# Exhibit RWE-008

# Second Witness Statement of Rotney Piedra

December 22, 2014

English Translation

**UNDER THE UNCITRAL ARBITRATION RULES AND SECTION B OF THE UNITED STATES – CENTRAL AMERICA – DOMINICAN REPUBLIC FREE TRADE AGREEMENT**

***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)**

**vs.**

***Republic of Costa Rica.***
**(Respondent)**

**ICSID Case No. UNCT/13/2**

**Second Statement of Rotney Piedra**
**Director of the Las Baulas National Marine Park**

**December 22, 2014**

## I. INTRODUCTION

1. My name is Rotney Piedra Chacon. I have been involved with the *Las Baulas* National Marine Park [*Parque Nacional Marino Las Baulas*] since the end of 1994, when I was a volunteer for the protection of leatherback sea turtles and their nests, up to the present date. From 1995 to today, I have been a part of a research group dedicated to monitoring the population of leatherback sea turtles, performing research during each nesting season. In 1997, I was invited to join a group of rangers of the *Las Baulas* National Marine Park ("PNMLB" or "National Park"), with the responsibility of managing a very important site. I started in this position in June 1998. I have been managing this protected area ever since.

2. This Statement is supplemental to the one I submitted on June 19, 2014. In my first statement, I explained the importance of protecting leatherback sea turtles and the actions taken by the government of Costa Rica in order to protect this endangered species. In this Statement, I will respond to certain allegations Claimants, as well as their experts and witnesses, submitted in October 2014.

3. In their Reply on the Merits and Counter-Memorial on Jurisdiction ("Reply"), Claimants presented several imprecise claims regarding the causes behind the creation of the *Las Baulas* National Marine Park, and with respect to the boundaries thereof. First, Claimants allege that Costa Rica is unaware of the current situation of the population of leatherback sea turtles.[1] For example, they claim that since 1991 Costa Rican authorities have changed their discourse on the causes primarily affecting the survival of the leatherback sea turtle.[2] Second, Claimants assert that it is not true that the boundaries of the Park have remained the same since its creation. In particular, they claim that the 125-meter strip of land has not been part of the Park since 1991.[3] Finally, they claim that the priority expropriation plan was only just created in 2012, and that it has not been followed by Costa Rica.[4] In this Statement, I will respond to each of these allegations.

## II. THE LEATHERBACK SEA TURTLE'S POPULATION RISKS

4. In their Reply, Claimants seem to suggest that the creation of the PNMLB was not necessary for the protection of an endangered species, such as the leatherback sea turtle.[5] Claimants claim that the leatherback sea turtles visiting the *Las Baulas* National Marine Park were diminished at the same time that the law was adopted establishing the Park in 1995.[6] Additionally, they argue that there is no evidence to support the fact that one of the greatest threats to the reproduction of turtles is urban development in areas adjacent to the nesting sites.[7] Claimants' claims are incorrect, as I discuss below.

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[1] *See* Claimants' Reply on the Merits and Counter-Memorial on Jurisdiction, October 2, 2014 ("Claimants' Reply"), para. 54.

[2] *See* Claimants' Reply, paras. 55-60.

[3] *See* Claimants' Reply, paras. 63-71.

[4] *See* Claimants' Reply, para. 129.

[5] *See* Claimants' Reply, para. 56.

[6] *See* Claimants' Reply, para. 54.

[7] *See* Claimants' Reply, paras. 55, 57.

### A. LEATHERBACK SEA TURTLES OF THE EASTERN PACIFIC OCEAN ARE CURRENTLY CRITICALLY ENDANGERED

5. Claimants allege that Costa Rica has inaccurately described the current situation of the leatherback sea turtles population.[8] They claim that Costa Rica seems to be unaware that certain populations of leatherback sea turtles have remained stable or are growing, and that the population of leatherback sea turtles in the Eastern Pacific Ocean was diminished at the same time as the law establishing the Park was adopted in 1995.[9] These statements are both confusing and inaccurate. The leatherback sea turtles in the Eastern Pacific Ocean, which are the ones affected by the PNMLB, are at critical risk of extinction.

