

**Office of Accountability Compliance Review
of OPIC's Social Due Diligence
of the Coeur d'Alene Mines/San Bartolomé Project**

Final Report

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**Office of Accountability
Overseas Private Investment Corporation**

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ABBREVIATIONS AND ACRONYMS

Coeur d’Alene	Coeur d’Alene Mines Corporation
COMIBOL	Corporacion Minera de Bolivia
Contract	Contract of Insurance
DSF	Dry stack facility (one of two tailings dams)
EIA	Environmental Impact Assessment
FDF	Fines disposal facility (one of two tailings dams)
FUNDESPO	Fundación de Desarrollo Sostenible de Potosí / Sustainable Development Foundation for Potosí
IEAU	Initial Environmental Audit
IFC	International Finance Corporation
IPP	Indigenous Peoples Plan
Manquiri	Empresa Minera Manquiri S.A.
OA	Office of Accountability
OPIC	Overseas Private Investment Corporation
PDO	Plan de Desarrollo Originario Sostenible / Indigenous Peoples Sustainable Development Plan
PLAHIPO	Planta Hidrometalurgica Potosí
Project	San Bartolomé Project
RAP	Resettlement Action Plan
The Act	Foreign Assistance Act of 1961, as amended

EXECUTIVE SUMMARY

The Office of Accountability prepared this report in response to an April 2008 request from an indigenous community in the area of influence of the San Bartolomé Project near Potosí, Bolivia. The request asked OA to review the Overseas Private Investment Corporation's compliance with Involuntary Resettlement and Indigenous Peoples policies and procedures with regard to the San Bartolomé Project.

The San Bartolomé Project consists of construction and operation of silver and tin mining facilities on the flanks of Cerro Rico Mountain, 4 Km southeast of the historic mining city of Potosí. Coeur d'Alene Mines Corporation leases the Project from Corporacion Minera de Bolivia (COMIBOL), Bolivia's state mining company. Empresa Minera Manquiri S.A., a subsidiary of Coeur d'Alene Mines, operates the Project. The Project began production of silver dore in June 2008, and expects to reach an annual capacity of approximately six million ounces of refined silver and 30-50 metric tonnes of tin annually. Total cost of the Project is US\$150 million. In December 2004, Coeur d'Alene contracted with OPIC for US\$54.25 million in political risk insurance coverage for a twenty-year term.

The Requesters raised the following specific concerns in their Request:

- financing and implementation of a Sustainable Indigenous Development Plan for benefit of the indigenous community, as required under the Indigenous Peoples policy referenced in OPIC's Environmental Handbook;
- compensation for directly-affected community members' loss of grazing land and pressure on the community's natural resources, as required under the Involuntary Resettlement policy referenced in OPIC's Environmental Handbook.

OA addressed the following key questions in the compliance review:

- Did OPIC comply with the Resettlement policy, procedures, standards and guidelines, to mitigate risk that community households would suffer loss of livelihood or a reduced standard of living due to resettlement under the Project? In case of non-compliance, was there any recognized waiver or grounds for waiver?
- Did OPIC comply with the Indigenous Peoples policy, procedures, standards and guidelines, to provide net positive Project benefits for indigenous people in the San Bartolomé Project's area of influence? In case of non-compliance, was there any recognized waiver or grounds for waiver?

In reviewing OPIC's environmental and social due diligence with regard to the San Bartolomé Project, OA examined documents and correspondence in OPIC electronic and paper files, and interviewed OPIC staff from the Office of Investment Policy and Insurance Department who were engaged in due diligence and monitoring of the Project from OPIC's receipt of the Project application in April 2004, through Office of Accountability's receipt of the

Request from the indigenous community in April 2008. OA consulted with social development staff of the International Finance Corporation and the World Bank, who authored and implemented in their institutions the policies that OPIC elected to incorporate and publicize in its Environmental Handbook. OA also met with the Requesters, the Requester community, and Manquiri in Potosí, Bolivia. And OA reviewed pertinent sections of the Environmental Baseline Audit, Environmental Impact Assessment, comments OPIC made during due diligence and monitoring, OPIC's Environmental Clearance, the Environmental Management Plan, and a document regarding compensation for impacted families.

Findings

Regarding the question of whether OPIC complied with the **Involuntary Resettlement** policy referenced in the OPIC Environmental Handbook in its due diligence and monitoring of the San Bartolomé Project, Office of Accountability finds that:

- OPIC did not apply the Involuntary Resettlement policy to the Project. OA has not seen any documentation or notification to any interested party regarding the applicability of the policy to the Project.
- As a consequence of the fact that OPIC did not apply the Involuntary Resettlement policy or guidelines, there is no publicly available baseline information beyond a cursory summary of Bolivian census data to assist resolution of the community's continuing concerns regarding compensation and loss of grazing land. The lack of documentation may make the community's concerns more difficult, costly and time-consuming to resolve. In the absence of adequate resettlement documentation, OPIC cannot assure itself that the "equal or better" Resettlement standard has been met or that reasonable measures to ensure "equal or better" livelihoods and living standards for households subject to resettlement are in place.

