



**Debunking Eight Falsehoods  
by Pacific Rim Mining /  
OceanaGold in El Salvador**

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# Debunking **Eight Falsehoods** by **Pacific Rim Mining /** **OceanaGold** in **El Salvador**



Vancouver-based Pacific Rim Mining, recently acquired by Australian-Canadian firm OceanaGold, has been trying to access gold deposits in northern El Salvador for close to a decade. In 2009, Pacific Rim launched a multi-million dollar lawsuit against El Salvador in a World Bank arbitration tribunal for not having granted the company the permit to put its El Dorado mine project into operation. OceanaGold, having bailed out Pacific Rim from near bankruptcy in November 2013, aims to strike a deal with the Salvadoran government or continue fighting the suit. But OceanaGold is hedging its bets based on shaky grounds. Pacific Rim never fulfilled the necessary requirements to obtain its permit. Furthermore, communities in the surrounding department of Cabañas - and most Salvadorans - do not want mining in their country. As the smallest and most densely populated country in Latin America with already stressed water supplies, Salvadorans are unwilling to face the risks that industrial metal mining represents. OceanaGold's open-pit gold and copper project in the Philippines illustrates the costs of mining that Salvadorans do not want to bear. The company's lawsuit aims to undermine public debate and to contain democratic public policy-making. In this document, we debunk eight falsehoods that the company has used to try to justify the El Dorado gold project in El Salvador.

## Despite the company's claims to the contrary:

1. Pacific Rim did not meet the regulatory requirements necessary to obtain a mining permit in El Salvador, relying instead on political lobbying.
2. Pacific Rim never undertook adequate studies to understand, much less mitigate, potential impacts from the El Dorado project, especially on water supplies.
3. There is broad opposition to mining in El Salvador that extends to the highest echelons of the Catholic Church.
4. Pacific Rim's activities in Cabañas have generated conflict, aggravated divisions and raised the stakes around current and potential economic benefits from mining. This can only have contributed to threats and violence, which have yet to be fully investigated.
5. The company's willingness to opt for political lobbying and local patronage, rather than meet regulatory requirements and respect communities, could have fueled corruption.
6. Any profits from the El Dorado project would mainly be returned to the company and its shareholders.
7. The company is using investor-state arbitration rules to subvert a democratic, nationwide debate over mining in El Salvador, a matter that should not be decided by a World Bank tribunal.
8. OceanaGold, which recently acquired Pacific Rim, operates an open-pit gold and copper project in the Philippines that illustrates the costs of mining that Salvadorans do not want to bear.

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## What Pacific Rim Claims...

**Pacific Rim has gone above and beyond El Salvador's environmental regulations**

*"We've not just followed the guidelines, we've far exceeded them, environmentally, in the mining law, in all laws."<sup>1</sup>*

*- Tom Shrake, President and CEO of Pacific Rim Mining*

## In Reality...

**Pacific Rim did not meet the regulatory requirements necessary to obtain a mining permit in El Salvador, relying instead on political lobbying.**

Pacific Rim did not fulfill all requirements to obtain a mine exploitation permit: (1) it never completed or submitted a feasibility study,<sup>2</sup> (2) nor did it ensure it had purchased ownership or authorization to work on the land above the proposed mine.<sup>3</sup> Neither were the company's Environmental Impact Assessment and environmental permit, necessary to apply for an exploitation permit, ever approved.<sup>4</sup>

Instead of ensuring that it met all regulatory requirements, Pacific Rim sought to lobby national officials within the former right-wing ARENA party administration.<sup>5</sup> It aimed to convince politicians "to ignore the popular will" and "to ignore the serious shortcomings in the El Dorado EIA."<sup>6</sup>



# 2 TWO



## What Pacific Rim Claims...

### Water supplies will not be affected by Pacific Rim's operation

*"The rivers and the water are chemical laden. Why are they asking all these environmental things of us when they don't have them in their own economy. Our process would actually end up with cleaner water... These people purport to be environmentalists, they're not. They're anti-development. They are not pro-environment, if they were, they would support this mine."*<sup>7</sup>

