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Bolivian water dispute settled, Bechtel forgoes compensation,
By Damon Vis-Dunbar and Luke Eric Peterson

A high-profile investment dispute between the Republic of Bolivia and Aguas del Tunari ended this week with more of a fizzle than a bang, as the consortium led by the US-based water services company Bechtel agreed to drop its multi-Million damage claim.

Bechtel, along with its co-investors in the concession, will withdraw the claim from the World Bank's International Centre for the Settlement of Investment Disputes (ICSID). In return, Bolivia has absolved the foreign investors of any potential liability.

"The Government of Bolivia and the international shareholders of Aguas del Tunari declare that the concession was terminated only because of the civil unrest and the state of emergency and not because of any act done or not done by the international shareholders of Aguas del Tunari (Bechtel, Befesa, Abengoa and Edison)," Bechtel announced in a prepared statement.

No compensation will be paid to either Aguas del Tunari or the Republic of Bolivia, said the statement by Bechtel.

In 2000, the foreign investors in AdT retreated from Bolivia after an attempt to raise water rates sparked riots in Cochabamba, Bolivia's third largest city. Amid the protests, the Bolivian Government terminated AdT's concession, leading the consortium investors to counter by seeking damages under the terms of the Netherlands-Bolivia bilateral investment treaty.

The so-called "Bolivian Water War" attracted intensive publicity from development campaigners, as well as the international media, with particular focus given to the company's allegedly tenuous ties to the Netherlands.

During hearings on jurisdiction, Bolivia had argued that Aguas del Tunari was ineligible to sue under the Dutch treaty, claiming that AdT was "controlled" by the US-based Bechtel, which held a majority stake in AdT. The Netherlands companies used to hold Bechtel's shares were mere "shells," argued Bolivia, with no real control.

However, in a decision handed down last year, the tribunal affirmed its jurisdiction in a 2 to 1 majority ruling. Arbitrators Henri C. Alvarez and David D. Caron expressed the view that control is a quality that flows from ownership, so there was no need for a test to determine if the owners exercised "actual" control.

In his dissenting view, Jose Luis Alberro-Semerena sided with Bolivia, arguing that AdT should have produced documents demonstrating that the Dutch branches did in fact exert actual control.

News of the settlement is being hailed by activists, who have maintained an aggressive campaign against Bechtel, claiming the dispute illustrates the pitfalls of privatizing essential public services, such as water and energy.

“This is a huge victory for activists worldwide who have fought this case on five continents,” said Jim Shultz, director of the Democracy Center, an advocacy group in Cochabamba which had sought to intervene in the ICSID arbitration. “It is a huge precedent for the growing Web of legal cases in which the world’s most powerful corporations seek to tie the hands of people and governments to shape their own economic futures.”

The Bechtel-Bolivia arbitration is the second investment treaty lawsuit at ICSID to end prematurely, against a backdrop of public outcry. In early 2003, a British-based conglomerate abandoned a claim against the Government of Guyana, after coming under heavy fire from UK activists. The Big Food Group (BFG), owner of the popular Iceland grocery store chain announced in March of 2003 that it would end its arbitration at the International Centre for Settlement of Investment Disputes (ICSID) in the face of heated activist and media criticism.

Campaigners had decried BFG’s attempt to collect on a debt dating back a quarter-century, at the same time that Guyana was seeking debt-relief from the International Monetary Fund and struggling to cope with an HIV/AIDS public health crisis. Shortly after the UK media picked up on the activist campaign against BFG, the British Broadcasting Corporation reported that firm had decided to abandon its arbitration claim after reviewing the lawsuit in light of the company’s “corporate and social responsibility”

Sources:

The decision on jurisdiction in *Aguas del Tunari, S.A., v. Republic of Bolivia* is available from the Investment Treaty News on-line documents centre by clicking [here](#).

“Tribunal split in Bechtel-Bolivia case over corporate nationality of investor”, By Luke Eric Peterson, Investment Treaty News, December 20, 2005

“Public Outcry Leads to Abandonment of Investment Treaty Arbitration Against Guyana”, INVEST-SD: Investment Law and Policy News Bulletin, March 28, 2003, available on-line [here](#).

“Company drops huge debt claim”, BBC News online, March 18, 2003, available on-line [here](#).

“Secretive World Bank Tribunal bans public and media participation in Bechtel lawsuit over access to water”, press release by would-be amicus curiae in Aguas del Tunari case, Feb.12, 2003, available on-line [here](#).