Regarding the question of whether OPIC complied with the **Indigenous Peoples** policy referenced in OPIC's Environmental Handbook with regard to the San Bartolomé Project, Office of Accountability finds that:

- OPIC did not apply the Indigenous Peoples policy to the Project. OA has not seen any documentation or notification to any interested party regarding the applicability of the policy to the Project.
- As a consequence of the fact that OPIC did not apply the Indigenous Peoples policy or guidelines, the Requester community does not have an agreed, funded and implemented Indigenous Peoples Plan or an IPP equivalent plan tailored to the Requester community. In the absence of an agreed, funded and implemented Indigenous Peoples Plan or IPP equivalent, OPIC cannot assure itself that reasonable measures to provide "net positive benefits" to the Requester community in the Project's area of influence are in place.

INTRODUCTION

Office of Accountability (“OA”) prepared this report in response to an April 2008 request (“The Request”) from an indigenous community (“The Requesters”) in the area of influence of the San Bartolomé Project (“The Project”) near Potosí, Bolivia. The Request asked OA to review the Overseas Private Investment Corporation’s compliance with Involuntary Resettlement and Indigenous Peoples policies that are referenced in OPIC’s Environmental Handbook (“The Handbook”), with regard to the Project. The Requesters, members of one of three subsistence-based indigenous communities in the Project’s area of influence, have asked that their identities remain confidential. In accordance with its operational guidelines, Office of Accountability screened the Request against its eligibility criteria and accepted the Request in May 2008.¹

The Office of Accountability is the accountability mechanism for the Overseas Private Investment Corporation (“OPIC”), and reports directly to OPIC’s President and CEO. OA’s authority extends to reviewing OPIC’s compliance with environmental, social, worker rights and human rights policies; the compliance of other parties participating in the San Bartolomé Project is outside the scope of OA’s authority and is not the subject of this report.

The Request concerns OPIC’s alleged failure to apply Involuntary Resettlement and Indigenous Peoples policies to the Project. The Request raises the issues: a) Did OPIC comply with the Indigenous Peoples policy that indigenous people in the Project’s Area of influence should receive net positive Project benefits; and b) Did OPIC comply with the Involuntary Resettlement policy to mitigate risk that community households would suffer loss of livelihood or reduced standard of living due to resettlement under the Project?

This report reflects Office of Accountability’s independent compliance review of OPIC’s due diligence concerning resettlement and indigenous peoples requirements, beginning with OPIC’s receipt of the Project application in April 2004, through Office of Accountability’s receipt of the Request in April 2008.

DESCRIPTION OF THE PROJECT

Physical Facilities

The San Bartolomé Project consists of construction and operation of a silver and tin mining operation on the flanks of Cerro Rico Mountain near the historic mining city of Potosí, Bolivia. The Project documents represent that Empresa Minera Manquiri S.A. (“Manquiri”), a subsidiary of Coeur d’Alene Mines Corporation (“Coeur d’Alene”), will exploit above-ground unconsolidated ore deposits, and will use cyanide leaching to produce silver and gravimetric methods to produce tin. They also indicate that silver will be formed into dore bars containing approximately 99 percent silver on site, exported for final refining in the United States, and sold into precious metals world markets. During the 15-year operational life of the Project, the Project documents indicate that Manquiri expects to process 37 million tonnes of ore, with an

¹ Office of Accountability’s webpage (<http://www.opic.gov/doingbusiness/accountability>) contains OA’s request acceptance criteria and a public registry showing the current status of registered requests.

average grade of 114 grams of silver per tonne, yielding an average 6 million ounces of refined silver and 30 to 50 million pounds of tin annually. Manquiri expects to remove from Cerro Rico Mountain approximately 1.2 million tonnes mining waste overlying the ore deposits to be exploited, and dispose of this waste in an environmentally safe manner.

The San Bartolomé Project consists of the following installations and facilities (see Fig. 1, Influence Area, p. 13):

- extraction of ore from four open pits developed in above-ground ore deposits;
- construction of a haul road to transport ore from the open pits to the processing plant;
- construction and operation of a processing plant with ore washing, classification and titration; a grinding circuit; and circuits for the cyanide tank leaching of silver and the gravimetric concentration of tin;
- construction of two lined reservoirs for disposal of solid residues:
 - a fines disposal facility (“FDF”) for disposal of fine tailings not subject to chemical processes, covering approximately 56 hectares (“ha”); and
 - a dry stack facility (“DSF”) for disposal of residues of the cyanide leaching process, covering approximately 89 ha;² and
- auxiliary facilities such as offices, shops and warehouses.

Project Stakeholders

The Project comprises 1,350 ha of mining rights, legally defined through: a) joint venture agreements with seven mining cooperatives; b) a leasing agreement with Corporacion Minera de Bolivia (“COMIBOL”); c) the Planta Hidrometalurgica Potosí (PLAHIPO) assignment agreement; d) Manquiri’s own mining concessions, and e) a negotiated concession process referring to surface rights to 400 ha land acquired by Manquiri from an indigenous community located within the Project’s area of influence.

Stakeholders in the Project include:

- three indigenous communities, each of which owns surface land rights within the Project’s area of influence;³
- seven mining cooperatives,⁴ which hold leases to several of the above-ground ore deposits in the mining area that the Project will exploit (see Fig. 1, Influence Area, p. 13);

² The fines disposal facility is designed to contain approximately 15 million tonnes; the dry stack facility approximately 27-28 million tonnes.

³ The three indigenous communities located within the area of influence are identified in the San Bartolomé Environmental Impact Assessment (Estudio de Evaluación de Impacto Ambiental/EEIA), March 2004, pp. 95-103. The approximate boundaries of the Project’s area of influence are: a) north: southern limit of Potosí city; b) south: northern base of Pichu Kkollu Hill; c) east: head of Martinez Valley; and d) west: western slope of Huacajchi Hill. See Fig. 1, Influence Area, p. 16, and San Bartolomé EIA, p. 5.

