

The Initial Agreement on Silala, or Siloli

The following document is a verbatim copy of the draft preliminary agreement arrived at by the governments of Bolivia and Chile in the case of use of the waters of Silala. This is a "final draft" made on 28 July 2009, as noted in the text, provided to the media by the Chancellery of the Republic of Bolivia.

Unofficial translation by Brendan Mulligan

The Initial Agreement on Silala, or Siloli

The parties to the present agreement,

Considering that the Ministries of Foreign Affairs of the Republic of Chile and the Plurinational State of Bolivia in 2004 constituted a Bolivia-Chile Working Group on the theme of Silala, which recorded its results in the minutes signed on May 6 2004; 20 January 20, 2005; June 10, 2008; and on November 14, 2008;

Considering that the topic of Silala or Siloli was included in Section VII of the 13 point bilateral agenda adopted by both sides in July 2006 and that since that date, they have worked to propose ways to overcome the differences regarding the Siloli or Silala hydrologic system, and the characteristics of its waters;

Considering that studies to date on an individual basis by each of the parties have provided sufficient information to establish this initial agreement as a basis for a new long term agreement, to be completed taking into consideration the results of the technical studies referred to in this Agreement, the continuation of joint work started in 2000, the existing resource use and sustainable use of the waters of Silala;

Considering that this Agreement does not address other issues relating to Silala or Siloli that each of the interested parties will address when negotiating a new long term agreement;

Considering that the atmosphere of mutual trust that has developed between the two countries has helped bring the will to deepen the understandings that the people desire, developing a mutually beneficial agreement on this point in the bilateral agenda.

Have agreed as follows:

GENERAL PRINCIPLES

Article 1

To establish a bilateral agreement for the preservation, sustainability, use and exploitation of the Silala or Siloli hydrologic system to benefit both countries.

Article 2

This initial agreement considers the volume of water of the Silala or Siloli hydrologic system flowing superficially across the border from the Plurinational State of Bolivia to the Republic of Chile. It also considers that, of the total volume of surface water that currently flows across the border, a percentage corresponds and is freely available to Bolivia, and that scientific studies will inform the decisions that are adopted in the future in this regard, according to the stipulations of Article 6.

Article 3

1. The present agreement establishes that the waters freely available to Bolivia and captured in that country may be delivered to be exploited in Chile. In such case, the Bolivian public holder of authorization for the granting of the use of such water will be compensated by the public or private legal entities established as users of such water.

2. For the granting of the use of such freely available water, the Bolivian public holder will consider the right of first refusal of public or private legal entities that were currently making use of such water in Chile. This right of first refusal will be exercised during a period of sixty days from the implementation of this part of the Agreement via official channels of communication.

3. Legal entities previously individualized should take actions as applicable in Chile, in the case in which such waters are to be used in this country, Bolivia may expire the authorization granted if these actions are not taken during the established period.

Article 4

Considering the fragility of the Silala or Siloli ecosystem, by this Agreement, the Parties agree to maintain current flow and water quality conditions of the water flowing across the border, and to take care that any future work undertaken individually or jointly not affect said flow and quality.

Article 5

By this Agreement the parties commit to jointly undertake complimentary studies on the Silala or Siloli hydrologic system, in order to achieve a better understanding of its nature and behaviour.

Article 6

1. The Parties establish, in accordance with Article 2, that the total volume of water of the Silala or Siloli system, which flows across the border (100%), 50% corresponds, initially, to the Plurinational State of Bolivia, is freely available to it and can be used within its territory or authorized to be captured for use by third parties, including its deliverance to Chile. This percentage may be increased in Bolivia's favour, based on the results of joint studies to be carried out under this Agreement.

2. As soon this Agreement is signed the parties commit to install the hydrometric station referred to in Article 8, b), which will record the volume of water crossing the border, which will be used for its implementation.

TECHNICAL CONSIDERATIONS

Article 7

From this initial agreement, the parties will implement a network of hydrometeorological stations in the area that will allow data collection and the execution of joint studies with a view to signing a new long term Agreement.

Article 8

1. In order to establish the percentage of water freely available to each country and advance the understanding of the hydrologic system, it is agreed to implement a network of monitoring stations for flow and hydrometeorological variables for precipitation (rain and snow) records, air temperature and other variables, as detailed below:

- (a) A weather station at the boundary crossing.
- (b) A hydrometric station at the border crossing.
- (c) A hydrometric station at the junction of the road next to the eastern wetlands in Bolivian territory.
- (d) A weather station in the hydrologic divide at the east end of the system.
- (e) A weather station on the Bolivian slopes of the Inacaliri Volcano.

(f) A weather station in the area of the wetland produced by the eastern groundwater spring.

2. Of the six proposed stations, two (a and b) will be on the border crossing and will be binational, four (c, d, e and f) will be located in Bolivia.

3. In addition, the network will form part of the Chilean General Directorate of Water (DGA) network, located on the Chilean side, near the international boundary crossing.

4. Additionally, the parties agree to exchange data from other stations near the study area.

5. Given the remoteness of the network of stations and the need for both countries to have continuous, simultaneous, and real-time information, the stations will be capable of satellite transmission, so that both parties can monitor the information and overall functioning of the stations.

