

OFFICE MEMORANDUM

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THE INSPECTION PANEL

DATE: August 1, 1997

TO: Richard E. Bissell, Chairman, Inspection Panel

FROM: Zafer Ecevit, Acting Vice President, LCRVP *ZHE.*

EXTENSION: 84072

SUBJECT: Request for Inspection - Additional Submissions
Argentina/Paraguay: Yacyretá Hydroelectric Project

Per your request of July 3, 1997, attached please find our comments to the complaints received by the Inspection Panel during their May 1997 visit to the city of Posadas. We have reviewed the documentation submitted to us and identified the relevant claims and provided responses accordingly. Claims and responses have been grouped to respond to the representations made by:

- (i) the population living in the A 1 neighborhood (Annex 1);
- (ii) the population living in the A 3.2 neighborhood (Annex 2);
- (iii) the small brick makers of Garupá and Candelaria (Annex 3);
- (iv) the Municipal Council of the city of Posadas (Annex 4); and
- (v) the Honorable Chamber of Representatives of the Province of Misiones (Annex 5).

Enclosures

Cleared with and cc: Messrs./Mmes. Alexander (LCC7C); Hagerstrom (LCC7A); Molnar (LEGLA); Partridge, Quintero, Ledec, Mejia (LCSES)

cc: Mr./Mme. Wolfensohn (EXC); Guerrero (LCC6C)

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POPULATION LIVING IN THE A.1 NEIGHBORHOOD

Background:

During the decade of the eighties and prior to the approval of the current Bank loan 3520-AR, EBY applied a resettlement policy whereby the relocatees were expected to pay the difference between the value of their previous house and the value of the new house given by EBY. Such payment would be capped at no more than 35% of the value of the new house. Under that policy, relocated families had to agree on the establishment of a mortgage in favor of EBY and acquire a debt to be paid in 30 years (360 monthly payments), at an annual interest rate of 6%. With this policy, EBY intended to recover part of the investments made in the settlements already built, whose construction standards for the majority of the affected population were far better than those of the affected areas. For those that had more valuable houses than those received, EBY gave such difference in cash.

Consistent with the above policy, again prior to the approval of the Bank loan 3520-AR in 1992, EBY built a new settlement known as A-1 or *Barrio Yacyretá* and relocated 1,113 families, and started the construction of a second new settlement known as A 3.2 or *Villa Lanus*. In both cases, the houses were built with higher construction standards than the majority of those located in the lower lands near the Paraná river.

Under loan 3520-AR, the Borrower and the Bank agreed on a new Resettlement Policy, in line with Bank OD 4.30, whereby all families affected by the Yacyretá project should be given new replacement houses in exchange for those affected by the Project, at no cost to the relocatees¹. The following two exceptions were considered under the new Resettlement Policy: (i) retroactive cases (families relocated before 1992), where relocatees were paying the differential value of their houses; and (ii) families that voluntarily might request a more expensive house (higher construction standards) and expressed their willingness to pay for the difference. In the first case, EBY would offer the alternative of moving to a new less costly house (reduced construction standards) and would cancel the obligation to pay the debt. For the second case, families must be given the opportunity to choose the alternative of a free house, and agree with EBY on the payment conditions for the additional cost if they choose to upgrade. For the rest of the affected population and certainly for all those to be relocated under the agreement of loan 3520-AR, EBY should provide housing at no cost to the beneficiary.

Despite the agreement under Bank loan 3520-AR, EBY continued applying its old policy, charging relocatees an average amount equivalent to 35% of the value of the new house, including those affected by reservoir elevation 76m who were covered by the new resettlement policy. The Bank was not informed about the application of this policy.

¹ See pages 50 to 59 of the Yacyreta Resettlement Plan, which together with the Environmental Management Plan constitute an integral part of the Loan Agreement. (See Annex 1 - Attachment 1)

During project supervision, in particular after the raising of the reservoir to elevation 76m, the issue of delays in the processing and issuing of property titles was discussed by every Bank supervision mission. EBY's explanations were that delays were due to slow and complicated legal/administrative procedures at the provincial agencies responsible for these matters, and to the shortage of personnel in EBY's legal department. As a result of the Bank's December 1995 supervision mission, the Bank understood that the old resettlement policy was no longer being applied by EBY. (See Annex 1 Attachment 2).

During the June 1997 Bank supervision mission, the Bank again raised its concern about the delays in the issuing of property titles, and learned that, on the Argentine side, the major obstacle for issuing those titles was the refusal of the affected population to sign the required documentation, because of the debt imposed by EBY. The mission also observed that EBY was indeed not charging any urban affected families for houses on the Paraguayan side. EBY was fully aware of this problem and informed the mission that the issue was being discussed with the local and federal governments, to solve the problem on a global basis. The mission informed EBY that transferring resettlement costs, to those involuntarily displaced by the project, is against the resettlement policy agreed with the Bank, stated on pages 50-59 of the Resettlement Plan contained in the Environmental Management Program (EMP) and referred to in the Loan Agreement for Loan 3520-AR. Consequently, the mission asked EBY to forgive the resettlers' debt to EBY in those cases where there is no option to move to a cost-free house.

EBY has since notified the Bank that, although it is taking measures to ameliorate the impact of such debt on resettlers, it disagrees with the Bank's interpretation of the Resettlement Plan on this point and therefore is not in a position to forgive the totality of the debts in such cases. In particular, EBY maintains that the "free resettlement" policy cited by the Bank and contained in the Resettlement Plan applies only in the case of replacement homes designed and constructed after the November 1992 date of the Loan 3520-AR Loan Agreement, and not to houses which were designed prior to that date and built in replacement of lesser quality structures occupied prior to the resettlement.

The Bank contends that the free resettlement policy of the Resettlement Plan applies not only prospectively, but also retroactively to the housing solutions designed prior to November 1992 (see para. 2 on page 59 of the Resettlement Plan, which text refers to the granting of alternative housing solutions to those who had incurred debt in connection with pre-November 1992 resettlement by EBY). Both EBY and the Bank are currently exchanging views in an effort to resolve this disagreement.

Claim 1. EBY has not complied with the quality standards for housing construction and has given houses of lesser quality (zinc roof, no internal doors, deficient electrical and sanitary installations).

Response: The Bank is satisfied that construction of the replacement houses meets or exceeds the current local urban standards for the Province of Misiones. In a few cases (70

units out of 1,058), for cost-savings, but still with the current standards, EBY reduced the level of interior finishing and used galvanized corrugated zinc sheets for roofing instead of ceramic tiles. Zinc roof is a common and highly acceptable solution in the Province of Misiones, and does not diminish the quality of the house. Electric and sanitary installations were given in good condition to relocated families. The EBY technical team reviewed them twice and families were given clear instructions for their use and maintenance. All installations were tested in the presence of each family and, during the first months after the move, EBY technicians made all repairs at the request of the affected families.

It should be noted that the houses in the A.1 settlement are of much better quality than those in the affected area, many of which were made out of wood and other non-durable materials, had no sanitary services and were periodically flooded. The average value of the previous houses ranged from: (i) \$2,500 to \$ 6,000 for houses owned by occupants (families with no legal rights on land), and (ii) \$15,000 to \$ 45,000 for houses owned by legal tenants and middle income families. The estimated value of the new houses provided by EBY to the population ranges from \$20,000 to \$36,000. The improvement in family patrimony is not only recognized by the relocatees, but also documented by independent evaluators².

Claim 2: According to the appraisal carried out by the Provincial Tribunal of Posadas (PTP), the value of the property in the A.1 settlement is less than that estimated by EBY.

Response: The appraisal carried out by PTP in April 1997 shows that property values in this settlement are about 21% - 25% below those estimated by EBY in 1995. PTP's appraisal is based on reference unit prices of five other nearby neighborhoods with different characteristics and services that are not comparable among themselves nor comparable with the A.1 settlement. The appraisal carried out by PTP is not supported by a technical study that would allow comparisons on the basis on homogeneous set of data. Because of the above, PTP estimations could only be considered as indicative values.

Regardless of the assumptions used by PTP, its appraisal shows a unit value of \$17 per square meter for plots located inside the compound, and \$20 per square meter for properties facing the main avenue (Avenida Lopez y Planes). These estimates are not supported by the real market prices in the area. EBY is currently paying \$21 per square meter in the Chacra 102³. There are also several properties for sale located on the main avenue with values of \$41 and \$46 square meter.

² See Volumes V, VII and X of the Independent Evaluation Report.

³ Documentation on current land acquisition and indemnification process in the A 1 area can be found in EBY Departamento de Tasaciones files.

Additionally, PTP estimated the value of infrastructure with a methodology that assigns values to each plot in proportion to the number of square meters built on it. According to this methodology, the value of the property would be different for 2 plots that have the same size, same location and same services, only because the number of square meters of the house built on each one is different.

