



Water Risks in the Mining Sector

Peru¹

As of August 2016

1. Overview

Peru is the world's second largest producer of copper, after Chile, and holds the second-largest known copper reserves. It is also the second largest producer of silver, and the sixth largest global producer of gold. The country also has significant reserves of coal, iron ore, silver, tin, sulfur and zinc.

Peru's legal system: Peru's legal system is based on civil law tradition. According to its Constitution, Peru's form of government is "unitary, representative, and decentralized." As a mandatory, continued policy of the state, decentralization is carried out in stages to ensure the proper distribution of jurisdictions and transfer of resources from the national government to local and regional governments. Pursuant to the decentralization process, mining, water and environmental issues are primarily regulated at the national level, while small and artisanal-scale mining is regulated at the regional level.² Local governments may also enact mining regulations applicable in their respective jurisdictions, as long as such regulations are not in conflict with national laws and regulations.

Water allocations and discharge permits: Contrary to Chile and many other jurisdictions, all water is public property in Peru and water rights permitting the use of water are not considered to be property rights that allow for the transfer or mortgaging of such rights.

Water licenses and discharge authorizations for mining operations are currently granted by the applicable local branch of the National Water Authority (ANA) and are valid until mining operations cease. While the time period to obtain the water license or discharge permit is relatively short, the time it takes to obtain the requisite environmental certification required to be submitted as part of the water license application can take 1-2 years to prepare and obtain. Until late 2015, all environmental certifications (which approve the required environmental impact study) for the mining sector were granted by the General Directorate of Mining Environmental Affairs (DGAAM), a body of the Ministry of Energy and Mines. However, recent legislative changes now require large-scale mining projects that require a Category III Detailed

¹ This project was managed by CCSI Senior Legal Researcher, Sophie Thomashausen. Research was conducted by Sophie Thomashausen, Joanna Eileen Capones and Kristina Hamil. The authors are also grateful to Sandra Orihuela for her helpful insights.

² Fernando Pickmann, "Peru: Mining 2016", *Latin Lawyer*, available at: <http://latinlawyer.com/reference/topics/46/jurisdictions/19/peru/>.



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Environmental Impact Assessment are reviewed and approved by the National Service of Environmental Certification (SENACE).

The environmental and water permitting process is also about to be considerably streamlined. Pursuant to the Investment Promotion Law 30327 enacted in 2015, a new global environmental certification system is being developed, which seeks to fast track the process for obtaining environmental certifications and associated environmental permits and authorizations. Once fully implemented, mining companies may only be required to obtain a single environmental certification permit rather than a separate environmental certification, water license, discharge authorization, among other permits.

Please see the Annexures for a description of the relevant legislation and institutions regulating water use and discharge in Peru.



2. Regulation of water use in mining in Peru

Water Quantity questions		
No	Question	Answer
1.	Which authority is responsible for water allocation?	The National Water Authority (Autoridad Nacional del Agua) (ANA). All applications for a water right must be filed at the local branch of ANA.
2.	Water allocation process - How is water granted to a mining concessionaire/ permit holder? Is there a water licensing/ permitting process? A water market?	<p>A mining company must apply for a water rights license to appropriate surface water from ANA. There are three types of water rights:</p> <ul style="list-style-type: none"> a. License – the right to use water for a specific aim and in a particular place. It is valid until the activity in respect of which it was granted ceases (i.e. the beneficiary concession). b. Permission – a water right granted for a temporary period when there is surplus water available. c. Authorization – a water right granted for just two years – which can be extended for an additional year – for exploratory activities, or mine construction. <p>Where there are two concurrent applications for the use of water with the same priority (see description of Law on Water Resources in Annex A below), the completed application filed first will prevail. However, when one use of water is considered preferential to the other (i.e. water for irrigation v. water for mining), the water use right will be granted to the use with the higher priority.</p> <p>Peru’s Water Resources Law provides that all water is publicly owned and not a private property right. The transfer or mortgaging of water rights is therefore prohibited. However, where the ownership of a mine changes, the new mine owner will just need to complete a simply administrative procedure to obtain the corresponding water right.</p>
3.	Scope of a water allocation permit/ license	



