

ASIAN DEVELOPMENT BANK

RESPONSE

OF

ADB MANAGEMENT

TO THE

BOARD INSPECTION COMMITTEE

ON

ADDITIONAL INFORMATION REQUESTED

AND

SUPPLEMENT TO THE REQUEST FOR INSPECTION

OF THE

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

IN THE

ISLAMIC REPUBLIC OF PAKISTAN

February 2003

MANAGEMENT RESPONSE TO ADDITIONAL INFORMATION REQUESTED AND SUPPLEMENT TO THE REQUEST FOR INSPECTION

1. Subsequent to the Response ("Response") filed by ADB Management ("Management") to the Request for Inspection ("Request"), the Board Inspection Committee ("BIC") has requested Management for additional information and response to the Supplement filed by the Requesters to their Request ("Supplement").¹ Responses to each of these are provided below.

A. Matters arising from the Response

1. Whether 'land for land' compensation is an option under the terms of reference of the GRSC ("TOR")

2. "Land for land" is an option to be explored by the GRSC under the TOR, along with any other option. In contrast to earlier drafts, in the final TOR, based on discussions between ADB mission and Government authorities,² references to specific remedial measures were avoided. This was to provide maximum room to GRSC to explore all options and to keep the scope of assessment and remedial measures wide and comprehensive. The TOR purposely avoid any prescriptive solutions keeping in view the independent nature of GRSC and its composition that comprises stakeholders and experts whose judgment should not be pre-empted.

3. Under the TOR, the GRSC is to make recommendations on: "any compensation and other assistance due to Project affectees ... remedial time bound measures to resolve any other outstanding issues and grievances that are submitted to the [GRSC]... (emphasis supplied)" (para. 10 of the TOR). In this regard any compensation, as legally possible, including "land for land", is to be explored by the GRSC.

4. Under the TOR, "Pakistan's policies and legal framework, including but not limited to the Land Acquisition Act, 1894 ("LAA") will provide the fundamental basis for GRSC's recommendations, which will be supplemented by ADB's relevant policies that includes [its] *Involuntary Resettlement Policy*³ ... where legally possible" (para.15 of the TOR). Therefore, when recommending remedial measures, the GRSC should assess the legality of the proposed solution in accordance with Pakistan laws and regulations including any amendments thereto, and ADB's policies for the Project situation that includes the *Involuntary Resettlement Policy* (para. 15 of the TOR). The GRSC is then required to develop a list of entitlements for compensation and other assistance that meets these applicable laws and policies (para. 11 of the TOR).

5. Discussions and dialogue between the ADB and the Government on the TOR included the question of consistency of "land for land" compensation with the LAA. As indicated in resettlement action plans provided by the Government under some development projects financed by the World Bank and ADB, "land for land" has been provided for as one of the possible methods for compensation. Section 31 of the LAA provides that the Collector can, instead of awarding cash compensation in respect of any land, make any arrangement with a person having an interest in such land, including the grant of other lands in exchange. This

¹ Communication from Chair, BIC dated 13 February 2003. Here the Supplement as referred to means the "Supplement to the Chashma Inspection Claim."

² During the ADB mission in January 2003 to Islamabad, Pakistan.

³ ADB 1995. *Involuntary Resettlement*. R179-95, 12 September.

power to enter into an arrangement is however, a discretionary power and requires sanction of the provincial government (which among other things has to ensure consistency with its overall policies and availability of alternate land) and the agreement of affected persons. Accordingly the resettlement action plan for *Ghazi Barotha Hydropower Project*⁴ provides for the possibility of "land for land":

"Under the [LAA], the person whose land is being acquired cannot be compelled against his wishes to accept compensation in any form other than cash. However, Section 31 of the [LAA] provides that the Collector can, instead of awarding cash compensation in respect of any land, make any arrangement with a person having an interest in such land, including the grant of other lands in exchange. Thus, a formal consensual agreement will be entered into with those [project affected persons] losing land who opt to pay part of their cash compensation for land ..."⁵

6. Notwithstanding the past examples on "land for land" compensation, it must be noted that these are clearly specific to the relevant projects and bear no precedent value to this Project. It would therefore be entirely for the GRSC to deliberate "land for land" as compensation *for this Project* under applicable laws and policies, including Section 31, and other provisions of the LAA, judicial interpretations thereof, and also in the light of the *Involuntary Resettlement Policy* that recognizes this form of compensation.