Finally, since EBY and PTP appraisals were carried out on different dates, the unit value for houses estimated by PTP may have been affected by lack of maintenance and may not reflect the real value of the house when it was new and given to the affected family by EBY.

Claim 3: EBY must suspend the title regularization process (*boleto de compraventa y comodato*) and proceed to review the conditions and covenants so far adopted by EBY in such documents. Relocates do not accept interest charges, financial obligations or mortgages (*gravamen hipotecario*) that will affect them for 30 years.

Response: We agree that property titles unencumbered by mortgages should be issued in those cases to which exceptions to the free resettlement policy (see third paragraph of page 1 above) do not apply. In addition, all debts arising in contravention of that policy should be annulled and EBY should take steps to reimburse relocatees for debt payments collected in contravention of that policy.

2. Tierra

Entrega de una parcela o Unidad Mínima Viable, para el restablecimiento de actividades económicas periurbanas y rurales basadas en el aprovechamiento de recursos naturales que serán afectados por el proyecto.

Las soluciones para el reasentamiento se diseñarán sobre la base del conocimiento de las características socioeconómicas de los grupos humanos desplazados y sobre el respeto y reconocimiento de sus estrategias culturales de adaptación al medio natural y social circundante.

OPCION DE INDEMNIZACION

Para fines de indemnización, los bienes inmuebles de las familias desplazadas, serán valorados a los costos comerciales de reposición. La libre elección de esta opción, exime a la EBY de cualquier responsabilidad relocalizatoria y de rehabilitación.

PAUTAS GENERALES DE POLITICA

Las soluciones que se propondrán a la comunidad, tendrán el doble objetivo de:

1. Reposición de la pérdida (mitigación del impacto)
2. Contribución a la mejora en el nivel de vida de las comunidades desplazadas.

Las soluciones serán diseñadas con criterios de racionalidad económica y justicia social, evitando vulnerar derechos humanos y sociales, y tendiendo a garantizar especialmente, la mayor asistencia y beneficio posible para la población de menores recursos y mayor vulnerabilidad social.

De esta manera, el reasentamiento no podrá dejar a ninguna familia en condiciones desmejoradas con respecto a las precedentes al desalojo, pero sí propender por la mejora significativa en las condiciones de vida de la población más dependiente del medio natural, de menores recursos económicos y socialmente más indefensa.

COSTO DE LAS SOLUCIONES DE REASENTAMIENTO

La opción de reasentamiento no implicará para ninguna familia, asumir costos o contraer deudas para el pago de la nueva solución.

La EBY repondrá, asumiendo todos los costos, las soluciones habitacionales y productivas necesarias, así como el equipamiento urbano y rural requerido para el restablecimiento de las comunidades barriales y campesinas, y de los sistemas sociales y económicos que resulten alterados como consecuencia del proyecto.

El asesoramiento relativo al saneamiento de títulos actuales, esclarecimiento de situaciones dominiales, y demás trámites jurídicos y administrativos correlativos al desplazamiento y relocalización, correrán por cuenta de la Entidad Binacional, hasta la entrega en propiedad de las nuevas soluciones.

PARTICIPACION DE LA COMUNIDAD

Las diferentes alternativas para el reasentamiento, en sus lineamientos básicos, deberán ser presentadas a las comunidades afectadas, a través de mecanismos de información-consulta, dirigidos a las familias, a las organizaciones comunitarias

SINTESIS DE LAS POLITICAS

AFECTADOS	SOLUCIONES
<p>1. POBLACION URBANA</p> <p>Familias residentes en cascos urbanos y familias residentes en zonas periurbanas (no oleros)</p>	<ol style="list-style-type: none"> 1. Reasentamiento Viviendas urbanas Viviendas urbanas con servicios (en canje) Asistencia social 2. Indemnización (propiedades) Compensación (mejoras)
<p>2. POBLACION PERIURBANA (OLEROS)</p> <p>Familias residentes en unidades artesanales de explotación de arcilla</p>	<ol style="list-style-type: none"> 1. Vivienda y parcela para explotación de arcilla (en yacim. fuera de cota) (en canje) 2. Unidad Mínima Viable para explotación agrícola en zona rural (En canje) Asistencia agropecuaria 3. Vivienda urbana con servicios (En canje) Asistencia social Asistencia en reconversión laboral 4. Indemnización (propiedades) Compensación (mejoras)
<p>Familias residentes en unidades medianas de explotación de arcilla</p>	<ol style="list-style-type: none"> 1. Vivienda y parcela para explotación de arcilla (en yacim. fuera de cota) (en canje) 2. Vivienda y parcela en zona de deposito de material acopiado 3. Indemnización Compensación (mejoras)

(continuación)

<p>3. POBLACION RURAL</p> <p>Familias residentes en zona rural, sin actividad agropecuaria principal</p>	<ol style="list-style-type: none"> 1. Reasentamiento vivienda con servicios en localidades urbanas cercanas (en canje)
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	2. Indemnización Compensación (mejoras)
Familias con actividad agropecuaria de autoconsumo (No propietarios)	1. Reasentamiento Vivienda rural Unidad Mínima Viable para explotación agropec. (7.5 ha) (en canje) Asistencia agropecuaria 2. Compensación (mejoras)
Familias propietarias de predios de explotación agrícola entre 7.5 y 20 ha	1. Reasentamiento Parcela de reposición hasta por un máximo de 20 Ha. (en canje) Asistencia Agropecuaria 2. Indemnización (tierras y mejoras)
Familias con actividad agropecuaria empresarial (Predios menores de 50 ha)	1. Reasentamiento Unidad económica empresarial Hasta un máximo de 20 ha Indemnización por tierra excedente y mejoras 2. Indemnización total

(continuación)

AFECTADOS	SOLUCIONES
4. INDUSTRIAS Y COMERCIOS Familias residentes en cascos urbanos con locales comerciales en la vivienda	1. Vivienda urbana con servicios (en canje) Espacio en zona comercial (en canje) 2. Indemnización (propiedades)
Arrendatarios de locales comerciales en área de afectación	1. espacio para arrendar en zona comercial
Industrias y comercios familiares anexos a la vivienda	1. Vivienda urbana con servicios con espacio para la reposición funcional de la actividad (en canje) 2. Indemnización (propiedades)
Mediana y gran industria	1. Indemnización y asistencia para autorrelocalización en zona industrial.
5. EQUIPAMIENTOS COMUNITARIOS URBANOS Y RURALES	1. reposición funcional en condiciones mejoradas
6. CASOS ESPECIALES	Estudio de caso particular Solución concertada con el afectado.

4.1.3. POBLACION RURAL

Para el reasentamiento rural, en lo posible, se adquirirán tierras cercanas a las localidades y centros de servicio del área rural. Se propenderá el reasentamiento en colonias y se les prestará a las familias reasentadas asistencia para la continuidad y desarrollo de sus actividades agropecuarias.

Agricultores de subsistencia

Para las familias que desarrollan actividades de subsistencia y que no son propietarios de predios, se entregará una Unidad Mínima Viable de 7.5 ha, en canje y con título de propiedad. Asimismo recibirán asistencia agropecuaria durante los 3 primeros años a partir de la reubicación.

Igual solución se dará a los propietarios de menos de 7.5 ha.

Propietarios de parcelas con más de 7.5 ha

Para los propietarios de parcelas de más de 7.5 ha, se entregarán en canje terrenos equivalentes, hasta por un máximo de 20 ha.

Propietarios de 20-50ha

Para estos propietarios se ofrecerán Unidades Económicas Empresariales de 20 ha e indemnización en dinero por las tierras excedentes afectadas.

Población excluida de los planes de reasentamiento

Se excluyen de la opción de reasentamiento los propietarios de terrenos que no habitan en la zona de afectación y los propietarios de Unidades Económicas Empresariales de más de 50 hectáreas. Para ellos está prevista la indemnización y asistencia para la reinstalación de la Unidad productiva en áreas cercanas a fin de mitigar en lo posible, la pérdida de empleo.

Nota

Unidad Mínima Viable: Pequeña parcela rural que permite subvenir las necesidades básicas del grupo familiar.

Según los procedimientos oficialmente aprobados por la EBY para el reasentamiento de la población residente en áreas rurales (Mayo de 1983), se define como "Familias con actividad agropecuaria de autoconsumo", aquellas que desarrollan una actividad principal de carácter rural, de venta menor y/o consumo, complementada o no con otras actividades, y que ocupen efectivamente el predio rural, con o sin vivienda, aportando el beneficiario rural y su familia la mayor parte del trabajo personal necesario".

