

Report No. 56225 - CL

The Inspection Panel 

Report and Recommendation

**CHILE: Quilleco Hydropower Project (Trust
Fund No. TF056272-CL)**

August 23, 2010

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Report and Recommendation On Request for Inspection

CHILE: Quilleco Hydropower Project (Trust Fund No. TF056272-CL)

1. Between November 11, 2009, and May 26, 2010, the Inspection Panel (the “Panel”) received several letters complaining about negative effects resulting from different hydropower projects in the Biobío River basin in Chile.¹ On April 21, 2010, the Panel received a formal Request for Inspection, which was complemented by clarifications on May 26 (dated May 24, 2010) (the “Request”). The Request was submitted by residents of Tucapel, Santa Bárbara, Ralco Lepoy, and Concepción (the “Requesters”) in the Biobío region of Chile.² The Requesters have asked in their correspondences that the Panel keep their names confidential.
2. The Panel registered this Request on June 18, 2010, and notified the Executive Directors and the President of the International Bank for Reconstruction and Development (the “IBRD”) in accordance with the Resolution establishing the Inspection Panel (“the Resolution”).³
3. The Request complains about harm allegedly caused by a number of existing or proposed hydropower projects in the Biobío basin: the Angostura project, the Quilleco project, the Pangué/Ralco projects, and the Laja project.⁴ According to its website, the IBRD considered the potential of acquiring carbon credits for the Laja project, but consideration of the project was dropped in April 2009.⁵ Only the Quilleco project (“the Project”⁶) is officially supported by the IBRD, and thus within the Panel’s purview.⁷ This Report will, therefore, focus mainly on this Project.
4. Although their grievances relate to all projects included in the Request, the Requesters make clear their urgent concerns related to the proposed Angostura Hydroelectric Project, which

¹ According to the *Management Response to Request for Inspection Panel Review of the Chile: Quilleco Hydropower Project (Trust Fund No. TF056272-CL) and Laja Hydroelectric Project*, July 20, 2010 (the “Management Response”), there are currently ten hydropower plants installed and operational in the Biobío region, and there are two additional plants under active preparation. These plants are located on the main stem of the Biobío River, and on two of its tributaries, the Laja River, and the Duqueco River (p. 5, para. 14)

² Some of the correspondence submitted to the Panel was simultaneously submitted to the Compliance Advisor Ombudsman (“CAO”) office of the International Finance Corporation (“IFC”).

³ IBRD Resolution 93 – 10, Resolution Establishing the Inspection Panel (September 22, 1993).

⁴ The Requesters correspondence also refers to the alleged negative effects of the Chacabuquito and Hornitos Hydroelectric projects in the Aconcagua river basin, but they do not make any specific complaints.

⁵ Management Response, p. 15, para. 34

⁶ Also referred to as “Quilleco,” see paragraph 8.

⁷ Panel Resolution, 1993, para. 13 (Panel review relates to projects “financed by the Bank”).

they claim is being supported by the IBRD. However, the Panel could not identify any IBRD support for this project at the time of the issuance of this Eligibility Report, and the Management Response states that the Bank “*is not and has no plans to become involved in the Angostura project.*”⁸

5. On July 20, 2010, Management submitted its Response to the Request. On August 23, 2010, Management submitted an Addendum to the Management Response to the Request, dated August 20, 2010 (the “Addendum”).
6. As provided in paragraph 19 of the Resolution, the purpose of this report is to determine the eligibility of the Requests and to make a recommendation to the Executive Directors as to whether the matter should be investigated.

A. THE PROJECT

7. According to the Project Appraisal Document (the “PAD”),⁹ the objective of the Bank’s assistance is to provide financial support through a market-based mechanism for private investment in projects in the Chilean power sector that reduce global greenhouse gas emissions, thereby generating Certified Emission Reductions (CERs), under the Clean Development Mechanism of the Kyoto Protocol to the UN Framework Convention on Climate Change (UNFCCC).¹⁰
8. The Project consists of a 70 MW run-of-river¹¹ hydropower plant, located on the Laja River; 8 km downstream of the existing Rucúe hydropower plant (160 MW). The Quilleco power plant is designed for a water flow of 130m³/s taken from the water discharged from the Rucúe plant. The project will generate on average about 422 GWh per year, with a firm power capacity of approximately 47 MW. The Project will feed into the Central Interconnected System (SIC) through a 0.5 km 220 kV transmission line.¹²
9. Construction on the Project began in January 2005, and the Project became operational in April 2007. As of May 2010, the electricity generated by the Project totals 1,206,560 MWh.¹³
10. Project performance is monitored as per a Monitoring Plan referred to in the Emission Reductions Purchasing Agreement¹⁴ (ERPA) and evaluated on the basis of generating the

⁸ Management Response, p. 5, para. 14(a). While Management indicates that the Bank is not involved in the Angostura project, it also notes that “*Colbún plans to construct the Angostura plant, a 316 MW reservoir facility. Colbún estimates that construction will begin this year and the plant will be in operation by December 2012.*”

⁹ Project Appraisal Document (PAD) for the Chile: Quilleco Hydropower Project, May 31, 2006.

¹⁰ PAD, p. 2.

