

Agreement Approved Between CDE, Indigenous Communities, and Mining Companies Over Environmental Damage in the Atacama Salt Flat

In a second ruling issued by the First Environmental Court regarding the Monturaqui-Negrillar and Tilopozo aquifer, an agreement was approved with Minera Escondida, Minera Zaldívar, and Albemarle, committing to 14 measures to cease water extraction in the area.

PULSO, By Víctor Guillou

A second ruling related to environmental damage in the Monturaqui-Negrillar and Tilopozo aquifer, located south of the Atacama Salt Flat, was issued on Monday by the First Environmental Court (1TA). This ruling pertains to a lawsuit filed in 2022 by the State Defense Council (CDE) and the Atacameña Indigenous Community of Peine against three mining companies extracting freshwater from the aquifer.

The companies involved are Minera Escondida, 57.5% owned by BHP; Albemarle, the U.S.-based lithium producer in the Atacama Salt Flat; and Minera Zaldívar, controlled by Antofagasta Minerals in partnership with Canada's Barrick Gold.

The environmental damage lawsuit targeted the continued extraction of water resources from the aquifer.

Escondida had already been fined a historic \$8.5 million due to irreparable environmental damage. The BHP-controlled mining company ceased water extraction in 2019 after commissioning two desalination plants in Puerto Coloso.

The conciliation agreement was achieved as the companies jointly committed to 14 measures. These include halting water extraction from the aquifer, diagnosing, restoring, and compensating for the vegetation systems affected by water extraction, and compensating and implementing socio-environmental management activities focused on the Peine community.

According to the court, the combined actions and measures committed to in the conciliation agreement amount to \$47 million. In a written statement, BHP noted that the agreement involves "amounts among the highest ever agreed upon in an environmental settlement."

Sources familiar with the agreement added that the amount reported by the court only represents the value of the environmental measures, excluding other actions agreed upon with the Peine community and approved by the court in a separate protocol. Measure 4 establishes the creation of a Social Management Plan aimed at improving "the socioeconomic conditions of the Peine Community through social investment projects," as stated in the 1TA resolution.

The companies highlighted the agreement reached with the CDE and the communities.

"We value this historic agreement, which is the result of a process of dialogue and good faith by all parties involved," said Minera Escondida. Meanwhile, Albemarle emphasized that the company "has cooperated with the Peine community, the CDE, and other parties in the case to reach an agreement that contributes to the sustainability of the Atacama Salt Flat."

Minera Escondida Fined Over 8 Billion Pesos for Irreparable Environmental Damage

PEINE. BHP's operations reduced groundwater levels in Tilopozo, impacting vegetation and disrupting the balance of the Monturaqui-Negrillar-Tilopozo aquifer.

El Mercurio de Antofagasta. December 18, 2024.

By Cristián Venegas M.

In 2022, as part of a sanctioning procedure against Minera Escondida, the Superintendency of the Environment (SMA) imposed a fine of 10,000 UTM on BHP's operation. The penalty followed confirmation of the environmental impact on the groundwater sustaining the ecosystem of the Tilopozo wetlands in the Atacama Salt Flat. This area, near Peine, was found to have sustained damage classified as irreparable.

The sanction stemmed from a complaint filed on April 20, 2018, by the Department of Conservation and Protection of Water Resources of the General Water Directorate (DGA). The complaint, submitted to the SMA, reported violations of the Early Warning Plan (PAT) for the Monturaqui-Negrillar-Tilopozo aquifer. The aquifer is located 78 kilometers east of Minera Escondida and 50 kilometers southeast of the Atacama Salt Flat.

Appeal Denied

In October 2023, Minera Escondida sought to overturn the fine, which now exceeds 8.075 billion pesos (US\$ 8.5 million), by filing an appeal with the First Environmental Court of Antofagasta. This week, the court rejected the appeal against the SMA.

The fine originated from a complaint documenting a drop in the water table exceeding 25 centimeters in the Tilopozo sector, as measured in wells TP-1, TP-2, TP-3, and SAT-2. This drop surpassed the maximum allowable drawdown for the water table, threatening the sustainability of vegetation systems and violating the Early Warning Plan for the Monturaqui-Negrillar-Tilopozo aquifer (PAT-MNT).

