

January 14, 2008

Compliance Advisor Ombudsman
Internationa Finance Corporation
2121 Pennsylvania Avenue NW
Room F11K - 232
Washington, DC 20433 USA.
cao-compliance@ifc.org

Eugenia Parrales de Cordero, Diógenes Hurtado,
y César Cárdenas Ramírez, Presidente de la Asociación Movimiento Mi Cometa y
Observatorio Ciudadano de Servicios Públicos
Malecón 208 y Juan Montalvo, 3er piso
Tlf. 593-4-2314438
Fax 593-4-560241
E-mail: cesarcardenasramirez@yahoo.com
Guayaquil-Ecuador

Subject: Complaint to the Compliance Advisor Ombudsman (CAO) concerning the
International Project Water Services Guayaquil Interagua C. Ltda. in Guayaquil,
Ecuador.

We, Eugenia Parrales de Cordero, Diogenes Hurtado and César Cárdenas Ramírez,
are hereby submitting a complaint with respect to the International Project Water
Services Guayaquil Interagua C. Ltda. This project is supported by MIGA.

This is a complaint on behalf of Eugenia Parrales de Cordero, Diógenes Hurtado, and
César Cárdenas Ramírez.

Each one of us is a long-time resident of Guasmo Sur and a parent of children and/or
grandchildren who live in the same area.

We live in the area of Guayaquil known as Guasmo Sur.¹

You may contact us through postal services and our address or telephone / fax
numbers as listed above.

The basis for the complaint is the following:

1. Description of the Project

The International Project Water Services Guayaquil Interagua C. Ltda., in Guayaquil, Ecuador (the “Interagua Project”) was guaranteed by MIGA in 2001 and is within the MIGA division for water and residual waters projects. At present, the project is classified as “active” and its objective is “to improve services and operative results of municipal current services for the water supply, especially to poor areas that have little access to drinking water and bad sanitary conditions, through the reduction of water amounts in whereabouts unknown, and through a more efficient collection of water resources.”²

According to MIGA, “the new project is expected to contribute to the enhancement of health and living conditions for the local population, while at the same time reducing the cost of water for those now depending on other water sources.”³

2. The participation of MIGA in the Project

MIGA granted the Interagua project a guarantee of \$18 million in 2001. According to MIGA, “the project represents MIGA’s first coverage of a water project and of a performance bond.”⁴

MIGA describes its support as follows: “The guarantee offers protection against the risks of expropriation and war and civil disturbance for an investment by International Water Services B.V. of the Netherlands in an Ecuadorian subsidiary. It also covers a performance bond—posted in accordance with the 30-year concession—that guarantees the company’s successful management, expansion, and operation of the water services, against the risk of wrongful call.”⁵

3. The project sponsor

The project sponsor is International Water Services BV de Holanda, o Interagua Ltda. en Guayaquil, Ecuador (“Interagua”), a subsidiary of the Bechtel Group of San Francisco, California.⁶

4. Social and Environmental Impacts of the Project

Contrary to the objectives stated in the project, the participation of Interagua in the privatization of water in Guayaquil, with the support of MIGA, has caused:

- Repeated cuts of residential water, up to 12,24,36 or more consecutive hours each,

without any additional supply regulations for the water service;⁷

- Water cuts in residences of elderly and low-income people, owing to their impossibility to pay – this circumstance has resulted in human catastrophe, even the death of two infants;⁸
- The lack of service extension to specific neighborhoods, especially low-income residents;
- Non-compliance of contract obligations for the refurbishing and expansion of the services;
- Public health problems, such as breathing trouble, skin rash, asthma and diarrhea, owing to the lack of treatment of residual waters;
- Contamination of the environment owing to the lack of treatment of residual waters;
 - A breakout of Hepatitis A in June, 2005, which was investigated by local authorities (Civic Control Commission and Office of the Ombudsman), who arrived to the conclusion that the water “is not fit for human consumption.”⁹ Additional lab tests on water quality, performed on the samples from our homes in Guasmo Sur, confirm these findings.¹⁰

5. Actions taken to try to solve these matters

We wrote to Mr. Bechtel, President and CEO of the Bechtel Group, on November 9, 2007, to call his attention to these matters. The letter where we submitted our concerns was sent with copies to President Correa, Interagua, MIGA and the members of the Foreign Affairs and Financial Services Committee of the House of Representatives of USA.¹¹

Moreover, hundreds of users on their own account, and with the Observatorio Ciudadano de Servicios Públicos, we have filed complaints with the Ombudsman, the Civic Control of Corruption Commission, the D.A. Office and the General Superintendence of Police.

6. Personal Contacts in MIGA

At present, we are not in contact with any member of MIGA staff, apart from our letter sent to MIGA on November 2007, 2007. We have not had any reply to this letter.

7. We have had contact with the following persons to try to solve these matters:

As we have said before, through Food & Water Watch we sent a letter on November 9, 2007 to the President and CEO of the Bechtel Group, with copies to President Correa, Interagua, MIGA and the above mentioned committee.

Former efforts have included direct contact with the following persons, organizations and offices:

Interagua
ECAPAG
Ombudsman Office;
Guayas Police Superintendence;
Police Stations at Cantón Guayaquil;
Guayas District Attorneys;
Penal judges;
Civil judges;
Ministry of Health;
Health agents;
Civic Control of Corruption Commission
National Congress;
State Attorney General

8. Violations of MIGA's Policies, Guidelines and Procedures

MIGA Performance Standard 1: This Performance Standard ("PS") is applied because the Interagua project has important risks and social and environmental impacts. PS1 has been violated and is currently being violated, insofar as the existing Social and Environmental Management System does not pay attention to the effects, has not executed any program for the mitigation and management of risks and has not considered the violation of local and national laws.

Among the violated norms is paragraph 4, which reads: "The laws and applicable regulations of the jurisdictions where the project operates, related with social and environmental issues, including the laws on the application of obligations of the host country according to international law, shall also be taken into account." PS1, ¶ 4. Ecuador has included the fundamental right to water in its Constitution, which establishes that the water supply must be efficient, timely and its access guaranteed for all the population. In spite of this regulation in the Constitution and the demand for MIGA to comply with it in ¶ 4, Interagua has violated and continues to violate it.

Examples of the failed management program and the mitigation measures are the interruptions of the water services during long periods in September 2005, which denied the citizens their fundamental right to water and have caused illness and even death. In the violation of PS1, ¶ 16, there was no action plan to prevent this damage. In the violation of PS1, ¶ 26, no action plan was disclosed to the affected communities. Lastly, even if there had been a management system, Interagua did not implement any kind of surveillance, thus violating PS1, ¶ 24.

