ANNEXES

Report of the Inspection Panel

on

Chashma Right Bank Irrigation Project
Stage III

10 June 2004
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TO THE REPORT OF THE INSPECTION PANEL
ON CHASHMA RIGHT BANK IRRIGATION PROJECT
STAGE III

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ANNEX 1

ASIAN DEVELOPMENT BANK (ADB)

TERMS OF REFERENCE FOR THE INSPECTION PANEL
FOR THE
CHASHMA RIGHT BANK IRRIGATION PROJECT (STAGE III)

JANUARY 2004

Project Name: CHASHMA RIGHT BANK IRRIGATION PROJECT (STAGE III) (ADB LOAN No: 1146-PAK [SF])

Project Location: Chashma, North-West Frontier and Punjab Provinces, Pakistan

Project Status: ADB Loan No. 1146-PAK [SF] for $185 million was approved by ADB Board of Directors (the Board) in December 1991; ADB additional financing for the Project in the amount of $33.5 million was approved in June 1999; as of 30 January 2004, Project construction is approximately 99% complete, and 80.34% of the total amount of the ADB loan has been disbursed.

ADB Department Involved: South Asia Regional Department (SARD)
Agriculture, Environment and Natural Resources Division

Inspection Panel Members: Mr. A.R.B. Amerasinghe
Mr. Goran Eklof
Mr. Neeraj N. Joshi
Mr. Larry Williams

ADB Contact Person: Ms. Jill M. Drilon
Position: Secretary, Board Inspection Committee, ADB Board of Directors
Address: c/o Office of the Secretary
Asian Development Bank
6 ADB Avenue, City of Mandaluyong
0401 Metro Manila, Philippines
Telephone: (632) 632-5145
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Email: jdrilon@adb.org
1. **Purpose; Authority; Inspection Policy**

a. **Purpose:** The purpose of the inspection is to determine independently whether ADB has complied with its operational policies and procedures in processing or implementing the Chashma Right Bank Irrigation Project (Stage III) in Pakistan (the Project). If the Inspection Panel (the Panel) determines that ADB has not complied with its policies, it must further determine whether this noncompliance has had, or is likely to have, a direct and material adverse effect on the rights and interests of the individuals who requested the inspection and the groups and individuals they represent (the Requesters). These Terms of Reference (TORs) for the Panel set forth (i) the specific terms and conditions applicable to the inspection that the Panel will undertake and (ii) the general terms and conditions under which the Panel should conduct its activities.

b. **Authority:** These TORs are based on the Board paper R225-95, the “Establishment of an Inspection Function” (10 November 1995), approved by the Board of Directors on 5 December 1995 (the Inspection Policy) and the Inspection Procedures, as approved by the Inspection Committee of the ADB’s Board of Directors on 9 October 1996 (the Inspection Procedures).

c. **Inspection Policy:** ADB’s Inspection Policy is intended to ensure that ADB’s “operational policies and procedures” are followed in the formulation, processing and implementation of ADB-financed projects. Appendix 1 defines such operational policies and procedures, and sets out other provisions relevant to the inspection.

2. **Role of the Board Inspection Committee:** Under paragraph 19 of the Inspection Policy, the Board Inspection Committee (the BIC) is charged with supervising inspections. Paragraph 39 stipulates that the BIC “…provide the Panel with appropriate terms of reference and a suggested time period within which to conduct the inspection.” According to paragraph 40 of the Inspection Policy, the Chairperson of the BIC must also approve the engagement of consultants required by the Panel. The Inspection Procedures, in paragraph 55, further provide that the Panel will “…report periodically to the Committee on the progress of its inspection, and will advise the Committee promptly of any necessary changes in the Panel’s work plan. If necessary, the Committee may also ask the Panel for interim reports.” The Panel will submit its final written report to the BIC, with a copy provided to Management, pursuant to paragraph 43 of the Inspection Policy and paragraph 56 of the Inspection Procedures.

3. **Privileges and Immunities of Inspection Panel:** Paragraph 42 of the Inspection Policy states: “In the performance of their functions, Panel members will be entitled to enjoy the privileges and immunities accorded to experts performing missions for the Bank under the Bank’s Charter.” Article 55 of the Charter sets out such privileges and immunities.

4. **Project to be Inspected.** Appendix 2 to these TORs sets forth a description of the Project which the Panel shall inspect in accordance with these TORs.
5. **Scope.** These TORs govern the performance and activities of the Panel and are based upon the *Inspection Policy* and *Inspection Procedures*. The specific provisions concerning the Panel are set forth in paragraphs 39-43 of the *Inspection Policy* and paragraphs 47 to 58 of the *Inspection Procedures*. The scope of the inspection is outlined in the BIC’s report and recommendation to the Board on *Inspection Request: Chashma Right Bank Irrigation Project (Stage III)* (R47-03), Section VI, “Summary of Findings” (See Appendix 3). The BIC concludes that further investigation is warranted into ADB’s action with respect to the following OMs and staff instructions: OM 21, Environmental Considerations; OM 23, Benefit Monitoring and Evaluation; OM 13, Supplementary Financing; OM 32, Bank’s Operational Missions; OM 50, Involuntary Resettlement; OM 47, Social Dimensions; staff instruction on Socio-cultural Impacts of Bank Projects; and staff instruction on Indigenous Peoples. In the event of a finding of noncompliance, the Panel should make a further finding as to whether this noncompliance has resulted or may result in direct and material harm to the rights and interests of the Requesters; and make any further recommendations, if appropriate, for any remedial changes in the scope or implementation of the Project. In making any such recommendations, the Panel will take account of the measures taken by Management to address the concerns of affected people, as well as the processes and outcome of any grievance redress process.

6. **The Inspection Authorities.** The *Inspection Policy* and *Inspection Procedures*, as supplemented by these TORs (including the timetable and budget approved by the BIC), govern the overall performance and activities of the Panel. Any change or modification to these TORs should be made only with prior written approval of the BIC. Should there be any conflict between any provision of the *Inspection Policy* and *Inspection Procedures* and these TORs, the *Inspection Policy* and *Inspection Procedures* shall prevail.

7. **Consent Required from the Concerned Government.** Paragraph 52 of the *Inspection Procedures* provides that the Panel may visit the Project area and meet with the requesters, other local communities, organizations and groups, project managers and government officials in the Project area in the country where the project is located. However, before the Panel or any of its consultants undertakes such activities, the BIC must confirm with the Director representing the relevant country that the government of the country has no objection. If the Government objects to any such activities, the Panel should modify its work plan accordingly, as stated in paragraph 52 and carry out its review on the basis of reports and other information available to the Panel and ADB.

8. **Conduct of Interviews.** The obtaining of evidence through interviews of ADB staff, consultants and other concerned persons including the requesters, members of other local communities, organizations and groups, project managers and government officials in Pakistan should be conducted in the manner determined by the Panel after consultation with the parties concerned.

Where ADB staff are to be interviewed by the Panel, the terms of paragraph 51 of the ADB’s *Inspection Procedures* should be noted namely, in conducting an inspection a Panel will have access to all concerned ADB staff and pertinent ADB documents, and may consult as necessary with officers or staff from relevant Departments and other Officers, as well as Management. The Panel may obtain information from interviews in the following manner:
a. The Panel should seek an interview with the person concerned (the interviewee) through the Secretary to the Panel (the Secretary), who will contact the interviewee through the appropriate channel.

b. The Panel may select one or more of its members to conduct each interview (interviewer).

c. The interviewer should initially inform the interviewee of the purpose of the interview, ask if the interviewee agrees to be interviewed, state that the interview results may become publicly available, and set a mutually convenient date, time and place for the interview. As far as possible, the BIC recommends that interviews be tape recorded, while noting that there may be cases in which tape recordings may not be possible or appropriate (e.g. a preliminary interview or an interview with individuals who may be intimidated by the presence of the recorder). If the interviewer wishes to tape record and/or have another Panel member or Panel consultant (if any) present, the interviewer should inform the interviewee before the interview.

d. Promptly after the interview, the interviewer should prepare an accurate written summary of the interview (including questions asked and responses and additional information given), and date and sign the summary. The interviewer should feel free (but is not required) to invite the interviewee to review, and if they wish sign and date, such final written summary.

e. The interviewer and the Panel should, for the duration of the Panel’s existence, keep the written summary of each interview as part of its confidential files and not disclose the summaries to any other party except the BIC. The BIC may decide whether, in accordance with ADB’s policy on confidentiality and disclosure of information, any documents should be treated as confidential, and the duration of confidentiality, subject to paragraph 6(f) below.

f. If the interviewee provides, or offers to provide, any information, including documents, which the interviewee asks to be kept confidential, paragraph 43 of the *Inspection Policy* and paragraph 58 of the *Inspection Procedures* should be followed, namely “Any information required to be kept confidential under the ADB’s policy on confidentiality and disclosure of Information will be segregated and submitted by the Panel to the [BIC] as a separate, confidential supplement to the Panel’s report.”

g. If an interviewee wishes to provide information to the Panel that can be made public but does not wish to be identified as the source of the information, the Panel may receive and refer to that information in its Report but should not include the identity of the source of the information in the Panel’s Report.

h. If the Panel uses any of the interviewee’s responses in its final report to the BIC, the Panel should make an appropriate citation to the written summary of the interviewee as part of its documentary evidence cited to support its findings and conclusions. If any such response contains confidential information and the Panel desires to include this confidential information in its final report to the BIC, it should prepare a separate confidential addendum to its final report that includes such confidential information.
9. **Access to Documents.** The Panel will have access to all relevant ADB documents necessary to discharge these TORs, including documents necessary to fully understand the context of the Project, such as those relating to all three stages of the Project or associated technical assistance. It may also request or will accept any other information or documents relating to the inspection from the Requesters, ADB’s Management or any other party. Panel members will adhere to ADB’s policy on confidentiality and disclosure of information with respect to any information they receive.

10. **Additional Means of Investigation.** If the Panel desires to use other means of investigation in addition to the means described in paragraphs 8 and 9 above, in its belief that these would substantially assist in its inspection, the Panel should make a recommendation to the BIC. If the BIC approves the recommendation, the Panel should ensure, to the greatest extent practicable, that an appropriate written record is prepared, in accordance with the provisions of paragraph 8(d). The Panel should seek to ensure that all such evidence that may be used in its deliberations and in its final report to the BIC shall be as accurate and complete as possible.

11. **Publicity.** During the inspection, particularly during a site visit if any, panel members will exercise discretion, maintain a low profile in the country, and will not give media interviews while making site visits in the borrowing country. The panel members will not give any media interviews relating to the substance of the inspection at any stage of the inspection. Any news releases will be made by the BIC in accordance with its established procedures.

12. **Engagement of Consultants.** If the Panel determines that it does not possess all the technical expertise required to conduct the inspection, it may propose the engagement of one or more consultants to the Chairman of the BIC for approval, indicating the type of expertise required, the work to be done and the likely duration of the assignment. If necessary, the BIC will meet with the Panel to clarify aspects of the proposed work plan and discuss the need for consulting services or other special arrangements. In accordance with paragraph 40 if the Inspection Policy and paragraph 50 of the Inspection Procedures, any consultants “will be engaged in accordance with the Bank’s standard procedures relating to staff consultants.”

13. **Use of Interpreters and Translators.** The Panel should, so far as practicable, conduct its activities and the inspection using the English language, which is ADB’s official working language. It is recognized that it will not be practicable in all cases to use English, especially as some of the persons that the Panel may wish to interview may not speak English. Therefore, on these occasions, it will be necessary for an interpreter or translator, acceptable to the parties to the inspection and to the interviewees, to be retained. If the Panel, in order to conduct its inspection, requires the services of interpreters or translators, it should so far as practicable notify the Chairman of the BIC in advance and come to an arrangement with BIC on the terms and conditions including compensation and payment of expenses for translators. These matters should as far as possible be addressed in the work plan to be prepared by the Panel.
14. Expense Documentation and Audit

   a. The Panel may, in accordance with provisions stipulated in the work plan and budget, offer to reimburse any necessary travel expenses for any interviewee upon the submission of written documentation substantiating such expense incurred, but it shall not otherwise offer, make or authorize any payments or give any consideration of any kind to any interviewee.

   b. The Panel, and each Panel member, may incur expenses authorized in the work plan and budget. Each Panel member should submit full original documentation of all expenses incurred in the performance of his or her duties under these TORs either when such expenses are incurred or promptly upon completion of the Panel’s work. Any claim for reimbursement of expenses should include full original documentation therefor. In accordance with ADB’s standard procedures, the Panel’s expenses will be subject to audit by ADB’s Office of the General Auditor. These requirements apply equally and fully to any translator, interpreter or consultant retained by the Panel.

15. Periodic Reports. In order to enable the BIC to inform the public of the progress of the inspection, the Panel will report to the BIC periodically on its progress, focusing on the process rather than the substance of the investigation. The BIC should then make summary reports publicly available, including posting them on the matrix in the inspection function website, so that all concerned persons may gauge the progress and timing of the inspection.

16. Legal Advice. To provide advice on questions referred to in paragraph 51 of the Inspection Procedures, separate Counsel will be provided by the General Counsel from within his office. This person should not have been involved in giving advice to Management with respect to the Project or this inspection, and should be suitably firewalled within the Office of the General Counsel. If the Panel requires advice on other questions of law, it may seek advice from such separate Counsel or may propose that a legal consultant be engaged under paragraph 9 above.

17. Draft report. At the completion of its inspection, the panel will issue a draft report of its findings and recommendations simultaneously to the Requesters and Management for comments. Each party is free to provide comments on the draft report, but only the Panel's final view on these matters will be reflected in its final report. The comments from Management and the Requester will be attached to the Panel's final report.

18. Delivery of Panel Materials and Work Product. Upon completion of the Panel’s work, the Panel and each Panel member should deliver to the BIC all originals, copies and any extracts and summaries of the materials, documents and work product that the Panel has obtained, received, developed or created during its existence and should not keep any such items unless expressly authorized in advance and in writing by the BIC. The BIC shall retain all such items as it deems appropriate in a secure place. These requirements apply equally to any translator or consultant retained by the Panel.
19. **Confidentiality and Public Disclosures.** During the Panel’s existence, the Panel and each Panel member should keep strictly confidential all of its work, deliberations and records, including interviews and interview summaries and any confidential information and materials received from interviewees, in whatever form that these exist. Upon completion of the Panel’s work, the Panel members should refrain from disclosing any information or matters that arose during the course of the Panel’s existence, except matters that have been made publicly available. These provisions apply equally to any translator, interpreter or consultant retained by the Panel. During the course of the Inspection, the Panel and its members should not make any public disclosures regarding its work. These provisions apply equally and fully to any translator, interpreter or consultant retained by the Panel.

20. **Timetable, budget and work plan.** A proposed budget and timetable is attached as Appendix 4, to be finalized in consultation with the Panel. Subject to these TORs, the Panel’s work plan and internal procedures will be finalized by the Panel in accordance with paragraph 39 of the *Inspection Policy* and paragraphs 48 and 49 of the *Inspection Procedures*.

21. We, the Panel members, hereby agree to abide by the terms and conditions set forth in these TORs in conducting the inspection of the Chashma Right Bank Irrigation Project (Stage III) in Pakistan:

Signed:                    Date: 2 February 2004

A.R.B. Amerasinghe

Goran Eklof

Neeraj N. Joshi

Larry Williams
1. Definition of ADB’s “Operational Policies and Procedures”:

Paragraph 4 of the Inspection Policy provides this definition:

4. In this paper, the Bank’s "operational policies and procedures" are defined as the Bank Policies and Operational Procedures set forth in the Bank's reorganized Operations Manual (OM) and, to the extent applicable, corresponding sections in earlier editions of the OM, but do not include Guidelines on Operational Procedures and similar documents or statements. The Bank's "operational policies and procedures" also include Staff Instructions that relate to the formulation, processing or implementation of Bank projects and that are intended to be incorporated eventually into the OM.

Paragraph 4 of the Inspection Procedures provides the following definition:

4. For purpose of the [Inspection] Policy, “operational policies and procedures” are defined as the ADB Policies and Operational Procedures set forth in the ADB's Operations Manual (the OM) and, to the extent applicable, corresponding paragraph in earlier editions of the OM (see paragraph. 17 below). They also include Staff Instructions that relate to the formulation, processing or implementation of ADB projects (but that have not yet been incorporated in the OM).

Paragraph 17 of the Inspection Procedures stipulates which “operational policies and procedures” may be considered with respect to a particular inspection:

17. The operational policies and procedures that apply to a project for purposes of the [Inspection] Policy are those that were in effect on the date the project was approved (or, in the case of a proposed project, those that were in effect on the date the inspection request was submitted to the Committee [i.e., BIC]).

2. Scope of the Inspection: The Inspection Policy is silent on the scope of the terms of reference for the Panel, and states only the following:

Subject to the terms of reference provided by the BIC, the Panel members may select from among themselves a Chairperson, and may determine the procedures to be followed to conduct the inspection and prepare their report.

Paragraph 47 of the Inspection Procedures requires that these TORs specify the scope of the inspection and the Panel’s activities as follows:

a. The scope of the inspection extends only to ADB’s operational policies and procedures [see definition in Paragraph 3 below], and therefore the policies and procedures of other development finance institutions would be relevant only to
the extent ADB’s own policies and procedures expressly refer to those of other institutions;

b. For similar reasons, the laws, policies and regulations of a borrowing member country or executing agency should be considered only to the extent directly relevant to ADB’s compliance with its operational policies and procedures;

c. The focus of the inspection is on ADB’s conduct, and therefore the conduct of parties other than ADB should be considered only to the extent directly relevant to assessing ADB’s compliance with its operational policies and procedures; and

d. Due consideration should be given to the exercise of professional judgment by ADB’s Management, staff and consultants in interpreting and applying ADB’s operational policies and procedures.

3. Contents of the Panel’s Written Report to the BIC:

Paragraph 43 of the Inspection Policy states, with respect to requirements for the Panel’s report:

Each Panel shall submit a written report to the BIC, with a copy provided to Management. This report shall

• identify all relevant facts

• make a finding as to whether the Bank has complied with its operational policies and procedures

• make recommendations, if appropriate, for any remedial changes in the scope or implementation of the inspected project.

In arriving at its findings, the Panel shall give due consideration to the exercise of professional judgment by the Bank's Management, staff and consultants in interpreting and applying the Bank’s operational policies and procedures to the inspected project. Any information required to be kept confidential under the Bank's policy on confidentiality and disclosure of information shall be segregated and submitted as a separate, confidential supplement to the report. The complete report (excluding any such confidential supplement) shall be given to the applicant for inspection as provided in paragraph 44 below and will become publicly available as provided in paragraph 46 below.

Paragraph 56 of the Inspection Procedures requires that, at the conclusion of its inspection, the Panel will submit a written report to the BIC, which will:

a. Identify all relevant facts;

b. Make a finding as to whether ADB has complied with its operational policies and procedures in connection with the inspected project;
c. In the event of noncompliance, make a further finding as to whether this noncompliance has resulted or may result in direct and material harm to the requester (or the group the requester represents); and

d. Make recommendations, if appropriate, for any remedial changes in the scope or implementation of the project.

4. **Other Special Provisions:**

Paragraph 43 of the *Inspection Policy* makes this provision about the Panel's findings and conclusions:

43. In conducting an inspection, a Panel should endeavor to arrive at its findings and recommendations by consensus.

Paragraph 57 of the *Inspection Procedures*:

“A Panel should endeavor to arrive at its findings and recommendations by consensus. In the absence of consensus, its report will state the findings and recommendation(s), if any, of the majority together with the minority view.”
Appendix 2

DESCRIPTION OF THE PROJECT TO BE INSPECTED

1. Project Name: CHASHMA RIGHT BANK IRRIGATION PROJECT (STAGE III)  
   (ADB LOAN No: 1146-PAK [SF])

2. Project Location and Address: Chashma, Pakistan

3. Project Status:
   a. ___ Pre-Board Approval
   b. _X_ Post-Board Approval Date Approved: 17 December 1991
   c. Description of the Project’s Current Status:

ADB Loan No. 1146-PAK [SF] for $185 million was approved by ADB Board of Directors (the Board) in December 1991; ADB additional financing for the Project in the amount of $33.5 million was approved in June 1999; as of 30 January 2004, Project construction is approximately 99% complete, and 80.34% of the total amount of the ADB loan has been disbursed.

d. ADB Department Involved:

   South Asia Regional Department (SARD)
   Agriculture, Environment and Natural Resources Division

4. Executing Agency or Other Organization Involved:

   Water and Power Development Authority, Pakistan

   Northwest Frontier Province

   Province of Punjab

5. Description of the Project:

The following description of the Project is taken from the Loan and Project Summary of the Report and Recommendation of the President to the Board of Directors on a Proposed Loan and Technical Assistance to the Islamic Republic of Pakistan for the Chashma Right Bank Irrigation Project (Stage III), dated 18 November 1991.

   Project description: The project consists of the following parts:

   Part A – main Canal and Related Facilities: (i) construction of the Stage III portion of the concrete-lined main canal, (ii) construction of flood-protection facilities, (iii) provision of mapping for the entire Chashma Right Bank Irrigation Project (CRBIP) area, (iv)
extension and improvement of the communication system of the CRBIP, (v) provision of erosion protection;

Part B – Distributary Canal and Drainage Facilities: (i) construction of 500 km of distributary and minor canals and about 500 km of service and access roads, and (ii) construction of surface-drainage facilities;

Part C – On-farm Water Management; and

Part D – Agricultural and Livestock Extension: (i) institutional strengthening of agricultural extension services of NWFP and Punjab, upgrading of market facilities and provision of two feeder markets; and (ii) institutional strengthening of NWFP’s and Punjab’s Livestock Departments. The Project also includes the provision of equipment and vehicles for Project implementation; operation and maintenance, consulting services and support for Project monitoring.

Project cost: The Project cost is estimated at $287.5 million equivalent comprising foreign exchange cost of $94.4 million and local currency cost of $193.1 million.

Technical Assistance: A technical assistance grant of $1,000,000 is proposed for strengthening environmental management for water resources development. The grant will be financed from the Japan Special Fund.

Project benefits: The Project will provide irrigation and drainage facilities to about 135,000 ha of cultivable command area with a full development annual cropping intensity of 150 per cent. The annual incremental production of wheat at full development is estimated at 211,000 mt, paddy at 57,000 mt, maize at 52,000 mt, sugar at 28,000 mt and seed cotton 23,000 mt. Gross farmgate output is expected to increase by $117 million and $20 million from crop and livestock production, respectively. The economic internal rate of return (EIRR) of the Project is estimated at about 20 per cent. For the whole CRBIP system, the overall EIRR is estimated at 14 per cent.
Appendix 3

SCOPE OF INSPECTION AS OUTLINED IN BIC’S REPORT TO THE BOARD

The operational policies and procedures (OPPs) listed in this Appendix reflect the Request for Inspection (Request) that was filed with the BIC. The table below is the summary of the BIC’s findings as presented in its report and recommendation to the Board on the Chashma Right Bank Irrigation Project (CRBIP), dated 12 March 2003. The table identifies OPPs and staff instructions where further investigation into ADB’s actions is warranted. The scope of the inspection shall be limited to ADB’s actions regarding the policies specified as warranting further investigation in the table below.

<table>
<thead>
<tr>
<th>Paragraph Reference</th>
<th>Requirement or Consideration</th>
<th>BIC’s Findings</th>
<th>Roster Member’s Findings</th>
<th>BIC’s Comments (if any)</th>
</tr>
</thead>
<tbody>
<tr>
<td>23(a)</td>
<td>A brief description or identification of the project</td>
<td>Meets requirement</td>
<td>Meets requirement</td>
<td></td>
</tr>
<tr>
<td>23(b)</td>
<td>An identification of the sender</td>
<td>Meets requirement</td>
<td>Meets requirement</td>
<td>Authorization to represent affected persons provided</td>
</tr>
</tbody>
</table>
| 23(c) and (d)        | A brief description of the operational policy or procedure alleged to have been breached and a description of the act or omission by ADB that may have led to this violation | Meets requirement in the following OMs: Loan approval, 1991  
- OM21, environmental considerations  
- OM23, benefit monitoring and evaluation  
- Staff Instruction, socio-cultural impacts  
Supplementary financing, 1999  
- OM13, supplementary financing  
- OM32, bank’s operational missions  
- OM 50, involuntary resettlement  
- OM 47, social dimensions | Meets requirement in the following OMs: Loan approval, 1991  
- OM21, environmental considerations  
- OM 23 does not appear to have been violated but requires further clarification  
- Not discussed  
Supplementary financing, 1999  
- OM13, supplementary financing  
- OM32, bank’s operational missions  
- OM 50, involuntary resettlement  
- OM 47, social dimensions | Further investigation warranted into ADB’s actions regarding:  
- Environmental categorization and impact of any miscategorization  
- Comprehensiveness of environmental assessment  
- Implementation of mitigation measures  
- Adequacy of social surveys  
- Adequacy of benchmark information  
- Adequacy of consideration of socio-cultural aspects  
- Impact of limited reappraisal on requesters’ claims  
- Adequacy of consultation  
- Adequacy and timeliness of compensation  
- Preparation of resettlement plan  
- Provision of social safety nets for vulnerable groups |
<table>
<thead>
<tr>
<th>Paragraph Reference</th>
<th>Requirement or Consideration</th>
<th>BIC’s Findings</th>
<th>Roster Member’s Findings</th>
<th>BIC’s Comments (if any)</th>
</tr>
</thead>
<tbody>
<tr>
<td>23(e)</td>
<td>An explanation of how the requester has been or is likely to be directly and materially harmed by ADB’s act or omission, and what rights or interests of the group have been or are likely to be adversely affected</td>
<td>Meets requirement</td>
<td>Meets requirement</td>
<td>The extent of harm and links to alleged policy violations warrant further investigation.</td>
</tr>
<tr>
<td>31(b)</td>
<td>A description of the steps taken by the Requester to bring the grievance to ADB’s attention, and a description of why ADB’s response was inadequate</td>
<td>Meets requirement</td>
<td>Meets requirement</td>
<td></td>
</tr>
<tr>
<td>7(f)</td>
<td>Whether Management has adequately responded to the claims made in the Request (either by demonstrating that it has followed its operational policies and procedures, or by outlining specific steps that Management is taking or intends to take to correct any failure to follow those policies and procedures and to address any harm caused by such failure)</td>
<td>Management has taken actions in response to unexpected flooding and resettlement issues since 1995.</td>
<td>Management has worked hard to gain agreement by the Government and the EA to establish the GRSC. However, the GRSC is not realistic and will not address the concerns of the affected people.</td>
<td>BIC is not in a position to determine the adequacy of any proposed remedial measures. Further investigation is required.</td>
</tr>
</tbody>
</table>

- Staff Instruction, indigenous peoples
- Policies or laws that are not within the scope of inspection:
  - Land Acquisition Act, 1894
  - ILO convention 169
  - Guidelines on Social Analysis of Development Projects
  - Staff Instruction on Revisions to RRP and TA format
- Policies or laws that are not within the scope of inspection:
  - Land Acquisition Act, 1894
  - ILO convention 169
  - Guidelines on Social Analysis of Development Projects
- Adoption of participatory approach
- No further investigation warranted
PROPOSED BUDGET AND TIMETABLE OF THE INSPECTION PANEL
CHASHMA RIGHT BANK IRRIGATION PROJECT (STAGE III)

I. PROPOSED BUDGET

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount (US$)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fees (4 Panel members)</td>
<td>350,000</td>
</tr>
<tr>
<td>Airfares</td>
<td>40,000</td>
</tr>
<tr>
<td>Hotel and subsistence</td>
<td>55,000</td>
</tr>
<tr>
<td>Consultants</td>
<td>45,000</td>
</tr>
<tr>
<td>Communications and out-of-pocket expenses</td>
<td>5,000</td>
</tr>
<tr>
<td>Contingency</td>
<td>5,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$500,000</strong></td>
</tr>
</tbody>
</table>

II. REVISED PROVISIONAL TIMETABLE

<table>
<thead>
<tr>
<th>Task Description</th>
<th>Target Dates</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Panel commences preparatory work</td>
<td>December 2003</td>
</tr>
<tr>
<td>2. BIC convenes Panel for organizational meeting</td>
<td>26 January 2004</td>
</tr>
<tr>
<td>3. BIC and Panel finalize TORs, work plan, timetable and budget</td>
<td>End January</td>
</tr>
<tr>
<td>4. Panel reviews additional background documents, including translated documents</td>
<td>2-29 February</td>
</tr>
<tr>
<td>5. Panel conducts interviews with ADB staff, consultants</td>
<td>1-19 March</td>
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<tr>
<td>6. Panel engages hydrology engineer</td>
<td>15 March</td>
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<tr>
<td>7. Panel prepares for visit to project area</td>
<td>22-26 March</td>
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<tr>
<td>8. Panel visits Pakistan, including project area</td>
<td>29 March- 8 April</td>
</tr>
<tr>
<td>9. Panel submits draft Inspection Report to Requesters and Management for comments</td>
<td>23 April</td>
</tr>
<tr>
<td>10. Panel considers comments from Requesters and Management and finalizes report</td>
<td>24 May-9 June</td>
</tr>
<tr>
<td>11. Panel submits final Inspection report, all work papers, final accounts and reimbursement requests to BIC</td>
<td>10 June</td>
</tr>
</tbody>
</table>
Stages of Inspection:

- Initial review of documents

- Initial organizational meeting with BIC (Manila)
  - finalize TORs
  - complete work plan, budget and timetable
  - determine documents and translations required

- Field visits to obtain factual information (Pakistan)
  - interviews with requesters, government officials etc.
  - public consultations, if required

- Visit to ADB to obtain factual information (Manila)
  - interviews with ADB staff

- Data and information verification (Manila and Pakistan)
  - cross-checking
  - identifying contradictions, etc.