¹¹ According to “Directions in Hydropower” (IBRD/World Bank 2009), a run-of-river project is a project that does not affect the natural flow of the river more than for daily storage. These kinds of projects may however affect the natural flow of the river in the stretch adjacent to the project, if they involve diverting part of a river’s flow through a pipe or tunnel leading to the turbines and then returning the flow back to the river at some point further downstream.

¹² PAD, p. 2

¹³ Management Response, p. 18, para. 41

expected amount of emissions reductions (ERs) and subsequent issuance of CERs by the international validator. Monitoring the generation of ERs is implicit in the project as a function of electricity generation.¹⁵

B. FINANCING

11. On May 31, 2006, the Bank approved a Certified Emission Reductions (CERs) purchase on behalf of the Netherlands Clean Development Mechanism Facility (NCDMF). The expected closing date for the ERPA is December 31, 2012.¹⁶ The project is financed by Colbún S.A. According to Management, the ERPA became effective on April 27, 2006.
12. Under the provisions of the ERPA, the NCDMF will purchase 100,000 tCO_{2e} (tones of carbon dioxide equivalent) of CERs each year between 2008-2011, at a price of Euros 6/tCO_{2e}, representing about US\$3.0 million in total purchases. Additional CERs produced by the project (an estimated 100,000 tCO_{2e} per year between 2008-11) are to be retained by the firm Tractebel – one of Colbún’s shareholders.¹⁷

C. THE REQUEST

13. The Request was submitted by residents of Tucapel, Santa Bárbara, Ralco Lepoy, Laja Valley, Peumo, and Concepción (the “Requesters”) in the Biobío region of Chile. Two of the Requesters are representatives of the Pehuenche indigenous community affected by some of the projects. The Requesters have asked in their correspondences that the Panel keep their names confidential.
14. The Requesters state that the region where they live has been, and will be, negatively impacted by World Bank Group (both IBRD and the International Finance Corporation [IFC]) supported hydroelectric projects. They add that the Bank’s involvement has been “*the object of enormous public concern and numerous and far reaching internal investigations.*” They state that the Quilleco, Laja and Angostura projects are existing or proposed hydroelectric projects in the areas where they live and in the same river basin.¹⁸
15. They state that the developers and operators of these projects should “*comply with WB environmental and social standards, and immediately cancel their plans for future irresponsible damming (sic) of the Biobío, particularly in lands of special spiritual and strategic value such as the El Piulo sector.*” They further add that the perceived non-compliance is contrary “*to the findings and recommendations of the WB investigations that*

¹⁴ The IBRD-Netherlands Clean Development Mechanism Facility Emissions Reductions Purchasing Agreement, dated April 27, 2006, is a purchasing agreement between Hidroeléctrica Guardia Vieja S.A. and the IBRD, as Trustee of the IBRD-Netherlands Clean Development Mechanism Facility. The agreement outlines, among other things, the purchase and sale of certified emissions reductions, the price and payment for services, and project verification and monitoring, as well as other conditions related to sale.

¹⁵ PAD, p. 8

¹⁶ Management Response, p. 1 para 3.

¹⁷ PAD, p. 2

¹⁸ Tucapel lies in the valley of the river Laja, close to the Quilleco project, and Santa Barbara lies in the valley of the river Biobío, downstream of the proposed Angostura project.

*have taken place in 1995-1996 (Downing Report), 1997-1998 (Hair Report) and in the period of 1999-2000 and 2002-2003 (CAO Office investigations)."*¹⁹ The Requesters consider that these findings and recommendations point not only to the extremely valuable ecological and cultural resources of the area, but also to the shortcomings of the Environmental Impact Assessments. Finally, the Requesters state that all of their claims refer to *"serious violations of Bank policies and procedures in the preparation, appraisal and supervision of these projects and actual and/or potential ecological, environmental, economic and social harm."*

16. The Requesters add that the Quilleco Project is the third arrangement between Hidroeléctrica Guardia Vieja, subsidiary of Colbún, and the Bank. In a November correspondence with the Panel, the Requesters mention two other arrangements between Hidroeléctrica Guardia Vieja and the Bank, the Chacabuquito and Hornitos hydroelectric projects. In this correspondence and in the April 21, 2010 Request, they state that they are concerned with the way Colbún SA, or its subsidiary, is handling the Environmental Assessments and community relations in the region, which disregard the rights of indigenous people (including the Mapuche-Pehuenche) and international commitments made by the World Bank Group.
17. The Requesters state that they have asked the World Bank Buenos Aires Country Office, at the time in charge of projects in Chile, for documentation regarding the Quilleco project. The Requesters consider that although the response was prompt and they received many documents, the response did not satisfy them.²⁰ The Requesters claim that there is a *"lack of coordination and non consideration of cumulative impact studies of the Quilleco and Angostura projects, which have failed to take into account the impacts of Pangué and Ralco on the endangered fish population."*²¹ They add that they understand that the Bank is considering supporting yet another project in the basin, the Laja Hydroelectric Project, which could pose additional impacts.
18. In a supplement to the Request for Inspection dated May 24, 2010, a resident of Tucapel agreed to formally become one of the claimants in the Request for Inspection because she feels *"actually and potentially affected by [the Quilleco] project."*

¹⁹ The Requesters refer to different reviews or assessments of the Pangué/Ralco Hydroelectric Project. The first is the "Downing Report," an independent evaluation of the Pehuen Foundation conducted by Mr. Theodore Downing for the IFC. The report was submitted to the IFC on May 6, 1996. The second is known as the "Hair Report." In 1996, the President of the World Bank at the time, Mr. James Wolfensohn, and IFC's Executive Vice President at the time, Mr. Jannik Lindbaek, appointed Dr. Jay Hair (then President of IUCN – the International Union for Conservation of Nature) to prepare another report; in July 1997 an edited version of the report was made public. The third is a report of IFC's Compliance Advisor Ombudsman (CAO). In July 2002, downstream municipalities flooded by water releases from the Pangué dam's reservoir during heavy rain, together with Pehuenche families, filed a complaint with the CAO. The CAO followed up with an assessment report that was issued in May 2003.