⁴ The seven cooperatives are Reserva Fiscal, Compotosi, Unificada, Veneros Villa Imperial, 10 de Noviembre, Rosario and 27 de Marzo. Twenty-seven mining cooperatives, employing 9,800 persons, operate in Cerro Rico Mountain.

- various groups in Potosí city.

This report concerns the first group – the indigenous communities.

Indigenous communities. The three communities with surface land rights within the Project’s area of influence are located south of the City of Potosí, in Tomas Frias Province of the Department of Potosí. The Requester community, which is one of the three indigenous communities, has approximately 600-700 members, whose livelihoods depend primarily on agrarian subsistence-oriented production (mainly llama and sheep grazing) and brick-making. The other two communities, whose lands are adjacent to the Requester community, have approximately 216 and 128 members, respectively.

The Requester community collectively owns approximately 11,000 ha of land south and east of the San Bartolomé Mining Area. The Requester community allocates portions of the collectively owned land by distinct lineage groups. Land and other rights are assigned through lineage affiliation. Requester community members live in six settlements, one of which is immediately adjacent to the mining area. The Requester community includes physically displaced persons who have relocated to new houses provided by the Project, economically displaced persons, who have lost access to resources and livelihood as a result of the Project, and a host population, who live near or around areas to which physically displaced people are resettled or economic assets are displaced, and who, in turn, may be adversely impacted by the resettlement.

Prior to submitting its application for political risk insurance to OPIC, Manquiri acquired surface rights to 400 ha of Requester community-owned land adjacent to the mining area for construction and operation of two tailings dams (the Atlantida and Atlantida II concessions, dated October 2000 and March 2004 respectively). (See Fig. 2, Contracts and Concessions Areas, p. 14). In both cases, Manquiri negotiated with a group of community members, paid lump sum compensation, and agreed to reclaim and return the land to the Requester community after the Project’s expected 15-year life. These concession agreements did not address resettlement impacts.

Chronology of the OPIC Process

OPIC received the formal Application for Political Risk Insurance from Coeur d’Alene on April 8, 2004.⁵ OPIC disclosed the Project’s EIA and Environmental Baseline Audit (“IEAU”), prepared by Manquiri, for public comment on May 20, 2004. OPIC visited Bolivia, including the mining area, June 1-4, 2004. OPIC’s Board of Directors approved OPIC’s participation in the Project on July 29, 2004. OPIC’s Office of Investment Policy issued an internal Environmental Clearance for the Project on October 25, 2004, and notified Bolivia’s Minister of Sustainable Development and Planning of standards and guidelines applicable to the Project on December 7, 2004. OPIC and Coeur d’Alene executed the Contract of Insurance on December 17, 2004. OPIC conducted a monitoring site visit to the Project area June 1-3, 2007.

⁵ OPIC registered the San Bartolomé Project for political risk insurance on or around January 10, 2002.

This report discusses OPIC's resettlement and indigenous peoples policies and their application.

OPIC'S APPLICATION OF RESETTLEMENT AND INDIGENOUS PEOPLES POLICIES

OPIC's environmental due diligence policy derives from the Foreign Assistance Act of 1961, as amended ("The Act"), that requires OPIC "to refuse to insure, reinsure, guarantee, or finance any investment in connection with a project which the Corporation determines will pose an unreasonable or major environmental, health, or safety hazard, or will result in significant degradation of national parks or similar protected areas."⁶ The Act prohibits OPIC's Board of Directors from voting in favor of an action that is likely to have significant adverse impacts unless the applicant has completed an environmental impact assessment, and the assessment has been made publicly available in the United States and the host country for at least 60 days prior to the date of the vote.

The OPIC Environmental Handbook (2004) is OPIC's core environmental policy document and sole publicly available environmental policy statement. The Handbook's stated purpose is to provide to OPIC's users and the interested public "information concerning the general environmental guidelines, assessment and monitoring procedures that OPIC applies, in its discretion, to prospective and ongoing investment projects," and "a consistent framework for interacting with OPIC on environmental matters." The general environmental guidelines include environmentally-related social policies and guidelines.⁷

According to the Handbook, OPIC "relies on guidelines and standards adopted by international organizations such as the World Bank...[and] applies the most current World Bank Group guideline to every project to which such Guidelines are applicable." The Handbook includes a core set of World Bank Group standards for application to OPIC-supported projects: a) sector-specific industrial standards from the World Bank Group's *Pollution Prevention and Abatement Handbook*; b) the International Finance Corporation's ("IFC's") *Environmental Health & Safety Guidelines*, and c) nine World Bank Group Operational Policies concerning cross-cutting environmental issues, including Environmental Assessment, Involuntary Resettlement and Indigenous Peoples and policies, "to the extent applicable to private sector investments."⁸

Environmental Assessment⁹

Social impact analysis during the environmental assessment process provides essential baseline data to identify potential project impacts, determine applicability of Involuntary

⁶ Foreign Assistance Act of 1961, as amended ("The Act"), § 231(n).

⁷ OPIC Environmental Handbook (February 2004), p. 5. The Handbook was originally issued in 1999. This review uses as its reference the current Handbook, as the version in effect when Coeur d'Alene applied for OPIC insurance in April 2004.

⁸ Ibid. pp. 45-47.

