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REGION AMAZONICA - ECUADOR

22 November 2005

Chairman Bill Thomas
Committee on Ways & Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington D.C. 20515

Dear Chairman Thomas,

We write to express our deep concern that the Chevron Corporation is inappropriately lobbying members of Congress to prevent Ecuador's participation in the Andean Free Trade Agreement (AFTA), in direct contradiction to the interests of U.S. foreign policy and to efforts by the Bush Administration to promote free trade in the hemisphere as discussed at the recent summit in Latin America. We have learned that Chevron has contacted members of Congress, including yourself, requesting that Ecuador be prevented from signing the AFTA until it "resolves" a legal issue with Chevron, which the company has euphemistically characterized as an "investment dispute" with Ecuador's government. This "investment dispute" is actually an unprecedented private lawsuit brought in 2003 by thousands of Ecuadorian citizens against Chevron alleging that the company dumped over 18 billion gallons of toxic waste into Ecuador's pristine rainforest, forcing two indigenous tribes to near-extinction and causing the worst oil-related contamination in the world. This is a terrible environmental crime that has caused horrific suffering to our people, and we write you as representatives of the inhabitants of the eighty communities and five indigenous groups who live in the affected area, which is roughly the size of Rhode Island. Chevron has no other issues of significance in Ecuador that we know of other than this lawsuit, which represents substantial financial and legal exposure for the company. Should Chevron be held liable in Ecuador's courts, the company would face a multi-billion dollar judgment that could diminish the record profits it currently enjoys and raise serious issues for the company's shareholders.

It appears to us that the purpose of Chevron's lobbying regarding Ecuador's participation in the AFTA is to convince the U.S. Congress to subordinate the interests of U.S. foreign policy in Latin America to the narrow economic interests of a single oil company. As we understand it, U.S. foreign policy in Latin America is in part designed to promote democracy and the rule of law, which are the exact interests being served by this historic lawsuit. It is clear Chevron now wishes to avoid, through back-door dealing with the U.S. Congress, a potential multi-billion dollar liability that could legitimately be imposed in open court. This kind of conduct by a major American oil company is one reason why the image of America as a country has suffered so much in our eyes and in the eyes of other indigenous peoples. Independent experts believe it will cost at least \$6 billion to clean up this toxic contamination, which has destroyed much of our wetlands and rivers and contaminated the groundwater on which many of us have relied for

survival for centuries. This amount does not include personal damages to the victims, which could cost the company billions of additional dollars. What is also troubling, as is our understanding from our team of Ecuadorian and North American lawyers, is that Chevron has disregarded corporate governance requirements, as it has yet to mention a word about this potential liability in its filings with the Securities and Exchange Commission.

In its two decades (1970 to 1992) in the Ecuadorian rainforest, Texaco, now merged with Chevron, designed and built an extensive system of wells and pipelines in Ecuador that, by Texaco's own admission, dumped more than 4 million gallons of carcinogenic byproduct (known as "water of formation" or simply "waste water") directly into the rainforest environment on a daily basis. The amount of pure crude in this waste water was the equivalent of a spill thirty times larger than the Exxon Valdez disaster in Alaska.¹ This toxic waste contained some of the most dangerous cancer-causing chemicals known to man, and there are currently 627 open-air pools that Chevron left on our ancestral lands, which continue to pose a threat to the health and livelihood of local residents. Multiple health studies of the region where Texaco operated, published in prestigious international medical journals and reported in major newspapers, demonstrate highly elevated rates of cancer and other oil-related health problems, such as spontaneous abortions and genetic defects.² Young children are four times as likely to contract leukemia in the region where Texaco operated, as compared to children in other parts of Ecuador.³ Experts predict thousands of additional deaths and illnesses in the coming decade if an adequate clean-up is not performed immediately.⁴ Texaco's dumping violated various Ecuadorian laws, as well as express contractual provisions that required the company to drill in a way that respected the natural habitat.⁵ It also violated general international and comparative norms — for example, Texaco's methods of waste disposal were outlawed in Texas, Texaco's home state, in 1919. The company used these methods, deliberately and intentionally, in an attempt to save a mere \$3 per barrel at the expense of Ecuadorian lives, indigenous cultures, and a unique rainforest ecosystem. (Chevron made an estimated \$30 billion in profits over its 28

¹ Roughly 18.5 billion gallons of water of formation was dumped in Texaco's concession, according to government records. Approximately 2% of water of formation is pure crude. Thus, the equivalent of 332 million gallons of crude was dumped. This amount is just over 30 times what was spilled in the Valdez disaster. This amount does not include the millions of gallons of crude spilled from pipelines.