6. The leatherback sea turtles are found across the world. These animals inhabit almost every ocean, occupying unique ecological niches and displaying inter-species variations in population sizes and trends, as well as differences in reproduction and morphology.[10] For this reason, and for the purpose of evaluating and prioritizing the conservation status of leatherback sea turtles populations worldwide, the Group of Marine Turtle Specialists from the International Union for the Conservation of Nature ("IUCN") has differentiated the subpopulations of leatherback sea turtles into seven regional management units: (i) Northwest Atlantic Ocean; (ii) East Atlantic Ocean; (iii) Southwest Atlantic Ocean; (iv) Northeast Indian Ocean; (v) Southwest Indian Ocean; (vi) West Pacific Ocean; and (vii) East Pacific Ocean.[11]

7. The leatherback sea turtles visiting the PNMLB correspond to the subpopulation of the Easter Pacific (from South Baja California to central Chile). The main nesting sites of this subpopulation

[8] *See* Claimants' Reply, para. 54.

[9] *See* Claimants' Reply, para. 54.

[10] *See* Wallace et al., *Global Conservation Priorities for Marine Turtles*, 6(9) Plos One, September 2011 [Exhibit R-084].

[11] *See* Wallace et al., *Regional Management Units for Marine Turtles: A Novel Framework for Prioritizing Conservation and Research across Multiple Scales*, 5(12) Plos One, December 2010 [Exhibit R-085]; *see also* IUCN, 2014 Red List of Threatened Species, "Dermochelys coriacea (East Pacific Ocean Subpopulation)," *available at* http://www.iucnredlist.org/details/46967807/0 (last visited November 29, 2014), p. 7 [Exhibit R-025].

are found in the states of Michoacán, Guerrero, and Oaxaca in Mexico, and on the beaches of the *Las Baulas* National Marine Park in Costa Rica. There are other secondary nesting sites across Mexico, Costa Rica, Nicaragua, Guatemala, El Salvador, Panama, Colombia, and Ecuador. Furthermore, feeding areas have been documented off the coasts of Panama, Colombia, Ecuador, Peru, and Chile.[12]

8. The current and future situation of leatherback sea turtles worldwide is without a doubt quite troubling for most of the subpopulations, as shown in Figure 1. In Figure 1, the subpopulations in red and yellow are those in a state of high risk, and the green color represents the turtles with less risk of extinction. According to the IUCN Red List, the species has been listed as critically endangered in four of its seven subpopulations. The Eastern Pacific group is among the subpopulations which are critically endangered.[13] This population is one of the most threatened in the world.[14] Additionally, the situation is so concerning that in 2004, the Inter-American Convention for the Protection and Conservation of Sea Turtles ("CIT") issued resolution CIT-COP2 2004-R1, whereby it urged the Member States to prioritize the "execution of conservation plans and monitoring programs that can reverse the critical situation of the leatherback sea turtle in the Eastern Pacific," and to obtain and assess "relevant conservation measures for the protection of nesting sites and their associated habitats."[15] Other subpopulations, such as those of the Northeast Atlantic, have been classified as a lesser concern, as indicated by Claimants.[16] Nevertheless, the current state of these populations is not relevant for this case.

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[12] *See* IUCN, 2014 Red List of Threatened Species, "Dermochelys coriacea (East Pacific Ocean Subpopulation)," *available at* http://www.iucnredlist.org/details/46967807/0 (last visited November 29, 2014) [Exhibit R-025]; *see also* Shillinger et al., *Persistent Leatherback Turtle Migrations Present Opportunities for Conservation*, 6(7) PLOS BIOLOGY (July 2008), pp. 4-6 [Exhibit R-008].

[13] *See* IUCN, 2014 Red List of Threatened Species, "Dermochelys coriacea (East Pacific Ocean Subpopulation)," *available at* http://www.iucnredlist.org/details/46967807/0 (last visited November 29, 2014) [Exhibit R-025].

[14] *See* Wallace et al, *Global Conservation Priorities for Marine Turtles*, 6(9) Plos One 6, September 2011 [Exhibit R-084].

[15] *See* Inter-American Convention for the Protection and Conservation of Sea Turtles, Resolution CIT- COP2 2004-R1, November 16-18, 2004, p. 2 [Exhibit R-086].

[16] *See* Wallace et al., *Global Conservation Priorities for Marine Turtles*, 6(9) Plos One 6, September 2011 [Exhibit R-084].

