

December 1, 2021

Catherine F.I. Andrade
Corporate Secretary
U.S. International Development Finance Corporation
1100 New York Ave NW
Washington, DC 20527
Via email: candrade@dfc.gov

Re: Notice of intent to make oral presentation at DFC public hearing on December 8, 2021 and written statement for the record

Dear Ms. Andrade,

The Center for International Environmental Law (CIEL) is a nonprofit organization headquartered in Washington, DC that uses the power of law to protect the environment, promote human rights, and ensure a just and sustainable society. Since 2015, CIEL has worked in collaboration with the Citizen Coordinator “No Alto Maipo” (CCNAM), a network of Chileans impacted by the Alto Maipo Hydroelectric Project, and Ecosistemas, a Chilean NGO, to bring to light the concerns of affected communities regarding this project’s environmental and social impacts.

It is in the context of this ongoing work that CIEL respectfully submits the information that appears on the following pages as a written statement for the record and supports Marcela Mella Ortiz, President and Spokesperson of CCNAM, in presenting this notice of intent to address the public hearing to be held on December 8, 2021 in order to speak about the Alto Maipo project.

The required information regarding the oral presentation is as follows:

Name of individual: Marcela Mella Ortiz
Title: President and Spokesperson
Organization: Citizen Coordinator “No Alto Maipo” (CCNAM)
Address: Los Olmos 19998, San José de Maipo, Santiago Metropolitan Region, Chile
Email: cuentaccrm@gmail.com
Phone: +56 9 9094 9063

A summary of the subject matter to be presented is included in the written comments below. Thank you for this opportunity to address the DFC Board of Directors at the upcoming public hearing.

Respectfully,

Carla García Zendejas
Director, People, Land & Resources Program
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Written Comments for DFC's Public Hearing of December 8, 2021

Date: December 1, 2021

Attention: Catherine F.I. Andrade
DFC Corporate Secretary

From: The Center for International Environmental Law (CIEL)

RE: Ongoing concerns related to OPIC/DFC investment in Chile's Alto Maipo Hydroelectric Project

We take this opportunity to reiterate our concern about the \$245 million investment made in 2014, with an additional \$5 million authorized in 2017, in the Alto Maipo Hydroelectric Project, located in Chile. This project was screened as Category A because its potential impacts were considered "diverse and potentially irreversible." As we have noted on previous occasions, this project presents serious financial concerns and raises questions about due diligence procedures, particularly in relation to environmental and social issues.

We would refer your attention to the written and oral submissions that we presented regarding the Alto Maipo Hydroelectric Project on the occasions of the public hearings held by OPIC on June 7, 2017, September 6, 2017, and June 5, 2019, as well as the public hearing held by DFC on June 9, 2021. We recall that the Boards of DFC and of its predecessor have already been informed of our principal concerns regarding this project, such as the project's expected impacts on access to water for millions of people in the Cajón del Maipo and in the greater Santiago metropolitan region, as well as its negative consequences for local economies and ecosystems and the ways that it has already exacerbated the effects of climate change in a region prone to severe water shortages. On this occasion, we will focus our written comments on the following notable developments that have occurred recently in relation to this project:

- I. The recently reported cybersurveillance contracted by AES Andes, a subsidiary of Virginia-based AES Corp and operator of the Alto Maipo Project, through which it received information and personal data about individuals and collectives who have expressed opposition to the project;
- II. The findings of the compliance investigation regarding this project that were published in September 2021 by the Compliance Advisor Ombudsman (CAO), the accountability mechanism of the International Finance Corporation (IFC); and
- III. The recent Chapter 11 bankruptcy filing by Alto Maipo Delaware LLC, a subsidiary of AES Andes.

We would emphasize that each of these events and disclosures — all of which have occurred in the span of the last 3 months — reveals different aspects of the problematic nature of the Alto Maipo Hydroelectric Project, which itself continues to have extreme negative impacts on local communities and ecosystems.

I. Cybersurveillance Contracted by the Alto Maipo Project Targeting Chilean Activists

During the course of several months in 2020, AES Andes — the subsidiary of US-based AES Corp that operates the Alto Maipo Hydroelectric Project — contracted “cyber-intelligence” services and received information regarding the activities and personal data about a number of persons who have questioned the Alto Maipo project. Among those who have been targeted is Marcela Mella Ortiz, President and Spokesperson of the Citizen Coordinator “No Alto Maipo” (CCNAM), a network of affected residents who have peacefully organized since 2007, voicing their opposition to the project due to its negative impacts.

