

Biwater Threatens Community Access and Fails to Sell Investors

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Hindered by a lack of available financing and burdened by debt, Biwater sold stock in its Cascas subsidiary on January 28, 2008. The company raised \$144 million (12 million shares at \$12 each) through its initial public offering on the New York Stock Exchange.¹ But this was a disappointment for Biwater, which had hoped to raise as much as \$365 million.^{2,3}

Cascas, which provides water and waste water services to nearly three million people in seven countries, was simply too big of a risk for investors.⁴ A look at the international water market and at the history of the company gave investors pause. Cascas's core business — long-term international contracts — is an unpopular, high-risk undertaking.⁵

Biwater turned to investors to cover debts as funding sources dried up. Earlier financiers, such as the World Bank and the United Kingdom's Department for International Development, are questioning the wisdom of private sector involvement in water — Biwater's primary business. A major study by the World Bank recently showed that private sector involvement is no more effective than traditional public management.⁶ In 2004, DfID announced that it would stop requiring water privatization as a condition for aid, a policy from which Biwater had benefited.⁷

On top of all that, one mustn't forget the debt Biwater took on as a result of buying Nuon's share of Cascas in June 2006.⁸ This purchase and other acquisitions have put Biwater in a \$188.5 million hole, one that the company had

At present, the South African community is fed up with Biwater. They are sick and tired of the fact that water is being cut off during intervals. Moreover, they are still delivering dirty water to the community.

— Lance Veotte, South African Municipal Workers Union



hoped to close with the stock offering.⁹ Biwater also had been turning in poor financial performances. In 2004, the Biwater business group reported an operating loss of 4.3 million pounds (\$8.3 million) on sales of 161.1 million pounds (\$313 million) at that time.¹⁰

What doesn't bode well for Cascas is that contracts for its core market — work on water in developing nations — are being awarded to local companies or developed under public management.¹¹ In addition, investments in Latin America carry significant political risk because governments view private sector involvement in water unfavorably. Bolivia, Colombia and Ecuador have passed or are considering changes to national constitutions that will keep water under public management. In several other places, popular demand has forced companies to pack up and leave. South Africa, which was previously considered to hold great potential for private investment in the water sector, has not signed any long-term contracts since its unpopular deal with Cascas in 1999.

Summary of Cases

Biwater's operations across the world have been plagued by problems. The company has made significant efforts to gain contracts in countries such as Nigeria, Ghana (Accra), Zimbabwe, Ecuador, Indonesia, the Philippines (Baguio) and Oman – all places where Biwater's offers were scrapped.

More significantly, Biwater and Cascal contracts have been canceled in Tanzania, Belize, Chile and India. Problems have plagued the company's operations in South Africa, Ghana (Tamale), Mexico, Panama, Indonesia (Batam Island) and the Philippines (Subic Bay).

Cancellation of Contracts

Biwater's abysmal record in Dar es Salaam, Tanzania, certainly didn't help its efforts to gain investor funds on Wall Street. On January 10, 2008, just days after filing for a stock sale of Biwater subsidiary Cascal with the Securities and Exchange Commission, an International Arbitration Tribunal ordered the company to pay the Tanzanian water authority Dawasa nearly \$8 million. In its SEC filing, Biwater claimed that its Tanzanian assets were expropriated, but the Tribunal found that Tanzania's actions were justified.¹² The award resulted from arbitration initiated by Biwater when its contract was canceled in 2005. But the Tribunal quickly found that Biwater's claims had few merits and ruled in favor of Tanzania. The Tribunal concluded that Biwater's subsidiary in Tanzania had been in violation of the contract almost from its outset in 2003 and had failed on

One of the biggest problems we had with Biwater in Tanzania was that the company initially promised investments to improve water provision. But, they brought *no* investment. Instead, the funds for the project were borrowed by the Tanzanian government from the World Bank, and they spent it irresponsibly. So actually they violated their agreement, and the government became furious because Biwater was not abiding to the contract.

– Gemma Akilimali, Tanzania Gender Network

I don't know if there's anything we can do about it now, because the Public Utility Commission — the PUC — approved every proposal that the company made. The PUC allowed for all kinds of administrative management fees that were charged by Cascal, and basically the government conceded. So legally, there is nothing we can now do to go back and reclaim that money.

– John Avery, The Guardian – Belize

all performance guarantees and the government eventually called the performance bond.¹³

Tanzania is not the only place where Biwater and Cascal's services were no longer welcome. In Belize, Cascal's relationship with the Public Utility Commission turned sour when the company requested a 32 percent rate increase. After the PUC found that only a 15 percent increase was justified, Cascal sought an international arbitration settlement similar to what the company had pursued in Tanzania. Belize, fearing costly legal proceedings, settled the case by repurchasing Cascal's shares in the water company in 2005; Cascal dropped international arbitration.¹⁴

In 2001, Biwater lost its contract in Bangalore, India, after a review of financial irregularities and the conditions under which the contract had been awarded. Government opposition charged that Biwater's contract was too expensive. Allegations of corruption in pursuing the contract surfaced during the review.¹⁵ In Chile, Biwater's 20-year contract to build a waste water plant in Calama was terminated in 2006.¹⁶ Financial returns on investment disappointed after an initial rush by many companies into the country.¹⁷

Challenges to Existing Contracts

A number of Biwater and Cascal projects still face difficulties. Nelspruit in South Africa has been a headache for Cascal – the contract has faced significant challenges since the 1999 award.

