

The Diablo Mudo Exploration Project and Private Conservation Areas in the Cordillera Huayhuash

The Communities of Pacllon (District of Pacllon, Province of Bolognesi, Region Ancash) and Huayllapa (District of Copa, Province of Cajatambo, Region Lima) have shared a border since their official establishment in the 19th Century (see map). As it is understood among local leaders, between the peaks known as Rio Palanca and Rasac, the two communities share a continuous boundary that separates their respective territories (see the map in annex C). Currently there are two open spaces (without title) and one overlapping space (both communities hold title) along this boundary. This situation is due to a titling ‘error’ made by the *Proyecto Especial de Titlacion de Tierras* (PETT – the special land titling project) as the government agency responsible for rural cadastral mapping in 1998 and 1999 when the communities registered their titles (the agency has since been changed). What is particularly interesting is that in one of the open spaces there is a mining exploration project, the Diablo Mudo Project, that has been under development since 1995 by the company CIA Minería Raura S.A. (a moderate-sized Peruvian-owned operation).

Minería Raura bought the sub-surface mineral rights titled “Nevado 1” and “Nevado 2,” located across the territories of Pacllon and Huayllapa, in January of 1995. Through this purchase the mining company secured rights to explore the sub-surface for minerals and also to develop any activities and infrastructure necessary for said exploration.

The communities redacted and signed a literal description of the boundary in 1997. This *acta de colindancia* (literal boundary description) was registered with the office of SUNARP (the public registry in Peru) in the state of Ancash by Pacllon in 1998 and in the state of Lima by Huayllapa in 1999. PETT then interpreted the literal description and drew one map for each community respectively. In terms of property rights to both the surface (communities) and sub-surface (the mine) everything was apparently registered correctly, but when the maps from the two different state offices (Ancash and Lima) are placed side-by-side it is possible to observe an ‘error’ in the maps drawn by PETT. The two open spaces and the one overlapping space can be observed (see annex C). With a little research into the ‘error’ it is possible to observe that the *acta de colindancia* registered with the titles of Pacllon and Huayllapa in the state offices of Ancash and Lima are in fact different (they should be identical—see annex A and annex B, the *actas* registered with the two different titles respectively). A close look reveals that the written description registered with Pacllon’s title was modified: the elevation of one point of reference was erased and subsequently changed and there is also an extra line of text at the bottom. Due to these changes a non-titled space opened between the two contiguous communities.

With or without the cadastral error it is necessary for a mine in Peru to negotiate rights of access with the owners of the surface land titles which lie above the sub-surface mineral rights (in this case both Pacllon and Huayllapa held title to the surface above the area of interest). In 2007 the Raura mining company visited Huayllapa and offered the young men of the community the opportunity to work shifts in their nearby mine located in the Cordillera Raura. In 2008 a new law was passed as the Supreme Decree 1064 that allowed rights to land held communally—there is an individual land title held by a group of people as is the case for Huayllapa and Pacllon—to be alienated with a vote in which only 50% of the community is present. Under these new terms the mine negotiated a contract with the community of Huayllapa in September of 2008 to permit exploration development on their surface lands. The mine also approached Pacllon, but was not able to offer the work shifts at the mine (the journey was too long) or negotiate an access agreement.

In any case the agreement with Huayllapa allowed the mine to begin exploration and gain access to the un-titled land on the map. Indeed, one of the principal perforation points is located in the center of the open space. According to the registered titles and the environmental impact statement developed by

the Raura mine (which includes the copy of the agreement with Huayllapa) the Diablo Mudo Exploration Project is completely legal in terms of surface and sub-surface ownership rights. If the changes to Pacllon’s literal boundary description had never taken place, this open space would pertain to the community of Pacllon and the company never concluded successful negotiations for the access with Pacllon.

