

Professor David D. Caron  
C/o Ms. Margrete Stevens  
Senior Counsel  
International Centre for the Settlement of Investment Disputes, MC6-611  
The World Bank Group  
Washington, D.C. 20433 U.S.A.

January 29, 2003

J. Martin Wagner  
Director, International Program, Earthjustice  
426 17<sup>th</sup> Street, 6<sup>th</sup> Floor  
Oakland, CA 94612

Dear Mr. Wagner:

I write in response to your letter of August 28<sup>th</sup> 2002 to the Secretary-General of the International Centre for Settlement of Investment Disputes (ICSID) requesting that he forward to the Tribunal a petition for intervention in ICSID Case No. Arb/02/03, *Aguas del Tunari v. The Republic of Bolivia*. The Secretary-General promptly forwarded your request to me and the other members of the Tribunal, José Alberro and Henri Alvarez. You were entirely correct in directing your request to the Tribunal, rather than ICSID itself, as ICSID plays only an administrative and support function in any tribunal's handling of cases.

The Tribunal has given extended consideration to your request. Moreover, the Tribunal requested, and subsequently received, the views of the parties to the dispute. As indicated on the ICSID public register for this case, the Tribunal was constituted under the Rules, without objection from the parties, on July 5, 2002, and held the First Session in this matter on December 9, 2002. Your letter and the request in it were discussed at that meeting and considered by the Tribunal. I write to you and your co-petitioners on behalf of the Tribunal with our response to the particular requests specified in your petition (copy attached hereto).

First, it is the Tribunal's unanimous opinion that your core requests are beyond the power or the authority of the Tribunal to grant. The interplay of the two treaties involved (the Convention on the Settlement of Investment Disputes and the 1992 Bilateral Agreement on Encouragement and Reciprocal Protection of Investments between the Kingdom of the Netherlands and Bolivia) and the consensual nature of arbitration places the control of the issues you raise with the parties, not the Tribunal. In particular, it is manifestly clear to the Tribunal that it does not, absent the agreement of the Parties, have the power to join a non-party to the proceedings; to provide access to hearings to non-parties and, *a fortiori*, to the public generally; or to make the documents of the proceedings public.

Second, the consent required of the Parties to grant the requests is not present. Although the Tribunal did not receive any indication that such consent may be forthcoming, the Tribunal remains open to any initiative from the parties in this regard.

Third, the Tribunal is of the view that there is not at present a need to call witnesses or seek supplementary non-party submissions at the jurisdictional phase of its work. We hold this view without in anyway prejudging the question of the extent of the Tribunal's authority to call witnesses or receive information from non-parties on its own initiative.

The Tribunal wishes to emphasize that it has given serious consideration to your request. The briefness of our reply should not be taken as an indication that your request was viewed in other than a serious manner. Rather, the Tribunal has endeavored to answer the request in a manner that is both responsive and efficient. In addition, given your status as a non-party to this dispute, we necessarily have been careful in our response not to breach the undertakings in our declarations as arbitrators, signed under Arbitration Rule 6(2), to maintain the confidentiality of the proceedings.

The Tribunal appreciates that you, and the organizations and individuals with whom you work, are concerned with the resolution of this dispute. The duties of the Tribunal, however, derive from the treaties which govern this particular dispute. It has been reported that the new bilateral investment treaty between Singapore and the United States contains provisions for the *amicus* participation of non-governmental organizations. The duty of a tribunal in any case that arises under that instrument will be to follow its dictates. It is no less our duty to follow the structure and requirements of the instruments that control this case.

The Tribunal thanks you for your letter and the attached petition. Your letter and petition will remain on file with the Secretariat. The ICSID Secretariat and the Parties have been informed of our views.

On behalf of myself and the other members of the Tribunal, I am

Respectfully yours,



David D. Caron

President of the Tribunal in the matter of  
*Aguas del Tunari vs. The Republic of Bolivia*