

PUBLIC
SIMULTANEOUS DISCLOSURE

DOCUMENT OF THE INDEPENDENT CONSULTATION
AND INVESTIGATION MECHANISM

MICI-BID-CH-2017-0115
ELIGIBILITY MEMORANDUM

ALTO MAIPO HYDROELECTRIC POWER PROJECT

(CH-L1067)
(3008A/OC-CH, 3008B/OC-CH)

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This document is being made publicly available simultaneously with its distribution to the Board for information.

**INFORMATION NOTE
ON THE MICI REGISTRATION PROCESS, ELIGIBILITY DETERMINATION ANALYSIS,
AND PUBLIC REGISTRY**

The Registration process begins when the Independent Consultation and Investigation Mechanism (MICI) receives a Request sent by Requesters, alleging that they have suffered or may suffer harm due to actions or omissions of the Inter-American Development Bank Group (IDB Group) that may constitute a failure to comply with one or more of its Relevant Operational Policies within the context of a Bank-financed operation.

In the Registration Phase, which lasts five business days, the MICI verifies that the Request contains all information required for processing and that it is not clearly linked with any of the exclusions that limit the MICI's actions. Following the registration of a Request, Management has the opportunity to provide its perspective with respect to the allegations submitted by the Requesters, which must be sent to the MICI within 21 business days after registration in the form of a document known as "Management Response."

Once it receives the Response, the MICI starts the eligibility determination process, which involves reviewing the Request against the eligibility criteria established in its Policy to determine whether or not the Request is eligible and whether it can be accepted for processing. This eligibility determination is neither an assessment of the merits of the Request or the issues raised, nor a determination of the IDB Group's compliance or noncompliance with its Relevant Operational Policies.

If the Request is declared eligible, the process will begin for the phase selected by the Requesters; otherwise, the process will be deemed concluded.

All Requests received by the MICI and their processing will be recorded in its virtual [Public Registry](#). Case files will disclose all public information generated in processing a case.

The MICI does not award compensation, damages, or similar benefits. It is not empowered to halt disbursements or suspend operations.

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2.	Joint Response of IDB-IIC Management to Request MICI-BID-CH-2017-0115 referring to the Alto Maipo Hydroelectric Power Project http://www.iadb.org/document.cfm?id=40863163
3.	Project abstract – “Alto Maipo Hydroelectric Power Project” (only available in English) http://www.iadb.org/Document.cfm?id=36773463
4.	Environmental impact assessment (EIA) and Addendums – “Alto Maipo Hydroelectric Power Project” http://seia.sea.gob.cl/documentos/documento.php?idDocumento=2933048 http://seia.sea.gob.cl/documentos/documento.php?idDocumento=3342955 http://seia.sea.gob.cl/documentos/documento.php?idDocumento=3512519 http://seia.sea.gob.cl/documentos/documento.php?idDocumento=3621665
5.	Environmental and social management report (ESMR) – “Alto Maipo Hydroelectric Power Project” (only available in English) http://www.iadb.org/Document.cfm?id=38143246

EXECUTIVE SUMMARY

The San José de Maipo district, which has a semirural character, is located on the eastern edge of Santiago's Metropolitan Region, 48 kilometers from Chile's capital. It is in the upper Maipo River Basin at the foothills of the Andes.

The district is made up of territories with scenic, cultural, and environmental value, and an urban system that includes various towns with a pattern of scattered settlements. It is one of the region's most important tourist destinations, declared a National Tourist Interest Zone in 2001 by the National Tourism Service.

There are many rivers, estuaries, and streams in the area, notably the Maipo River's tributaries: the Olivares, Colorado, El Yeso, and Volcán rivers. One of the main drinking water reservoirs for Santiago's Metropolitan Region is located within its borders.

The Alto Maipo Hydroelectric Power Project (known by its Spanish-language acronym PHAM, or the project) consists of the construction, operation, and maintenance of two run-of-the-river hydroelectric plants¹ (the Alfafal II and Las Lajas plants) with a combined net installed capacity of 531 MW. These plants capture the upper-basin water flows from the Volcán and El Yeso rivers, as well as water from the middle to lower reaches of the Colorado River, and then return the water to the Maipo River. The project's objective is to increase Chile's hydroelectric capabilities and to decrease its dependence on thermoelectric power and fossil fuels.

On 16 October 2013, the IDB Board of Executive Directors approved the Alto Maipo Hydroelectric Power Project (loan CH-L1067), a non-sovereign guaranteed operation of the Structured and Corporate Financing Department (SFD), for US\$200 million. In addition to the IDB loan and capital contributions from sponsors, the financing structure includes US\$150 million from the International Finance Corporation (IFC), US\$250 million from the United States Overseas Private Investment Corporation (OPIC), and US\$600 million from five commercial banks.

The borrower is Alto Maipo SpA, a company created specifically for the project whose main sponsor is currently AES Gener, the Chilean subsidiary of U.S. company AES Corporation. At the time of approval, the project's construction phase was expected to last five years. Once up and running, it was expected to generate an annual average of approximately 2,300 GWh for the Chilean Central Interconnected System. The operation was classified as a category "A" under the Environment and Safeguards Compliance Policy (Operational Policy OP-703).

On 23 January 2017, the MICI received a Request from 23 people impacted by the Alto Maipo Hydroelectric Power Project (PHAM) and represented in the matter by Marcela Mella of Coordinadora Ciudadana No Alto Maipo [No Alto Maipo Coordinating Committee] and Juan Pablo Orrego of Ecosistemas, with advisory support from staff of the Washington, D.C.-based Center for International Environmental Law (CIEL).

The group of Requesters is comprised of area residents who live and work mainly in the San José del Maipo district. They allege that they have suffered or are likely to suffer harm in connection with the project, during both its construction stage and operation. Below is

¹ The project does not require the creation of a reservoir or the construction of a dam to regulate the water flow that enters the powerhouses. The electrical stations capture the water and then return it to the tributaries.

a summary of the Request and additional information submitted to the MICI. These documents are available in the MICI Public Registry ([case file MICI-BID-CH-2017-0115](#)) and in the electronic links section of this document.