These events were made known to the public by an investigative report¹ published by the Chilean digital media outlet *Interferencia* on November 8, 2021. The report itself states (in Spanish):

Between at least February and August 2020, the Alto Maipo hydroelectric project, owned by the AES Andes S.A. company, invested \$3 million [Chilean] monthly in “cyberintelligence” services. [...] INTERFERENCIA accessed eleven reports created during this period, confirming that in addition to receiving reports about what occurs online, Alto Maipo used this service to acquire personal addresses, telephone numbers, RUT [personal identification numbers], and other contextual information —such as occupation, spouse, and political history— about environmentalists and persons opposed to the project. [Translation CIEL.]

In addition to collecting personal information about Ms. Mella, the cyber-intelligence services contracted by AES Andes consisted of infiltrating and monitoring CCNAM’s communications, including through its chat group on the WhatsApp communication platform, according to the reports² obtained by *Interferencia*.

Furthermore, we understand that personal information regarding Ms. Mella’s daughters — one of whom is a minor — was also compiled and submitted to AES Andes. (The investigative report published by *Interferencia* does not mention this information, due to security- and privacy-related considerations.) This is particularly concerning in light of the patterns of persecution, harassment, and criminalization of environmental and human rights defenders that can be observed throughout Latin America, where family members of defenders can themselves become the targets of threats, intimidation, and other forms of reprisals. It is often apparent that

¹ *Interferencia, Alto Maipo contrató servicios de “ciberinteligencia” para infiltrar grupos ambientalistas y monitorear a sus propios trabajadores*, 8 November 2021, available in Spanish at: <https://interferencia.cl/articulos/alto-maipo-contrato-servicios-de-ciberinteligencia-para-infiltrar-grupos-ambientalistas-y>.

² After anonymizing it, *Interferencia* published one of the reports at the following link: https://interferencia.cl/sites/default/files/informe_anonimizado_final.pdf.

such acts are aimed at pressuring the defenders to cease their activities in defense of human rights and the environment.

It should be noted that the *Interferencia* investigative report comes after CCNAM had identified security-related issues and possible infiltration, which led CCNAM to contact *Interferencia* to look into the situation, according to a press release issued by CCNAM on November 8, 2021 in response to the *Interferencia* investigation.

Finally, it is also worth noting that 27 members of the Chilean Constitutional Convention published a statement in this regard, in which they denounce this type of “cyber-espionage” targeting activists and ask AES Andes to provide a response.³ In addition, the mayor of San José de Maipo has expressed his solidarity with the affected activists, calling publicly on AES Andes to cease these actions.⁴

II. The CAO’s Findings from its Compliance Investigation of the Alto Maipo Project

In September 2021, the Compliance Advisor Ombudsman (CAO), the independent accountability mechanism of the International Finance Corporation (IFC) of the World Bank, published its compliance investigation report on the Alto Maipo Hydroelectric Project. We would remind the DFC that in 2017, CCNAM, Ecosistemas, and CIEL filed the complaint with the CAO that resulted in this investigation. In its report, the CAO confirmed that, in a number of instances, the IFC failed to ensure compliance with its own performance standards. The CAO further

³ El Mostrador, *Constituyentes repudian ciberespionaje de Alto Maipo a grupos ambientalistas y trabajadores*, 19 November 2021, available in Spanish at: <https://www.elmostrador.cl/cultura/2021/11/19/constituyentes-repudian-ciberespionaje-de-alto-maipo-a-grupos-ambientalistas-y-trabajadores/amp/>.

⁴ Statement by Roberto Pérez Catalán, Mayor of the Municipality of San José de Maipo, published on Instagram on 12 November 2021, available in Spanish at: https://www.instagram.com/p/CWLpMCygPu6/?utm_source=ig_web_copy_link.

concluded that the IFC's adaptive management approach in this technically complex infrastructure project resulted in significant oversights regarding a number of environmental and social risks and impacts.

Some of the key findings from the CAO compliance investigation report are as follows:

- Regarding access to information: One of the key concerns that the complainants raised in this case related to the difficulties that affected community members experienced in accessing information about the project. In its investigation report, the CAO found that, while IFC's Environmental and Social Monitoring Consultant advised the client about disclosing information to stakeholders, the IFC itself failed to follow its own disclosure policies, as both the IFC's environmental and social pre-investment assessment and its supervision were based on environmental and social documents that were not disclosed on its website, in violation of the IFC's 2012 Access to Information Policy.
- Regarding the impacts of tunneling on infiltration of groundwater: In its report, the CAO found that the IFC did not ensure that adequate environmental studies were conducted prior to the start of construction, which led to flooded tunnels and increased risks of groundwater contamination and glacier melt infiltration, with potential project impacts on downstream river ecosystems. The report found that during the pre-investment stage, the IFC was already aware the baseline models were weak. However, construction was allowed to continue without proper modelling of the potential impacts that tunneling would have on groundwater in the area. Shortcomings were expected to be addressed through adaptive management techniques, which were found to be inadequate to address the impacts caused by improper construction of the project's tunnels.

