding the size of a park, thereby causing so many unnecessary expropriations), he has committed an abuse of power.

Paragraphs 3 and 4 of Article 146 of Ley General de la Administración Pública, provide as follows:

> 3. *No procederá la ejecución administrativa de los actos ineficaces o absolutamente nulos y la misma, de darse, producirá responsabilidad penal del servidor que la haya ordenado, sin perjuicio de las otras resultantes.*
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> 3. Administrative implementation of ineffective or null *acts* shall not be allowed, and such implementation, if it is done, shall give rise to criminal liability for the official responsible, without prejudice to other responsibilities resulting therefrom.
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> 4. *La ejecución en estas circunstancia se reputará como abuso de poder.*

4. Implementation in such circumstances shall be considered as an abuse of power.

Article 168 of the Penal Code provides sanctions of imprisonment for up to 10 years for this kind of case (*"corrupción agravada"*). Nonetheless, the Government has apparently condoned Jurado's actions.

The Second Letter, dated February 12, 2004

This second letter was issued only two days after the first one. In it, Jurado stated that he was responding to the consultation request of a Congresswoman, sent on May 6 2003. This is also unorthodox; requests for consultation from members of Congress are typically answered within a matter of days, not nine months later (and not – coincidentally – just two days after the first letter was issued).

In providing this opinion letter, Jurado repeated the same misconduct as he did with the first: he answered a request that was not accompanied by the requisite legal opinion. This time, Jurado's excuse was not based upon the alleged importance of the issue, but instead upon the "important parliamentary task performed by Congressmen".

Jurado compounds his misconduct by explicitly relying on the opinion he expressed in the first letter, without revealing that it was not binding. Most of the people who would have relied upon the second letter would not have been familiar enough with these issues to prudently consult the first letter before relying upon the second as a reliable precedent. The second letter was, in fact, defective twice over, because both letters were issued in violation of the same law that makes opinions issued from the Office of the Attorney General binding under the correct conditions.

Otherwise, Jurado basically just transcribed the contents of the first letter into the second. Accordingly, in my opinion this second letter is also incorrect, as a matter of law, and issued violating essential requirements imposed by the law.

Given how the third letter largely represents a recitation of the first letter, it suffers from all of the same defects described further above.

4. You have reviewed decisions issued by Costa Rican judges concerning the valuation of the Claimant's expropriated lots. In your opinion, based upon your review of these examples, has the discretion delegated under the Law on Expropriation been properly exercised?

The decisions regarding valuation are cause of embarrassment for the Judicial System of Costa Rica. For many years, I was one of the attorneys who participated in discussions with Government officials to improve the valuation methods to be used by the Ministry of the Treasury. Too many examples of viciously conducted valuations

were what caused us to act. To make these improvements it was necessary to discontinue the old custom that led to artificially low valuations, which in some cases appear to have been directed to be as low as possible by the head of the Treasury.

In June, 2006, I asked for an appointment with the Vice Minister of the Treasury (Ms. Jenny Phillips) and explained to her the duty to perform valuations using international standards. Months later, the Department of Valuations of the Ministry of the Treasury adopted international valuations standards. At that time, this change appeared to have a beneficial effect, with administrative valuations of a ridiculous amount, such as $3 per square meter, rising to $300 per square meter and higher. What I have seen in this case is disheartening. There are some cases in which the judge outrageously decided on a value of $0 dollars per square meter, under the rationale that the value of conservation land is nil.

This kind of example obviously violates the valuation concept of "highest and best use" (which, in this case, would be prime land for tourism development). By issuing these resolutions, the concerned judges have expressly violated the Law of Costa Rica, which they have sworn to respect and enforce. Article 22 of the General Law on Expropriations provides that the expropriation, itself, must not be taken into account for purposes of determining the price to be paid on account of the expropriation ("...shall not be taken into account facts of the future neither the expectance of rights").