²⁰ As described in the Section on eligibility, below, the Requesters have previously expressed concerns to Bank Management and Colbún about issues relating to the projects, including the Quilleco Project, over a long period of time, including in meetings noted in the Bank Management Response between 2004 and 2006 and in a December 2008 letter sent to the President of the World Bank and the Executive Vice President of IFC.

²¹ The Requesters claim that even though the Pangué/Ralco dams were directly and/or indirectly financed by the World Bank Group through the IFC, these projects provide the context in which the Quilleco and Laja Projects are operating and thus should be taken into account. With regards to the Biobío basin as a whole, the Requesters state that they feel that "the IFC commitments and CAO recommendations to mitigate and /or avoid harm to the environment and people should be binding for the whole WB Group."

19. The Requesters also express concern for dam safety, citing examples of fatalities due to rapidly rising waters downstream of the dams. The Requesters state that *“the lack of downstream impact studies and appropriate compensatory and emergency measures is something bank management has been aware of since late 1992.”*
20. With regards to the proposed Angostura Project, a key concern of the Requesters, the Requesters state that *“although the information posted in the World Bank website does not presently show that the proposed Angostura is being financed or proposed to be financed by the Bank as administrator of carbon funds, our understanding is that there are plans for selling carbon reduction (...) for this project. Such understanding is based on the facts that such financing was unofficially disclosed by a Bank source and also it apparently is mentioned or referred to in a Quilleco supervisory mission report.”*
21. The Requesters state that the Angostura project *“would result in the forced relocation, for A SECOND TIME! Of some five families now residing in the Los Nostros sector that were among the original nine families that were forcefully relocated for the Pangué project in the mid 90s.”*
22. The Requesters ask for an investigation stating that the actions of the developers and operators of the Projects in the Biobío are impeding Bank commitments from being implemented and are leading to persistent violations of the rights of Pehuenche and other communities.

D. MANAGEMENT RESPONSE

23. As stated earlier in this Report, Management submitted its Response on July 20, 2010. In its Response (see Annex 2), Management asks the Panel to consider the Request to be ineligible, on the basis that Management did not have the opportunity to respond to specific claims regarding the Quilleco Project. Management claims that the Bank received an initial letter requesting information in January 2010 but containing no claims, to which the Bank responded, and that the next inquiry letter to Bank staff from the Requesters was on April 20, 2010, the day preceding the date of the Requesters’ letter to the Inspection Panel. Thus Management states that it *“did not have an opportunity to address the concerns raised before the Request was filed and registered.”*²²
24. Management states that while in the Requesters’ supplemental letter to the Panel on May 24, 2010 the Requesters state that *“The Angostura Project [is] the most serious and urgent issue...,”*²³ the project does not involve the World Bank. Management states that *“the Bank is not and has no plans to become involved in the Angostura project (although reference was made to the Angostura project and to the rest of Colbún’s project portfolio in the context of general discussions of a new Carbon Finance product).”*²⁴

²² Management response, p. 1 para. 4

²³ Management Response, p. 16 para. 36

²⁴ Management Response, p. 14 para. 29

25. Management states that the Quilleco Hydropower Project “*is the only project referred to in the Request that raises claims of adverse impacts and also involves IBRD.*”²⁵ Management emphasizes that while numerous hydropower projects in Chile are mentioned in the Request, the Quilleco project is the only IBRD project against which claims are made. The Bank is no longer considering financing for the Laja project, and Management believes no specific claims are made against this project. While the Request mentions two other projects that involve the IBRD, Chacabuquito and Hornitos, Management believes no specific claims were made against these projects. In addition, Management states that “*because IBRD is not a party to the other projects to which the Request refers, [it] is not able to offer a definitive response regarding possible details and responsibilities concerning projects that other entities within the World Bank Group may have supported.*” Management therefore focuses on issues relating to the Quilleco project in its response, stating that “*the Quilleco project is the only project that appears relevant for the purposes of Bank operations.*”²⁶
26. **Environmental Assessment.** Management believes that the cumulative impact assessment carried out for the Quilleco and Rucúe projects was appropriate to the nature and scale of the project investments. The area of influence for the Quilleco project with respect to cumulative impacts was appropriately determined by the Comisión Nacional de Medio Ambiente (CONAMA),²⁷ as the direct effects of the Rucúe and Quilleco projects in cascade on river hydrology and on aquatic habitat. Upon review of the September 1998 Environmental Impact Assessment (EIA) for the Quilleco project, CONAMA required additional assessment work to focus on the cumulative and synergistic impacts of the Quilleco and Rucúe projects. In the revised analysis of March 1999, the defined area of influence for cumulative effects for the Quilleco project was these two run-of-river projects in cascade, including the stretch of river between the intake for the Rucúe project and, downstream, the discharge into the river from the proposed Quilleco power plant. Management feels this definition of the Project’s area of influence for cumulative impact assessment on resident fish populations was appropriate.²⁸
27. Management states that the possible cumulative effects of Rucúe and Quilleco on aquatic habitat in the area of influence were carefully studied. Management claims that appropriate methodology has been used since 1999 to monitor the cumulative effects of the Rucúe and Quilleco projects, and that the monitoring data have shown that the Minimum Ecological Flow²⁹ (MEF) designated initially for the Rucúe project and subsequently for the Quilleco project has been able to maintain the diversity of aquatic habitats and fish species within the area of influence as determined by CONAMA.³⁰
28. Management believes that OP 4.01 (Environmental Assessment) was applied appropriately and that the EIA and subsequent independent evaluations were consistent with the