	<p>(a) Requirements separate water permit – is a separate water permit required? What is the process for obtaining the permit</p>	<p>The procedure for applying for any of the three water rights is the same.³ The application must include the following information (Art. 54 of the Law on Water Resources):</p> <ul style="list-style-type: none"> - Description and purpose for which the water is requested. - Identification of source and route of water, including the basin from which it would be taken. - Location of proposed withdrawal along with diagrams. - Description of annual volume required and estimated discharge. - Environmental certificate (see below). - Description of any easements required. - Evidence of title to land or permit to use land on which source is located.
	<p>(b) Time required to obtain permits – how long does it generally take?</p>	<p>The average time for a water rights application at ANA is about 30 working days.⁴ However, the environmental certification required by regulation to be submitted with a water license take around two years to complete.</p> <p><i>Note, however, that under Law 30327 which was enacted in late 2015, a separate water rights license may, at some stage in the future, no longer be required. Instead, the National Service of Environmental Certification for Sustainable Investments (SENACE) will issue a Global Environmental Certification in respect of large-scale investment projects. This certification must incorporate in one proceeding, the review of the environmental impact assessment submitted by the titleholder of the project and the compliance with the main requirements for the granting of various environmental permits and/or authorizations that are being proposed to be subsumed under this global environmental certification.</i></p> <p>If SENACE, after the review of the technical reports, the binding opinions and the environmental impact assessment concludes that is feasible the issuance of the Global Environmental Certification, it will approve in a single</p>

³ Jose Antonio Honda, “Energy Law in Peru” (Alphen aan den Rijn: Kluwer Law International, 2010), accessible at: https://books.google.com/books?id=TcuxNrx9V6gC&pg=PA238&lpg=PA238&dq=water+license+peru&source=bl&ots=rem08q-O1h&sig=o6mAUBr6WeQRU98IL--1wU1RsaE&hl=en&sa=X&ved=0ahUKewiMrbyDtv3LAhVMWh4KHY_tCuoQ6AEITTAI#v=onepage&q=water%20licen se%20peru&f=false

⁴ Ibid.



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			administrative act the environmental impact assessment and the relevant permits within 150 business days after the filing of the application.
		(c) Duration of water permit	<p>None of the water rights are unlimited or indefinite:</p> <p>A water license is valid for the duration of a mine concession.⁵</p> <p>A permit is temporary in nature and will only be valid for the period of the water surplus in respect of which it was granted.⁶</p> <p>An authorization granted for a definite term, which should not be more than two years. It can be extended once.</p>
		(d) process for permit renewal	N/A
4.	How does the process of securing a water allocation relate to the general mining permit approval process (i.e. is a water permit required before a mining permit, or is information about water use required for an EIA which is required for a mining permit)?		<p>A mining company must apply for an environmental certification, which is required to support both a water rights application and a mine permit.⁷ The type of impact assessment depends on the size of the mining project and its potential impact on the environment. There are three categories:</p> <ul style="list-style-type: none"> - Category I: includes projects which don't cause significant negative environmental impacts. These projects become certified with the approval of an Environmental Impact Statement (DIA). - Category II: includes projects which may cause moderate environmental impacts and whose negative effects can be eliminated or minimised by taking simple measures. These projects become certified with the approval of a Semi-detailed Environmental Impact Assessment (EIASd). - Category III: includes projects whose characteristics, size and/or location can produce significant (quantitative or qualitative) negative environmental impacts. These projects require deeper analysis to review their impacts and propose the corresponding environmental management strategies. These projects

⁵ Jose Antonio Honda, "Energy Law in Peru."

⁶ Ibid.

⁷ "Flexicadastre: "Environment and Drilling Permit Management," available at:

<http://www.spatialdimension.com/Portals/0/Downloads/UserConference/2012/12%20Rogerio%20Castejon%20-%20Environmental%20Drilling%20Permit%20Management.pdf>.



		<p>become certified with the approval of a Detailed Environmental Impact Assessment (EIAd).⁸</p> <p>Note, however, that an integrated permitting regime, the Global Environmental Certification, is currently being developed (see 3(b) above). The issuance of water permits may be incorporated into this global environmental certification regime once it is operational.⁹</p>
5.	<p>Tariffs for water use Do mines have to pay for water usage? If yes, who sets the tariffs?</p>	Yes. The ANA sets the tariffs.
6.	<p>Requirements for recycling water</p>	<p>There are currently no express legal requirements for water recycling. However, as part of the process to get an environmental certification prior to applying for a water rights permit, the impact assessment studies must show that the quality of surrounding water sources will not be impacted by the mining operations.</p> <p>Given Peru’s history of social conflicts, most large mining companies implement water recycling to minimize their water footprint in an effort to maintain a social license with affected communities.</p>
7.	<p>What rights, if any, does the relevant Authority have to change the amount of water allotted to a mine? Is the mining company allowed compensation for such changes?</p>	Water rights may be terminated by, among others, lack of water resources, formally declared by the ANA or problems of quality that impede its use. ¹⁰

3. Regulation of water quality and waste water discharge in mining in Peru

Water Quality questions		
No	Topic	Answer

⁸ International Comparative Legal Guide: “Peru: Mining Law 2016” available at: <http://www.iclg.co.uk/practice-areas/mining-law/mining-law-2016/peru#chaptercontent8>.

