

GONZALO CASTRO DE LA MATA
Chairman
The Inspection Panel

IPN REQUEST RQ 16/10

January 12, 2017

NOTICE OF REGISTRATION

Request for Inspection

REPUBLIC OF KENYA: Water and Sanitation Service Improvement Project (P096367) and Water and Sanitation Service Improvement Project - Additional Financing (P126637)

Summary

1. On November 29, 2016, the Inspection Panel (the Panel) received a Request for Inspection (the Request) of the Bank-financed Water and Sanitation Service Improvement Project (P096367) and its Additional Financing (P126637) (the “Project” or “WaSSIP”). The Request claims that water transfer under the Project from rivers in their area will have irreversible environmental impact and cause water shortages, leading to food insecurity and domestic water scarcity. After conducting initial due diligence, the Panel has registered the Request.

The Project

2. The Water and Sanitation Service Improvement Project was approved for an amount of US\$150 million equivalent (IDA) on December 20, 2007. The development objectives of WaSSIP are to: (a) increase access to reliable, affordable and sustainable water supply and sanitation services; and (b) to improve the water and wastewater services in the areas served by Athi Water Services Board (ATSB), Lake Victoria North Water Services Board (LVNWSB) and Coast Water Services Board (CWSB).

3. The Project was restructured and scaled up in May 2012 under an additional financing of US\$300 million (IDA), with a revised development objective to increase access to water supply and sanitation services in the project implementing entities’ service areas. The additional financing has three components, and is co-financed by the Agence Française de Développement (AFD). Component 1 supports the ATSB, Component 2 supports the CWSB, and Component 3 supports the LVNWSB. At the time of receipt of this Request, WaSSIP was 73 percent disbursed.

4. A Northern Collector Tunnel Phase I (NCT I), costing \$85 million, is a subcomponent of Component 1 of the Additional Financing. It consists of a system of tunnels 11.3 km long, diverting water from the Aberdares river system to supply water to Nairobi. It is derived from the Water Master Plan for Developing New Water Sources for Nairobi and 13 Satellite Towns, and includes the following sub-components:



- Transfer of water from Maragua River, Irati River and Gikigie River to Thika dam (Ndakaini dam);
- Construction of a raw water gravity main from Thika dam to the proposed Water Treatment Plant 6km downstream of Thika dam;
- Construction of a Water Treatment Plant 6 km downstream of the dam; and
- Construction of a 44 km treated water gravity main up to Kabete reservoirs (capacity 1.60m³/s) via Ngethu and Gigiri Water Treatment Plants to meet the city's year 2017 water demand.

5. Work on the NCT I was expected to be completed by December 2015, so as to meet Nairobi's water needs. The Additional Financing resulted in a change in the Environmental Assessment (EA) category from B to A to reflect its potentially significant environmental and social impacts. The Project triggered seven safeguard policies: (i) Environmental Assessment (OP/BP 4.01); (ii) Natural Habitats (OP/BP 4.04); (iii) Physical Cultural Resources (OP/BP 4.11); (iv) Involuntary Resettlement (OP/BP 4.12); (v) Indigenous Peoples (OP/BP 4.10); (vi) Safety of Dams (OP/BP 4.37); and (vii) Projects on International Waterways (OP/BP 7.50).

6. The EA prepared for the NCT I indicated that the main environmental and socioeconomic impacts would be related to the diversion of water and the resulting reduction in downstream flows in the rivers. The EA requires an assessment of the required downstream reserve flows, including environmental and compensation flows, and states that such impacts are expected to be long term. Additional impacts are related to the construction of the facilities, expected to be local-level and relatively short-term.

Concerns Raised in the Request

7. The Request was submitted by 47 residents of Murang'a county who authorized two residents to represent them for purposes of the Panel process (the Requesters). The Requesters asked that their identities be kept confidential, and are supported in their submission by a local non-governmental organization. They claim that the water transfer from the rivers in their area will have irreversible environmental impact and cause water shortages, leading to food insecurity and domestic water scarcity. They also allege that the environmental and social impact assessment for the NCT I was not comprehensive, and community participation in this process was insufficient. The Requesters are also concerned about the impartiality of the Independent Panel of Experts (IPE) constituted under the NCT I.

8. The Requesters also state that while they are concerned about impacts from the construction of the NCT I, they understand the need to provide additional water to Nairobi. However, they fear a drastic water loss of their domestic, industrial and agricultural sources and believe their input has not been appropriately considered in the environmental and social impact assessment, thereby rendering it deficient in their opinion.