ESTUDIOS DE CASO

La EBY, con criterio social, estudiará y propondrá soluciones en forma particular para los casos que no se ajusten a lo previsto en las pautas generales de política.

POLITICAS ESPECIALES

1. (El plan de reasentamiento involucrará las familias que habiendo sido censadas en 1979 y/o relevadas en 1989 - 90, han tenido que abandonar sus hogares asentándose fuera de zona de afectación, como consecuencias de las inundaciones, la humedad, y problemas de salud, obligándolos a salir de su antiguo asentamiento y ubicarse en terrenos no inundables, siempre y cuando hayan comunicado a la EBY su cambio de domicilio y se trate de fuerza mayor.

Para estas familias se ofrecerá vivienda urbana con servicios en los nuevos asentamientos construidos por la EBY. Ello compensará en parte, la larga espera, el trauma de la emigración y vivienda transitoria, y crear al menos, algunas condiciones para restablecer los lazos de vecindad. Este caso tiene vigencia para la margen Argentina.

2. Problemas de retroactividad de la deuda para el caso de familias ya reasentadas en el barrio Yacyretá y que han asumido una deuda por la nueva vivienda, se les ofrecerá la alternativa de menores especificaciones sin contraer una deuda adicional.
3. Para los no propietarios de viviendas y tierras de restitución con capacidad de pago que deban ser reasentados en el futuro y que deseen acceder a las viviendas más costosas, como algunas de las ya entregadas en los nuevos asentamientos, deberá ofrecerse la opción de obtenerla en canje por su correspondiente indemnización más una deuda por un valor máximo del 35% del costo del inmueble entregado, con un período de 30 años al 6% de interés.
4. Familias rurales reasentadas en Atinguy.

Para este grupo se propenderá por la regularización inmediata de los títulos de propiedad. Para aquellas familias no propietarias se les ofrecerá la alternativa de renegociar su parcela sin deuda adicional, pero de menor superficie. Las familias que opten por esta alternativa, cederán a la EBY una porción de sus tierras a cambio de los títulos de propiedad inmediatos sin deuda adicional. Las familias que deseen seguir con las condiciones actuales podrán hacerlo

THE WORLD BANK GROUP

ROUTING SLIP		DATE: May 8, 1996	
NAME		ROOM. NO.	
Ms. Maria Clara Mejia			
<input type="checkbox"/>	URGENT	<input type="checkbox"/>	PER YOUR REQUEST
<input type="checkbox"/>	FOR COMMENT	<input type="checkbox"/>	PER OUR CONVERSATION
<input checked="" type="radio"/>	FOR ACTION	<input type="checkbox"/>	NOTE AND FILE
<input type="checkbox"/>	FOR APPROVAL/CLEARANCE	<input checked="" type="radio"/>	FOR INFORMATION
<input type="checkbox"/>	FOR SIGNATURE	<input type="checkbox"/>	PREPARE REPLY
<input type="checkbox"/>	NOTE AND CIRCULATE	<input type="checkbox"/>	NOTE AND RETURN
RE: Yacyreta Project: Resettlement Program - Land Tenure and Titling Aspects			
<p>REMARKS: Maria Clara: Please find attached my full report from the mission to Argentina and Paraguay we carried out at the end of last year. This report supplements the note I sent to you and Bill Partridge on December 11, 1995. We did not photocopy the legal instruments because of their size and length, so you have the originals and only copies. At the same time, I am sending a copy of the text and Annexes 13 and 14 (the summary of the current situation with regard to land titles in the resettlement areas) to Messrs. Faiz, de Franco, Jadrijevic, Klockner, and Partridge for their information. Sorry this took longer to get to you than I would have wished. I hope that rapid action can be taken where necessary to accelerate the delivery of titles, as outlined in the report. If you would like to pursue any of the topics in greater depth, please let me know.</p> <p>Thank you.</p> <p style="text-align: center;"><i>Orv</i> Orv</p>			
FROM Orv Grimes		ROOM NO. Q7-023	EXTENSION 38104

**Yacyreta II Project
Resettlement Program (PARR)
Land Tenure Aspects**

A. *Introduction*

1. This note addresses land tenure issues related to the Resettlement Program (PARR) of the Yacyreta II project. The focus is on delivery of full title to resettled families: what are the procedures that need to be followed, where are the bottlenecks, and what can be done to speed up the process?

2. The note begins with a synopsis of pertinent aspects of land law in Argentina and Paraguay, and continues with definition of the main issues related to the attribution of full title to the properties occupied by resettled families. It concludes with the next steps that are recommended in order to ensure delivery of titles in the shortest possible time.

B. *Land Law in Argentina*

3. The basic elements of land legislation in Argentina are derived from the French Napoleonic Code, put in place in the 19th century and still in use today. As in the French system, there are two types of public land (*dominio publico del estado*; *dominio privado del estado*). Expropriation procedures are the same, particularly the key aspect that the land expropriated can be used for the intended public purpose before the compensation award is decided.

4. *Acquisition of land for public purposes.* There are two ways for public authorities to acquire land for project purposes: by agreement, and by expropriation. In Argentina, the shorthand for these methods is "acuerdo" and "juicio." About half of EBY's acquisitions for Yacyreta have been by acuerdo, and half by juicio. EBY may offer a premium of 10% over market price to encourage the owner to agree amicably to the acquisition. In this acuerdo case, when agreement is reached the property is registered at the Registro Publico in the name of EBY. The *escribano publico* (a Government civil servant acting as intermediary between EBY and the beneficiary in this case) is in charge of delivering title to the beneficiary. EBY pays all costs of land titling, including the expenses of the *escribano*. In the "juicio" cases, a few of the disagreements have been over low prices offered by EBY, but far more have been because of clouded or unclear title to the land. Law No. 21.499 of 1977, the basic expropriation law of Argentina, is included as Annex 1. In both the acuerdo and juicio cases the issuance of the Expropriation Decree (*Declaracion de utilidad publica*) signals the transfer of the property into public hands, EBY in this case, for project use. The process does not have to be long: the expropriation of land at Santa Tecla by EBY took only two months (from March to May 1993). The expropriation decree for Santa Tecla is attached as Annex 2.

5. In order to obtain title, evidence must be shown of payment of all relevant taxes for the past ten years. Without this attestation, the titling process stops.

6. *Application to Yacyreta.* A separate Generic Land Law, approved in 1980, covers the application of the above legislation in the specific case of Yacyreta. This original Generic Land Law for Yacyreta, Law No. 22.313, is included as Annex 3. It was valid for 10 years, until 1990. Another law (No. 23.881, approved in 1990, included as Annex 4), extends the Generic Land Law until 2000, and is consequently still in force.

C. *Land Law in Paraguay*

7. In Paraguay, existing legislation is basically similar to that of Argentina, but the application to Yacyreta reflects two main differences. First, since the pace of decentralization in Paraguay has been slow, local districts are by and large not geared up to process land titles, even though a Servicio de Catastro may exist. This means that many key decisions in the titling process need to be made in Asuncion. Second, there is no basic land law in Paraguay comparable to Law 21.499 in Argentina. This means there is no ley-marco on which to draw for legislation applying specifically to Yacyreta, and that legislation is therefore likely to take much more time than in Argentina. A Generic Land Law for Yacyreta was approved in Paraguay only in September 1994. It is included as Annex 5. It should be noted that unlike Argentina, **this legislation covers up to Level 76 only.** A new law covering up to Level 83 was submitted to the Paraguayan Legislature in November 1995, but has not yet been acted upon.

8. The function of the escribano publico is identical in Paraguay to that in Argentina. The main difference is that the escribano in Paraguay needs to deal more with the capital, especially the Registro Nacional de Catastro Publico, in addition to the local district.

9. In order to obtain title, evidence must be shown of payment of all relevant taxes for the past four years. Without this attestation, the titling process stops.

D. *Tenure and Titling Issues in Yacyreta Resettlement*

10. Whether in Argentina or Paraguay, families to be resettled typically have no written evidence of tenure. When they are resettled, they are given an occupancy certificate called a **contrato de comodato**. The contrato de comodato in use in Argentina is attached as Annex 6, and that used in Paraguay is included as Annex 7.

11. The comodato certificate confers only usufruct, or the right to occupy and use the property. No payment is made to obtain it. The comodato cannot be sold, and cannot be used at a bank as collateral. Sub-letting is prohibited (although it occurs with some frequency at Yacyreta). For these reasons resettled families may be initially pleased with a

comodato, but later on when they learn its limitations, end up placing a low value on it. They want full title.

