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PRIVILEGED & CONFIDENTIAL: **ATTORNEY-CLIENT PRIVILEGED INFORMATION**

October 29, 2004

Hon. Board of Commissioners
Brownsville Navigation & Canal District
1000 Foust Road
Brownsville, Texas 78520

VIA HAND DELIVERY

THIS REPORT IS A CONFIDENTIAL ATTORNEY-CLIENT PRIVILEGED DOCUMENT PREPARED FOR THE EXCLUSIVE USE OF THE BROWNSVILLE NAVIGATION & CANAL DISTRICT BOARD OF COMMISSIONERS AND FOR ITS RELATED USE, AS NECESSARY, BY SPECIAL COUNSEL CHARLES WILLETTE, JR. NEITHER IT NOR THE CONTENT OF IT SHALL BE RELEASED TO THIRD PARTIES WITHOUT THE EXPRESS WRITTEN CONSENT OF THE BROWNSVILLE NAVIGATION & CANAL DISTRICT THROUGH A VOTE OF ITS BOARD OF COMMISSIONERS.

RE: *Final Report regarding Status, in Mexico, of Brownsville Navigation & Canal District's Proposed Port Bridge Project; Our File No. CV2595.01*

Dear Board Members:

The undersigned law firm was retained on June 16, 2004, by the Brownsville Navigation and Canal District (also known as the Port of Brownsville, and hereinafter referred to as the "BND") in order to provide a report on the status, in

Mexico, of the BND's Port Bridge Project (hereinafter "BND Project") which began in 1991, including the work done to date and the position of the various Mexican governmental entities involved in the decision-making process.

In order to correctly understand the scope and dimension of our firm's investigation, it is important to acknowledge the political and social environments that the Republic of Mexico has gone through in the past thirteen (13) years at all levels of government: municipal, state and federal. As there is no re-election to government positions, there have been five (5) mayors in Matamoros; three (3) Governors for the State of Tamaulipas; and three (3) Presidents of Mexico, including the historic election of the PAN's (National Action Party) Vicente Fox Quesada in 2000, ending seventy-one (71) years of the PRI's (Revolutionary Institutional Party) control of Mexico's presidency. Based the change of administrations resulting from said elections, these environments have had an inevitable impact on the BND Project.

This BND Project, which involves the consideration, approval and construction of an international bridge between the cities of Matamoros, Tamaulipas, Mexico and Brownsville, Texas, U.S.A. (to be located at the Port of Brownsville), has been from its inception, one that has generated favorable and negative reactions throughout the communities of both countries. All international projects of this nature may create benefits for some while not for others. The additional factor involved with the BND Project, the use of public monies, has served to fuel the controversial fire.

In light of the foregoing, during the course of this firm's investigation, which has

involved the review of thousands of pages worth of documents detailing the history behind the BND's pursuit of this project before the Mexican authorities, and various interviews with said authorities and fact witnesses, we began with the first Mexican "promoter" for the BND Project surfacing in 1992 and ending with the most recent and perhaps the most controversial, Dannenbaum Engineering Corporation (hereinafter "DEC").

I. 1991 through 1996.

Historical Background.

Despite its failures, President Carlos Salinas de Gortari's administration (1988-1994) appeared to be successful, and was so recognized by international financial institutions worldwide and the international press. During the middle of 1994, Mexico became a part of "the rich county club", the Organization for Economic Cooperation and Development (OCDE), putting the finishing touch on President Salinas' plan he publicly expressed in 1990, when he said "We want Mexico to be part of the first world, not the third."

Construction work today in Mexico cannot be compared to that which took place during the Salinas administration. The construction sector was flourishing then as a result of large projects. There was a thirty percent (30%) increase in public works during said administration, and there was plenty of work for all, as remembered by a director from Ingenieros Civiles Asociados, S.A. ("ICA"), one of the largest construction companies in Mexico. Records show that during that six-year span, many buildings, hospitals, schools, highways, hydroelectric dams,

railroads, ports, tollways and bridges were built, which degree of construction had not been previously seen in many years. In 1989 the Federal Government awarded mexican construction conglomerate GUTSA Construcciones, S.A. de C.V., a concession to construct, operate and utilize the mexican portion of the Zaragoza-Ysleta International Bridge between the cities of El Paso, Texas and Cd. Juarez, Mexico.¹

During the end of the Salinas and beginning of the Ernesto Zedillo Ponce de Leon administration, the continuation of Mexico's infrastructure activity was considered a pillar for the country's development, and all companies involved in this area were highly active and very profitable, mainly involved in public works, which accounted for sixty percent (60%) of all work.

During the same period, the State of Tamaulipas elected a new governor in 1993, Mr. Manuel Cavazos Lerma, who replaced Governor Americo Villarreal Guerra. Governor Cavazos' administration had its own controversial projects, i.e., Intercoastal Canal, which would have created a waterway from the southern part of Matamoros, through the Laguna Madre, and on to the State of Veracruz, hoping to attract business from the the U.S. inland waterways. At one point, it is believed Governor Cavazos' administration identified the BND Project and the Intercoastal Canal as one and the same.

In the City of Matamoros, the municipal elections were nullified and a body called the Administration Board was installed to run the city from 1990-1992, headed by Mr. Fernando Montemayor. Mr. Montemayor would then be replaced by the following Mayors for the corresponding time periods: Tomas Yarrington

¹ See Exhibit I.1

Ruvalcaba (1993-1995); Ramon Antonio Sampayo Ortiz (1996-1998); Homar Zamorano Ayala (1999-2001); and Mario Zolezzi Garcia (2002-2004).

Document Review

Our document review revealed that dating back to 1991, BND Port Director took part in Binational² and Border Governors' meetings while promoting the BND Project, in order to present said project to the Mexican authorities, while making important contacts with the Departments of Communications and Transportation (SCT) and Foreign Relations (SRE).

A. Ingenieros Civiles Asociados, S.A. (Grupo ICA).

The first official Mexican promoter for the BND Project was the Mexican conglomerate known as Ingenieros Civiles Asociados, S.A. (hereinafter "ICA"), which held various negotiation meetings with then Port Director and CEO James Kruse, during the first half of 1992. Records further show that in a regular meeting of the BND Board of Commissioners on April 22, 1992, the Port Director/CEO Kruse was authorized to negotiate and execute on behalf of the BND a contract with Grupo ICA to carry out various studies in connection with the Mexican portion of the BND Project.³ The execution of a written contract for services with said company took place on or about June 17, 1992, entered into by and between James Kruse as BND Port Director/CEO and Ing. Andres Conesa Ruiz, Executive

² See Exhibit I.2

³ See Exhibit I.A.1

Vice-President for Grupo ICA.⁴

In this services agreement entered into with Grupo ICA, said Mexican company assumed the obligation to carry out, as stated in the third clause of the referenced document which was for a four (4) month period, the studies, analyses, and work to determine the technical feasibility in connection with the construction of the International Bridge between Matamoros and Brownsville and the highway portion to said bridge within the Mexican territory. Accordingly, the BND was responsible for covering ICA's engineering and travel expenses, which are found in Exhibit 1 to said agreement⁵, in the sum of \$21,500.00 U.S. Dollars (Twenty-One Thousand Five Hundred and No/100 USD), of which only the sum of \$8,600.00 U.S. Dollars (Eight Thousand Six Hundred and No/100 USD) were submitted as advance payment.

Following the execution of the services agreement between the BND and ICA, there began an exchange of correspondence between Port Director/CEO Kruse and various ICA officers, wherein he informs them regarding the various contacts the BND has made with federal officials in Mexico.⁶ This last document is important, as Mr. Kruse mentions that with regard to Ambassador Luis Wybo Alfaro (Mexican Ambassador to China during President Zedillo's Administration), who was then the Director of Border Affairs at SRE, he had made certain comments which could be considered negative. Kruse further noted that Ambassador Wybo's had commented that without a Mexican promoter, the BND Project could not be officially recognized by the Mexican government, and that

⁴ See Exhibit I.A.2

⁵ See Exhibit I.A.3

there existed certain concern regarding the possible competition with the Port of Altamira.

There is evidence to show that during this period, at least with SRE, the BND Project was not a priority item for the Mexican federal government. As pointed out in a correspondence dated August 5, 1992⁷ from Mr. Kruse to an ICA officer, U.S. federal officials had mentioned during a binational meeting in Nogales, Arizona held in July of that same year, that Ambassador Wybo had stated the Mexican government “has no interest” in the BND Project, and as a result the U.S. Border Bridges and Crossings Committee deemed it necessary to suspend the BND Presidential Permit application until the position of the Mexican government changed. (**Note:** *The veracity of said document is unknown, as such was not found amongst the vast number of documents reviewed by this firm.*) Within that same correspondence, Mr. Kruse believed the situation would be resolved within months, because according to the former Port Director and CEO, the BND Project had “received the approval of all departments involved, with the exception of the U.S. Fish & Wildlife Services.” Based on his belief, Mr. Kruse then pleaded with ICA to continue carrying out the technical and financial feasibility analyses in connection with the BND Project.

