

## SUPPLEMENT TO THE CHASHMA INSPECTION CLAIM<sup>1</sup>

### **I. Optimizing Existing Investment in the Water Sector in Pakistan: The Case of supplementary financing to the CRBIP**

The event of the Bank's supplementary financing totaling \$33.5 million to the CRBIP in 1999, in order to partly covering the financing gap of \$50.5 million, necessitates special attention in terms of its conditions, requirements and alternative option assessment involved in the approval process. Analysis of supplementary financing to the CRBIP is also important because the implementation of relevant policies and procedures in this regard have already been thoroughly judged in the Samut Inspection Claim. Furthermore, the additional funding involves certain policy breaches ranging from the Bank's OM 13; OM 32 to the Staff Instruction on Revision to RRP to TA Formats dated 25 October 1994.

The loan for CRBIP Stage III was approved in 1991. The loan closing date was set for 30 September 2000. However, 83 percent of the original implementation period was elapsed at the approval time of additional funding in June 1999, while overall physical progress was about 40 percent<sup>2</sup> The multiplying cause of the project cost overrun was thus the substantial delay in the project commencement, implementation and completion. The delay was attributed to (i) late compliance with the effectiveness of loan covenants, (ii) late recruitment of project consultants, (iii) late completion of orthophotomapping, (iv) delays in resolving issues related to the award of construction contracts, and (v) insufficient counterpart financing. Major contract for the construction of the main canal, flood carrier channels and related civil works (Contract 65) could not be awarded until late 1997 because of the serious differences between WAPDA and ADB about the selection of the major civil works contractor.<sup>3</sup> The specific reasons for the cost overruns were (i) escalation of prices of the main civil works due to the delay, estimated about \$23 million for the main canal and about \$5 million for distribution canals, totaling \$28 million (57 percent); (ii) the effects of the increase in the foreign exchange components of the main civil works cost from 31 percent assumed at appraisal to 66 percent under the main construction contract (Contract 65), estimated at about \$13 million (27 percent); and (iii) increase in quantities due to design changes, insufficient provisions for the mobilization costs in the appraisal estimate, and the differences in the unit rates, exceeding the effects of price escalation, estimated at about \$8 million (16 percent)<sup>4</sup>.

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<sup>1</sup> This supplement is being prepared after receiving limited access to the documents cited in the Management's response to the initial Chashma Complaint.

<sup>2</sup> See Report and Recommendations of the President (RRP) entitled Optimizing Existing Investment in the Water Sector, Asian Development Bank, June 1999.

<sup>3</sup> For further details, please see the Chashma Inspection Claim and the PC-1 Performa for the CRBIP Stage III, 2000.

<sup>4</sup> See Report and Recommendations of the President (RRP) entitled Optimizing Existing Investment in the Water Sector, Asian Development Bank, June 1999.

During the Bank's Country Portfolio Review Mission in July 1998, the Government of Pakistan asked the Bank to consider meeting the part of the financing gaps of two projects: \$ 18.1 million for the Pat Feeder Canal Rehabilitation and Improvement Project (PFCRIP), and \$50.5 million for Chashma Right Bank Irrigation Project (CRBIP). The Government of Pakistan expressed its inability to meet these cost overruns because of the serious financial crisis and subsequent shortage of foreign exchange and domestic resources. The Government asked Bank to consider meeting the financing gaps through a change in the scope of the National Drainage Sector Project (NDSP), the project co-financed by the World Bank, Asian Development Bank and Overseas Economic Cooperation Fund (Japan). This is relevant to mention here that the delay in the implementation of the other project-PFCRIP- was about seven years. Moreover, the decision to approve supplementary financing for these two projects was taken without any comprehensive reappraisal as required by the relevant policies.

Report and Recommendations of the President (RRP), entitled Optimizing Existing Investment in the Water Sector, was prepared in June 1999, in order to get the Board approval for supplementary financing to meeting the cost overruns of these two projects. RRP proposed the Board to reallocate a total of \$ 47.5 million equivalent from the NDSP loan proceeds, and transfer \$14.0 million to the PFCRIP loan account, and \$33.5 million to the CRBIP Stage III. It was also proposed that certain amount of CRBIP loan proceeds would be reallocated to the NDSP if the uncertain Government of Germany (KfW) decided to continue with the project and approve additional funding of \$6.4 million. It was proposed in RRP that, in the interim, the Bank would cover their share until the Government of Germany made the decision. Reasons for the uncertain funding position of the Government of Germany are not known to the project affectees and supporting NGOs. Later on, about \$5.1 million was redirected back to the loan proceeds of the NDSP.