⁹ Practicallaw.com: “Environmental law and practice in Peru: overview,” available at: <http://us.practicallaw.com/8-602-1506?q=&gp=&qo=&qe=#a605046>.

¹⁰Jose Antonio Honda, “Energy Law in Peru”.



<p>1.</p>	<p>Requirements for a permit for mine waste discharge Does a mine have to apply for a permit to discharge waste/ waste water into surrounding water courses? If so, what permits are required? What is the permitting process?</p>	<p>Yes. A separate discharge authorization must be issued by ANA, although the requirement for this separate authorization may soon be replaced by the global environmental certification under Law 30327 issued by SENACE (see 3(b) above).</p> <p>The application for a discharge permit must be filed with the Director of Quality Management of Water Resources. As part of the application, the following information on the proposed discharge must be included:</p> <ol style="list-style-type: none">1. Favorable technical opinion of the Directorate General of Environmental Health.2. Relevant part of the environmental instrument or environmental assessment.3. System specification of the wastewater treatment and discharge device.4. Copy of systems plans for the wastewater treatment and discharge device, signed by the health, civil or environmental engineer and qualified referee.5. Operation and Maintenance System Wastewater Treatment, signed by the responsible professional referee and enabled.6. Registration Form for authorization of dumping treated wastewater, signed by a chartered engineer.¹¹ <p>The discharge will not be approved by the ANA unless:</p> <ol style="list-style-type: none">1. The wastewater to be discharged has been previously treated, and2. The amount does not exceed the maximum permissible limits of the sector.3. The conditions of the receiving body allow the natural processes of purification.4. Will not prejudice another person's water use, in terms of water quantity or quality.5. Conservation of aquatic environment is not affected.6. Environmental authorization approved by the competent sectoral authority is provided.
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¹¹ ANA: "Autorización de vertimiento de aguas residuales industriales, domésticas y municipales tratadas," available at: <http://www.ana.gob.pe/contenido/autorizacion-de-vertimientos-de-aguas-residuales-industriales-municipales-y-domesticas>.



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		<p>7. Its underwater release does not damage the ecosystem and other bodies of water.¹²</p> <p>Authorizations are granted based on mandatory water environmental quality standards.¹³</p> <p>The period of validity of a discharge authorization will depend on the characteristics of the mining project, but will not be less than two years or more than six years.</p>
<p>2.</p>	<p>Other licensing/permitting processes that cover water quality/discharge</p>	<p>Discharging waste or polluting substances into natural water resources is not allowed unless the measures set out by the Health and Environmental Protection Regulations are adopted.¹⁴</p> <p>See above on the proposed global environmental certification currently being developed, that will replace the need to obtain separate environmental and water permits.</p>
<p>3.</p>	<p>Nexus with environmental impact assessments/ statements</p> <p>What is the process for obtaining an environmental impact assessment? At which stage of the mining process must it be obtained? To what extent are water issues covered in it?</p>	<p>At present, mining companies must file an application for environmental certification and a preliminary assessment with the by the General Directorate of Mining Environmental Affairs (DGAAM), a body of the Ministry of Energy and Mines which makes a classification decision within 20 working days.¹⁵</p> <p>If the project is classified as Category I, the proponent only needs to submit an Environmental Impact Statement which is automatically approved except for exceptional circumstances.¹⁶</p> <p>If the project is classified as Category II, a semi-detailed Environmental Impact Assessment (EIA-sd) must be submitted and if the project is classified as Category III, a detailed Environmental Impact Assessment (EIA-d) must be submitted.</p>

¹² Art. 133, Regulation for Law No. 29338, Law on Water Resources. See: http://www.oefa.gob.pe/?wpfb_dl=11835

¹³ Practicallaw.com: “Environmental law and practice in Peru: overview.”