⁹ World Bank OP 4.01 on Environmental Assessment, January 1999.

Resettlement and Indigenous Peoples policies, and support those policies' application. This analysis separates the affected population into social groups which may be impacted in different ways, degrees and locations. Social differences that may be environmentally significant include ethnic and tribal affiliation, occupation, socioeconomic status, age and gender.¹⁰ In particular, social assessment includes detailed data on household income, community employment and socioeconomic stratification.

Involuntary Resettlement¹¹

The Involuntary Resettlement policy and guidelines aim to prevent or minimize displacement or impoverishment of project-affected persons, net loss of land or resources, and loss of access to resources. Where involuntary resettlement cannot be avoided, the policy restores or improves affected persons' livelihoods and standards of living to "equal or better" levels relative to the pre-project baseline, whether or not affected households are physically displaced. The policy applies under all conditions of potential physical or economic displacement resulting from acquisition of use of land for a project, regardless of the total number of people affected or the significance or severity of anticipated impact.¹² Affected persons include those who are physically displaced (move house) and/or economically displaced (lose access to resources or livelihood), and the host population (people living in or around areas to which displaced people or assets may be relocated, and who, in turn, may be adversely affected by the resettlement).

Application of the Involuntary Resettlement policy requires the lender or insurer to communicate the resettlement policy and social assessment and baseline data collection requirements to the project. The project: a) conducts a census to identify affected persons and assets in the project's area of influence, which includes areas where displaced and host populations live and work; b) develops a Resettlement Plan, in consultation with impacted persons, which ensures that impacted persons are informed about options and rights, receive prompt compensation at full replacement cost, and receive alternative or similar resources to compensate for loss of access to community resources; c) submits the Resettlement Plan to the lender or insurer; and d) publicly discloses the Plan. The lender or insurer then assesses the plan's adequacy, and ensures that project legal agreements reflect the project's obligation to implement the Resettlement Plan and to keep the lender or insurer informed of progress of implementation.

Due diligence. The San Bartolomé EIA identifies approximately 17 directly-affected families subject to physical displacement and/or potential loss of assets and livelihood. According to the EIA, before tailings dam construction could begin, four families would be relocated to new

¹⁰ World Bank, *Environmental Assessment Sourcebook*, 1999, Ch. 3, p. 2.

¹¹ World Bank Operational Policy 4.12 on Involuntary Resettlement, December 2001, was the most current World Bank Group resettlement policy when Coeur d'Alene applied for OPIC insurance in April 2004. It replaced World Bank Operational Directive 4.30, issued in 1990. The IFC refers to OD 4.30 in its Handbook for Preparing a Resettlement Action Plan, 2002. All these documents agree on the major requirements for Resettlement Plans. OPIC staff advised OA that the IFC Handbook for Preparing a Resettlement Action Plan is relevant and applicable as a reference document for implementation of resettlement policy. This review uses as its references the World Bank OP 4.12 and IFC's Handbook for Preparing a Resettlement Action Plan.

¹² IFC, Handbook for Preparing a Resettlement Action Plan, 2002, p. 5.

housing, and might permanently lose their grazing land, depending on the effectiveness of post-mine revegetation; a fifth family chose not to be relocated, but might also permanently lose its grazing land. Another twelve families would lose grazing land at the processing plant site and elsewhere in the Martinez Valley.¹³

Office of Accountability found no Project documentation regarding applicability of resettlement policies to project-affected people in OPIC's files for the period from OPIC's receipt of the Project application in April 2004 through OA's receipt of the Request in April 2008.

During OA's interviews with OPIC in the course of its investigation, OPIC staff stated several reasons for the fact that OPIC did not apply the resettlement policy, including: a) the number of displaced persons, which they said was too small to warrant a full Resettlement Plan; b) the negotiated compensation payments received by physically displaced households, which they said indicated that the resettlement was voluntary, and hence not subject to the Involuntary Resettlement policy; and c) more generally, OPIC exercised its discretion to waive policies referenced in its Environmental Handbook.

Regarding the number of displaced persons pertaining to a full Resettlement Plan, the IFC's Handbook for Preparing a Resettlement Action Plan stipulates that the policy applies under all conditions of physical or economic displacement resulting from acquisition of use of land for a project, regardless of the number of people affected.¹⁴ An Abbreviated Resettlement Plan may be used for small-scale resettlement (fewer than 200 displaced people or loss of less than 10 percent of affected people's productive assets).¹⁵

Regarding whether the anticipated resettlement was voluntary, the World Bank Resettlement Sourcebook clarifies that in infrastructure projects with fixed locations, e.g. the tailings dam reservoir in this case, project-affected people cannot disagree with land use rights acquisition, without invoking adverse consequences imposed formally or informally by the state. The fixed location of the tailings dam reservoirs under the San Bartolomé Project did not allow for voluntary resettlement.¹⁶

Regarding the claim that OPIC can decide to waive policies referenced in the Environmental Handbook, without documentation of reasonable grounds for opting out of the policy or notification of interested parties, OA has not seen any documents that provide such authority to OPIC. Nor has OA seen OPIC records that document reasonable grounds for waiving the resettlement policy. The fact that OPIC did not apply the policy resulted in an inability to monitor resettlement and to address any adverse consequences of resettlement until affected people complained.

¹³ San Bartolomé EIA, pp. 126-27. See also Figs. 1 and 2, pp. 16-17. The EIA does not address the host population who live near or around areas to which physically displaced people or economically displaced assets are relocated.