In this regard, I note that Article 350 of the Penal Code states:

> **ARTÍCULO 350.**
> Se impondrá prisión de dos a seis años al funcionario judicial o administrativo que dictare resoluciones contrarias a la ley o las fundare en hechos falsos.
>
> Non-Official Translation:
>
> **ARTICLE 350.**
> Imprisonment from two to six years shall be imposed on the administrative or judicial officer who issues resolutions contrary to the law or on the basis of false facts.

In addition to risking the violation of the "Deber de Probidad" established by Article 3 of the Law Against Corruption and illicit Enrichment, described earlier, the concerned judicial official can also be held liable for making a decision that is obviously against the law under *Ley Orgánica del Poder Judicial* (Organic Law of the judicial Power). Article 8 of said law provides:

> **Artículo 8.**
> Los funcionarios que administran justicia no podrán:
>
> 1.- Aplicar leyes ni otras normas o actos de cualquier naturaleza, contrarios a la Constitución Política o al derecho internacional o comunitario vigentes en el país.

Non-Official Translation:

Article 8.
The officers in charge of administering the justice shall not:

1. Neither apply laws nor other norms or acts of any nature in a manner that is contrary to the Constitution or international law or the Integration Law in effect in the country.

Why are these officials risking such harsh sanctions? The internationally recognized late Professor of Law, Dr. Eduardo Ortiz Ortiz, in his book "*Expropiación y Responsabilidad Pública*", page 113 provides one possible explanation:

> *"...la solidaridad del Juez contencioso con el Estado, como empleado público que es. Es un problema de solidaridad gremial con el gobernante y el administrador... ... El Juez contencioso está siempre mucho más cerca del Estado, y le gusta. Cuando le da la razón, se satisface; cuando se la quita, se siente solo y culpable".* ("Expropiación y Responsabilidad Pública", pág. 113).

> "...the solidarity of the Judge "Contencioso" ("Juez Contencioso" is the judge in cases where the State is an interested party) with the State, as public employee that he indeed is, is a problem of guild solidarity with the government and the administrator... ...The Judge "Contencioso" is always closer to the State and he likes it. When he awards to the State the verdict, he satisfies himself, and when he takes away such verdict to the State, he finds himself alone and guilty."

Regardless of the reason for these outrageous decisions, as they have been issued contrary to law, they should be treated as nullities.

5. The Government of Costa Rica states that it decided to suspend its expropriation "process" for various lots held by certain claimants. In your opinion, does the Government possess the authority to adopt such a policy and, in any event, would you describe this policy as a common and accepted practice?

The law does not authorize any suspension. The only possibility authorized by the law is the advanced termination of the expropriation, authorized by Article 46, which states:

> **Artículo 46.**
> **Archivo de las diligencias.** En cualquier momento, la Administración expropiante podrá solicitar el archivo del expediente. Cuando lo solicite en la vía judicial, deberá cubrir las costas procesales y personales."

> Non-Official Translation:

> **Article 46.**

> **Dismissal of the Procedures.** At any stage, the expropriating Administration may request the dismissal of the procedure. When such request is at the judicial stage, it shall cover the court costs and attorney fees.

There have been cases where the Expropriating administration has requested the suspension of an ongoing expropriation process, from the Court, to pursue conciliation with the landholder. However in these cases the expropriated party has acceded, formally, to the request. Otherwise, without the agreement of the expropriated party, no such suspension is feasible. It is also important to note that these were cases in which a decree of expropriation had been issued, so that the case was already before the Court. In this case, it appears that a majority of the lots have not yet received a decree of expropriation.

In the present case, the suspensions are not related to the public purpose for which expropriation has been authorized (PNMB consolidation). Instead, the Administration has unilaterally selected some of the cases and has continued the proceedings in many others. This unilateral selection is also not allowed. Under Article 33 of the Political Constitution, it is illegal for the Government to discriminate among equals. Article 19 of the Political Constitution extends this right to foreigners.