¹⁴ [Ibid.](#)

¹⁵ Netherlands commission for environmental assessment: “Peru,” available at: <http://www.eia.nl/en/countries/sa/peru/eia>.

¹⁶ “Peru Mining Investment Handbook,” available at: <http://www.resourcegovernance.org/sites/default/files/Mining%20investment%20handbook%20ENGLISH.pdf>.



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		<p><i>As of late 2015, if a mining project is classified as Category III, the environmental agency SENACE rather than DGAAM must review and approve the environmental impact assessment.</i></p> <p>As part of the approval for a category II or III environmental impact assessment a public hearing must be held.¹⁷ In practice, the process of preparing an environmental impact assessment and obtaining an environmental certification can one to two years, although the governing regulations specify that a review should just take up to 120 days.¹⁸ The Global Environmental Certification system that is currently being developed seeks to fast track the process for obtaining all environmental permits, authorizations and certifications.</p> <p>Environmental certification (approving an environmental impact assessment) must be completed before mining operations begin or are expanded.</p>
4.	Are there regulations regarding the storage of tailings/ waste water by mines? ¹⁹	Yes. OEFA requires mining companies to carry out an appropriate management, storage and handling of ore concentrates in storage deposits located outside the mining operation areas. In the case of benefit operations, it is also required to have spill and waste collection systems, drainage systems and contingency storage systems. Mines must also ensure the physical or chemical structure stability of their tailings or slag deposits. ²⁰
5.	Acid mine drainage regulations	There are guidelines with respect to water quality, and tailings and water discharge. ²¹
6.	Recycling requirements – Are there any requirements/ incentives for mines to recycle water/ minimize water discharge?	The government gives incentives in favor of holders of water rights who invest in works intended for the efficient use, protection and conservation of water. The cost of the investment may be deducted from the payments for water fees

¹⁷ Netherlands commission for environmental assessment: “Peru.”

¹⁸ Greta Bourke, “Govt to speed up evaluation of environmental studies – DGAAM,” *BNAmericas* (September 5, 2011), available at: <http://www.bnamericas.com/en/news/mining/govt-to-speed-up-evaluation-of-environmental-studies-dgaam>.

¹⁹ **Tailings** are crushed rock particles that are transported hydraulically in a slurry form to a tailing impoundment or storage facility. The tailing solids are a mixture of sand, silt, and clay size particles. Tailings are sent to a tailing impoundment for disposition.

²⁰ OEFA: “The ABC of environmental control”, available at: http://www.oefa.gob.pe/?wpfb_dl=11828.

²¹ [http://www.ey.com/Publication/vwLUAssets/Gu%C3%ADa_Minera_2015-2016/\\$FILE/EY-Peru-mining-and-metals-investment-guide-2015-2016.pdf](http://www.ey.com/Publication/vwLUAssets/Gu%C3%ADa_Minera_2015-2016/$FILE/EY-Peru-mining-and-metals-investment-guide-2015-2016.pdf)



		<p>or salary, in compliance with the criteria and percentage established in the regulations.²²</p> <p>The ANA also issues performance certificates to users and operators of water infrastructure that comply with efficiency parameters.²³</p>
7.	Any specific regulation of waste for copper and/or gold mining?	None.

4. Monitoring requirements

General questions		
No	Question	Answer
1.	Who monitors a mining operation's water quality to ensure compliance with legislation? And how often does such monitoring occur?	<p>The mining company/ operator is required to monitor its own activities. A monitoring and supervision plan must be submitted as part of the environmental certification process.²⁴</p> <p>OEFA also monitors compliance with environmental laws. It has authority to conduct unexpected audits and impose fines for violations of environmental standards.²⁵</p>
2.	Are there any reporting requirements?	Yes. The mining company/ operator must produce frequent reports on environmental monitoring. ²⁶

5. Regulation of water issues post-mine closure

²² Art. 84, Law on Water Resources, available at: http://www.oefa.gob.pe/?wpfb_dl=11835

²³ Art. 85, Law on Water Resources.

²⁴ Netherlands commission for environmental assessment: "Peru," available at: <http://www.eia.nl/en/countries/sa/peru/eia>.

²⁵ [http://www.ey.com/Publication/vwLUAssets/Gu%C3%ADa_Minera_2015-2016/\\$FILE/EY-Peru-mining-and-metals-investment-guide-2015-2016.pdf](http://www.ey.com/Publication/vwLUAssets/Gu%C3%ADa_Minera_2015-2016/$FILE/EY-Peru-mining-and-metals-investment-guide-2015-2016.pdf)

²⁶ Netherlands commission for environmental assessment: "Peru," available at: <http://www.eia.nl/en/countries/sa/peru/eia>.