²⁵ Management Response, p. 1, para. 2

²⁶ Management Response, p. 17, para. 37

²⁷ In English: “The National Environmental Commission.”

²⁸ Management Response, p. vi, p. 29 para. 80

²⁹ *Ecological or environmental flows* describe the quantity, timing, and quality of water flows required to sustain freshwater and estuarine ecosystems and the human livelihoods and well-being that depend on these ecosystems. (Brisbane Declaration, 2007)

³⁰ Management Response, p. 29

requirements of this policy as defined for category B environmental risk projects.³¹ Management also believes that OP 4.04 (Natural Habitats) was applied appropriately with regard to the importance of the possible aquatic habitat impacts and the presence of important and endangered fish species. Management believes that the MEF defined for the Project is an appropriate mitigation measure, given the nature and scale of the likely impacts on aquatic habitats and key species.³²

29. Additionally, Management states that the CONAMA regulatory oversight body has not registered any complaint from any member of the public regarding the Quilleco project, and the Project's license remains in effect. Management claims that according to the CONAMA Biobío office, which is responsible for Quilleco's environmental evaluation, CONAMA Biobío has regularly received Quilleco environmental reports and that upon distribution of these reports to relevant authorities, no comments have been made.³³

30. **Consultation and Issues of Groundwater and Water Resources.** Management believes that the consultation process offered communities in both Quilleco and Tucapel adequate opportunities to express their views and concerns on the Quilleco project, and that their concerns were addressed at different stages of the Project. Management claims consultations on the Project and its potential environmental and social impacts were carried out as part of the preparation of the EIA between June 1997 and December 1998. Following the recommendation of a Bank mission, Colbún commissioned a hydro-geological study in response to concerns expressed by Tucapel residents about the potential impacts of the project on groundwater levels. Management states that the findings of the study—that the Project would not affect groundwater levels or water resources of the community of Tucapel—were communicated to the communities. According to Management, consultations continued during project preparation and supervision to enable communities to raise issues and concerns, and enable Colbún and IBRD to respond to and address these concerns.³⁴

31. Management states that during a September 2004 mission, when some residents of Tucapel expressed their concerns about the possible impact of Quilleco on well water levels, IBRD recommended that Colbún carry out further consultations with the community of Tucapel to address these concerns. Based on a November 2005 Environmental and Social Report commissioned by the Bank, Bank staff confirmed that as of 2005, periodic meetings between Colbún and the Tucapel community were being held. The appraisal mission of April 2006 also met with representatives of Quilleco and Tucapel. The representatives from Tucapel mentioned that 25 families in the Valle del Laja did not feel that their concerns had been resolved. Colbún completed a baseline study in Valle del Laja, and wrote to the community at Valle del Laja reiterating that the Quilleco project did not affect groundwater levels. Colbún also wrote to the community offering to meet with them, but did not receive any response. Management believes that its actions have been consistent with the Bank's operational policy for supervision of this Project.³⁵

