

Section 1: 8-K (FORM 8-K)

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT
PURSUANT TO SECTION 13 OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934

June 29, 2020
(Date of earliest event reported)

CONSOLIDATED WATER CO. LTD.
(Exact Name of Registrant as Specified in Charter)

Cayman Islands, B.W.I.
(State or Other Jurisdiction of
Incorporation)

0-25248
(Commission File No.)

98-0619652
(IRS Employer Identification No.)

Regatta Office Park
Windward Three, 4th Floor
West Bay Road, P.O. Box 1114
Grand Cayman, KY1-1102
Cayman Islands
(Address of Principal Executive Offices)

(345) 945-4277
(Registrant's telephone number, including area code)

Not Applicable
(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instructions A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

<u>Title of each class</u>	<u>Trading Symbol(s)</u>	<u>Name of each exchange on which registered</u>
Class A common stock, \$0.60 par value	CWCO	The Nasdaq Global Select Market

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 1.02 Termination of a Material Definitive Agreement.

As previously reported, Consolidated Water Co. Ltd. (the “Company”), through its wholly-owned Netherlands subsidiary, Consolidated Water Cooperatief, U.A. (“CW-Cooperatief”), owns a 99.99% interest in N.S.C. Agua, S.A. de C.V. (“NSC”), a development stage Mexican company. NSC was formed in 2010 to pursue a project (the “Project”) that originally encompassed the construction, operation and minority ownership of a 100 million gallon per day seawater reverse osmosis desalination plant to be located in northern Baja California, Mexico and accompanying pipelines to deliver water to the Mexican potable water system.

Through a series of transactions completed between 2012 and 2014, NSC purchased 20.1 hectares of land for approximately \$20.6 million on which the proposed Project’s plant was to be constructed.

In 2012, NSC entered into a lease (the “Lease”), with an effective term of 20 years from the date of full operation of the Project’s desalination plant, with the Comisión Federal de Electricidad for approximately 5,000 square meters of land on which it planned to construct the water intake and discharge works for the plant. The Lease may be cancelled by NSC if the Project does not proceed.

In August 2014, the State of Baja California (the “State”) enacted new legislation to regulate Public-Private Association projects which involve the type of long-term contract between a public-sector authority and a private party required to complete the Project (the “APP Law”). Pursuant to this new legislation, in March 2015, NSC submitted a detailed proposal (the “APP Proposal”) to the Ministry of Infrastructure and Urban Development of the State of Baja California (“SIDUE”) that complied with the requirements of the new legislation. The new legislation required that such proposal be evaluated by SIDUE and submitted to the Public-Private Association Projects State Committee for review and authorization.

In response to its APP Proposal, in September 2015, NSC received a letter dated June 30, 2015 from the Director General of the Comisión Estatal del Agua de Baja California (“CEA”), the State agency with responsibility for the Project, stating that (i) the Project is in the public interest with high social benefits and is consistent with the objectives of the State development plan; and (ii) that the Project should proceed, and the required public tender should be conducted. In November 2015, the State officially commenced the required public tender for the Project, the scope of which the State defined as a first phase to be operational in 2019 consisting of a 50 million gallon per day plant and an aqueduct that connects to the Mexican potable water infrastructure and a second phase to be operational in 2024 consisting of an additional 50 million gallons per day of production capacity. A consortium (the “Consortium”) comprised of NSC, NuWater S.A.P.I. de C.V. (“NuWater”) and Suez Medio Ambiente México, S.A. de C.V. (“Suez MA”), a subsidiary of SUEZ International, S.A.S., submitted its tender for the Project in April 2016 and in June 2016, the State designated the Consortium as the winner of the tender process for the Project.

In August 2016, NSC and NuWater incorporated Newco under the name Aguas de Rosarito S.A.P.I. de C.V. (“AdR”) to pursue completion of the Project and executed a shareholders agreement for AdR agreeing among other things that (i) AdR would purchase the land and other Project assets from NSC on the date that the Project begins commercial operation and (ii) AdR would enter into a Management and Technical Services Agreement with NSC effective on the first day that the Project begins commercial operation. NSC initially owned 99.6% of the equity of AdR. In February 2018, NSC acquired the remaining 0.4% ownership in AdR from NuWater.

On August 22, 2016, the Public Private Partnership Agreement for public private partnership number 002/2015, bid number SIDUE-CEA-APP-2015-002 (“APP Contract”), was executed between AdR, CEA, the Government of Baja California as represented by the Secretary of Planning and Finance and the Public Utilities Commission of Tijuana (“CESPT”). The APP Contract required AdR to design, construct, finance and operate a seawater reverse osmosis desalination plant (and accompanying aqueduct) with a capacity of up to 100 million gallons per day in two phases: the first with a capacity of 50 million gallons per day and an aqueduct to the Mexican potable water system in Tijuana, Baja California and the second phase with a capacity of 50 million gallons per day. The first phase was to be operational within 36 months of commencing construction and the second phase was to be operational by July 2024. The APP Contract further required AdR to operate and maintain the plant and aqueduct for a period of 37 years starting from the commencement of operation of the first phase. At the end of the operating period, ownership of the plant and aqueduct would have been transferred to CEA.

