

The Inspection Panel
Report and Recommendation
On
Request for Inspection

PAKISTAN: National Drainage Program Project
(Credit No. 2999-PAK)

1. On September 10, 2004, the Inspection Panel received a Request for Inspection related to the Pakistan: National Drainage Program Project (the “Project”). The Request was submitted by Khadim Talpur, Mohammad Ali Shah, Mustafa Talpur, Munawar Hassan Memon, Iqbal Hyder, Mir Mohammad Buledi, and Najma Junejo on their own behalf and on behalf of “*others who live in the area known as district Badin, Sindh, Pakistan*” in the Indus River Basin.¹ On September 17, 2004, in accordance with the Resolution establishing the Inspection Panel (the “Resolution”),² the Panel notified the Executive Directors and the President of the International Development Association (IDA)³ that it had received the Request, which constituted Registration of the Request under the Panel’s *Operating Procedures*.⁴ The Panel received Bank Management’s Response to the Request on October 19, 2004 (the “Response”).⁵
2. As provided in paragraph 19 of the Resolution, the purpose of this Report is to determine the eligibility of the Requests and to make a recommendation to the Executive Directors as to whether the Panel should investigate the matters alleged in the Request.

A. The Project

3. The Request raises issues related to the Pakistan: National Drainage Program Project (NDP), in particular to the disposal of saline effluent and to the proposed construction of the National Surface Drainage System (NSDS), a northwards extension of the existing Left Bank Outfall Drain (LBOD) system in Sindh Province. The Bank states: “*A related issue for sustainability of the system is a long-term solution for disposal of drainage effluent outside the Indus Basin. The*

¹ The Request was received electronically. Prior to Registration, the Panel received a hard copy of the Request with over 2,000 original signatures.

² IDA Resolution No. 93-6, the Resolution Establishing the Inspection Panel (September 22, 1993).

³ For the purposes of this Report, the IDA is referred to as “the Bank.”

⁴ See The Inspection Panel, *Operating Procedures* (August 19, 1994), ¶17.

⁵ Bank Management Response to Request for Inspection, Pakistan: National Drainage Program Project (IDA Credit No. 2999-PAK) [hereinafter “Management Response”].

project would support the preparation of feasibility studies and detailed design for the Borrower's proposed NSDS which is intended to create a permanent disposal channel for drainage effluent via the LBOD into the Arabian Sea.”⁶

4. The National Drainage Program was launched in 1997 to address waterlogging and salinity, which are the principal threats to the sustainability of irrigated agriculture in Pakistan.⁷ Waterlogging is a phenomenon that can permanently afflict areas like wetlands, and it has economic (agricultural) and species distribution consequences. Waterlogging cuts off the oxygen supply to roots and inhibits the escape of gases, such as carbon dioxide, from the roots, which then accumulate in the soil and have a corresponding effect on the roots themselves. It may also increase risk of soil-borne fungal diseases, and in warmer climates near the sea, waterlogging can also produce increased salinity.⁸
5. The Indus Basin Irrigation System (IBIS) brought water to the basin but did not have an outlet to the sea to drain off surplus water.⁹ In other words, there was an extensive irrigation system, but no corresponding interconnected drainage network. Much of the drainage either stayed in the irrigation system itself or was disbursed into rivers and streams. The retention of surplus water caused the watertable to rise very close to the surface and to become heavily saline.¹⁰ In Sindh Province, it was estimated in 1997 that 56% of groundwater areas were moderately saline, 32.5% severely so.¹¹
6. On December 13, 1984, IDA approved a Credit of \$150 million for the LBOD Project, to address flooding and salinity problems. The central feature of the LBOD is the spinal drain, which connects the drainage network to the sea through a Tidal Link.¹² The LBOD spinal drain collects surplus drainage and distributes it through a weir to two branch drains, the Kadhan Pateji Outfall Drain (KPOD) and the Dhoru Puran Outfall Drain (DPOD). The spinal drain system was designed to direct the high salinity drainage into the KPOD and thence to the sea. The KPOD connects to the sea via a 26-mile long canal, referred to as the Tidal Link. By December 31, 1997, the closing date of the Project, some works were yet to be completed. The outstanding components were transferred to the NDP.

⁶ Staff Appraisal Report, No. 15310-PAK, dated September 25, 1997 (hereinafter “SAR”), ¶5.20.

⁷ Id., ¶1.8.

⁸ Jackson, Michael B., School of Biological Sciences, University of Bristol. “The Impact of Flooding Stress on Plants and Crops.” Available at http://www.plantstress.com/Articles/waterlogging_i/waterlog_i.htm. As stated by the International Commission on Irrigation and Drainage, “[i]n the hot and arid climate the capability rise of groundwater in areas with salty soils, carries the salts upward to the surface of the root zone. Evaporation of water leaves layers of salt at or close to surface affecting agricultural production.” International Commission on Irrigation and Drainage, *Irrigation & Drainage in the World – A Global Review*, p. 4. Available at http://www.icid.org/i_d_pakistan.pdf.

⁹ Pakistan Public Expenditure Management, Report No. 25665-PK, ¶2.5.

¹⁰ Jackson, Michael B., School of Biological Sciences, University of Bristol “The Impact of Flooding Stress on Plants and Crops,” ¶6. Available at http://www.plantstress.com/Articles/waterlogging_i/waterlog_i.htm.

¹¹ SAR, ¶1.8.

¹² Id., ¶2.5.

7. The NDP Project is partly financed under IDA Credit No. 2999-PAK. According to the Staff Appraisal Report (SAR), the objective of the Project is *“to implement the first phase of the Borrower’s and Province’s 25-year NDP which is designed to minimize saline drainable surplus, and facilitate the eventual evacuation of all saline drainable surplus from the Indus Basin to the Arabian Sea, and thereby restore environmentally-sound irrigated agriculture to Pakistan.”*¹³ The SAR describes the Project as *“a ‘high reward-high risk’ venture.”*¹⁴
8. The Project as described in the Development Credit Agreement includes; a) drainage and irrigation institutional reforms, b) drainage and irrigation research and sector planning, and c) drainage and irrigation infrastructure investment projects.¹⁵ The investment component, which is also described in Section 2, Part E of the SAR,¹⁶ includes the following sub-components: (i) off-farm drainage; (ii) on-farm drainage (only where Farmer Organizations (FOs) have been established and are willing to share the investment costs and responsibility for Operation and Maintenance (O&M) costs); (iii) rehabilitation and modernization of irrigation systems, focusing on saline groundwater areas where FOs have been established; and (iv) O&M of selected drainage and irrigation facilities through private sector performance contracts.¹⁷
9. The pipeline of investments includes completion of ongoing projects such as the LBOD and the Right Bank Outfall Drain (RBOD), construction, rehabilitation, and improvement of surface drains in five drainage circles in Punjab and two drainage circles in Sindh, and O&M performance contracts for five projects which includes the LBOD.¹⁸
10. The Project was assigned Environmental Category B based on the submission of a Drainage Sector Environmental Assessment (DSEA).¹⁹ According to the Bank no investment project would be included *“unless there is a disposal strategy for the drainage effluent.”*²⁰ Furthermore, the Bank obtained assurances from the Borrower that all investment projects would have an Initial Environmental Scoping (IES) and that full Environmental Impact Assessments (EIAs) would be prepared to IDA’s satisfaction for all those projects that the IES indicates have significant environmental impacts. *‘Such projects would only be approved for funding under the project if their EIA indicates that the adverse environmental impacts would be substantially mitigated or avoided.’*²¹

¹³ Id, ¶2.1.