Two big questions remain: when was the literal description modified and who was responsible for the changes? At the time of writing these questions cannot be answered and it is likely that they never will be. PETT no longer exists and tracking down the officials who might have the ability to shed light on these details is difficult indeed, let alone whether they would be willing to provide information or not. But even if we could answer these questions the other key to resolving this problems is to determine the actual legal status of the open spaces between the communities. Who owns this land now? Is it possible to require the Raura mine to negotiate with Pacllon now that this error has been found or is the agreement with Huayllapa sufficient for their access needs?

- Francisco Raimondi de Mayolo

Postscript:

This press release was made public in Peru in September of 2011. A mesa de Dialog between the two communities, the state agency for natural resource management, and the mine was convened later in September. In the first months of 2012 the mine decided to retire their exploration activities at Diablo Mudo. While there were several other factors involved in this decision, problems with water use licenses and several water contamination incidents for example, it is likely that the discovery of this ‘error’ played a role. While there was never any direct proof that the mine had a role in altering the documents, the coincidental nature of the acquisition of sub-surface rights, the registration of the community titles, and then the 2008 agreement between Huayllapa and the mine all hurt the public perception of what had happened. The mine had lost its ‘social license,’ or the *de facto* rights to continue working in the area without conflict.

Tim Norris – January 2015

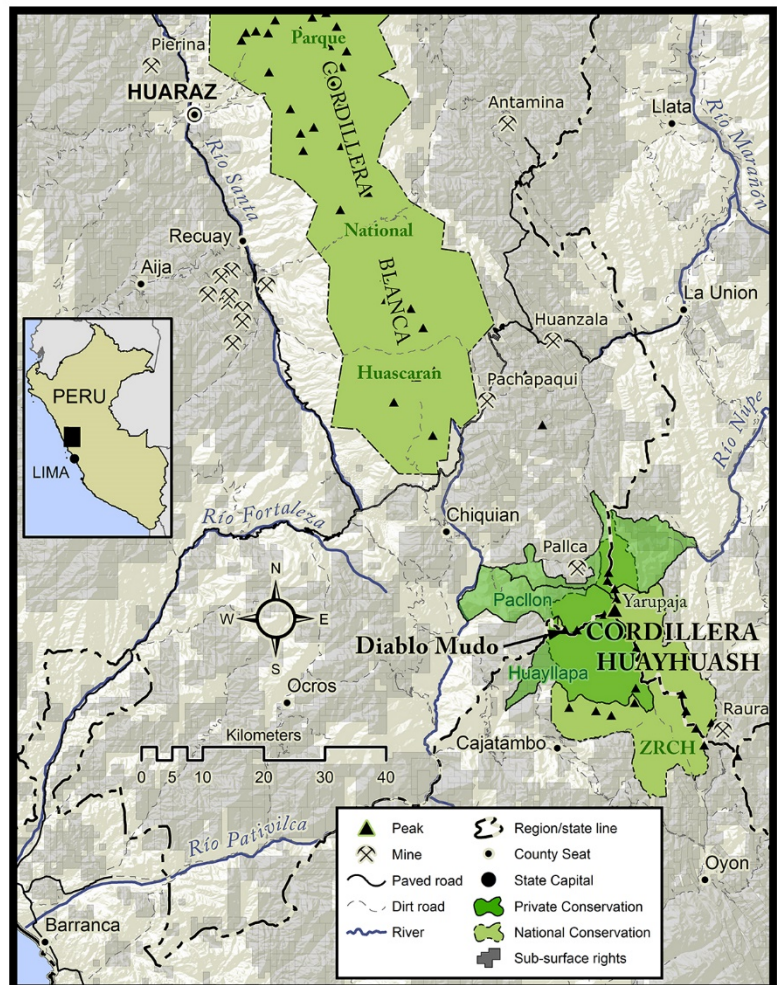


Figure 1: Map of the Cordillera Huayhuash and the surrounding area. Sources: INGEMMET and SERNANP online databases (2014), SRTM (2014).