Cascal's problems there were due, in large part, to the company's inability to understand the political landscape – and it nearly brought the contract to a close. Customers in the area were not paying for water delivered – many claiming



that water was too expensive. Cascal stated that water rates were increased by only 10 percent in the first years of the contract, yet many users saw increases of up to 69 percent due to the new rate structure. Cascal started cutting water to neighborhoods. The company suspected some households had been self-connecting to the water pipes. As a result Cascal stopped required investments. Cascal's tactics violated its contractual obligations, including provision of 24-hour supply, and increased the number of dissatisfied consumers. The inability to collect fees from users led to a loss of investor confidence, and Cascal was unable to provide the investments promised. Instead, the publicly held Southern African Development Bank bailed out Cascal.¹⁸

In Panama, Biwater was supposed to have finalized 70 percent of a water plant construction by the end of 1999. But it was still seeking to renegotiate the deal and had not even started the project by the end of that year.¹⁹ Biwater has also faced criticism over its involvement in the Tamale Water Expansion Project in Ghana and demands to speed up delivery.²⁰ A number of concerns about the contract's lack of transparency have been raised in the country.²¹ In Mexico, the World Bank identified operational, financial and political difficulties in Biwater's operations in Puerto Vallarta. The operations did not fulfill the contractual standards, and legal disputes followed rate increases.²² In addition, Biwater's debt repayment soured when interest rates in Mexico increased.²³

Subic Bay residents in the Philippines have long been fed up with Cascal's operations. Cascal was supposed to provide sewage treatment, but the company still sends waste water

directly into the pristine water, threatening the tourism industry and public health in the community. The company has failed to make the required investments and is instead spending its money on consultants. As a result, the regulatory body put a cap on consultant fees and in 2007 rejected a rate increase.²⁴ Cascal already raised rates 400 percent despite protests from local businesses threatening to leave and refusing to pay due to the high cost of water.²⁵

Withdrawal and Rejection of Project Proposals

In the past decade, Biwater has been involved in a string of projects that never came to fruition.

In the Philippines, Biwater was awarded a long term contract in Baguio in 1997, but it was canceled before it even started. Immediately following the award, Biwater asked for rates higher than what it had said it needed during the bidding process. Baguio instead reversed the award.²⁶ In 1999 Biwater pulled out of a project in Zimbabwe after irregularities in contract negotiations.²⁷ In addition, a water provision project for Harare expired, ending years of Biwater's pursuit of a deal.²⁸

Project negotiations came to an abrupt halt in Biwater's quest for a Middle East deal in a waste water project in Muscat, Oman in 2001.²⁹ In 2002, Cascal withdrew from a 30-year concession in Pekanbaru in the Riau province of Indonesia. Although the contract was signed in 2001, Biwater failed to secure investment that would allow it to perform the work.³⁰ In 2002 Biwater visited Lagos as part

There is a huge number of poor people in Nelspruit who simply cannot afford the prices being charged. We marched in the streets of Nelspruit [when the contract was first signed] but Biwater is still here... In 2005 there were flash floods in Nelspruit, and then children started getting sick from the water. They got diarrhea and [had gastrointestinal problems]. Some children even died. But Biwater insists this was not their fault.

– Lance Veotte, South African Municipal Workers Union

of a British delegation seeking business opportunities for proposed long term contracts. Despite pressure from the World Bank, the Nigerian government ultimately decided against such private sector options, citing significant problems in similar water projects around the world.³¹

In Ghana, Bewater withdrew from the bidding process in 2005 following significant public backlash against private management of water. As a result, the World Bank, which had been the primary funder, scaled back the project.³² In Ecuador, Bewater and other companies had prequalified for the project that would have privatized water provision in Quito, but the process was met with a strong public outcry for alternative reforms. In March 2007, the mayor announced that the privatization process was definitively canceled.³³

Endnotes

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Communities that were not on the [water main] connection in Ghana fought the privatization of water because they had no access. The private sector made promises, but didn't deliver.

– Al-Hassan Adam, African Water Network, Ghana

About Food & Water Watch

Food & Water Watch is a nonprofit consumer organization that works to ensure clean water and safe food in the United States and around the world. We challenge the corporate control and abuse of our food and water resources by empowering people to take action and by transforming the public consciousness about what we eat and drink.

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