³¹ Management Response, p. 31

³² Management Response, p. 31-32

³³ Management Response, p. 31, para. 88

³⁴ Management Response, p. 30, para. 84

³⁵ Management Response, p. 30-31

32. **Other Concerns.** Management believes that OPN 11.03 (Cultural Property),³⁶ OD 4.20 (Indigenous Peoples),³⁷ OP/BP 4.37 (Safety of Dams),³⁸ and OP/BP 4.12 (Involuntary resettlement)³⁹ were applied appropriately in relation to the Quilleco project. With regards to cultural property, Management states that as part of the EIA, a survey of important physical cultural resources was carried out and the findings documented as part of the baseline studies. As part of the mitigation of potential adverse impacts, construction contracts included chance finds procedures in the event that cultural resources were discovered during excavation or other construction activities.⁴⁰
33. Regarding involuntary resettlement, Management asserts that the project acquired 112.42 ha of land which was mainly under forest and small scale farming activities. In the case of Quilleco, Management understands that all land was acquired through a process of negotiation which helped reach a mutually agreed settlement on compensation levels between Colbún and the affected parties.⁴¹
34. At the time of Project preparation, the task team therefore decided not to require any action under OP 4.12 since land acquisition for the project was completed many years before the Bank's involvement, was acquired in accordance with national laws, and there were no outstanding issues that needed to be addressed.
35. Regarding indigenous peoples, Management states that the Project was processed under OD 4.20. Management concludes that the Quilleco project has not affected any Indigenous Peoples for purposes of OD 4.20. In Management's view, none of the studies carried out to date or Bank supervision visits have identified indigenous groups or individuals in the project area. According to Management, the Corporación Nacional de Desarrollo Indígena⁴² (CONADI) has confirmed that there are no indigenous lands within Quilleco and Tucapel. CONADI also confirmed that there are no lands that are being claimed by indigenous communities or that are in the process of being adjudicated to indigenous communities.⁴³
36. With respect to safety of dams, Management states that OP 4.37 was reviewed in light of its requirements with respect to the Quilleco plant and it was determined that no action was required regarding this facility. The Quilleco project involves a run-of-river plant but no dam or storage reservoir. Given these technical characteristics, Management believes that the judgment not to apply the provisions of OP 4.37 to the Quilleco facilities was justified.⁴⁴
37. Management claims that the Requesters have not voiced concerns about dam safety in the Laja sub-basin. However Management recognizes that given the Project's context on the

³⁶ Management Response, p. 32, para. 91

³⁷ Management Response, p. 32, para. 94

³⁸ Management Response, p. 33, para. 96

³⁹ Management Response, p. 33, para. 98

⁴⁰ Management Response, p. 32, para. 91

⁴¹ Management Response, p. 33, para. 98

⁴² In English: "National Corporation for Indigenous Development".

⁴³ Management Response, p. 32, para. 94

⁴⁴ Management Response, p. 33, para. 96

Laja River, the project team should have reviewed and evaluated the operation of the two dams located upstream of the Bank-financed Project.⁴⁵

38. Management states that flooding incidents mentioned by the Requesters near two dams, Pangué and Ralco, are “*on a completely separate river (Biobío) from Quilleco (Laja River) and ...could not have been caused by a run-of-river hydropower project on the Laja River.*”⁴⁶
39. **IBRD Supervision and Corporate Due Diligence.** Management states that the Bank conducted numerous supervision missions, including site visits and meeting with the Project sponsor. Five separate supervision missions are mentioned in the Management response, and Management states that “*no significant issues were identified but availability and well levels were still identified as concerns on the part of Valle del Laja community.*”⁴⁷
40. Management states that as part of its due diligence as the Trustee for the NCDMF, the IBRD undertook due diligence on the sponsor, Colbún, at two distinct levels. First, it reviewed Colbún’s ability to carry out the required environmental and social management aspects of the Project, finding it “acceptable,” and second, it reviewed other aspects of Colbún’s operations.⁴⁸ Management states that based on the due diligence done in the preparation of the Quilleco Project, the Bank believes that Colbún carried out its operations with respect to the Quilleco Project in a manner that was consistent with the application of relevant World Bank policies.⁴⁹ Management also clarifies that the Bank applies its policies on projects receiving Bank support, but the Bank does not extend this requirement to other activities of a company or country that is partnering with the Bank.⁵⁰
41. **Management Actions.** Management’s view, as expressed in the Management Response, is that the Bank has followed the guidelines, policies, and procedures applicable to the matters raised by the Requesters. The Management Response does note that “*additional due diligence should be carried out with respect to the issue of dam safety regarding the dams located upstream of the Quilleco project*”⁵¹ and states that Bank staff will consult with Endesa and the responsible Chilean authorities to determine whether appropriate safety measures are in place and implemented at the existing dams in the upper Laja watershed and will follow up with a supervision mission. The Response adds that Management “*will continue to supervise the Project, including evaluating any potential concerns of affected populations*”, and that the “*Bank also will continue to exchange information with Requesters through the ongoing correspondence between them and Bank staff.*”⁵²
42. **Addendum to the Management Response.** On August 23, 2010, the Panel received an Addendum to the Management Response (“the Addendum”), stating Management’s

⁴⁵ Management Response, p. 33, para. 97

⁴⁶ Management Response, p. 52

⁴⁷ Management Response, p. 27, para. 74

⁴⁸ Management Response, p. 25, para. 65

⁴⁹ Management Response, p. vi, para. ix

⁵⁰ Management Response, p. vi, para. ix

⁵¹ Management Response, p. 34, para. 102

⁵² Management Response, p 34, para. 102

understanding of the Requesters' claims and describing a series of actions that Management intends to carry out in order to address the Requesters' concerns. Management states that it "*understands from discussions with the Inspection Panel that the concerns regarding water availability have crystallized around the potential impact of the Quilleco plant,*" and that "*Members of the Laja community have expressed concerns to the Inspection Panel that they believe that the Quilleco project is adversely affecting water availability.*"⁵³

43. In light of the above information, Management proposes additional actions to address the concerns raised by the Requesters. Management states that it will "*analyze as a first step the impact of the Quilleco diversion on the local hydrology and geohydrology, and, as a second step, the consequences, if any, on the availability of water to the agricultural and livestock activities of the local population living in the project area.*" In addition, on the basis of the results of this analysis, Management proposes to explore potential follow-up actions. Management states that this analysis and follow-up will take no longer than 6 months.⁵⁴

