

Cerro de Oro Complaint

Project Description

The Cerro de Oro Hydroelectric Project (the Project) is planned to be a 15 MW hydroelectric power facility located in Tuxtepec Municipality in the State of Oaxaca, Mexico. The Project is co-owned by Comexhidro and the Latin Power III Fund (the Company) to which OPIC has provided financing. As a condition of its financing, OPIC has required the preparation of an environmental and social impact assessment (EIA). The EIA along with an overall Project summary and a third party environmental compliance review can be accessed [here](#).

A key dimension of the Project is its geographic context. The Project is situated on the right bank of the Cerro do Oro Dam, which was originally constructed for flood control in the 1970s and 1980s and which required the relocation of thousands of people. Several communities are adjacent to or near project components. These are the ejidos of Los Reyes, Santa Ursula, Paso Canoa, Cerro de Oro, Sebastopol and San Rafael. Of these, all but Cerro de Oro are located in the Tuxtepec municipality. Los Reyes is located closest to the Project where the Company had to acquire land for the future power generation facilities.

The Cerro de Oro dam is of earthen construction, and its operator (the National Water Commission, CONAGUA) controls the downstream flow of the Santo Domingo River, which emerges from the dam's floodgates. The Project's design includes construction of a tunnel through the rock wall adjacent to the dam curtain in order to direct water from the reservoir to power turbines. According to the project's original design, an existing creek would be modified and used to return the water to the Santa Domingo River about two kilometers downstream of the dam. The status of the Project when the complaint was filed was that necessary approvals had been obtained from the Mexican authorities; most land rights had been acquired for the Project's infrastructure; and some construction activities had been undertaken.

The Complaint

On November 30, 2010, the Office of Accountability (OA) received a complaint filed by a U.S.-based NGO, Accountability Counsel, on behalf of the communities of Paso Canoa and Santa Ursula (the Complainants).

Complainants claim that the activities of the Cerro de Oro Hydroelectric Project are negatively affecting and posing risks to their health, environment, and livelihoods. The concerns expressed by the complainants cover a wide range of topics; many of them relate to the communities' access to local water resources for domestic, livelihood, and recreational purposes. These resources include a spring and a creek that emerge downstream of the dam, the Cerro de Oro reservoir, and the Santa Domingo River. To address their concerns, the Complainants requested that OA conduct both a problem-solving process and a compliance review.

OA also received a November 30, 2010 letter sent by Accountability Counsel to OPIC President Elizabeth Littlefield requesting that she add anonymous members of the Los Reyes community to the original request for compliance review. By agreement of the other parties, Los Reyes subsequently became a participant in the OA's dialogue process.

In late December, 2010, OA received a response from the Company to the allegations made in the original complaint.

Finally, on January 17, 2011, OA received an addendum to the original complaint via Accountability Counsel requesting that the community of Cerro de Oro be added to the Complainants.

OA Chronology

The following summary describes the chronology of OA's steps in processing the complaint as of August 31, 2011.

On December 6, 2010, OA acknowledged receipt of the initial complaint. Further, OA accepted the request to initiate a problem-solving process, the first step of which is to appraise whether or not the parties are interested in participating in an independently-mediated dialogue table.

From January 5 to 12, 2011, OA conducted a site visit to appraise the potential for convening a problem-solving dialogue between the parties. During this visit, OA met with representatives of the communities of Paso Canoa, Santa Ursula, and Cerro de Oro; visited the project site; received a briefing from company representatives; and met with municipal authorities. Based on this first visit, OA made a preliminary determination that there appeared to be adequate potential for such a dialogue to help resolve key issues. Moreover, OA determined that it would defer a decision on whether to initiate a compliance review until the problem-solving phase of processing the complaint was completed.

As part of the appraisal phase, OA made a second visit in early February to further assess the parties' willingness to pursue a problem-solving process. Around the time of OA's February visit, the Company suspended all construction activities at the request of the Complainants.

In early March, OA made another site visit. On March 9th, OA contacted representatives of Los Reyes and determined that this community wanted to be included in the dialogue process. OA convened the first dialogue table on March 11. At that time, OA accepted the participation of all four communities in the dialogue, given that the company did not object to the addition of Los Reyes and Cerro de Oro to the initial Complainants. In this first dialogue, parties focused discussion on priority issues and reached [formal agreement](#) on them, which was recorded and signed by the parties. [\[i\]](#)

The following actions were taken in response to the March 11 agreement:

- The Company subsequently maintained its suspension of all construction activities.
- The Company initiated a study of an alternative design for the project that would avoid affecting the spring and the creek.
- OA initiated a search for qualified experts in dam safety, and presented a slate of four candidates to be considered by the parties.
- Both parties agreed on the selection of one of these candidates.
- The company delivered copies of project documents including permits, licenses, and studies to each of the communities.

OA convened a second dialogue table on May 5, which resulted in a [second agreement](#). On the basis of this agreement, the following actions were taken:

- OA directed the selected dam safety expert to initiate a study designed to address the questions posed in the agreement.
- The dam safety expert presented his methodology to the parties on June 2-3.
- The Company conducted site-specific feasibility studies in support of its design alternative.

OA convened a third dialogue table on July 20, at which time the Company presented its alternative project design, which is intended to comply with provisions of the March 11 agreement. During this dialogue table, the dam safety expert also presented his findings. In addition to the Complainants and the Company being represented at this dialogue table, at the behest of the parties, OA successfully solicited the participation of Mexican municipal, state, and federal authorities. The dialogue resulted in a [third agreement](#).

Several actions related to the July 20 agreement have been taken:

- On July 30, the community authorities through Accountability Counsel transmitted a letter to OA and the Company containing their response to the provisions in the July 20 agreement.
- On August 2, OA transmitted to the parties the final report of the expert on the security of the spring.
- On August 12, the national electricity commission (CRE) transmitted a letter on the project to OA, which OA circulated to the parties.
- On August 15, the Company transmitted a letter to the communities and OA responding to the communities' letter.
- On August 17, OA transmitted to the parties the final report of the expert on dam safety.
- CONAGUA initiated a review of the safety of the Cerro de Oro dam in the context of the proposed hydroelectric project (which ultimately resulted in the technical opinion referenced in the final problem-solving report on this case).

In addition to the above actions all taken in response to the July 20 agreement, the national environmental regulatory agency (PROFEPA) issued a resolution about the project in response to a request filed in March, 2011, on behalf of some members of the Santa Ursula community.

[i]Note that all agreements appended to this summary were originally written in Spanish; the English translations of them are informal. The original Spanish documents with signatures are attached below.

[March 11 agreement](#)

[May 5 agreement](#)

[July 20 agreement](#)