- Conclusion and report writing (Manila)
To: Director Stephen Sedgwick  
Chairman, Board Inspection Committee

From: Arthur M. Mitchell  
The General Counsel

Subject: Chashma Right Bank Irrigation Project: Stage III (the "Project")

1. You have advised me that the Board Inspection Committee ("BIC") of the Board of Directors (the "Board") of the Asian Development Bank ("ADB") will meet on 12 February 2003 to begin its consideration of whether or not to recommend to the Board that inspection of the Project commence in accordance with the procedures set forth in Board Paper R225-95, Establishment of an Inspection Function (the "Inspection Policy"). A complaint (the "Complaint") was received on 28 May 2002 and Management made its Initial Response on 16 July 2002. Not being satisfied with Management's initial response, the requesters filed a request for inspection with BIC on 25 November 2002 (the "Request"). On 18 December 2002 BIC found that the Request was not clearly frivolous or ineligible, forwarded a copy of the Request to the President and requested Management to provide BIC with a written response within 30 days. On 6 January 2003, BIC informed the requesters that it had extended the deadline for Management's response to 7 February 2003 pursuant to paragraph 38 of the Inspection Procedures. The BIC received a copy of Management's response to the Request on 7 February 2003 (the "Response").

2. In order for the BIC to perform its functions under the Inspection Policy at this stage in the preliminary review process, BIC must make an initial determination concerning which ADB policies and procedures it thinks may have been violated by Management in connection with the Project. You have asked me to advise you as to (i) what standards should be applied by the BIC in determining which of ADB's policies and procedures should be relevant for its consideration at this stage of the review; (ii) whether ADB policies that were "operationalized" after the date of the original Board approval of the Project and procedures can be included within the scope of BIC's review; and (iii) whether BIC would be required to reject a request for inspection if it finds that Management has taken, or intends to take, steps to correct any failure to follow ADB policies and to address any harm caused by such failure.

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1 The Inspection Policy is currently under review. The analysis set forth in this Memorandum is, unless otherwise specifically indicated, based on the Inspection Policy, Inspection Procedures, Operations Manual, Staff Instructions and related documents in effect as of the date hereof.

2 Para. 37 of the Inspection Procedures.
What policies should be applied in connection with BIC’s preliminary review?

3. The Inspection Policy, the Inspection Procedures, the BIC Terms of Reference and the BIC’s Internal Working Guidelines are the relevant documents that govern the obligations of the BIC. Reference to these documents will guide the members of the BIC as to what they must do, how they must perform those duties, and what time frames are to be employed. It is important to emphasize that the BIC is not constituted as a “fact finding” or judicial body. Accordingly, it is not necessary for either the requesters or Management, at this stage, to establish or prove their allegations or defenses or establish any causal relationships or the lack thereof. These matters are for the Inspection Panel to determine. The principal mission of the BIC at this stage in the preliminary review is to evaluate the evidence provided by the requesters and Management to determine whether an investigation into the facts concerning potential violation of applicable ADB policies and procedures by an Inspection Panel is warranted. A recommendation to the Board to commence an inspection is not a preliminary determination as to the truth of any allegations in the Request or the Response of Management. On the other hand, if the BIC determines that there is no reasonable evidence of past or current violations of applicable ADB policies and procedures, or that mitigation measures seem adequate, it may conclude that a recommendation for inspection is not warranted. The following is a legal analysis of these conclusions.

4. Paragraph 35 of the Inspection Policy instructs the BIC as to what it must do. It provides, in pertinent part, that:

“on the basis of its review of the request and Management’s response (if required), the BIC will decide whether to recommend an inspection of the Board of Directors”.

5. Paragraph 28 of the Inspection Policy delineates what the BIC must review. It provides, in pertinent part, that:

“Applicants must present reasonable evidence that their rights or interests have been or are likely to be directly, materially, and adversely affected by an act or omission of the Bank as a result of the Bank’s failure to follow its operational policies and procedures (as defined in paragraph 4 above) in connection with a proposed or ongoing Bank project (as defined in the same paragraph)”.

6. Paragraph 4 of the Inspection Policy tells us which policies of the Bank are subject to inspection. It states, in pertinent part, that:

*4. In this paper, the Bank’s “operational policies and procedures” are defined as the Bank Policies and Operational Procedures set forth in the Bank’s reorganized Operations Manual (OM) and, to the extent applicable, corresponding sections in earlier editions of the OM, but do not include

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3 Under the Inspection Policy, it is the Inspection Panel that is responsible for “identify[ing] all relevant facts” (see Para. 43). The Inspection Policy also provides that the inspection function is “not intended to provide judicial-type remedies such as injunctions or money damages” (see Para. 23).

4 Para. 43 of the Inspection Policy and Para. 6A of the Inspection Procedures.

5 Para. 7(f) of the BIC’s Internal Working Guidelines.
Guidelines on Operational Procedures and similar documents or statements. The Bank's "operational policies and procedures" also include Staff Instructions that relate to the formulation, processing or implementation of Bank projects and that are intended to be incorporated eventually into the OM.

Footnote 4 to the text quoted from paragraph 28 above sets forth the time frames that are relevant for the purposes of inspection. It states:

"The operational policies and procedures that apply to a Bank project under inspection will be those that were in effect on the date the project was approved (or, in the case of a proposed project or in the case of a request regarding the administration of an ongoing project, those that were in effect on the date the inspection request was filed with the BIC)."

For a project processed or approved by the Board prior to the reorganization of the OM into Bank Policies and Operational Procedures and into Guidelines on Operational Procedures separate from the OM, the operational policies and procedures that apply will be those relating to the formulation, processing and implementation of Bank projects and that were included in the OM in effect on the relevant date. It will be for the BIC to determine which portions of the relevant sections of the OM prior to its reorganization are operational policies and procedures and which portions are, in effect, guidelines on operational procedures or other materials that do not in themselves constitute operational policies and procedures; an inspection panel may request the BIC for such a determination in respect of any relevant OM section."

8. It is clear that the Project is an "ongoing project" for purposes of the Inspection Policy. The original loan was approved by the Board on 17 December 1991. A supplementary loan for the Project was approved by the Board on 13 July 1999. The Request for inspection was filed with the ADB on 25 November 2002. The requesters and Management have identified in the Request and the Response each of the ADB operational policies and procedures that might be subject to review on each of those dates (i.e., 1991, 1999 and 2002). A list of such ADB policies and procedures is attached hereto as Schedule 1.

9. It should be helpful to remember that the mandatory provisions of all Board approved policies (i.e., ADB's "internal law") are in effect from the date that they are approved by the Board, unless otherwise specifically provided under the policy. Furthermore, the mandatory
provisions of all Board approved policies are implemented immediately by the President and ADB staff upon effectiveness of the policies.\(^9\)

10. Nevertheless, as noted above, in order to properly come within the purview of the Inspection Policy, an operational policy and procedure must fall within the definition of "Bank Policies and Operational Procedures" or "Staff Instructions" as provided in paragraph 4 of the Inspection Policy. ADB policies that are covered by the OM (or through Staff Instructions) are deemed to be "operationalized" for the purposes of the Inspection Policy.

11. All of the ADB policies and procedures and Staff Instructions set forth in Schedule 1 (i) were in effect as of the relevant dates, (ii) were being implemented by senior management, and (iii) were "operationalized" for the purposes of the Inspection Policy.

Can policies adopted after the original Project approval be considered by BIC?

12. As indicated in paragraph 7 above, the footnote to paragraph 28 of the Inspection Policy sets out the relevant timeframes. Usually, the date of project approval is the relevant date for purposes of identifying policies and procedures subject to inspection, but there are exceptions. In the case of proposed projects (where there is, as yet, no date of project approval), the relevant date is the date the inspection request is filed with the BIC. Similarly, with respect to "a request regarding the administration of an ongoing project", the Inspection Policy points to the policies and procedures in effect on the date the inspection request is filed with the BIC rather than to the date of project approval. There is a sound basis for the different date applied for requests regarding administration. Many of ADB's policies, notably in key safeguard areas such as resettlement and environment, have become considerably more sophisticated and demanding over time. Management could not be expected retrospectively to apply 2003 standards for loan processing to loans approved many years earlier, even if the projects are still under implementation. However, to the extent that new policies apply additional obligations with respect to project administration and monitoring, there need be no retrospective application. Therefore, to the extent that a request for inspection relates to administration or monitoring of a project as opposed to its preparation, it is reasonable (and required by the Inspection Policy) for the BIC to consider it.

13. The Project was somewhat unusual in that the Board approved two loans (in 1991 and 1999), and could therefore be said to have approved the Project twice. The analysis of which policies and procedures are subject to the inspection process therefore turns on the identification of the steps required for approval of supplemental financing (in 1999) as well as the steps required for approval of the original loan (in 1991).

14. In connection with the BIC's consideration of the Samut Prakarn matter, which is a useful precedent for the Chashma matter, Management argued that Board policies that had been adopted after the original approval of that project were not relevant because the "reappraisal" required in connection with supplemental financing was limited to the financial reasons for the cost overruns incurred.\(^10\) The Inspection Panel concluded, and the BIC

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\(^9\) See the comment of the President to the Board as set forth in the Record of Discussions at the Board Meeting of 10 July 2001: "... all policies approved by the Board are for implementation by the Bank as of their effectiveness date. There is no exception to that." Para. 158.

agreed, that such an interpretation of Management's obligations concerning "reappraisal" was unduly narrow.11

15. "Reappraisal" is mentioned in OM 13: Supplementary Financing of Cost Overruns on Bank-Financed Projects. The BP of OM 13 (issued on 12 December 1995) provides, in pertinent part, that “Financing of cost overruns will require reappraisal of the project concerned.” The OP of OM 13 provides, in pertinent part, that “The procedure for processing a supplementary loan, whether by additional financing or by reallocating funds from other Bank-financed projects, is similar to that for new loans, and includes reappraisal of the entire project.” (emphasis added). OM 13 acknowledges that it is based on a number of documents submitted to the Board of Directors, including R115-83 of November 1983 and SEC.M48-89. These documents include language that confirm that for the preparation of a supplementary loan, the procedural arrangements for processing such a loan must be “similar to those applicable to new loans, including the reappraisal of the whole project” (e.g., para. 22 of R115-83).

16. The introduction of OM 32 (specifically OP 32, para. 1) provides as follows: “This part of the OM Section describes the nature and purpose of Bank operational missions.” Regarding a "reappraisal mission", para. 29 of OP 32 states, in pertinent part, that “A reappraisal mission is sent when substantial or basic changes have become necessary in the scope or implementation arrangements of an approved project or when cost overruns are incurred in its implementation. As in the case of an appraisal mission, the re-appraisal mission is required to obtain all the necessary information to analyze the technical, economic, financial, legal, institutional, social, environmental, and other aspects of the revised project. ... The mission is expected to examine the completed and ongoing works of the approved project ...”. A "reappraisal" which broadly considers the foregoing factors is known as a "full reappraisal".

17. It, therefore, appears clear that operational policies and procedures adopted prior to approval of the supplementary loan are relevant to the BIC's consideration of this inspection request.

Is BIC required to reject a request for inspection if it finds that Management has taken, or intends to take, steps to correct any failure to follow ADB policies and procedures and to address any harm caused by such failure?

18. Under the Inspection Policy and the Inspection Procedures, consideration of whether Management has taken remedial action to follow ADB operational policies and procedures appears in the following three instances: (i) in the requirement that a request for inspection assert that Management has "failed within a period of 45 days to demonstrate that the Bank had followed, or was taking adequate steps to follow, its operational policies and procedures" (emphasis added)12; (ii) the addressing of "remedial steps" proposed in Management's response to an initial complaint;13 and (iii) the Panel's report "mak[ing] recommendations, if appropriate, for any remedial changes in the scope or implementation of the inspected project" (emphasis added) and any remedial changes in project scope or implementation recommended in the Panel report being carried out in accordance with

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11 See Para. 25 of the BIC's Report to the Board of 20 June 2001 on the Samut Prakarn Wastewater Management Project.
12 Para. 30 of the Inspection Policy; Para. 15 of the Inspection Procedures.
13 Para. 33 of the Inspection Policy; Para. 27 of the Inspection Procedures.
applicable Bank procedures.14 The Inspection Policy and the Inspection Procedures are silent concerning the duties of the BIC with respect to remedial measures during this stage of the preliminary review.

19. However, the BIC's Internal Working Guidelines provide as follows: "In determining whether to recommend to the Board that a request for inspection should be approved, the Committee will consider the following: ... (f) whether Management had adequately responded to the claims made in the request (either by demonstrating that it has followed its operational policies and procedures, or by outlining specific steps that Management is taking or intends to take to correct any failure to follow these policies and procedures and to address any harm caused by such failure)."15

20. BIC may decide not to recommend an inspection if it finds that Management has taken, or intends to take, adequate steps to correct any failure to follow ADB operational policies and procedures and to address any harm caused by such failure. BIC, after due consideration, may also determine that such measures are inadequate, and recommend an inspection.

Conclusions

21. The BIC may use the policies set forth in Schedule 1 as the basis for making its decision as to whether or not to recommend the initiation of an inspection with respect to the Project. Applicable policies and procedures that were approved after the date of the original approval of the Project may also be considered. In making such decisions, it should be emphasized that the BIC functions as a "gatekeeper" for the entire Board during the preliminary review of the requesters' Complaint and Request. The Inspection Policy, the Inspection Procedures and the Internal Working Guidelines require the BIC to dismiss complaints that are clearly frivolous or clearly ineligible. The BIC must also dismiss any request for inspection that is not supported by reasonable evidence that applicable ADB policies and procedures are likely to have been or continue to be violated but the BIC does not have the authority or the ability16 to independently investigate and find facts. It must rely on the documents and other information supplied by the requesters and Management in assessing the adequacy of the evidence presented.17 Finally, BIC should consider whether Management has taken, or intends to take, adequate steps to correct any failure to follow ADB policies and to address any harm caused by such failure. BIC's conclusions concerning mitigation may be used either in support of or against a recommendation to commence an inspection depending upon how BIC evaluates such measures.

A.M.M.

Attachment

cc: Philip Daltrop / Victor You

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14 Para. 43 and Para. 45 of the Inspection Policy; Para. 56 and Para. 64 of the Inspection Procedures.
15 Para. 7 of the BIC's Internal Working Guidelines.
16 For example, the BIC is not empowered to hire expert consultants, to interview witnesses or to travel to the project site to collect evidence. All of these fact-finding activities are for the Inspection Panel to perform.
17 The BIC may request Management or the requesters to supply more information if it deems it necessary and extend the time to make its decision until such information is received. See Para. 35 of the Inspection Policy.
|   | A. INITIAL LOAN APPROVAL  
(17 December 1991) | B. SUPPLEMENTARY LOAN APPROVAL  
(13 July 1999) | C. REQUEST FOR INSPECTION  
(25 November 2002) |
|---|---|---|---|
[supersedes OM 21 of 1 December 1992 and OM 21 of 8 February 1988] |   |
[supersedes OM 22 of 7 January 1997] |
| 3. | Staff Instruction of 17 September 1986: Socio-Cultural Impacts of Bank Projects |   |   |
[supersedes OM 15 of 22 May 1991] |   |
| 5. |   | OM 32 of 13 January 1997: Bank Operational Missions  
[supersedes OM 40 of 18 December 1991] |   |
| 6a. | Staff Instruction of 15 February 1994: Involuntary Resettlement |   |   |
| 6b. | OM 50 of 7 January 1997: Involuntary Resettlement |   |   |
| 8. | OM 54 of 13 January 1997: Governance |   |   |
| 10a. | Staff Instruction of 25 October 1994: Revisions to RRP and TA Format |   |   |
| 10b. | OM 82 of 15 April 1993: Preparation of the Report and Recommendation of the President |   |   |
Dear members of the inspection panel,

Let us begin with a thank you for your best efforts. The focus on non-compliance as part of the TORs tied you down in what you were able to discuss, but your best efforts had been made. Yet the problems accrue, problems which lie outside the TORs and issues of non-compliance.

Omissions in the material of your report however have been stark. The process of the GRSC is made completely redundant. The complaints which we had forwarded to you have not been given proper value. This constant play with peoples time, energy and words is an affront. Similarly redundant is the testimony that you heard during your visit to the area. There is no reference to these. To jog your memory we have attached two transcripts of conversations during your time with us. How would you use these? As confirmation of your own thoughts and placing into boxes for your convenience or to let them speak and tell truth in their terms?

And so to your recommendations. Your suggestions focus on a process of consultation and assessment. Past experiences of these processes have not sufficiently been taken into account. The Lok Sath is a mode of deliberation amongst communities, it is a genuine method of inquiry, of truth telling. You pass comments on consultation and assessment but make no reference to the possibility of using this fora. Should you wish to make any genuine steps in your recommendation the peoples forum of the Lok Sath furnishes you with an opportunity to engage with the people. If that is not a step made then the judgement of the Lok Sath (attached) will come to pass.

Specific comments on and around your report have been developed by some of us in languages of your own. This is attached.

Mushtaq Gadi
Chashma Lok Sath
Comments on draft Chashma Inspection Report

I. Recommendations (Page 6):

(i) *Policy Non-compliance:* At the beginning of the Report, the Panel should list all of the policies that the Panel was investigating and their assessment of them regarding compliance. This is a crucial piece of summary information as it will lay out the result of the investigation very clearly. Anyone reading the report (especially The Board) can then see very clearly all incidences of non-compliance and breach of policies which the Panel found on every Policy mentioned by the Requesters in their inspection request.

(ii) *Specific recommendations:* The Panel should make specific recommendations for each policy violation they identified.

(iii) *Recommendation 3:* This recommendation should apply not only to large scale canal irrigation projects. It should apply (at the very least) to all water sector projects and all infrastructure projects in Pakistan since the executing agencies are the same and the ADB Operational Department (SAR) is the same. The problem thus is systematic, and not confined to canal projects alone.

(iv) *Compliance:* On the recommendations page, the Panel should make a clear and strong statement that Board should ensure that the ADB brings the Project into full compliance with ADB policies. The fact that the Board Inspection Committee (BIC) decided in favor of the GRSC over-riding the views of the Requesters must also be mentioned.

II. Introduction

(i) On page 9, The Panel should mention the entire GRSC debacle between Para 13 and 14 since otherwise the reader does not know what exactly happened between April 2003 and December 2003.

III. Project History
In para 43, it’s important to mention that the ADB initiated the multi-stakeholder process ONLY after tremendous pressure from NGOs. This was not something the ADB did of its own volition.

In para 44, can the Panel indicate the date on which ADB forst communicated the idea of GRSC to NGOs/Requesters?

III. GRSC:
The Panel’s overall assessment of the GRSC must be included at some point in the report. The Panel, based on what they write about the GRSC in the report, should conclude that the GRSC was wholly inadequate and cannot be the basis for the implementation of the Panel's recommendations.

page 18, paras 61-63: The assessment of GRSC is not clear in these paragraphs. It seems to imply that GRSC’s work was too narrow in scope and that nothing was really accomplished by
GRSC, but the Panel does not state this directly. For example, it gives the impression that GRSC recommendations which were accepted by the government have been acted on or are currently being acted on and that these will address some of the harms outlined here. Do we know if GoP has acted on some of those GRSC recommendations?

Page 18, para 62: It should be made clear that the Matrix mentioned in this para was NOT developed following a participatory process as stated in the ToR of the GRSC.

Page 25, para 88: The sentence "some issues remained unsettled and important tasks were left unfinished" makes it sound like GRSC actually accomplished something -- if so, what? The Panel should provide a clearer assessment of GRSC.

Page 50, para 202: This point (regarding the GRSC) should be elaborated to explain what was it, in the Requester's view, about the GRSC that made them refuse to participate in the GRSC as it then formed. It would be useful for the Panel to record this and also give its view of the essential pre-requisites for meaningful participation which the GRSC did not contain.

Page 51, para 206: “Even without going into discussions about shortcomings in terms of its composition and mandate, the most recent experience of the GRSC illustrates the problem [of participation]." The Panel needs to go into a discussion about these shortcomings- composition and mandate -- somewhere in report. Current references are vague in the sections before this, and leave the reader with a mixed impression of Panel's view on GRSC.

"As of 1 January 2004 there is again no forum where the voices of the affected people and their representatives can be heard, and where they can execute their right to participation..." This implies that the GRSC gave the affected people this opportunity and actually provided a forum for voice, participation, etc. Does the Panel mean to give this impression? If not, the Panel should restate this more clearly.

Page 53, para 219: This para makes it seem that GRSC recommendations/mitigatory measures would address these problems if implemented. In earlier sections, the Panel raises questions about the adequacy of these measures. If this point isn't clarified (the Panel's assessment of the GRSC and its outcome), Management can use the GRSC recommendations, plus an enhanced commitment to monitor their implementation, as their proposed remedy/response.

Page 54, para 227: "The inadequacy of the GRSC with regard to its mandate for activities such as long-term ... is discussed in Chapter 3...." As stated above, a clear, comprehensive discussion of these inadequacies is missing. The next paragraphs 228-232 point to some of the GRSC inadequacies that should be summarized in Chapter 3 as well as part of this comprehensive discussion.

Page 54, para 228: Why was the GRSC unable to finish its task? Was it because its consultant (International Resettlement Consultant) was away on leave for most of his tenure? Or was it that the ADB staff in Manila and in the Pakistan Resident Mission did not adequately monitor the GRSC, a body on which the ADB staked its claim as the solver of all problems.
IV. Other Specific Points

(i) Recommendation #3: add word “participatory” to this sentence so that it reads as: “…ADB needs to ensure that appropriate, reliable and transparent and participatory mechanisms are in place…”

Page 17, Para 57: Does the Panel mean “full re-appraisal” instead of “full appraisal”? 

Page 18, para 58: This paragraph should be written more clearly.

Page 22, para 72: The phrase “at least as a matter of best practice” should be taken out since the ADB does have a duty to monitor the obligations of a borrower as mentioned in the loan covenants.

Page 26, Para 92: This para is really strong and sets an important precedent regarding compliance with environmental guidelines.

Page 28, Paras 100 – 101, 141: The panel should consider including a footnote or explanation that what the ADB had classified as Category C projects under an older policy it now classifies as Category A, to avoid any confusion about the magnitude of CRBIP's environmental impacts.

Page 34, para 130: Can the Panel shed some light on WHY the recommendation to transfer responsibility of EMP back to CRBIP was not followed up?

Page 35, para 138: Is the Panel sure this “final plan” was based on the ACTUAL feedback of stakeholders and it was not (yet again) a case of ADB staff writing up something themselves and then claiming it was developed following a participatory process?

Page 36, para 142: The Panel should provide its assessment/response for each of the questions it poses here. This section should not be left open-ended and subject to interpretation. If left open-ended, Management/Board can assume these to be mere observations; Panel must provide its findings to these questions.

Page 40, para 161: Can the use of agriculture chemicals and their run-off into drinking water sources (mainly the Canal) be the cause of the ailments (rashes, gastronomical problems) identified by affected communities and documented in the BIC/ED Trip Report (March 2004) ?

Page 42, para 169: Can the Panel expand a bit on pollution and waste management in the sugar industry and how it relates to the EMP?

Can the Panel incorporate more pictures from its field visit to make the case for certain points it makes in the text of the Report?
Dear Jill,

Attach please find my comments.

Muhammad Nauman

creed alliance Comments on IP Draft Report.doc
Dear Members of the Inspection Panel,

1. We appreciate team’s efforts in preparing the draft report. The Panel has examined most of the facts stated by the Requesters in the Inspection Claim and Bank’s response on their claims. The findings confirm that the Bank failed to comply with almost all of its operational Policies and Procedures outlined in the Scope of Inspection. These findings will definitely help Civil Society Organizations to expose ADB’s projects and its role in the region.

2. However, some of the findings need proper emphasis to put things in right perspective. For example, paras 155, 157,163,208, 211 and 216 should lead to the conclusion that how the sustainable livelihood, that was environment friendly, culturally rich and supported diversified economic activities (grazing, agriculture, seasonal labour); was converted to market dependent agriculture that is environmentally disastrous, requires inputs not affordable by poor segments and is vulnerable to the brute market forces. This fact is to be elaborated.

3. The report does not reject the claim of the Management (para 212) that diversions to the floodwater courses (FCCs) have affected only a limited strip of 2 km along the main canal. Although the members have themselves witnessed the destruction caused to the agriculture land and grazing grounds on the west side of the canal due to diversion and linkage of rod kohis to minimize the cross drainage structures and FCCs. They have also seen the devastation caused by project induced flooding even in the riverine belt, due to bad design of the FCCs.

4. The Report confirms the fact that the Bank Management started project execution with a defective SIEE and without conducting a proper IEE or EIA. The Management also ignored the 1992 Evaluation report’s recommendation to go for in-depth social analysis before starting the engineering design. Similarly, the Management avoided Resettlement issue despite its inclusion in the Staff Instructions of 1986 and 1994. Need for Resettlement was first identified in1995 and in 1997 Resettlement became part of OM-50 and ISA became part of OM-47. But even at the time of supplementary financing in July 1999, when EIA, SIA and Resettlement Plans were supposed to be carried out as per requirements of full appraisal of the Project, the Management did not accept the proposals for carrying out SIA, EIA and Resettlement. The Panel members received from the requesters, the details of their correspondence, emails and meetings with various concerned Bank Officials, Missions, and ADB Consultants from time to time. AGMs, Stakeholders’ Conference and other occasions were also utilized by the requesters, to keep ADB engaged, and to highlight the project irregularities. The Panel is in knowledge of these facts.

5. IP had to determine if the non-compliance had or likely to have, a direct and material adverse effect on the rights and interests of group making the request. The Draft Report avoids concrete determination (even where it was possible) of the harm caused by non-compliance. In the absence of baseline data and surveys, the Panel does not feel comfortable in making comments on the harms caused. No doubt it is difficult to
quantify the harms, specially those on social and cultural life of the communities living in harmony with environment. **But in principle responsibility of every harm caused by intervention of a project that was started and continued without meeting/completing the most fundamental pre-requisites as required by the Bank’s operational policies and procedures must lie with ADB.** The project is almost complete and at this stage, no amount of mitigation measures and compensation can restore and revive the eco system, socio-cultural life style and environmentally sustainable practices.

6. Assessments for direct and material adverse effects are vague or very generalized, not identifying the specific losses incurred on various groups of affectees, **It also fails to pin point the violation of human, economical, cultural and political rights** (guaranteed in the Universal Declaration, various UN Conventions & Covenants) of the affected communities represented by the Requesters.

7. The Recommendations part of the draft is the weakest. We propose to add the following recommendations with regard to remedial changes in scope and implementation of the Project:

- Because of total failure of entire Management to adhere to Bank’s policies at all stages of the project cycle, the ADB’s Management and EA’s, including those of GOP cannot be trusted for carrying out the remedial work, surveys, studies, damage assessment, disbursement of compensation, formulating and implementing resettlement action plan. Independent and reputed international organizations, acceptable to the project affected people, should monitor the task along with the elected representatives of affected communities.
- The report should propose measures for having a meaningful consultation with the affected communities including how and when this process should start.
- The whole process must be completely transparent and participatory in nature. The project office located in the project area should have complete set of project documents accessible to every citizen.
- All actions/activities should be time bound with responsibilities to be clearly specified.
- For future safeguard, the Bank should refrain from signing and executing other mega projects in Pakistan (particularly in the water sector) without opening them for public debate and without making all project documents available for public scrutiny.
- Since the harms are caused by the failure of Management, the funds for compensation, mitigation measures and resettlement should come as a special grant from the Bank. It will be unfair to put it as an additional loan to GOP particularly in light of the fact that 80% of the taxes are collected from the poor of Pakistan.
- Staff and missions of ADB directly responsible in not carrying out the policies & procedures and deliberately concealing the facts from the affected communities, should be put to task including punitive actions such as removal from the service or contract, demotion, penalty.

8. As requester I would also like to add hat:

- In future, I would consult only with the Board on this particular project as I have no faith on Management that has messed up the project.
- The past and present experience with the Bank management in various projects (LBOD, Chotiari Reservoir, NDP, Korangi waste water project, Access to Justice Program, and now Pakistan Industrial Management Project and Devolved Social Services Program for Sindh) indicates similar pattern. No public/stakeholders participation, no transparency, no information disclosure, not even justification for initiating many of these projects. This is the SOP that Bank management follows.
- Prior commitment on time bound actions by the Bank and GoP to address specific harms caused by CRBIP in specific ways will decide our future engagement with the Board in future.
Chashma Lok Sath
March 27, 2004

The Judgement

I

In the Beginning

We gathered in Daera Din-Panha (Circle of God’s Protection) to meditate on truth - to uncover the truth of what has passed. How and why it had become. And what is to be done now.

Where these words are the result of our meditations on truth at the Lok Sath, they are words which emerge from the depths of truth. And it is our judgement on the Chashma Canal.

Where we sat bears visual testimony to the color by which the canal has scarred our lands. The entire Damaan lay itself bare to us. In the distance towards the West the Suleiman Range, the fountain of the rowed kohee, cast its shadow a reminder of the ways things had once been. We sat in the Command Area laid dusty brown – testimony to the failure of the canals dream and promise of abundance and perennial water. And we looked down on kaachi seeing the lush green of the riverine belt. And in the distance we see the shimmering of the goddess. The Indus.

And it is homage to the Indus that the Lok Sath opens with our poets’ recitation:

If the River dies, my dearest listen,
the eyes die, the heart dies,
the identity of our being and our living dies

So as the slumber of the blue waters die
It is not just the swan couplet that dies,
But the entire laughter of the River that dies

And so we are inextricably tied to the River. To know the state of our being look merely at the River as your guide. Our laughter, cries and suffering are mere echoes of that of the River. We allowed ourselves to be parted from the Indus and the ways of our ancestors, we allowed others to take her away from us and be packaged in languages which have no relation to the lands and its waters.

And singing our redemption song we brought to pass the Lok Sath: And in taking back the power we worship the Goddess. To revive our lands and our waters and speak once more in the language of the Indus.

The passing of this judgement at the Lok Sath sets a precedent of our peoples doing law. And it is in this vein that we speak this judgement our gaze turning upon those who perpetuate crimes which destroy the link which furnishes as our very being.
There once came a dream of abundance. A Canal would be carved across our lands that would furnish us with all the wares that we need to enter the world of the developed. A world in which water would be plentiful, and crops could be grown for sale at far away markets, and all the oddities of the world could come to rest in our hands and on our terms.

