

DRAFT - NOT FOR CIRCULATION OUTSIDE OF USG - DRAFT

Camisea Meeting - May 15, 2003

072

Participants:

Keith Kozloff / US Treasury
Leslie Johnston / US AID
Carl Kendall; James Mahoney / ExIm Bank
Leonardo Corral (Public); Elizabeth Brito; Robert Montgomery; Paola Van Houten / IADB
Julio Bonelli / MEM
Gonzalo Morante; Jorge Dimopulos / TGP
Sandra Martinez; Francisco Negrini / Pluspetrol
Ralph Braccio; Gustavo Mange / ERM
Brian Swinford / Hunt Oil

The following set of notes summarizes points discussed during the meeting and identifies follow-up actions. Comments are attributed to organizations rather than individuals. "USG" refers to Treasury and/or USAID. It should be noted that time constraints prevented a full discussion of all outstanding issues.

Indigenous Issues in Block 88

The USG had previously submitted to Pluspetrol a set of issues that needed to be addressed before construction could begin within the Nahua-Kugapakori Indigenous Reserve. The responses provided by Pluspetrol to the proposed recommendations are a good first step to solve this issue. There is convergence between indigenous issues raised by the USG and the responses made by Pluspetrol, however the critical issue remains of timing, sequencing and legitimacy of activities. (USG email and Pluspetrol responses are provided in Annex 1).

Ethnic and resource use mapping study: The USG believes that the proposed study supervised by CONAPA is a good start. The study will include the entire area of Block 88 and form the basis for a protocol addressing voluntary isolated populations for this and future work within the Reserve. Two consultants have been hired (Juan Ossio and Virginia Montoya) and the study should be completed by the end of June. There has not been engagement or consultations with stakeholders in Peru on the design of the study or consultants hired. Because of the history of distrust (some of which predates the current project), there needs to be more sensitivity by the GoP and sponsors before moving ahead with this project. Without adequate consultation on the study, stakeholders may not have "buy-in" into the process and support the study's results. This is complicated by the concern that CONAPA has neither the legal authority nor the technical capacity to proactively address indigenous issues associated with the project.

Actions:

- To overcome the above concerns, it was recommended that the terms of reference for the ethnic and natural resource mapping and identification of consultants be shared at least with the three Indigenous Federations and local NGOs for their feedback. This consultation would be conducted by CONAPA/GTCI rather than Pluspetrol.
- MEM agreed to explore the possibility of organizing this consultation through GTCI. Potential invitees would include at least [CONAP?], ADESEP, FECONAYY, COMARU, and CECONAMA.

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The group also discussed the concern about Pluspetrol's work activities starting in the Reserve – specifically on SM3 and conducting a topographic survey of the flow line – before the results of the study have been incorporated into these activities. Work initiated in the Reserve could affect the target population's behavior, thus preventing the study from achieving its purpose of acquiring accurate baseline information, not to mention have adverse social impacts. Ex-Im stated that conducting activities in the Reserve before the study is done exemplifies a more general sequencing problem with the project. Pluspetrol acknowledged that the time constraints and transportation windows it faces may not allow for project delays if the August 2004 deadline is to be met.

Some options to address the sequencing issue were discussed. Besides the concept of a grace period, another option is for the Government to lower the quantity of product to be commercially available in August, 2004. Also, IDB proposed a rapid appraisal during which project activities would be suspended. This would be followed by a more detailed analysis while enabling the company to resume activities upon completion of the appraisal. The sequencing issue was not resolved at the meeting.

Actions:

- MEM will discuss internally and report back on the feasibility of a specified grace period for completion of the project, in order for social and environmental concerns to be adequately addressed.
- Pluspetrol will investigate the implications of temporarily delaying activities in the Reserve on its ability to meet contractual deadlines and on costs.

Health issues: After discussion of health activities in the region by the Ministry of Health and Pluspetrol, it was agreed that there were a number of ongoing activities. However, it was recognized that there may still be gaps with respect to monitoring, detecting and responding to health issues. There continue to be lack of coordination with the indigenous groups. For example, AIDSESEP has contracted with the London School of Tropical Health to do an assessment late May. Optimally this should be coordinated with MoH.

Actions:

- MEM will raise the issue with MoH of how to address gaps effectively and coordinate with the indigenous groups' efforts.