On December 16th, 2008, the Constitutional Court Government ordered the Government to immediately expropriate all privately owned lots located within the expanded boundaries of the PNMB. It is a violation of equality before the law for the Government to choose the lots it will expropriate today and which lots it will expropriate five years later. It is also a violation of the equality rule for the Government to launch the expropriation process against a large group of owners, by issuing a decree of public interest, but then choose only to proceed with a portion of them, by not issuing an expropriation a decree of expropriation for the entire group. The Government has been ordered to expropriate all like properties immediately. It cannot start a policy of delaying some proceedings and permitting others to continue. It is required to behave in the same manner regarding the others.

To my knowledge, nobody has consented to an offer of mediation in this case. Before the Respondent delivered its Memorial, it appears that the Government did not provide any reason for delaying, or suspending its actions, to the third persons affected by its decisions. One explanation I had heard is that the Government has refrained from proceeding against some persons because they have already built expensive houses, so the expected payment could be larger. No article of the law provides for such suspension.

I have now been informed that SINAC officials have told the Tribunal that they suspended the expropriations because wanted to wait until the Comptroller General (Contraloría General de la República) issued a report. The report was issued in 2010. I understand that SINAC says the delay continues because more time is needed for them to implement the report's recommendations. It is possible that this means they are waiting for the results of a case in which I am working with12 other attorneys, from

different law firms, which was started by environmental activists to invalidate titles to land that the Government granted 40 years ago.

I understand that the Comptroller General's report included a recommendation for the Government to pursue the same case to invalidate titles to land in the alleged park. The Procuraduría General de la República has since intervened in the case with which I am involved, on the side of the defendants. Because the Procuraduría did not start the case as claimant, but relied on an action by an association formed for that purpose, the Procuraduría cannot be condemned to pay costs (it is an *amicus curiae)*.

It does not matter why SINAC is waiting, however, because Article 29 of the General Law on Expropriations orders the Government to present a demand for expropriation to the Court within the six months following the refusal of an owner to accept the price offered with the Declaration of Public Interest. I am informed that, for all of the Claimants, that time passed many years ago.

6.- On 27 May 2008, the Court surveyed the ongoing problem of lots in the 150 meters zone (titled at Playa Grande) remaining in limbo, which it attributed to bureaucratic incompetence. Accordingly, it ordered MINAE to either complete the "expropriations" in reasonable time, or establish appropriate regulations to allow lot owners to proceed with suitable development plans. On 16 December 2008, the Court ordered that all environmental viability reports and all construction permits in the same zone be annulled; that all pending requests for viability reports or construction permits be halted; and that no future requests for either be accepted. It also ordered MINAE to proceed "immediately" with the expropriation of all privately-owned lots in the zone. MINAE then filed before the Court an extemporaneous motion for clarification on 23 January 2009. On 27 March 2009, the Court dismissed MINAE's motion. In so doing, the Court observed that, under applicable constitutional principles, it does not possess the authority to dictate to the Executive branch how or when it should exercise the authority to expropriate. Please review these materials, correct any errors found in the foregoing text, and explain the current status of MINAE's authority to expropriate, as a consequence of the aforementioned decisions.

There are several issues affecting this claim:

a. The resolutions of the Constitutional Court are biding *erga omnes* (Article 13 of Law for the Constitutional Jurisdiction). The binding effect of a decision is exclusively on the part of the text resolving the purpose of the concerned

resolution ("parte dispositiva") and not of comments or reasons to substantiate such resolution.

b. The Constitution (Article 9), after establishing that the Government of the Republic is composed by three different powers (Legislative, Executive, and Judicial), orders total separation among them ("Ninguno de los Poderes puede delegar el ejercicio de funciones que le son propias").

c. The Constitution (Article 10) defines the role of the Constitutional Court with three mandates: a) declare the inconstitutionality of norms and of actions committed, b) Resolve the conflicts of jurisdiction among the different Powers of the Government, and c) Resolve the consultation over projects of reform of the Constitution, of International Treaties and of other projects of law.