Post-mine closure questions		
No	Question	Answer
1.	Requirements for closure	Within one year of the approval of the environmental impact assessment required for the development of a mining project, a mining company/ operator must file with the DGAAM a mine closure plan.
	(a) Closure plan: What are the requirements for a closure plan?? Who approves it, if anybody?	<p>This mine closure plan must describe the closure activities in feasibility-level engineering and provide the corresponding closure budget.</p> <p>The following are the contents of a closure plan:</p> <ol style="list-style-type: none"> a. Table of contents b. Executive summary c. Closure and rehabilitation objectives d. Closure and rehabilitation programs. e. Background information. f. Detailed description of mining workings and facilities. g. Detailed description of the closure work already performed. h. Characterization of remaining reserves. i. Description of the area of influence of the mining workings and facilities. j. Detailed description of the closure works and final, post-mining land use. k. Description of the information custody program for public purposes. l. Estimated closure costs and schedule of implementation.²⁷ m. Amount, type and term of the financial guaranty. Other supporting documents mentioned in the body of the closure plan. n. The monitoring plan (location of stations, control frequency, parameters, etc.).²⁸ <p>The DGAAM, which is part of the MINEM, approves closure plans and all amendments to it. <i>DGAAM must issue an advisory opinion within 90 calendar days after receiving</i></p>

²⁷ Thomas H. Furst, Ph.D. and Ann J. Pacey: “New Peruvian mine closure requirements,” available at: http://www.ausenco.com/uploads/papers/64060_New_Peruvian_Mine_Closure_Requirements.pdf.

²⁸ Ibid.



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		<i>the plan, otherwise the closure plan will be deemed approved.</i> ²⁹
	(b) Bond requirements	<p>Once the plan is approved, a mining company must post the financial assurance mechanisms according to the approved schedule until the end of the mine’s life, as approved.</p> <p>The types of permitting financial insurance mechanisms include the following:</p> <ol style="list-style-type: none"> 1. Guarantee trust. 2. Standby letter of credit or other similar instruments. 3. Corporate guarantee. 4. Performance bonds and other type of insurance coverage. 5. Mortgage. 6. Warrant. 7. Security interests over personal property.³⁰ <p>The financial assurance must be sufficient to support the costs associated to the execution of the mine closure plan. The mine must provide annual contributions to the financial assurance within the first 12 working days of each year, beginning one year after the approval or amendment of the mine closure plan. The annual contribution should be equal to the total amount of the financial assurance divided by the number of expected remaining years of the mine.³¹</p>
	(c) Water quality/ Tailings dam requirements	For water bodies that received effluent discharges, water quality must conform to the standards set forth in the National Environmental Quality Standards for Water. ³²

²⁹ Ibid.

³⁰“Closure of Natural Resource Projects in Latin America,” available at: <http://files.chinagoabroad.com/Public/uploads/v2/event/attachment/Paper%20on%20the%20closure%20of%20natural%20resources%20projects%20in%20Latin%20America.pdf>.

³¹ Ibid.

³² Beveridge & Diamond, P.C., “Peru Adopts Implementing Rules for National Environmental Quality Standards for Water,” *Latin American Region Environmental Quarterly* (January 2010), available at: <http://www.bdlaw.com/news-781.html>.



2.	Post-mine closure monitoring requirements	A monitoring plan is required as part of the closure plan.
3.	Liability period - For how long, if at all, is a mine liable for water contamination after a mine has closed?	OEFA has the power to penalize mining companies that violate environmental standards. Law 30230 establishes a three-year period starting from 2014 during which the applicable fines for infractions is reduced by 35%. ³³
4.	Are there any reporting requirements in relation to a mine's preparation for post-closure?	The mining company is required to submit reports every six months after the operations closure until it obtains a final closure certificate. ³⁴

3. Enforcement/ Regulatory actions

General questions		
No	Topic	Answer
1.	Enforcement actions available to the government/ public authorities/ citizens take for breach of any of the relevant laws/ regulations	<p>For violations of the Law on Water Resources, ANA may initiate administrative proceedings and impose sanctions (community work or payment of fine). In addition, ANA may:</p> <ol style="list-style-type: none"> Require the violator to restore the situation that existed prior to the violation or pay the costs required for restoration; Confiscate the property used to commit the offense; Order the removal, demolition, modification, relocation or suspension of work; and Suspend or revoke water rights. <p>Violations of other environmental laws can also give rise to administrative liabilities and the imposition of fines are based on the seriousness of the environmental damage.³⁵</p>

³³ Omar Mariluz Laguna, "De cada 100 supervisiones de OEFA menos de dos terminaron en multa," *Gestión*, Aug. 26, 2014, available at <http://gestion.pe/economia/cada-100-supervisiones-oefa-menos-dos-terminaron-multa-2106609>.