Mr. Kruse further believed that Mexico’s possible opposition to the BND Project could be based primarily on three things:

1. the erroneous perception on the part of certain Mexican officials that the Port of Brownsville (POB) would directly compete with the

⁶ See Exhibit I.A.4

⁷ See Exhibit I.A.5

Port of Altamira, and that the BND Project would harm that port's development;

2. the lack of a Mexican promoter for the BND Project to promote project in Mexico;
3. resentment on the part of the Mexican Border Bridges and Crossings Committee, when it noticed the U.S. Government had not provided the necessary funding for various projects that existed prior to the BND Project, which the Mexican Government deemed approved by both countries. Those Mexican officials posed the question: "How can we possibly Statement our support for this (BND) project when the U.S. Government does not carry out its obligations in connection with those projects previously approved by both countries?" It must be noted that the U.S. Government denies that such projects were approved by both countries, but instead stated that they were simply placed on the bilateral agenda for the committee's consideration.

In said letter, the former Port Director noted the solutions offered by the BND in response to the above items:

1. "With regard to the Port of Altamira issues, we have distributed a report that reveals that not only do both ports not compete for the same clientele, but instead complement each other, as they both take full advantage of two (2) very different markets: The Port of

Altamira looks for the container business, while the POB focuses on grain cargo and fractionalized cargo.” It was the Port of Brownsville understanding that Puertos Mexicanos (mexican port authorities at SCT) officials were not convinced with this argument.

2. With regards to our mexican counterpart, is possible that can be resolved within the next three months if the analysis... satisfies ICA’s board of directors requirements.
3. and last, the question of the official approval, or lack of it, has nothing to do with older projects that lack the merits of the Port/Matamoros project, specially when you bring up the issue that this one won’t require federal funds to make it happen.

ICA as it has been stated, was hired by the BND in 1992 to carry out technical and financial feasibility studies regarding the BND Project, which was in the process of obtaining a U.S. Presidential Permit.

The contract signed between ICA and the Port of Brownsville on June of 1992, initially was scheduled to end in October of that same year, but ICA was unable to complete its work within that timeframe, as said studies were completed until July 1993. The studies conducted by ICA revealed that said project was not economically feasible.⁸

It is important to note that during the contract period with ICA, in September 1992, Mr. Tomas Reynoso Ennis (apparently, then an ICA employee) is

designated as Project Manager. In October of that same year Mr. Reynoso, on behalf of ICA, informed Mr. Kruse that ICA⁹ had reviewed the BND Project and requested it be named the project's promoter before the Mexican authorities and, if possible, the U.S. side as well. There exists information, however, that reflects that as of the middle of November 1992, ICA had knowledge that the BND Project was not economically viable and, that at least some ICA officers were unaware of Mr. Reynoso's correspondence to Mr. Kruse on behalf of ICA. Notwithstanding, Mr. Kruse obtained verification from Ing. Adres Conesa, ICA's Executive Vice-President, that Mr. Reynoso was duly authorized to take such actions.

Since ICA had become the BND Project Mexican sponsor, and Mr. Reynoso, was the Project Manager, Mr. Reynoso and some port officials attended the Binational Border Bridges and Crossings Meeting in Mexicali, Baja California, Mexico during February 22 through 24, 1993. It is important to note that during a public hearing the BND Project received public support from then Matamoros Mayor Tomas Yarrington Ruvalcaba, currently Governor for the State of Tamaulipas.

Mr. Tomas Reynoso, on behalf of ICA, carried out various activities before the State Government of Tamaulipas and the Mexican federal government, in attempting to obtain support for the BND Project which was needed to continue efforts in the U.S. to obtain the Presidential Permit. According to BND records reviewed by our firm, Mr. Reynoso's relationship with ICA was somewhat dubious, as during the month of November 1992, Mr. Reynoso informed Mr. Kruse that ICA

⁸ See Exhibit I.A.6

⁹ See Exhibit I.A.7

would absorb the costs related to the project as it was not completed on time. In November 1993, however, ICA was requesting from the BND, payment in full of the pending balance owed¹⁰. There is no information contained within BND records reviewed by our firm to indicate whether or not the balance of \$12,900.00 (Twelve Thousand Nine Hundred and No/100 Dollars) was paid to ICA.

B. Tomas Reynoso Ennis.

In March of 1993, Mr. Reynoso unexpectedly offered his services directly to the BND to represent its interests in Mexico. As a result, in May of 1993, the BND entered into a services agreement with Mr. Reynoso, personally, for a six-month period¹¹. The agreement had as its objective for Mr. Reynoso to carry out the necessary activities to secure Mexico's approval to continue with the BND Project, through notification by Mexico's SRE to the U.S. Department of State.

We did not find information as to when Mr. Reynoso was no longer associated with ICA, as his contract covered the same duties which ICA was supposed to be doing for the BND. Since October 1992, ICA had stated its desire to become the BND's Project promoter, which duties would precisely include carrying out activities before the Mexican government. In 1994, the BND received another correspondence from Mr. Reynoso, wherein he offered to continue his promotional services before the Mexican government, as contained in the original services agreement.

During a February 1994 meeting in Mexico City, Mr. Reynoso presented a letter

¹⁰ See Exhibit I.A.8

¹¹ See Exhibit I.B.1

to a Mr. Vargas from SRE, wherein another Mexican company named Grupo Rio San Juan would assume the responsibility of Mexican promoter for the BND Project¹². No detailed information was obtained from our review regarding the specific tasks undertaken by Grupo Rio San Juan, except for a September 1994 presentation. In that presentation, Grupo Rio San Juan states that it carried out at its own risk and expense, technical and financial feasibility studies in connection with the BND Project, and had employed specialized firms (citing a URS company in New York) to carry out vehicular destination, origin and maximum traffic flow capability studies on both sides of the U.S.-Mexico border. In that same presentation, Grupo Rio San Juan further states that it has resolved the financial portion of the project through some personal resources and the participation of an international bank through a line of credit previously offered in writing. No other participation is noted within our BND Project document review. It is important to note, however, that in a newspaper article dated April 10, 1994, Grupo Rio San Juan was involved in a corruption scandal involving the Texas Transportation Commission, resulting in the resignation of the Commission's Chairman, Henry Muñoz¹³.

C. Donaciano (Chano) Tamez Fuentes.

The first contact registered between the BND and Mr. Tamez dates back to August of 1993, when he served as a director for Grupo Rio San Juan. Following the termination of Mr. Reynoso's services agreement, which objectives were not

12 See Exhibit I.B.2

13 See Exhibit I.B.3

met, the BND received an offer from Mr. Tamez to act as its consultant in Mexico. Mr. Tamez offered to attempt to obtain support from the Mexican government for the BND Project, for which services he was to receive, as was Mr. Reynoso before him, the monthly sum of \$10,000.00 (Ten Thousand and No/100 Dollars). Unlike Mr. Reynoso's contract, Mr. Tamez was to be paid for his services which were to result in the issuance of the U.S. Presidential Permit, which had been delayed until the BND Project received support from the Mexican government. Once said permit was issued, Mr. Tamez was apparently owed by the BND the total sum of \$240,000.00 (Two Hundred Forty Thousand and No/100 Dollars). This payment created much controversy, as it was not made directly to Mr. Tamez, but instead wired to a Malpaso Corporation to an account with Barclays Bank, PLC Ltd, Bay, Street Branch, in Nassau, Bahamas. No records reviewed by this firm revealed the connection between Mr. Tamez and Malpaso Corporation, or said company's involvement with Mr. Tamez's work in Mexico or the U.S.

This period is of particular importance in Mexico, as it marked the end of President Salinas de Gortari's administration, and the coming of a major financial crisis no one envisioned at the time, mostly affecting the banks and all infrastructure projects financed by the private sector.

II.-1995 through 2004

Historical Background

During this period, Mexico experienced significant economic, political and social changes, as the presidential election held in 1994 was followed by events never

before envisioned before the end of the twentieth century: an armed uprising by Indians, led by left-wing intellectuals, receiving perhaps the most international media coverage since the Cuban revolution; the assassination of the PRI party's presidential candidate, the PRI party's National Secretary General, and a Catholic Church Cardinal a year earlier; and, possibly that country's worst financial crisis. Less than three (3) weeks had passed after President Zedillo had taken office, when all the hopes and plans quickly disappeared as if an optical illusion. As a result of the continued deterioration of the Bank of Mexico's international reserves, the federal government announced a Peso devaluation of fifteen percent (15%).

