



MiningWatch Canada  
Mines Alerte

***Report***  
***from the March 20-27, 2010***  
***fact-finding delegation to Chiapas, Mexico,***  
***to investigate the assassination of***  
***Mariano Abarca Roblero***  
***and the activities of***  
***Blackfire Exploration Ltd.***

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## *Executive Summary*

This report is the product of a fact finding delegation to Chiapas, Mexico, to investigate the activities of Calgary-based Blackfire Exploration Ltd, a private Canadian mining company. The delegation took place at the invitation of the Mexican Network of Communities Affected by Mining after the murder of environmental activist and mine opponent Mariano Abarca on November 27, 2009. The delegation visited the municipality of Chicomuselo, the *ejidos* where Blackfire's Payback Mine is located, the nearby city of San Cristobal de las Casas, Tuxtla Gutierrez (the state capital of Chiapas) and, finally, the Canadian Embassy in Mexico City.

The delegation found that once Mexican federal concessions for subsurface (mineral) rights were granted to Blackfire, the company negotiated agreements with municipal and *ejidal* organizations for surface rights.<sup>1</sup> These agreements were secretive and suspect, and left the members of the local communities with little protection and very few benefits from the development of the barite mine. The delegation has substantial concerns about the accountability of the various levels of government in Mexico with respect to the benefits that should have accrued to the communities affected by the mine.

The site of Blackfire's Payback Mine is similar in appearance to a quarry, covers approximately 15,000 square metres and is divided into two main extraction areas. The forest vegetation had been bulldozed to expose the veins of barite. The mine site is in a steep, mountainous setting. Community members from adjacent *ejidos* expressed concerns about environmental impacts, particularly on water flow and quality, and the risk of a landslide. Residents of Chicomuselo also expressed concern about new cracks in their houses caused by ore-laden truck traffic on the town's streets.

There were no visible indications that any preventative measures to mitigate risk at the open-pit mine site were taken by Blackfire. On December 7, 2009, the Chiapas state environmental agency (SEMAVI) issued a closure order, shuttering the project for an undefined period due to environmental violations. We understand that the company is fighting this closure in state-level civil courts. However, the majority of people the delegation spoke with in Chiapas were clear that they wanted the company to leave the area permanently.

The social impacts of Blackfire's barite mine in the municipality of Chicomuselo are profound, most notably as a result of the murder of Mariano Abarca on November 27, 2009. Tensions in the community have eased somewhat since the closure of the mine, but the Abarca's home remains under 24-hour police protection.

Currently, there are six people in jail for the killing of Mariano. It is the view of the Abarca family that Blackfire was ultimately responsible for the violence that followed the arrival of the mine, culminating in Mariano's murder. His family calls on the Mexican authorities to ramp up their investigations, and to avoid them becoming further politicized.

This report is accompanied by a series of recommendations that target the main actors involved in this tragic case in an effort to seek redress for those most affected by Blackfire's mining operation in Chiapas, while at the same time promoting a change in the way Canadian resource extraction companies acting outside Canada's borders are regulated by Ottawa.

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<sup>1</sup> An *ejido* is communally held territory, managed by a council of elected *ejido* members. Until the signing of the North America Free Trade Agreement in 1994, it was not possible for *ejido* land to be parcelled off or sold.

Among the recommendations of the delegation are:

- That Blackfire leave Chicomuselo and Chiapas, that it cease and desist from the legal action the company has initiated in the Chiapas court system to overturn the mine site closure order issued December 7, 2009 by the Chiapas Ministry of the Environment and Housing (SEMAVI).
- That Blackfire issue a public apology for the acts of intimidation carried out by company employees, with particular reference to the assassination of environmental activist Mariano Abarca Roblero, for which several company employees have been jailed while others remain fugitives from justice;
- That there be an all-party motion of censure of Blackfire's activities in Chiapas introduced for a vote in the Canadian Parliament;
- That the parliament of Canada debate and pass Bills C-300 and C-354 as soon as possible.
- That the RCMP carry out a thorough investigation of Blackfire's relations with municipal authorities in Chicomuselo following the March 10 complaint filed with the RCMP by nine Canadian organizations under the Corruption of Foreign Public Officials Act.

## ***Part I: The Context***

### ***A. Background to the Delegation***

In January 2010, REMA (Mexican Network of Communities Affected by Mining) invited Canadian organizations to send a fact-finding mission to Chiapas. This followed a series of events in 2009 that led to the tragic November 27 killing of Mariano Abarca Roblero, an environmental activist and member of REMA. (*Image of a memorial to Mariano below*).



Five Canadian organizations (Common Frontiers, Council of Canadians, MiningWatch Canada, Sierra Club Canada, and United Steelworkers) formed an ad-hoc working group to follow up on the Blackfire mining firm's activities in the Chicomuselo municipality.

When the invitation arrived it was quickly decided to send a Canadian delegation to look more carefully into the circumstances surrounding the assassination of Mariano Abarca and to prepare a report on this case.

A three-member delegation, consisting of representatives of Common Frontiers, United Steel Workers and MiningWatch Canada arrived in Chiapas on March 20, 2010 to begin their investigation. **The full itinerary and list of participants is attached as Appendix 1.**

It also should be noted that on March 10, 2010 the ad-hoc working group filed a Complaint with the RCMP (Royal Canadian Mounted Police) against Blackfire under the *Corruption of Foreign Public Officials Act*. The Complaint was sponsored by a total of nine organizations. **The full complaint is attached as Appendix 2.**

### ***B. The History of Chicomuselo***

The municipality of Chicomuselo is located in the south of the state of Chiapas, Mexico, near the border with Guatemala.

Though few studies exist about the pre-colonial past of the region, the town of Chicomuselo was originally founded by Mayan people, and in the year 700 was occupied by Huasteco people who emigrated from the San Luis Potosi region. The town of Chicomuselo was refounded by the Spanish after 1528, due to its strategic location as a transit point between Comalapa and San Cristobal de las Casas. Today, residents of the area generally do not identify as Indigenous, though many are of Mayan and Huasteco descent.

The population derives their livelihood from farming, with many community members practicing subsistence agriculture of corn, beans, rice, cashews, coffee, sorghum, fruits, and vegetables as well as limited ranching, fishing and aquaculture. Coffee production has seriously declined since 1994, as have prices of corn and beans. This phenomenon has contributed to an increase in migration out of Chicomuselo to other urban centres and to the United States. There are a small minority of community members who make a living as transportation providers, educators and government workers.

There is some historical evidence of metal mining in Chicomuselo, possibly of lead mining. Little is known about these activities today.

### ***C. Blackfire in Chicomuselo***

Blackfire Exploration Ltd. is a private, Calgary-based company. Its directors and executives are Mexican and Canadian, and the Payback Mine in Chiapas is the company's only producing mine. Payback is located in the *Ejido* of Grecia, in the municipality of Chicomuselo, Chiapas.<sup>2</sup> The company also has built an access road through the *Ejido* of Nueva Morelia. Both of these *ejidos*<sup>3</sup> are within the municipality of Chicomuselo.

According to the U.S. Geological Survey, Blackfire Exploration Ltd. produced drilling grade barite from a high-grade vein 12 metres wide and 1,200 metres long at a rate of 5,000 metric tonnes per month.<sup>4</sup> (*Image of barite from the Payback mine below*). The same document states that plans were to increase production to 20,000 metric tonnes per month by the end of 2009. It is not known how much barite Blackfire was actually producing just prior to its closure.



The average price per tonne for barite in 2008 was \$47.60, though prices can range significantly depending on the grade of mineral.<sup>5</sup> There has been a recent boom in barite production, linked to an increase in exploration for oil and natural gas, as barite is primarily used for drilling petroleum wells. It

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<sup>2</sup> <http://www.blackfireexploration.com/default.asp?id=14>

<sup>3</sup> An *ejido* is communally held territory, managed by a council of elected *ejido* members. Until the signing of the North America Free Trade Agreement in 1994, it was not possible for *ejido* land to be sold or broken down into fee simple titles.

<sup>4</sup> <http://minerals.usgs.gov/minerals/pubs/commodity/barite/myb1-2008-barit.pdf>

<sup>5</sup> <http://minerals.usgs.gov/minerals/pubs/commodity/barite/myb1-2008-barit.pdf>

can also be used in producing chemicals and glass, in food manufacturing, television and computer manufacturing, and in vehicle manufacturing. Most if not all of the barite mined in Chicomuselo is believed to have been sold to PEMEX, the state oil company in Mexico.

Total world production of barite is 8,050,000 metric tonnes, with the four main producers being India, China, Morocco and the United States.<sup>6</sup>

The delegation was told that people first found out about mining interests in the region either through seeing people unknown to community members collecting surface rock samples along the rivers, or by the presence of trucks belonging to Blackfire. The concession was first granted to a Mexican company called Caracol. It is believed the original concessions in Grecia were sold to Blackfire in 2005. Blackfire has nine additional concessions in the municipality of Chicomuselo, and two others elsewhere in Chiapas. The company also states they have probable reserves of magnetite and titanium. The delegation did not investigate the other concessions or the other minerals.

### ***D. Overview of Mining Regulation in Chiapas***

Mining in Mexico is regulated by several different levels of Government. The Mexican Federal Government grants (sub-surface) mineral rights concessions to prospective mining companies through the Secretaria de Economia (SE). However, beyond the granting of mineral rights, it is not clear whether the Federal Government of Mexico took any active role in ensuring that Blackfire's operation otherwise complied with Mexican law.

The State Government of Chiapas appears to be exercising responsibility for oversight and regulation of the mining operation. In particular, the State of Chiapas was closely involved in the infrastructure agreements necessary to implement the mining operation as well as the environmental regulatory oversight.

Finally, a mining company like Blackfire must reach agreements for the surface rights with local and municipal governments. Unless Blackfire obtains such agreements, it cannot develop the mine. In this case, the municipal officials and *Ejidors* were left to "negotiate" with Blackfire with respect to the benefits and protections to be afforded to the local communities as a result of the Blackfire's operation. We found that this process was secretive and suspect, and ultimately left the members of the local communities with little protection and very few benefits from the development of the Blackfire mine.

## ***Part II: Regulation and Community Benefits of the Blackfire Mine***

### ***A. Brief Description of the Mine Site***

On the first day of the visit, the delegation visited the mine site. The Payback mine is located at kilometre 45 of the Chicomuselo-Barrio de San Ramon road, in the *Ejido* of Grecia. The open-pit mine site in Grecia is similar in appearance to a quarry, and covers approximately 15,000 square metres, divided into two main extraction areas. The mine site is 1419 metres above sea level. Forest vegetation had been bulldozed to expose the veins of barite. With the topsoil stripped off, the visual impact is that of a deeply scarred landscape. (*Image of the mine site below*).

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<sup>6</sup> <http://minerals.usgs.gov/minerals/pubs/commodity/barite/mybl-2008-barit.pdf>



### ***B. Regulatory History of the Blackfire Mine***

Blackfire acquired the right to mine the property in Grecia from Caracol, a Mexican mining concern, in or around 2005. The delegation did not review in detail the rights and agreements that had previously been negotiated by Caracol, if any.

The Blackfire mine is located in the Community of Grecia, on the border of Grecia and the community of Nueva Morelia. In order for the mine to operate, Blackfire was required to acquire surface property rights from the community of Grecia and they had to obtain the agreement of Nueva Morelia in order to build an access road and a facility for minor processing of the ore at the bottom of the mountain.

Towards the end of 2007 up to June 2008, Blackfire “negotiated” a series of agreements with the community of Grecia. The State Government of Chiapas was a signatory to the agreements. Astonishingly, these agreements do not appear to have been made public. Moreover, it is unclear whether the communities of Grecia and Nueva Morelia were adequately represented in their discussions with Blackfire.

The delegation met with the communities of Nueva Morelia and Grecia in order to hear from the communities about their expectations with respect to the benefits that were to come from the mine and the actual benefits they received.

### ***C. Mine Impact Benefits for Nueva Morelia***

With respect to Nueva Morelia, there appears to have been little or no consultation with the community before mine development commenced. No one was able to point the delegation to any written agreement reached with the community.

The delegation was told that Blackfire purchased a number of plots of land, but, it appears there was no consultation with the community, even though under Mexican law, the purchase of the property must be approved by the *Ejido*.



Many members of the community of Nueva Morelia told the delegation that promises were made for substantial infrastructure benefits to the community including improved roads, health care facilities and money to the community.

However, there was no evidence that the community received any substantial benefits whatsoever from then Blackfire mine. Community members stated that Blackfire built and used a large road through Nueva Morelia, and then proceeded to extract the Barite from along the edges of the road construction project, contrary to the understanding that there would be no mining in Nueva Morelia.