d. On 27 May 2008, answering a Recurso de Amparo presented by Marion Unglaube, who complained (among other things) that MINAE had taken over ten years to complete an expropriation of her real estate. In its reasons for decision, the Court addressed the overall problem of landholders in Playa Grande, and then, among other things, it ordered MINAE to either complete the "expropriations" (plural, not just Ms. Unglaube) in reasonable time, or establish appropriate regulations to allow lot owners to proceed with suitable development plans. In doing so, the Court was addressing the violation of the petitioner's right to prompt and final justice, contrary to Article 41 of the Constitution.

e. On 16 December 2008, addressing a Recurso de Amparo submitted by an association of environmentalists who have been active in bringing cases about the Park. In this case, they claimed that by issuing environmental viability notices and construction permits in an area that was allegedly part of a national park, various government authorities were violating Article 50 of the Constitution, which grants all persons the right for a healthy environment. The Court ordered, among other things, that all environmental viability reports and all construction permits in the 50 meter to 125 meter zone of Playa Grande be annulled; that all pending requests for viability reports or construction permits be halted; and that no future requests for either be accepted.

f. The Court also ordered MINAE to proceed "immediately" with the expropriation of all privately owned lots in the zone. Thus, it could appear that a contradiction was created, because either the Executive can decide whether and when to expropriate or the Court would decide the timing instead (i.e. "immediately").

g. The Court based its resolution on Article 50 of the Constitution. In my opinion, it is debatable that the concerned expropriations would assist in a healthy environment for persons (or that the protection of an animal, the turtle, would

be achieved by the expropriations). But I do not have the authority to contradict what the Constitutional Court determined.

h. At the 27 March 2009 the Constitutional Court, in full respect of its authority, decided that it is not within its responsibility to tell the Executive Power when and how to perform its own functions (in this case, when and how to expropriate).

(i) The Court issued this decision in response to a motion for clarification from MINAE, made on January 23, 2009. However, the Government must ask for such clarifications within 3 days of the decision having been rendered. The decision had been published on 14 January 2009. The Court thus dismissed the motion, but it also resolved the apparent contradiction between the two decisions. Both decisions remain in force, except that the Court has recognized the limits of its constitutional authority in that it cannot demand expropriations to happen immediately. This remains in the discretion of the executive.

(j) Article 16 of the General Law on Expropriations requires that, after a term of at least ten years has elapsed since the expropriation was first mandated, the Government must, upon the request of the original owners or their descendants, return the real estate properties, or the remaining parts, that have not been totally utilized for the purpose provided for the expropriation.

Therefore, based on the above referred facts, it is my opinion that:

- The Government has repeatedly refused to abide by directions given by the Constitutional Court for it to proceed with more haste.
- But for the operation of Article 16 of the General Law of Expropriations, the Government would still, today, retain authority to decide when to expropriate land for the alleged park.
- However, because more than ten years has elapsed since the underlying mandate to expropriate land for the alleged park, the current status of MINAE's authority to expropriate is that such authority has ceased to exist, as the public interest that is the base of that authority, does not exist anymore, as mandated by Art. 16 of the General Law on Expropriations.

San José, Costa Rica, October 1, 2014

Lic. Miguel Ruiz Herrera

Appendix I

Miguel Ruiz Herrera

Lex Counsel
Professional Biographical Information

Positions Held as Public Officer in and for the Government of Costa Rica:

- Costa Rica's Representative before the European Communities
  1979 – 1981
- Minister Plenipotentiary and General Consul before the Kingdom of Belgium and before the Grand Duchy of Luxembourg
  1979 – 1981
- Executive Director, Export & Investment Agency
  1981 – 1982
- Director, Costa Rican Free Trade Zones Authority
  1981 – 1982
- Negotiator for Costa Rica in Bilateral Trade Agreements
  1986 – 1992
- Negotiator for Costa Rica in the Caribbean Basin Initiative
  1981 – 1983
- Negotiator for Costa Rica in Trade Discussions with United States of America regarding textiles, flowers and plants, and electronics
  1981 – 1994

Service as an Informal Presidential Advisor on Issues of International Trade:

- 2000 – 2002 (Rodríguez Administration); and
- 2002 – 2006 (Pacheco Administration).