¹⁴ IFC, Handbook for Preparing a Resettlement Action Plan, 2002, p. 5.

¹⁵ See World Bank OP 4.12 on Involuntary Resettlement, Resettlement Instruments, p. 25, and Annex A, Abbreviated Resettlement Plan.

¹⁶ World Bank, Involuntary Resettlement Sourcebook, 2004, p. 21

The “Analysis of Socioeconomic Impacts” chapter of the EIA presents information pertaining to physically and economically displaced households in the Project’s area of influence, but does not address host communities living near areas to which displaced persons or assets are relocated. And, regarding physically and economically displaced people, the EIA does not include detailed data on household income, composition or occupation. Also, the EIA does not discuss the relationship between households and significant social groups or subgroups within the impacted communities (e.g. lineages, which control land allocation), or anticipated impacts on host populations. As a result, the EIA underestimates the number of project-affected persons in the Project’s area of influence.

As noted above, a full enumeration of Project-affected persons, potential physical and economic displacement and host populations constitutes a critical baseline for any resettlement plan or indigenous peoples plan. Without a full enumeration, it is difficult for any interested party to determine whether individual families, households or community groups subject to resettlement are achieving restored or improved livelihoods and standards of living relative to the pre-Project baseline.

The only document OA found that did address OPIC’s consideration of the applicability of the Involuntary Resettlement policy to the Project was OPIC’s Environmental Clearance, issued in October 2004, which recommended that OPIC’s Contract of Insurance should require Manquiri to prepare a Resettlement Action Plan (“RAP”). The RAP was one of eight environment-related plans the Environmental Clearance required to be submitted for OPIC’s review by April 2005. The December 2004 Contract of Insurance incorporated all the required plans, but one: the Resettlement Action Plan requirement was dropped.

OA has not seen any documents in OPIC’s files that provide information concerning the inclusion of the Resettlement Action Plan among the conditions of the Project. The environmental staff who prepared the Environmental Clearance has since left OPIC and would not make himself available to discuss the rationale for inclusion of the resettlement condition in the Clearance. OA did not find any documentation or rationale concerning the absence of the Resettlement Action Plan condition from the Contract. Both the environmental staff who drafted the conditions and the Legal staff who drafted the Contract of Insurance, and hence might be able to explain the absence of the RAP condition from the Contract, have since left OPIC and were not available.

Project implementation. Following execution of the Contract of Insurance in December 2004, the San Bartolomé Project conducted compensation negotiations with approximately 14 Requester community households whose dwellings, grazing land and/or brick-making kilns were located in or near the tailings dam or processing plant sites in mid-2006. The Project relocated four families to new houses in Potosí city, and moved economically-displaced households’ livestock to outlying areas of the affected lineage’s land.

In July 2007, OPIC asked the Project whether a Resettlement Action Plan had been prepared for the displaced families, and if so, requested a copy. The Project provided a 15-page summary of its compensation calculation methodology, entitled “Valoracion de Los Bienes/Recursos Perdidos y Compensacion” (“Assessment of Lost Assets/Resources and

Compensation”), which is undated and evidently part of an unidentified larger document. OA has seen no evidence that OPIC reviewed or commented on the “Valoracion” document.

OPIC provided the “Valoracion” document to Office of Accountability, and identified it as Manquiri’s resettlement plan. OA reviewed the “Valoracion” document, and found that it apparently does not address many of the key issues that should be addressed in a Resettlement Plan, e.g. the number and composition of household and other groups within the impacted area, a detailed inventory of resources and rights (e.g. seasonal grazing) that might be impaired, and a plan to provide “equal or better” opportunities for affected local communities.

During Office of Accountability’s July 2008 visit to the Project’s area of influence, the Project informed OA that it had prepared a Resettlement Diagnostico (Baseline Study) and Resettlement Plan. OA requested but has not received copies of these documents. To OA’s knowledge, these documents are not publicly available. Without public availability, it is difficult for any interested party to determine whether project-affected persons subject to resettlement are undergoing loss of economic assets or livelihood.

Office of Accountability met with Requester community families who had moved house and/or lost grazing land or brick kilns during its July 2008 visit. The Requester families expressed confusion and concerns about exclusion of community and family members, who they believed should have been entitled to compensation, from the compensation process, the transparency and “rules of the game” of the compensation process, and the Project’s alleged failure to provide adequate alternative grazing land. Livestock that was moved to outlying areas of the affected lineage’s land competed for scarce forage with the host population’s herds, causing both intra- and inter-lineage conflict when relocated livestock wandered onto a neighboring lineage’s land. The lack of a plan, they said, resulted in reduction of llama herds, loss of household income and livelihood, and lack of opportunities to restore income to an “equal or better” standard.

Indigenous Peoples¹⁷

The Indigenous Peoples policy and guidelines aim to ensure net positive, culturally compatible social and economic benefits for indigenous people in the project area of influence, and to avoid and/or mitigate adverse impacts on indigenous people. The policy applies to indigenous persons having: a) a close attachment to ancestral territories and to the natural resources in those areas; b) self-identification and identification by others as members of a distinct cultural group; c) indigenous language; d) customary social and political institutions; and e) primarily subsistence-oriented production.