"Año de la Reforestación : Cien Millones de Árboles"



MINISTERIO DE AGRICULTURA
Dirección Regional Agraria Chavín
PROYECTO ESPECIAL DE TITULACION
DE TIERRAS Y CATASTRO RURAL



COMUNIDAD CAMPESINA: ... **PACLLÓN** ...
DISTRITO : ... **PACLLÓN** ...
PROVINCIA : ... **BOLOGNESI** ...
DEPARTAMENTO : ... **ANCASH** ...
REGION : **CHAVIN**

ACTA DE COLINDANCIA

Celebrada en **EN LA ESQUINA DE LA LAGUNA DE SUSOCOCHA** siendo
12.30 p.m. del día **04** de **NOVIEMBRE**
de mil novecientos noventa y siete, entre **LA C.C. PACLLÓN Y LA C.C. HUAYLLAPA**
con intervención de los funcionarios del Proyecto Especial de Titulación de Tierras encargados de delimitar las tierras de la Comunidad Campesina **DE PACLLÓN** conforme a dispuesto por la Ley 24657 de fecha 13 de abril de 1987.

Los linderos establecidos por mutuo acuerdo son los siguientes :
SE INICIA EN EL PUNTO TRIPARTITO ENTRE LAS COMUNIDADES ; PACLLÓN MANGAS Y HUAYLLAPA DENOMINADO CERRO RÍO PALLANCA (CARBÓN DE PIEDRA DE ESTE PUNTO CONTINÚA POR LA CUMBRE AL CERRO RÍO PALLANCA DOS SIGUE BAJANDO AL HITO DENOMINADO PORTÓN PASA POR EL DESAÍGUE DE LA LAGUNA DE SUSOCOCHA Y VA A DAR A LA CUMBRE DEL CERRO USHPA (NEVADO), PROSIGUE EN LINEA RECTA A LA CUMBRE DEL CERRO DE COTA 5222, CAMBIA DE DIRECCIÓN A LA CUMBRE DEL NEVADO PUNKO, CONTINUANDO EN LINEA RECTA A LA CÚSPIDE DEL NEVADO RASABC (5622), DONDE FINALIZA LA COLINDANCIA ENTRE AMBAS COMUNIDADES.

Leída el acta, los comparecientes ratificaron su contenido, comprometiéndose a respetar y conservar los hitos señalados, firmando por cuadruplicado conjuntamente con los comisionados en señal de conformidad.



EDAL LAURENTE RIVAS
Presidente de la Directiva
Comunal del Distrito de Pacllón



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"Año de la Reforestación : Cien Millones de Árboles"



MINISTERIO DE AGRICULTURA
Dirección Regional Agraria Chavín
PROYECTO ESPECIAL DE TITULACION
DE TIERRAS Y CATASTRO RURAL



Copia Simple
NO DA MÉRITO A
CERTIFICACIÓN

FECHA: 01 ABR. 2011

COMUNIDAD CAMPESINA: PACLLON.....
DISTRITO : PACLLON.....
PROVINCIA : BOLOGNESI.....
DEPARTAMENTO : ANCASH.....
REGION : CHAVIN