In December 2016, the Congress of the State of Baja California, Mexico (the “Congress”) passed Decreto #57 which, among other things, ratified and authorized the payment obligations of the corresponding public entities under the APP Contract and authorized the corresponding public entities to obtain a credit facility to guarantee their payment obligations. During 2017, following consultations between representatives of the State of Baja California and the Ministry of Finance of the Federal Government of Mexico, it was determined that certain amendments to Decreto #57 were required to comply with recent changes to the Federal Financial Discipline Law for Federative Entities and Municipalities. In addition, an amendment of Decreto #57 was required to authorize the inclusion of revenue from the CESPT in the primary payment trust for the Project. These amendments were included in Decreto #168, which was approved by the Congress in December 2017. The authorization of the payment obligations of the public entities under the APP Contract and for the execution of the credit agreement to guarantee such payment obligations given in Decreto #57, as amended by Decreto #168, expired on December 31, 2018. During the congressional session held at the end of March 2019, the Congress passed Decreto #335, which renewed the authorizations for the various payment trusts, guaranties and bank credit lines required to be established for the Project by the State entities. Decreto #335 expired December 31, 2019. During the congressional session held at the end of December 2019, the Congress passed Decreto #37, which renewed the authorizations for the various payment trusts, guaranties and bank credit lines required to be established for the Project by the State entities. Decreto #37 expired June 30, 2020.

Both the exchange rate for the Mexican peso relative to the dollar and general macroeconomic conditions in Mexico varied since the execution of the APP Contract. These changes adversely impacted the estimated construction, operating and financing costs for the Project. The APP Contract and the APP Law allow for the parties to negotiate (but do not guarantee) modifications to the consideration (i.e. water tariff) under the APP Contract in the event of such significant macroeconomic condition changes. In February 2017, AdR submitted proposals to CEA requesting the definition of the mechanism required by the APP Contract to update the consideration under the APP Contract for changes in foreign exchange rates, lending rates and certain laws which have impacted the Project. On June 1, 2018, AdR and CEA executed an amendment to the APP Contract which, among other things, increased the scope of Phase 1 of the Project by including the aqueduct originally designated for Phase 2, and addressed AdR’s concerns regarding the impact on the Project for changes in the exchange rate for the peso relative to the dollar and changes in interest rates that have occurred subsequent to the submission of the Consortium’s bid for the Project. As a result of this amendment to the APP Contract, the final cost of Phase 1 and the related consideration to be charged by AdR under the APP Contract was to be determined based upon the bid submitted by the Consortium, the changes set forth in the amendment to the APP Contract and the economic conditions (e.g. interest rates and currency exchange rates) in effect on the financial closing date for Phase 1.

In February 2018, AdR executed a subscription agreement (the “Subscription Agreement”) for the equity funding required for the Project. The Subscription Agreement calls for NSC to retain a minimum of 25% of the equity in AdR. One or more affiliates of Greenfield SPV VII, S.A.P.I. de C.V. (“Greenfield”), a Mexico company managed by an affiliate of a leading U.S. asset manager, will acquire a minimum of 55% of the equity of AdR. The Subscription Agreement also provides Suez MA with the option to purchase 20% of the equity of AdR. If Suez MA does not exercise this option, NSC will retain 35% of the equity of AdR and Greenfield will acquire 65% of the equity of AdR. The Subscription Agreement will become effective when the additional conditions related to the Project are met, including but not limited to those conditions discussed previously. The aggregate funding to be provided by AdR’s shareholders for the Project, in the form of equity and subordinated shareholder loans, is presently estimated at approximately 20% of the total cost of Phase 1 of the Project. This Subscription Agreement was scheduled to expire on September 30, 2020.

NSC expected to generate a portion of its funding for AdR through the sale to AdR of the land it had purchased for the Project.

On June 29, 2020, AdR received a letter (the “Letter”) from the Director General of CEA terminating the APP Contract. The reasoning provided in the Letter for the decision to terminate the APP Contract is that the Project (a) is not financially feasible due to increases in the construction, operating and financing costs for the Project in addition to negative changes in economic conditions (e.g. interest rates and currency exchange rates); (b) is not sustainable for CEA and CESPT given its financial unfeasibility; (c) puts pressure to increase the rates charged to customers; (d) would force the Government of the State to cover a deficit of CEA and CESPT, thus preventing the State Government from spending on investment programs or social expenditures; and (e) negatively affects the general interest. The Letter requests that AdR provide an inventory of the assets that currently comprise the “Project Works” (as defined in the APP Contract) for the purpose of acknowledging and paying the non-recoverable expenses made by AdR in connection with the Project, with such reimbursement to be calculated in accordance with the terms of the APP Contract.