¹⁴ Id, ¶5.13.

¹⁵ Development Credit Agreement between the Islamic Republic of Pakistan and the International Development Association, December 16, 1997, Schedule 2 (hereinafter “Credit Agreement”).

¹⁶ SAR, ¶2.28.

¹⁷ Id, ¶2.28 – 2.33.

¹⁸ Id, ¶2.34.

¹⁹ Id, ¶4.16.

²⁰ Ibid.

²¹ Ibid.

11. The Project's Environmental Management Plan (EMP) includes design and implementation of a Wetlands Management Plan (WMP) which is to focus on critical wetland areas affected by the IBIS.²² This plan is to include mitigation measures to improve wetlands protection. Assurances were obtained that in constructing field drains, wetlands would be adequately protected.²³
12. The Bank obtained assurances that the Water and Power Development Authority of Pakistan (WAPDA) and the Provinces would carry out all land acquisition and involuntary displacement (and subsequent resettlement and rehabilitation) in accordance with an agreed Framework for Land Acquisition and Resettlement (FLAR).²⁴ The Bank required the submission of a land acquisition plan and Resettlement Action Plan (RAP) for all investment projects.²⁵ The FLAR estimated that about 9,500 acres of land would be required for the investment component.²⁶ In the SAR the Bank argues that the investment projects would reclaim around 22,430 acres of currently abandoned land, rehabilitate another estimated 162,850 acres, and provide drainage relief to over five million acres.²⁷
13. According to the Supervision Plan for the Project described in the SAR, "*IDA would decentralize an increasing proportion of its responsibility for supervision of the project to its Resident Mission in Pakistan and a World Bank Project Monitor.*"²⁸ The SAR includes a caveat that this assumes that Consultant Trust Funds are available to finance the costs of such supervisory services.²⁹ The SAR adds: "*The donors and the Borrower would jointly supervise the project. IDA supervision Missions would be held twice yearly in April and November.*"³⁰

B. Financing

14. On December 16, 1997, the International Development Association entered into a Development Credit Agreement with the Islamic Republic of Pakistan providing for a credit in an amount equivalent to SDR198,600,000³¹ for the Project. In addition to the Association's credit, the Project's financing structure includes a loan from the Asian Development Bank (ADB) and a loan from the Japan Bank for International Cooperation. According to the SAR the breakdown of the Project's financing is as follows:

²² Id, ¶4.18.

²³ Id, ¶4.19.

²⁴ Id, ¶4.15.

²⁵ Ibid.

²⁶ Ibid.

²⁷ Ibid.

²⁸ Id, ¶4.10.

²⁹ Id, FN43, p.33.

³⁰ Id, ¶4.10.

³¹ SDRs are Special Drawing Rights; SDR198,600,000 is equivalent to about US\$ 285 million.

Financing Plan
(US\$ Million)³²

Financier	Type of Expenditure		Total	
	Local	Foreign	Amount	%
Borrower and Provinces	208.1 ³⁴	19.8	227.9	29.0
Farmers through Farmers' Organizations	19.5	12.6	32.1	4.1
Asian Development Bank	84.5	55.5	140.0	17.9
Overseas Economic Cooperation Fund ³³	56.6	43.4	100.0	12.7
International Development Association	198.0	87.0	285.0	36.3
Total	566.7	218.3	785.0	100.0

Source: Staff Appraisal Report

15. The Bank approved the Project on November 4, 1997. According to the legal agreement the Project was expected to be completed by June 30, 2004.³⁵ The current closing date of the credit is December 31, 2004.

C. The Request

16. The Requesters state: *“We have suffered, or are likely to suffer, harm as a result of the World Bank’s failures in the National Drainage Program Project (NDP) credit no 2999-PK, being implemented in [the] Indus Basin Irrigation System in Pakistan (...).”*³⁶ They add: *“The implementation of [the] NDP as envisaged in [the] Staff Appraisal Report, mid term review and other World Bank documents will likely cause a [sic] serious adverse impacts on our livelihood and environment on which we depend.”*³⁷ They argue that there are *“several thousand people who entirely depend on local Dhands/fishing, grazing, and agriculture.”*³⁸

Involuntary Resettlement and Loss of Livelihood

17. The Requesters claim that the saline effluent coming down the drainage system will cause large-scale flooding which will force them to leave their ancestral villages. They claim that such displacement *“is even not considered in project documents even though it will occur due to the consequences of [the] project outcome.”*³⁹ The Requesters claim that *“[the] faulty disposal system through [the] tidal link will increase the pressure of backwater flow during the high tide*

³² SAR, p.21.

³³ The Overseas Economic Cooperation Fund (OECF) was established on March 16, 1961, to promote Japan’s overseas economic cooperation by providing concessional funds for industrial development and economic stability of developing countries. On October 1, 1999, OECF merged with the Export-Import Bank of Japan (JEXIM) to form the Japan Bank for International Cooperation (JBIC).

³⁴ Includes taxes and duties (US\$103.3 million).

³⁵ Credit Agreement, Schedule 2.

³⁶ Request for Inspection (hereinafter “Request”), ¶2, p.1.

³⁷ Id, ¶12.

³⁸ Id, ¶19. *Dhand* is a Sindhi word for a shallow lake, depression, or wetland.

³⁹ Ibid.

*timings.*⁴⁰ They state that since the LBOD system began operating, the clash between the downstream saline effluent flow and the incoming high tide water has caused the KPOD to overflow and inundate the surrounding agricultural land and villages. “[T]he World Bank and ADB planned another mega drainage project to connect the existing faulty disposal system of LBOD to further upstream in order to evacuate more effluents. We believe that in case of the NDP the historical custodian[s] and local communities of [the] coastal belt will be entirely wiped out due to this policy decision.”⁴¹

18. The Requesters further claim that a remodeling of the spinal drain, the KPOD, and the DPOD will be necessary to handle the extra saline effluent; that such expansion of the drains will require the acquisition of several thousand acres of land; and that the Requesters will be left with “*meager resources for livelihood(...)[i]n addition to land there are several villages, which will be displaced in broadening the cross sections of [the] drains.*”⁴²
19. The Requesters express the fear that their land will be acquired under the Land Acquisition Act of 1894 for the expansion of the KPOD without proper compensation and resettlement and in violation of Bank policy.⁴³ They claim that the FLAR is “*quite vague and does not mention the location and quantity of land required.*”⁴⁴ Nor, they state, does it give any time frame for compensation to be paid or credible economic rehabilitation of affected persons to be achieved.⁴⁵

Environmental Assessment

20. The Requesters claim that the design of the NDP Project is faulty and unsustainable because it has not taken into account the social and environmental difficulties inherent in the existing disposal route, and because it did not explore possible alternative routes.⁴⁶ They state that they have raised objections to the feasibility and sustainability of the Project, but that “[i]mplementing agencies, financiers including the World Bank, and the project consultants never listened to us.”⁴⁷
21. They further claim that the environmental assessment for the Project has ignored or underestimated items on the checklist for Bank-financed projects.⁴⁸ They contend that “[t]he effect of [the] NDP on marine resources, bio-diversity including bcal coastal plants, animal[s], critical habitats and protected areas will be entirely negative. The NDP has under-estimated all these critical

⁴⁰ Id, ¶21.

⁴¹ Id, ¶13.

⁴² Id, ¶20.