12. Before the process of conversion from comodato to titulo is described, it will be useful to mention a third land tenure instrument, the **boleto de compra-venta**. This instrument has several features which make it inappropriate for resettlement. Monthly payments are required for 30 years, like a mortgage, a financial burden which should not be placed on families being involuntarily resettled. Also, unlike a mortgage, equity does not build up. The payer of the monthly amount does not own anything until all payments are made, at which time full title is given. Fortunately, the boleto de compra-venta was used only at the first Argentine resettlement site (Area A.1), and EBY has since moved away from it. An example of a boleto de compra-venta is included as Annexes 8 (with housing credit) and 9 (without housing credit). The boleto de compra-venta is used rarely in Paraguay, and not at all in Yacyreta. An example of a model form for the Paraguay boleto de compra-venta is attached as Annex 10.

12. In summary, the land titling process in Yacyreta consists of moving families from a contrato de comodato to a titulo de propiedad. Examples of titles are included as Annex 11 (Argentina) and 12 (Paraguay).

13. EBY's experience with escribanos publicos shows that once the escribanos receive the authorization to proceed, they can deliver titles fairly quickly and efficiently. This authorization to proceed **does not come from EBY**. It comes from local governments or other agencies in the form of approval of Site Plans (Plan de Loteamiento) for the resettlement areas. **Approval of Site Plans is the main bottleneck in the delivery of land titles in Yacyreta.**

14. Annex 13 shows, for each resettlement area in Paraguay and Argentina, the entity responsible for approving Site Plans. The Site Plans are not complicated, and approval should be quick. Yet, as shown in Annex 13, some Site Plans were submitted for approval up to two years ago, and are still pending. Where Site Plans have been approved, as in Atinguy - Phase I, Buena Vista, and San Cosme (Paraguay) and Area A.1 (Argentina), the bottleneck is basically lifted and the process can be completed. Annex 14 summarizes the present status of change from comodato to titulo for each resettlement area. In 7 of the 12 areas, this change has not begun and everyone still has comodatos.

E. *Recommendations*

15. The following next steps are recommended:

- * Because of the weakness of local authorities, EBY with few staff is carrying out tenure and titling activities that the local governments should be performing. EBY should liaise with these authorities to gradually transfer responsibilities to them.

- * A line item for training and other assistance to local land offices should be included in the PARR budget.
- * Contact should be made as soon as possible, and sustained through involvement of traveling mission staff and the Facilitating Office in Asuncion, with the agencies listed in Annex 13 to encourage rapid approval of Site Plans
- * EBY land units in both Argentina and Paraguay should designate a focal point for close monitoring of the land titling process, no matter which unit within EBY is in charge.
- * Approval of Paraguay basic legislation for Yacyreta applying up to Level 83.
- * Close monitoring should also be carried out in the basic PARR tables, especially the table entitled "Soluciones rurales por asentamientos - Margen Paraguaya/Margen Argentina." Land titling status can either be in a separate column, or in the existing box "Infraestructura y servicios."
- * Land tenure and titling aspects are not covered in the PARR monitoring reports, both dated March 1995, prepared by the University of Misiones. A section on such aspects should be included in each monitoring report until all titles are delivered.

O. Grimes
May 1996

POPULATION LIVING IN THE A 3.2 NEIGHBORHOOD

Background: Please refer to the background section in Annex 1.

Claim 1: In at least one particular case, EBY is attempting to collect an interest charge that has not been set forth in the purchase agreement signed between EBY and the beneficiary.

Response: The interest payment is included within the Pesos 61.80 installment payable every month over the 30-year period of the mortgage. These installments are explicitly mentioned in the sale agreement submitted to the Inspection Panel; thus, the relevant amounts have not been hidden from the buyer in question (although itemizing which portion of that Pesos 61.80 payment was attributable to principal and which portion was attributable to interest would have made the text clearer).

Claim 2: EBY is attempting to collect financial charges, despite the fact that the school has not been completed yet, there is no permanent water supply, and the police and health posts do not exist to meet the neighborhood's needs.

Response: It is the Bank's understanding that the charges levied by EBY are not to recover the cost of public services. Moreover, the issuance of the property title does not depend on the completion of communal infrastructure (school, health post, police post, kindergarten, etc.), some of which did not even exist in the affected neighborhoods located near the river.

It is important to note that prior to the relocation of the population, the houses in A 3.2 were equipped with electricity, water and sewerage pipeline systems, at an average investment of about \$29,000 per family. On the other hand, completion of school, kindergarten, health and police posts were delayed due to: (i) bankruptcy and abandonment of the contractor responsible for the works; (ii) vandalism (details given in the Resettlement Monitoring Report No. 2 of March 1995) of the works after the contractor left; and (iii) EBY's shortage of funds that delayed implementation. In June 1997, EBY signed a new contract to finish the communal infrastructure.

Despite the delays, the majority of relocated children (64%) have been attending classes at nearby schools located less than 2 km away from their homes, while 34% attend classes in more distant neighborhoods located more than 4 km away. The latter group usually takes a public bus at a cost of \$0.40 per day. According to EBY, 18% of the children do not attend classes due to capacity limitations in nearby schools or due to economic difficulties of their families.

Attendance at other schools will continue until the new school for the A 3.2 settlement is finished. To complete the works, EBY has hired a new construction firm

which resumed works in June 1997. It is expected that the school will be ready by mid August and the remaining of the infrastructure works by December 1997. It is expected that the school will be fully operational for the next academic year.

Regarding the health post, it should be noted that the permanent facility is presently being constructed and in the mean-time, the post operates in a house provided by EBY to the Ministry of Public Health. These health services are the responsibility of the MPH and follow the standards agreed in the Ministry of Public Health.

With regard to water supply, although the pipeline has been installed, the system will not be operational until APOS (the local water company) completes the expansion of the treatment water plant to assure the required water quantities. It is expected that by December 1997 both the water and the sewerage system will be operational. Meanwhile and since 1994, when the first families settled in the new compound, EBY has been providing water by deep water wells and complemented by trucks to all relocated families. This service will continue until the system is fully operational and has been taken over by APOS.

Claim 3: The housing development is located 10 kms from downtown Posadas. Affected people need to go downtown for food because there is no food market in the neighborhood. This implies extra transportation costs and time that they did not have before the relocation.

Response: The following considerations should be taken into account to understand the above claim: (i) the population settled in the A.3.2 compound came from areas, near the river, which were subject to periodic floods and characterized by highly deteriorated sanitary conditions; (ii) due to the high demographic density in the city of Posadas, it was not possible to relocate the population downtown without displacing thousands of families; (iii) the A 3.2 settlement has good sanitary conditions and its location was known in advance and accepted by the affected population; and (iv) during the present decade, the city has grown to a point where the A 3.2 settlement is connected to the urban transport net. It is understandable that there is no well developed commercial area in the new settlement, precisely because it is new. It is also clear that prices and market opportunities in A 3.2 cannot be compared with those in downtown Posadas. On the other hand, downtown Posadas is not the only option for those living in A 3.2, who can shop in the small family businesses existing in the new settlement, which were relocated with EBY assistance. There are also supermarkets and commercial areas located within a 3 km distance.

It is true that there has been a change in the composition of the relocated families' expenditures. Because of new urban transportation needs, family expenditures for this item have slightly increased (5% to 7%). This increment has been documented by the Independent Evaluators of the Resettlement Plan (see Independent Evaluation Report -

Urban Sector - Volume X). The trade-offs for such an increment are better sanitary and living conditions and the avoidance of periodic floods.

SMALL BRICK MAKERS OF GARUPA AND CANDELARIA

Background

In 1993 EBY and the Secretariat of Mines and Geology of the Province of Misiones signed an agreement aimed at solving the problems suffered by brick makers (oleros) resulting from the filling of the Yacyretá reservoir. To define the total number of affected oleros and therefore those entitled to resettlement, a new field survey was carried out. The survey concluded that 443 oleros were to be affected, including 66 oleros of the Garupa and Candelaria area who were not surveyed by EBY in the 1989-1990 census, and who are now included in EBY's official list of beneficiaries. EBY and the provincial government agreed that 235 oleros (those included in EBY's 1989-1990 census) will be assisted by EBY, and the remaining 208 (settled between 1990 and 1994) will be assisted by the government of the Province of Misiones.

In July 1994 a mechanism for consultation and decision making was created, the so-called *Mesa de Concertación*, which included representatives of all affected brick maker neighborhoods. Relocation alternatives, benefits, overall program and timetable were discussed among participants of the *Mesa de Concertación*, EBY, affected parties and the Provincial Government. All agreements were reached by consensus or majority (for details, see records of the meetings of the *Mesa de Concertación*, dated August, 1994 and June 1995, in Attachment 1). Between 1994 and 1995, 94 oleros were relocated by EBY in the Nemesio Parma area (identified by the Provincial Government as the best source of non-river clay deposits, based on quality and reserves).