On February 12, 2010 Mexican environmental officials received a complaint from representatives from the communities of Nueva Morelia, La Lucha, San Francisco las Palmas, and others in the municipality of Chicomuselo filed a complaint against Blackfire. The complaint was filed with the Chiapas office of the Secretariat of the Environment and Natural Resources (SEMARNAT) for contamination and impact on and destruction of the environment in the municipality of Chicomuselo. This followed a January 21, 2009 complaint lodged by a SEMARNAT employee in relation to the access road that describes an unauthorized change in the use of forested lands for the purpose of taking advantage of the rocky terrain in order to extract ores.

#### ***D. Mine Impact Benefits for Grecia***

The situation in Grecia, the community where the mine is located, is somewhat more complicated. When the delegation met with the community of Grecia, we were told that, as with Nueva Morelia, there had been very little community consultation with respect to the mine project before mine development began. Although members of the community, including some members in position of responsibility, generally asserted that they were aware that agreements had been signed between the community of Grecia, Blackfire and the State Government, no one was in possession of those agreements. We were initially told, after repeated requests, that we could not have copies of the agreements.

Members of community of Grecia were told that as a result of the mine, there would be road improvements, a water tank would be built for the village, a health clinic would be constructed, money would be provided to the community and a school would be built. Members of the community were unanimous in their view that very few of these benefits had actually accrued to them. A water tank was built, but it was widely condemned as being substandard. Minimal road improvements were made, not nearly to the level that the community had expected. Other than the water tank and short length of roadwork, no one in the community was able to identify any tangible benefits to the community of Grecia from Blackfire's mine development.

The day after the delegation met with the community of Grecia, the delegation obtained 2 agreements between Blackfire and the community, which date from December 2007 and June 2008, as well as certain other agreements from June and August 2008 between the Ejido of Grecia and the State Government. All of these agreements were signed by officials of the State Government. **These agreements, together with translations, are attached at Appendix 3.**

The first agreement signed by Blackfire provides for extensive payments to be made to the community of Grecia in the amount of an initial payment of \$100,000 pesos and subsequent payments in the amount \$50,000 pesos per month, with possible increases once the mine commenced production. The subsequent Land-Lease Contract signed 7 months later upped the monthly amount to be paid by Blackfire to \$60,000 pesos.

Few members of the community had any knowledge of these payments or knew to whom they had been made. Given the substantial secrecy around the agreements between Blackfire and Grecia, the

delegation is of the opinion that that these payments gives rise to a significant concern that corruption could have occurred between Blackfire and the community of Grecia, particularly in light of what has clearly occurred in Chicomuselo. One thing is clear: no one in Grecia could identify any benefit to the community from these payments.

The agreements themselves actually provide that the infrastructure projects were to be built primarily by the State of Chiapas. However, as noted above, very few infrastructure improvements were built in the community.

### ***E. The Role of the State Government of Chiapas***

Finally, it is also clear that the State Government of Chiapas was a signatory to all of the community agreements and the mine. The State was also responsible for certain infrastructure developments that appear to have made little positive impact on the communities.

The delegation met with senior state officials from the Government of Chiapas. The delegation asked the officials about their role in the provision of benefits that should have gone to the communities. We were told that the Government of Chiapas had little or no role in the process, and that local governments were responsible for negotiating such agreements. When it was pointed out that they were signatories to the agreements, they claimed they only signed on as “observers.” They asserted that they their role was to make sure that the infrastructure was properly regulated.

The delegation has substantial concerns about the accountability of the various levels of government with respect to the benefits that should accrue to the communities affected by the mine. In particular, the delegation was advised by lawyers in Chiapas that the State enjoys a very broad immunity. As a result, it is almost impossible for the communities to launch an action against the state for its failure to build the promised infrastructure.

## ***Part III: Environmental Degradation Caused by the Mine***

### ***A. Environmental Observations of the Delegation***

As noted above, the delegation visited the mine site and found a small mine consisting of two open pits located at substantial elevation at the head of a valley. The forest had been bulldozed and earth at the site has been piled in mounds ranging from twelve to twenty metres high with the sides sloping downward at angles ranging between seventy-five and ninety degrees. The mine site is in a mountainous setting where the hillside inclinations can vary from between forty-five and sixty degrees. These factors led the Chiapas Ministry of the Environment (SEMAVI) to observe that conditions could lead to washouts and landslides. Fissures were visible in the rocky soil pushed to the edges of the excavated areas.

The delegation heard from community members who were concerned that these fissures could indicate that the earth mounds were unstable and could, if saturated by heavy rains, pose a risk of landslide communities, even at a distance of several kilometres down the valley. Given seismic activity in the zone (92 tremors in the first two and one-half months of 2010), a major shake could also be a risk factor for people living below the mine site.



At the mine site several open buckets with unknown substances in them were observed in our walkabout. Abandoned machinery (backhoes, excavators) remained in two locations on site. Blackfire also maintained a storage area some seven kilometres from the mine site, and on the northeast corner there were some six drums of 200 litres each of used oil being stored along with used filters and cloths that were impregnated with heavy-duty oil. (*Image of the oil filled buckets above*).

There were no visible indications that preventative measures to mitigate any of the above-mentioned risks were taken by Blackfire.

### ***B. Community Concerns about Environmental Effects***

At the delegation's meetings with community members from Chicomuselo, and the *Ejid*os of Grecia and Nueva Morelia, a wide variety of serious environmental concerns were raised.

First, members of the communities expressed concern about the water, which they use for washing, irrigation, animal care and drinking. The delegation was told that since the arrival of the mine, some streams that provide drinking water have dried up. Other streams and rivers have been contaminated such that normal bathing caused rashes on bathers' bodies. The delegation was told that the washing of clothes in the river has also been rendered impossible.

This water contamination appears to have been caused by increased silt and mud in streams and rivers as a result of soil erosion caused by the mine development. This is consistent with the delegation's observations at the mine site. The delegation was also told that the water contamination has killed fish in the streams.

Second, the delegation was told on several separate occasions that since the development of the mine, cattle are dying at a higher rate on pastures that are downstream. Community members freely acknowledge that they are not environmental experts and they have no direct scientific evidence to substantiate the claim that the cattle deaths are caused by the mine. However, this highlights another issue that was raised on several occasions by local community members: the fact that they were not provided with any advice or assurances regarding the environmental impact of the mine. Moreover, they had no access to expert assistance when it emerged that the problem may have been linked to mining activities.

Third, and perhaps most significantly, villagers and farmers are concerned about a major landslide being triggered by either the onset of the rainy season in May, or by a significant quake. The delegation was told that the rainy season in 2009 had been uncharacteristically dry and as a result, no landslide had occurred. Given the amount of topsoil that has been moved by the mine operators and the apparent lack of support for the soil, the delegation shares the community's concerns regarding soil erosion and the possibility of a landslide.

Finally, the delegation met with residents of the town of Chicomuselo, who expressed concern about cracks in the walls of their houses resulting from the traffic of ore-bearing trucks belonging to Blackfire.

In response to questions about the environmental hazards caused by the mine, Blackfire officials have asserted that Barite is not toxic and the mine itself does not use chemicals. A study prepared by the government of Alberta has shown that "impurities associated with barite include aluminum oxide, arsenic, barium, calcium, copper, fluorine, iron (III) oxide, lead, manganese, silica, strontium sulphate, zinc, cadmium, mercury, or radium."<sup>7</sup> It is not known which, if any, of these impurities are present in Blackfire's barite concession. Further, previous studies have shown that barite mine dumps have contributed to the level of sulphur in local water systems in India.<sup>8</sup>

### ***C. Closure of the Blackfire mine by SEMAVI***

On December 07, 2009 SEMAVI (Secretariat for the Environment of the Government of Chiapas) ordered the "total and temporary" closure of the barite mine operated by Blackfire. **The full complaint is attached as Appendix 4.**

Reasons given for the closure cite an extremely fragile ecosystem high in the Sierra Madre of Chiapas where an open-pit mine could lead to deforestation and subsequent erosion causing short, medium, and long-term impacts from which the area would never recuperate, including:

- Climate change impact given disturbance to soil and vegetation leading to the release of greenhouse gasses;
- Nascent surface and subsurface water sources affected as well as hydrological cycles interrupted;
- Loss of biological diversity;
- Heightened risk/threats/vulnerabilities for the zones below the mine given materials-laden runoff from the rain, along with the danger posed by the saturation of the earth on the mountainside;
- Risk not only to the environment itself, but also to human habitation in zones that fall within the areas of influence should there be a future event of significance.

In a meeting with the Undersecretary of the Government of Chiapas, the delegation learned that at some point in the first quarter of 2010, Blackfire commenced a legal challenge in the Mexican court system to have the SEMAVI-ordered closure of the mine site reversed.

We were also informed that Blackfire CEO Brent Willis had met with the Undersecretary's office a week prior to our visit, and that he had asked for the mine to be re-opened. This same government office assured us that they were not inclined to allow the opening of the Payback mine in the future. However, should the court find in Blackfire's favour, the state government could be obliged to repeal the closure. It should be noted that the many community members we met with in the municipality where the mine is located were adamant that Blackfire be ordered to leave Chiapas altogether.

<sup>7</sup> <http://environment.alberta.ca/3281.html>

<sup>8</sup> <http://www.springerlink.com/content/5651r1472757409j/>

## ***Part IV: Social Impacts of the Blackfire Mine***

### ***A. Community Concerns about Social Impacts***

The killing of Mariano Abarca was the most extreme incident in the community relating to Blackfire's presence; however residents expressed concern about how the company has divided their community. Among the concerns raised:

- Approximately 50 people from the community were hired by the company to work at or guard the mine site. Some of these people also acted as shock troops used to intimidate any opposition to the Blackfire's operations;
- Some public authorities handle small payments from the company; most community members see little or nothing of those monies;
- There is an increased religious divide between Catholics who question the Blackfire operation and its impact on the communities, and Evangelicals who mostly back the company;
- There is also a growing divide between men and women, as public authorities let it be known to women living in poverty who receive a small bi-monthly state subsidy (*Oportunidades Mujeres*) that they could have their subsidy cut off if they opposed the mining operations.

### ***B. Anti-Mining Activism and the Murder of Mariano Abarca***

Mariano Abarca Roblero was involved along with other community members in raising community awareness about the effects of mining. He worked with the Mexican Network of Communities Affected by Mining (REMA). Mariano was involved, with others, in investigating the legal standing of the company, in demanding benefits for his communities, and in networking with ejido members to denounce the effects the company was having in their lands. Mariano was not an active member of the Catholic Church, but coordinated educational activities related to the struggle against mining with the local parish.

When community demands sent to the company went unheeded, community members began a series of road blockades and pickets in and around the town of Chicomuselo to halt the trucking-out of barite.

These blockades were in the main the result of promises not kept by Blackfire. The blockades were also a way to enforce community demands for reparations, as in the case of townspeople who experienced cracks in their homes caused by the heavy traffic. These actions began to pick up steam as of June 2009.

In August 2008, two Blackfire employees beat Mariano, who was one of the more high profile anti-mining activist in Chicomuselo, and one of his sons. The employees arrived at Mariano's house wearing company vests, and during the incident they held a gun to the head of Mariano's wife.

On August 17, 2009, police in Chicomuselo arrested Mariano off the street. He was jailed without legal justification and accused of attacks against public roadways, criminal association, offences against the peace and other charges. Mariano was released some 8 days later following a local and international campaign of letters to the Governor of Chiapas.

On November 23, 2009, Mariano submitted an administrative complaint against Ciro Roblero Perez and Luis Antonio Flores Villatoro. Villatoro was the Public Relations Manager for Blackfire. In the complaint, Mariano told government authorities that these individuals had made serious death threats against his person. He asserted that Ciro Roblero told him that they had gone after him to "blow him to bits" so that he would cease his campaign against the mine. In these documents, Abarca stated "If something happens to me, I hold the Canadian mining company Blackfire responsible."

Two days before the police were to formally launch their investigation into the threats against Abarca, Mariano was assassinated Nov. 27, 2009 outside his house and business on the main street of Chicomuselo. He was shot in the back in a walk-by shooting. *(Image is of Mariano's wife at his grave site.)*



The delegation met with don Orlando Vasquez who was a witness to the murder. Don Orlando was himself shot in the assassination, although he could not identify the assassin. Don Orlando himself was convinced that Abarca had been murdered because of his activism in opposing the Blackfire mine. Shortly after the assassination three individuals were charged with the murder. According to the press release issued by the State Attorney for Chiapas, these individuals are Jorge Carlos Sepulveda Calvo (identified in the press release as the alleged shooter) Caralampio Lopez Vazquez (identified as an accomplice) and Ricardo Antonio Coutino Velasco (also identified as an accomplice).

