

Fred P. Hochberg
President
Export-Import Bank of the United States
Washington, D.C.
[Via e-mail]

May 10, 2010

Re: Pascua Lama

Dear President Hochberg,

It has come to our attention that the Ex-Im Bank has received a request to finance the binational Pascua Lama mine. We are writing to strongly urge that the Ex-Im Bank reject financing for the Pascua Lama mine.

The Pascua Lama project company, Barrick Gold, has taken a number of actions that have caused significant environmental, social and human rights impacts, and that undermine Chilean institutions and laws. These actions threaten the last remaining fertile valley in the Atacama Desert, an area that is inhabited by seventy thousand people, whose well-being is directly linked to the thriving agricultural economy. Moreover, these actions raise serious doubts regarding the company's compliance with Ex-Im Bank policies.

I. Barrick Gold's Pascua Lama mining project has promoted a weakening of Chilean environmental institutions and laws. The Free Trade Agreement negotiated between Chile and the United States identified the need to strengthen this same regulatory apparatus.

1. Environmental assessment

The company deliberately undermined the Chilean environmental impact assessment system (SEIA) by dividing the Pascua Lama project into parts, which it presented separately for evaluation. At least five components have been assessed independently of the mineral extraction project, following approval of the latter.¹ This strategy allowed the company to minimize the overall impact of the project and to hide its inter-regional character, thereby avoiding an environmental evaluation at the national level (as opposed to the less complex regional assessment). In addition, the company was able to submit relatively small projects to the evaluation system, which involve a much simpler procedure ("simple declaration") than if the project had been considered as a whole.

¹ Extension and Improvement of the Transmission Line Punta Colorada-Tres Quebradas environmental permit <https://www.e-seia.cl/documentos/documento.php?idDocumento=2464432>
Thermoelectric Center Punto Colorada environmental permit https://www.e-seia.cl/archivos/962_111.pdf
Access Roads and High Tension Lines for the Nevada and El Indio Projects environmental permit https://www.e-seia.cl/expediente/expedientesEvaluacion.php?modo=ficha&id_expediente=48
Vallenar Logistics Center environmental permit <https://www.e-seia.cl/documentos/documento.php?idDocumento=1641285>
Limestone Quarry environmental permit <https://www.e-seia.cl/documentos/documento.php?idDocumento=3738154>

2. Appearance of corruption and conflict of interest

Pascua Lama has promoted corruption among Chilean authorities, including regional authorities involved in project approval, local leaders and communities.

- a. Barrick silenced the principal farmers' organization² in the Huasco Valley by giving its management money. In June 2005, eight of the organization's directors met with the company to sign an Agreement Protocol, which provides that Barrick Gold will pay the organization \$60 million. The money is to be administered by the organization's directors, the regional "Intendente"³ and other public authorities who are involved in the project approval process. In exchange for the payment, the organization agreed to end its opposition to the project. The agreement was recognized as illegitimate by the national government. Under Chilean law, organizations of water-users are required to ratify such agreements in formal assemblies. The Barrick agreement has never received such sanction. While the government recognized the agreement's invalidity, it declined to intervene in what it characterized as a private matter.⁴
- b. Barrick gave money to government authorities who were involved in the environmental approval process for the project. In 2005, the company announced the creation of a "Sustainable Development" Foundation for which it established a \$10 million fund.⁵ The Foundation was to be presided over by the Regional "Intendente," who is also responsible for the Regional Environment Commission (COREMA), the state entity that issues project environmental permits. The environmental permit for the Pascua Lama project was approved in February 2006 by COREMA, following Barrick's announcement. Thus far, no information has been publicly disseminated regarding the creation of the Foundation, although payments have been made to public entities.⁶
- c. Barrick sought public financing for infrastructure projects intended for its private use, two years before it initiated the environmental approval process for the Pascua Lama project. Barrick succeeded in obtaining an agreement with the regional government of Atacama, dated December 22, 1998, regarding the surfacing of roads for the mine project.⁷ The same government was later involved in the approval process for Pascua Lama. The agreement concerned the use of 10 billion pesos (approximately \$21 million) for works that favored Barrick and prejudiced local residents. Increased commercial traffic on the narrow, mountainous roads that were paved under the agreement has curtailed the ability of locals to employ these surfaces for traditional uses, such as the movement of livestock.

² Organization of those who hold water rights or "regantes."

³ Representative of the President of the Republic.