*– Catherine McLeod-Seltzer, Chairman of the Pacific Rim Board of Directors*

## In Reality...

**Pacific Rim never undertook adequate studies to understand, much less mitigate, potential impacts from the El Dorado project. Early exploration activities gave rise to complaints of impacts on water supplies. An expert from the United States characterized the company's environmental assessment as unfit for consideration in the US or Canada.**

During Pacific Rim's exploration activities, local residents in Cabañas reported negative impacts, including "reduced access to fresh water, polluted water, impacts to livestock and adverse health impacts."<sup>8</sup>

Rather than provide a serious response to public concerns about cyanide use in gold processing and other mining impacts, Pacific Rim launched a "green mining" campaign.<sup>9</sup> As part of this, company representatives held public meetings in Cabañas at which they treated local residents with disrespect, trying to convince them that cyanide was safe enough to consume.<sup>10</sup>

Water quality, hydro-geology and geochemistry expert Dr. Robert Moran carried out a review of the company's 2005 Environmental Impact Assessment and found that it would be unacceptable in Canada or the US. The study found a "near complete lack of baseline water quality and quantity data," particularly regarding groundwater, and a "lack of transparency in the public consultation process."<sup>11</sup> He also found that the assessment did not include sufficient detail to allow for a serious evaluation of what measures would be needed to mitigate consequences of a possible seismic event in the area.<sup>12</sup>

In 2012, Salvadoran researchers from the Institute of Vulcanology at the University of El Salvador in collaboration with the Association for Economic and Social Development of Santa Marta (ADES) found concentrations of arsenic in sediments above levels permissible in Canada from two rivers near the area in which Pacific Rim operated.<sup>13</sup> Whether naturally occurring or a result of recent mining activity, this has raised further questions about the impacts the project has had or could have if it were advanced.

Experiences elsewhere in El Salvador further fuel local skepticism. A now-closed gold mine in eastern El Salvador, most recently owned by the Milwaukee-based Commerce Group Company, left water pollution from acid mine drainage. High levels of kidney and nervous system diseases have been observed among the local population.<sup>14</sup> A study by the Salvadoran Ministry of the Environment in July 2013 found that the nearby San Sebastian river water contains nine times more cyanide and one thousand times more iron than is safe for human consumption.<sup>15</sup> Instead of taking responsibility, Commerce Group sued the cash-strapped Salvadoran government for suspending its mining permits over these environmental concerns.<sup>16</sup>

# 3 Three



## What Pacific Rim Claims...

### Rogue or “anti-development” NGOs are behind the campaign against mining in El Salvador

*“Frankly, anti-development NGOs fomented anti-mining by spreading lies. [I’m talking about groups like] OXFAM. They have factions in some of these areas that are very anti-development. Church groups... I don’t think they control their people on the ground. I think these are probably rogues that seize upon an opportunity.”<sup>17</sup>*

– Catherine McLeod-Seltzer, Chairman of the Pacific Rim Board of Directors

## In Reality...

### Opposition to mining in El Salvador is broad-based and extends to the highest echelons of the Catholic Church.

Local opposition emerged in response to people’s experiences with Pacific Rim and gave rise to a national movement against mining in El Salvador. In addition to concerns over water impacts mentioned in response to Claim #2, during exploratory drilling, Pacific Rim employees trespassed on the private property of local residents in a manner that has been described as “suspicious and arrogant.”<sup>18</sup> The range of negative effects and encounters led local owners to refuse to sell land to the company and contributed to the emergence of local and national opposition.<sup>19</sup>

In 2008, the University of Central America released a poll showing that 62.4% of the population in mining-affected areas opposes mining.<sup>20</sup>

The Salvadoran Bishops’ Conference is among those that have come out publicly against mining in El Salvador:

*“Salvadorans ask that this project be stopped. Canada has so many good people. Ask those transnational companies that they commit no more terrible injustice, no more exploitation of the people of El Salvador. We are not very happy about this judicial dispute; they are asking us to pay them millions. Still I think it is better to pay [the costs of the suit], than to pay the consequences [of mining].”<sup>21</sup>*

– Archbishop José Luis Escobar Alas, 2013 (Archbishop since 2009)<sup>22</sup>

*“It is not right to risk the health of the population so that a few who do not live here can take 97% of the juicy profits and leave us with 100% of the cyanide.”<sup>23</sup>*

– Monseñor Fernando Saenz La Calle, 2007 (Archbishop from 1995-2008)<sup>24</sup>

In 2008 and 2009, both outgoing and incoming Salvadoran presidents publicly committed to not approve any mining projects during their administration.

The National Roundtable against Metallic Mining (or “The Mesa” as it is known) involves hundreds of communities and thousands of people throughout El Salvador. The NGOs participating in the Mesa include many respected environmental and grassroots organizations.

The Mesa has achieved international recognition and in 2011, more than 260 international organizations joined The Mesa’s call for the World Bank trade tribunal to dismiss Pacific Rim’s legal claims, including the International Trade Union Confederation (ITUC).<sup>25</sup> In 2011, Salvadoran activist Francisco Pineda from the Cabañas Environmental Committee won the prestigious Goldman Environmental Prize for having been among those who “courageously led a citizens’ movement that stopped a gold mine from destroying El Salvador’s dwindling water resources and the livelihoods of rural communities throughout the country.”<sup>26</sup>

For its part, Oxfam America is a global organization working to right the wrongs of poverty, hunger and injustice. It aims to save lives, develop long-term solutions to poverty and campaign for social change. Oxfam America seeks to ensure local and global conditions for the respect of basic people’s human rights, including the right to free, prior and informed consent. Oxfam believes that communities around the world should have access to meaningful and timely information concerning projects that would affect their lives; should be heard and should participate in the decision-making processes of those projects; and should have the right to decide whether a mining project would contribute to the betterment of their communities or not. Oxfam America believes that Pacific Rim/OceanaGold is complying with minimal standards for the mining industry. By trying to impose themselves on El Salvador using an international tribunal, the company is not showing respect for Salvadorans’ human rights, including their right to a national democratic debate about what is best for their future.



# 4 Four



## What Pacific Rim

### Pacific Rim is not connected with violence against activists in Cabañas

*“The three people who were killed have nothing to do with mining. I mean, these are Hatfield and McCoy areas, right (laughs), I mean people carry long grudges and they have access to firearms and you come onto my land and I’m going to shoot you. A very long leap was made to say that this was an anti-mining murder. It wasn’t. It’s been investigated by the US Embassy down there.”<sup>27</sup>*

*- Catherine McLeod-Seltzer, Chairman of the Pacific Rim Board of Directors*

*“We have co-operated fully in the investigations into 4 homicides that took place in communities around El Dorado and went so far as to call on the US Embassy to also investigate claims that these murders were related to mining.”<sup>28</sup>*

*- Barbara Henderson, Pacific Rim’s Corporate Secretary and Vice President for Investor Relations*

## In Reality...

**Pacific Rim’s activities in Cabañas generated conflict, aggravated divisions and raised the stakes around current and potential economic benefits from mining. This can only have contributed to threats and violence, which have yet to be fully investigated.**

The emergence of local opposition to the mine in Cabañas brought local community organizations, priests and journalists into direct tension with local politicians that supported Pacific Rim. Since at least 2006, when threats against anti-mining activists began, the right-wing ARENA party has largely controlled local governments in Cabañas.<sup>29</sup>

Conservationist Richard Steiner notes in his report *Gold, Guns and Choice* that substantial company funds were provided for “local initiatives aimed at winning local consent for the project.”<sup>30</sup> Reportedly, funds were paid directly to several mayors in the region and used for such things as local “projects, parties and substantial discretionary funding.”<sup>31</sup> Furthermore, local mayors would be responsible for administering royalties from the mine, were it ever put into operation.<sup>32</sup>