According to the State press release, all three of these individuals had a close connection to Blackfire. Lopez Vazquez was head of personnel and security for Blackfire and worked as a driver and translator for a Blackfire executive. Sepulveda Calvo worked as a driver for Blackfire and Coutino Velasco owned and drove a truck that was rented out to Blackfire as part of its fleet.<sup>9</sup>

Since the initial arrests, an additional three men have been jailed. Blackfire has denied any responsibility for Mariano's murder.

In January of 2010, Walter Antonio León Montoya was charged with conspiracy ("intellectual author") to commit murder in connection with Mariano's assassination. León Montoya is a former congressperson for the Institutional Revolution Party (PRI), and is a political opponent of the current governor of Chiapas, who is from the Revolutionary Democratic Party (PRD). He is also head of a transport union that had contracts with Blackfire. León Montoya is currently in jail.

<sup>9</sup> Procuraduria General de Justicia del Estado de Chiapas: Esclarece Procuraduria de Chiapas homicidio de Mariano Abarca Roblero; press release issued December 8, 2009.

On February 17, 2010, Horacio Culebro Borrayas, who was legal counsel for Blackfire in Chiapas, was arrested and also charged with conspiracy (“intellectual author”) in connection with the assassination of Mariano.

In late March, 2010, Carlos Calderon Gallegos was arrested in connection with Mariano’s assassination. He was involved in the August 2008 beating of Mariano.

When the delegation met with officials from the State of Chiapas, they expressed great certainty that they had arrested the perpetrators of the murder. But REMA and the Abarca family are demanding that the investigation continue. They have named names, specifically asking for an investigation into Blackfire’s public relations head, Mr. Luis Antonio Flores Villatoro, and eight others.<sup>10</sup>

Concern was expressed by communities as well as lawyers that the investigation into the shooting is being politicized, which some believe will lead to a miscarriage of justice. REMA has called the charges against León Montoya a form of political revenge.

There was a general consensus among the members of the community that Blackfire was responsible for the spiral of violence that erupted after the arrival of the mine that culminated in the assassination of Mariano Abarca. The Abarca family, Community members and REMA representatives were adamant that they want justice, and that the Canadians responsible for this project should also be investigated.

## ***Part V: The Canadian Context***

### ***A. Legal Prosecution and Law Reform in Canada***

The Blackfire case highlights the fact that there is a pressing need for greater regulation of Canadian resource extraction companies acting outside Canadian borders. Canada’s extractive sector has a global reach and, in recent years, the actions of several companies have come under close scrutiny. Blackfire is but the latest example of irresponsible conduct.

Canadian mining companies operate with virtual impunity around the world. This problem was highlighted by the March 2007 *Report of the National Roundtable on Corporate Social Responsibility (CSR) and the Canadian Extractive Industries in Developing Countries*. That report made numerous recommendations, including legislation of the kind promoted in the delegation’s report.

The delegation spent considerable time hearing from Mexican activists, lawyers and community members regarding the need for justice in the community. There was a great concern that Blackfire would never be brought to justice for the violations of environmental rights and human rights perpetrated in Chiapas. Of particular importance for the delegation was the overwhelming concern expressed by the family of Mariano Abarca that Blackfire must be brought to justice for Mariano’s assassination. It was their view that Blackfire was ultimately responsible for the violence that followed the arrival of the mine, culminating in Mariano’s murder.

While the Blackfire story is an egregious example, it is only one example of Canadian corporations behaving irresponsibly on the international stage. In order to end the impunity under which these corporations operate, the delegation wishes to highlight three legal and policy initiatives that might serve to hold Blackfire, and other corporations like Blackfire, accountable for their actions.

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<sup>10</sup> <http://otrosmundoschiapas.org/index.php/mineria/99-mariano-abarca.html>



### ***B. Prosecution of Blackfire under Canadian Corruption Statute***

Prior to the delegation's visit to Chiapas, a group of nine Canadian non-governmental organizations filed a dossier of material with the RCMP asking it to charge Blackfire under the Canadian Corruption of Foreign Public Officials Act (CFPOA). **A copy of the full Complaint is attached as Appendix 2.** The focus of the Complaint is the clear evidence of payments made by Blackfire to Julio Cesar Velasquez Calderon, the mayor of Chicomuselo, for unofficial services for the benefit of Blackfire. The CFPOA has been in force in Canada since 1998, but it has rarely been used to prosecute Canadian corporations acting abroad.

Given the lack of any other current Canadian legislation to hold corporations like Blackfire accountable for its actions, it is essential that the RCMP act upon this information to fully investigate Blackfire officials regarding these payments. In speaking with activists in Chicomuselo, the delegation found that the issue of corruption was extremely important. Given the lack of consultation that occurred with the community prior to the opening of the mine, there was a general consensus that the approval process for the mine was unsound. Moreover, there was profound scepticism that the Mexican officials, or Blackfire executives, would ever be held accountable for the corruption that appears to have been an important part of the mine development process.

### ***C. Concern about an apparent double standard operating at the Canadian Embassy in Mexico***

The delegation was concerned by an apparent double standard that Canadian legations sometimes exhibit in a foreign country - in this case Mexico. The Canadian Embassy in Mexico, for example, financed and made available *An Information Kit about Mining in Mexico*, which contains suggestions for companies in achieving a smoother entry into communities that could be impacted by the presence of a mine. The Embassy web site boasts a host of free services for Canadian companies to help them set up operations, and even suggest that Embassy officials can help the company resolve problems. However, such as in the case of Blackfire, when a Canadian firm behaves irresponsibly leading the affected local community to approach the Canadian Embassy with a grievance (as happened twice in the Blackfire case), the community members are told that the matter is not a problem of pertinence to the Embassy.

During the delegation's meeting at the Canadian Embassy in Mexico City, we asked whether Blackfire had received support through the Embassy. We did not get a clear answer to the question. Nonetheless, the Canadian government does provide extensive assistance, advice, and in some cases financing to Canadian mining companies in Mexico. Whether or not this was the case for Blackfire, the delegation believes that such support must be tied to a concrete requirement that Canadian corporations respect the human rights and environmental rights of Mexican citizens.

The delegation was aware of the existence of a report on the Blackfire case, prepared by the Canadian Embassy's Political Counsellor during a trip taken to Chiapas in early 2010. When asked by the delegation for a copy of this report, we were told that it would not be possible, and that the report in question was classified.



### **D. Bill C-300: An Act Respecting CSR for the Activities of Canadian Resource Companies in Developing Countries**

Bill C-300, tabled by MP John McKay (Liberal, Scarborough-Guildwood), is an important piece of legislation that would go some distance to holding Canadian mining corporations accountable for their irresponsible actions on foreign soil.

At its core, the Bill legislates that Canadian Government support to companies in the mining, oil and gas sectors must be contingent on Corporate Social Responsibility standards for human rights and environmental rights. This includes financial and political support via trade commissioners, foreign affairs, Export Development Canada and the Canadian Pension Plan. The legislation builds on the recommendations of the National Roundtable on CSR in the Extractive Industries, mentioned above. Under the legislation, complaints could be filed against corporations like Blackfire with the Minister of International Trade and Foreign Affairs. The Bill requires the Minister to act on every complaint that is not frivolous and make a determination as to whether the Company violates the standards or not. All of this would be recorded in the Gazette. However, private companies like Blackfire would not be subject to the Bill's proposed financial sanctions, which would cut all taxpayer support (Canada Pension Plan investment, Export Development Canada loan guarantees or political risk insurance, etc.) to companies found to have violated international human rights standards and relevant guidelines until they come back into compliance.

While not perfect, Bill C-300 could foster an environment that would assist in making companies like Blackfire accountable to Ottawa, and we believe that the Bill deserves to be passed by Parliament.

### **E. Bill C-354: International Promotion and Protection of Human Rights Act**

This Bill, introduced in the last two parliaments by NDP MP Peter Julian, creates a new civil cause of action that would allow the Canadian Federal Courts to hear and decide claims for violations of international law that occur outside of Canada.

Specifically, the legislation would allow non-citizens to sue anyone in Canada for violations of basic human, environmental or labour rights when they are committed outside the country. The Bill would also require judges on the Federal Court to satisfy themselves that the Court is an appropriate forum to hear these matters before allowing such a claim to proceed.

At present, human, labour and environmental rights are subject to few concrete, effective enforcement mechanisms. The *International Promotion and Protection of Human Rights Act* (IPPHRA) fills this need for the victims of international rights violations when no forum is available to them in the country where the violations are taking place.

The principal model for Bill C-354 is found in the United States. The *Alien Tort Claims Act* (ATCA) gives foreigners the ability to sue in domestic U.S. courts. The statute was dormant for many years, but since 1980, the U.S. courts has been used to launch claims for a wide variety of human rights violations including genocide, war crimes, extrajudicial killing, slavery, torture, unlawful detention, and violations of environmental rights.

The IPPHRA will allow the victims of human rights abuses to pursue damages in Canada against the perpetrators of these violations. For example, in the case of Blackfire, the IPPHRA would permit the family of Mariano Abarca to sue Blackfire for its role in Mariano's death. Similarly, local communities

could launch a suit against Blackfire for violations of environmental rights caused by the mine development.

The IPPHRA would permit judges to award punitive damages that are designed to deter similarly abusive conduct by others in the future. The risk of damage awards alone will provide an example to potential abusers, like Blackfire, that demonstrates that such conduct is both personally costly and socially unacceptable.

In addition to any monetary awards provided by courts, these cases will be important to victims and their families. Plaintiffs are allowed to tell their stories to a court and can confront their abusers. The trial itself creates an official record of the abuses inflicted on the victims. Filing these civil suits can empower the victims and give them a means of fighting back against abhorrent treatment.

In general, the Canadian government promotes itself as a defender of human rights on the international stage. Canada has been at the forefront of the creation of many human rights institutions at the U.N. and elsewhere. But Canada has taken few concrete steps towards the creation of legitimate legal forums with the power to provide meaningful remedies to those who are the victims of human rights abuses.

It is important that Canadian corporations and other non-state actors respect international human rights, labour rights and environmental standards. Bill C-300 and Bill C-354 aim to lessen the incentive among some companies to disregard basic human rights due to overseas competition in jurisdictions where human rights, environmental standards and labour rights are not adequately protected.

In short, it is vital to our place in the world community that the Canadian Government require Canadian corporations to behave responsibly in the communities where they seek to do business. Both Bill C-300 and Bill 354 would help to ensure that Canadian corporations respect basic human rights principles while operating abroad. It is long past time that the Canadian Government acted on these proposals.

## ***Part V: Conclusions and Recommendations***

The delegation makes the following conclusions:

### **A. The Absence of Any Community Benefits**

- The development of the mine occurred without any substantial consultation with the affected communities.
- The process by which Blackfire obtained the land for the mine site and the access road appears to have been highly suspect.
- Although Blackfire did negotiate certain agreements with communities, this was done in secrecy with little accountability to the members of those communities
- Despite substantial assurance and promises, the communities that were directly affected by the Blackfire mine development received little or no benefit from the mine operation.
- There is direct evidence of inappropriate payments being made by Blackfire to the Mayor of Chicomuselo. One of the alleged rationales for the payments was the suppression of local dissent. There were also agreements for large and unaccounted for payments from Blackfire to the Ejido of Grecia.
- The role of the State of Chiapas is unclear. There is a serious problem of accountability with regards to who should take responsibility for the failure of the communities to get any benefits from the mine.

## **B. The Destruction of the Environment Caused by the Mine**

- Although the delegation was told that the Blackfire mine project could only proceed after an environmental impact assessment, the delegation found no evidence that a meaningful assessment took place. Moreover, there was no evidence that the affected communities were consulted at all with respect to the possible environmental impact of the mine.
- The affected communities are unanimously of the view that the mine development has led to contamination of their water supply leading to adverse health effects for the residents and livestock
- The open pit mine has led to substantial soil movement and erosion leading to a serious risk of mudslides and runoff from the mine site.
- The transportation of the barite ore on large trucks through the small communities as led to damage to roads and buildings.
- The mine was ultimately closed by the state of Chiapas over many of these same environmental concerns.

## **C. Violence and Division within the Community**

- The arrival of the Blackfire mine divided the local communities in many important respects: it created political divides, gender divides and led to a split in the faith communities.
- Ultimately, the development of the mine led to civil resistance, blockades, the arming of employees and ultimately violence.
- Anti-mining activists, notably Mariano Abarca, were subject to death threats, beatings and police harassment.
- The violence culminated in the murder of Mariano Abarca. All of the individuals charged in connection with the murder have a connection to Blackfire.
- The consensus in the community is that Blackfire is directly responsible for Mariano Abarca's murder.
- In the view of the delegation, the violence would not have erupted if Blackfire had not developed and opened the mine in Chiapas. As a result, Blackfire must bear some responsibility for the violence, including the murder of Mariano Abarca.