Article 9

1. The Parties shall draw up a joint monitoring period of four annual hydrological cycles to determine the water balance, hydrometric behaviour, the age of the waters, surface and groundwater flows, and the influence of hydraulic works on the flow, among other parameters, using scientifically valid methodology.

2. Data gathering, storage and processing shall be the responsibility of the General Water Directorate (DGA) in Chile and the National Service of Meteorology and Hydrology (SENAMHI) in Bolivia.

Article 10

1. For this initial agreement, a monitoring program is established to determine the quality and the age of the water, sampling twice a year, in winter (July) and summer (January), in the areas of the wetlands and the border crossing.

2. It also established that cartographic work in the Silala or Siloli area will be complemented through field work to technically support aerial photographs taken together in 2001, in order to develop detailed mapping, satellite imagery will be acquired, and a digital terrain model will be developed.

Article 11

The Parties shall produce semi-annual reports and a final report after four years with the results of the studies. This final report will form the basis for the new long term Agreement that will establish the percentage water freely available to each country.

INSTITUCIONAL CONSIDERATIONS

Article 12

1. The Plurinational State of Bolivia through the Ministry of Environment and Water will designate the Prefecture of the Department of Potosi or another public legal entity to act as the subject holder of the authorization to use the Silala or Siloli water freely available to Bolivia.

2. Under the framework of this initial agreement, the monitoring and technical operation of water use, for Bolivia, will be the responsibility of the aforementioned subject holder; for Chile, it will be the responsibility of the General Water Directorate, Ministry of Public Works.

3. The Parties shall inform each other of any changes regarding the regime established above.

Article 13

The Ministry of Environment and Water will determine the value per cubic metre to be received by the Plurinational State of Bolivia in compensation depending on the volume transferred, which will be negotiated directly with the relevant public or private legal entity. It shall also determine the frequency of payment and safeguards to ensure compensation.

Article 14

For the determination of compensation, the Ministry of Environment and Water may take into account, inter alia, the average price currently paid per cubic meter of untreated water in the II Region of Chile.

Article 15

1. In accordance with this Agreement, the Government of Bolivia, declares that the legal entity, public or private, approved by the Ministry of Environment and Water to have the unencumbered right to use the waters of Silala or Siloli in Chilean territory, may use the waters without restriction or discrimination.

2. The Government of Chile declares that it will not oppose measures that under Bolivian law and this Agreement will apply to users not meeting the obligations undertaken with the public legal entity designated by the Ministry of Environment and Water under this Agreement.

3. The differences that may arise between a legal entity and the Plurinational State of Bolivia under Articles 3 and 6 regarding approval, and compliance or enforcement, shall be resolved under the provisions applicable in that State and which establish authorization for

appropriate use, internal jurisdictional instances of the Plurinational State of Bolivia competent for this purpose.

SETTLEMENT OF DISPUTES

Article 16

1. If in the application or interpretation of this Agreement there arises a difference, contingency or matter requiring joint attention of the Parties, either Party may convene the Bolivia-Chile Silala working group, created by the Foreign Offices of both states in 2004, to settle or give an appropriate response.

2. In technical work referred to in Articles 7 to 1, the Parties shall endeavour to actively cooperate, and to achieve results that serve as reference for future agreements. If, despite all efforts, it is not possible to agree on the volume of freely available water, among other matters, the Parties shall implement mechanisms to overcome these differences, with the support of experts where necessary.

3. Notwithstanding, the Parties, by mutual agreement at any time, may request the assistance of an internationally recognized technical or scientific expert, in order to provide information that leads to a settlement between the parties.

4. If unable to reach agreement through these procedures regarding the application or interpretation of this Agreement, either party may request the formation of a Settlement Commission of three members, to apply its knowledge and recommendation to the dispute.

5. Within thirty days after receiving the application, each party shall designate one member of the Settlement Commission. The third, who shall preside, shall be appointed by mutual agreement and not be a national of either Party. In case of disagreement on the appointed person or if a Party fails to nominate a member to the Commission within that period, either party may request the highest authority of the following agencies or programs according to their fundamental constitutional rules, to designate the member, in the following order. The Executive Director of the United Nations Educational, Scientific and Cultural Organization (UNESCO); the Secretary-General of the World Meteorological Organization (WMO); the Executive Director of the United Nations Environment Program (UNEP); the Director General of the International Atomic Energy Agency (IAEA); or the Administrator of the United Nations Development Program (UNDP). An agency or program whose maximum authority is a Party national, or where such person has worked in the service of one of them, will not be considered.

6. If agreement in some specific aspect is unable to be reached despite the application of the above, the Parties may submit to arbitration.

7. The new long term agreement will establish a dispute settlement mechanism.

ENTRY INTO FORCE

Article 17

1. This initial agreement will apply for a four year term, and will lead to a new agreement upon the completion of relevant studies. If the long-term agreement cannot be established after four years, it will be extended on an annual basis.

2. The new long-term agreement will take into account licensing acts which were adopted during the initial term of this Agreement.

3. This Agreement shall enter into force thirty days after receipt of the last Note by which the Parties notify each other of compliance of the relevant internal requirements. Notwithstanding, the second paragraph of Article 6 shall enter into force upon its signing.

4. After four years, this Agreement may be terminated by either party, by written notice to the other party, six months in advance. The termination will come into effect following said period.

5. Signed at ...