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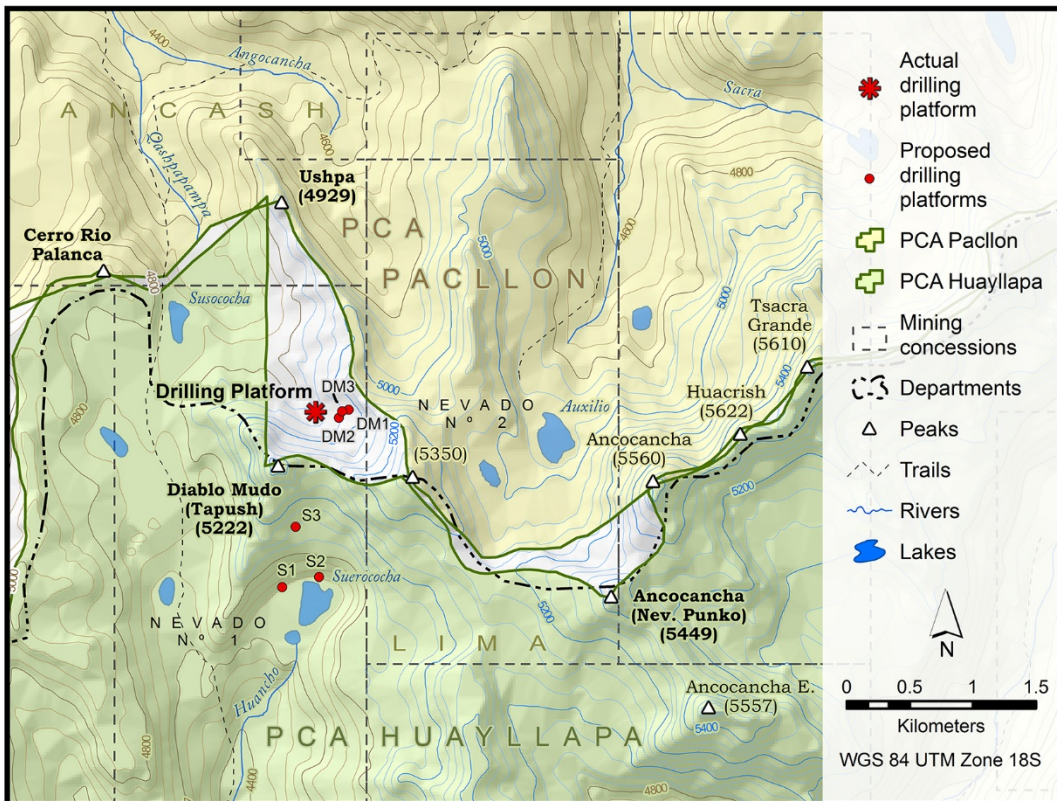
Los linderos establecidos por mutuo acuerdo son los siguientes :

SE INICIA EN EL PUNTO TRIPARTITO ENTRE LAS COMUNIDADES: PACLLON,
MANGAS y HUAYLLAPA DENOMINADO CERRO RIO PALLANCA (CARBON DE PIEDRA);
DE ESTE PUNTO CONTINUA POR LA CUMBRE AL CERRO RIO PALLANCA
DOS, SIGUE BAJANDO AL HITO DENOMINADO PORTON, PASA POR EL
DESAGUE DE LA LAGUNA DE SUSOCOCHA, y VA A DAR A LA
CUMBRE DEL CERRO USHPA (NEVADO), PROSIGUE EN LINEA RECTA
A LA CUMBRE DEL CERRO DE COTA 4939, CAMBIA DE DIRECCION
A LA CUMBRE DEL NEVADO PUNKO, CONTINUANDO EN LINEA
RECTA A LA CUSPIDE DEL NEVADO RASAC (5622), DONDE
FINALIZA LA COLINDANCIA ENTRE AMBAS COMUNIDADES
*5600 y 6017; COTA 6617 NEVADO DE YERUPATA.

Leída el acta, los comparecientes ratificaron su contenido, comprometiéndose
a respetar y conservar los hitos señalados, firmando por cuadruplicado conjuntamente
con los comisionados en señal de conformidad.

VIDAL LAURENTE RIVAS
Presidente de la Directiva
Comunal del Distrito de Pacllon





Annex C – The two PETT maps side by side reveal the spaces between Pacllon and Huayllapa that are now state territory. In an uncanny coincidence CIA Minería Raura S.A. located their drilling platform in the center of the largest open space and they can access this space through the territory of Huayllapa with whom they have an access agreement. Sources: IGN, SERNANP, INGEMMET, CIA Minería Raura S.A., PETT, and GPS ground truth in May of 2011.