Notable Achievements as a Litigator:

- Successfully defended a major US courier company, which led to the change Agency Law in Costa Rica.
- Successfully litigated case against the Office of the Comptroller General over multimillion-dollar contract dispute over software used by the Costa Rican Power and Telecommunication institution (case settled at the request of the Comptroller General).
- Successfully litigated case against the Office of the Comptroller General over sanctions imposed on multinational distributor of heavy equipment (case now at final, cassation level.
- Prevailed in a 16-year case against the Government of Costa Rica, over the expropriation of 75,000 acres of land (including 30 miles of beachfront) to

consolidate the Santa Rosa National Park on the north Pacific coast of Costa Rica, which concluded in the well known ICSID arbitration: ***Compañía del Desarrollo de Santa Elena, S.A. v. Republic of Costa Rica***.

- Defended a major U.S. company in a multimillion-dollar dispute brought by a local company, resulting in an award of only 10% of the amount claimed.
- Recouped a non-secured and non-documented multimillion-dollar investment by a U.S. senior citizen in an airline.
- Successfully defended the shareholders of a local household appliances company in an international arbitration held in Paris.
- Succeeded in obtaining 92% of a claim filed against one of the largest U.S. insurance companies, through a court-ordered conciliation process held in Indianapolis, USA.

Notable Achievements as a Solicitor:

- Responsible for the privatization of the main sugar mill of Costa Rica that belonged to a Government owned company (which involved clearing its operations, organizing it and then selling in at an international bidding procedure).
- Responsible for the privatization of the main aluminum mill in Costa Rica, then owned by a State enterprise (which involved clearing its operations, organizing it and then selling in at an international bidding procedure).
- Responsible for the re-organization of Costa Rica's leading manufacturer of personal care products (which involved capitalization through an issue of preferred shares) and since serving as Legal Counsel and Secretary of the Board for the past 20 years.
- Responsible for developing a multimillion-dollar commercial condominium - for office space- in one of the most exclusive residential and commercial areas in Costa Rica.
- Responsible for structuring two multimillion-dollar housing condominiums (one with 100 units and the other with 40 units) in one of the most exclusive residential and commercial areas in Costa Rica.
- Provided counsel to a foreign entity in bidding for industrial real estate located in six different geographical locations.
- Successfully represented a Free Trade Zone developer in obtaining the necessary concession rights from the Government and subsequently provided counsel on its operations, in Turrialba, Costa Rica.

Notable Achievements as Counsel to International Lending Institutions and Enterprises for Projects in Costa Rica:

- Documentation for a major tourist resort enterprise for an international bank, overcoming the obstacle that the land could not serve as collateral because it belonged to the government of Costa Rica.

- Documentation for three major hotel and apartment resorts, for one of the world's leading commercial banks.
- Documentation for redevelopment of Costa Rica's main airport for the IFC, and then handling the complications that developed upon its execution.
- Documentation for three major public works projects undertaken by concession agreement in the power generation industry, financed by the IFC and DEG.
- Documentation for major import distribution enterprises (three in Costa Rica ***and*** four in other countries in the region and in the Caribbean).