We lived and breathed that dream. It colonised the way in which we knew our world. It was taught in our schools. It was echoed in the building of our nation(s). All spoke from the same hymn sheet and a sense of naturalness was granted to this dream. It became the only dream. And therein lies the first and most deadly of all crimes, the drawing of a singular dream.

So the canal came into being. And in its becoming the dream slowly faded. Reality was a mere shadow of the promises. And we awoke from the dream. Instead the dream brought with it a violence that ruptured our very sense of being, tearing us from the lands and its waters. The mirage was built on lies and deceit.

Here is the litany of violence that the canal and its dream brought to us, by design or by default, by intent or by negligence this is what came to pass:

<table>
<thead>
<tr>
<th>Flooding</th>
<th>Deceit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lands stolen</td>
<td>Lies</td>
</tr>
<tr>
<td>Housing destroyed</td>
<td>Corruption</td>
</tr>
<tr>
<td>Roads destroyed</td>
<td>Mobility lost</td>
</tr>
<tr>
<td>Birds Flown</td>
<td>No Compensation</td>
</tr>
<tr>
<td>Crops destroyed</td>
<td>Drains unnecessary/ incomplete</td>
</tr>
<tr>
<td>Trees Uprooted</td>
<td></td>
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<tr>
<td>Forests Cleared</td>
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Distributaries incomplete/too low

Graveyards lost and torn and made inaccessible for us

Water Logging

Prisons built to protect us
Rowed Kohee Destroyed  Livelihoods destroyed
Damaan divided
Too much water/Too little water
Migration Barren wastelands
Nomadic lifestyles destroyed
New Power brokers Kacchi destroyed
(wo)manslaughter as people drown in the canal

And therein lies the testimony of those who have lost. This litany would be seen as isolated incidences and so the categories and listing of violence would restrict itself. And that is precisely how you would bracket your violence, simple boxes to be remedied. To be left in your hands and your graciousness to remedy. That this is not a mere misfortune or an isolated happening was testified to by those from other areas who have suffered similar violation. From the LBOD; Tarbela; Badin, RBO D, Kacchi Canal, Greater Thal Canal, Ghazi Barotha Project, coastal areas – all subject to similar logics.

The dream had become a nightmare.

And yet there was a deeper series of crimes that this litany speaks of. It tells of a threefold taking

Of Language: When you tore us apart you also tore apart the language by which we read this land. The language of the land by which we have lived for centuries was replaced by a science which relies on the state as its motor and its legitimacy – yet a science that failed as the litany bears testimony to its technical failures. Language dignifies life and you deny us the communicable nature of humanity and nature. The Lok Sath restores this.

Of Power: power was taken away from us and placed in others’ hands. And with that destiny is taken from our hands. Everything that furnished us with the languages of the land have been taken and given to others to exert their control over us and our destinies. No longer paying homage to the Goddess and the Rowed Kohee we must pay homage to the man who controls our waters, who compensates us, who resolves our disputes over our lands et al. The Lok Sath restores this.

Of Material: water which lied between God and us you have taken away and sought to make it into just a simple good which can be bought and sold. And in commodifying water you commodify us. The Lok Sath responds to this.
III

Guilt

The testimony of the victims that constructs the litany omits to tell us who is responsible for these crimes. Who enabled this violence? Who is guilty?

We bring to task two criminals who colluded together:

The state of Pakistan
The Asian Development Bank

The former provided the physical arms for the implementation of the crime – the police, the ongoing colonial architecture of power, WAPDA, the law, the bulldozers. The latter furnished the capital and forms the new colonial architecture of power that the weight of the world now carries.

The justification and your defence is that it was done for a greater common good, under the name of development. It is this that animates your interventions. A development that requires sacrifices, the death of us as us. And for what have we been sacrificed – the salvation you seek for this sacrifice is in development. That what you do is for the good of us. And if not us then certainly it is good postponed for some future or a good shifted to some other place. And when we testify that in fact it is not good for us and victims from other projects testify that you are habitual criminals, one wonders who it is who benefits from this sacrifice?

We announce that those who benefit are yourselves. Your machinery and industry of your being – civil contracts, corruption, consultants, interest rates, new loans to cover old loans, promotions, daily allowances, and the continuity of elites old and building of elites new.

That this was your intent is apparent as you attempt to abrogate responsibility claiming it was the other that committed the crime. And when you have the chance to redeem yourselves in your Stakeholders dialogue and in the GRSC, you soil your hands even more and your intent is made clear as the business of your being is renewed. You obscure your crimes by your laws and your conscience dies.

Our Lok Sath pronounces you guilty.
IV

Punishment and/or Surrender

And so what is to be done?

Realisation of your crimes has not been forthcoming, your deeds, your words and your eyes tell us that this realisation has not come to pass. Instead you obscure and collude to avoid your responsibility, the passing through the temples and the machinery of your law acts as your redemption song. And yet it cannot redeem because you have not recognised your crime and your failures.

Instead we are left with no choice. Punishment and/or surrender? It is both. The only punishment that can be is surrender of yourselves and the confession and realisation of your crimes. Step away from your law which negates any possibility of your conscience. And resort to the course of salvation which lies either in the law of love or of suffering. The choice is laid bare for you – respond to your conscience and admit your crimes and failures and take responsibility for these. Or face our conscience.

Let us help you make this tangible:

The Lok Sath declares the start of a campaign of civil disobedience which can include:

1. **Water Taxes** will not be paid.
2. A **Long March** or **Jal Jatra**, a pilgrimage to worship the Indus water and feel its pain.
3. An **Indefinite Hunger Strike** to suffer on your behalf and quench violence.
Panel’s meeting with Mr. Akram Mulghani, Nazim of Sokkar

(Mr. Akram Mulghani was also member of the GRSC)

April Fools Day

Mushtaq: should we start?
Mulghani: yes we should start discussion
Mushtaq: these guests will explain you the purpose of coming here….. I will translate the discussion.
Mulghani: please carry on….
Larry William: we are the members of the inspection panel which came together in response to request by Mr. Gadi and other NGOs to look how the bank spends its money in building chashma project……whether it follows all the rules which the bank has laid off that it must follow.

(Mushtaq starts translation but Akram Mulghani gestured that he would directly converse with the panel in English. He paraphrased that the purpose of inspection was to judge whether the money was spent properly or improperly. Most of remaining discussion was directly held in English. Other persons present in the meeting continued to add comments/remarks).

Mulghani: the inspection team from asian bank or world bank…?
Larry William: the asian development bank……how they followed their rules.
Goran: ………we are appointed by the bank……we are an independent panel.
Larry William:………………we hope the Bank will listen.

(Meanwhile, Mushtaq clarified the panel that the claim was not filed by NGOs. Rather the requesters are six individuals who were working in different NGOs at the time the claim was filed).

Mulghani: a year a go, a team came here……an inspection team……they inspected and visited the site….but there was no result.
Goran: can you give details….?
Mulghani: I think Mushtaq was accompanying them….
Joshi: who did come?
Mulghani: this happened a year ago.
Mulghani: recently, a person came here…..he was from Pakistan….he was sayyed or shah or something like that.
Joshi: when did he come?
Mulghani: he came here two or three months a go…..he noted our problems…… but I don’t think they will do anything….
Mulghani: an inspection team came here a year ago, Mushtaq!!!!!
Mushtaq: let me explain you……they may be Adil Najam and Ayub Qutub, who were doing survey….
Mulghani: I don’t doubt you……you are right.
Mushtaq: they were appointed by ADB to do survey.
Mulghani: no, no…there was another team that was inspecting whether the money was spent correctly or not….
Mushtaq: they were from ADB……..
Mulghani: listen Mushtaq…….the adb’s own team should also report correctly.
Mushtaq: yes……you are right …
Mulghani: they should report correctly……...we don’t know what happened later on……....this only means we just complained and they left.

(Mushtaq tried to explain the confusion that arises from several ADB missions and NGOs visiting the village and the issue of compensation.)

Mulghani: no, no, this is not only the matter of compensation…. I am not discussing compensation…… there was a team that came here when flood entered into the village… about eighty-ninety houses were damaged…….the revenue department did also report the damages…………roundabout ninety to hundred houses were damaged…………a person drowned in rowed-kohee……but no compensation was made……...and they promised that they would compensate the people….. people waited for a year….. but there was no result.
Joshi: who were they? Was that adb?
Mushtaq: I think it was from ADB……... Matsuo and other persons are used to come here.....
Goran: yes there is a report…. I have done with the resettlement study……there was a report that says that the nazim of sokkar village confirms that flood damage was not due to the project.
Mulghani: not at all. I have never said that… they told a lie.
Goran: so what is your opinion? …. we can now hear first hand information…..
Mulghani: the flood was due to their fault…they were constructing the channel. ……..they would have first constructed the protection bund.……but they did construct it later on….they didn’t construct the protection bund that is why our houses were damaged……no compensation has been paid.……this all is purely a fault of wapda….. that is all… I don’t know who is responsible…I don’t know…………... It was the responsibility of all parties……. wapda plus taxer.
Goran: the report that I am seeing…I am just asking it says that the flooding was caused due to--
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Mulghani: now they have constructed the bund…. 
Goran: … this did not happen this year.
Mulghani: no, no……two years before, 2001
William Larry: they say that was caused by........
Mulghani: after that they have constructed the protection bund.
Joshi: after the flood…?
Mulghani: after the flood…
Mushtaq: please listen their question
Mulghani: I came to know it is being said by adb that nazim of sokkar union council satisfied us.
Mushtaq: another matter is that they (wapda and adb) say that houses were damaged because villagers had wrongly diverted water of rowed-kohi to village.
Mulghani: why they should do this….? how can we divert rowed-kohee to our own homes…? even a mental person can divert the water towards his home; a normal person can never divert the hill-torrents towards his home……how is it possible?
Amaresinghey: And the same report says since the person who was drowned was not from this area……nothing to do with this village (not fully intelligible).
Mulghani: he was drowned within the village…within the village…… I can show you the site and the people will tell you how he was drowned here…………they tried to get rid of it…………they tried to get rid of it…it is their fault.
Goran: now we have the chance to get first hand information….
Mulghani: now they have constructed the protection bund……you may see….. they felt their fault….they acknowledged their fault…..that is why they have constructed the protection bund…..
Goran: before the flood protection bund was partly done….
Mulghani: no…at that time no protection bund was constructed….
Mushtaq: First time there was no protection bund.
Mulghani: first time there was no protection bund from any side.
Mushtaq: second time it was half constructed….
Mulghani: no flood came second time….
Mushtaq: flood came once…..
Mulghani: flood entered into whole village……. houses were damaged….
Sulaiman: Mushtaq, they (the panel members) are taking notes on rough…. papers…………
these problems are related with Sokkar, not with Taunsa town, Tubb…. they should at least acknowledge it….
Goran: we are taking notes…………
Sulaiman: ok. …these problems are related with sokkar village……there should be the specification….
Mushtaq: they have noted that these issues are related with sokkar village……
Goran: I want to know when the villagers realized there was the risk of flooding…………
Mulghani: there was always the risk of flooding……. floods come directly from the west side….. it was not first time the risk of flood…………we always feel the risk of flooding……now I feel the protection bund is not sufficient to control the flood….
Mushtaq: let me explain……the question was when the risk of flooding was first time realized due to the canal…..?
Mulghani: they (wapda and adb) first realized when flood entered into the town…..after the flooding……before that they didn’t pay any attention…..
Goran: you said floods were always come……what is the difference?
Mushtaq: the question is what the difference is before and after the canal……
Mulghani: before the canal, floodwater was used to flow without any obstruction……after the construction of canal protection embankment on the west side, rowed-kohee could not cross the canal freely……that is why there was flooding……it spread all around in the vast area……now after three years it is crossing but channels are silting up…………now drains (FCCS) are cutting lands…………you can visit the site……you can check the site……it is very close by…… it is cutting up lands from both sides……
Amarasenghe (not intelligible)
Goran: the embankment how does it affects the villagers…… (not fully intelligible)
Mulghani: now the town is saved to some extent…..
Goran: is there any possibility of breach?
Mulghani: yes there is a possibility……I don’t think it is hundered percent constructed according to the satisfaction of us…….they people have no idea about hill-torrents…..
Mushtaq: the builders-----
Akram: yes, the builders have no idea about hill torrents……. hill-torrents do never come into controlled position. It is always speedy water………hill-torrents are always speedy……you can’t fix quantity………sometimes it is in low quantity…sometimes it is very high quantity…. even we can’t imagine about it……in this year, it breached our bund………. people filled it early in the morning with the help of tractors. 

Mushtaq: the breach that occurred on 21st August, 2003?

Mulghani: yes, this year (monsoon season).…. 

Mushtaq: can you tell about the problem of drainage after the construction of bund?

Mulghani: yes, I tell about it.….. 

Mulghani: next is that the area that was previously being cultivated within the protection bund, those lands have not been provided proper *mogas* (inlets)……all farmers who now own agricultural land within the embankment they have lost their source of income.

Goran: how much land is this?

Mulghani: About 4-5 *muraba* (4000-5000 kanal)…..that is owned by different people………not cultivated by one person……

Mulghani: Next, there are no arrangements for the drainage of sanitation and rainwater water in the village…. and that is very important and necessary.…..

Mushtaq: can you tell about the issue of sump-pumps?

Mulghani: yes, I discuss that…..did we complete the discussion on protection bund?

Mushtaq: (to the panel) did you have any question about protection bund?

Akram Mulghani: Its width and height should be improved….we need to change that….otherwise, within two or three years the protection bund will be finished….its width is especially very low at some spots…..

Goran: can it be breached….?

Mulghani: yes, and at some points, its height is low…..you can visit the site. I can show you…..

Mulghani: water management department looted the people…..they received Rs.250/ per acre from each cultivator for the construction of *khalsa* (water courses)…..and those water courses are lying incomplete……now Water Management Department has gone as it left the site…..

Larry William: we talked to one village that has losses….could you try to finish the work through some appeal and legal actions?

Mulghani: ha ha ha ha *(laughter)*….how can we do that? .....what can we do...?.....they had a period.......they had a fixed period.…. 

Mushtaq: their job period has been finished and they have now left the area….and legal action....?.... the courts you know…

Mulghani: and we were not given any receipt…..

Goran: was this the legal fee?... I mean…..

Mushtaq: yes that was the legal fee…..

Mulghani: yes that was the legal fee to construct water courses….. 

Mushtaq: The complaint is that water courses were not properly constructed………

Mulghani: don’t say they were not properly constructed….they were constructed not at all…proper and improper, that is a different thing. 

Joshi: there was no construction work at all…

Mulghani: there was no construction work at all…..

Mushtaq: definitely the people themselves have constructed………

Mulghani: I have constructed myself……

William Larry: they may charge for irrigation water…..am I correct?
Mulghani: they charged from us, water management (Department)…..and they have gone…..
Mulghani: next, some lands that can not be irrigated by normal water courses, it is necessary that they (wapda) should provide sumps or wells in main canal to the people for irrigation purposes…..they provided……I think…six or seven sumps or wells in D.I. Khan District in five union councils and they have also provided five or six wells in eight union councils in Punjab…..they have not treated us equally……on equal level.
Mushtaq: is there any fee for the approval of sump pumps?
Akram Mulghani: no…..
Son of Mulghani: today, Shafi… the SDO….. told that the quota of Srahad (NWFP) has been provided……while, for this whole cotton season, 1000 cusecs has been determined from Lahore, although we have demanded that the quota should be determined up to 1500 cusecs. If the peoples rise up and block the road, this may or may not happen……..otherwise, the water has been released to Sindh.
Mulghani: this is the point for later on……
Amarasenghe: (not fully intelligible)
Mulghani: Punjab is not getting its quota the quota of its water……
Goran: we have seen some examples where there is not enough water to get at the end of distributary…..
Mulghani: you are right, sir…..
Goran: how much land has been affected here in your area?.....
Mulghani: our wheat has been damaged……our wheat crop has been damaged…..the water was not provided for full two months……it is notable, sir….it is notable…..they didn’t provide water for two months and our wheat crop has been damaged……we would not get proper average….
Mushtaq: so the yield is basically low here…
Mulghani: yes, the yield…. we will get low yield…..
Goran: how large is area you think that is being affected by this too little water….?
Mulghani: the whole area….the total area….from Rammak to up till the tail…. 
Mushtaq: he is referring to the boundary from where the Punjab Province starts up to the tail……the whole area are being affected by this shortage of water.
Mulghani: no, no, not the shortage of water……the canal was closed for two months….. it was dry for two months…..
Mushtaq: They have closed the canal for maintenance purpose….however; in fact no desilting was done….I have shown you that after some area, there was no desilting…..in this area, no desilting was carried out at all…..and in this canal no such desilting was required because this is new canal…..
Mulghani: according to the decision, they were to close the canal for 25 days…but they closed it for 60 days….our crops were damaged, our fodder for livestock was damaged…. 
Mushtaq: a lot of losses
Goran: what is the response?
Akram Mulghani: they don’t bother….
William: they don’t respond…
Akram Mulghani: Not at all…..especially the wapda…..the canal is under the wapda…
William Larry: wapda is more difficult------
Mulghani: ha ha ha (laughter) more difficult...there is a director in D.I.Khan. He teaches cultivators as a police officer.... Notable, sir....we made many sort of complaints to him...he does not treat us properly....I think he is a powerful person.....he does what he likes.....

Mushtaq: the project director.........
Mulghani: he is the project director.....he is on the seat of chief engineer....
Mushtaq: he is an adhoc chief engineer.....
Mulghani: yes.....he does not treat us gently.... he does not try to satisfy the people........and he always behaves like a police officer or an army office.....that is not proper way.....and he is doing as he wishes.....he closed the canal for two months........we requested him several times during these two months but he did not give any sort of response.....
Mushtaq: when the legal permission for sumps is not given to people, how do they treat the people because people cultivate lands?
Mulghani: then they say you are doing illegal. ...they have filed police cases against the people....
Son of Mulghani: they say the abiana (irrigation tax) has also been imposed....
Mulghani: another point is that there is no doubt they have installed sump pumps but they are irrigating lands that are in the command area.......I admit that sump pumps are illegal......but they have not provided sump pumps are water courses that is why the people have adjusted their pumps on the main canal.....they are cultivating command area, not un-command area.....notable, sir.....that area should be cultivated....that must be cultivated.......
Mulghani: next, the Punjab is not getting its due share of water. Punjab has to get 1800 cusecs of water.......at this moment, we are getting only 600 or 700 cusecs.....how can we cultivate cotton and other crops?.....I think it will become very difficult.....we don’t think that we will be able to cultivate rice and sugar cane and even the canal water will not be sufficient for next cotton crop.....
William Larry: That is less water....
Mulghani: yes that is less water. D.I.Khan district is getting its full share.... they are getting their share.....and that director is local from that area.....this is notable....that gentleman is the local person from D.I.Khan.......he is giving their share but he is not giving us our share.....neutral person should be appointed here. ..... Son of Mulghani: now they employed 14 wireless operators....they are from D.I.Khan.....most of the other employees are also from D.I.Khan district.....
Mulghani: That is why I am requesting that the neutral person should be appointed as our director who should treat us equally.....honest person...gentleman....not prejudiced (laughed).....
Mushtaq: what about compensation?
Mulghani: compensation is not adequate.....in Taunsa Mauza, they have given Rs.90,000 for per acre but in this area they are giving us Rs.35000-40,000 per acre.....they are adjoined areas.....Sokkar is an adjoined mauza to Taunsa.....
Goran: this is not clear to me....can you clarify?
Mulghani: sir, I clarify you......there are two adjoining muazas....one is mauza Taunsa, another is mauza Sokkar. They are paying Rs.40, 000 per acre for Sokkar mauza.... in Taunsa mauza, they are paying Rs.90, 000 per acre....and the land is almost same and have equal value.....but there is the fifty percent difference in land compensation.......
Mushtaq: what is the current value of land in Sokkar?
Mulghani: recently a gentleman sold land in my presence…..its price was 140,000 per acre…..they are not giving the proper payment…..if they say, this is the value, then they should provide us land (for land). We don’t want cash compensation…..there is a lot of state land available in Taunsa…..

Son of Mulghani: the minister came here and announced _abiana_ (Irrigation Tax)….he has done damage to us…..they will impose it in back dates…..

Mulghani: the system is yet not complete…..even distributaries, water courses, _chack bandi_ are not completed…..but now we will have to pay _abiana_…..

Mushtaq: we came to know _abiana_ is being imposed on land holding….

Mulghani: this is not the proper way…..still a lot of lands are lying barren…..why should we pay _abiana_…..and those lands have no source (for irrigation)…..these land are included in the command area……but they are still imposing _abiana_…..the project cost is about eighteen billion rupees……but it is not supervised properly…..there is no proper supervision.

Goran: what happened to the complaints you have filed to the GRSC?

Mulghani: I was the member of that Committee from farmers’ side……so far there is no result…..

Goran: when you say no result you mean no result…..

Mulghani: I mean zero result…..

Joshi: You mean no implementation….

Mulghani: no, I mean zero result

William Larry: any effort to make the use of pesticides, fertilizers effectively…..is there any program?

Mushtaq: they are asking about pesticides, fertilizers…..whether its use is increasing or not…..will it have any impact?

Mulghani: definitely…..

William Larry: is anybody coming and talking?

Mulghani: yes, there was a seminar in Taunsa, a month a go…..I agree with them…..

Goran: another question….whether the agricultural extension services train farmers or not?

Mulghani: no, not at all……everybody is running on his own way…..we are agriculturalists…..we know better compared to them.

Joshi: is there any hope that recommendations of GRSC will be implemented….?

Mulghani: we have sent (the recommendations) to the government….

Mushtaq: do you have any hope something will happen in future…..

Mulghani: God knows better (_laughed_)

Goran: As a member of the Committee, are you satisfied with the level-----

Mulghani: I am satisfied with the report…..not with results…..

Goran: Was there an interaction between peoples and Committee?

Mulghani: yes, many times there were meetings…..

Joshi: So you are satisfied with the consultation and communication with the people.

Akram: yes, definitely, it was necessary…..

Joshi: Are you satisfied with the process that was followed?

Akram Mulghani: yes……there was a judge, Aqil Mirza…..he was nice person….a coolheaded person…..there was another person…..who was that Mushtaq?

Mushtaq: Trimizi?

Mulghani: yes……but the chairman was very nice person….he was used to listen attentively and discuss each thing.
William: so you have written the report.
Akram: yes I was present in the final meeting…..they gave full report…. all Committee members agreed.
Mushtaq: do you know about the meeting on the GRSC that was held in Islamabad….. were you briefed about that?
Mulghani: no, we don’t know about the result…..
William Larry: what we were hoping that the report would have some timetable…..things would get done.
Mushtaq: in my opinion, this was just to diffuse the opposition…..to show the people that we are very concerned about you….this is self evident by the progress report on the GRSC.
Goran: as a local leader what you are supposed to do in order to address some of these problems?
Mulghani: my suggestion to you or request (is)….whenever any responsible person came here we requested him to complete the system…..the system is not completed. …we are not satisfied…..in this position….we are not satisfied…. it is not completed. we can only request…..we don’t have any power…..at various times, we have given our suggestions but no attention was paid…..if wapda and irrigation department impose tax without completing system, then there is a problem…..last year, the people who bribed them in form of giving wheat their peter (sump pumps) continued to operate….the people who did not offer wheat as bribe the police cases were registered against them…. Now a day, the gate keepers are asking money as bribe to release water (in distributaries).
Mansoor Malik: give five hundred rupees and gate will be fully open for one night…. they don’t bother what happened to others……
Mulghani: they (the gate-keepers) are the real in-charge of the Chashma Project.
Mansoor Malik: another interesting aspect is that no body takes responsibility…..if we go to wapda……they refers us to the irrigation department…..if we go to irrigation department……the officials refer us to wapda.
Mulghani: and if you make any sort of complaint….wapda says irrigation (department) is responsible….irrigation department says wapda is responsible….we are lost…..
Mushtaq: this is their typical politics……
Mulghani: it is an insult of our country whatever we are discussing……but these are bitter facts……these are very bitter facts………..
Mansoor Malik: the area under contract 68 has not been so far taken over by the irrigation department……the irrigation department says we should be given money by wapda……there is an on-going battle between them.
Mulghani: one most important point….. now they have constructed causeways on the Indus Highway……in hill-torrent season, the traffic will be blocked…..
William Larry: That is a long season………..
Mulghani: that is four-month season…..the traffic will be blocked from both sides….. they would have constructed the bridges…..and in near future they will have to construct them……this is a double wastage of national money…..first, they constructed causeways, next they will construct bridges…..they will have to construct (bridges)………..
Mushtaq: A lot of rowed-kohi water flows across these causeways……this is a major highway connecting Peshawar to Karachi……
Mulghani: yes, this is the major highway……in the NWFP everywhere there is a bridge….but in the Punjab, there are no bridges…..
William Larry: is it the responsibility of the highway department?
Akram Mulghani: no, no.....
Mushtaq: there is an interesting story.....we have narrated it many times.....the highway was constructed first and the canal was constructed later on.....there was no coordination between wapda and highway department.....
Mulghani: this is a very important point.....they constructed roads in front of drains.
Mushtaq: FCCs were located somewhere else while the bridges were constructed at another location.....so they had to reconstruct causeways.....so the previous investment in constructing the bridges was also the wastage of money.....
Mulghani: and they will again waste money in near future when they will reconstruct bridges........
Mulghani: we have been looted by Taxer.....there was a pact with the government that they (Taxer) will repair our roads.....they did not repair even a single road.....when we contact the highway department, they (the officials) say that the Taxer will repair it. now Taxer has left to Istanbul.....that is why Taunsa-Sokkar road is not repaired for five years. Sokkar-Bughlani Road is also un-repaired......main Road to Kot Mahoi is lying un-repaired.....there are many roads that are un-repaired.....four roads are lying un-repaired in my own union council.....

Panel’s meeting with the people of Channar village
Day after April Fools Day

Master Raheem: mission should introduce and describe the purpose........
Larry William: I am Larry William and there are other members of the panel........we are here in response of Mr. Gadi and others who have filed a complaint to the bank about the way the chashma three irrigation project has been constructed.....we are here to see if the asian development bank followed its own procedures in providing the money for the construction of this project.....we are going to write a report to the bank which will provide our valuation how we think the bank followed its procedures.....the hope is that as a result of that report the bank will improve the way it gives its money and supports the construction of the projects like chashma.....and that is the major hope of our work........
Mushtaq: as a requester let me also explain a bit about this process.......first we filed the claim and they will prepare their report on that.......whether they prepare good or bad report that depends on them.....we are facilitating them in this visit.......first we thought we should not facilitate this visit.......the people who were present in lok sath they know it was discussed whether we should accompany them or not.....in lok sath we discussed we have already filed a lot of complaints.....a committee was also established...many complaints were sent by this village.....
Karim: we have the receipts...
Mushtaq: we are doing it for last three years and our experience tells us that nothing will come out of this process........
Master Reheem: there is no way ahead....
Mushtaq: at last we decided to arrange their visit but we need to keep in mind that they will prepare the report.....whether good or bad.....but final power is in the hands of asian development bank...our experience is that we don’t have any hope from asian development bank....the basic
interest is to give loans and get profit…...secondly they are outsiders…..they employ consultants, advisors…..they don’t bother what is being said by the people….what are their problems….that is why we said in **lok sath** that we did not have any hope from this process….the most important thing for us is our own struggles…..we will have to find our own solutions…..we will have to hold **lok sath**…..at last we decided to arrange their visit….there might be some benefit of the inspection report……..

**Goran:** first give the name and location of this village...........

**Master Raheem:** this is mauza phagan marral, the village is baet channar.....

**Abdul Wahid**¹: is it included in the command area...

**Mushtaq:** no this is not included in the command area....

**Larry William:** is this FCC not completed up to the river.....

Mushtaq: in this case it is not FCC… veohwa rowed-kohee is not considered FCC….in this case the channel was left as it was in the past......

Goran: ok……

**Karim:** please note that this area was written as no man land...

**Mushtaq:** can you draw the map and describe impacts

**Mohmmad Yasin:** this drain has not been prepared below the road....

**Mater Raheem:** rowed-kohee comes from the west towards east…. when it comes to this place there is a **bhik** (a high bank)….from there it spreads everywhere in the whole area….its entry point is village **churkkan**.......when it comes to this area it has silted up the riverine belt and there is no way to the river......there are seven to eight mauzas and river is seven to eight kilometers away from this place.......about 30,000 acres of land is affected....it spreads on about 15-16 kilometers from south to north----about eight **mauzas** are located here....you can count them.....nutkani, durra.....churkan.....gaadi.....lashari, baet fatah khan, gamb.........

**Mor Khan:** the rowed-kohee comes here and goes to north......there is another incomplete drain..... they have not completed that....this area is thus affected by two rowed-kohees—veohwa and korra rowed-kohee...

**Mushtaq:** how much population affected by this flooding rowed-kohee.

**Mor Khan:** about 15-20 thousand households...

Goran: what is the household size....?

**Raheem:** about seven to eight persons

**Mushtaq:** these are definitely rough estimates.....if you are interested to get the accurate information you can get it from union council record....

**Abdul Wahid:** what is the average landholding......

**Karim:** There is one person present here he owns 600 acres of land.....there are small landowners as well.....having 15 acres of land...there is also allotment by the government.....some of this area is owned by the Government of Pakistan.....some are big land owners and some are small.....there are people who own 2 to 3 acres.....

**Abdul Wahid:** what is the average.....?

**Mushtaq:** can't provide you accurate average....you can get the data from government department....

Goran: 2 to 600 acres is the range....

Mushtaq: no, no....these are just guesses....that is why I have said that you needed to get information from the government departments....however the guess about affected population and area is almost accurate....

