CHEVRON'S REBUTTAL

TO THE SUPPLEMENTAL EXPERT REPORT

EXECUTIVE SUMMARY

Before this Court is the largest civil damages award ever proposed, and it comes in a case that has been irretrievably politicized by the plaintiffs and the Government of Ecuador. An Ecuadorian mining engineer, Richard Cabrera, would have a U.S. oil company pay more than $27 *billion*—roughly half of Ecuador's gross domestic product—to address every alleged environmental, health, and social issue in the Oriente today based upon the operations of an oil consortium that ended 17 years ago. Mr. Cabrera recommends this unprecedented sum notwithstanding the fact that TexPet spent $40 million to remediate its share of the impacts of the Consortium's operations and received a complete release from any further liability from the Republic of Ecuador. In contrast, Mr. Cabrera would *not* have the state-owned oil company, Petroecuador, pay a penny even though it was the majority owner of the Consortium, is obligated to perform all remaining remediation arising from the Consortium's operations, and has been the sole operator of the oil fields in the Oriente ever since the Consortium ended in 1992. Mr. Cabrera's conclusions are indefensible and evidently intended to defraud Chevron of tens of billions of dollars.

Mr. Cabrera's first report recommended $16 billion in damages against Chevron based upon sweeping conclusions of environmental contamination unsupported by scientific data; allegations based not on real facts but rather fabrications and presumptions on topics that went beyond the issues of the case, the scope of his mandate, and his qualifications; and excessive damages for nonsensical proposals that bore no conceivable relationship to conditions in the Oriente and are meant to finance proposals that are not viable and will not solve the alleged problems they are supposed to correct. Although fully aware of these fundamental defects, Mr. Cabrera fails to even acknowledge them. Indeed, his second report compounds, rather than corrects, these flaws. At the urging of the Ecuadorian plaintiffs—who have the "full support" of the president of Ecuador himself—the new report recommends *increasing* the damages against Chevron by an additional $11 billion. That this was done without offering a scintilla of new evidence only confirms Mr. Cabrera's indifference to science, his predisposition against Chevron, and his effort to deceive this Court. Because the final recommendations are not expert, neutral, or objective, they must be rejected in their entirety.

1. INITIAL RECOMMENDED DAMAGES ASSESSMENT

As Chevron showed in its previous submission, Mr. Cabrera has departed from the legal and logical structure of this Court's mandate. He was to (i) identify and define, using appropriate baselines and reliable tests, environmental conditions in the former concession area that require remediation; (ii) prove that Chevron, and not some other source or entity, caused that environmental condition; and (iii) determine the practical

steps that would be needed to remedy those environmental conditions to reasonable standards. Mr. Cabrera's analysis, however, did not follow these basic steps. For example, as to step one, he addressed topics that had nothing to do with environmental conditions and failed to substantiate his "findings" of "alleged harm" with credible evidence; as to step two, he concededly made no effort to determine causation and absurdly deemed Chevron responsible for all alleged harms; and, as to step three, in addition to "damages" for the non-environmental issues that went beyond the scope of his mandate and qualifications, he suggested exaggerated remediation costs that were not tied to viable, concrete plans and that went well beyond anything that would be required to protect the environment.

Mr. Cabrera's first report lacked scientific credibility, systematically favored the plaintiffs, and furthered the interests of the Government of Ecuador:

- Mr. Cabrera never submitted a viable work plan despite this Court's order to do so, and he followed no discernible protocol in performing his work, even though such a protocol was negotiated by the parties and adopted by the Court.

- Mr. Cabrera was paid by the plaintiffs' representatives, who also directly and actively assisted him in his fieldwork and, according to indicators in the report itself, likely had a hand in its drafting. Much of Mr. Cabrera's work was done in secret by unknown parties of unknown qualifications, and Mr. Cabrera has refused to provide Chevron or the Court essential information about this work, even though he was obligated to do so per Article 257 of the Code of Civil Procedure.

