

## Open Letter to Aguas Andinas

Mr. Claudio Muñoz Zúñiga

Chairman of the Board

Aguas Andinas S.A.

On July 16<sup>th</sup> 2020, the company AES Gener-Chile, subsidiary of AES Corp-USA, owner of the Alto Maipo Hydroelectric Project (AMHP), reported a new delay in the commissioning of its two proposed hydroelectrical plants, Alfalfal II and Las Lajas.

This news does not surprise us. From the beginning of the AMHP, we have witnessed the proponent's alarming lack of control in the construction process. This is due to many reasons, mostly the project's overly ambitious scale. This results in an important occupation and degradation of the three sub-basins -Volcán, Yeso and Colorado- which conform the Maipo River's watershed, one of the most strategic in Chile given the enormous population it serves.

There are other facts that evidence the excessive scale and the project's lack of control. Lives have been lost during the construction due to failures in contingency planning and the precarious security and living conditions for the project's employees, which motivated several work strikes<sup>1</sup>. The startup of the facility has been repeatedly delayed due to the flawed project evaluation, that has likewise resulted in cost increases from USD 800 M to more than USD 3,400 M.

With the recent announcement of a further delay, Alto Maipo demonstrates, once again, that its work plan failed to incorporate critical base-line information, resulting in chronic improvisation and patchwork. This is unacceptable for such a high-stake venture, that puts at risk the livelihoods of the Maipo's basin inhabitants, and the vital water supply for seven million people in Santiago's Metropolitan Region and the irrigation of more than 120.000 hectares of agricultural lands (approx. 300,000 acres).

Water seepage and flooding in the more than 70 kilometers of tunnels -a key feature of the project's infrastructure- are one of the principal causes of these problems. The tunnels are being drilled through the unstable and fractured rock and sediments underlying the local high mountains of the Cordillera de los Andes. The drilling and blasting have had a negative impact on the watershed's glaciers -already affected by climate change-which hold a significant part of the basin's water reserves. The seepage in the tunnels exposes a grave manhandling of aquifers, and the outpouring flooding water has contaminated groundwater and streams with sediments and minerals,

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<sup>1</sup> <https://www.cooperativa.cl/noticias/pais/trabajo/accidentes-laborales/un-trabajador-murio-en-accidente-laboral-en-faenas-de-la-hidroelectrica/2020-02-11/223119.html>  
<https://www.soychile.cl/Santiago/Sociedad/2017/07/26/478065/Trabajador-murio-tras-un-accidente-en-las-obras-del-proyecto-Alto-Maipo.aspx>  
<https://www.latercera.com/pulso/noticia/trabajadores-alto-maipo-declaran-huelga-paralizan-faenas/848530/>

including heavy metals. Since the beginning of the construction of AMHP, it has been reported and denounced by independent experts and by the community.

The dire consequences of the ongoing construction are alarming and, as said, have occurred mainly because these foreseeable impacts were not considered properly in the project's environmental evaluation presented by AES Gener to environmental authorities in Chile. The evaluation was based on partial and incomplete studies where the opinions of all stakeholders were not duly considered, and clear scientific and technical evidence, including the inevitable impacts of climate change, were ignored.

The incomplete and irregular evaluation of the AMHP also exposes the structural flaws of Chile's environmental legislation and institutions. Rather than following technical and environmental criteria, the approval of mega projects such as AMHP depends on a highly questioned political consensus of decades ago, that prioritize a "development" model designed around the uncontrolled degradation of Chile's territory through the exploitation of natural resources.

The same political prioritization of multimillion-dollar megaprojects over technical, social, and environmental criteria is operating today in the AMHP audit before Chile's Environmental Superintendence (ES). Over the last decade, this environmental institution has received and accumulated dozens of citizen's complaints about AMHP's multiple irregularities and the severe negative impacts that its construction have provoked. ES finally resolved to accept a compliance/corrective plan presented by the company AES Gener. However, the plan is as deficient and incomplete as the original environmental assessment and does not solve any of the project's critical problems. In consequence, several legal and administrative demands are being pursued in environmental and civil courts.

But all this would not be of concern to Aguas Andinas if in compliance with the sanitary regulations, the company develops as a sole purpose the business that was given to it in concession; in other words: supplying drinking water for Santiago. Aguas Andinas does not have the right to allocate the freshwater reserves that were entrusted to it by the Chilean State, nor the related public water infrastructure, located in the first mountainous section of the basin. These public resources do not belong to Aguas Andinas and should not be used for purposes other than those specifically granted in the concession.