RRP presented three alternative options for covering financing gaps of the CRBIP that include (i) no additional funding along with reduction in the project scope; (ii) provision of the additional funding from the NDSP; and (iii) approval of additional funding through a supplementary loan. The Economic Internal Return Rate (EIRR) for the Option 2 and Option 3 was calculated 15.4 and 15.2 accordingly. The Option 2 for providing additional funding through transfer of the loan proceeds of the NDSP to the CRBIP was however preferred. Explaining the reasons of this preference for the Option 2, RRP states, "*the most efficient way for covering the cost overruns for both the projects is to utilize NDSP loan funds. This is in preference to financing through supplementary loans, since it is economically more attractive and avoids the need for the Government to commit to additional counterpart funds at a time of financial difficulty*"<sup>5</sup> ( Paragraph. 36, Page. 10; emphasize provided). Furthermore, the second option was also preferred because of the fast approval process for meeting the project cost

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overruns under this option. RRP states, “ The EIRR of the CRBIP is quite sensitive to delay implementation. In the case of Option 3, the analysis assumes that there would be about a six-month delay compared with the Option 2, thus the reduced EIRR. However, this assumed time framework is highly sensitive to external factors, and processing time could become much longer; this would cause further significant reduction to the economic viability<sup>6</sup>. (Paragraph. 47. Page. 14).

Impacts on the sustainability of the NDSP given the transfer of its funds to the PFCRIP and the CRBIP were also analyzed and concluded that there would be no significant adverse impact. Rather, RRP emphasizes the compatibility of the scope of these three projects, namely, the PFCRIP, the CRBIP and the NDSP. Additional Environmental Monitoring in the CRBIP was also provided under the NDSP<sup>7</sup> (Paragraph. 36, Page. 10; emphasis provided).

Preference given to the Option 2 in order to meeting the CRBIP cost overruns went totally against the interests and rights of the project affectees. The stated preference criteria in RRP- to avoid the need for the Government to commit additional counterpart funding as well as compulsion for immediate processing of supplementary financing- was meant that allocation of counterpart funds for resettlement, fair and just assets replacement and livelihoods rehabilitation was not at all desirable. It was also meant that any comprehensive project re-appraisal including technical, social, legal and institutional aspects was also out of question because of the urgency created by already substantial delay in the project implementation. It is ironical to note here that Management at the time of supplementary financing to the CRBIP was well aware of the project-induced adverse social and environmental impacts. A review and assessment of various Back to Office Reports (BOR) confirm this assertion. For example, a comprehensive independent social survey and resettlement action plan was planned in 1995. A local consultancy firm called National Development Consultants (NDC), was also commissioned by the Bank in 1997 in order to undertake this social study and resettlement action plan. To highlight the magnitude of adverse social and environmental issues, the following excerpt from the term of references of the said study is suffice:

“ A second stage social survey is required to develop flood mitigation and relocation plans to minimize adverse social Project impacts for approximately 5,500 people living in villages outside of the command area along west bank of the irrigation canal...Stage III of the Chashma Right Bank Irrigation Project (CRBIP) will result in changes in environment to the west of the main canal following the construction of the main canal, embankment and associated cross-drainage works (culverts and super passages). The changes are likely to include (i) changes in the flow patterns, depth and speed of the nullah hill-torrents flowing from the Suleiman Range to the Indus River; (ii) long terms ponding due to

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<sup>6</sup> Ibid.

<sup>7</sup> Ibid

retention of seasonal floodwater behind the super-passages; (iii) increased risk of flooding for villages located immediately to the west of the main canal, outside of the command area; (iv) possibility of sediment build up which could divert the nullah courses. The total area estimated to be submerged was about 25,000 acres.<sup>8</sup> (Paragraph 1,2, Page. 1).

It is interesting to note that this study was commissioned in mid of 1997 although its need and requirement was identified by the Bank's review mission in late 1994. Most tragically, this study could not be completed before February 2001, which is meant that its findings and recommendations were not incorporated in the revision of loan agreement after the approval of supplementary financing in 1999. Undoubtedly, Management was not prepared to comply with the relevant social safeguard policies to mitigate project induced adverse social and environmental impacts. RRP states very clearly that the preference is to avoid the need for the Government to commit additional counterpart funds as well as delays in project implementation. While the compliance with the relevant social safeguard policies was not only required additional counterpart financing for resettlement, just and fair assets replacements and livelihoods rehabilitation but it was also meant further delay in implementation because of resolving issues concerning with land acquisition and compensation. Later on, emergency rules were imposed in the land acquisition process under the project and thus the project affectees were deprived to get normal legal redress process for their complaints. In fact, the push for the 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<sup>9</sup>. This is why all BTORs except the last two ones described that no major problem was encountered in land acquisition process.