---

¹ Mr. Abdul Wahid was the consultant hired by the inspection panel.
Abdul Wahid: If they know the size of the area and they know the population roughly….it is 15 acres per person….
Mushtaq: many are landless persons….secondly this is not socio-economic survey that we are conducting…..
Goran: exactly….
Mushtaq: that requires another methodology…
Goran: ask him to continue…
Mater Raheem: this whole area is first class agricultural land…it is number one agricultural land in Pakistan….everything is before your eyes…crops, trees…..
Karim: even today we feel the threat of rowed-kohee….after the construction of the canal we are suffering a lot….it turns into toofan-e-nooh (mega flood)….previously it was distributed upstream….the people needed this water in the past but now after the canal they don’t need rowed-kohee and it all comes to us….after the construction of canal it inflicts damages upon us….now there is no use of rowed-kohee in the command area….
Abdul Wahid: the land that were being previously irrigated in the west side of the canal…..are those are not irrigated now…
Yasin: yes those lands are still being irrigated by rowed-kohee….those (lands) which are now in the command areas are not irrigated by rowed-kohee….previously rowed-kohee was dispersed in very wide and far away area…
Abdul Wahid: correct….
Mor Khan: with the help of channels….for example this is rowed-kohee….its water was taken away 20-25 kilometers like the canal….
Abdul Wahid: correct….
Mor Khan: there is threat to our houses…..
Mor Khan: another important point….when the west embankment of the canal was constructed……its height is unusual….so before it can cross the canal the rowed kohee diverts from north toward south….towards khad buzdar where there is already a lot of rowed-kohee water….the channel of khad buzdar is lying low…. 
Mushtaq: whatever I understood is that there is a sharp fall when it crosses super passage and when it enters into the riverine belt….when we entered into this low lying riverine belt you would have also seen that…so because of fall its speeds increases….
Abdul Wahid: rather sharp fall should decrease its velocity
Mushtaq: why?
Abdul Wahid: it is a kind of check and it will dissipate its energy…decrease the velocity…..
Abdul Wahid: according to the principle….
Mushtaq: we can discuss that later on or you can mention it in your report…
Mor Khan: my point was not related to this aspect…
Mushtaq: simply speaking rowed-kohee of korra instead of properly crossing super-passage it diverts towards the channel of vehowa rowed-kohee…
Mor Khan: the excess canal water is also discharged into this eight kilometer riverine belt….there is no extension of distributaries….so the rainwater, rowed-kohee and excess canal water all get together becomes grave problem for us….and if there comes flood from the Sindh River then we will not have a piece of land to dig out our graves…. 
Amarasenghe: can I go to the point that he made earlier….he said flooding is partly due that after the canal people upstream are not making the use of rowed-kohee…why is that? why people upstream are not using that?…..
Mushtaq: are you referring to the canal command area…?
Abdul Wahid: no just in the command area….
William Larry: it is just because of that was below…
Mushtaq: that referred to the people in the command area…
Amarsenghe: I misunderstood that….
Mushtaq: misunderstanding… but you need to keep in mind that major rowed-kohee areas are below the canal because in the (present) canal command area it was possible for the people to easily divert and control rowed-kohee…..so present canal command area was the major rowed-kohee area….
Yasin: because of this we face a variety of problems…after flooding we face problems in mobility….we take patient to hospital on our shoulders….there are no ways after flooding….our children can’t go to school at least in three months…
William Larry: how long it remains….
Raheem: almost four months…it starts from May-June and remains up to September…this is monsoon season….if there is rainfall today our crops will be destroyed…..clouds seem gathering today….if it starts raining today our crops will be destroyed tomorrow as it happened in past…

Note: The discussion was abruptly ended because of the exchange of hot words between Mr. Abdul Wahid and Mushtaq Gadi. Mushtaq Gadi said that the panel and visiting team should not ask questions in inquisitive way and judicial style. Moreover, there was also a protest against the attitude of policemen who were accompanying the panel for security reasons. Throughout the meeting, the policemen continued to verbally threaten villagers. Even at one occasion during the visit, the police man said he would like to fire Mushtaq because he was the main culprit.
Later on the panel took the field visit of the area affected by flooding last year.
ANNEX 4

COMMENTS

OF

ADB MANAGEMENT

TO THE

INSPECTION PANEL

ON

THE PANEL’S DRAFT REPORT

ON THE

CHASHMA RIGHT BANK IRRIGATION PROJECT (STAGE III)
(Loan 1146-PAK [SF])

IN THE

ISLAMIC REPUBLIC OF PAKISTAN

May 2004
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<th>Abbreviation</th>
<th>Description</th>
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<tr>
<td>ADB</td>
<td>Asian Development Bank</td>
</tr>
<tr>
<td>AR</td>
<td>Appraisal Report</td>
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<tr>
<td>BIC</td>
<td>Board Inspection Committee</td>
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<tr>
<td>BTOR</td>
<td>back to office report</td>
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<tr>
<td>CBI</td>
<td>Consensus Building Institute</td>
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<tr>
<td>CRBIP</td>
<td>Chashma Right Bank Irrigation Project, Stages I, II and III</td>
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<tr>
<td>EA</td>
<td>Executing agency</td>
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<tr>
<td>EIA</td>
<td>Environmental impact assessment</td>
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<tr>
<td>EMP</td>
<td>Environmental management plan</td>
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<tr>
<td>FR</td>
<td>Feasibility Report</td>
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<tr>
<td>GRSC</td>
<td>Grievances Redress and Settlement Committee</td>
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<tr>
<td>IEE</td>
<td>initial environmental examination</td>
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<tr>
<td>KfW</td>
<td>Kreditanstalt für Wiederaufbau</td>
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<tr>
<td>NDC</td>
<td>National Development Consultants</td>
</tr>
<tr>
<td>NDSP</td>
<td>National Drainage Sector Project</td>
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<tr>
<td>NFC</td>
<td>National Fertilizer Corporation</td>
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<tr>
<td>NGO</td>
<td>Non-Government Organization</td>
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<tr>
<td>NWFP</td>
<td>North West Frontier Province</td>
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<tr>
<td>OM</td>
<td>Operational Manual</td>
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<tr>
<td>OP</td>
<td>Operational Procedures</td>
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<tr>
<td>PBME</td>
<td>Project Benefit Monitoring and Evaluation</td>
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<tr>
<td>PIME</td>
<td>Project impact monitoring and evaluation</td>
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<td>PPAR</td>
<td>project performance audit report</td>
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<td>PRA</td>
<td>participatory rural appraisal</td>
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<td>SIEE</td>
<td>summary initial environmental examination</td>
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<td>SSAP</td>
<td>Social Survey and Action Plan</td>
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<td>TA</td>
<td>technical assistance</td>
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<td>TOR</td>
<td>terms of reference</td>
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<tr>
<td>TPAR</td>
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<td>WAPDA</td>
<td>Water and Power Development Authority</td>
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EXECUTIVE SUMMARY

1. This submission represents formal response of ADB Management (the Management) to the Draft Report prepared by the Inspection Panel (the "Panel"). The latter was commissioned by the Board Inspection Committee (the "BIC") to look into ADB’s adherence to its Operational Policies and Procedures in relation to the Chashma Right Bank Irrigation Project (Stage III), (the "Project"), approved in 1991. This submission should be read with Management responses to the initial complaint and request for inspection ("Earlier Responses"). Management appreciates the opportunity to provide these comments, and thus the inclusion by the BIC of this extra step in the Panel’s Terms of Reference. The underlying objective is to assist the Panel with the preparation of an accurate, fair and balanced Final Report, thus helping the BIC and the Board discharge their responsibilities under the Inspection Policy.

2. The main conclusion from the Draft Report is that the Panel finds fault with the way ADB prepared and implemented the Project, linking this primarily to the approval of a Supplementary Financing in 1999. Management does not agree that ADB failed to comply in any substantive manner with its Operational Policies and Procedures in relation to the preparation and implementation of the Project. Management further submits that ADB acted responsibly and adhered to the Operational Policies and Procedures applicable at the time in relation to the approval of supplementary financing for the Project in 1999.

3. This Response is structured in two parts. In the main section, Management addresses each of the main points raised by the Panel in relation to the Inspection. In an Attachment, Management provides additional paragraph-specific responses to issues raised in the Draft Report. Below, Management summarizes the main concerns it has with the findings and conclusions reached by the Panel. These cover principally the following areas:

- Project Preparation
- Project Implementation
- Professional Judgment
- Supplementary Financing
- Other Issues

4. Management does not wish to compromise or preempt the Borrower’s response to the Panel’s Recommendations 1 and 2 by commenting on the same. Management, however, welcomes the intent of Recommendations 3 and 4 to address issues beyond the instant Project and is keen to work with BIC on these.

Project Preparation

5. Management is of the view that it handled Project preparation adequately and efficiently. Moreover, it believes ADB Staff ("Staff") did so in compliance with the Operational Policies and Procedures at the time.

(a) Project preparation was based on the accumulated experience of ADB spanning over many years and comprising 17 loans to the sector and rural communities in Pakistan with total financing valued at just under $1 billion. It also included Stages I and II of a larger program of investments targeting the Project area. The Project itself covered Stage III of this program. In addition, ADB collaborated closely with other institutions in the sector, including the World Bank and bilateral
agencies from many countries. The Project itself was cofinanced with one of them (KfW).

(b) The Executing Agency was experienced and had been involved with several projects of this nature and size in the past. Government attached the highest priority to developing the Project area, previously a semi-arid and barren land with limited production, employment and income possibilities. But this area had the right climatic conditions to become a thriving agricultural center. A major constraint was the supply of water on a regular basis.

(c) Project preparation was supported by a technical assistance grant under which ADB contracted the services of experienced external experts. These experts were engaged to: (i) carry out detailed and extensive due diligence on all key areas, (ii) assist Staff with project structuring, and (iii) help define appropriate implementation arrangements. The team engaged by ADB and the Executing Agency had already worked on preparation of Stages I and II of the Chashma Right Bank Irrigation Project. Due diligence and then appraisals were carried out over a period of almost 3 years in conjunction with Staff. This due diligence covered technical, financial, commercial, legal, economic, institutional, environmental, social, cultural, and other safeguard matters. Staff responsible for Fact-Finding and Appraisal had considerable experience in the sector and in Pakistan.

(d) Staff complied with ADB requirements for processing and implementing projects of this nature. The approaches taken, and the decisions made, met ADB Operational Policies and Procedures applicable at the time. Professional judgment, a basic premise of the way complex development projects can be carried out, was used to address those areas not prescribed for in “black and white.”

**Project Implementation**

6. ADB supervised the implementation of the Project in an efficient and transparent manner, without violating any of its Operational Policies and Procedures.

(a) Implementation encountered considerable delays. None of these delays can be attributed to the way the Project was processed originally, or to the manner in which Staff conducted itself.

(b) The role of ADB was to supervise the implementation of the Project as opposed to actually implementing it. Experienced Staff, supported in a number of areas by external consultants engaged under the Loan, carried out the supervision task. A number of these consultants were placed permanently in the Project area during the Design and Construction phases.

(c) Staff encountered a number of technical and non-technical issues during the implementation phase. Some of these relate to the complaints raised by the Requesters. Others do not. ADB took actions to identify, evaluate and find suitable remedies. ADB never walked away from difficulties, and by acting in this manner managed to address most of the potential adverse effects on local communities. Flood risks came into this category.
(d) In response to the Initial Complaint from the Requesters, ADB recommended and established a Grievances Redress and Settlement Committee (GRSC) to help consult with the communities, both affected and non-affected, primarily for the purpose of identifying grievances and putting together practical solutions to deal with them. This action is considered innovative and in many respects far-reaching, at least in the context of this Project. The recommendations made by the Panel were largely already taken into account by the GRSC.

Professional Judgment

7. Management is of the opinion that the Panel has not taken this aspect into account for the purposes of the Inspection:

(a) The Inspection Policy requires that the Panel gives due consideration to the professional judgment of Management, Staff and consultants. This has not been done.

(b) Professional judgment applies at all stages of the project cycle, including the preparation and implementation stages. At preparation, Staff carries out and judges the results of due diligence undertaken by it and/or others on technical, commercial, financial, legal, institutional, environmental and all other standard safeguard matters. At implementation, Staff is responsible for supervising and monitoring the work carried out by the Executing Agency and/or the owner of the Project.

(c) Management contends that professional judgment was exercised correctly and reasonably in the context of the Project, taking into account all facts and the circumstances prevailing at the time.

(d) In assessing professional judgment, the Panel must not “second guess” the professional judgment of Management, Staff or consultants. Instead, it should examine whether the decisions and impugned actions fell within the range of permissible and reasonable options open to professionals faced with a similar context and situation.

Supplementary Financing

8. The basic premise for the conclusions reached by the Panel is an alleged non-compliance with ADB’s Operational Manual 13 (OM 13) that relates to Supplementary Financing of Cost Overruns. Non-compliance with this OM creates a “chain reaction” of non-compliance with the provisions of other OMs applicable at the time of the approval of the Supplementary Financing in 1999.

9. Management is of the view that ADB complied fully with the terms and conditions specified under OM 13 for the purposes of appraising and approving this Supplementary Financing:

(a) A cost overrun can arise from a reconfiguration of the Project or from a gap in its original financing plan. Unless redressed, the latter creates a mismatch between the original cost estimate and the original financing plan.
(b) The cost overrun of the Project was a function of a financing gap. This amounted to $50.5 million and was created primarily by price escalations brought about by implementation delays, fluctuations in the value of local currency in relation to the foreign currency value of contracts, and budget difficulties. These developments took place in a period of economic crisis in Pakistan.

(c) Unless addressed quickly, a financing gap of this nature can lead to more serious delays in Project implementation, ultimately undermining the viability and the integrity of the Project itself. The Project had already experienced delays because of slow procurement actions. In this case, Management took the view that the reasons for the financing gap, and the request, were justified and merited immediate support.

(d) The Project configuration, scope, objectives and components remained unchanged. The overrun was attributed therefore exclusively to a gap in the financing plan, and to the Government’s inability to make good its own planned contributions.

(e) ADB carried out due diligence as required under OM 13 to appraise the reasons and effects of this financing gap. But this appraisal was not a reconsideration of other essential parameters or design features of the Project. The original features of the Project remain valid to this date. Staff evaluated the causes of the overrun, or financing gap, and then subjected the entire Project to a new economic appraisal to ascertain whether its viability would still hold because of the extra financing or debt structure put in place. In this case, the Project was deemed to still be economically viable. Staff concluded that the causes of the financing gap were related to past delays and adverse economic conditions and that the execution of the Project would suffer unduly unless the financing gap could be met adequately and at short notice.

(f) Management has not interpreted the term “reappraisal” to be anything other than the way it did in this case. In the view of Management, the use of a supplementary facility to cover a financing gap merits only the type of reappraisal undertaken. The reference to a “reappraisal of the entire project” in OM 13/OP paragraph 1 cannot be read in literal terms to mean the equivalent of “full appraisal” as if the Project had been a totally new operation. To the extent that a requirement for a “full appraisal” (i.e., an appraisal with respect to factors not relevant to an assessment of the principal reasons for cost overruns) is based on OM 32/OP, Management is of the view that this would simply be misplaced. OM 32/OP is a general provision related to ADB’s Operational Missions and states what “reappraisals” should generally cover. Extending due diligence to areas other than those related to the cost overrun was considered to be superfluous. If other actions were also required to be taken, this would seriously delay approval of the supplementary financing so that it cannot meet the need. A different approach to the one taken would be untenable and would defeat the logic and rationale for having a supplementary facility in the first place.

(g) In this sense, Management submits that it complied with the meaning and intent of OM 13 in relation to this Project.
Other Issues

10. Other comments that Management submits in the context of the Draft Report from the Panel are as follows:

   (a) The Draft Report has not taken into account all relevant facts in relation to the issues raised by the Requesters.

   (b) The Draft Report does not give due consideration to the rationale and performance of the Project as a whole. Instead, it makes a skewed evaluation of what this performance might have been.

   (c) The Draft Report does not seem to adhere to the Terms of Reference given to the Panel, or with the requirements stipulated under the *Inspection Policy and Procedures*.

   (d) The Panel measures past performance by standards developed and applied years later. In this sense, the Panel has retrospectively applied many Operational Policies and Procedures to evaluate compliance.

   (e) The Panel has applied portions of Pre-1995 Operational Manuals and Instructions without appropriate guidance from BIC.

   (f) There is no evaluation of the adverse effects pertaining to the issues raised and the alleged violations of Operational Policies and Procedures.

   (g) The Panel does not give due consideration to the considerable work undertaken by the GRSC.

11. Management has complied in a substantive manner with all applicable Operational Policies and Procedures in relation to this Project.
I. INTRODUCTION

1. This submission represents Management’s formal response to the Draft Report prepared by the Inspection Panel (the “Panel”). The latter was commissioned by the Board Inspection Committee (the “BIC”) to look into ADB’s adherence to its Operational Policies and Procedures in relation to the Chashma Right Bank Irrigation Project (Stage III), (the “Project”)\(^1\), approved in 1991. This submission should be read with Management responses to the initial complaint and request for Inspection (“Earlier Responses”).

2. The objective of this Response is to assist the Panel with its work. But it is also to demonstrate that ADB complied with its Policies and Procedures in respect of the Project.

3. The Inspection Panel invited Management to submit comments on the Draft Report. Management appreciates the opportunity to do so. Such a provision is not included in ADB’s Inspection Policy and Inspection Procedures\(^2\) (the “Inspection Policy and Procedures”). Nonetheless, in this particular case, the BIC suggested this arrangement under the Terms of Reference of the Panel. Management hopes that its comments will further assist the Panel with its work, and also help the BIC, and ultimately the Board, to discharge its responsibilities in respect of this inspection process.

4. These comments are given in good faith and should not be understood or taken as being an indictment of the inspection process itself or the professionalism of the Panel. Management is as interested as the Panel and the BIC in a Report that provides an accurate and fair account of all relevant facts related to the Project. It is also interested in recommendations that pave the way for solving outstanding issues faced by the Requesters and others. Similarly, Management is keen to learn from the experience and to identify ways and measures in which it can further improve the quality of ADB projects.

5. Management’s comments cross-refer to the Earlier Responses submitted under this Inspection. These comments are structured into sections. In Section II, Management highlights issues related to the Inspection Policy and Procedures, the objective being to share views as to what the Inspection process should be. The objective is to exchange notes on what Management sees as the “rules of engagement.” In the remaining sections, Management addresses in more detail the various specific points raised by the Panel in its Draft Report. A final section deals with Management’s conclusions and recommendations. References to documents and operational policies and procedures (“Operational Policies and Procedures”)\(^3\) are similar to those cited in the Earlier Responses. To further assist the Panel, this presentation is accompanied by an Attachment providing detailed paragraph-specific comments on the Draft Report.

6. Management trusts that this submission will help the Panel with its further deliberations, and ultimately with the preparation of its Final Report. Management and Staff remain at the Panel’s disposal should it require further information and/or clarifications.

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\(^1\) In this Response, the “Project” refers only to Stage III of the Chashma Right Bank Irrigation Project. For clarity, stages I and II are referred to respectively as “Stage I Project” and “Stage II Project.” The Chashma Right Bank Irrigation Project or “CRBIP” represents the entire project covering all the three Stages.


\(^3\) For the scope and extent of “Operational Policies and Procedures” reference is drawn to para. 31 of the Management’s response to the Request for Inspection.
II. GENERAL COMMENTS

A. Overview of Project

7. The Panel has submitted a Draft Report on various issues related to ADB’s conduct on the Project. Although the Panel was not supposed to evaluate the Project, the Draft Report does convey a very skewed image of it. The overview in this section provides a brief account of the "before" and “after” situation in the Project area. Prior to the Project, farming in the area was based on traditional and unstable systems. After the Project, agricultural production is based on an irrigated, and by definition, a more stable system. The traditional system was based on rod kohi, a system reliant on hill torrent water (see Box 5, page 25).

8. The Project area was probably among the poorest in the country in terms of agricultural productivity, at least prior to 1991. The Project was conceived and designed as means to bring prosperity to a highly impoverished area. This was largely a barren and desolate area, with a harsh climate and frequent dust storms. Living conditions for local people were difficult. Only 60% of the rural population received potable water. The rest relied on often-stagnant pond water, with waterborne disease as the end result. Rapid population growth, and limited employment opportunities in the locality forced people to leave their homes and lands. Poverty was widespread. Incomes in the past averaged $14 a year.

9. At appraisal, less than 6% of the original Stage III command area of 134,000 ha was irrigated. Where irrigation was possible, production was high and the range of crops wider. In addition, some 4,000–6,000 ha were irrigated on a regular basis with rod kohi water each year. But a further 22,500 ha just received sporadic rod kohi supplies. The unreliable floods from hill torrents limited cropping to irregular intervals. Hill torrents were often uncontrollable and flooded villages, damaged properties, and standing crops and many times human life also.

10. The Project introduced permanent canal irrigation to a vast area. One of the aims was to increase cropping intensity to 150%, compared to previous intensities of less than 40%. Wheat, lentils, cotton, mustard, rice, and sorghum could now be grown, improving the base and the stability of family incomes. Satellite images show that the Project converted a large area of semi-desert and barani (dry) lands into a more effective and sustainable production center.

11. Stage III of the irrigation system was completed in late 2002. The shift from traditional to irrigated farming, and the corresponding build-up benefits, will still take some time to come through. But these will come and will be widespread, starting with the northern area. Overall, it is estimated that the entire CRBIP area, including Stages I and II, is already producing about 137,300 tons of wheat, 547,500 tons of sugarcane, 40,400 tons of rice, and 5,600 tons of cotton. These production levels will more than double when the Project area reaches full development in about five years. Some 36,000 farm families (an estimated population of 362,000) will be direct beneficiaries. The evaluation of Stages I and II of the CRBIP under the Project Impact Monitoring and Evaluation (PIME) Phase I study already indicate much higher

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4 Under the rod kohi system, farmers divert hill torrent floodwaters that move rapidly down from the surrounding mountains through nullahs (natural channels or gullies) after precipitation falls in the catchment area. As rainfall is highly erratic in the semi-arid Project area, crop agriculture under the rod kohi system is subject to sharp year-to-year fluctuations.

5 Cropping intensity is the ratio of the cropped area per year over the cultivable area. For example, if the entire area is cropped twice a year, cropping intensity is 200%.

6 At appraisal, the build-up period for achieving the target production was assumed to be six years. See the Appraisal Report, Appendix 15, page 13. In 1999, these targets were revised for a ten-year period.
farm income. Thus far this has increased on the average by 279% in the Stage I area and by 508% in the Stage II. The income increase is higher in the case of small farmers than for large farmers. For those previously practicing barani agriculture (before CRBIP), net income also increased by as much as 18 to 24 times. In recently developed areas under the Project, the PIME Phase II study also found that households had 26% to 55% higher monthly budgets on average than those falling outside the command area. The “before Project” scenario was certainly quite different from all this.

B. ADB’s Inspection Policy and Procedures

12. This section outlines Management’s understanding of the Inspection Policy and Procedures. The objective is to provide a context for some of the comments later but also to ensure a common understanding about the objectives, meaning and spirit of the inspection process itself – and the policy and procedures guiding it. The issues outlined below should be given due consideration by the Panel in finalizing its report. Some of these issues are as follows:

- Professional judgment
- Conduct and work by Staff
- Basic premises of the Panel’s Terms of Reference
- Other aspects of the Inspection Policy and Procedures

1. Professional Judgment

13. The Inspection Policy and Procedures require that the Terms of Reference (“TOR”), give due consideration to the exercise of professional judgment by ADB’s Management, Staff and consultants when interpreting and applying Operational Policies and Procedures.

14. Management is of the view that the Panel has not taken professional judgment into account. As such, it has not interpreted the Operational Policies and Procedures accurately. The impact of this is a failure to adhere to, and deliver adequately on, its TOR. Whether this is or not the case is of course ultimately for the BIC and the Board to determine. Nonetheless, Management raises these issues upfront not only because they have a material bearing on how the Panel has approached the Inspection, but principally because they impact on the draft findings and recommendations.

15. “Due consideration” for professional judgment is warranted on account of the complex matrix of issues normally involved in defining, evaluating, processing and implementing development projects of this nature. But judgment also applies to the interpretation given to Operational Policies and Procedures themselves. It is for this reason that ADB’s “internal laws” are not written as rule-based statutes but as operational principles that Staff should apply. This setup, coupled with the differing conditions and context of each project (no doubt complicated further by country specific variables such as the stage of development, capacity, governance, different institutional arrangements, etc.) means that Management (as well as the Board) are called upon to make evaluations and decisions about what is possible and “doable” while adhering to the integrity and spirit of ADB’s internal laws. This is not unique to ADB. It affects all other similar institutions. It affects ADB’s clients too. The point is that the very

8 See paras. 22 and 43 of the Inspection Policy and para. 47 of the Inspection Procedures.
nature of development financing inherently involves difficult judgment calls. More often than not there is no one single right answer. Instead, usually there are several answers or options, and to exercise choice, clearly professional judgment is essential.

16. With the above in mind, Management feels it is relevant to highlight that many (if not all) of the operational principles in place in the past and today are drafted on the understanding that "one rule does not fit all." Professional judgment fills the vacuum. It is needed in relation to all due diligence areas, including:

- Technical
- Commercial
- Economic
- Financial
- Legal
- Institutional
- Environmental
- Social
- Gender
- Indigenous Peoples
- Resettlement

17. The Inspection Policy and Procedures require “professional judgment” criteria also to be applied at the time of carrying out an assessment on compliance. The Inspection Policy and Procedures were prescribed with this in mind. It is for this reason that Management feels strongly the Panel should give full credence to it.

18. The Project is not the first of its kind financed by ADB in the country or the region. Besides Stage III, ADB had already approved financing for Stages I and II of CRBIP. Prior to this investment, ADB had approved 17 loans to the sector in Pakistan, a portfolio valued at just under $1 billion. The Project was processed by a team of professionals with considerable experience in the sector and the country. The consultants engaged by ADB to help prepare the Project (first by carrying out due diligence on technical, commercial, financial, legal, institutional, economic, environmental and safeguard areas) were experienced, credible and familiar with the situation on the ground. They had already helped with the definition of Stages I and II. The ADB team responsible for Fact-finding and then Appraisal was an experienced one in the sector, perhaps one of the most accomplished in the region. This team had worked in the past with the Executing Agency, an entity that that had been involved in projects of this nature and size in the country for many years. ADB collaborated closely and gained from the experience of others, including the World Bank and the bilateral agencies from many countries. Project preparation and appraisal were based on extensive work over a period of three years.

19. While the Panel states that it is not a judicial authority and that its mandate is not to evaluate the Project, the Draft Report on this point gives a different impression. The Draft Report also conveys a very partial and skewed vision of the Project itself, perhaps the result of the Panel's narrow focus on the allegations made by the Requesters. There is no consideration given to its benefits. The Draft Report does not include an account (indeed not even a reference) to the “before” and “after” situation. It does not make any reference to the thousands of families that derive employment and income from this investment. It does not recognize the widespread poverty in the area or the futility of the unstable and highly inefficient rod kohi system that perpetuates misery and blocks opportunity. It does not value either the importance to all peoples of having a thriving agriculture, or the importance of developing a diversified farm
base, with value added products for the national and international market. The Draft Report almost suggests that this Project should not have been put together in the first place. It also suggests that ADB should be judged now not by the standards and yardsticks used by its Staff in relation to what was required under its Operational Policies and Procedures back in 1991, but by what came up many years later. This is an unfair expectation of Staff’s professional judgment.

20. Professional judgment applies to processing and to implementation. Management is willing to recognize the existence of problems during the implementation phase and accepts that implementation was at times beset by unreasonable delays. However, Staff used their initiative and professional judgment to address problems as they arose. Indeed, apart from many other initiatives to address these problems, ADB was even able to persuade the Borrower to adopt the work of a special vehicle and forum, the Grievances Redress and Settlement Committee (the “GRSC”), an independent body put in place in response to the Initial Complaint raised by the Requesters, to help all parties air views, concerns and claims relating to potential Project-related adverse effects. This vehicle became a platform from which to define and implement additional specific actions, in all cases in accordance with latest ADB policies. It is a credit to the Borrower that despite not being legally obligated to abide by these actions, it largely accepted the proposals and the measures suggested by ADB and the GRSC. This forum became a means to provide not only a true fair hearing to affected peoples but also a means to seek redress. Problems arose not because of the way ADB prepared the Project. They arose because there was a Project.

2. Conduct and Work of Staff

21. The Panel is expected to take into account not only the conduct but also the efforts put in by Staff to identify and deal with problems. Management is of the view that Staff consistently made all efforts both during 1991 and thereafter, to identify, address and find solutions to problems. Problems can be anticipated. But under most circumstances, problems can only be dealt with once they become known, including the ones not anticipated. ADB supervised the implementation of the Project. Besides the numerous project supervision teams sent from headquarters, ADB and the Borrower also put in place experienced advisors on a long-term basis in the field to assist with implementation tasks. Some of these teams dealt with technical and quantitative aspects. Others handled exclusively qualitative aspects, including community-level consultations.

3. Basic Premise of Panel Terms of Reference

22. Under the Terms of Reference, which includes the requirements of the Inspection Policy and Procedures, the Panel is required to deliver the following:9

✓ Identify all relevant facts.

✓ Make a finding as to whether ADB has complied with its Operational Policies and Procedures in connection with the Project.

✓ In the event of noncompliance, make a further finding as to whether this noncompliance has resulted or may result in direct and material harm to the Requester (or the group the Requester represents).

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9 See para. 33 of the Inspection Policy and para. 56 of the Inspection Procedures.
✓ Make recommendations, if appropriate, for any remedial changes in the scope or implementation of the Project.

4. Identification of Relevant Facts

23. The Panel has not identified all relevant facts about ADB’s conduct in relation to its Operational Policies and Procedures. The Draft Report makes a number of assertions and cites selectively from documents. This gives the impression that Staff exercised professional judgment poorly or out of context. We provide a number of examples of this in the Attachment to this submission.

24. Management wants to move the Inspection forward in a constructive manner. This implies a focus on all pending issues and on the legitimate grievances of affected communities. However, since the Inspection deals first with compliance and then with solutions, Management calls on the assessment to start with a complete rather than a partial evaluation of all relevant facts.