Witness Monitor: The USG recommends that there is a permanent independent presence in the field as Pluspetrol expands its activities into the Reserve. This entity must be credible to NGOs and civil society and provide monthly reports for public release. A variety of different options were discussed, including adapting one of the ongoing monitoring functions by OSINERG, CONAPA, IDB or Community Monitoring program. The witness monitor could be arranged through CECONAMA, FECONAYY and COMARU. Ongoing activities in the Reserve give urgency to deploying such a monitor.

Actions:

- MEM will explore the deployment of OSINERG monitors for technical aspects, to be combined with community monitors for nontechnical aspects.

Status of Nahua-Kugapakori Indigenous Reserve: The legal status of this Reserve needs to be strengthened from a Ministerial Resolution to a Supreme Decree or Supreme Resolution. This would also imply that there would be no more extractive activities within the Reserve and thus Block 57 and 58 would need to be

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modified to eliminate overlap with the Reserve. MEM explained that this was under the purview of INRENA and PeruPetro.

Actions:

- MEM will raise this issue with the appropriate entities (INRENA, PeruPetro and Minister) and provide feedback as to the feasibility and timing of the proposed change in status.

Compensation for Reserve Population: The economic appraisal study includes the Nahua-Kugapakori Indigenous Reserve. Funds have been set aside but how and when they will be applied is unclear. This is because no investment plan can be made with a voluntarily-isolated population. Another unknown is the determination of who is entitled to compensation due to direct or indirect impacts. The ethnic and natural resource mapping study will provide a better idea how to deal with this issue. Criteria need to be established taking into account findings of the study and both direct and indirect impacts.

Actions:

- MEM will discuss with CONAPA a procedure for how to establish criteria and a mechanism for compensation.

PARACAS

Overarching discussions concerning Paracas were whether it is the correct site for the coastal facilities. If the Paracas site is retained, participants discussed options for ensuring positive development outcomes. Several key concerns were raised concerning technical and legal aspects of the site selection.

Alternative site selection: Ex-Im is not convinced that the alternative site selection process carefully considered environmental and social issues. Ex-Im Directors understand that Block 88 has to be a component of the project since that is where the natural gas reserves are, however, there was a choice for where the fractionation plant and marine terminal could be sited. Since there was a choice, a convincing case needs to be presented as to why Paracas, an area of high ecological sensitivity and biodiversity, was chosen. The set of alternative sites needs to be compared from cost/benefit and environmental perspectives. Construction cost cannot be the only factor for selecting Paracas. Pluspetrol submitted all information to DGAA and to Ex-Im, but Ex-Im did not feel comfortable with the information sent.

USG stated that many critical environmental issues were not addressed in the EIA, such as ballast water exchange and impacts on migratory birds.

Pluspetrol states that the plant will be safe and use environmentally-friendly technology. Its location on the buffer zone legally allows for siting of such plant. Pluspetrol stated that no other acceptable sites were found during the site selection study between Paracas and Lima. Pluspetrol stated it would have to go as far as 70 km south of Paracas Reserve for an acceptable site. It estimates that looking for an alternative site would take more than a year due to all the studies necessary. Ex-Im inquired how the LNG facility, having more stringent requirements, found a site for the plant north of Paracas.

Co-location with LNG facility: Exclusion zone requirements for LNG do not allow co-locating of the two plants. They cannot share the marine terminal or port facilities. Pipeline distances and product requirements do not match. Participants discussed an industrial zone created for spin-off activities resulting from the Camisea project. It is unclear whether this would be feasible.

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GOP said that the site selection process has been underway since August 2002. INRENA has already approved the site selection and submitted questions regarding the best practices for construction and operations at this site.

Actions:

- Project sponsors and the GoP will consider the request by Ex-Im and USG for a review of the site selection process, and the technical considerations that were used in the decision.
- Project sponsors will consider suspending construction activities at Paracas until the site selection issue is resolved. Sponsors will report on the financial implications and GoP will report on the legal implications of doing so.

Legal issues: The USG raised the issues of legality with respect to the conditional approval of the EIA for the land facilities. Starting construction in the site without full approval is a sham to the EIA process due to segmentation of the project and all the pressure that would come for a final EIA approval for the marine terminal once the facility was built. This behavior does not fulfill the intent and purpose of the environmental assessment. Studies need to address critical environmental issues not addressed in the EIA prior to actual approval of the site to determine whether mitigation efforts would offset negative impacts. The August 2004 deadline does not give the opportunity for Pluspetrol to evaluate other sites.