² San Sebastian M., Armstrong B., Cordoba JA. and Stephens C., Exposures and cancer incidence near oil fields in the Amazon basin of Ecuador, OCCUPATIONAL & ENVIRONMENTAL MEDICINE, 58(8):517-22 (2001); San Sebastian M., Armstrong B. and Stephens C., Outcomes of pregnancy among women living in the proximity of oil fields in the Amazon basin of Ecuador, INTERNATIONAL JOURNAL OF OCCUPATIONAL & ENVIRONMENTAL HEALTH, 8(4):312-9 (2002); Hurtig AK. and San Sebastian M., Gynecologic and breast malignancies in the Amazon basin of Ecuador, 1985-1998, INTERNATIONAL JOURNAL OF GYNAECOLOGY & OBSTETRICS, 76(2):199-201 (2002); San Sebastian M., Armstrong B. and Stephens C., La salud de mujeres que viven cerca de pozos y estaciones de petróleo en la Amazonía ecuatoriana, REVISTA PANAMERICANA DE SALUD PUBLICA, 9(6): 375-384 (2001).

³ Hurtig AK. and San Sebastian M., Incidence of Childhood Leukemia and Oil Exploitation in the Amazon Basin of Ecuador, INTERNATIONAL JOURNAL OF EPIDEMIOLOGY; 31:1021-1027 (2002).

⁴ Hurtig AK. and San Sebastian M., Oil exploitation in the Amazon basin of Ecuador: a public health emergency, REVISTA PANAMERICANA DE SALUD PUBLICA, 15(3): 205-211 (2004).

⁵ Political Constitution of Ecuador Art. 3.3, Art. 23.6, Art. 86-91; Ley de Gestion Ambiental; Ley de Hidrocarburos; Codigo de la Salud; Ley Forestal y de Conservacion.

years of operating in Ecuador, while the failure to use proper re-injection technology saved it an estimated \$4.5 billion.⁶)

You might not be aware that Chevron's litigation posture in the case appears inherently hypocritical. For several years Chevron tried to convince the U.S. federal trial court (where the case was originally filed in 1993) -- over our objections -- that the lawsuit should be sent to Ecuador because it was a more convenient forum. When the case was finally sent to Ecuador in 2002, as a result of a decision by the U.S. Court of Appeals for the Second Circuit, it appeared to be a setback for us but we did not give up. We re-filed the same case in Ecuador in 2003 and pressed our legal claims against Chevron, as was our right under Ecuadorian law and was consistent with the recommendations of the U.S. court decision. But once the trial began in Ecuador later that year, Chevron's lawyers suddenly changed their position and claimed that the Ecuadorian courts had no jurisdiction. They made this assertion after having specifically stipulated before the American court that they would submit to jurisdiction in Ecuador. Chevron also began a ferocious lobbying campaign to undermine the rule of law in Ecuador by pressuring the Ecuadorian government to halt the trial and later, by initiating a lawsuit against the Ecuadorian government claiming it should be responsible for all the damages caused by Chevron, even though it is not a party to the lawsuit. Chevron's lobbying has included: a secret meeting by top Chevron executives with Ecuador's President, Alfredo Palacio, on August 3 of this year in Quito; the lobbying of Ecuador's Attorney General to convince him to have the case dismissed; and the purchase of at least 50 full-page advertisements in leading Ecuadorian newspapers at an estimated cost of more than \$500,000.

Chevron's lobbying of the U.S. Congress is particularly unsettling because it seems to be part of a pattern where Chevron uses its vast economic resources to produce its desired result in court, rather than respect a judicial process that provides all parties a level playing field to pursue legal claims. It disturbs us greatly that Chevron has poured more money into American politics than any other energy company over the past 15 years.⁷ We are also concerned about the likelihood of an intervention on behalf of Chevron, given the close ties between Chevron, the Bush Administration, and Congress. Chevron's senior lobbyist in Washington, D.C., is Wayne Berman, one of Bush's "Rangers" who raised at least \$200,000 for the Bush campaign in 2004 and whose wife is a senior White House aide.⁸ Secretary of State Condoleezza Rice served on the Board of Directors for Chevron from 1991 to 2001, and Chevron named an oil tanker in her honor.⁹ During the 2000 election cycle, Chevron gave Republican candidates and committees \$758,588, including \$224,038 to Republican Congressional candidates. In addition, Chevron employees contributed \$100,000 to the inaugural fund for President George Bush. In 2002, Chevron gave \$125,000 to the Republican National Committee. More recently, Chevron CEO David O'Reilly denied in testimony before the Congress that his company had any contact with Vice President Cheney's 2001 energy task force. However, investigations have shown that

⁶ Chevron's claim that its Ecuador profits were a mere \$500 million is based on the amount booked for accounting purposes to its 4th-tier subsidiary in Ecuador, Texpet. It excludes the enormous revenue generated by Texaco on the sale of the oil on the international market after it left Ecuador.