Published Studies:

- The European Communities Legal Structure, 1973, published by Universidad de Costa Rica.
- Costa Rica, Sound Ground for Investment (English & German) published by the European Union
- Régimen Legal de la Inversión Extranjera en Costa Rica 1985, Published by CINDE - UCAEP.
- New alternatives for International Trade, 1992. Published by UNCTAD/GATT.
- Effective Defense in case of Expropriations – The New Law, Published by CINDE, 2002.
- Mortgages vs. New Alternatives for Documenting Loans, 2004, published by CDDF.
- Valuations during Expropriations (article not formally published but distributed widely, which led to a modification in the valuations performed by the Government of Costa Rica. 2006)
- Doing Business in Costa Rica (in charge of the chapters on banking, credit documentation, anticorruption laws, and company laws – World Bank and IFC –2008, 2009, 2010, 2011, 2012, 2013 and 2014
- The Advantages of a Guaranty Trust over mortgages or Chattel Mortgages (1994 and 2003)
- "Avasallamiento en Zona Marítimo Terrestre (Defending rights of owners against expropriation). Published by the Supreme Court of Justice, December 2010.
- "Reporto y Venta con recompra" (2014. Published by the Supreme Court Journal.
- Distribution Law in Costa Rica (Agency Law) 2014. Article for Latin Lawyer.
- How to confront Bias in International Arbitration 2013. CILS.

Non-Profit / NGO Leadership Positions Held:

- CINDE (Coalición de Iniciativas de Desarrollo), an USAID sponsored foundation for the development of foreign investment and exports in Costa

Rica - Member of the Advisory Councils and Director (1993 -1994) Member of the Assembly (since 1988)

- FUNDEX, an USAID sponsored foundation for the development of foreign investment and exports in Costa Rica, and for privatization of Government controlled businesses. Controller (1990-1992) Legal Counsel (1990-2000) Trustee (1998-2000)
- Asociación Pro Hospital de Niños, non-profit entity that develops and manages an amusement and theme park for the exclusive benefit of Costa Rica's Children Hospital. Director and Controller (since 1994).
- Fundación CAATEC, NGO dedicated to promote the competitiveness for the high tech sector (services and manufacturing). Director/Controller and Legal Counsel (since 2000)

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APPENDIX II

TABLE 1:

PROPERTIES WITH PUBLIC INTEREST DECLARATION ANNOTATIONS

Property Registration Number	Lot Number	Proprietor	Public Interest Declaration Registration Number	Date
42336-000	V33	Windows of the Blue Sky Net SA	573-35897-001	Signed: October 9th, 2007 Filed: October 11th, 2007
42348-000	V39	Corporación Lacheaven de Ventana S.A.	573-35901-001	Signed: October 9th, 2007. Filed: October 11th, 2007
42350-000	V40	Corporación Lacheaven de Ventana S.A.	573-35957-001	Signed: October 9th, 2007. Filed: October 11th, 2007
42362-001	V46	Ronco Realty Investments SA	573-36018-001	Signed: October 9th, 2007. Filed: October 11th, 2007.
42362-002	V46	Joeco Realty Investments SA	573-36018-001	Signed: October 9th, 2007. Filed: October 11th, 2007
42634-001	V47	Ronco Realty Investments SA	573-36015-001	Signed: October 9th, 2007. Filed: October 11th, 2007
42634-002	V47	Joeco Realty Investments SA	573-36015-001	Signed: October 9th, 2007. Filed: October 11th, 2007
130542-000	B5	Pochote Mar Vista Estates E S.A.	562-13467-001	Signed: December 7th, 2005 Filed: December 9th, 2005
130543-000	B6	Saino Mar Vista Estates F S.A.	562-13469-001	Signed: December 7th, 2005 Filed: December 9th, 2005

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TABLE 2:

PROPERTIES WITH ANNOTATIONS OF

WRIT OF EXPROPRIATION

Property Registration Number	Lot Number	Proprietor	Writ of Expropriation	Date
131865-000	SPG1	Keeping Track Ltda	571-12253-001	Signed: April 17th, 2007. Filed: April 18th, 2007
	SPG1		575-54751-001	Signed and Filed: April 17th, 2008
42346-000	V38	Seize the Day SA	573-35906-001	Signed: October 9th, 2007. Filed: October 11th, 2007
130538-000	B1	Aceituno Mar Vista Estates A S.A.	569-77111-001	Signed: December 5th, 2006 Filed: December 6th, 2006

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TABLE 3:

PROPERTIES WITH BOTH ANNOTATIONS:

PUBLIC INTEREST DECLARATION AND WRIT OF EXPROPRIATION

Property Registration Number	Lot Number	Proprietor	Public Interest Declaration	Date	Writ of Expropriation	Date
131866-000	SPG2	Keeping Track Ltda	571-12254-001	Signed: April 17th, 2007 Filed: April 18th, 2007	575-58762-001	Signed: April 17th, 2008 Filed: April, 22nd 2008
130544-000	B7	Vacation Rentals S.A.	562-13468-001	Signed: December 7th, 2005 Filed: December 9th, 2005	569-77118-001	Signed: December 5th, 2006 Filed: December 6th, 2006

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TABLE 4:

PROPERTIES WHICH DO NOT APPEAR WITH ANNOTATIONS REGARDING EXPROPRIATION PROCEEDINGS

Property Registry Number	Lot Number	Proprietor	Public Interest Declaration	Date	Writ of Expropriation	Date
42783-000	A40	EL ESTADO				
42781-000	A39	Grande Beach Holdings Ltda				
43073-000	C71	Grande Beach Holdings Ltda				
43133-000	C96	Grande Beach Holdings Ltda				
144808-000	V61 a	Grande Beach Holdings Ltda				
154432-000	V 61 b	Grande Beach Holdings Ltda				
154433-000	V 61 c	Grande Beach Holdings Ltda				
89606-000	V59	Grande Beach Holdings Ltda				
132952-000	SPG3	Keeping Track Ltda				
42330-000	V30	Windows of the Blue Sky Net SA				
42332-000	V31	Windows of the Blue Sky Net SA				
42334-000	V32	Windows of the Blue Sky Net SA				
130540-000	B3	EL ESTADO				
130545-000	B8	EL ESTADO				

EXPEDIENTE: 08-000120-0163-CA 14:00 27 NOV. 2013
PROCESO: EXPROPIACIÓN ESTADO Grupo Doce Bonlos
ACTOR/A: EL ESTADO
DEMANDADO/A: PLAYA GRANDE S.A.

JUZGADO CONTENCIOSO ADMINISTRATIVO Y CIVIL DE HACIENDA, SEGUNDO CIRCUITO JUDICIAL.- GOICOECHEA.- San José, a las catorce horas y cuarenta y cinco minutos del doce de noviembre del año dos mil trece.

Por aportadas las copias prevenidas, procédase a notificar la resolución de las catorce horas y cuarenta y cinco minutos del doce de noviembre del año dos mil trece, así como el proveído de las dieciséis horas y veintisiete minutos del diecisiete de abril del año dos mil ocho **(f(11-13))** a la : **1- Municipalidad de Santa Cruz,** en la siguiente dirección: Santa Cruz, Guanacaste, en el Palacio Municipal, representado por el Alcalde Municipal. Para tal efecto se comisiona a la **OFICINA CENTRALIZADA DE NOTIFICACIONES JUDICIALES DE SANTA CRUZ**. **2- Shang Gi La de Santa Ana S.A.**, en la siguiente dirección: San José, Barrio González Lahmann, de casa Matute Gómez 100 mtrs. al sur y 150 mtrs. este, representado por el **Sr.Manfred Marshall Montealegre y la Sra. Ana Catalina Facio Franco**. Para tal efecto se comisiona a la **OFICINA CENTRALIZADA DE NOTIFICACIONES JUDICIALES DEL PRIMER CIRCUITO JUDICIAL DE SAN JOSÉ**. **3- Playa Grande de la Bahia South Beach S.A.**, en la siguiente dirección: San José, Barrio González Lahmann, de casa Matute Gómez, 100 mtrs. al sur y 150 mtrs. este, No. 2320, representado por el **Sr.Manfred Marshall Montealegre, Sr.Manfred Marshall Facio, y el Sr. Jhon Justo Marshall Facio.** Para tal efecto se comisiona a la **OFICINA CENTRALIZADA DE NOTIFICACIONES JUDICIALES DEL PRIMER CIRCUITO JUDICIAL DE SAN JOSÉ**. **4- Club Bahia Tamarindo S.A.**, en la siguiente dirección: San José, Barrio González Lahmann, de casa Matute Gómez 100 mtrs. al sur y 150 mtrs. este, No. 2320, representado por el **Sr.Manfred Marshall Facio, y el Sr. Jhon Justo Marshall Facio.** Para tal efecto se comisiona a la **OFICINA CENTRALIZADA DE NOTIFICACIONES JUDICIALES DEL PRIMER CIRCUITO JUDICIAL DE SAN JOSÉ**. **5- Consultores**