- Regarding the project's impacts on recreational uses of the affected rivers: Similar to its findings related to the tunneling activities noted above, the CAO found that the IFC failed to ensure that satisfactory studies of Alto Maipo's impacts on river usage were completed by the time the IFC exited the project. In this regard, the CAO found that the IFC had not ensured the project was in line with Performance Standard 6 on Biodiversity Conservation and Sustainable Management of Living Natural Resources during the supervision stage.
- Regarding air and noise pollution caused by the project: The CAO also found that the IFC failed to ensure proper monitoring of both air and noise pollution — including particularly in the affected community of El Alfalfal — during its supervision of the project. The CAO found that a lack of quantitative air monitoring during IFC's supervision gave rise to a risk of undetected air pollution and associated impacts on human health. Because the IFC did not ensure adequate monitoring of air quality, the CAO found that IFC's supervision of the project fell below the requirements of both Performance Standard 3 on Resource Efficiency and Pollution Prevention and of the World Bank Group's Environmental Health & Safety Guidelines. Similarly, as relates to the issue of noise pollution, although the CAO found that while the project's environmental and social impact assessment included noise measurements for specific areas, it also found that the IFC did not discuss exceedances with its client or ask its client to meet the World Bank Group's Environmental Health and Safety Guidelines in relation to noise. For this reason, the CAO found that the IFC failed to ensure that the project was taking sufficient measures to meet Performance Standard 3 in relation to noise impacts.

In response to the CAO report, IFC Management issued a response, including a Management Action Plan (MAP), acknowledging the CAO's findings in several areas and identifying a number of lessons learned through this case.

III. Alto Maipo Delaware LLC and Alto Maipo SpA Filed for Chapter 11 Bankruptcy

On November 17, 2021, it was announced that Alto Maipo Delaware LLC and Alto Maipo SpA⁵ had filed for Chapter 11 protection in a U.S. Bankruptcy Court. It was also reported that, as a result of this action, AES Corp would no longer be considered to have control over Alto Maipo.

Among the principal reasons cited for this action is the fact that there has been a significant decrease in hydrology in the last decade that is likely to affect the capacity of the project to generate electricity. It is important to recall that affected residents and members of CCNAM have questioned the Alto Maipo project from its inception, raising — among other issues — significant concerns related to the decreasing flows of the Maipo River and its tributaries, which Alto Maipo has rerouted in significant part through its tunnels to underground turbines in order to generate electricity. In fact, the areas affected by the Alto Maipo project have already experienced significant water shortages, as we have noted in the context of previous OPIC and DFC public hearings in recent years, and the historic levels of drought that have already been experienced in the region are only expected to worsen as the impacts of climate change intensify.

⁵ Alto Maipo, *United States Chapter 11 filing: Alto Maipo begins reorganization process with the agreement of its creditors*, 17 November 2021, available at: <https://cases.primeclerk.com/altomaipo/Home-DownloadPDF?id1=MjA3ODQ5Ng%3D%3D&id2=0>.

IV. Requests to the DFC Board of Directors

In light of the issues highlighted above, we respectfully request information regarding the specific steps that the DFC has taken or will take to address the concerns regarding the negative environmental and social impacts stemming from the construction of the Alto Maipo project, which CIEL, CCNAM, and Ecosistemas have repeatedly raised with both DFC and OPIC. We further request that the DFC take note of the vulnerable situation that environmental defenders are facing as a result of targeted cybersurveillance within a project that has been financed by this institution since 2014, and that relevant offices within the U.S. Government be informed about this situation of reprisals against Chilean citizens.

In addition, we reiterate the requests that we have presented at previous public hearings of these bodies, including the following:

A. Regarding the Alto Maipo hydroelectric project:

- Use the tools at DFC's disposal to raise concerns with AES Andes (formerly AES Gener) regarding the state of operations at the Alto Maipo Project.
- Provide clarification about the steps that DFC has taken at all stages of project development to avoid negative impacts on the human right to water.
- Provide clarification about the measures that DFC has taken to avoid negative impacts on human rights of the people in the Maipo region in the context of the Alto Maipo project.

B. Regarding DFC operations:

- Review procedures to ensure more active due diligence of project developers' capacities and/or willingness to carry out meaningful assessments.

- Review stakeholder engagement procedures with affected communities to ensure proper disclosure of information and meaningful public participation processes are performed.
- Refrain from investing in or refinancing any project in the absence of a comprehensive, inclusive, and up-to-date environmental and social impact assessment that includes its climate impact, an analysis of contextual risk, and the legality of the project developers' actions in-country.
- Provide information regarding the specific steps that the DFC has taken or plans to take to address the recommendations of OIG's Audit as a result of the transition and development of policies and procedures to ensure consistency with the BUILD Act.