

September 9, 2019

TO: Acting President Bohigian  
Board Members  
U.S. Overseas Private Investment Corporation (OPIC)  
Washington DC

RE: Response and Additional Questions on proposed fracking projects in Argentina

**Background:** On August 26, 2019 the Argentinian non-governmental organization Fundación Ambiente y Recursos Naturales (FARN), along with the Center for International Environmental Law and Friends of the Earth U.S., submitted comments to OPIC on the Environmental and Social Impact Assessment (ESIA) for large scale fracking projects in Argentina proposed by Vista Oil & Gas Argentina S.A. and Aleph Midstream S.A. On September 6, 2019 OPIC provided us with an unattributed response to these concerns.<sup>1</sup> We hereby provide our overarching reaction to this response, as well as a more detailed list of responses in an appended document.

**Overarching reaction:** You are being asked to place hundreds of millions of dollars in federal subsidies, with your professional reputations at stake, for fracking projects in the context of an inadequate environmental and social assessment, the promise that major unaddressed concerns will somehow be remedied after your financing decision is made, and the documented failure of the agency to provide adequate oversight of past financing decisions.

*As a consequence, the responsible decision now is for you to reject approval of these two fracking projects.*

The response provided by OPIC claims that “the ESIA posted on the OPIC website is a comprehensive document that addresses all aspects, activities and facilities that make up the Project.” Yet, throughout the response, OPIC provides multiple examples to the contrary, revealing a premature and incomplete analysis. For example:

*Stakeholder mapping and engagement programs that will meet OPIC requirements are under development and will be a condition of OPIC support.*

*Given the challenges related to land tenure and recognition in the region, OPIC will require that the Project’s stakeholder mapping and engagement programs are sufficiently responsive to ensure appropriate avoidance, mitigation, and management for these identified risks. [Note: this would occur at some later date, after the board vote to approve financing.]*

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<sup>1</sup> The response OPIC provided is unattributed. It is not clear whether this response was generated by OPIC staff, consultants to OPIC, consultants to project sponsors, or the project sponsors themselves. Therefore, it is impossible to ascertain the professional credentials and independence of the author. It is also possible that the author participated in OPIC’s due diligence process for the project, and therefore the response is a defensive reaction to a critique of their work rather than an objective independent analysis.

*The Midstream (Aleph) Project is a staged development and some facilities that make up the midstream Project are still pending approval by the Province of Neuquén and subject to site-specific change per regulator direction.*

*OPIC will require that shrub patches be specifically addressed in the biodiversity management and monitoring plan. [Note: the plan has yet to be completed.]*

*The Ecosystem Services Assessment in Section 5.2.6 of the ESIA is labeled "Preliminary."*

Moreover, concerning greenhouse gas emissions, the response provided by OPIC states:

*OPIC has reviewed the Projects' GHG emissions estimates (420,000 tons of carbon dioxide equivalent per year for Vista and 420,000 tons of carbon dioxide equivalent per year for Aleph) and found them to be conservative, complete and consistent with the GHG emission rates from similar projects.*

Yet, concerning greenhouse gas emissions the ESIA states:

*The Project is in the early stages of design and therefore, details on specific air emission sources are not yet available.*

In the absence of details on specific air emission sources, OPIC claims to have somehow independently reviewed the project sponsors' estimates of the projects' GHG emissions for both the upstream (Vista) and mid-stream (Aleph), comprised of two wholly separate and distinct sets of operations. And then, perhaps by some great coincidence, the estimate for *each distinct part* is exactly the same, 420,000 tons of carbon dioxide equivalent. Needless to say, we find these claims to be dubious.

Regarding required consultation, the response provided by OPIC states:

*The public consultation captured within the ESIA documentation was that which was required on the part of national or provincial regulators for permitting and approval purposes to date. Stakeholder mapping and engagement programs that will meet OPIC requirements are under development and will be a condition of OPIC support.*

Yet, as further articulated in our appended detailed response, the consultation was not for all elements of the project. The public information about the consultation was only for the midstream project, not for the drilling projects for Vista (in addition to the project failing to comply with the OPIC policy requirement to adhere to International Finance Corporation consultation requirements).

The response provided by OPIC suggests that it is normal to address these fundamentally important issues at some later stage (which is conveniently after financing for the project is

approved). That hardly justifies a rushed approval process based on a premature ESIA, particularly for a Category A (high risk) project. Further, while OPIC's response claims that these issues will be addressed later as a condition of OPIC support, as a practical matter, OPIC loses significant leverage to require and enforce changes to a project after financing has been approved. Moreover, what is unfortunately "normal" at OPIC is the agency's and its clients' failure to conduct proper and meaningful monitoring and oversight after projects have been approved for financing. As we cited in our comments on the ESIA:

*The failure to conduct a complete analysis is especially concerning in the wake of the recent audit of OPIC from the Office of Inspector General (OIG) of the US Agency for International Development. This audit reviewed OPIC's investments in Chile's renewable energy sector and determined that OPIC was unable to meet its requirements for data collection and oversight. In particular, it noted that "weak processes and internal controls—including unverified borrower self-assessments, outdated policies and procedures, and poor records management—hindered the ability of OPIC staff to ensure its projects comply with environmental and social laws, adequately manage and monitor OPIC-backed projects, and identify risky clients.*

Thank you for your consideration.

