



DOCUMENT OF THE INDEPENDENT CONSULTATION AND INVESTIGATION MECHANISM

MICI-BID-CH-2017-0115

COMPLIANCE REVIEW REPORT

ALTO MAIPO HYDROELECTRIC POWER PROJECT

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

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ABOUT THE MICI COMPLIANCE REVIEW PROCESS

The purpose of a Compliance Review is to investigate allegations by Requesters who assert that their rights or interests have been and/or could be directly harmed by actions or omissions of the Inter-American Development Bank that potentially fail to comply with one or more of the Bank's Relevant Operational Policies in connection with one or more operations. Accordingly, a Compliance Review investigation is aimed at determining whether a Bank action or omission with respect to a Bank-financed operation has resulted in noncompliance with the Bank's Relevant Operational Policies and has caused or could cause substantial and direct harm to the Requesters.

A Compliance Review is a fact-finding exercise designed to assist the Board of Executive Directors in promoting compliance with the Bank's Operational Policies, support the positive development outcomes of Bank-financed operations, and foster institutional learning. Compliance Reviews only address compliance with Relevant Operational Policies on the part of the Bank, without drawing any conclusion regarding the actions of any other party with respect to the Bank-financed operation in question.

ACKNOWLEDGMENTS

The Independent Consultation and Investigation Mechanism is grateful for the support provided by the Requesters, IDB and IDB Invest Management, the Client, and the Board of Executive Directors of the Bank throughout this investigation. This effort would not have been possible without their cooperation.

We thank the Requesters for their trust and cooperation during the various stages of the process, as well as for their assistance with logistics and in making arrangements for numerous meetings during the Compliance Review mission in Chile.

We thank IDB and IDB Invest Management, and particularly the project team, for their willingness to participate in the meetings requested and to provide information relevant to this investigation.

The MICI would also like to recognize the cooperation of the Client and its assistance with logistics and in making arrangements for meetings during the Compliance Review mission in Chile, as well as the cooperation and assistance of the various consultants participating in the project, authorities from the SEA, SMA, DGA, and Ministry of Energy, residents of Cajón del Maipo, and other outside parties involved in the project.

We thank the chair for Chile at the Inter-American Development Bank for its valuable support and ongoing availability.

The Independent Consultation and Investigation Mechanism acknowledges the environment of collaboration, support, and institutional maturity at the Bank that enabled it to conduct this investigation and hopes that its findings further enrich the Bank's contributions to the region of Latin America and the Caribbean.

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Annex I	Management's Comments on the Preliminary Version of the MICI Compliance Review Report on the Alto Maipo Hydroelectric Power Project in Chile

LINKS	
1.	Original Requests and Annexes http://www.iadb.org/document.cfm?id=40837423 http://www.iadb.org/document.cfm?id=40848319
2.	Eligibility Memorandum https://idbg.sharepoint.com/teams/ez-MICI/cases/_layouts/15/DocIdRedir.aspx?ID=EZSHARE-1800453186-462
3.	Joint Response of IDB-IIC Management to the Request http://www.iadb.org/document.cfm?id=40863162
4.	Recommendation for a Compliance Review and Terms of Reference http://www.iadb.org/document.cfm?id=EZSHARE-1800453186-687
5.	List of meetings/interviews conducted during the investigation https://idbg.sharepoint.com/teams/ez-MICI/cases/MICIBIDCH20170115/Compliance%20Review%20Phase/Investigation/Listado%20de%20Reuniones%20durante%20la%20FVO.docx?d=wd754ba425e76480f89f13d6619177ed4
6.	[REDACTED]
7.	Environmental and social strategy http://www.iadb.org/Document.cfm?id=40860158
8.	Environmental impact assessment (EIA) and addenda, Alto Maipo Hydroelectric Power Project https://idbg.sharepoint.com/teams/ez-MICI/cases/_layouts/15/DocIdRedir.aspx?ID=EZSHARE-1800453186-295
9.	Environmental and social management report (ESMR), Alto Maipo Hydroelectric Power Project (only available in English) http://www.iadb.org/Document.cfm?id=38143246
10.	Technical report on the ecological flow of the Alto Maipo Hydroelectric Power Project http://www.iadb.org/Document.cfm?id=38040835
11.	[REDACTED]
12.	[REDACTED]
13.	[REDACTED]
14.	Environmental classification resolution (ECR) http://idbdocs.iadb.org/wsdocs/getDocument.aspx?DOCNUM=40868134
15.	Project abstract – Alto Maipo Hydroelectric Power Project (only available in English) http://www.iadb.org/Document.cfm?id=36773463
16.	Item 1: Identification and assessment of potential impacts on water uses and users http://www.iadb.org/Document.cfm?id=40877913
17.	[REDACTED]

18. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

19. Bibliography consulted
<https://idbg.sharepoint.com/teams/ez-MICI/cases/MICIBIDCH20170115/Compliance%20Review%20Phase/Investigation/Bibiliograf%C3%ADa%20Consultada.docx?>

ABBREVIATIONS

Alto Maipo	Alto Maipo SpA
Bank or IDB	Inter-American Development Bank
Board of Executive Directors	Board of Executive Directors of the IDB
CAO	Office of the Compliance Advisor/Ombudsman
CASI	Consultor Ambiental y Social Independiente [Independent Environmental and Social Consultant]
CEA	Centro de Ecología Aplicada (consulting firm)
IDB	Inter-American Development Bank
IFC	International Finance Corporation
CIEL	Center for International Environmental Law
Client	AES Gener S.A.
CNM	Constructora Nuevo Maipo S.A.
DGA	Dirección General de Aguas [Water Bureau]
district	San José de Maipo district
DOH	Dirección General de Obras Hidráulicas [Hydraulic Works Department]
ECR	Environmental classification resolution
EIA	Environmental impact assessment
ERM	Environmental Resources Management (consulting firm)
ESDD	Environmental and social due diligence
ESHSAP	Environmental and social, health, and safety action plan
ESMP	Environmental and social management plan
ESMR	Environmental and social management report by CASI
ESOHS	Environmental, social, and occupational health and safety
ESOSMS	Environmental, social, and occupational safety management system
ESS	Environmental and social strategy
FDC	Consulting firm that monitors social indicators
IDB Invest	IDB Group institution supporting the private sector, formerly IIC
IIC	Inter-American Investment Corporation
Management	IDB or IDB Invest Management
MICI	Independent Consultation and Investigation Mechanism
MICI Policy	Policy of the Independent Consultation and Investigation Mechanism (document MI-47-6)
MIS	Monitoreo de indicadores sociales [social indicators monitoring]
MLP	Minera Los Pelambres (mining company)
ODS	Origin and destination survey
OP-102	Access to Information Policy
OP-703	Environment and Safeguards Compliance Policy
OP-704	Disaster Risk Management Policy
OP-708	Public Utilities Policy
OP-710	Operational Policy on Involuntary Resettlement
OP-761	Operational Policy on Gender Equality in Development

OPIC	Overseas Private Investment Corporation of the United States
OVE	Office of Evaluation and Oversight of the IDB Group
PIIM	Project-induced in-migration
Project	Alto Maipo Hydroelectric Power Project
SCF	Structured and Corporate Financing Department
SEA	Servicio de Evaluación Ambiental [Environmental Assessment Service]
SMA	Superintendencia del Medio Ambiente [Superintendency of the Environment]

EXECUTIVE SUMMARY

A. The project

The Alto Maipo Hydroelectric Power Project (the “project”) consists of the construction, operation, and maintenance of two run-of-the-river hydroelectric plants (the Alfalfal II and Las Lajas plants) with a combined installed capacity of 531 MW. The project is located in the San José de Maipo district, on the eastern edge of Santiago’s Metropolitan Region, 48 kilometers from Chile’s capital and in the upper Maipo River basin. There are 23 towns within the area, as well as many rivers, estuaries, and streams. These plants capture water flows from the upper Volcán and El Yeso river basins, as well as from the middle to lower reaches of the Colorado River, and then return the water downstream to the Maipo River.

The area’s economic activities are tourism (notably including hiking, rafting, horseback riding, fishing, and kayaking), mining, hydroelectric power generation, agriculture, and cattle raising. The district is one of the region’s most important tourist destinations, declared a National Tourist Interest Zone in 2001 by the National Tourism Service. The backbone of the district’s road system is Route G-25, which runs through the town of San José de Maipo and has become a transit route for the district.

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, as well as access roads, bridges, and 17 kilometers of transmission lines, and other construction activities. Permanent surface works for the project are expected to occupy a total of 85 hectares and approximately 61 hectares for transmission lines. The original estimate of five years for the project’s construction stage has been extended to nine years.

On 16 October 2013, the Bank’s Board of Executive Directors approved a non-sovereign guaranteed loan to Alto Maipo SpA in the amount of US\$200 million for the project (loan CH-L1067). Other international financial institutions, such as the International Finance Corporation (IFC) and the United States Overseas Private Investment Corporation (OPIC), and multilateral and commercial banks participated or currently participate in the financing for the project.

The Bank originated this loan operation (which is classified as category “A”) through its private-sector window, conducting due diligence on the project in 2013 together with the other lenders. In January 2016, management of the loan operation was transferred to IDB Invest as part of the merge-out of the IDB’s private sector operations. The project was subject to two financial restructurings starting in March 2017. [REDACTED]

B. The Request

On 23 January 2017, the MICI received a Request from 23 individuals who live and work mainly in the San José de Maipo district. They alleged that they have suffered or are likely to suffer harm in connection with the project during both its construction stage and its operation. The Requesters alleged noncompliance with respect to a large number of environmental and social issues, including failure to properly assess environmental and social impacts, as a result of the work on the area’s rivers that will be affected by the project and its effects on tourism activities; negative impacts on various economic and tourist activities during construction; impacts from worker migration to the district, particularly gender-differentiated impacts; and the impacts on the community of El Alfalfal

from the project's construction. A similar complaint was simultaneously filed with the IFC's mechanism, the Office of the Compliance Advisor/Ombudsman (CAO).

C. The Compliance Review

On 30 May 2018, the Board of Executive Directors approved the Recommendation for a Compliance Review and Terms of Reference for the investigation (document MI-65-6). The Investigation Panel was then established, consisting of independent experts Ana María Ibacache, Chiqui Arregui, and Oscar Link, and Compliance Review Phase Coordinator Arantxa Villanueva, as Chairperson.

Of the issues alleged by the Requesters in their Request, the following were not included in the investigation: (1) potential noncompliance with Operational Policies OP-704, OP-710, and OP-708; (2) potential impacts on the sedimentology regime in the Maipo River; and (3) potential impacts on third-party water use rights. The investigation focused on five specific issues: (1) alteration of water flow in the targeted rivers, particularly with regard to the area's recreational and economic activities (kayaking and rafting); (2) decline in the area's economic activities, particularly tourism and leisure; (3) high worker migration, with an emphasis on gender-differentiated impacts; (4) effects on residents of the community of El Alfalfal; and (5) adequate consultation processes and lack of information disclosure on project impacts and management measures.

Since the Requesters also filed a similar complaint with the CAO, the MICI and the CAO worked together, sharing independent experts, conducting a joint field mission, and sharing relevant public information. The CAO investigation covers issues not included in the investigation approved for the MICI and spans a more limited time period, since the IFC withdrew from the project in May 2018. Each mechanism will issue its own compliance report regarding the respective institution's environmental and social standards. The preliminary version of this report was sent to Management for comments, which were then reviewed. As a result, this final version includes changes as the MICI deemed appropriate.¹ The investigation involved a detailed study of approximately 700 documents and close to 40 interviews and meetings with more than 100 individuals, including IDB and IDB Invest staff, the Requesters, the Client, and others.

D. Findings of the investigation

Analyzing the five issues that form part of this Compliance Review entailed reviewing the Bank's compliance with two operational policies: OP-703 (Environment and Safeguards Compliance Policy), specifically Directives B.5, B.6, and B.7; and OP-761 (Operational Policy on Gender Equality in Development).

As described in this report, the Bank conducted an environmental and social due diligence (ESDD) review that identified various gaps in compliance with the Bank's Operational Policies, asked the Client to take specific steps to close those gaps, and supervised compliance with the environmental and social requirements included in the Loan Contract. However, the analysis also shows that, overall, despite identifying certain gaps and requesting additional studies from the Client: (1) the Bank approved the project without some of those requested studies, which in some cases have not been completed to date; (2) impacts stemming from issues that had not been included in the environmental and

¹ In January 2018, the Requesters leaked to the press the draft Recommendation for a Compliance Review and Terms of Reference, which had been shared with them on a confidential basis. In view of this, when approving the investigation, the Board of Executive Directors instructed the MICI not to share confidential information with the Requesters.

social, health, and safety action plan (ESHSAP) were not adequately monitored by the Bank during the supervision; and (3) the Bank has not ensured the Client's full compliance with some ESHSAP requirements.

Specifically, the MICI found that, even though the due diligence process identified that, once in operation, the project could impact the tourist and recreational uses of the rivers due to altered water flows and that an assessment of those impacts in consultation with the affected population was needed, no such assessment has been conducted as of the issuance date of this Compliance Review Report, and those potentially affected have not been properly consulted. The loan operation was approved with the requirement that, as promptly as possible and well ahead of the operating stage, an impact study be conducted on the recreational uses of the targeted rivers (kayaking and rafting). However, in the six years elapsed since the loan's approval and despite supervising compliance with this requirement, the Bank has not succeeded in ensuring that the Client complete the study even while pointing out the urgent need to do so. Yet the Bank has been extremely flexible in supervising the bridging of this critical gap and has continued to make timely disbursements. For this reason, the MICI made a determination of noncompliance with Directives B.5, B.6, and B.7 of Operational Policy OP-703.

On the issue of impacts resulting from worker migration into the area, the MICI found that, during the ESDD process, the Bank estimated that the project would require at most 2,500 workers during construction. Accordingly, it confirmed certain measures to mitigate the potential impacts of this migration on the communities, including housing workers in camps away from the communities, to prevent mixing with the local population. However, this mitigation measure has not been implemented during the project's execution, and many workers are lodging within the communities. In addition, it was found that the actual number of workers exceeded 5,000, more than double the initial forecast, and the Bank did not request an assessment of whether this material alteration of the circumstances would create impacts other than, or different from, those initially envisaged and require the established mitigation measures to be modified or adjusted. The MICI concludes that the Bank failed to comply with Directives B.5 and B.7 of Operational Policy OP-703 in terms of management of the worker migration issue.

The MICI also analyzed the allegations regarding gender-differentiated impacts and found that the project's social impact assessments did not include any gender-mainstreaming analysis, thus failing to adequately consider the potential gender-differentiated risks and impacts of worker migration for women and girls in the district. In addition to the project's impact assessments, the MICI looked at three general measures taken by the project: a project induced in-migration (PIIM) management plan, community relations regulations, and a campaign of zero tolerance for sexual harassment in the workplace. It was found that these are general tools, the first two designed to regulate worker conduct and the third to prevent sexual harassment solely in the workplace. As such, they are neither specific impact assessments nor management measures reflecting a gender perspective. Moreover, the MICI found that the Bank's efforts, once allegations of sexual violence and prostitution had been received, were again not reflective of a gender perspective. Similarly, there was a failure to design appropriate environments or adopt methodologies for gathering information from, and building trust among, women and girls in the community on this issue. For this reason, the MICI found that the Bank did not comply with Operational Policy OP-761.

Regarding the allegations of impacts on economic activities and lifestyle in the community stemming from the project's construction, the MICI divided its analysis into three areas:

(1) impacts on economic and tourist activities involving mule drivers; (2) impacts from project-related vehicle traffic; and (3) impacts on the social fabric and divisions within the community.

Regarding the impact on activities of mule and pack horse drivers (community members who practice traditional cattle farming and grazing and organize mountain tourism horseback riding trips), it was found that no assessment was made of the project's potential impacts on this population group, nor was this group included in the consultation processes with the affected population. Consequently, the MICI concluded that the Bank failed to comply with Directives B.5 and B.6 of Operational Policy OP-703. At the same time, as a result of the concerns expressed by this population group, the Client and a representative group of mule drivers established a dialogue during the project execution stage to discuss the project's impacts and how they could be addressed, in compliance with the aforementioned Directive B.6.

Regarding the impacts due to vehicle traffic during project construction, the MICI found that the Bank assessed the project's impact arising from the increase in vehicle traffic and confirmed that certain mitigation measures were in place, in compliance with Directive B.5 of Operational Policy OP-703. However, during the supervision process, it was discovered that this impact assessment was based on a document that included base data errors, so a request was made to correct them. The new information identified an exponential increase in vehicle traffic with respect to the initially considered data. However, the MICI found that no assessment was made of the potential impacts, including cumulative impacts, of this actual increase in traffic, nor any analysis as to whether a modification of the mitigating measures was warranted. Thus, the Bank failed to comply with Directive B.5 of Operational Policy OP-703. In addition, while the Bank performed its supervision in overall compliance with Directive B.7, it was found that the Bank has been unable to ensure compliance with certain specific measures during the execution stage, thereby not fully complying with Directive B.7 of Operational Policy OP-703.

Lastly, the MICI analyzed the allegations of impacts on residents of the community of El Alfalfa, a small, 60-family settlement on the banks of the Colorado River surrounded by works for construction of one of the project's surge tanks, among other works. The reviewed allegations focus on three issues: noise, air pollution (in both cases from the project's construction), and social divisions brought on by the project.

Firstly, regarding noise, the MICI found that, although the EIA assessed this impact and identified mitigation measures designed to ensure that noise levels would not exceed the allowed limits under the national standard, the Bank did not verify whether those measures were adequate for compliance with the standards required of the Client, namely the relevant World Bank Group guidelines, which are more protective than the national standard. The MICI found shortcomings in how this project impact was managed, including starting the works before the impact mitigation measures were in place; a Bank supervision process focused on asking the Client for years to report noise measurement data based on World Bank Group guidelines rather than on the national standard; the absence of clear measures aimed at preventing, minimizing, or abating the noise impact, only taking action reactively, once noise levels became excessive; and extending the construction period by several years without evaluating the consequences for the community. In view of this, the report concludes that the Bank complied with Directive B.5, since it assessed the impact of construction noise on the community, but did not fully comply with this directive, since it failed to verify the effectiveness of the measures. In addition, the MICI found noncompliance with Directive B.7 of Operational Policy OP-703.

Regarding impacts due to the dust created by the works, the MICI found that this was identified as a general project impact and the Bank determined that the existing mitigation measures were adequate. Thus, the Bank did not require a specific assessment of this impact on El Alfalfal (although it did in the case of noise), despite the community's close proximity to the works and its classification as a sensitive receptor. At the same time, the MICI concluded that the Bank supervised the general mitigation measures aimed at addressing the project's potential impact on air quality. Consequently, it found that the Bank did not comply with Directive B.5 but did comply with Directive B.7 of Operational Policy OP-703.

Regarding the allegations of social divisions in the community of El Alfalfal due to the works, the MICI found that this was not assessed as a project impact, even though several different documents identified a split in the community arising from the presence of two separate and opposing groups. In addition, community consultation and participation processes were conducted with only one group in the community. No efforts were made to inform and establish a dialogue with the neighborhood council as the formal representative body under Chilean legislation. Consequently, the MICI finds a failure to comply with Directives B.5 and B.6 of Operational Policy OP-703.

The MICI's conclusions regarding compliance with the Relevant Operational Policies are summarized in Table 8.

E. Recommendations

Based on the findings of this Compliance Review Report, the MICI includes the following recommendations for consideration by the Board of Executive Directors. These recommendations have been previously discussed with Management, which has expressed general agreement with them.

Specific recommendations for the project	
Recommendation 1.	<p>Complete an impact assessment on recreational, tourist, and scenic uses at the earliest opportunity, including a management plan for the identified impacts, as required under Directive B.5 of Operational Policy OP-703.</p> <p>Ensure that the environmental and social management plan is consistent with the identified impacts with a view to preventing the harm from occurring and, if it cannot be prevented, put mitigation or offset measures in place within an appropriate environmental and social management plan.</p> <p>Ensure that both the study and the management plan are disclosed in a timely manner and sufficiently in advance to enable the affected population to participate in a meaningful consultation process in keeping with the standards of Directive B.6 of Operational Policy OP-703, i.e., by establishing a two-way dialogue for meaningful consultations.</p> <p>Ensure that measures are put in place to monitor compliance with the management plan during the project's operation phase, consistent with the requirements of Directive B.7.</p> <p>Establish a timetable for execution of these measures, consistent with the requirements of the Operational Policies and project progress.</p>
Recommendation 2.	<p>At the earliest opportunity, request a comprehensive assessment of the potential social and economic impacts of the flow of workers and the measures taken during the construction phase, once the project enters the operation phase.</p> <p>Based on this assessment, design and implement measures to mitigate, offset, and manage the identified impacts, to be supervised by the Bank.</p>
Recommendation 3.	<p>Require an assessment, reflecting a gender perspective, of the social and economic impacts of worker migration, to determine:</p>

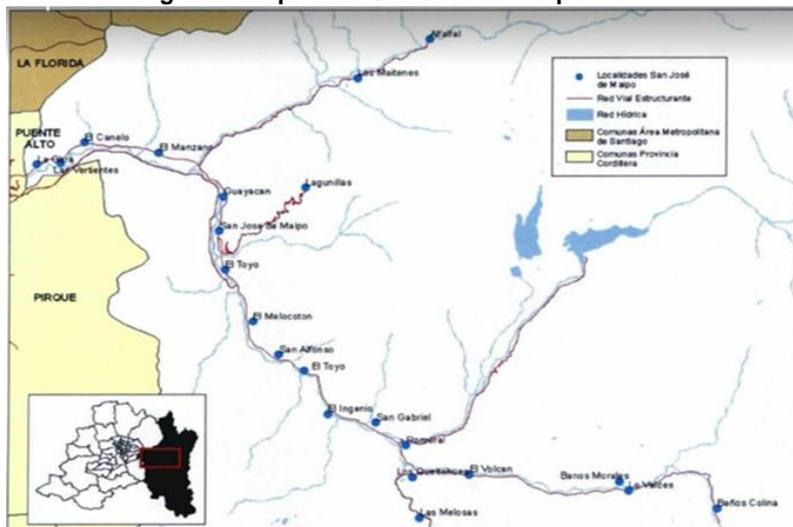
	<p>1. Whether gender impacts on the population have occurred, thus far.</p> <p>2. Whether the decision to allow workers lodging within the community has impacted, and will impact, the community's female population to a greater degree.</p> <p>The mitigation measures resulting from the assessment should reflect the gender perspective and ensure that the differentiated impacts are not perpetuated.</p> <p>Lastly, ensure that the assessment is performed/supported by gender specialists using appropriate methodologies for studies of this kind.</p>
<p>Recommendation 4.</p>	<p>Introduce (either in the environmental and social, health, and safety action plan (ESHSAP) or in a corrective action plan, as most convenient based on the project's arrangements) a mitigation measure in relation to the mule drivers' activities during the construction stage, consisting of ensuring that a communication protocol is in place to make this group aware of blocked roads and trails, as well as blasting schedules, sufficiently in advance, and supervise the Client's compliance with this measure.</p>
<p>Recommendation 5.</p>	<p>Require an analysis of whether the existing mitigation measures are adequate in view of the updated traffic increase data, considering the cumulative impacts; establish a corrective action plan if the mitigation measures are found to be inadequate; and strictly supervise the plan's implementation during the remainder of the construction stage.</p>
<p>General recommendations for the IDB Group</p>	
<p>Recommendation 6.</p>	<p>Strengthen IDB Group staff understanding and capability to implement the requirements of Operational Policy OP-761 and any relevant policy applicable to the process of identification, assessment, and mitigation of gender-based impacts in operations, as well as related to any requirements ensuring the safe, effective participation of vulnerable groups. Specifically, develop guidelines for implementing Operational Policy OP-761 and other policies related to such impact, in order to strengthen compliance with these policies and their proper implementation in Bank operations.</p> <p>Establish a blanket zero tolerance policy toward gender-based violence as part of the IDB Group's environmental and social safeguard policies, and ensure that this policy is incorporated into the contractual conditions of operations approved by the IDB Group.</p>
<p>Recommendation to develop an action plan</p>	
<p>Recommendation 7.</p>	<p>Management should develop an action plan, in consultation with the MICI, for implementation of the recommendations in this report that are approved by the Board of Executive Directors. This plan should contain an implementation schedule compatible with the operation underlying the investigation, to be monitored by the MICI in accordance with paragraph 49 of the MICI Policy.</p>

I. BACKGROUND²

A. Geographic and social context³

- 1.1 The San José de Maipo district, which is semirural, 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 and 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.
- 1.2 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.
- 1.3 San José de Maipo is divided into 23 towns.⁴ 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 the San José de Maipo district



Source: Land use plan for San José de Maipo.