⁴³ Id, ¶22.

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Id, ¶14.

⁴⁷ Ibid.

⁴⁸ Id, ¶33.

*components during planning. We believe that we will lose several fish species and other marine bio-diversity due to toxic effluents; also there is [a] threat to terrestrial plants. The economic costs of these bio-diversity and environmental impacts have also been completely ignored.”*⁴⁹

22. The Requesters also claim that the Bank, by accepting the DSEA, violated its environmental assessment policy because the DSEA focuses only on general environmental issues of Pakistan’s drainage sector and does not deal with issues such as coastal ecology, safe disposal of saline effluent into the Arabian Sea, and protection of wetlands.⁵⁰ In addition, the Requesters state that the DSEA, prepared originally in the early 1990s, was not updated during consideration of the NDP loan in 1997, and that it *“also lacks public legitimacy because no civil society groups or affected people were consulted during the prepared [sic] of the study.”*⁵¹
23. The Requesters also claim that although the Bank’s Environmental Assessment policy clearly requires an EMP, *“after the lapse of six years there is no such EMP.”*⁵² They claim that in spite of the DSEA proposing a Wetlands Management Plan and a program of monitoring and audit, *“nothing has materialized in this regard.”*⁵³ They claim they are suffering harm because of the lack of an EMP. *“Due to these [sic] delay in the implementation of EMP of LBOD and non-formulation of EMP of NDP, we are bearing the cost of environmental degradation including reduced fish catch, loss of agriculture land and forest, loss of grazing land and degradation of Wetlands. Consequently the combined effect of all these factors is impoverishing us.”*⁵⁴

Natural Habitat

24. The Requesters state that the wetlands affected by the Project are an important natural habitat, because they are part of a migratory route for waterfowl and of nesting grounds for *“a large number of locally and globally important bird species, including some endangered species such as the Dalmatian Pelican. Two species of marine turtles inhabit the area, including [the] green turtle and the loggerhead turtle.”*⁵⁵ The Requesters claim that the wetlands, channels, and creeks *“are also a productive fishery source including several species of commercially valuable shrimp, prawns, and crabs.”*⁵⁶ The interconnected lakes known as *dhands* are the source of livelihood for forty villages of fishermen with a combined population of 12,000 to 15,000.

⁴⁹ Ibid.

⁵⁰ Id, ¶34.

⁵¹ Id, ¶35.

⁵² Id, ¶37.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Id, ¶38.

⁵⁶ Ibid.

25. The Requesters assert that two of these *dhands* – the Narreri lagoon and the Jubho lagoon – are internationally recognized sites under the Ramsar Convention on Wetlands of International Importance especially as a Waterfowl Habitat⁵⁷ “because of their significance for migratory birds and other biodiversity and ecosystem values.”⁵⁸ They state that Pakistan is a party to the Ramsar Convention⁵⁹ and that the Bank is “not supposed to provide support to projects that would contravene a government’s requirements under international environmental treaties and agreements.”⁶⁰ They argue that the Project is in violation of Operational Manual Statement 2.36⁶¹ and claim that the linking of the KPOD with Shah Samado creek through the Tidal Link that was passing through these *dhands* was “entirely unsound.”⁶² This is because the construction of the Tidal Link prevented the water from the Rann of Kutch during wet years from entering the *dhands*. This decreasing water flow has reduced the areas of the *dhands*.
26. The Requesters claim that the degradation of these wetlands has already caused severe damage to the ecosystem, habitat, and fish catch.⁶³ They believe that if the NDP Project is implemented according to its present design – and if there is an inter-provincial drainage accord and more trunk drains are connected to the spinal drain of the LBOD – the *dhands* “will be the story of past and people earning their livelihood will be forcibly migrated. This will be yet another example of involuntary displacement of people that is ignored by the official documents of both government and donors.”⁶⁴

Indigenous People

27. The Requesters claim that people from the *Mallah* tribe of the coastal belt in certain villages close to the KPOD are adversely affected by the Project. Already, according to the Requesters, the existing faulty operation of the LBOD lead to the inundation of the *Mallah* villages, causing loss of livelihood and life.⁶⁵ The reduced area of the *dhands* and impaired water quality in them has affected the fish catch on which the *Mallah* communities depend for income and sustenance.⁶⁶ The Requesters assert that the Project “has not taken into account the poverty and impoverishment of the indigenous people (...). We believe that [the] proposed NDP investment will pose [a] serious threat to the lives, livelihood and rights to

⁵⁷ Ramsar Convention on Wetlands of International Importance Especially as a Waterfowl Habitat, February 2, 1971 [hereinafter “Ramsar Convention”]; available at www.ramsar.org.

⁵⁸ Request, ¶40.

⁵⁹ Pakistan ratified the Ramsar Convention on November 23, 1976.

⁶⁰ Ibid.

⁶¹ Request, ¶40.

⁶² Id, ¶42.

⁶³ Id, ¶46.

⁶⁴ Id, ¶48.

⁶⁵ Id, ¶50.

⁶⁶ Id, ¶51.

*development and culture of indigenous groups guaranteed under several international covenants.”*⁶⁷

Loss of Cultural Property and Historical Monuments

28. The Requesters state that the districts of Thatta and Badin have long been a rich cultural location. They claim that “[t]he few and very important cultural [sites] in Badin which are being badly affected by KPOD and Tidal link canal include the monuments of saint Shaikh Kirhiyo Bhandari, the historical site of Roopa Mari and thari, these both sites were the important town of the dynasty of Soomra ruler in Sindh (1051 to 1351).”⁶⁸ They also declare that “the existing monuments of saints and formers rulers are quite important cultural sites.”⁶⁹ The Requesters allege that the KPOD is passing through the identified 4 km area of Roopa Mari, which was the capital of the Soomra rulers and where “[the] tomb of Dodo Soomro the last ruler of Soomra dynasty is also located.”⁷⁰ They also allege that these sites are all “in the range of KPOD and Tidal Link” and that “floods have hit these places twice in five years and there is eminent [sic] threat that [they] will lose [their] history and culture.”⁷¹ The Requesters further allege that the KPOD has “already occupied some of the area of cultural and historical importance and in case of expansion of KPOD, the remaining areas and monuments will be entirely vanished.”⁷²

Community Participation and Information Disclosure

29. The Requesters claim that the local communities and affected people of the coastal belt “have been kept entirely unaware about the plans of NDP and its environmental assessments.”⁷³ The Requesters consider that there “remains a serious lack of institutionalized mechanisms for information sharing and consultation with the affected people. The project planning process remained the business of few bureaucrats and donors and project implementation remained non-transparent and hence failed to obtain informed consent since the outset.”⁷⁴ They state that they “were entirely unaware regarding NDP until the rains of 2003,” when they were informed “that more effluents [sic] would be added in existing LBOD system.”⁷⁵ The Requesters further state that “[t]he participation of the affected people and local communities in any process of the project from planning to implementation is negligible.”⁷⁶

⁶⁷ Id, ¶52.

⁶⁸ Id, ¶53.

⁶⁹ Ibid.

⁷⁰ Id, ¶54.

⁷¹ Ibid.

⁷² Ibid.

⁷³ Id, ¶55.

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ Ibid.