Regarding the construction phase, the Requesters allege that the project has already affected them in various ways, adversely impacting their way of life and financial condition, and increasing insecurity for them and their families. They believe these are the result of noncompliance with local laws and regulations and with the IDB Group's environmental and social safeguards. The Request also alleges potential environmental harm tied to the future operation of the PHAM, mainly through adverse impacts on the water availability and flow of the rivers targeted by the project.

The Requesters stated that such harm had been the result of the Bank's noncompliance with several of its Operational Policies and expressed interest in the MICI conducting a compliance review in relation to such policies.

During the registration/eligibility determination period, in addition to reviewing the relevant documentation, the MICI held conference calls and meetings with IDB and IIC Management, the Representatives of the Requesters, the Requesters themselves, staff of Chile's Ministry of Energy, and civil society organizations. Since the Requesters had also submitted a complaint to the Compliance Advisor Ombudsman (CAO), the International Finance Corporation's accountability mechanism, the MICI made contact early, to coordinate the work of the two offices within the mandate and authority of each.²

Upon review of the relevant documentation and having conducted a mission to the project site, the MICI Director, in accordance with Section G of the MICI Policy (document MI-47-6), concludes that this Request **is eligible** because it meets the eligibility criteria of the Policy.

This determination of eligibility is neither an assessment of the merits of the Request and the issues raised therein, nor is it a determination of the Bank's compliance or noncompliance with its Relevant Operational Policies.

Notice of this determination is given directly to the Requesters, Management, and the Board of Executive Directors by means of this Memorandum, and to interested third parties through the Public Registry once the Memorandum has been distributed to the Board.

After notifying the Board of Executive Directors, the MICI Director will transfer the case to the Compliance Review Phase, as selected by the Requesters and stipulated in the Policy, in order to begin processing the Request under that phase.

It should be noted that **this eligibility determination and the initiation of the MICI process do not halt the project or its disbursements.**

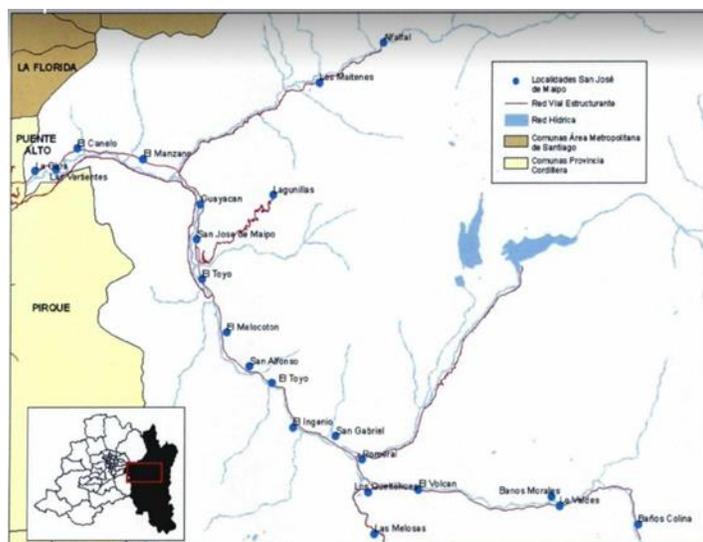
² See paragraph 68 of the MICI Policy regarding Cooperation with Other Independent Accountability Mechanisms.

I. THE PROJECT³

A. Geographic and social context⁴

- 1.1 The San José de Maipo district, which has a semirural character, is located on the eastern edge of Santiago's Metropolitan Region, 48 kilometers from Chile's capital. It is in the upper Maipo River Basin at the foothills of the Andes.
- 1.2 The district is made up of territories with scenic, cultural, and environmental value, and an urban system that includes various towns with a pattern of scattered settlements. It is one of the region's most important tourist destinations, declared a National Tourist Interest Zone in 2001 by the National Tourism Service.
- 1.3 There are many rivers, estuaries, and streams in the area, notably the Maipo River's tributaries: the Olivares, Colorado, El Yeso, and Volcán rivers. One of the main drinking water reservoirs for Santiago's Metropolitan Region is located within its borders.
- 1.4 San José de Maipo is divided into 23 towns: La Obra, Las Vertientes, El Canelo, El Manzano, Los Maitenes, El Guayacán, San José de Maipo, Lagunillas, El Toyo, El Melocotón, San Alfonso, El Ingenio, Bollenar, San Gabriel, El Romeral, El Yeso Reservoir, Los Queltehues, Las Melosas, El Volcán, Baños Morales, El Morado, Lo Valdés, and Baños Colina. The district's capital is the town of San José de Maipo. The spaces occupied by residents (valley and foothills) are related to the location of the terraces of the Maipo River and its tributaries.

Figure 1. Map of San José de Maipo district



Source: Land use plan for San José de Maipo.

³ Information taken from the Bank's website and public documents on operations. These documents are available in the electronic links section of this Memorandum.

⁴ District land use plan for San José de Maipo.

- 1.5 The backbone of the district's road system is Route G-25, also known as the Road to El Volcán, which is the only access from Puente Alto and, therefore, from Greater Santiago. This road goes to the town of San Gabriel, from where it divides toward El Yeso Reservoir and the Lo Valdés area. Since this road runs through the town of San José de Maipo, it has become a transit route for the district.⁵
- 1.6 San José de Maipo has a population of 13,376, according to the 2002 census, accounting for 0.22% of the region's total population and 2.56% of the total population of Cordillera province. San José de Maipo district has the province's smallest population, even though it covers the region's largest area.
- 1.7 The area's economic activities are tourism, mining, hydroelectric power generation, agriculture, and cattle raising. Sand and gravel extraction as well as lime, limestone, and gypsum mining are also important activities. The district has five hydropower plants in operation (Alfalfal I, Queltehues, Maitenes, Volcán, and El Yeso Reservoir), all owned by Gener, S.A.
- 1.8 Lastly, according to the 2010 San José de Maipo District Development Plan, the main tourism activities are climbing, rafting, horseback riding, hiking, fishing, and kayaking. Growth in restaurant and hotel services is also being reported.