The complaint led to inspections by the SMA on April 17 and 18, 2019, resulting in the Environmental Inspection Report DFZ-2019-309-II-RCA (IFA DFZ-2019-309-II-RCA).

The sanctioning procedure revealed unauthorized depletion of the water table in the Tilopozo sector, exceeding the permitted 25 centimeters. This depletion caused harm to vegetation and disrupted the balance of the Monturaqui-Negrillar-Tilopozo aquifer (MNT aquifer). The SMA determined that Minera Escondida had failed to adequately implement the mitigation measures outlined in Environmental Qualification Resolution No. 1/1997. The violation was initially classified as serious and later upgraded to "very serious" in the sanctioning resolution.

Acknowledging the Ruling

In response to the ruling upholding the penalty, Escondida stated, "The company respects judicial decisions and complies with the resolutions issued by competent institutions within their scope of authority."

Escondida (BHP) Acknowledges Conciliation with the CDE and Agrees to Comply with SMA Sanction

ValorFuturo
December 17

Minera Escondida, operated by BHP, welcomed the conciliation agreement reached between the company, Albemarle, and Minera Zaldívar with the State Defense Council (CDE) in the context of the lawsuit for environmental damage to the Monturaqui – Negrillar and Tilopozo aquifer, located in the San Pedro de Atacama commune, Antofagasta Region. The agreement also addresses the Tilopozo wetlands and the livelihoods and customs of the Peine Community.

“As a company, we value this historic agreement, which is the result of a process of dialogue and good faith among all parties involved,” the mining company stated in a communiqué. Escondida noted that “this agreement includes unprecedented socio-environmental measures in our country, with amounts that rank among the highest agreed upon in an environmental conciliation.”

The company emphasized, “It is worth noting that Escondida permanently ceased water extraction from this aquifer and all continental water sources at the end of 2019.”

At the same time, Escondida confirmed its compliance with the ruling by the First Environmental Court (1TA), which upheld the fine imposed by the Superintendency of the Environment (SMA) in 2022 concerning the same issue.

“Regarding this decision, the company respects judicial rulings and complies with resolutions made by competent institutions within the scope of their authority,” the company stated.

“Escondida | BHP reiterates the significance of the historic agreement reached with the State of Chile, the Peine Community, Minera Zaldívar, and Albemarle, which brings the environmental damage lawsuit to an end through a conciliation approved by the Environmental Court,” the statement concluded.

For environmental damage:

Court upholds US\$ 8.5 million fine for Escondida

The First Environmental Court rejected the claim from Minera Escondida

MERCURIO DE SANTIAGO

The First Environmental Court rejected the claim from Minera Escondida, owned by BHP, and upheld the US\$ 8.5 million fine imposed by the SMA in 2022. The sanction originated due to "irreparable environmental damage" to the Monturaqui-Negrillar-Tilopozo aquifer and, consequently, to the Tilopozo wetlands and the Atacameña Peine Indigenous Community, stated the court. It also approved an agreement between the CDE and the Peine community, along with Escondida, Albemarle, and Compañía Minera Zaldívar, for the environmental damage, with measures amounting to US\$ 47 million.

Escondida, Albemarle, Zaldívar, CDE, and Peine Community Reach Unprecedented Conciliation to Address Aquifer Damage in Salar de Atacama

The First Environmental Court approved the agreement, which includes the implementation of 14 measures by mining companies, with actions amounting to \$47 million.

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Tuesday, December 17

The First Environmental Court of Antofagasta (1TA) approved an unprecedented settlement agreement reached by the State Defense Council (CDE) and the Atacameño Indigenous Community of Peine with three mining companies to address environmental damage to the Monturaqui-Negrillar-Tilpozo aquifer, located in the southern area of the Salar de Atacama. The agreement includes actions amounting to \$47 million.

The conciliation, involving Minera Escondida, Albemarle, and Compañía Minera Zaldívar, is part of a lawsuit seeking reparations for damage caused in the area, including impacts on the Tilpozo wetlands and the livelihood and customs of the Peine Community.

The agreement outlines 14 measures, mostly to be implemented by the mining companies, with a total value close to \$50 million. It also establishes a governance board composed of the community, the companies, and the Council of Atacameño Peoples.