The Company, AdR and NSC plan to vigorously pursue all legal remedies and courses of action available under the APP Contract and applicable law (including, if necessary, international treaties and agreements) with respect to any rights they may have upon termination of the APP Contract, including the reimbursement of expenses and investments. However, the Company cannot provide any assurances that it will be able to obtain reimbursement for any expenses or investments made with respect to the Project.

As a consequence of the termination of the APP Contract, the Company, AdR and NSC expect to and shall terminate the various agreements ancillary to the Project.

Also as a consequence of the termination of the APP Contract, the land NSC purchased and the rights of way deposits it has made may have declined in value due to the loss of their strategic importance derived from their incorporation in the Project. Due to the uncertainty associated with the amount and timing of any reimbursement from the State Government, the Company may be required to record impairment losses to reduce the carrying values of the land and/or the rights of way (which amounted to approximately \$21.2 million and \$3.0 million, respectively, at March 31, 2020) to their current fair values. Such impairment losses could have a material adverse impact on the Company’s consolidated financial condition and results of operations.

The summary of the Letter does not purport to be complete and is qualified in its entirety by reference to the full text of the Letter that is filed herewith as Exhibit 10.1.

Note about forward-looking statements. *Certain statements in this report, other than purely historical information, including estimates, projections, statements relating to the Company’s business plans, objectives and expected operating results, and the assumptions upon which those statements are based, are “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995, Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. These forward-looking statements generally are identified by the words “believe,” “project,” “expect,” “anticipate,” “estimate,” “intend,” “strategy,” “future,” “opportunity,” “plan,” “may,” “should,” “will,” “would,” “will be,” “will continue,” “will likely result,” and similar expressions. Forward-looking statements are based on current expectations and assumptions that are subject to risks and uncertainties which may cause actual results to differ materially from the forward-looking statements. Factors that would cause or contribute to such differences include, but are not limited to, continued acceptance of the Company’s products and services in the marketplace, the outcome of the Company and NSC’s attempt to pursue legal remedies and courses of action available under the APP Contract and applicable law with respect to NSC’s rights upon termination of the APP Contract, the Company’s ability to manage growth and other risks detailed in the Company’s periodic report filings with the Securities and Exchange Commission. Except as otherwise required by law, the Company undertakes no obligation to update or revise publicly any forward-looking statements, whether as a result of new information, future events or otherwise.*

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

<u>Exhibit No.</u>	<u>Title</u>
<u>10.1</u>	<u>Letter dated June 29, 2020 from the Director General of the Comisión Estatal del Agua de Baja California to Aguas de Rosarito, S.A.P.I. de C.V.</u>

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

CONSOLIDATED WATER CO. LTD.

By: /s/ David W. Sasnett
Name: David W. Sasnett
Title: Executive Vice President & Chief Financial Officer

Date: July 6, 2020

EXHIBIT INDEX

Exhibit No.	Title
10.1	Letter dated June 29, 2020 from the Director General of the Comisión Estatal del Agua de Baja California to Aguas de Rosarito, S.A.P.I. de C.V.

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Section 2: EX-10.1 (EXHIBIT 10.1)

EXHIBIT 10.1

[Seal that says
CEA – *Comisión*
Estatel del Agua]

<p>AGENCY: STATE WATER COMMISSION OF BAJA CALIFORNIA.</p> <p>SECTION: GENERAL DIRECTION</p> <p>OFFICIAL COMMUNICATION: DG/122/2020</p>

Mexicali, Baja California, on June 29th, 2020.

[Seal that says STATE WATER
COMMISSION OF BAJA
CALIFORNIA/ DISPATCHED/
JUNE 29, 2020]

AGUAS DE ROSARITO, S.A.P.I. de C.V.

Boulevard Rodolfo Sánchez Taboada number 10488, suite 801,
Zona Rfo, Tijuana Baja California, Mexico Postal Code 22320.
and/or
Paseo de los Héroes number 10289-302, Col. Zona Urbana Rio Tijuana
Tijuana Baja California, Mexico Postal Code 22010.
Present.

We make reference to the Public-Private Partnership Agreement Number C-SIDUE-CEA-APP-2015-002, entered into on August 22nd, 2016, by and between the STATE WATER COMMISSION OF BAJA CALIFORNIA (hereinafter, the “**CEA**”) y AGUAS DE ROSARITO S.A.P.I. de C.V. (hereinafter, the “**DEVELOPER**”); as well as STATE COMMISSION OF PUBLIC UTILITIES OF TIJUANA (hereinafter, “**CESPT**”) in its capacity as joint obligor, and by, at that time, the Ministry of Planning and Finance as guarantor in the Current Account Credit Facility. Said agreement was subject matter of Public Bid number SIDUE-CEA-APP-2015-002, was notarized before the public faith of Mr. Rodolfo González Quiroz, Notary Public number 13 of the City of Mexicali, Baja California, as evidenced in notarial deed number 78,242, volume 1,890, dated August 26th, 2016, which was amended through amendment agreement dated June 1st, 2018, (hereinafter, the amendment agreement dated June 1st, 2018 will be referred as “**Amendment Agreement**”; and jointly the Amendment Agreement and the agreement C-SIDUE-CEA-APP-2015-002 will be referred to as the “**APP Agreement**”).

