

**Joint Response of IDB and IIC Management to the Request Submitted to the MICI regarding  
the “Santiago-Valparaiso-Viña Toll Road Guarantee” Project (CH0167)  
June 30, 2016**

**In response to the Request received from the Pitama Reservoir Irrigation Right-Holders Association, we wish to state that:**

**1. The Project**

The construction, maintenance, and operation of the Santiago-Valparaiso-Viña Toll Road (the “Project”) is a 109.6 km toll road concession located in the central area of Chile. The Project consists of the engineering, construction, upgrade, operation, and maintenance of an existing highway that connects Santiago to Valparaíso and Viña del Mar in order to improve land access among the three cities. This highway corridor is also known Route 68. On December 20, 2000, the Bank’s Board of Executive Directors approved a guarantee for the Project. On December 27, 2001, the concessionaire company Rutas del Pacífico S.A. (“Rutas”) signed a bond indenture for approximately US\$430 million (at today’s exchange rate<sup>1</sup>) to finance the construction and development of the Santiago-Valparaiso-Viña del Mar Toll Road. On April 9, 2002, the Bank signed a guarantee for up to US\$75 million in order to guarantee payment of the principal and the interest under the bonds, which mature in 2024 (hereinafter the “financing”). The construction on the Project was completed in December 2005.

**2. Environmental and Social Performance**

The Bank, whether by direct administration, through third parties hired specifically for that purpose, or by both means, monitors the environmental and social performance of each one of its operations with periodic supervision visits and desk review. If any kind of deviation from the content of our policies is evident during the supervision process, an environmental and social correction plan is devised with the client, the execution of which is closely monitored until it is confirmed that the deviation has been corrected. From the approval of the guarantee to the present time, the Project for the improvement and construction of the Santiago-Valparaiso-Viña Toll Road has been supervised continually by both the Bank’s—and recently by the IIC—environmental and social team, as well as by JGP Consultores, the firm that was hired as the Independent Environmental and Social Consultant for that purpose.

During the execution of the Project, Rutas used a piece of land located in the district of Melosilla, approximately 6 km northeast of the town of Lo Vásquez, as a dump for surplus material from the road construction. At this site, after the compression, formation of embankments, and installation of necessary drains and works of art, nearly 180,000 cubic meters of unclassified material was placed there. The complaint filed by the Irrigation Right-Holders alleges that, due to the instability of the embankments in the Melosilla dump, part of the material deposited there was carried into the Pitama Reservoir, causing “...its blockage and the obstruction of the surface and underground rainwater drainage channels. This resulted in the reduction of the reservoir’s water levels, rendering it currently inoperable.”

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<sup>1</sup> Approximately UF11.4 million

The Pitama Reservoir has a volume in excess of 2.13 million cubic meters – of which 2 million are useful volume and 0.13 million (that is, 130,000 cubic meters) are dead volume – and it is located more than 4 km downstream of the Melosilla dump. The Pitama complex (dam and reservoir) has been in operation since 1932, meaning that, in practical terms, both the reservoir and the dam had already completed their useful life (expected to be 50 years) much earlier than the start of the construction works related to the concession.

It is our understanding that, in 2000, one of the embankments of the Melosilla dump became unstable and that, consequently, a small amount of material (around 4000 cubic meters, a negligible figure compared to the two million cubic meter capacity of the reservoir) may have been carried toward Pitama. It is also our understanding that, as soon as this land shift occurred in Melosilla, Rutas implemented the necessary correction and prevention measures. In the opinion of JPG, our independent environmental and social consulting firm, these measures were implemented adequately.

A satellite analysis of the behavior of the Pitama complex over time leads to the unequivocal conclusion that the reservoir has been and is in use, given that its water surface level has varied constantly over time. Thus, there are periods such as the years 2003 and 2007 when the surface level (and therefore the accumulated volume of the reservoir) has been quite large, and others such as 2011 and 2012 when the surface has been noticeably reduced. The last visit to Pitama, in May 2016, showed a reservoir still in use, the dead volume of which had still not been filled by sediment.