Maipo River



Source: MICI.

Colorado River



B. The Alto Maipo Hydroelectric Power Project

- 1.9 The Alto Maipo Hydroelectric Power Project (known by its Spanish-language acronym PHAM, or the project) consists of the construction, operation, and maintenance of two run-of-the-river hydroelectric plants⁶ (the Alfalfal II and Las Lajas plants) with a combined net installed capacity of 531 MW. These plants capture the upper-basin water flows from the Volcán and El Yeso rivers, as well as

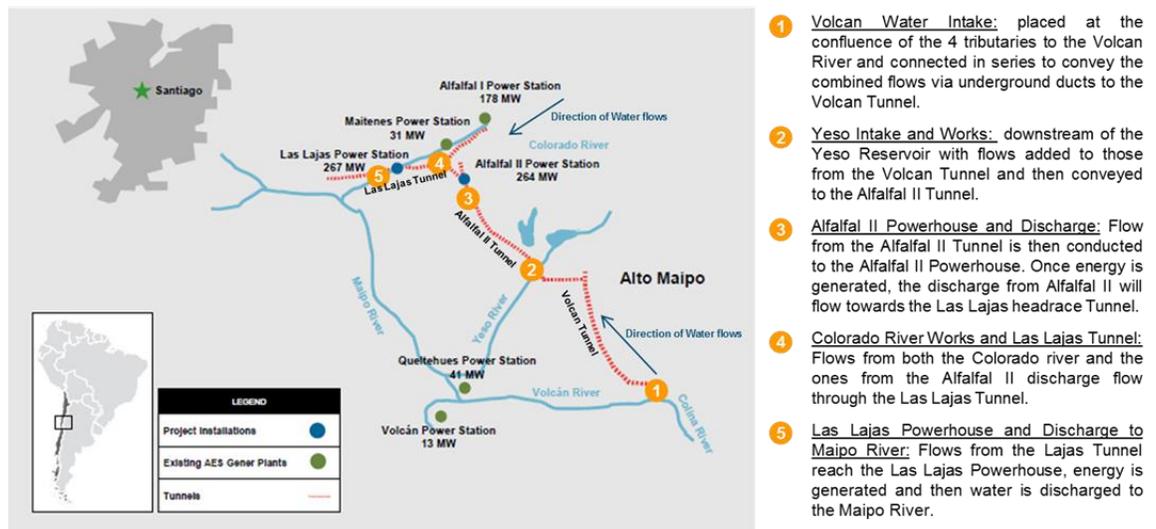
⁵ 2010-2014 San José de Maipo District Development Plan, page 98.

⁶ The project does not require the creation of a reservoir or the construction of a dam to regulate the water flow that enters the powerhouses. The electrical stations capture the water and then return it to the tributaries.

water from the middle to lower reaches of the Colorado River, and then return the water to the Maipo River.

- 1.10 The project calls for the construction of works, chiefly (90%) the excavation of 67 kilometers of underground tunnels, the construction of two powerhouses, four siphons to cross streams, and two surge tanks. In addition, the project includes the construction of 31 kilometers of access roads, four new bridges, and 17 kilometers of transmission lines, as well as improvements to existing roads and electrical substations, intakes, raceways, temporary camps, and storage areas. Permanent surface works for the project are expected to occupy a total of 85 hectares and approximately 61 hectares for transmission lines.

Figure 2. Alto Maipo Hydroelectric Power Project Map



Source: Project documents.

- 1.11 According to 2012 data, Chile's energy matrix still relies on a high percentage of thermoelectric power followed by hydroelectric sources, and only a small percentage comes from nonconventional renewable energy sources. Chile's government is working to increase the share of the latter in the energy matrix, but thus far the country largely depends on large hydroelectric projects, particularly run-of-the-river plants. The project's objective is to increase Chile's hydroelectric capabilities and to decrease its dependence on thermoelectric power and fossil fuels.
- 1.12 The PHAM began in May 2008, when AES Gener submitted the project's environmental impact assessment (excluding transmission lines) for approval to the Environmental Assessment Service. In March 2009, an environmental qualification resolution (EQR) was issued approving construction. From the beginning, the project has reported opposition from the area's civil society groups and from national environmental organizations.
- 1.13 In 2012, the IDB's private-sector window—the Structured and Corporate Financing Department (SCF)—began due diligence for this operation, culminating in approval of a non-sovereign guaranteed loan of US\$200 million, approved on

16 October 2013 by the Board of Executive Directors as the Alto Maipo Hydroelectric Power Project (loan CH-L1067, operations 3008A/OC-CH and 3008B/OC-CH). Total project cost at that time was estimated at US\$2 billion. In addition to the IDB loan and capital contributions from sponsors, the financing structure includes US\$150 million from the International Finance Corporation (IFC), US\$250 million from the United States Overseas Private Investment Corporation (OPIC), and US\$600 million from five commercial banks.