- 1.4 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.

² Information taken from the Bank's website and public documents on the project. These documents are available in the links section of this report.

³ Information supplemented by the land use plan for San José de Maipo.

⁴ 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, Embalse El Yeso, Los Queltehues, Las Melosas, El Volcán, Baños Morales, El Morado, Lo Valdés, and Baños Colina.

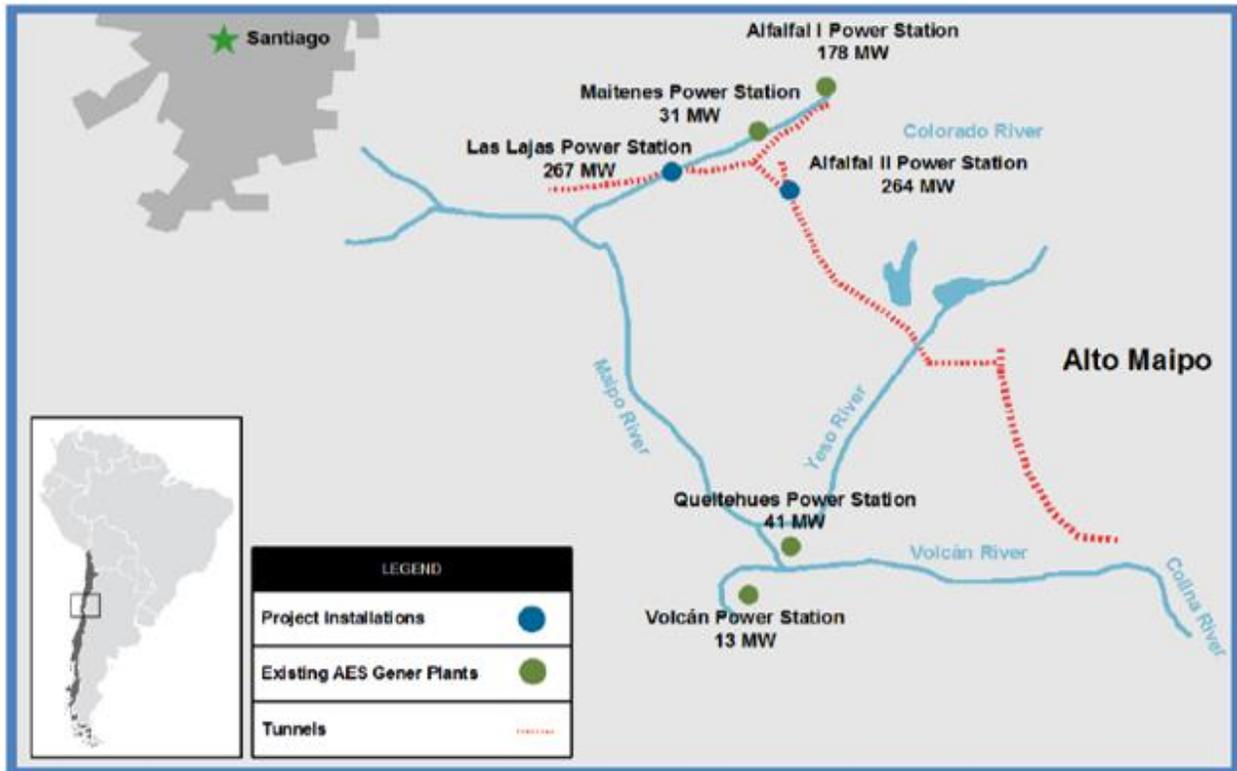
- 1.5 San José de Maipo has a population of 18,189, according to the 20017 census, accounting for 0.22% of the region's total population and 2.56% of the total population of Cordillera province.
- 1.6 The area's economic activities are tourism, mining, hydroelectric power generation, agriculture, and 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 AES Gener S.A. It is one of the region's most important tourist destinations, declared a National Tourist Interest Zone in 2001 by the National Tourism Service. According to the 2010 San José de Maipo District Development Plan, the main tourist activities are climbing, rafting, horseback riding, hiking, fishing, and kayaking. Growth in restaurant and hotel services is also being reported.

B. The Alto Maipo Hydroelectric Power Project

- 1.7 The Alto Maipo Hydroelectric Power Project consists of the construction, operation, and maintenance of two run-of-the-river hydroelectric power plants⁵ (the Alfalfal II and Las Lajas plants) with a combined installed capacity of 531 MW. These plants capture water from the upper Volcán and El Yeso river basins, as well as from the middle to lower reaches of the Colorado River, and then return the water downstream to the Maipo River.
- 1.8 The project calls for the construction of works, chiefly (90%) the excavation of 67 kilometers of underground tunnels and 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.

⁵ According to the project documents, the project does not require creating a reservoir or building a dam to regulate the flow of water entering the plants. The electrical stations capture the water and then return it to the tributaries.

Figure 2. Alto Maipo Hydroelectric Power Project Map



Source: ESMR, p. 66.H67

- 1.9 Development of the Alto Maipo Hydroelectric Power Project concept began in 1992, and its preliminary design was ready in 2000. In May 2008, AES Gener submitted the project's environmental impact assessment (EIA), excluding transmission lines, for approval to Chile's Environmental Assessment Service. On 16 October 2013, the Board of Executive Directors approved a non-sovereign guaranteed loan of US\$200 million (loan CH-L1067) for the design, construction, operation, and maintenance of the Alto Maipo Hydroelectric Power Project.
- 1.10 The borrower is Alto Maipo SpA (Alto Maipo), a company created specifically for the project whose original sponsors were AES Gener, the Chilean subsidiary of the United States company AES Corporation, and Antofagasta Minerals S.A. As of January 2017, the consortium consists of AES Gener S.A., as majority shareholder, and Strabag Spa. In addition to the IDB loan and capital contributions from sponsors, the financing structure included the following sources of funds: an A loan for US\$150 million from the International Finance Corporation (IFC); a US\$250 million contribution from the United States Overseas Private Investment Corporation (OPIC); and a US\$600 million investment from an additional six multilateral and commercial banks, including Corpbanca, Banco de Crédito e Inversiones, Banco Itaú Chile, Banco del Estado de Chile, KfW Ipex-Bank, and DNB Bank ASA.
- 1.11 This loan operation was classified as 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, particularly its potential implications for water management in the Alto Maipo river basin.

- 1.12 The Bank originated this operation through its private-sector window—the Structured and Corporate Financing Department (SCF)—with the signing of the mandate letter in April 2012 and commenced the due diligence stage in 2013 together with the other lenders.
- 1.13 In January 2016, management of the loan operation was transferred to the Inter-American Investment Corporation, now IDB Invest, as part of the merge-out of the IDB’s private sector operations.
- 1.14 In March 2017, when Antofagasta Minerals S.A. abandoned the project, a financial and corporate restructuring of the project was announced, to be carried out by AES Gener, which “included the purchase by AES Gener of the entire shareholding of Minera Los Pelambres (MLP) in 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.”⁶
- 1.15 In June 2017, Alto Maipo reported that it had terminated one of the project’s construction contracts, with Constructora Nuevo Alto Maipo (CNM), due to an alleged breach of contract, leading to arbitration proceedings in Chilean and international courts. In addition, in late July Alto Maipo reported that this contract termination had triggered a technical default on the financing contracts under which the project operates.
- 1.16 [REDACTED]

⁶ Press release, “AES Gener concluye exitosamente reestructuración financiera de Alto Maipo” [AES Gener successfully concludes Alto Maipo financial restructuring], March 2017. <http://www.aesgener.cl/SalaPrensa/Paginas/AES-Gener-concluye-exitosamente-reestructuraci%C3%B3n-financiera-de-Alto-Maipo.aspx>.

Table 1
Alto Maipo Hydroelectric Power Project Schedule

Year	Action
1992	Initial project concept
2000	Preliminary design
2002-2003	Basic engineering design
2008	Signing of social collaboration agreement
2008	Citizen participation period – ECR
2009	ECR approval (30 March)
2011	Commencement of preliminary works
2012	IDB mandate letter (April)
2013	Environmental and social due diligence
2013	Loan approval by the IDB Board of Executive Directors (16 October)
2013	Signing of Loan Contract [REDACTED]
2014	[REDACTED]
2014	Start of construction
2016	Transfer of the loan operation from IDB to IDB Invest (January)

Source: Prepared by the authors with project documents.

C. The Request⁷

- 1.17 On 23 January 2017, the MICI received a Request from 23 people impacted by the project 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 at the Washington, D.C.-based Center for International Environmental Law (CIEL).⁸
- 1.18 The group of Requesters is comprised of area residents who live and work mainly in the San José de 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 its operation. While the case was being processed with the MICI, two Requesters decided to withdraw from the Compliance Review Phase and are accordingly not being considered as Requesters in this report.
- 1.19 As early as 2013, the project’s environmental and social management report (ESMR) described opposition to the project from certain sectors of the community and of organized civil society due to potentially adverse environmental and social impacts, particularly in terms of hydrology, erosion, water rights, and tourist activities, and the lack of timely and adequate disclosure following the issuance of the environmental classification resolution (ECR). This opposition has remained constant and been expressed through public demonstrations, social media, and legal action.

⁷ The Request and Annexes are available in the links section of this document. This section includes information received by the MICI directly from the Requesters in the course of the missions conducted in Santiago de Chile and Cajón del Maipo.

⁸ The Requesters filed the same Request with the Office of the Compliance Advisor/Ombudsman (CAO), the IFC’s accountability mechanism.

D. The Compliance Review process to date

- 1.20 On 30 May 2019, the Board of Executive Directors approved the Recommendation for a Compliance Review and Terms of Reference (document MI-65-6). Accordingly, the investigation focused on determining whether the Bank has complied with the Environment and Safeguards Compliance Policy (OP-703) and the Operational Policy on Gender Equality in Development (OP-761) with respect to five issues:
1. Alteration of water flow in the targeted rivers, particularly with regard to the area's recreational and economic activities;
 2. Decline in the area's economic activities, particularly tourism and leisure;
 3. High worker migration, with an emphasis on gender-differentiated impacts;
 4. Effects on residents of the community of El Alfalfal.
 5. Absence of adequate consultation processes and lack of information disclosure on impacts and management measures.
- 1.21 The analysis of the fifth issue (lack of consultation and information disclosure) was performed as part of the analysis of each of the other four issues, to the extent that there were relevant related allegations.
- 1.22 Issues related to the Bank's potential noncompliance with Operational Policies OP-704, OP-710, and OP-708 were removed from the scope of the investigation, since the MICI judged that the evidence was insufficient to support proposing a compliance review process. In addition, due to the existence of two pending judicial proceedings, the following issues were excluded: (i) the potential impacts on the sedimentology regime of the Maipo River and (ii) the potential impacts on third-party water use rights.⁹
- 1.23 Since the Requesters also filed a similar complaint with the IFC's mechanism, the Office of the Compliance Advisor/Ombudsman (CAO), and in accordance with paragraph 68 of the MICI Policy, the two mechanisms signed a memorandum of understanding, agreeing to carry out the identification of experts and the field mission on a joint basis and to share public information as deemed appropriate.
- 1.24 The Compliance Review Panel consisted of Arantxa Villanueva as Chair and independent experts Chiqui Arregui, Ana María Ibacache, and Oscar Link, with assistance from the MICI staff assigned to the Compliance Review Phase.
- 1.25 On 6 December 2019, a preliminary version of this report was sent to Management.¹⁰ On 21 January 2020, the MICI received Management's comments, which were carefully reviewed. This report incorporates some of those comments, as deemed relevant by the MICI. The document sent by Management, including Management's comments, is available in the annexes section of this report. As a specific exception in this case, on instructions from the Board of Executive

⁹ Recommendation for a Compliance Review and Terms of Reference, p. 3.

¹⁰ In January 2018, the Requesters leaked to the press the draft Recommendation for a Compliance Review and Terms of Reference, which had been shared with them on a confidential basis. In view of this, when approving the investigation, the Board of Executive Directors instructed the MICI not to share confidential information with the Requesters.

Directors, the preliminary version of this report has not been shared with the Requesters for their comments.

II. COMPLIANCE REVIEW

A. Methodology

- 2.1 The Compliance Review process is governed by the provisions of paragraphs 36 to 49 of the MICI Policy for IDB-financed operations (document MI-47-6) and is focused on determining whether the Bank's actions or omissions complied with the Relevant Operational Policies. The Compliance Review process is not designed to review the actions of the Client or its consultants, nor to assign fault or responsibility to the various parties involved. This report covers the period commencing with the Bank's involvement in 2012 and ending in June 2019, when the investigation phase was completed.
- 2.2 The investigation involved a detailed analysis of approximately 700 documents that were made available to the MICI, including Bank documents related to the project and other relevant documents, both from inside and outside the Bank.¹¹
- 2.3 In addition, the MICI investigation team, accompanied by the MICI Director and CAO officers, conducted a mission to Chile from 3 to 8 December 2018. The Compliance Review Panel's independent experts also conducted a mission to Washington D.C. from 28 to 30 November 2018 to conduct interviews together with the rest of the investigation team. During the investigation period, more than 39 interviews and meetings were conducted with more than 100 individuals, including IDB and IDB Invest staff, various stakeholders directly or indirectly involved in the project, and the Requesters.¹²

¹¹ The links section provides a complete list of the documents consulted during the investigation.

¹² The links section provides a complete list of the meetings held during the investigation.

Table 2
Main meetings held by the MICI during the Compliance Review process

Date	Meeting
29 November 2018 – 19 December 2019	Meetings with IDB Management – IDB Invest Management (5)
29 November 2018 – 22 January 2019	Meetings with ERM (Independent Environmental and Social Consultant) (3)
30 December 2018	Meeting with consulting firm Social Capital Group
3 December 2018 – 25 January 2019	Meetings with the Requesters (14)
3 December 2018	Meeting with Chile’s Environmental Assessment Service (SEA)
	Meeting with Chile’s Superintendency of the Environment (SMA)
3 December 2018 – 7 December 2018	Meetings with the Client (8)
5 December 2018	Meeting with the Water Bureau, Ministry of Public Works
	Meeting with consulting firm ARCADIS
	Meeting with consulting firm FDC
	Meeting with Chile’s Ministry of Energy
6 December 2018	Meeting with community residents, members of panels, and beneficiaries of grant funds (2)

Source: Prepared by the MICI.

- 2.4 The MICI Policy calls for a determination as to whether any noncompliance found has caused or could cause harm. However, the MICI Policy establishes that the Compliance Review process is not a judicial proceeding and that the MICI does not award compensation, damages, or similar benefit. Thus, the MICI mandate is to review the Bank’s actions surrounding a specific operation. In consideration of the fact that a determination of harm is not intended for the purpose of awarding compensation to an individual, the standard of proof for determining the occurrence of the harm is different from the standard used in judicial proceedings. Accordingly, the MICI’s determination is primarily based on: the testimony of the Requesters, the documents and evidence they provide, the potential impacts identified by the project documents, and the observations made in the course of the Compliance Review mission.
- 2.5 This Compliance Review Report is divided into four findings sections:
- a. Alteration of water flow and impacts on recreational uses in the targeted rivers;
 - b. Impacts from worker migration, particularly gender-differentiated impacts;
 - c. Impacts on economic activities and lifestyle in the district;
 - d. Effects on residents of the community of El Alfalfa.
- 2.6 As indicated above, in each of these four sections, this report examines whether the Bank complied with Directive B.6 regarding fulfillment of the consultation requirements for a category “A” operation.
- B. The Bank’s involvement in the Alto Maipo Hydroelectric Power Project**
- IDB–IDB Invest interinstitutional coordination**
- 2.7 As described above, the Bank’s involvement in the project began in 2012 through its private-sector window—the Structured and Corporate Financing Department

(SCF)—and was solidified in 2013, when the loan operation was approved by the Bank’s Board of Executive Directors.

- 2.8 On 30 March 2015, the Annual Meeting of the Boards of Governors of the IIC and IDB approved the transfer of all of the IDB’s operational and administrative functions associated with private-sector and non-sovereign guaranteed activities to the IIC. This decision went into effect on 1 January 2016; accordingly, as of that date, IIC is responsible for originating and managing the Bank’s existing non-sovereign guaranteed operations (known as the Bank’s legacy portfolio). According to the regulations established¹³ for this merge-out, the Bank’s legacy portfolio will continue to be subject to the Bank’s operational policies.
- 2.9 In accordance with the MICI Policy and for the relevant purposes of this investigation, the compliance analysis has been conducted with respect to the Bank’s operational policies and the Bank’s responsibility. Regarding the institutional arrangements, it is worth noting that IDB Management actively participated in the various activities associated with the due diligence, approval, and execution of this loan operation until the date of the private sector merge-out. As of 1 January 2016, responsibility for daily supervision of the operation was transferred to IDB Invest Management; however, the loan operation continues to be considered a Bank-financed operation under the MICI Policy.¹⁴ [REDACTED]
[REDACTED]
[REDACTED] Regarding this, two relevant findings for the compliance process were made during the investigation.
- 2.10 First, in terms of identifying the applicable environmental and social policies, [REDACTED]
[REDACTED] the environmental and social policies applicable to the project include, among others, the Performance Standards (“Performance Standards”) of the International Finance Corporation (IFC) (which also apply to the United States Overseas Private Investment Corporation (OPIC)) and the Bank’s Relevant Operational Policies.¹⁵ The interviewed IDB and IDB Invest Officers, as well as the Independent Environmental and Social Consultant (CASI), indicated that they ensured project compliance with the Bank’s Relevant Operational Policies. However, during the field mission, the MICI interviewed various actors responsible for conducting studies, implementing actions related to environmental and social safeguards, and monitoring such implementation. The MICI also interviewed Client officers, who reported being familiar with and having applied the Performance Standards but not the Bank’s Relevant Operational Policies. In some cases, they even indicated that the project abides by the Performance Standards, without mentioning or being aware of the application of, and/or compliance with, the Bank’s Relevant Operational Policies.
- 2.11 Second, in terms of environmental review, the initial environmental and social project documents, such as the environmental and social due diligence (ESDD)

¹³ MICI Policy, Glossary and paragraphs 5, 8, and 10-12. [REDACTED]
[REDACTED]

¹⁴ Resolution AG-9/15 and CII/AG-2/15. Delivering the Renewed Vision: Organizational and Capitalization Proposal for the IDB Group Private Sector Merge-Out. 30 March 2015. Annual Meeting of the Boards of Governors of the Inter-American Development Bank and the Inter-American Investment Corporation. Available at http://www.iadb.org/document.cfm?id=EZ_SHARE_-1983553961-2030.

¹⁵ [REDACTED]

reports and the environmental and social management report (ESMR), properly analyze compliance with both the Bank's Relevant Operational Policies and the Performance Standards. However, this situation changes with the Bank's 2018 supervision reports. The most recent environmental and social safeguard supervision reports from IDB Invest Management,¹⁶ [REDACTED] deal with compliance with the Performance Standards and make no mention of the Bank's Relevant Operational Policies. In this regard, IDB Invest officers confirmed that their supervision documents reflect the Performance Standards because these are the contractually stipulated standards for the entire syndicate of banks that finances the project. In its comments on the preliminary version of the Compliance Review Report, Management indicated that, after analyzing the Relevant Operational Policies applicable to the project and comparing them with the Performance Standards, they found a direct correspondence between the two.

- 2.12 This finding may not be material but is worth highlighting for the following reasons: on one hand, the compliance analysis to be performed by the MICI with regard to the project is based on the Relevant Operational Policies rather than the Performance Standards, since this is an IDB-approved operation; on the other hand, [REDACTED] requires compliance not only with the Performance Standards but also with the Bank's Relevant Operational Policies; and lastly, compliance with the Relevant Operational Policies is a requirement for all Bank portfolio operations.

The social and environmental due diligence stage

- 2.13 The lenders (IDB, IFC, and OPIC) launched their ESDD process [REDACTED] 2012 with the support of ERM as Independent Environmental and Social Consultant (CASI), [REDACTED].¹⁷ The ESDD process focused on identifying the project's critical gaps¹⁸ with respect to the lenders' environmental and social standards. In this regard, it identified eight critical gaps that needed to be resolved for the Operation's approval and made recommendations to the Client for addressing them.¹⁹

¹⁶ [REDACTED]

¹⁷ CAO Compliance Appraisal Report — IFC Investment in Alto Maipo, pp. 10 and 12. [REDACTED]

¹⁸ Critical gaps are issues regarding compliance with the lenders' standards that needed to be resolved before the loan operation could be submitted to the respective Boards of Executive Directors for approval.

¹⁹ Public Project Summary, OPIC, pp. 2-6. [REDACTED]

Table 3
Critical gaps identified during the ESDD

Identified critical gaps	
Gap #1	Identification and assessment of potential impacts on water users and establishment of a management or compensation plan
Gap #2	Identification and assessment of potential impacts on riverbed sediments and establishment of a management or compensation plan
Gap #3	Identification and assessment of conversion or degradation of aquatic habitats and establishment of an ecological flow management strategy
Gap #4	Identification and assessment of potential impacts from land and right of way acquisition
Gap #5	Identification and assessment of impacts on legally protected and internationally recognized areas
Gap #6	Cumulative impact assessment
Gap #7	Analysis of alternatives
Gap #8	Contact with significant stakeholders

Source: Prepared by the MICI based on the OPIC's Public Project Summary.

- 2.14 Between May 2012 and June 2013, to address these gaps, the Client submitted a series of additional studies for review by the lenders.²⁰
- 2.15 The final version of the ESDD report, [REDACTED] prepared by the CASI, assesses the project's compliance with the applicable standards: the applicable national regulatory requirements, the IFC's performance standards, and the Bank's social and environmental policies, particularly the Environment and Safeguards Compliance Policy, Access to Information Policy, and Disaster Risk Management Policy.²¹
- 2.16 Pursuant to the ESDD report, the requirements for closing the critical gaps and the timetable for implementing those requirements are set out in the Environmental and Social, Health, and Safety Action Plan (ESHSAP) included in the project's ESMR²² and in an updated version of the ESHSAP forming part of the Loan Contract.²³

C. The MICI's findings as to compliance with Operational Policies OP-703 and OP-761 with respect to the five investigated issues

- 2.17 This section sets out the findings of the investigation conducted by the MICI with respect to the Requesters' allegations regarding:
1. Alteration of water flow in the targeted rivers, particularly with regard to the area's recreational and economic activities;
 2. High worker migration, particularly gender-differentiated impacts;
 3. Decline in the area's economic activities, particularly tourism and leisure;
 4. Effects on residents of the community of El Alfalfa.

²⁰ Public Project Summary, OPIC, p. 4. [REDACTED]

²¹ ESMR, p. 30. [REDACTED]

²² ESMR, pp. 71-78. [REDACTED]

²³ [REDACTED]

- 2.18 As indicated above, for each of these issues, this section analyzes whether the Bank complied with Directive B.6 regarding consultations, which is the fifth issue addressed in this investigation.
- 2.19 In addition, for each issue, this section presents a summary of the requirements under the Relevant Operational Policies and the connection to these policies; the Requesters' allegations regarding the issues listed in the Recommendation;²⁴ the findings of the investigation; and the respective determination of compliance or noncompliance, as well as its connection to the alleged harm, if noncompliance is identified. Where relevant, the analysis is divided into stages associated with the project cycle and the project's specific chronology.

1. Impacts on recreational and tourist uses due to alteration in water flows

a. Requesters' allegations

- 2.20 The Requesters indicate that the project will capture the water flows of the Colorado, Yeso, and Volcán rivers almost entirely. They believe there is uncertainty in this regard and that the diminishment of water flows will be greater than forecast by the project, on the order of 60% to 90%. In addition, they allege that the 10% minimum ecological flow (which they consider insufficient anyway) is not being respected. The Requesters add that the project's assessment was not comprehensive, failed to consider cumulative impacts, among other impacts, and failed to involve other users of the basin. They allege that, as a result of the reduction in the volume of these rivers, the winter flows of the Maipo River will resemble those of a stream's tributary rather than those of a main river. They add that the volume of these rivers during the project's operation will make it impossible to continue to practice tourist and recreational activities, such as kayaking and rafting, in these rivers. They also claim not to be aware of any environmental management plan implemented by the Bank that envisages meetings with affected communities.

b. Relevant Operational Policies

- 2.21 The Bank's Relevant Operational Policy for an analysis of the alleged impacts on water flows and recreational uses of the Maipo River and its tributaries is Operational Policy [OP-703](#), Directives B.5, B.6, and B.7.
- 2.22 Operational Policy OP-703 establishes that safeguards apply to the entire project cycle and are intended to ensure the environmental viability of Bank-financed operations. The Bank takes a precautionary approach to environmental impacts. The Bank favors avoiding negative environmental impacts; when impacts are unavoidable, Bank-financed operations require mitigation measures; and for impacts that cannot be fully mitigated, compensation or offsets should be implemented. The Bank will work with borrowers to manage environmental risks effectively and to help develop environmental management capacity, as agreed. Where in the opinion of the Bank the environmental risks are deemed too great, the Bank would support the proposed investment only once the plan for mitigation of the risks is agreed.