2. Whether benchmark information was prepared during the feasibility study, as required under paragraph 3 of OM 23 (issued 30 March 1987)

7. As stated in para. 165 of the Appraisal Report,⁶ a benchmark socio-economic survey was carried out by ADB in 1989 as a part of the feasibility study, and the final report was prepared in October 1990, entitled *Benchmark Socio-economic Survey of Chashma Right Bank Irrigation Project, Stage III* (prepared by the consultants namely - National Fertilizer Corporation of Pakistan Ltd.). The report was reviewed and cleared by ADB staff (Project Benefit Monitoring and Evaluation Specialist of the Agriculture Department).⁷ The Project Impact Monitoring and Evaluation (PIME) Studies in 2000 and 2002 were more comprehensive studies covering the entire Chashma Right Bank Irrigation Project including stages I and II. Under the PIME Studies, a benchmark survey in Stage III (the Project) was undertaken again and the socio-economic status right before commencement of the irrigation services were analyzed using the same methodology and subject coverage as the study in Stages I and II.

B. Matters arising from the Supplement

1. Response on Staff Instruction on Revisions to RRP and TA Format dated 25 October 1994 and the attached memorandum of 16 September 1994 entitled Streamlining of Board Documents (the "cited Staff Instruction")

8. Before responding to the issue raised it is necessary to point out that in accordance with the *Inspection Policy*⁸ the cited Staff Instruction was not applicable at the time of preparation of

⁴ Loan 1424-PAK *Ghazi Barotha Project*, for \$300 million, approved 16 January 1996.

⁵ See Resettlement Action Plan prepared by WAPDA under the *Ghazi Barotha Project* dated September 1994 (chapter 6.6).

⁶ See Appraisal Report under ADB 1991. *Chashma Right Bank Irrigation Project (Stage III)*. 26 November, Manila.

⁷ See memo dated 15 October 1990 of the staff.

⁸ Under the *Inspection Policy*, "operational policies and procedures" are those as set forth in ADB's reorganized operations manual (OM) and to the extent applicable, corresponding sections in earlier editions of the OM. Furthermore in the instant case these will be as *are in effect on the date the Project was approved*.

the Board Paper for supplementary financing in 1999 (the "1999 Board Paper").⁹ This is explained below.

9. The cited Staff Instruction (see attached Annexure 1) was incorporated in the relevant OM 62 on *Preparation of the Report and Recommendation of President* (issued 15 April 1993). However, this OM 62 was further superseded in 1995 by GP 46 on *Preparation of the Report and Recommendation of the President* (issued 12 December 1995). As such, by 1995, the cited Staff Instruction or the OM 62 ceased to apply. A standard form of RRP, as included under GP 46 was therefore applicable in preparation of RRP.

10. However, notwithstanding the standard form of RRP under GP 46, for supplementary loan proposals, a further specific but *indicative* model of RRP was applicable under GP 13 on *Supplementary Financing of Cost Overruns on Bank-financed Projects* (issued 12 December 1995) (see attached Annexure 2).¹⁰ This was applicable at the time of preparation of 1999 Board Paper and was complied with as further explained below.

11. The supplementary financing for the Project¹¹ was by way of reallocation of funds¹² from the National Drainage Sector Project ("NDSP").¹³ The 1999 Board Paper format as presented was therefore a combination of major change in scope (due to change in scope for the NDSP) and that of supplementary financing on account of cost overruns (for the Project). It is not relevant to discuss the requirements of major change in scope (as that applied to NDSP). As applicable to the Project, the indicative model under Appendix 2 to GP 13 was used to include all relevant information in regard to cost overruns.

12. Without prejudice to above position, Management wishes to respond to the specific assertion under the 10th para. of part I of the Supplement arising from a reference to the cited Staff Instruction as below.

13. The Requesters wrongly allege that in not including relocation and other related social and environmental cost under Project scope and cost, ADB staff have violated the cited Staff Instruction. In response, Management would like to refer to its submissions under the Response on supplementary financing and compliance with policies (see paras. 47–55 of the Response). It is reiterated that Management in 1999, considered Re-appraisal to be limited to establishment of cost overruns.

14. Furthermore, at the time of Re-appraisal in any event, resettlement and related issues were still under survey and in that sense, in the judgment of staff were work-in-progress; accordingly the 1999 Board Paper indicated this work-in-progress status under para. 54 on

⁹ Board Paper R89-99, 10 June 1999, *Optimizing Existing Investments in the Water Resources Sector in Pakistan*.

