

January 17, 2011

***Submitted via electronic mail***

Dr. Jean Aden  
Mr. Keith Kosloff  
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Overseas Private Investment Corporation  
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E-mail: [accountability@opic.gov](mailto:accountability@opic.gov)

**Re: Addendum to the Complaint regarding the Cerro de Oro Hydroelectric Project**

Dear Dr. Aden,

We are writing to submit the following addendum to the Complaint filed with the OPIC Office of Accountability regarding the Cerro de Oro Hydroelectric Project (“Project”) in Oaxaca, Mexico on November 30, 2010 (“November 30, 2010 Complaint”).

During the OPIC Office of Accountability’s recent visit to the affected communities and project site in January 2011, members of the Chinanteco indigenous community Cerro de Oro (“Cerro de Oro Ejido”) expressed concerns about the Project and its implementation.<sup>1</sup> The members of the Cerro de Oro Ejido hereby join the communities of Santa Ursula and Paso Canoa in their Complaint to the OPIC Office of Accountability. This addendum outlines the Cerro de Oro Ejido’s concerns about the Project, including failure to provide information and hold consultations, as well as the Project’s potential severe environmental, livelihood, human rights and social impacts.

The members of the Cerro de Oro Ejido submit this addendum to the Complaint publicly and do not request confidential treatment.

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<sup>1</sup> Although previous visits to the region sought to identify and include as many affected communities as possible, the potential effects on Cerro de Oro Ejido did not come to light until after the filing of the November 30, 2010 Complaint. Because the proposed hydroelectric expansion directly affects this community, no mediation process or resolution should take place without its involvement.

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## I. Cerro de Oro Ejido

The Cerro de Oro Ejido, part of the municipality of San Lucas Ojitlán, Oaxaca, Mexico, is a predominantly Chinanteco community located adjacent to the community of Paso Canoa.<sup>2</sup> The population of the community is approximately 480, of which the vast majority are *vecinos*, or members of the community who are not landholders in the *ejido*. Inhabitants of the community, including landholders and *vecinos*, self-identify as Chinanteco. The indigenous language of Chinanteco, rather than Spanish, is predominantly spoken within the community.<sup>3</sup> Children in the community speak Chinanteco not only at home but also at the local bilingual elementary school.

Cerro de Oro Ejido's land borders the *ejido* territory of Paso Canoa. The community is rapidly expanding and has outgrown the habitable territory in the primary urban center. Community members have constructed homes on a strip of land adjacent to the reservoir created by the Cerro de Oro dam ("Reservoir") and the tunnels that release water into the Santo Domingo River.<sup>4</sup> While a few community members have had residences on this territory for at least five years, construction intensified approximately three years ago.<sup>5</sup> Currently, there are six homes and a restaurant in the new urban area, visible from the main road, and there are 56 homes contemplated for this area.<sup>6</sup>

Both residents from the urban center of the Cerro de Oro Ejido and the newly-populated area rely on the Reservoir and the Santo Domingo River for water and for their livelihood. Members of the community regularly fish in the Reservoir and the Santo Domingo River for sustenance, and also sell fish as a critical source of revenue for their families.<sup>7</sup> Residents from both populated areas use the river to wash clothes, with women from the central urban zone walking up to an hour back and forth from the river to do their laundry.<sup>8</sup> Habitants of the newly-

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<sup>2</sup> A small number of ejido members, approximately five, purchased their rights in the ejido. Many of them are not Chinantecos, and do not live in the community.

<sup>3</sup> Interview by Komala Ramachandra with Teresa Narsizo Valor, Cerro de Oro Ejido Resident, San Lucas Ojitlán, Oaxaca, Mexico (Jan. 10, 2011); interview by Komala Ramachandra with Angela Pioquinto Pradillo, Cerro de Oro Ejido Resident, San Lucas Ojitlán, Oaxaca, Mexico (Jan. 10, 2011); interview by Komala Ramachandra with Angelica Ocampo Narsizo, President Comisariada, Cerro de Oro Ejido, San Lucas Ojitlán, Oaxaca, Mexico (Jan. 10, 2011); interview by Komala Ramachandra with Francisco Castillo Alejo, Cerro de Oro Ejido Resident, San Lucas Ojitlán, Oaxaca, Mexico (Jan. 10, 2011).