## **D. General Conclusions**

- The consensus in Chiapas is that the Blackfire mine must not be allowed to re-open. Indeed, the delegation heard time and again that Blackfire must be barred from mining anywhere in Chiapas.
- If the mine were to re-open, there would be overwhelming community opposition which raises the strong likelihood of renewed violence.
- Canada's image has received a major setback not only in Chiapas but also more widely in Mexico as a result of the irresponsible and widely publicized actions of Canadian mining firm Blackfire.
- The community wants Blackfire officials, including Canadian Blackfire officers and directors, to be held accountable by Mexican and Canadian governments for what has taken place in Chiapas.

The delegation makes the following recommendations based on their findings from the mission to Chiapas:

### **With regard to Blackfire Exploration:**

- That Blackfire cease and desist from the legal action the company has initiated in the Chiapas court system to overturn the mine site closure order issued December 7, 2009 by the Chiapas Ministry of the Environment and Housing (SEMAVI);

- That Blackfire cease and desist from making threats against Mexican public authorities such as that of pursuing a Chapter 11 case under NAFTA seeking \$800 million in compensation for the closure of the Payback mine as reported by the Mexican news service Milenio;
- That Blackfire make public any and all payments made to the Ejido de Grecia Commissariat including names and account numbers on any bank transfers issued by the company since it took over the mine site;
- That Blackfire move immediately to compensate the Ejido of Nuevo Morelia for the approximately 7 kilometre long access road built on their lands without a prior environmental impact study having been undertaken or the proper license to operate with regard to the level of permitted atmospheric emissions having been obtained. The delegation also heard anecdotal evidence from several Ejido de Morelia members that ores uncovered in the process of bulldozing the access road were frequently loaded onto trucks and taken away for processing without permission from the Ejido;
- That Blackfire move immediately to set up a fund to allow for the option of third party mitigation efforts at the mine site following prior permission from, and under the supervision of, SEMAVI officials;
- That Blackfire issue a public apology for the acts of intimidation carried out by company employees, with particular reference to the assassination of environmental activist Mariano Abarca Roblero for which several company employees have been jailed while others remain fugitives from justice;
- That Blackfire announce publicly that it will make reparations to the owners of the houses that have been damaged by the excessive shaking of the buildings due to the traffic of heavily laden ore trucks utilizing streets in the town of Chicomuselo as an access route to and from the mine;

**With regard to the Canadian government:**

- That there be an all-party motion of censure of Blackfire's activities in Chiapas introduced for a vote in the Canadian Parliament;
- That the government immediately announce the setting up of an ombudsperson office with powers to investigate mining activities at home and abroad, and to mete out punishment as required;
- The delegation is of the view that in so far as Canadian Foreign Affairs and Canadian Embassies provide advice and assistance to Canadian mining companies abroad, that assistance must include a strong emphasis on the importance of corporate social responsibility. Further, if a company like Blackfire behaves irresponsibly, any such support or assistance should be withdrawn.
- Given that Canada is major player in mining activities worldwide, there is a pressing need to end the corporate impunity under which Canadian mining companies operate. As a result, the delegation urges the parliament of Canada to debate and pass Bills C-300 and C-354 as soon as possible.

**With regard to the RCMP:**

- That the RCMP carry out a thorough investigation of Blackfire's relations with municipal authorities in Chicomuselo following the March 10 complaint filed with the RCMP by nine Canadian organizations under the Corruption of Foreign Public Officials Act.

**With regard to Canadian civil society organizations:**

- That Canadian civil society organizations continue to monitor and speak out about events related to the communities in Chiapas affected by Blackfire's activities in that state, and about the impact being felt by communities in the Municipality of Chicomuselo as a result of the open pit barite mine.

## ***Appendix 1: Participants and agenda of the Canadian delegation***

### ***Participants***

**Rick Arnold** is the Coordinator for Common Frontiers-Canada, a 20 year-old multisectoral coalition established to promote fair trade relations in the Americas. Rick was born in Venezuela and after moving to Canada in his teens has had a history of working to improve North-South relations in this hemisphere. He was Executive Director for an International NGO focusing on community development work in Mesoamerica from 1992-2000, and has been working with Common Frontiers for the past eight years.

**Mark Rowlinson** is a labour lawyer in the United Steelworkers' Canadian National Office legal department. Mark received his B.A. from McGill University and a graduate degree in Developing Area Studies from the University of Geneva, Switzerland. Mark received his law degree from Osgoode Hall Law School, and was called to the Bar of Ontario in 1994. Mark has had the opportunity to be involved in several international labour rights cases, including cases under the NAFTA labour side agreement, and he is a frequent speaker on the subject of international law, labour rights and hemispheric trade. The Steelworkers is one of Canada's largest unions and has fought against unreasonable demands of mining companies at home and abroad.

**Dawn Paley** is a journalist based in Vancouver, BC. She has extensive experience writing about the extractive industries in Central and South America. Dawn represented MiningWatch Canada as a researcher during the Canadian observer mission to Chiapas.

### ***Agenda***

#### **Sunday March 21:**

- The delegation drove to the open-pit barite mine directly from San Cristobal de las Casas, arriving just after mid-day. There were some 100 small farmers and villagers who live in the valley below the mountain-top site waiting for us there. We heard from a significant number of people regarding their concerns and anger about the negative impact that this mine site, lacking in any mitigation efforts by the Canadian company, was having on their current lives. They discussed nightmare scenarios should a major land-slide occur once the rainy season gets underway in a couple of months.
- At the mine site we met with several members of the Ejido Nuevo Morelia that had originally reached an agreement on an access road by Blackfire trucks through their lands, only to find that barite exposed in the building of the access road was being taken away. When confronted on this Blackfire refused to pay compensation, so the community blockaded the access road to back their demands for compensation.
- We then drove to the village of Grecia located on an adjacent hill top to speak with community members there. They told us that most Blackfire promises in a signed agreement with their public authorities had gone unmet. While some said they did not share the environmental and health concerns of those communities in the valley below the mine site, others could see that their long term best interests were in joining forces with the other affected communities to save the area from a future ecological disaster scenario.

#### **Monday March 22:**

- We met with the priest from the Parish of Chicomuselo, Father Eliazar, and with the parish Human Rights Committee—10<sup>th</sup> of January. They spoke about the growing opposition in the region's

parishes to this and other mining operations. They also spoke of efforts made to silence the parish leaders, including the pouring of an unidentified substance on the communion wafers, and the introduction of a foreign substance into the communion wine. Despite these efforts at intimidation, we were told that the numbers of people in the parishes who opposed the mine, and wanted Blackfire out of Chiapas, and out of Mexico, were growing.

- We met with the family of slain environmental activist Mariano Abarca Roblero, heard their story of the events leading up to the killing of Mariano, and we accompanied the family to put flowers on Mariano's grave.
- We went to Municipal offices in Chicomuselo to speak with the Mayor just before mid-day, only to be told that he hadn't yet come to work, but that when he did his calendar was already full!
- We went to the Blackfire office in Chicomuselo for a meeting with company officials but got no response to our insistent knocking on the front gate.
- We visited with two of Mariano's closest friends and their families to hear their accounts of Mariano's life, and about his tragic death.
- We visited a family home where walls and a granite floor had been cracked by the heavy ore-laden trucks passing by carrying barite to a processing plant in Veracruz. The family told us that other houses on their street had been similarly affected, and that the company had made no effort to contact them despite being told about the damage.

#### **Tuesday March 23:**

- We visited the newspaper reporter in Tuxtla Gutierrez who had originally broken the story of the involvement of Blackfire in the corruption of municipal authorities in Chicomuselo.
- We went to the Chiapas government's Environment Ministry but were unable to wait once that meeting was delayed given another government meeting scheduled back-to-back.
- We met with the key authorities from the Government Secretariat charged with overseeing the case of Mariano Abarca. They told us that they had met the previous week with Blackfire's Canadian CEO Brent Willis who had asked them to re-open the mine. They explained to us that they weren't likely to be opening that site unless Blackfire was successful in a court challenge they had launched at the Chiapas judicial level. They also pointed out that the Governor of Chiapas had proclaimed at a meeting in Chicomuselo that mining activities in general were not in the best interests of Chiapas.
- We held a very well attended Press Conference at the end of the day while still in Tuxtla where we put forward some of our preliminary findings from the many meetings we had held.

#### **Wednesday, March 24:**

- The delegation met with five Mexican lawyers to discuss legal actions that could be taken not only against Blackfire in Mexico and Canada, but also against the mayor of Chicomuselo given the compelling evidence of corrupt practices at both ends of the money trail. The Mexican lawyers were also apprised of the fact that Blackfire had initiated a case before the courts in Chiapas to try and get the Ministry of the Environment's order to close the barite mine reversed. We also discussed the need for legal help for the communities of Grecia and Nuevo Morelia to help them get out of any real or perceived contractual obligations with Blackfire, given that the mining firm was not itself living up to its contractual commitments.

#### **Thursday, March 25:**

- Travel day from Chiapas to Mexico City.
- Evening meeting with Alejandro Villamar of REMA where we discussed the bigger picture of Canadian mining operations in Mexico.

**Friday, March 26:**

- Morning press conference with reporters from La Reforma newspaper and CENCOS social communication network.
- Afternoon meeting at the Canadian Embassy in Mexico City with Karim Amegan, Political Counselor. We briefed Karim Amegan on the major findings from our fact-finding mission to Chiapas, and he spoke about his January trip to Chiapas.

**Saturday March 27 & Sunday March 28:**

- Delegation members returned to Canada



## ***Appendix 2: Complaint to RCMP asking it to investigate Blackfire under the Canadian Corruption of Foreign Public Officials Act (CFPOA)***

March 10, 2010

George Prouse  
Anti-Corruption Unit  
Royal Canadian Mounted Police  
7575-8th Street N.E.  
Calgary, AB  
P2E 8A2

Via e-mail: [george.prouse@rcmp-grc.gc.ca](mailto:george.prouse@rcmp-grc.gc.ca)

Dear Mr. Prouse,

The undersigned request that the RCMP investigate Blackfire Exploration Ltd. and Blackfire Exploration Mexico S de RL de CV regarding the possible bribing of a foreign public official contrary to subsection 3(1) of the *Corruption of Foreign Public Officials Act* (the “Act”).

### **Corporate Information**

Blackfire Exploration Ltd. (“Blackfire Canada”) is a small privately owned Canadian exploration and mining company incorporated under the laws of Alberta and headquartered in Calgary, Alberta. The company is controlled by four individuals, Mr. Brent Willis, Mr. Brad Willis, Mr. Emiliano Avila Canales, and Mr. Artemio Avila Cervera who are also directors and officers of the corporation. Blackfire Canada maintains its head office at 4150, 825-8th Avenue SW, Calgary, Alberta, Canada T2P 2T3.

According to its website [www.blackfireexploration.com](http://www.blackfireexploration.com), Blackfire Canada conducts operations in Mexico through a 100%-owned Mexican subsidiary called Blackfire Exploration Mexico S de RL de CV (“Blackfire Mexico”). Mr. Emiliano Avila Canales, a director and controlling shareholder of Blackfire Canada, is also the President and General Manager of Blackfire Mexico. Mr. Artemio Avila Cervera, a director of Blackfire Canada, is also Blackfire Mexico’s General Manager of Social Responsibility.

Given that these individuals are corporate directors and officers in both Mexico and Canada, there is a strong link between the alleged wrongful conduct as set out below and both Canada and Canadian jurisdiction.

### **Allegations of Bribery and Corruption in Mexico**

According to a document signed by Mr. Artemio Avila Cervera, Blackfire Mexico has made payments totalling at least 204,022.69 Mexican Pesos (equivalent to approximately CDN\$20,000 at prevailing exchange rates) to Mr. Julio César Velázquez Calderón, the Mayor of the municipality of Chicomuselo in the state of Chiapas, Mexico for unofficial services for the benefit of Blackfire Mexico. The company has also provided the mayor with other benefits including airline tickets for himself, his family and his

associates. These payments and other benefits were apparently made in response to the Mayor's demands for "favours".

From the information available to us, these payments and provision of other benefits to Mr. Velázquez as a foreign public official appear to be in breach of subsection 3(1) of the Act. These payments do not appear to meet any of the "saving provisions" under subsection 3(3) of the Act or qualify as "facilitation payments" under subsection 3(4) of the Act.