But back in 2011, Aguas Andinas and AES Gener signed a secret contract, which was made public only after a transparency lawsuit was pursued in the Chilean courts by a group of Maipo's basin residents. It was discovered that through this business arrangement, Aguas Andinas agreed to "lease" the reserves of fresh drinking water for Santiago -in the El Yeso Reservoir, and the two pristine managed lagoons Laguna Negra and Lo Encañado- to Alto Maipo, as regulation reservoirs for the operation of Alto Maipo's two electrical plants. The community argues that these revenues are illegal and that the Sanitary Services Superintendence (SISS in Spanish) has performed rather as a guarantor for Alto Maipo than as a public service inspector, even going so far as to shelter -behind the back of the public- the secret nature of the contract between the sanitary company Aguas Andinas and private party, Alto Maipo. This action by SISS, which vulnerated regulations has been questioned by the General Comptroller's Office and reversed in the courts thanks to the community's transparency demand.

However, a termination clause was established in the mentioned contract, meant to be a safeguard for Aguas Andinas' interests and, incidentally, to safeguard the interests of millions of Santiago's residents who depend upon Aguas Andinas to supply them with drinking water. This clause correctly anticipated construction problems and delays of the project that would ensue, given the project's excessive scale and complexity, and faulty and irregular evaluation and authorization; it allowed Aguas Andinas to terminate the contract if any of the two Alto Maipo hydroelectric was not operational by the end of 2019.

The inclusion of this clause in the contract is not strange, considering that Aguas Andinas, when it was still appropriately fulfilling its public service concession and mission, publicly expressed its opposition to the AMHP. During the project's environmental evaluation, and prior to its odd decision to go into business with AES Gener, Aguas Andinas publicly commented that with Alto Maipo operating "*a lack of service [referring to the water supply] may occur that [would] prevent it from meeting the demand of its customers, generating shortages in the city of Santiago*"<sup>2</sup>.

Because AES Gener failed in completing the project by the end of 2019, Aguas Andinas could have chosen to activate the contract's termination clause without major consequences. Instead, it chose to sign a contract extension accepting an additional year for the commissioning of AMHP<sup>3</sup>. This decision revealed another contradiction of the company since it clashes with the 'green' image Aguas Andinas sought to communicate when it acted as a private financier of COP25.

As inhabitants of the Maipo River's watershed, we demand that Aguas Andinas makes use of its legal right to terminate the AMHP agreement, and once and for all ends with the threat that this project poses for the water supply for millions of people.

We submit that Aguas Andinas' Board of Directors knows better than anyone that the Alto Maipo project poses a serious risk to Aguas Andina's ability to deliver on its concession obligations and responsibilities. Aguas Andinas' Board of Directors know that, eventually, freshwater consumption will be subordinated to electricity generation; that future decisions in the face of weather contingencies and water supply might be affected; that control of the El Yeso Reservoir will be lost; that the possibility of building new pipelines and intakes to bring water directly to the city unimpeded by AMHP's tunnels and infrastructure will be limited; and that the tunnels are susceptible to technical failures. The best evidence to all these is the clause included in the contract regarding the distribution of the insurance money in case of such eventualities.

Aguas Andinas' Board of Directors also know about the weak mechanisms established in the contract to regain control of the water in case of emergencies. And, in case they do not remember, please re-read the presentation that the company submitted when it was still fully committed to fulfilling the public service it was entrusted to perform, and your company officers stood with us in firm opposition to the construction of Alto Maipo.

While your initial clarity before partnering with the project may be forgotten, it has since been demonstrated by several of the partners that the project once had, who have

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<sup>2</sup>"Observaciones Aguas Andinas durante proceso de evaluación ambiental (2008)" available to download here <https://drive.google.com/file/d/14dRmaXkozXCHG5vfuyaSLeBueLXYayeg/view?usp=sharing>

<sup>3</sup> <https://www.revistaei.cl/2020/02/03/2020-el-ano-de-alto-maipo/#> and <http://generadoras.cl/prensa/aes-gener-establece-enero-de-2021-como-fecha-de-entrada-del-complejo-hidroelectrico-alto-maipo>

decided to abandon the scheme, as soon as irregularities began to appear. Not only did the German building firm Hochtief, and the Italian CMC di Ravenna pull out of the project and sue Alto Maipo, but the Japanese bank Mizuho and the IFC, the private investment arm of the World Bank, also abandoned it.<sup>4</sup> Chilean investors have also left the project.

Time has come not only to demand selective changes in corporate behavior, but citizens' meaningful and binding participation. The political criteria that allowed the development of projects that transformed many regions of the country into "sacrifice zones" are today under scrutiny by citizens who do not passively accept these abuses anymore with growing awareness of the importance and scarcity of clean water, and the state of water bodies, watersheds, rivers, and wetlands, and of the importance of the environment in general. The establishment needs to assume the need and obligation to mutate to a new social and environmental paradigm.