The problems in September 2005 also violated Ecuadorean legislation and the terms of the project's contract. For example, during one of the cuts, Interagua cut off the water supply during 42 hours, for all the citizens in the central and southern districts of Guayaquil. There was no provisional supply for these citizens, in violation of clause 67 (b) of the internal Management Code for Drinking water Services, Sanitary Sewers and

Rainwater Drains.¹² This also violated clause 5.4.3.6 of the Interagua concession contract, which establishes that “if the suspension of the service lasts over 24 hours, the concessionaire must provide an alternative service”.¹³

Moreover PS1 was violated because Interagua neither consulted nor communicated adequately with the communities that were affected by Interagua’s anticipated water cut. PS1,¶ 19-22.

On the other hand, the affected communities have no knowledge about any mechanism established by Interagua to resolve complaints, in violation of PS1,¶ 23. Said mechanism is required at least when the users begin to complain about the services. We have sent Interagua several communications in writing to request this measure, which we enclose as annexes to the case.

MIGA Performance Standard 3: The Project has also violated PS 3 on the prevention and mitigation of contamination, to avoid or minimize adverse impacts on human health, water cuts during long periods and water that is not fit for human consumption. It is equally important that Interagua has refused to acknowledge the dangerous effects for the environment caused by the lack of secondary treatment of residual waters. These waters are the main waste product of the project; instead of being properly handled they are discharged without any treatment into the bodies of water around Guayaquil. The independent studies on the effects of this manner of eliminating sewage waters have concluded that the Guayas river and the estuaries around Guayaquil cannot continue to absorb this level of untreated sewage waters.¹⁴ This poses a risk, both for the health of residents living on the banks and for the ecology of these bodies of water.

MIGA Performance Standard 4: The Project has violated PS 4 with respect to Protection of Public Health, Safety and Surveillance, insofar as they did not “avoid or reduce to a minimum the risks and impacts on the local community’s health and safety during the lifecycle of the project, both under routine and non-routine circumstances”.¹⁵

MIGA Norm on Social Policy and Environmental Sustainability: MIGA has violated paragraph 12 of this policy, inasmuch as they **did not** adequately revise interagua’s evaluation, or “help Interagua in the drafting of measures to avoid, minimize, mitigate or compensate social and environmental impacts, consistently with Performance Standards,” or “categorize the project for the purpose of specifying MIGA’s institutional obligations to reveal to the public all specific information on the project”, “or help to identify opportunities to improve social and environmental results”, or “supervise the social and environmental results of the project during all the useful life of MIGA’s guarantee.”

Paragraphs 21, 24 and 27 of this policy include MIGA’s suggestions to their client companies about the actions and strategies that will help to make their projects socially and environmentally sustainable. These suggestions include the “ previous, free and informed consultation with the affected communities” and “ the full disclosed of residential tariffs and adjustment mechanisms, norms of service and investment

obligations.” However, to the best of our knowledge as members of the affected communities, Interagua has omitted those suggestions without any kind of response from MIGA. This is a matter of particular concern, because our letter to MIGA, formally requesting this type of surveillance of Interagua’s services was never acknowledged. MIGA’s inaction requires the elaboration of this petition for an in-depth investigation of the Interagua project by CAO.

Environmental Norms for Waste Management Facilities: The project has violated this policy insofar as its section about “General requirements of the environment,” which specifies that “project facilities must be designed to minimize impacts on the atmosphere and on Hydric resources.” In the case of Interagua, the absence of facilities for secondary treatment of residual and rain waters shows negligence, since it guarantees that Interagua’s facilities be insufficient to prevent the contamination of water resources.

Moreover, sewage waters are Interagua’s main product, since their project consists partly in the sale of drinking water. Their “Project Operations” clearly says that waste must be analyzed, before elimination, for their compatibility with treatment and elimination methods.” However, the absence of secondary treatment of residual waters clearly indicates that the chemical composition of sewage waters is not taken into account before their discharge in the water bodies around Guayaquil.

MIGA’s Environmental Norms: The project violates MIGA’s norms for the elimination of “liquid effluents”, because it is admitted at various local institutions, even the regulating organization ECAPAG, that the waters collected from rainwater ditches really contain industrial waste.¹⁶ These waters are poured out without any treatment process, therefore Interagua is acting negligently by ignoring MIGA’s norms for the elimination of waste. Consequently, the environment is at permanent risk of grave contamination.

9. We would like this complaint to be resolved in the following manner

The affected communities demand that the project sponsor, with MIGA’s support, should adopt the following measures:

- Implement urgent mechanisms to condone all water supply debts of residents whose services have been cut owing to their impossibility to pay;
- Reconnect water services for all residents whose services have been cut owing to non-payment;
- Ensure compliance with the concession contract with respect to the rehabilitation and expansion of water services;
- Ensure compliance with the concession contract insofar as the treatment of residual waters;

- Watch over compliance of the Ecuadorean Constitution, laws and internal regulations relative to the right to water and water quality;
- Attend to citizens' demands that water and other services be controlled locally and managed with the active participation of residents.

10. Other relevant facts that support this complaint

See the attached annexes to find information on the following paradigmatic cases of Interagua's actions:

Annex G) Case: Ramón Arreaga Quinto

Guayaquil, January 15, 2008

JUDGE ORDERS PRISON FOR INTERAGUA MANAGER GUILLERMO MINGOLLA

Dr. Guadalupe Manrique, twelfth judge at the Guayas penal court, by a ruling dated January 7, 2008, orders a subpoena against Guillermo Mingolla, Manager of Interagua and Ivon Mellinger of Interagua, as well as a warrant for the preventive arrest against those two officials, according to art. 234 of the Penal Code, for contempt in the rendering of public water service in the city of Guayaquil.

The decision of the twelfth Judge at the penal court sets a true precedent of the application of justice in favor of the poor and unprotected, as the case of Mr. Arreaga, an elderly person, **WHOSE RIGHTS WERE NOT RESPECTED BY INTERAGUA**, in spite of the express orders from relevant authorities.

The prison Ruling against the officials of Interagua is passed in the case of user Ramón Maximiliano Arreaga Quinto, ID N° 090054857-9, domiciled at Portete 5322 and 28th, who filed a complaint dated October 20, 2004, both with the Ombudsman Office and the Guayas Police Superintendence, which certifies that Interagua was invoicing average consumption costs (between \$6.00 and \$7.00) but at the time the house did not have a meter. After a meter was installed, in June 2004, there was an outrageous increase, quite damaging for the user's economy: \$114.62, an inconceivable amount, since neither the family or the consumption have been incremented.