The APP Agreement, as established in the Amendment Agreement, is for the “Construction, Financing and Operation of a Desalination Plant in the Municipality of Playas de Rosarito” consisting of “A Desalination Plant with a capacity of up to 4.4 m³/second in two stages: the first with a capacity of 2.2 m³/second and an aqueduct to the delivery point in Tank 3 up to the El Florido Water Treatment Plant both in the Municipality of Tijuana, the expansion to 20,000 m³ of the mentioned Tank 3, and the second with a capacity of 2.2 m³/second, includes the Design, Preparation of the Executive Project, Construction, Electromechanical Equipment and functioning Tests of the Desalination Plant and the Aqueducts; as well as, their Operation, Conservation, Maintenance including its conduction and delivery of up to 4,400 liters per second, the treatment and the disposition of the rejection water during an operation period of 37 years” (hereinafter the “**Project**”).

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The terms written with an initial capital letter, the meaning of which is not expressly defined herein, shall have the meaning ascribed to them in the APP Agreement.

In this regard, the fifth paragraph of Clause First of the APP Agreement provides that the guaranteed annual volume of water at 95% efficiency for both stages of the Project shall be 131.2 million cubic meters, equivalent to 4,162 liters per second of Potable Water; the first stage being 65.6 million cubic meters, equivalent to 2,081 liters per second, and for the second stage 65.6 million cubic meters, equivalent to 2,081 liters per second at the Measurement Point, regardless of its conduction to the Delivery Point, as well as the disposition of the Rejection Water¹.

The public-private partnership projects, in accordance with the provisions of article 2, paragraph two of the Public-Private Partnership Law for the State of Baja California (the "**APP Law**")², must be fully justified, specify the social benefit that is sought to be obtained, and evidence the need or convenience before other forms of financing, principles that have ceased being in effect in the case of the Project, because, in the event of continuing with the fulfillment of the agreed obligations, a damage would be caused to the CEA, to the CESPT, to the State of Baja California and to the users of the service by generating strong pressure to increase the current rates, as will be evidenced below, with the provisions of the first paragraph of Article 123 of the Regulations to the APP Law³ and Clause Thirtieth, section V, number 1⁴ of the APP Agreement being applicable.

Legal representation of Mr. Luis Granados Pacheco, General Director of the State Water Commission

The undersigned, Mr. Luis Granados Pacheco is the General Director of the State Water Commission of Baja California, pursuant to the terms of the appointment issued in my favor on November 1st, 2019, by the Constitutional Governor of the State of Baja California, Mr. Jaime Bonilla Valdez and ratified before the H. Board of Governors of the CEA, which is supported by the notarization of the corresponding minutes which corresponds to volume 5,103, with number 183,694, dated November 21st, 2020, notarized before the faith of Notary Public number Five of the city of Mexicali Baja California, Mr. Luis Alfonso Vidales Moreno, which was registered in the Public Registry of Property and Commerce in the City of Mexicali Baja California, by means of entry 5883674 dated November 22nd, 2019 of the civil section, who exercises the legal representation of said organization in accordance with articles 11 and 12 of the Decree by which the State Water Commission of the State of Baja California is created, published in the Official Gazette of the State of Baja California on March 3rd, 1999 (hereinafter the "**Decree for the Creation of the CEA**").

¹ Clause First, paragraph fifth of the Public-Private Partnership Agreement identified with number C-SIDUE-CEA-APP-2015-002 named Subject Matter of the APP contained in Clause Fifth of the Amendment Agreement to the Public-Private Partnership Agreement dated June 1st, 2018, named Amendment to the APP Clauses, pp 13-14.

² Public-Private Partnership Law for the State of Baja California published in the Official Gazette of the State on August 22nd, 2014, article 2, second paragraph. [...]

In the terms provided for in this Law, the public-private partnership projects shall be fully justified, specify the social benefit that is sought and evidence the need or convenience before other forms of financing.

³ Regulations for the Public-Private Partnership Law for the State of Baja California published in the Official Gazette of the State on August 22nd, 2014, article 123, first paragraph. The Contracting Entity must agree in the Public-Private Partnership Agreement that it may be early terminated when general interest reasons occur or, when for justified cause, the need for the requirement of the originally agreed goods or services extinguishes, and it is evidenced that, continuing with fulfillment of the agreed obligation, would cause a damage or prejudice to the State. [...]