¹⁰ See Appendix 2 to GP 13. As may also be noted from footnote 1 to the Appendix the requirement to follow standard RRP format under OM 46/GP is referenced *only* in limited sections. Given the combination of major change in scope and supplementary financing involving three loans, some of these sections were not included such as that on loan and project summary. Furthermore GP 14 on *Use of Surplus Loan Proceeds* (issued 12 December 1995) requires: "where the proposed use of surplus loan funds is for another on-going Bank-financed project ... if the savings will be used to finance the cost-overrun of another ongoing project, then the requirements of the Bank's supplementary financing policy (footnote-see OM 13 on Supplementary Financing of Cost Overruns on Bank-Financed Projects) will also need to be satisfied in processing the proposal (emphasis supplied)." Compliance with OM 13 has already been addressed in the Response.

¹¹ As also for another project that is not discussed as not related to the Project.

¹² See para. 1 of OM 13 that allows the Bank to "be flexible in reallocating savings, if any, under Bank loans to meet the cost overrun of the affected project."

¹³ Loan 1413-PAK (SF) *National Drainage Sector Project*, for \$185 million, approved on 17 December 1991.

"Environmental and Social Aspects" that states: "[t]he relocation arrangements are being made for villagers who will be affected by floods..." Related costs could not be finalized and therefore could not be included pending completion of surveys and reports from consultants commissioned to carry out the studies in relation to the resettlement related issues. These are already discussed under the Response. Notwithstanding this it may also be noted that as also agreed earlier and now under the TOR for the GRSC, "WAPDA and provincial authorities also agree to undertake prompt revision of the Project's PC-1 as required for financing the [GRSC's] recommended remedial measures" (para. 21 of the TOR).

15. Under the 10th para. of part I the Supplement, the Requesters have quoted the 1999 Board Paper out of context. The Requesters wrongly allege that the reason for not including relocation and other related social and environmental costs is a "stated preference of avoiding the need for the Government to commit to additional counterpart funds at a time of financial difficulty." Non-inclusion of costs relating to resettlement as already explained above were due to the limited Re-appraisal under cost overruns as discussed above. It is also submitted that the stated preference is based on the detailed analyses of the three options as discussed under the Board paper.¹⁴

16. As the 1999 Board Paper itself indicates, the reasons for preferring option 2 (reallocation of loan funds from the NDSP) were (i) EIRR (at 15.4 percent), (ii) optimization of the allocation of resources among existing investments in the water resources sector; and (iii) minimizing delays in processing.¹⁵ The option was not suggested merely as an avoidance of counterpart funding by the Borrower. As is evident from the revised financing plan, at the time of supplementary financing, the additional counterpart funds to be financed by the Borrower were in an amount of \$17 million equivalent.¹⁶ By choosing option 2, the counterpart funds for the NDSP could be saved by \$14.6 million, which is equivalent to 86% of the additional counterpart funds needed for the Project. In that sense in avoiding "the need for the Government to commit additional counterpart funds at a time of financial difficulty" the purpose was not to avoid Government funding but to optimize on resources already available to the Government in the sector. As may be noted from para. 1 of the 1999 Board Paper, the request for reallocation of surplus loan funds came from the Government itself, due to serious financial crisis being faced by it resulting in shortage of foreign exchange and domestic resources. It is also relevant to note here that option 2 as suggested under the 1999 Board Paper was also in accordance with the applicable OM 13 that provides: "[t]he Bank will also be flexible in reallocating savings, if any, under Bank loans to meet the cost overrun of the affected project."¹⁷

17. Based on above discussion, the assertion that choosing option 2 "was totally against the interests and rights of project affectees"¹⁸ is without basis. In any event, choosing any of the other two options would not have made any difference to the resettlement and related issues.

¹⁴ See paras. 44-48 of the 1999 Board Paper.

¹⁵ As indicated under para. 47 of the 1999 Board Paper, at the time of supplementary financing, the EIRR for the Project was seen as sensitive to delayed implementation.

¹⁶ It should also be noted that in accordance with para. 4 of OM 13/BP, the Bank can even consider financing the entire cost overrun in foreign exchange, even if it would cause the Bank financing to exceed applicable standard percentage limit for the Borrower. Notwithstanding this, as may be noted from the revised financing plan under the 1999 Board Paper, this percentage was at 66%, that was well within the limits under the then prescribed percentage limits of Bank financing for the Borrower (at 70%).