- 1.14 The borrower is Alto Maipo SpA, a company created specifically for the project whose main sponsor is currently AES Gener, the Chilean subsidiary of U.S. company AES Corporation. At the time of approval, the project's construction phase was expected to last five years. Once up and running, it was expected to generate an annual average of approximately 2,300 GWh for the Chilean Central Interconnected System.
- 1.15 The operation was classified as a category "A" under the Environment and Safeguards Compliance Policy (Operational Policy OP-703), due to its large scale and the significance of its potential adverse environmental and social impacts, with an emphasis on its potential implications for water management in the Alto Maipo River Basin. Adverse impacts were identified for the project's construction and operation phases, related to "large-scale construction activities in a predominantly tourist outdoor recreation area, including two protected areas below which the project will drill tunnels, raising potential issues of groundwater contamination and deterioration of attractiveness of the area for tourism activities;"⁷ as well as potential "changes during project's operation in hydrological conditions (including sediments) in the rivers intercepted by the project, including the Upper Volcán River, the Upper Yeso River, the Colorado River, and indirectly some sections of the Maipo River, raising issues of water flow in the diverted reaches of those rivers, potential damages due to erosion on structures located downstream of the water discharge back into the Maipo River, and potential adverse impacts on recreational uses of the rivers in the diverted reaches."⁸
- 1.16 During due diligence, critical aspects to be addressed were identified because of opposition to the project from groups in the community and civil society organizations, given the potential adverse environmental and social impacts. These groups also reported a lack of timely and proper dissemination of information. Other risks identified were the volume of worker migration, increased road traffic, and other impacts on the project's direct area of influence, which includes the communities of El Canelo, El Manzano, Los Maitenes, El Alfalfal, San Gabriel, El Romeral, El Volcán, Baños Morales, and Lo Valdés.
- 1.17 Based on the risks identified and the environmental classification, the Bank indicated that the project's Relevant Operational Policies are: Access to Information Policy (OP-102); Environment and Safeguards Compliance Policy (OP-703); Disaster Risk Management Policy (OP-704); Operational Policy on Involuntary Resettlement Policy (OP-710); and Operational Policy on Gender Equality in Development (OP-761).

^{7 8} Environmental and social management report for the Alto Maipo Hydroelectric Power Project (loan CH-L1067), September 2013, paragraph 1.3.

- 1.18 In March 2017, a financial and social restructuring process prepared for the project by AES Gener was announced: “The financial restructuring included the purchase by AES Gener of the entire shareholding of Minera Los Pelambres (MLP) in the company Alto Maipo SpA (Alto Maipo); the addition of Strabag SpA, the project’s prime contractor, as a minority shareholder of Alto Maipo, with an approximate stake of 7%; the amendment of power supply contracts signed by Alto Maipo and AES Gener with MLP; and modification of the terms and conditions of the project’s current senior financing.”⁹
- 1.19 The project currently reports that 50% of the construction has been completed, and the plant is expected to begin operations in May 2019.

II. THE REQUEST¹⁰

- 2.1 On 23 January 2017, the MICI received a Request from 23 people impacted by the Alto Maipo Hydroelectric Power Project (PHAM) and represented in the matter by Marcela Mella of Coordinadora Ciudadana No Alto Maipo [No Alto Maipo Coordinating Committee] and Juan Pablo Orrego of Ecosistemas, with advisory support from staff of the Washington, D.C.-based Center for International Environmental Law (CIEL).
- 2.2 The group of Requesters¹¹ is comprised of area residents who live and work mainly in the San José del Maipo district. They allege that they have suffered or are likely to suffer harm in connection with the project, during both its construction stage and operation. Below is a summary of the Request and additional information submitted to the MICI. These documents are available in the MICI Public Registry ([case file MICI-BID-CH-2017-0115](#)) and in the electronic links section of this document.
- 2.3 Regarding the construction phase, the Requesters allege that the project has already affected them in various ways, adversely impacting their way of life and financial condition, and increasing insecurity for them and their families. They believe these are the result of noncompliance with local laws and regulations and with the IDB Group’s environmental and social safeguards.
- 2.4 Given the area’s focus on tourism, the Requesters indicated in their complaint to the MICI that the noncompliance with coexistence agreements and commitments has meant a decrease in the number of visitors to the area because of increased traffic. There has also been an increase in the number of vehicles parked irregularly by the side of the road. Therefore, they allege that there has been an increase in the number of traffic accidents on roads that used to have normal travel, as well as fatalities involving grazing animals and pets.

⁹ Press release, “AES Gener concluye exitosamente reestructuración financiera de Alto Maipo” [AES Gener successfully concludes financial restructuring of Alto Maipo], March 2017.

<http://www.aesgener.cl/SalaPrensa/Paginas/AES-Gener-concluye-exitosamente-reestructuraci%C3%B3n-financiera-de-Alto-Maipo.aspx>.

¹⁰ The Request and Annexes are available in the electronic links section of this document.

¹¹ Annex 1 contains a list of the names and organizations of the Requesters, as well as of their Representatives.

- 2.5 This traffic increase has also negatively impacted their livelihoods, which are mainly tourism-related, since visitors who used to travel to Cajón del Maipo are avoiding the area because of these transportation problems and the intensity of the work.
- 2.6 In addition, the project works have blocked access to various roads, traditional routes, and highland areas in Cajón del Maipo that were used by mule drivers, hikers, campers, and others involved in tourism and/or sporting activities. They state that this has also adversely impacted tourism.
- 2.7 Regarding the issue of difficult access, the Request specifically mentioned that the El Alfalfal community has been cut off by a perimeter wall built for the PHAM's construction work. According to the Requesters, this wall impacts their access to water hydrants and cuts off emergency escape routes.

Construction of works in the El Alfalfal community



Source: MICI.

- 2.8 The Request also discusses the explosives used to excavate tunnels for the project, which the Requesters believe have been mishandled. Specifically, they stated that the ground transportation of explosives is taking place without following proper safety procedures, making the already congested local roads more unsafe. In addition, they warned about the adverse impact of explosives detonating at all hours, seven days a week. They note that this not only affects their quality of life but also endangers their safety and that of tourists, as well as their cattle and sheep, which graze in areas where the PHAM is being built and have occasionally