30. Requesters allege that local people and organizations have raised the issue with “WAPDA officials, consultants and visiting mission members from time to time (...). But both donors and government officials remained silent and nothing practically has been done to adequately respond to these concerns or to satisfactorily resolve the issues.”⁷⁷ They also state that they “expedited [their] efforts and communication with government officials and World Bank after the monsoon rains of 2003.”⁷⁸ The Requesters also refer to a letter, annexed to the Request, they sent to the World Bank Islamabad office on September 9, 2003, and another on September 11, 2003, concerning “the failure of drainage system in Badin and losses to human life and livelihood resources,”⁷⁹ stating that they received no response.
31. The Requesters state that on September 17, 2003, the affected communities organized a protest march in Badin demanding reparation for harm suffered because of the LBOD and cancellation of the Loan for the NDP Project, and that “[t]he detailed report of protest march again was communicated to Bank officials in Islamabad (...) and widely published in local and national media.”⁸⁰ They state that on December 28, 2003, they organized a protest rally in Karachi, and “the issue of drainage system failure and NDP was highlighted.”⁸¹ They also state that, on May 01, 2004, the affected coastal communities and local nongovernmental organizations (NGOs) organized a widely reported protest in the town of Badin to voice their concerns about the Project and “demanded reparation of LBOD, repair of LBOD breaches and cancellation of NDP loan.”⁸² The Requesters further state that on March 15, 2004, ten people including an eleven year old girl and two women from the Save Coast Action Committee “observed seven hours token hunger strike in front of World Bank Islamabad office to record their protest on National Drainage Program and losses occurred due to Left Bank Outfall Drainage.”⁸³
32. The Requesters allege that on December 24, 2003, they had a meeting with the Managing Director of the Sindh Irrigation and Drainage Authority (SIDA) “to communicate the viewpoint of local communities and civil society regarding the failure of LBOD and incoming issue of NDP” and that he “was quite agreeing with the reservation made by communities on extension of NDP.”⁸⁴ They also allege that further meetings with a WAPDA Chief Engineer on December 27, 2003, did not result in “any satisfactory answer.”⁸⁵ During the same month they allegedly tried to meet with staff at the World Bank Islamabad office, who “declined to meet and suggested to meet with WAPDA and other implementing

⁷⁷ Id, ¶56.

⁷⁸ Id, ¶57.

⁷⁹ Ibid.

⁸⁰ Id, ¶58.

⁸¹ Id, ¶61.

⁸² Id, ¶73.

⁸³ Id, ¶71.

⁸⁴ Id, ¶59.

⁸⁵ Id, ¶60.

agencies instead,” and also denied the Requesters access to “NDP related documents especially environmental management plan.”⁸⁶

33. The Requesters also enumerate a list of letters that were sent from several local organizations and groupings between September 2003 and May 2004 to express their concerns about the Project. The letters were allegedly sent to Federal and Provincial Government officials, World Bank officials in Islamabad and Washington DC, the Asian Development Bank, civil society groups, and the press.⁸⁷ The Requesters further state that in December, 2003 ActionAid Pakistan published its research on the “*disastrous effects of LBOD and future risks of NDP,*” which was “*widely circulated and also sent to World Bank and Asian Development Bank Islamabad offices.*”⁸⁸
34. The Requesters declare that they have raised the matters of their complaint with the Bank⁸⁹ and attempted to discuss their concerns. “*We expedited our efforts and communications with government officials and World Bank after the monsoon rains of 2003 when the proposed outfall drains brought death and widespread destruction to our communities. In the reporting of failure of drainage system Mustafa Talpur of ActionAid sent an email to several organizations including Mr. Usman Qamar of World Bank Islamabad office on September 9, 2003. The above message outlined the failure of drainage system in Badin and losses to human life and livelihood resources. Another email was sent on September 11, 2003 to World Bank officials in Islamabad. (Annex 2). No response was received.*”⁹⁰
35. In its Notice of Registration, the Panel noted that the above claims may constitute violations by the Bank of various provisions of the following operational Policies and Procedures:

OD 4.01	Environmental Assessment
OP 4.04	Natural Habitats
OD 4.20	Indigenous People
OD 4.30	Involuntary Resettlement
OPN 11.03	Management of Cultural Property
BP 17.50	Disclosure of Information

D. Management Response

36. The Management Response begins by noting that many of the issues in the Request relate to the prior LBOD Stage 1 project, which closed in 1997, and asserts that the NDP will not extend the LBOD Spinal Drain any further north.⁹¹

⁸⁶ Id, ¶63.

⁸⁷ Id, ¶64 - 75.

⁸⁸ Id, ¶62.

⁸⁹ Id, ¶4, p.2.

⁹⁰ Id, ¶57.

⁹¹ Management Response, ¶6 (hereinafter “Management Response”).

Management states that the NDP Project was originally the product of a new strategy for Pakistan's water resources conceived between the Government of Pakistan (GoP) and IDA in 1994 and driven by concern over the deterioration of the drainage infrastructure and the environmental status of the Indus Basin Irrigation System.⁹² In particular, it was thought that the lack of an effective drainage system was a threat to the sustainability of agriculture in the Basin. IDA in 1992 had ceased all lending to the drainage sector pending agreement on a new strategy.⁹³

37. The NDP Project's IDA Credit 2999-PAK (US\$285 million) was approved by the Board on November 4, 1997.⁹⁴ The total estimated cost of US\$785 million was funded by several donors;⁹⁵ IDA was financing institutional reforms, a part of the investment component in all Provinces (Punjab, Sindh, Northwest Frontier, and Balochistan), all sector planning and research, technical assistance, and supervision.⁹⁶ Management states that the Project was “*deliberately ‘frontloaded’ with an institutional and policy reform agenda and ‘backloaded’ with an investment program*”⁹⁷ in order to focus on strengthening governance and transparency in the irrigation and drainage sector. Management states that “[t]he major risks emanated from the possible impact of the project on existing power relationships and alliances in rural Pakistan, as was evidenced by the strong opposition of feudal interests and parts of the irrigation bureaucracy; such opposition included thwarting civil works, damaging infrastructure and illegally removing water, and discouraging farmers from paying water charges.”⁹⁸
38. Management acknowledges that implementation of the Project has proceeded more slowly than expected “*due to various reasons, including project complexity, poor coordination and leadership; an absence of reform ‘champions’ and, therefore, lack of commitment to, and slow launch of, institutional reforms; a lengthy subproject identification and preparation process; and lack of agreement on a drainage strategy.*”⁹⁹
39. During 2001 – 2002 a pre-feasibility study of a National Surface Drainage System (NSDS) was done, which envisaged a major drain some 1,464 kilometers in length to carry drainage effluent from Punjab to the sea.¹⁰⁰ The Bank fielded a Panel of Experts (PoE) who reviewed the study and recommended deferring the NSDS unless alternative measures proved inadequate. Such alternative measures included institutional and policy reforms, more efficient irrigation management,

⁹² Id, ¶7.

⁹³ Ibid.

⁹⁴ Id, ¶8.

⁹⁵ Id, ¶9.

⁹⁶ Id, ¶13.

⁹⁷ Id, ¶11.

⁹⁸ Ibid.

⁹⁹ Id, ¶16.

