

Bankrupt Chilean Dam Project May Seek Votes On Ch. 11 Plan

By **Leslie A. Pappas**

Law360 (April 6, 2022, 6:07 PM EDT) -- Bankrupt Chilean dam project Alto Maipo got court permission Wednesday to solicit votes from creditors on its Chapter 11 plan of reorganization after overcoming most objections from creditors, an ad hoc committee of tort claimants and the U.S. Department of Justice's bankruptcy watchdog.

U.S. Bankruptcy Court Judge Karen B. Owens of the District of Delaware approved the dam operator's revised disclosure statement and updated restructuring support agreement at a virtual hearing Wednesday after overruling the outstanding objections.

Amendments filed Monday to the restructuring support agreement, or RSA, "fully resolved" the **objections from the official committee** of unsecured creditors and "significantly narrowed" objections from the U.S. Trustee's Office, the debtors' attorney, Luke A. Barefoot of Cleary Gottlieb Steen & Hamilton LLP, told the court at the hearing.

Under the revised RSA, Alto Maipo's parent company, AES Andes SA, would contribute \$300,000 in cash to pay certain unsecured claims while either disallowing others or estimating them at zero for distribution purposes and deeming them unimpaired. AES Andes has also agreed to contribute up to \$10 million later to satisfy certain unsecured claims that are not satisfied by the \$300,000 fund.

The revised RSA now has the support of holders of more than 75% of Alto Maipo's senior secured debt, Barefoot said, calling the resolution a "momentous" achievement.

But an ad hoc group of tort claimants who assert more than \$3 billion in water-rights-related tort claims said the changes to the RSA favored only unsecured creditors with contract claims.

"They have cherry-picked two members of the unsecured creditors' committee" and assumed those claims, while tort claims will be estimated at zero, the ad hoc group's attorney, Patricia Tomasco of Quinn Emanuel Urquhart & Sullivan LLP, told the court.

Judge Owens overruled the ad hoc committee's objection for now, saying it should be raised later when the court considers confirmation of the debtors' plan. She overruled the trustee's remaining objection, related to a definition of third-party releases, for the same reason, saying the issue also could be addressed later at plan confirmation.

In addition to approval of the RSA and disclosure statement, Judge Owens granted the debtors' request to extend the deadline for getting acceptance of the plan from May 16 to June 1.

Santiago-based Alto Maipo SpA and its Delaware affiliate Alto Maipo Delaware LLC **filed** for Chapter 11 protection in November 2021 with an RSA in place **backed** by \$50 million in bankruptcy financing from parent AES Andes, a subsidiary of Virginia-based global electricity supplier AES Corp. The debtor's Chapter 11 plan, based on the restructuring agreement between Alto Maipo, AES Andes and the debtors' senior lenders, would allow the company to restructure its \$2.1 billion of outstanding debt obligations and continue to operate once it emerges from bankruptcy.

The bankruptcy marks the third restructuring for the hydroelectric project, located in the Andes Mountains approximately 30 miles southeast of Santiago, Chile's capital. Construction on the project, which includes 42 miles of underground tunnels and two underground caverns, started in 2013 with a

budget of \$2.1 billion but soon hit cost overruns that forced recapitalizations in 2017 and 2018.

The project has made progress during the bankruptcy, with three of the four generating units starting commercial operations on March 26 and the fourth expected to go into operation later this month, Barefoot told the court Wednesday.

A confirmation hearing has been scheduled for May 13.

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

The unsecured creditors are represented by Sam J. Alberts, David F. Cook and Lynn P. Harrison III of Dentons; James R. Irving of Dentons Bingham Greenebaum LLP; Carlos Urzúa and Gonzalo Varela of Dentons Larraín Rencoret SpA; and Kevin M. Capuzzi, Jennifer R. Hoover and John C. Gentile of Benesch Friedlander Coplan & Aronoff.

The ad hoc committee of tort claimants is represented by Patricia Tomasco and Joanna D. Caytas of Quinn Emanuel Urquhart & Sullivan LLP and Stanley B. Tarr and Michael B. Schaedle of Blank Rome LLP.

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 Isaac Monterose. Editing by Andrew Cohen.