³⁴ OEFA: "The ABC of environmental control", available at: http://www.oeфа.gob.pe/?wpfb_dl=11828.

³⁵ "Getting the deal through: "Peru - Mining," available at: <https://gettingthedealthrough.com>.



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		Civil and criminal actions may also be initiated against violators of environmental laws. Note that criminal liability may attach for criminal negligence in the case of environmental contamination and illegal disposal or trade of waste. The proceedings may run simultaneously. ³⁶
2.	Bodies responsible for regulatory enforcement and associated procedures	OEFA is responsible for regulating and giving incentives related to environmental enforcement. ³⁷ ANA is in charge of enforcing water regulations.
3.	Is there an online database of penalties/fines related to water use in the mining sector	None
4.	What is the procedure for bringing a case?	The Law on General Administrative Procedures sets out the general procedures for administrative proceedings. The appropriate agency, on its own or upon request by a third party, may initiate the proceedings. Where the decision will likely affect an unidentified party, a public hearing is required. ³⁸ To initiate a criminal case due to an environmental offense, a complaint must be submitted to the Public Ministry or the National Police of Peru. ³⁹
5.	Who has standing to bring a case?	Administrative proceedings can be initiated by the appropriate agency or upon request by any third party. ⁴⁰ OEFA receives environmental complaints from any person worldwide, even without direct interest in the complaint. ⁴¹ Complaints may even be filed anonymously. ⁴² Any third party, including the state, may file a civil lawsuit against a person or entity who has violated environmental laws and caused or contributed to environmental damage.

³⁶ Ibid.

³⁷Martha Ines Aldana: "Enforcement of environmental impact assessments in the natural gas sector in Peru: A practical approach," *Ninth Annual Conference on Environmental Compliance and Enforcement 2011*, available at: http://inece.org/conference/9/proceedings/48_Aldana.pdf.

³⁸ Law Business Research, "Getting the deal through - Environment 2012."

³⁹OEFA: "The ABC of environmental control", available at: http://www.oefa.gob.pe/?wpfb_dl=11828.

⁴⁰ "Getting the deal through: "Peru - Mining," available at: <https://gettingthedealthrough.com>.

⁴¹ OEFA: "The ABC of environmental control", available at: http://www.oefa.gob.pe/?wpfb_dl=11828.

⁴² Ibid.



		<p>It is not required for the plaintiff to have personal or economic interest, as long as there is determinable harm.⁴³</p> <p>The state or any offended party may initiate a criminal action for violation of environmental laws.</p>
6.	Statute of limitations	<p>For civil actions based on environmental damages (tort), a two-year statute of limitations is provided under the Civil Code. The period starts at the moment the damage is initially caused or when the affected party becomes aware of it.⁴⁴</p>

ANNEXURES

A. Legislation (policies, laws, and regulations) governing water use and discharge in the mining sector in Peru⁴⁵

No.	Name of Legislation	Brief description of how it applies
1	<u>Constitution of Peru</u> (1993) (Constitución Política Del Peru)	<p>The Constitution (1993) sets out the social, political, and economic rights/obligations of the state and citizens of Peru. In relation to environmental matters, the Constitution establishes that:</p> <ul style="list-style-type: none"> - Every person has the fundamental right to live in a healthy and balanced environment, one which allows the full development of a person's life (Art. 2). - It is the state's duty to determine National Environmental Policy, which must pursue the sustainable use of the country's natural resources; and - the state must promote the conservation of biodiversity, the creation of natural protected areas and the sustainable use of the Amazon rainforest (Arts. 66-68).

⁴³ "Getting the deal through: "Peru - Mining," available at: <https://gettingthedealthrough.com>.

⁴⁴ Lorenzo de la Puente and Renzo Castagnino: "Environment – 2012 – Peru," *LatinLawyer.com*, available at : <http://www.delapuate.com.pe/admin/recursos/informes/LatinLawyer2012.pdf>.