⁷ Data about Chevron's political contributions compiled from www.opensecrets.org.

⁸ Jonathan Weisman, *Bush Advisor Helped Law Firm Land Job*, WASHINGTON POST, 12 July 2005, at D1.

⁹ *Chevron Renames Condoleezza Rice*, 51 OIL DAILY 88, 08 May 2001.

Chevron “gave detailed energy policy recommendations”¹⁰ to the energy task force, and that these recommendations were adopted nearly word-for-word.

We want to emphasize that as plaintiffs in the case, we have an indisputable right to voice our claims in a court of law. In the past, the U.S.’s own Department of State has denounced the “politiciz[ation]”¹¹ of the Ecuadorian legal system, but it hardly envisioned the possibility that such a problem would be the result of pressure asserted by the Ways and Means Committee, on behalf of a party to the litigation. Any interference in the judicial process by a third party, whether direct or indirect, would be an obvious effort to undermine the rule of law. Efforts to influence or intimidate parties to the litigation or those authorities charged with maintaining a fair and impartial process would be nothing less than thinly-veiled attempts at corruption.

More specifically, a crucial argument of our case is that a controversial legal release certifying Chevron’s remediation efforts, signed by certain officials in Ecuador’s government in 1998, was obtained fraudulently. We have alleged at trial that Texaco purposefully hid its lack of compliance with environmental norms from the Ecuadorian government, to ensure that the release would be effectuated. Ecuadorian government lawyers are currently evaluating this release to determine if it was obtained fraudulently by Chevron.¹² Clearly, a fear on their part that the U.S. would prevent Ecuador from entering the AFTA -- unless the litigation with Chevron is resolved -- could induce the Ecuadorian government to cease this evaluation, notwithstanding its independent belief that Texaco’s actions were fraudulent. Such pressure by the Ways and Means Committee might also induce the Ecuadorian government to abandon an ongoing official investigation into the actions of Chevron executives regarding the release.

From another perspective, the U.S. has devoted countless years, dollars and personnel to fomenting and nurturing democracy – and the hallmarks of democracy – in Ecuador. Arguably the most important of these hallmarks is an independent judiciary, a concept enshrined in Article III of the U.S. Constitution and held sacred in the U.S. That the Ways and Means Committee would think of intervening, even indirectly, with the Ecuadorian judiciary by dangling a sought-after carrot in front of the Ecuadorian executive to induce them to pressure the judiciary is to violate a bedrock principal of democracy --- and no less so, because it is not the American judiciary being victimized.

No one suggests that the plaintiffs are *entitled* to a victory in the Ecuadorian legal system. But after the investment of several years of time and effort in this case, the possibility of a fair and impartial judgment -- of a legitimate and valid victory -- should not be taken from us at the behest of Chevron, nor anyone else. We urgently request that you refrain from taking any action on behalf of Chevron on this issue, that you permit negotiations between the U.S. and Ecuador regarding the AFTA to proceed organically, and that you accord the proper respect to an independent judicial process regardless of where it occurs.

¹⁰ Dana Milbank and Justin Blum, *Document Says Oil Chiefs Met With Cheney Task Force*, WASHINGTON POST, 16 Nov. 2005, at A01.

¹¹ See, e.g., U.S. Department of State, *Ecuador: Country Report on Human Rights Practices – 2001*, 04 Mar. 2002.

¹² This evaluation is taking place in the office of the Fiscal, or Ecuador’s version of a national prosecuting office.

Any intervention by the U.S. Congress which could impact the current litigation in Ecuador would be a clear attempt to undermine the rule of law, and, with regard to foreign relations, would be nothing short of an insult to the Ecuadorian people and our own government. It would also be an insult to our developing legal system, and to our robust democracy. We look forward to your prompt response, which can be sent to us directly via email at casotexaco@uio.satnet.net.

Sincerely,

Humberto Piahuaje
Representative, Secoya Indigenous Group

Luis Yanza
Coordinator, Legal Case

Ermel Chavez
President, Coalition for the Defense of the Amazon

Ermegildo Criollo
Rep., Cofan Indigenous Group

Venancio Criollo
Representative, Siona Indigenous Group

Cc:

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Dr. Manuel Chiriboga