- been injured by explosions. They also warned of the environmental harm and pollution caused by detonations near surface bodies of water and groundwater, as well as detonations below glaciers that may impact them.
- 2.9 They further allege that mining activities for construction of the project's underground sections may be causing environmental harm in the Cajón area in two main ways. First, they state, improper handling of the waste generated from the extraction of materials is polluting the waters of the Colorado, El Yeso, Volcán, and Maipo rivers, as well as the mountain and estuary wetlands in Las Arenas and Yeso valleys, where the PHAM is located. Second, there is a risk that extraction materials may seep into groundwater tables. They allege that the pollution of these water bodies is already creating problems both for their health and that of tourists who practice watersports like rafting, as well as their cattle, which drink that water.
- 2.10 The Requesters also highlighted the impact the project has had on the social fabric in the various towns that make up Cajón del Maipo. They emphasized the effect of the migration of construction workers,¹² most of who, are not from the community, and some of whom are renting rooms in private homes. They connect this migration to an increase in physical violence, theft, and selling of alcohol and drugs, as well as prostitution in areas close to work sites. Likewise, social conflicts have been pitting neighbor against neighbor, for or against the project. They perceive that this has created a greater sense of violence and instability in the region, which used to be peaceful.
- 2.11 Regarding the community's relationship with the company, the Request states that several agreements made between the Alto Maipo company and various district territorial organizations on such issues as water use and resettlement of residents (mainly in the El Alfalfal area) have not been fulfilled thus far. These commitments range from obligations made to resettle families in El Alfalfal to agreements for construction operations to be managed in such a way that activities can continue in the area.
- 2.12 The Request also alleges potential environmental harm tied to the future operation of the PHAM, mainly through adverse impacts on the water availability and flow of the rivers targeted by the project. The Requesters stated that the environmental assessment and other studies have been insufficient and incomplete, since they: (i) omit the impacts of the project on the hydrological regime in a larger area of influence than originally identified, which would affect drinking water supplies; and (ii) do not consider the differentiated effects of the PHAM on each water user as far as quantity, quality, and availability to meet their needs given their activities.
- 2.13 In terms of the impact on the water flows of the targeted rivers, the Requesters allege that because the project transfers water from the Volcán, Colorado, and El Yeso rivers to the Maipo River 100 kilometers downstream, the actual impact on those tributaries is uncertain. They allege that this impacts their future investment decisions, mainly for tourism activities that require certain water flow volumes. Any unforeseen change in the availability of water would lead to significant losses for their businesses.

¹² The project projected that 2,500 jobs would be created during the construction phase. Currently, the company reports having close to 5,000 employees.

- 2.14 Throughout the Request, they repeatedly mentioned the lack of information available or of public consultations with the community regarding the project's current and future impacts.
- 2.15 In the Request, the Representatives of the Requesters ask the MICI to permanently suspend project execution because it is causing serious and irreparable harm in Cajón del Maipo and the Santiago Metropolitan Area.¹³
- 2.16 The Requesters stated that such harm had been the result of the Bank's noncompliance with the provisions of the Environment and Safeguards Compliance Policy (Operational Policy OP-703), relating to environmental harm, their health and safety, and the impact on their livelihoods, as well as the lack of public consultations; the Disaster Risk Management Policy (OP-704), relating to environmental harm and the risks associated with the project's construction and operation; the Public Utilities Policy (OP-708), relating to impacts from the lack of water access and availability; the Operational Policy on Involuntary Resettlement (OP-710), relating to impacts on their livelihoods and noncompliance with agreements on resettlement of community members; and the Access to Information Policy (OP-102), relating to the lack of information provided to the impacted population.
- 2.17 As far as contact with Management, the Requesters told the MICI that the Representatives of the Requesters met with the Bank's Management in September 2015 during a visit to Headquarters in Washington, D.C. and presented their concerns about the project. According to the Request, the response that the IDB gave to the issues raised during the meeting did not address their concerns, which from their perspective still persist. Therefore, they decided to submit a Request to the MICI.
- 2.18 The Requesters expressed their interest in having the MICI process the case through the Compliance Review Phase, if deemed eligible.
- 2.19 Last, the Requesters stated that they had also submitted a complaint to the Compliance Advisor Ombudsman (CAO), the International Finance Corporation's independent accountability mechanism.¹⁴

III. MANAGEMENT'S RESPONSE¹⁵

- 3.1 On 15 February 2017, pursuant to paragraph 21 of the MICI Policy, IDB Management was notified of the registration of Request MICI-BID-CH-2017-0115. Within the deadline provided, on 17 March they submitted a Response with their perspective regarding the issues presented in the Request. In this case, Management's Response was made jointly by the IDB and the Inter-American Investment Corporation (IIC), since the latter is currently responsible for managing

¹³ See the MICI's considerations in this regard in paragraph 4.8.

¹⁴ The International Finance Corporation (IFC) is the arm of the World Bank that finances private sector operations.

¹⁵ The "Joint Response of IDB-IIC Management, with Annexes, to Request MICI-BID-CH-2017-0115 referring to the Alto Maipo Hydroelectric Power Project" (loan CH-L1067) is included in the electronic links section.

- the project. The Response is summarized below and can also be consulted in the electronic links section of this Memorandum.
- 3.2 Management provided a brief summary of the Alto Maipo Hydroelectric Power Project (PHAM) and highlighted its positive environmental and social aspects. These include having annual generation capacity of 2,300 GWh, not requiring dams or new reservoirs, not impacting indigenous communities, creating 2,500 jobs during the construction phase, and displacing almost 1 million tons of CO₂ per year that would have been produced by thermal power plants. They also highlighted the oversight structure, both local as well as from the project's financiers, through Environmental Resource Management (ERM), a firm serving as an independent environmental and social consultant.
 - 3.3 In addition, the Bank, acting through the Country Office, has been in ongoing contact with the civil society organizations belonging to one of the representative organizations, answering their questions and keeping them informed on progress. The Response also confirmed that Management met with the Representatives at Washington, D.C. Headquarters in September 2015. The issues discussed at the meeting include: environmental impacts of the PHAM in the Cajón del Maipo area; potential effects of water rights and underground water flows; impact on tourist areas; and increase of vehicles on local roads and risk of accidents during construction. Management noted that the Requesters did not make contact after that meeting until the date when they submitted the Request to the MICI in January 2017.
 - 3.4 Management notes that some of the concerns included in the Request had not been previously brought to its attention, such as the impact of the wall on El Alfalfal community, the traffic problem, and the pollution of estuaries due to explosives. Also, some of the issues presented are outside the purview of the Bank and the IIC, since they involve national domestic matters.
 - 3.5 Regarding the allegations of harm during the construction phase, Management stated that the environmental, social, and occupational safety management system (ESOSMS) adopted by the project has allowed them to detect and correct in a timely manner any deviations from management plans in construction activity. As far as road safety, they highlighted that the company has limited powers to control roadways in general.
 - 3.6 Regarding the allegation about the construction of the wall in El Alfalfal and the lack of access, Management stated that this wall was built as required by the EQR at the express request of the community. Management also states that none of the access routes to El Alfalfal have been blocked, and that on subsequent supervisory visits it will verify whether this wall is creating adverse impacts.
 - 3.7 Regarding the impact of vibrations from blasting, a measurement system has detected zero impact on the glacier. In addition, Management notes, the melting of the glacier is unrelated to the project and due to external processes.
 - 3.8 Regarding the impact on current and future water rights for surface waters, Management stated that the project had previously assessed the impact of potential scenarios of diminished flows due to effects already present in the area caused by desertification and climate change. Likewise, studies had been done on the potential impact of climate change on the project, and the project's operation