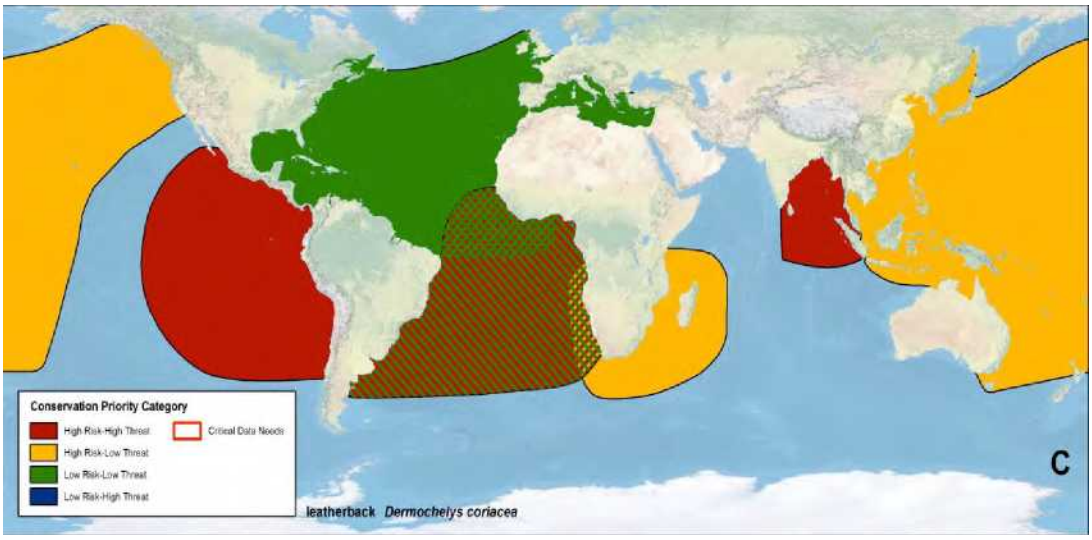


**Figure 1 Conservation Priorities for the Leatherback Sea Turtle. The red and yellow areas are high-risk subpopulations.**[17]

9. Therefore, there should be no doubt that the leatherback sea turtles visiting the beaches of the PNMLB have a critical status, for which reason Costa Rica should take the necessary measures to prevent further affectation of this species.

### B. PRIMARY RISKS FACED BY LEATHERBACK SEA TURTLES

10. Claimants allege that Costa Rica has changed its discourse concerning the threats affecting the survival of leatherback sea turtles. They claim that it is only in recent years that Costa Rica has identified urban development of coastal areas as one of these threats.[18]In fact, they claim that I have maintained different stances regarding the risks facing leatherback sea turtles. They also argue that coastal development is not a threat for leatherback sea turtles.[19] This is not correct.

11. As I established in my first Statement, and as I have also argued in the past, there is no single cause that explains the decline in turtle populations.[20] This is due to a combination of factors

[17] *Taken* from Wallace et al., *Global Conservation Priorities for Marine Turtles*, 6(9) Plos One 7, September 2011 [Exhibit R-084].

[18] *See* Claimants' Reply, paras. 55-60.

[19] *See* Second Witness Statement of Kirt Rusenko, September 10, 2014, para. 7.

[20] *See* Witness Statement of Rotney Piedra, June 19, 2014 ("Piedra First Witness Statement"), para. 20 [Exhibit RWE-002].

related to the stages of the turtles' life cycle. Coastal development is one of the current threats for the reproduction of the turtle, which takes place at the National Park. This represents a major challenge in efforts to save the species.[21]

12. Both the CIT as well as the IUCN have listed the following as threats to sea turtles:

- Fisheries bycatch;
- Direct utilization of turtles or eggs for human use;
- Coastal development affecting the critical habitat of the turtles; for example, the alteration of coastal environments by humans due to construction, dredging, beach modification, etc.;
- Contamination and pathogens. Contamination of the sea and debris affecting sea turtles;
- Climate change. For example, higher sand temperatures at nesting beaches affect the gender proportion of the offspring, or rising sea levels and the frequency and intensity of storms can affect nesting habitats.[22]

13. These threats have been identified and studied for many years by scientists specializing in leatherback sea turtles.[23]

14. One of the most important aspects for the effective management of protected areas is precisely the identification of all the relevant factors leading directly or indirectly to the creation of threats that contribute to the increased vulnerability of the animals subject to conservation efforts or to loss of ecosystem functionality. These threats must be determined in order to address them and to find a solution as soon as possible. Thanks to a constant and permanent leatherback sea turtle monitoring

[21] *See* IUCN, 2014 Red List of Threatened Species, "Dermochelys coriacea (East Pacific Ocean Subpopulation)," *available at* http://www.iucnredlist.org/details/46967807/0 (last visited November 29, 2014) [Exhibit R-025].