In April 1995 a group of brick makers requested cash compensation, instead of relocation. Although cash compensation was not foreseen in the Resettlement Plan and was not part of the policy agreed with the Bank, EBY accepted the request based on the fact that 99% of the oleros to be relocated in the Second Stage did not want any solution other than cash¹ (see Attachment 2). In June 1995, EBY, on the basis of an evaluation of the production levels and characteristics of each productive unit, made a proposal for compensation, ranging between \$6,500 to \$16,000 per relevant unit. The oleros' representatives did not object to EBY's proposals. Based on this agreement, EBY's Administrative Council issued Resolutions Nos. 652/96 and 685/96, spelling out EBY's official policy adopted on this matter as well as the plan, by stages, for implementation of the oleros' relocation/indemnification. By receiving cash compensation, EBY's obligations ceased and no further claims were to be accepted.

¹ Only one olero refused both cash compensation and relocation, Mr. Ruben Fernandez who is the President of the Asociacion de Oleros and who signed the note addressed to the Inspection Panel.

Current Situation

At the present time the situation is as follows:

- (i) 94 oleros were relocated in the Nemesio Parma area and received plots with clay and technical assistance that still is being provided;
- (ii) 12 oleros, by their own decision, were relocated in the rural areas of Santa Tecla and Campo Godoy;
- (iii) 216 received compensation in cash;
- (iv) one of the oleros died, five more left the area, and one, Mr. Ruben Fernandez, did not accept any of EBY's proposals;
- (v) 48 oleros (Santa Rita) received cash compensation. Payments were completed in September 1996; and
- (vi) 66 oleros of Garupá and Candelaria received 100% of the compensation agreed. Last payment were made on July 30, 1997.

Claim 1. The censuses carried out by EBY were not accurate and were not adjusted.

Response: EBY's census, carried out in 1989/1990, was updated in 1993 by the Mines and Geology Division of the Provincial Government. Areas not previously included were incorporated in the revised census. For details, please refer to the first paragraph in the Background Section above.

Claim 2. There are brick makers affected by the reservoir elevation 76m that have not received any solution up to date.

Response: All oleros affected by reservoir elevation 76m, with the exception of one olero who had not accepted any solution proposed by EBY, have been either relocated or been compensated in cash. For details, please refer to the Background Section above.

Claim 3. Payments made by EBY to indemnify/compensate brick makers are not enough. They were accepted due to the necessity (economic situation) and should be reviewed and increased.

Response: Compensation in cash paid by EBY ranges from \$6,500 for small units producing less than 7,500 bricks/ month, to \$16,000 for larger units producing more than 30,000 bricks/month. In all cases, the amount paid is equivalent to the expected family income over a period of five years. This amount, estimated as the productive life of the clay deposits moreover, is considered adequate to reestablish their lost productive unit and house.

It is important to note that for those oleros who selected relocation instead of cash, the average investment made by EBY per relocated family was about \$27,500 (land and house and a serviced plot for production). These figures do not include the cost of

the technical and social assistance program carried out during the last two years. As a result, it is not surprising that those who voluntarily selected cash compensation instead of relocation are now requesting additional money. We believe that there is no justification for such a request.

Claim 4. Oleros in Garupa and Candelaria must be relocated under the same conditions as those relocated in Posadas.

Response: EBY and the oleros of Garupa and Candelaria have agreed on cash compensation, currently being paid by EBY, on the same terms as for the other oleros. For details, please refer to the Background Section above.

Claim 5. Compensation paid by EBY only benefited the owners of the olerias (small brick industries) but not their helpers, who lost their jobs.

Response: The Resettlement Plan anticipated the relocation and economic recovery of the affected olerias, in order to assure continuity of the activity. However, 99% of the oleros to be affected by further reservoir elevations requested cash compensation instead of relocation assisted by EBY. Once the compensation was paid, owners of the olerias were free to exercise their discretion as to whether or not to continue with their manufacturing activity. Many of them opted to continue, for example, in the Arroyo Zaiman area; others in exercise of their entrepreneurial rights decided not to continue with the oleria and shifted to new economic activities. In conformity with the Bank's resettlement policy, the loss of employment due to the personal choice of the affected owner falls beyond the purview of EBY and the Bank.

Claim 6. In the last two years, EBY has left the oleros with no land, means of production and jobs. They claim compensation for the damage during that period, as well as houses and land.

Response: Replacement houses and land, as well as technical assistance to continue with the brick making activity, were given to those who selected relocation assisted by EBY. On top of this, EBY provided clay delivered at the site of production. For those who selected compensation in cash, no further entitlement for housing and land is required.

Claim 7. All oleros that selected cash compensation instead of relocation received the amount agreed upon with oleros representatives in June 1995 (see records of the meeting). Compensation was based on the level of production of each brick maker and equivalent to the expected family income over a period of five years. For those that selected cash compensation, no other entitlement was required. However, after receiving the money, a group of oleros decided to invade empty public lands (tierras fiscales) in the site called "El Povenir" which had been selected by EBY and the Provincial Government to relocate brick makers affected by elevation above 76m. After the occupation, they requested EBY to improve access and demanded services from the local government. Access were improved by EBY and electricity was provided by the municipality.

Response: It is correct that there were families affected by the Yacyretá project who were not initially included in EBY's census of 1989/1990, due to the following factors: (i) many families came to the area after the census was concluded; and (ii) the Garupa and Candelaria area was not surveyed. Consequently, a follow-up census was undertaken in 1993 and adjustments were made to take into account all of the above cases.

EBY has no obligation to assisting any oleros who may have settled illegally in the affected area since 1993. According to the last Provincial Demographic Census, population migration from rural areas has resulted in the establishment of 18 new neighborhoods (around 6,900 inhabitants) in the city of Posadas. Likewise, according to EBY estimates, there are about 1,800 families that recently settled in the project affected area (between 76m and 83m). On average, this represents one new family per day. According to the proposed amendment to the Third Owners' Agreement, the relocation/compensation of these additional families would be the responsibility of the Government of Argentina.



ACTA DE REUNION

El presente documento contiene las conclusiones y acuerdos alcanzados en las reuniones de la Mesa de Análisis y Concertación constituida para el tratamiento de la relocalización de oleros en Posadas, Garupá y Candelaria, por mandato recibido el día 20/07/94 del Sr. Director Ejecutivo de la Entidad Binacional Yacyretá Lic. Jorge Domínguez y del Sr. Ministro de Gobierno de la Provincia de Misiones Dr. René Oudín.

A continuación se exponen los puntos tratados (contenidos en la agenda acordada) y los acuerdos alcanzados en cada uno de ellos. Se destaca que la agenda de discusión incorporó el conjunto de reclamos presentados por la Coordinadora de Comisiones Vecinales de Afectados a Cota 84, la Asociación de Oleros de la Ciudad de Posadas y la Cooperativa de Industria y Comercio de Producción de Ladrillos de Villa Lanús.

1.a. Cantidad de Oleros afectados:

Se verificará la existencia de oleros que no figuren en el listado anexo al Convenio a fin de incorporarlos al mismo, siempre y cuando figuren en el relevamiento efectuado por la DGMyG y/o se compruebe fehacientemente la antigüedad y permanencia en la actividad.

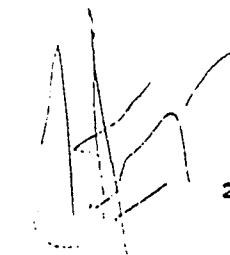
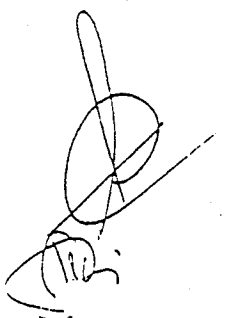
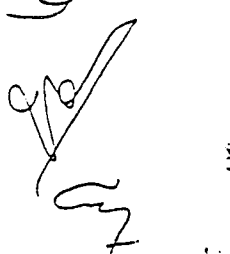
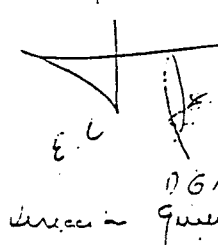
2.b. Características de las parcelas destinadas a la producción:

Se decidió que las parcelas destinadas a la producción serán individuales y los yacimientos no comunitarios, formándose una comisión técnica por cada asentamiento (con participación de oleros) para avanzar en la solución del loteamiento con yacimiento individual. La EBY acepta el criterio exponiendo y aclarando que no asume la responsabilidad por los inconvenientes que pudieran derivar de esta modalidad, la que es asumida formalmente por los beneficiarios, quienes suscribirán individualmente una constancia según modelo adjunto.