<sup>4</sup> Site visit with OPIC Office of Accountability team (Jan. 9, 2011).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Interview by Komala Ramachandra with Angelica Ocampo Narsizo, President Comisariada, Cerro de Oro Ejido, San Lucas Ojitlán, Oaxaca, Mexico (Jan. 10, 2011); interview by Komala Ramachandra with Francisco Castillo Alejo, Cerro de Oro Ejido Resident, San Lucas Ojitlán, Oaxaca, Mexico (Jan. 10, 2011).

<sup>8</sup> Interview by Komala Ramachandra with Angelica Ocampo Narsizo, President Comisariada, Cerro de Oro Ejido, San Lucas Ojitlán, Oaxaca, Mexico (Jan. 10, 2011).

populated area also get all their daily use water from the Santo Domingo River, including drinking and cooking water.<sup>9</sup>

## **II. Current and likely impacts of the Cerro de Oro Hydroelectric Project**

### **A. Lack of Information and Consultation**

Members of the Cerro de Oro Ejido were not informed or consulted before construction on the Project began.<sup>10</sup> Project representatives have not visited the community or disclosed information about the Project's impacts. Some community members heard rumors about the construction, and three residents of the Cerro de Oro Ejido work on the Project construction site.<sup>11</sup> Community members want more information about the Project, as well as an effective mechanism through which to address their concerns about contamination of the Reservoir and changes in the flow of the Santo Domingo River. They are unaware of how to obtain information about the Project or contact Project sponsors with their concerns.

### **B. Livelihood and Social Impacts**

Community members are concerned that changes in the flow of the Santo Domingo River and contamination of the Reservoir will affect the local fish populations, a critical source of nutrition and income in their community. Community members expressed concern about that the Project would restrict the flow of water from the Reservoir, particularly during the dry season, and impact fish populations in the Santo Domingo River.<sup>12</sup> There are also concerns that, based on eyewitness reports from construction site workers, effluent from the construction, particularly a cement accelerator, is flowing into the Reservoir and the Santo Domingo River.<sup>13</sup> This effluent could impact water composition and quality,<sup>14</sup> affecting fish populations that currently thrive in those bodies of water.

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<sup>9</sup> Water from the Reservoir is not potable. Those members of the community that rely on the Santo Domingo River for drinking water are forced to boil their water for drinking and cooking.

<sup>10</sup> See interview by Komala Ramachandra with Jose Pioquinto Valor, Cerro de Oro Ejido Resident, San Lucas Ojitlán, Oaxaca, Mexico (Jan. 10, 2011); interview by Komala Ramachandra with Teresa Narsizo Valor, Cerro de Oro Ejido Resident, San Lucas Ojitlán, Oaxaca, Mexico (Jan. 10, 2011); interview by Komala Ramachandra with Angelica Ocampo Narsizo, President Comisariada, Cerro de Oro Ejido, San Lucas Ojitlán, Oaxaca, Mexico (Jan. 10, 2011).

<sup>11</sup> Interview by Komala Ramachandra, Anonymous Cerro de Oro Ejido Resident, San Lucas Ojitlán, Oaxaca, Mexico (Jan. 10, 2011).