⁴⁵ Specifically copper and gold, which are hard rock minerals. Also note that there may be some references to water use, environmental/ water discharge, and post-closure obligations in the mining code/ general mining legislation.



Mining legislation		
2	General Mining Law (1992) (Ley 01492 - General De Minería)	The General Mining Law sets out the rights of mining concessionaires, regulations concerning prospecting and explorations performed by mining operators, and the roles of various regulatory bodies.
3	Mine Closure Law (2009) (Ley 28090 - Ley que regula el Cierre de Minas)	The Mine Closure Law sets out the requirements and methods for mining operators creating, presenting, and effectuating mine closure plans.
Environmental and water legislation		
4	General Environmental Law (2005) (Ley 26811 - Ley General del Ambiente)	The General Environmental Law sets out the principles governing environmental policy and the system for the approval of environmental management plans for investment projects. The law also: <ul style="list-style-type: none"> - “Defines the concepts of maximum permissible limits (MPLs) and environmental quality standards (EQSs) and the process for their approval and review. - Regulates access to public information and participation in the governmental decision-making process in environment-related matters. - Differentiates the competencies at national, regional and local levels of government. - Contains provisions on the use and protection of flora, fauna, land, water, air and other natural resources by populations, including indigenous peoples, rural and native communities, and industry.”⁴⁶
5	Law on the National System of Environmental Impact Assessments (2001) (Ley 27446 – Ley Del Sistema Nacional De Evaluacion De Impacto Ambiental Y Su Reglamento)	Law No. 27446 sets out the process for completing the environmental impact assessments, and regulates citizen participation connected to the approval of environmental impact studies.
6	Organic law for sustainable use of natural resources (Ley Orgánica Para el Aprovechamiento)	The law aims to promote and regulate the sustainable use of natural resources, including surface and underground water. It establishes a framework for the promotion of investment, ensuring a dynamic balance between economic growth, the

⁴⁶ Practicallaw.com: “Environmental law and practice in Peru: overview,” available at: <http://us.practicallaw.com/8-602-1506?q=&gp=&qo=&qe=#a605046>.



	Sostenible de los Recursos Naturales) 1997	conservation of natural resources and environment and the development of the society.
7	<u>Water Resources Law</u> (2009)(Ley de Recursos Hídricos)	<p>The Water Resources Law provides a comprehensive national system for the management of water resources.⁴⁷</p> <p>The Law provides that there are no private rights to water in Peru. Rather, all water is the patrimony of the people of Peru, administered by the national government with input from regional, watershed and local water user groups.</p> <p>The Law also outlines a hierarchy/ priority of water uses, identifies and describes the various types of water use rights (e.g., licenses, permits and authorizations) that can be allocated by the National Water Authority, and provides some detail on appropriate water valuation.</p> <p>The priority of water uses is as follows: Agricultural uses at the top, followed by aquaculture and fishing, energy, industry, medicinal, mining, recreation, tourism and transport (Art. 43). Special water rights for indigenous and rural communities are also recognized (Art. 64).</p> <p>Finally, the Water Resources Law establishes that water rights holders must pay for their water rights and associated water services.</p> <p>Implementing regulations are required to give effect to much of the Water Resources Law</p>
8	Implementing regulations of the Water Resources Law (Decreto Supremo No. 001-2010-AG, Aprueban Reglamento de la Ley No. 29338, Ley de Recursos Hídricos)	<p>This implementing regulation provides more details on the priority of water uses and the management of water resources in Peru. In particular, the regulation:</p> <ul style="list-style-type: none"> - Provides that water use for human consumption is a priority over any other class or type of use (Art. 55). - Creates Basin Councils for Water Resource Management (“Councils”) with the objective of managing water resources by basin rather than by political jurisdiction (Art. 24). These Councils fall under the jurisdiction of ANA and include both regional and local government representatives (Art. 28). - Provides for the development of water resource management plans by the Councils, with regional, local,

⁴⁷ Beveridge & Diamond, P.C.: “Congress passes new water law,” *Latin American Region Environmental Quarterly* (July 2009), available at: <http://www.bdlaw.com/news-litigation-621.html>.