²⁴ Other allegations, relating to issues not analyzed in this report, are not included.

- 2.23 In general terms, Directive B.5 instructs the Bank to require the borrower's compliance with specified standards in preparing the EIA and its environmental and social management plan (ESMP), among other requirements. In category "A" projects, these standards consist of assessing and characterizing the direct, indirect, regional, and cumulative impacts and the no-project alternative; having consultation and information disclosure mechanisms in place; and designing measures to prevent, minimize, compensate for, and/or mitigate the key impacts and risks, as well as the structure, mechanisms, schedule, and budget needed for their implementation. Directive B.6 requires meaningful consultations during the environmental assessment process, as well as keeping the affected parties informed of the project's impacts and the respective mitigation measures during the project's implementation. Lastly, under Directive B.7, once the environmental and social requirements to be fulfilled by the Client pursuant to the Loan Contract are defined, the Bank is required to review compliance with those requirements during the project's implementation.

c. Findings of the investigation and determination as to compliance

Summary of MICI findings and determination as to compliance

The MICI found that, even though the due diligence process identified that, once in operation, the project could impact the tourist and recreational uses of the rivers due to altered water flows and that an assessment of those impacts in consultation with the affected population was needed, no such assessment has been conducted as of the issuance date of this Compliance Review Report, and those potentially affected have not been properly consulted.

The loan operation was approved with the requirement that, as promptly as possible and well ahead of the operating stage, an impact study be conducted on the recreational uses of the targeted rivers. However, in the six years elapsed since the loan's approval and despite supervising compliance with this requirement, the Bank has not succeeded in ensuring that the Client complete the study even while pointing out the urgent need to do so. Yet the Bank has been extremely flexible in supervising the bridging of this critical gap and has continued to make timely disbursements. For this reason, the MICI made a determination of noncompliance with Directives B.5, B.6, and B.7 of Operational Policy OP-703.

- 2.24 Based on the Requesters' allegations, the analysis of compliance with the Bank's Relevant Operational Policies is focused on determining whether the Bank ensured that the impacts on the area's tourist and recreational activities stemming from the drop in the water volume of the rivers targeted by the project were identified, characterized, and assessed, and that the necessary management measures were implemented to prevent, minimize, compensate for, and/or mitigate those impacts.²⁵ The alleged effects relate primarily to the practice of kayaking and rafting; accordingly, the analysis focuses on these activities and includes a review of the ESDD and the Bank's supervision activities as well as the consultation and disclosure requirements regarding these impacts.
- 2.25 Bu way of general context, the project plans to capture water through various intakes from some tributaries of the Maipo River, specifically from the upper basins of the Volcán and Yeso rivers as well as from the middle to lower reaches of the

²⁵ The impact assessment and design of Bank-driven measures regarding water users holding formally recognized rights (such as channel irrigators) were excluded from this investigation and are therefore not analyzed in this report.

- 2.27 According to Management’s Response to the Request, during the project’s preparation process the lenders requested additional assessments of potential impacts on the minimum flow rates to be maintained downstream from the project’s water intake works in order to ensure the preservation of the ecological functions of the rivers and their potential uses, including recreational uses. These assessments conclude that: “the project’s [downstream] water intake points are sufficient to preserve the ecological integrity of the bodies of water and levels of water required for recreational boating (rafting), although they could diminish the ‘recreational experience’ during a few critical months of the year.” Management indicates that, at the request of the lenders, the project commissioned the consulting firm ERM to perform a Recreational Boating Study on the rivers affected by the project. This study provided preliminary findings regarding the minimum volume required for adventure boating; the effects on the number of rafting days; the recreational uses of the Volcán, Colorado, and Yeso rivers; and the effects of the project on the middle reaches of the Maipo River, among others.
- 2.28 According to the information provided by the Requesters, activities on the Maipo River include commercial rafting, kayaking, and/or noncommercial rafting. On the Volcán and Yeso rivers, activities include kayaking by professional kayakers and by Chile’s national team.
- 2.29 Regarding the assessment of environmental impacts, the project documents indicate that the project’s operation will lead to a reduction of water volume in the targeted area, with the attendant impacts on aquatic habitats, water users, river infrastructure, and sediment transport. To address this, the ECR established a minimum flow (ecological flow) requirement with a view to mitigating these impacts.²⁸ The proposed ecological flow was approved by the environmental authority based on an ecological flow study (CEA-2008) submitted in the 2008 EIA. Subsequently, the ECR revised the minimum flow levels to reflect Water Bureau (DGA) requirements,²⁹ and these revised levels are the applicable minimum required flows.

Table 4
Existing and ecological flows in the rivers affected by the project

Intake	Intake design flow (m ³ /s)	Average annual flow (m ³ /s)	ECR minimum ecological flow (m ³ /s)	DGA minimum ecological flow (m ³ /s)
La Engorda	2.1	0.99	0.15	0.20
Colina	6.0	3.24	0.37	0.37
Las Placas	1.0	0.47	0.10	0.14
El Morado	3.7	1.71	0.17	0.24
El Yeso	15.0	7.91	0.46	0.82
Colorado (at altitude of El Alfalfal)	30.0	16.05	0.66	2.51

Source: Prepared by the authors with information from the ECR and the 2008 and 2013 CEA reports.

²⁸ ECR, p. 17.

²⁹ As defined by the DGA in its Manual of Rules and Procedures (DGA 2002), ecological flow is “the minimum flow that a river should have to preserve the aquatic ecosystem.”

- 2.30 However, the ESDD found some flaws [REDACTED] in the ecological flow study, [REDACTED]. In particular, it was concluded (among other findings) that the impacts on recreational users could not be confirmed with the information available at the time.³⁰
- 2.31 Accordingly, the identification and assessment of potential impacts on all water users and the establishment of a management and/or compensation plan are included as critical gap #1. In this regard, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]³¹
- 2.32 Pursuant to these requirements, the Client submitted a revised ecological flow study (June 2013)³² which was analyzed in the ESDD process.³³ The ESDD report concluded that the assessment of impacts on water flows for recreational uses was limited in several respects: it used statistical data from the 2008 report, which focused only on one section of the Maipo River used for commercial rafting between the confluence of the Yeso and Maipo rivers and the town of San José de Maipo, failing to consider other river sections that could have noncommercial recreational uses, particularly kayaking in the lower and upper reaches of the Colorado, Yeso, Volcán, and Maipo rivers, and which merited an assessment; [REDACTED]
[REDACTED]³⁴
- 2.33 Consequently, the ESDD report recommended conducting a study of flows for recreational uses so as to quantify the extent and level of recreational uses on these rivers and the preferred and acceptable flows based on the quality of the recreational experience. In addition, the report indicated that the flow preferences should be developed through a combination of structured interviews with water users, questionnaires, and direct observation.³⁵ It specified that this study could be conducted during the construction stage, well ahead of the operation phase, before the flow is diverted, and be managed in adaptive fashion following construction to monitor the patterns of recreational use and the effectiveness of the flows in satisfying the recreational needs.³⁶
- 2.34 Lastly, the ESDD report indicates that identifying the optimum flow range could define the number of days per year with recreational opportunities consistent with the operation. Based on this, if relevant, the Client would have to consider

³⁰ ESMR, p. 47. [REDACTED]

³¹ Memorandum on critical gap #1, p. 2.

³² Technical report. Ecological flow of the Alto Maipo Hydroelectric Power Project, CEA, August 2013, p. 10.

³³ [REDACTED]

³⁴ ESMR, pp. 48-49. [REDACTED]

³⁵ ESMR, p. 48-49. [REDACTED]

³⁶ ESMR, pp. 48-49. [REDACTED]

seasonal mitigation measures enabling an appropriate number and level of discharges for recreational uses to be included in the adaptive management plan.³⁷

2.35 The ESMR [REDACTED] identified changes in hydrological conditions in the intercepted rivers as key impacts and risks, indicating that the project raised concerns regarding the minimum ecological flow in these rivers and the potential adverse impacts on recreational activities in the portions of the rivers that would be diverted.³⁸ These documents noted that those impacts had been assessed in the ESDD process through additional studies, reviews by independent experts, and additional consultation activities.³⁹ [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]⁴⁰

2.36 The ESMR indicated that the main concerns of local authorities and relevant stakeholders included impacts on downstream water users due to changes in the availability of water and the hydrological balance in the project area, as well as impacts on in-stream recreational uses of rivers, including kayaking, rafting, fishing, and swimming areas.⁴¹

2.37 In keeping with the foregoing, the ESHSAP called for preparing a recreational water use management program consisting of quantifying the levels of recreational use in the targeted rivers in consultation with commercial and private recreational users and other key stakeholders; determining the flow requirements for a quality recreational experience (including the preferred river sections, times of year, and minimum and maximum flows for recreational uses in any of the targeted sections); and proposing supplementary mitigation and management measures, if needed, within the scope of the adaptive management plan.⁴² With regard to adaptive management, the adaptive monitoring plans made available to the MICI are periodic monitoring reports solely for purposes of supervising the aquatic habitat and biodiversity of the rivers affected by the project in accordance with the ECR.⁴³

2.38 Subsequent to the approval of the loan operation, the Bank and the CASI focused on monitoring compliance with the various requirements established in the ESHSAP regarding critical gap #1, including quantification of recreational use and design of management measures, specifying deliverables and deadlines. With respect to recreational use, four deliverables were specified:

³⁷ ESMR, p. 49. [REDACTED]

³⁸ ESMR, p. 39. [REDACTED]

³⁹ ESMR, pp. 30 and 48. [REDACTED]

⁴⁰ Loan proposal, p. 13.

⁴¹ ESMR, p. 16.

⁴² ESMR, p. 77.

⁴³ Adaptive monitoring plan, CEA, March 2014 summer campaign, dated June 2014, pp. 8-9. Along similar lines, the ECR, pp. 16-17 and 56; requiring that, if during project operation and monitoring of flow levels it is found that the ecological flow is insufficient to maintain the area's biodiversity, the Client take additional steps to properly manage this impact.

sustainability, providing that failure to comply in timely fashion cannot be cured subsequent to the approval.

- 2.48 In the due diligence stage of the project, the Bank identified the failure to complete the assessment of recreational uses but did not require this assessment and the determination of mitigation measures prior to the project's approval. The ESHSAP was incorporated into the Loan Contract while the impact assessment actions were still outstanding, and requirements were established along with a schedule for compliance during the early stages of execution. However, as of the date of conclusion of the investigation, the impact assessment requirements under the ESHSAP continued to remain outstanding.
- 2.49 Based on the foregoing, the MICI finds that, starting with the ESDD, the Bank monitored the process of identifying and assessing the project's potential adverse impacts on the tourist and recreational uses of the targeted rivers. The MICI recognizes that the project has faced significant challenges that have delayed its execution, and understands that the recreational uses of the river are only one aspect of the broader issue of assessing the impacts of reduced water flows. However, more than five years after this failure to comply with critical gap #1 was identified, the gap has yet to be closed and there is still no assessment of these impacts on the terms required by the Bank. Thus, in this stage, the Bank continues to be in noncompliance with its obligation to ensure that the project include an assessment of the main potential impacts and the respective mitigation measures, reflected in an ESMP, as provided in Directive B.5 of Operational Policy OP-703.
- 2.50 Considering that this potential impact, should it materialize, would do so in the operation phase of the project and would be of a targeted nature, it is essential to ensure that an adequately consulted impact study making it possible to determine the appropriate mitigation measures is available at the earliest opportunity.
- 2.51 In addition, under Directive B.7 of Operational Policy OP-703, the Bank is required to supervise compliance with all environmental and social requirements set out in the Loan Contract and to ensure that this compliance is analyzed, studied, and reported as part of review missions at least annually in the case of category "A" projects.
- 2.52 As was noted, both the Bank and the CASI have monitored the preparation of the study to assess the project's potential impacts on recreational activities in the area stemming from a reduction of water flows in the targeted rivers, including the delays incurred and progress made in preparing the study. Moreover, in some supervision reports they have required actions for moving forward on this process. In this regard, the MICI finds that, from the moment it first became involved in the project, the Bank has supervised and required the Client to carry out a robust study on recreational uses, offering guidance and monitoring the various milestones in the preparation process. Thus, the Bank has complied with its obligation to provide supervision as required under Directive B.7 of Operational Policy OP-703.
- 2.53 However, the Bank has to date not succeeded in ensuring the completion of this assessment, which has gone far beyond the original deadline [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] In

the MICI's opinion, Management has been extremely flexible in supervising compliance with the ESHSAP in this respect. Through its supervision work and the information provided by the CASI, Management was aware of the noncompliance regarding this gap and had multiple opportunities, in the context of the disbursements, to demand compliance both with the contractual requirements under the ESHSAP and with the requirements of the Relevant Operational Policies. Thus, the MICI finds that Management did not comply fully with its obligation of supervision under Directive B.7 of Operational Policy OP-703.

- 2.54 With respect to the consultation requirements under Directive B.6, Management established, as a project requirement, that the study on recreational uses was to be conducted in consultation with the potentially affected individuals. During supervision, kayaking and rafting operators are reported to have constantly complained of lack of information on the project, on the potential impacts on their activities, and on the measures that might be available to manage those impacts.⁶² These concerns were also raised with the MICI during the investigation.
- 2.55 In its review, the MICI found that, in the context of the project, no consultations were made for preparation of the aforementioned study until 2019, [REDACTED]
[REDACTED]
[REDACTED] In addition, the MICI has confirmed that the Bank and the CASI approached recreational business owners and users on various occasions. While these engagement efforts are an important step in ensuring compliance with the Bank's Relevant Operational Policies, the MICI notes that the kayaking users active in the targeted rivers appear not to have been included and that the dissemination of, and consultations on, the study remain outstanding.
- 2.56 In this regard, the Bank has required the Client to begin a consultation phase with stakeholder groups once the final study is submitted. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]⁶³ The MICI recognizes the importance of these requirements for compliance with the Relevant Operational Policies.
- 2.57 It is clear that the requirements of Directive B.6 of Operational Policy OP-703 are directly linked to the requirements of Directive B.5. Consequently, generally speaking, the absence of an impact assessment on recreational river uses prior to the loan operation's approval directly affected the consultation requirements provided in Directive B.6. Thus, the MICI concludes that the failure to engage in consultations on the impact assessment from the loan operation's approval date to the date of this report amounts to noncompliance with Directive B.6 of Operational Policy OP-703. Conducting meaningful and robust consultation processes requires having information on the impacts and proposed mitigation measures and disclosing it in timely fashion. In this case, even if not timely, Management should ensure compliance with the Relevant Operational Policies in

⁶² ESMR, pp. 48 and 77. [REDACTED]

⁶³ Environmental and Social Supervision Report, IDB Invest, January 2019, p. 13.

this regard, requiring the Client to implement a robust information and consultation process once the assessment is ready. The foregoing is particularly important since one of the constant grievances encountered by Management when engaging tourism and recreational users is the absence of information and consultation in the context of the project.

d. Connection between the findings of noncompliance and the alleged Harm⁶⁴

2.58 The project calls for diverting flows from the Yeso, Volcán (and its tributaries Colina, Las Placas, Engorda, and Morado), and Colorado rivers, all of which are Maipo River tributaries, leading to a diminishment of their respective water flows. To mitigate the impact on the ecosystem, the ECR determined that the project would have to ensure an ecological flow, i.e., a minimal water level, in each river at all times. However, as indicated, the ecological flow established under the ECR only takes the ecosystem’s needs into account and was not designed to include the needs of recreational users of the targeted rivers. Thus, during the ESDD process, it was concluded that the project’s impact on the recreational uses of these rivers would have to be assessed through a study that, if applicable, would define appropriate measures to manage any such impact. However, this assessment has not been finalized yet.

2.59 In the course of the investigation, Requesters who operate rafting and kayaking businesses described the various commercial rafting activities they perform in the Maipo River, as well as other kayaking activities they perform in the Maipo’s tributaries, primarily the Yeso and Volcán rivers. They noted that, in both cases, these activities have become more popular and are now being practiced more intensively. In addition, the preliminary project data confirm the practice of commercial rafting and noncommercial rafting and kayaking on the Maipo River, while some documents contain observations describing the use of the Volcán and Yeso rivers by professional kayakers.

**Table 6
Types of recreational uses by river**

River	Kayaking use	Rafting use
Maipo	Recreational and commercial	Recreational and commercial
Volcán	Recreational	No
Yeso	Recreational	No
Colorado	No	No

Source: Prepared by the authors based on data from FDC monitoring reports and information provided by tour operators and rafting and kayaking practitioners.

⁶⁴ The MICI determines the occurrence of Harm in accordance with the methodology described in paragraph 2.4 above.

Figure 4. Rafting and kayaking activities on the Maipo river



Source. Photograph taken by the MICI during the Compliance Review mission.

2.60 Thus, in view of the reports identifying various tourist and recreational uses of the rivers affected by the project and the failure to complete an assessment of the impacts on those uses and a determination of the appropriate management measures, the MICI considers that, should this situation remain unchanged, there is a potential for harm to the Requesters.

2.61 It is worth noting that, since this harm would potentially materialize in the operation phase, there is still a window of opportunity for Management to prevent it from occurring. This would require completing the impact assessment study and implementing mitigation measures under the respective management plan, as well as consulting and entering into a dialogue with both commercial and noncommercial recreational users of the rivers. Completing the study on recreational uses will make it possible to design the mitigation measures that may be deemed appropriate, along with their respective management plan, to prevent the identified impacts from materializing, thus avoiding having to act solely under a reactive system of actions designed and implemented when the harm has already occurred.

2. Impacts due to worker migration, particularly gender-differentiated impacts

a. Requesters' allegations

2.62 The Requesters highlight the project's impact on the social fabric of the various towns comprising Cajón del Maipo. They emphasize the adverse effect of a large migration of construction workers (most of whom are not district residents and some of whom rent rooms in private homes), which has allegedly disrupted the

social dynamics of the small local population and led to an increase in physical insecurity, theft, sale of alcohol and drugs, and prostitution in the vicinity of the work sites, with a differentiated impact on women and girls. The Requesters also point out that the workers will subsequently leave the area and only temporary jobs will be created during construction.

b. Relevant Operational Policies

- 2.63 The Bank's Relevant Operational Policies for an analysis of the alleged social impacts are the Environment and Safeguards Compliance Policy ([OP-703](#)), specifically Directives B.5 and B.7, and the Operational Policy on Gender Equality in Development ([OP-761](#)). With regard to the aforementioned Directives B.5 and B.7, the MICI refers to paragraphs 2.22 and 2.23 hereinabove.
- 2.64 Operational Policy OP-761 establishes that the Bank will conduct its financial operations so as to identify and address adverse impacts and the risk of gender-based exclusion, assessing the operations' potential adverse impacts on gender equality. If impacts of this nature are identified, the Bank will incorporate a gender analysis into its social impact and risk assessments, as well as introduce measures to prevent, avoid, or mitigate any adverse impacts and/or risks of this type, specifically including the risk of an increase in gender-based violence.

c. MICI findings and determination as to compliance

- 2.65 In this section, the MICI assesses the potential impact of worker migration to the project area, focusing on two issues: (1) impacts due to the volume or number of workers, and the measures designed to manage these impacts; and (2) consideration of potential gender-based impacts.

1. Impacts arising from the number of workers and measures to manage these impacts

Summary of MICI findings and determination as to compliance

During the ESDD process, the Bank estimated that the project would require at most 2,500 workers during construction. Accordingly, it confirmed certain measures to mitigate the potential impacts of this migration on the communities, including housing workers in camps away from the communities, to prevent mixing with the local population. However, this mitigation measure has not been implemented during the project's execution, and many workers are lodging within the communities. In addition, it was found that the actual number of workers exceeded 5,000, more than double the initial forecast, and the Bank did not request an assessment of whether this material alteration of the circumstances would create impacts other than, or different from, those initially envisaged and require the established mitigation measures to be modified or adjusted. The MICI concludes that the Bank failed to comply with Directives B.5 and B.7 of Operational Policy OP-703 in terms of management of the worker migration issue.

- 2.66 It was originally estimated that an average of 2,000 workers would be required for the project's construction stage, possibly reaching a maximum of 2,500 during the peak year of construction activities.⁶⁵ Of this total, 500 would be local residents

⁶⁵ Environmental and social strategy, Project profile, paragraph 1.17; [REDACTED] and ESMR, p. 37.

drawn from the San José de Maipo district and 2,000 would originate outside the district.⁶⁶

- 2.67 According to the 2012 population census, the population of the district at the time was 14,464 (8,715 urban and 5,749 rural).⁶⁷ The ESDD report indicates that one of the key health and safety risks to the community during construction is the potential exposure to diseases due to interactions between workers and community residents at worker accommodation sites (including the potential transmission of communicable diseases, respiratory infections, and sexually transmitted diseases), coupled with changes in health determinants such as drug and alcohol use or gender-based violence associated with the sudden influx of workers during project construction and operation. This impact is described in the ESMR, with an emphasis on the construction stage, when the influx can be greater.⁶⁸
- 2.68 To mitigate the impact from the interaction of this number of workers with the local communities,⁶⁹ the ESMR provided that nonlocal workers were to be housed in 5 camps, each capable of accommodating 200 to 400 workers, located far from the communities and with their own rules of conduct. Local workers were to be accommodated in their own communities.⁷⁰ In addition, the project was to provide transportation between the camps and the work sites and between the camps and the residential areas to prevent traffic and flows into the district.⁷¹ The ESDD report was clear in establishing that nonlocal workers are expected to live in the camps⁷² and in deeming the rules governing the camps to be appropriate for minimizing these risks.⁷³
- 2.69 However, following the project's approval, these circumstances changed dramatically in terms of both the number of workers and compliance with the mitigation measures.
- 2.70 Regarding the number of workers, the highest expected figure has since doubled, with more than 5,500 workers employed at the project [REDACTED]⁷⁴ According to the analyzed information, and as shown in the figure below (Figure 5) and in the table on number of workers (available in the links section), the number of workers has been rising year after year since March 2015, which is when it reached the high estimate under the impact assessment (2,500 workers). [REDACTED]

⁶⁶ Environmental and social strategy, Project profile, paragraph 1.17.

⁶⁷ 2012 census: XVIII population census results, Chile's National Statistics Institute (INE), p. 48.

⁶⁸ ESMR, p. 38.

⁶⁹ ESMR, p. 38.

⁷⁰ ESMR, pp. 37-38. [REDACTED]

⁷¹ ESMR, p. 37.

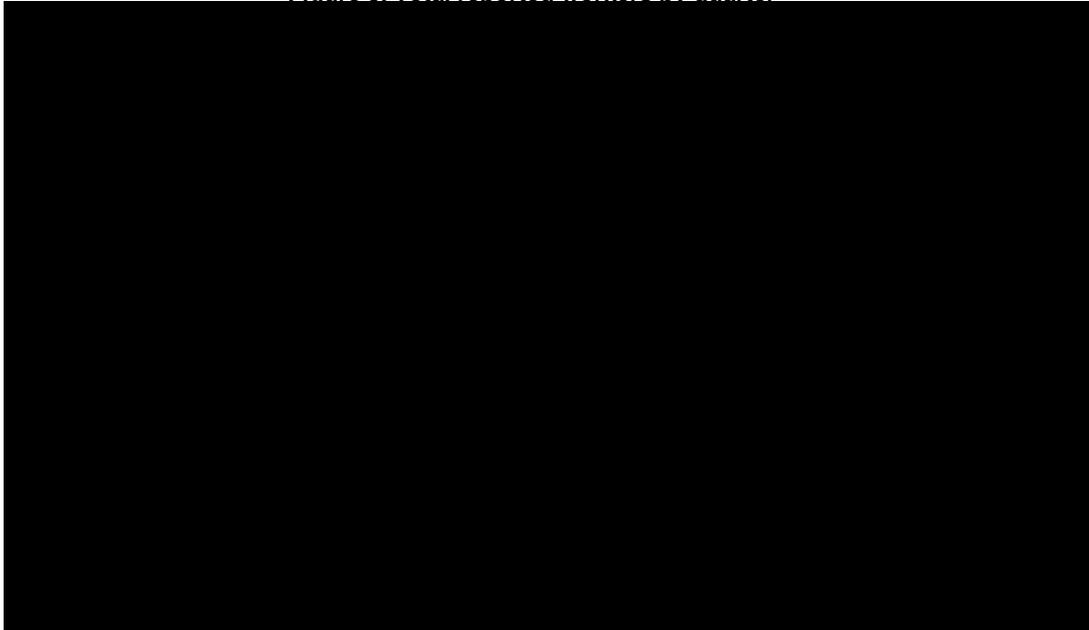
⁷² [REDACTED] ESMR, p. 38.