<sup>12</sup> Interview by Komala Ramachandra with Marcial Ocampo Hernandez, Cerro de Oro Ejido Resident, San Lucas Ojitlán, Oaxaca, Mexico (Jan. 10, 2011); interview by Komala Ramachandra with Francisco Castillo Alejo, Cerro de Oro Ejido Resident, San Lucas Ojitlán, Oaxaca, Mexico (Jan. 10, 2011); interview by Komala Ramachandra with Paulino Roldan Lopez, Cerro de Oro Ejido Resident, San Lucas Ojitlán, Oaxaca, Mexico (Jan. 10, 2011); interview by Komala Ramachandra with Angelica Ocampo Narsizo, President Comisariada, Cerro de Oro Ejido, San Lucas Ojitlán, Oaxaca, Mexico (Jan. 10, 2011).

<sup>13</sup> Interview by Komala Ramachandra, Anonymous Cerro de Oro Ejido Resident, San Lucas Ojitlán, Oaxaca, Mexico (Jan. 10, 2011).

<sup>14</sup> The most common cement accelerators are salts, which cause pH levels to rise (become more basic). See <http://www.wardchem.com/cement-accelerator.htm>.

The women of Cerro de Oro Ejido worry that they will need to walk farther to obtain water for washing and other household necessities. Women from Cerro de Oro Ejido's main urban center walk up to an hour to wash their clothes in the river, and may be forced to go further downriver if the amount of water released from the tunnels into the Santo Domingo River is reduced to facilitate the outflow of water into the turbine.<sup>15</sup>

An additional concern for the women of the community is the presence of outside workers in the region. They expressed distress at the idea of men who do not have social ties to the communities living and working near their community, and fear that unfamiliar workers pose a threat to their safety and the safety of their children.<sup>16</sup> They particularly fear robbery, sexual assault and other violent crimes. They are also worried about outside workers bringing diseases, like HIV/AIDS.<sup>17</sup>

### C. Environmental Impacts

Cerro de Oro Ejido is participating in a forest conservation and environmental services program called ProÁrbol, administered by the National Forest Commission ("CONAFOR" for its initials in Spanish) and the Ministry of Environment and Natural Resources ("SEMARNAT" for its initials in Spanish) of the Mexican government.<sup>18</sup> This program requires community residents to refrain from commercial use of forest flora and fauna surrounding their community, and to obtain permission for personal use. Cerro de Oro Ejido authorities expressed support for the program in their territory, a hill located adjacent to the Reservoir. They are concerned that alterations to the ecosystem, whether in terms of water quality or quantity, could affect the protected forest.<sup>19</sup> Community members worry that allowing the hydroelectric project to proceed will jeopardize their participation in the forestry protection project, which could result in a loss of economic support from the federal government to the Cerro de Oro Ejido.<sup>20</sup>

Unable to commercially hunt the forest animals in the preserve in accordance with ProÁrbol, community members depend on fishing the Santo Domingo River as a source of protein and income. The hydroelectric project is jeopardizing community members' very survival by threatening to reduce local fishing stock.

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<sup>15</sup> Interview by Komala Ramachandra with Angelica Ocampo Narsizo, President Comisariada, Cerro de Oro Ejido, San Lucas Ojitlán, Oaxaca, Mexico (Jan. 10, 2011).

<sup>16</sup> Interview by Komala Ramachandra with Angelica Ocampo Narsizo, President Comisariada, Cerro de Oro Ejido, San Lucas Ojitlán, Oaxaca, Mexico (Jan. 10, 2011).

<sup>17</sup> *Id.*

<sup>18</sup> See PROARBOL, <http://www.conafor.gob.mx/portal/index.php/proarbol>.

<sup>19</sup> See interview by Komala Ramachandra with Anonymous Cerro de Oro Ejido Resident, San Lucas Ojitlán, Oaxaca, Mexico (Jan. 10, 2011); interview by Komala Ramachandra with Angelica Ocampo Narsizo, President Comisariada, Cerro de Oro Ejido, San Lucas Ojitlán, Oaxaca, Mexico (Jan. 10, 2011).