Application of the Indigenous Peoples policy requires the lender or insurer to communicate the Indigenous Peoples policy, social assessment and baseline data requirements to the project. The project: a) conducts a census to identify affected indigenous persons in the

¹⁷ World Bank Operational Directive 4.20 on Indigenous Peoples, September 1991, was the most current World Bank Group indigenous peoples policy when Coeur d’Alene applied for OPIC insurance in April 2004. This review uses World Bank OD 4.20 as its reference.

project's area of influence, analyzes the social structure and income sources of the population, and inventories the resources that indigenous peoples use; b) conducts direct consultation for informed participation of project-affected indigenous people, and uses experienced specialists to assist identification of local preferences; and c) prepares and submits to the lender or insurer an Indigenous Peoples Plan ("IPP") or equivalent, with an implementation schedule and benchmarks, which may include special components, e.g. health, cultural preservation, entitlement to natural resources, and education, that may lie outside the project's primary objectives. The lender or insurer then assesses the plan's adequacy, and ensures that the project legal agreement reflects the project's commitment to implement the IPP.

Due diligence. The San Bartolomé EIA describes the Project's public consultations with the Requester community and the other two indigenous communities in the Project's area of influence. The Project organized an information workshop with the Requester community in November 2003, followed by a public consultation meeting in December 2003. Due to Project design changes affecting the Requester community, the Project organized a second public consultation with the authorities and members of the Requester community in April 2004.

The consultation meetings consisted of: a) a presentation of the Project's characteristics, potential environmental impacts, anticipated socioeconomic impacts, proposed prevention and mitigation measures; b) solicitation of the community's concerns and suggestions; and c) presentation of a proposed process for developing a strategy for managing impacts and providing development opportunities to stakeholder communities, centered on a proposed Sustainable Development Foundation for Potosí (Fundacion de Desarrollo Sostenible de Potosí, "FUNDESPO").¹⁸ OPIC also received briefings on the FUNDESPO proposal during an April 2004 meeting in Washington and during OPIC's June 2004 due diligence site visit.

Office of Accountability found no record in OPIC's files to explain the fact that OPIC did not apply the Indigenous Peoples policy to the Project. During OA's interviews with OPIC in the course of its investigation, OPIC staff stated two reasons for the fact that OPIC did not apply the policy: a) the view of the OPIC team and the social consultants to the Project that all local residents formed a single cultural group, which had lived in the area for centuries, shared a common heritage and Quechua language, and identified themselves as a single cultural group, and that no local population met the World Bank Group definition of "indigenous people" (see p. 8); and b) OPIC exercised its discretion to waive policies referenced in its Environmental Handbook.

Regarding the view that the Requester community is neither "indigenous" nor distinct from other groups, the expert anthropologist who participated in Office of Accountability's visit to the Project area in 2008 states that the Requester community is identified by the Bolivian government as a distinct indigenous community, and meets the Indigenous Peoples policy's criteria for identification of indigenous peoples.¹⁹

Regarding the claim that OPIC can decide to apply or waive policies referenced in the Environmental Handbook, without documentation of reasonable grounds for opting out of the

¹⁸ EIA, pp. 184-88, 162-69.

¹⁹ See p. 6 above, and OD 4.20, para. 5.

policy, the same concern noted above – whether anyone has such authority, and if so, what is the process – also applies in this case. Given the EIA’s identification of adverse Project impacts on soil use on indigenous land within the Project’s area of influence, the Indigenous Peoples policy required that OPIC examine local patterns of social stratification and resource allocation, in order to determine whether to apply the Indigenous Peoples policy.²⁰ This was not done.

OPIC’s Environmental Clearance does not refer to the Indigenous Peoples policy or apply it to the Project. OA has seen no reference in OPIC’s files to any initiative to communicate the Indigenous Peoples policy to the Project, or to require any submissions to OPIC concerning an Indigenous Peoples Plan, to ensure a continuing flow of benefits to indigenous communities in the area of influence during the 15-year life of the Project. The Contract of Insurance contains no reference to any Indigenous Peoples planning process or requirement for the San Bartolomé Project.

Project implementation. According to the Requester community, the Project did not initiate a participatory indigenous peoples planning process with the community after execution of the Contract in December 2004. In mid-2006, the Requesters asked the Project to fund preparation of a Plan de Desarrollo Originario Sostenible (Sustainable Indigenous Development Plan, “PDO”) specifically for their community, which the Project did. A proposed PDO was presented to a joint meeting of the community and the Project in October/November 2007, but to OA’s knowledge, its implementation has not been funded to date.

In the absence of a functional Indigenous Peoples Plan or IPP equivalent, tailored to the needs of the Requester community, and without socioeconomic baseline data consistent with Indigenous Peoples policy requirements to serve as a benchmark, OPIC cannot reasonably assure itself that the flow of benefits to indigenous communities in the Project’s area of influence has met the Indigenous Peoples standards referenced in its Environmental Handbook.

Conclusions

The San Bartolomé Project involves an extractive industry utilizing indigenous-owned land, resettlement of indigenous households, and physically and economically displaced households’ and host populations’ potential loss of access to resources and livelihood. The San Bartolomé EIA and Project information presentations by Manquiri and its social consultants, in Washington and Potosí, informed OPIC of the physical and economic displacement features of the Project early in its due diligence process.

Pursuant to its social policies, OPIC is responsible for communicating the policies, guidelines and plan preparation requirements to the Project, reviewing the Project’s resettlement and indigenous peoples plans against policy requirements and features of the Project, ensuring that the Project legal agreement reflects the Project’s obligation to implement the resettlement and indigenous peoples plans, and monitoring implementation of the plans relative to “equal or better” and “net positive benefit” benchmarks.