La distribución de lotes por asentamiento se decidió realizar por sorteo, asignando 1 Ha. para los que produzcan hasta 21.000; 2 Has. para los que produzcan entre 21.000 y 60.000 y 2,5 Has. para los que produzcan más de 60.000 ladrillos en base a la información de cada caso individual que surgió del relevamiento realizado por la DGMyG.

3.c. Número de Oleros afectados a cota 76:

A cota 76 se ratificó la cantidad de 93 oleros (a verificar según lo acordado en el Punto 1.a.) afectados en esta etapa. Los





 DGMyG
 Dirección General de Muestreo y Geología

misimos se encuentran asentados en las zonas de Laurel y Mártires.

Se decidió la realización de un estudio que deberá estar finalizado el día 20/08/94, tendiente a la determinación de la real afectación de oleros radicados en las riberas del Aº Zaimán (aprox. 171 olerías -a verificar según lo acordado en el Punto 1.a.). Este estudio deberá ser realizado por una comisión técnica integrada por representantes del Gobierno Provincial, de EBY y de Oleros de dicha zona.

Una vez efectuado el estudio referido en el apartado precedente y de acuerdo al resultado del mismo, se procederá a implementar las soluciones que permitan superar la situación planteada por la eventual afectación.

Lo anterior no implica modificación en las responsabilidades asumidas en la cláusula 4 del Anexo II del Convenio Especifico de Cooperación entre Yacyretá y el Gobierno de la Provincia de Misiones.

4.d. Adjudicación de viviendas:

Además de la Unidad Productiva (beneficio que alcanza a todos los oleros) les corresponderá vivienda a quienes cumplan con los siguientes requisitos:

* Para beneficiarios de la Provincia:

- Que vivan actualmente a menos de mil metros de su olería.
- Que tengan más de tres años en el oficio.
- Que no sean propietarios de viviendas.

La Provincia gestionará el financiamiento de estas viviendas dentro del Préstamo AR-3521 del Banco Mundial, y en las condiciones del mismo, ante la imposibilidad de financiarlas con recursos propios.

La Provincia contemplará la viabilidad de alternativas de financiamiento especial para la construcción de viviendas en los lotes con servicios para los que no les corresponda vivienda.

* Para beneficiarios de EBY:

- Estar incluidos en el Censo de 1989/90.
- Vivir en zona de afectación.

Los que sean propietarios del inmueble tendrán derecho a solicitar su indemnización u optar por la relocalización.

Quienes no cumplan con los requisitos anteriores tendrán derecho a un lote con servicios dentro del área urbanizada, exclusivamente para implantar una vivienda o campamento cuya dimensión será de 20m x 20m.

5.e. Plazos para la relocalización:

- Oleros de Mártires y Laurel: antes del 1º de Septiembre de 1994.-
- Oleros del Zaimán incluidos en el total de 277 (a verificar según lo acordado en el Punto 1.a.): antes del 15 de Noviembre de 1994, dando prioridad a aquellos que se verifiquen como afectados en el estudio mencionado en el Punto 3.c.
- Oleros restantes: se continuará hasta relocalizar a la totalidad antes de su afectación.

6.f. Opción de dinero en calidad de indemnización:

Reconversión laboral: para los que quieran abandonar la actividad, solamente se considerarán los casos que opten por una solución rural.

Tanto la EBY como la Provincia no acceden a la petición de una indemnización ya que el programa se orienta al mantenimiento de la actividad productiva y el acceso a la propiedad por parte de los beneficiarios.

7.g. Compromiso escrito entre la EBY, el Gobierno Provincial y los Oleros:

La presente acta se elevará al señor Gobernador y al señor Director Ejecutivo de la Entidad a los efectos correspondientes.

8.h. No al llenado del Embalse:

En virtud de todos los puntos acordados, los oleros deciden retirar esta petición siempre y cuando se cumplan los compromisos firmados en esta acta.

9.i. Que toda la ejecución del proyecto sea realizada por la Dirección General de Minas y Geología:

El organismo designado por el Gobierno para la coordinación de los diferentes entes provinciales que intervienen en la ejecución del proyecto es la Dirección General de Minas y Geología.



10.j. Monto del Resarcimiento:

Se acuerda modificar el monto establecido en el punto 4 del Anexo II del Convenio Específico de Cooperación entre la Entidad Binacional Yacyretá y el Gobierno de la Provincia de Misiones, el que queda fijado en la suma de \$ 2.600, la que se abonará de la siguiente forma:

\$. 1.000.- Inmediatamente después del traslado
\$ 800.- A los 30 días después del primer pago
\$ 800.- A los 30 días después del segundo pago

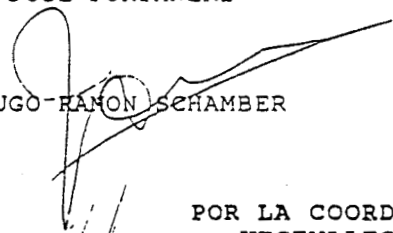
Además se entregará a cada olero un corte de madera para la construcción de su vivienda transitoria de 4m x 5m y las chapas de zinc para el techo. Las entregas se realizarán a un ritmo de 25 unidades por semana

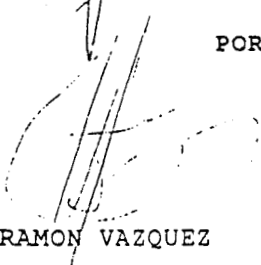
Se constituye la Mesa de Trabajo Permanente que tendrá como misión recibir y analizar las inquietudes que surjan durante la ejecución de estos acuerdos. La Mesa fijará día y hora de las reuniones.

Se firma la presente de conformidad en la ciudad de Posadas a los 02 días del mes de Agosto de 1994.

POR EL GOBIERNO DE LA
PROVINCIA DE MISIONES

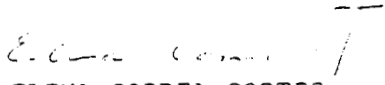

JOSE PORTANERI


HUGO RAMON SCHAMBER


RAMON VAZQUEZ

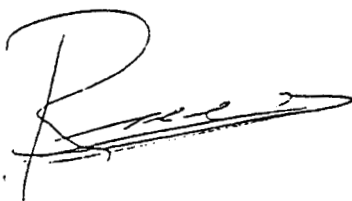
POR LA ENTIDAD BINACIONAL
YACYRETA


CESAR EDIL MENEM


ELENA CORREA CORTES

POR LA COORDINADORA DE COMISIONES
VECINALES DE AFECTADOS POR
LA COTA 84


AMADOR CASTELLANOS



POR LOS OLEROS

Rosalino Gonzalez
ROSALINO GONZALEZ

Zulmira Pedrozo
ZULMIRA PEDROZO

Juan Carlos Vera
JUAN CARLOS VERA

Eleuterio Acosta
ELEUTERIO ACOSTA

Victor Pacheco
VICTOR PACHECO

Antonio Gonzalez
ANTONIO GONZALEZ

Romulo Sanchez
ROMULO SANCHEZ

Bernardo Ferreira
BERNARDO FERREIRA

Juan Acosta
JUAN ACOSTA

Ruben Fernandez
RUBEN FERNANDEZ

Juan Carlos Serrano
JUAN CARLOS SERRANO

Desiderio Gonzalez
DESIDERIO GONZALEZ

Maria Vera Mareco
MARIA VERA MARECO

PEDRO DA SILVA

Ramon Martinez
RAMON MARTINEZ

Ramon Olivera
RAMON OLIVERA

Manuel Rosa
MANUEL ROSA

Armando Rosa
ARMANDO ROSA

Modesto Vazquez
MODESTO VAZQUEZ

Paulino da Rosa
PAULINO DA ROSA

Emma Laudelino
EMMA LAUDELINO

Ireneo Medina
IRENEO MEDINA

Ramon Villareal
RAMON VILLAREAL

Jose Kirickzik
JOSE KIRICKZIK

Ricardo Isidro Salgado
RICARDO ISIDRO SALGADO

Jose Petruk
JOSE PETRUK

Maximiliano Miranda
MAXIMILIANO MIRANDA

Teodoro Jorge da Silva
TEODORO JORGE DA SILVA

[Signature]

POR LA HONORABLE CAMARA DE REPRESENTANTES
DE LA PROVINCIA DE MISIONES

LILIANA IRRAZABAL
DIPUTADA PROVINCIAL

LUIS A. REY
DIPUTADO PROVINCIAL

POR EL HONORABLE CONCEJO DELIBERANTE
DE LA CIUDAD DE POSADAS

LUIS ARNOLDO JACOBO
DEFENSOR DEL PUEBLO

NELSON LUKOWSKI
CONCEJAL

PABLO MARTINEZ PIRES
CONCEJAL

En la ciudad de Posadas, Provincia de Misiones, a los 2 días del mes de junio de 1995, siendo las 15,30 hs. se da inicio a una nueva reunión de la Mesa de Análisis y Concertación con la presencia por parte de la E.B.Y. del Ing. Roberto Salem, de los Lic. Hugo Amable, Laura de Perini y Miguel Ramos y el Agrim. Héctor Ringa, el Lic. José Portaneri en representación del Gobierno Provincial, y del Defensor del Pueblo Luis Jacobo en representación de la Municipalidad de Posadas y de los delegados de los oleros de los asentamientos del A° Zajmán.