⁷³ [REDACTED] ESMR, p. 38.

⁷⁴ [REDACTED]

[REDACTED]⁷⁵ [REDACTED]⁷⁶ [REDACTED]
[REDACTED],⁷⁷ [REDACTED].

Figure 5. Total reported workers by quarter



2.71 During the investigation process, the MICI received information from the Client contradicting the analyzed documents. The Client suggested that the figure of 2,500 workers had not changed significantly, since it referred not to total hired workers but to total active workers at any given time in the district. Thus, the Client explained that even if there are more than 5,000 hired workers, only half are “actively” working for the project in the district. This includes workers actually working shifts as well as those overnighing in the community or in camps during their time off. It is worth noting in this regard that neither the EIA nor the ESMR or other related documents provide these clarifications; they simply refer to the total number of workers hired for the works (including those spending their time off outside the project area).⁷⁸ Accordingly, their criterion for counting workers is the same for 2,500 than for the subsequent 5,500.

2.72 [REDACTED]
[REDACTED]
[REDACTED] Moreover, during the investigation process, Bank staff reported being surprised, [REDACTED], [REDACTED], by the significant difference between the actual number of project workers and the originally projected number.

⁷⁵ See ESMR 2016 Q1, p. 8, Q2, p 6, Q3, p.6, and Q4, p. 10.; ESMR 2017 Q1, p. 11, Q2 and Q3, p. 6., and Q4, p. 5; and ESMR 2018 Q1-Q2, p. 5

⁷⁶ ESMR 2018 Q3, p. 4 and Q4, p. 4.

⁷⁷ However, while construction delays may have created a need to take additional measures to correct them, such as hiring workers, the impact of these additional measures should nevertheless be assessed.

⁷⁸ EIA, p. II.5; ESMR, p. 9; [REDACTED].

[REDACTED]

2.78 As described above, it was initially envisaged that, in the first stage of the project, five worker camps would be set up, with their own rules of conduct, and that the company would provide means of transportation to shuttle the workers from and to the camps, with a view to mitigating the impacts of a 2,000- to 2,500-worker migration.⁸⁵ However, substantive changes began to be made following approval of the project. As shown in the table below, there were no camps in the first two years of construction (2014 and 2015). Two camps were set up in late 2015 and a third one in early 2016, but the anticipated total of five camps never materialized. To address the demand for accommodations, the various local settlements were encouraged to provide lodging and food services.

2.79 In addition, it should be noted that the construction period, initially projected at five years, is now estimated at nine years, further intensifying the impact from the number of workers temporarily residing in the community. [REDACTED]

[REDACTED]

⁸⁸ The social indicator monitoring (MIS) reports list the total number of workers accommodated outside the camps. The MIS reports indicate that, in 2014, between 300 and 1,040 workers were being housed outside the camps. In the first half of 2015 this figure rose to 3,000 workers, and dropped to 1,364 by year-end 2015. Between 2016 and 2018, the MIS reports indicate that between 1,100 and 2,114 were being accommodated outside the camps.⁸⁹

⁸⁵ CASI letter, 17 February 2014, pp. 3 and 4.

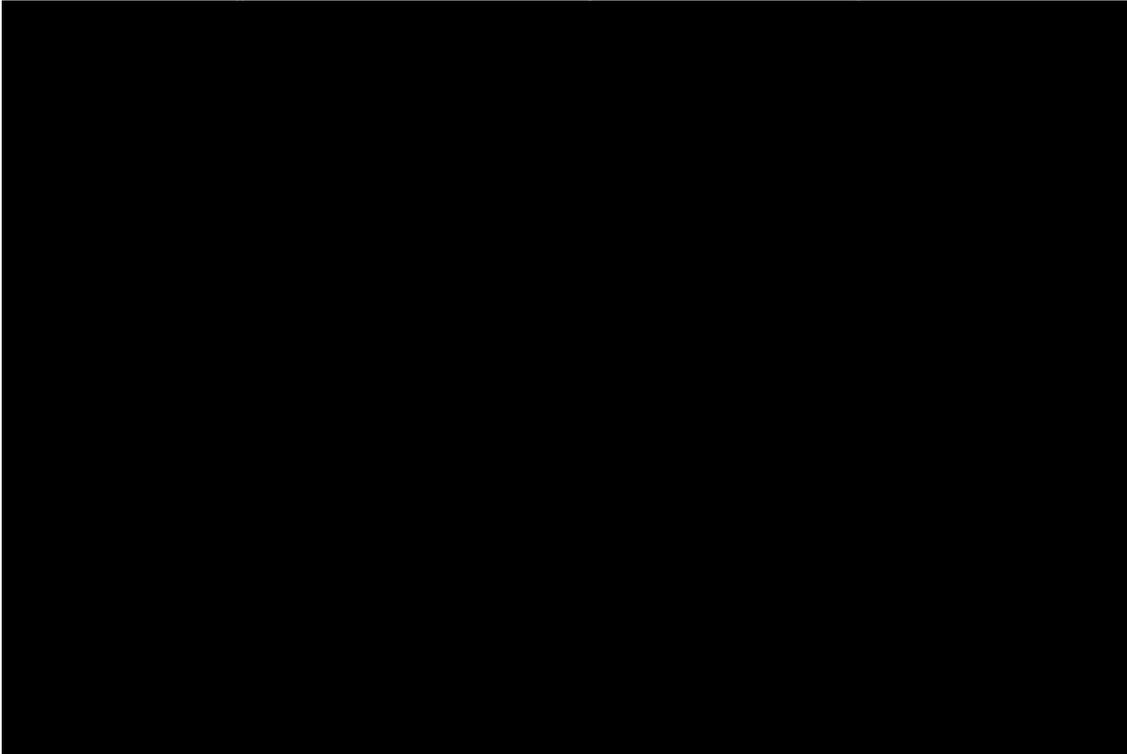
⁸⁶ ESMR 2014 Q2, p. 116-118.

⁸⁷ Project profile, paragraph 1.16.

⁸⁸ ESMRs 2014 Q1 to 2018 Q3.

⁸⁹ MIS 2014 to 2018.

Figure 6. Workers housed in camps and in the community⁹⁰



2.80 Regarding other assessments of the social impacts of worker migration, in 2018, after the MICI investigation period had commenced, the lenders asked the Client to conduct a study to determine whether the presence of workers living in the community had created social and economic effects on the population.⁹¹ It should be noted that, at the time it was prepared, this study estimated that there were approximately 1,800 workers renting accommodations in the communities.⁹² In its comments on the preliminary version of this report, Management reported on the scope of this study. According to the MICI's review, the study consisted of surveys conducted in four communities. The surveys targeted 250 residents, 200 workers renting accommodations in the district communities, and key informants, and covered various types of social and economic effects.⁹³ Unlike the PIIM management plan, this survey did not examine the sociocultural situation in the district or the volume and modalities of worker accommodations, and did not identify the attendant risks and the measures to be implemented to manage them. In other words, it was not an impact assessment aimed at designing management

⁹⁰ [REDACTED]

⁹¹ Análisis de los impactos sociales y económicos en las poblaciones del Cajón del Maipo, generados por la presencia de trabajadores del PHAM que se alojan fuera de los campamentos [Analysis of the social and economic impacts on the communities of Cajón del Maipo stemming from project workers housed outside the camps] ("Worker impact analysis"), Clodinámica, undated.

⁹² Worker impact analysis, Clodinámica, undated, p. 4.

⁹³ Worker impact analysis, Clodinámica, undated, pp. 4-5 and 59-74.

measures.⁹⁴ Furthermore, it is not clear to the MICI how the identified impacts will be addressed.

- 2.81 The survey's conclusions show that there are positions both in favor of the presence of workers in the district, mainly due to the economic benefits accruing to those who provide accommodations to workers, and against their presence. Thus, in the most populous of the surveyed communities, namely Manzano and San José de Maipo, roughly 41% of the population, equivalent to approximately 2,650 people, considers that coexistence between residents and project workers is not harmonious. Similarly, roughly 35% of the population, which is equivalent to approximately 2,300 people, report not feeling comfortable with the project workers residing in the local communities.⁹⁵ Furthermore, close to 41% of the survey respondents consider that workers "are fairly involved" or deeply involved in alcohol use, while 44% of respondents believe that, with the arrival of the project workers, they are unable to walk safely in their neighborhood at any hour.⁹⁶ Despite the foregoing, the study does not include recommendations or actions to be taken in view of these results; similarly, the CASI and Bank supervision reports do not include any follow-up requirement.
- 2.82 Based on the information set out in the preceding paragraphs, as of the date of conclusion of the MICI investigation (June 2019), the project has experienced the following:
1. Extension of the construction period from an estimate of four years to a total of nine years due to various financial and construction challenges.
 2. A considerable increase in the number of workers, from an initial maximum figure of 2,500 (with local residents accounting for an estimated 20%) to more than 5,500 (with local residents accounting for 12%).
 3. A change in the projected accommodation arrangements for this workforce, from a plan calling for five camps removed from the communities to the current total of only three camps housing roughly 2,000 workers while the rest (2,100, according to the latest figures) are housed in private homes, rentals, and other accommodations.

⁹⁴ While the study is useful for purposes of learning the views of the population, it is not an impact assessment in accordance with international standards. See, for example, the potential impacts to be identified and possible mitigation and management measures set out in the World Bank guide *Managing the Risks of Adverse Impacts on Communities from Temporary Project Induced Labor Influx*, pp. 3-6 and 20-24; as well as the factors to be considered in identifying risks due to worker migration and the factors to take into account in assessing the potential environmental and social impacts of such migration, set out in the IFC guide *Projects and People: A Handbook for Addressing Project-induced In-Migration*, section 3 on risk analysis.

⁹⁵ According to the study, San José has a population of 5615 and El Manzano has a population of 1022, while El Alfalfal and Maitenes respectively have 160 and 227 inhabitants. Thus, when roughly 35% of San José's inhabitants report not feeling comfortable with the project workers living in their community, it means that 1,965 people hold that view. Similarly, when 90% of the inhabitants of El Alfalfal or Maitenes report feeling comfortable with the presence of workers, it means that 144 or 204 people share that opinion. Worker impact analysis, Clodinámica, undated, p. 6. Moreover, it should be noted that, in El Alfalfal and Maitenes, the project has carried out various social actions under social collaboration agreements with these communities.

⁹⁶ Worker impact analysis, Clodinámica, undated, pp. 16, 30, 35.

- 2.83 In its comments on the preliminary version of this report, Management indicated that “the fact that the MICI has not found specific studies evidencing a reassessment of the impact that an increase in the volume of project workers may have caused does not mean that such an analysis has not been performed.” It noted that this work was carried out by the project’s environmental, social, and occupational safety management system (ESOSMS), and that this system, after assessing the impacts, proposed and implemented measures aimed at managing them. To illustrate this, Management described five such management measures. However, based on the reviewed documentation and the field interviews conducted during the Compliance Review, the MICI has found that the Bank did not request an impact assessment of worker migration in response to the increase in the number of workers or in response to the extension of the construction period. The CASI and Bank supervision reports make no reference to an ESOSMS assessment on this issue, nor do they mention the design of additional management measures. During the investigation, the interviewed Bank and CASI staff did not mention an assessment of this type. Furthermore, the MICI notes that three of the five measures described as additional in Management’s comments had already been envisaged following the project’s initial impact assessment.
- 2.84 The size of the increase in the number of workers entails a substantive change in the originally assessed circumstances. To date, no analysis has been performed to validate either the opinion of those interviewees who believe that this increase has not caused any impacts on the communities or the opinion of other interviewees and the Requesters, who believe that such impacts are in fact present.
- 2.85 In addition, the MICI finds that the envisaged mitigation measures have not been implemented, and has found no documentation justifying the failure to implement such measures.
- 2.86 The MICI points out that the volume of workers is a variable that influences the type, intensity, and duration of potential project impacts; consequently, it is very important to properly identify it. In fact, IDB, World Bank, and IFC documents acknowledge that a potential project-induced migration can create significant impacts, both positive and negative, on local communities. The negative impacts can even account for a considerable portion of a project’s total impact on local communities. Accordingly, tools have been developed to close a gap in assessing these impacts by describing the main potential impacts and risks, along with impact assessment tools and suggestions on different measures that can be designed to manage these impacts.⁹⁷
- 2.87 The Bank recognized the impact that the sudden influx of 2,500 workers could cause for the community.⁹⁸ Moreover, the Bank noted that the size of this influx was significant because it increased the number of economically active residents

⁹⁷ IDB, Social impact assessment: Integrating social issues in development projects, see pp. 120-121 on Influx of workers and other types of in-migration; World Bank, Managing the Risks of Adverse Impacts on Communities from Temporary Project Induced Labor Influx, December 2016; International Finance Corporation, Projects and People: A Handbook for Addressing Project-Induced In-migration, December 2009.

⁹⁸ ESMR, p. 38.

in the entire municipality by 67%.⁹⁹ Thus, the influx of about 4,500 nonlocal workers, in contrast to the initial estimate of 2,000, meant an increase of more than 100% over the expected number. Considering that, at the time the PIIM plan was requested, the most recent available census (2012) estimated a total population of 14,465, the volume of nonlocal workers hired by the project meant a temporary population increase of 14%. At present, the increase is on the order of 31% with respect to the original population census (and on the order of 25% with respect to the 2017 census showing 18,189 inhabitants).

2.88 In addition, the ESMR and the ESDD report originally envisaged that none of the project's workers would be housed inside the district. [REDACTED]

[REDACTED]¹⁰⁰ Despite these plans, the analyzed data show that up to 3,000 workers have been housed inside the district at some point during project construction.

2.89 Based on the foregoing, the MICI concludes that the increase in the number of project workers, their accommodation in the area's communities, and the extension of the construction period without consideration for the impact that longer stays by workers would cause are new circumstances in the project's conditions, and the Bank did not ensure that these circumstances were assessed and management measures were implemented to address them, thus failing to comply with Directive B.5 of Operational Policy OP-703. This conclusion does not label the project's initial assessment as inadequate for failing to consider the number of workers ultimately involved. At the time, the available information indicated that the project would have an average of 2,000, and at most 2,500, workers. Thus, the potential impact assessments could not have been made under a different assumption. The MICI's conclusion relates only to the failure to assess the potential impacts when new circumstances arose during project supervision, finding that the study requested by the lenders in 2018 to determine harm is not an assessment of direct, indirect, and cumulative impacts, nor does it contain measures to manage such impacts, as required under Directive B.5 of Operational Policy OP-703.

2.90 In addition, as set out in the preceding paragraphs, the Bank did not ensure compliance with the measures originally designed for the project, such as housing workers in camps removed from the communities and shuttling them in vehicles provided by the Client. Thus, the Bank failed to fulfill its duty to supervise compliance with mitigation measures as required under Directive B.7 of Operational Policy OP-703.

2.91 The decision to accommodate workers in the community rather than in camps has resulted in significant economic benefits for members of the community. However, these benefits are temporary since the project's operation phase is expected to require only 70 workers.¹⁰¹ The MICI understands that actions are being requested to address the potential impact on the community's residents upon the loss of this source of income once the construction period ends. While these actions are beyond the scope of this investigation, the MICI highlights the importance of

⁹⁹ Based on the number of inhabitants in 2013. ESMR, p. 37.

¹⁰⁰ PIIM management plan, Arcadis, pp. 36-37.

¹⁰¹ OPIC, Public Project Summary, Alto Maipo Project, p. 8. [REDACTED]

implementing measures to address this risk, which arises from the decision to house workers in the community.

2. Assessment of gender-based impacts

Summary of MICI findings and determination as to compliance

Regarding gender-differentiated impacts related to worker migration, the MICI found that the project's social impact assessments did not include any gender-mainstreaming analysis, thus failing to adequately consider the potential gender-differentiated risks and impacts of worker migration for women and girls in the district. In addition to the project's impact assessments, the MICI looked at three general measures taken by the project: a project induced in-migration (PIIM) management plan, community relations regulations, and a campaign of zero tolerance for sexual harassment in the workplace. It was found that these are general tools, the first two designed to regulate worker conduct and the third to prevent sexual harassment solely in the workplace. As such, they are neither specific impact assessments nor management measures reflecting a gender perspective. Moreover, the MICI found that the Bank's efforts, once allegations of sexual violence and prostitution had been received, were again not reflective of a gender perspective. Similarly, there was a failure to design appropriate environments or adopt methodologies for gathering information from, and building trust among, women and girls in the community on this issue. For this reason, the MICI found that the Bank did not comply with Operational Policy OP-761.

- 2.92 The Requesters allege that the high influx of workers to the project area has resulted in gender-differentiated impacts. The preceding section concluded that the Bank failed to comply with Operational Policy OP-703 by not ensuring that an assessment of the social impacts was performed and measures were designed to manage the presence of more than 5,500 workers in the project area and the decision to house a large number of them in the communities of San José de Maipo. Since this absence of an assessment also included the potential gender-differentiated impacts, which were not assessed, the Bank failed to comply with its obligations under Operational Policy OP-761.
- 2.93 Operational Policy OP-761 requires the Bank to conduct its financial operations so as to identify and address adverse impacts and the risk of gender-based exclusion. Similarly, the Bank's social impact assessment guidelines indicate that the social impact assessment process and the ESMP should consider, at a minimum, the potential adverse effects on gender equality and the risks of gender-based exclusion. These include impacts on women's livelihoods; risk of increase in gender violence, including sexual exploitation and human trafficking; making sure that a specific analysis is done on men's and women's roles, views, and priorities in relation to the project; and including women's organizations in stakeholder mapping to ensure their active participation in the consultation process, among others. In addition, the ESMP should include specific measures to prevent, avoid, or mitigate potential gender-based risks and/or impacts; those measures should be monitored in timely fashion; and upon identifying potential risks of exploitation, abuse, and/or "sexual exploitation ... (e.g. projects involving influx of workers into small communities), specific and clear prevention and monitoring measures must be included in the ESMP to prevent and address gender-based violence."¹⁰²

¹⁰² Social impact assessment: Integrating social issues in development projects. IDB, pp. 148 and 91.

2.94 With regard to gender-based impact assessment, the MICI finds that the Bank’s environmental and social analysis documents related to the project, while containing measures to mitigate the impacts of worker migration, do not envisage an assessment of gender-based impacts. The ESDD report and the ESMR only indicate that no direct or indirect impacts on women are expected, and merely state that the consultation and information disclosure activities have provided an “equal opportunity for women.” The ESMR reflects concerns surrounding the analysis of impacts from worker migration to the area and requires preparation of a PIIM management plan (see paragraphs 2.74 and 2.75 above). However, this requirement does not include the provisions of Operational Policy OP-761. Similarly, in its comments on the preliminary version of this report, Management notes that, during its supervision of the project, it has systematically sought to include gender issues in accordance with Operational Policy OP-761. Furthermore, it points out that, in 2019, IDB Invest adopted a gender-based risk assessment tool that is being used to assess this type of impact in other projects. While the MICI acknowledges the importance of the development of this tool, it also notes that, based on its review, the gender perspective has not systematically been included in this project.

2.95 At the same time, while the Bank did not make sure that the project’s impact assessment incorporated a gender perspective in accordance with Operational Policy OP-761, some of the designed and implemented measures may affect the management of potential impacts on women from the influx of workers. Specifically, the MICI will analyze three measures: the PIIM plan, the community relations regulations, and a campaign aimed at workers regarding sexual harassment.

2.96 [REDACTED]

¹⁰³

2.97 In view of this, the MICI concludes that the PIIM plan lacks a gender approach regarding the potential impacts of the project. The plan only considers crimes, therefore ignoring other potential (direct or indirect) impacts on women and girls in the district’s communities brought on the presence of a significant number of men from outside the district. These impacts, which include street harassment and

¹⁰³ PIIM plan, Arcadis, p. 63-65.

forced changes in the normal habits of women and girls when going out into the street (for example, avoiding going out at certain times, avoiding certain places, and not feeling comfortable when walking alone), were described by the Requesters during the MICI's visit.

2.98 The community relations regulations contain general obligations for workers, such as maintaining good conduct, respecting the community, being pleasant, respecting customs, and not doing to others what they would not like done to them.¹⁰⁴ However, these regulations do not provide a gender-perspective analysis with specific rules to prevent an environment of intimidation, harassment, and/or aggression toward women and girls from developing. [REDACTED]

[REDACTED]
[REDACTED].¹⁰⁵

2.99 With regard to the anti-harassment campaigns aimed at workers, the MICI finds that they were conducted in response to complaints of sexual harassment in the workplace. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]¹⁰⁶ rather than specifically on preventing harassment and any form of gender-based violence against women and girls in the district's communities.

2.100 Lastly, in addition to the mitigation measures, the MICI notes that [REDACTED], inquiries were made as to the existence of prostitution and sexual harassment in the project area. This was done through interviews, primarily with local police staff (known as carabineros), and through a survey of district residents. In the course of the compliance review process, the MICI was made aware of these interviews, and was informed that staff involved in the project's supervision asked Cajón del Maipo residents about the existence of prostitution in the area, both in formal (such as neighborhood council) meetings and in informal and random encounters. While it is positive for the Bank to have acted on allegations included in the filing of the request at the MICI, making the inquiries it deemed appropriate, the MICI notes that these inquiries were not conducted from a gender perspective in keeping with the principles of Operational Policy OP-761 and the Bank's commitments in this regard.

¹⁰⁴ Such as: driving prudently and at moderate speed, obeying traffic laws, and giving pedestrians the right of way at intersections. Community relations regulations, article 5.1.3, p. 10.

¹⁰⁵ ESMR, 2014 Q1, pp. 93-94.

¹⁰⁶ ERM, February 2018. ESMR N. 13, Alto Maipo Hydroelectric Power Project; and ERM, May 2018. ESMR N. 14, Alto Maipo Hydroelectric Power Project.

2.101 [REDACTED]

2.102 Regarding these reports, the MICI points out that gender-based violence goes beyond behavior reported or investigated as criminal. In other words, it encompasses various types of conduct that are not necessarily identified as crimes but produce gender-based impacts. In particular, forms of gender-based violence such as street harassment or intimidation derived from the presence of a large number of workers inside a small community are unlikely to be considered “crimes” and be reported to the police. Even more serious cases of violence, such as rape and physical and sexual aggression, have low reporting rates. This is so for various social and cultural reasons, such as the stigma and fear potentially faced by women who report these acts, and the lack of action or follow-up by official bodies that deem these reports to be “without basis” or to relate to “private matters.”¹¹⁰ Thus, the MICI considers that consulting the police (as the primary and only source of information) is not the most effective or reliable means of determining or assessing the existence of gender impacts, even those that are violence-related. Management shares this view, as stated in its comments on the preliminary version of this report. [REDACTED]

¹⁰⁷ Environmental and social supervision report, IDB Invest, March 2018, pp. 2 and 12.

¹⁰⁸ Environmental and social supervision report, IDB Invest, March 2018, p. 13.

¹⁰⁹ Environmental and social supervision report, IDB Invest, June 2018, p. 9.

¹¹⁰ “Around the world most women who experience violence never seek help or tell anyone about the violence. [...] Another recent study estimated that only [...]14% [of women] in Latin America and the Caribbean made any formal disclosure of their experience of violence.” Violence against Women and Girls Resource Guide, prepared by the Global Women’s Institute at George Washington University, the IDB, and the World Bank, available at: <http://www.vawresourceguide.org/es>. In particular, see the Introduction, p. 9 and the Citizen Security, Law, and Justice Brief, pp. 3 and 4. See also: IFC, Tip Sheet: Addressing and Preventing Sexual Harassment in IFC Projects, p. 2; CEDAW, General recommendation no. 33 on women’s access to justice, CEDAW/C/GC/33, and Palermo T., J. Bleck, A. Peterman. “Tip of the iceberg: Reporting gender-based violence in developing countries.” Am J Epidemiol. March 2014. 1;179(5):602-12. With respect to this case, it is enlightening how an incident of violence or sexual harassment was disregarded for a lack of basis. While the MICI has no information regarding this event, there is no evidence that the Bank initiated any type of follow-up on it.

¹¹¹ Environmental and social supervision report, IDB Invest, March 2018, p. 10-11.