9. **Environmental and Social Impacts:** The Requesters allege the environmental and social impact assessment for the NCT I is not comprehensive and as a result, the NCT is being constructed without adequate geotechnical studies to map rocks, aquifers, water table, swamps, springs and associated mitigation measures. They believe tunneling will puncture aquifers, interrupt underground water flow paths and cause rivers and springs to dry up. They fear these impacts could cause irreversible environmental damage. Furthermore, they allege that comprehensive environmental and social impacts from NCT I and NCT II, which will extend the tunnel into

“another four stressed MC [Murang’a County] rivers...[that] share a common water catchment and hydrology and have integrated uses within the County” have not been undertaken. They further allege a lack of disclosure of information about the comprehensive environmental and social impacts.

10. **Water Availability:** The Requesters are concerned about possible water shortages for domestic, agricultural and industrial (coffee processing) use when water from the rivers is diverted into the NCT I. They fear short periods or days of zero or near-zero flow, especially in the dry season (December-March; July-October).

11. **Water Storage Capacity:** The NCT I will deliver water to the Thika dam, and the Requesters allege this dam does not have storage capacity to absorb additional water intake. They state the dam receives water from the Thika River and spills over “twice a year and in a period of less than [a] month”. Moreover, they allege additional water carried by the NCT I into Thika dam will result in spillage during 3-4 months a year, causing a wastage of flood flow that otherwise would be used in the Murang’a County to replenish low lands and recharging of the water table, thereby enabling farming in the dry season.

12. **Community Participation:** The Requesters allege impacts from NCT I were not properly explained to relevant communities, and “misinformation” was spread by suggesting the project will transfer flood water while “factually the project is designed to withdraw Q95 flow almost 365 days a year”.¹ They further allege the implementation authority has not disclosed the “many negative impacts” to the communities, and especially not to the most negatively impacted communities.

13. **Impartiality of the Independent Panel of Experts:** As a response to the complaints received from the Requesters and the Murang’a County, the AWSB formed an IPE to study the project. The Requesters raise concerns about the working of the IPE and also question its impartiality.

Initial Due Diligence

14. After receipt of the Request, the Panel conducted its initial due diligence and verified that the Request was submitted by two or more people as required under the Panel’s Operating Procedures. Furthermore, the Panel notes that the issues raised in the Request have been brought to the attention of the Bank on several occasions.

15. The Panel also verified that the Request meets requirements for registration. The Request is not frivolous or anonymous. The Bank is financing the NCT I under the WaSSIP Additional Financing, and the harm alleged in the Request could plausibly be linked to this Project. The Bank’s disbursement of funds for WaSSIP is less than 95 percent. The subject matter of the Request does not concern issues of procurement. Finally, the Panel has not made a recommendation on a previous Request related to this Project.

¹ The Technical Committee Report sent as an annex to the Request describes Q₉₅ flow as minimum flow (p. 84): “In the absence of detailed long-term ecological studies (which often tend to focus only on individual species) the widely used index for determining minimum Environmental Flow Release (EFR) requirements is the index of natural low flow, Q₉₅. Q₉₅ flows are therefore seen as the minimum flow, beyond which abstraction must not occur...”

16. The Panel met with Bank Management on December 15, 2016 to receive relevant information and updates. Management stated it was aware of the issues raised by the complainants, and had been in communication with them. Management is of the view that the impacts feared by the Requesters have been properly addressed in the design of the Project. Management also provided the Panel with additional documentation related to the Request.

Registration of the Request

17. As provided in paragraph 17 of the Resolution, *“the Chairperson of the Panel shall inform the Executive Directors and the President of the Bank promptly upon receiving a request for inspection.”* With this notice, I am notifying you that I have, on January 12, 2017, which is also the date of this notice, registered this Request.

18. The Panel’s registration implies no judgment whatsoever concerning the merits of a Request for Inspection. As provided in paragraph 18 of the Resolution, and paragraphs 2 and 8 of the *“Conclusions of the Board’s Second Review of the Inspection Panel”* (the 1999 Clarification), Bank Management must provide the Panel within 21 business days as of this Notice, by February 14, 2017, a response to the issues raised in the Request. The subject matter that Management must deal with in the response to the requests is set out in paragraphs 3 and 4 of the 1999 Clarification.

19. After receiving the Management Response, the Panel will, as outlined in the 1999 Clarification and as provided by paragraph 19 of the Resolution, *“determine whether the Request meets the eligibility criteria set out in paragraphs 12 to 14 [of the Resolution] and shall make a recommendation to the Executive Directors as to whether the matter should be investigated.”* The Request has been assigned IPN Request Number RQ 16/10.

Yours sincerely,



Gonzalo Castro de la Mata
Chairman

Attachments

Mr. Jim Yong Kim, President
International Development Association

The Executive Directors and Alternates
International Development Association