Sincerely,

Fundación Ambiente y Recursos Naturales  
Friends of the Earth U.S.  
Center for International Environmental Law

## **Appendix: Enumerated deficiencies in OPIC's response to joint comments from Fundación Ambiente y Recursos, Center for International Environmental Law, and Friends of the Earth U.S.**

The Overseas Private Investment Corporation (OPIC) provided a response to comments submitted by FARN, CIEL, and FOE. This response fails to address multiple concerns, a number of which are outlined below, raised by the groups in the joint comment.

**Comment I: Consideration of Project Alternatives.** The response from OPIC notes that an alternatives analysis was conducted. However, the response addresses alternative ways for conducting the project, not alternatives to the project (such as those based on renewable energy), and does not address the failure to conduct a no-project alternative analysis, which is critical for such a potentially impactful project. Moreover, in the alternatives analysis which does exist, location alternatives are only examined for the pipeline, not for the wells themselves.

**Comment II: Greenhouse Gas Emissions.** The response from OPIC includes two identical measures of greenhouse gas emissions for two completely separate and distinctly different projects (upstream and midstream). These measurements are neither in the ESIA nor are they justified. Moreover, the emissions analysis does not account for the emissions produced from the combustion of the fossil fuel to be produced, which would increase the emissions factor significantly.

**Comment III: Consultation.** The limited consultation undertaken by loan applicants, like the alternatives analysis, was only done in regard to the midstream pipeline and not the entire fracking project. OPIC says, "Stakeholder mapping and engagement programs that will meet OPIC requirements are under development and will be a condition of OPIC support," supposedly at some unspecified future date. OPIC's response only refers to consultation requirements "on the part of national or provincial regulators," and not the separate and distinct consultation requirements of OPIC. What's more, OPIC's response makes no guarantee that stakeholder mapping and engagement programs and other required consulting will occur prior to the project breaking ground and before irreversible impacts are made. OPIC should not approve a project that has not demonstrated its compliance with OPIC's consultation requirements. This response indicates that OPIC is aware that Vista and Aleph have not satisfied that requirement.

**Comment IV: The Rights of Indigenous Peoples.** The response to comments indicates that OPIC is aware of the "challenges related to land tenure and recognition in the region." OPIC must know that the loan applicants have not only failed to satisfy the requirement of consultation, but have not obtained the free, prior, and informed consent of affected communities of Indigenous Peoples. OPIC says it "will require that the Project's stakeholder mapping and engagement programs are sufficiently responsive to ensure appropriate avoidance, mitigation, and management for these identified risks." These projects cannot be approved before such mapping and engagement have been completed. Further, OPIC's response only addresses the projects' direct area of influence. However, Argentina is party to ILO 169, which requires indigenous communities in the direct and *indirect* influence areas to be consulted in order to give their free, prior, and informed consent.

**Comment V(e): Waste Disposal.** The issue of waste disposal is one of the most significant sources of conflict over impacts in Neuquén, and it should be a key factor in the ESIA. In fact, there are legal cases

around that problem, such as with Treater S.A., where toxic sludge would be deposited directly on the ground without an adequate drainage area or waterproofing coating at only 5 km from Añelo's city.<sup>2</sup>

**Comment V(h):** If the indirect influence area includes all the Rio Negro province, it also should include the same distance area around the project. Thus, parts of the Mendoza and La Pampa province should be considered.

**Comment V(j): Ecosystem Services.** Ecosystem services are a critical issue, but the evaluation in the ESIA is presented as “preliminary.” OPIC’s response does not account for the importance of ecosystem services in providing for habitat resilience, especially in the context of climate change. OPIC should require a thorough analysis of ecosystem services before considering financing for this project, and such considerations should be open to public consultation where those with local knowledge can provide input.

**Comment V(k): Concerns Raised after USAID OIG Audit.** OPIC notes the concerns raised with regard to the agency’s past failures to adequately monitor projects and ensure compliance with established requirements. Specifically, concerns raised in our input to the ESIA stated:

*The failure to conduct a complete analysis is especially concerning in the wake of the recent audit of OPIC from the Office of Inspector General (OIG) of the US Agency for International Development. This audit reviewed OPIC’s investments in Chile’s renewable energy sector and determined that OPIC was unable to meet its requirements for data collection and oversight. In particular, it noted that “weak processes and internal controls—including unverified borrower self-assessments, outdated policies and procedures, and poor records management—hindered the ability of OPIC staff to ensure its projects comply with environmental and social laws, adequately manage and monitor OPIC-backed projects, and identify risky clients.”*

OPIC does not explain if it plans to address these concerns or improve its processes. This is of additional and significant concern as OPIC transitions into the DFC, and could potentially perpetuate compliance and oversight failures from OPIC’s failed systems before the new organization establishes its footing.

**Comment VI: Potential Violation of Human Rights.** OPIC states only that human rights concerns raised by the organizations are “noted.” Such a cursory response is dismissive of legitimate concerns that the projects under consideration may violate human rights as warned by the UN Commission on Economic, Social, and Cultural Rights. OPIC has not explained how it will evaluate this risk or if it will consider rejecting the project applications to avoid human rights violations. Moreover, OPIC’s response states nothing about the agency’s own requirements for the protection of human rights.

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<sup>2</sup> <http://www.opsur.org.ar/blog/2018/12/17/divulgan-fotos-y-videos-de-un-basurero-petrolero-en-vaca-muerta/>