[22] *See* IUCN, 2014 Red List of Threatened Species, "Dermochelys coriacea (East Pacific Ocean Subpopulation)," *available at* http://www.iucnredlist.org/details/46967807/0 (last visited November 29, 2014), pp. 7-8 (emphasis ours) [Exhibit R-025].

[23] *See* for example Wallace et al., *Global Conservation Priorities for Marine Turtles*, 6(9) Plos One 2, September 2011 (citing Mast RB, Hutchinson BJ, Howgate E, Pilcher NJ (2005) MTSG update: IUCN/SSC Marine Turtle Specialist Group hosts the second Burning Issues Assessment Workshop. Marine Turtle Newsletter 110: 13-15.) [Exhibit R-084]; *see also* IUCN, 2014 Red List of Threatened Species, "Dermochelys coriacea (East Pacific Ocean Subpopulation)," *available at* http://www.iucnredlist.org/details/46967807/0 (last visited November 29, 2014), p. 8 [Exhibit R-025].

program which has provided a relevant and significant amount of information collected during a period of 26 years at the PNMLB, it has been possible to identify the various threats that have led the subpopulation of leatherback sea turtles to nest on the beaches of the National Park, as well as to their current decline in numbers. The results of the research conducted at the PNMLB have been published in scientific articles in highly prestigious journals, and, as such, they have been rigorously reviewed.

15. These turtles face various threats throughout their lives, and the PNMLB plays a key role in their survival by protecting their reproductive process. Through the various research efforts carried out at the PNMLB, it has been determined that the populations of sea turtles cannot be maintained without beaches on which their eggs can develop and their offspring can find their way to the ocean. Nor can they survive if the adults are killed as a result of sea fishing. As such, the various pressures on the early and late stages of their life cycle may result in a decrease in population numbers, for which it is recommended that all stages be protected when human activities are causing a reduction in their populations. With regard to the reproductive stage of the turtles' life cycle, protection must be given to the beaches where they nest and their eggs must be preserved, as well as the routes along which their offspring must travel to reach the ocean. In general, the habitat necessary for adult turtles to successfully complete their reproductive process must be maintained.

16. To accomplish these things, coastal development has been identified as one of the threats affecting their reproduction. Coastal development exerts pressure on the beaches where the turtles nest and results in changes to their beach habitats. For example, it has been determined that artificial lights (from houses or buildings near the beach) disorient both adult turtles and hatchlings on their way to the ocean.[24] Consequently, neither adult nor baby turtles would know the direction of the ocean, which is

[24] *See* Humane Society International and International Fund for Animal Welfare, "Sea turtles: A struggle for survival", p. 6 [Exhibit R-087].

critical for their survival.[25] Likewise, it has been shown that as a result of coastal development, the northern sector of the Playa Grande in question has flatter beaches with little inclination, lower pH, and higher salinity than undeveloped areas. These are physical and chemical factors that the leatherback sea turtles respond to when selecting their nesting sites, and which can also be linked to the effects of erosion.[26] Erosion is generated by the elimination of vegetation adjacent to the beach.[27] Additionally, the invasion of exotic species into the nesting area also threatens the survival of the turtles during their reproductive process.[28] The 75-meter strip is essential as a buffer zone between the beach and future developments, and which must be planned out according to the environmental conditions of the area. Playa Tamarindo, adjacent to Playa Grande and located in the same bay, is the most apparent example of unsustainable coastal development.[29] Playa Tamarindo has been eroded, and there are currently no records of leatherback sea turtles nesting there, despite being part of the same bay.

17. In my first Statement, I also mentioned the spatial distribution of nests along the entire beach at different times and how it is directly related to the location of houses and hotels at Playa Grande. I explained that there has been a reduction in the number of nests in the areas where houses or buildings are located.[30] It is precisely this sector, Playa Grande Norte, where the flattest beach can be found. The erosion of the dunes at Playa Grande is a plausible mechanism to explain the nest

[25] *See* Humane Society International and International Fund for Animal Welfare, "Sea Turtles: A struggle for survival", p. 6 [Exhibit R-087].