As stated above, the economic crisis stalled Mexico's economy and the peso plummeted, the financial system pushed to the brink of collapse. Interest rates were at an all-time high, which made it impossible for corporations and the average citizen to pay on their loans, mortgages, credit cards., etc. This had a negative impact on most of the concessions awarded to build toll roads and bridges during this period. The Federal Government's Fondo Bancario de Proteccion al Ahorro (FOBAPROA) bailed numerous construction companies and bankers, while acquiring their debts and buying from banks other unpaid loans, which system was abused by most of the bankers who sold their personal loans to those banks. This resulted in people having a very bad perception of the government, specially the ruling PRI party, which resulted in the historic election of Vicente Fox Quesada (the PAN Candidate) as Mexico's President, breaking seventy-one (71) years of government rule under a PRI party president.

During this period, the State of Tamaulipas had three (3) governors, former

governors Americo Villarreal Guerra (1987-1992); Manuel Cavazos Lerma (1993-1998) and current Governor Tomas Yarrington Ruvalcaba (1999-2004).

At the local level, than Mayor Yarrington was replaced as Mayor of Matamoros in 1996 by Ramon Antonio Sampayo Ortiz, who that same year sent a letter of support¹⁴ of the BND Project on behalf of the City of Matamoros, and is currently running again for Mayor. As stated in further detail below, it is believed that as Mayor, Mr. Sampayo would like to continue his commitment of support to the BND Project. Then in 1999, Mr. Sampayo was replaced by Mr. Homar Zamorano, who in turn was succeeded by current Mayor Mario Zolezzi Garcia in 2002.

Document Review.

During the review of documents pertaining to this BND Project phase, probably the most controversial one, due to the amount of studies made and the obtained results in light of the overall status of the BND Project.

A. Prospectiva Economica y Social, S.A. (“PES”).

PES was initially hired by Brown & Root, which at the time was the engineering firm handling the U.S. side of the BND Project, to carry out the promotional services and conduct the studies and work in connection with the Mexican portion of said project.

In 1995, PES attended various workshop and binational meetings and those with federal and state government officials in Mexico. The purpose for these meetings was to determine the nature and purpose of the various studies that

would comprise the Mexican portion of this proposed international project. Accordingly, it was determined that in order to afford a greater eye for detail, a plan known as the “executive plan” in Mexico, would need to be created. This executive plan would include all environmental, architectural, engineering, land use, heavy truck flow highway and railway studies, as well as the financial evaluations regarding the BND Project.

Based on the above, PES contacted regional institutions with vast environmental experience, such as the Autonomous University in Tamaulipas (UAT) to carry out the environmental impact studies as required under Mexico’s Environmental Protection Law (*Ley Federal de Proteccion al Medio Ambiente*) and applicable state laws. The BND Board of Commissioners offered the assistance of those environmental experts who prepared all required environmental studies on the U.S. side, if necessary. During PES’s involvement with the BND Project, the Mexican government allowed work to commence for the corresponding portion in Mexico, resulting in the preparation of the project concept studies and cost estimates to allow for the consideration of its socio-economic, financial and environmental feasibility. This further led to the review and consideration of the bridge design studies for the U.S. portion, the architectural drawings of and highway access to the port and the proposed international bridge, and intended connection with existing roads.

On September 18, 1995, PES concluded its work with regard to the concept designs for the main areas of the BND Project, which were presented at the Binational Meeting held in South Padre Island, Texas. During said meeting, PES

¹⁴ See Exhibit II.1

reiterated the fact that in order to conduct an evaluation of the technical and financial feasibility of a project to be concessioned, such would require the preparation of a master project plan for each and every work and study in detail: environmental, as required by law; topographical; topo hydrological and land use; and other property value studies which would ensure the availability of land as the project required to erect the necessary buildings and provide right of way access and for future development.

The above information, once obtained, would be presented in a detailed memorandum outlining the proposed financial mechanisms best suited for carrying out the desired construction and allow for a proper evaluation of the economic results associated with the operation of the border bridge and port. The referenced memorandum would serve as the basis for the document through which the request would be made to the Mexican federal government for the issuance of a concession to the Tamaulipas State Government, as well as providing the bases for the bidding process, while relying on the detailed studies to reveal a solid theory for a return on the investment.

Following the binational meeting, where two PES representatives were present, a meeting with the State of Tamaulipas was discussed, to review the progress made and to outline a new course of action to continue with the BND Project. The meeting agenda proposed by PES and accepted by Tamaulipas Undersecretary for Commerce and Infrastructure was as follows: (1) Presentation and discussion of criteria used to define the border port site and extension thereof; (2) Presentation and discussion regarding the technical criteria adopted to

prepare the preliminary highway access route, including the conceptual design of said route; (3) Presentation and discussion of the conceptual design of the intersection of the access route and Avenida Lauro Villar in Matamoros, Tamaulipas, Mexico; (4) Approval of border port installation site, which was to allow for the definition of the preliminary construction design of the port buildings, the transportation area components, landscaping and general services, and the provision of services such as water, energy, communications, wastewater treatment, sewage and maintenance works.

The referenced meeting took place on October 4, 1996 in Ciudad Victoria, Tamaulipas, where various Tamaulipas state officials attended and PES representatives were accompanied by its sub-contractors from Ing. Felix Acosta y Consultores Asociados, S.C. and Arquitectura y Urbanismo, S.A. de C.V. The following areas were addressed: (1) Comments were made in connection with engineering, architectural and environmental issues regarding the proposed site for port's customs facility, which was selected. The Tamaulipas state representatives pointed out the need to obtain feedback regarding the project with two federal governmental agencies in Mexico: The International Boundaries and Water Commission (*Comision Internacional de Limites y Aguas* or "CILA") and the Comptroller and Administrative Development (*Secretaria de Contraloria y Desarrollo Administrativo* or "SECODAM"), which process still appears to be ongoing; (2) PES representatives pointed out the need for progress in obtaining the property information, with regard to surface areas and property owners, to allow for a possible letter of intent to purchase or transfer property rights as soon

as possible. Based on the foregoing presentation and discussion of items, the following agreements were reached: (A) The Tamaulipas State representatives agreed to request the necessary information from CILA, including flooding and land elevation information, and estimated a response time of approximately fifteen (15) days; and (B) The Tamaulipas State representatives agreed to have, within a fifteen (15) day period, the landowner and surface area data for the proposed right of way and port's customs facility. This information is approximately fifty (50%) percent complete.

The Ciudad Victoria meeting allowed for a better definition for the specific reference terms to be used in connection the necessary studies. As a result, it became necessary for PES representatives to meet with the Director for Urban Operations-North and South Zones, of Mexico's Social Development Department (*Secretaria de Desarrollo Social* or "SEDESOL") to obtain their cooperation by providing a group of urban planning specialists to advise the sub-contractor in charge of devising a Master Plan for the proposed port and highway access to Avenida Lauro Villar. A meeting was also held with the General Director for Public Works for SECODAM, in connection with that agency's review of the architectural proposal for the customs facility as requested by the Tamaulipas State government. Said SECODAM official informed that said agency was only involved with the legal procedure in connection with the public works bid process to make sure it is carried out in strict adherence to applicable law.

In addition to promotional activities at the Binational Meeting in September if 1995, PES also attended said meeting in March of 1996 in Monterrey, Nuevo

Leon, Mexico, during which a BND Project presentation was made, promotional brochures were handed out and a video prepared by PES was also distributed to key U.S. and Mexican officials. As a result of the meeting held in Monterrey, documents reveal that important working relationships were established with the Mexican National Environmental Institute as well as SEDESOL, SRE and the Department of Tax and Public Credit (*Secretaria de Hacienda y Credito Publico* or “SHCP”). These relationships would be of great importance in the next phases of the BND Project in order to get the Mexican government to make the project a top priority.