¹⁰⁰ Id, ¶21.

local stakeholder participation and local disposal solutions. The Bank and the GoP endorsed these recommendations.¹⁰¹

40. Regarding the LBOD, Management states that construction of a spinal drainage system to dispose of excess water was begun in the 1960s to address the Indus Basin's drainage problems.¹⁰² The total scheme involved a spinal drain, remodeling of the KPOD and the DPOD, and a 26-mile Tidal Link canal connecting the KPOD to an active tidal creek. A 1989 EIA brought forth concerns that the Tidal Link could have serious ecological impacts on the *dhands*.¹⁰³ Hence, the northern side of the Tidal Link was raised and a concrete weir built to protect local ecology by preventing over-drainage of the *dhands* at low tide.¹⁰⁴ Management states that in discussing the LBOD Environmental Management and Monitoring Plan (EMMP), "*the lack of a complete baseline and continuing, systematic, scientific and well coordinated monitoring and study of the [Tidal Link] area remain critical issues.*"¹⁰⁵
41. In discussing the status of the Tidal Link, Management states that almost as soon as it began operating, it experienced problems, including significant erosion, scouring, and the collapse of a 250 foot section of the weir.¹⁰⁶ All attempts to close the breached weir failed due to monsoon weather and inaccessibility of the site. Then in May, 1999 a catastrophic cyclone hit the area causing severe damage, including near total destruction of the Cholri Weir and further breaches of the Tidal Link embankment. Management points out that the lower Badin area "*is characterized by severe poverty and harsh living conditions*"¹⁰⁷ and acknowledges disruptions to livelihoods from the severe weather events. Management maintains, however, that "*it cannot be presumed that these disruptions are attributable directly to the damage to the Tidal Link and failure of the Cholri Weir.*"¹⁰⁸
42. Management states that the original intent of frontloading the NDP Project was not realized, and that the NSDS and Drainage Management Plan (DMP) studies were only initiated halfway through project implementation instead of earlier when they might have provided the chance for finding local drainage effluent disposal solutions.
43. Management assigned the NDP Project to EA Category B, rather than A, under OD 4.01. According to Management the rationale was that "*a primary objective was to address environmental issues associated with irrigation,*"¹⁰⁹ and that

¹⁰¹ Id, ¶22.

¹⁰² Id, ¶27.

¹⁰³ Id, ¶30.

¹⁰⁴ Ibid.

¹⁰⁵ Id, ¶32.

¹⁰⁶ Id, ¶34.

¹⁰⁷ Id, ¶38.

¹⁰⁸ Ibid.

¹⁰⁹ Id, ¶40.

significant environmental benefits were anticipated. Management notes that “[s]uch categorization appears to have reflected a premature (pre-EIA) balancing of possible adverse effects with positive effects, and a focus on individual infrastructure activities, without regard to their potential cumulative effects.”¹¹⁰ Management adds that it acknowledges “that it would have been more appropriate to categorize this as an EA category ‘A’ project.”¹¹¹

44. Management states that it believes the Project is in compliance with many of the requirements for OD 4.01 (Environmental Assessment), including preparation of a sectoral EA and requirements for screening subprojects.¹¹² However, Management acknowledges that no report on ex-post sampling of ongoing work has yet been prepared to ensure compliance with covenants on screening, nor has the EMP as required by the Project Agreement been implemented. Consultations conducted in the course of producing the DSEA “appear to have been few, particularly with affected groups.”¹¹³ According to Management the Project also failed to comply with the disclosure requirements for BP 17.50 (Disclosure of Operational Information) “since the DSEA was not disclosed prior to appraisal at the Infoshop and no records of disclosure in country could be located.”¹¹⁴ Management states that OP 4.04 (Natural Habitats), OD 4.20 (Indigenous Peoples), and OPN 11.03 (Cultural Property) were not applicable to the Project.¹¹⁵ It adds that because agreement with the GoP over the FLAR could not be reached, IDA did not finance any subprojects involving resettlement and therefore OD 4.30 (Involuntary Resettlement) did not apply.
45. Management states that the Bank will now take three specific actions regarding the Project: (1) assemble a PoE to review ecological, hydrological, and water quality monitoring data in the LBOD outfall area and propose a course of action; (2) conduct a diagnostic study of livelihood improvements in the area to determine the losses suffered and formulate an assistance program; (3) assist the GoP with a Country Water Resources Assistance Strategy and a Strategic Country Environmental Assessment.¹¹⁶

Environmental Assessment

46. The first set of issues analyzed in Annex 1 of the Response relates to the Requesters’ allegations concerning inadequate environmental assessment and compliance with OD 4.01 (Environmental Assessment).¹¹⁷ In response to the Requesters’ claim that the DSEA accepted by the Bank was incomplete and vague, and did not cover coastal ecology issues and wetlands degradation,

¹¹⁰ Id, ¶41.

¹¹¹ Ibid.

¹¹² Id, ¶43.

¹¹³ Ibid.

¹¹⁴ Ibid.

¹¹⁵ Id, ¶44.

¹¹⁶ Id, ¶45.

¹¹⁷ Request ¶34.

- Management states that the DSEA in Volume III included studies of ecological issues in lower Sindh; that further safeguards were built into the Project's design;¹¹⁸ and that the 1989 EIA for the LBOD addressed the coastal zone issues referred to in the Request.
47. Regarding the classification of the Project as EA Category B, Management states that category "A" would have been more appropriate for the Project.¹¹⁹ As for the claim that the DSEA was not updated during consideration of the NDP loan in 1997,¹²⁰ Management responds that the DSEA was accepted by IDA as a sectoral EIA for the Project; that it was not updated because *"the primary focus of the NDP Project was sector reform and safeguards for each subproject were built into project design."*¹²¹ There were 38 such subprojects identified in Sindh Province. Management states that initial environmental scoping was carried out for the subprojects that were actually implemented in Sindh.¹²²
48. Concerning the claim that the design of the NDP has entirely ignored exploring alternatives to the existing disposal route,¹²³ Management states that *"preparation work for the NDP project, as well as the studies supported during its implementation, sought to consider all reasonable alternatives for disposal of Indus Basin drainage effluent."*¹²⁴ According to Management, the DSEA in Chapter 5 of the Main Report considered five alternative methods of disposal, reuse, or recycling.
49. Regarding the Requesters' claim that there is no Environmental Management Plan for the Project and no Wetlands Management Plan as envisaged in the DSEA,¹²⁵ Management responds that the design of the NDP Project included preparation of an EMP, and that a Water Sector EMP-Framework for Action was developed under the Project in February, 2002, with the detailed design for it under preparation.¹²⁶ According to Management, *"[t]he Water Sector Framework also outlined a basin-wide Wetland Conservation Strategy. Development of a comprehensive Wetland Management Plan is called for."*¹²⁷
50. The Requesters' claim that the extension of the existing LBOD system and construction of the NSDS poses a serious threat because of a failure to consider environmental issues at the disposal point.¹²⁸ Management responds that the NSDS pre-feasibility study, begun in late January, 2001, examined a so-called

¹¹⁸ Management Response, Annex 1, Item 1, p.17.

¹¹⁹ Id, Annex 1, Item 2, p.17.

¹²⁰ Request, ¶35.

¹²¹ Management Response, Annex 1, Item 3, p.18.

¹²² Ibid.

¹²³ Request ¶14.

¹²⁴ Management Response, Annex 1, Item 4, p.18.

¹²⁵ Request ¶37.

¹²⁶ Management Response, Annex 1, Item 5, p.19.

¹²⁷ Ibid.

¹²⁸ Id, Annex 1, Items 6, 7, p.20.