Escondida, operated by BHP, highlighted the agreement and stated, "It includes unprecedented socio-environmental measures in our country, with amounts among the highest ever agreed upon in an environmental conciliation."

"As a company, we value this historic agreement, which is the result of a process of dialogue and good faith among all parties involved," the company added. It also noted that Escondida permanently ceased water extraction from the aquifer and all continental water sources at the end of 2019.

In legal matters, BHP was represented by Raimundo Moreno of Cariola Díez Pérez-Cotapos and Patricio Leyton of Ferrada Nehme. Albemarle was represented by Matías Montoya of Barros y Errázuriz and Felipe Bulnes, while Compañía Minera Zaldívar was represented by Enrique Urrutia and Rodrigo Guzmán.

On Monday, the same court rejected a claim by Escondida against the SMA's resolution imposing a fine of more than \$8.5 million for violating its environmental permit, which dates back to 1997. The fine stemmed from a 2018 complaint by the Department of Conservation and Protection of Water Resources of the General Water Directorate, which reported a drop exceeding 25 centimeters in the aquifer's water level. Subsequently, in 2022, the CDE filed a lawsuit seeking reparations for environmental damage against the three mining companies.

Split Decision

In a split ruling, Ministers Juan Opazo Lagos and Carlos Valdovinos Jeldes approved the settlement proposal, which includes measures related to aquifer recovery, as well as the restoration and compensation of the Tilpozo wetlands and La Punta and La Brava lagoons.

The proposal also includes measures for social, environmental, and economic compensation for the Peine Community, as well as initiatives to disseminate information about improvements in the Tilpozo area and the territorial management and protection of water resources.

The dissenting vote came from acting presiding judge Sandra Álvarez, who stated that the proposed settlement lacks specific reparative measures addressing the over-extraction and water level decline in the aquifer.

According to estimates, the aquifer could potentially recover its original levels by the year 2200—an inhuman time scale—if all extractions were immediately ceased, which the agreement does not contemplate.

Álvarez also noted that the settlement lacks a preventive nature, as it does not eliminate the root cause of the environmental damage: the over-extraction of water beyond the limits defined by the respective environmental permits.

Environmental Court Rejects Escondida's Claim and Confirms Historic Fine for Irreparable Environmental Damage

The penalty against BHP, exceeding \$8 million, was imposed by the Superintendency of the Environment in 2022. In a split decision, the court ruled that the mining company's water extraction caused significant and irreversible damage to the aquifer and vegetation in the Tilopozo wetlands, also affecting the Atacameño Indigenous Community of Peine.

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Tuesday, December 17

The First Environmental Court has dealt a severe blow to the world's largest copper mine, Minera Escondida, operated by BHP. The court rejected the company's claim against the resolution issued by the Superintendency of the Environment (SMA) in March 2022, which fined Escondida 10,000 Annual Tax Units (equivalent to more than 8 billion Chilean pesos, or approximately \$8.5 million) for violations of its Environmental Qualification Resolution (RCA) dating back to 1997.

The fine originated from a 2018 complaint by the Department of Conservation and Protection of Water Resources within the General Water Directorate. The complaint reported a drop of over 25 centimeters in the water table in the Tilopozo sector, observed in four wells. This exceeded the maximum allowable drawdown that the area's vegetation systems could sustain under the Early Warning Plan (PAT) for the Monturaqui-Negrillar-Tilopozo aquifer.

The subsequent investigation revealed unauthorized water table depletion in the Tilopozo sector, surpassing the permissible 25-centimeter limit, which harmed vegetation and disrupted the balance of the Monturaqui-Negrillar-Tilopozo aquifer. The SMA determined that Minera Escondida failed to implement the mitigation measures stipulated in its RCA. Initially classified as a serious infraction, the violation was later escalated to a "very serious" classification in the sanctioning resolution.

In its divided ruling, the court dismissed Escondida's arguments, concluding that the SMA acted within its authority in imposing the penalty. The court found that the company failed to meet its environmental obligations, determining that Minera Escondida's water extraction caused significant and irreversible damage to the aquifer and the vegetation in the Tilopozo wetlands. The ruling also recognized that the damage to the aquifer and wetlands adversely affected the Atacameño Indigenous Community of Peine, disrupting their way of life and cultural practices.