Further, the available information suggests that corporate officials who control, operate and direct Blackfire Canada were aware of, and may have directed, Blackfire Mexico to engage in the act of bribing a foreign public official for the benefit of both Blackfire Mexico and Blackfire Canada.

The primary evidence in this matter is a statement signed by the General Manager of Social Responsibility for Blackfire Mexico, Mr. Artemio Avila Cervera, who is also a corporate director of Blackfire Canada. This statement was filed with the Chiapas State Congress on June 15, 2009 and includes a spreadsheet detailing a series of "reward" payments of between 4,022.69 and 75,000 pesos made to Mr. Velázquez Calderón. The documentation also includes bank statements corresponding to some of the payments detailed in the spreadsheet.

Witnesses in Chicomuselo are available to testify regarding the relationship between Mr. Velázquez Calderón and Blackfire Mexico. The regional organization REMA-Chiapas, through its spokesperson Gustavo Castro, has indicated it is willing to help make whatever arrangements are required to identify witnesses and secure the necessary testimony.

By way of the present submission, the undersigned organizations request that the RCMP investigate Blackfire Canada as well as its directors and officers and initiate whatever prosecution may be deemed appropriate. We will provide whatever assistance we can in such an investigation, including but not limited to identifying material and expert witnesses and providing documentation.

To aid in your investigation, we have attached the following documents.

- Corporate Search of Blackfire Exploration Ltd.
- Blackfire Exploration, "To: President of the Honourable Congress of the State of Chiapas". June 15, 2009. [English translation and scanned original]
- Spreadsheet showing payments by Blackfire Exploration
- Bank deposit receipts: March 10, 2008; June 2, 2008; July 1, 2008; October 9, 2008; and November 4, 2008
- Isai López, "For Extortion of a Canadian Mining Company - Petition regarding the dismissal of the mayor of Chicomuselo". El Heraldo de Chiapas, June 24, 2009. [English translation and scanned original]

Sincerely,

[original signed by]

Jamie Kneen,  
Communications and Outreach Coordinator  
MiningWatch Canada

Co-sponsored by:

- Common Frontiers
- Council of Canadians

- United Steelworkers
- Comité pour les droits humains en Amérique latine
- Sierra Club Canada
- L'Entraide missionnaire
- Atlantic Regional Solidarity Network
- Social Justice Committee

### ***Appendix 3: Translation of Agreements between the Ejido of Grecia and Blackfire Exploration Ltd.***

#### **MEMORANDUM OF AGREEMENT**

Meeting at the Ejido house belonging to the Ejido of Grecia, Municipality of Chicomuselo, State of Chiapas, being 11:30 hours of the day 13 of December of 2007: ON BEHALF OF THE GOVERNMENT DEPARTMENTS the following – Lic. Rene Salvador Cartagena Corzo, Head of Residence, and Lic. Nidia Villafuerte Ramirez, Agrarian visitor, both from the Comitán office of the Agrarian Solicitor's office; Profr. Fredi J. Bartolome Junun, Undersecretary for the Regional Operations in the Sierra; Lic. Bulmaro Acuna Nuricumbo, Public Prosecutor for the Frontier Sierra District, Comitán de Dominguez, Chiapas; Mvz. Jaime Horacio Albores Ruiz, Delegate of the Rural Secretariat Region III Frontier, Comitán, Chiapas; Lic. Carlos Enriquez Lopez Barrios, Director of Agreements, Training and Legal Services for S.E.P.I., Lic. Diego Jimenez Mendez, Undersecretary for Regional Operations of S.E.P.I.; Alejandro Gonzalez Alonso and Humberto Camacho Dominguez, analysts for the Secretary of the Economy, Sierra Frontier Region, Comitán, Chiapas; Emilio Toledo Avila, Department Head, Undersecretary of Agrarian Affairs, Tuxtla Gutierrez: ON BEHALF OF THE COMPANY BLACKFIRE the following – Lic. Artemio Avila Cervera, Director General, C.P. Elmo A. Enriquez Cabrera, Operations Manager, Lic. Celso Pena Ruiz, Legal counsel; ON BEHALF OF THE EJIDO the following – Roselio Ramires Roblero- President, Lucas Pérez Morales-Secretary, Luis Zacarías Fernández-Treasurer, for the Ejido Owners on the Commissariat; Roman Lopez Ramirez First Secretary, and Adalberto Roblero Gutierrez Second Secretary, owners on the Vigilance Council, ALL ASSEMBLED to comply with the Minutes from the December 6, 2007 meeting, that took place in the Rural Solicitor's offices, located in Comitán, with Federal and State Government Departments and Blackfire mining company present, at a meeting which it should be noted that representatives of the Ejido Grecia, Chicomuselo Municipality, Chiapas were not present; although notified of the meeting, they did not show up on that day. The following was arrived at:

#### **AGREEMENTS**

**FIRST:** with reference to the minuted meeting from the 6<sup>th</sup> of December, 2007, the Blackfire mining company, through its Director General C. Artemio Avila Cervera, took on the responsibility of giving to the Ejido as compensation for access, use, enjoyment and the occupying of lands belonging to the Ejido, the sum of \$50,000.00 (fifty thousand Mexican Pesos) a month, but for today, the 13 of December of 2007, the company is offering the Ejido Grecia the sum of \$60,000.00 (sixty thousand Mexican Pesos), as a final offer that will be maintained in the form of monthly payments over a period of six months; for which the company proposes that the Ejido will remove the barrier to access to the mine, and under the condition that the company can begin to work there as of the 14 of December of 2007, the company agrees to make a first payment to the Ejido Grecia of \$100,000.00 (one hundred thousand pesos) on the 14<sup>th</sup> of February, 2007 to cover the period from the 14<sup>th</sup> of December, 2007, to the 14 of February, 2008, and thereafter the monthly amount would be \$60,000.00 (sixty thousand pesos) until the 14<sup>th</sup> of July, 2008, after which time the amount could go up according to the Bank of Mexico's Inflation Index, it being of no concern to the Ejido the route or access used to extract the barite. In this regard, the previous proposal was put before the Assembly which approved it by unanimous vote.

**SECOND:** The mining company agrees to help in a registry of financial contributors to the Ejido so as to be able to issue financial receipts.

**THIRD:** In order to respond to the requests of the Grecia Ejido with the purpose of assigning resources to social projects, the following agreements are entered into with the government when and if the norms established by Departments of the Federal and State governments based on studies and technical work related to the particular projects are adhered to.

In the case of the supply of electricity, the Undersecretary of the government for the Sierra region agrees to call on the Federal Electrical Commission to come to the Ejido on the 15<sup>th</sup> of January, 2008, at 10:30 a.m. for the purpose of sorting out the liabilities that the Ejido has with that parastatal, the previous being sorted out for the purpose of implementing a tri-phase line.

With regard to the paving project of the road that runs from the Ejido Ricardo Flores Magon to the Ejido Grecia and its two adjoining communities, Los Arroyos and San Ramon, and the opening of the road that goes from El Rancho Las Minas to Rancheria Rincon Ocote, roads to get out the harvest, and as well the paving of the streets of the main Ejido town of Grecia – these commitments will be submitted to the Infrastructure and Housing Secretariat, following discussions to be called for by the Secretariat of the Indian Peoples.

With regard to the potable water project, the Ejido requests that it be installed in the town of Grecia and in the barrio of San Ramon.

With respect to construction, the Ejido requests the building of two rooms – one for the primary school Benito Juarez located in the barrio Los Arroyos, and a multiple-purpose hall for the town of Grecia.

**FOURTH:** The Ejido agrees to rescind the agreement entered into between the Ejido and the mining company Caracol of the 8<sup>th</sup> of April, 2005, before the District 4 Unitarian Agrarian Tribunal of the city of Tapachula, Chiapas, filed with the National Agrarian Registry under the number 07RA00000711.

**FIFTH:** After the previous point has been completed, the Ejido Grecia will enter into formal agreements and contracts with the mining company, Blackfire, in which the agreements will be put into writing covering the areas to be affected, be it on an individual basis for areas that have been parcelled off, or with the Ejido in lands that are held in common.

**SIXTH:** The mining company will carry out a topographical survey of the surface to be exploited to be able to clarify whether it falls in the area of common use or individual parcels, and as a consequence carry out the agreements or contracts individually or with the Assembly.

Without any more to add, the current memorandum of agreements is closed at 21 hours of the same day that it was begun, signed by those that participated in it - in the case of the Ejido, the bodies of Representation and Vigilance signed on behalf of the Assembly.

## PARTICIPATING GOVERNMENT DEPARTMENTS

## ***LAND-LEASING CONTRACT***

The land-leasing contract that is being entered into by on the one hand the Ejido called “Grecia” of the Municipality of Chicomuselo of the State of Chiapas represented by Roselio Ramirez Roblero, Lucas Perez Morales, and Luis Zacarias Fernandez in their roles as President, Secretary and Treasurer of the Ejido Commissariat, respectively, and on the other hand the firm called “Blackfire Exploration Mexico S. de R.L.de C.V.”, represented by C.L.A.E. Artemio Avila Cervera, in his role as legal representative, and subsequently will be known as the “Lessor” and “Lessee” respectively in the following declarations and clauses:

### **DECLARATIONS**

#### **I Declaration of “the Lessor”:**

- 1) That was created following a presidential resolution related to the land distribution of the 17<sup>th</sup> of August, 1987 and put into effect as of the 5<sup>th</sup> of February, 1988.
- 2) With the date of 15<sup>th</sup> of December, 2005, the Ejido mentioned in the above point, held its’ assembly with respect to the delineation and assignation of Ejido lands within its own boundaries to conform with what was established by Article 56 of the Agrarian Law.
- 3) With the date of 8<sup>th</sup> of February, 2006, the National Agrarian Registry officially handed the documents resulting from the program of certification of Ejido rights and entitlement of urban plots, to all and every one of the entitled from this population who were beneficiaries of said program.

The copies of said documents are annexed to the present contract as **Annex One**.

- 4) In delineating the Ejido via the Assembly related to delineation and assignation of the Ejido lands, they destined 2299-92-97 hectares for use in common of which they are the owners.
- 5) It is the intention to proceed with the present contract with the “Lessee” with respect to 13-50-00 hectares of common use of which it is the owner with regard to which, on the 17<sup>th</sup> June, 2008, a General Assembly was held to deal with the formalities required for the sections that are dealt with by Article 23 of the Agrarian Law.
- 6) That in the aforementioned Assembly, the members of the Ejido Commissariat were authorized to carry out the current land-lease contract, which encompasses 13-50-00 hectares in common use, in the terms of the present contract, which are clearly identified in the survey which is annexed to the current contract as **Annex Two**.
- 7) That the members of the Ejido Commissariat can prove their accreditation by the Assembly that elected them on the 7<sup>th</sup> February, 2007 – accreditation which has not been modified, restricted or revoked in any form: copy of this Act added to this contract as **Annex Three**.
- 8) They indicate as the location to hear or receive all types of notifications as being the Ejido house of the Ejido Grecia, Municipality of Chicomuselo, Chiapas.

#### **II Declaration of “the Lessee”:**

- 1) It is a limited liability company with variable capital duly incorporated under the laws of the Mexican Republic, confirmed by public deed number one thousand seventy-eight of the thirteenth day of December two thousand and six, witnessed by Notary Public number two hundred and one, Mr. Hector Manuel Cardenas Villareal, with practice and residence in Mexico City, Federal District, registered on volume number ninety two, book nine hundred and eighteen.

The copy of the deed is attached hereto as **Annex Four**.

- 2) The legal representative for this current contract is accredited with the power invested in him according to a public document number twenty-seven thousand, two hundred and seventy-eight, of the 13<sup>th</sup> of December, 2006, Lic. Hector Manuel Cardenas Villarreal, notary number 201, with residence in Avenida San Geronimo, number 500, Colonia Jardines del Pedregal, Mexico, DF; inscribed in the public Registry of Property and Commerce in the city of Mexico, DF, under Volume one hundred, Book nine hundred and ninety-one, Article twenty-nine thousand ninety-six, with the date of two thousand and seven, which has not been revoked nor modified. As proof of the above, it is added as **Annex Five**.

In this Act, the representative is **L.A.E. Artemio Avila Cervera**, in his role as legal counsel, which is accredited with the public document (that is mentioned in Number one of the present set of declarations) with the purpose of identifying him as a legal representative under the Society.