“*drainage superhighway*,” a concept rejected by the Bank’s PoE in April, 2003. Again, in September, 2004, a PoE for the Drainage Management Plan (DMP) confirmed that the drainage superhighway concept was not feasible.¹²⁹ Management states that “[t]here are no plans under the NDP project to extend the LBOD. The NDP project has not financed any expansion of the area drained into [the] LBOD.”¹³⁰ Management adds that “[t]he incremental drainage resulting from the tubewells installed under the ADB-financed components of the NDP project is controlled so that the tubewells do not operate during storm events, and therefore do not increase the peak flood flows that must pass through LBOD.”¹³¹ Management states that the GoP has accepted the recommendations of the PoE regarding the superhighway concept.¹³²

51. Regarding the Requesters’ claims about land loss and salinity, in particular about encroachment by the sea after the collapse of the Tidal Link and the Cholri Weir,¹³³ Management responds that a Bank fact-finding mission in 2001 concurred with the Government of Sindh (GoS) that the damage to the Tidal Link and the Cholri Weir was beyond repair.¹³⁴ According to Management, the mission also found that the Tidal Link was continuing to function well, but observed that salinity in the Link had increased because the more saline waters of the Rann of Kutch and the *dhands* were mingling with the Link waters. Management states that the salinity of the *dhands* “*has probably changed as a consequence of the damage [from the cyclones]*,”¹³⁵ but that data collection along the Link will help improve understanding of the problem. Management adds that “*drainage effluents alone would not be the cause of increased salinity, if it has occurred.*”¹³⁶
52. The Requesters also claimed that the proposed drainage network will badly affect an already degraded environment in the Indus Delta because there is no fresh water available to add to the Delta and because the drainage effluent contains both saline water and toxic residues of pesticides, fertilizer, and industrial waste.¹³⁷ Management responds that “*the NDP project is being implemented in a manner that does not add to or exacerbate the environmental problems of the already degraded Indus River Delta or the coastal zone.*”¹³⁸ Management relies on the 1989 LBOD EIA to support this response. Management acknowledges that there are serious problems in the Indus Delta, and attributes them to “*the drastic change in freshwater flow and reduced sediment load reaching the Delta brought about*

¹²⁹ Id, Annex 1, Item 6, p.20.

¹³⁰ Id, Annex 1, Item 7, p.20.

¹³¹ Ibid.

¹³² Ibid.

¹³³ Request ¶¶24, 25, 29.

¹³⁴ Management Response, Annex 1, Item 8, p.21.

¹³⁵ Ibid.

¹³⁶ Ibid.

¹³⁷ Request ¶¶30.

¹³⁸ Management Response, Annex 1, Item 9, p.22.

*by the development of the Indus Basin irrigation system (especially since the 1960s).”*¹³⁹

53. The Requesters claim that the tidal effect prevents the drainage flow twice in every twenty-four hour period in the Tidal Link, causing the effluent to seep into the sides of the KPOD up to Reduced Distance (RD) 110 (110,000 feet)¹⁴⁰ and negatively affecting groundwater quality and human health.¹⁴¹ Management responds that the tidal effect does not prevent the flow from the KPOD to the sea.¹⁴² It states that the tidal effect and the Cholri Weir are essential hydraulic features of the Tidal Link design and adds that there is no specific information regarding groundwater quality or drinking water sources in this specific location.¹⁴³ Management states that the primary source of drinking water is freshwater from the canal system, and that the Drought Emergency Recovery Assistance program, funded from the IDA Credit, supported several drinking water supply schemes in Sindh, including one at Badin.¹⁴⁴
54. The Requesters also claim that local communities, particularly in the coastal belt, have been kept entirely unaware of the Project’s plans and environmental assessments; that the implementation process has not been transparent; and that the Project officials and donors failed to obtain the informed consent or meaningful participation of affected persons.¹⁴⁵ In response to this, Management states that “[c]onsultations were held during the project preparation phase with representative NGOs, FOs, and CBOs [Community-Based Organizations] to define the overall program and to outline the consultation and appraisal criteria and process for individual subprojects. Local onsultations were carried out during preparation of subprojects.”¹⁴⁶ Annex 9 of the Response sets out in detail the places, dates, and names of NGOs and CBOs consulted. Management notes that in March, 2004 the Task Team Leader met with NGOs including the Sindh Agricultural Forum, and in September, 2004, the PoE of the DMP held stakeholder consultations in Badin and Hyderabad, which included representatives of ActionAid Pakistan.¹⁴⁷

Involuntary Resettlement

55. The Requesters claim that there are several thousand people who entirely depend on local *dhands* for fishing and on grazing and agriculture for their livelihood who will be forced to leave their ancestral villages by saline water flooding their

¹³⁹ Ibid.

¹⁴⁰ According to the Request, Reduced Distance is measured at one RD = 1000 feet.

¹⁴¹ Request ¶3:VII, p.2.

¹⁴² Management Response, Annex 1, Item 10, p.23.

¹⁴³ Ibid.

¹⁴⁴ Ibid.

¹⁴⁵ Request ¶55.

¹⁴⁶ Management Response, Annex 1, Item 11, p.23.

¹⁴⁷ Id, Annex 1, Item 11, p.24.

area.¹⁴⁸ Management responds to this claim by saying that areas of lower Sindh are indeed prone to flooding, but that flooding was greater before construction of the LBOD Stage 1 Project.¹⁴⁹ Management believes that *“the implementation of the NDP project has not and will not exacerbate flooding.”*¹⁵⁰ It emphasizes that a PoE rejected the drainage superhighway concept, so the type of flooding the Requesters fear *“will not occur as a result of disposal of drainage effluents in the lowland areas of Sindh.”*¹⁵¹

56. The Requesters also express fear that the expansion of the KPOD, the DPOD, and the Spinal Drain will drain several thousand acres causing them to lose their remaining land.¹⁵² Management responds by repeating its statement that the Bank has no plans to support the expansion of the KPOD, DPOD, or the Spinal Drain. The only works planned for the KPOD and financed by the Bank are repairs.¹⁵³ Management states that *“IDA funding has not supported any subprojects that require land acquisition or resettlement”*¹⁵⁴ because of lack of agreement on the FLAR with the GoP.
57. The Requesters claim that the FLAR is vague, does not mention location or quantity of land to be acquired, nor a time frame for compensation payments.¹⁵⁵ They also complain of the lack of a RAP, or any consultants engaged to prepare a RAP. Management responds that the FLAR was prepared in 1996, approved by the GoP, and agreed with IDA. However, WAPDA officials later objected to some of its provisions, resulting in revisions being proposed in May, 2001.¹⁵⁶ Agreement could not be reached, with the Provinces taking the position that the existing law was sufficient to provide for all the issues dealt with in the FLAR and RAPs. Because no subprojects requiring land acquisition or resettlement were to be included in any IDA-funded investment subprojects, the Bank did not pursue further discussions with the GoP on the FLAR.¹⁵⁷
58. The Requesters claim that because the KPOD and Tidal Link have blocked the flow of water to the Rann of Kutch, the vegetation south of the KPOD has declined, reducing grazing areas and forcing the migration of affected people.¹⁵⁸ They claim the area has only two villages left out of the ten that existed there before desertification when the area was green. They claim that during monsoon rains in 2003 water from the Kotri barrage and the KPOD flooded 75 villages. Management responds that this claim refers to the closed LBOD Stage 1 project,

¹⁴⁸ Request ¶19.

¹⁴⁹ Management Response, Annex 1, Item 12, p.24.

¹⁵⁰ Ibid.

¹⁵¹ Ibid.

¹⁵² Request ¶20.

¹⁵³ Management Response, Annex 1, Item 13, p.24.

¹⁵⁴ Ibid.

¹⁵⁵ Request ¶22.