On September 27, 2000, Mexico’s National Environmental Institute (*Instituto Nacional de Ecologia* or “INE”), which forms part of the General Directorate of Ecological Ordinance and Environmental Impact of the Department of Environment, Natural Resources and Fisheries (*Secretaria de Medio Ambiente, Recursos Naturales y Pesca* or “SEMARNAP”), through Official Document No. D.O.O. DGOEIA.-005785¹⁵, **granted the State of Tamaulipas** a conditional authorization for construction of the proposed project “Matamoros-Port of Brownsville International Bridge”, having considered, among other things:

(Translation)

“That pursuant to official documents nos. 310.4-136 and 310.5.-843 dated March 8th and November 12th, 1999, the General Directorate for Urban Development submitted to this General Directorate a land use technical report to be considered for resolution of the project “Matamoros-Port of Brownsville International Bridge”,

¹⁵ See Exhibit I1A.1

noting that the reference project is outside the scope of application of the current Master Plan for Matamoros, as said Master Plan can regulate only the proposed land usage within the population center of Matamoros and the total Municipality.”¹⁶

Based on the foregoing, the authorization was granted, while placing conditions on even the various environmental construction norms and maintenance, more particularly as follows:

(Translation)

“FIRST.- The present resolution regarding Environmental Impact hereby grants the State of Tamaulipas the right to carry out the work and activities for the “Matamoros-Port of Brownsville International Bridge” to cover a surface area of 38-39-00 hectares, to include the construction of:

1.- An international toll bridge across the Rio Bravo (Rio Grande River), in a single structure, for the flow of cargo vehicles between the cities of Matamoros, Tamaulipas (Mexico) and the Port of Brownsville, Texas (U.S.A.). It shall have a designated northbound destination, and is to be situated outside the urban area of the City of Matamoros, Tamaulipas, 23.5 Kilometers to the East of the International Gateway Bridge and 21 Kilometers to the West of Lauro Villar Beach. The bridge structure shall measure 340 meters in length and 18.25 meters in width, and shall have four vehicular lanes measuring 3.65 meters and two pedestrian crossing lanes measuring 1.80 meters.

2.- Border ports to be located 1.3 kilometers Southeast of the Rio Bravo (Rio Grande River) crossing with geographical coordinates of: 25°54’27” North

¹⁶ This is the same agency which, in June 2004, sent a letter to Matamoros’ Mayor Zolezzi, in response to his request for the confirmation of their opinion previously issued in 1988, in connection with their official document 310.4-339 dated March 15, 1988. Said letter states the *east* rail project represents a very high investment and thus is unnecessary for Mexico, concluding that the *west* is a better alternative. See Exhibit I1.A.2

Latitude and 97°21'06" East Longitude.¹⁷

SECOND.- The work and activities related to the “Matamoros-Port of Brownsville International Bridge”, as contemplated in the Environmental Impact Statement, *shall be completed within two (2) years from the day following receipt of the present resolution.* In the event an extension of the referenced time period is required, the State of Tamaulipas must request same in writing to this General Directorate of Ecological Ordinance and Environmental Impact, thirty (30) days prior to the expiration of said period. This request must be submitted with validation from the Federal Environmental Protection Agency in connection with the latest Condition Compliance Report.¹⁸

FOURTH.- The State of Tamaulipas shall provide prior notice to this General Directorate of Ecological Ordinance and Environmental Impact regarding any modification to the project or work mentioned in the Environmental Impact Statement, to afford ample opportunity to determine the proper recourse pursuant to the current environmental legislation, based on Article 28 of the Regulations to the Ecological Equilibrium and Environmental Protection Law as applied to the Environmental Impact Evaluation.¹⁹

TENTH.- This resolution in favor of the Government of the State of Tamaulipas is personal. In case of trying to transfer the rights and obligations contained in this document, the Government of the State of Tamaulipas, shall request this authority, in writing, to determine the proper, and in its case, will decidethe transference pursuant to article 49 of the Regulation to the Ecological Equilibrium and Environmental Protection law as applied to the Environmental Impact Evaluation.²⁰

17 See Exhibit I1.A.1 (pages 2-3)

18 See Exhibit I1.A.1 (page 6)

19 See Exhibit I1.A.1 (page 7)

20 See Exhibit I1A.1 (page 16)

As is evident from the above-highlighted portions of the conditional environmental authorization, said Environmental Impact Statement authorizing commencement of construction of the BND Project, contemplates only the construction of an international bridge for heavy truck usage, while there is no mention of a rail bridge. There is also a list of conditions for the construction of the proposed international bridge, which do not appear to match the specifications listed by the engineering firms employed by the BND to date. Although the referenced environmental impact documents allows for a project modification process, our records review revealed no such notice and/or requested made on behalf of the State of Tamaulipas directly or at the request of BND-employed engineers.

It is important to note that said environmental impact study, which is indispensable for construction on this project, was scheduled to expire following the expiration of two (2) years from the date of notice, unless an extension is requested with thirty (30) days' in advance notice in writing by the State of Tamaulipas. Again, all BND records reviewed by this firm revealed no such application for extension of time filed in connection with this matter. Finally, and perhaps most importantly, the environmental study in question granted the conditional authorization and the environmental rights associated therewith for the construction of the BND Project to the State of Tamaulipas directly. Accordingly, the authorization of the State of Tamaulipas is indispensable, in order to take advantage of the important rights granted to said state government. Based on the

foregoing, it appears that although support from the State of Tamaulipas is necessary, it should also be noted that the referenced conditional authorization has expired and there exists a need for the BND to re-apply for one, in the event the document in question cannot be “revived” by the State of Tamaulipas if it so chooses.

B. Dannenbaum Engineering Corporation (“DEC”).

In April of 2001, the BND chooses to modify its services agreement with the Houston-based company Dannenbaum Engineering Corporation (“DEC”), which currently served as the BND’s engineering firm handling the U.S. portion of the BND Project. In said contract modification, the BND thereby authorized DEC, through Mr. Louis H. Jones, Jr., a principal with the company, to represent the BND in Mexico in connection with the port bridge project. Mr. Jones informed the BND that he would be carrying out said additional duties with members of his organization, among others, Mr. Miguel Nagel Leon.

It is important to note that the first documented contact between the BND and Mr. Nagel is in a set of Technical Meeting Minutes²¹ conducted at DEC offices in Houston, Texas on April 15, 2001. In addition to various DEC and BND representatives in attendance, Messrs. Nagel and Hector Larios Santillan attended on behalf of an entity named “Grupo Respira”. Following this meeting, Messrs. Nagel and Larios, through DEC, became involved with the BND Project and

21 See Exhibit I1.B.1

apparently as part of the DEC group.²² On this same date, Mr. Louis Jones sent a letter to Mr. Flavio Perezgazga from PES, wherein he informed Mr. Perezgazga that DEC had been assigned full responsibility of the project.²³

On April 10, 2001, Port Director Mr. Raul Besteiro, sent a letter²⁴ to Governor Yarrington, requesting a meeting with him in order to personally address some concerns regarding what impact the BND Project would have on:

- Growth of Altamira Port;
- Projected costs of infrastructure needed to support the bridge leading directly to the Port;
- Potential “zone of poverty” along railroad intersection(s).

Based on our review of information pertaining to that initial phase of DEC’s extended scope of services, we believe that Mr. Nagel was working with DEC, given that as requested by Mr. Jones’ facsimile correspondence²⁵ dated September 7, 2001, addressed to Mr. Besteiro requesting a letter which was to be dated April 20, 2001, and that such requested document should state that *“The Port of Brownsville Commissioners have willingly approved authorizing Dannenbaum Engineering Corporation through Mr. Louis Jones and Sr. Miguel Nagel ...to represent the Port of Brownsville on all matters in Mexico”*. The final

22 In said meeting minutes, it is stated that Messrs. Nagel, Larios and Oleg Darushenkov, all in attendance, represented Grupo Respira. A discussion by Mr. Larios includes a presentation and strategy on how to obtain support from the Governor of Tamaulipas (Yarrington). See Exhibit II.B.1 page 1.

23 See Exhibit II.B.2

24 See Exhibit II.B.3

25 See Exhibit II.B.4

draft of such letter²⁶ stated indeed that the Port of Brownsville Commissioners had granted DEC, through Mr. Jones, the right to represent the Port of Brownsville on all matters in Mexico pertaining to the BND Project. It further stated that Mr. Jones was to carry out this project with *members of his organization*, one being Mr. Miguel Nagel.

The BND Project received the official support of the Government of the State of Tamaulipas during the month of September 2001, as Gov. Yarrington issued two (2) letters dated on the 20th and 30th days of said month and year, through Official Documents 21929²⁷ and 21930²⁸, respectively. Gov. Yarrington addressed said correspondence to the SRE Secretary and its Director for Border Affairs, in support of the BND Project, explaining in detail, the various advantages the referenced project would bring to the region.

In a letter dated May 20, 2002²⁹, Mr. Jones informed Mr. Enrique Escorza, SRE's current Director of Border Affairs, that as he was aware, "the Port of Brownsville has authorized Dannenbaum Engineering Corporation (DEC) to represent the Port of Brownsville in Mexico... Also, the Port recognized that DEC has authorized Lic. Miguel Nagel and Ing. Hector Larios to represent the Port's Projects in Mexico." The same 2002 letter also recognized that the Port of Brownsville **had completed all the studies in Mexico** for the BND Project, and that such studies were ready for submission for approval by the appropriate Mexican agencies.