will have to be adjusted for those changes, ensuring that the pre-established environmental flow rates are respected at each intake point.

- 3.9 Additionally, the sediment monitoring program adopted by the project will track hydraulic profiles downriver, so that control measures can be activated to guarantee water flow.
- 3.10 Regarding subsurface waters, the project’s environmental impact assessment evaluated the potential impact on groundwater tables without finding impacts that would endanger their availability. A groundwater monitoring system has also been implemented upstream and downstream from muck collection sites¹⁶ and has not detected any change in water table levels thus far.
- 3.11 Regarding future impacts on tourism, Management reported that there had been assessments of protected areas and minimum water flows for recreational boating/rafting, to determine the project’s impact. The conclusion from these assessments is that, once the PHAM was operational, there would be minimal impact due to its small surface footprint, and water flows would be sufficient to maintain the levels required for kayaking and rafting. In December 2016, Management requested a recreational boating study on the rivers affected by the project. The preliminary findings are that the adverse impact is small. Management states that “an adaptive management method will be used during the project’s operation, including, if necessary, additional flow releases in order to guarantee the recreational uses of the rivers.”¹⁷
- 3.12 Last, Management cites five arbitral or judicial review proceedings in Chile, which it believes may be related to issues raised in the Request, as shown in Table 1.

Table 1.
Summary of proceedings

Proceeding	Authority	Issue	Plaintiff/Respondent
13,218-2012	4th Civil Court of Santiago	Motion to Nullify EQR No. 256/2009, which approved the PHAM.	Associations of channel users (canalistas) and Sara Larraín v. CONAMA (National Environmental Council, replaced by the Environmental Assessment Service), AES Gener, Treasury of Chile.
2,456-2014	28th Civil Court of Santiago	Motion to Nullify Resolution No. 2060 of the Water Bureau (DGA), which approved the hydraulic works of the PHAM.	Sara Larraín and Instituto Río Colorado v. the DGA.
C-5178-2016	28th Civil Court of Santiago	Civil suit for false allegations and defamation.	Alto Maipo, SpA v. Andrei Tchernitchin.
IC-512-2016	San Miguel Court of Appeals	Motion to Nullify EQR No. 256/2009, which approved the PHAM.	Coordinadora Ciudadana No Alto Maipo and Red Metropolitana No Alto Maipo.
Resolution	Authority	Issue	Comments
EX. No./ROL 0-001-2017	Superintendency of the Environment	Infractions during the 2014-2016 period.	Administrative proceeding for compliance with EQR requirements.

¹⁶ “Muck” in this context refers to mining extraction residue from tunneling.

¹⁷ Joint Response of IDB-IIC Management, page 9.

IV. MICI ACTIONS

- 4.1 In accordance with Section G of the MICI Policy and the eligibility criteria set out in paragraph 22, the process for admission and determination of eligibility of the Request followed the timeline below:

Table 2
Timeline of MICI actions from 23 January to 1 May 2017

Date	Actions
23 January	Receipt of Request and meeting with Representatives regarding MICI process.
30 January	Requesters given up to 10 business days to submit the additional information needed to process the Request.
2 February	Conference call with Compliance Advisor Ombudsman (CAO) staff.
15 February	Registration of Request.
16 February	Conference call with Representatives of the Requesters.
17 March	Receipt of IDB-IIC Management Response.
24 March	Conference call with Representatives of the Requesters.
3 April	Conference call with IDB Representative in Chile.
4 April	Meeting with IDB Management in charge of the operation.
10 April	Meeting with IDB Management in charge of the operation.
10-14 April	Mission to Santiago and Cajón del Maipo to determine eligibility, with participation of CAO staff.
17 April	Conference call with IDB Representative in Chile.
	Meeting with IDB Management in charge of the operation.
	Submission of a "Request for Extension for the Determination of Eligibility" to the Bank's Board of Executive Directors for consideration.
21 April	Approval of the "Request for Extension for the Determination of Eligibility."
26 April	Conference call with officials of Chile's Ministry of Energy.
1 May	Eligibility Memorandum issued.

- 4.2 After receiving the Request on 23 January 2017, the MICI reviewed it and notified the representative organizations provide the list of Requesters and proof of representation to the MICI for its registration, as required by the MICI Policy. In addition, more details were requested regarding actual and potential harm facing the Requesters. This information was received within the required 10 business days, and the MICI issued a notice of registration.
- 4.3 During the registration/eligibility determination period, in addition to reviewing the relevant documentation, conference calls and meetings were held with IDB and IIC Management, the Representatives of the Requesters, staff of Chile's Ministry of Energy, and civil society organizations.
- 4.4 Since the Requesters had also submitted a complaint to the Compliance Advisor Ombudsman (CAO), the International Finance Corporation's accountability mechanism, the MICI made contact early, to coordinate the work of the two offices within the mandate and authority of each.
- 4.5 From 11 to 14 April 2017, a delegation of MICI and CAO staff conducted a mission to Santiago and the Cajón del Maipo area. During the mission, the MICI met with Alto Maipo company officials and visited some of the project's work sites and tunnels. There were also meetings with members of community-based committees, the Mayor of San José de Maipo, local council members, and the

Requesters, which included visits to the project target area, as well as meetings with third party stakeholders.