The above given analysis clearly shows that the preference given to the Option 2 was only meant to compliance with the provisions of the Bank's Operational Procedures on Supplementary Financing of Cost Overruns of Bank Financed Projects (OM Section 13/OP), which require that "the procedures for processing a supplementary loan or by reallocating funds from Bank's financed projects, is a similar to that for new loans, and include reappraisal of the entire projects (BP Para 1). The selection of the Option 2 was also against the provision of the Bank's Operational Manual (OM 32 BP/OP issued in January 13, 1997). It is clearly stated in OM 32 that, " A reappraisal mission is sent when substantial or basic changes have become necessary in the scope or implementation arrangements of an approved project or when cost overruns are incurred in its implementation. A in the case of an appraisal mission, the re-appraisal mission is required to obtain all the necessary information to analyze the technical, economic, financial, legal, institutional, social, environmental, and all other

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<sup>8</sup> See the revised Terms of Reference (ToRs) for Social Survey and Action Plan,, forwarded by Ms. Susana Price, Social Development Specialists, SOCD, to Mr. Jeremy Bird, Senior Project Engineer, AFWN, issued on 28 May 1997.

<sup>9</sup> See BTOR dated January 5, 1995.

aspects of the revised project and should also reach a written understanding in the form of an MOU with the borrower/ executing agency concerned” It should be noted that the re-appraisal mission was not sent despite the fact that substantial cost overruns occurred in the project but one of the reasons for that cost overruns was significant design changes leading to increased risk of flooding, involuntary displacement, need for further land acquisition, etc. It is also relevant to note here that the stated compatibility of the scope of NDSP with the to projects later on proved partially wrong when the Government of Balochistan decided not to carry on with the implementation of the NDSP in the PFCRIP<sup>10</sup>.

It will be relevant and interesting to see how the above mentioned adverse project impacts are being presented in RRP on Optimizing Existing Investment in the Water Sector in Pakistan and what kinds of violations were committed in the preparation of RRP in the light of the Staff Instruction on Revision to RRP and TA Format dated 25 October 1994. Staff Instruction on the Revision to RRP says, “The Purpose of the Environmental and Social Measures section (Chapter IV) is to describe adverse social and environmental impacts of the project and the proposed mitigation measures, and the social processes as far as they related to implementation of the project.... in the case of adverse social (and environmental) impact of the project, it is mandatory to include remedial measures in the project which become part of the project scope and cost and should be discussed under Chapter IV (Page.5), Interestingly, though RRP on the Optimizing Existing Investment in the Water Sector in Pakistan describes the project induced flooding and suggest relocation arrangements for the project affected communities but it remains silent on the question of making these relocation arrangements as part of the project scope and cost as recommended in the said Staff Instruction. One can well imagine that making the relocation and other related social and environmental cost as part of the project scope and cost was not possible because of the sated preference of avoiding the need for the Government to commit to additional counterpart funds at a time of financial difficulty. According to the Bank’s Resettlement Policy, the responsibility for planning and implementing resettlement rests with the government and other project financers and the preference was not ask the government to commit additional counterpart funding for this component as well. Resettlement and other social and environmental costs of the project are not only presented in RRP in very vague fashion but the question cost was totally missed.

One of the important parts of the RRP is ‘lesson learned’. Staff Instruction on Revision to RRP says, “ The problem of describing project-related lessons in the Background chapter is that there tends to be repetition in the Project chapter. The solution is to cross-reference the later discussion to refer to how the project addresses specific lessons. There is no need to address all lessons, just those relevant to the project. Furthermore, pertinent project-specific lessons may be mentioned” (Page. 3). Very clear recommendation that the need is to address project specific lessons instead of repetition and generalization. How RRP

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<sup>10</sup> See Mid Term Review Report of the NDSP prepared in 2001.

presents the CRBIP related lessons especially concerning with resettlement and land acquisition? First RRP does not at all address the CRBIP related lessons learned by Management. RRP is totally silent with regard to the detailed analysis of substantial delay in the project implementation. It is also silent on the design related causes of the cost overruns as well as severs issue of flooding, resettlement and land acquisition. Rather, RRP tends to do which is being discouraged in the Staff Instruction on Revisions to RRP and TA Format. For example, Lessons Learned section of the RRP says that to avoid implementation delays, land acquisition and resettlement should be completed before the award of civil works. These important lessons were incorporated in the design of projects during 1990, namely, the Pehur High Level Canal Project, NDSP, Second Flood Protection Sector, and Punjab Farmer-Managed Irrigation Project” (Page 4, Paragraph. 13). It is totally stunning and unfair that RRP does not even mention the CRBIP related land acquisition and resettlement issues and just make shrewd generalized statements about the other Bank-funded projects. It would also be relevant to mention here that the reallocation of funds from the NDSP to the CRBIP presented the opportunity to Management to ask the Government to agree with the implementation of Land Acquisition and Resettlement Guidelines for the NDSP which are much better and fully complied with the Bank’s policies on Resettlement and Indigenous Peoples.