- 2.103 Similarly, inquiring whether there is prostitution, rape, sexual harassment, and gender-based violence in general is difficult in the context of public meetings, particularly when men are present or when the only persons interviewed are men. Obtaining this information requires creating appropriate environments to enable people, particularly women, to provide information freely and using specific methodologies that incorporate a gender perspective.¹¹² In this regard, it is worth noting that the above-described interviews proactively conducted by the Bank did not include any interviews with individual women, social organizations involved in gender issues, or formal or informal women's groups in environments designed to create the necessary trust to discuss these issues.
- 2.104 The survey to determine whether housing workers in the district's communities has led to adverse impacts (see paragraph 2.80 above) included questions on safety and sexual harassment. Thus, district residents were asked whether they believe that project workers are involved in "sexual harassment" and in prostitution and/or sexual commerce, with more than 90% of respondents indicating their belief that workers have "limited or no" involvement in these activities.¹¹³ While posing these questions to district residents is a step in the right direction, the MICI notes that the survey does not design appropriate environments for discussing these issues with women and that it emphasizes the absence of complaints and the information provided by the police in order to argue that there is no prostitution or sexual harassment. In other words, the survey's line of inquiry also fails to incorporate a gender perspective.¹¹⁴
- 2.105 In view of the foregoing, the MICI considers that the Bank did not ensure that the assessment of potential impacts from the influx of workers into the district's communities, and the measures designed to manage them, would properly take into account the potential gender-differentiated risks and impacts for women and girls in the district. Thus, the Bank failed to comply with Operational Policy OP-761.

d. Connection between the findings of noncompliance and the alleged Harm¹¹⁵

- 2.106 The Requesters allege that the presence of a significant number of workers in the district has created adverse impacts, such as an increase in prostitution, alcohol

¹¹² For example, the Violence against Women and Girls Resource Guide highlights the need to adopt measures to enable women to remain anonymous and preserve the confidentiality of any information they provide, be interviewed by trained project staff trained in "how to preserve the safety of women while interviewing/collecting data on this topic," and avoid, among other things, "telling their story in front of an audience." Violence against Women and Girls Resource Guide, prepared by the Global Women's Institute at George Washington University, the IDB, and the World Bank, available at: <http://www.vawgresourceguide.org/es>, Introduction, p. 11. See also: Ellsberg, M., and L. Heise. "Researching violence against women: A practical guide for researchers and activists." Washington, D.C., United States: World Health Organization, PATH; 2005.

¹¹³ Worker impact analysis, Clodinámica, undated, p. 34. On the other hand, more than 30% of those surveyed believe that workers consume "a fair amount or a lot" of alcohol. Worker impact analysis, Clodinámica, undated, p. 35.

¹¹⁴ The survey indicates that there are no complaints of sexual harassment and that, according to the police records, there is no evidence of prostitution or sexual commerce. Worker impact analysis, Clodinámica, undated, pp. 34 and 36.

¹¹⁵ The MICI determines the occurrence of Harm in accordance with the methodology described in paragraph 2.4 above.

and drug abuse, and street harassment and intimidation of local women and girls. During the compliance review mission, the MICI held a meeting aimed at obtaining more information regarding the alleged instances of gender-based violence. In this meeting, the MICI was able to interview women of different ages and professions, who described various harassment experiences involving the presence of project workers in the district's communities. The meeting also included a dialogue with representatives of two organizations focused on gender issues in the project area, who described instances of harassment and gender-based violence generally linked to the project but associated as well with overall structural problems.

2.107 Requesters and residents interviewed during the field visit pointed to an increase in prostitution in the area and a rise in alcohol and drug use following the start of project construction. However, the MICI did not have access to any additional information that could confirm these allegations. At the same time, it is clear that the interviewed women reported having suffered harassment and intimidation by project workers, giving rise to feelings ranging from mistrust and apprehension to fear and more severe psychological effects due to the presence in their communities of a large number of men from outside the district. This situation is alleged to have affected the normal activities of women and girls, such as going to school, leading them to avoid passing through places where workers congregate and even avoid going out unaccompanied (especially without a male companion).

2.108 As established in some of the project documents, the influx of a significant number of workers can produce impacts on health and safety, including gender-based violence. In this regard, the MICI found that the number of project workers is substantially higher than anticipated and that, in noncompliance with Operational Policies OP-703 and OP-761, no assessment was conducted to determine whether the originally designed management measures would be adequate in view of the actual number of workers. Along similar lines, the MICI concluded that the impact assessment in the main project documents did not incorporate a gender perspective as required under Operational Policy OP-761. Thus, they do not include provisions to prevent or mitigate adverse impacts on women, such as harassment and other types of aggression. [REDACTED]

[REDACTED]

¹¹⁶

2.109 Consequently, based on the testimonies received, the absence of an assessment of potential gender-based impacts and mitigation measures to address them, and the acknowledgment of the potential overall impacts of worker migration, the MICI considers that the alleged harm is likely to have occurred. This alleged harm consists of various instances of street harassment and a sense of intimidation and lack of safety due to the presence of a large number of workers in the district's communities. While it was a positive step to conduct a survey of district residents with questions as to the involvement of project workers in sexual harassment, prostitution, and alcohol use, the MICI considers that the design of this survey did not incorporate a gender perspective that could provide the necessary

¹¹⁶ Environmental and Social Supervision Report, IDB Invest, March 2018, pp. 10-11.

environments for investigating these issues, as required under Operational Policy OP-761. Consequently, considering that the project is still in the construction stage, an assessment should be performed to determine whether harm has occurred in this regard and establish measures to prevent it from occurring.

3. Impacts on economic activities and lifestyle in the district

a. Requesters' allegations

- 2.110 The Requesters allege that the project's social impacts were not assessed in a comprehensive manner, pointing to effects during project construction and operation. They indicate that they are suffering from adverse impacts on their lifestyle and economic situation and heightened physical insecurity (their own and their families'). They report an increase in large-tonnage trucks and other project vehicles circulating through the district at high speeds outside of authorized hours, considerable delays in their daily travel, and improperly parked project vehicles.
- 2.111 In addition, they indicate that the works have affected roads, traditional paths, and areas in the higher reaches of Cajón del Maipo used by mule drivers and others. In these areas, they warn of the negative impact of blasting, which is conducted around the clock seven days a week. This not only affects their quality of life but jeopardizes their safety and that of tourists, endangering their activities and their animals. They state that, when in operation, the project will continue to impact their economic activities since the view of dry riverbeds will diminish the area's attractiveness for a number of tourist activities.
- 2.112 The Requesters also indicate that the project is affecting the social fabric in the various communities that comprise the Cajón del Maipo. They warn that social conflicts have divided the communities between those in favor and those opposed to the project. In the view of the Requesters, this has heightened the sense of latent violence and instability in a formerly quiet region. The Requesters believe that the offer of financial benefits in the form of grant resources fuels these divisions.

b. Relevant Operational Policies

- 2.113 The Bank's Relevant Operational Policy for an analysis of the alleged social impacts is the Environment and Safeguards Compliance Policy ([OP-703](#)), specifically Directives B.5, B.6, and B.7, which require an assessment of social and environmental impacts, design of management measures, consultation, and supervision (see paragraphs 2.22 and 2.23 above).

c. MICI findings and determination as to compliance

- 2.114 The MICI finds that the Requesters' allegations may be divided into three main issues related to the project's construction stage: (1) impacts on economic and tourist activities involving mule drivers; (2) impacts due to project vehicle traffic; and (3) impacts on the social fabric and divisions within the community. Accordingly, the analysis on compliance with the Relevant Operational Policies is divided along similar lines. With regard to allegations of impacts on tourism activities during project operations, most of these impacts are associated with environmental effects which are not analyzed in this report. The exception is the reduction in water flow, which is discussed in paragraphs 2.20 to 2.61 above.

1. Impacts on economic and tourist activities involving mule drivers

Summary of MICI findings and determination as to compliance

Regarding the impact on activities of mule drivers (community members who practice traditional cattle farming and grazing and organize mountain tourism horseback riding trips), it was found that no assessment was made of the project's potential impacts on this population group, nor was this group included in the consultation processes with the affected population. Consequently, the MICI concluded that the Bank failed to comply with Directives B.5 and B.6 of Operational Policy OP-703. At the same time, as a result of the concerns expressed by this population group, the Client and a representative group of mule drivers established a dialogue during the project execution stage to discuss the project's impacts and how they could be addressed, in compliance with the aforementioned Directive B.6.

- 2.115 Mule drivers are a subgroup of the area's population who practice traditional cattle farming and grazing and organize horseback riding trips for groups interested in mountain sports. This activity takes place primarily in the Colorado River valleys (Maitenes and El Alfalfa) and in the community of Baños Morales. While mule drivers are a traditional feature in the area, they have only been working as tourist guides for approximately 20 years. Their activity as such is highly seasonal, marked by a period of high intensity from November to April of each year.¹¹⁷
- 2.116 The ESDD report mentioned that the traditional mule driving activities were assessed by the project as part of the environmental assessment process. [REDACTED]
[REDACTED]
[REDACTED] the project carried out an ethnographic study in 2008 (Ethnographic Study of Human Groups in the Area of Influence) specifically to assess the potential impact on mule drivers.¹¹⁸ [REDACTED]
[REDACTED]
[REDACTED].¹¹⁹ However, in its review, the MICI found that the study is a characterization of the area's population groups that engage in traditional cattle farming and grazing practices, the roads they most frequently use, and the seasonal nature of their activities. It does not provide a potential impact assessment, although it does include the opinions of some regarding the project's implementation.¹²⁰ In its comments on the preliminary version of this report, Management stated that the potential impacts on mule drivers were analyzed during the project's environmental and social assessment process. However, there is no evidence of this in either the EIA or the ECR.
- 2.117 The EIA rates the impact on mule drivers as "not significant," because their activities are not compromised other than in the low reaches of the La Engorda summer pasture, involving a "sequential intervention that will temporarily restrict the environment in the immediate vicinity of the worksites."¹²¹ It points out that the project's transportation routes are not the same as those taken by the mule drivers;

¹¹⁷ EIA, Annex 34 Ethnographic Study on Human Groups in the Area of Influence, p. 16.

¹¹⁸ [REDACTED]

¹¹⁹ ESDD report, p. 193.

¹²⁰ See Ethnographic Study on Human Groups in the Area of Influence, EIA.

¹²¹ EIA, pp. 6.4-75.

when they occasionally converge, cattle farmers currently coexist with the vehicle flow on public roads.¹²²

- 2.118 The ESDD report extracts the following quote from the EIA: “Since mule drivers are used to avoiding vehicle traffic when grazing their cattle, as they currently do when using public roads to move from one pasture area to another, the control measures to prevent impacts on traditional cattle farming activities include training and contractual obligations for contractors operating in the areas frequented by mule drivers, installing fencing in construction areas that are near cattle,¹²³ and implementing a social indicator monitoring program.”¹²⁴
- 2.119 The social indicator monitoring program establishes three monitoring dimensions for this issue:

Table 7
Social indicator monitoring program
Variables and indicators to be monitored

Dimensions	Variable	Parameters/Indicators
Geographic	Access to summer pastures, winter pastures, and calving grounds	The project does not prevent access to summer pastures, winter pastures, and calving grounds. The project's works and activities do not cause accidents for cattle farmers or animals.
Anthropological	Continuity of cattle farming activity	The project does not prevent access to summer pastures, winter pastures, and calving grounds.
Socioeconomic	Continuity of cattle farming activity	The project does not prevent access to summer pastures, winter pastures, and calving grounds. The project's works and activities do not cause accidents for cattle farmers or animals.

Source: Environmental Impact Assessment, 2008, Annex 39, p. 2.

- 2.120 The ESMR recognizes the existence of a number of “traditional families” that carry out traditional grazing and cattle farming activities. However, it does not include considerations regarding potential impacts or mitigation measures.¹²⁵
- 2.121 The information in the MIS reports indicates that the project has not affected mule drivers’ access to the roads and places they traditionally use. It is worth noting that the information gathered for the MIS reports is based on surveys of a representative sample of households in 11 communities and on qualified informants, and that the information set out in the MIS reports does not match the information found in other project documents, which do identify impacts (see paragraph. 2,123 above). [REDACTED]

¹²² EIA, pp. 6.4-74. The EIA also indicates that project-related transportation will take place Monday through Friday, while the mule drivers conduct their tourist activities on weekends.

¹²³ The EIA and the ECR establish this measure only in the work area of the Engorda summer pasture.

¹²⁴ [REDACTED] ECR, p. 39. EIA 6, VII.1 Plan for mitigation, reparation, and compensation measures, EIA 6.4-75.

¹²⁵ ESMR, p. 27.

[REDACTED]
[REDACTED]
[REDACTED]¹²⁶

2.122 The documentation on the EIA consultation process¹²⁷ shows no evidence that mule drivers were consulted as a stakeholder group, even though the EIA lists effects on mule drivers as one of the community's major concerns.¹²⁸ Mule driver representatives and authorities who were interviewed as part of the MICI investigation reported that a dialogue with mule drivers was initiated in 2015 by the Ministry of Energy due to the failure to consult this group during the project's environmental assessment. The mule drivers had initially asked the Client to begin talks. This request resulted in some meetings between the Client and the mule drivers, and these meetings ultimately came to be organized by the Ministry of Energy as a third party intermediary between the mule drivers and the Client.

2.123 With regard to the foregoing, the project information shows that meetings were held between the Client and the Corporación de Arrieros [mule drivers' association], and that the mule drivers raised their concerns at these meetings and the Client proposed initiatives to address them. [REDACTED]

[REDACTED]
[REDACTED]¹²⁹ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]¹³⁰ [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]¹³¹ According to the interviews with Ministry of Energy officials and mule driver representatives, the meetings came to an end in August 2016, when the Client withdrew in the belief that its commitments had been fulfilled.¹³² The MICI did not find any information on this dialogue process and its outcomes in any of

¹²⁶ Environmental and Social Supervision Report, IDB Invest, March 2018, p. 7-8.
¹²⁷ EIA, Annex 44, early citizen participation. This report contains a list of citizen participation activities conducted as part of the project's environmental impact assessment process.
¹²⁸ EIA, chapter 9, Citizen participation, pp. 9.2-2. P. 5.
¹²⁹ Information obtained from the Corporación de Arrieros website.
See <https://losarrierosdelcajon.wordpress.com/2016/03/16/agrupaciones-de-arrieros/>.
¹³⁰ Minutes of meetings between the Client and the mule drivers between September 2014 and September 2016.
¹³¹ Minutes of meetings between the Client and the mule drivers between September 2014 and September 2016.
¹³² Interviewed authorities report that their attempts to induce the Client to return to the dialogue table were unsuccessful because the Client deemed the agreement to have been fulfilled and therefore had no interest in participating, even though the mule drivers considered that not all the agreed-upon commitments had been met.

the Bank or CASI supervision reports to supplement the above-described information.

2.124 Regarding the effects of blasting, [REDACTED]
[REDACTED]
[REDACTED] information on restricted times due to blastings was communicated through signs and direct messages from the community relations team.¹³⁴ [REDACTED]
[REDACTED]
[REDACTED] With regard to informational blasting signage, during the investigation and eligibility missions respectively conducted in 2017 and 2018 the MICI observed signs (see below) in which the notified blasting times are 24 hours a day, 7 days a week. In this regard, [REDACTED]
[REDACTED]
[REDACTED].¹³⁵

Figure 7. Signage related to blasting times



¹³³ ESDD report, pp. 95-96 and 295.

¹³⁴ [REDACTED]
[REDACTED]

¹³⁵ Environmental and Social Supervision Report, IDB Invest, January 2019, p. 8.



Source: Photographs taken during the compliance review mission.

- 2.125 Based on the foregoing, the MICI finds that the Bank failed to consider the effects on mule drivers when conducting its ESDD. Furthermore, even though the MIS reports mapped the impacts and indicators, the Bank did not ensure that measures to manage the potential impacts were put in place as required under Directive B.5 of Operational Policy OP-703 since mule drivers are part of the area’s cultural tradition and tourism promotion efforts. In its comments on the preliminary version of this report, Management indicated that the stakeholders’ map prepared as part of the due diligence process included mule drivers and that the potential impacts on this group were analyzed during the EIA process. However, the MICI review shows that the ESDD was based only on the EIA and the attached ethnographic study, which did not include an impact assessment. Moreover, despite not having sufficient information as to the potential impacts, the Bank did not ask the Client to conduct an assessment with respect to this activity.
- 2.126 Similarly, it is unclear why the Bank failed to request that consultations be held with mule drivers to determine the project’s potential impact on them, as required by Directive B.6 of Operational Policy OP-703. The MICI’s review shows that mule drivers were not consulted during the environmental assessment process and the Bank did not identify this shortcoming and request measures to remedy it. In not ensuring that the affected parties were consulted during the environmental assessment process, the Bank failed to comply with Directive B.6 of Operational Policy OP-703. At the same time, the MICI notes that, between 2014 and 2016, the mules drivers and the Client were engaged in a dialogue that met the

requirements of Directive B.6 on meaningful consultations, since it consisted of an exchange of information on project impacts and the measures that could be taken to address them.

2. Impact arising from an increase in vehicle traffic

Summary of MICI findings and determination as to compliance

Regarding the impacts due to vehicle traffic during project construction, the MICI found that the Bank assessed the project's impact arising from the increase in vehicle traffic and confirmed that certain mitigation measures were in place, in compliance with Directive B.5 of Operational Policy OP-703. However, during the supervision process, it was discovered that this impact assessment was based on a document that included base data errors, so a request was made to correct them. The new information identified an exponential increase in vehicle traffic with respect to the initially considered data. However, the MICI found that no assessment was made of the potential impacts, including cumulative impacts, of this actual increase in traffic, nor any analysis as to whether a modification of the mitigating measures was warranted. Thus, the Bank failed to comply with Directive B.5 of Operational Policy OP-703.

In addition, while the Bank performed its supervision in compliance with Directive B.7, it was found that the Bank has been unable to ensure compliance with certain specific measures during the execution stage, thereby not fully complying with Directive B.7 of Operational Policy OP-703.

2.127 To address the allegations, the MICI will now analyze whether impacts arising from the increase in vehicles in the community during construction, including cumulative impacts, were assessed in the framework of the project, and whether the appropriate mitigation measures were adopted if necessary, in compliance with Directives B.5 and B.7 of Operational Policy OP-703 (paragraphs 2.22 and 2.23 above). Specifically, this analysis covers two issues: assessment of the impact on the community arising from an increase in the volume of vehicles in circulation and road safety, in both cases including the relative appropriateness of the mitigation measures and their implementation.

2.128 With regard to the impact produced by the increase in vehicle traffic, the MICI's review shows that the project's construction activities resulted in a "temporary increase in vehicle traffic [REDACTED]

[REDACTED]¹³⁶ The EIA and the Bank estimated that the project's adverse road impact would be light and insignificant, and they found that the following mitigation measures would be adequate:¹³⁷ specific return routes to Santiago for construction-related trucks; specific times for moving trucks through urban areas; suspending heavy-truck traffic on weekends on certain roads; paving roads; and installing traffic signs and crash barriers.¹³⁸ The ESMR confirmed these results, indicating that, according to the projections, the traffic volume generated by the project would not account for a significant increase with respect to the baseline conditions set out in the EIA (an approximate total increase of 10%) and would

¹³⁶ [REDACTED]

¹³⁷ Road impact assessment – May 2008 report. Annex 14 EIA, pp. 4-6. The EIA also indicated that the period with the highest vehicle traffic would be from the second to the fourth year of the initially estimated five years. EIA, chapter 6.4, p. 73. ESMR, p. 36 and [REDACTED]

¹³⁸ [REDACTED]

cause temporary traffic delays.¹³⁹ [REDACTED]
[REDACTED]
[REDACTED]¹⁴⁰

2.129 In addition, in the course of the ESDD, the lenders requested a cumulative impact assessment, which identified an increase in traffic on the roads immediately adjacent to the construction sites and indicated that it could lead to a rise in vehicle congestion and reduce road safety in the project area.¹⁴¹ However, the assessment considered that there would be no significant impacts on road use and road safety. At the same time, it allowed the possibility of cumulative impacts in the event that a series of projects were to be simultaneously implemented in the area, given their effect on vehicle flow, particularly during construction.¹⁴² Consequently, additional mitigation measures were established, such as: (i) expanding monitoring to include measures aimed at minimizing impacts on community health and safety; (ii) implementing a grievance mechanisms; (iii) monitoring traffic on a bimonthly basis during the first three years of construction; (iv) implementing measures to differentiate project vehicles; and (v) managing accident risks through training and safety guidelines.¹⁴³

2.130 [REDACTED]
[REDACTED]¹⁴⁴
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]¹⁴⁵
[REDACTED]
[REDACTED]
[REDACTED]¹⁴⁶
[REDACTED]
[REDACTED]
[REDACTED]¹⁴⁷

¹³⁹ ESMR, p. 36 and [REDACTED]
¹⁴⁰ ESMR, p. 52 and ESDD report, p. 266. [REDACTED] ESDD report, pp. 200-201.
¹⁴¹ Cumulative impact assessment – Alto Maipo Hydroelectric Power Project. Rev 2. Dated 14.06.13. pp. 6 and 71.
¹⁴² Cumulative impact assessment – Alto Maipo Hydroelectric Power Project. Rev 2. Dated 14.06.13. pp. 72-73 and 79-84.
¹⁴³ ESMR, p. 36. [REDACTED]
¹⁴⁴ ESMR 2014 Q1, pp. 64 and 134. The MICI did not have access to the CASI reports for the second quarter of 2014 [REDACTED]
¹⁴⁵ ESMR 2014 Q1, pp. 63-65. [REDACTED]
¹⁴⁶ ESHSAP 2015 Q1, p. 63. [REDACTED]
[REDACTED] ESHSAP 2014 Q2, p. 194. [REDACTED]
¹⁴⁷ ESMR, 2015 Q1, p. 63. [REDACTED]
[REDACTED]
[REDACTED] ESMR, 2015 Q3, p. 53 and ODS February 2019, p. 5.

2.131 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] 148 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] 149

2.132 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] 150 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] 151 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

2.133 Other documents also show an increase in project-related vehicles, [REDACTED] 152 In its comments on the preliminary version of this report, Management also acknowledged an increase in vehicle traffic stemming from the execution of project works. However, it is not clear from the reviewed documents whether an analysis was conducted to determine whether the project-related traffic increase produced

¹⁴⁸ ESHSAP 2015 Q3, p. 53. [REDACTED]
[REDACTED] See ESHSAP 2015 Q4, p. 55; ESHSAP 2016 Q1, p. 31; ESHSAP 2016 Q3, p. 34; and ESHSAP 2016 Q4, p. 46.

¹⁴⁹ [REDACTED] [REDACTED]
[REDACTED] ESHSAP 2017 Q2-Q3, pp. 89-90. [REDACTED]
[REDACTED]
[REDACTED]

¹⁵⁰ Road monitoring with origin and destination survey Routes G-25, G-345, G-421, and G-455. November 2018. Rev. B February 2019, pp. 63 and 64.

¹⁵¹ Road monitoring with origin and destination survey Routes G-25, G-345, G-421, and G-455. November 2018. Rev. B February 2019, p. 51.

¹⁵² [REDACTED] police reports indicating that the access road to the project and to Cajón del Maipo is beyond capacity due to an increase in vehicle traffic, without directly attributing this increase to the project. [REDACTED]
[REDACTED]

an impact (particularly a cumulative impact) on the communities requiring additional measures to mitigate it. Furthermore, the MICI has not found any analyses addressing the extension of the project's construction period.

2.134 With respect to road safety, in 2015 the project adopted various mitigation measures: training for drivers, identification of some project vehicles through GPS systems, creation of a participatory traffic monitoring team, procedures and fines for violations, dismissal of repeat offenders, and a grievance system for the community.¹⁵³

2.135 [REDACTED]
[REDACTED]
[REDACTED]¹⁵⁴ [REDACTED]
[REDACTED]¹⁵⁵ [REDACTED]
[REDACTED].¹⁵⁶ However, while Management asserted (in its comments on the preliminary version of this report) that GPS systems were installed in all project vehicles, the information that was made available to the MICI does not show that this has been done to date.

2.136 With regard to the allegations of speed-limit violations, [REDACTED]
[REDACTED]
[REDACTED]¹⁵⁷ [REDACTED]
[REDACTED]
[REDACTED]¹⁵⁸

2.137 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]¹⁵⁹

2.138 Regarding the complaints of parking violations, [REDACTED]
[REDACTED]
[REDACTED]¹⁶⁰ Despite this, in their meetings with the MICI, area residents reported that irregular parking was still taking place in the vicinity of the project's construction sites. Moreover, in its field visit of December 2018, the MICI team observed that this practice continues.

2.139 Lastly, with respect to the mitigation measure (established in the ECR) of restricting traffic to certain hours, which the ESMR deems adequate, the

¹⁵³ [REDACTED]

¹⁵⁴ ESHSAP 2015 Q1, p. 63.