- Mr. Cabrera sided with the plaintiffs on every material issue. As documented in clandestine emails, the plaintiffs and the Government of Ecuador have long colluded to hold the defendant *exclusively* responsible for all perceived ills in the Oriente. In furtherance of this scheme, Mr. Cabrera has absurdly proposed holding Chevron liable for the unilateral and independent acts of Petroecuador since the Consortium ended, including that company's well-documented record of environmental mismanagement for almost two decades. He even would have Chevron contribute almost $400 million to improve Petroecuador's current production infrastructure.

- Mr. Cabrera's broad and vague conclusions of alleged harm were not supported by adequate or competent scientific data and ignored relevant evidence, including official government reports that conflicted with his desired result. For example, Mr. Cabrera visited less than 15 percent of the sites in the former concession area, many in secret; and he reported only a handful of samples at each of those sites, while improperly discarding "clean" samples in the field. Nonetheless, based upon generalization, speculation, and extrapolation, he has recommended that Chevron pay to remediate the *entire* former concession area.

- Mr. Cabrera went far afield of his limited mandate (to determine and define the existence of environmental impacts) and opined upon numerous socioeconomic and infrastructure issues that he was not qualified to assess and that were plainly outside of TexPet's control. For example, he proposes having Chevron pay $430 million for indigenous Ecuadorians who were admittedly displaced by the Government's decades-long colonization policy. He has also recommended that Chevron pay another half a billion dollars for a new potable water system despite not having taken a single drinking-water sample and despite acknowledging that bacterial contaminants in the water are due to the poor public sanitation system.

These and other absurd errors deprived the first report of any value. This marks a continuing pattern: Mr. Cabrera ignores all arguments and evidence submitted by Chevron and instead parrots without independent analysis the unsupported assertions of plaintiffs' counsel.

2. NEW RECOMMENDED DAMAGES ASSESSMENTS

The conclusions in the second report build and expand upon the errors in the first, confirming that fact, science, and logic carry no weight with Mr. Cabrera. Rather, as shown below, it is evident that Mr. Cabrera's sole interest was to facilitate the result sought by plaintiffs' counsel and the Government of Ecuador: a windfall damages judgment against a U.S. oil company that never operated in Ecuador and had nothing to do with the Consortium. In attempting to deliver that preordained result, Mr. Cabrera makes other grave errors that indicate an intent to commit fraud against the administration of justice. In furtherance of this goal, Mr. Cabrera simply cuts and pastes portions of plaintiffs' rebuttal into his own supplemental answers. For example, to support over $9 billion of his damages assessment—nearly a third of the speculative damages he suggests Chevron should pay—Mr. Cabrera reiterated almost verbatim plaintiffs' baseless allegation of "excess" cancer deaths:

- Plaintiffs argued in their comments:

  In view of** the **revised calculation of the number of excessive cancer deaths at 1401, and the calculation of the value of a statistical life at U.S. $6,800,000 billion** [sic] **in 2008 dollars shown in Annex Q, the damages required to be paid would be U.S. $9,527,000,000 ($9.527 billion in 2008 dollars), rounded to the nearest million.

- In his Supplemental Report, Mr. Cabrera changed only a single word ("my" for "the") and concluded:

  In view of** my **revised calculation of the number of excessive cancer deaths at 1401, and the calculation of the value of a statistical life at U.S. $6,800,000 billion** [sic] **in 2008 dollars shown in Annex Q, the damages required to be paid would be U.S. $9,527,000,000 ($9.527 billion in 2008 dollars), rounded to the nearest million.

In addition, Mr. Cabrera failed to address almost all the concerns raised in Chevron's rebuttal to his original report. There is perhaps no greater example of Mr. Cabrera's substantive failure, as well as of his lack of impartiality, than his outrageous refusal to respond to Chevron's clear, supported, and legitimate criticisms of his work. Not only does Mr. Cabrera blithely ignore Chevron's criticisms, he goes on to insert *new* errors—nearly doubling the earlier, unsubstantiated damages amount in his original report without identifying *any* new evidence.