Briefly speaking, the objectives set in making preference to the Option 2 for meeting the project cost overruns were not only not compatible with the need for full compliance with these policies.

## **II. Project Design, Flooding and Involuntary Resettlement**

Management’ response to the initial Chashma Complaint says that the allegation that the project design was bound to fail and negatively affect a large population because of deliberately ignored factors. Management’s response further says that these assertions are unsubstantiated. It should be noted that substantiation of these assertions require full access to consultants’ reports and studies with regard to flooding, sediment deposition and subsequent design choices made during the project preparations and implementation. This access has been however denied to the claimants without giving any specific reasons.

This specific part of the supplement will only depend on the recently released BTORs and especially the report of the Technical Review Mission fielded in late 1994. The purpose of this effort is to show that Management has not only failed to ensure the compliance with all the relevant Bank’s policies and procedures<sup>11</sup> on resettlement emphasizing the need to (i) avoid involuntary resettlement where feasible and, (ii) minimize resettlement where displacement is unavoidable, but

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<sup>11</sup> Involuntary Resettlement, August 1995; Staff Instructions on Certain Policy/Administrative Issues- Involuntary Resettlement; the Guidelines for Incorporations of Social Dimensions in Bank Operations, October 1993; Guidelines for Social Analysis of Development Projects, June, 1991.

made certain design choices which resulted into aggravating social and environmental problems facing the project affectees.

The claimants made the assertion in their initial complaint that the decision to convert seven cross-drainage structures from nullah siphons to super-passages increased the risk of flooding and led to the displacement of thousands of non-beneficiary villagers living on west side of the main canal. Management's response does not agree with the claimants' assertion and states "*nullah siphons were found to increase the risk of flooding, as they would not function properly in draining flood flows due to choked barrels...the design change was to reduce the risk of flooding against any failure of siphons in draining flood flows*" (Paragraph 45, Page. 10-11). The report of the Technical Review Mission does not however fully support Management's claim and predicts that the villages would experience "*increased damage due to the retarding effect of the super passages, and the flood embankment along the main canal*<sup>12</sup>". (Paragraph 18, Page. 10) While explaining the flooding impacts of super passages, the report further says that "*more flooding will occur on the upstream side than for canal siphons and culverts, and ponding will result after the water level falls below the floor level of the super passages*" (Paragraph 17, Page 10). The report of Technical review Mission further says, "*In terms of geomorphology, the siphons and canal culverts are preferred because the nullah channels grade is maintained, retrogression can be accommodated easily in the design, and flood embankments on the right (west) side of the canal is lower, and there is no ponding of floodwater and accompanying deposition of sediment.*" (Paragraph. 15, Page 10) It is evident from the report of Technical Review Mission that minimization of head losses was prime objective with regard to this design change in cross-drainage structures instead of the consideration of lessening the adverse impacts of flooding, ponding of water, land submergence and involuntary displacement. Aid Memoir signed after the completion of the Technical Review Mission says that meeting agreed on the need to analyze and take remedial measures to protect villages up-stream of the canal against increased flooding which may be caused by the construction of the super passages" (Paragraph. 13, Page 3.). No other report than the Social Survey and Action Plan commissioned by the Bank for the investigation of adverse impacts of flooding and resettlement throws full light on this subject. The report on Social Survey and Action Plan says, "*Before commencing the actual construction work in Stage III, the alignment of the canal was shifted by some distance to its right so that the floodwater brought by hill-torrents and sheet flows could be passed from west to east over the canal through super passage structures constructed athwart it instead of passing it under the canal through siphons as originally planned. This, at the same time, necessitated to convert right bank of the canal into a flood embankments. These super passages are designed with crest levels higher than the nullah bed. The design flood passage levels at these points are higher than the normal one. Also*

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<sup>12</sup> See Report of the Technical Review Mission visiting Pakistan from 16-22 December 1994.

*the flow of the hill torrents is uncontrolled and it can abandon its natural course and hit the flood embankments anywhere<sup>13</sup>* (Page. 4).