26 See Exhibit II.B.5

27 See Exhibit II.B.6

28 See Exhibit II.B.7

29 See Exhibit II.B.8

On June 7, 2002, SRE did submit a diplomatic note³⁰ to the U.S. Department of State, in which the Mexican government acknowledges the BND Project, and makes reference to some studies that are pending in connection with the executive project.

Following the issuance of said diplomatic note, on September 5th and 10th, 2002, through official documents DAN-02231³¹, DAN-02268³², DAN-02269³³, and DAN-02270³⁴, SRE's Department of Border Affairs presented the completed studies to various Mexican agencies in order to get their approval in connection with the BND Project. In response to one of the studies submitted before it, Mexico's CILA (comparable to the International Boundaries and Water Commission), through official document number LAE01730/02³⁵, informed then SRE Director for North American Affairs, and concluded that the studies did comply with the established requirements. Accordingly, Mexico's CILA concluded that the next step was for the Mexican promoter to create a conceptual project and obtain the consent and approval of SCT. SRE then informed Mr. Jones and DEC, through official document DAN-02785³⁶ dated November 4, 2002, regarding the referenced CILA correspondence and progress made on the project to date.

A second diplomatic note³⁷ was issued by the Mexican government to the U.S. Department of State dated November 19, 2003. This particular diplomatic note stated that, as agreed to by both governments at the October 30, 2003

30 See Exhibit II.B.9
31 See Exhibit II.B.10
32 See Exhibit II.B.11
33 See Exhibit II.B.12
34 See Exhibit II.B.13
35 See Exhibit II.B.14
36 See Exhibit II.B.15

meeting in Washington, D.C., the technical file needed to be completed, and that all pending studies must be completed before the end of 2004. The reason stated in said diplomatic note was that the plan is to commence construction in 2005, and the bridge operations sometime in 2006.

During this time, several meetings were apparently held between Messrs. Jones, Nagel, Larios, as well as BND and State of Tamaulipas officials, including a meeting with the office of the Governor of Tamaulipas. At the federal level of government, multiple meetings were held with officials from various entities, including a meeting in the President of Mexico at the official residence, Los Pinos.

37 See Exhibit II.B.16

III.- Obtained Results By Mexican Promoters And/Or Consultants.

As a result of the activities conducted by the different promoters, the BND Project has achieved the following:

1. Presidential Permit awarded by the Government of the United States of America in favor of the BND Project. (1997);
2. Authorization from the National Environmental Institute (INE) to the Tamaulipas State Government, regarding related environmental matters and commencement of construction of the proposed international bridge, pursuant to certain specifications described therein, and with an expiration date following two (2) years from the date of notice. (2000);
3. Letters of Support from the State of Tamaulipas in favor of the BND Project. (2001);
4. First positive Diplomatic Note from Mexico's SRE on behalf of Mexican government. (2002);
5. Approval of CILA studies. (2002);
6. Second positive Diplomatic Note from Mexico's SRE on behalf of Mexican government. (2003);
7. Letter from SRE to Grupo Respira regarding completion of preliminary review process by Interagency Commission, and proceeding to SCT concession phase³⁸. (2004).

IV.- Overview of International Bridge Building Process in Mexico.

38 See Exhibit II.B.17

It is important to note that the process for obtaining the required authorization to construct international bridges and crossings in Mexico is different than the process followed in the U.S. In Mexico, there exists a **Comision Intersecretarial sobre Cruces y Servicios Fronterizos or “CICSF”** (Interagency Commission on Border Crossings and Services), which coordinates the preliminary approval process regarding all international bridge projects in Mexico. This Commission was created in 1995, to coordinate the city, state and federal agencies which, under Mexican law, have jurisdiction or otherwise are involved in the negotiation, construction, operation and maintenance of border ports and the services provided by said ports. The Commission is comprised of the following Departments: *Secretaría de Relaciones Exteriores* or “SRE” (Department of Foreign Relations); *Comisión Internacional de Límites y Aguas, Sección Mexicana* or “CILA” (International Boundaries and Water Commission, Mexican Section); *Secretaría de la Defensa Nacional* or “SEDENA” (National Department of Defense); *Secretaría de Gobernación* or “SEGOB” (Department of the Interior); *Secretaría de Seguridad Pública* or “SSP” (Department of Public Safety); *Secretaría de Comunicaciones y Transportes* or “SCT” (Department of Communications and Transportation); *Comisión de Avalúos de Bienes Nacionales* or “CABIN” (National Assets Appraisal Commission); *Secretaría de Agricultura, Ganadería, Desarrollo Rural, Pesca y Alimentación* or “SAGARPA” (Department of Agriculture, Livestock, Rural Development, Fishing and Food); *Secretaría de Desarrollo Social* or “SEDESOL” (Department of Social Development); *Secretaría*

de Turismo or “SECTUR” (Department of Tourism). Mexico’s *Secretaría de Relaciones Exteriores* acts as the Group’s Coordinator.

That same year, the Interagency Commission adopted a *Guía para la Presentación y Evaluación de Propuestas sobre Puertos Fronterizos* (Guide for the Presentation and Evaluation of Border Port Proposals), which seeks to guide the project promoters regarding the requirements to be fulfilled in preparing their project proposals in order to obtain the necessary approval. As part of the project evaluation process, the Interagency Commission holds regular meetings depending on the need for decisions to be made on pending projects. The Guide establishes seven (7) phases that lead to the concession for the construction of a project, which include the Application Submission; Project Analysis by Committee; Bonds/Guarantees Requirements; Binational Consultation; Review of Preliminary Version of proposed Border Port Project; Executive Project; and Construction.

Upon completion of the preliminary interagency review process and obtaining the go-ahead from the Commission, the next step is to request Mexico’s *Secretaria de Comunicaciones y Transporte* or “SCT” (Department of Communications and Transportation) to call for the concession which would ultimately lead to the final approval, concession award and construction of the proposed international border crossing.

V. Current Perspective regarding BND Project.

A.- *Dannenbaum Engineering Corporation (“DEC”).*

In its June 2004 report to the BND, DEC stated the BND Project’s status in Mexico to be as follows (*emphasis added*):

“In México, this project *has all of the Mexican government approvals/diplomatic notes* for Phase I required to go to construction. The final concession and diplomatic note allowing construction to begin on Phase I should be completed by December, 2004. Final construction plans for Phase I - Rail only will be completed by December, 2004. The project has support from the Governor of Tamaulipas, México; *TFM, the Mexican railroad*; and the *President's Office in México*. *All of the appropriate Mexican federal agencies have also approved this project.* Both the U.S. and Mexican Federal State Departments have agreed to a time line for construction to begin by end of 2004 (first of 2005) and operation by the end of 2006. *This project has advanced to where the start of construction in January 2005 is very feasible.* This is the *only rail project in the area that is ready for construction, funded and will not increase the rail tariff.* This project is the only rail project in the Matamoras/Brownsville area that can result in increasing the competition for rail crossings, resulting in a reduction in rail tariffs.”

Based on our document review and witness interviews (including Grupo Respira representatives) conducted to date, and the fact that we are now at the end of the month of November 2004, we believe that the above DEC statements, or its assessment of the BND Project, is not completely accurate. The commencement of construction in January 2005 is not “very feasible” but instead, unrealistic. Once the Grupo Respira requests that SCT call for a public bid and

award a concession for the construction and maintenance of the the Mexican portion of the BND Project, the BND will be able to determine with better certainty, the actual commencement dates for construction and operation.

B.- Grupo Respira (“GR”).

As part of our firm’s investigative review, we further reviewed approximately ten (10) boxes of documents delivered by DEC staff, on behalf of Grupo Respira, to the BND offices on or about June 28, 2004.

Following our review of the documents furnished by GR, we traveled to Mexico City to personally meet with some of its shareholders/directors: Messrs. Miguel Nagel Leon and Hector Larios Santillan, along with corporate counsel Ricardo Piña. During our meeting, Mr. Nagel acted as GR’s spokesperson, and proceeded to outline GR’s past work and its intended course of action in connection with the SCT concession phase and support from the State of Tamaulipas and the City of Matamoros.

Mr. Nagel proposed an agreement between Grupo Respira and the BND, outlining the necessary steps needed for completion of this project.³⁹ Mr. Nagel stated that they anticipated calling for the SCT concession in November 2004, and that the whole process would last until approximately February 2005, at which time the SCT response would be known. In the event of a SCT denial, an *amparo* (injunction) lawsuit would be filed against the federal agency, pushing back the timetable a few more months, to March/April 2005. Commencement of construction was estimated by Mr. Nagel to take place at the end of 2005. Mr.

Nagel, on behalf of GR, further stated that should BND decide to enter into such agreement, they would in turn release the BND from their assumed obligation of financing the BND Project, including the portion in Mexico.

With regard to the support from the State of Tamaulipas and the City of Matamoros, Mr. Nagel mentioned that they have proceeded and will continue to proceed under the notion that Gov. Yarrington has issued two (2) letters of support for the BND Project and has not officially withdrawn said support.