[26] *See* John H. Roe et al., *Characteristics of a Leatherback Nesting Beach and Implications for Coastal Development*, 12(1) CHELONIAN CONSERVATION AND BIOLOGY 34, pp. 38-40 (2013) [Exhibit R-014].

[27] *See* Piedra and Wallace, *Sea Turtles of the Eastern Pacific*, 2012, p. 203 [Exhibit C-115].

[28] *See* Piedra and Wallace, *Sea Turtles of the Eastern Pacific*, 2012, p. 203 [Exhibit C-115]; *see also* Humane Society International and International Fund for Animal Welfare, "Sea Turtles: A struggle for survival", pp. 4-5 [Exhibit R-087].

[29] *See* Tamarindo Photography, May 2013 [Exhibit R-088]; *see also* Piedra and Wallace, Sea Turtles of the Eastern Pacific, 2012, p. 203 [Exhibit C-115].

[30] *See* First Piedra Statement, para. 20 [Exhibit RWE-002].

distribution.[31] Claimants' expert, Dr. Kirt Rusenko, claims that there is no evidence that the distribution of nests at Playa Grande has been affected by construction in the area.[32] However, the information which I have presented and which has been stated out in my first statement was taken from a normal process of scientific data collection which we carried out at the Park.

18. Attention to the various threats in relation to protection of the leatherback sea turtles has changed throughout the years. As I have indicated, there are several threats affecting the turtles. For example, the theft of eggs in the National Park was the main cause for the decline, for which immediate intervention was required. Nevertheless, since this issue was addressed, the threat is no longer a problem for the future of the population as long as it remains under control. It is for this reason that in recent years, greater attention has been given to other threats affecting the turtles, such as unsustainable coastal development.[33] Contrary to what Claimants have claimed, the identification of coastal development as one of the threats affecting the turtles is not something new. Since at least 1991, when the Park was established, it was identified that development in the area directly affected the turtles.[34]

## III. *LAS BAULAS* NATIONAL MARINE PARK

19. Claimants have claimed that the boundaries of the PNMLB have changed at various times since its creation in 1991. In particular, they claim that the 125-meter strip of land has not been part of the Park since 1991.[35] Surprisingly, Claimants also argue that there is no reason for the National Park to include a 75-meter strip of land in addition to the 50 meters of the public area.[36] Finally, they

[31] *See* John H. Roe et al., Characteristics of a Leatherback Nesting Beach and Implications for Coastal Development, 12(1) Chelonian Conservation and Biology 34, 41 (2013) [Exhibit R-014].

[32] *See* Second Statement of Kirt Rusenko, September 10, 2014, para. 9.

[33] *See* Piedra and Wallace, *Sea Turtles of the Eastern Pacific, 2012*, p. 203-06 [Exhibit C-115].

[34] *See* Decree 20518-MINEREM- the "1991 Decree", July 9, 1991 [Exhibit C-1b].

[35] *See* Claimants' Reply, paras. 63-71.

[36] *See* Claimants' Reply, paras. 61-62.

allege – also surprisingly – that the National Park has not has any positive effect on the protection of the leatherback sea turtles visiting the Park.[37] All of these claims are simply not correct.

### A. THE STRIP OF LAND MEASURING 125 METERS HAS EXISTED SINCE 1991

20. Claimants claim that this strip of land created in 1991 was modified during the Law Establishing the *Las Baulas* National Marine Park in 1995. They also assert that I recognized, in a video published in 2001, that the National Park was marine in nature and that the National Park was just the 50 meters of public area.[38] Additionally, Claimants seem to claim that in a publication which I co-authored I acknowledged that the Park did not always have a 125-meter land strip. Claimants' declarations are taken out of context and are thus deceiving.

21. For as long as I have been involved with the National Park, I have been clear on the fact that the National Park includes a 125-meter strip of land measured from the ordinary high tide. This has also been Costa Rica's official stance since the creation of the Park. Though there have been various legislative proposals to modify the Park's boundaries, these have never been approved and the current boundaries, with respect to the 125-meter strip of land, have been the same since 1991.

22. Now, with regard to my statement in the video published in 2001, I must clarify that I was referring to the area of the Park that was consolidated at that time – that is, the area of the Park that was already under public domain. That does not mean that the 75-meter strip has not been part of the Park since 1991. In fact, the narrator of the video clarifies that the Park Administration hoped to be able to acquire the land in question in order to protect the turtles' nesting sites.[39] It is clear that this is referring to the 75-meter strip of land which was to be expropriated. At that time, the expropriation processes had not begun, so none of the 75 meters of land belonged to the Government.