This is evident by these references that the informed decision to convert siphons into super passages and subsequent required changes made in the alignment of the main canal further to the westward has not only played havoc with the local ecology but posed a serious threat to life and livelihoods of the communities living in the west side of the main canal, the non-command area. This decision was clear violation of the relevant policies on resettlement that require avoidance from and minimization of involuntary displacement.

It should be also noted that the Report on Social Survey and Action Plan recommended the resettlement of the affected communities in the safe eastern side that lies in the canal command area. However, this recommendation was not implemented. Rather, the affected villages were asked to only accept cash compensation or agree with the option of flood embankment around the village. The villages did not prefer these two options and they are still living in the danger of flooding and involuntary displacement.

We would like to emphasize here that flooding problem is not only limited to the west side of the main canal. Rather, the eastern riverine belt and command area has also experienced flooding. In the eastern riverine belt, the flooding is occurring because the distribution canals and flood carrier channels have not been extended to the Indus River. Major causes of the flooding in the canal command area are poor operation and maintenance of the flood carrier channels and lack of the provisions of the four cross-drainage structures at the Indus Highway.

### **III. Land Acquisition and Compensation**

Emergency rules (section 17) of the Land Acquisition Act were imposed in the project area in November 2001, in order to forcibly acquire approximately twenty thousand acres of land under the project. Besides the issue of imposing emergency for land acquisition, the question emerges here what specific rules were applied for the land acquisition before November 2001. Civil works under the Contract 64 and Contract 65 was started in 1995 and 1998 accordingly. There is no other explanation for this dilemma except the fact that all land acquisition process was illegal and no relevant national laws were applied in this process. It is relevant to mention here that land compensation is now being paid under the emergency rules which means that the land acquired prior to the imposition of emergency in November 2001 was not acquired through a legal process. So far only 10 percent of the project affectees are being paid.

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<sup>13</sup> Report on Social Survey and Action Plan: Flooding to the West of Main Canal prepared by the NDC in February 2001.



There is also a need to note that the available state land in the project area is more than the acquired land under this project. However, the option of land for land has been totally dropped which was once considered in the project implementation. The stated reason for dropping out this option was the high value of the newly irrigated land and the desire to develop it for other purposes. It was however not considered that the land acquired under the project was also valuable for farmers after the completion of the project. Besides the historically proved inadequacy of cash compensation with respect to fair and proper assets replacement and livelihoods rehabilitation, the special issue is the massive corruption involved in this mode of compensation. This issue has already been brought into the notice of Management and relevant project authorities.

Detailed affectees' position on land acquisition and compensation is provided in the separate attachment.

#### **IV. Brief Description of Major Material Harms**

The project affectees are encountering the following concrete material harm.

- Involuntary displacement of about 15000 people <sup>14</sup>. There is no resettlement plan for their relocation in safe canal command area.
- No consideration for the compensation for about 25,000 acres of land that would be submerged due to the flooding in the west side.
- Serious disruptions in the traditional rowed-kohi system of irrigation in the west side of the main canal resulting into livelihood losses and as well as the violations of their historical and legal rights over the floodwater.
- Flooding in the eastern riverine belt because of the more floodwater, which is now conveyed to this belt as well as non-completion of the distribution canal and flood carrier channels up to the Indus River. As this problem was not predicted and understood during design preparations and reviews there does not exist official figures of the project-affected people. Rapid and rough estimate made by the affectees is about 40,000. Flooding in the eastern riverine belt does also include involuntary displacement. Specific examples are Mallana village and Gadi Sandeela in the Makwal union council. This should also be noted that crops in these areas are being continuously flooded and destroyed for last two years.
- Illegal land acquisition following the unfair and unjust cash compensation. Only 10 percent of the affectees in Punjab provinces have been so far compensated. About twenty thousand acres is acquired under the project. There is also standard 10 percent illegal commission asked by the revenue authorities in order to issuing the payment order. Official figure for the people affected by land acquisition does not exist.

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<sup>14</sup> These are official figures. Rough estimates made by the project affectees and NGOs exceed the number of 30,000 people to be displaced by the project

- Flooding in the command area because of the poor operation and maintenance of the flood carrier channels and non-construction of four cross-drainage structures along the Indus Highway.
- Serious mobility problem and disruptions in community support systems and local market links because of the limited number of bridges over the main canal and distribution canals. No bridges have been provided to cross the flood carrier channels throughout the project area.
- Last but not least, massive in-migration (about 25,000 households) of the ethnically different population, mainly tribal militant Pakhtoons living near the Afghanistan-Pakistan border' will not only create political tension in the project area but adversely influence local culture and social fabric.