E. THE PANEL'S PURVIEW WITH RESPECT TO THE REQUEST

44. The Panel has reviewed the Request and Management's Response. Panel Chair Roberto Lenton together with Panel consultant Eduardo Abbot (the "Panel team") visited Chile between August 8 and August 12, 2010. During their visit, the Panel team met with a number of Requesters, Government officials from the Ministry of Finance and CONAMA, and officials from Colbún in Santiago, Chile. The Panel team also visited Santa Barbara, Tucapel, Valle del Laja, El Peumo, Los Notros and the Alto Biobío, and met with communities affected by hydroelectric projects in those areas. The Panel wishes to express its appreciation to everyone mentioned above for sharing their views and exchanging information and insights with the Panel.
45. The Panel notes that the Requesters constitute a diverse group that, as noted in the Observations section of this Report below, feels, actually and potentially, adversely affected by several hydroelectric projects, which operate or are under construction or consideration in the areas where they live.
46. Some of these projects have been supported financially by the IBRD or by the IFC. The Panel notes, however, that for local people these projects have had the support of the "*Banco Mundial*" (World Bank) and for them it is difficult to understand how these two institutions that have the same President and Board of Directors are juridically and functionally different and independent between themselves. When the Panel team explained these differences the answer back was: "*yes, but both institutions belong to the World Bank.*" In this sense, it is easy to understand the range of people that submitted this Request for Inspection and why they expected all institutions that belong to the World Bank Group to be bound by the findings of earlier reviews of these projects, and especially by the "*Lessons Learned: Pangué Hydroelectric*" that according to them was issued by IFC's Environmental and Social

⁵³ Addendum to Management Response to Request for Inspection Panel Review of the Chile: Quilleco Hydropower Project (Trust Fund No. TF056272-CL) and Laja Hydroelectric Project, August 23, 2010 (the "Addendum"), p. 1, para. 2.

⁵⁴ Addendum to Management Response, p. 1, para. 3.

Development Department after a CAO review of that project. This document covers Indirect Impacts, Cumulative Effects, Added Value and Disclosure issues, and seems to contain valuable lessons for future engagements with hydroelectric projects.

47. Other projects referred to by the Requesters do not involve any financial support from the World Bank Group. One such project is the Angostura project, currently under construction on the river Biobío upstream of Santa Barbara. The Panel notes that it met with requesters and other people in Santa Barbara and surrounding areas who confirmed their serious concerns about this project, including the possibility of an increase in the flash flood incidents that have killed people in the past and the lack of an emergency plan to deal with future such occurrences. Serious concern was also expressed about the involuntary resettlement of residents of the area, including indigenous Pehuenche peoples, some of which had apparently been involuntarily displaced several years earlier because of the Pangué and Ralco projects.
48. Regardless of how reasonable and justified the positions of all requesters may be, it is not within the purview of the Panel to investigate allegations of policy noncompliance and related harm related to projects not financed by IBRD or the International Development Association (“IDA”). Hence, the only issues that can be considered by the Panel are those related to the one project that the IBRD is supporting and is therefore under the Panel’s purview: the Quilleco project. All references to the Requesters, the Request and the Project hereinafter relate only to the Quilleco Project.
49. The claims related to the Quilleco project may constitute non-compliance by the Bank with various provisions of the following operational Policies and Procedures:
 - A. OP/BP 4.01 Environmental Assessment
 - B. OP/BP 4.04 Natural Habitats
 - C. OP/BP 4.12 Involuntary Resettlement
 - D. OP/BP 4.37 Safety of Dams
 - E. OP/BP 13.05 Project Supervision

F. ELIGIBILITY

50. The Panel must determine whether the Request satisfies the eligibility criteria set forth in the 1993 Resolution establishing the Panel and the 1999 Clarifications,⁵⁵ and recommend whether the matters alleged in the Request should be investigated.
51. The Panel is satisfied that the Request meets all of the eligibility criteria provided in the 1993 Resolution and Paragraph 9 of the 1999 Clarifications.
52. During the visit, the Panel confirmed that the Requesters are legitimate parties under the Resolution to submit a Request for Inspection to the Inspection Panel. The Requesters live in

⁵⁵ Conclusions of the Board’s Second Review of the Inspection Panel (the “1999 Clarifications”), April 1999.

Project-affected areas and have common interests and common concerns, as required by item (a) of the said Paragraph 9.