5. Establishment of “Direct and Material Harm” or Adverse Effects

25. The Draft Report is required to establish “direct and material harm” (or adverse effects) in order to satisfy the requirements of the Inspection Policy and Procedures. It is the opinion of Management that the Panel has not delivered on this requirement. The Panel alludes to the absence or inadequacy of baseline data as one of the main reasons for not dealing with adverse effects. In parts of the Report, it has cited selectively from documents to justify alleged adverse effects. But it is our understanding that assertions, statements of non-accomplishments, or unfulfilled expectations, cannot be treated as a basis for establishing “direct and material harm”, at least not in terms of the existing Inspection Policy and Procedures.

26. While the Inspection Policy and Procedures do not set out the actual scope of the term “direct and material harm”, in its Earlier Responses, Management did make some practical suggestions on how to deal with this issue. These took as a reference what other institutions like ADB use.10

The resolution of the International Bank for Reconstruction on Inspection Panel provides some useful principles for assessment of material adverse effect. It provides that, "[for assessing material adverse effect, the without-project situation should be used as a base case for comparison, taking into account what baseline information may be available. Non-accomplishments and unfulfilled expectations that do not generate a material deterioration compared to the without-project situation will not be considered as material adverse effect for this purpose. As the assessment of material adverse effect in the context of a complex reality of a specific project can be difficult, the Panel will have to exercise carefully its judgment on these matters, and be guided by Bank policies and procedures where relevant." (emphasis supplied)11

27. In order to assist with the resolution of this particular issue, Management proposes a specific approach to the Panel on the subject. On the basis of the existing baseline information, improved recently through the GRSC process (which gives the population potentially affected

10 See para. 38 of Management response to the Request for Inspection.
and the types of potential adverse effects) and the various surveys already undertaken during implementation, the following measures might be an appropriate way to move forward:

- Based on the entitlement matrix prepared by GRSC, rank the main issues according to the degree of adverse effect (e.g., very serious, serious, less serious, etc.).
- Define and undertake follow-up sample investigations with the aim of confirming the resolution of the issues.
- Based on the above, develop action plans and address any remaining issues.

28. In finalizing its conclusions on adverse effects, the Panel must also establish that such actual or potential adverse effects were caused by ADB’s non-compliance. The mere existence of such harm is not sufficient under the *Inspection Policy and Procedures*.

6. **Other aspects of the Inspection Policy and Procedures**

*Current Operational Policies & Procedures are not applicable*

29. The Panel has relied heavily on current Operational Policies and Procedures as a reference to carry out the Inspection. A large number of these are simply not applicable to a Project approved in 1991. Moreover, some of these are not even applicable under the *Inspection Policy and Procedures*:

> The operational policies and procedures.... regarding the administration of an ongoing project, (will be) those that are in effect on the date the inspection request was filed with the BIC.\(^\text{12}\)

*Operational Policies and Procedures prior to 1995 are not automatically applicable to an Inspection*

30. The *Inspection Policy and Procedures* provide BIC with a mandate to decide which parts of pre-1995 Operational Policies and Procedures can be taken into account in the Inspection:

> It will be for the BIC to determine which portions of the relevant sections of the OM prior to reorganization [i.e. pre-1995] are operational policies and procedures and which are, in effect, guidelines... that do not in themselves constitute operational policies and procedures; an Inspection Panel may request the BIC for such a determination in respect of any OM section.\(^\text{13}\) (square brackets and emphasis supplied).

31. Some Operational Manuals (“OMs”) and Staff Instructions applicable at the time of Project appraisal in 1991 fall in the above category. But it seems as if the Panel has relied on parts of pre-1995 OM or Staff Instructions without a formal BIC determination on whether these constitute operational policies and procedures eligible under *Inspection Policy and Procedures*. Management recommends that the Panel refer this matter to BIC before finalizing its Draft Report.

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\(^{12}\) See footnote 4 of the *Inspection Policy*.

\(^{13}\) Ibid.
Standards of today cannot apply to old Operational Policies and Procedures

32. In line with Earlier Responses, Management is of the view that several Operational Policies and Procedures forming part of the Inspection have evolved radically and materially in the years since the Project was first processed and approved. Logic suggests that these cannot be retrospectively read into older Operational Policies and Procedures. By so doing, we create new standards and yardsticks against which to measure the quality, performance and compliance of actions taken in the past. The Panel ought to assess the level of compliance with the standards prevalent only in 1991. In this instance, creating a “chain reaction” of OMs not complied with through the use of one particular OM (OM 13) interpreted in a liberal fashion is not considered appropriate. But in addition, the Panel has interpreted some old OMs or Staff Instructions in use at the time of Project approval in a way that could then easily misconstrue their meaning and spirit. In the light of this, the appropriate corrections should be made to the Draft Report. For example, the Panel in assessing noncompliance with the Staff Instruction of 1986 on Socio-cultural impacts of Bank Projects has interpreted the Instruction in a manner radically different to the interpretation that was reasonably possible at the time of Project preparation. Specifically, it suggests several aspects that should have been included in the Feasibility Report (FR). In this instance, as in others, Management submits that this was neither explicitly required nor intended under the Staff Instruction.

C. Grievances Redress and Settlement Committee

33. The implementation of any project will sooner or later give rise to specific problems. Some will be difficult to deal with, others will not. This is the essence of “development.” In this case, problems were identified and dealt with; sometimes quickly, at other times slowly. But when issues were raised, Staff took steps to address these in accordance with applicable and even evolving Operational Policies and Procedures. In this respect, the establishment of GRSC was a meaningful and significant forward-looking measure. It enabled people to talk and parties to reach agreements. In a Project area where none of the Non-Government Organizations (NGOs) representing the Requesters have organizational roots and where community groups or formations are largely absent, the establishment of the GRSC with representatives elected on the basis of universal suffrage was a great success. If the recommendations that GRSC made (accepted by the Government) are fully and promptly implemented, then Project-affected persons will be measurably better off. The Panel has of course recommended its own set of measures. In our view, these are not too different to those already emanating from GRSC.

34. The establishment of the GRSC had two fundamental objectives. The first was to give a fair hearing to all parties associated with the Project. The second was to come up with a forum not only to take stock of issues, to quantify, qualify and rank adverse effects, but also to agree on practical solutions for each. The first objective is as important as the second. Management has always maintained that the BIC should not be the only place to give affected people “a fair hearing.” The BIC can and should be used, but our view is also that by the time this process finishes, in some cases, and for some people, there is a real risk that solutions might come too late. This is particularly the case where agreed solutions or processes to arrive at them may be permanently suspended because of the Inspection. The Requesters may have valid complaints. But the Requesters do not represent all the people who raised complaints. In this Project, there are also many people who clearly benefit from the Project but who have not raised complaints.

35. The second objective was to provide a vehicle through GRSC to identify, quantify and qualify issues, and the means to define alternative arrangements and reach agreements.

36. The Panel has missed out on the substantive and substantial work done through GRSC. It has also missed out on the good faith shown by the majority of affected people. The Workshops and GRSC might have come late in the implementation process. But both were major necessary steps. The Panel was asked to look at the GRSC and its achievements. We think it should do so and take account of:

- Measures put in place to address the concerns of affected people
- The processes and outcomes of the actual grievance redress initiative

37. The GRSC was an important initiative and its recommendations go a long way in addressing problems raised.

38. The GRSC worked over a span of nine months (March-December 2003). It interviewed and consulted many affected persons, local government, implementing agencies, etc. It ensured information dissemination and made extensive consultations through publicity campaigns, first on its existence and secondly on its mandate. People were informed through newspaper advertisements and the distribution of several thousand handbills and posters. The team in place held many public meetings, made loudspeaker announcements and paid field visits. The entitlement matrix that was drawn up by the GRSC was all based on consultations with affected people. This matrix was disclosed to the public through media and Union Councils and village-to-village announcements. These were also issued in the local Urdu language, including through the local Urdu papers – the daily Sada-E-Haq, daily Apna Akhbar and weekly Al Monzoor.

39. A total of 8,914 persons filed 5,212 separate grievances. Based on these filings, the GRSC categorized the grievances in line with a range of issues. Based on the entitlement matrix, the GRSC came up with sixteen final specific recommendations. A summary of these were published and made available to the wider public through local Urdu papers. All the recommendations were accepted by the Government (except for one).

40. As of 5 May 2004, awards for compensation were announced for 4,467 acres (74% out of 6,061 acres acquired) in North West Frontier Province (NWFP), and 8,900 acres (92% out of 9,720 acres acquired) in Punjab Province. These figures compared with 2,688 acres (44%) in NWFP, and 4,815 acres (50%) in Punjab Province as of 22 July 2003.

41. Despite its detailed work over the nine-month period and the 16 specific recommendations, it is a surprise to Management that the Panel should have chosen to largely ignore all of this effort. In fact, GRSC has been depicted in the Draft Report as an inadequate measure. The Panel should at least substantiate this conclusion with the evidence that it has been able to collect from its field visit, including meetings with GRSC members.

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16 See para. 5 of the Panel's TOR.

17 This exception relates to the extra 25% compensation payments for land acquisition (see minutes of the meeting dated 8 December 2003 among GRSC, the Government and ADB) – payable under the Land Acquisition Act when land is acquired on behalf of a company. WAPDA, however claims that in the present case while the acquisition was by WAPDA, it acquired the land on behalf of the provincial governments of Punjab and NWFP, and not for use of WAPDA as an entity and therefore it is not liable to pay the extra compensation of 25%.

18 Based on information provided by the Government to ADB in a meeting held on 6 May 2004.
42. The *Inspection Policy and Procedures* recognize that any remedial measures must be consented to by the Borrower. This was the case in the context of the measures suggested through the GRSC.
III. OM 13 – SUPPLEMENTARY FINANCING OF COST OVERRUNS

A. Meaning of “Cost Overrun” and the Term “Reappraisal” under OM 13

1. Cost Overrun

43. A “cost overrun” can arise from two different situations or a combination of both, namely:

- A basic or substantial change in project scope, leading to an increase in size of the original investment plan (i.e. the original cost estimate).
- A gap in the original financing plan, leading to a mismatch between the original investment plan and financing plans.

44. These two situations are likely to require a different level of support for due diligence. But a plain reading of OM 13 can easily bypass this difference.

45. Financing plan gaps have been a frequent cause of what is considered a “cost overrun.” The genesis of the supplementary financing facility itself is this. Indeed, it must be remembered that the facility came into being originally in the aftermath of the Oil Crisis in the 1970s. Financing plans are often funded by more than one source, even in the case of public sector or sovereign guarantee-backed projects. At times, the government (as cofinancier) is unable to make good its obligations under a particular financing plan. In such situation, it calls on its partners to meet the emerging gap. The inability to accompany the other financiers has generally tended to be the result of some sort of economic instability in the country, leading to:

- A tight budgetary situation
- A fall in the value of the local currency
- Project implementation delays (leading to price escalations)
For the purpose of OM 13, “cost overruns” have generally been understood to refer to a financing gap in relation to an original investment plan or project cost estimated at appraisal. OM 13 recognizes that a cost overrun arising on account of a financing gap may thus “occur even when there is no overrun in the total cost of the Project.” This is the case in the context of the Project subject to inspection. The Project developed a financing gap of $50.5 million due to currency fluctuations, fiscal constraints, and cost escalation. Out of the $50.5 million financing gap, Government committed to finance $17 million and ADB was asked to cover the balance ($33.5 million). The original investment plan remained unchanged.

In a case where the cost overrun is nothing more than extra financing, a priori it would seem somewhat far-fetched to suggest that a “full appraisal” of an entire project be carried out. This further supports the case for reading the requirements of an appraisal with reference to paragraph 24 of the 1983 policy – rather than the provisions contained in OM 32/OP (see below). It is erroneous to suppose that in approving supplementary financing the Board is at any time approving a project twice. In approving supplementary financing for a financing gap, the Board does nothing more than approve financing the gap for the existing Project. Approval by the Board in the 1999 Board paper demonstrates this. The suggestion that the Board approved the Project twice (in 1991 and in 1999) is not borne out by the documents submitted to the Board, or by the Board discussion and decision on the matter. Such suggestion would represent a serious misconception about the nature of supplementary financing itself.

In this particular case, the project scope never changed. Management submits that the nature of investment plan presented to the Board in 1991 has remained unchanged and intact ever since. The integrity and configuration of the original project has never shifted in substance. Pakistan had to deal with the financing gap. It could do two things: (i) allocate more money to the Project financing plan, or (ii) ask the original financiers to do so. There was a third alternative, which was to do nothing and risk losing out on the investments already made. The decision made was to approach ADB. ADB had precisely the financial product to deal with such gaps in financing plans. This product is provided for under OM 13.

2. “Reappraisal”

And what did ADB do with the Borrower’s request? It carried out due diligence as required to appraise reasons and causes of the financing gap. But this was not a reconsideration of other parameters or design features of the Project, as these have remained valid to this day. Such an exercise was not warranted, and would have been wasteful and simply out of place. Prior to ADB putting extra money into the Project, Staff did two things in sequence:

- Firstly, Staff looked at the possible causes for the financing gap (i.e., the overrun)
- Secondly, Staff subjected the “entire” original project to a new economic evaluation to see if with more debt (i.e., more interest payments coming up in future), the Project would still remain viable.

Staff concluded that the causes for the financing gap were related to adverse economic circumstances and that the execution or implementation of the Project would suffer unduly

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unless this financing gap could be addressed at short notice. It cannot be over-emphasized enough that there was no change in substance with respect to design of the Project.

51. The matter would have been different if the Project had been reconfigured in a material or substantive manner, always a function of a major change in objectives, structure, scope and thus size of some or of all of the components. But this was not the case. Staff looked instead at the causes and effect of the financing gap and then reappraised the Project in terms of the impact that the extra funding might have on the economic viability. This work was carried out in line with the prevailing Operational Policies and Procedures. The Executing Agency needed to issue two contracts for the purposes of two components. Project implementation had already been delayed on account of slow procurement. In the view of Management, the entire operation would have suffered if those actual works could not now start as planned. But these contracts were based on the original Project scope. They were not new activities linked to new or modified components.

52. Thus, a supplementary financing facility used to finance a financing gap associated with an unchanged Project merits only the type of reappraisal undertaken.

53. The reference to “reappraisal of the whole project” in para. 22 of the 1983 Board paper or the reference to “reappraisal of the entire project” in OM 13/OP para. 1, cannot be read to mean “full fact finding and appraisal” equivalent. That would imply covering matters other than those relevant to justify the financing gap and the emergency nature of the support needed. Clearly, the requirement was understood to be confined to assessing only the financing gap. The whole Project was evaluated again, but only from the point of view of the impact that the extra financing would have on its economic viability. In any event, para. 22 is subordinate to para. 24 of the 1983 Board paper, which requires reappraisal to focus on the reasons of the cost overrun. As the recommendation actually approved by the Board, para. 24 ranks higher than any other part of the 1983 Board paper. The reference to the “procedural arrangements for processing supplementary loans” (para. 22 of the 1983 Board paper), being “similar” to those for a new loan, simply means that the level and quality of appraisal required in respect of each element justifying the cost-overrun should be no less than that required in respect of such elements for a new loan.

54. To the extent that any requirement for a “full appraisal” (i.e. an appraisal with respect to factors not relevant to an assessment of the principal reasons for cost overruns) is based on OM 32/OP, Management believes that this would be simply misplaced. OM 32/OP is a general provision on ADB’s Operational Missions. However, in case of supplementary financing triggered by cost overruns, the nature of the reappraisal would be governed by OM 13/OP and accordingly limited to matters focusing on the cost overruns. This is consistent with the basic principle of interpretation that the particular must prevail over the general. This is also borne out by the consistent practice of ADB over a period of almost 20 years.

55. The requirement of a full appraisal extending to all aspects of a project as opposed to just the causes of the cost overrun would mean that all proposals for supplementary financing would have to be prepared as new loans. A full appraisal for supplementary financing under such circumstances would seriously delay the provision of such financing and obliterate any distinction between processing a new loan and providing financing for an ongoing project.

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56. It is therefore submitted that this was never the intention of Management or the Board. The findings of the Panel (para. 55 of the Draft Report) that the requirements of OM 13 do not carry a corollary that there need not be a full appraisal of the Project, is untenable as it defeats the whole rationale for the supplementary financing policy, especially where the principal reason for the cost overrun is an emerging financing gap.

57. The conclusion from the above is that reappraisal must focus on the reasons for the cost overrun. So, when a cost overrun relates principally to a gap in the financing plan, the “reappraisal” has to be limited to the impact the extra debt to fill this gap might have on the economic and financial viability of the original and only Project. There are no two projects. There is only one, the original one. Thus, on the basis of this, Management argues that (i) it was right to approve the Supplementary Financing in the terms proposed, and (ii) that it complied fully with the meaning and intentions of OM 13. Not approving this financing quickly would have put the Project in serious risk. It is contended therefore that undertaking the type of due diligence suggested by the Panel was simply not required.

3. Adverse Effects

58. To the extent that any finding of adverse effects resulting from ADB’s failure to follow OMs 13/OP and 32/OP is based on the requirement for a “full appraisal”, and the failure to follow policies applicable in 1999 to new projects under processing, such adverse effects remain without a basis. The premises for the Panel’s finding are purely speculative. Where adverse effects were identified (serious or otherwise), Staff took steps so that the Executing Agency could deal with them. The Earlier Responses give an outline of actions taken in this respect. It would be much appreciated if the Final Report could capture these. Not so much to agree with the solution per se, but to at least recognize that ADB has indeed listened and acted properly and in line with what was reasonably expected of it. Moreover, on the basis of the Draft Report, it is not possible to establish that a “full appraisal” per se as understood by the Panel would have been any more successful in solving the pending issues than the various actions taken by Staff during implementation of the Project.
IV. PROJECT BENEFIT MONITORING AND EVALUATION

A. Benchmark Information

59. The Draft Report finds non-compliance with OM 23 on *Project Benefit Monitoring and Evaluation* (issued 30 March 1987) (“OM 23”). For the Panel, the presumed violation is on the basis of two alleged deficiencies:

- Defective benchmark information
- Inadequate data on socio-economic aspects

60. The following is an explanation of what Management understands the issue to mean, the work undertaken before and after 1991, and the possible implications looking forward.

1. Approach

61. The scope of the “benchmark information” or quantitative data to be collected for the purposes of project preparation varies with each ADB operation. In projects such as the one in question, where the benefits clearly outweigh adverse effects (based on the experience from 17 other projects, including Stages I and II), a pragmatic approach was taken. ADB was not starting from scratch. This means that what was considered relevant data were collected for the purposes of the preparation. But some data, particularly on several of the issues raised by the Requesters and the Panel, were to be collected and/or further refined during the implementation phase. This was done on the understanding that such data would not materially affect the configuration and the evaluation of the Project (Stage III). It was done also on the understanding that during Final Design and Construction, issues normally falling outside the strict technical and operational areas would be identified and dealt with promptly but also much more efficiently. The Project area was a large one, the population levels low and the dispersion of farms high. A large number of this population was also itinerant. In some cases, the topography actually impeded access to collect information. Management understood this approach to fall within the rules of engagement. But it also felt it to be practical. The implementation arrangements catered for the issues raised. The underlying assumption is that these arrangements must be executed efficiently and that the Project configuration is modified to reflect material developments supported by relevant new data. On the whole, this approach worked. New data were generated during the implementation process. Some of these data suggested the need for actions. None suggested changes to the Project scope itself. In terms of required actions, all were taken in account by Management, and Staff brought these to the attention of the Executing Agency. These actions were all in line with the evolving Operational Policies and Procedures of ADB.

62. The approach adopted by Staff in relation to some benchmark information is not inconsistent with the Staff Instruction of 1986 on *Socio-cultural impacts of Bank Projects* that states:

> Quantitative assessment of social effects is admittedly often difficult. However, in many cases, quantification may be unnecessary. What is important is that an analysis of possible social impacts be made during the processing of such Projects. Such analyses may be needed not only to help establish the project targets but also to determine whether social or cultural factors exist which may help or impede the achievement of such targets. (Emphasis supplied)
2. Actions Taken

63. Despite transferring to the implementation phase some benchmark data collection and evaluation, Management does not wish to convey the impression that the Project preparation phase was carried out in isolation of basic benchmark information. This is not the case. The FR for the Project (carried out over a long period of time through a feasibility study financed by ADB and managed by Staff) was handled by the same team of consultants used by ADB and the Executing Agency for the purposes of Stages I and II. Besides having considerable local knowledge, the terms of reference of this team included due diligence on socioeconomic and cultural impacts. These terms of reference were met in full. And the information generated was used later by Staff to help make an assessment of the Project as a whole and this issue in particular. It is true that today these terms of reference would have been more structured and lengthy. Our own ability to gather and process data has changed considerably since 1991. But the work entrusted to the team was in accordance with the standards applicable at the time. The work was delivered on time by specialists with experience on the subject.

64. In addition to carrying out considerable work in support of Project preparation, ADB also covenanted applicable requirements in the Loan Agreement. Specifically, in order to fulfill the compliance requirements of OM 23, the Loan Agreement entrusted the responsibility for detailed Project Benefit Monitoring and Evaluation (PBME) to the Borrower. It also specified various specialist technical assistance contracts to ensure that the work was carried out promptly and to the highest standards. Paragraph 13 of Schedule 6 to the Loan Agreement for the Project stipulates:

   The Borrower shall cause PBME to be carried out in accordance with the Bank's "Guidelines for Project Benefit Monitoring and Evaluation for Agriculture, Irrigation and Rural Development Projects." On the basis of the agro socioeconomic benchmark survey carried out in 1989 under a Bank-financed technical assistance to be reviewed and updated… (Emphasis supplied)

65. Under para. 3(e) of Schedule 6 to the Loan Agreement, ADB prescribed the establishment of Provincial Coordinating and Monitoring Units. These were mandated with looking after PBME work, including the execution of specialist surveys and special data collection that might be relevant to the Project and the locality.

66. Staff followed up on these requirements during implementation, as highlighted in the Earlier Responses. Besides the arrangements planned during the Project implementation phase, during Project implementation, ADB commissioned two PIME Studies. These were carried out during June 2000 – July 2001 and November 2001 – December 2002. The objective of these studies was to evaluate the performance of Stages I and II, but also to undertake a benchmark survey in the Stage III area. The PIME studies were based on extensive interviews/surveys with 685 sample households (under the first survey) and 464 sample households (under the second survey). A holistic assessment using a participatory approach was also carried out in 60 villages.

67. Management believes that the spirit and purpose of OM 23 was generally met. More might have been done and faster during the implementation phase. But be that as it may, OM 23 does predate by many years the existing Inspection Policy and Procedures. Before the Panel embarks with its assessment of compliance on the basis that all provisions of OM 23 are mandatory and inspectable, it first may wish to refer the matter to BIC for guidance on which parts of this OM are applicable under the Inspection Policy.
3. Resettlement and OM 23

68. With regard to resettlement issues, Management is of the view that OM 23 (para. 8) only applies to actions taken during Project preparation. At that point in time resettlement plans, at least as we understand them today, were not considered necessary. This OM provision should not therefore be extrapolated to read into it future standards and requirements. Management further argues that during the preparatory stage, Staff and the consultants did look into the issue with care and attention.

69. Flooding as a potential risk first came to the fore in 1995. The specific actions and measures undertaken by Staff in relation to this have been described in detail in the Earlier Responses. The key point to note from this is that Staff (i) identified the issue promptly and (ii) discussed and agreed with Government the most appropriate measures to deal with it. Resettlement was one of the alternatives. ADB’s Involuntary Resettlement Policy and Guidelines on Incorporation of Social Dimensions in Bank Operations were seen by the Government as being an acceptable reference for dealing with matter.

70. In relation to the Involuntary Resettlement Policy, the data collection and surveys recommended, and agreed, formed part of the Social Survey and Action Plan (SSAP) prepared during the implementation phase. The terms of reference for the consultants engaged to deal with this work were based on ADB’s Guidelines on Incorporation of Social Dimensions in Bank Operations and the Involuntary Resettlement Policy.\(^{21}\)

B. Adverse Effects Not Substantiated

71. In asserting the adverse effects under this subject matter, the Panel has relied on a project performance audit report (PPAR) from ADB. Since the implementation of Stage III simply had not been completed at the time the report was prepared (1998), the Panel’s reliance on this PPAR for the purposes of evaluating this particular issue is inappropriate. The canal had not even been constructed.

72. Furthermore, a PPAR is prepared only after a Project is completed. The PPAR used by the Panel to decipher potential adverse effects did include some information on the Project, although the true coverage of the PPAR was supposed to have been confined to other projects, including the Chashma Command Area Development Project (Loan 723-PAK).

73. Based on above and the Earlier Responses, Management is of the view that Staff followed OM 23 during Project preparation, within the best professional judgment of Staff. In relation to the various issues raised, in the professional judgment of Staff, it was appropriate to refine old data, and to gather and evaluate new data (on selected socioeconomic and cultural matters) through a PBME structure, operational during the implementation phase. Management accepts that during the implementation phase some of these tasks might have been identified late in the process.

\(^{21}\) See para. 99 of the Management’s response to the Request for Inspection.
V. ENVIRONMENTAL IMPACT

A. Environmental Categorization

74. Management is of the view that the environmental categorization applied at the time of appraisal was, and remains, the correct one. This means that the actions taken were in accordance with the provisions given in OM 21 (Environmental Considerations in Bank Operations (issued 8 February 1988)).

75. The Panel should distinguish more clearly between a narrow legalistic interpretation of the words ‘generally include’ and ‘include’ given in Appendix 1 of the OM 21 and the true interpretation of “operational principles.” A legalistic interpretation is inappropriate. But this is precisely what the Panel has used in this case.

76. A categorization of projects normally follows the principles given in para. 11 of OM 21. On this basis alone, Management continues to submit that the categorization of the Project as "B" was accurate and justified. It is to be understood that the Project was seen as one “with significant adverse environmental impacts but for which mitigative/remedial measures may be prescribed readily.”

77. Given the specific features of the Project area (primarily a barren landscape), the main environmental concerns identified by the specialists engaged for the purposes of Project preparation and appraisal were associated with accelerated erosion. This is particularly important during monsoon seasons when short but intense rainfall can be experienced and when run-off is particularly severe because of heavy clay soils (as evidenced by numerous deeply incised nullahs). It must be taken into account that the Project area had been bereft of any vegetation, except for desert scrub vegetation and selected agricultural crops (albeit only where irrigation water was available or whenever traditional rainwater harvesting devices were constructed). Despite these conditions, it also should be emphasized that area was climatically appropriate for the cultivation of a wide variety of crops, including rice and wheat on heavy clays. It had the right climatic conditions but no stable irrigation system to take advantage of this opportunity. Neither the consultants nor Staff saw evidence of any sites of historical, cultural, or archeological significance. There was no evidence either of significant wildlife or other ecologically sensitive areas.

78. The Project team followed ADB’s rules of engagement in relation to environmental issues. The rules then were different to what they are today. But the general principles remain the same. In terms of the approach, the consultants, and later Staff, felt it would be right and practical to mainstream various environmental sector actions at the Design Stage. This was conceived as the best way to ensure that all the potentially adverse impacts could be either prevented or mitigated through the Design itself, and later, as and when they occurred. As is normal practice with institutions like ADB, at times Project preparation does not include Final Design. Because of the size and complexity, this task was entrusted to a specialist Contractor engaged under the Loan. ADB, and others like it, do prepare design criteria and at times also preliminary designs. This was the case here. These criteria and preliminary design provide then the basis for estimating project costs, and set the basic rules for the Final Design itself. Final Design (and Construction) was supervised by a specialist team located on a long-term basis in the Project area.

79. The underlying objective for checking more carefully environmental considerations under the design stage was to ensure that no lasting adverse environmental impacts resulted from
the Project. This is evidenced by an analysis of the FR, the Appraisal Report, the Loan Agreement, as well as other reports such as the one produced by the advisory technical assistance, piggy-backed to the Loan.

B. Preparation of IEE and SIEE

80. Another measure by ADB included a secondary environmental screening. This was intended to bring out any additional and potentially significant impacts and concerns. Some of these included: (i) watershed erosion; (ii) use of agricultural chemicals and impact on downstream water quality, (iii) conflicts in water use; (iv) changes in ground water hydrology; and (v) water borne diseases.

81. The secondary screening work recommended an Initial Environmental Examination (IEE). The consultant team and Staff listed potential adverse impacts for each Project component, and in each case suggested the appropriate mitigation measures. An Annex to the main report from the consultants provided information on all of these. The Fact-finding and the Appraisal missions thereafter were able to look at this information and undertake their own independent due diligence on the matter.

82. As required under ADB procedures and the environmental guidelines at the time, a Summary IEE (SIEE) was prepared and attached as Appendix 10 of the Appraisal Report (AR). This was based on the substantial environmental impact assessment done already. The SIEE is only 11 pages long, but this should not be the basis for claiming a violation of any OM. Moreover, the Annex to the FR could also not be faulted just because that was five pages long. It is important to bear in mind that environmental issues were addressed throughout the report and the Project's design. The Annex captured all the due diligence carried out by an experienced team that spent a considerable amount of time in the field, and who had already prepared Stages I and II of the investment program. The Annex summarized the actions proposed. Quality should not be confused with quantity. There was no contravention of OM 21.

83. As required under the SIEE that identified both the adverse impacts and mitigation measures,22 the Project Design mandate also included adequate mitigation measures. These have already been summarized in Earlier Responses. Independent of the adequacy or otherwise of the IEE, Management is of the view that Staff addressed all relevant environmental dimensions needed for a category B project, in compliance of OM 21.

C. EIA

84. The Panel uses its own definition of the term “EIA” (and the possible requirements thereof for this purpose) in order to find non-compliance with OM 21. As already stated, in categorizing the Project as “B”, the SIEE clearly stated, “no further detailed environment impact assessment is required.”23 For operational purposes an EIA for a Project classified under Category B was unnecessary. In interviews with the Panel, Staff clarified the scope and extent of the term “Environment Impact Assessment as applied to the CRBI Project, as covenanted under the Project's Loan Agreement.24 These clarifications have not been reflected by the Panel in the Draft Report.

