

ACCOUNTABILITY COUNSEL

September 13, 2011

Via Electronic Mail

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**Re: Open Letter re Conclusion of CAO Ombudsman Process re Maple Energy in
Canaán de Cachiyacu and Nuevo Sucre**

Dear Meg, Julia, Susana, and Antonio,

We are writing to thank you for your work in the dialogue process between Canaán de Cachiyacu, Nuevo Sucre, and Maple Energy regarding the human rights and environmental abuses documented in the communities' April 2010 complaint to the CAO. The communities have considered your request that they return to the dialogue table with Maple, and have decided to decline. We are also writing to share some reflections about the dialogue process with you, and to discuss next steps.

First, we sincerely thank the CAO staff and consultants for the time and energy that has been devoted to the dialogue process since the complaint from Canaán and Nuevo Sucre was filed. By its very nature, this complaint has raised difficult facts and circumstances and we appreciate your work toward bringing the parties together.

Second, we would like to acknowledge the accomplishments of the dialogue process. Through this process the communities have gained a better understanding of Maple and its employees as a result of face-to-face meetings, and we believe the company has benefitted from an improved understanding of the issues facing the communities. We note that the company agreed to install Internet services in Canaán and Nuevo Sucre, that studies were conducted regarding the quality of the well water in Nuevo Sucre which uncovered high bacterial levels, the well in Nuevo Sucre was deepened, and that terms of reference for further studies were developed, providing the communities with an understanding of how studies are designed and initiated. Also, the communities received a copy of Maple's report to OSINERGMIN regarding

the July 2011 spill, though they refute the information in that report. While these are positive developments, none of them concretely address the health, environmental, labor and human rights issues raised in the communities' complaint.

Third, we therefore summarize once more the communities' reasons for withdrawing from the dialogue process and request that the last agreement of the CAO Ombudsman dialogue process be finalized and distributed. The communities decided to discontinue the dialogue because of Maple's manifest bad faith by failing to take appropriate measures to address urgent health and environmental problems resulting from the July 2011 oil spill, and because Maple failed to commit to covering the costs of studies to measure the degree of environmental remediation and health services needed to address problems they have caused in these two communities. The communities believe these two positions by Maple are indicative of the company's failure to acknowledge their role in the harm they have caused, and are continuing to cause, and believe dialogue around the whole range of larger issues cannot be productive as a result.

Most recently, the CAO encouraged the communities to return to the dialogue table. Because the circumstances described above have not changed, the communities have decided that returning to the dialogue table at this point is not in their interest.

Fourth, the communities express concerns with the CAO process that have reinforced their decision not to return to the dialogue process. The communities entered the dialogue process wary of the rules of secrecy surrounding the process, and also wary of the rules that prohibited participation by the communities' advisors at the dialogue table. However, they were willing to compromise and agree to these restrictions with the hope that the company would negotiate in good faith and promptly address the urgent concerns raised in the communities' complaint. In light of Maple's failure to take responsibility and move toward meaningful solutions, these restrictions on transparency and participation now make continuing with the CAO dialogue process under these rules impossible.

During the CAO dialogue process, as it became clear that Maple was not negotiating in good faith, the communities felt that the restrictions on transparency and participation under the circumstances were undermining their rights, making the process coercive and unfair. In particular, the rules established for the dispute-resolution process did not respect the rights of the communities to determine who would speak for them at the dialogue table. The communities requested the participation of their indigenous federation leadership and of Accountability Counsel to assist them with expressing their concerns and ideas in a forum that was foreign to them and because of their experience with Maple's aggressive and dismissive approach. Maple strongly disagreed with the communities' desire to have their representatives participate at the dialogue table, but the CAO encouraged the parties to move forward without community representation nonetheless. While we acknowledge that many issues must be on the table for compromise when initially setting the rules of negotiation through a voluntary dispute-resolution process, we encourage the CAO in the future to respect the right of communities to select who will represent and support them.

While it is clear that there are often important reasons to maintain confidentiality in a dialogue process, the communities believe that in this case, the effect was to alienate the

communities from being able to share their experiences and achievements with other indigenous communities in the Peruvian Amazon facing the same challenges. The communities of Canaán and Nuevo Sucre place a high intrinsic value on the principle of transparency, and lack of transparency has been a consistent thread their complaints, making this rule a particular challenge.¹

Fifth, we note that the Government of Peru sent a multi-sectoral technical commission to Canaán and Nuevo Sucre this week to discuss the communities' concerns about Maple Energy. During that visit, representatives from the Ministry of Environment and the National Water Authority conducted site visits to the various streams, pipelines, and oil wells. They found vegetation along the Mashiria Creek "impregnated" with crude, clearly indicating a failure to adequately remediate the affected areas nearly two months after the most recent spill. In addition, the government experts noted poor maintenance at Maple's Maquia oil field, noting probable contamination from crude residue and waste products that drain into the community's creeks with every rain. The representative of the delegation from PeruPetrol also noted that the July 2011 spill could have been more than the two barrels of crude that Maple reported to the Peruvian Government.

Also as part of the commission, a doctor from the Peruvian National Institute of Health reviewed available health records in each community, and noted high levels of digestive, skin and vision problems immediately following the July 2011 spill in Nuevo Sucre. Other members of the commission confirmed Maple's non-compliance with the community relations plans and occupational health and safety standards through discussion with community members, as well as through audiovisual evidence collected during the July 2011 oil spill.

The Peruvian Government commission agreed to conduct further evaluation of the environmental and health impacts of Maple's operations. These observations are recorded in an official, signed agreement between community and government representatives, including commitments to conduct further studies of Maple's impacts on the communities. We are attaching the agreements from the September 8, 2011 meeting of the multi-sectoral technical commission and representatives of Canaán and Nuevo Sucre.²

Finally, we note the letter we received on September 1, 2011 from IFC Vice President Thierry Tanoh claiming that after each spill (of which the number of spills and dates listed are incorrect), "Maple Energy responded in accordance with its Oil Spill Response Plan, and the streams or contaminated soil were cleaned up."³ We look forward to a CAO compliance audit into IFC's role to correct the IFC's clearly false record.

¹ The primary way that indigenous Amazonian communities communicate with one another is through radio broadcasts in their indigenous language, which were prohibited under the rules of the dialogue table.

² Attached please find agreements between the communities and the Government of Peru reached on August 16, 2011 in Pucallpa and September 8, 2011 in Canaán de Cachiyacu (where the participating offices of government were the Ministry of the Environment, the Ministry of Energy and Mines, the National Institute of Health, the National Water Authority, and PetroPeru).

³ While this is a patently false statement on many levels, we also note that neither Maple nor the IFC have ever disclosed an Oil Spill Response Plan to the communities, despite our requests for disclosure of Emergency Response

We thank you again for your time and effort and look forward to following up with you about the final meeting minutes from the last dialogue session and the next steps that we may expect in the CAO compliance audit process.

Sincerely,
(please see Spanish-language version for signatures)

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cc: Henrik Linders, CAO Compliance

Plans per IFC policy. We have no reason to believe that such a plan exists. Even if such a Plan did exist, it is ineffective, as Maple's continuing practice after significant spills has been to intentionally expose community members to crude oil without warnings, information, equipment to use for the clean up, or medical treatment. Maple has also failed to adequately remediate contamination that remains today. See attached Agreement with the Government of Peru dated September 8, 2011.