Based on our overall review of the GR documents and our meetings in Mexico City with Messrs. Nagel and Larios, we believe that GR is acting under the assumption that a direct concession will be granted by SCT to GR, **without a public bid**. Under Mexican law, however, and as outlined below, such a direct concession is not allowed. The no public bid idea, as being promoted by Mr. Jones/DEC, and Messrs. Nagel and Larios/GR, is simply an aggressive plan of action on their part to bring the BND Project to fruition. Nevertheless, their plans have not materialized during past two (2) years they have maintained such pursuit.

As further noted below, this may very well be the reason, along with the obvious lack of capital from GR, that DEC and/or GR have not proceeded to the SCT concession phase to date.

39 See Exhibit V.B.1

C.- *Secretaria de Relaciones Exteriores (SRE) and Comision Intersecretarial de Puertos y Cruces Fronterizos (CIDPCF).*

Following an extensive review of numerous documents tendered to this firm by the BND, including those sent directly from DEC and from GR through DEC, we obtained all correspondence addressed to and from the SRE officials who have been involved with the BND Project throughout the years. Once said document review was conducted, we were able to attend a meeting with Lic. Enrique Escorza Zamudio, SRE's Director for Border Affairs, at the SRE Offices in Mexico City. Mr. Escorza conducted an informational presentation outlining the various phases the BND Project has gone through, from the issuance of an adverse Diplomatic Note in 1997, to the latest Diplomatic Notes issued in 2003, making references to certain timelines discussed below.

As previously mentioned herein, the Brownsville Navigation District began requesting the support of the Mexican government for this project dating back to 1991. Records show that on November 15, 1997, following the U.S. Department of State's official notification to the Mexican government that a U.S. Presidential Permit had been received by the Brownsville Navigation District for both its rail and truck port bridge project, the Mexican Federal government, in less than 96 hours, responded that such project was not viable, based on the construction of Los Tomates bridge, and that such a project could represent unfair competition to the Mexican ports located Altamira and Tampico.

During the referenced SRE meeting, Mr. Escorza highlighted that recent steps, however, have been taken to better explain and market this port bridge project, resulting in a positive response from the Mexican government. He further

noted that this international border crossing project is an integral part of a proposed transpacific commercial corridor between the U.S. and Asia, through the Port of Lazaro Cardenas, located in the Mexican state of Michoacan, and the cities of Matamoros and Brownsville. As a result of the Brownsville Navigation District's continued efforts, the Mexican government issued a diplomatic note on or about June 7, 2002, to the U.S. Department of State, stating Mexico's interest in this project. What ensued were various official correspondences in support of this project being exchanged during 2003 between both countries' state department officials. Such exchange resulted in a September 2003 diplomatic note from the U.S. Department of State stating its continued interest in the Brownsville Navigation District Port Bridge Project. The Mexican government responded in similar fashion by way of a diplomatic note dated November 18, 2003, wherein said government states it will keep the U.S. Department of State informed, through the Mexican Embassy in Washington, regarding any advances which are recorded in the project's technical file, as well as pertinent information in connection with the concession process. The Mexican government further noted in the referenced diplomatic note, that under current Mexican law, once the application for the necessary concession has been duly filed, the response from the proper authorities shall be transmitted and made known to the interested parties in a period not to exceed ninety (90) days, and from that point forward, the public bid period shall commence. Based on said time table, the Mexican government states that the subsequent bid and construction of the project could be resolved before the end of this year should the technical file be complete. We are aware that the

BND and CSA (who in turn is working closely with GR regarding the Mexican concession-related issues) conglomerate is currently working closely through its newly-created Port Bridge Committee, to pursue the concession-related issues associated with the BND Project.

In meeting with SRE officials in Mexico City, we have been assured that the Interagency Commission's preliminary review of the BND Project is complete and, that the party or parties interested in applying for and obtaining the concession from SCT, as it pertains to the corresponding port bridge project in Mexico, can do so pursuant to Mexico's applicable rules and regulations controlling this process.

It is important to note, however, that including the BND Project, SRE official informed us that there are currently twenty-six (26) official border bridges and/or crossings projects pending in Mexico. The last bridge crossing built was built was opened in February of 2000 between Laredo, Texas and Nuevo Laredo, Tamaulipas, Mexico. Finally, SRE states that there exist limited resources in Mexico at all government levels, whether local, state or federal, for new infrastructure projects.

Regarding SRE's current perspective regarding the BND Project, Mr. Escorza addressed a letter to Mr. Miguel Nagel Leon of Grupo Respira, dated June 17, 2004. In said letter Mr. Escorza's advises Mr. Nagel of Grupo Respira that SRE has no problem with him proceeding with applying for the necessary concession in connection with this project. It appears from the referenced correspondence and our interview with Mr. Escorza, the BND Project may proceed to the concession phase with SCT.

It is important to note, however, that from reading the June 17, 2004, SRE correspondence, the meeting with SRE, the meeting with Grupo Respira, and the responses provided by DEC to our specific inquiries, all references made in connection with proceeding with the concession phase are based on documents which were either prepared or submitted no later than 2002. Accordingly, there appears to be a strong indication that although the BND Project may be in a position to proceed to the SCT concession phase, such may have been the case since 2002. This scenario and related topics have been discussed with Special Counsel Charles Willette, Jr., in an effort to further assist with that portion of the audit and investigation.

D. Secretaria de Comunicaciones y Transportes (SCT).

The documents reviewed by our firm show contact was made with SCT regarding the BND Project dating back to February 1991, when former Port Director Jim Kruse, attended a Border Governor's conference in Hermosillo, Sonora, Mexico, where Mr. Kruse and Under Secretary Victor Mahbub were together in a workshop and spoke about the project.

This long history is important to place in perspective a comment from an SCT official, Dr. Felipe San Martin, during the Binational Meeting held in San Antonio, Texas in March of this year. Those comments made by Mr. San Martin appear to be clearly mistaken, as is mentioned above, there appears to have been significant contact with SCT regarding this project starting in 1991.

Based on our interview with SCT officials in Mexico City, which included Ing.

Juan Jose Erazo Garcia Cano, Director for Intermodal Projects-Toll Highways Unit, within the office of the SCT Undersecretary for Infrastructure, and Ing. Oscar Ringenbach Sanabria, Deputy Director for Analysis of Intermodal Projects, we were informed that said intermodal projects department is currently conducting studies regarding the effects of the BND Project. These studies include a review of the railroad portion, currently being conducted by the General Directorate for Tariffs, Railroad and Multimode Transportation (under the SCT Transportation Undersecretary), including a request for input from Transportaci3n Ferroviaria Mexicana ("TFM"), Mexico's largest railroad company, and the Port of Altamira, which will allow SCT to better determine its position once such studies have been completed.

Several attempts were made to schedule a meeting with Aaron Dychter, SCT Transportation Undersecretary, in order to obtain additional feedback regarding SCT's perspective. This meeting was tentatively scheduled to take place during the first week and subsequently, the last week of October 2004. No meeting, however, took place due to conflicting schedules. At this time this report was being prepared for submission to this Board, an invitation to meet with Undersecretary Dychter has been extended for the first weeks in November 2004.

E.- State of Tamaulipas.

1. Office of the Governor.

In an effort to obtain information regarding the official position of the State of Tamaulipas in connection with the BND Project, contact was made with

Governor Tomas Yarrington Ruvalcaba's Office in Ciudad Victoria, Tamaulipas, Mexico. During a telephone conference with his Chief of Staff, Lic. Daniel Sampayo Sanchez, information was received that there was in fact a bridge project the Governor's Mexico City's representative was currently working on. We were further notified that a representative from the Secretary of Economic Development and Labor would contact our firm directly regarding this matter.

2. Secretary of Urban Development and Environment.

We spoke directly with the Secretary of Urban Development and Environment (*Secretaria de Desarrollo Urbano y Ecologia* or "SEDUE"), Ing. Juan Miguel Garcia Garcia, regarding his involvement, if any, with the BND Bridge Project. Secretary Garcia informed us that he was aware of the project in question, and its potential impact on this border region. He further stated that the BND Project would help in developing the area near Lauro Villar beach, but would not serve to solve the Matamoros' current problem: to remove the railroad traffic from the inner city. We were advised there is no government monies available to fund this project which calls for a nineteen (19) kilometer loop around the city. When told of the BND Project's proposal to obtain private financing, Secretary Garcia's final comments included the fact that if such was the case, that this project would go forward as no public monies would be required.