In a written statement, Minera Escondida responded: "The company respects judicial decisions and complies with the resolutions issued by competent institutions within their scope of authority."

Details of the Ruling

The decision, issued Monday by the First Environmental Court, involved the presiding judge Sandra Álvarez, and judges Marcelo Hernández and Alamiro Alfaro, with Alfaro dissenting.

The majority ruling determined that the SMA acted in accordance with the law by documenting that Minera Escondida exceeded the maximum allowable drawdown of the water table. It further concluded that the SMA correctly identified and justified the environmental damage, emphasizing that the depletion of the Tilopozo water table has led to progressive degradation of the protected ecosystems in the area.

The ruling stated that groundwater extraction exceeded the limits authorized in the RCA and PAT, causing significant environmental damage to the aquifer, which is projected to take centuries to recover.

The decision highlighted systematic declines in vegetation vigor and coverage since 2007 in several monitored areas of the Tilopozo wetlands. It noted that the SMA appropriately accounted for seasonal factors and data uncertainties, concluding that the degradation of these wetlands constitutes irreparable environmental damage, compromising the functionality of this fragile and unique ecosystem.

Regarding the Atacameño Indigenous Community of Peine, the court identified irreversible harm to their way of life and cultural practices due to the impact on the hydrogeological system supporting the Tilopozo wetlands. This damage undermines their ability to manage environmental conservation plans and use the wetlands as a tourism

resource, limiting their development opportunities for decades. The court ruled that this impact justified the classification of the violation as “very serious,” upholding the SMA’s actions.

Judge Alamiro Alfaro dissented, arguing that the infractions attributed to Escondida did not meet the principle of specificity required in administrative sanctions law. He stated that the rules, conditions, and measures allegedly violated lacked sufficient clarity and precision to define the punishable conduct.

He also argued that classifying the infraction as “very serious” due to irreparable environmental damage was inadequately substantiated, as the SMA failed to adequately demonstrate harm to water resources and vegetation in the Tilopozo wetlands. Alfaro pointed to methodological flaws in the SMA’s reports, including improper use of satellite imagery, failure to analyze climatic variables, and a lack of on-site inspections.

Escondida | BHP Highlights Historic Socio-Environmental Conciliation Agreement

Alongside a fine imposed by the Superintendency of the Environment (SMA), a parallel agreement was reached that includes unprecedented socio-environmental measures in Chile. The agreement, involving Minera Zaldívar, Albemarle, and Escondida, represents some of the highest amounts ever agreed upon in an environmental conciliation. Additionally, the BHP-operated mine emphasized that Escondida permanently ceased water extraction from the aquifer and any continental water sources at the end of 2019.

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Tuesday, December 17

In a split decision, the Antofagasta Environmental Court rejected Escondida | BHP's claim, thereby upholding the \$8.5 million fine imposed by the Superintendency of the Environment (SMA) for damaging the Monturaqui-Negrillar-Tilopozo ecosystem and affecting the Atacameño Indigenous Community of Peine. At the same time, the court approved the conciliation agreement reached by Escondida, Minera Zaldívar, Albemarle, the State Defense Council (CDE), and the Peine community to ensure the sustainability of the Monturaqui-Negrillar-Tilopozo aquifer.

This agreement includes socio-environmental measures unprecedented in Chile, with financial commitments among the highest agreed upon in an environmental conciliation.

Escondida | BHP stated, "We value this historic agreement, which is the result of a process of dialogue and good faith among all parties involved. It is worth noting that Escondida permanently ceased water extraction from this aquifer and any continental water sources at the end of 2019."

Second Resolution

The second ruling pertains to the ratification of the sanction imposed by the Superintendency of the Environment in 2022.

"Regarding this decision, the company respects the decisions of the judiciary and complies with the resolutions made by competent institutions within the scope of their authority. Escondida | BHP reiterates the importance of the historic agreement reached with the State of Chile, the Peine community, Minera Zaldívar, and Albemarle, which concludes the environmental damage lawsuit through a conciliation approved by the Environmental Court," the company concluded.