

Kinross Gold Corporation response to the Business and Human Rights Resource Centre regarding the Rio Jorquera Colla Community (RJCC)

Summary statement

Compañía Minera Maricunga (CMM, a subsidiary of Kinross Gold Corporation) has maintained a relationship with the Rio Jorquera Colla community (RJCC) since 1998. During most of the past 20 years the relationship has been constructive; issues which have occurred have been resolved through negotiation and dialogue. We have worked together on important community projects, organized from 2008 within a protocol agreement funded with significant resources by CMM. Projects included donation of water rights to the RJCC and sustainable community agriculture programs.

Unfortunately, since 2017 the leadership of RJCC has not only been unwilling to resolve several matters through dialogue, but has consistently not honoured agreements with CMM - even after accepting payments stipulated in these agreements, including:

- *Non-compliance of agreement with the RJCC's consultant for an ethno-cartographic study contracted by CMM.* Legal action was initiated in July 2018 by CMM against RJCC's consultant with regard to failure to deliver the contracted study despite payment in advance in June 2017.
- *RJCC's illegal blockage of CMM's lawful access to the Rancho del Gallo camp.* CMM has filed legal action against RJCC since the blockage impedes the access of CMM personnel to and from the camp and has obliged CMM to abandon the facility, which is currently unoccupied.
- *RJCC's failure during five years to register easement agreements signed with CMM in 2013 and for which payment of 285 million pesos was made.* In late 2018 CMM filed legal action against RJCC regarding restitution of payment made to the RJCC for permanent easement agreements which RJCC did not register. The easements include pylons for a power line and widening of the public road.
- *Clean-up of a release of diesel fuel from a power generation area at the Rancho del Gallo Camp.* The spill occurred when a pipe valve attached to a fuel tank was opened by an unknown party, effectively draining the tank. Some of the diesel escaped containment affecting the surrounding soil and approximately 5,500 litres affected a nearby stream. After discovering the release, CMM immediately commenced actions to contain the release. CMM's prompt action ensured that the spill had no environmental impact. The SMA (Superintendent for the Environment) has concluded that CMM took appropriate actions to address the incident. From the moment of the release, CMM has worked together with the RJCC in the coordination of the clean-up and has complied with the conditions in the agreement signed with the RJCC.

CMM remains willing and open to resume a dialogue with the RJCC and its leadership.

Specific information on key issues

About the ethno-cartographic study

An ethno-cartographic study is a valuable compendium of historical, cultural, and social knowledge of the community. Often it is the first time that this knowledge, held orally by community members, is captured

in documentary form. CMM had originally proposed to the RJCC leadership that a professional consultancy with experience in this field, conduct the study. However, the RJCC leadership insisted that its own consultant do the work. CMM agreed and in June 2017 paid in advance the first instalment for the project. However, even after providing a 100 day extension, the product delivered to CMM in March 2018 was very deficient and did not comply with the agreed conditions and required level of quality. The conditions included that a significant number of local community people would be hired for fieldwork, which never happened. CMM filed a lawsuit in July 2018.

About the diesel spill

The spill occurred during a snowstorm on May 20, 2017, and we believe it was caused by an unknown party which opened two valves at a fuel tank feeding the on-site power generator.

Upon discovery of the spill, CMM responded immediately to contain the material and notify authorities and Colla leadership. A portion of the spill left company property and entered a stream. Containment efforts included constructing containment dykes on the stream, using sorbents to collect diesel floating on top of the stream, installation of a bypass pipe to convey the stream around the affected area, and recovery of affected soil. Several companies with experience in fuel spill recovery assisted with this work.

These efforts were successful in containing the spill approximately 2.2 km downstream (not 20 km as indicated by the RJCC). At no time did the spill reach downstream communities or their water sources; ongoing monitoring showed no traces of fuel below the containment dykes. The rapid clean-up process ensured that no infiltration of fuel occurred. In November 2017, the SMA closed its inspection process, determining that the containment plan implemented by CMM had been 100% effective and that there was no damage to the environment.

Shortly after the spill the RJCC filed a legal complaint with the authorities; this case remains open. All other processes with the agencies have been closed.

Since February 9th 2018 the Colla leadership has prevented access to the area. This, despite the fact that in April 2018 the water agency (Dirección General de Aguas, DGA) issued an order to the company to finish its activities and remove the temporary works, including the stream bypass. The RJCC leadership has also blocked further monitoring of the area since February 2018.