⁴ Clause Thirtieth, Section V, Number 1 of the Public-Private Partnership Agreement identified with number C-SIDUE-CEA-APP-2015-002 named Early Termination of the APP, Early Termination for reasons of general interest, pp 71-72.

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Legal representation of Chemist Rigoberto Laborín Valdez, General Director of the State Commission of Public Utilities of Tijuana

Chemist Rigoberto Laborín Valdez, has the authority to contract, obligate and agree on behalf of the CESPT in accordance with his functions, who evidences his capacity by means of an appointment dated November first, two thousand nineteen, granted by Mr. Jaime Bonilla Valdez, Constitutional Governor of the State of Baja California, which was granted in accordance with the provisions of articles 49 fraction X of the Political Constitution of the Free and Sovereign State of Baja California, 2 and 12 of the Organic Law of Public Administration of the State of Baja California, 21 of the Law of Quasigovernmental Entities of Baja California and 11 of the Law of the State Commissions of Public Utilities of the State of Baja California and through a power of attorney granted by its Board of Directors as evidenced in Public Deed Number 182,428, Volume 5,896, dated November 13th, 2019, which is duly notarized before Notary Public Number 3 of this city of Tijuana, Mr. Xavier Ibáñez Veramendi, registered in the Public Registry of Property and Commerce under Entry 6182154 of the Civil Section, with registration date December 4th, 2019.

Opinion of the CEA as a Contracting Entity

Pursuant to the terms of article 123 of the Regulations to the APP Law, on June 25th, 2020, the CEA issued the opinion supporting the early termination of the APP Agreement, which specifies the reasons and justified causes creating it and supporting and motivating such circumstance are precised, which are communicated to the Developer herein, for the relevant legal, regulatory and contractual purposes (hereinafter the “**CEA Opinion**”).

Resolution of the Board of Directors of the State Water Commission of Baja California.

At the Fourth Extraordinary Session of the Board of Directors of the CEA held on June 26th, 2020, the Board of Directors of the CEA resolved to authorize the early termination of the APP Agreement for the reasons set forth in the CEA Opinion and authorized the undersigned, in his capacity as as CEA's General Manager, to proceed lawfully.

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GROUNDS FOR THE EARLY TERMINATION OF THE APP AGREEMENT FOR CAUSES OF GENERAL INTEREST

Articles 1, 2, 5, 10, 11 and 12 of the Decree for the Creation of CEA, 1 of the Decree amending the Executive Decree creating the Decentralized Organism known as State Water Commission, 111 and 112 of the APP Law, 123 of the Regulations to the APP Law, and other related provisions, as well as the provisions of Clauses First, Third, Fourth, Fifth, Thirtieth Section V, number 1, Thirty Third and Thirty Eighth of the APP Agreement and resolution number SE/008/26-06-20 passed during the Fourth Extraordinary Session of the Board of Directors of the CEA are the basis for the early termination of the APP Agreement.

REASON FOR THE EARLY TERMINATION OF THE APP AGREEMENT FOR CAUSES OF GENERAL INTEREST.

Causes of general interest for the termination of the APP Agreement.

In accordance with what is indicated in Clause Thirtieth, section V, number 1, item a), below are the causes of general interest that justifiably evidence that if the obligations of the APP Agreement continue to be fulfilled, a damage would be caused to the CEA, to the CESPT, to the State of Baja California and to the users of the service, by generating strong pressure to increase the current rates, all the foregoing to the detriment of the general interest.

- a) **Description.** As evidenced below, the current conditions of the Project have been substantially modified with respect to the original conditions arising from the Public Bid number SIDUE-CEA-APP-2015-002⁵, which trigger the provisions for terminating the APP Agreement for reasons of general interest in accordance with the legal, regulatory and contractual provisions that have been indicated and the reasoning described herein; as it does not constitute a sustainable solution given its financial unfeasibility, as well as the damage that would be caused by continuing fulfillment of the obligations agreed in the APP Agreement.

- b) **Justification.** Under the APP Agreement, the Developer must carry out the necessary actions for the development of the Project consisting of the planning, definition and execution of all the actions that it considers necessary to supply for 37 years, the operation of a flow of up to 4,400 LPS of desalinated and potable water in two stages, each one of 2,200 LPS, to partially cover the demand in the Municipalities of Tijuana and Playas de Rosarito in the State of Baja California. Originally, it was foreseen that the second phase, corresponding to 2,200 LPS, would begin operations in the year 2024⁶.

⁵ Exhibits 1, 4 and 5 of the Public-Private Partnership Agreement identified with number C-SIDUE-CEA-APP-2015-002 named Call, Proposition and Scope of the works of the Reference Terms, respectively.

⁶ Cfr. Note 9.