The user Arreaga Quinto is an elderly person, whose right to pay 50% of consumption per service has not been respected. When Mr. Arreaga submitted his complaint about the unjustified charge, the company arbitrarily cut off the service on September 30, 2004, without considering the Consumer's Defense Law.

Mr. Arreaga justifiably filed a lawsuit with the D. A. Office, supported by a resolution from the General Superintendence of Police in favor of the plaintiff. However, and in spite of a whole process in favor of Mr. Arreaga, Interagua has not reconnected the service so far, and continues to charge for a service the plaintiff does not have.

César Cárdenas
President
OBSERVATORIO CIUDADANO DE SERVICIOS PUBLICOS

Annex H) Case: Outbreak of Hepatitis A in the Suburbs

Annex I) Case: Complaint of contamination and discharge of waste in the rivers and marshes of Guayaquil.

Annex J) Case: Distribution of water unfit for human consumption

Annex K) Case: \$1.5 million Fine for non-compliance with the goals of the concession contract

Annex L) Independent Comparative study of the Faro Group, under contract with IDB, which concluded that the poor will not have access to water in Guayaquil

Annex M) Case: The numerous problems, omissions and disappointments found in Interagua's Masterplan, condemning the city to inadequate services for the duration of the concession

Annex N) Case: Lack of construction of a sewage system in the Mapasingue sector

The above mentioned annexes are attached in support of this complaint.

We await your reply.

Date: January 14, 2008

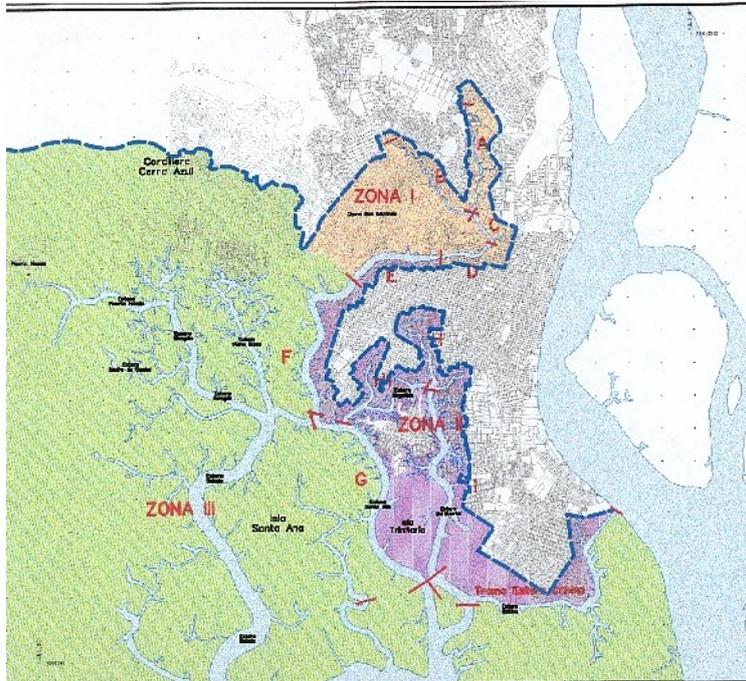
Signatures:

Diógenes Hurtado Segura
User

Eugenia Parrales
User

César Cárdenas Ramírez
President - Movimiento Mi Cometa
President - Observatorio Ciudadano de Servicios Públicos.

Anexo A.- (DIGITAL MAP OF GUAYAQUIL)



GUASMO LOCATED ON THE UPPER EDGE OF THE MAP

- Portada
- Política
- Economía
- Sucesos
- Migración
- El País
- Internacionales
- Deportes
- El Gran Guayaquil**
- Vida
- En escena
- Religiosa y Obituarios
- Opiniones**
- Editorial
- Columnistas
- Cartas al Director
- Temas**
- Fotogalerías
- Agropecuario
- Cuéntamelo todo
- Un día como hoy
- El Alquimista
- The New York Times
- Eloisa dice
- Suplementos**
- La Revista
- Sambo
- Servicios**
- Cartelera de cines
- Portadas Impresas
- Todos los titulares
- RSS
- Clasificados
- Teléfonos útiles
- Clima
- Puertos
- Tabla de Mareas
- Agenda
- Línea caliente
- Foros de Discusión
- Voz de los emigrantes
- Horóscopo

eluniverso.com/ EL GRAN GUAYAQUIL

granguayaquil@eluniverso.com

Cuantioso castigo a Interagua de \$ 1'500.000 por incumplir contrato

Julio 28, 2007

[ampliar imagen](#)

Concesionaria dice que incumplimiento de metas es por deudas del Gobierno.

La Empresa Cantonal de Agua Potable y Alcantarillado de Guayaquil (Ecapag) penalizó a Interagua con 9.892 conexiones de alcantarillado sanitario adicionales, que deberá ejecutar hasta el 9 de julio del próximo año, por haber incumplido las metas del primer quinquenio.

Interagua debió entregar 55.238 conexiones en agosto del año pasado, pero solo concretó 27.740. Ecapag, ente regulador, no la sancionó en esa época y le concedió además un año de prórroga que volvió a incumplir.

La reunión de los funcionarios se efectuó una vez que se les entregó los resultados de las inspecciones realizadas por JVP Consultores y la firma extranjera de Auditoría Técnica Externa de la Concesión.

"La concesionaria solo cumplió con 19.255 conexiones de las 27.740 que debía entregar", señaló José Luis Santos, gerente general de Ecapag.

Santos dio a conocer que para determinar la sanción a Interagua se sumarán a las conexiones realizadas hasta el 9 de agosto del 2006 y las que se concluyó el pasado 9 de julio. Lo que da un total de 46.995 redes de alcantarillado sanitario.

"Ellos cumplieron con más del 85% y como determina el contrato se los penalizó con más obras. Ahora no solo deben realizar 8.234 conexiones que han dejado pendientes sino también 1.649 redes que pertenecen al 20% con lo que hemos sancionado a la concesionaria", manifestó.

Mientras que la subgerente de comunicación de Interagua, Ilfn Florsheim, señaló que Ecapag se saltó un paso del contrato. "Ellos debieron enviarnos una notificación y después de ello nosotros teníamos quince días para presentar pruebas de descargo. Si después de ese periodo Ecapag seguía insistiendo con la sanción, Interagua tenía 20 días adicionales para determinar el tema de la infracción.

Después de ello, el ente regulador tiene un plazo de diez días para decidir la penalización que impondrá, pero ellos no hicieron esto", resaltó.