¹⁵⁶ Management Response, Annex 1, Item 14, p.25.

¹⁵⁷ Ibid.

¹⁵⁸ Request ¶26.

but that ADB-supported work under the NDP project will help mitigate residual environmental effects of the LBOD.¹⁵⁹ Management adds that the 2003 monsoon storm was an extremely rare event, bringing rainfall volume larger than any on record. Various factors resulted in surface runoff four times the design capacity of the LBOD. Management acknowledges the effects of the storm and proposes to carry out a diagnostic study to determine the extent of the losses and formulate a livelihood assistance program in consultation with the GoP and GoS.¹⁶⁰

Natural Habitats

59. The Requesters claim that the wetlands of Sindh are an important part of the route of certain migratory birds; that two species of marine turtles inhabit the area; that the wetlands are an important fishery for local people; and that two of the *dhands* have been recognized as Ramsar Convention sites.¹⁶¹ They claim the Bank is not supposed to support projects that would violate international treaties, as this one does. Management responds that the NDP project has not supported projects that directly affect the two *dhands* designated under the Ramsar Convention, the Nurri and Jubho Lagoons, but notes that “[m]ore detailed assessment is required to determine if these sites are affected by the breaches in the Tidal Link Canal and the collapse of the Cholri Weir.”¹⁶²
60. The Requesters claim that the idea of linking the KPOD with the Shah Samado creek through the Tidal Link passing through the *dhands* was unsound because the Tidal Link prevented water flowing from the Rann of Kutch into the *dhands*. They allege that the 1989 EIA for the LBOD foresaw that excessive drainage by the Tidal Link would affect the *dhands*, but that no mitigating measures have been taken. Management responds that this claim refers to the closed LBOD Stage 1 project. Management states that the design combination of the Tidal Link canal and the Cholri Weir was intended to mitigate adverse effects on the *dhands*, but structural problems and a 1999 cyclone damaged the Tidal Link and the weir.¹⁶³ According to Management, this severely hampered the effect of the mitigation measures. Management points out that the 1989 EIA indicated that the additional, temporary inflow of drainage water from the KPOD would not have an adverse effect and could offset the loss of water from the Rann of Kutch in wet years.¹⁶⁴
61. The Requesters claim that degradation of the wetlands has caused severe damage to the ecosystem, habitat, and fish catch, especially some commercially important fish species.¹⁶⁵ Management responds that the Tidal Link Fact Finding Mission recommended that no repairs be done to the storm damage because it was beyond

¹⁵⁹ Management Response, Annex 1, Item 15, p.25.

¹⁶⁰ Id, Annex 1, Item 17, p.27.

¹⁶¹ Request ¶¶38-40.

¹⁶² Management Response, Annex 1, Item 16, p.26.

¹⁶³ Id, Annex 1, Item 18, p.27.

¹⁶⁴ Ibid.

¹⁶⁵ Request ¶46.

the limits of possible repair.¹⁶⁶ The Mission also recommended a strengthened monitoring program and more data collection and analysis.¹⁶⁷ Management adds that “[w]hile data collection coordinated by WAPDA-South has continued (...), the strengthened program of monitoring and analysis has not been undertaken as recommended, and as a result, mitigation measures have not been identified and decided.”¹⁶⁸

Indigenous Peoples

62. The Requesters claim that the coastal Mallah communities are indigenous people because they have a close attachment to ancestral territories in the area.¹⁶⁹ Management responds that the Mallah fishing community does not meet the criteria in OD 4.20 (Indigenous Peoples) as Indigenous People because they do not have an indigenous language distinct from the mainstream language in the region, they lack customary social and political institutions, and they are not identified by others as a distinct cultural group.¹⁷⁰ According to Management, the processes and procedures suggested in the SAR for social and environmental screening were followed during preparation of NDP subprojects. Management adds that “[f]urther, environmental and social screening of NDP subprojects did not identify any adverse impacts on the Mallah community.”¹⁷¹

Cultural Property

63. The Requesters claim that important cultural sites near Badin are threatened by flooding from the KPOD and the Tidal Link.¹⁷² These sites include monuments of saint Shaikh Kirhiyo Bhandari, the historical site of Roopa Mari, and the tomb of Dodo Soomro. The Requesters allege that the Project donors have not bothered to recognize the cultural and historical importance of the area and the threat posed by drainage projects. Management responds that there are no plans to expand the KPOD under the NDP project, and that “[t]he construction and normal operation of KPOD does not appear to have affected the [Dodo Soomro tomb] site, since the high water level in the KPOD design is about 1-2m below the site.”¹⁷³

Community Participation

64. The Requesters claim the Bank failed to involve local, affected people in the planning and implementation of the NDP, and refused to share information with affected communities and NGOs.¹⁷⁴ Regarding the issue of participation,

¹⁶⁶ Management Response, Annex 1, Item 19, p.28.

¹⁶⁷ Ibid.

¹⁶⁸ Ibid.

¹⁶⁹ Request, ¶49-51.

¹⁷⁰ Management Response, Annex 1, Item 20, p.28.

¹⁷¹ Id, Annex 1, Item 21, p.29.

¹⁷² Request, ¶53-54.

¹⁷³ Management Response, Annex 1, Item 22, p.29.

¹⁷⁴ Request, ¶55.

Management responds that by forming FOs, the NDP project has provided the chance for marginalized groups such as sharecroppers and farmers at canal tail ends to participate in decision-making on water allocations.¹⁷⁵ In Sindh, Management says about 200 FOs have been established, half of these having assumed legal responsibility for operation and management of the tertiary irrigation system and for collection of water charges.¹⁷⁶ Regarding the issue of disclosure of project information, Management states that the following operational documents were disclosed: (1) DSEA – disclosed in the Public Information Center in April, 1996, but no information about in-country disclosure to affected stakeholders or about subproject EAs could be found; (2) FLAR – disclosed in May, 2001 at the Infoshop, but no information on in-country disclosure is available; (3) Project Information Document – disclosed in 1994, updated in 1997. Management also states that from 2001 a periodic bulletin in the Sindhi language about the Project has been disseminated among farmers.¹⁷⁷

F. ELIGIBILITY

65. The Panel must determine whether the Request satisfies the eligibility criteria for an Inspection, as set forth in the 1993 Resolution establishing the Panel and the 1999 Clarifications, and recommend whether the matter alleged in the Request should be investigated.
66. The Panel has reviewed the Request and Management's Response. Panel Member Werner Kiene, together with the Panel's Assistant Executive Secretary Andrew Thomson, and Panel Operations Officer Serge Selwan, visited the Sindh Province and Islamabad in Pakistan from November 3-6, 2004. During their visit, the Panel team met with the Requesters, national and provincial government officials, local people in the Project area, local NGOs, and World Bank staff.
67. The Panel team started its mission by meeting Sindh provincial officials in Karachi. The Panel then undertook field visits at the Roopa Mari site, the Kadhan Pateji Outfall Drain, its intersection with the Lowari Branch Drain, Shekhani Garhi, and the villages of Moulvi Haji Ahmed Mallah and Fazal Khan Lund. The Panel met with the Requesters and Badin district officials in the town of Badin. The Panel also met with GoP officials in Islamabad. At Fazal Khan Lund the Panel team met with a group of villagers who personally experienced flooding events in the vicinity of the KPOD, some of whom reported the loss of family members, and also with a group of former fishermen near the village of Moulvi Haji Ahmed Mallah. Both groups allege that their livelihoods now depend not on agriculture or fishing but on the collection and sale of firewood, which has resulted in a substantial reduction to their incomes.