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22 See Appraisal Report, Appendix 10, para. 22.
23 See para. 1 of the SIEE attached as Appendix 10 to the Appraisal Report.
24 See email from Director SAAE to the Panel dated 8 March 2004 to the Panel.
85. The reference to “an environmental impact assessment (EIA)” in the Technical Assistance (TA) piggy-backed to the Loan referred to the one to be carried out for training purposes to provide WAPDA with the resources and experience necessary to enhance its capacity on environmental management matters. The TA covered (i) assistance to WAPDA in drafting guidelines on water resources development, taking into account related environmental policy and planning, in accordance with national development objectives; (ii) preparation of a study for training purposes, encompassing a demonstration of procedures for guiding environmental management planning of irrigation projects – such a study would involve preparation of an environmental management plan (EMP) for the Chashma Right Bank Irrigation Project (CRBIP) including preparation of an EIA and a detailed comprehensive environmental monitoring program encompassing a data management system and on-the-job training in EIA, monitoring, and data management; and (iii) provision of computer hardware and software for establishment of an environmental data management system in WAPDA. Nowhere in the TA objectives or its scope is there any reference to preparation of an EIA for operational use during project implementation. The EIA was provided purely for training purposes and to build capacity at WAPDA. Moreover, since the Project’s environmental classification was confirmed as “B,” there was no need to prepare an EIA.

D. Design and Cost of Mitigation

86. Environment mitigating actions were mainstreamed in the design and implementation phase of the Project. The costs of these mitigation actions were estimated and included in the Project’s investment plan. Some examples of these potentially adverse impacts and mitigation measures proposed are summarized in Box 2.

E. 1999 Supplementary Financing Facility

87. The supplementary financing facility approved in 1999 was aimed at addressing a gap in the financing plan of the original project. As such, the environmental categorization remained valid. It was not envisaged, nor required, that a new environmental assessment be carried out because of this facility. The provisions applying to the original or first loan under the Project were still applicable and in force at the time.

F. Supervision of Implementation

88. Management has already acknowledged delays in the implementation of the EMP. But these were mainly due to the delayed implementation of the National Drainage Sector Project (NDSP). Staff followed up on the implementation of environmental remedial measures at all times, adopting in the process a participatory approach to the subject.

G. Conclusions

89. Staff dealt adequately with all environmental issues during the processing and implementation stages of the Project. Management further submits that:

✓ It was right to classify the Project under category B.

26 See para. 80 of Management’s response to the Request for Inspection.
ADB acted in accordance with OM 21.

An IEE was prepared as a part of the FR and an SIEE was prepared prior to approval of the Project.

Since the Project was classified as "B," an EIA was not required and the EIA mentioned within the Loan Agreement was an EIA to be prepared for training as opposed to operational purposes.

Environmental actions and obligations were reflected in the Loan Agreement.

H. Adverse Effects

90. The Draft Report highlights a number of negative impacts alleged to have taken place in the Project area and downstream. In particular, it takes a negative view on forests and grazing lands. The Draft Report is mistaken on these and in addition, it does not recognize the “without” Project scenario. Management feels that the Panel has chosen to ignore Earlier Responses, without any justification. In this regard, it is suggested that “non-accomplishments and unfulfilled expectations” that have not generated a material environmental deterioration in relation to the “without-project” situation should not treated as material adverse effects.
Box 2: Environmental Mitigation Measures Incorporated in the Project Design

Problems in General

- Development of a comprehensive environmental monitoring program and management plan for CRBiP under an advisory technical assistance, including training for the WAPDA staff.

Watershed Erosion

- Concrete lining of the main canal to reduce seepage and consequent erosion.
- Cross drainage structures, escapes, silt ejectors, canal drains to regulate water flow and reduce potential damage by excessive runoff and flooding, designed for 1 in 40 years flood discharge.
- Compacted flood-protection embankments.
- Dedicated floodwater carrier channels for safe passage of floodwaters to the Indus River.
- Erosion protection of the main canal and flood carrier channels through establishment of erosion-control vegetation and waterways stabilization measures.

Waterlogging and Salinity

- Establishment of surface drainage systems to address potential problems due to water logging and salinity.
- Upgrading the groundwater monitoring system to ascertain accurate and timely monitoring of changes in the configuration of the water table and analysis of the timing and extent of subsurface drainage construction.

Agricultural Chemicals and Pesticides

- Strengthening agricultural extension system to ensure efficient use of chemicals.

Inequalities in Water Distribution

- High water allowance of 8.7 cusec per 1,000 acres is sanctioned, as compared to the conventional allowance of 3.0 cusec per 1,000 acres, which will alleviate the problems associated with inequitable supplies of water.
- NWFP and Punjab are to reach an agreement on provincial water sharing.

Movement of Humans and Animals

- Bridges (provided for all existing roads), gravel surfaces, all weather service and access roads to facilitate movement of wildlife, domesticated animals, and humans.
VI. SOCIOECONOMIC AND CULTURAL IMPACTS

91. The Panel needs to reconsider using Staff Instruction of 17 September 1986 to assess compliance on this matter. The definition of the term “Operational Policies and Procedures” in paragraph 4 of the *Inspection Policy* does not suggest that this Staff Instruction can automatically be used as a reference point for assessing compliance under the *Inspection Policy and Procedures*. Furthermore, it is far from clear that this was a Staff Instruction that was intended to be “incorporated eventually into the OM” (paragraph 4 of the Inspection Policy).

<table>
<thead>
<tr>
<th>Box 3:</th>
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<tbody>
<tr>
<td><strong>1986 Staff Instruction on Socio-cultural Impacts of Bank Projects does not automatically constitute an operational policy and procedure (para. 4 of Inspection Policy)</strong></td>
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<tr>
<td>… operational policies and procedures include <em>Staff Instructions</em> … that are intended to be incorporated eventually into the OM.</td>
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<tr>
<td>BIC must determine which parts of OM 23 and 1986 Staff Instruction are inspectable <em>(footnote 4 to para. 28 of Inspection Policy)</em></td>
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<tr>
<td>It will be for the BIC to determine which portions of the relevant sections of the OM prior to reorganization [i.e. pre-1995] are operational policies and procedures and which are, in effect guidelines… that do not in themselves constitute operational policies and procedures; an inspection Panel may request the BIC for such a determination in respect of any OM section. (square brackets and emphasis supplied).</td>
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92. The Panel rightly concluded that the applicable Staff Instruction of 1986 on *Socio-cultural Impacts of Bank Projects* lacked “specificity regarding the requirements” for social analysis and remedial actions. If that is the case, then a judgment on a stringent compliance with this Staff Instruction becomes redundant.27 The Staff Instruction included five brief paragraphs and left Staff with considerable discretion to deal with the matters mentioned therein. The Staff Instruction set no standards for any of the socio-cultural impacts identified. It did not provide any specific procedure to deal them. Any attempt now to give specificity to the meaning of the Staff Instruction can only be done by importing standards and procedures from elsewhere and at later times.

93. Despite this, the FR, which was not merely an engineering study, examined many of the socio-cultural impacts raised by the Requesters. During the various missions undertaken by ADB during the Project preparation cycle, Staff did look into this subject and concluded that they did not anticipate significant negative socio-cultural impacts. At the time of Appraisal, Staff exercised professional judgment on the matter. Hindsight cannot be used now to measure compliance.

94. If the Panel is to make use of the 1992 Post-Evaluation Mission28 in relation to this issue, then it should also take into account the counter views of Project Staff. In particular, it should

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look at the responses made to the various drafts of the work. One example is the alleged non-inclusion of opportunity costs of water: Project Staff viewed that the opportunity cost of water for the Project was essentially zero since the CRBIP canal offtakes would not measurably affect offtakes to any system downstream and since the interprovincial agreement on the allocations of the Indus water preclude the CRBIP’s allocation to any other system.

95. The Panel should modify its conclusion that “it is clear from Management’s response that local communities were not consulted in preparatory stages of the Project.” Such a conclusion is simply incorrect. The Project documents tell another story. Staff and the consultants did consult. It is difficult to imagine a feasibility report without consultations taking place with all key stakeholders. Staff has taken many actions to promote beneficiary participation at appropriate stages during the implementation phase.

<table>
<thead>
<tr>
<th>Box 4: Consultations with Local Communities</th>
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<tbody>
<tr>
<td>✓ FR included four weeks of field investigations and discussions by social sector specialists, and structured interviews in 16 villages.</td>
</tr>
<tr>
<td>✓ The Environmental TA carried out social survey interviews in 10 villages in the Project area, as well as in 19 villages in the Stage I and II areas.</td>
</tr>
<tr>
<td>✓ Eleven villages that were identified at risk by the August 1995 flood study. Rapid Appraisal Surveys on Flood Affected Villages carried out in 1996. Consultant team visited nine villages to see protection alternatives and collected basic village statistics under Flood Mitigation Study in 1996.</td>
</tr>
<tr>
<td>✓ Sociologists carried out a survey in 12 flood-affected villages under the Social Survey and Action Plan Survey during 2000.</td>
</tr>
<tr>
<td>✓ PIME studies based on extensive interviews/surveys with 685 sample households (under the first survey) and 464 sample households (under the second survey).</td>
</tr>
<tr>
<td>✓ A holistic assessment using a participatory approach carried out in 60 villages.</td>
</tr>
<tr>
<td>✓ Consultation meeting in Taunsa in 2001, attended by one of the Requesters, WAPDA, Agriculture Department, ADB, and 30 farmers.</td>
</tr>
<tr>
<td>✓ Multi-Stakeholder Workshop in 2002 to discuss Social Assessment Study findings and produce an action plan. Participation from community representatives, project organizations, Requesters, provincial and other government organizations, and ADB and KfW.</td>
</tr>
<tr>
<td>✓ GRSC activities in 2003 implemented in a participatory manner.</td>
</tr>
<tr>
<td>✓ 18 Field visits by ADB missions.</td>
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<tr>
<td>✓ WAPDA’s Environment Management Unit (EMU) organized two stakeholder workshops in 2004</td>
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</table>

30 See Appendix 6 of the FR.
A. Adverse Effects

96. The Panel does not provide any evidence about the adverse effects alleged to have been caused by a violation of the Operational Policies and Procedures. The Panel has not recognized either the considerable benefits to former rod kohi farmers or high the high vulnerability of rod kohi farming systems.

Box 5: 

Rod Kohi – A Harsh Life in an Arid Area

- Rod kohi farming uses hill torrent water by diverting into enclosed lands by bunds. It is then stored within the soil profile, using the soil moisture for crop growth.
- Rod kohi villages were generally poor, fuelling migration.
- Even large land holding owners (50-100 acres) carried out commercial activities outside the village.
- Cropping was confined to low value crops. Cropping intensity was low at about 20-35%.
- Use of modern inputs was rare and yields are low.
- Rod kohi villages visited during Project preparation had received water less than three times over a period of five years.
- Rod kohi was/is labor intensive. Construction and breaking weirs/bunds required every year.
- Land holdings were dispersed, the result of an unstable irrigation system.
- Most landlords were also tenants. In bad years some worked for others who received water, or for family or biraderi members who receive water in surrounding villages. One zamindar (landlord) observed that his brother was working as a tenant for him one year, but if the water went a different way the next year, “I will be his tenant.”

97. Management does not feel qualified to comment on the assertions made by the Panel in the Draft Report in relation to the alleged victimization of ethnic minorities. Staff did not encounter evidence of this. GRSC did not identify this as an issue during its intensive and extensive consultations. The Panel does not produce any evidence either. It needs to be pointed out also that the GRSC included tribal groups in its membership.

98. The Panel claims that GRSC had noted adverse effects in relation to socioeconomic and cultural aspects. Management has already acknowledged that it did. But GRSC recommended solutions to deal with these effects. Government accepted all except one. Moreover, it is important to correct the notion that GRSC has been “dismantled.” GRSC completed its term as envisaged.

99. The Panel should consider whether it is in a position to evaluate the measures proposed by GRSC. The Panel should at least provide reasons for rejecting or casting doubt on the

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31 This Box is based on the information available in the FR and the PIME Studies.
measures proposed. It is also pertinent to mention that none of the Requesters seem to have invoked the remedies available to them under local laws, including remedies available under the Land Acquisition Act and the inexpensive and ready accessibility to provincial ombudsman (against provincial authorities) or the federal ombudsman (against WAPDA or other federal authorities).
VII. INVOLUNTARY RESETTLEMENT

100. At the time of Project appraisal, ADB did not have any specific involuntary resettlement policy. The only reference to this aspect was in the 1986 Staff Instruction on Socio-cultural Impacts of Bank Projects. “Socio-economic and cultural factors affecting the success of development projects may include settlement/resettlement.” Again, as is the case with other issues covered in this Staff Instruction, no standards or parameters for compliance were defined or outlined. As with other due diligence areas, Staff relied on the FR and field visits during fact-finding and appraisals missions to make judgments on the matter. The conclusion was that no settlement/resettlement issues were involved.

101. As for compliance with OM 50 or with the 1994 Staff Instruction on Involuntary Resettlement, Management feels that the question simply does not arise. Resettlement issues are important and have been recognized by Management during Project implementation. There is a general presumption that all policies are to be applied prospectively unless otherwise expressly stated by the Board. Accordingly the Panel should modify its interpretation of the “spirit” of the 1994 Staff Instruction, as stated in para. 256 of the Draft Report, and the interpretation of OM 50.

102. As for ADB’s conduct after 1999, Management reiterates that a full reappraisal involving re-examination of all resettlement issues was not required under OM 13. Thus, OM 32 cannot apply.

103. Management has already acknowledged delays in fielding consultants to address resettlement and other related issues. It has also explained the reasons for this in its Earlier Responses. While unfortunate, this hardly constitutes a breach of OM 50. Looking forward, Management will examine how it can deal more effectively with the causes of these delays.

104. Management’s Earlier Responses and the Draft Report of the Panel itself demonstrates that considerable energy was put into resolving problems related to flooding, and thus by association, to resettlement. The Panel should consider whether it is appropriate for it to come up with actions beyond those already proposed by ADB. In the absence of a full blown inquiry that will take a lot more than a short visit to Pakistan, it may not be appropriate for the Panel to conclude that the second round of consultations were “not as much a consultation as a campaign.”

105. In passing judgment on the legality of the Borrower’s actions in relation to the acquisition of land, the Panel must also consider the provisions of the Borrower’s Land Acquisition Act. This contains provisions for the Government to acquire land after due notice and affords opportunities to landowners to contest the level of compensation. Failure to follow the procedures for land acquisition can also be challenged before the federal ombudsman (as land acquisition was made by WAPDA, albeit it claims on behalf of provincial governments) and this process involves no formalities (applications can be made on a plain hand-written letter in the local language) or costs. Alternatively, a wrongful acquisition of land can also be challenged in the High Court under a constitutional provision.

106. Management acknowledges that there were delays in the preparation of a resettlement plan. However, it also wishes to point out that considerable resources and time were put aside to look after potential flood risks. GRSC acknowledged and addressed this issue.
VIII. INDIGENOUS PEOPLES

107. The Draft Report misconstrues facts by stating that "Management points out that no Staff Instructions, Policy or Procedures on Indigenous Peoples were in existence" in 1991. As stated in para. 131 of Management’s response to the Request for Inspection, while OM 21 did not provide specific instructions on how to address issues concerning ethnic groups, the Staff Instruction of 1986 on *Socio-cultural Impacts of Bank Projects* provided:

> In a project where socio-cultural variables are likely to be important, considerations essential for social acceptability should be addressed during the project cycle along with technical, financial, economic aspects of the project. Quantitative assessment of social effects is admittedly often difficult. However, in many cases, quantification may be unnecessary. What is important is that an analysis of possible social impacts be made during the processing of such projects. Such analyses may be needed not only to help establish project targets but also to determine whether social or cultural factors exist which may help or impede the achievement of such targets. (Emphasis supplied)

108. The observations already made above in relation to the scope and applicability of the 1986 Staff Instruction under the Inspection Policy are also fully applicable here. Despite its lack of specificity in terms of setting standards or procedures, the Panel has applied standards developed much later. The Panel should re-examine its reliance on the 1986 Staff Instructions or parts thereof in strictly assessing ADB compliance.

109. As already stated in the Earlier Responses, in relation to OM 21, Staff identified no adverse impacts that needed to be addressed through specific mitigation measures. Accordingly, during 1991, and in carrying out the limited re-appraisal in 1999, no further actions were taken on this matter.

110. The Panel states that greater quantitative information and analyses of data were required to enable appraisal to take in place in relation to OM 23. While the Panel does not specify the relevant portion of OM 23 in this regard, in the view of Management, such a requirement would logically and reasonably be needed only if there was a displacement of communities. Under such circumstances a resettlement is expected. As already stated, resettlement was not foreseen as an issue during loan processing in 1991. This means that OM 23 is not relevant. On the other hand, it is relevant to note that the Staff Instruction of 1986 on *Socio-cultural Impacts of Bank Projects* states, "quantitative assessment of social effects is admittedly often difficult. However, in many cases, quantification may be unnecessary."

111. Management continues to be of the view that an identification of ‘indigenous peoples’ was not warranted under the Staff Instruction of 1986 on *Socio-cultural Impacts of Bank Projects*. The term was not even used at the time. In 1986, the Instruction simply referred to the matter as tribal/ethnic minorities. The FR had dealt with the question of tribal/ethnic minorities. In this sense, ADB complied with the 1986 Staff Instructions. The Panel, however, finds noncompliance with the Staff Instruction of 1994 on *Indigenous Peoples* cannot be applicable to the Project.

112. Concerning the terms of reference of the GRSC, any reasonable concerns that could be substantiated with respect to the issue of indigenous peoples were to be addressed. The Panel

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32 See para. 8 of OM 23.
has expressed doubts as to whether GRSC discussed the issue at all, and concluded that ADB has not taken any action in this regard to ensure compliance. Management submits that it did comply. Staff included this issue in the terms of reference of the GRSC. An International Resettlement Specialist was included in the team. This expert concluded that the Indigenous Peoples Policy was not applicable in this case. It must be noted that the procedures adopted by the GRSC were required to follow participatory approaches and due consideration of ADB policies and domestic legal framework of the Borrower. GRSC is an independent body and had representation from all stakeholders, as well as members from the group claimed by the Requesters to have been adversely affected. Moreover, there is no indication whatsoever that GRSC refused to hear any person on this issue.
IX. PANEL'S RECOMMENDATIONS

113. Management does not consider it appropriate to comment on Recommendations 1 and 2 of the Report. It is felt that doing so, might be viewed as compromising or preempting the position that the Borrower and the Requesters may wish to take.

114. Management welcomes the intentions of Recommendations 3 and 4 and is prepared to work with BIC to address the broader implications of this Inspection in relation to ADB operations. In finalizing its recommendations, the Panel should take a realistic view of what is possible and achievable in a Project context.
DETACHED PARAGRAPH-SPECIFIC COMMENTS

This Attachment supplements the comments made by Management in the main section of the Response. The objective here is to cover issues and points raised in the Draft Report in more detail than in the main section of Management’s Comments.

Boxes

The Boxes provided in each chapter refer to OMs, Staff Instructions and Guidelines. The quotations in these boxes are often paraphrased and used selectively, this practice provides a restrictive perspective on ADB’s Operational Policies and Procedures. For the purpose of accuracy, we suggest that all OMs, Staff Instructions and Guidelines should be quoted fully, or a full copy given in the Final Report. Where the Panel chooses to paraphrase, each box should state, “paraphrased by the Panel,” or “partly selected but some clauses omitted by the Panel” to ensure that reader understands that the true content of the Boxes are not exact quotations from OMs, Staff Instructions and Guidelines.

Chapter 2 - Project History

Para. 42: “ADB also requested that Flood Protection Plan should be developed.” This partial quotation misconstrues ADB’s recommendations. ADB recommended the preparation of a Flood Protection Plan and Resettlement Plan because the study did not develop the Flood Protection and Resettlement Plans in sufficient detail before villagers were requested to take final decisions on protection or resettlement. By mentioning only the Flood Protection Plan but not the Resettlement Plan, this sentence suggests that ADB recommended the protection option only, dropping the resettlement options. This is not the case. ADB recommended that the consultants look into both flood protection and resettlement plans.

Chapter 4 - Project Benefit Monitoring and Evaluation

Findings

Para. 68, first line: “The Report prepared by the National Fertilizer Corporation Ltd. (NFC) 1990 says that it followed closely some studies made in 1980.” This sentence is misleading. The referred page of the NFC report states that the survey was designed in a way that its findings were comparable with the earlier socio-economic surveys of the CRBIP. The Draft Report uses this to imply inadequacy of the NFC study. However, the referred statement in the NFC report simply mentions the comparability of its methodology with earlier studies, which is an important requirement for a sequence of socioeconomic surveys intended to capture changes over time.

Para. 68, last sentence: “The PIME Studies Phase I began in June 2000 and focused on Stages I and II.” This statement understates the scope of the PIME Study by reporting a much smaller coverage of the study. Besides Stages I and II, the PIME Study also covered one-third of the entire Stage III area.

Para. 70, third line: “This was so, but merely because the geographical areas in Stages I, II as well as III were considered. However, as far as the scope was concerned, the limitations of the earlier study applied. This was expected; for, as Management observed, the “same

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1 Hereinafter, quotations from the Draft Report are shown in italic letters with quotation marks. Quotations from other documents appear in normal font with quotation marks.
methodology and subject coverage as the study in Stages I and II” were used…”. The clause quoting from Management’s Response to the Inspection Request (the Response),2 viz. “same methodology and subject coverage as the study in Stages I and II…” misinterprets what was really was meant by Management. This quote from the Response refers to PIME Phase I study that covered Stages I and II and Contract No. 66 area of Stage III, not the previous studies undertaken in 1980. The Panel concludes “but merely because the geographical areas” without providing a detailed comparison of the coverage content of the studies. The conclusion reached by the Panel is based on a misinterpretation of the message given in Earlier Responses. The PIME Study was more comprehensive in terms of its coverage, sampling, and focus on Project objectives, as may be noted below:

**Sampling Methodology:** The 1980 Study applied two-stage stratified random sampling for random village selection and then random household sampling within selected villages. The PIME Studies applied multi-stage stratified random sampling, first through selecting command areas of distributary canals, then those of watercourses, and then households. The studies also distinguished between the stages of canal development, giving a more complete and reliable picture overtime. Furthermore, under the PIME Studies, household surveys were differentiated by male and female groups, supplemented by a village level survey based on systematic sampling.

**Subject Coverage:** The 1980 Study dealt with about 180 survey items, while the PIME Phase-II Study dealt with 456 survey items (under the household-level survey) and 120 survey items (under the village-level survey). The PIME surveys had a broader coverage. These covered infrastructure and services, the impact on women, and irrigation system performance, aspects not included in earlier surveys.

**Project-Objective Focus:** In order to capture the impact of the Project, a logical framework was developed during the Phase-I PIME Study, which later became the basis for the design of Phase-II Study. Furthermore, the PIME Studies included specific subjects directly related to the Project such as irrigation system performance, update of IEE, and assessment of farm demonstration activities.

Management is of the view that, the statement made by the Panel in relation to the Memorandum of Understanding for the TA Fact-Finding Mission of February 1989 (7th line of para. 70) is largely immaterial.

**Para. 70, 10th line:** “In fact, it appears from the 2001 PIME Study referred to by the Management, that by reference to eight criteria, indicators for the PIME program had been identified, which would have yielded quantitative and qualitative information about important social and economic characteristics of individuals and groups affected by the project…But these were not used (emphasis underline supplied).” This is incorrect. In fact, the PIME Phase I Report explained that these “indicators” were in fact the criteria used to prioritize the indicators. The Phase I Report also clearly lays out the final set of indicators selected by the consultants, which were used in the Phase II surveys and assigned to the appropriate Government agencies for long-term monitoring.

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2 ADB 2003, Response of ADB Management to the Board Inspection Committee on the Request for Inspection of the Chashma Right Bank Irrigation Project (Stage III) (Loan 1146-PAK [SF]), February 2003.
**Para. 72, footnote thereof:** The Panel refers to OM Section J4/BP Issued on 29 October 2003, which is clearly inapplicable to this Inspection.

**Para. 73, footnote thereof:** The Panel refers to OM Section J2/BP Issued on 29 October 2003, which is not applicable to this Inspection.

**Para. 74:** This paragraph refers to the Panel’s interview with Staff. It is not clear whether the quoted reference to “huge gaps in our knowledge” was mentioned in the interview in exactly the same context as asserted by the Panel. In this regard, we wish to highlight para. 8.h of Panel’s TOR that states “[i]f the Panel uses any of the interviewee’s responses in its final report to BIC, the Panel should make an appropriate citation to the written summary of the interviewee as a part of its documentary evidence cited to support its findings and conclusions.” The Panel may also wish to clarify whether the interviewer invited the interviewee to review the final written summary and whether the interviewee opted to sign and date the same (paragraph 8(d) of the Panel’s TOR, January 2004).

**Para. 75:** It should be noted that the data obtained from the benchmark survey were the basis for the economic and farm budget analyses used to assess the impact of the Project in the Feasibility Report (FR) and Appraisal Report. Regarding “persons to be otherwise affected by the project” it should be noted that in neither the FR or during loan processing, were such groups identified. The PIME Studies included a holistic participatory rural appraisal (PRA) survey covering 60 villages to highlight lack of social infrastructure facilities and other major problems being faced by the communities.

**Para. 76:** Benchmark information provides a static baseline against which Project impact can be analyzed under follow-on surveys. However, benchmark information itself does permit analysis of impacts, nor capture the dynamism of the Project area. The data and information collected under the NFC survey and PIME Studies serve as a basis for monitoring these impacts, including the impact of an increased population in the area. Increased population would result in various changes in the Project area that are to be reflected in the changes in socioeconomic indicators, such as those of land tenure, housing, drinking water and sanitation, education, health, and others, in the PIME Studies and its follow-on monitoring surveys. To supplement these quantitative data and capture other outstanding problems, the PIME Studies included the aforementioned PRA survey. If problems such as ethnic conflict were coming to the fore, then surely these surveys would have identified them. Such conflict would also have been detected by the PRA. However, none of the surveyed villages reported such problems (see below).

**Para. 79, 7th line:** There has been no “political response that would slow the development of the CCA” (third line) experienced in the Project area. In addition, we do not believe that under the requirement of para. 8 of OM 23, a benefit monitoring survey should cover people who may be displaced “by selling their lands to immigrants” (9th line), insofar as these are voluntary personal transactions.

**Para. 80:** "Neither the NFC report nor the PIME studies provide information about communities, -- whether minority tribal groups or others -- which may be displaced…” In fact, the NFC and the PIME studies gave specific attention to the issues of in-migration and ethnic conflict. These studies reached the same conclusions as the FR on this matter, supporting the general view that tribal diversity and displacement were not significant issues in the Project area. In 18 field visits carried out by ADB missions, there was no single mention of such issues.
The NFC questionnaire contained a specific section on clan, caste, and tribal relationships in the sample villages. The objective was to identify whether these relations and any other village factionalism would influence intra-village cooperation in watercourse associations and other community development efforts. Overall, the survey results show overwhelmingly that inter-tribal relations were cooperative and would facilitate watercourse and other village development activities.

In its ex-post evaluation of Stages I and II, the PIME Phase I study reported that tribal enmities are not observed in the Project area based on interviews with key informants in the villages surveyed. The PIME PRAs for the Stage III area began each interview by asking about village social history, including in-migration and the importance and impact of culture and traditions. Although the incidence of in-migration was high in the sample villages, no significant concerns emerged about tribal enmities or displacement. In 58 of the 60 villages surveyed by PRA, village groups indicated that inter-tribal relationships were harmonious. Migration, land sales, and tribal tensions were prominent in only two villages. Interestingly, despite the tribal diversity and the Requesters' concern about marginalization of the Saraiki minority, the Saraiki language was either the only language spoken or the dominant language in all villages. The priority needs identified by the villagers were consistently related to practical concerns such as the quality, coverage and continuity of village infrastructure and health services. In no village was there concerning displacement or conflict between ethnic, or other socioeconomic groups raised as a concern.

**Harm Caused**

Para. 85: The 1998 PPAR for another project does not provide evidence of any adverse effects caused by CRBIP. In 1998, the Project was still in the early implementation stage, as construction of the main canal only commenced in March 1998. Therefore, the claims about "flawed design," and "inadequate O&M and management" under CRBIP are only hypothetical extrapolations, none of which are based on facts.

Para. 86: The PPAR was incorrect with regard to how cropping patterns were evaluated. Moreover, this paragraph in the Draft Report does not indicate any substantiated adverse effects. Indicative cropping patterns were modeled not only based on soil and climate suitability, but also on prevailing farming practice in the area, farmer preferences, and market potential. Both the NFC and PIME Studies extensively surveyed farming practices and cropping intensities. The NFC survey asked farmers about practices and input use, as well as about anticipated cropping patterns with irrigation. Each farmer makes independent decisions regardless of recommendations on model cropping patterns. Farmers normally like to “see” first before accepting changes. Deviations from a recommended cropping pattern can take place. However, such deviations, if any, do not necessarily mean adverse effects.

Paras. 87 and 88: The Panel does not identify any material adverse effect on account of the alleged Operational Policies and Procedures violations. The NFC and PIME Studies gave attention to the interests of Project beneficiaries. No resettlement was expected under the Project, but the studies gave attention to the possible impacts of in-migration and tribal tensions, which at the time were seen as the main risk factors that could potentially impede the achievement of Project targets. Under a project that covers a large area such as CRBIP, there always remains a possibility of unforeseen complaints arising during implementation. Such complaints are difficult, if not impossible, to detect within a benchmark survey. Nevertheless, ADB always took prompt action whenever a new issue emerged, and made every possible effort to encourage the Government to resolve such issues.
Para. 89: The statement, “credible pre-project and post-project comparison might well nigh be impossible, and leave people with serious misgivings…,” does not substantiate any material adverse effect. A benchmark survey provides the starting point for impact assessments, and the variables measured in such surveys are chosen based on the best possible technical assessment at a given point in time about a project's expected impacts, both positive and negative. The suggestion that everything should have been measured and monitored in such a large project area is unrealistic. We acknowledge that with the developments in "best practices" during the last 15 years, a somewhat expanded set of variables might be covered if the Project were being prepared today. In our view, the Benchmark Survey and PIME Studies were well structured and efficiently carried out and provided an adequate basis for the evaluation of Project benefits.