Among those that promoted Pacific Rim’s “green mining” campaign were local representatives of the Ministry of Education (MINED). According to the National Roundtable against Metallic Mining (The Mesa), MINED representatives allowed the company to disseminate information in favor of mining in the schools, while those opposed were prohibited from doing the same.<sup>33</sup> The Mesa also complained that some schools were painted green and white, to match the company’s propaganda, instead of the usual blue and white, the color of the Salvadoran flag.<sup>34</sup>

The discord in Cabañas led Steiner to conclude that the company’s activities led to the creation of “corrosive communities,” in which “an intense socio-political polarity has developed between proponents and opponents of mining [that has led] to social tensions, emotional stress, disintegration of civil society, political turmoil and violence.”<sup>35</sup>



Threats against anti-mining activists are reported to have begun in 2006.<sup>36</sup> These culminated in violence in 2009 and again in 2011.<sup>37</sup>

In June 2009, the body of community leader and vocal anti-mining activist Marcelo Rivera was found in a well with signs of torture, two weeks after he disappeared.<sup>38</sup> Immediately afterward, threats were issued against local activists such as Father Luis Quintanilla, who was attacked twice in July 2009.<sup>39</sup> Reporters at Radio Victoria received intermittent threats before, during and since this time.<sup>40</sup> In December 2009, Ramiro Rivera Gómez, Vice President of the Cabañas Environmental Committee, was shot to death,<sup>41</sup> followed six days later by the murder of activist Dora Alicia Recinos Sorto and her unborn child.<sup>42</sup> In late 2010 and early 2011, two gang members with information about Marcelo Rivera's murder were killed.<sup>43</sup> In June 2011, Juan Francisco Durán Ayala, a volunteer with the Cabañas Environmental Committee, was also murdered.<sup>44</sup>

Shortly after the murders of Ramiro Rivera and Dora Alicia Sorto in 2009, the Sub-Director for the National Police Howard Cotto remarked: "Even if we suggest that the motive of these crimes have to do with mining or not... what is clear is that in all the areas where Pacific Rim began mining exploration, high levels of conflict occurred."<sup>45</sup> The Salvadoran Ombudsman for Human Rights has also stated that the acts of violence "are very probably related to each other, thus enabling us to infer that they are also linked to the victims' work in defense of the environment."<sup>46</sup>

Immediately following the murder of Juan Francisco Durán in 2011, Salvadoran President Mauricio Funes called for a full investigation and offered "more security to the environmental movement, because its struggles and demands are just."<sup>47</sup>

Nonetheless, Salvadoran officials responsible for investigating the 2009 murders immediately depoliticized the potential motives for the crimes.<sup>48</sup> Six people were convicted in Marcelo Rivera's case, but questions remain about the intellectual authors of the crime.<sup>49</sup> A lawyer working in the Attorney General's office in Cabañas lost her job after she complained that the investigation into Marcelo Rivera's murder was corrupt and pressed for an independent investigation.<sup>50</sup> Nine have been arrested in the case of Ramiro Rivera and others from the community of Trinidad, but a full trial has yet to take place.<sup>51</sup> Radio Victoria has not seen results from any investigations into the litany of threats their group has received.<sup>52</sup> The rate of impunity for violent crimes in El Salvador is 96%.<sup>53</sup>



# 5 FIVE



## What Pacific Rim Claims...

**The El Dorado mine did not receive a permit because Pacific Rim refused to bribe ex-President Tony Saca**

*"I think it's all about corruption. I think we were being squeezed by Saca. Certainly he has that history. We don't pay to play."<sup>54</sup>*

*- Tom Shrake, President and CEO of Pacific Rim Mining*

*"We invested money under their laws and they didn't follow their laws. It's very simple. They have a mining code, we followed it... [but] we didn't offer to line their pockets."<sup>55</sup>*

*- Catherine McLeod-Seltzer, Chairman of the Pacific Rim Board of Directors*

## In Reality...

**The company's willingness to opt for high level lobbying and local patronage, rather than meet regulatory requirements and respect communities, could have fueled corruption.**