¹⁷⁵ Management Response, Annex 1, Item 23, p.30.

¹⁷⁶ Ibid.

¹⁷⁷ Id, Annex 1, Item 23, p.30, 31.

68. While visiting the Project area the Panel witnessed engineers employed by the GoS supervising earthworks on KPOD's western embankment. The senior engineer stated that the purpose of these works was to repair breaches that had occurred during last year's flood, and to increase the height of the embankment so that the drain would hold more water during the coming monsoon season. He added that similar work would be done on both sides along most of the LBOD's lower section and was being funded through NDP Project.
69. During the visit, the Panel confirmed that the Requesters and other signatories of the Request are legitimate parties under the Resolution to submit a Request for Inspection to the Inspection Panel. They reside in the Borrower's territory, live or own land in areas apparently affected by the Project (and/or represent people who do) and have common interests or concerns (Resolution paragraph 12 and paragraph 9(a) of the 1999 Clarifications).
70. The Panel notes that the Request asserts "*in substance that a serious violation by the Bank of its operational policies and procedures has or is likely to have material adverse effect upon the requesters.*" The Request asserts that the Requesters have and will suffer severe adverse effects from the Project and that such effects result from the Bank's failure to follow its operational policies and procedures.
71. The Request states, and the Requesters interviewed by the Panel reiterated, that several dozen people died in floods in the Badin area in Sindh Province, a tragedy that, according to the Requesters, is a result of faulty design of the LBOD Project and a failure in the NDP Project to address the inherited risks of the LBOD components carried over into the NDP Project, and to carry out proper environmental assessment and analysis on those and other components. The Requesters assert that the component works of the LBOD carried forward into the NDP Project will affect them in a material adverse way.
72. The Panel notes the conflicting assertions regarding the relationship between the LBOD Project and the NDP Project. On the one hand, Management states that the Requesters' concerns relate not to the NDP Project but rather to the LBOD Project, which is closed. On the other hand, the SAR approved by the Board for the NDP Project states that the Project strategy on evacuating saline drainable surplus is, *inter alia*, to "(i) use environmentally sustainable methods for disposal of saline drainage effluent (including diverting saline effluent away from freshwater lakes and rivers), and lay the groundwork for construction of a permanent trunk drainage network connected to the sea via LBOD's Spinal Drain which would be known as the NSDS (...)." ¹⁷⁸ Moreover, the SAR states that the pipeline of investment projects includes, *inter alia*, the "(i) completion of on-going projects including the LBOD Project (donor-funded including IDA and ADB) (...)." ¹⁷⁹ The SAR also states that the investment subprojects which would

¹⁷⁸ SAR, ¶2.5.

¹⁷⁹ SAR, ¶2.34.

be commenced in the first two years of project implementation “*would substantially comprise completion of the on-going LBOD project (estimated cost: US\$166 million), O&M of recently completed projects (notably LBOD - estimated cost US\$46 million), and small surface drainage schemes with short preparation period.*”¹⁸⁰ In describing the Project’s co-financing arrangements, the SAR states “*IDA would finance the rest of the donors’ share of project costs. This would include all Investment Project costs in Sindh Province, costs of remaining works under the ongoing LBOD Project, some components of the RBOD Project, and all remaining technical assistance and program coordination and supervision costs.*”¹⁸¹

73. Further, an Aide Memoire for the NDP Project Implementation Review dated July 10, 2003 carries the statement under the section entitled Infrastructure Component, “*Completed and On-going Works. Projects worth an estimated Rs. 2328 million have been completed (LBOD remaining works) and another set of projects worth Rs. 725 million is under implementation.*”¹⁸² As stated above, during its visit to the Project area the Panel team was informed that NDP funds were being used to add new infrastructure to the LBOD works, i.e. to increase the height of the KPOD embankments to handle increased water flows.
74. In the Request, the Requesters claim that the harm done to people in the Badin area of lower Sindh Province indicates that Bank Management and staff have not complied with a number of Bank policies and procedures in the design and implementation of the NDP Project and that the failure to comply has had a very significant adverse effect upon the Requesters’ rights (Resolution paragraphs 12 and 14 (a) and paragraph 9 (b) of the 1999 Clarifications).
75. The Panel is satisfied that the Request “*does assert that its subject matter has been brought to Management’s attention and that, in the Requesters’ view, Management has failed to respond adequately demonstrating that it has followed or is taking steps to follow the Bank’s policies and procedures.*” The Request claims that the Requesters raised the matters of their complaint with Bank Management, and includes evidence of prior correspondence with the Bank.
76. The Requesters state, “*We have been protesting since the inception of the project and had attempted several times to approach local implementing agencies as well as World Bank officials to discuss our concerns regarding [the] NDP. We have received no response. We request the Inspection Panel to investigation [sic] these policy violations and the harm we have suffered and make recommendations to the Board for how to resolve these harms and these policy violations, in consultation with the affected people.*”¹⁸³ The Panel received evidence showing

¹⁸⁰ SAR, ¶2.34-2.35.

¹⁸¹ SAR, ¶3.5.

¹⁸² Pakistan National Drainage Program (NDP) Project, Implementation Review: Sindh Aide Memoire, July 10, 2003.

¹⁸³ Request, ¶4.

that the Requesters wrote to Bank staff about their concerns on several occasions (Resolution paragraph 13 and paragraph 9(c) of the 1999 Clarifications). Some of them demonstrated outside the Bank's office in Islamabad to voice their complaint.

77. The Panel notes that the subject matter of the Request is not related to procurement (Resolution paragraph 14(b) and paragraph 9(d) of the 1999 Clarifications).
78. The expected closing date of the related Credit is December 31, 2004. About 76 percent of the IDA Credit had been disbursed as of the date the Request was filed. The Request therefore satisfies the requirement referred to in the Resolution paragraph 14(c) and in paragraph 9(e) of the 1999 Clarifications that the related Credit has not been closed or substantially disbursed.¹⁸⁴
79. Furthermore, the Panel has not previously made a recommendation on the subject matter of the Request. Therefore, the Request satisfies Resolution paragraph 14(d) and paragraph 9(f) of the 1999 Clarifications.
80. The Panel is satisfied that the Request meets all of the eligibility criteria provided in the 1993 Resolution and paragraph 9 of the 1999 Clarifications.

G. CONCLUSION

81. In the Panel's opinion, the contradictions in the assertions of the Requesters and Management are substantial and bear close relation to the sources and extent of the harm alleged by the Requesters. The Request and the Requesters meet the eligibility criteria set forth in the Resolution that established the Inspection Panel and the 1999 Clarifications. The Request, Management's Response, the Panel team's visit to Pakistan, and discussions with Project officials and affected persons, confirmed that the differing views on the issues raised by the Request cannot be easily reconciled and that they involve conflicting assertions and interpretations about the issues, the facts, and compliance with Bank policies and procedures.
82. The Panel believes that these important questions regarding the Bank's alleged failure to comply with its policies and procedures as well as the proximate causes of the alleged harm that can only be addressed in the context of a Panel investigation.
83. In light of the foregoing, the Panel recommends an investigation of the matters alleged in the Request for Inspection.

¹⁸⁴ The 1993 Resolution establishing the Inspection Panel provides in Note 1 that this will be deemed to be the case when at least ninety-five percent of the loan [development credit] proceeds have been disbursed.