²⁰ San Bartolomé EIA, p. 135.

As a consequence of the fact that OPIC did not apply the Involuntary Resettlement policy or guidelines, there is no publicly available baseline information beyond a cursory summary of Bolivian census data to assist resolution of the community's continuing concerns regarding compensation and loss of grazing land. The lack of documentation regarding compensation and loss of grazing lands may make the community's concerns more difficult, costly and time-consuming to resolve. As a consequence of the fact that OPIC did not apply the Indigenous Peoples policy or guidelines, to OA's knowledge, the Requester community does not have an agreed, funded and implemented Indigenous Peoples Plan or an IPP equivalent plan tailored to the Requester community.

FINDINGS AND RECOMMENDATIONS

Findings

Regarding the question of whether OPIC complied with the **Involuntary Resettlement** policy referenced in the OPIC Environmental Handbook in its due diligence and monitoring of the San Bartolomé Project, Office of Accountability finds that:

- OPIC did not apply the Involuntary Resettlement policy to the Project. OA has not seen any documentation or notification to any interested party regarding the applicability of the policy to the Project.
- As a consequence of the fact that OPIC did not apply the Involuntary Resettlement policy or guidelines, there is no publicly available baseline information beyond a cursory summary of Bolivian census data to assist resolution of the community's continuing concerns regarding compensation and loss of grazing land. The lack of documentation may make the community's concerns more difficult, costly and time-consuming to resolve. In the absence of adequate resettlement documentation, OPIC cannot assure itself that the "equal or better" Resettlement standard has been met or that reasonable measures to ensure "equal or better" livelihoods and living standards for households subject to resettlement are in place.

Regarding the question of whether OPIC complied with the **Indigenous Peoples** policy referenced in OPIC's Environmental Handbook with regard to the San Bartolomé Project, Office of Accountability finds that:

- OPIC did not apply the Indigenous Peoples policy to the Project. OA has not seen any documentation or notification to any interested party regarding the applicability of the policy to the Project.
- As a consequence of the fact that OPIC did not apply the Indigenous Peoples policy or guidelines, the Requester community does not have an agreed, funded and implemented Indigenous Peoples Plan or an IPP equivalent plan tailored to the Requester community. In the absence of an agreed, funded and implemented Indigenous Peoples Plan or IPP equivalent, OPIC cannot assure itself that reasonable measures to provide "net positive benefits" to the Requester community in the Project's area of influence are in place.

Recommendations

Based on the findings of this review, Office of Accountability recommends that:

- OPIC encourage the Project and the Requester community to continue discussions toward an agreed Sustainable Indigenous Development Plan, in order to ensure that reasonable measures to provide “net positive benefits” to the Requester community are in place.
- OPIC develop criteria and procedures to document its consideration of the applicability of Involuntary Resettlement and Indigenous Peoples policies.
- OPIC strengthen its capacity to apply the Involuntary Resettlement and Indigenous Peoples policies and guidelines to OPIC-supported projects.