A recurso de reconsideración submitted by Colegio de Arquitectos has been presented to MEM. DGAA is preparing a response to the recurso. Because this is an outstanding legal claim, DGAA can not provide additional information. To date, this is the only appeal received by the DGAA. If the matter goes to court, participants were unsure as to whether a court could issue an injunction on construction activities until the issue is resolved.

Action:

- MEM will evaluate the legal issues raised regarding the conditional approval of the EIA. MEM will ask DGAA to evaluate the potential for civil society to make a constitutional challenge to the approval and whether such a challenge could result in an injunction.

Mitigation efforts: IDB raised the issue that while the discussion concerning Paracas continues, mitigation measures will need to be identified and implemented. There is the perception that siting the plant at Paracas diminishes the importance of the Reserve. There was discussion of what the government can do to demonstrate commitment to protect the reserve in other respects, and whether locating the fractionation plant at Paracas could result in a positive environmental outcome. Participants discussed the need for strategic planning which should specify what measures will be implemented and how they will be funded.

USG noted that until all the key environmental issues were properly examined, it is not possible to go forward with mitigation efforts since it is unclear what impacts one is mitigating or whether or not the impact can even be mitigated.

Peru is in the process of decentralizing many of its powers and activities from the central government to regional/local government. Because this process is just beginning, the GoP has identified a lack of capacity in regional governments with respect to land use planning and environmental law enforcement. Another issue that needs to be resolved, as the decentralization process proceeds, is contradictory national and local laws.

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In discussing the environmental offset concept (providing an incentive to either relocate or buy out the fishmeal plants), IDB stated that they did not see removing the fishmeal industry from Paracas as an offset for the Camisca facilities, and do not plan any conditionalities in the project document with respect to this issue.

Participants discussed the need for a contingency plan. Such plans will be made based on a mathematical model to assess the transport of spills. The plan will be approved by coastguard and go into the national response system. USG asked if international guidelines for spill response will be followed.

USG asked if the marine terminal will have a biodiversity monitoring program. Currently Pluspetrol has submitted a monitoring program that includes a biotic component.

Actions:

- MEM will clarify what entities have authority to enforce laws and orders that relate to pollution by the fishmeal plants and to implement land use controls in the coastal zone.

Various Performance Issues

The meeting concluded with brief discussions on a range of topics.

The loan document will contain requirements that will be monitored, and the IDB will have financial and disbursement requirements. The borrowers will need to document that they have complied with the performance required by the project. Environmental insurance will need to be acquired. TGP has a performance bond with the government that requires it to comply with all legal aspects of the concession contract, including environmental aspects. Pluspetrol also has a performance bond of similar characteristics.

USG was asked about whether biodiversity monitoring would include Andean wetlands.

Participants discussed how community monitoring program could be implemented in all project areas, despite political issues in Upper Urubamba (Comaru and Cedia vs. ProNaturaleza).

The time to resolve the issues discussed during the meeting is limited to about one month. During this period, conditions will need to be drafted to address the issues for incorporation in the board documents to be issued. IDB is considering all recommendations it has received on the project, and is compiling the documents that will be submitted to the environmental committee. The project document will include requirements for receiving the loan, and what the project has done to address the issues raised during all the consultations.

IDB will promote interaction between civil society and the sponsors. IDB probably will hold additional meetings with local NGOs.

Questions regarding social and environmental funding mechanism need to be resolved. The reason to put deadlines into the loan document is to force resolution of these questions, and not have them drag out the process of getting social and environmental projects funded and implemented. USG had no immediate preference whether one or two entities should manage the two funds. Rather, the key is to make sure that intent and goals for the funds were fulfilled. Not all details need to be resolved prior to release of project document, but structures, criteria and operating principles need to be in place.

Actions:

- The GoP will state its position in providing a grace period for the companies to address environmental and social issues.

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- The USG will convey its proposed priorities regarding areas for biodiversity monitoring.
- Project sponsors will return to Washington in mid-June to continue discussions. In the meantime, meeting participants will use electronic correspondence to address issues not discussed at the meeting.
- TGP will have additional meetings over the next weeks regarding technical issues.