

Santiago, January 28, 2025

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Subject: Legal risks of the Rucalhue Hydroelectric Project

Dear Sirs,

Receive cordial greetings from the [names of the Chilean organizations signing the letter]. We address you as representatives of Chilean civil society organizations concerned about the serious social, environmental, and legal implications of the Rucalhue Hydroelectric Project, located in the Biobío Region in Chile, which is under your control.

This project has a series of social and environmental backgrounds that CWE and its parent company, CCCC, must take into account. The Biobío region has been impacted by more than 20 hydroelectric projects and is facing negative effects on water quality, flow regime, and local biodiversity, including the alteration of habitats of vulnerable species such as native fish and protected tree species like the Guindo Santo and the Naranjillo. According to the Environmental Impact Study (EIS), the construction of this run-of-river hydroelectric plant will create a reservoir of at least 7.7 kilometers, which will directly affect more than 1.5 million people who depend on the Biobío River for food and agricultural activities. Additionally, in 2020, modifications were introduced to the project design (changes to the dam and relocation of roads) that were irregularly approved without undergoing a new environmental evaluation, which increased tensions with local communities.

On the social front, the Indigenous Mapuche Pewenche communities living in Alto Biobío have stated that this project violates previous agreements with the Chilean State, such as the Friendly Settlement Agreement approved by the Inter-American Commission on Human Rights in 2004, which prohibited the installation of new hydroelectric projects on Indigenous lands. They have also denounced the lack of free, prior, and informed Indigenous consultation, violating ILO Convention 169.

These omissions have intensified the rejection of the project, leading to protests, legal actions, and increased conflict in the region. In addition, there have been reports of the criminalization of

community leaders and the risk of flooding inhabited lands, highlighting the lack of due diligence in human rights and environmental matters in the planning and execution of the project. We consider that these precedents are essential for CWE and CCCC to evaluate the social and environmental implications associated with the project and its possible consequences.

In 2024, two legal actions were filed against what were considered arbitrary and illegal actions implemented by Chilean authorities and CWE in the Rucalhue Hydroelectric Project. Below we present the main arguments of these legal actions:

1. The first legal action, filed on May 7, 2024, by ancestral Mapuche Pewenche authorities, seeks protection of the fundamental rights of the Pehuen Mapu Mapuche people against Resolution No. 330/2024 of CONAF. This resolution authorized the hydroelectric project to intervene in the habitat of vulnerable species protected under conservation categories, such as the Guindo Santo and the Naranjillo. The petitioners argue that the CONAF authorization violates fundamental rights due to the omission of free, prior, and informed Indigenous consultation, as established in ILO Convention 169, ratified by Chile through Law No. 19.253, Supreme Decree No. 236 of 2008, and Decree No. 66 of 2014. This legal noncompliance, according to the Mapuche Indigenous people, also contravenes Article 19 of Law No. 20.283 on Native Forest Recovery and Forestry Promotion (2008), which prohibits the intervention of endangered or vulnerable species.

Members of Mapuche communities denounce that the authorization to intervene 651 individuals of protected species directly affects the cultural, spiritual, and medicinal practices of the Pewenche people. These protected species are essential to their worldview, particularly as part of Lawen (medicinal herbs), and their destruction represents an irreversible threat to their well-being. The legal filing also highlights that the procedure followed by CONAF infringes the Escazú Agreement, ratified by Chile through Supreme Decree No. 209 of 2022, which guarantees public participation and the rights of local communities in environmental decisions.

Therefore, the claimants request the annulment of CONAF Resolution No. 330/2024 and the implementation of a free, prior, and informed Indigenous consultation. They also request a precautionary measure to suspend the effects of the CONAF resolution while the legal action is being processed, arguing that, if this measure is not adopted, the damages caused would be irreversible and would deepen the violation of the rights of Indigenous communities and the environment.

2. The second legal action, filed by the Municipality of Quilaco before the Court of Appeals of Concepción, questions the legality of Supreme Decree No. 175 of 2023, issued by the Ministry of Energy, which extended the concession period for the execution of the Rucalhue Hydroelectric Project from 35 to 65 months. According to the plaintiffs, this was an arbitrary and illegal decision because it lacks adequate justification and does not meet the requirements of the General Law of Electrical Services (Decree with Force of Law No. 4 of 2006), which requires concessions to comply with strict deadlines for execution, except in duly substantiated cases of force majeure.

This legal action also claims that the extension of the term was based on unproven facts, such as work stoppages that did not actually halt the project. It also highlights the lack of free, prior, and informed consultation with the Mapuche Pewenche communities that will be affected (ILO Convention 169).

Due to these irregularities, the Municipality of Quilaco requests the annulment of Decree No. 175 of 2023 from the Ministry of Energy and the suspension of the works, relying on the fundamental rights established in Article 19 of the Constitution, such as the right to life, to live in an environment free of contamination, and to property.

Due to these legal actions, the Rucalhue Hydroelectric Project faces the risk of being temporarily or permanently halted. Specifically, these legal actions could result in adverse judicial decisions for CWE and CCCC, such as the annulment of the environmental authorization or the suspension of the granted concession. A temporary halt would directly impact the project timeline, increase costs, and could affect its financial viability. A potential permanent halt is not ruled out, which would result in the total loss of investments made to date. Additionally, these legal actions could result in fines and legal sanctions against the company for violating Chilean environmental and Indigenous laws.

Moreover, the project entails reputational risks for CWE, which has a broad history of hydroelectric projects, as well as for CCCC as the parent company, for whom the Rucalhue Hydroelectric Project is their first venture in this sector abroad. The negative perception of local communities and civil society organizations toward the project could damage the company's image, affecting its ability to develop future projects in Chile and other countries in the region.

For these reasons, we strongly urge you to reconsider the continuation of the Rucalhue Hydroelectric Project. We believe that a thorough assessment of the social and environmental impacts, as well as the legal risks associated with the ongoing legal actions, could help avoid significant economic and reputational losses for your company.

On our part, we wish to thank you for your attention to this letter, and reiterate our willingness to provide further background information regarding the situation in the territory.

Sincerely,