3. Secretary of Economic Development and Labor.

Contact was made with the office of Lic. Jorge Reyes Moreno, Secretary of Economic Development and Labor for the State of Tamaulipas. We spoke with

Ing. Ernesto Morris Delgado, Director of Infrastructure, who graciously agreed to provide us with the official stance of the current administration of the State of Tamaulipas. From the onset, Mr. Morris asked that we bear in mind that the present administration under Gov. Yarrington (1999-2004) will come to an end on December 31, 2004, and that the new administration taking over on January 1, 2005, may or may not share their position. According to the information compiled by the Office of the Secretary of Economic Development and Labor, which is responsible for all infrastructure projects in the State of Tamaulipas, there are currently two (2) rail bridge projects which said office labels as follows: The first, located to the west of the city, with an estimated cost of \$180 Million Pesos (approximately \$15.5 Million U.S. Dollars); and second, the one by the coastline with an estimated cost of \$2 Billion Pesos (\$172.4 Million U.S. Dollars). Based on a simple math analysis, he stated, one can see which is more cost beneficial to Tamaulipas. In response to our statement that the BND Project calls for private financing and not from the State of Tamaulipas, Mr. Morris stated that in fact they have *heard* that the Port intends to pay directly or otherwise obtain private financing for this project. He continued to state, however, that in actuality, no formal financing proposal has ever been developed to date. He further mentioned that he knows that for private financing to take place, there needs to be a concession awarded through a public bid, for which no apparent interest has been made by such required private investors, nor interest shown by the private sector, no concession has been applied for or awarded from SCT, or even a public bid.

Mr. Morris further elaborated that for some time now, the State of

Tamaulipas had known of the BND's plan to build a *rail bridge only*, including a rail loop around the City of Matamoros. He added that the State of Tamaulipas had always informed the BND that it favored the BND going forward with both phases of the proposed bridge project, that is, to include rail and truck lanes along with a rail and truck loop around the City of Matamoros. The State of Tamaulipas contends that a rail only loop would cut off the City of Matamoros' projected growth with the lack of vehicular transportation loop.

Finally, the State of Tamaulipas believes that the BND Project undoubtedly has as its purpose to benefit the Port of Brownsville, and that the benefit to the City of Matamoros is at best, minimal. In the State's opinion, the west project offers the City of Matamoros its much anticipated solution to its current problem, by getting the railroad out of the inner city. Mr. Morris added that even if the BND Project comes to fruition, the west project should and would still proceed because of the City of Matamoros' need for a solution to its railroad problem.

4. Gubernatorial Candidates for November 14, 2004 Election.

Based on our interviews with the above-referenced state government officials, and references to the end of their administration, we proceeded to contact the gubernatorial candidates representing the top (2) major parties in the State of Tamaulipas: The Partido Revolucionario Institucional ("PRI") and the Partido Accion Nacional ("PAN").

We were able to make contact first with Ing. Eugenio Hernandez Flores, the gubernatorial candidate for the PRI party. We were informed through a close aide,

that Mr. Hernandez is well aware of the BND Project. There was no indication of any pre-disposition for/against the BND Project or for/against Cameron County's West Rail Project. An interest to obtain additional information regarding the BND Project was made on behalf of this candidate following the upcoming elections.

We were able to speak with Lic. Gustavo Cardenas Gutierrez, the gubernatorial candidate for the PAN party. Mr. Cardenas that he would welcome any BND Project representatives to discuss the mutual benefits this project would offer the BND and the State of Tamaulipas.

F.- City of Matamoros.

1. Office of the Mayor.

In an effort to obtain information corresponding regarding the official position of the City of Matamoros in connection with the BND Project, contact was made with Mayor Mario Zolezzi Garcia's Office in Matamoros, Tamaulipas, Mexico. Various attempts were made to obtain an appointment to visit with Mayor Zolezzi, through Prof. Juan Martin Delgado Botello. We were informed through our sources that the BND Project "was dead", but that an appointment would be made for us to visit with Mayor Zolezzi. To date, our firm has not been contacted by the Mayor's office in connection with this matter.

2. City Commission.

During our informal conversations with some current City Commissioners for the City of Matamoros, we were informed that no official vote has been made on the

BND Project nor has it been addressed by the City Commissioners (known as the “Cabildo”). Although no votes have been cast in connection the West Rail Project, there has been talk in Matamoros’ city hall about this project’s continued progress in the U.S.

c. Matamoros Urban Planning Director.

Ing. Humberto Acosta, Urban Planning Director for the City of Matamoros, has publicly stated on various occasions that his office has not received official notification from the BND regarding its project. Mr. Acosta has further stated that the city’s urban growth plan includes an international rail crossing to the West, and no plans or discussion has been made regarding the BND Project.

c. Mayoral Candidates for November 14, 2004 Election.

Just as in the gubernatorial election, in an effort to provide this Board of Commissioners the most updated version of the government viewpoints at the state and local levels, we likewise proceeded to contact the mayoral candidates representing the top two (2) major parties in the City of Matamoros: The Partido Revolucionario Institucional (“PRI”) and the Partido Accion Nacional (“PAN”).

We had the opportunity to sit down and talk with Lic. Baltazar Hinojosa Ochoa, the mayoral candidate for the PRI party. Mr. Hinojosa informed us that he has heard much about this project during his time in the state’s capital during Gov. Yarrington’s administration (Mr. Ochoa served as Secretary for Social Development and subsequently, Secretary of Education until 2003) and as

Congressman from Matamoros (2003-2004). Mr. Hinojosa stated that he is very interested in this project, and would welcome the BND to make a presentation to allow him the opportunity to appreciate the potential benefits it would bring to both the Port of Brownsville and the City of Matamoros.

During a break from his campaign schedule, we arranged a meeting with C.P. Ramon Antonio Sampayo Ortiz, the mayoral candidate for the PAN party. The interview with Mr. Sampayo is of particular importance, as he has previously pledged support for the BND Project in 1996, while Mayor for the City of Matamoros (1996-1998). Mr. Sampayo vividly recalled the BND Project, which in his opinion, represents a significant impact on the region's import/export industry. Having spent time away from this particular issue since 1998 (he served as a State Representative from Matamoros and most recently, Tamaulipas State President of the PAN Party, which position he resigned from just before becoming the current mayoral candidate), Mr. Sampayo stated that as mayor in 2005, he would address this matter and evaluate the progress made to date. With that comment regarding progress made to date, Mr. Sampayo was referring to the West Rail Project, in that he would inquire as to which project is further along, and assist the one closest to completion so he could proceed with the next one, whichever it may be.

VI.- Conclusions.

As mentioned herein, we conducted a review of all documents provided to us by the BND, which as previously mentioned, included services agreements,

project reports/updates, engineering studies, and requests and/or correspondence addresses to various governmental agencies in Mexico at the local, state and federal levels. The documents in questions date back to 1992 through 2004, including without limitation: ICA, Tomas Reynoso Ennis, Donaciano Tamez Fuentes/Malpasso Corporation, Prospectiva Economica y Social, Dannenbaum Engineering Corporation and Grupo Respira.

Regarding the historical significance of some of the documents prepared by certain individuals/companies and reviewed by this firm, that is, they did not have a direct impact on the status of the BND Project, we can include those related to the following: ICA and Tomas Reynoso Ennis, as the only issue that calls attention is the amount potentially due ICA of Twelve Thousand Nine Hundred and No/100 Dollars (\$12,900.00), under the administration of Mr. Jim Kruse.

With regard to the relationship between the BND and Mr. Tamez/Malpasso Corporation, the items of importance are as follows: (1) the sums of money wired to Malpasso Corporation to a bank in Nassau, Bahamas as a “success fee” for assisting the BND in obtaining the U.S. Presidential Permit in 1997, are not directly linked to his activities in Mexico, as we were not able to determine what effect they may have had on the U.S. Government, resulting in the issuance of said permit; (2) In 2001, Mr. Tamez, as representative of Buena Vista Corporation, entered into a services agreement with DEC. The purpose was for Mr. Tamez to obtain a diplomatic note in favor of the BND Project. Although the contract signed in March was originally for a period of 10 months, and called for a “success fee” of 1.5 Million Dollars, said document was later modified to last for only three (3)

months. A couple of days after DEC declared the contract with Buena Vista terminated, the favorable Diplomatic Note was issued by the Mexican Government, in June 2002. The documents reviewed do not reflect if in fact DEC and Buena Vista addressed this potential issue.

In connection with the work carried out by PES, said company is responsible for various studies carried out in the 1990's through 2001, which are part of the documents on file and reviewed by Mexico's Interagency Commission. Said work is not believed to have a direct impact on the current status of the BND Project, as such work should still be useful today, with the exception being the work done in connection with the Federal Environmental Impact Statement, unless modifications were made to such work during the course of this project.