<sup>20</sup> *Id.*

#### D. Community Health and Safety Impacts

Inhabitants of the newly-populated area adjacent to the Santo Domingo River, who use river water for drinking and cooking, are afraid that contamination from the construction site could cause health impacts.<sup>21</sup> Community members do not know the nature of the chemical effluents reaching the Cerro de Oro Reservoir, and therefore do not know how to properly treat their water in order to make it potable. In addition, the fish from the affected bodies of water could contain these chemicals, another source of feared health impacts.<sup>22</sup> Removal of water and food sources threatens the human rights of these community members.

Community members, like their neighbors in Santa Ursula and Paso Canoa, are terrified of the Project sponsors' use of dynamite near the dam curtain. Some community members are aware that the Mexican army handles explosives and manages the detonations, but they are concerned by the long-term impacts of the activity.<sup>23</sup> They are concerned that vibrations from the explosions could compromise the integrity of the dam, causing cracks or fissures that may one day lead to its collapse and fatal consequences.<sup>24</sup>

#### E. Impacts on a Vulnerable Population

The residents of Cerro de Oro Ejido, both ejiditarios and vecinos, are Chinantecos, a marginalized indigenous people. The construction of the Cerro de Oro dam had ruinous effects on the Chinanteco people, "inundat[ing] fertile land of the Chinantecos affecting the heart of their region and bring[ing] a rise in hunger, misery, and marginalization of this culture."<sup>25</sup> Some of Cerro de Oro Ejido's agricultural land was flooded by the construction of the dam, and residents are concerned the Project will further damage local ecosystems.

Project sponsors did not provide information to Cerro de Oro Ejido authorities, nor those living near the outflow of the Reservoir.<sup>26</sup> The Project sponsors had an obligation to identify and consult with all indigenous communities that could be affected by the Project. However, Cerro de Oro Ejido was not consulted, and impacts on this community were not considered, mitigated,

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<sup>21</sup> Interview by Komala Ramachandra, Anonymous Cerro de Oro Ejido Resident, San Lucas Ojitlán, Oaxaca, Mexico (Jan. 10, 2011); interview by Komala Ramachandra with Angela Pioquinto Pradillo, Cerro de Oro Ejido Resident, San Lucas Ojitlán, Oaxaca, Mexico (Jan. 10, 2011); interview by Komala Ramachandra with Paulino Roldan Lopez, Cerro de Oro Ejido Resident, San Lucas Ojitlán, Oaxaca, Mexico (Jan. 10, 2011).

<sup>22</sup> *Id.*

<sup>23</sup> Interview by Komala Ramachandra, Anonymous Cerro de Oro Ejido Resident, San Lucas Ojitlán, Oaxaca, Mexico (Jan. 10, 2011).

<sup>24</sup> *Id.* See also interview by Komala Ramachandra with Angelica Ocampo Narsizo, President Comisariada, Cerro de Oro Ejido, San Lucas Ojitlán, Oaxaca, Mexico (Jan. 10, 2011).

<sup>25</sup> Enciclopedia de los Municipios de México, Estado de Oaxaca, San Luis Ojitlán, <http://www.e-local.gob.mx/work/templates/enciclo/oaxaca/municipios/20232a.htm> (translated by Komala Ramachandra).

<sup>26</sup> Site visit with OPIC Office of Accountability team (Jan. 9, 2011). See also interview by Komala Ramachandra with Angelica Ocampo Narsizo, President Comisariada, Cerro de Oro Ejido, San Lucas Ojitlán, Oaxaca, Mexico (Jan. 10, 2011).

or compensated. Residents are upset that their collective rights as an indigenous community potentially affected by the project were not respected prior to commencing construction.<sup>27</sup>

In addition, the populated area near the dam tunnels will primarily consist of non-land holding community members, in this case adult children of *ejiditarios* of Cerro de Oro Ejido.<sup>28</sup> While *ejiditarios* and *vecinos* join this complaint together after acknowledging the community-wide impacts of this project, the *vecinos* cannot make decisions about *ejido* nor participate in the *ejido*'s assembly. The Project has grave implications for *vecinos* because their houses are located nearest to the Reservoir. Project sponsors ignored the requirement to identify and consult with this vulnerable and affected population, prior to starting construction.