El Ing. Salem pone a consideración los valores que se ofrecen como compensación por indemnización, aclarando que se toma como producción mínima conforme al censo efectuado por la D.G. de M. y Geología 7.500 ladrillos/mes.

Los rangos de producción son los siguientes:

Hasta 7.500	\$ 6.500.-
Hasta 15.000	\$ 8.000.-
Hasta 21.000	\$ 9.600.-
Hasta 30.000	\$ 12.800.-
Más de 30.000	\$ 16.000.-

Forma de pago: 30, 60 y 90 días

Para los que acepten la indemnización y quieran la tierra, se les descontará el valor de la misma según la tasación que efectúe el Tribunal de Tasaciones de la Provincia.

Queda pendiente la opción de relocalización para establecer un nuevo cronograma una vez obtenida la respuesta a esta nueva propuesta.

Se pasa a cuarto intermedio para que los representantes de los oleros analicen la propuesta.

Se reanuda la reunión y el Sr. Zurko efectúa las siguientes propuestas para los 223 titulares según padrón.

1) Pregunta si la indemnización anula o no el beneficio de la vivienda.

El Ing. Salem responde que los beneficiarios de la E.B.Y. que les corresponda la vivienda no pierden su derecho.

El Lic. Portaneri aclara que no puede responder en este momento por la Provincia.

2) Propone que la forma de pago sea Contado, 30 y 60 días con los saldos documentados mediante pagaré o cheque.

El Ing. Salem responde que acepta las condiciones de pago, pero que los saldos no pueden documentarse de esa forma y que se hará por acta de avenimiento individual.

3) Propone que los que acepten la indemnización y quieran la tierra como parte de pago, que el saldo se abone de la misma forma que en el punto anterior.

Se acepta.

4) Para los que quieran continuar con el programa de relocalización oportunamente acordado según Acta de Acuerdo de fecha 20.07.94, que se establezca la fecha en la que va a continuarse con el mismo.

El Ing. Salem responde que una vez que se tenga en claro la cantidad de gente que opte por la nueva propuesta, se establecerá un nuevo cronograma de relocalización.

5) Para los que están autorrelocalizados en El Porvenir y que opten por el programa de relocalización que se les entregue el corte de vivienda y el pago del resarcimiento según acta de acuerdo, ítem 10j.

El Ing. Salem responde que está de acuerdo.

6) Se continúa con el pago del Apoyo Alimentario hasta que se efectiviza la solución.

Rosa Candia M. Morán B. 100

Ramos y Portaneri

Respecto al pedido de los oleros autorelocalizados en "El Porvenir", se preve efectuar un análisis de la situación de los mismos, quedando en claro, con el acuerdo de todos los presentes, que no se incluyen en ninguna de las soluciones que se plantean en esta Mesa las personas asentadas que no cuentan con censo E.B.Y. o Provincia.

Se solicitará un presupuesto para la instalación de la luz eléctrica, expresando el Sr. Zurko que los mismos oleros se ofrecían para efectuar la colocación de los postes.

A pedido del Sr. Miranda, se pasa a un cuarto intermedio de 15 minutos, siendo las 16,45 horas.

Reiniciada la reunión el Señor Kovalewski efectúa una moción de orden general, solicitando que la E.B.Y. de cumplimiento en forma integral al Acta de Compromiso acordada oportunamente, y que dado el atraso en que se ha incurrido, se implemente:

a) Un resarcimiento igualitario para todos los afectados de 500 \$/mes en concepto de ayuda alimentaria, y hasta tanto se produzca alguna de las siguientes opciones, no excluyentes:

- 1) Relocalización
- 2) Indemnización

Solicita que se dé a conocer la propuesta indemnizatoria a la mayor brevedad.

Luego de la intervención de varios representantes oleros, como asimismo de los representantes del Gobierno Provincial y de la Municipalidad de Posadas, se conviene en que el Ing. Salem traerá una respuesta para la próxima reunión en que esté presente, la que se conviene en realizar aproximadamente dentro de 15 días, pero que a los efectos de mantener la mecánica de reuniones y el análisis de los problemas en forma mas detallada, la Mesa de Concertación volverá a reunirse el próximo jueves 4 de mayo a las 9 hs.

No habiendo otros temas que tratar, se da por finalizada la reunión, siendo las 18 y 30 hs..

Pal
PA
Ramiro Villanueva
RESTA
comodoro MACRO AVINO
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X Zurko
Hilberto Smith
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MUNICIPAL COUNCIL OF THE CITY OF POSADAS

The Municipal Inter-institutional Council for the Yacyretá project presented several complaints grouped in three different areas: environment, productive activities, and social activities. Below are the claims and responses grouped accordingly:

Environment

Claim 1. No studies nor final projects have been prepared for coastal treatment, and the urban creeks did not receive treatment. This resulted in a continuous growing of unhealthy vegetable mass.

Response: Coastal treatment studies and designs are being planned for reservoir operation at higher elevations. At the actual elevation of 76m, there has been a minimum of disruption of coastal areas. Nevertheless, the areas that were flooded were cleaned of construction wastes, latrines were closed and sanitized, and outstanding trees were removed in some areas; in addition minor erosion protection works will be executed as needed during reservoir operation at elevation 76m. Major coastal protection works are not envisioned except for reservoir operation at 83m. For lower reservoir operation, water levels in the flood plain will continue to behave in the same manner as in natural conditions for flows above those that can be controlled by the operating level. Lateral bays are of minimum size at elevation 76m. Pollution of urban streams is caused by untreated sewage disposal, not by reservoir levels.

Claim 2. There are no studies to determine and monitor the behavior of underground waters and freatic levels.

Response: Groundwater behavior will be studied under a hydrogeological study to be carried out by an international firm. Appointment of the consultant is expected by September 1997, and the works should start shortly after. The results of this study will help to establish the specific requirements for reservoir operation at higher levels.

Claim 3. The projects and works to cover the overall sewerage system of the city of Posadas have been stopped because the main collectors and treatment plant (under the responsibility of EBY) have not materialized yet. No works have been executed to alleviate the existing environmental impact.

Response: The sewage collection works for Posadas as a whole have not been affected by delays in the construction of the main collectors and treatment plant by EBY. The lack of progress to date has been caused by APOS's inability to handle the construction and operation of the new system. World Bank financing of the water and sewage collection systems in Posadas is conditioned on improvements in APOS's institutional capacity and appointment of a private operator for the operation and maintenance of the system and construction of new facilities. The bids for the construction of the main collectors and

treatment plant were received by EBY, and the construction contract is expected to be awarded in September 1997.

Productive Activities

Claim 4. The fishing activity downstream of the dam has practically disappeared because of the reduced fish migration through the fish transfer facilities at the Yacyretá dam.

Response: It is true that the Yacyretá Dam (and any other large dam of its kind) serves as a barrier to natural fish migration patterns, with limited fish passage upriver through the fish elevators and downriver through the turbines and spillways. Nonetheless, the monitoring being carried out under the Yacyretá Project indicates that many commercially valuable fish species remain abundant, both above and below the dam. Within one kilometer upriver and down river of the dam, fishing is prohibited for safety reasons and to improve sustainability, since the concentration of migratory species below the dam makes them unnaturally easy to catch. Illegal fishing within this prohibited zone remains a problem (mostly in Paraguayan waters), although it has apparently declined due to recent enforcement efforts. Outside of this prohibited zone, fishing activity remains high, both up- and downriver of the dam.

Claim 5. Because of the Yacyretá project, the brick makers production has been reduced. The situation is aggravated by the fact that the new clay deposits given to the relocated oleros do not have enough clay and, if they do, they are of poor quality.

Response: Based on the recommendations of the Technical Report prepared by the Mines and Geology Division of the Province of Misiones, EBY bought land with clay deposits in Nemesio Parma and relocated oleros affected by elevation 76m. According to the mentioned report, clay deposits had adequate and sufficient clay for ten years' production. For efficiency purposes in clay exploitation and because of the characteristics of the material (not as good as the river clay deposits), the report recommended technological adaptations, technical assistance, and communal exploitation of the clay deposits. In 1994, ninety three productive units were relocated by EBY. The oleros rejected communal exploitation, and decided instead on a division of plots, individually own and exploited, taking the risk that some of them might not necessarily have clay in their property (see records of the meeting dated 20/07/94). In July 29, 1997, EBY received 6 offers in response to the bidding for provision of the equipment (truck and excavation equipment). EBY is currently assessing the offers in order to adjudicate the contract.