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Current Account Credit Facility

The APP Agreement contains an obligation of CEA to carry out the contracting of a Current Account Credit line, which must comply with the following characteristics⁷:

- a. Be irrevocable and contingent;
- b. To guarantee to the Lenders of the Developer the fulfillment of the payment obligations in charge of the CEA;
- c. Have an amount equivalent to 3 months of the payment of the Consideration including the Value Added Tax.
- d. Have as a source of payment the necessary and sufficient percentage of the income from the tax on the remunerations for personal work plus the income from water rights collected by the CESPT for the rendering of its public utility service.
- e. Be in force as long as there are payment obligations in charge of the CEA under the APP Agreement (in the order of 37 years);

This current account credit line implied a guarantee for an amount of \$295.78 million pesos for phase 1 which was increased in \$223.8 million pesos for phase 2, giving a total of \$519.6 million pesos for both phases⁸.

Original Consideration

The APP Agreement was executed with a bid amount equal to \$98.6 million pesos of monthly consideration for the first phase and \$74.6 million pesos for the second (at February 2016 prices). That is, the consideration for the two phases amounted to \$173.2 million pesos including value added tax⁹.

To place the above amounts into context, the monthly management income of CESPT (Audited in 2019) was of \$328.8 million pesos and the operative result (management income minus operating expense) was \$49.1 million pesos per month¹⁰.

That is, the amount of the Consideration established in the APP Agreement¹¹ only for phase 1 of \$98.6 million pesos represents 30% of the income of the CESPT for 2019 and 200% of the operating result (income minus management expenses), therefore the payment of the Consideration would represent the creation of an **annual deficit in the order of \$593.17 million pesos to CESPT**, this is due to obligation of the CESPT under the APP Agreement, of executing a water purchase and sale agreement in order for the **CEA** to have sufficient resources to pay the Consideration¹².

⁷ Clause Twenty Ninth of the Public-Private Partnership Agreement identified with number C-SIDUE-CEA-APP-2015-002 named Resources of the Consideration, pp. 68-70.

⁸ Item 6 of clause Twenty Ninth of the Public-Private Partnership Agreement identified with number C-SIDUE-CEA-APP-2015-002 named Resources of the Consideration, pp. 69.

⁹ Exhibit 4 to the Public-Private Partnership Agreement identified with number C-SIDUE-CEA-APP-2015-002 named Proposition.

¹⁰ Opinion on the Financial Statements of the State Commission of Public Utilities of Tijuana for the period comprised between January 1st and December 31st, 2019.

¹¹ Clause Eleventh of the Public-Private Partnership Agreement identified with number C-SIDUE-CEA-APP-2015-002 named Consideration for the Services, pp. 40-46.

¹² Opinion of the CEA.

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The deficit in the CESPT mentioned in the previous paragraph impacts the CEA, the State Government and the users in the following manner:

- a. The deficit of CESPT would cause it to be unable to make full payment under the Water Purchase and Sale Agreement entered into with the CEA, causing the CEA in turn to not have sufficient resources for payment of the Consideration under this agreement.
- b. Upon the lack of sufficient resources for the payment of the Consideration, the exercise of the Current Account Credit that the CEA would contract with the guarantee of the Government of the State of Baja California, represented at the time by the Ministry of Planning and Finance (SPF), would be triggered
- c. Given that the Current Account Credit would affect the income and rights for the tax on remuneration for personal work in a necessary and sufficient percentage, the Government of the State of Baja California would have its income affected in the amount of resources necessary to cover the deficit of the Consideration, thus reducing the resources available for its investment or social spending programs.
- d. Given that the deficit would be maintained over time, this would generate strong pressure to increase user rates seeking to reduce said deficit.

Amendment Agreement

The Amendment Agreement amended the Total Cost of the System and consequently the Total Investment Amount and changed the original risk matrix of the Project by incorporating an acknowledgement of the variations in the exchange rate and interest rates, in addition to the updating mechanism for inflation originally foreseen, in accordance with the following¹³:

- a. It increased the total cost of the System for phase 1 from \$5,254.48 million pesos to \$6,099.80 million pesos
- b. It reduced the total cost of the System for phase 2 from \$3,271.26 million pesos to \$2,624.58 million pesos

¹³ Clauses Fourth and Fifth of the Amendment Agreement to the Public-Private Partnership Agreement, dated June 1st, 2018, named Amendment to the APP Clauses; Clause Forty Sixth named total Cost of the System pp. 25-26.

- c. It modified the amount of the Consideration in charge of the CEA and in favor of the Developer.
- d. It included a clause entitled: “Adjustment mechanism to recognize changes in financial conditions during the investment period”, which allows for an increase in the payment arising from the increase in the exchange rate in United States Dollars, in Euros and the increase in the interest rate.

Economic Impacts of the Amendment Agreement

The monthly consideration of \$98.6 million pesos for the first phase was increased to \$107.83 million pesos per month without considering the effects of exchange rate and interest rate adjustments¹⁴.