Chapter 5 - Environmental Impacts

Box 3: This box does not exactly quote OM 21 and the Guidelines in force. It is highly selective and omits important and crucial words. For example, the Guidelines state "[t]he IEE should be prepared by the Bank staff early in the project preparation process. Usually this will be best done by the Bank’s fact-finding mission for the proposed project" (para. 1.2.4, emphasis supplied). The word “best” is dropped in Box 3. This can give the impression that there was less flexibility for professional judgment provided under OM 21.

Findings

Para. 98: This paragraph misconstrues Management’s explanations on the environmental categorization at appraisal by referencing the preliminary screening report in 1989. The Preliminary Environmental Screening in its simple format at that time listed project names, estimated loan amounts, and environmental categories. But no further information was provided. Therefore, the second sentence of this paragraph “[a]t the time little was suspected of the magnitude of the project’s environmental impacts, and, not surprisingly, no mitigative measures had yet been considered,” is a presumption by the Panel that is not supported by any record or information. The categorization in 1989 and that at appraisal in 1991 represented judgments made at different stages of the Project preparation process. The final categorization took place in 1991, not in 1989. By this time, ADB had more comprehensive information available.

Para. 103, third line: “...the OM and the Guidelines clearly required that an IEE is to be undertaken at the Fact-finding stage in the project cycle in order to identify the need for further assessment as part of the Feasibility Study” (emphasis supplied). A footnote reference is made to para. 15 of OM 21. However, neither the OM nor the Guidelines include the underlined requirement. OM 21 requires submission of an IEE to the Environment Unit or its inclusion in the back-to-office reports (BTOR) of fact-finding missions. These are loan fact-finding missions (as is evident in the reference in para. 13 of the OM to the Management Review Meeting, which follows the loan fact finding mission). Further, loan fact-finding missions are usually carried out after completion of the feasibility study. Therefore, an IEE cannot be used for “further assessment as part of the Feasibility Study.” It is also relevant to note again what the Guidelines state about the timing of IEE, “[t]he IEE should be prepared by the Bank staff early in the project preparation process. Usually this will be best done by the Bank’s fact-finding mission for the proposed project" (para. 1.2.4, emphasis supplied).
Paras. 103, 104 and 105: The Panel claims that Appendices 6 and 18 of the FR do not satisfy the requirements of an IEE under the Environmental Guidelines. In the view of Management, the Guidelines were followed under this work. Appendix 18 of the FR covered relevant items in the checklist for irrigation projects (provided in Annex I-A of the Guidelines), and discussed the anticipated impacts and measures for mitigation. Therefore, the assertion of non-compliance of OM 21 by not fulfilling requirements of the Guidelines is not supported by the facts. While the Guidelines do not specifically provide a standard format for an IEE, Appendix 18 of the FR, in light of the considerable mainstreaming of environmental issues and incorporation of mitigating measures into the Project design, was considered adequate as an IEE.

Para. 107-110 Advisory and Operational Technical Assistance: The stated reference in the Appraisal Report (AR) to “an environmental impact assessment (EIA) TA proposed for Bank financing” was aimed at providing WAPDA with the resources to enhance its capacity in environmental management. The overall objective of this TA (as stated in Appendix 9 of the AR) was to assist WAPDA in ensuring that water resources development projects contribute optimally to sustainable economic and socioeconomic development. The scope of the TA covered (i) assistance to WAPDA in drafting guidelines on water resources development, taking into account related environmental policy and planning, in accordance with national development objectives; (ii) preparation of a study for training purposes, encompassing a demonstration of procedures for guiding environmental management planning of irrigation projects -- such a study would involve preparation of an environmental management plan (EMP) for the Chashma Right Bank Irrigation Project (CRBIP) including preparation of an EIA and a detailed comprehensive environmental monitoring program encompassing data management systems and on-the-job training in EIA, monitoring, and actual data management; and (iv) provision of computer hardware and software for the establishment of an environmental data management system in WAPDA. Specifically, the tasks of the TA included, inter alia, a post-evaluation EIA of Stages I and II, based on which, there would be a baseline environmental survey for the remaining CRBIP area, i.e., Stage III. Nowhere in the TA objectives, or its scope, is there any reference to the preparation of an EIA for the CRBIP for operational use, except for training purposes. Moreover, since the Project’s environmental classification was confirmed as Category B, there was no need to prepare an EIA.

Para. 107: Inclusion of a piggybacked TA is not “a direct contradiction” of the conclusion of the SIEE. The TA’s objective was to strengthen WAPDA’s Environment Cell, and not to substitute for an environmental assessment during Project preparation. The EIA exercise was included in the TA scope as a case study and for training purposes, but not for the purpose of fulfilling any EIA requirement in the traditional sense (as required for category A projects). This was a Category B Project. The Panel should be aware that piggybacked advisory TAs are generally for capacity building purposes, not for purposes of project implementation.

Para. 108: As Staff have already made clear to the Panel, the phrase "environmental impact assessment" was used in the loan agreement in a generic rather than a specific sense, as would have been implied by the abbreviation "EIA." The purpose of the covenant was to ensure that WAPDA provided full support necessary for the piggybacked TA to complete its work tasks and achieve its objectives.

Para. 109: The statement about “[f]ive days before the loan was approved...” could be misinterpreted as implying that the AR’s SIEE was somehow invalidated by changes in the canal alignment. This would be incorrect. First, the consultant’s submission of a proposal does not necessarily mean approval of the proposed design. In fact, the final alignment and the design of the cross drainage structures underwent considerable study and refinement, and were
only approved in 1995. Prior to this decision, ADB fielded a Technical Review Mission in December 1994, which thoroughly examined the technical options. Second, the environmental assessment at appraisal could only be made based on the feasibility-level design that would later be refined through detailed design studies. The deviation in environmental effects in the final project design as compared to the FR was the flood impact in the west of the main canal. This issue has been continuously addressed since its identification in late 1994 through the flood impact studies, social surveys, and community consultations. Therefore, we disagree with the assertion, “The potential environmental and social effects of these changes were never assessed” (last sentence of para. 109).

Paras. 111-112: Management considers that, consistent with OM 21, environmental considerations were mainstreamed in the design and implementation of the Project. Various Project components and related covenants dealt comprehensively with the potentially adverse impacts anticipated at the time of appraisal. The Project financing plan reflected the estimated costs of such components. Numerous examples can be cited from the Appraisal Report and Project Loan Agreement:

Paras. 72-76 of Appraisal Report

✓ Concrete lining of the main canal to reduce seepage and consequent erosion.

✓ Cross drainage structures, escapes, silt ejectors, canal drains to regulate water flow and reduce potential damage by excessive runoff and flooding, designed for 1 in 40 years flood discharge.

✓ Bridges, gravel surfaces, all weather service and access roads to facilitate movement of wildlife, domesticated animals, and humans.

✓ Compacted flood-protection embankments.

✓ Dedicated floodwater carried channels for safe passage of floodwaters to Indus River.

Para. 80 of Appraisal Report

✓ Erosion protection of the main canal and flood carrier channels through establishment of erosion-control vegetation and waterways stabilization measures.

Para. 123 of Appraisal Report

✓ Establishment of surface drainage systems to address potential problems due to water logging and salinity.

✓ Upgrading the groundwater monitoring system to ascertain accurate and timely monitoring of changes in the configuration of the water table and analysis of the timing and extent of subsurface drainage construction.

✓ Development of a comprehensive environmental monitoring program and management plan for CRBIP under the piggybacked TA, including training for the WAPDA staff in EIA and monitoring.
Project Loan Agreement

Schedule 6 contained four relevant covenants (paras. 11, 15[b], 21, and 22) on (i) water table and salinity monitoring under WAPDA’s ongoing Salinity Control and Reclamation Projects, (ii) construction of on-farm drains by Water User Associations, (iii) requirement for NWFP and Punjab to establish and collect irrigation service fees adequate to recover the full costs of O&M of irrigation and drainage systems of the Project, and (iv) installation of subsurface drainage in the event the water table rose to less than 5 feet below the surface.

In addition to the above specific covenants, the Loan Agreement contained numerous ADB standard covenants to ensure the efficient implementation of all Project components.

Paras. 113-117 (The 1999 Supplementary Financing): As in the case of the original loan, assessment and mitigation of adverse environmental impacts were mainstreamed as an integral part of design and implementation. Moreover, the supplementary financing did not come about because of a change in the scope of the Project. As such, there was no particular need to look again at environmental impacts. During implementation, ADB looked closely at these impacts, including the potential flood risk in the west of the main canal.

Para. 116: It would be accurate if the first sentence were revised to read, “the IEE together with the Environmental Management Plan… were sufficient to meet the intent of the Project loan covenant requiring an environmental impact assessment” (underlined text proposed). This language would be consistent with the Panel’s correspondence with Staff (not Management) about both the conclusion of ADB operational and environmental staff involved at the time, and the intent of the Project loan covenant (see para. 108 of the Draft Report), which required WAPDA to develop a comprehensive environmental monitoring program and undertake an environmental impact assessment of the CRBI Project. See the above comment on para. 108 in regard to the meaning intended by the phrase "environmental impact assessment." In addition, to put the quote (lines 5 and 6) from the TA’s IEE in proper perspective, it would be appropriate if the Panel also mentioned further that the IEE acknowledged that it was unduly pessimistic, because it assumed none of the identified mitigating and enhancement measures, some of which might well be included in the final Project design. Please see our comments above about these mitigatory and enhancement measures.

Para. 121, third line: The consultant’s EMP report submitted in March 1994 is not a “completed EMP” but a final proposal submitted by the consultants to the Government. This may lead to a misunderstanding that the EMP was finalized in 1995. The Draft Report itself later refers to the EMP report as “EMP Draft” in para. 137.

Para. 122, 5th line: “It should be noted that the EIA was proposed in the final report in spite of the fact that a December 1994 meeting between an ADB Technical Review Mission and Project Management had already proposed replacing the EIA with the development of an “environmental action plan.” The change of the title of the study from EIA to “environmental action programme” was an agreement, not a proposal, in the tripartite meeting on 10 December 1994 to discuss the draft final report. The change is recoded in the Government’s minutes of the meeting.

Para. 125, 7th line: The phrase “the Borrower shall support through the (NDSP), the implementation of EMP for the CRB” clearly indicates the Borrower’s responsibility for
implementation of the EMP. Such responsibility is in no way diluted by the word “support” as misconstrued in the Draft Report. It is indicative that while implementation of the EMP is included under NDSP, the Borrower must ensure such implementation.

Para. 125, footnote to the last sentence: The assertion suggesting that the responsibility of WAPDA’s Environmental Cell is limited to the EMP of NDSP is out of place and out of context. It is not correct. The relevant paragraph 13 of Schedule 5 to the NDSP loan agreement clearly refers to EMP not only for NDSP, but also for ‘subprojects,’ ‘LBOD,’ and the ‘Project.’

Para. 125, last sentence: “…nor any explicit provision for funding its implementation.” It should be noted that NDSP is a sector loan project and, therefore, unlike a regular project loan, does not contain specific budget provision for each subproject. In this case, the allocation to the Project is part of the overall financing of EMPs covered under the Loan. NDSP had funds specifically earmarked for technical assistance and other support (excluding civil works) for the implementation of EMPs under its budget component for Institutional Programs. Civil works, if needed, would be financed out of other loan components. OM Section D3/BP provides a definition of sector lending and the Operational Policies and Procedures therein.

Para. 128, 4th line: “Nothing had yet been done to implement the measures from the CRBIP EMP.”; Para. 130: last sentence “…but this was never done.”; and Para. 131, third line: “The plan was submitted for funding… but funding for the plan was never granted.” In making such assertions, the Panel does not appreciate all the efforts of Staff, as documented in various BTORs and follow-up communications with WAPDA, in pursuing on the implementation of the EMP albeit with unfortunate delays.

Para. 136, 5th line: The sentence in parentheses challenges Management’s Earlier Responses by confusing the coverage of the EMP for CRBIP. The EMP from its initial preparation until today has been consistently for the entire CRBIP area and was never seen or considered separately for each Stage. Therefore, it was entirely appropriate that village consultations for preparation of the EMP should be undertaken throughout the area covered by all three Stages.

Para. 137: It is not clear whom the Panel refers to in stating, “the participants that represented civil society still did not have access to the full 1995 EMP Draft…. ” The Inspection Requesters were invited to the Workshop held in February 2004 by WAPDA. However except for one person, the Requesters rejected taking part in this event. According to WAPDA, the reason for the rejection was that a list of participants was not made available to the Requesters.3 Some other NGOs active in the Project area did send their representatives to the Workshop. To our knowledge, however, there was no request to WAPDA from any participant for a copy of the consultant’s 1995 EMP Report. Furthermore, the draft EMP Report prepared by WAPDA for the workshop includes a list of the measures proposed in the 1995 EMP Report. Therefore, those measures proposed for immediate implementation, and those that could be undertaken later, were made clear.

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3 This was despite WAPDA’s explanation to the Requesters that invitees included all local representative relevant to CRBIP, officials of agencies, and a few members of lawyers' groups, as well as representatives of NGOs, including the Requesters. WAPDA explained to the Requesters that the names and addresses of participants would be available at the workshop (see e-mail from WAPDA to one of the Requesters dated 7 February 2004).
Harm Caused

Para. 144, last sentence: “An EIA that was proposed before as well as in the EMP contained a budget for the acquisition and analysis of the satellite data and imagery that would be required to fill this gap, but this proposal was never accepted.” It should be noted that satellite data and images could not be obtained because of the country’s military security restrictions. This was not due to budget considerations. Therefore, neither the EIA nor EMP could fulfill this gap.

Para. 147: For our comments on the issues raised with respect to forest and grazing land, see paras. 163, 166, and 167 below. We acknowledge that fuelwood and grazing land have become scarcer. However, in the case of fuelwood, we question the extent to which this can be associated with the Project as compared to external factors (i.e., long-term decline predating the Project, as well as the prolonged drought of 1998-2001). Please see our related comments below on paras. 163 and 167.

If the assessment is to be balanced, the Report should explicitly note in para. 147 that these impacts were not anticipated in any of the environmental assessments undertaken, including the SIEE of the Appraisal Report, the TA’s ex post EIA of Stages I and II, and the TA’s IEE of Stage III. Indeed, the TA’s IEE predicted minor-to-moderate positive impacts of Stage III on forests, trees and livestock.

Para. 154, second sentence: “The extent of flood risks that are due to changes in the dynamics of hill torrents and in land use were also not properly assessed.” It is doubtful if an EIA could analyze this issue in more detail than what was presented in Appendix 9 of the FR. The Panel ought to assess the adequacy of the dynamics of hill torrents and the effect of land use highlighted in Appendix 9 of the FR. The Panel does not indicate what specific aspects are missing in the analysis and what additional studies are required.

Para. 155: Similar to the above comment, it is doubtful if an EIA could provide any more detailed assessments of the impact of the cross drainage structures than the flood studies of 1995 and 1996.

Para. 156, first sentence: “Had the problems been identified, either before appraisal or an EIA in 1995, there would still have been time to modify the designs in order to avoid some of the flood damage.” This assertion does not take account of any engineering considerations. Since 1994, repeated engineering assessments of the flood impacts were carried out. Therefore, an EIA that might recommend a flood assessment would have had added no value to the issue. Also, the various technical options were thoroughly examined during the Technical Review Mission in December 1994, through which the existing design was confirmed and agreed as the most appropriate among available options. The Panel should look into the work done by the engineering and water resources experts.

Para. 158: The Panel’s interpretation of the quoted statement from Management’s Earlier Responses, referring to a report of the Punjab Private Groundwater Development Project, is not correct, although we did make a typographical error on our part. We apologize that the title of this project was not clearly indicated in the Earlier Responses. The phrase “the Project area” in the quotation from the Response does not refer to the Chashma Project. Nonetheless, the point made was that even after 150 years of intensive irrigated agriculture in that region of Punjab, the presence of agricultural chemicals in groundwater was very low, supporting the SIEE’s conclusion on the matter.
Para. 163. Reference is made to the IEE Study 1994, but the partial quotation misconstrues the real meaning. The IEE report does not state that the poor condition of the Government Reserve Forest is due to recent human pressure. But para. 163 of the Draft Report implicitly states that this is the cause. Also, important statements on the overall biotic environmental impacts in the IEE report are not brought out. The IEE mentions that major influences of human activities had been imposed upon the original ecological framework over a long period of time, and much of the original flora had been cleared or drastically thinned (as of the IEE field survey in 1993). The IEE then concludes that biological environmental issues are of limited importance in the Project area.

Para. 166, second line: “Rach Triman, which the IEE had reported to be one of two Reserve Forest that was in better condition than the other two” (emphasis supplied) is an incorrect quotation. The IEE report states that the two Reserves, Takh Miran and Rach Triman, are of significant size as compared with other two Reserves but does not mention that they are “in better condition.” Contrary, the IEE mentions that they were already in poor condition as of the IEE survey in 1993.

Para. 167: This paragraph should distinguish between “loss of grazing land” and “loss of access to grazing land.” The existing problem is that landless people, who earlier were able to access other peoples’ unused land for grazing, are today not allowed to enter the same land because it has been developed as irrigated farmland. This is a social issue rather than an environmental problem. It should be noted that there is no easy solution to this problem, as the former grazing lands are private property and are now being used for commercial purposes.

Para. 169, last sentence: “The Panel’s impressions from the field suggest that there are a number of issues related to pollution and waste management in the sugar industry that have not been properly addressed.” It would be appropriate not to conclude this based only on impressions, but rather on sound evidence and assessments of all relevant facts. It may also be noted that other authorities govern or provide for environmental controls of private agro-processing industries, as well as other industries not connected to the Project.

Chapter 6 - Socio-economic and Cultural Impacts

Box 5: This box quotes selectively from Staff Instruction of 17 September 1986, and it omits relevant clauses. Since these Instructions are the basis of the Inspection, it is necessary to give a more complete citation. In particular, we note that the following underlined clauses are omitted from the Staff Instruction:

“While the case for considering socio-cultural impacts in the processing of development projects mainly rests on the values and priorities of the DMCs, the Bank also has an obligation to ensure that potential socio cultural...”

“In a project where socio-cultural variables are likely to be important, considerations essential for social acceptability should be addressed during the project cycle along with the technical, financial and economic aspects of the project. Quantitative assessment of social effects is admittedly often difficult. However, in many cases, quantification may be unnecessary. What is important is that an analysis of possible social impacts is made during the processing of such projects. Such analysis may be needed not only to help establish project targets but also to determine whether social or cultural factors exist which may help or impede the achievement of such targets”
Findings

Para. 178: As commented above in relation to paras. 75 and 76, the NFC’s Benchmark Survey provided an adequate basis for the FR to evaluate social and economic impacts of the Project anticipated at the time. The benchmark information provides a static baseline, but cannot capture by itself the dynamism of the project over time. The assertion that “the Benchmark Survey did not adequately identify and focus on issues along these parameters” requires greater specificity given that the benchmark information only provides a starting point for further impact monitoring.

Para. 179: This paragraph implicitly blames ADB for selecting NFC instead of the consulting firm that submitted a different proposal to carry out the Benchmark Survey. The Panel misunderstands the background to this issue and the procurement rules in this case. First, the socioeconomic survey was to be subcontracted under the consultancy contract for the FR. Therefore, the decision on the selection of the subcontractor rested fully with the FR consultants. Further, the phrase in the paragraph “[t]he proposal was rejected on the grounds that it was too costly (third line, emphasis supplied)” misconstrues Staff’s explanation to the Panel, which stated “while no communications are in the file, this may suggest that the financial negotiations with [firm’s name deleted] were not successful and [firm’s name deleted] withdrew.” The financial proposal for this sub-contract was submitted to the consultants, not to ADB. Moreover, the proposal exceeded the budget available for the job. As Staff already informed the Panel, it is our understanding that the parties entered into negotiations but could not reach an agreement. Subsequently, the consultants invited proposals from other interested parties. NFC was one of these.

Para. 189, reference to OM 47/BP, para. 4 (i): It should be noted that for a large-scale irrigation project of this kind, the main canal and distributary canals are mostly geographically and topographically determined and there is thus very limited scope for beneficiary participation in the project design. On the other hand, small irrigation schemes or tertiary and on-farm systems under a large-scale irrigation project are better designed through the participatory process. The Project adopted this approach, as reflected in the implementation arrangement of Part-C: On-farm Water Management. This component was implemented with the full participation of farmers, taking the steps of: (i) organizing water users’ associations, (ii) mobilizing farmers’ contributions of 20% of the material cost, (iii) determining alignment and outlets of watercourse in consultation with members of water users associations, and (iv) construction of watercourses by the farmers themselves with technical advice from the Project’s field team. Throughout the implementation of this component, there had been active participation by the beneficiaries, which influenced and controlled Project decisions in so far as these are related to them.

Para. 189, reference to OM 47/BP, para. 4 (iv): The referred section of OM 47 states:

(iv) ensure that project design and implementation arrangements include provisions to monitor and evaluate the benefits will be based on the project framework matrix that is to be developed during the preparation of the project (emphasis supplied);

The provisions on monitoring and evaluation under the OM are to be included during project processing, and to be based on a project framework that is to be developed during project preparation. However this OM was introduced in 1997 long after the Project was prepared and approved in 1991. Nevertheless, a benchmark survey for future benefit monitoring was included in the scope of the PIME Studies. These PIME Studies proposed follow-on monitoring activities
by the Government. In addition, as envisioned in the OM, a project framework was prepared by the PIME Study.

**Para. 189, reference to OM 47/OP, para. 5:** The referred section of OM 47 states:

The process of identifying potential beneficiaries and people likely to be adversely affected will start right at the stage of project identification and will continue with more and more refinement in the succeeding stages of project processing. Also, analysis will become more focused on key social aspects at successive stages.

The Draft Report states "it would defeat the intention of the OM if the Bank did not also have an obligation to ensure that the social dimensions are properly dealt with projects where this was not done (11th line)." However, the Draft Report does not identify or suggest what specific omissions were made. During Project implementation, ADB took adequate actions to identify adversely affected people and addressed issues as they emerged. Such initiatives included PRA exercises under the PIME Studies, the Social Survey and Action Plan Study for the flood-affected communities, the Social Assessment Study in 2001, and later the work under the GRSC. Further, the Project's Part C: On-Farm Water Management, established a large grassroots level network of on-farm development field teams that served as a channel for people to voice concern to the relevant offices.

**Para. 191:** As the Panel rightly points out, the 1986 Staff Instructions were lacking in specificity regarding the requirements. Nevertheless, we consider that the FR met the objectives of the 1986 Staff Instructions in the context of best practices in 1989-1990. We would appreciate it if the Panel could indicate more specifically what should have been covered given the unspecified requirements in the 1986 Staff Instructions, the scale of the Project, and the conditions of the Project area.

**Para. 192:** As mentioned in our comments in relation to para. 189, OM 47 mostly applies to the project preparation stage. The requirement during implementation, "analysis will become more focused on key social aspects at successive stages," has been fulfilled by the series of actions taken on specific issues, including the Social Survey and Action Plan (SSAP) Study in 2000-01 and the Social Assessment Survey in 2001.

**Para. 193:** Management's position on the supplementary financing of cost overruns is provided in Chapter III of the main text. We consider that the requirements mentioned in this paragraph were not applicable at the time the supplementary financing was approved in July 1999.

**Para. 198, first sentence:** “In (sic) is clear from Management’s response that local communities were not consulted in the preparatory stages of the Project.” The basis for this conclusion is unclear. We also believe it is incorrect. The studies listed in para. 196 are indicated in para. 135 of Management’s Responses to “illustrate the consultative and participative approach adopted by ADB under the Project.” The Response does not suggest that they were the only consultations made. In this regard, it would be relevant to mention that the then Agriculture Department commented on the post-evaluation of the TA that 12-week inputs of two native speaking, international social anthropologists and 8-week inputs of local sociologist/rural institution specialist (8 weeks) provided adequate assessment of the cultural and institutional issues relevant to the Project, and that these issues were incorporated into the Project design.

As indicated in Appendix 6 of the FR, the study team carried out field investigations over a period of 4 weeks and undertook structured interviews in 16 villages. Therefore, the Panel's
view that “local communities were not consulted in the preparatory stage of the Project” is incorrect.

**Para. 199, 6th line:** The statement, “…consultations effectively ended when its recommendations were rejected by the project authorities…” is inaccurate. WAPDA did not accept the approach taken by the consultants, but it requested the consultants to undertake consultations again after preparation of the flood protection plan. The flood protection plan was prepared based on a field survey and consultations with each village. After the preparation of the flood protection plan as one of the options, the consultation process with the villages resumed. Even the “crash program,” prepared under the pressure of nearing monsoon season, was made in consultation with the villages concerned. The report by National Development Consultants (NDC) was a draft report that did not satisfy the requirement of either WAPDA or ADB. Sharing such an incomplete report with communities concerned would have been premature and inappropriate.

**Para. 200:** On the Panel’s assertions that “…CBI [Consensus Building Institute] report does not seem to meet such requirements…” and that “…the report was nothing more than a discussion paper for the ensuing Multi-Stakeholder Workshop,” the fact that the report was discussed in the workshop itself does not mean that the report was merely a discussion paper and not a serious professional report on the social survey. We believe that the depth and breath of the contents presented in the CBI report demonstrate that the report is an independent social survey report. The Panel should specify clearly what “such requirements” are. In addition, it should indicate reasons why it does not consider the CBI report as more than a discussion paper.

**Para. 201:** Without commenting on views of other parties that may or may not have represented all the affected, it is relevant to note that the Workshop of 6-7 March 2001 adopted the Urdu language for the workshop on request of the Requesters. Therefore, most of discussions were in this language between the Requesters, executing agencies, and the facilitators. The action plan was prepared through the workshop discussions, mainly through the process of executing agencies’ responding to the demands of the Requesters.

**Paras. 201 to 203:** These paragraphs rely on the Requester’s claims but offer no objective information on their validity. We would like to repeat the facts: the Requesters refused to participate in the discussions on GRSC’s framework and TOR in November 2002. They did not agree to the contents of the discussion paper distributed by WAPDA prior to the meeting. Although the responsible Government official explained to the Requesters that the discussion paper was merely a proposal from WAPDA, and that the meeting was an opportunity to express and discuss any different opinions and proposals, the Requesters did not change their position of rejecting the invitation to participate. In the second instance in January 2003, the Requesters again rejected participation in the meeting to discuss the TOR for GRSC, seeking “formal response on their concerns and demands through the existing inspection function.” Their position of rejecting participation and consultation was maintained further during the GRSC operations. This was the case, despite the recommendation by the Board Inspection Committee that “all parties, with good will, to avail themselves of the opportunity the GRSC presents.”

**Para. 205, first sentence:** “Apart from the initial phase of resettlement planning, Management does not refer to any more opportunities for such participation between the adoption of the OM

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4 ADB 2003, Report of the Board Inspection Committee to the Board of Directors on the Request for Inspection on Chashma Right Bank irrigation Project (Stage III) (ADB Loan No. 1146-PAK [SF]) in the Islamic Republic of Pakistan, 12 March 2003, para. 94.
in January 1997 and the CBI consultations that started in August 2001.” This finding overlooks the fact that the Project’s Part-C: On-farm Water Management was implemented with full participation of farmers through: (i) organizing water users’ associations first, (ii) mobilizing farmers’ contribution of 20% of the material cost, (iii) determining alignment and outlets of watercourse in consultation with members of water users associations, and (iv) construction of watercourses by farmers themselves with technical advice of the Project’s field team. This component covered the entire irrigation command area, and served as a channel of information exchange between the villagers and the Project. Throughout the implementation of this component, there had been day-to-day communications and consultations with the beneficiaries. The implementation of this component itself must be seen as a critical part of the consultation process.

Harm Caused

**Para. 209 and 210:** Whether the Project design is poor or not should be assessed with specific information related to the specific location, rather than through general discussions provided in these paragraphs. If the Panel wishes to claim the inadequacy of the design, then it needs to specify on what account did the design fail. A recently fielded consultant (Irrigation Management Specialist) reported\(^5\) that farmers upstream of distributary canals tend to draw more than their designed share of water by blocking the canals. Also, in many cases, a piece of land cannot be irrigated from a nearby outlet due to high land elevation. But it can be irrigated from an upper outlet. Farmers that encounter such a case tend to complain about “design failure” and use pumps to draw water from the channel next to their land in not understanding that water can be drawn from a farther outlet instead of a closer outlet. Also, a gravity irrigation system by nature has to exclude land with higher elevation from its command area, if the land is undulating. Owners of such land tend to claim this is a “design failure” and use pumps to irrigate their high level lands. Such situations normally arise in the early stage of development of a gravity irrigation system. These are not design problems, but operational and managerial matters that can be addressed during a transition period. However, if the Panel indicates specific locations afforded and provides evidence of “poor design,” ADB would be happy to take these up with WAPDA and the Irrigation and Power Departments.

**Para. 212:** The Panel’s interpretation of Management’s Earlier Responses in relation to the Requesters’ claim of “massive diversions and disturbances to the floodwater course” to the west of the main canal that are negatively affecting the *rod kohi* system, is mistaken. As we understand from WAPDA, there are no such farmers in the immediate west of the main canal who had to give up *rod kohi* farming due to the Project. Hence, Management’s comment about the maximum 2 km. distance needs to be put into the perspective of the huge land area and sparse settlement to the west of the canal. However, if there are such cases, then affected farmers could have sent complaints to GRSC. Even if they missed this opportunity, they can still approach WAPDA’s CRBIP office so that WAPDA can look into the problem and find a solution.

**Para. 213:** Without looking at specific grievances, it is difficult to comment. However, in general, flooding and lack of water are chronic problems inherent in *rod kohi* farming. Complaints in this regard need to be put in the right context.

**Para. 215:** “Management in its response, does not respond to allegation with regard to other vulnerable groups, except in relation to women and resettlement.” We did not or could not

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respond because the Requesters’ claims were not substantiated. They lacked specific information as to with whom and in which locations these problems existed. The claims referred to in para. 214 remain far too general to respond with specifics.