- 4.6 The meetings provided the MICI with additional information to identify the various interest groups tied to the project. In particular, it notes that the representative organizations, certain Requesters, and other stakeholders are totally opposed to the project and want it stopped. Others object to the PHAM in terms of how it was affecting them and stringently call for compliance with environmental and social norms. Still others expressed that they supported the project. Given the size of the community, the MICI identified that relationships among neighbors had become strained, affecting coexistence in the area.

Visit to Las Arenas Valley and El Yeso Reservoir



Source: MICI.

- 4.7 Specifically, during meetings with Requesters, the MICI was able to obtain more information regarding the allegations included in the Request as far as their concerns about the actual and potential impact on their living conditions and livelihoods, mainly related to: (i) the actual impact on the social fabric of communities, both because of the migration of workers employed in the PHAM's construction and confrontations between groups for and against the project; and (ii) the potential harm from changes in the water flow once the project enters its operational phase. There were also ad hoc meetings with certain groups of Requesters impacted because of their economic activities in the area.

Meetings with Requesters



Source: MICI.

- 4.8 At those meetings, the MICI had an opportunity to explain its process and the scope of its mandate. The presentations always emphasized that a MICI process does not halt disbursements or delay execution of the project.
- 4.9 In talking to company officials and visiting work sites, the MICI received relevant information on project status, the company's actions in coordination with municipal authorities to support the community through the AES Gener Foundation, and the participation mechanisms that the company has implemented thus far.

V. ELIGIBILITY DETERMINATION ANALYSIS

- 5.1 As part of the eligibility process, the MICI considered the information presented in the Request, which includes various Annexes, as well as Management's Response and its annexes, various Bank documents, and other sources of information relevant to this analysis.¹⁸
- 5.2 In accordance with paragraph 22 of the MICI Policy, a Request will be deemed eligible by the MICI if it is determined that it meets all the following criteria:
- a. The Request is filed by two or more persons who believe that they have been or may be affected and who reside in the country where the Bank-financed operation is implemented. If the Request is filed by a representative, the identity of the Requesters on whose behalf the Request is filed will be indicated and written proof of representation will be attached.
 - b. The Request clearly identifies a Bank-financed operation that has been approved by the Board, the President, or the Donors Committee.
 - c. The Request describes the Harm that could result from potential noncompliance with one or more Relevant Operational Policies.
 - d. The Request describes the efforts that the Requesters have made to address the issues in the Request with Management and includes a description of the results of those efforts, or an explanation of why contacting Management was not possible.
 - e. None of the exclusions set forth in paragraph 19 apply.

¹⁸ The documents reviewed are available in the electronic links section of this document.

- 5.3 In the case of Request MICI-BID-CH-2017-0115, the analysis of eligibility criteria established in the Policy is as follows:
- 5.4 The Request is filed by **23 residents living and working mainly in the towns of San José del Maipo, San Alfonso, El Manzano, and El Alfalfal, located in Cajón del Maipo.**
- 5.5 **Ms. Marcela Mella** of Coordinadora Ciudadana No Alto Maipo and **Mr. Juan Pablo Orrego** of Ecosistemas are acting as **Representatives of the Requesters** to the MICI. Pursuant to the MICI Policy, the Representative must indicate the identity of the Requesters on whose behalf the Request is filed and provide written proof of representation. The MICI knows the identity of the Requesters and has written proof of representation. Consequently, **Criterion 22(a) has been met.**
- 5.6 The Request identifies the **Alto Maipo Hydroelectric Power Project (CH-L1067)**, which is being financed by the IDB Group under **operation 3008A/OC-CH**, approved by the Bank's Board of Executive Directors on 16 October 2013. Consequently, **Criterion 22(b) has been met.**
- 5.7 The Request presents **allegations of economic, environmental, and social harm to the Requesters in connection with the construction and operation of the Alto Maipo Hydroelectric Power Project (PHAM).** Sections II and IV of this document provide more details regarding the alleged harm that the Requesters attribute to the Bank's noncompliance and/or omission of the requirements of its Operational Policies OP-703, OP-704, OP-708, OP-710, and OP-102 for category "A" operations. **The MICI has concluded that the allegations submitted establish a plausible link with the requirements of one or more of the aforementioned Operational Policies, which must be followed in project design, execution, and oversight. Consequently, Criterion 22(c) has been met.**
- 5.8 Regarding prior contact with Management, the Request describes how Requesters made Bank Management aware of their concerns in 2012 and 2013, as well as in a face-to-face meeting in 2015. However, they stated that the responses from the staff in attendance did not resolve their concerns. Management confirmed that it received information from the representative organizations through the Country Office in Chile and at the face-to-face meeting in 2015. Management also confirmed that information was offered but the Representatives "demonstrated no interest... in approaching the Bank's technical team in order to expand upon, discuss, or refute the explanations they were given."
- 5.9 Regarding the requirement to contact Management, the Policy does not establish an obligation for the Requesters to accept the information that Management presents or to exhaust all subjects. The Policy even includes a model letter for Requesters as Annex 1, which proposes the following text regarding contacting Management: "4. We have complained to IDB Management on the following dates (list dates and names of IDB officials who were contacted) by (explain how the complaint was delivered, e.g., meeting, letter, phone call). Management's response was (explain whether there was a response from Management, and if so, what the result was. Enter any other information about prior contact with the Bank)."