It is important to underscore that the contract entered into for the Project's financing establishes that our client must comply with local laws, as well as with any judgments. The Bank has no responsibility in determining whether the client complied with a judgment issued by a local authority. That is determined by the respective authority. The Bank has no influence or participation, or obligation of any kind, with respect to litigation in which our clients are involved. In this particular instance, the court case that resulted in the judgment detailed in section [1] was brought by the Irrigation Right-Holders and did not arise from the environmental supervision conducted by the Bank. Rutas sent a letter to the Public Works Inspector dated April 8, 2016, stating that it had complied with the measures ordered in the judgment, and asking the authority to verify the works carried out and to consider the court's judgment satisfied.

### **3. Additional Considerations**

#### **3.1 Pending Judicial Proceedings**

There are currently two lawsuits pending in Chile between the Pitama Reservoir Irrigation Right-Holders Association (the "Irrigation Right-Holders") and Rutas: (i) a lawsuit alleging environmental harm, filed with the 10<sup>th</sup> Civil Court of Santiago, which is currently at the enforcement stage; and (ii) a suit for damages in the 25<sup>th</sup> Court, currently at the trial stage, the evidentiary phase having been concluded.<sup>2</sup> In the first lawsuit, a judgment has been entered against Rutas, allowing the environmental claim asserted by the Irrigation Right-Holders and ordering a number of environmental measures that Rutas must implement to redress the harm. Rutas submitted a report on its compliance with the obligations contained in the judgment to the Public Works Inspector for approval. The case will close once the order

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<sup>2</sup> See website of the [Chilean Judiciary](#); FILE C-5421-2002 10<sup>th</sup> Civil Court of Santiago; FILE C-17.327-2013 25<sup>th</sup> Civil Court of Santiago.

of the 10<sup>th</sup> Civil Court of Santiago approving Rutas’s compliance becomes final. The purpose of the second case is to set the damages to compensate the environmental harm described in the first lawsuit. This second case is currently before the court, pending final judgment. It is important to underscore that the Bank has no influence or participation, or obligation of any kind, with respect to litigation in which our clients are involved.

### **3.2 Guarantees and Clause 19.f of the MICI Policy:**

Clause 19.f of the Policy of the Independent Consultation and Investigation Mechanism (MICI) establishes that requests must be filed within a term of 24 months from the date of the “last disbursement” of funds from the Bank. This clause assumes financing that consists of a loan or other type of debt and does not provide for the case of financing through a Bank guarantee as in the instant case. It is therefore our opinion that, in cases in which the Bank has granted guarantees, the calculation should be made on the basis of the financing that is being guaranteed—whether it is a loan or the issuance of bonds—and the date of disbursement or issuance of the bonds for that financing should be used to determine whether the 24-month period provided for in this clause has elapsed. In this case, the 24-month period expired on April 9, 2004. We must begin with the assumption that if the Bank were granting that loan directly or purchasing the bonds, the 24-month period would be calculated from the final disbursement or date of issuance, whichever the case may be.

### **3.3 Current Policy**

It bears noting that the Request by the Irrigation Right-Holders to activate the Mechanism was filed nearly ten years after the Project for the construction of the toll road in question was concluded, and more than fourteen years after the guarantee was granted by the Bank. We must additionally clarify that the policy in force at the time the guarantee in question was approved was the “Operational Policy on the Environment” (GP-73-3) <sup>3</sup> approved on May 9, 1979, which, unlike the Environment and Safeguards Compliance Policy (OP-703) currently in force,<sup>4</sup> only establishes general principles of environmental management or “Basic Criteria,” which the Project has complied with in full.

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<sup>3</sup> <https://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=123119>

<sup>4</sup> Approved in 2006