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[37] *See* Claimants' Reply, para. 180.

[38] *See* Claimants' Reply, para. 69.

[39] *See* Hector Duran, "Stories of the Wind: A well-told story about the National Parks of Costa Rica", episode: "Las Baulas National Marine Park," produced in February 2000 and which aired on July 17, 2001 [Exhibit C-087].

23. Likewise, with regard to the publication cited by Claimants,[40] in which I supposedly acknowledge that the Park only included a 50-meter strip of land, Claimants have apparently ignored the description of the Park in which it was stated that it encompassed a 125-meter area measured at ordinary high tide.[41] As such, there is no inconsistency regarding this matter.

24. Claimants also claim in their Reply that the Ministry of Environment ensured Mr. Berkowitz that his land was not included as part of the Park, thus supposedly making it clear that in 2003 the Park did not include 125 meters of land.[42] As evidence for this assertion, Claimants cite to Meeting Minutes of a meeting held in June 2003.[43] In my fist Statement, I explained that the extension of the Park referred to during said meeting was the extension to 1000 meters of land which was being discussed in Congress at that time.[44] Claimants claim that this statement is incorrect.[45] They claim that I seem to be unaware of the events that unfolded at that time.[46] However, Claimants' allegations are incorrect.

25. It is true, as Claimants acknowledge, that in 2003 a further extension of the Park was being discussed, as a result of which the area would be expanded to 1000 meters measured at ordinary high tide. At that time, the Ministry was also suggesting a change with respect to management of land use within the Park. However, the proposed extension of 1000 meters was not approved, nor was the Ministry's proposal with respect to the use of the land within the Park. The National Park at that time already had an area of 125 meters, for which the Ministry knew it had to perform the necessary

[40] *See* Claimants' Reply, paras. 70-71.

[41] *See* Piedra and Wallace, Sea Turtles of the Eastern Pacific, 2012, p. 203 [Exhibit C-115].

[42] *See* Second Statement of Brett Berkowitz, October 2, 2014 ("Berkowitz Second Witness Statement"), para. 19.

[43] *See* Berkowitz Second Witness Statement, para. 18.

[44] *See* Piedra First Witness Statement, paras. 36-38 [Exhibit RWE-002].

[45] *See* Claimants' Reply, paras. 79.

[46] *See* Claimants' Reply, paras. 79, 81.

expropriation activities in order to consolidate the Park.[47] Therefore, although I do not know what Minister Rodriguez discussed directly with Mr. Berkowitz, I can say that in June 2003, those present at the meeting were clear on the fact that the Park had an area of 125 meters for which the necessary expropriations had to be carried out, unless something changed in terms of Park regulations. Nothing changed, so the 125 meters of land continued to exist, and the expropriations would continue to occur as needed.

26. Finally, Mr. Berkowitz claims that in my first Statement I omitted certain relevant facts with regard to the complaint filed against him for cutting down trees within the Park without the required authorization.[48] This is not correct.

27. The first complaint in this regard was submitted by Mr. Carlos Chang in September 2003.[49] Based on this, in 2004 I presented a formal complaint before the Administrative Environmental Court against Mr. Berkowitz, among others, for carrying out activities such a tree felling and earthworks within and outside of the boundaries of the Park without authorization. During this proceeding, various precautionary measures were imposed on Mr. Berkowitz so that he would halt these activities. These were violated, and he continued to perform the unauthorized activities both within and outside of the Park's boundaries.[50] I understand that the last act in this proceeding was the declaration of nullity of the hearing due to procedural rather than substantive grounds.[51] Similarly, in 2004 the Director of the Tempisque Conservation Area submitted a criminal complaint against Mr. Berkowitz for illegally cutting trees and altering the vegetation both within and outside of the Park without authorization,

[47] *See* Minutes from Meeting between Government Agencies, July 16, 2003, p. 2 [Exhibit C-053]: "In the private areas declared as a National Park in 1991 and 1995, we wish to promote a voluntary conservation regime, rather than proceed with expropriation." It is clear that we know that unless something changed concerning applicable park regulations, the Park included land which had to be expropriated for the sake of its consolidation.