In addition to the company's high level lobbying activities mentioned in response to Claim #1 and the corrosive effects of its presence in Cabañas mentioned in response to Claim #4, the company evidently used patronage at the local level to "divide-and-conquer" communities.<sup>56</sup>

The company "provided up to \$1 million/year to various local initiatives aimed at winning local consent for the project."<sup>57</sup> As mentioned in Claim #4, these undertakings included community "projects, parties and substantial discretionary funding reportedly paid to several mayors of the region."<sup>58</sup>

Radio Victoria has reported that, in 2007, a Pacific Rim representative offered to finish constructing their new building and to run \$8,000 in publicity on the radio.<sup>59</sup> They turned down the offer, which they interpreted as an attempt to stop their anti-mining coverage.<sup>60</sup> One individual has also acknowledged having turned down weekly payments to meet with Pacific Rim employees and inform them on the activities of the local opposition – that is, to spy.<sup>61</sup>





## 6 Six

### What Pacific Rim Claims...

#### The El Dorado project will bring economic growth to El Salvador

*"El Dorado is a rare opportunity for El Salvador and her citizens... To turn its back on a ready, willing and eager investor that wants to build an environmentally safe operation in one of the poorest regions of the country is mind-boggling. Are you aware that the El Dorado mine would be by far the biggest taxpayer in the country, and employ several hundred people with 4-5 times that many gaining employment in spin-off jobs? El Dorado is a win-win proposal. I assure you, our conscience is very clear."*<sup>62</sup>

*- Barbara Henderson, Pacific Rim's Corporate Secretary and Vice President for Investor Relations*

### In Reality...

#### Any profits from the El Dorado project would principally be returned to the company and its investors.

Pacific Rim structured its company to avoid paying taxes. It originally established a subsidiary in the Cayman Islands to manage its project in El Salvador. As such, should it have started generating revenue from the El Dorado project, the company would have avoided paying taxes in both El Salvador and the US. The Cayman Islands has a corporate tax rate of zero and a capital gains tax rate of zero.<sup>63</sup>

In 2007, Pacific Rim moved its Cayman Islands subsidiary to Nevada in order to launch a very costly lawsuit against El Salvador under the Dominican Republic-Central American Free Trade Agreement (CAFTA-DR).<sup>64</sup> Pacific Rim is suing El Salvador for \$301 million.<sup>65</sup>

To date, the lawsuit has cost El Salvador \$5 million, which could be far better spent on the needs of Salvadorans. \$5 million could provide one year of adult literacy classes for 140,000 people or feed 60,570 families in temporary housing for a full two weeks during a natural disaster.<sup>66</sup> The suit is projected to cost at least \$12 million per side.

Despite its long history, mining has never played a significant role in El Salvador's economy. Even if all of its resources were developed, revenue from the minerals would amount to only a small fraction of the country's diversified economy.<sup>67</sup> El Salvador's mining law requires only a 2% royalty on mine revenues: 1% is paid to the federal government and 1% is paid to the local government.<sup>68</sup> As of 2006, "mining and quarrying," which includes metals mining and the development of fossil fuels, sand, gravel, cement, and other nonmetal resources, represented less than 0.4% of El Salvador's GDP.<sup>69</sup>

A recent report by Oxfam America, *Metals Mining and Sustainable Development in Central America*, assesses the benefits and costs of mining in the region, concluding, "For Central American communities and nations, the warning is clear: mining usually does not bring substantial net benefits - and it may well undermine local economic well-being."<sup>70</sup>

The likelihood of a mining project contributing to local well-being is directly associated with whether or not local communities are adequately consulted and their right to say no to a mining project is respected.