The critical errors in Mr. Cabrera's reports suggest that he is attempting a fraud upon the Court, falsely holding himself out as an independent and impartial expert who has supported his findings with scientific evidence. As a result of Mr. Cabrera's indisputable bias, Chevron has suffered a series of constitutional and due-process violations affecting, among other things, its right of defense, all of which have been noted previously during this lawsuit.

2.1 Remediation of Groundwater

Mr. Cabrera's new damages estimate of $3.2 billion for groundwater remediation follows none of the three steps required by his mandate. As set out in Chevron's previous rebuttal, there is no basis for Mr. Cabrera's underlying conclusion that groundwater remediation is needed in the former concession area. The overwhelming and irrefutable evidence presented by Chevron during the judicial-inspection process, together with Mr. Cabrera's limited sampling during his field work, show that there is no petroleum-related contamination posing a risk to human health in the groundwater of the former concession area.

There is thus no basis for *any* groundwater remediation, let alone $3.2 billion. Indeed, this assessment conflicts with Mr. Cabrera's repeated acknowledgments that he is unable to estimate groundwater remediation costs. In his April 2008 report, Mr. Cabrera conceded that "sufficient information is not available" to assess the costs of cleaning up groundwater and, therefore, excluded groundwater from his initial damages recommendation. The plaintiffs then specifically asked Mr. Cabrera to "include in the total amount for reparation the items and plans needed for remediating the area's groundwater." Again, Mr. Cabrera unequivocally stated in response: "I am unable to define the cost of cleaning up the groundwater" because it "w[ould] require a substantial effort over an extensive period and w[ould] cost millions of dollars for collecting the data needed for developing the groundwater clean-up plan." (Cabrera Supp. Report at 12 (Response to Question 10).) This admission alone demonstrates that the $3.2 billion figure is entirely insupportable.

This figure, furthermore, is unaccompanied by an actual groundwater remediation plan, and the "methodology" by which it was reached is facially absurd. The only source that Mr. Cabrera relied upon was an Internet site containing information about 233 remediation projects in the United States, none of which involved groundwater remediation at oil-production sites. He then cherry-picked just four of those inapposite

projects and further assumed without any basis that each of those projects would last for 20 years. The inclusion of $3.2 billion in estimated damages based on this type of calculation, after Mr. Cabrera himself reaffirmed his inability to estimate groundwater remediation costs, belies any claim of competence and impartiality.

2.2 Soil Remediation

Similarly meritless is Mr. Cabrera's assessment of an additional $1 billion—on top of the $1.7 billion in his original report—for remediation of pits and surrounding soil. Mr. Cabrera achieved this result by lowering his remediation standard (to 100 ppm TPH) and by arbitrarily "assum[ing]," without support, that this standard requires a 25 percent increase in the depth of soil remediation. Mr. Cabrera's new standard is far stricter than Ecuador law's strictest standard of 1000 ppm TPH (reserved for "sensitive ecosystems"), which Mr. Cabrera erroneously applied in his original report. Mr. Cabrera sought to justify this tenfold change in the remediation standard by claiming that 100 ppm TPH is the standard used by the Government of Ecuador in its Project to Eliminate Pits in the Amazon District (PEPDA) remediation project. To the contrary, official documents before this Court confirm that PEPDA in fact applies a 2500 ppm TPH standard, which is the standard under Ecuador law for agricultural areas. Mr. Cabrera's purported reliance on the PEPDA standard thus should have led him to *lower* his soil remediation estimate, rather than increase it by $1 billion. In fact, the PEPDA budget, which carefully describes the actions and costs to remediate all pits and spills throughout the former concession area, shows that the real costs are 59 times less than those recommended by Mr. Cabrera. Thus, even assuming that Mr. Cabrera had satisfied the first two steps of his mandate with respect to the extent and cause of any soil impact—which, as Chevron has previously shown, he did not—his bloated cost estimate to remediate the soil plainly runs afoul of step three.