¹⁷ See para. 1 of OM 13/BP on *Supplementary Financing of Cost Overruns on Bank-Financed Projects*, (issued 12 December 1995).

¹⁸ See the 7th para. of part I of the Supplement.

2. Management's response in relation to any new information under the Supplement

18. Many of the assertions raised under the Supplement are either narrative of the 1999 Board Paper or are already responded to by Management under the Response, particularly under the section on supplementary financing. Management therefore refers to the related paragraphs of the Response and reiterates that regardless of full or limited Re-appraisal, staff and Management have taken adequate actions, before, during, and subsequent to the supplementary financing, to solve issues and problems identified including finding remedial measures in accordance with applicable policies and guidelines. The Supplement also makes assertions with regard to other projects. These are not addressed here as these are not related to the Project. Only new assertions under the Supplement are therefore responded to as below.

19. Project Design (3-4th paras. of part II of the Supplement) – Management submits that the assertion on the Project design referring to the Technical Review Mission in December 1994 (TRM) is taken out of context, and does not reflect the correct and final conclusion of the TRM. The report referred to in the Supplement is a staff consultant's report (Report) that was attached to the Aide Memoire of the TRM. The Supplement selectively quotes from the Report, only the assessment on demerits of superpassages, and completely ignores the conclusions drawn under the same Report. The conclusions are consequent to comparing the merits and demerits of the three types of cross drainage structure. Under paras. 15-18 of the Report, the staff consultant assessed the merits and demerits of the three types of the cross drainage structure, namely, inverted syphon, canal culvert, and superpassage. The Report concluded under para. 18 that "[a]s a result of this and other comparisons, superpassages have been chosen to convey flood waters and accompanying sediment across the main canal." This conclusion was also confirmed between the TRM and the executing agencies (EAs) as is evident from para. 13 of the Aide Memoire of the TRM: "the meeting [with WAPDA, NWFP and Punjab province to review design and scheduling issues held on 20 December 1994] agreed that the construction of superpassages offers better prospects than the canal syphons earlier proposed by the [Project Management Organization] (emphasis supplied)."

20. Therefore Management's Initial Response to the Initial Complaint and the Response are fully consistent with the above stated conclusion of the TRM as also agreed by the EAs.¹⁹ Following the recommendations made by the TRM, the EAs started to analyze the risk of flooding and mitigation measures. The actions taken with regard to the increased risk of flooding subsequent to the TRM are already indicated under Annexure 8 of the Response.

21. Social Survey action Plan (5th para. of part II of the Supplement) - With regard to the assertion under the Supplement regarding the Social Survey and Action Plan, it should be noted that the survey results and methods were not satisfactory to ADB. This is already indicated under para. 85 of the Response. Furthermore, the assertion that "[t]he villages did not prefer these two options and they are still living in the danger of flooding and involuntary displacement" does not reflect the facts already provided under para. 85 of the Response. It is restated that based on agreements reached, out of the 22 villages, 8 were provided flood protection bunds and the remaining 14 were paid compensation for relocation of houses.

22. With regard to the reference of the likelihood of an estimated 25,000 acres to be submerged,²⁰ it is submitted that the Supplement exaggerates its adversity. It is submitted that

¹⁹ See paras. 56-62, 93, and Annexure 6, paras. 8-9 of the Response.

²⁰ See the 7th para. of part I of the Supplement.

this figure was based on a study by WAPDA and its consultants entitled *Flood Mitigation West of Main Canal* in December 1996 (the "Study"), which states:

"The total area (tentative) likely to be submerged comes to be about 25,000 acres. This apparently can be reduced in certain reaches of the canal by some minor modification in structure design and training works, the planning of which will await field surveys. However, as the lands on the west side of the canal are almost in the entire length (except tail reach) barren and virgin, lying as such since times immemorial. Flooding instead of damaging them, provides a golden opportunity for cropping and is therefore quite welcome to the land owners, rather a blessing in disguise." (Issue No. 182, *Flood Mitigation West of Main Canal*, December 1996, page 3)