53. The Panel confirms that the Request and further statements made to the Panel team *“assert[s] in substance that a serious violation by the Bank of its operational policies and procedures has or is likely to have material adverse effect upon the requesters,”* as per the requirement of Paragraph 9(b).
54. The Requesters assert that the Project has caused and will cause a range of environmental and social harm as noted previously. They state that this harm will arise from negative environmental impacts on water supplies, irrigation, farming, livestock activities and fish and other aquatic life. During the Panel’s eligibility visit, the Requesters and affected community members elaborated in particular about their serious concerns that the Quilleco project has led to depleted water supplies and the “drying up” of the river, which has adversely affected the area where they live and has had corresponding negative impacts on their lives and livelihoods. (See discussion of Observations, below).
55. The 1999 Clarifications further provide that the Panel shall satisfy itself that the Request *“does assert that the subject matter has been brought to Management’s attention and that, in the requester’s view, Management has failed to respond adequately demonstrating that it has followed or is taking steps to follow the Bank’s policies and procedures”* as set forth in Paragraph 9(c).
56. In this regard, Management asserts in its Response that it was not given the opportunity to adequately respond to Requesters claims prior to the April 21, 2010 Request for Inspection. Management claims that the initial letter they received, in January 2010, requested information (to which they responded) but stated no claims, and the next inquiry letter was dated April 20, 2010, only one day before the April 21 Request for Inspection.⁵⁶ Management reiterates the sentiment that it has not yet had an adequate opportunity to respond to the Requesters claims in the August 23, 2010 Addendum to the Management Response.
57. The Panel observes, however, that the affected community has raised concerns both to Bank Management and to Colbún about harms from the projects, including the Quilleco project, in meetings throughout Project preparation and supervision dating back, as acknowledged in Management’s Response, to 2004-2006.⁵⁷ Furthermore, the 2006 PAD states that *“inhabitants of Tucapel were less supportive of the [Quilleco] project, because some inhabitants living on the northern bank of the Laja River claimed that the construction and*

⁵⁶ Specifically, Management states as follows: *“As reflected in the correspondence between the Requesters and Bank staff, the Bank received an initial letter requesting information (but containing no claims), to which the Bank responded (this response included information and documentation, queried the requesters about their specific concerns and included an offer by Bank staff to meet with them). The next inquiry letter to Bank staff from the Requesters was on April 20, 2010, which is the day preceding the date of the Requesters’ letter to the Inspection Panel. This chronology reflects the lack of opportunity provided to Bank staff to respond to Requester claims prior to the April 21st Request for Inspection.”* Management Response, Cover.

⁵⁷ See description of this back-and-forth discussion on these issues in Management Response, p. vii, focused on concerns about impacts of the project on groundwater levels and water resources.

*operation of the Rucúe plant reduced water availability, resulting in the drying out of several river branches and impacts on water wells, pastures and fishing. These inhabitants feared that the Quilleco project would exacerbate issues of water availability, as it will use the water discharged by the Rucúe plant.*⁵⁸ (emphasis added)

58. Subsequently, in December 2008, a letter was sent to the Executive Vice-President of IFC, the Office of the President of the World Bank, and others, alleging non-compliance with both World Bank and IFC policies with respect to projects in the Biobío, including the Quilleco project.⁵⁹ These earlier communications were then followed by a letter to the Inspection Panel of November 21, 2009 and, subsequently, additional correspondence from Requesters to the Bank Management Country Office in January and April 2010, prior to the filing of the Request for Inspection.
59. Thus the Panel confirms that the Requesters and affected people have brought the subject matter of their concerns to the attention of Management on various occasions over the course of many years, and have further indicated that they are not satisfied with the Bank Management response. The Panel is therefore satisfied that the Request meets the requirement of Paragraph 9(c).
60. At the same time, the Panel appreciates the views expressed by Management about having additional opportunity to respond to the grievances of the Requesters in relation to the Quilleco project. (See Observations and Conclusions, below).
61. The Panel notes that the subject matter of the Request is not related to procurement, as required by Paragraph 9(d).
62. As stated above, the closing date of the ERPA is now December 31, 2012. As mentioned in paragraph 13, the NCDMF will purchase 100,000 tCO_{2e} each year between 2008 and 2011, representing about US\$3.0 million in total purchases. The Request therefore satisfies the requirement in Paragraph 9(e) that the related financing has not been closed or substantially disbursed.⁶⁰
63. Furthermore, the Panel has not previously made a recommendation on the subject matter of the Request. Therefore, the Request satisfies Paragraph 9(f).

G. OBSERVATIONS

64. During its visit, the Panel team met with a group of local community members from Tucapel, which as indicated earlier is located in the valley of the river Laja, close to the Quilleco

⁵⁸ PAD, p. 16.

⁵⁹ This December 2008 communication is referred to in the correspondence of November 2009 mentioned in the Panel's Notice of Registration (first paragraph). Among other references, the correspondence alleges that "*the WB will be extending a check for one million dollars, on behalf of the Dutch facility, to a company that is supposedly saving our atmosphere from harmful emissions, but that is also, according to recent and reliable testimony, responsible for disregarding WM [WB] commitments.*"

⁶⁰ According to the Resolution that established the Panel, "this will be deemed to be the case when at least ninety-five percent of the loan proceeds have been disbursed." Footnote to Paragraph 14 (c).

project. These local residents, who are mostly farmers who live in and work the land along the river Laja, amplified upon the concerns stated in that part of the Request for Inspection that refers to the Quilleco Project, and asked that their concerns be conveyed to the Executive Directors of the Bank. In the Panel Team's meeting with the members of the Junta de Vecinos "Peumo y Valle de Laja"⁶¹ all present asked to be considered as additional signatories of the Request. The local residents expressed a strong concern about the way in which the Project had impacted their lives and livelihoods, and the lack of concern of Project authorities, including Bank staff.