ANGEL AGUIRRE

En el Guasmo sur se encuentra una caja domiciliaria en mal estado. Este es uno de los trabajos inconclusos de Interagua.

[imprimir](#) [enviar](#)

Agenda

Guayaquil

Ambiente

El Centro Homa invita a la gran pirámide de luna llena denominada 'Sanando el ambiente nos sanamos también nosotros', en la plaza de la salud del Malecón del Salado. La entrada es gratuita. Hora: 17:00

[Más Actividades](#)

Annex B.- “The Complex Participation of the Private Sector:

“The First Quinquennium of Interagua”, from Agüita Amarilla, by Emily Joiner

Guayaquil is currently at the end of the first quinquennium of the 30-year concession for services of drinkable water and sewage. During this period the presence of Interagua has been felt in its construction projects, as well as in the new tariffs imposed by the company with the approval of ECAPAG. These years have also brought about a process of getting to know Interagua, although the concession did not permit citizen participation. But firstly, the importance of the first quinquennium has been the evidence of how a private company works when rendering public services. The perceptions of the company are complex: their works have outstripped the achievements of any public company, but non-compliance of contracts and lack of defense for the citizens have an unpleasant impact on the users.

International Water Services (Guayaquil) Interagua Cía. Ltd. is a subsidiary of the international consortium International Water Holdings B.V. (IWH), created to comply with the requisite of the contract, that the concessionaire should have headquarters in Guayaquil. Therefore, Interagua manages its daily operations independently, from its offices in Guayaquil, depending on its own management team. Services rendered include the development of projects and financing, engineering and construction, operation, maintenance and management. IWH's function is to guarantee and have ultimate responsibility for the results, since it was their experience and reputation as a company that won the confidence of ECAPAG during the bidding process.¹⁷

Meanwhile, the IWH consortium is not a company with independent roots either. The company was founded in 1996 as a subsidiary of Bechtel, a company in San Francisco, CA – USA. Until 1999, Bechtel had 100% equity in IWH and projects for water, sanitation and drainage in various countries, including Poland, India, Australia and Bolivia. In November 1999, Edison S.p.A. bought a 50% equity of the firm. Moreover, IWH, recognizes United Utilities International as a strategic partner and maintains a “well-established strategic alliance.”

In the case of Interagua, United Utilities is half owner of International Water Services (Guayaquil) B.V., which is in turn 90% owner of Interagua.¹⁸ It is important to note that the concession contract distributes 9,998 of the 10,000 shares in Interagua to its headquarters company, Bechtel, through the legally independent entity, International Water Services. This fact indicates the degree of financial interest placed by Bechtel in the company's success.

It also offers Bechtel a main role in the determination of the company's institutional strategy. The presence of United Utilities also strengthened IWH's image as a competitor in the concession: With the three organizations: Bechtel, Edison and United Utilities, IWH was found to have impressive references from previous projects in the area.¹⁹

At the same time, the activities of Bechtel, the main actor of IWH, continually inspire controversy. The company has a long history of employing authorities from a variety of the US government positions, a fact that becomes complicated owing to the number of contracts received from the government. For example, between 2003 and

2004, Bechtel received two contracts for a value of up to \$2.8 billion for the reconstruction of the Iraqi infrastructure, destroyed during the US controversial occupation that began in 2002.

Furthermore, Bechtel has been in three legal disputes since 1976, owing to their actions. The most important conflict is in Bolivia, where a Bechtel subsidiary called Aguas del Tunari triggered a conflict called “the water war”. The Bolivian people won the struggle against the company’s massive increases in drinking water tariffs.

Citizens questioned the company through mobilizations and marched against the new concessionaire’s tariff increases. The firm sued the Bolivian government for \$25 million in damages.²⁰ However, the lawsuit ended in favour of Bolivians and Aguas del Tunari wound up without any compensation for their expected earnings in that country.

These events greatly worry the social, community and neighborhood organizations that support the interests of Guayaquil people. The links between the various members of the International Water Holdings and their founder, Bechtel, must be complicated and their degree of mutual cooperation is not known.

Nevertheless, according to the above mentioned background, it is not hard to believe that Bechtel’s interests and those of its subsidiaries and affiliates do not match the social needs of the communities where they work. It is worrying to think that there could be a working pattern between the different subsidiaries, even Interagua, that promotes low-quality standards, such as those found in the concession contract, as well as a disregard of legal norms. In the first place, the contract for Guayaquil acknowledges the right to profit, without consideration for social circumstances. This fact is the strongest argument against the privatization of basic services: the private companies keep their right to obtain earnings, without any legal obligation to reinvest their resources where they are needed the most.

According to Interagua’s presentation at the First Ecuadorean Water Forum in March 2006, Interagua has spent the first four and a half years of the concession working with some success on their expansion projects for drinking water, reduction of non-accounted for waters, increase of pressure and continuity, improvement of service quality and environmental education.

In August 2005 they had installed 37,966 connections for drinkable water, surpassing the goal that was set in their economic proposal; but in August 2006 it was made known that Interagua did not reach the goal of 55,238 connections installed during the first quinquennium.²¹ Unaccounted for waters had come down by 11%, to 68% of total production. Moreover, the construction of an additional pipeline is underway: the “express line” south, to offer uninterrupted service to all consumers connected to the networks by August 2006, an obligation established in the concession contract. As to the treatment of quality drinkable water, they report 100% compliance with the norms, confirmed by the 45,000 monthly tests performed at their lab. They have also organized events and seminars in some schools and neighborhoods, focusing primarily on the adequate supply of water and on avoiding waste.²² These

achievements exceed the accomplishments of government companies that preceded the concession period.

Without forgetting these achievements, we must consider Interagua's capacities as a transnational company as compared with their actions. As part of a powerful consortium, the company has a great capacity to obtain loans. However, it is not known whether Interagua has striven to seek sources of private capital to invest in their projects. In 2003, Interagua applied for a \$50 million loan from the Interamerican Development Bank, to implement part of the expansion plan for the first quinquennium.²³ It is also known that in September 2005, Interagua received a \$280,620 grant from the US Commerce and Development Agency, an organization that administers public funds, i.e. US government money. That fund was designed for the elaboration of the five-year plan for the period 2006-2011.²⁴ However, it will not be applied to investments on works. On the contrary, considering the significant tariff increases, it would seem that Interagua has taken advantage of the loose requisites for investment set by ECAPAG and the concession contract, expecting to obtain earnings from the sale of drinkable water rather than risking borrowed funds. At present, the financial documents published by ECAPAG indicate Interagua's intention to avoid any investment in city infrastructure during the second quinquennium. Instead, \$90,000 will be generated from the payment of tariffs for water consumption and \$40,000 will be contributed by the municipal government. All other funds to be invested will come from taxes paid by the consumers themselves, through taxes on telephones and the Special Contribution for Improvements.²⁵

This situation suggests an unanswerable question on the \$520 million that Interagua promised during the concession's bidding process. No document informs how Interagua is planning to do its duty to invest in the infrastructure of Guayaquil. It was acknowledged, prior to the concession, that Guayaquil lacked infrastructure and that substantial investments were needed to correct problems. Interagua's policy to minimize investments that cannot be recovered from tariffs, is permitted in the contract. However, they treat the inherent social needs for public services, irresponsibly.