- 5.10 In their Request, the Requesters described what they did to make Management aware of their concerns, which Management confirmed. They also said they received a response, which they deemed unsatisfactory. From their point of view, Management was not willing to address their concerns. Therefore, for two years they sought other alternatives to address these concerns. They did not decide to submit their claim to the MICI until 2017. **The MICI therefore concludes that Criterion 22(d) has been met.**
- 5.11 Regarding the exclusions provided in paragraph 19, **the MICI concludes that none of the exclusions contained in subparagraphs 19(a), 19(b), 19(c), 19(e), or 19(f) apply**, since the Request does not raise issues beyond the scope of the MICI; does include the names of the Requesters; none of the issues included in the Request have already been reviewed by the MICI; and the operation in question was approved in 2013 and is in the process of project execution.
- 5.12 Regarding **exclusion 19(d)**, that neither the Consultation Phase nor the Compliance Review Phase would apply to particular issues or matters raised in a Request that are under arbitral or judicial review in an IDB member country, the MICI has asked the Requesters and Management if that is the case. In its Response, Management stated that there are five active proceedings, all of which must be assessed to determine the applicability of exclusion 19(d).
- 5.13 Of the five proceedings mentioned by Management and included in Table 1 of Section III, one is a suit for false accusations and defamation filed by Alto Maipo against a third party and another is an administrative resolution from the Superintendency of the Environment. Neither of these cases is relevant to the applicability of exclusion 19(d), the first one because of the issue addressed, and the second because it is an administrative proceeding.

Table 3
Proceedings under way

Proceeding	Authority	Issue	Plaintiff/Respondent
C-5178-2016	28th Civil Court of Santiago	Civil suit for false allegations and defamation.	Alto Maipo, SpA v. Andrei Tchernitchin
Resolution EX. No./ ROL 0-001-2017	Superintendency of the Environment	Infractions during the 2014-2016 period.	—

- 5.14 For the other three, which are judicial or arbitral proceedings, the applicable analysis is as follows:
- a. Proceeding 2,456.-2014 against the Water Bureau (DGA) appears on the website of the Chilean court system as “in process.” The petitioners are not part of the Request submitted to the MICI.
 - b. Proceeding 13,218-2012 appears on the same website as “judgment entered.” Based on the information from that website, the petitioners are not part of the Request submitted to the MICI.
 - c. Proceeding IC-512-2016 did involve some of the Requesters, but on the court system’s website, it appears as “file closed.”

Table 4
Proceedings under way

Proceeding	Authority	Issue	Plaintiff/Respondent
2,456-2014	28th Civil Court of Santiago	Motion to Nullify Resolution No. 2060 of the Water Bureau (DGA), which approved the hydraulic works of the PHAM.	Sara Larraín and Instituto Río Colorado v. the DGA.
13,218-2012	4th Civil Court of Santiago	Motion to Nullify EQR No. 256/2009, which approved the PHAM.	Associations of channel users (canalistas) and Sara Larraín v. CONAMA (National Environmental Council, replaced by the Environmental Assessment Service), AES Gener, Treasury of Chile.
IC-512-2016	San Miguel Court of Appeals	Motion to Nullify EQR No. 256/2009, which approved the PHAM.	Coordinadora Ciudadana No Alto Maipo and Red Metropolitana No Alto Maipo.

- 5.15 In analyzing the three known proceedings to date, **the MICI concludes that exclusion 19(d) does NOT apply, since they have either been concluded or do not involve the Requesters in this case.**

VI. CONCLUSION

- 6.1 The MICI Director, in accordance with Section G of the MICI Policy (document MI-47-6), concludes that this Request **is eligible** because it meets the eligibility criteria of the Policy.
- 6.2 This determination of eligibility is neither an assessment of the merits of the Request and the issues raised therein, nor is it a determination of the Bank's compliance or noncompliance with its Relevant Operational Policies.
- 6.3 Notice of this determination is given directly to the Requesters, Management, and the Board of Executive Directors by means of this Memorandum, and to interested third parties through the Public Registry once the Memorandum has been distributed to the Board.
- 6.4 After notifying the Board of Executive Directors, the MICI Director will transfer the case to the Compliance Review Phase, as selected by the Requesters and stipulated in the Policy, in order to begin processing the Request under that phase.
- 6.5 Lastly, it should be noted that the initiation of the MICI process does not halt the project or its disbursements.
- 6.6 The MICI thanks all Parties for their participation in this phase: Requesters and their Representatives, IDB and IIC Management, officials of Alto Maipo SpA, the Mayor of San José de Maipo, neighborhood groups that were impacted by the project but are not part of the Request, and civil society organizations that dedicated time to help the MICI.

ANNEX 1. LIST OF REQUESTERS AND REPRESENTATIVES

REQUESTERS

Name	Profession or position in the district	Region or town
Manuel Ahumada	President of Cajón del Maipo Chamber of Tourism	Cajón Maipo
Verónica Ahumada	Artisan	San José de Maipo
Rubén Arenas	President of neighborhood council	El Alfalfal
Cristian Arias	Businessman	San José de Maipo
Carolina Astorga	Designer	San Alfonso
Sara Astorga	Cascada de Las Ánimas Ecotourism Center and Nature Sanctuary	Cajón Maipo
Germán Barías	Sports, adventure, and rafting microentrepreneur	San José de Maipo
Cristián Becker	Entrepreneur, Casa Bosque Restaurant and Event Center	Guayacán
Olaf Bercic	Tourism entrepreneur	El Manzano
Maite Birke	Councilwoman for San José de Maipo	San José de Maipo
Claudio Canales	Attorney	Los Maitenes
Paola Chávez	Microentrepreneur	El Manzano
Mónica Garrido	President of San Alfonso Security and Prevention Committee	San Alfonso
Tomás González	Natural resource engineer; National Rafting Team	San Alfonso
Luis Krahl	Mining engineer	San Alfonso
Alfonso Labra	Electrical engineer	El Canelo
Lorella Lopresti	Principal of Andino Antuquielén school	El Manzano
Pablo Melo	Graphic designer	Las Vertientes
Pamina Robenson	Homeowner	Las Vertientes
Juan Vargas	Cuisine entrepreneur, Antiguo Sueño Restaurant and Café	El Manzano
Ítalo Vásquez	Musician and singer, Los Vásquez	Las Vertientes
Federico Wunsch	President of San José de Maipo District Canal	San José de Maipo
Jaime Zaror	President of Los Arrieros Equestrian Tourism Corporation	Cajón Maipo

REPRESENTATIVES

Name	Organization
Marcela Mella	Coordinadora Ciudadana No Alto Maipo
Juan Pablo Orrego	Ecosistemas