

# Holland & Knight

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*Via E-mail*

October 31, 2019

Ms. Jean Kalicki

Mr. John M. Townsend

Prof. Zachary Douglas QC

c/o Mr. Francisco Grob

Re: *Daniel W. Kappes and Kappes, Cassiday & Associates v. Republic of Guatemala*  
ICSID Case No. ARB/18/43

Dear Members of the Tribunal:

Respondent, the Republic of Guatemala, appreciates the invitation to provide observations to the *amicus curiae* application from the environmental justice movement La Puya, dated 23 October 2019.

First, Respondent does not object to the participation of La Puya as an *amicus curiae* in the merits phase of the Arbitration, in accordance with ICSID Arbitration Rule 37(2), CAFTA-DR Article 10.20.3 and section 18.2 of Procedural Order No. 1.

La Puya requests participation arguing “they have been greatly and detrimentally impacted by the El Tambor mining project.”<sup>1</sup> La Puya claims their “unique perspective, knowledge and insight regarding the matter [...] will assist the tribunal”<sup>2</sup> in the resolution of this case. Respondent agrees that La Puya’s participation may assist the Tribunal in obtaining information and an understanding on issues relating to the communities of San José del Golfo and San Pedro Ayampuc and the El Tambor mining project.<sup>3</sup> However, because Respondent’s Preliminary Objections are legal in nature and Respondent has assumed all the facts in the Notice of Arbitration to be true for the purposes of the Preliminary Objections, La Puya’s intervention should be during the merits phase of the case, in the event Respondent’s Preliminary Objections are denied in whole or in part.

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<sup>1</sup> Letter from La Puya to ICSID, 23 October 2019, p. 1.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

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In other words, given the procedural nature of the Preliminary Objections phase, where the underlying factual issues are not discussed, the issue of how the communities of San José del Golfo and San Pedro Ayampuc have been “detrimentally impacted by the El Tambor mining project”<sup>4</sup> is premature.

Finally, in its letter, La Puya asserts that Respondent “has not made [ ] materials available to the public or La Puya”<sup>5</sup> in accordance with Article 10.21 of CAFTA-DR. However, it must be clarified that Respondent has complied with its obligations under Article 10.21 of CAFTA-DR, and has published on the Ministry of Economy of Guatemala’s website all the documents required under CAFTA-DR. The documents are accessible at this institutional electronic address: <https://www.mineco.gob.gt/controversias-inversionista-estado>. These documents have also been published on the itlaw website at the following electronic address: <https://www.itlaw.com/cases/6611>.

In view of the above, Respondent has no objection that the Tribunal, if it considers it appropriate, allow the participation of La Puya as an *amicus curiae* during the merits phase of the Arbitration, should the case proceed to such a procedural stage.

Sincerely yours,

HOLLAND & KNIGHT LLP

Adolfo E. Jiménez

AEJ:ap

cc: Andrea J. Menaker  
Rafael Llano  
Ministro Acisclo Valladares Urruela  
Attorney General Jorge Luis Donado Vivar  
Alexander Salvador Cutz Calderon  
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<sup>4</sup> *Ibid.*

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