¹⁵⁵ ESHSAP 2015 Q1, p. 63.

¹⁵⁶ ESHSAP 2014 Q2, pp. 63-64. [REDACTED]
[REDACTED] ESHSAP 2015 Q3, pp. 54-64.

¹⁵⁷ ESHSAP 2016 Q2, p. 69; and ESHSAP 2018 Q1-Q2, p. 48.

¹⁵⁸ ESHSAP 2015 Q1, p. 63.

¹⁵⁹ [REDACTED]
[REDACTED]
[REDACTED]

¹⁶⁰ ESHSAP 2016 Q2, p. 80.

supervision reports do not provide systematic information.¹⁶¹ However, in the investigation mission, the Client reported that it requested an interpretation from Chile's Environmental Assessment Service (SEA) regarding the hours established in the ECR, including a complete list of project hours.

- 2.140 Based on the foregoing, the MICI considers that, during the ESDD, the Bank made sure that the project assessed the impact of the increase in vehicle traffic and determined mitigation measures, requesting a cumulative impact assessment that had not been previously performed. In this regard, the Bank complied with Directive B.5 of Operational Policy OP-703. However, this assessment was based on faulty data. The Bank, through the CASI, addressed this problem by requesting the Client to correct the errors and provide new information to enable a reassessment of the traffic impact. The MICI found that, once the actual traffic increase figures were identified, the Bank did not ensure that these results were analyzed to determine whether the difference with respect to the original estimates could produce an impact on the population, particularly in the form of delays and accidents, including potential cumulative impacts and the reported adjustment to the project traffic hours. Similarly, the MICI found no evidence of an analysis to assess the need to adopt additional mitigation measures or modify the existing measures. Thus, the Bank did not comply with the requirements of Directive B.5.
- 2.141 At the same time, the MICI finds that the Bank and the CASI monitored the implementation of the originally established measures and additional measures to address the impact of project traffic on the community's safety, such as instituting speed limits and receiving and addressing complaints. This led to a gradual reduction in project-related driving speeds and number of accidents, in compliance with the supervision requirements of Directive B.7 of Operational Policy OP-703. However, the Bank did not ensure compliance with all management measures, including identifying project vehicles to enable district residents to differentiate them from others, as requested since the ESDD report. In this regard, the Bank failed to comply with Directive B.7 of Operational Policy OP-703.

3. Divisions and impacts on the social fabric

- 2.142 With regard to the allegations concerning impacts on the social fabric and divisions within the community, the MICI lacks sufficient information to conclude that there is a generalized schism, polarization, and conflict among residents of the district as a result of the project. The interviews conducted during the compliance review process and the documents reviewed indicate that there are residents who favor the project, particularly because of the economic benefits it has brought, such as demand for services and availability of jobs and grant funds, and residents who oppose the project. However, the MICI is unable to conclude from this information that there are generalized divisions or a tearing of the social fabric that would warrant an analysis by the MICI.
- 2.143 Nevertheless, the specific case of the community of El Alfalfal merits an analysis in this regard. This analysis will be described in the compliance analysis section for that community (paragraphs 2,169 to 2,179 below).

¹⁶¹ [REDACTED]

d. Connection between the findings of noncompliance and the alleged Harm¹⁶²

- 2.144 The MICI review shows that, as indicated by the Requesters and asserted in the course of the dialogue process with the Client, the project did not identify the roads used by the mule drivers prior to the start of construction, the construction affected and blocked various roads used by mule drivers, there was no communication protocol for notifying mule drivers of blastings, and both problems and improvements were reported regarding the signs informing of blasting times. In view of this and the absence of an assessment in the context of the project, the economic activities of those Requesters who form part of this population group have been affected. However, it is unclear to the MICI whether the adverse impacts have been temporary or have persisted throughout the entire construction stage.
- 2.145 With regard to vehicle traffic, several Requesters described incidents involving project vehicles that almost resulted in accidents and reported that their normal travel times have increased considerably. The MICI found that the project documents identify a safety risk to pedestrians and other automobiles stemming from the rise in vehicle traffic. In addition, the Bank's supervision reports identify an increase in traffic in the area, vehicle movement at excessive speeds at various times, an unforeseen use of private vehicles by workers, and irregular parking practices. While the traffic levels and potential accidents may be associated with vehicles from other projects, the Bank's supervision reports also show that the project's vehicles have not been identified and differentiated as required. As a result, the population is not always able clearly to identify the project's vehicles.
- 2.146 Furthermore, the MICI concluded that, once the actual traffic increase had been pinpointed, there was a failure to assess the impacts of this increase on the community, including the potential cumulative impacts, with a view to determining whether the project's management measures are sufficient or whether additional measures are needed. Consequently, it is likely that harm is occurring as a result of the traffic increase as alleged by the Requesters, particularly in view of the extension of the project's construction period, the unplanned use of private vehicles by workers, and the considerable growth in the number of project workers.

4. Social and environmental impacts on the community of El Alfalfal

a. Requesters' allegations

- 2.147 The Requesters allege that the community of El Alfalfal is suffering powerful noise, vibration, and pollution effects during construction. They assert that the works under way in the areas surrounding the community create noise and dust, and that the noise barrier that encloses the community fails to minimize noise and isolates the community. They state that the noise and dust produced by the construction work and the transport of materials have been a source of concern for the community from the outset, and that there are no restrictions on these activities in terms of days or hours of operation. Furthermore, they indicate that the project has caused divisions within the community by failing to provide information to the

¹⁶² The MICI determines the occurrence of Harm in accordance with the methodology described in paragraph 2.4 above.

neighborhood council and establishing communication through an advancement committee.¹⁶³

b. Relevant Operational Policies

2.148 Directives B.5, B.6, and B.7 of Operational Policy [OP-703](#) are applicable to these issues (see paragraphs 2.22 and 2.23 above), since they establish requirements regarding impact assessment, design and implementation of management measures, consultation and information disclosure, and Bank supervision.

c. MICI findings and determination as to compliance

2.149 The MICI finds that the Requesters' allegations regarding El Alfalfal focus on two issues: (1) impacts from project construction, especially noise- and dust-related, and management of these impacts; and (2) divisions within the community and consultation with all sectors of the community.

2.150 By way of general context, El Alfalfal is a small settlement of approximately 60 families located on the Colorado River basin. Around the community are project works on the Colorado River and the Las Lajas tunnel, including construction of the 75-hectare surge tank and the headrace tunnel for the Las Lajas plant.¹⁶⁴ [REDACTED], construction works have been under way since 2014 and continue to be performed as of the date of conclusion of the MICI investigation.¹⁶⁵ In general terms, the project identified changes in air quality, noise, and vibration stemming from construction and transport activities as impacts on this community. These impacts are the result of, among others, stationary sources such as blasts at tunnel entrances, heavy machinery, concrete plants, generators, and loading and unloading of materials, and mobile sources such as truck and vehicle traffic.¹⁶⁶ It was also found that the EIA incorporated mitigation and management measures for each of these impacts into the design and construction stages, including the construction of a noise barrier.¹⁶⁷

¹⁶³ There are allegations of noncompliance with Operational Policy OP-710 regarding the resettlement agreements entered into between the company and some residents of El Alfalfal. These allegations were not included in the investigation recommendation since none of the Requesters in this case is a party to those agreements; thus, that issue does not form part of this compliance review. Similarly, this Compliance Review Report does not analyze allegations regarding compliance with an agreement between the Client and the El Alfalfal Advancement Committee, since none of the Requesters is a member of this committee.

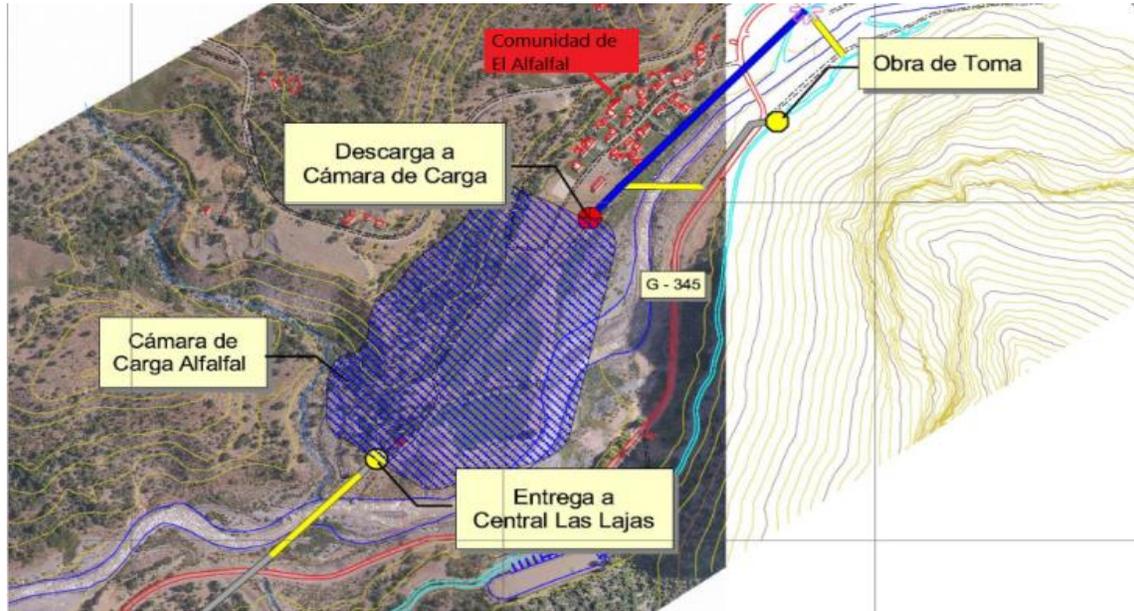
¹⁶⁴ ESMR, p. 5, and ECR, p. 6-7.

¹⁶⁵ [REDACTED]

¹⁶⁶ [REDACTED]

¹⁶⁷ [REDACTED]

Figure 8. Location of El Alfalfal and project works



Source: EIA, Figure 2.2.7, Location of works, Alfalfal sector.

2.151 With regard to these works, in August 2014 the Client signed an agreement with the El Alfalfal Advancement Committee,¹⁶⁸ a local community organization, undertaking to fulfill various commitments.¹⁶⁹

[REDACTED]

2.152 In its Response to the Request, Management indicates that the wall built around the town of Alfalfal is temporary and will be removed after construction is completed. According to Management, the wall is the result of two factors: (i) it was a requirement of the ECR; and (ii) the community expressly requested it. In addition, Management points out that none of the community's access points has been blocked as a result of the wall. Management will verify on its next visit whether

¹⁶⁸ The El Alfalfal Advancement Committee is a not-for-profit community organization aimed at representing and promoting specific values of the community within the district's territory. See article 2 c) of Law 19,418, in effect since 1 April 2014, available at <https://www.juntasdevecinos.cl/ley-de-juntas-de-vecinos/>.

¹⁶⁹ These commitments include: [REDACTED]

Agreement between Alto Maipo SpA and the Advancement Committee dated 5 August 2014. [REDACTED]

[REDACTED] It is worth noting that the residents of El Alfalfal lack title to their land parcels. Having settled on land classified as a "flood zone," they are unable to hold title to their land. The project's construction includes rockfill works on the Colorado River. As reported, this may enable lifting the restriction on this land and thus requesting land title.

¹⁷⁰ ESHSAP, item 19, Existing community agreements.

the wall is creating other types of impacts on the community, and if so, how they should be mitigated or compensated.

1. Noise and dust impacts

Summary of MICI findings and determination as to compliance

Firstly, regarding noise, the MICI found that, although the EIA assessed this impact and identified mitigation measures designed to ensure that noise levels would not exceed the allowed limits under the national standard, the Bank did not verify whether those measures were adequate for compliance with the standards required of the Client, namely the relevant World Bank Group guidelines, which are more protective than the national standard. The MICI found shortcomings in how this project impact was managed, including starting the works before the impact mitigation measures were in place; a Bank supervision process focused on asking the Client for years to report noise measurement data based on World Bank Group guidelines rather than on the national standard; the absence of clear measures aimed at preventing, minimizing, or abating the noise impact, only taking action reactively, once noise levels became excessive; and extending the construction period by several years without evaluating the consequences for the community. In view of this, the report concludes that the Bank complied with Directive B.5, since it assessed the impact of construction noise on the community, but did not fully comply with this directive, since it failed to verify the effectiveness of the measures. In addition, the MICI found noncompliance with Directive B.7 of Operational Policy OP-703.

(i) Noise impacts

2.153 The noise generated by construction in the area of El Alfalfal was identified as a project impact and mitigation measures were set out in the ECR, notably including the erection of a noise barrier and periodic measurement of noise levels.¹⁷¹ [REDACTED]

[REDACTED]

(i) [REDACTED]

(ii) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]¹⁷³

(iii) [REDACTED]

(iv) [REDACTED]

(v) [REDACTED]
[REDACTED]

¹⁷¹ [REDACTED]

¹⁷² ESDD report, pp. 166, 290, and 295.

¹⁷³ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] ESDD report, p. 290.

- (vi) include noise and vibration monitoring points in homes and sensitive receptors located in the vicinity of roads with heavy traffic from the project.

2.154 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

¹⁷⁴ Meanwhile, the noise barrier was installed between December 2014 and April 2015, [REDACTED]
[REDACTED]

[REDACTED].¹⁷⁵ According to this, work began before the main mitigation measure (i.e., installation of a noise barrier) had been implemented, and there is no evidence that other mitigation measures were implemented, or that an analysis of the lack of mitigation measures was conducted, during that interim period.

2.155 With regard to the barrier's design, the Client told the MICI that the original wall was L-shaped and that the residents requested that it be fully closed.¹⁷⁶ According to the Client, the ECR was not modified accordingly; instead, the change was made as a commitment to the community. Thus, the design of the barrier was modified without any assessment of the implications of such a change, whether positive or negative, or of the suitability of a full enclosure as a way of mitigating the noise and dust created by the works.

2.156 Regarding the effectiveness of the noise barrier as a mitigation measure, the MICI found that the EIA performed baseline measurements and noise modeling to predict the project's contribution to noise, and that based on the results, the ECR provided for a noise barrier to reduce the noise and thus satisfy the maximum permissible levels under Chilean standard DS146/98.¹⁷⁷ The documents reviewed by the MICI show no evidence of any analysis allowing the Bank to determine whether the wall's noise reduction would also bring noise levels in line with the World Bank Group guidelines, as required of the Client by the lenders.¹⁷⁸ In addition, starting in 2014, the community of El Alfalfal has been reporting dissatisfaction with this barrier and complaints of excessive noise.¹⁷⁹ [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]¹⁸⁰ The reviewed documents show that the measures implemented to address the issue

174 [REDACTED]
[REDACTED]
[REDACTED]

175 Monthly Construction Progress Report, December 2014, p.33. Monthly Construction Progress Report, April 2015, p. 36. Alto Maipo, Meeting minutes PHAM-PCD-06/F8 of 19 November 2014.

176 [REDACTED]
[REDACTED]
[REDACTED]

177 This standard allowed higher noise levels than both the subsequent replacement standard and the World Bank Group guidelines.

178 [REDACTED]
[REDACTED]

179 [REDACTED]
[REDACTED]
[REDACTED]

180 [REDACTED]

[REDACTED]

[REDACTED]¹⁸⁹ In its comments on the preliminary version of this report, Management reported having asked the Client to prepare an analysis of the base noise level in the EI Alfalfal sector to determine whether it exceeded the guidelines by itself. Management went on to indicate that, according to the analysis, the project's activities in that sector did not significantly contribute to the average noise (existing in the absence of those activities). However, at a subsequent meeting, Management informed the MICI that the analysis referenced in its comments is not an additional analysis but rather baseline information obtained in the course of preparing the project's EIA.

2.160 One of the main problems encountered by the MICI is that project compliance with the noise standard required by the lenders was not being ensured. The MICI found that, over a period of at least four years, project supervision indicated that the Bank's requirements in this regard were not being met. [REDACTED]

[REDACTED]

[REDACTED]¹⁹⁰

2.161 In this regard, the reviewed documents show no evidence of any Bank reaction.¹⁹¹ Moreover, when the Client apparently began to report the data as a function of these guidelines, it also pointed out that it would be unable to meet them since the background noise in EI Alfalfal could by itself exceed the permissible levels under the guidelines. As reported by Management in its comments on the preliminary version of this report, the MICI finds it curious that, if this inability could be identified from the EIA's baseline, the CASI and the Bank should have focused a large part of their supervision efforts on achieving compliance with these guidelines.

2.162 Lastly, it is worth highlighting that, as the project documents show, the construction period was projected to be five years, ending in 2018.¹⁹² However, the project has undergone delays [REDACTED]

[REDACTED]¹⁹³ This has meant longer-lasting noise-related impacts on the community. The project documents show no evidence that this change prompted a review of the management plans.

2.163 Based on the foregoing, the MICI finds that the Bank complied with its obligation under Directive B.5 by ensuring that the potential noise-related impacts in areas

¹⁸⁹ ESMR, 2018 Q3. [REDACTED]

¹⁹⁰ Second disbursement information and document package. Annex A, CASI Environmental and Social Compliance Certificate.

¹⁹¹ [REDACTED]

¹⁹² ESMR, p. 3 and [REDACTED]

¹⁹³ ESMR, 2019 Q2, p. 4.

such as El Alfalfal were assessed. However, it did not fully comply with this directive inasmuch as it failed to verify the effectiveness of the implemented measures in preventing, minimizing, or mitigating these impacts. In addition, problems arose during the project's implementation in ensuring Client compliance with the Bank's requirements, and no evidence has been found that the Bank succeeded in ensuring compliance with the measures or in ascertaining their suitability for preventing an adverse noise-related impact on the community of El Alfalfal. This constitutes noncompliance with the obligations established in Directive B.7.

(ii) Impacts on air quality due to dust

Summary of MICI findings and determination as to compliance

Regarding impacts due to dust, the MICI found that this was identified as a general project impact and the Bank determined that the existing mitigation measures were adequate. Thus, the Bank did not require a specific assessment of this impact on El Alfalfal (although it did in the case of noise), despite the community's close proximity to the works and its classification as a sensitive receptor. At the same time, the MICI concluded that the Bank supervised the general mitigation measures aimed at addressing the project's potential impact on air quality. Consequently, it found that the Bank did not comply with Directive B.5 but did comply with Directive B.7 of Operational Policy OP-703.

2.164 [REDACTED] changes in air quality as one of the main environmental and social impacts during the construction period.¹⁹⁴ [REDACTED]

[REDACTED] the project planned to implement adequate prevention measures and management practices to minimize dust generation (such as covering trucks with mesh and wetting road surfaces) in addition to emission compensation measures (also identified as compensation programs), including management measures, in accordance with the Air Pollution Prevention and Decontamination Plan for the Metropolitan Region, [REDACTED]

[REDACTED]¹⁹⁵

2.165 [REDACTED] there is no evidence in the documents examined by the MICI that a specific assessment was conducted of the situation in El Alfalfal. In this regard, it is worth noting that, according to the EIA and the ECR, the assessment of project impacts on air quality and the design of mitigation measures abided by the requirements of national legislation. Pursuant to these requirements, the project's location in a "saturated zone" meant that it needed to implement a compensation program as a

¹⁹⁴ [REDACTED]

¹⁹⁵ ECR, p. 25. [REDACTED]

project had a specific assessment or baseline for El Alfalfal to enable identifying the impact that the construction work would have on this community, which was classified as a sensitive receptor due to its vicinity to the works. Along similar lines, because of this lack of an assessment, it is impossible to determine whether or not the established general mitigation measures are effective for the community. The MICI believes that, in cases such as that of El Alfalfal, it would be reasonable to consider the appropriateness of characterizing air quality so as to subsequently be able to monitor project impacts. At the same time, the MICI considers that the Bank complied with Directive B.7 inasmuch as it ensured that the CASI would monitor the general air quality measures designed within the framework of the project.

2. Divisions within the community and consultations with all affected parties

Summary of MICI findings and determination as to compliance

Regarding social divisions in the community of El Alfalfal due to the works, the MICI found that this was not assessed as a project impact, even though several different documents identified a split in the community arising from the presence of two separate and opposing groups. In addition, community consultation and participation processes were conducted with only one group in the community. No efforts were made to inform and establish a dialogue with the neighborhood council as the formal representative body under Chilean legislation. Consequently, the MICI finds a failure to comply with Directives B.5 and B.6 of Operational Policy OP-703.

2.169 Regarding the divisions within the El Alfalfal community, interviews with Bank staff during the investigation indicate recognition that such divisions exist. Thus, it was reported to the MICI that some residents entered into an agreement with the Client at the start of construction, while others have stayed away. There are two sets of community leaders, with tensions and disagreements between them.

2.170 [REDACTED]

[REDACTED].²⁰³ [REDACTED]
[REDACTED]
[REDACTED].²⁰⁴ The El Alfalfal residents interviewed by the MICI during the compliance review mission indicated that the project has created schisms and that the population has been divided at various times.²⁰⁵

2.171 At the same time, a review of project documents shows no evidence that these divisions were identified by the Client or the Bank as a potential impact warranting assessment, either during the national environmental assessment process, the ESDD process, the project approval process, or subsequently.

2.172 The MICI finds that a central issue regarding the split within the community is the alleged absence of information sharing and consultations with all populations groups in El Alfalfal. The MICI's document review and interviews show that

²⁰³ Environmental and Social Supervision Report, IDB Invest, April 2017.

²⁰⁴ Environmental and Social Supervision Report, IDB Invest, July 2018.

²⁰⁵ The MICI was able to interview the former chair of the neighborhood council, who is one of the Requesters, and the chairs of the advancement committee and the stakeholders' committee.

- 2.175 At the same time, in its comments on the preliminary version of this report, Management states that the Client has invited the entire population of El Alfalfal to attend information and consultation events, and that the secretary and treasurer of the neighborhood council were present on several such occasions, as evidenced by the attendance lists. Similarly, Management indicates that it has endeavored to ensure that the invitations and the consultation process are open, transparent, and in good faith, but cannot guarantee the participation of all community organizations, particularly if some decide to refrain from taking part in these processes. In this regard, the existence of these meetings is not evident from the documents and attendance lists made available to the MICI; similarly, this information was not reported to the MICI in the interviews conducted during the investigation process. The information contained in those documents, including the CASI and Bank supervision reports, and provided in those interviews shows that project supervision did not include reporting on consultation activities with the neighborhood council and focused instead on reviewing the Client's reported consultation activities with the advancement committee.
- 2.176 Lastly, the MICI emphasizes that the reviewed document and the interviews conducted during the investigation mission confirm that the project has had significant positive impacts on El Alfalfal, primarily by creating economic opportunities in services, especially lodging and food for workers. Thus, the documents show, among other things, that the roughly 60 families in El Alfalfal provide lodging for close to 300 workers and that the project has delivered direct economic benefits to various residents, among other benefits.²⁰⁹ Two of the interviewed residents asserted that the project had generated funds for most of the population of El Alfalfal and transformed their lifestyle, the only qualification being that more opportunities could have been made available to local workers in the project's construction. The other interviewed resident asserted that a factor causing more people to favor the project is the Client's provision of direct benefits. With regard to lodging for workers, it is worth noting that, as indicated in paragraphs 2.88 and 2.89 above, the project did not assess the impact of housing a significant number of workers inside communities such as El Alfalfal.
- 2.177 The Bank's policies require that, during the execution of a project, affected parties be kept informed of the project's impacts and the measures implemented to manage these impacts. Operational Policy OP-703 defines affected parties as the individuals, group of individuals, or communities who may be directly impacted by a Bank-financed operation. According to this definition, the residents of El Alfalfal and their representative bodies, including both the advancement committee and the neighborhood council, are affected parties for purposes of the Bank's Relevant Operational Policies. As such, they should have been kept informed of the project's impacts and management measures through a two-way dialogue that would take their views into account when implementing these measures.
- 2.178 The consultations required under the Relevant Operational Policies should be conducted ensuring that the various categories and groups of affected parties are being represented, avoiding any type of discrimination. As established by the Bank, an essential point for meaningful stakeholder consultation is to ensure that the views of groups potentially opposed to the project are heard and to make efforts

²⁰⁹ Worker impact analysis, *Ciudadinámica*, p. 6.

to encourage an open and inclusive consultation process.²¹⁰ In addition, aside from the fact that the Relevant Operational Policies require consultations with all affected parties, the failure to include or inform an affected party may cause individuals initially unopposed to a project to become critical of it when not receiving information or not being included in the decision-making process.²¹¹

- 2.179 The MICI review shows that efforts were made to share information and establish a dialogue with the El Alfalfal Advancement Committee but not with the El Alfalfal Neighborhood Council, despite the latter's standing as the formal representative body for the community under Chilean legislation. Moreover, after it was identified that an election process would be conducted to establish this council, the Bank did not monitor or ask the CASI to monitor this process even though it was aware of the situation. Consequently, the MICI finds that the Bank failed to comply with its obligations under Directive B.6 of Operational Policy OP-703. Furthermore, as indicated above, the MICI's document review and interviews show that there is a schism within the community of El Alfalfal. However, despite the Bank's awareness of this, there is no evidence that the impact of this schism was assessed or that measures were designed to manage it. The Bank merely supervised fulfillment of the agreement reached with the advancement committee, thus failing to comply with Directive B.5 of Operational Policy OP-703.

d. Connection between the findings of noncompliance and the alleged Harm²¹²

- 2.180 As described above, El Alfalfal is a small settlement comprising about 60 families and exposed to various project construction activities since 2014. In addition, it has been shown that the project's arrival gave rise to divisions within the community and changes in living conditions, including economic benefits stemming from the provision of services for the project, among other sources. Below is the MICI's analysis of the alleged harm in the context of the social and environmental impacts on this community.
- 2.181 The MICI found that, over the course of four years, the Bank was unable to verify the project's compliance with international noise reduction guidelines. In addition, there were reports that noise limits were exceeded and that no assessments were made as to whether the designed mitigation measures were effective. In this regard, the purpose of establishing limits on noise generation is to prevent or mitigate the impact of noise on communities.
- 2.182 The problem of noise pollution and its close relationship with the risks it entails for public health have become increasingly significant over the last decades. Public health experts agree that exposure to noise created by various means of transportation and industries contributes as much as 25% to the development of diseases in human beings.²¹³ Thus, it has been found that exposure to high noise levels—such as those exceeding 53 decibels in daytime hours and 45 decibels in

²¹⁰ IDB, Meaningful Stakeholder Consultation, pp. 8-9 and 21.