On November 19, 2006, *El Telégrafo* published the results of a study performed by the Board of Regulations and Territorial Infrastructure and the United Nations System, entitled "Study of Poverty in Guayaquil." This study found that 70% of the homes in Guayaquil do not have all the basic services they should have: drinking water, sanitary sewers, electric power, conventional telephone service, garbage collection and hygiene services.

According to the investigation, 20.81% of the homes lack drinking water services, which implies that they continue to pay exorbitant prices to the tankers carrying water to the sectors that lack the formal service. Nevertheless, the case of sewers is particularly grave, with 51.46% of the population living without that service. To complicate matters further, this 51.46% rate is 4.5% higher than in 1990. In other words, during the recent history of water supply by ECAPAG and Interagua, the extension of sewer services has decreased, as compared with population growth. This indicates that investments made in this sector have been really insignificant and perhaps even negligent for public health in Guayaquil.²⁶

At the same time that this internationally sponsored investigation uncovers impressive deficiencies in the supply of services that directly affect public health, ECAPAG has known for several years about the effects of deficient services on the environment. However, this information has remained classified in their files.

Since 2003, ECAPAG has maintained a database to record industrial discharge from one thousand companies into the network of sewer and rain water. In some cases, this database says that factories dump their waste directly into the rainwater drain system, which does not get any treatment before reaching the rivers and marshes around Guayaquil.²⁷ Studies in 2003 and 2004 by the engineering team at ECAPAG confirm it, indicating that the quality of the water in these bodies of water is worsening as years go by with the concession.

In 2004, samples were taken at six different places, corresponding to the six places examined previously in a 1988 study by ECAPAG. The Catholic University performed the tests at their lab. In every case, the data about the quantity of oxygen dissolved, color, fecal contamination, pH levels and the biochemical demand for oxygen indicated that water quality had worsened in at least one of these items at each site.

The results were compared with those of the 1998 samples.²⁸ Additional tests in 2004 and 2005 also showed a high presence of detergents and organic solids in the water, as well as an abnormal pH level (in this study, a level over 7.5).²⁹ These results conclusively prove that the bodies of water now receiving the discharges of sanitary sewage and rainwater cannot resist the amount of contamination received since the beginning of the concession in 2001. Interagua, as concessionaire, is responsible for these damaging effects on the environment and on public health, since contamination is a threat to people's welfare.

Furthermore, the fact that ECAPAG, in possession of this information, has not demanded a revision of water treatment practices or a policy of sanctions for the main contaminating companies, shows the incapacity of the company as a regulatory entity for the concession. To complicate the issue even more, at the end of 2006 and during the early days of 2007, Guayaquil Municipality was trying to claim the authority to grant environmental licenses to public and private companies that operate in the city.

This proposal would contradict the opinion of the Environment Ministry: that the municipal government should not be "judge and party" in the granting of environmental licenses to their own projects.³⁰ Where environmental effects are concerned, neither Interagua, nor ECAPAG, nor the municipal government make effective use of the existing information, to the detriment of the environment itself and, indirectly, of people's health.

The media in Guayaquil reflect, to a great extent, the set of problems with Interagua's works that arose during the first quinquennium and give a voice to the difficulties faced daily by the users. A television monitoring carried out during just April and May, 2005, revealed more than one hundred TV broadcasts on the deficiency of water and sanitary services.

Nearly all these reports are complaints about the bad quality of water, the dysfunction of the sewers or the total absence of services.³¹ This significant presence is repeated in the printed press, with weekly articles in the most widely circulated newspapers: *El Universo*, *El Telégrafo* and *El Expreso*.³² The press more than adequately expresses the appalling quality of the water that reaches some sectors of the city. Some comments on water quality were published in May 2005, but were dismissed by Interagua; they explained that “during repairs, the nearest networks always suffer”.³³

However, in November 2005, some photos of muddy water were published by *El Universo*, together with comments about the water having a “nauseating”, “unbearable” stench.³⁴ The paper clippings show that the situation never changed and indicate a persistent problem, rather than a circumstantial one. At the same time, the newspapers published the low pressure of the water and the inconvenient schedules for water distribution in sectors distant from the city.³⁵ Water leaks, broken pipes, floods owing to the lack of adequate sewage, charges without meters, environmental damages due to lack of waste water treatment, make up the discontent about the services rendered by Interagua during the first quinquennium.³⁶

The bad quality of these services has inspired not only news reports but letters and leading articles published in the newspapers. In these articles the writers usually sum up the technical problems endured daily by the citizens and then ask the unanswerable question: “where is ECAPAG?”³⁷ In October of 2005, it was announced that ECAPAG had fine Interagua for \$56,180 during the first four years of the concession. At this point, the Civic Control Commission and the Ombudsman’s Office had already declared the water “unfit for human consumption.”

Nevertheless, it is recognized that these sanctions deal only with aspects of invoicing and non-compliance with requisites for reports between ECAPAG and Interagua. The quality of the services themselves had no weight on the sanctions.³⁸ In November 2005, the Observatorio Ciudadano de Servicios Públicos conducted a survey on the basic services of water and sanitation. As part of this survey, 88.8% of the 41,901 participants voted that Interagua and ECAPAG were not complying with their responsibility of supplying quality services.

Moreover, 93.1% were of the opinion that the concession contract should be terminated.³⁹ These opinions, expressed after four years of the concession, strongly point at the dissatisfaction of consumers with the services they were getting. So many voices, loudly expressing concurring opinions, should not be ignored.