23. As may be noted from above, most part of such land is in fact barren since times immemorial. Further the location of this land was such that its flooding was possibly beneficial for cropping and therefore could have a positive impact on the land owners. As the peak floods rarely occur simultaneously (see para. 94 of the Response), it is very unlikely that the entire 25,000 acres could be flooded at the same time. Inundation by the design-level floods (once in 40 years) is also temporary, estimated at 5 hours to 40 hours (see Table 3 of the Study). Notwithstanding the findings of the study, ADB staff requested a second stage survey that is otherwise referred to as the "Social Survey and Action Plan" (see para. 54 of the Response).²¹ Under the Social Survey and Action Plan in 2001, A random sample of 50 percent of households (225 in number) was interviewed in 12 villages. The Survey found that these households owned about 2,120 acres of land to the west of the main canal, and about 400 acres to the east of the canal, and approximately 80% of the lands were lying fallow and were unused for either cropping or residential purposes. This suggests that the area that could have been impacted adversely is in fact much less than 25,000 acres, and that most of the area may have had positive impacts as stated above.

24. Land acquisition and related compensation - Under the 8th para. of part I, the Supplement asserts without any basis that "[i]n fact, the push for imposition of emergency rules in the land acquisition process was already provided by Management to WAPDA when it was asked in 1995 that WAPDA should give written assurance to ADB that there would be no hold up on land acquisition." This is not factually correct; the referred BTOR dated 5 January 1995 does not refer to the issue of land acquisition. Similarly the statement that "[t]his is why all BTORs except the last two ones described that no major problem was encountered in land acquisition process" is accordingly based on wrong understanding of the facts. Given the delays in Project implementation, ADB staff repeatedly requested for expediting land acquisition and related compensation. However, at no time could that be interpreted to mean that the EAs must use illegal or unfair means to acquire land or use any procedures that are inconsistent with or in violation of the applicable laws and policies. Management also seeks to refer to paras. 109-112 of the Response, on the issue of land acquisition and related compensation.

C. Conclusion

25. Under the *Inspection* Policy, in responding to an initial complaint, Management has to demonstrate that it has followed its operational policies and procedures.²² Management believes that under the Initial Response, it has adequately demonstrated compliance with operational policies and procedures, consistent with its understanding of the requirements of supplementary financing in 1999. It has, however, also acknowledged with the benefit of hindsight and

²¹ See also Annexure 8 page 2 to the Response.

²² ADB 1995. *Establishment of an Inspection Function*. R225-95, 10 November (para. 30).

interpretation of BIC in the Samut Prakarn case, the need for full appraisal for supplementary financing that could have more fully addressed some of the issues. In any event, regardless of the full or limited re-appraisal, before, during, and after the supplementary financing, in addressing issues as and when identified, staff and Management have taken steps to ensure that all actions are taken in accordance with applicable operational policies and procedures.

26. The *Inspection Policy* requires Management to indicate in the initial response, (i) what steps it is taking to follow its operational policies and procedures, and (ii) what actions, if any, it intends to take regarding the initial complaint.²³ The setting up of GRSC and other actions indicated in the Initial Response and in the Response indicate that Management has taken steps to ensure that the legitimate grievances of the Requesters are genuinely addressed. The TOR of the GRSC are also consistent with the principles of the applicable policies including mainly the *Involuntary Resettlement Policy*, for example, that of participation and consultation in preparing the matrix of entitlements,²⁴ and other requirements that need not be repeated here for the sake of brevity. Furthermore, objections raised by the Requesters to the GRSC under their Request have also been adequately addressed to date, notwithstanding the absence of the Requesters in crucial meetings on the same.

27. The *Inspection Policy* also requires that any remedial measures (such as the GRSC in this case) would need to be consented to by the Borrower. This consent has already been obtained and further steps towards commencement of its working are under way. This is also indicative of the commitment of the Borrower to address all pending issues in a time bound manner.

28. In view of the above, Management submits that an inspection would seriously jeopardize all efforts made thus far by Management and the Borrower in finding resolutions to pending complex issues under the Project, and seeks BIC's consideration of the same.

Annexures:

- Annexure 1. Staff Instruction on *Revisions to RRP and TA Format* dated 25 October 1994 and the attached memorandum of 16 September 1994 entitled *Streamlining of Board Documents*.
- Annexure 2. GP 13 on *Supplementary Financing of Cost Overruns on Bank-Financed Projects* (issued 12 December 1995).

²³ Ibid. (paras. 30 and 32)

²⁴ See also para. 104 of the Response.