After the diesel spill, CMM provided direct support to the one community member who had to move his animals from the area of the spill on a temporary basis. Support consisted of food (alfalfa) for his animals on a weekly basis (more than 7,082 bales of alfalfa, valued at approximately US\$76,200) and a perimeter fence around the spill area. However, this fence was then closed on 9th February 2018 by the community with chains and padlocks, blocking further access.

Despite the support given to this community member, he has alleged that his animals are in poor health because of the spill. At his request, CMM arranged for a veterinarian to visit the site. Although he did not allow the vet to inspect directly the animals, the veterinarian was able to observe that the animals' poor health is the result of neglect and malnutrition, and found no evidence of health effects related to diesel. The community member has refused to accept these findings.

Engagement with the Colla community and leadership

From the beginning, CMM has taken a collaborative approach with the community to ensure that the environmental effects of the spill are understood and addressed. This includes joint sampling efforts, regular joint inspections during the period immediately following the spill, and an agreement to conduct participatory monitoring and diagnostic study to identify any potential residual impacts.

That agreement was signed with community leadership on July 31, 2017. While CMM has continuously complied with its obligations under that agreement, the Colla leadership has repeatedly refused to abide by its commitments. For example, in November 2017 joint sampling and monitoring was done at agreed locations for water, soil, and sediments using an agreed methodology. Despite this, in March 2018 the community demanded changes to the list of parameters to be monitored. The community has subsequently refused to acknowledge the results of joint monitoring conducted under the agreement, and has instead provided other data from unidentified “sources”, collected by the community outside of the agreement, including analytical data which do not correspond to the type of diesel involved in the spill. Despite the lack of progress to implement the joint participatory monitoring agreement, in November 2017 CMM proposed a settlement that was rejected out of hand by the RJCC leadership.

In September 2018, the RJCC leadership staged a sit-in at the CMM offices in Copiapo. Despite the aggressive action by the RJCC leadership, an agreement was reached whereby CMM agreed to reimburse a portion of RJCC’s expenses; in exchange, the Colla agreed that further payments would be linked to concrete steps on the clean-up plan. After CMM had made the first instalment of the promised payment, the Colla leadership inserted unreasonable demands (additional studies, excessive job numbers) to the agreement to which CMM could not agree.

The reimbursable expenses claimed by Colla leadership included \$30,000 of receipts which were rejected by CMM. These included receipts for toys, excessive restaurant bills and other expenses clearly not associated with the spill.

About CMM’s relationship with the Colla community

CMM’s relationship with RJCC started in 1998 when CMM made improvements to public roads that already existed at the time in the Rio Jorquera valley (C-611). These public roads passed several farms and homesteads belonging to the RJCC. The road works were done before the territory was listed as “Colla” by CONADI in 2004, and before the State conveyed land title to the RJCC in July 2005, covering areas along the valley floors. During 2004 – 2005 CMM constructed a power line and filed for an easement for the route and the towers. The lands conveyed in 2005 to RJCC ended up encompassing approximately 10 of the towers for the power line.

The Maricunga mine went into care & maintenance in 2001. When construction to re-start CMM began in 2004, there were complaints from RJCC about impacts related to increased use of the road (primarily dust and concerns about vehicle accidents). CMM and the RJCC worked together with the Government road agency to have the road surface sealed to improve safety and reduce dust.

Continued dialogue led to the signing of a formal protocol between CMM and RJCC in June 2008, funded entirely by CMM with significant resources, which were then increased by 27% in 2013 with the signing of an addendum to the protocol. In addition to continued regular dialogue tables, CMM committed to purchase water rights for the community (done in 2009-2010), as well as several joint activities with the community, focused on development:

- Education - Scholarships for children in the community to attend school; skills training for youth include internships at CMM; educational seminars for adults on legal literacy
- Health – mobile clinic visits for the community
- Transport – service between Copiapo and Rio Jorquera for community meetings, service for schoolchildren
- Environment – joint monitoring program with community monitors
- Culture – support for community events (e.g., Indigenous New Year)
- Infrastructure improvements (e.g., community centre, barns for hay storage, improvements to homes and workshops especially through better roofs)
- Productive projects (e.g., donation of F-350 pickup and a fully equipped tractor, fences, water tanks, piping, and land clearing and leveling for farming; surveying to subdivide land parcels, support to start production of alfalfa). CMM also worked through a government program, PRODESAL, to provide veterinary and agronomy services to the community.