Furthermore, PEPDA's 2007 annual report confirms that any additional soil remediation in the former concession area is Petroecuador's responsibility. Petroecuador assumed this responsibility when it, along with the Republic of Ecuador, released TexPet from environmental liability in exchange for TexPet's performance of remediation at designated sites according to its participation interest in the former Consortium. Throughout this lawsuit, Mr. Cabrera and the plaintiffs consistently have ignored the fact that the PEPDA remediation standards and current Ecuador legal standards were not established until years after TexPet finished its remediation to the Government's satisfaction and more than a decade after it ceased operating the Consortium. TexPet's remediation met the clean-up parameters established by the parties in the settlement agreement. As shown in Chevron's September 2008 rebuttal, this fact is confirmed not only by the Government's certifications at the time of the remediation but also by testing performed during the judicial-inspection phase, by the report of the Sacha-53 Settling Experts, and by Mr. Cabrera's own test results. Thus, Chevron is not responsible for additional soil remediation, much less the grossly inflated figure that Mr. Cabrera calculated based on a goal (100 ppm TPH) that is far stricter than even the current standard under Ecuador law.

2.3 "Excess" Deaths from Cancer

In the largest—and perhaps most indefensible—increase in the original damages recommendation, Mr. Cabrera has more than tripled his suggested compensation for "excessive deaths due to cancer" from $2.9 to $9.5 billion. As Chevron explained in its first rebuttal, this entire subject is far beyond the scope of Mr. Cabrera's supposed expertise and of this case, which seeks not compensation for individual injuries, but rather payments for environmental remediation and restoration. This assessment fails step one of the mandate for the additional reason that Mr. Cabrera has not identified even *one* of the supposed victims or produced *any* valid evidence, such as a death certificate, medical report, or hospital record. Rather, like his original figure, Mr. Cabrera's new $9.5 billion figure is based solely upon the answers of a group of potential beneficiaries to a biased and unscientific survey that allowed unidentified lay persons to speculate as to the cause of undocumented injuries.

In an effort to gather additional information about the "survey"—which evidence indicates was in fact designed and administered by the plaintiffs themselves—Chevron moved to depose Mr. Cabrera after he submitted his original report. In response, Mr. Cabrera refused to appear for his first court-ordered deposition and instead provided a written statement that failed to answer any questions about the survey methodology, about the team that had carried out the survey, or, most notably, about the alleged 306 "victims." The Court then rescheduled Mr. Cabrera's deposition for 5 p.m. on October 29, 2008, but, after an *ex parte* conference requested by the plaintiffs' lawyer, inexplicably declared that depositions could not be conducted after 5 p.m. Since then, the Court repeatedly has refused to reschedule Mr. Cabrera's deposition.

The Court's failure to investigate these allegations is particularly egregious given that similar claims were proven false in a related case against Chevron and resulted in sanctions for the plaintiffs' former lead lawyer. That lawyer brought suit in U.S. federal court in 2006 on behalf of "nine Oriente residents" who also alleged they had developed cancer as a result of TexPet's former operations in Ecuador. Like Mr. Cabrera here, that lawyer initially fought to avoid disclosure of the names of any of the alleged cancer victims. Unlike this Court, however, the U.S. court ordered that the "Doe" plaintiffs be identified. During subsequent interviews, several admitted that they had never been diagnosed with cancer, and some denied ever telling the lawyer that they suffered from cancer. The U.S. court sanctioned the plaintiffs' lawyer $45,000 for bringing fabricated claims, noting that "[t]his is not the first evidence of possible misconduct by plaintiffs' counsel in this case. It is clear to the Court that this case was manufactured by plaintiffs' counsel for reasons other than to seek a recovery on these plaintiffs' behalf. This litigation is likely a smaller piece of some larger scheme against [Chevron]." No. C 06-02820 WHA, 2007 WL 2255217, at *6 (N.D. Cal. Aug. 3, 2007). There are several indications that the plaintiffs' lawyers have committed a similar fraud here, and the Court's refusal to investigate the alleged cancer claims is a clear denial of necessary judicial protections as well as a denial of due process.