EBY provided technical assistance to recover previous production levels but has encountered an unforeseen difficulty. Contrary to the findings of the Technical Report, the replacement clay deposits do not have the quantity and quality required for the brickmaking production. This was confirmed by an EBY study carried out in 1996, one and a half years after the relocation. To solve this problem, EBY has developed several complementary alternatives including access to river clay deposits still available in the zone already acquired by EBY, technical assistance to those using the available material

(non-river clay), productive programs for developing complementary income sources, such as gardening and domestic animals, and organization of a cooperative to help in solving production problems. During a supervision mission in March 1997, EBY and the Bank agreed, additionally, to provide the oleros with equipment (trucks and excavation equipment) for transport and gathering of material from river clay deposits and other clay sources. This agreement is currently under implementation.

Claim 6. There are 200 brick makers still waiting for a solution from EBY to their problems.

Response: All the oleros except one have been either relocated or given cash compensation, including those located in Garupa and Candelaria.

Claim 7. Some of the brick makers had to accept miserable compensation from EBY and relocate themselves to the Porvenir area.

Response: All oleros that selected cash compensation instead of relocation received the amount agreed upon with oleros representatives in June 1995 (see records of the meeting). Compensations were based on the level of production of each brick maker and equivalent to the expected family income over a period of five years. For those that selected cash compensation, no other entitlement was required. However, after receiving the money, a group of oleros decided to invade empty public lands (tierras fiscales) in the site called "El Porvenir" which had been selected by EBY and the Provincial Government to relocate the brick makers affected by elevation above 76m. After the occupation, they requested EBY to improve access and demanded services from the local government. The access were improved by EBY and electrify was provided by the municipality.

Social Activities

Claim 8. Under Argentine law, the fact that realty in the Yacyretá area has been declared subject to expropriation since 1980 means that owners of affected land are restricted in their ability to improve their properties because improvements made after the declaration of expropriability will not be compensated by the expropriating party. Also as a result of this legal situation, areas to be flooded by the Yacyretá reservoir do not receive basic services (water supply, transportation and others) from the municipal or provincial authorities.

Response: Argentina's expropriation law (No. 21499, first published on January 21, 1977) applies in the Yacyretá case and indeed does specify in its Article 11 that "compensation will not be awarded for improvements, except necessary ones, that are made to the property after the property was officially declared to be subject to expropriation" ("no se indemnizarán las mejoras realizadas en el bien con posterioridad al acto que lo declaró afectado a expropiación, salvo las mejoras necesarias"). This in no way means that owners cannot improve their properties; in fact, owners who made improvements soon after the Yacyretá area was declared subject to expropriation in 1980

have had almost twenty years during which to enjoy such improvements. It does mean, however, that such owners may find a legal bar to compensation for such improvements when actual expropriation does take place (prior to the actual expropriation of their properties), unless they can demonstrate that the improvements were "necessary" (building an addition to a house to accommodate a growing family is an example of a necessary improvement).

Legal provisions such as those contained in the cited Article 11 have a sound basis in that they are designed to discourage speculative improvements which can result in an unwarranted drain on the resources of the expropriating authorities and can thus harm the interests of the tax-paying citizenry at large. Only when, as in the Yacyretá case, actual expropriation of properties affected by such provisions is unduly postponed (because of, for example, construction delays) does the impact of such provisions become larger. However, it is possible that, in the face of such delays, Argentine courts may be persuaded to adopt an interpretation of the term "necessary improvements" that takes appropriate account of the effect of time.

As for the claim that the local authorities, because of the impact of the expropriation law, do not provide adequate infrastructure in areas to be flooded by the reservoir, the key point is whether: (a) as a result of the Yacyretá project, services already present were removed from those areas by the authorities and not replaced; or (b) whether it was reasonable to expect, in the absence of the Yacyretá project, that additional services now missing in the areas would have in fact been provided by the authorities. As for point (a), we are not aware of any elimination of previously existing services. As for point (b), our understanding is that at least a portion of the areas in question would probably have remained marginalized since the area is on a flood plain subject to annual inundations. Furthermore, now that the project is underway, a portion of such areas is also subject to illegal invasion by settlers and extending public services to the areas would only encourage even more illegal settlers.

Comment on the List of Projects

The reconstruction of affected urban infrastructure is one of the most serious challenges for raising the reservoir to its highest operating level. The list presented in the Council's letter represents a best preliminary estimate of the total works that will be required for elevation 83m. The necessary design, implementation chronograms and budgets for carrying out the construction of urban infrastructure will be part of the tasks of an engineering consulting firm to be hired in September 1997. Minor protection works are envisioned for intermediate operating levels. Any urban area flooded at these intermediate levels will be subject to standard clean up operations (sealing of latrines, and the removal of fences, trees, construction wastes, trash, etc.). Water quality and vector monitoring systems have been in place since prior to reservoir filling. EBY, through a Convenio with the University of Misiones, has prepared a proposal for the implementation of an industrial pollution control system for the uppershed (up to Itaipu) of the Parana River.

HONORABLE CHAMBER OF REPRESENTATIVES OF THE PROVINCE OF MISIONES

Claim 1: The Government of Argentina (GOA) and EBY have failed to implement the resettlement and environmental works (defined as complementary works) required by the project, as agreed with the Bank, and the Bank has failed to exercise its leverage to press the Borrower to comply with agreed commitments. The Chamber request the Bank to use all of its resources to ensure that all pending works are completed as planned.

Response: As previously reported to the Board, the Bank urged (on April 13, 1996) the GOA to agree on a plan of action to complete by December 1997 all pending actions related to elevation 76m, and to establish an escrow account for ensuring financing of these works. On May 1996 the plan of action was agreed. On July 1996 a special account was opened to start implementation of the most urgent works, and in October 1996 the escrow account was established. As of June 30, 1997, 74 % of the plan has been executed and is expected to be completed as scheduled.

Because of the macroeconomic crisis faced by Argentina, the GOA decided to reduce by half in 1995 and to eliminate in 1996 its budget contributions to the project, which delayed and almost stopped implementation of environmental and resettlement works required for reservoir elevations 78m and 83m. In addition, because of the failure of the Governments of Argentina and Paraguay to complete these works through a privatization scheme (rejected by both Congresses), the GOA decided to keep operating the reservoir at elevation 76m until further decisions are taken to complete the project. On December 1996, the Bank urged the GOA to agree on a Plan of Action to address the adverse resettlement and environmental impacts resulting from the prolonged operation of the reservoir at elevation 76m. On January 1997, a Plan of Action satisfactory to the Bank was received, and by April 30, 1997, the GOA and EBY satisfied the major institutional, administrative, and financial requirements to permit implementation of this plan. Implementation of this plan, to be completed by December 1999, started in May 1997, and is progressing as planned. An amendment to Bank Loans 3520-AR and 2854-AR to support partial financing of the above plan is under discussion and is expected to be signed in late August 1997.

Claim 2: The Bank failed by approving a plan to raise the reservoir level by stages, first to elevation 76m and later to elevations 78m and 83m (final design level). Consequently, investments for key resettlement and infrastructure works were postponed, in favor of completing major civil works and electro-mechanical installations for the power house.

Response: The GOA's plan to raise the reservoir level to 76m was accepted by the Bank on the basis that: (i) reservoir elevation to 76m would take place in September 1994, after completing all of the minimum strictly needed resettlement and environmental works; and (ii) reservoir elevation to 78m would take place on September 1995, after completion of all agreed resettlement and environmental works needed for that phase; and then continue to elevation 83m once the remaining resettlement works were done. Construction

schedules for major civil works and commissioning of generating units were to continue as planned, along with the implementation of the environmental, resettlement and other complementary works. Revenues from the GOA and from sales of electricity were to assist EBY in meeting its counterpart funds obligations to the project. According to the plan, all works were to be done in sequence, and it is not correct to say that the plan for elevation 76m included a reprogramming and postponement of other resettlement and environmental activities required for elevation 78m and 83m.

In fact, reservoir elevation to 78m did not take place in September 1995, as planned, because of the financial crisis explained . Although the Bank did not foresee, at that time, the adverse impacts because of the prolonged operation at elevation 76m, the Bank took a very strong position with the GOA, immediately after the GOA informed the Bank of its decision to remain at elevation 76m for an unconfirmed period of time. The outcome of the Bank's position is precisely the base program (Plan B) that EBY is implementing today.