**3) Among their respective social objectives are to:**

- A. Acquire, possess, exchange, dispose or retain a lien on, under whatever legal title the property, its use, enjoyment or possession of all types of real estate: as well as entitlement to dispose of the personal or real rights over the same as necessary and convenient for the social objectives of the society.
  - B. Lease, acquire, give or receive, loan for lease agreement or under whatever title possess, exploit, administer and/or operate centres, plants, warehouses, establishments or whatever other place for the establishment, use or distribution of all types of machinery, equipment or materials according to what may be necessary for the development of the Society.
  - C. Conclude all types of agreements and contracts – civil, mercantile or administrative, including in a declared but not limited manner the following: buy-sell, exchange, loan for lease agreement, opening of credit of all types, leases, sub-leases, professional services, administration, deposit, storage, distribution, technical assistance, exemption, development and investigation, transfer of technology, consultancy, marketing agreements, partnerships and whatever other, according to what is necessary or convenient for the social objectives of the society.
- 4) It is in their interest to agree to the present contract with the “Lessor” with respect to the 13-50-00 hectares of common use that belong to the latter to have total use of them in the exploitation of a site in order to extract a mineral called “barite”.
  - 5) That they know the modalities governing the Ejido property and what is stated in the agrarian law, with respect to the sealing of this present contract.
  - 6) That they indicate that the address to which all classes of notification to be heard or received would be sent to the following location: Avenida Cedros, Numero 162, Fraccionamiento Arboledas de la Ciudad de Tuxtla Gutierrez, Chiapas.

### III Both Parties Declare:

1. - They recognize the legal status of the representatives with whom they are negotiating the present contract.
2. – In line with the declarations described, it is in the interest of both parties to the contract to seal the land-lease contract for the purpose of formalizing their relations, within the terms of this agreement. Administratively, both parties agree to seal the present contract, conforming to the following;
3. - Based on the foregoing, and based on Articles 27, Subsection VII of the Political Constitution of the United States of Mexico 2, 9, 23 Subsection IV, V 32, 33, 42, 45, 73 and 74 of the Agrarian Law from 2398 to 2447 , 2452 a 2483 to 2489 and 2490 of the Civil Code of the Federal District in common matters and for the Republic in Federal matters 1,2,6, 10, 148 and 150 of the Corporations General Law, 18 Subsection XI of the Organic Law of Agricultural Land Tribunals, Articles 1,2,3,4, Subsection II, 6.7, Subsection II, 8,11,12 and 27 of the Regulations of the Mining Law and Article 56 and Articles 1.2, 3, 5, 6, 15, 19 and 98 of the General Law of Ecological Balance and Protection of the Environment and Articles 1,2,4, L), Subsection I, O) Subsection III and others relative to its regulations on the matter of the administrative impact assessment, the parties agree to enter into this Agreement in accordance with the following:

### CLAUSES

**FIRST:** The “Lessor” leases to the “Lessee” 13-50-00 hectares of mountainous lands held in common exclusively for the use and exploitation in the zone where the mine is located for the extraction of the mineral known as “barite”; This surface area is bounded by the measurements and borders that are specified in the respective topographical survey, whose borders are the following:

**To the North:** With lands of common use by the Ejido Grecia and the individual parcel of C. Guimel Morales Perez, individual parcel of C. Ignacio Morales Rodriguez, individual parcel of C. Jose Luis Culebro.

**To the South:** With lands in common use by the Ejido itself.

**To the West:** With individual parcel of C. Limbano Velazquez Morales, and individual parcel of C. Olegario Morales Culebro.

**To the East:** With the individual parcel of C. Jose Luis Culebro.

**SECOND:** The “Lessor” gives to the “Lessee” the lands indicated in the present contract with all of its accessories and in a ready-to-use state for the use agreed to.

**THIRD:** In payment for the access, use, enjoyment and occupation of the Ejido lands being leased, the amount of which is described above, the leasing company agrees to provide the amount of \$60,000.00 (sixty thousand Mexican pesos) monthly, covering the period up until the 26<sup>th</sup> of the month, payments to be made at the known location where the Ejido house of the Ejido is located, that amount can be increased every six months following an analysis and a revision based on the inflation index provided by the Bank of Mexico, being of no importance to the Ejido the route or access by which the “barite” will be brought out. Clarifying that the first revision and analysis of the contract will be done for the first time two months after this agreement has been signed and then every six months subsequently.



**FOUR:** The “Lessor” agrees to give to the “Lessee” following every payment a financial receipt that will be signed by the members of the Ejido Commissariat in representation of the Ejido Assembly.

**FIVE:** During the life of the present contract, the “Lessor” agrees not to cause difficulties that would delay in any way the work of the “Lessee”, thus guaranteeing the use and enjoyment of the lands which have been granted under the lease agreement.

**SIX:** It is the obligation of the “Lessee” to pay the rent owing on the lands in the form and time agreed to, answer for any culpable damages or harm suffered through their negligence or carelessness, while at the same time, using the lands in the manner agreed to.

**SEVEN:** The “Lessor” agrees to respect in favour of the “Lessee” the right of way and/or access routes to the mine for the carrying out of its’ activities as under the present contract, should this not be the case they will be held accountable for their responsibilities under the law.

**EIGHT:** The present contract could be rescinded for the following, the failure to pay on time two or more monthly rents, the use of the leased lands that was not agreed to,

**NINTH:** This contract will have a duration of 10 years, as of this date .

**TENTH:** The "Lessee" agrees to comply with the resolute NO. D.F. CHIS. SDGPA/UGA/030/05 dated August 19, 2005, issued by the Ministry of the Environment and Natural Resources, ratified by order No  
**(bottom line cut off)**

and the justification for the change of use of the surface in forested lands, carried out by the Company SETEFA. With respect to the former, annexed is the agreement emitted by SEMARNAT, regarding change of title signed by the federal delegate in Chiapas, and the technical study for the change in the use of the surface in forested terrain is **ANNEX SIX**. With regard to the resolution signaled previously the leasing company agrees to submit a plan to the Secretariat of the Environment and Natural Resources, that the reforestation of 50-00-00 hectares fall within the lands belonging to the Ejido Grecia, Municipality of Chicomuselo, Chiapas.

**ELEVEN:** Should there be any conflict or controversy with respect to the interpretation or implementation of the present contract, both parties will submit themselves to the jurisdiction of the Unitary Agrarian Tribunals in the location of the ‘Lessor’.

**TWELVE:** The current contract will come into effect on the date that it is agreed to, although it can be revised, modified or added to, prior to agreement by both parties, which in any case would have to be done in writing.

**THIRTEEN:** The present contract will be filed with the National Agrarian Registry.

Having read and understood the extent of the agreement and the legal content of its clauses, both parties sign three copies of this contract, in the Ejido Grecia, Municipality of Chicomuselo, Chiapas, on the twenty-third day of the month of June of the year two thousand and eight.

### **Signatures:**

#### **For the Lessor**

Commissioners of Communal Lands

Roselio Ramirez Roblero  
President

Lucas Peres Morales  
Secretary

Luis Zacarias Fernandez  
Treasurer

Vigilance Council

Roman Lopez Ramirez  
Secundino Ramirez Morales  
Adalberto Roblero Gutierrez

**For the Lessee**

L-A-E- Artemio Avila Cervera  
Legal Representative  
Director-General of the company "Blackfire Exploration Mexico, .....

**Witnesses**

Professor Julio Cesar Velazquez Calderon  
Municipal President

Jorge Gonzalez Gomez  
Representative of the Sub-Secretary of State, Sierra Region

Lic. Carlos Virgilio Morales Sarmiento  
Lic. Jose Martin Martinez Hernandez  
Legal Counsels of the Sub-Secretary of Agrarian Affairs of the Ministry of Lands

***Appendix 4: Translation of SEMAVI report ordering closure of mine site***

## [TRANSLATOR'S NOTE:

letterhead for this page reads:

Ministry of the Environment and Housing

"2009, Year of the Poet and Writer Jaime Sabines Gutiérrez"

Seal on the left and right both indicate that the letterhead is that of the Executive Branch of the State of Chiapas  
Text at the bottom of the page is that of the Ministry offices.]

Inspection Order No. SEMAVI/SMA/DPA7097/2009 Tuxtla  
Gutiérrez, Chiapas; December 7, 2009.

KIND OF WORK AND/OR ACTIVITY:	INSPECTION VISIT Exploration, extraction and use of minerals or substances that constitute deposits similar to the soil.
PARTY ACCOUNTABLE FOR THE ACTIVITY:	<u>"Blackfire Exploration México, S. de R.L. de C.V."</u>
LOCATION OF THE SITE OF THE ACTIVITY:	Kilometre 45, on the stretch of the road from Chicomuselo to Barrio de San Ramón of the Collective Farm Ejido <u>Grecia, in the Municipality of Chicomuselo, Chiapas.</u>
REGISTERED ADDRESS FOR FISCAL PURPOSES:	<u>Avenida Cedros No. 321, Las Arboledas, Tuxtla Gutiérrez, Chiapas.</u>
LEGAL REPRESENTATIVE:	Lic. Emiliano Canales Cervera

Based on Articles 14, 16 and 25 of the Constitution of the United States of Mexico; 7 Subsections II, III, IV, VII, X, XVI and XXI of the General Law of Ecological Balance and Environmental Protection; 4 Subsection II, 7 Subsections XVII, XXI, 79 Subsections V, XIV, XVII, 142, 143, 144, 145 Subsection I, 147, 149, 154, 169, 171, 174, 176, 193, 194, 196, 203, 206, 208, 213, 221, 223 and all others that are part of the Environmental Law of the State of Chiapas; 32-A Subsections I, II, IV, V, First, Seventh and Eighth Transitional Provisions of Decree No. 214, which reforms several stipulations in the Charter of Public Administration of the State of Chiapas published in the State Official Gazette, Volume III, No. 109 on August 7, 2008; 1, 3, 9, 17, 31, 33, 38, 39, 65, 66, 67, 68 69, 70, 71, 72, 73, 79, 85, 86 and all other relative articles of the Law of Administrative Procedures for the State of Chiapas; and taking into consideration that State Environmental Legislation is a public matter in society's interest, and that in accordance with the aforementioned stipulations it is the responsibility of the Ministry of the Environment and Housing to ensure their enforcement and that the administrative responsibility for inspecting and verifying the work or activity being carried out is a government responsibility, this visit is duly ordered with the object of verifying compliance with the Environmental Law for the State of Chiapas during the activities of exploration, extraction and use of minerals or substances that constitute deposits similar to the components of the soil located at Kilometre 45 along the stretch of road from Chicomuselo to Barrio de San Ramón of the Collective Farm Ejido Grecia, in the Municipality of Chicomuselo, Chiapas. To this effect, the following Accredited Environmental Inspectors have been appointed: ALEJANDRO CALLEJAS LINARES (biologist), RENE VILLARREAL LAVIADA, ATZIMBA LUCÍA CASTRO BARRAGÁN, EDGAR LÓPEZ ESPINOSA (engineer), MEZHDUNARODNAYA ESTRADA GIRÓN (engineer), GUILLERMO JIMÉNEZ VÁZQUEZ (engineer), CANDELARIO ÁLVAREZ VILCHIS (biologist), JESÚS LÓPEZ MORALES, and HUGO ANTONIO SANTIESTEBAN MENDOZA, assigned to the Environmental Protection Office of the Vice Ministry of the Environment of the Ministry of the Environment and Housing, who may act together or separately.

[Translator's Note:

Letterhead for this and the following 15 pages reads:

Vice-Ministry of the Environment

Deeds, Not Words

Office for Environmental Protection

“2009, Year of the Poet and Writer Jaime Sabines Gutiérrez”

Text at the bottom of each page is the address of the Vice-Ministry]

## INSPECTION REPORT

### LEGAL CAPACITY AND ACCREDITATION OF THE PARTICIPANTS

At 4 p.m. on December 7, 2009, having previously verified the site to be inspected where activities of exploration, extraction and use of minerals or substances that constitute deposits similar to the components of the soil, located at kilometre 45, on the stretch of road between Chicomuselo and Barrio San Ramón of the Collective Farm Ejido Grecia, in the municipality of Chicomuselo, Chiapas, and which is legally established there as well, based on Articles 65, 66 and 68 of the Law of Administrative Procedures for the State of Chiapas, Alejandro Callejas Linares (biologist), Atzimba Lucia *Castro* Barragán, Edgar López Espinosa (engineer) and Guillermo Jiménez Vázquez (engineer), in their capacity as accredited Inspectors, assigned to the Ministry of the Environment and Housing, who identify themselves using credentials no. SEMAVI/SMA/DPA/010/09, SEMAVI/SMA/DPA/001/09, SEMAVI/SMA/DPA/002/09 and SEMAVI/SMA/DPA/007/09 respectively, issued by Lourdes Adriana López Moreno, Minister of the Environment and Housing and valid from March 19 to December 31, 2009.