Goicoechea, Calle Blancos, 50 metros oeste del BNCR, frente a Café Dorado. Teléfonos: 2545-0101, 2545-0068, 2545-0069, 2545-0070. Fax: 2241-3371. Correo electrónico: jcontencioso-sgdoc@poder-judicial.go.cr

Financieros Confin S.A., en la siguiente dirección: San José, Escazú, San Rafael, Edificio A.E DOS, en Avenida Escazú, quinto piso, Oficinas Gómez y Galindo Asociados, representado por el **Sr. Danilo Zamora Mendaz y el Sr, Mario Gómez Pacheco**. Para tal efecto se comisiona al **JUZGADO CONTRAVENCIONAL Y DE MENOR CUANTÍA DE ESCAZÚ.** **6- Diamante Flamingo S.A.**, en la siguiente dirección: San José , Santa Ana, Lindora, Radial Santa - Belén, contiguo a Auto mercado, Centro Empresarial Forum 2 , Edificio A, cuarto piso, despacho de abogados Pacheco Coto, representado por el **Sr.Gary Arlen Hoopes, y el Sr. Kerri Herring Hoopes.** Para tal efecto se comisiona al **JUZGADO CONTRAVENCIONAL Y DE MENOR CUANTÍA DE SANTA ANA.** **7- Nuevos Horizontes de MontañaTempate S.A.,** en la siguiente dirección: San José , Canton Primero, San José Distrito Cuarto Catedral, Barrio González Lahmann, Avenida 10, Calle 15 y 17 No. 1-1585, representado por el **Sr. Lawrence William Kenney**. Para tal efecto se comisiona a la **OFICINA CENTRALIZADA DE NOTIFICACIONES JUDICIALES DEL PRIMER CIRCUITO JUDICIAL DE SAN JOSÉ.** **8- Grupo Doce Baulas**, en la siguiente dirección: Heredia, Calle Primera, Avenida Central y Segunda, Bufete Montenegro y Asociados, representado por el **Sr. Willam Edward Sinnot , Sr. Donald Fairbank Savage, y el Sr. Pasquale Joseph Sullo**. Para tal efecto se comisiona a la **OFICINA CENTRALIZADA DE NOTIFICACIONES JUDICIALES DE HEREDIA.,** **9- El Cortesano Azul S.A.,** en la siguiente dirección: San José , Santa Ana, Lindora, Radial San Antonio de Belén, Km. 3 , Oficentro Via Lindora, piso 4 en las oficinas de BLP Asociados, representado por la **Sra. Birgitt Maria Wunderlich Hou bertz, Sr. David William Newman, y el Sr. Thomas Joseph Gallagher**.. Para tal efecto se comisiona al **JUZGADO CONTRAVENCIONAL Y DE MENOR CUANTÍA DE SANTA ANA.** Por otro lado, Proceda la representación Estatal a suministrar documento idóneo actualizado, en el cual se constate quienes son los apoderados de **Asociación Pro Conservación y Defensa de los Recursos Naturales y Culturales de la Provincia de Guanacaste,** entendiéndose que el nombramiento de dicha representación aportado en su oportunidad, se encuentra vencido **(15 de abril del 2013 f 888).** Lo anterior, para notificar en debida forma. **José Roberto Brenes Chinchilla.-Juez-**