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		<p>water user and public participation and approval of ANA (Arts. 31 and 32).</p> <ul style="list-style-type: none"> - Includes provisions for, among other things, water use licenses, classification of water bodies, designation of protected zones and desalination projects (Arts. 70, 106, 127, and 167).⁴⁸
9	<p>Regulation No. 57 on the Administration of Water Users (2000) (Reglamento N° 57 de 2000 sobre la administración de usuarios del agua)</p>	<p>Regulation No. 57 regulates Water Users Associations.</p>
10	<p>Citizen Participation Regulation (2008) (Participación Ciudadana Reglamento)</p>	<p>As noted in the Law of the Environment, citizen participation is crucial for the planning and publication of environmental materials, and for the creation and implementation of environmental management strategies, rules, and instruments, as well as environmental programs.⁴⁹</p>
11	<p>Environmental Regulations for Mining Exploration Activities, approved by Supreme Decree 020-2008-EM and Environmental Regulations for Mining and Metallurgic Activities, approved by Supreme Decree 040-2014-EM.</p>	
12	<p>Law to promote Investments for economic growth and sustainable development (Ley de promoción de las inversiones para el crecimiento económico y el desarrollo sostenible) (Law No. 30327) 2015</p>	<p>A law that, when implemented, proposes to fast track the process for obtaining an environmental certification by creating a global environmental certification process which will replace various existing permitting processes (including the existing environmental certification process and the permitting process for obtaining a water rights permit) into a single permit that is envisaged to take no longer than 150 days to obtain.</p>

⁴⁸ Beveridge & Diamond, P.C.: “Regulations to Peruvian water law implemented,” *Latin American Region Environmental Quarterly* (April 2010), available at: <http://www.bdlaw.com/news-865.html>.

⁴⁹ Peru Mining Investment Handbook. “Regulations For Community Relationships: 1. Citizen Participation.” Pg 30.



B. List of authorities involved in the regulation of water in the mining sector in Peru

No.	Name (In English and local language)	Brief description of its role
	<u>National Water Authority</u> (Autoridad Nacional del Agua (ANA))	ANA was created in 2008 to promote integrated water resource management.
	<u>Ministry of Energy and Mines</u> (<u>Ministerio de Energía y Minas</u> (MINEM))	MINEM is the authority responsible to approve the administrative procedures for initiation of mining activities, granting mining concessions, and approving the environmental certification of large-scale mining projects
	<u>Geological, Mining and Metallurgical Institute</u> (Instituto Geológico Minero y Metalúrgico (INGEMMET))	INGEMMET operates the national mining cadastre.
	<u>General Bureau of Mining Environmental Matters</u> (Dirección General de Asuntos Ambientales Mineros (DGAAM))	DGAAM is the bureau of MINAM that is responsible for approving environmental impact assessments.
	<u>The Agency for Environmental Assessment and Enforcement</u> (Organismo de Evaluación y Fiscalización Ambiental (OEFA))	OEFA works to ensure that economic activities in Peru are conducted in keeping with the right of the individual to enjoy a healthy environment. For this, it is responsible for the assessment, supervision, enforcement and sanction in environmental matters, as well as of incentive application in the mining, energy, fishery and industry sectors. It was created as a specialized technical agency ascribed to Ministry of Environment in 2008.
	<u>Ministry of the Environment</u> (Ministerio de Medio Ambiente (MINAM))	MINAM is responsible for designing, establishing, implementing and supervising national and sector environmental policy. It is also in charge of drafting and approving environmental quality standards and approving maximum permissible limits for all productive activities.
	Water Users Associations (Asociaciones de Usuarios del Agua)	Water user associations are civil nonprofit associations that are created to participate in managing the sustainable use of water resources, in accordance with the Policy and National Water Resources Strategy, and provisions of the National Water Authority. Water users associations monitor a mining operation's compliance with water use legislation.



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	<p><u>Local Water Authorities</u> (Autoridad Local del Agua (ALA))</p>	<p>The mining company must apply to the ALA, a body under the Water Management Authority office, for the license to use water in either surface water (rivers, streams, ponds lakes or other water sources) or underground (springs), before starting their exploration, exploitation and / or benefit.</p>
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<p><u>Agency of Environmental Certification for Sustainable Investment</u> (Servicio Nacional de Certificaciones para las Inversiones Sostenibles (SENACE))</p>	<p>The <u>Agency of Environmental Certification for Sustainable Investment</u> is in charge of reviewing and approving environmental certifications called “Environmental Impact Detailed Study – EIA-d” for large-scale investment projects (mining, oil and gas, and power projects) classified as Category III. It is also in charge of evaluating and approving the Global Environmental Certification.</p>
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