Given that Emiliano Canales Cervera, the legal representative of the company “Blackfire Exploration México, S. de R.L. de C.V.,” was not present, this procedure was carried out with Fernando Josué Sánchez Velázquez, who swore under oath that his name was, in effect, as it has been written here, that he was 26 years old, that he had studied up to university level, and that he was domiciled at Calle 35 X18 y 22 223, Fraccionamiento Monterreal, Mérida, Yucatán, and who accredited himself as the company Head of Operations, and identified himself using his Federal Electoral Institute (IFE) voter's card no. 0262066609396, an official document bearing his photograph and name and which was physically presented, examined, and returned to its owner, and who signs at the end of this document [sic].

In order to carry out the inspection, the object of the visit was communicated to Fernando Josué Sánchez Velázquez, the company's Head of Operations, and, in accordance with the stipulations in Article 68 of the Law of Administrative Procedures for the State of Chiapas, a copy of Inspection Order No. SEMAVI/SMA/DPA/097/2009, dated December 07, 2009, signed by Lourdes Adriana López Moreno, in her capacity as Minister of the Environment and Housing, was given to him.

## II - DESIGNATION OF WITNESSES

In accordance with Articles 69 and 70, Subsection VI, of the Law of Administrative Procedures for the State of Chiapas, during the action, it was requested that the party to be inspected designate two witnesses who would remain present during the entire proceedings, advising him that if he did not do so or if they absented themselves, the witnesses would be designated by the inspecting party.

In compliance, Fernando Josué Sánchez Velázquez (company Head of Operations), designated as witnesses Homero Flores Ruiz, who under oath swore that he was domiciled at 1<sup>a</sup> Calle Oriente (no number), Downtown, Chicomuselo, Chiapas, and Luis Fernando López Briones, who under oath swore he was domiciled in Barrio San Juan, Chicomuselo, Chiapas. It is important to mention that neither witness presented any type of official identification.

## III – THE INSPECTION

Based on Article 70, Subsection VII of the Law of Administrative Procedures of the State of Chiapas, the following is reported:

The object of this visit is to verify compliance with the Environmental Law for the State of Chiapas in matters of Environmental Impact, during activities of exploration, extraction and use of minerals or substances that constitute deposits similar to the components of the soil, as well as to verify the current natural conditions of the parcel of land inspected, with regard to activities that could cause an adverse environmental effect and, because of the workings, activities or usage in question, are not within the regulation of federal laws.

The company visited (Blackfire Exploration México, S. de R.L. de C.V.) carries out exploration, exploitation and the use of barite on the parcel of land located at kilometre 45, on the stretch of road from Chicomuselo to Barrio de San Ramón of the Collective Farm Ejido Grecia, in the municipality of Chicomuselo, Chiapas.

#### AREAS USED FOR EXPLORING FOR AND EXTRACTING BARITE

The aforementioned company extracts barite from the following three areas:

**1 - Plátanos Area** - This area, measuring approximately 5,000 square metres, is where open-air mining of the mineral is carried out by mechanical means.

In this area two pieces of heavy machinery can be observed (a VOLVO EC 210 LC Excavator, and a CAT 322B hydraulic hammer excavator undergoing repair).

Talus piles of between 10 and 15 metres in height with slopes of between 85° and 90° can be seen on the site, creating the risk of possible mud slides and landslides in the area.

The topography of the terrain is totally irregular and uneven, with slopes of between 45° and 60°.

The area's vegetation consists of forest transition vegetation (or ecotone) typical of the region.

The UTM coordinates for this area are:

15P 0558366

UTM 1747589

The area is at an altitude of 1,419 metres above sea level.

**2. The Torre 1 (Tower) Area** – This area is about 10,000 square metres in size, and is where open-air mining is carried out by machines.

In this area two pieces of heavy machinery are observed (a VOLVO EC 360 B excavator and a D8R Frontal Loader), both carrying out extractive activities.

In this area talus piles between 12 and 20 metres in height, with slopes of between 75° and 90°, can be seen, constituting a risk of possible mud slides and landslides in the zone.

The topography of the terrain is totally irregular and uneven, with slopes of 45° and 60°.

The vegetation in this area consists of forest transition vegetation (or ecotone) typical of the region.

The UTM coordinates for this area are:

15P 05586657

UTM 1747472

The area is at an altitude of 1,435 metres above sea level.

One of the talus piles in this area shows signs of humidity (a possible heavy filtering due to its blocking a natural underground flow of water.)

**3.- The Mirador (Lookout) Area** – This area was not visited because at the time of the inspection, machinery was not being used to extract ore there.

#### STORAGE AND PROCESSING AREA FOR THE RAW MATERIAL (BARITE) AND THE MACHINE WORKSHOP

The company has a 1.5 hectare processing and storage area for the raw material (barite), located 7 kilometres south of the mining sites proper. The following machinery can be observed in the southwest part of this area:

- > A CAT POWER 26x44 BL-PEGSON LTD. crushing machine with two conveyor belts (one for barite and the other for waste)

To one side of the conveyor belt for barite, about 25 metric metres of barite could be observed.

- > A VIPER SIZER 122 screening machine (sieve), used to classify the materials in the waste, to obtain small aggregates of barite and unusable waste.

To one side of this sieve, about 350 metric metres of waste materials could be seen.

At the centre of the piece of land destined for storage and processing the raw material (barite) is a storage area for raw materials, where the following can be observed: 10 19-liter containers of machine oil; boxes labeled “samples of soil perforation”; and tools for heavy machinery.

On the southwest side of this area, behind the crushing equipment, the inspectors also observed 4 cylinders, 2.5 metres in diameter and 2 metres high, inserted into the ground, completely unused

It is important to point out that during the visit through the processing and storage area (the entire area), excessive amounts of dust could be observed, the product of the constant lack of damping down the area. It is also important to point out that the crusher and screening equipment do not have systems and/or equipment to mitigate the dust contamination

The trucks transporting the material from the extraction site to the processing site are not covered with canvas, which means that the dust is blown off into the atmosphere.

On the northwest side of this area can be observed a dangerous waste storage facility in which 10 200-liter drums filled with used oil can be seen, plus cardboard, rags and hemp or jute fibres soaked in machine oil, as well as used heavy-machinery oil filters. Outside this area 6 19-liter buckets can be seen, filled with replacement parts as well as a battery for heavy machinery.

To one side of the dangerous waste storage facility can be seen a makeshift nursery planted with two species: *Ceratozamia norstogui* (known as “espadañas or cycads) and *Danubsis Americano* (known in Spanish as “cow hide”).

#### ACCESS ROAD TO THE MINE’S EXTRACTION AREA

This road is approximately 7 kilometres long and 5 metres wide. It has been covered [in some parts with gravel and in others with strips of cement] and it can be observed that the surface layer of vegetation has been removed along it.

The surface of the road has eroded), creating a large amount of dust because of the natural circulation of mountain air and passing trucks.

As you go down the road, you can see the surface water continually flowing along what is called the “Los Mangos Stream,” which is cut five times by the road. An excessive accumulation of oily matter can also be observed on the sides of this stream.

Slopes of between 30° and 45° can also be observed along the road, creating a risk for the trucks and machinery driving down it.

For all these reasons and considering that the company “Blackfire Exploration México, S. de R.L. de C.V.” DOES NOT HAVE THE FOLLOWING PERMITS:

- The Environmental Impact Permit to build, expand and modernize the 7 kilometres of road from the raw material (barite) storage and processing area to the area where the barite is extracted.
- The Licence for the Functioning of Fixed Sources of Atmospheric Emissions (LFFFEA) for emitting dust in the areas of storage, transport and processing of the raw material as well as for the equipment and/or machinery.

For these reasons, and using as a basis the stipulations in Article 221 of the Environmental Law for the State of Chiapas and Article 85 of the Law of Administrative Procedures for the State of Chiapas, the activities of exploration, extraction, storage and processing of the rock (barite) ARE TEMPORARILY, TOTALLY HALTED, as is the transport of vehicles involved in the company’s extraction activities along the road that leads from the raw material storage and processing area to the area used for extracting the material, and to this effect, RED BARRIER TAPE INDICATING SUSPENSION OF OPERATIONS is placed in the locations described as follows:

- On the foot-pedals, gearshifts and on the tread (left side) of the VOLVO EC 360 B, located in the Torre 1 (Tower 1) Area.
- On the foot-pedals, gearshifts and tread (right side) of the D8R Frontal Loader located in Torre 1 (Tower 1) Area.
- On the access to the Torre Uno (Tower 1) Area.
- On the cab and on the arm of the VOLVO EC 210 LC Excavator located in the Plátanos Area.
- On the cab and on the arm of the CAT 322 B Hydraulic Hammer Excavator undergoing repairs at the Plátanos Area.
- On one of the sides of and on the two conveyor belts of the BL-PEGSON LIMITED 26x44 CAT POWER crushing machine, located in the raw material (barite) storage and processing area.
- On the two access points of the rock storage and processing area.

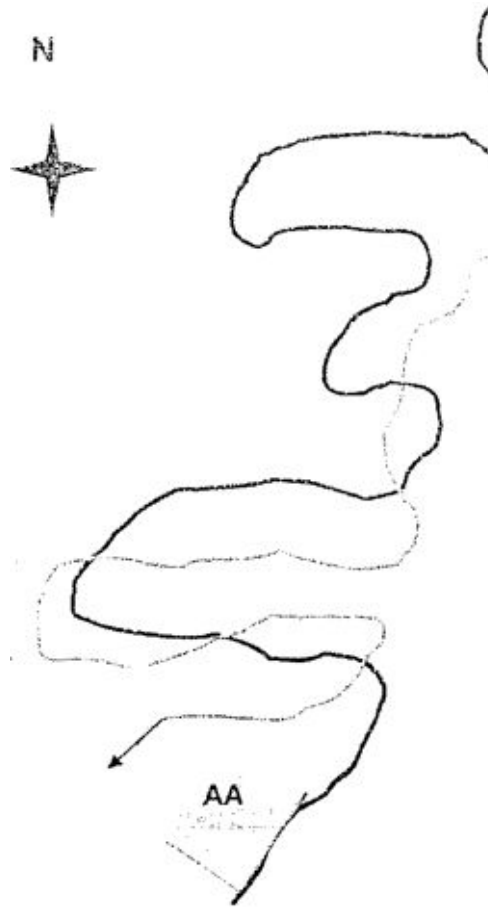
This takes into account the fact that during the phase of exploitation the impact on the surrounding ecosystems is not only caused by the method used, but also by the comprehensive compliance with current environmental legislation [sic – should be “also caused by the comprehensive non-compliance with current environmental legislation”].

In a highly fragile area like the forests associated with the Chiapas Sierra Madre mountain range, deforestation of the soil and the its resulting erosion, which is vaster and deeper in the case of open-pit mines, have irrecoverable short-term, medium-term and long-term environmental impacts. These processes affect the water cycle and the collection of phreatic water, increase the albedo effect, and emit a large amount of greenhouse gases (contained in vegetation and the soil), thus greatly contributing to climate change; they cause the loss of natural capital and biodiversity in detriment to the planet’s ecological resources; and they increase the threats, risk and vulnerability of the lowlands due to transporting materials through the rain, the softening of aggregates in the mountains, and the modification of surface and underground currents of water. This risk is not only to nature, but to the human settlements within the area of influence that could potentially be affected.

Finally, the inspected party is advised that the violation or tearing of the red barrier tape constitutes a crime penalized by the Criminal Code for the State of Chiapas; that, enforcing Paragraph IV of Chapter Four, Title Seven of Article 221 of the Environmental Law for the State of Chiapas, “the inspected party is designated as the holder of the goods attached.” In addition, the inspected party must request in writing from the Ministry of the Environment and Housing what procedures must be followed to obtain the Environmental Impact Permit to build, expand and modernize the road from the raw material storage and processing area to the areas where the material is extracted and the Licence for the Functioning of Fixed Sources of Atmospheric Emissions.

SKETCH OF THE AREA VISITED IN THE GRECIA MINING DISTRICT SAN CARLOS VEIN

F3



F1: Los Plátanos extraction area

F2: Torre Uno (Tower 1) extraction area

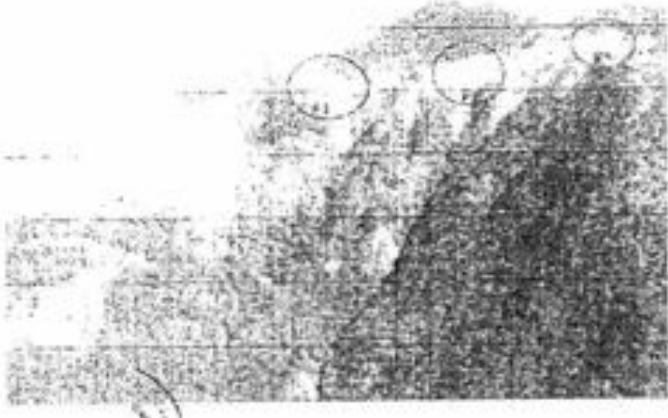
F3: Mirador (Lookout) extraction area

AA: Storage area (straight line) Access road to the mine

(dotted line) Constantly flowing surface runoff, called the Los Mangos Stream

To support this report, 20 photographs taken during the inspection visit to the extraction area are attached.