Likewise, to place into context the amounts indicated in the previous paragraph, this Consideration of \$107.83 million pesos represents 30% of the income of CESPT in 2019 and 219% of its operating result (income minus management expenses), which would imply generating an **annual deficit for CESPT in the order of \$704 million pesos**.¹⁵

When calculating the effect of the “Adjustment mechanism to recognize changes in financial conditions during the investment period”¹⁶ incorporated into the APP Agreement through the Amendment Agreement, the Consideration for phase 1 including value added tax is estimated could increase from \$107.83 million pesos to \$125.50 million pesos per month.¹⁷

Again, to place in context the amounts indicated above, the Consideration for Phase 1 for \$125.50 million pesos represents 44% of the income of CESPT in 2019 and 296% of the operating result (income minus management expenses) which could generate an **annual deficit for CESPT of \$1,157 million pesos** with the same affectation on the State of Baja California and the corresponding pressure for an increase in user rates.¹⁸

Options to cover the Deficit generated between the income and payment obligations in charge of the CEA and the CESPT

The amount of the Consideration to be paid by the CEA and the CESPT under the APP Agreement were increased due to the Amendment Agreement, which increased the amount of the investment and incorporated the change mechanism per increase of the exchange rate and interest rate, which means that the amount of such Consideration, from their origin, could generate a budget deficit for the CESPT that began at \$593 million pesos annually, but when incorporating the effects arising from the Amendment Agreement, could reach an amount of \$1,157 million pesos annually, which should be covered by the contingent credit line as follows:¹⁹

¹⁴ Clause Fifth of the Amendment Agreement to the Public-Private Partnership Agreement, dated June 1st, 2018, named Amendment to the APP Clauses; Clause Eleventh.- Consideration for the Services. Sets an amount for total monthly consideration of \$92,968,663, which amount, when adding the VAT, results in \$107,843,649, p. 16.

¹⁵ Opinion of the CEA.

¹⁶ Clause Fifth of the Amendment Agreement to the Public-Private Partnership Agreement, dated June 1st, 2018, named Amendment to the APP Clauses; Clause Fourteenth named Adjustment Mechanisms to recognize changes in the financial conditions during the investment period pp. 17-19.

¹⁷ Opinion of the CEA.

¹⁸ Ibidem.

¹⁹ Ibidem

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The deficit of the CESPT mentioned in the previous paragraph impacts the CEA, the State Government and the users as follows:

- a. The deficit of the CESPT would cause it to be unable to make full payment under the Water Purchase and Sale Agreement entered into with the CEA, causing the CEA in turn to not have sufficient resources for payment of the Consideration under this agreement.
- b. Upon the lack of sufficient resources for the payment of the Consideration, the exercise of the Current Account Credit that the CEA would contract with the guarantee of the Government of the State of Baja California, represented at the time by the Ministry of Planning and Finance (SPF), would be triggered.
- c. Given that the Current-Account Credit would affect the income and rights for the tax on remuneration for personal work in a necessary and sufficient percentage, the Government of the State of Baja California would have its income affected in the amount of resources necessary to cover the deficit of the Counterpart, thus reducing the resources available for its investment or social spending programs.
- d. Given that the deficit would be maintained over time, this would generate strong pressure to increase user rates seeking to reduce said deficit.

This level of deficit would have to be covered through a combination of the following three sources:

- a. Reducing or eliminating future investments of the CESPT to the detriment of its service
- b. Use budget resources of the State Government of Baja California affecting the social or investment projects.
- c. Increase rates substantially affecting the economy of the population.

Conclusion

Based on the above founded and motivated, in case of continuing with the obligations foreseen in the APP Agreement, a negative impact on the finances of the CEA, of the CESPT and in the finances of the State of Baja California and a strong pressure to carry out an increase in the current rates would be created, thereby affecting the general interest. In other words, the Project contained in the APP Agreement:

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- a. Is not sustainable.
- b. Is not financially viable, nor sustainable for the CEA and the CESPT.
- c. Puts pressure on the increase in the amount of the rates to be paid by the users, affecting their economy.
- d. Negatively affects the general interest.

Notice of Early Termination of the APP Agreement for General Interest Reasons.

In this context and given that it is the obligation of CEA to plan and coordinate the pertinent actions so that the population has sufficient hydraulic infrastructure through sustainable solutions, as established in article 1 of the Decree amending the Executive Decree creating the Decentralized Organism known as the State Water Commission, through which the State Water Service Commission is administratively and operationally incorporated into the State Water Commission²⁰ and which must promote, at all times, its healthy development, a task that is made difficult by the financial unfeasibility of the APP Agreement, due to the complex situation described in this document; Therefore, pursuant to the terms of Articles 111 and 112 of the APP Law, 123²¹ of the Regulations to the APP Law, as well as the provisions of Clauses First²², Third²³, Fourth²⁴, Fifth²⁵, Thirtieth section V, number 1²⁶, Thirty Third²⁷ and Thirty Eighth²⁸ of the APP Agreement, the company AGUAS DE ROSARITO S.A.P.I de C.V. is hereby **notified**, in its capacity as Developer under the APP Agreement, of the early termination of the APP Agreement for causes of general interest as of this date, and therefore said agreement ceases to have effects immediately.