# 7 Seven

## What Pacific Rim Claims...

### **Pacific Rim is seeking its due in an arbitration process at the World Bank's International Centre for the Settlement of Investment Disputes (ICSID)**

*"We also have rights as well and now we're in a situation where we're having to defend them in arbitration. When we were forced to shut down exploration, the value of our shares dropped by 75% or more, and we'll never recuperate that, never. We've been damaged and we represent the people that invested a lot of money and we have no choice but to defend their investment."<sup>71</sup>*

*- Tom Shrake, President and CEO of Pacific Rim Mining*

## In Reality...

**The company is using investor-state rules to subvert a democratic, nationwide debate over mining in El Salvador, a matter that should not be decided by a World Bank tribunal.**

Pacific Rim undertook considerable "jurisdiction shopping" in order to launch its suit against El Salvador. In an abuse of process designed to attract jurisdiction under CAFTA-DR, Pacific Rim moved its subsidiary from the Cayman Islands to Nevada in the United States.<sup>72</sup> The move failed. Nonetheless, ICSID has allowed the company to proceed under an already outdated Salvadoran investment law that gave companies recourse to international tribunals.<sup>73</sup> Since then, this law has been amended to prevent transnational corporations from bypassing the Salvadoran domestic courts; they can no longer bring cases directly to ICSID.<sup>74,75</sup>

The broad range of local and national Salvadorans organizations that oppose mining in their country lack a voice in the tribunal proceedings. The arbiters will only consider whether or not investment protection rules have been breached.

The company is suing for \$301 million USD, far above the \$77 million that the company claims to have invested so far.<sup>76</sup> As noted in response to Claim #6, the money tied up in this case could be put to much better use. Impacts from the company's activities to date should be adequately compensated and restored.

As Vidalina Morales, a member of The Mesa, has stated: "While failing to comply with environmental regulations and laws, Pacific Rim's exploration activities caused ecological damage, economic losses, social conflicts and corruption. In other words, it aggrieved the country and as a result, should be judged. Instead, the company is suing the state. The roles are reversed: the aggressor is suing the victim."<sup>77</sup>

# 8Eight

## What Pacific Rim Claims...

### **OceanaGold is an environmentally and socially responsible company**

*“OceanaGold is a technically savvy and eminently capable mine-builder with a demonstrated long-range commitment to developing and operating mines in challenging environments with the utmost consideration for social and environmental stewardship. We believe OceanaGold is the perfect company to take the reins on behalf of our shareholders and are confident in their ability to bring the El Dorado Project to fruition.”<sup>78</sup>*

*- Tom Shrake, President and CEO of Pacific Rim Mining*

## In Reality...

### **OceanaGold’s open-pit gold and copper mine in the Philippines illustrates the costs of mining Salvadorans do not want to bear.**

In 2011, the Philippine Human Rights Commission filed a motion against OceanaGold for its mine in Didipio, Nueva Vizcaya. In it, the Human Rights Commission recommended the revocation of the company’s mining license, citing forcible and illegal demolitions, the harassment of residents, and the indigenous community’s right to culture.<sup>79</sup> The Philippine Human Rights Commission continues to be concerned about the situation at OceanaGold’s mine.<sup>80</sup>

While OceanaGold claims to be a “green” company, it has focused almost exclusively on planting trees in nearby areas rather than on addressing the environmental devastation of the open-pit operation.<sup>81</sup> Residents have complained of “dirty water” downstream from the mine and of dead fish washing up on the shore.<sup>82</sup>

OceanaGold’s Philippine mining venture has likewise brought conflict to the Didipio community. In 2012, two community members involved in anti-mining activities were murdered.<sup>83</sup> No one suggests that the mining company shot the two, but OceanaGold’s presence in the community – as with Pacific Rim’s presence in El Salvador - has brought conflict and death to a previously peaceful municipality.



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- **René Guerra Salazar**, Executive Director, SalvAide, and co-founder of Canadians against Mining in El Salvador (CAMES).
- **Meera Karunanathan**, International Water Campaigner, Council of Canadians' Blue Planet Project.
- **Jan Morrill**, Past Coordinator International Allies of the National Roundtable against Metal Mining, who lived in El Salvador and worked closely with mining affected communities for several years up to 2012.
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