Mr. Cabrera's $9.5 billion damages assessment contains several other fundamental defects. Although Mr. Cabrera bases his $7 billion increase upon population data from Ecuador's National Statistics and Census Institute (INEC), he ignores INEC's data that cancer rates in the Oriente are no higher than those in other areas of Ecuador. In addition, Mr. Cabrera purports to estimate how many cancer deaths in the concession area were "excess," but he admittedly fails to compare residents within the former concession to a control group of similarly situated people outside that area. Mr. Cabrera's only explanation is that his survey "would not have been suitable" for use with people outside the concession area "due to the fact that most of the questions *referred to the impact of Tex[Pet]'s petroleum operations*." (Cabrera Supp. Report at 30 (Response to Question 36), emphasis added.) But this is no answer—to the contrary, it is an admission that the survey asked leading questions and was designed to elicit responses condemning TexPet. Thus, Mr. Cabrera's "survey" fails to establish either the existence of "excess" cancer deaths or any causal link to TexPet's activities. The incompetence and bias of Mr. Cabrera is underscored by the fact this flawed survey is the basis for a third of his proposed damages award.

2.4 Unjust Enrichment

Chevron has previously exposed the invalidity of Mr. Cabrera's recommendation of "unjust enrichment" damages of over $8 billion, which he would use to *add* to his already excessive damages amount. In violation of step one of his mandate, Mr. Cabrera has conceded that these proposed damages are not intended to compensate for any alleged harm, but rather that this Court might impose them as a "punitive" measure. Furthermore, "unjust enrichment" and the determination of whether such "enrichment" occurred were not included in his mandate or sought in the complaint, and the concept does not even exist under Ecuadorian law. Yet Mr. Cabrera now recommends an additional $110 million for "unjust enrichment" on the notion that TexPet saved this amount by failing to use specially lined pits. This allegation is baseless.

First, as Chevron has shown previously, the use of pits without a synthetic lining was consistent with applicable Ecuadorian laws and regulations and was common practice in the United States and around the world. *Second*, the $110 million figure was calculated in error, since it includes not only the cost of the liners, but also the cost of constructing and remediating the pits. Mr. Cabrera does not account for the tens of millions of dollars in costs that TexPet incurred both in constructing the pits for the Consortium and in closing the pits as part of its remediation. *Third*, Mr. Cabrera once again has disregarded the fact that TexPet's share of Consortium costs (and, thus, any supposed cost savings) was only 37.5 percent, whereas the share of Petroecuador—which Mr. Cabrera would absolve of any liability—was 62.5 percent. Indeed, because the primary beneficiary of the Consortium's activities was the Republic of Ecuador (which received nearly 95 percent of revenues in the form of royalties, taxes and fees, and other payments), TexPet's total profits over the 28-year life of the Consortium were approximately $490 million, as has been documented through official government records.

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In sum, like the conclusions in the original report, the supplemental findings are based not on credible facts or sound methodology, but rather on Mr. Cabrera's evident purpose of furthering the cause of the plaintiffs and the Republic of Ecuador, arbitrarily attributing to Chevron the responsibility for all the current socioeconomic conditions in the Oriente. Mr. Cabrera has consistently failed to adhere to the three-step analysis required by his mandate in an apparent effort to saddle Chevron with the largest judgment possible. Proof of Mr. Cabrera's ideological and nonscientific position is shown in how he describes his mission:

> One of the basic ideas . . . is to achieve change in the overall economic, political and social paradigm to a new view of equality of entitlements, with economic solidarity that has as its ultimate goal benefiting the population as a whole instead of elitist profiteering, in which the well-being of the environment and its rational and sustainable use is valued, and which includes sovereign energy and food-supply independence. (Cabrera Supp. Report at 16 (Response to Question 13).)

These plainly are not the words of a technical expert disinterested in the outcome of this litigation. Mr. Cabrera's Supplemental Report—like his original report, his investigation, and his appointment—violates Chevron's constitutional and due-process rights. It is the product of numerous essential errors that indicate that Mr. Cabrera is attempting to mislead this Court. This fundamentally flawed report, along with its unprecedented $27 billion conclusion, must be stricken in its entirety and should serve only to demonstrate the bad faith of Mr. Cabrera and the plaintiffs, who are the beneficiaries of that conduct.