**Para. 228:** “As the GRSC could not complete its tasks, three specialist consultants were contracted under an ADB funded TA…” (emphasis supplied). The involvement of the three consultants was clearly anticipated during the formulation of GRSC and specified in the TOR for GRSC, and the timing of their services was decided by GRSC. It is incorrect to say that their recruitment was because GRSC could not complete its tasks. The Panel should revise this statement.

**Paras. 230-232:** We appreciate the Panel’s recognition of GRSC’s attention to a wide range of development issues. The Panel should also be aware that many of these issues, particularly those related to people who were landless or otherwise were vulnerable before the Project, and to women’s roles in society, extend beyond the direct scope and impacts of the Project. The Gender Specialist was tasked to facilitate access of severely affected people to existing livelihood support programs in accordance with Recommendation No. 7 of GRSC. The specialist identified ongoing development programs that could assist villagers in a range of development activities, including those of NGOs active in the area and the ADB-financed Dera Ghazi Khan Rural Development Project. ADB will pursue the implementation of actions based on the consultant's recommendations.

**Para. 231:** The Gender Specialist’s report was received on 21 April 2004. The expert’s main task was to identify the needs for domestic water use and livestock watering among landless and vulnerable peoples in the Project area. It was also to prepare a domestic water supply scheme for such communities through a consultative process in accordance with Recommendation No. 6 of GRSC. The expert conducted a participatory rural assessment in selected communities. About 140 villages, including landless communities, were identified as eligible. Implementation of the proposed water supply scheme is to be undertaken by the Irrigation and Power Departments according to the GRSC recommendation. The Irrigation and Power Department of Punjab has expressed commitment to take the necessary actions.

**Para. 232:** As noted above on para. 167, recovery of the lost grazing land directly is not feasible, as land was, and remains, privately owned. GRSC’s recommendation for the provision of water supply facilities is, as we understand from GRSC, to address the first priority constraint of such affectees to mitigate their livelihood difficulties.

**Chapter 7 - Involuntary Resettlement**

**Box 7:** Staff Instruction of 17 September 1986 is not quoted correctly, omitting some key words. The following parts of the Staff Instruction should also be noted:

“Socio-economic and cultural factors affecting the success of a development project may include settlement/resettlement (e.g. construction of dams and reservoirs, irrigation, transmigration, highways, and agricultural development with land clearing)…”

“In response to the above, the Environment Specialists, as part of their review should be consulted by projects staff to help identify socio-cultural issues and on possible mitigation measures as necessary.”
Findings

Para. 242: “Force and threats have been used to make people leave their homes, even in the absence of resettlement arrangements.” As already stated in para. 105 of Management’s Response, as we understand from WAPDA, there have been no such coercive measures taken. Villagers received the cash compensation by signing the agreement in which they assured that they would arrange relocation by themselves. But Staff are not aware of “force and threats” being used as asserted by the Requesters. It would be helpful if beyond the allegations made, the Panel could state the basis for its findings. ADB has seriously explored these allegations, as well as allegations of corrupt practices in land compensation, but found no concrete evidence on which to further pursue such matters.

Para. 252: This paragraph gives the impression that ADB identified the flood risk only after floods actually took place in July 1994. The July 1994 flood and the identification of the flood risk by the Technical Review Mission in December 1994 were two separate incidents. The need to analyze the flood impact that could be caused by construction of superpassages was identified after review of the design options based on the design report that was submitted by the Project Management Office in October 1994. The preparation of the design report predates the July 1994 flood incident. Therefore, there is no basis at all for the presumption to link the July 1994 flood to the identification of the issue. At the same time, as a result of the July 1994 flood, which exceeded the 40-year design, the October 1994 ADB Mission recommended excavation of the Gudh flood carrier channel.

Para. 253, first line: “… a first report in August 1995 clearly stated that resettlement was necessary. The option of building protective dykes around the villages was dismissed for safety reasons.” Safety of ring dikes (as opposed to partial dikes) was an issue, but cost of dikes relative to alternative resettlement measures was also an important consideration.

The preliminary report recommended that all the affected villages be resettled to higher ground. The report does not state, “resettlement was necessary,” nor does it dismiss the option of building all types of protective dikes, including designs with different means of egress. The report did warn of the safety risks of ring dikes. The follow-on study in December 1996 proposed four alternatives, comprising ring embankment (with an access road for escape purposes), escape embankment, an extension of the main canal embankment, and relocation of the villages. Dikes, including ring dikes, are also proposed in this later study. The reason for recommending resettlement to higher ground (further to the west) in the 1995 study was “cost effectiveness,” not safety alone. Therefore, paras 253 and 298 of the Draft Report misconstrue the recommendations of the 1995 study.

Para. 254, last sentence: “Only three months later Sokkar village, which was not among the listed villages, was hit by a flood.” As mentioned in para. 88 of Management’s Response, the floods in Sokkar village in 2001 were not due to the Project: “Flooding by the flushing hill torrents during rainy season is the chronic problem in the village as rightly stated in para. 59 of the Request.” Although the flood incident was factual, this paragraph implicitly claims that the floods in Sokkar village were due to the Project. Floods would have hit the village regardless of the existence of the main canal.

Para. 256: While the scope of the term “reasonable time” is subjective, Management has already acknowledged delays being unfortunate. The Panel may consider looking into the
justifications for these delays as provided by Management in its Earlier Responses. The identification of the flood risk in 1994 was not an “initial mistake” but was properly anticipated during refinement of the technical design.

**Para. 258, second line:** The reasons for villagers’ preference for embankment are selectively cited in this paragraph, which is misleading. The referred report attributes villagers’ preference for embankment to the resettlement plan to two reasons, psychological and social behavior, and economic considerations. The former includes villagers’ attachment to the land, the presence of graveyards, cultural tradition, and unity of the community. The latter was considered if resettlement is accepted as a second choice. The villagers’ views are misconstrued in para. 258 by omitting the villagers’ first responses and selectively quoting the villagers’ second responses. Further, the villagers’ concerns about delayed or inadequate payment would be misplaced in a resettlement plan under which land and houses are to be provided in advance by the Government. Finally, the referred report recommends the land for land option for the case in which land acquisition makes small landowners landless, based on the feedback of the Stage-II experiences. The report did not recommend this option for all cases. The Panel misconstrued this limited recommendation by selectively quoting from the report. In this regard, the Panel would appreciate GRSC’s recommendation that land owners whose land became less than 5 acres as a result of land acquisition are entitled to additional 5 acres of land.

**Para. 258, last sentence:** The experience from Stage II and the recommendation of the land-for-land option are cited out of context. The report suggests the land for land option for compensation acquired for right-of-way of the canal not for the resettlement that would be needed for the flood-impact zone. Further, such a suggestion is not included in the conclusion of the report. The conclusions and suggestions of the report comprise: (i) education and awareness programs are needed; (ii) villages must be consulted before finalization of a plan; (iii) local administration should be involved before making a final decision on possible relocation; (iv) villagers’ resentment and desperate feelings can diminish if livelihood support facilities are provided; and (v) consideration of these suggestion on humanitarian grounds would settle issues in the long run.

**Para 260:** Various references are made to the long time taken to start the SSAP. However, in the interests of completeness and balance, the Draft Report needs to mention what actions were taken by ADB and the key reasons for delays. These are traceable through various documents as explained to the Panel through Staff interviews. The presentation in the Draft Report is selective and leaves the impression that this issue was not followed up by ADB. It was explained that there were difficulties during 1998 in receiving a study proposal acceptable to ADB and KfW (as recorded in various correspondence from January to October 1998). ADB and KfW followed this up during the June 1999 ADB-KfW Joint Review Mission and a deadline was agreed to. Notwithstanding the reservations on the commencement of the SSAP, the November 1999 ADB Mission in its Aide Memoire specified that the contract should be executed with provision to include NWFP villages later (through a contract variation). Nevertheless, the issue had to be followed up yet again during the March 2000 ADB Mission. This ensured the contract was signed a few days after the Mission. This background highlights difficulties in taking prompt action, despite concerted efforts to push ahead with the SSAP.

**Para. 260, last sentence:** “But more importantly, no arrangements for resettlement (or flood protection) were provided for in the scope of or budget of the additional financing agreement.” This assertion is incorrect. The cost estimates for the 1999 Board Paper\(^6\) did include line items

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for "Land Acquisition" for Parts A, B, and D of the Project. There is $12.4 million allowed for Part A (main canal), increased from a previous provision of $10.1 million. This made tentative allowance for land acquisition/resettlement associated with flooding. Flood protection embankments were considered part of the civil works for the main canal (Part A). Also, as noted in para. 26 of the Board Paper, there was adequate allowance for cost escalation and contingencies. Reference is also drawn to para. 14 of 'Management's response to the BIC on additional information requested and supplement to the request for inspection (February 2003),' whereby pending finalization of resettlement arrangements and completion of surveys and reports, related costs could not be finalized or included.

Para 261, second to last sentence: which states "... ADB took no further action." [on NWFP reluctance to participate in the SSAP]." As recorded in the ADB Mission's Aide Memoire of March 2000, the Mission was advised that protection bunds had been completed according to the wishes of the communities concerned. Although it is not recorded, the ADB Mission visited the two villages concerned, and interviewed randomly selected villagers who did not indicate any strong objections to the bunds that had been provided. This clearly did not provide the Mission with a strong basis for further threats of suspension.

Para. 262: It should be noted that the NDC's February 2001 Report was not accepted by WAPDA and ADB. More specifically, the way the consultants presented the options to the villages was questioned, and therefore WAPDA requested the consultant to formulate a more definite flood protection plan, together with other resettlement options that were acceptable to WAPDA. ADB also commented that the consultant did not fulfill the terms of reference because the flood protection and resettlement plans were not developed in sufficient detail before villagers took final decisions. Further, the last sentence of this paragraph, "The consultants predicted that the 12th village would also, in the end, opt for resettlement" may be taken from the sentence in the consultants' report, which stated "even in this group an unidentified muffled opposition to the embankment and in favor of resettlement could be perceived." There is an apparent gap between the meaning of "unidentified muffled opposition to the embankment" and the Draft Report's conclusion that the village would "in the end, opt for resettlement."

Para. 266: WAPDA's instructions are only partly cited in this paragraph. This gives a biased view of the issue. The first instruction of WAPDA was that "options for flood protection and resettlement must be worked out for all villages" (emphasis provided). However, the Panel only cites that "consultants were instructed to work out flood protection options for all villages," dropping the word resettlement.

Para. 266, footnote: "ADB's Management is obviously aware of decision. However, in its response to the requesters they unnecessarily confuse the issue by denying that such a decision was taken on the date that the Requesters erroneously referred to." The assertion "unnecessarily confuse" is not based on fact. What is referred to is the Requester's claim that "a decision had been made against implementation of the draft resettlement plan prepared by consultants in May 2001." Judging from this footnote, the Panel presumes that the Requester's claim refers to WAPDA's 31 March 2001 meeting. However, the meeting did not decide on implementation of any draft resettlement plan, which did not exist in any case. As discussed above, the meeting instructed the consultants to work out options for flood protection and resettlement. Therefore, the Panel's conclusion is inaccurate and misleading.

Para. 267, first sentence and 4th line: This seems to infer that ADB waited for the outcome of the meeting between WAPDA and the consultants on 31 March 2001, and adjusted its comments to endorse the rejection of the proposed resettlement option. This is incorrect.
Although comments on the SSAP report were not formally submitted to WAPDA until 2 April 2001, the meeting did have access to a preliminary copy of these comments circulated to participants, as recorded in para. 1 of the minutes of the meeting. In addition, the issues recorded in ADB's comments had already been discussed during the ADB Mission fielded from 24 to 30 March 2001. Further, minutes of WAPDA’s conclusion of the 31 March 2001 meeting were signed only on 16 April 2001. Therefore, the Panel should not suggest that Staff endorsed the meeting’s agreement in its fax of 2 April 2001. In its comments, Staff insisted that the study was not carried out in accordance with its terms of reference, and it did not develop the Flood Protection and Resettlement Plans in sufficient detail. Without detailed plans, there was no point in commenting on “participation in the settling of entitlements, development of institutional frameworks, livelihood issues for vulnerable groups etc.” (second sentence) as such information was not provided in the report. As no adequate resettlement plan was prepared, the comments had to remind the consultants to adhere to their terms of reference rather than commenting on the non-existent parts of the report.

Para 267, 6th line: This indicates that ADB did not support the resettlement specialist’s recommendation, which we assume refers to the NDC's option 5 to settle the villages on the western side of the canal. If so, this is misleading. First, the Resettlement Specialist also recommended the preparation of a flood protection plan before asking villagers' for their final preference. Second, the alternative option mentioned in para 13 of the Resettlement Specialist's comments relating to living conditions is quite similar to Option 5 (protected, convenient road access, water frontage, etc.). As such, these would provide an improvement, compared to their previous locations. The Resettlement Specialist would not have been aware of this option at the time of preparing the comments. It must also be kept in mind that not all villages would be affected by potential floods to the same extent (see paras. 7 and 8 of the comments). We believe this is relevant in selecting solutions. In addition, the NDC report clearly mentioned that most people would like to live near their existing land and were reluctant to move from their existing houses (para 6 of the comments). Although the Panel's report aims to construe that ADB's comments encouraged a confined approach along the lines that WAPDA wanted, we firmly believe that the comments, in their entirety, were aimed at encouraging the Project staff and consultants to go back and take a fully balanced assessment, taking into consideration all the parameters and options, including the problem of non-unanimous decision-making within a single village (para 10 of the comments), livestock considerations, depth of flooding, etc.

Para 269, first sentence: "There is no indication that any further efforts were made to consult the affected communities between February and May." This comment ignores information provided to the Panel. ADB did make strong efforts to ensure that there were ongoing consultations with flood-affected villages. The Aide Memoire dated 30 March 2001, para. 3, in the agreed actions, very clearly made the point that "... the Flood Protection/Resettlement Plan … should be worked out in consultation with the affected people and the technical staff of the Project." This was reiterated in two follow-up letters to WAPDA. In the Mission’s follow-up letter dated 10 April 2001, para. 3, states "ADB stresses the need for the village communities to be fully involved." In a letter on 20 April 2001, addressed to the same parties, 4th paragraph recommends engaging a consultant well respected within the community to facilitate agreement with the villagers on appropriate solutions. These actions demonstrate that Staff made efforts to consult with villages. This is reflected too in the language in two letters to WAPDA (on 20 April and 9 May 2001) that stated, "... we appreciate there has been further consultations with the affected villages since the recent mission...", and "... we understand finalizing solutions may be hampered in some villages by absence of villagers...", respectively.
Para 269, second sentence and Para 270, last sentence: ADB’s understanding of the 31 March 2001 meeting is that it was a meeting called by WAPDA to meet the consultants in order to review their work to date and to issue further instructions to bring the work to a satisfactory conclusion. As such the meeting was still a ‘work-in-progress’ discussion of the consultants’ work. Further, the Panel should clarify its conclusion that “ADB gave its full endorsement to the campaign to convince project affectees to select project preferred options.” If this is a reference to ADB’s letter of 9 May 2001, then it is quoted out of context and is misleading. ADB fully supported the Project Management Consultant’s suggestion to take temporary measures to ensure the safety of villagers during the coming wet season, but stressed that “… permanent solutions should be installed after there is clear consensus by the villagers.” The language in this letter very clearly did not mean or imply that ADB endorsed any forcing of options on the villagers. On the contrary, it reflects ADB’s serious concerns about villages and desire to resolve the issue in a consultative manner, as required by ADB’s Resettlement Policy.

Para. 272, last sentence: Please replace "affected by" with "at risk of."

Para. 273, third sentence: “The proposed resettlement options had apparently been made so unattractive that they had been rejected by all remaining villages.” This statement is inaccurate and misleading. The footnote that states “An ADB mission in March 2002…” is out of context since it is not about the views of the ADB Mission under the cited BTOR, but about the attachment to the BTOR related to a draft proposal prepared by the Project Management Consultant. Further, the statement meant that peoples’ preferences were influenced by attractive options that had been rejected by WAPDA (such as providing land in irrigated areas) and that later affected the consultations. This option was judged not feasible or realistic by WAPDA, as discussed in the March 2001 meeting.

Para. 274: The consultant’s guidelines have been selectively quoted, so are misleading. The statement “to advice the affected persons/villages on the best solution in each particular case” is quoted out of context. The relevant part of the referred guidelines is followed by a phrase: “[t]his may vary from village to village and also from person to person.” Further, the statement “WAPDA’s preference for flood protection should be made known to the villagers” is also misleading. It does not reflect the correct and factual position in the guidelines, which state, “[t]he second task is to explain to the concerned villages how WAPDA intends to protect them against the floods if they opt for flood protection.”

Para. 277: The basis of the description “[a] previously agreed approach to provide emergency flood protection to villages that could not be consulted had been abandoned” is not clear. The referred communication from the consultant states “Recent assessments have clearly indicated a shift of preferences of villagers. It was therefore concluded that the earlier agreed approach (provision of flood protection and emergency measures where villagers could not be consulted) was no more realistic and requires modification.” By changing the word from “no more realistic” to “abandon” this paragraph provides a different message and it does not follow real facts. Also, the description “Instead payment of compensation according to simplified yardsticks would be given highest priority” is modified from the original note that states, “Assessment and payment of compensation to villagers will be given priority. Yardsticks for the assessment of compensation have been simplified and arrangements have been made for immediate payments.” These differences in presenting the facts could mislead the reader and, overall, contribute to a significant change in the context and conclusions on underlying issues of resettlement.
Para. 284: In any compensation exercise, the compensating party has to use a yardstick for the purpose of the initial estimate of the value of the assets that are to be compensated. Then it needs to consult with the recipient of compensation. This does not mean that the recipients have been denied any participation in the valuation process of their assets.

Para. 286: In the BTOR, the figure indicated is “about 500 households” (para. 8), not 600 households.

Para. 288: As per our comment on the footnote to para. 273 above, the draft proposal was prepared by the Project Management Consultant and does not reflect the ADB Mission’s views or estimates. Further, the proposal was not final, but subject to further review and discussion within ADB and with the Government. A comparison of the consultants’ cost estimates in the March 2002 proposal and NDC’s 2001 proposal, is not relevant. It is also relevant to note the weakness in NDC’s estimate of the resettlement costs, which comprise land (with unit costs on the low side) and household buildings only. But this does not consider other appropriate costs for basic amenities such as mosques, community buildings and water supply.

Para. 291 and 292: The statements misinterpret the manner in which the Workshop Action Plan, the terms of reference for preparation of a resettlement plan, and the GRSC were handled. To put these in proper perspective, we clarify as follows: The March 2002 Multi-Stakeholder Workshop did not discuss the issue of flood-affected villages in detail, and therefore the Action Plan does not include a specific measure on this. The terms of reference (of the consultants) to address resettlement issues (as indicated in para. 291) were proposed as a parallel or complementary initiative, and therefore were not to “sideline” the Action Plan, as stated in para. 292. Further, the proposal for the establishment of GRSC was in response to the Requester’s Initial Complaint. This included not just resettlement issues, but also a number of other issues. In this regard, given the independent and comprehensive nature of the GRSC, and its composition (including all stakeholders and experts), it was felt that such a body would be better equipped to address all remaining issues in a conclusive and timely manner, as also demanded by the Requesters in their Initial Complaint. It should, therefore, be appreciated that all initiatives/actions described in paras. 291-292 were in response to the views of affected persons. Staff sought a comprehensive approach to addressing the issues. Any revisions, as pointed out in para. 292, must therefore be read in this context.

Para. 298: “This argument, however, disregards the clear need for resettlement that was identified in the early flood studies and formed the basis of the terms of reference for the SSAP” (second sentence). In making this assertion, the Panel disregards the study of December 1996, which proposed options for protection bunds. Further, the comments on the NDC report dated 2 April 2001 encouraged a holistic assessment of options in line with community preferences. It is also worth mentioning that the referred August 1995 flood study recommended resettlement further to the west. The statement, “when the clear preference that were expressed by the majority of the villages in the initial consultations were rejected (last sentence),” misconstrues facts. As already noted in regard to para. 273 above, the rejection by WAPDA of the early expressed preference was a result of the options being found infeasible.

Para 299, last sentence: “Still, the fact is several rainy seasons had already passed – fortunately without much rain - since the main canal was constructed... (emphasis supplied).” This assertion is a supposition that is not based on facts. The canal construction was completed in November 2001. The construction of the main canal was contracted in August 1997 and work started in early 1998. Therefore, the flood-affected villages faced the flood risk for at most two rainy seasons (1999 and 2000) before the 2001 rainy season. Further, as the main canal was
constructed from north to south, except for two villages in NWFP and some villages in northern part of Punjab, the rainy season in 2001 was the first time that the area was exposed to the flood risk.

Harm Caused

Para. 303: It should be noted that the Participatory Assessment Specialist, after an extensive field survey, found that out of 462 households that received compensation, 127 households actually have been residing long since in other places, 34 households moved more than three years ago (before 2001, prior to receipt of compensation), and 162 households moved within the last three years.\(^7\) This information suggests that flood risk actually did not significantly threaten the life of 161 households (35% of 462 households), as they had already moved to safe locations, mostly to the land they owned in the irrigation command area. It also indicates that another 35%, or 162 households, had moved as per the agreement made in 2001. As proposed by GRSC, action is needed for the remaining 139 households, in particular 23 households that face difficulties.

Para. 304: “Valuation of assets ... may not have been sufficient.” In the absence of substantiation, this conclusion by the Panel cannot be taken at face value.

Chapter 8 - Indigenous Peoples

Findings

Para. 320: As the Panel rightly points out, the TOR for the FR prepared in February 1989 used the phrase “diverse indigenous population.” However, neither the Staff Instruction of 1986 on Socio-cultural impacts of Bank Projects, nor OM 21 that was applicable at the time, includes the phrase “indigenous peoples.” Therefore, the phrase used in the TOR for the FR should not be taken to confirm that the existence of indigenous people in the Project area was recognized by the TA Fact-Finding Mission. Also, it should be noted that the Mission predated the June 1989 International Labor Organization Convention 169, which presented the fundamental concept that became the basis of policies on indigenous peoples for international organizations, including ADB.

Para. 322: This paragraph provides the Panel’s interpretation of the FR, which is not consistent with the concluding remarks in the FR. The Panel, however, does not indicate specific statements in the FR that lead to its interpretation. It should be noted that the FR does not use the phrase “risks of marginalization of vulnerable groups.” Management’s view that there are no significant ethnic tensions in the Project area is based on the results of the PRA assessment in 60 villages under the PIME Studies, as well 18 field visits by ADB missions. The PIME Phase-II Study reports that out of 449 surveyed households, 49% belonged to Baloch tribal group, 43% belonged to Jat tribal group, and only 10 households (2%) belonged to Pashtun tribes. It was also reported that they have no major enmities, which is consistent with the findings of the PIME Phase-I Study as mentioned in the comment on para. 80 -Tribal enmities or conflicts were not identified as an issue in the Project area according to extensive interviews with village key informants. Occasional disputes do arise among villagers but they are personal not tribal. Further, the PIME Phase-II Study reported that 312 households, or 70%, were farm owner-operators, indicating that most Jat and Baloch people are landowners.

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\(^7\) End of the Tenure Report of the Participatory Assessment Specialist, April 2004. A copy was submitted to the Panel in April 2004.
Para. 323: It should be noted that FR mentions survival of Jat language (*Jakti* or *Saraiki*) and culture in the area. As noted in our comments above on para. 80 of the Draft Report, the Saraiki language was either the only language spoken or the dominant language in all of the 60 villages surveyed by the PIME Studies. Also, the statement in the second line of para. 323, “Due to growing wave of Pakhtun migrants, politics of D. I. Khan city had already changed” (emphasis supplied), is not an appropriate inference of the findings in the FR. The FR explained that change in politics in D.I. Khan was reflective in part of the growing migration and not exclusively due to such migration.

Para. 324: The information on Mahra village from the FR does not present all the relevant facts. The FR states that landholders sold their land, being attracted by the prices offered by the buyers and because landholders “received virtually nothing from their land for years.” One may argue that those who sell property at low prices always regret it if land prices then increase after the sale. It is worth mentioning that with regard to the resistance of local inhabitants against purchase of land by outsiders, the FR concludes that such resistance should decline as the local inhabitants adjust to and benefit from the changes brought by the canal.

Para. 325: We would disagree with the Panel’s view that the FR “tended to view the effects of in-migration and possible social tensions only from an economic and Project perspective.” It is pertinent to note again that the relevant Staff Instruction of 1986 on *Socio-cultural impacts of Bank Projects* stated:

“In a project where socio-cultural variables are likely to be important, considerations essential for social acceptability should be addressed during the project cycle along with technical, financial, economic aspects of the project… Such analyses may be needed not only to help establish project targets but also to determine whether social or cultural factors exist which may help or impede the achievement of such targets.” (Emphasis supplied)

It is also noteworthy that, despite this criticism, the Panel relies on descriptions from this allegedly deficient FR in asserting the existence and implications of ethnic tensions.

Para. 329: It should be noted that Staff have made efforts to address the protection of vulnerable people when existence of problems become apparent, as evidenced by initiation of the SSAP in 2001 and GRSC activities, which did not directly apply the Indigenous Peoples Policy, but took other measures into account. This was because all issues thus far identified did not involve specific ethnic or tribal groups, but were undifferentiated among various tribal groups. This is consistent with the provision in para. 12 of the policy paper, “The application of any definition of indigenous peoples should work to differentiate between indigenous peoples and other cultural and ethnic minorities for which indigenous status is not an issue; the broader protection of a vulnerable group is an issue addressed in other policies and practices of the Bank.”

However, to assess the possible relationship between Project impacts and ethnic/tribal issues, GRSC was to review the applicability of ADB’s Policy on Indigenous People. As already submitted to the Panel, a GRSC’s expert assessed the matter and concluded that there were

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9 The International Resettlement Specialist for GRSC is a Pakistan national, possesses a PhD degree in Sociology from a prominent European university, and has more than 20 year work experience as a sociologist mainly in Pakistan.
no readily definable indigenous peoples as per the working definition of “Indigenous Peoples” because (i) Saraiki linguistic and cultural identity is not distinct from the dominant or mainstream socio-economic structure in the Project area; (ii) Saraiki speaking tribal groups, such as Jat and Baloch, form the dominant majority not only in the Project area but in western and southern Punjab (Districts of Dera Ghazi Khan, Multan, Bahawalpur, Rahim Yar Khan, Sadiqabad, Mianwali, Bhakkar, Leiah and Muzaffargarh); (iii) the ties and attachment of the population in the Project area to the habitat and natural resources is no more unique than that of other populations to their habitats and natural resources in the Indus River Basin; (iv) the population in the Project area does not have any political institutions distinct from the mainstream political and administrative institutions; and (v) the hill tribes such as Pathan, Wazirs and Masoods, which the Requesters and the Panel claim to be threatening Saraiki speaking groups, are minority tribes in the area. Based on this expert’s advice, Staff considered that the further steps provided in OM 53 were not required.

It should also be noted that in reviewing this matter the GRSC used ADB’s booklet on “Policy on Indigenous Peoples” which does not contain the procedures in OM 53 that are cited in para. 330. Therefore, the fact that GRSC did not follow the procedures in OM 53 does not support the Panel’s allegation of GRSC’s negligence of its TOR.

Pictures (in back pages of Draft Report)

Gat Village Area - Massive Soil Erosion: The two pictures are not relevant to the Inspection. Although the Draft Report does not explicitly state that this soil erosion is due to the Project, inserting the pictures of this nature gives the incorrect impression that the problems are Project-induced. However, soil erosion in Gat village is not due to the Project but to Vehowa hill torrents for which a canal siphon was provided at the crossing of the main canal. The hill torrent flows are untouched by the Project, and therefore the Project has nothing to do with the soil erosion problem in the village. Further to Management’s explanation provided in para. 92 of the Response to the Request for Inspection, WAPDA advised Staff that Vehowa nullah was not converted to an FCC, as WAPDA, after an engineering field survey, concluded that the nullah had a well-defined channel and that the provision of embankments was too costly, as compared with the benefits. WAPDA further advised Staff that there exists an embankment constructed by the Irrigation and Power Department in upstream of Gat village, which could be causing soil erosion. The said embankment, however, is not a Project facility and predates the Project.

A Hazardous Business: This picture is also irrelevant to the Inspection. The Project has never forced people to fetch water from the canals. The Panel seems to rely on the arguments of some NGOs that water supply systems in some villages to the west of the main canal were destroyed by the Project and thereafter villagers have to rely on canal water taking risks in such a “hazardous business.” This is not true. It is submitted that WAPDA assures ADB that the Project did not destroy the existing water supply system, except for temporary disturbances due to construction works. WAPDA further indicates that some villages located in the west of the main canal used to have water supply facilities provided by the Public Health Department, but that many of these have not been operational due to factors not related to the Project (such as lack of funds for operating tubewells, and deterioration of the pipes and tanks). On the other hand, the canal built under the Project is providing a relief, instead of hazard, to these villages.

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11 ADB’s policy paper also does not include the said procedures.
Obtaining Irrigation Water – Illegally: We do not understand what this picture is intended to convey to the reader. This type of unauthorized offtake occurs in almost all large-scale DMC irrigation systems. Pakistan’s provincial irrigation authorities monitor such occurrences and take action against the illegal users. In and of itself, the picture does not focus on issues underlying the Inspection.

Obtaining Irrigation Water – Legally: The explanatory note to this picture, “by using authorized pumps but at an exorbitant and ill-affordable cost” is not substantiated. The photo should be deleted unless “exorbitant ill-affordable cost” is quantified.

General comment: In order to have a balanced and overall assessment of Project impacts, the Panel may consider including pictures that indicate benefits of the Project. A few examples follow.
PROJECT BENEFITS AT A GLANCE

Rod Kohi land before irrigation – Distributary 40 command area

Irrigated farm – Distributary 14 command area

Good harvest with irrigation– at Chandewali Village
PARTICIPATION AND CONSULTATION

A GRSC member is having dialogues with farmers of Morjangi Village at Distributary 30

Farmers are voluntarily working to improve a watercourse

Women Workshop for Linkages Development in February 2004