²¹¹ IDB, Lessons from four decades of infrastructure project-related conflicts in Latin America and the Caribbean, p. 43.

²¹² The MICI determines the occurrence of Harm in accordance with the methodology described in paragraph 2.4 above.

²¹³ World Health Organization. Burden of Disease from Environmental Noise. 2011. P. vii.

nighttime hours—can produce adverse effects on human health, including sleep disruption and learning problems in children and adolescents; while chronic exposure to noise levels exceeding these limits increases the risk of cardiovascular diseases such as hypertension.²¹⁴

- 2.183 In keeping with these findings, the Chilean standard currently in effect establishes the “need to further protect the community from the effects of noise, with particular consideration for nighttime rest. Accordingly, stricter limits shall be established both for the nighttime period and for rural areas, many of which list peace and quiet and distance from urban noise as their most prized environmental value.”²¹⁵
- 2.184 With regard to dust or particulate matter, changes in air quality were identified within the framework of the project as one of the main construction impacts. However, in compliance with national legislation, general measures were established without assessing the potential impact on sensitive receptors such as El Alfalfal. Interviews conducted during the mission and document reviews show constant nuisance complaints from residents regarding dust and noise. Residents interviewed during the mission confirmed that, while dust is a persistent problem, they have been getting accustomed to it.
- 2.185 At the same time, community divisions have been reported. One of the Requesters, a former chair of the El Alfalfal Neighborhood Council, indicated that he has been subjected to harassment and attacks, and his relations with neighbors have been broken off, due to his critical stance toward the project, finally leading him to resign his position as council chair.
- 2.186 Despite a general recognition that residents of El Alfalfal may request that work be halted when there is too much noise, noise levels exceeding the lenders’ guidelines have been reported as well as a persistently large amount of dust. While these impacts are temporary, it is worth recalling that the project’s construction period has been extended, along with its associated impacts.
- 2.187 The absence of assessments or information regarding health impacts precludes determining the existence or extent of harm with any certainty. However, the community’s exposure to particulate matter and to noise levels exceeding the lenders’ guidelines for an extended period as a result of project construction may mean that residents of El Alfalfal are being impacted. In addition, the MICI finds that the absence of an assessment of the risk of community divisions, and the lack of actions to ensure that activities were carried out by the project to engage the neighborhood council, may have contributed to the impacts reported by the aforementioned Requester, the effects on his relations with other members of the community, and his sense of isolation.
- 2.188 Since the project is still under construction, it would be advisable to establish a corrective action plan aimed at specifically monitoring the noise and dust levels and requiring effective mitigation measures to prevent medium-term impacts on the community’s health.

²¹⁴ Environmental Noise Guidelines for the European Union of 2018. P. xvi -2.

²¹⁵ Standard for noise emissions from sources indicated therein, based on the revision of Decree 146 of 1997 by the Ministry of the General Secretariat of the Presidency. Link: <https://www.leychile.cl/Navegar?idNorma=1040928>.

III. CONCLUSIONS

A. Conclusions as to compliance with Operational Policies OP-703 and OP-761

- 3.1 Section II presented a detailed analysis of the investigation’s findings, which showed Bank compliance and noncompliance with various obligations in Operational Policies OP-703 and OP-761.
- 3.2 In addition to the directives examined in Section II, Directive B.1 of Operational Policy OP-703 establishes that “[t]he Bank will only finance operations and activities that comply with the directives of this policy, and are consistent with the relevant provisions of other Bank policies.”
- 3.3 Consequently, based on the MICI’s findings and conclusions regarding compliance (shown in Table 10 below), the MICI finds that the Bank did not comply with Directive B.1 inasmuch as it failed to comply with Directives B.5, B.6, and B.7 of Operational Policy OP-703 or with the requirements of Operational Policy OP-761.

Table 8
Summary of conclusions as to compliance with the Relevant Operational Policies

Conclusions as to compliance
Impacts on recreational and tourist uses due to altered water flows
<p>The Bank did not comply with Directive B.5 of Operational Policy OP-703 inasmuch as it did not ensure that an assessment was made of the potential impacts on the tourist and recreational uses of the rivers to be targeted by the project, along with the respective management measures, as required by the Bank during the environmental and social due diligence (ESDD) process.</p> <p>The Bank did not comply with Directive B.6 of Operational Policy OP-703 inasmuch as it did not carry out a consultation process on the study of recreational uses either before the project’s approval or thereafter to the date of this report.</p> <p>The Bank complied with Directive B.7 of Operational Policy OP-703 inasmuch as it supervised the requirement for preparing a study of recreational uses, providing guidance and monitoring the various milestones in the course of the study’s preparation. However, the Bank did not comply with Directive B.7 inasmuch as it has not ensured, as of the date of this report, that an impact assessment on recreational and tourist uses of the targeted rivers has been prepared, despite the specific requirements and schedule established in the environmental and social, health, and safety action plan (ESHSAP) and despite having had opportunities to demand that the Client comply with these requirements within the framework of disbursement approvals.</p>
Impacts due to worker migration, particularly gender-differentiated impacts
<p>The Bank did not comply with Directive B.5 of Operational Policy OP-703 inasmuch as it did not ensure that the impact of the increased number of project workers was assessed, the relevant management steps were designed, and the originally designed mitigation measures were modified.</p> <p>The Bank did not comply with Directive B.7 of Operational Policy OP-703 inasmuch as it did not ensure compliance with the originally designed mitigation measures for the project, such as housing workers in camps removed from the communities and transporting them in vehicles provided by the Client.</p> <p>The Bank did not comply with Operational Policy OP-761 inasmuch as it did not ensure that the assessment of potential impacts from the influx of workers into the district, and the measures designed to manage it, took proper note of the gender-differentiated risks and impacts potentially affecting women and girls in the community.</p>
Impacts on economic activities and lifestyle in the district
<p>The Bank did not comply with Directive B.5 of Operational Policy OP-703 inasmuch as, in the ESDD, it did not consider the potential impacts on mule drivers during project construction nor ensure the establishment of the relevant management measures.</p>

The Bank **did not comply** with Directive B.6 of Operational Policy OP-703 inasmuch as it did not identify the failure to conduct consultations with mule drivers during the environmental impact assessment (EIA) process, and consequently did not request corrective action. At the same time, the mule drivers and the Client established a dialogue from 2014 to 2016 that **complied** with the requirements of Directive B.6 by providing for an exchange of information on project impacts and steps that could be taken to address them.

The Bank ensured that the impact of the increase in vehicle flow in the district during the project's construction phase was assessed, and mitigation measures were identified, and so **complied** with Directive B.5 of Operational Policy OP-703. However, once it identified that the original assessment of increased vehicle flow had been based on faulty data, and requested information from the Client to correct the errors, the Bank did not ensure that the real and cumulative impact would be analyzed, and so **did not comply** with Directive B.5.

The Bank **complied** with Directive B.7 of Operational Policy OP-703 by monitoring implementation of management measures to address the potential impacts on community safety stemming from project traffic. However, it failed to ensure implementation of all management measures, and in that regard **did not comply** with Directive B.7.

Social and environmental impacts on the community of El Alfalfal

The Bank **complied** with Directive B.5 of Operational Policy OP-703 by ensuring that the potential impacts of noise in areas such as El Alfalfal were assessed, and specific measures were established to manage them. However, it **did not comply** fully with this directive inasmuch as it did not determine whether the specific measures were effective to prevent, minimize, or soften this impact.

The Bank **did not comply** with Directive B.7 of Operational Policy OP-703 inasmuch as it did not ensure that the management measures requested by the Bank were implemented by the Client and that they were suitable for preventing adverse noise-related impacts on the El Alfalfal community during project construction.

The Bank **did not comply** with Directive B.5 of Operational Policy OP-703 inasmuch as it did not ensure that a specific assessment had been conducted on the potential impact of the works on air quality in the community of El Alfalfal, despite the fact that this community had been identified as a sensitive receptor due to its proximity to the works.

At the same time, the Bank **complied** with Directive B.7 of Operational Policy OP-703 inasmuch as it ensured that the Independent Environmental and Social Consultant (CASI) monitored the project's general mitigation measures regarding air quality.

The Bank **did not comply** with Directive B.5 of Operational Policy OP-703 inasmuch as it did not ensure that community divisions in El Alfalfal were assessed as a potential project impact and that the appropriate management measures were designed, despite having identified the existence of such divisions within the community.

The Bank **did not comply** with Directive B.6 inasmuch as it did not ensure that, during project execution, information was disclosed to, and a dialogue was established with, all parties in El Alfalfal affected by construction of the project.

Source: Prepared by the authors based on various documents obtained during the investigation.

IV. RECOMMENDATIONS

- 4.1 The MICI believes that the value added of a Compliance Review process like the one presented here is twofold: first, with respect to the operation being investigated specifically, in order to correct and/or strengthen the sustainability of the project; and second, in terms of areas or subjects connected to the Operational Policy framework that pose challenges at the time of implementation, for which the independent insight of the MICI can support the Bank's ongoing improvement process. With regard to the latter, it is worth noting that the IDB Group is currently reviewing its environmental and social sustainability frameworks. Accordingly, the scope of the general recommendations bridges the existing policies and those now being designed.
- 4.2 The recommendations presented here seek to address these two aspects of the Compliance Review, and are submitted to the Board of Executive Directors for its consideration and approval of their adoption. Under the MICI Policy, if the Board of Executive Directors accepts these recommendations and deems them appropriate, it will instruct Management to prepare an action plan in consultation with the MICI and submit that plan to the Board for consideration. If appropriate, the MICI will monitor the implementation of any action plan or plan for corrective or remedial action adopted as a result of this Compliance Review. For this Compliance Review, it should be kept in mind that the project is now in execution. Accordingly, the MICI's recommendations are divided into specific recommendations for the project and general recommendations for the IDB Group.

Specific recommendations for the project	
Recommendation 1.	<p>Complete an impact assessment on recreational, tourist, and scenic uses at the earliest opportunity, including a management plan for the identified impacts, as required under Directive B.5 of Operational Policy OP-703.</p> <p>Ensure that the environmental and social management plan is consistent with the identified impacts with a view to preventing the harm from occurring and, if it cannot be prevented, put mitigation or offset measures in place within an appropriate environmental and social management plan.</p> <p>Ensure that both the study and the management plan are disclosed in a timely manner and sufficiently in advance to enable the affected population to participate in a meaningful consultation process in keeping with the standards of Directive B.6 of Operational Policy OP-703, i.e., by establishing a two-way dialogue for meaningful consultations.</p> <p>Ensure that measures are put in place to monitor compliance with the management plan during the project's operation phase, consistent with the requirements of Directive B.7.</p> <p>Establish a timetable for execution of these measures, consistent with the requirements of the Operational Policies and project progress.</p>
Recommendation 2.	<p>At the earliest opportunity, request a comprehensive assessment of the potential social and economic impacts of the flow of workers and the measures taken during the construction phase, once the project enters the operation phase.</p> <p>Based on this assessment, design and implement measures to mitigate, offset, and manage the identified impacts, to be supervised by the Bank.</p>
Recommendation 3.	<p>Require an assessment, reflecting a gender perspective, of the social and economic impacts of worker migration, to determine:</p> <ol style="list-style-type: none"> 1. Whether gender impacts on the population have occurred, thus far.

	<p>2. Whether the decision to allow workers lodging within the community has impacted, and will impact, the community's female population to a greater degree.</p> <p>The mitigation measures resulting from the assessment should reflect the gender perspective and ensure that the differentiated impacts are not perpetuated.</p> <p>Lastly, ensure that the assessment is performed/supported by gender specialists using appropriate methodologies for studies of this kind.</p>
Recommendation 4.	<p>Introduce (either in the environmental and social, health, and safety action plan (ESHSAP) or in a corrective action plan, as most convenient based on the project's arrangements) a mitigation measure in relation to the mule drivers' activities during the construction stage, consisting of ensuring that a communication protocol is in place to make this group aware of blocked roads and trails, as well as blasting schedules, sufficiently in advance, and supervise the Client's compliance with this measure.</p>
Recommendation 5.	<p>Require an analysis of whether the existing mitigation measures are adequate in view of the updated traffic increase data, considering the cumulative impacts; establish a corrective action plan if the mitigation measures are found to be inadequate; and strictly supervise the plan's implementation during the remainder of the construction stage</p>
General recommendations for the IDB Group	
Recommendation 6.	<p>Strengthen IDB Group staff understanding and capability to implement the requirements of Operational Policy OP-761 and any relevant policy applicable to the process of identification, assessment, and mitigation of gender-based impacts in operations, as well as related to any requirements ensuring the safe, effective participation of vulnerable groups. Specifically, develop guidelines for implementing Operational Policy OP-761 and other policies related to such impact, in order to strengthen compliance with these policies and their proper implementation in Bank operations.</p> <p>Establish a blanket zero tolerance policy toward gender-based violence as part of the IDB Group's environmental and social safeguard policies, and ensure that this policy is incorporated into the contractual conditions of operations approved by the IDB Group.</p>
Recommendation to develop an action plan	
Recommendation 7.	<p>Management should develop an action plan, in consultation with the MICI, for implementation of the recommendations in this report that are approved by the Board of Executive Directors. This plan should contain an implementation schedule compatible with the operation underlying the investigation, to be monitored by the MICI in accordance with paragraph 49 of the MICI Policy.</p>

- 4.3 Pursuant to paragraph 48 of the MICI Policy, following its consideration by the Board, this report will be published in the Public Registry along with Management's response and the Board's final decision.
- 4.4 If the action plan for addressing the recommendations is approved by the Board of Executive Directors, the MICI will prepare a monitoring plan and issue monitoring reports periodically according to the implementation schedule for the proposed actions.

**ANNEX I: MANAGEMENT’S COMMENTS ON THE PRELIMINARY VERSION OF THE
MICI COMPLIANCE REVIEW REPORT ON THE ALTO MAIPO HYDROELECTRIC POWER
PROJECT IN CHILE**

**JOINT RESPONSE OF IDB-IDB INVEST MANAGEMENT TO THE DRAFT COMPLIANCE REVIEW
REPORT ON THE ALTO MAIPO HYDROELECTRIC POWER PROJECT IN CHILE**

MICI-BID-CH-2017-0115

I. INTRODUCTION

- 1.1 Management at the Inter-American Investment Corporation (“IDB Invest”) and at the Inter-American Development Bank (“IDB”), hereinafter and jointly “Management,” would like to thank the Independent Consultation and Investigation Mechanism (“MICI”) for having shared the Draft Compliance Review Report on the Alto Maipo Hydroelectric Power Project in Chile, MICI-BID-CH-2017-0115 (“Report”).
- 1.2 Management acknowledges the MICI’s efforts in fostering avenues for discussion of the issues set out in the report.
- 1.3 It is Management’s belief that, in the preparation and execution of the Alto Maipo Hydroelectric Power Project (“Project”), it has substantially complied and ensured compliance with the Bank’s environmental and social policies¹ applicable to this operation. However, Management is also aware that, beyond mere compliance with these policies, there may be opportunities for improvement that could add value to the environmental, social, and occupational health and safety management of the Project.
- 1.4 As requested, and with a view to constructively contributing to the MICI’s efforts to conduct an impartial Compliance Review regarding the Alto Maipo Hydroelectric Power Project in Chile, Management offers the comments below.

II. THE ALTO MAIPO PROJECT

- 2.1 

¹ <http://www.iadb.org/es/acerca-del-bid/politicas-operativas-sectoriales,6194.html>. Operational Policies: Environment and Safeguards Compliance Policy (OP-703); Disaster Risk Management Policy (OP-704); Operational Policy on Involuntary Resettlement (OP-710); Operational Policy on Gender Equality in Development (OP-761); and Operational Policy on Indigenous Peoples (OP-765). <http://www.iadb.org/es/acerca-del-bid/politicas-operativas-generales,6235.html> Access to Information Policy (OP-102).

- [REDACTED]
- [REDACTED]
- 2.2 The Alto Maipo Hydroelectric Project consists of the construction and operation of two run-of-the-river hydroelectric plants in hydraulic series with a combined capacity of 531 MW (the Alfafal II Plant with 264 MW and the Las Lajas Plant with 267 MW). For the operation of these two plants, the Project will capture water from four tributary estuaries of the Volcán River and from the Yeso River, the Aucayes Stream, and the Colorado River.
- 2.3 Close to 90% of the planned construction works are underground, including the two powerhouses. The Project's development will also require the construction of approximately 67 km of tunnels, four inverted siphons to cross four streams, two surge tanks (forebays), and ancillary facilities including approximately 31 km of new access roads, four new bridges, 17 km of new transmission lines (110/220 kV), improvements to existing roads and electrical substations, water intakes, raceways, temporary camps, storage areas, and other works. As a run-of-the-river plant, the Project does not require any dams or regulating reservoirs.
- 2.4 Despite a number of positive environmental and social features,² the operation was classified as Category "A," given its nature and in keeping with Directive B.3 of the Bank's Environment and Safeguards Compliance Policy (Operational Policy OP-703).
- 2.5 The Project, under construction since 2012, is supervised by a redundant system of internal authorities (contractors, the Technical Works Inspectorate (ITO), and the Project) and external authorities.³ The external supervision authorities are: (i) the Superintendency of the Environment (SMA); (ii) the different sector offices with jurisdiction over environmental, health, and labor matters, natural resources, and public infrastructure,⁴ such as: the Regional Office of the Ministry of Health (SEREMI de Salud); the National Forestry Corporation (CONAF); the Agriculture and Livestock Service (SAG); the National Monuments Council (CMN); the Labor Inspectorate; the Regional Office of the Ministry of Transportation (SEREMI de Transporte), the Water Bureau (DGA), the Hydraulic Works Department (DOH), and others; (iii) the independent environmental audit authority;⁵ and (iv) the enders' environmental and social teams, acting directly and through Environmental Resource Management (ERM),⁶ a firm serving as Independent Environmental and Social Consultant (CASI).

² Generation of around 2,300 GWh per year of clean, renewable energy that displaces close to one million tons of CO₂ per year; not requiring dams or new reservoirs; most of the works are underground; not requiring physical resettlement of people; not affecting any indigenous community, directly or indirectly; not leading to loss of habitats due to flooding by not requiring a storage reservoir, etc.

³ These bodies require ongoing reporting and perform both physical and desk supervision and inspection activities.

⁴ Local authorities have spent approximately 170 days in the field carrying out inspection activities.

⁵ From 2012 to date, the Independent Environmental Auditor has been making field inspections twice a month, totaling approximately 192 days of field work.

⁶ ERM has visited the project 4 days every 4 months, on average, totaling 128 days of field work.

- 2.6 [REDACTED]
- 2.7 [REDACTED]
- 2.8 From the operation's approval until December 2015, environmental and social supervision of the Project was performed by IDB Management. From January 2016 onward, IDB Invest Management has been responsible for the Project's environmental and social supervision.

III. RESPONSE TO THE MICI'S ARGUMENTS

III.A Use of the Performance Standards for supervision

- 3.1 The IDB Invest Environmental Sustainability Policy includes the environmental and social policies and the IFC Performance Standards;⁹ the terms and conditions of the Loan Contract entered into with the Client specifically indicate (pp. 5, 6, and 30) that the environmental and social policies applicable to the Project include the environmental, social, health, and safety standards of conduct set out in the Performance Standards; analyzing the environmental and social policies applicable to the Project and comparing them with the Performance Standards revealed a direct correspondence; and use of the Performance Standards makes it possible to address issues not explicitly included in the environmental and social policies (especially those related to: environmental and social management system – Performance Standard 1, labor and occupational health and safety - Performance Standard 2, and community health and safety - Performance Standard 4). In view of the above, as of 2018, IDB Invest is using the Performance Standards as a benchmark when evaluating the results of its environmental, social, and occupational health and safety (ESOHS) supervision missions for the Project.
- 3.2 It is also worth noting that, as of 2019, IDB Invest's ESOHS supervision reports include an assessment of the risk associated with any deviations from compliance

⁷ Until 2017, the project had two major contractors: (i) Constructora Nuevo Maipo (CNM), consisting of the German firm Hochtief and the Italian firm CMC Di Ravenna, in charge of the work in El Volcán and El Yeso; and (ii) the Austrian firm Strabag, in charge of the other work sites (Alfalfal II and Las Lajas).

⁸ Rather than a restructuring, this was a rescheduling of the operation.

⁹ https://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/policies-standards/performance-standards.

identified during the supervision missions. This has made it possible to prioritize corrective actions based on the risk of such deviations.

III.B Alteration of water flows in the targeted rivers. Impacts on recreational and economic activities in the area.

- 3.3 Management is in complete agreement with the MICI's assertion¹⁰ that, more than five years having passed since the need to conduct a robust study of potential Project impacts on recreational activities in the targeted rivers was first identified,¹¹ there is still no assessment of such impacts on the terms required by the Bank. This is exactly what has been captured in IDB Invest's ESOHS supervision reports, as indicated in the Report.
- 3.4 The first two deadlines in the table of deliverables mentioned in the Loan Contract were not met. However, deliverable 3 in the Report's Table 6 "Deliverables and deadlines under the Loan Contract"¹² also indicates that the management measures to mitigate or offset any impact on recreational activities are to be ready and documented 60 days before the start of operations or by 31 January 2018, whichever occurs first.
- 3.5 As indicated above,¹³ the delays in the Project made it simply impossible to meet this deliverable deadline by 31 January 2018, not because of any failure by IDB Invest to request this insistently in its supervision reports, but because the conditions in place prior to and at the time of the two restructurings had already created significant time lags in the Project execution schedule.
- 3.6 That said, Management differs from the MICI's view that "its supervision work and the information provided by the CASI, Management was aware of the noncompliance regarding this gap and had multiple opportunities, in the context of the disbursements, to demand compliance both with the contractual requirements under the ESHSAP and with the requirements of the Relevant Operational Policies. Thus, the MICI finds that Management did not comply fully with its obligation of supervision under Directive B.7 of Operational Policy OP-703."¹⁴ Our difference of opinion is essentially based on the following: (i) this issue has been constantly raised in the supervision process; (ii) the condition of having **a robust plan in place to manage the Project's potential impacts on recreational activities has not been waived and continues to be a contractual condition**; (iii) the final study of Project impacts on recreational activities should be ready in the coming weeks; and (iv) the Project will not modify the water flows in the targeted rivers until it enters its operational stage, which is projected to occur in the third quarter of 2021, almost two years from now.

¹⁰ According to paragraph 2.53 of the Report received on 6/12/19.

¹¹ Critical gap #1 identified in the ESDD report.

¹² According to paragraph 2.41 of the Report received on 6/12/19.

¹³ Paragraph 2.6 of this document.

¹⁴ According to paragraph 2.57 of the Report received on 6/12/19.

