

Chilean Hydropower Project Gets Ch. 11 Plan Confirmed

By **Leslie A. Pappas**

Law360 (May 13, 2022, 6:15 PM EDT) -- Chilean hydropower venture Alto Maipo won court approval of its Chapter 11 plan Friday after agreeing to modify language related to third-party releases in response to an objection from the U.S. Trustee's Office.

The final remaining objection from the Department of Justice's bankruptcy watchdog related to releases that the plan imposed on third parties that were "related" in some way to Alto Maipo's creditors but were not given an opportunity to opt out of the releases.

The definition of "related parties" is not clear and "there's no evidence that all related parties to the releasing parties received notice," Jane Leamy, an attorney for the U.S. Trustee's Office, said at a virtual hearing Friday.

U.S. Bankruptcy Judge Karen Owens of the District of Delaware instructed the debtors to revise the definition of "related parties" to address the U.S. Trustee's concerns and remove a provision that said the bankruptcy court would retain jurisdiction.

"With those changes, I'm very pleased to approve the proposed confirmation order," Judge Owens said. "I sincerely hope it brings benefits to the Chilean population and everyone involved."

The plan will allow Alto Maipo to restructure more than \$2 billion of outstanding debt, pay its unsecured creditors, and emerge from bankruptcy as a going concern. The plan also allows its parent and majority equity holder, AES Andes SA, a subsidiary of Virginia-based global electricity supplier AES Corp., to maintain ownership of the project and continue to oversee its operations.

The bankruptcy marks the third restructuring for the hydroelectric project, which includes 42 miles of underground tunnels and two underground caverns in the Andes Mountains approximately 30 miles southeast of Santiago, Chile's capital. The project started in 2013 with a budget of \$2.1 billion but soon hit cost overruns that forced recapitalizations in 2017 and 2018.

Santiago-based Alto Maipo SpA and its Delaware-based foreign representative, Alto Maipo Delaware LLC, **filed for Chapter 11** protection in Delaware in November 2021. Alto Maipo's third bankruptcy **started** with a tentative restructuring support agreement, or RSA, with its parent company and senior lenders holding about 55% of its \$1.65 billion secured debt.

In the months that followed, lenders made "numerous financial concessions" to prevent the bankruptcy "from spiraling into a free fall" and amended the RSA five times to achieve the consensual balance-sheet restructuring laid out in the plan, Andrew Rosenblatt of Norton Rose Fulbright US LLP, counsel for the senior lenders, said at the hearing Friday.

The final plan is now supported by all but one of the senior lenders, accounting for 96% in number and 99% in value, the senior lenders said in court filings.

"This was not an easy road to get here," Rosenblatt said. "Quite frankly there were instances where we thought we wouldn't be here today."

A committee of unsecured creditors that **objected** to an earlier version of the plan in March also expressed their support for the revised plan.

The case "has ended up in a very stable place," Sam J. Alberts of Dentons Bingham Greenebaum LLP, the committee's attorney, said at the hearing. Unsecured creditors were impaired in earlier versions of the plan, but are now unimpaired and will get paid to the extent that their claims are allowed, he said.

Under the final revised plan, AES Andes will contribute \$300,000 for certain unsecured claims and has committed to contributing up to \$10 million later for certain unsecured claims that are not satisfied by the initial \$300,000 fund.

Alto Maipo is represented by Luke A. Barefoot, Richard J. Cooper and Jack A. Massey of Cleary Gottlieb Steen & Hamilton LLP, and S. Alexander Faris, Pauline K. Morgan and Sean T. Greecher of Young Conaway Stargatt & Taylor LLP.

The senior lenders are represented by Andrew Rosenblatt and Derek Cash of Norton Rose Fulbright US LLP.

The official committee of unsecured creditors is represented by Jennifer R. Hoover, Kevin M. Capuzzi and John C. Gentile of Benesch Friedlander Coplan & Aronoff LLP, and Sam J. Alberts, David F. Cook, Lynn P. Harrison III and Geoffrey M. Miller of Dentons.

The case is In re: Alto Maipo Delaware LLC et al., case number 1:21-bk-11507, in the U.S. Bankruptcy Court for the District of Delaware.

--Additional reporting by Rick Archer, Jeff Montgomery, and Vince Sullivan. Editing by Robert Rudinger.