**Aerial view of the extraction area.**



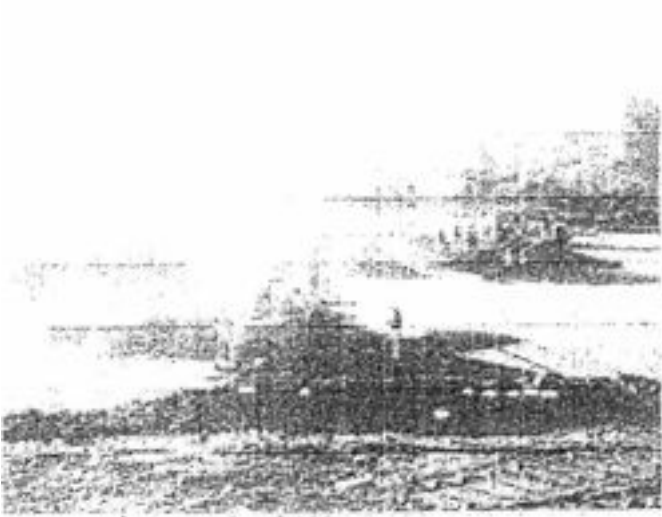
**General view of the storage area.**



**Dust in the storage area.**



**Dust along the access road.**



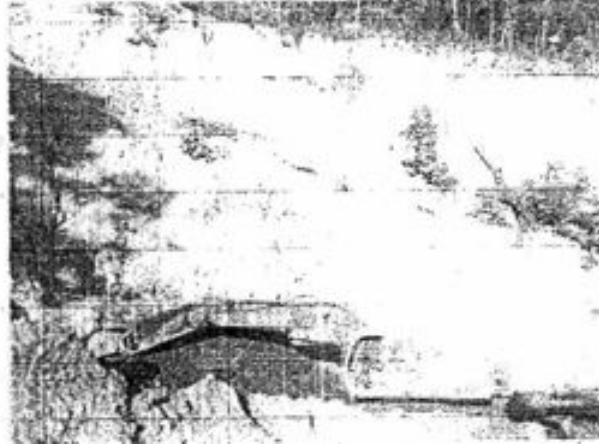
**Crushing and screening machines.**



**Oil residue storage area.**



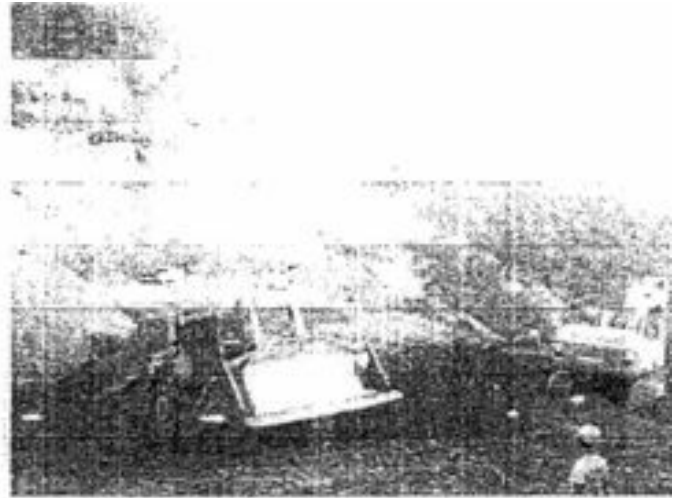
**Material along the sides of the continual surface runoff.**



**Los Plátanos extraction area.**



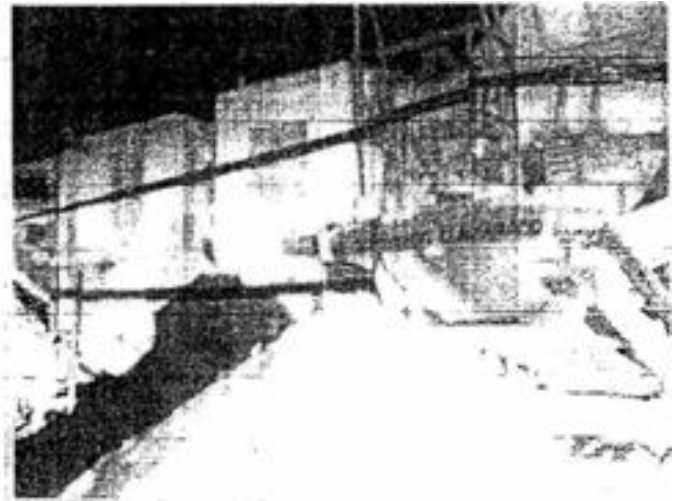
**Torre Uno (Tower 1) exploitation area.**



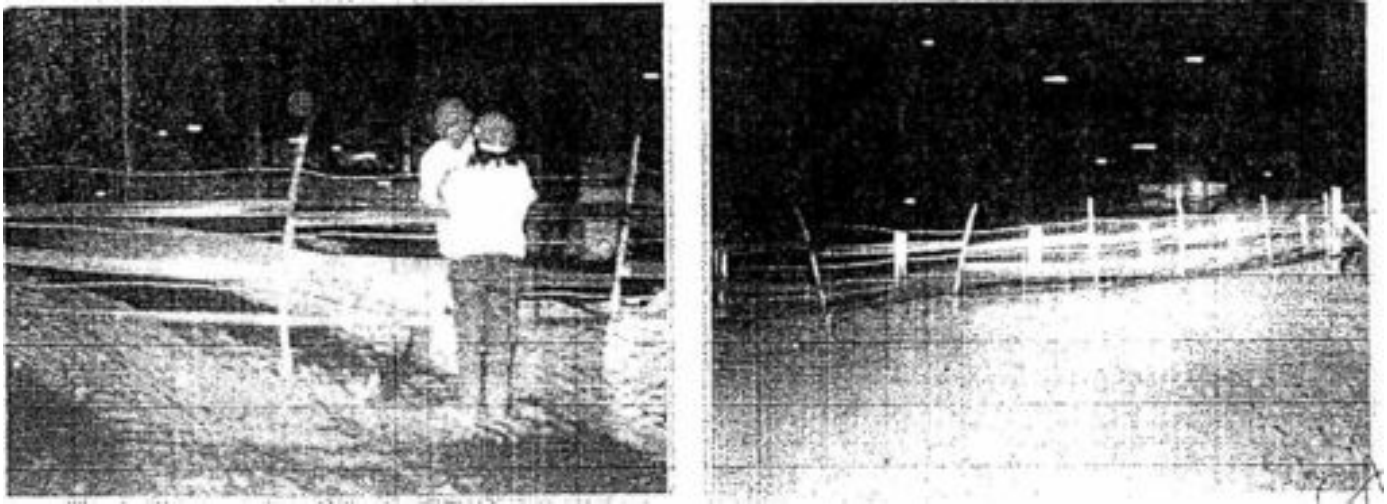
**Vegetation destroyed by extraction activities.**



**Placing the red barrier tape on the machinery at the Torre Uno (Tower 1) extraction area.**



**Placing the red barrier tape on the crushing machine in the storage area.**



**Placing the red barrier tape on the storage area access points.**

#### IV - STATEMENT OF THE INSPECTED PARTY

In accordance with Article 71 of the Law of Administrative Procedures for the States of Chiapas, which stipulates:

*Article 71.- Inspected parties may make observations that shall be included in the inspection report and may offer proofs regarding the facts contained in it, or, they may make use of this right in writing within the five days following the date the report is made.*

For this reason, at the time the report was made, the inspected party was given the right to say whatever he considered pertinent.

[The following is written by hand]:

It is hereby stated that, having been invited to utilize his right to say whatever he considered pertinent to his rights about the inspection described in this Inspection Report, Fernando Josué Sánchez Velázquez, Head of Operations of the company “Blackfire Exploration México, S. de R.L. de C.V.,” refused to make use of this right, stating, word for word, “I will not use this right and neither will I nor my witnesses sign this report.”

(signatures)

Alejandro Callejas Linares (biologist)

Atzimba Lucía Castro Barragan

Edgar López Espinosa (engineer)

Guillermo Jiménez Vázquez

#### V - CONCLUSION OF REPORT

Based on Article 69, Paragraph 2 of the Law of Administrative Procedures of the State of Chiapas, which stipulates:

*Article 69 – A copy of every report will be left with the person involved in the inspection, even if he/she refused to sign it, which will not affect the validity of either the report or the document in question, as long as the inspector states this circumstance in the report itself.*

As well, and in accordance with Article 70, Subsection IX, which stipulates:

*Article 70 – The report will state:*

*IX – The name and signature of participants in the inspection, including that of those who carried it out. If the party visited or his/her legal representative refuses to sign, this will not affect the validity of the report, and the inspector must make a statement to this effect.*

Therefore, the inspection came to an end at 11:55 p.m. on December 7, 2009. The 16-page report, original and copy, was written up immediately, and after it was read to all participants and approved by them, they signed every sheet, and a legible copy was given to the inspected party.


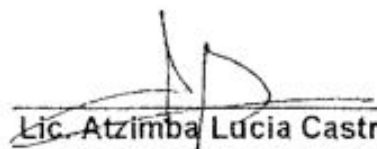
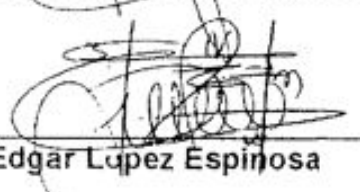

FOR THE PARTY INSPECTED

Fernando Josué Sánchez Velázquez

FOR THE MINISTRY OF THE ENVIRONMENT AND HOUSING

INSPECTORS

VERIFICADORES

 Bjol. Alejandro Callejas Linares	 Lic. Atzimba Lucía Castro Barragán
 Ing. Edgar López Espinosa	 Ing. Guillermo Jiménez Vázquez

TESTIGOS

WITNESSES

Homero Flores Ruiz

Luis Fernando López Briones

(PAGE 17 SHOWS A PHOTOCOPY OF THE FRONT AND BACK OF THE OFFICIAL ID (VOTER REGISTRATION CARD) OF THE COMPANY HEAD OF OPERATIONS, FERNANCO JOSUE VELÁZQUEZ SÁNCHEZ.

PAGE 18 IS A HANDWRITTEN ACCOUNT OF THE INSPECTION, SIGNED BY THE FOUR MAIN INSPECTORS. IT READS AS FOLLOWS:

LET IT BE NOTED: At 11:55 p.m. on December 7, 2009, in the presence of Alejandro Callejas Linares (biologist), Atzimba Lucía Castro Barragán, Edgar López Espinosa (engineer) and Guillermo Jiménez Vázquez (engineer), accredited inspectors of the Ministry of the Environment, who identified themselves with their [ministry] credentials SEMAVI/SMA/DPA/10/09, SEMAVI/SMA/DPA/001/09, SEMAVI/SMA/DPA/002/09, and SEMAVI/SMA/DPA/00709, respectively, and having verified that we are at the site where activities of exploration, extraction and use of mineral substances that constitute deposits similar to the components of the soil

are carried out, located at Kilometre 45 along the stretch of road from Chicomuselo to Barrio San Ramón of the Collective Farm Ejido Grecia, in the municipality of Chicomuselo, Chiapas, because this was so stated by Fernando Josué Sánchez Velázquez, Head of Operations of the company “Blackfire Exploration México, S. de R.L. de C.V.,” the undersigned proceeded to comply with Inspection Order number SEMAVI/SMA/DPA/097/2005, dated December 7, 2009, which orders an inspection visit be carried out to verify compliance with the Environmental Law for the State of Chiapas, concerning the activities of exploration, extraction and use of minerals or substances that constitute deposits similar to the components of the soil. Following the visit, we wrote the Inspection Report, giving Fernando Josué Sánchez Velázquez the opportunity to express whatever he considered pertinent to exercising his rights. However, he refused to make use of this right, as well as to sign or to have his witnesses sign the Inspection Report dated December 7, 2009. We therefore declare all this for whatever legal effects there may be.

(signatures) Alejandro Callejas Linares (biologist), Atzimba Lucía Castro Barragán,  
Edgar López Espinosa (engineer), Guillermo Jiménez Vázquez (engineer)