- 3.7 Separately, regarding possible noncompliance with Directive B.6 of Operational Policy OP-703 regarding this issue, Management wishes to state the following:
- (i) The action plan in the January 2019 Environmental Supervision Report required the Project¹⁵ to submit a final study of recreational water uses by the end of March 2019, together with a strategy for the dialogue process with rafting and kayaking operators and evidence that such dialogue had been initiated.
 - (ii) The Environmental Supervision Report of the next Management mission to the Project¹⁶ evaluated the progress made on meeting these requirements. Given that: (1) according to the Project, by failing to analyze how the Yeso reservoir regulates the Yeso River's flow, the report calculated lower river volumes than those actually occurring; and (2) there should be no impact on recreational and commercial rafting and kayaking activities, since the Project is not capturing water from the rivers to generate power; Management set a new date (first quarter of 2020) for fulfillment of these requirements.¹⁷
- 3.8 Importantly, the preliminary study of recreational water uses, conducted in May 2017, as well as the second report, dated March 2019,¹⁸ both prepared by ERM, conclude that the Project should produce low or marginal impacts on recreational uses of the targeted rivers (Volcán, Yeso, Colorado, and Maipo).
- 3.9 Elsewhere, in the analysis of the connection between the noncompliance identified by the MICI and the alleged harm,¹⁹ the concept of "ecological flow" is (as indicated in the Report itself) used incorrectly to take into account only the ecosystem's needs, without including the requirements for recreational use of the targeted rivers.²⁰ In this regard, the design of the Project used the concept of "minimum flows," which includes the flows required to ensure ecosystem needs plus the flows required to ensure water uses. For the former, the design used the Instream Flow Incremental Methodology²¹ (IFIM) and Physical Habitat Simulation (PHASBIN) methodologies,²² while the latter were determined through an analysis of water uses that included consumption and recreational uses.
- 3.10 The Report does not establish any harm from the Project's potential impacts on recreational water uses. This is because no harm has occurred to date, since the Project is not capturing water from any source to generate electricity. Nevertheless, Management agrees with the MICI that it is essential to complete

¹⁵ Actions 6, 6, and 7 under the action plan.

¹⁶ Environmental Supervision Report for September 2019.

¹⁷ Actions 2, 3, and 4 under the action plan, dealing with the need for the Client to submit: (i) the final study on recreational water uses; (ii) a strategy for disseminating this study; and (iii) evidence that the dissemination process is under way.

¹⁸ A copy was sent by ERM to the lenders but cannot be officially used until the Client issues its no objection.

¹⁹ According to Section II.C.1.d of the Report received on 6/12/19.

²⁰ According to paragraph 2.62 of the Report received on 6/12/19.

²¹ <https://www.chijournal.org/R176-01>.

²² <https://hydrologicmodels.tamu.edu/physical-habitat-simulation-phabsim/hydraulic-models/>.

the study, quantify the potential impacts, and implement measures to manage them, if required.

- 3.11 Management agrees with the MICI that there is an open window of opportunity to prevent potential Project harm to recreational water use activities from materializing, since this would occur in the Project's operational phase. It is precisely for this reason that Management has been requiring that the Client complete the studies and begin the process of engaging both commercial and recreational rafters and kayakers to jointly analyze the potential impacts and the measures to manage them.

III.C Worker migration. Gender-differentiated impacts.

- 3.12 The Project's two restructurings caused the number of construction workers to increase from the 2,500²³ projected at the date of the ESDD report to the almost 5,500 currently employed. However, since the workforce operates on a shift system to guarantee workers their mandatory rest days, not all workers are working and occupying the housing facilities provided at camps or in communities adjacent to the Project at the same time. Consequently, the Client's assertion (mentioned by the MICI) that "only half of these [5,500] workers are 'actively' working for the Project in the district, including workers working their shift as well as those overnighing in the community or in camps during their time off," is a fairly true depiction of reality.
- 3.13 As indicated in the relevant environmental and social management report (ESMR), it is essential for projects of this type to have an environmental, social, and occupational health and safety management system (ESOSMS) in place. The reasons include the following: (i) the environmental and social assessment process cannot predict *all* environmental and social impacts of a project, given that the environment varies over time and may change suddenly and unpredictably; and (ii) any infrastructure project, especially if it is a complex undertaking, tends to introduce variations aimed at adapting it to the different conditions that may arise over time. That said, every project supervision exercise by IDB Invest thus far has included an assessment of the ESOSMS, to determine whether it is capable of, among other things: (i) performing the tasks envisaged in the respective environmental, social, and occupational health and safety management plans; (ii) operating properly; (iii) identifying any impact or risk not previously identified in the environmental assessment process; and (iv) proposing measures for managing these impacts or risks.
- 3.14 The fact that the MICI has not found any specific studies evidencing a reassessment of the potential impacts of an increase in the number of Project workers does not mean that such analysis was not performed. This task was carried out by the ESOSMS, and it was this system that, after assessing the

²³ This calculation refers to the total number of workers present at the various construction sites at the same time.

potential impacts, implemented then and continues to implement measures²⁴ to manage their effects.

- 3.15 In view of the foregoing, in June 2018 Management prompted the lenders to ask the Alto Maipo Hydroelectric Power Project (through a third party) for a study to determine whether the presence of workers housed within the district of Cajón del Maipo had produced adverse social and economic impacts on the population.²⁵ This study, based on surveys of residents in four of the area communities, workers housed within the district, and qualified informants,²⁶ arrived at the following general conclusions: (i) there is no perceived negative impact on the community from the presence of workers housed outside the camps in terms of quality of life, public safety, and law and order; (ii) the problems and complaints of noise and conflicts arising from coexistence occur in rented homes rather than in boarding houses, where workers are more closely supervised (due to the schedules and rules imposed by the boarding house owners); (iii) the workers and the community share the same perception on all surveyed issues; and (iv) while the presence of a significant number of workers living in the heart of a community creates impacts, these are for the most part positive (energized local economy, increase in jobs, etc.).
- 3.16 The study also looks at the impacts related to quality of life, income and employment, and public safety and law and order. With regard to quality of life, it concludes that: (i) relations between workers and the community are limited, largely because of clear project regulations aimed at keeping order among workers; (ii) there is a general perception that the presence of workers outside the camps does not affect the quality of life of the population; and (iii) the impact on quality of life identified by residents has more to do with the presence of the Project than with that of the workers.
- 3.17 With regard to income and employment, the study concludes that: (i) there is a positive perceived impact on the district's income, since the influx of workers has led to the development of new businesses and the expansion of existing businesses; and (ii) the community perceives benefits in terms of indirect employment, i.e., not only due to the jobs of those who have been hired by the Project but also due to the growth of small and medium-sized enterprises (SMEs) resulting from the presence of the workers.
- 3.18 With regard to public safety and law and order, the study concludes that: (i) there is a perception that workers are not particularly involved in situations that can affect public safety and law and order; (ii) safety issues affect Project workers to the

²⁴ These measures include: (i) introducing a behavior card for the workers to be housed in the communities; (ii) classifying the region's hotel capacity based on proximity and contact with the communities; (iii) mandatory use of the transportation provided by the Client for travel from the accommodation point to the project and vice versa; (iv) adopting a specific grievances and complaints mechanism for accommodation sites outside the project; and (v) introducing curfew hours to prevent workers from leaving their accommodation sites.

²⁵ Análisis de los impactos sociales y económicos en las poblaciones del Cajón del Maipo, generados por la presencia de trabajadores del PHAM que se alojan fuera de los campamentos [Analysis of the social and economic impacts on the communities of Cajón del Maipo stemming from project workers housed outside the camps], prepared by Clodinámica.

²⁶ Informants included men and women of various ages and neighborhoods, many of whom live in proximity to the hotel facilities that are being used to house workers.

same extent as the rest of the district's population, since workers have also been victims of robberies and criminal acts; and (iii) phenomena such as prostitution and street brawls (which in any event are rare) are not associated with workers or their presence in the communities.

- 3.19 These conclusions were verified by Management when interviewing officers from the Cuerpo de Carabineros de Chile [Chilean Police Force] (CCC), who confirmed²⁷ that: (i) other than demonstrations against the Project (which took place primarily in 2015 and have since abated significantly in terms of intensity and duration), there have not been any major instances of disorderly conduct in Cajón del Maipo since the Project's arrival; and (ii) there have been no reports of misconduct by Project workers lodged in hotel facilities in the Cajón del Maipo communities or of harassment or rape²⁸ involving them or the community in general.
- 3.20 Management suggests that the MICI carefully review the conclusions of this study and corroborate the Chilean Police Force's assertions regarding violence in Cajón del Maipo before concluding that "the Bank did not make sure to review whether the Project's existing management measures were adequate or whether adjusting them was necessary in view of the increase in the number of Project workers."²⁹
- 3.21 As noted in the Report,³⁰ the positive impact of the decision to house workers in the community rather than in camps, in terms of the significant economic benefit for community members, is temporary. To counteract the potential negative effect once the Project enters its operation phase, the workforce demobilization plan³¹ that Management has required the Alto Maipo Hydroelectric Power Project to carry out includes a series of measures³² (some of which are already in execution) to be implemented by the Project prior to the completion of the works.
- 3.22 With regard to the assessment of gender-based impacts, Management has sought, in its project supervision process, to include gender issues systemically and in accordance with the requirements of Operational Policy OP-761. In 2019, as part of this effort and as a result of lessons learned, IDB Invest adopted a gender-risk assessment tool that is now being used in ESDD processes to assess the potential effects of a project on gender issues. The results of these assessments are being incorporated into the environmental and social action plans (ESAP) for the operations in question.

²⁷ Environmental Supervision Report for March 2018.

²⁸ Management is aware that this source of information may not be the best indicator, since many instances of rape are not formally reported. However, in addition to the fact that only a single case has been reported and processed through the grievances and complaints system, this generally suggests proper conduct by workers in this regard.

²⁹ According to paragraph 2.93 of the Report received on 6/12/19.

³⁰ According to paragraph 2.95 of the Report received on 6/12/19.

³¹ The demand for this plan was made in compliance with Performance Standard 2, since the labor issue is not included in the Bank's environmental and social policies.

³² Contained in the programs for: (i) support to local entrepreneurs to formalize their economic activities and organize as SMEs; (ii) support to the community to strengthen the value chains and gain access to markets beyond El Cajón del Maipo or the Santiago Metropolitan Area; and (iii) strengthening the supply of services in El Cajón to attract more agents requiring those services (tourism, etc.).

- 3.23 Management agrees with the MICI's assertion that "while the Bank did not ensure that the Project had an impact analysis with a gender perspective," it did demand the adoption and implementation of measures capable of influencing the management of potential impacts on women due to worker migration, including the project induced in-migration (PIIM) plan, the community relations regulations, and the zero tolerance for sexual harassment campaign.
- 3.24 With respect to the first two of the above-mentioned measures, Management also agrees with the MICI that they provide general guidelines for good conduct and make some allusions to gender. However, with respect to the third measure, Management disagrees with the Report since the zero tolerance for sexual harassment campaign was expressly conceived and implemented from a gender perspective, seeking to prevent, monitor, and report any form of sexual harassment.
- 3.25 Management also agrees with the MICI that, while it is impossible to determine whether the impacts produced by the migration of Project-related workers caused harm to the population from a gender perspective, the aforementioned measures could be fine-tuned to provide better coverage of the gender issue and the ESDD process could have addressed this issue more comprehensively. In this regard, Management is open to any recommendation that will allow it to improve how it performs its supervision tasks.

III.D Decline in the area's economic activities. Impacts on tourism and recreation.

- 3.26 The report divides the analysis of the decline in the area's economic activities and the impacts on tourism and recreation into three sections: (i) impacts on economic and tourist activities involving mule drivers; (ii) impacts due to Project vehicle traffic; and (iii) impacts on the social fabric and divisions within the community. Management's response to this analysis will also be similarly structured.

III.D.1. Impacts on economic and tourist activities involving mule drivers

- 3.27 The environmental and social assessment process for the Project included an analysis of the potential impacts on the Project's main stakeholders. This included mule drivers, a subgroup of the area's population who practice traditional cattle farming and grazing and organize horseback riding trips for groups interested in mountain sports, primarily in the Colorado River valleys (Maitenes and El Alfalfal) and in the community of Baños Morales. The analysis found that the Project's potential impacts on mule drivers would not be significant in view of their mobility and versatility when carrying out their activities.³³
- 3.28 Nevertheless, Management has been monitoring potential impacts on mule drivers, as evidenced in the ESOHS supervision report for March 2018, which acknowledges the improvements made by the Project to the roads used by mule drivers and cattle farmers.
- 3.29 With respect to the MICI's assertion that the Bank, in the ESDD process, failed to consider effects on mule drivers as part of the tourism impacts and failed to consult them, it is worth noting that the stakeholders' map prepared as part of the due diligence process did include them. In addition, when it was determined that the

³³ Most mule drivers move "cross-country" without any fixed pattern.

Project construction activities could affect mule drivers, even if marginally, they were regularly provided with informational leaflets on construction progress with a view to preventing any impact on their activities.

III.D.2. Impacts due to Project vehicle traffic

- 3.30 The environmental impact assessment (EIA), environmental and social management plan (ESMP), ESDD process, environmental and social management report (ESMR), and cumulative impact study concurred in finding that one of the potential impacts of Project construction would be the rise in vehicle traffic on the roads adjacent to the work sites, leading to increased traffic congestion and decreased road safety. The most significant measures that were formulated to manage these impacts are the following: (i) strict monitoring to minimize impacts on health and safety in the community; (ii) implementation of a specific grievances and complaints mechanism; (iii) bimonthly monitoring of vehicle traffic on the roads during the first three years of construction; (iv) introduction of visual aids to differentiate Project vehicles; and (v) prevention of traffic accidents through road safety courses and training for drivers of Project vehicles. All these measures are being applied to a greater or lesser extent since the start of the Project's construction phase.
- 3.31 Starting in 2015, a global positioning system (GPS) tracker was installed in all Project vehicles to monitor traffic on the roads leading to the Project. This device allows the vehicle's position and speed to be established in real time. Other actions included creating a participatory traffic monitoring team and adopting a system of incentives for drivers who obey the traffic rules instituted by the Project and penalties for those who violate them, including termination of Project employment for repeat offenders.
- 3.32 Management's supervision reports document the effectiveness of these measures and how speeding by drivers of vehicle projects was controlled in a relatively short time. Moreover, it is worth noting that the upgrades made by the Project to the access roads to Cajón del Maipo benefit not only the Project's vehicles but also those traveling from Santiago to the El Cajón sector and adjacent areas, and vice versa.
- 3.33 Since their inception, the traffic monitoring teams have been checking the speed of vehicles moving on the roads adjacent to the Project and reporting those that exceed the preestablished speed limits. This has made it possible to penalize speeding drivers of Project vehicles and bring the impacts of such vehicles under control. However, violators include not only Project vehicles but also private vehicles, which by law are subject to Chilean Police Force control.
- 3.34 Chilean Police Force statistics for San José de Maipo indicate that, among the 4,700 traffic violations and 2 fatal accidents occurring in 2017, there was only one violation by a Project worker.³⁴ The Chilean Police Force also notes that, while the access road to El Cajón is overwhelmed due to an extraordinary increase in the number of private vehicles (given the fact that the Project paved the road and improved the access roads to both the Volcán and the El Yeso areas, both of which are considered tourist areas), the speed monitoring system implemented by the

³⁴ Strabag worker arrested for drunk driving.

- Project for Project vehicles has proven very good and has also dissuaded drivers not associated with the Project from exceeding the speed limits upon noticing the presence of the monitoring teams.³⁵
- 3.35 With regard to the use of part of the right of way as a parking area for the private vehicles of some Project workers, the Chilean Police Force clearly indicated that this is not an offense or violation since: (i) the vehicles are not a threat either to vehicle traffic or to pedestrians; and (ii) the land used as a parking area belongs to the national government, since it is part of the right of way. Thus, the Chilean Police Force representatives stated³⁶ that the vehicle owners cannot be barred from continuing to use these areas for parking.
- 3.36 The Client is similarly unable to apply any restriction on the use of those areas for parking purposes. Since they are considered “public,” any prohibition by the Project on their use as parking lots by its employees could very well lead to an action for protection of constitutional rights on the grounds that the Project is interfering with Chileans’ right to the use and enjoyment of public goods and to free movement throughout the nation’s territory.
- 3.37 As indicated in the Environmental Supervision Report for March 2019, as of that date there had not been any major complaints regarding vehicle traffic. The community of San Gabriel had initially reported inconveniences due to the increase in vehicle traffic. However, after the issue had been reported and the Project had decided that most Project workers were to be housed in camps, traffic had subsided and was concentrated during authorized hours. It is worth noting that, between 2014 and the first quarter of 2019, the grievances and complaints system recorded only 51 complaints related to traffic problems, for a monthly average of less than one.
- 3.38 With respect to the hours set out in the environmental classification resolution³⁷ (ECR) for operation and movement of heavy traffic, the Project’s deviations resulted in the imposition of a set of penalties³⁸ by SMA that were subsequently translated into a compliance plan³⁹ to correct them. This plan is in execution and provides for online monitoring through the GPS trackers installed in the Project’s buses and trucks to verify compliance with the committed schedules and implement corrective action if needed.
- 3.39 Management agrees with the Report’s conclusion that there has been an increase in vehicle traffic on the roads adjacent to the Project as a result of the construction work; that the increase in traffic is due not only to the Project but also to the road upgrades and improved road access to tourist places (El Yeso and Volcán areas); and that it is hard for residents to identify and differentiate Project vehicles. However, since the MICI’s investigation does not determine whether the alleged impacts resulted in any harm to the residents, Management considers that the

³⁵ Many private drivers, when seeing the project’s traffic monitoring teams, immediately slow down, unsure whether it is a Chilean Police Force or project monitoring activity.

³⁶ Environmental Supervision Report for March 2018.

³⁷ The environmental license.

³⁸ Resolution 1/Rol D-001-2017 of 20 January 2017.

³⁹ Submitted by Alto Maipo to the Superintendency of the Environment on 16 February 2017 and approved in April 2018 through Resolution 29 / ROL D-001-2017.

conclusion that “it is likely that harm is occurring as alleged by the Requesters” is an assumption rather than a conclusion grounded in tangible evidence. This is particularly true since the periodic reports issued by the consultant AMBITRANS⁴⁰ indicate that the traffic impact associated with the Project’s vehicles is the same, in terms of significance and projections, as was stated during the process of obtaining the ECR for the Project.

III.D.3. Impacts on the social fabric and community divisions in El Alfalfal

- 3.40 El Alfalfal is a small settlement of approximately 60 families located on the right bank of the Colorado River, only a few meters downstream from the control room of the Alfalfal I project, in a semiarid region. In the vicinity are the Colorado River intake works, the surge tank (covering approximately 75 hectares), and the headrace tunnel for the Las Lajas plant. El Alfalfal arose from an unauthorized settlement (adverse possession) that occurred several years prior to the start of the Project’s construction. Although it was an established hamlet by the time Project construction began, the Chilean authorities were unable to formalize it because of its location in a high-risk area, namely the convex portion of one of the curves of the Colorado River.⁴¹
- 3.41 The environmental assessment and ESDD processes identified that the main potential impacts on this community during Project construction would be an increase in noise and dust generation. To counteract these impacts, the following was proposed (and approved under the ECR): (i) construction of a temporary noise barrier between the settlement and the Colorado River, to mitigate the effects of the noise; (ii) sprinkling of exposed ground surfaces to control the production of dust; (iii) establishment of work hours from 8:00 a.m. to 9:00 p.m.; and (iv) monitoring of noise and particulate matter at various points.
- 3.42 The temporary noise barrier was installed between late 2014 and early 2015 in accordance with the ECR requirements. At the request of the residents, this structure was subsequently expanded to enclose the entire settlement and protect it from the fine material landslides constantly occurring in the northwest corner that borders the local hills. The exposed soil is being sprinkled since the Project began earth movement in the area; the work hours have been adhered to since the start of construction; and noise and dust monitoring have been consistently performed.
- 3.43 The results of the noise and dust monitoring prompted Management to request that the Project⁴² design and adopt measures to avoid exceeding the noise (especially nighttime noise) and particulate emission standards, both Chilean and international. However, this has not been feasible in all circumstances, primarily

⁴⁰ Firm specializing in road impact assessment, under contract to track and monitor traffic since the start of project construction.

⁴¹ It is worth noting that the settlement will presumably cease to be a risk area, thanks to the river protection works being carried out by the project in the El Alfalfal sector. At that point, the process of legalizing this land for the community could be initiated, with the help of the project.

⁴² Management asked the Client for a technical report analyzing the ambient (base) noise levels in the El Alfalfal sector, to verify whether they exceeded the standard by themselves. This report concluded, among other things, “that the Alto Maipo project’s work in the El Alfalfal sector did not significantly add to the average noise recorded on a normal day (without project work) in that location, the difference falling within the range defined by Chilean standard NCh 1619-79 as ‘no reaction’ from the community.”

because at certain times of year:⁴³ (i) the ambient noise produced by the Colorado River current is comparable to the maximum permissible noise under the guidelines, especially for the daytime; and (ii) the particulate load in the air due to the natural wind erosion produced in the Colorado River valley is very high, so much so that it minimizes the Project's continuous sprinkling of all exposed soil surfaces.

- 3.44 The preceding explanation makes it clear that the problems of excessive noise levels and particulate matter in the air are largely due to the characteristics of the environment. However, Management agrees with the Report's conclusion that no harm has come to the community as a result of these temporary impacts.
- 3.45 With respect to the allegation that the consultation process did not involve the three community organization structures in El Alfalfal (advancement committee, neighborhood council, and stakeholder committee), it is worth highlighting that, as required by Directive B.6 of Operational Policy OP-703, the consultation and information disclosure process conducted as part of the Project ensured that there would be no barrier or bias in the invitations to the relevant events preventing stakeholders from participating freely.
- 3.46 The Project's consultation and information disclosure activities started in 2008 with the launch of the environmental impact assessment (EIA) process. In 2014, when the community participation program forming part of the Project's ESMP began to be implemented, the only community organization existing in the community of El Alfalfal was the advancement committee. Thus, in August of that year, the Project signed an agreement with this committee to carry out a series of social programs.⁴⁴ It was only in May 2015, i.e., several months later, that Chile's Servicio de Registro Civil e Identificación [Civil Registry and Identification Service] recognized the El Alfalfal Neighborhood Council as a nonprofit organization.⁴⁵
- 3.47 In October 2015, the Project made a public call to the residents of El Alfalfal to revisit issues related to the Project's potential impacts, the management measures to be implemented, and the compensation programs to be executed. This call was answered by representatives of the advancement committee, the newly created neighborhood council, and the stakeholder committee, a recently formed organization. Unfortunately, since that meeting, the acting chairman of the neighborhood council expressed his full opposition to the Project and refused to continue the dialogue, removing himself from the process. However, as required by Directive B.6 of Operational Policy OP-703 and without any form of discrimination, the Project continued to invite the entire population of El Alfalfal to subsequent consultation and information disclosure events, several of which were attended by the secretary and the treasurer of the neighborhood council, as shown by the respective attendance lists.
- 3.48 It is worth noting that, according to the Implementation Guidelines for Directive B.6 of Operational Policy OP-703, consultations for category A projects *may* be preceded by an analysis of the parties involved (stakeholder mapping); affected

⁴³ Baseline taken at the time that the project's EIAs were prepared.

⁴⁴ Agreement signed in August 2014, with Mrs. Victoria Ortega Espinoza acting as representative of the El Alfalfal Advancement Committee.

⁴⁵ Board of Directors Certificate of Nonprofit Organization No. 232488 of 14 May 2015.

parties should be consulted at least twice during project preparation; these operations should have a public consultation plan defining the objectives and methodology for performing the consultations; and the first consultation should occur during the scoping phase of the environmental assessment process, and the second when the impact assessment is being reviewed.⁴⁶ Management believes that it has fully complied with the provisions of this directive: not only has the mapping of stakeholders been done, the two consultations conducted as required, and a public consultation plan prepared (which is constantly being updated through the ESOSMS), but the Project has been carrying out a participation process with the community of El Alfalfa. Management would also like to highlight that, in terms of implementing the requirements of the aforementioned directive, Management has always endeavored to ensure that the invitations and the consultation process itself are open, transparent, and in good faith. However, it cannot ensure that all community organizations actually participate, especially when some decide for whatever reason to refrain from taking part in these processes.

IV. MANAGEMENT'S COMMENTS ON THE RECOMMENDATIONS IN THE REPORT

- 4.1 Management is grateful to the MICI for the recommendations made as a result of the Compliance Review Process for the Alto Maipo Hydroelectric Power Project and is generally in agreement with these recommendations, on the understanding that their adoption and subsequent implementation will add value to the work it has been doing in managing the operation.

⁴⁶ Paragraph 6 of the Implementation Guidelines for the Environment and Safeguards Compliance Policy, corresponding to Directive B.6.