On August 6, 2006, *El Universo* published an article describing the situation of the customer service provided by Interagua and ECAPAG. All the people interviewed agreed in their comments that their complaints to the customer service departments of both companies were still without reply. This circumstance is perhaps due to the fact that at that time each employee answered some 130 calls daily.⁴⁰

The inadequacy of the companies’ response to the situation is not justified, but it is not clear whether the blame is on the lack of staff or indifference, or on the

appalling quality of the services. Notwithstanding that, the inefficiencies leave the consumers without any choices to deal with the situation. At the time the article was published, 462 cases against Interagua had been submitted to the Ombudsman's Office. 60% of them were due to incorrect invoicing, thus reflecting the magnitude of the problems caused by Interagua's administrative practices.⁴¹ The inefficiency of customer service has contributed to the dissatisfaction of customers with Interagua's supply of services within the last five years of the concession.

The public's discontent increases upon learning that a great part of the funds managed by Interagua comes directly from the pocket of the consumer, through the monthly tariffs. These tariffs are designed to cover maintenance and administration costs and to ensure the financial sustainability of services and expansion plans. Meanwhile, a tariff structure has been designed, which aims at eliminating the consumer ranks and subsidies included in the prices.⁴²

ECAPAG began to drive the change towards "real prices" of drinking water in 1995, according to the corresponding policy of the World Bank. A study performed by the Municipality of Guayaquil indicates that the concept of real prices "is part of ECAPAG's policy to reduce subsidies and adopt more realistic prices." And just before the concession, in the year 2000, measures were taken to eliminate users' categories (e.g. industrial, domestic, commercial, etc.). These were replaced by ranks of consumption with the corresponding prices: the less a person consumed, the less he paid per cubic meter.

This system kept some features of the former subsidies. After the concession, the policy was further consolidated in 2002, with the decrease of the poor population's percentage that would benefit from subsidized prices.⁴³ Moreover, one can see in the monthly form sheets that the fixed charge for the administration of the company and the basic tariff for drinking water consumption are increased every quarter.

The difference recorded is negligible from one quarter to the next, however, the cumulative effect of tariff increases is a reduction of the economic resources that the users could spend on other needs.⁴⁴ According to the concession contract, ECAPAG is responsible for establishing the tariff structure. This role would seem to have give them the opportunity to impose a concept of social responsibility whereby water should be accessible to all. However, each quarter ECAPAG increases even more the "updating factor", applied to maintain the "real values" of services.⁴⁵

Actually, ECAPAG is in charge of maintaining Interagua's economic efficiency, therefore it is convenient, both for ECAPAG and for Interagua, to have a tariff structure that supports the sale of water to those consumers who can pay the most. During the first five years of the concession, the water tariffs have risen "officially" three times. At the same time, the number of consumers who receive subsidies on the real cost of water have decreased. Meanwhile, the tariffs for sanitary sewers have risen another 20% of the water consumption paid by less-consuming users.⁴⁶ These are the same consumers for whom drinkable water is already the highest expense with respect to their income. These changes reflect the policy of "real values" encouraged by ECAPAG where, ideally, no consumer is subsidized by another. However, the concession

contract says in Annex 6 that water tariffs must rise only after the first five years, if Interagua's forecast costs increase by more than 50% over the cost of previous years, owing to expansion plans, legislative changes, or force majeure.⁴⁷

Theoretically, then, this tariff policy for water should require that increases be justified by works or improved services. To this date, the consumers who are most affected by increases and consume less water, have not received adequate services, as would be necessary to make them accept increases supposedly justified by the necessity to invest additional funds to improve their services.

Interagua's financial interests, reflected in this tariff structure, have appeared in all their works during the first quinquennium. The feeble requisites of the concession contract and the political complicity of ECAPAG consultants with the private sector, enable Interagua to ensure their earnings through postponing investments. Thus, the Company has avoided taken responsibility for the most demanding and hardest to measure aspects of the contract: continuity, high pressure and the broad scope of services, among others.

Along the first five years there have been some examples of Interagua's irregularities and contract non-compliance. These events have come into public knowledge through the joint efforts of independent organizations and persons, who have voiced the problems experienced. Most cases are instances of non-compliance with the concession contract.

However, just as important are the cases where the real problem is the lack of citizen participation and the defense of every user's rights. In this sense, the cases described underscore the main sources of discontent with the concession: the weak or non-existent control of Interagua exercised by ECAPAG, the minimum contractual requisites and the absence of a responsible entity to heed and incorporate all the doubts and needs of consumers to the company's policy.

Annex C.- ***“Neither Water nor Authorities”***: *“The Great Water Cut on September 2005”*, text of Chapter 8 of *Agüita Amarilla* by Emily Joiner

Lack of infrastructure. No capital to build it. These words were high on the list of reasons to grant concessions for water and sanitary services in Guayaquil. Clearly, any company that would become a concessionaire should undertake great construction projects. However the citizens did not foresee that a water supplying company would leave the entire city without water, violating its contract and rejecting any responsibility for the extreme difficulties experienced by the poor. Interagua’s lack of foresight had a cost for all the people of Guayaquil, but for the poorest, incapable of accessing to the resources to obtain water supply, the cost was too high. In one case, the damage caused by the company brought about the death of two children.

Interagua’s “Los Angeles” plan, which caused the cut, consists in all the necessary works to obtain steady water supply for all Guayaquil, as from December 2006. As part of that plan, they scheduled three total cuts of drinking water services. The first one was in September 2005 and lasted officially for 42 hours, for consumers in the center and south of the city. The scheduled work was the separation of one of the four pipelines that transport water from the water treatment plant at La Toma to the Tres Cerritos reservoir. From the elimination of the connection between this pipeline and Tres Cerritos they expected to obtain greater continuity and pressure in the south of the city.

Without the “bottleneck” of the reservoir, the water would reach the south more easily and efficiently, and the risk of a total lack of water to the entire city, due to just one problem in Tres Cerritos, would be eliminated. Other works included connections of smaller pipes and the relocation of several valves.⁴⁸ Interagua maintained the decision to cut the water, calling it “inevitable”.⁴⁹ However, the concessionaire did not propose any kind of alternative supply, as provided for in clause 67, item b of the Internal Regulations for the management of Potable Water Services, Sanitary Sewage service and Rainwater Drains.⁵⁰

At the beginning of September they announced the first of the three “great water cuts”, which affected the whole city of Guayaquil. The cut would start at 20 hs of Friday, September 16 and end at 14 hs on Sunday, September 18. Citizens worried right away, wondering how they could go on for nearly two days without a drop of water from the pipelines. The sales of buckets, pails and tanks to hold water increased, with prices rising to match sales volume.

While some could buy different containers, many residents of marginal districts lacked the necessary resources. For example, Bertha Suárez, from Mapasingue, admitted to the press that she only had three buckets and one pot to store water at her home, for a family of five.⁵¹ Many families did not know how they could resist through the cut without having health or hygiene problems at their homes. Shop owners, food stores and business centers elaborated contingency plans, but sometimes had to close down for lack of water.