Particular reference is made to the Federal Environmental Impact Statement, as said study is perhaps the most important to the BND Project, as without said authorization, no construction work could be commenced. This study and authorization issued by the National Environmental Institute was only valid for a period of two (2) years from the date notice was given to the State of Tamaulipas, September 27, 2000. Since no construction took place prior to the expiration of the two (2) year period, an extension request had to be submitted on behalf of the State of Tamaulipas (the Permit Holder) at least thirty (30) prior to the expiration date. We found no document(s) during our review to show that DEC, the Project Manager for the BND Project for the U.S. and Mexico during the applicable time period (2002), filed for said extension or otherwise requested the State of Tamaulipas to file for same, nor any information regarding the State of

Tamaulipas' assignment of rights in connection with said authorization.

During DEC's initial review of all documents upon its designation as the U.S.-Mexico Project Manager, the Environmental Impact Statement and corresponding authorization should have been reviewed to notice that such document had an applicable expiration date which would halt commencement of construction when the time came. Among the documents received by the BND from DEC, there exists a registered meeting between DEC, Grupo Respira and others, wherein Messrs. Nagel and Larios met with the President of the National Environmental Institute on November 15, 2002, nearly two (2) months after the expiration of the Environmental Impact Statement issued by said federal agency. No mention is made regarding any extension being granted or even requested.

As for the relationship between DEC and the BND, wherein DEC plays an integral part as the engineering firm and U.S.-Mexico Project Manager of the BND Project, DEC assumed the important task of coordinating all project-related efforts before all Mexican authorities at the local, state and federal levels. DEC, as the entity with the requisite experience, further directed all efforts in conducting the studies it deemed necessary in both the U.S. and Mexico.

As previously mentioned, the BND expanded DEC's scope of work in 2001, to include any and all work necessary to obtain the permits and/or authorizations as may be required by the Mexican government. This expanded scope of work did include allowing DEC to associate with those persons or entities deemed necessary by DEC in order to carry out its contractual duties. The previously-mentioned letter from Mr. Louis H. Jones, Jr., Principal of DEC, addressed to Mr.

Besteiro and dated September 7, 2001, requested Mr. Besteiro to write a letter stating that Mr. Jones, on behalf of DEC, had been employed by the BND to assist in all matters related to the BND Project. Mr. Jones further requested therein that the referenced letter be dated April 25, 2001, and that Mr. Miguel Nagel formed part of Mr. Jones' organization. As Mr. Jones, as a Principal of DEC requested this letter, logic would follow that Mr. Jones was stating that Mr. Nagel formed part of his organization, DEC. This matter is of significant importance, given that DEC and Mr. Jones have maintained that they have not, and do not, have a direct relationship with Mr. Nagel and Grupo Respira. Moreover, DEC should be ultimately responsible and responsive to the BND in connection with any and all activities and work carried out in Mexico, as the BND has no contractual relationship with any Mexican sub-contractor directly employed by DEC.

As Project Manager of the BND Project, DEC employed the services of various Mexican sub-contractors which include, among others: Comercializadora Binacional America, S.A.; Comercio Inteligente, S.A. de C.V.; Sistemas Ejecutivos de Seguridad Privada, S.A. de C.V.; Homeframes, S.A. de C.V.; and Homeframes de Mexico, S.A. de C.V.

There exists documents showing that, as referenced earlier, Messrs. Miguel Nagel Leon and Hector Larios Santillan became involved with the BND Project through Mr. Jones and DEC. Additional documents reviewed further show that Mr. Jones, Principal of DEC, owns stock in at least two (2) companies with Messrs.

Nagel and Larios: Earthwise Technologies, Inc., a Nevada Corporation⁴⁰; and, Comercializadora Binacional America, S.A., a Mexican corporation formed in Mexico City on April 18, 2001.

Comercializadora Binacional America (“COBINA”)⁴¹, however, was actively involved in the BND Project. Mr. Jones/DEC employed the services of COBINA to carry out various studies in Mexico, receiving the total sum of \$1,445,000.00 USD (One Million Four Hundred Forty-Five Thousand and No/100 Dollars) for services rendered from April 1, 2001 through July 10, 2002.

Among the principal sub-contractors employed by DEC, many have been represented by Mr. Miguel Nagel. As referenced above, he is a shareholder in the company COBINA; as referenced in his correspondence to Mr. Besteiro dated June 22, 2004⁴², he also represents Homeframes, S.A. de C.V. and Sistemas Ejecutivos de Seguridad Privada, S.A. de C.V. With regard to the latter companies, no information was obtained during the timeframe allowed connecting them to DEC and/or Mr. Jones.

With regard to our overall review of the Interagency Commission process which is coordinated by SRE, the recommendations made to SCT, if any, are non-binding and are thus, not indicative of what SCT may or may not do in connection with any given project. Accordingly, there exists the possibility that these type of projects may not necessarily have to go through the Interagency Commission process before proceeding to the SCT concession phase. When we questioned

40 The shareholders include Messrs. Louis H. Jones, Jr., Miguel Nagel, Hector Larios and Steven C. Howard. Mr. Howard’s company, S.C. Howard & Co., was also retained as a consultant to DEC by Mr. Jones pursuant to a contract worth \$100,000.00.

41 The shareholders include Messrs. Louis H. Jones, Jr., Miguel Nagel, Hector Larios and Steven C. Howard.

Mr. Escorza from SRE directly regarding this matter, he responded that although it may not be necessary today, that (going through the Interagency Commission) is the way it was done a few years ago. During our meeting with Mr. Escorza, he further noted the progress made on the BND Project by mentioning that we had a copy of the a 2002 approval from the International Water and Boundaries Commission (IWBC) of a 1999 study. The referenced IWBC approval informs DEC that the 1999 study was satisfactory and as far as the IWBC was concerned, DEC could proceed with the SCT concession phase. Mr. Escorza then produced copies of various correspondence dated in September 2002, upon which the SRE Department of Border Affairs under his charge based its official position in its referenced correspondence of June 17, 2004 (date incorrectly reflects July 17, 2004), which included those addressed to: Toll Bridges and Highways Unit (SCT); General Directorate for Tariffs, Railroad Multimode Transportation (SCT); and the General Directorate for Urban Development (SEDESOL).

Based on the foregoing, we conclude that the Interagency Commission review process has ended, based on the SRE documents produced and reviewed, since September 2002. This fact serves to demonstrate that DEC was partially correct in its project assessment to the BND, the BND Project can go forward and take the necessary steps to pursue the SCT concession. The real question, however, is how long has the BND Project been in a position to go forward and request SCT to initiate the public bid and concession award process. There is no evidence to indicate any reason why no steps have been taken in connection with pursuing the SCT concession, if in fact the BND Project was done with the

42 See Exhibit VI.1 (with translation)

Interagency Commission review process since September 2002, the last dates of the documents on which the SRE relied upon to issue its June 17, 2004 correspondence.

Why has the SCT concession not been applied for?

The BND was advised by DEC that it had been informed by Grupo Respira, that Grupo Respira would apply for the necessary concession through a *private bid* process. This scenario is not possible under current Mexican law. As stated earlier, the concession process is carried out based on **public bids**, with the exception of those cases where a state or municipality is the petitioning party, who in turn can then grant a concession through a bidding procedure. In a letter⁴³ to Mr. Besteiro dated September 4, 2002, Mr. Escorza (SRE) provides a brief overview of the process, in Mexico, involved in the approval process for an international bridge. Mr. Escorza specifies that after the required studies have been approved, SCT may call for a *public bid* and award a concession to the designated winner.

Accordingly, the only other manner of directly obtaining a concession for the construction, operation and use of the Mexican portion of the BND Project, would require an amendment to the current applicable Mexican law. Our review of the items on the Congressional Agenda for the current legislature indicate that such an amendment, however, is not contemplated in either session of the Mexican Federal Congress as of October, 27, 2004. The other alternative route is a

⁴³ See Exhibit VI.2

Presidential Decree, although such is a highly improbable option. If such a project is so beneficial to society and the government, it would be hard to justify why no other person or entity would be interested in a public bid.

Based on GR's own admission during both of our meetings in Mexico City, they have not proceeded to request that SCT call for the concession until they have partnered up with a financially sound company with the capability of financing the Mexican portion of the BND Project. As is known by all involved in this project, GR has brought to the table the CSA conglomerate, a joint venture between the Cooper T./Smith and SSA Stevedoring companies. That process, involving GR, CSA, DEC and the BND's newly-appointed Port Bridge Project Committee, appears to be ongoing.

Should the BND Board of Commissioners decide to proceed with this project on the U.S. side and GR on the Mexican side, the Board should do so with the understanding that it should not be required to pay additional monies, as the person or entity requesting and applying for the SCT concession is to be responsible for absorbing those costs.

Very truly yours,

Ignacio Torteya, III
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ITM:pg
Enclosure(s)

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