²⁰ Decree amending the Executive Decree creating the Decentralized Organism known as the State Water Commission by means of which the State Water Service Commission is administratively and Operationally integrated to the State Water Commission published in the Official Gazette of the State on January 27th, 2006, article First. Articles 1, 2, 4 and 12 of the Decree creating the State Water Commission of Baja California are amended to read as follows:

Article 1.- The decentralized public body with its own legal personality and assets is created, called the State Water Commission of Baja California, which purpose will be to plan and coordinate the pertinent actions for the population to have sufficient hydraulic infrastructure, as well as to appoint, organize, and execute the water in block policy in the state, thus satisfying the demand for water services through sustainable solutions.

²¹ Cfr. Note 3.

²² Clause First of the Public-Private Partnership Agreement identified with number C-SIDUE-CEA-APP-2015-002 named Subject Matter of the Agreement, contained in Clause Fifth of the Amendment Agreement to the Public-Private Partnership Agreement, dated June 1st, 2018, pp. 13-15.

²³ Clause Third of the Public-Private Partnership Agreement identified with number C-SIDUE-CEA-APP-2015-002 named Description of the Works of the Agreement, pp. 28-29.

²⁴ Clause Fourth of the Public-Private Partnership Agreement identified with number C-SIDUE-CEA-APP-2015-002 named Times for the Execution of the Agreement, pp. 29-33.

²⁵ Clause Fifth of the Public-Private Partnership Agreement identified with number C-SIDUE-CEA-APP-2015-002 named Realization of the Project and Financing of the Agreement, pp. 33-35.

²⁶ Clause Thirtieth, Section V, Number 1 of the Public-Private Partnership Agreement identified with number C-SIDUE-CEA-APP-2015-002 named Early Termination of the APP, Early Termination for reasons of general interest, pp. 71-72.

²⁷ Clause Thirty Third of the Public-Private Partnership Agreement identified with number C-SIDUE-CEA-APP-2015-002 named Early Termination for reasons of general interest or Justified Causes, pp. 81.

²⁸ Clause Thirty Eighth of the Public-Private Partnership Agreement identified with number C-SIDUE-CEA-APP-2015-002 named Notices, pp. 86-87.

Requirement to the Developer:

In terms of the provisions of Clause Thirtieth, section V, number 1, items a), b) and c)²⁹ respectively, the Developer is requested to, within the terms mentioned below:

- a. Begin the inventory of the assets that are currently comprise the Works of the Project referred to in paragraphs a) and b) of number 1 of Section V of Clause Thirtieth of the APP Agreement and proceed to its delivery to CEA within 90 (ninety) business days as from the date of delivery of this notice;
- b. For purposes of that mentioned in the immediately preceding paragraph, Mr. Juan Carlos Sandoval has been appointed as representative of CEA.
- c. Submit to CEA the corresponding evidence, with the purpose of acknowledging and paying the non-recoverable expenses and those pending amortization made by the Developer in the Project.
- d. The reimbursement will be calculated in accordance with the APP Agreement.

For purposes of carrying out the delivery of this notice in terms of the provisions of Clause Thirty Eighth of the APP Agreement³⁰, I hereby inform you that this notice will be delivered to you by Mr. Alejandro Aguilera Martinez, in his capacity as legal representative of this State Water Commission of Baja California.

Without further ado, saying goodbye to You.

SINCERELY,

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**MR. LUIS GRANADOS PACHECO
GENERAL DIRECTOR AND LEGAL REPRESENTATIVE
OF THE STATE WATER COMMISSION OF BAJA CALIFORNIA
AS CONTRACTOR OF THE APP AGREEMENT.**

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**MR. RIGOBERTO LABORIN VALDEZ
GENERAL DIRECTOR OF THE STATE COMMISSION OF PUBLIC UTILITIES OF TIJUANA.**

²⁹ Cfr. Note 13.

³⁰ Cfr. Note 5.

- c.c. Members of the State Committee for Public-Private Partnership Projects. Present
General Minister of the Government of Baja California.- Present.
Minister of Finance of the State of Baja California.- Present
Minister of Infrastructure, Urban Development and Territorial Reorganization of the State of Baja California.- Present
Minister of Water of the State of Baja California. Present.
Minister of Honesty and Public Function. Present.
H. Board of Directors of CEA.- Present.
Mr. Juan Carlos Saldoval in his capacity as representative of the State Water Commission of Baja California in terms of this official communication- present
Project Supervision.- Present.
Project Logbook.- Archive

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