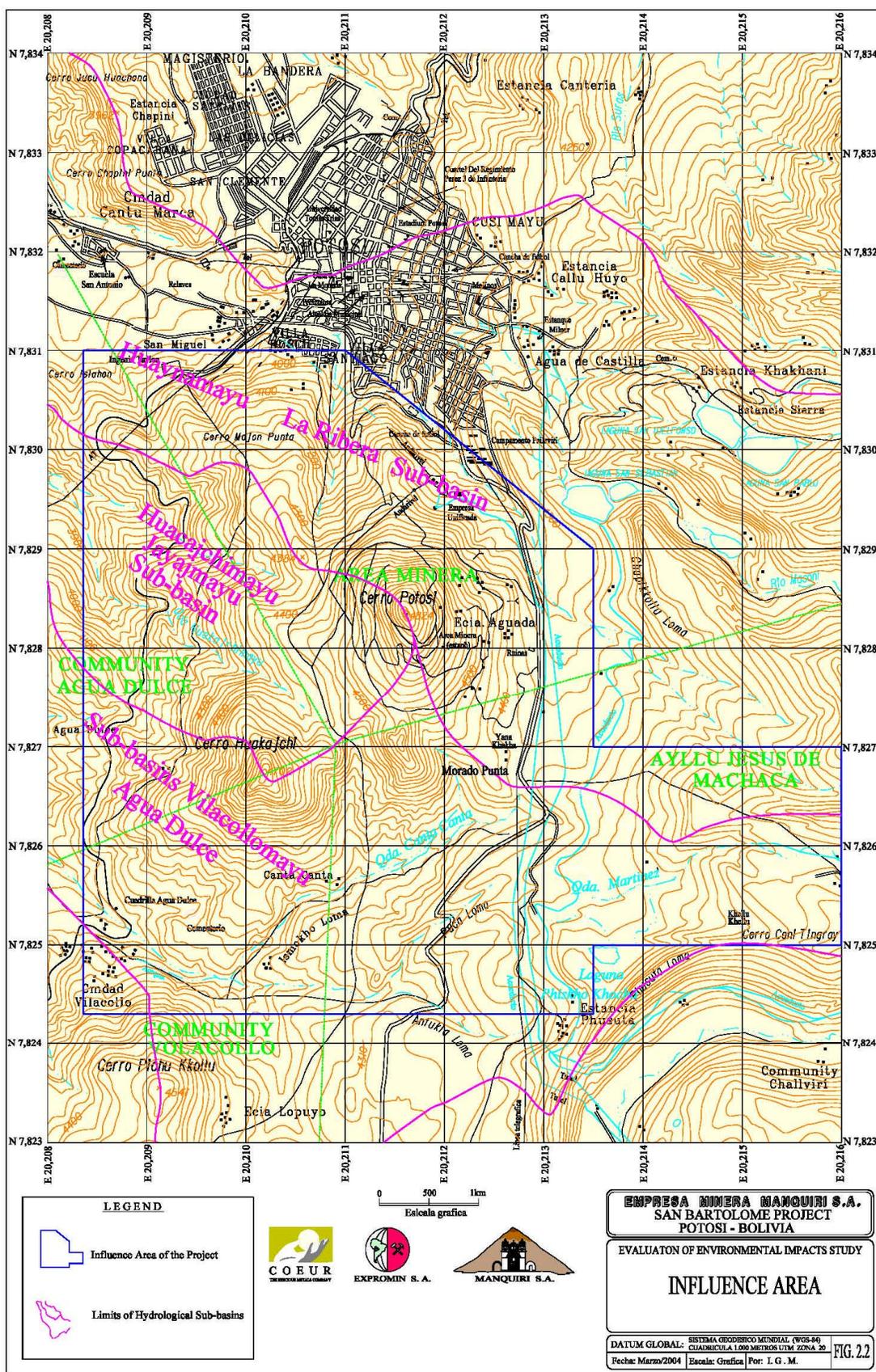


Figure 1

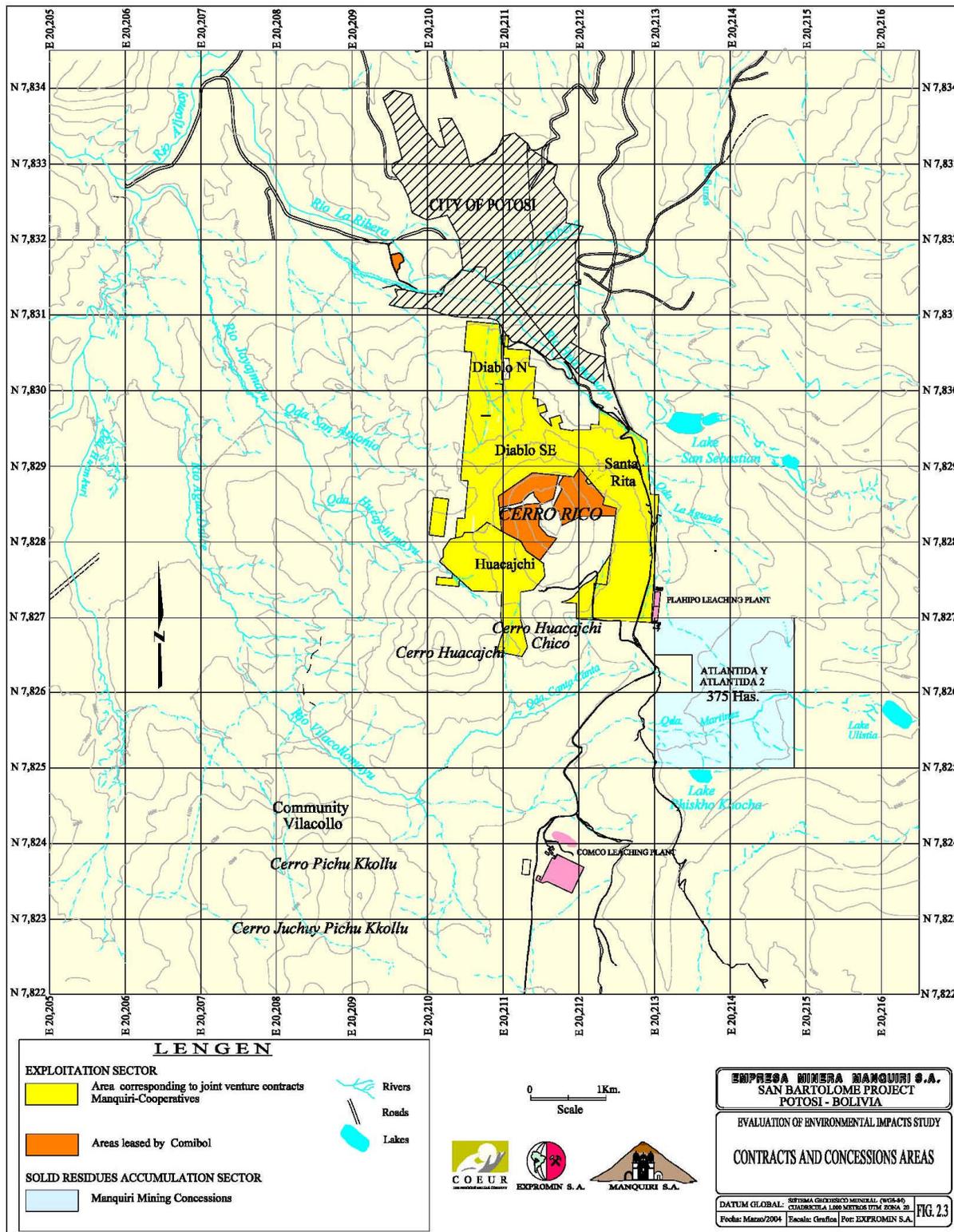


Figure 2