Hospitals and prisons negotiated with Interagua to develop their strategy and got the promise of supply from tank-trucks during the cut.⁵² At the same time, Interagua and the newspapers published measures aimed at storing water: not to wash cars or water

plants, avoid laundry, ration water in the kitchen, among others. Interagua also informed the city that the tankers would not sell water in any sector during the cut, which was a great difficulty for those sectors supplied only by tankers.⁵³ The situation became even more complicated owing to the lack of communication with those sectors where residents reported: “We don’t know if the distributors will come. They usually come often, but now they said they might not come.” In the end the comment from Elizabeth Quintero de Bastión is particularly enlightening: “We are not in condition to buy more containers or fill them all together.”⁵⁴ As in so many other instances, when there is a crisis the poorest people are disproportionately affected.

Even before the cut, a controversy arose in Guayaquil. On September 9, before the rush for water and the doubts arising from the process, Jaime Nebot, Mayor of Guayaquil, was concerned about the extreme duration of the cut. He said: “I don’t approve or disapprove of the cut, but 42 hours is too much; they shall have to explain.”⁵⁵ The City Observatory of Public Service also anticipated the cut, with protests about non-compliance of the concession contract, which in its clause 5.4.3.6 establishes that “if the suspension of the service has a duration over 24 hours, the concessionaire shall have to provide an alternative service.”⁵⁶ However, the company replied that to supply two million people from tankers was impossible. Meanwhile, other voices were raised to agree with the Observatory’s protest. In an editorial of *El Universo*, published on September 15, ECAPAG is criticized for its lack of response against allegations of non-compliance with the contract, on the part of Interagua.⁵⁷ ECAPAG, supposedly responsible for the regulation of the concessionaire, did not show any sign of disapproval or questioning of Interagua, thus again confirming their incapacity to perform their control functions.

Residents of the south, an area where water supply by network is less regular, began to feel the cut on Thursday night, 24 hours before the appointed time. According to Interagua, the premature effect was due to the city’s high demand for water to cover the following days, and not to their action. Notwithstanding the logic of this assertion, the consequences for the residents were serious. One resident declared: “I wanted to get water, but I got dirt. I had to buy some gallons and I don’t know if it will be enough. I have spent money that was not budgeted.”⁵⁸ In other cases, these emergency purchases were not possible.

Little by little during September 18, the water flow returned to the farthest sectors of the Tres Cerritos reservoir, the main works site. The service was irregular on Sunday, at the end of the cut, but most residents had again water through their networks. The newspaper *El Comercio* and *El Universo* published articles praising the local residents for surviving the cut “without suffering major alterations in their usual routine” and for “not having been taken by surprise.”⁵⁹

However, reality was not so simple. Guayaquil had overcome the difficulties posed by the cut, but the events on the previous days had cost some citizens more than others. Immediately before the cut, the price of water tanks and the cost of water itself rose.⁶⁰ For some families, the additional expense of twenty to thirty dollars had a drastic impact on the family budget for basic needs.

For one family, the normality praised by the press ended with the water cut. At El Fortín, two children died on September 17, while trying to get water to wash their school uniforms. Like other northern sectors, El Fortín depended on the tankers for their water supply. When the cut started, the tankers left that sector and the families without water. At the home of the two children, they used tank water for the kitchen but for the laundry they had to get it elsewhere. The youngest boy was trying to take water from a ditch, known as the “death ditch”, when he slipped and fell into the water. Her sister jumped in, but the current took both.⁶¹ The desperate mother blamed the tankers: “It’s because of the damn tankers that did not bring any water.”⁶² Without questioning her statement, it is crucial to recognize that the tankers did not bring water, not because of negligence but because of Interagua’s prohibition. The company failed to comply with their responsibility to the citizens to supply water.

At the end of the cut, the Ombudsman called Interagua’s and ECAPAG’s authorities to a meeting (hearing) at the Consumer’s Court. The purpose of this event would have been to determine whether the cut was really inevitable or not. If it was not inevitable then it was a violation of Ecuador’s Constitution, not just the concession contract, which would warrant a strong sanction against the company.⁶³ Unfortunately for the citizens, the meeting either did not take place or never publicly resolved the matter, leaving the company as innocent of any breach of contract or violation of the Republic’s Constitution.

The water cut in September 2005 was, in the first place, an action that jeopardized the welfare of consumers throughout Guayaquil. The lack of economic resources was ignored by the company when they obliged their users to get their water in an abnormal manner. Moreover, since no other alternative was provided, Interagua seriously violated the concession contract. The cut was overcome by the city, but considering the loss of lives and the needs of citizens, the improvements came at too high a price. Interagua’s negligence and the definite absence of response on the part of ECAPAG show once more the incapacity of this concession to adequately supply water and sanitary services to the people of Guayaquil.

Annex D.- LETTER FROM FOOD AND WATER WATCH TO BECHTEL

November 9, 2007

Riley P. Bechtel
President and CEO
Bechtel Group
45 Fremont Street
San Francisco, CA 94105

Cc: President Correa, International Water Services, Interagua, MIGA, members of the US Finance and Foreign Affairs Committee

Mr Bechtel:

The undersigned organizations are writing to express our most serious concern about the activities that your subsidiary, International Water Services, better known as Interagua Ltd has been developing in Guayaquil, Ecuador. Supported by credits from the Interamerican Development Bank and a guarantee from MIGA, the World Bank Agency, your company obtained a contract to administrate the water and sanitary services in the city of Guayaquil, in October 2000. This contract was signed shortly after your company abandoned Cochabamba, Bolivia, after massive protests due to tariff increases and other problems related with the privatization contract for water supply in that city. The citizens of Guayaquil, Ecuador are suffering similar problems and are demanding that your company assume responsibility for them.

The regulating agency, ECAPAG, has recently fined Interagua for 1.5 million dollars, owing to violations of the contract. The following aspects, including contractual violations, have called our attention:

- Repeated cuts of residential water, up to 12, 24, 36 or more consecutive hours each;
- Water cuts in residences of elderly and low-income people, owing to their impossibility to pay;
- Non-compliance with the expansion of services for some neighbourhoods, especially low-income residents;
- Non-compliance with contract obligations for the refurbishing and expansion of the services;
- Public health problems, such as breathing trouble, skin rash, asthma and diarrhea, owing to the lack of treatment of residual waters;
- Contamination of the environment owing to the lack of treatment of residual waters;

A breakout of Hepatitis A in June, 2005, which was investigated by local authorities (Civic Control Commission and Office of the Ombudsman), who arrived to the conclusion that the water "is not fit for human consumption."