65. Overall, the concern of the local residents met by the Panel team relates to what they view as the "drying up" of the area in which they live and on which their livelihoods depend. The Panel received allegations that the operation of the Quilleco plant, which uses water released by the Rucúe hydropower project and directly affects the stretch of water between the point where the water was originally returned to the river by the Rucúe plant and the point that water is now discharged back into the river from the Quilleco power plant, had significantly reduced the availability of water from the Laja River in that area for agricultural and livestock use. As a result, agricultural production has suffered and their livestock have dwindled, which had directly affected their livelihoods and incomes.
66. They claim that the reduced flow of water in the river has also had a negative impact on their wells, which have either become dry or seen their level drop considerably. In their view, the flow in this stretch of the river is significantly below the level needed to sustain the water level in their wells and the agricultural and livestock activity they had enjoyed before the Project commenced operations. They also claim that decreased water and the cumulative impacts of the Rucúe and Quilleco projects have negatively affected native flora and fauna (especially numbers of fish) and that they are not receiving any benefits from the Project. On the contrary, they allege that electricity prices are higher in their area than in the capital city of Santiago. In summary, the residents of the stretch of river in question believe that the Project has resulted in the taking of water that is vital for their lives and livelihoods without any serious efforts to mitigate these impacts or to compensate appropriately.
67. The Panel observes that the allegations of harm as a result of the Quilleco Project, though they affect a relatively small area and a limited number of people, are serious. If validated, the allegations would imply that a project designed to protect the global environment has done so at least in part at the expense of local people and the local environment.
68. The Panel notes that the allegations of harm in the Request, the views it heard and the supplemental information it received during its visit differ considerably from those in the Management Response on the environmental, social and economic impact of the Project. Overall, the Project's impacts as conveyed by the Requesters are very different from that portrayed in the Management Response.
69. The Panel notes that, as mentioned in the Management Response, Management believes that it has properly and adequately complied with the relevant Bank policies and that appropriate analysis of environmental effects was carried out in the EIA. Management Response

⁶¹ In English: "The Association of Neighbors of Peumo and the Laja Valley"

indicates that the potential impacts of the Project on groundwater and wells was thoroughly studied during appraisal stage and that, according to information provided by Colbún, the Quilleco project has not affected groundwater levels or water resources. However, the description of the main findings of available monitoring reports in the Management Response suggests that the principal focus of current monitoring activities is on environmental parameters and does not appear to include consideration of social impacts, including changes in agricultural and livestock production and thus on livelihoods and incomes, which is a key concern of the requesters.

70. Although the Management Response indicates that no formal complaints have been received from the Valle del Laja community and that therefore a proposed committee to resolve disputes was not formed, during its meetings with local residents the Panel team was informed that the group has submitted claims to the local Quilleco power station, and had earlier made a complaint directly to Colbún and also to the Bank officials that visited the area during Project preparation and supervision, most recently in June 2010. Concern was also expressed over inadequate disclosure of information and consultation with local people about the potential impacts of the Project and potential solutions.
71. However the Panel notes that, while originally Management claims to have been unaware of the Requesters' concerns, Management now recognizes that the Panel Team's visit and consultation with the Requesters has helped to illuminate the specific grievances of the Requesters and has helped Management to take steps to address those grievances.
72. With the clarifications provided by the Panel Team's visit to Chile in early August, Management submitted an addendum to its original response on August 23, 2010. In its addendum, Management indicated that it agreed to analyze the impact of the Quilleco diversion on the local hydrology and geohydrology and determine whether there is evidence of a linkage to community concerns over water availability, especially for livestock and agriculture in the project area, and, if necessary, ways to address those concerns.

H. CONCLUSION

73. As stated in section E, the conclusions and recommendations below pertain only to claims made against the Quilleco project and subsequent Management Response regarding this project.
74. The Panel has determined that the Requesters and the Request meet the eligibility criteria set forth in the Resolution that established the Inspection Panel and the 1999 Clarifications.
75. The Panel notes that there are conflicting assertions and differing views on issues of harm and compliance with policies and procedures raised in the Request for Inspection, as evidenced by the various statements made in the Request, in the Management Response, in the Panel team's meetings with affected people and with Bank staff, and in Management's addendum to the Management Response. As described in the section on Observations, these conflicting assertions relate, in particular, to impacts on ground and surface water resources

and livelihoods resulting from the Quilleco project, and can only be addressed through an investigation.

76. At the same time, the Panel notes Management's recent positive approach in responding to the grievances of the Requesters through the set of actions proposed in paragraph 102 of the Management Response and in the Addendum to the Management Response, to help ascertain the causes and extent of the harm alleged by the Requesters and ways and means to address such grievances. In light of these proposed actions and Articles 4 and 5 of the 1999 Clarifications, and consistent with prior similar recommendations approved by the Board, the Panel recommends to defer the decision on whether to recommend an investigation until further time has elapsed to determine if the issues and concerns raised by the Request can be addressed by the proposed actions and the ensuing dialogue among the affected and interested parties. The Panel expects to be able to make a determination by May 31, 2011 as to whether an investigation is warranted. The Panel's judgment at that point in time will involve a careful independent review by the Inspection Panel of Management's actions to address the Requesters' concerns, including the views of Requesters on these actions and on any remedial measures proposed.
77. Since the Panel is not making a recommendation at this time, the Requesters may still have recourse to the Panel later if they consider there are serious violations of Bank policies and procedures causing material adverse effect, which are based on specific acts or omissions of the Bank relating to the Project.
78. If the Board of Executive Directors concurs with the foregoing, the Inspection Panel will advise the Requesters and Management accordingly.