Women and children could be disproportionately affected by the project. As noted above, women are responsible for obtaining water for the household and many tasks that require using river water. Changing flow levels and contamination would have a direct impact on them. In addition, many residents expressed concerns about the impacts on children and their health, due to long-term exposure to effluents in the water supply and impacts on the ecosystems and food supply.<sup>29</sup>

### III. Policy Violations

The preparation and implementation of the Cerro de Oro Hydroelectric Project violates OPIC policy as well as Mexican domestic and international law with respect to Cerro de Oro Ejido and its inhabitants. A full discussion of those policies and their violation in the implementation of this project can be found in the November 30, 2010 Complaint. *The analysis in the Complaint applies equally to the situation of the Cerro de Oro Ejido.*

In addition to the discussion of policy and legal violations in the November 30, 2010 Complaint, the preparation and impacts of the Project on the Cerro de Oro Ejido violate IFC Performance Standards 1 and 6 because of the failure to consider the ProÁrbol protected forest area in the environmental impact assessment, and failure to consult the Cerro de Oro Ejido about particular risks and mitigation measures needed due to the presence of this protected area.

The violations of PS 7, as described in the November 30, 2010 Complaint, are particularly stark with regard to the Cerro de Oro Ejido given that this indigenous community was not provided with Project information or consulted, and the Project poses gravely threatens the community's environment and well-being. The human rights and indigenous rights violations of ILO 169 are also particularly stark with regard to the Cerro de Oro Ejido given the Project sponsors' failure to obtain free, prior, and informed consent before approving projects affecting indigenous lands, territories, or resources.

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<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> Interview by Komala Ramachandra with Teresa Narsizo Valor, Cerro de Oro Ejido Resident, San Lucas Ojitlán, Oaxaca, Mexico (Jan. 10, 2011); interview by Komala Ramachandra with Angela Pioquinto Pradillo, Cerro de Oro Ejido Resident, San Lucas Ojitlán, Oaxaca, Mexico (Jan. 10, 2011); interview by Komala Ramachandra with Angelica Ocampo Narsizo, President Comisariada, Cerro de Oro Ejido, San Lucas Ojitlán, Oaxaca, Mexico (Jan. 10, 2011).

#### IV. Next Steps

The community members of Cerro de Oro Ejido had the opportunity to speak with the investigation team from OPIC's Office of Accountability on January 9, 2010. They communicated their dissatisfaction and concerns with the Project, and their desire to enter a Problem-solving initiative and Compliance Review with the neighboring communities of Paso Canoa and Santa Ursula. They reaffirm that request by signing this addendum to the November 30, 2010 Complaint.

The Cerro de Oro Ejido requests immediate information about the Project from the sponsors, in a manner that is complete and comprehensible. They request that the Project sponsors hold a consultation with the entire community, *ejiditarios* and *vecinos*, that complies with OPIC's requirements and takes into consideration the community's concerns about the Project *before it proceeds further*. Community members are interested in independent studies of the Project's environmental, health, and social impacts. They also request that a Compliance Review of the Project's non-compliance with all of OPIC's applicable social, environmental, health, and transparency standards begin immediately.

In addition, the Cerro de Oro Ejido requests a Problem-solving initiative where mitigation and compensation for future impacts on Cerro de Oro Ejido, its two populated areas, and its environs can be discussed with the presence of an independent mediator.

Complainants may be contacted via email through their representatives in the Working Group listed in Exhibit 1 to the November 30, 2010 Complaint. Thank you for your attention to this urgent request.

We, as members of the communities affected by the Cerro de Oro Hydroelectric Project in the municipality of San Lucas, Ojitlán, Oaxaca, hereby sign the Complaint presented to the OPIC Office of Accountability on November 30, 2010 and the present Addendum to the Complaint.

*[please see attached signatures]*

cc: Mr. Juan Dumas