Additional lab tests on water quality, performed on the samples from our homes in Guasmo Sur, confirm these findings.

The undersigned organizations wish to extend our heartfelt support to the citizens of Guayaquil, who demand that Interagua should respect their constitutional rights, their basic human needs and their fundamental human rights. The City Observatory of Public Service has worked intensely, trying to call attention to these problems, and we join them to call on Bechtel, on International Water Services and on the local company Interagua to take the following actions demanded by our Guayaquil residents:

Prompt action to condone the debts of residents whose water supply has been cut for lack of payment;
Reconnection of water services for those residents whose water supply has been cut for lack of payment capability;
Compliance with the concession contract insofar as the rehabilitation and expansion of water services;
Compliance with the concession contract insofar as the treatment of sewage water;
Compliance with the Ecuadorean constitution, laws and regulations in connection with the right to water and its quality standards;
Attention to the demands of citizens about the fact that water and other public services should be publicly administrated, with social participation and control.

As you know, water is essential for life maintenance. The United Nations Committee of Economic, Social and Cultural Rights adopted the human right to water on November 26, 2002. The Development Report of the 2006 Nations Program calls on governments to protect the right to water in their legislation. The human right to water is indispensable to lead a dignified life. The access to drinkable water and sanitary services are fundamental human rights. Every person should be ensured access to sanitation and drinkable water, in sufficient quantities to meet his basic human needs.

We await your prompt answer to these issues.

Sincerely,

Food & Water Watch

ACT UP East Bay, United States
Administración Autónoma Para Obras Sanitarias, AAPOS, Bolivia
Americas Policy Program, United States
Antiimperialist Movement Siempre en Guardia, Argentina
Anti-Privatisation Forum, South Africa
Apunipima Cape York Health Council, Australia
Asociación YAKU, Italia
Attac, Spain
Attac, Denmark
Beyond Nuclear, United States
Bloque Popular, Honduras

Blue Planet Project, Canada
 BUILD, India
 Caribbean Latin America Coalition, United States
 Catholic Health East, United States
 Center for Policy Analysis on Trade and Health, United States
 Centre for Human Rights and Rehabilitation, Malawi
 Centro Cultural, Social y del Medio Ambiente Ceibo – Maipú, Chile
 Centro de Derechos Humanos "Fray Francisco de Vitoria O.P.", A.C., Mexico
 Child Development Foundation, Holland-India
 Citizens Against Privatisation (CAP), New Zealand
 Coalición de Organizaciones Mexicanas por el Derecho al Agua, Mexico
 Collective Initiative for Research and Action, Nepal
 Collective Initiative for Research and Action (CIRA), Nepal
 Colombia Support Network, United States
 Comisión Nacional en Defensa del Agua y la Vida, Uruguay
 Comité de Agua Potable Hermogenes Aguilar COMAPHA, Bolivia
 Comité Pro Agua sin Arsénico, Ecuador
 Committee in Solidarity with El Salvador (CISPES), United States
 Community Environmental Monitoring, India
 Conference of Major Superiors of Men (CMSM), United States
 Consejo de Defensa de la Cuenca del Río Pilcomayo, CODERIP, Sucre Bolivia
 Cooperativa de Servicios de Agua y Alcantarillado de Tarija Limitada ,COSAALT,
 Tarija, Bolivia
 Coordinadora del Agua, Bolivia
 Coordinadora Nacional de Resistencia Popular, Honduras
 Corporacion La Ceiba, Columbia
 Corporación Ecofondo, Columbia
 Corporate Accountability, United States
 Council of Canadians, Canada
 Defending Water for Life Campaign, Alliance for Democracy, United States
 Democracy Center, Bolivia
 Eco Pax Mundi, United Kingdom
 Enginyeria Sense Fronteres, Spain
 Environmental Justice Coalition for Water, United States
 Escuela del Pueblo primero de Mayo, Bolivia
 Federación de Trabajadores Fabriles de Cochabamba, Bolivia
 Federación de Trabajadores Fabriles Jubilados de Cochabamba, Bolivia
 Federación Departamental de Cooperativas de Agua Potable y Alcantarillado Sanitario,
 FEDECAAS Ltda, Santa Cruz, Bolivia
 FIVAS, Foreningen for Internasjonale Vannstudier, Norway
 Food First, USA
 Frente Nacional de Saneamento Ambiental, Brazil
 Friends of the Earth, United States
 Fundación Abril, Bolivia
 Gender Action USA
 Ghana National Coalition Against Privatisation of Water, Ghana
 Global Economy Project, Institute for Policy Studies, United States
 Global Exchange, United States

Global Justice Ecology Project, United States
Grupo de Trabajo de Control Social y Participación Ciudadana GTCS, Bolivia
Health Action for Human Rights, The Philippines
Jibhi Community Health Action Initiative, India
Jubilee USA Network, USA
Justice and Witness Ministries, United Church of Christ, United States
Marin Peace and Justice Coalition, United States
Maryknoll Office of Global Concerns, United States
Melamchi Local Concern Group, Nepal
Midwest Coalition for Responsible Investment, United States
Missionary Oblates of Mary Immaculate, United States
Nicaragua Network, United States
Oil Watch International, USA
Otros Mundos, A.C., Mexico
Our Water, Germany
People's Health Movement, Australia
Polaris Institute, Canada
Producers, "Thirst" United States
Public Services International, International
Rainforest Action Network, USA
Red de Género y Medio Ambiente, Mexico
Rede Brasileira pela Integração dos Povos (REBRIP), Brazil
REDES-Amigos de la Tierra, Uruguay
Region VI Coalition for Responsible Investment, United States
RR Resources - Albert J.Roebert, former deputy managing director of Amsterdam
Water Supply, The Netherlands
Rural Reconstruction Nepal (RRN), Nepal
SANIPLAN, United States
School of the Americas Watch, United States
Sisters of Charity of Cincinnati, USA Corporate Responsibility Committee, United States
Sisters of Charity of Nazareth Congregational Leadership, United States
Sisters of Charity, BVM, United States
Sisters of the Sorrowful Mother, United States
Social Justice Alliance, United States
Solidariedade e Educação (FASE), Brazil
Su-Politik (Water-Political), Turkey
The Clean Air Action Group, Hungary
The Corner House, United Kingdom
The Latin America Solidarity Centre (LASC), Ireland
The World Development Movement, United Kingdom
Witness for Peace, United States