⁴ DGA report that sets out the illegality of the agreement:

http://olca.cl/oca/chile/region03/pascualama/dictamen_DGA_protocolo.pdf

⁵ <http://www.olca.cl/oca/chile/region03/pascualama36.htm>

⁶ See, for example, http://www.barricksudamerica.com/noticias/detalle_comunicados.php?id=314&info=Noticias
<http://www.barricksudamerica.com/minera/atacama.php>

⁷ Text of the agreement http://olca.cl/oca/chile/region03/pascualama/convenio_de_cofinanciamiento.pdf

- d. All of the municipalities located in the province of Huasco received money and other forms of support from Barrick prior to the approval of its EIA.⁸ These municipalities participated in the EIA approval process.

II. The project does not comply with Chilean environmental legislation.

1. Noncompliance with environmental permit

One month after the Pascua Lama mining project was initiated, serious irregularities were identified during the first project inspection. The Environmental Qualification Resolution (RCA) for the project (No. 024, February 16, 2006)⁹ states that “the holder shall access the mineral resource, and works associated with the development of the project in the area of glaciers Toro 1, Toro 2 and Esperanza (shall be undertaken), in a manner that does not produce the removal, transfer, destruction or any other physical intervention in (the glaciers).”

- a. In response to a report¹⁰ prepared by the Operative Control Committee,¹¹ the Regional Environment Commission (COREMA) initiated a process¹² to sanction the company for its failure to comply with the basic conditions established under its Environmental Qualification Resolution.¹³ Irregularities include the illegal extraction of water and an increase in the presence of particulate matter. The latter reflects the company’s failure to employ appropriate mitigation methods to prevent irreversible damage to neighboring glaciers. Under the project’s RCA, as indicated above, the company is obliged to protect both hydrological resources and glaciers.
- b. In its visit to the project site in November 2009, the Operative Control Committee also discovered the presence of an “unforeseen environmental impact” to the El Estrecho glacier that was not reported by the company. This violation of the company’s environmental permit (Environmental Qualification Resolution) has not yet received sanction. The damage to El Estrecho, which was not considered in the initial environmental evaluation process, may signal the need for a new project review.

2. Glacial damage

Barrick Gold caused significant damage to three Andean glaciers before beginning mine construction. In its report of January 12, 2005, the General Water Department of the

⁸ For example, see <http://www.olca.cl/oca/chile/region03/pascualama54.htm>

⁹ Pascua Lama environmental permit https://www.e-seia.cl/externos/admin_seia_web/archivos/6316_2006_2_15_RE.pdf

¹⁰ DGA report regarding inspection of Pascua Lama <https://www.e-seia.cl/documentos/documento.php?idDocumento=4286234>

¹¹ The Operative Control Committee (Comité Operativo de Fiscalización), which is coordinated by the National Environment Commission (CONAMA), assesses compliance with Environmental Qualification Resolutions for projects that are approved through the SEIA.

¹² Resolution that initiates sanction process against Pascua Lama https://www.e-seia.cl/externos/sanciones/archivos/SAN_idExp1048260_idSan1963.PDF

¹³ The RCA is the environmental permit issued by the Regional Environment Commission (COREMA) once the environmental evaluation for a project has been completed. This document normally includes a summary of the project, presents the most relevant environmental impacts, identifies required activities and establishes a technical guide for the execution of the project.

Ministry of Public Works¹⁴ described the presence of “dirt on the surface of the glaciers,” “loss of (glacial) mass” and the “removal” of ice from glaciers. The report includes measurements indicating the significant reductions in mass experienced by several glaciers. All of these impacts are directly attributed by the Department to the activities of the company.

In a letter to the regional director of the National Environment Commission (CONAMA) from Barrick’s subsidiary, Compañía Minera Nevada Ltda., dated September 22, 2005, the company reports undertaking activities that have caused irreversible damage to the glaciers Toro I, Toro II and Esperanza.¹⁵ On page 5 the letter reads, “we are continuing with the construction of roads in the Cerro Esperanza area to identify reserves and we’re drilling at 13 points on the glacier of the same name.” On page 6: “during this time, we placed gravel on a strip approximately 3 meters wide and 100 meters long on glaciers Toro 1 and Toro 2 in order to drive on the glaciers without affecting them (...) In the case of Toro 1, the snow that falls each year on this strip is removed so that we can drive on the strip.”

In addition, Barrick plans to locate its waste rock impoundment, which will receive 1.2 billion metric tons of rock, in the headwaters of the El Estrecho River. Exposure of this rock will result in the release of heavy metals and acid mine drainage. Moreover, the impoundment site coincides with the presence of a “rock glacier”, which will be buried under the company’s waste.¹⁶

III. Barrick Gold has systematically violated the human rights of the inhabitants of the Huasco Valley.

1. Thus far, fifteen of the company’s workers have died. These deaths were hidden by Barrick until 2008, when local communities forced the company to disclose relevant information, although the company has still not revealed the names of the deceased or the cause of their deaths.¹⁷