[48] *See* Second Statement of Berkowitz, paras. 28-35.

[49] *See* Denouncement of BB by Ranger Carlos Chang, September 1, 2003 [Exhibit C-079].

[50] *See* Rotney Complaint TAA Reply, May 31, 2004 [Exhibit C-081].

[51] *See* Decision of Administrative Tribunal on Cutting Trees, May 26, 2005 [Exhibit R-150].

among other things.[52] The criminal proceedings concluded in 2005 through conciliation, in which Mr. Berkowitz agreed to pay a sum of money and to take steps to repair the damage that had been done.[53]

28. Therefore, there are no inconsistencies in the Administration's actions. It has always been clear that the Park has a land area of 125 meters necessary to protect the nesting habitat of the leatherback sea turtles.

### B. THE STRIP OF 125 METERS OF LAND IS NECESSARY FOR THE PROTECTION OF THE LEATHERBACK SEA TURTLES

29. The 125 meters inland are necessary to protect the nesting sites of the leatherback sea turtles. Claimants make the surprising claim that Costa Rica has created a "myth" concerning the need to have space in addition to the 50 meters of land in the public area.54 They assert that this strip of land is not necessary, since the turtles never go past the sand dunes and never move among the vegetation.55 This statement is misleading. The 75 additional meters of land is not necessary for the turtles to nest in different areas of the beach. The 75 meters are absolutely necessary because this creates a buffer zone that prevents direct pressure from human activities on the beaches. Protection of the 75 meters ensures that the vegetation that creates a protective barrier for the nesting habitat of the turtles is maintained. This is very important because it prevents direct pressure on the beaches where the turtles nest, and it maintains the necessary darkness on the beach. This is why a strip of 125 meters was included as part of the National Park since its creation in 1991.

30. Finally, Claimants also allege that the creation of the Park has not had any positive effect on the protection of the turtles.[56] This assertion is absurd. First of all, one must take into account that the

[52] *See* Criminal complaint against Mr. Brett Berkowitz, 2004 [Exhibit R-148]. Brett Berkowitz also goes by Alejandro Berkowitz in Costa Rica.

[53] *See* Settlement of Criminal Proceeding, September 26, 2007 [Exhibit R-152].

[54] *See* Claimants' Reply, para. 61.

[55] *See* Claimants' Reply, paras. 61, 177.

[56] *See* Claimants' Reply, para. 180.

results of the conservation actions taken by Costa Rica will take years to be definitively seen, since it takes the turtles between 12-30 years after hatching to reach sexual maturity, at which point they will return to the PNMLB to reproduce. Second, the efforts made by the Park Administration have achieved a reduction in the looting of turtle eggs. Third, the Park has ensured the protection of the nests on the beach. Without the Park, the decrease in the number of females would have been much faster and more drastic. And fourthly, by just comparing the situation at Playa Tamarindo and that of Playa Grande, it is apparent that the Park has prevented unsustainable coastal development which, as mentioned previously, directly affects the reproductive process of the turtles.

## IV. PRIORITIES OF EXPROPRIATION

31. Claimants claim that the priorities of expropriation described in my first Statement have not been consistently followed by Costa Rica. They claim that in any case the list of priorities was recently created, and that Claimants were unaware of them until this year.[57] As I described in my first Statement, this list of priorities was made official in 2012,[58] which does not imply that they did not exist previously. Costa Rica has understood since the very beginning that the main priority is the expropriation of lands where there are large numbers of turtle nests recorded. In this sense, a list of priorities with an ecosystem focus was created. This list of priorities consists of recommendations, and should not be taken as guidelines which must be strictly followed. It is my understanding that to begin the expropriation process there are various situations which require additional steps on the part of the Administration. For example, in the case of large farms that span more than 75 meters, it is necessary to prepare specific plans corresponding to the area included within the boundaries of the National Park, which takes more or less time in the case of some lots. For this reason, the Ministry sometimes decides

[57] *See* Claimants' Reply, para. 129.

[58] *See* Piedra First Witness Statement, paras. 56 [Exhibit RWE-002].

to proceed with lots that are of a Priority level 2 or 3, without necessarily having expropriated all of the lots with a Priority level of 1. This, however, does not mean that Priority 1 lots will not be expropriated.

The facts contained in this statement are true to the best of my knowledge and belief.

[signature]

Rotney Piedra

Date: December 22, 2014