The impact on fundamental human rights by megaprojects like Alto Maipo, are part of an economic development model not well regulated, which is seen also in audit institutions incapable of ensuring minimum environmental standards. And this is not only said by Chilean citizens. Recently Mr. Léo Heller, a UN Special Rapporteur on the human rights to safe drinking water and sanitation, specifically referred to this project saying: *"The Chilean Government would not be fulfilling its international human rights obligations if it prioritizes economic development projects over the human rights to water and health"*<sup>5</sup>.

Santiago's inhabitants have the duty and the right of procuring a worthy and competent administrator for managing the freshwater supply to Chile's capital. Aguas Andinas still have an opportunity to demonstrate that it can administer this valuable concession and public resource in an efficient and profitable way, while benefiting your numerous clients at the same time.

## **Sign**

### **Chilean organizations**

Coordinadora Ciudadana No Alto Maipo

Fundación Chile Sustentable

Ecosistemas

Greenpeace

Fridays for the future Santiago

Colegio de Profesoras y Profesores de Chile Regional Metropolitano

Fundación Miles Chile

Federación Nacional de Agua Potable Rural FENAPRU Chile

Fundación Origen

Fundación Newenko

Fundación Mingako

Fundación Terram

Fundación Glaciares Chilenos

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<sup>4</sup> <https://www.elmostrador.cl/noticias/2017/07/31/alto-maipo-cae-en-default-tecnico-y-aes-gener-alerta-sobre-viabilidad-del-proyecto/>

<sup>5</sup> <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26177&LangID=E>

Sociedad por la Acción Climática SCAC  
 MODATIMA Chile  
 Comité Pro Defensa de la Flora y la Fauna CODEFF  
 Corporación Vecinos Camino a Farellones  
 Asociación ASOPESCA Tocopilla  
 Movimiento No más Anglo  
 Ética en los Bosques  
 Sociedad Acción Climática SCAC  
 Conservación Andina  
 Club Deportivo Cascada  
 Club Andino Pirque  
 Fundación Tantí  
 Fundación Pulso Ambiental  
 Voluntarios Por la Naturaleza  
 Ciudadanos y Clima  
 Somos Maipo  
 Mujeres Por el Maipo  
 Red Ríos Libres  
 Colectivo Animalista Alza tu voz  
 Fundación Daya  
 Fundación Río Montaña  
 Santuario de las Ánimas  
 Santuario San Francisco de Lagunillas y Quillayal  
 Geoturismo Chile  
 Bestias del Sur Salvaje  
 Acceso PanAm  
 OPES

### **International Organizations**

Asociación Interamericana para la Defensa del Ambiente AIDA - Internacional  
 Center for International Environmental Law CIEL - Internacional  
 International Rivers - Estados Unidos  
 Bank Information Center - Internacional  
 Corporate Accountability Lab - Estados Unidos  
 International Accountability Project – Internacional  
 Urgewald – Alemania  
 Sustentarse – América Latina  
 Movimiento Ríos Vivos - Colombia  
 Fundación Danielle Mitterrand - Francia  
 Coalition Eau Île de France - Francia  
 Lumière Synergie por le Développement LSD – Senegal  
 Réseau de Lutte contre la Faim RELUFA – Internacional  
 CATAPA - Bélgica  
 Comisión Nacional en Defensa del Agua y la Vida CNDAV - Uruguay  
 Movimiento de Favelas de Sao José dos Campos - Brasil  
 Red de afectados por el BID – Internacional

Instituto Maíra – Brasil

### **Natural persons**

Marcela Mella Ortiz - Presidenta Coordinadora Ciudadana No Alto Maipo

Sara Larraín Ruiz Tagle - Agricultora y ambientalista

Juan Pablo Orrego Silva – Ecólogo, ambientalista, ganador del Premio Right Livelihood (Premio Nóbel Alternativo)

Betty Francia - Presidenta Colegio de Antropólogos de Uruguay

Rodrigo Mundaca Cabrera - Activista por el agua y los Derechos Humanos, ganador del Premio Internacional de Derechos Humanos de Nuremberg

Fernanda Urrejola – Actriz

Natalia Valdebenito – Actriz, comediante

Ana María Gazmuri - Actriz, activista

Ramón Navarro – Surfista

Pangal Andrade - Kayakista

Pedro Astorga – Kayakista

Juliana García - Guía de Montaña, Ecuador

Federico Mekis - Montañista

Patricio Mekis - Documentalista

Felipe Cancino - Montañista

Francisca Navarro - Snowboardista

Sofía Clement - Esquiadora

María Paz Ibarra - Montañista

Rodolfo Torrens - Montañista