2. The ancestral rights of the indigenous Diaguita Huascoaltina community have been violated. The community submitted a complaint before the Inter-American Commission on Human Rights against the Chilean state, accusing it of “denial of justice.” This is based on the failure of national tribunals in Chile to address Diaguita complaints regarding the inclusion of their territory in Barrick Gold’s mining concessions and the fact that they were not consulted about this decision. The complaint was declared admissible by the Commission.¹⁸

3. The Pascua Lama project continues to illegally block a public road, making the passage of local vehicles and persons impossible and preventing traditional activities in the area, such as the movement of livestock.¹⁹

¹⁴ DGA report regarding inspection of Pascua Lama

http://olca.cl/oca/chile/region03/pascualama/informe_comision_servicio_a_III_region.pdf

¹⁵ Letter dated September 22, 2005 http://olca.cl/oca/chile/region03/pascualama/barrick_glaciares.pdf

¹⁶ Report regarding impact on rock glacier

http://olca.cl/oca/chile/region03/pascualama/informe_botadero_sobre_glaciar_de_roca.pdf

¹⁷ Barrick statement <http://www.noapascualama.org/info.asp?Ob=9&Id=84>

¹⁸ Commission decision <http://www.cidh.oas.org/annualrep/2009sp/Chile415-07.sp.htm>

¹⁹ Regional Secretary of Public Works denounces obstruction of a public road
<https://www.e-seia.cl/documentos/documento.php?idDocumento=4246843>

IV. Local, national and international resistance.

The Huasco Valley community has remained fiercely opposed to the Pascua Lama project for over ten years. At first, this resistance was concentrated at the local level. Later, local convictions and solid arguments took the struggle to the national and international levels. Since 2005, the annual “March for Water and Life” has taken place in Vallenar, bringing together more people than any other event in the area. Moreover, numerous carnivals, artistic presentations, conferences, protests, Catholic masses, pilgrimages, meetings, debates and international awareness-building campaigns have taken place with regard to the project. Pascua Lama has motivated more university-level theses, reports and independent documentary films than any other social / environmental conflict in Chile. These efforts seek to counter the biased and polemic media coverage that Barrick Gold’s project has received.

Despite having been deceived by their authorities, ignored by the mass media and threatened daily by public institutions and the company, communities in the Huasco Valley have pursued legal, academic and cultural initiatives over ten years to express their opposition to this project and to raise awareness. These efforts have succeeded in exposing the damage that Pascua Lama implies and in highlighting the importance of self determination and the exercise of citizen rights in such conflicts.²⁰

President Hochberg, given the information described above (which only addresses the impacts of the project on the Chilean side of the binational Pascua Lama project), we urge you to reject financing for this project, thereby avoiding responsibility for the illicit actions that have been carried out by the project proponent and preventing American resources from supporting the destruction of the Huasco Valley and the glacial ecosystems of the Andean cordillera.

We would be pleased to provide you with further information and to meet with you. We encourage you to visit the Huasco Valley and we await your response to this letter.

Yours truly,

Observatorio Latinoamericano de Conflictos Ambientales – OLCA

Agrupación Ecológica Atacama Limpio – Vallenar, Región de Atacama

Alianza por una Mejor Calidad de Vida RAP-AL, Chile

Centro Cultural Social y del Medio Ambiente Ceibo – Maipú, RM

Centro Ecoceanos - Chile

Columban Center for Advocacy and Outreach (USA)

Comité de Defensa del Valle de Chuchiñi – Salamanca, Región de Coquimbo

Comité Esperanza de Vida – Alto del Carmen, Región de Atacama

Consejo de Defensa del Valle del Huasco- Región de Atacama

Coordinadora Contra Pascua Lama - Santiago

²⁰ <http://www.olca.cl/oca/chile/pascualama.htm>

Corporación de Defensa y Promoción de los Derechos del Pueblo, CODEPU-Chile
Acción por los Cisnes - Valdivia - Región de los Ríos
La Coalición Ecuménica por el Cuidado de la Creación - Chile
Centro Ecuménico Diego de Medellín
Departamento de Paz Justicia e Integridad de la Creación, CONFERRE-Chile
El Comité de Defensa y Recuperación del Cobre - Chile
Organización Ciudadana Ambiental de Salamanca, OCAS – Región de Coquimbo
Oficina de Justicia, Paz e Integridad de la Creación. Sociedad Misionera de San
Columbano
Pastoral Salvaguarda de la Creación – Alto del Carmen, Valle del Huasco
Red Ciudadana por la Defensa de la Precordillera de Santiago, RM Chile

Cc:

Chairman Barney Frank
House Committee on Financial Services

Chairman Christopher Dodd
Senate Committee on Banking, Housing and Urban Affairs

Eric Siegel
President and CEO
Export Development Canada

Doug Norlen
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Karyn Keenan
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