Following the devastating impact of extreme weather events in 2015, CMM provided major humanitarian assistance to the RJCC through reopening roads, plus food and medical assistance to stranded members of the RJCC.

The principal community outcomes for Rio Jorquera have been:

- Implementation of organized farming which continues to be productive and economically viable, allowing some of the more vulnerable members of the community to improve significantly their well-being
- Improved education for hundreds of Colla children over the years

Testimony by Roni Ivan Villegas, Rio Jorquera community member (2009)

“Here we thought that the mines destroy everything but the mine started talking with us, the Colla. The mine donated the first fences so that we could start to progress. Maricunga helped level my land and this year I produced 540 bales of hay. Next year I hope to produce more than 2000 bales from the 5 ha of land that I have. I have cattle, sheep, and horses – I have everything. Now I live better, more stable. Before I would have to go up and down from the mountains, now we have our home. I am proud and happy. My family is together.” <https://www.youtube.com/watch?v=48TtHmXU3Q0>

Traditionally, the RJCC had invited CMM to be present at Community assembly meetings but from 2010 onwards this stopped, at the same time as the current community President took office. The RJCC leadership began to insist on its autonomy, in particular regarding the control over funds for community programs.

About resolution of grievances

From 2008 to 2009 the new camp for Maricunga was constructed at Rancho del Gallo, just off the C-611 road and at lower elevation than the mine. Original access to the camp was via an old existing road, which had a very tight curve, difficult for buses to navigate safely in winter due to ice formation, and so in winter

2009 (June-august) CMM built a bypass which crossed through 700 m of lands claimed by the RJCC. The RJCC started a protest by blocking the road with a fence. Following this event, CMM blocked off the bypass with a berm and made improvements to the existing road so that ice would not accumulate.

Earlier in March 2010, CMM had signed a three-way agreement with RJCC and the road authority whereby we would improve C-611, and maintain it. As part of this agreement, RJCC formed “territorial inspectors” with responsibility to look after the lands of the RJCC. The original width (8 m) of the C-611 continued to be a problem, causing numerous accidents. The agreement included widening of the road to 12 m.

In early 2012 the RJCC filed a formal claim with the authorities against CMM for damages. This claim was rejected by the courts and negotiations ensued between RJCC and CMM, leading in 2013 to the parties signing a formal agreement to resolve all historical controversies. CMM agreed to a 27% increase in funding for community programs and provision of a community house in Copiapo.

In the Kinross 2013 Corporate Responsibility report we highlighted the success of our work with the RJCC related to the C-611 road improvements in 2011. The President of the Community even said “This is an example of how our Vulnerable Groups, Investors and Authorities can work together to realize initiatives while respecting the law and the indigenous vision.”

Since then key highlights include direct humanitarian support provided by Kinross during the extreme weather events of 2015 and again in 2017, above and beyond what was in the 2013 agreement.

About the easement agreements

In 2013, CMM and RJCC signed an easement promise agreement, which was subject to the condition of obtaining authorization from CONADI and CMM made a payment of 285 million pesos to the RJCC. The RJCC leadership was responsible for obtaining this authorization but did not do so. The agreement included C-611 road widening, the Rancho del Gallo bypass, and 14 power line towers. Due to the non-compliance by RJCC leadership of its obligations in the agreement, CMM submitted a civil claim for reimbursement of amounts paid to the RJCC, which is ongoing.

About the RJCC’s illegal blockage of access to the Rancho del Gallo camp

In November 2018 the RJCC initiated a blockade of the access road to the Rancho del Gallo camp. This blockade impeded access for employees circulating between Rancho del Gallo and the CMM mine site, and for shift changes down to Copiapo. Despite best efforts through direct engagement and also various authorities, no progress was made in a resolution of the blockade. The decision to vacate the Rancho del Gallo camp was made entirely by CMM and not at the request of the RJCC leadership. Due to the blockade it was no longer possible to guarantee the safety and well-being of the employees using this facility. A constitutional Injunction was submitted by CMM to the Court of Appeal of Copiapo to request the unblocking of the road due to the Constitutional Rights of the employees and company being affected. This case is an ongoing matter for the courts.

CMM notes that the public road C-611 passes through the Maricunga industrial site. CMM does maintain access control gates, fully permitted for industrial safety and security reasons. Any vehicle wishing to transit the site is logged in and escorted from one side of the site to the other.