

Memorandum

To: Keith Kozloff
Director, Office of Accountability

From: Elizabeth L. Littlefield
President & CEO

Date: October 12, 2012

Subject: Office of Accountability Cerro de Oro Hydroelectric Project Compliance Review Appraisal Report

This memorandum sets forth action by OPIC Management with regard to specific recommendations made by the Office of Accountability (OA) in its appraisal report on the Cerro de Oro Hydroelectric Project case. After reviewing the report, OPIC has carefully considered the observations and recommendations made in the appraisal report. The following are OPIC Management's responses to the findings contained in the OA report:

Social context for projects

***OA Comment:** OA encourages OPIC to: 1) review its project screening and categorization procedures to better identify elevated risks associated with a project's social context, and 2) strengthen its social review procedures for mitigating these risks through required elements of clients' social management action plans. It may be possible to cost effectively generate sub-regional contextual information, such as through more targeted guidance to OPIC's information center and requests to U.S. embassies. When elevated risks warrant special consideration, OPIC should encourage clients to incorporate measures to address the risks via project action plans.*

Response: Since the time the Cerro de Oro project underwent the policy clearance process, OPIC has drafted, adopted and implemented a revised Environmental and Social Policy Statement (October 15, 2010), which requires projects to develop and adhere to a Social and Environmental Management System to mitigate social and environmental risks throughout the life of OPIC's loan, guaranty, or insurance contract. In addition, OPIC has (1) drafted policy implementing procedures, which describe OPIC's project screening and categorization procedures used to identify social and environmental risks associated with a project and (2) developed a risk characterization matrix that is used internally to assist in identification of project risks based on various factors including sector, size and project location. Partially in response to the OA appraisal report, OPIC also has hired a full time, social impact specialist to provide additional in-house expertise.

OPIC also agrees with the OA recommendation to contact U.S. embassies in a project's host country to seek guidance on any potential political and/or social tensions, either present or historical, in a project area. OPIC has incorporated this recommendation into its environmental and social due diligence procedures for Category A projects.

Client capacity to address social risks

***OA Comment:** The OA understands that, for OPIC-supported funds that invest in Category A projects, OPIC now requires fund managers to appoint a qualified environmental and social expert to assist in implementing OPIC's environmental and social policy requirements. The OA encourages OPIC to require such individuals to have explicit community development and social analysis expertise and experience. When a Category A project is an investment fund subproject, the OA encourages OPIC's due diligence to include evaluating the organizational and technical capacities of the portfolio company and the local partner to effectively address community questions and concerns through staffing and external consultants.*

Response: OPIC's current environmental and social policy, as applied to financial intermediaries and adopted after the Cerro de Oro project underwent OPIC's policy clearance process, is one of the most robust among the development finance institutions. OPIC conducts environmental and social assessments of each proposed private equity fund investment. OPIC also now requires that the private equity fund manager maintain at all times an environmental and social management system, which consists of policies, procedures and resources adequate to implement the OPIC requirements with respect to the environment, human health and safety, and social impacts, and requires the appointment of a senior private equity fund officer with overall responsibility for environmental and social matters.

For OPIC-supported private equity funds that invest in Category A projects, OPIC requires the private equity fund manager to establish the appropriate capacity to manage the implementation of the OPIC requirements with respect to the environment, health, safety and social impacts.

Analysis of project alternatives

***OA Comment:** The OA encourages OPIC to clarify its interpretation of PSI with respect to Category A projects. According to the OA's interpretation of PSI and of international good practice, the results of an analysis of the technical and financial feasibility of alternatives should be included in the ESIA of Category A projects. When OPIC is presented with a previously prepared ESIA of a Category A project that does not include evidence of such an analysis, the ESIA should be supplemented with written documentation of what alternatives were analyzed, how they were compared, and the reasons for selecting the preferred alternative. Although OPIC may wish to specify conditions in which exceptions would be made to this requirement, the default presumption should be to require such documentation, regardless of host country requirements.*

Response: Consistent with PS1, OPIC requires that ESIA's include an alternatives analysis. Formal technical and/or financial feasibility studies of alternatives are required in cases where a project either is unable to meet standards found in the IFC sector specific guidelines, or IFC General Environmental, Health and Safety (EHS) Guidelines or when risks to communities or the environment are potentially significant. In these cases, in order for a project to receive OPIC support, a technical and/or financial feasibility study must demonstrate that there are no technically feasible alternatives for project design or that selection of any identified alternatives would make the project commercially unviable.

Time-sensitive actions

***OA Comment:** In order for grievance mechanisms and communication strategies to serve their intended purpose, they need to be well-designed, fully operational, and publicized to stakeholders at the right time. While receiving written plans for and client reports on these actions is important, the OA encourages OPIC to strengthen its site monitoring such that it can determine whether the functionality of these measures on the ground matches the client's written plans and strategies, especially at sensitive phases of the project cycle. OPIC needs to retain the leverage to expedite remedial measures whenever it detects deficiencies in the design or implementation of any time-sensitive actions.*

Response: Since adopting and implementing the revised ESPS, OPIC requires all projects to develop and implement a community grievance mechanism commensurate with the risks associated with the size and nature of the project. In response to the OA findings, OPIC proposes to require Category A projects to provide evidence that a grievance mechanism has been developed and implemented prior to consent or disbursement. Review and approval of the evidence will be at OPIC's discretion and will be based on an evaluation of the proposed development with respect to OPIC's statutory and policy mandates. OPIC will continue to prioritize site monitoring of Category A projects.

Legacy consultation and compensation issues

***OA Comment:** If the Cerro project is re-activated, the OA encourages OPIC to monitor whatever compensation negotiations need to be conducted in order to accommodate land requirements and other impacts associated with the new project design.*

With respect to future Category A projects for which disclosure and consultation processes occurred before or outside of OPIC's involvement, the OA encourages OPIC to review relevant procedures so that it is able to confirm that some basic objectives of consultation were achieved, consistent with PS1. These include: 1) the range of invited participants was appropriate; 2) affected communities understand the project; and 3) community members had ample opportunity to provide input into the ESIA process and to have their questions and concerns about the project addressed. OPIC's procedures should provide for remedial measures to fill any gaps it identifies in legacy consultation procedures.

Regarding legacy compensation negotiations where expropriation can be invoked, OPIC should have the ability to confirm that the objectives of PS 5 had been met. In legacy compensation situations even where PS 5 is not relevant, it is particularly important for OPIC to confirm the existence of an effectively designed and operating grievance mechanism.

Response: OPIC agrees with the recommendation to continually review its procedures for evaluating and assessing community consultation and social issues. To that end, OPIC will continue to work and reflect on its procedures manual, which is a living document, adaptable to new and revised international environmental and social guidelines and standards. OPIC will continue to place emphasis on community consultation and social issues as part of its procedures.