

**MANAGEMENT RESPONSE TO
REQUEST FOR INSPECTION OF THE
RED SEA – DEAD SEA WATER CONVEYANCE STUDY PROGRAM**

Management has reviewed the Request for Inspection of the Red Sea – Dead Sea Water Conveyance Study Program, received by the Inspection Panel on June 24, 2011 and registered on October 20, 2011 (RQ11/04). Management has prepared the following response.

November 15, 2011

Executive Summary

- i. ***The Red Sea – Dead Sea Water Conveyance Study Program is not a Bank financed project. It is a Study Program to investigate the feasibility of reversing the environmental degradation of the Dead Sea by transferring water from the Red Sea.*** It is a multi-donor funded effort managed by the World Bank at the request of Israel, Jordan and the Palestinian Authority, collectively referred to for the purposes of the Study Program as the Beneficiary Parties. The Study Program also aims at fostering regional cooperation.
- ii. ***The Request for Inspection was submitted by two Palestinian civil society organizations, Stop the Wall Campaign and the Palestinian Farmers Union, and the Global Initiative for Economic, Social and Cultural Rights of the United States*** claiming that the Study Program may constitute violations by the Bank of various provisions of its policies and procedures.
- iii. ***Management has carefully and seriously considered the Requesters’ concerns, and determined that the harm alleged by the Requesters does not relate to the Study Program managed by the Bank, but rather focuses on potential harm that could derive from the construction, operation and/or failure of a possible Red Sea – Dead Sea Water Conveyance investment.***
- iv. ***Management would like to note that the Bank has not been requested to undertake any potential Red Sea – Dead Sea Water Conveyance investment by the Beneficiary Parties, nor has the World Bank taken any decision or expressed any intention to support such an investment.*** The activities currently being managed by the Bank are restricted to the ongoing Study Program, which does not include any detailed design and engineering studies that would be sufficient to be considered part of project identification or preparation under Bank policy and practice.
- v. ***Management views with great concern any suggestion that Bank support for studies, which in no way commit the Bank to go forward with financial support for a potential project, could be eligible for investigation.*** Management is of the view that the mere generation and dissemination of knowledge in the form of the Study Program, which is not a Bank project, cannot result in direct material harm. Attempts to investigate Bank action at this stage are premature, and would seriously undermine the Bank’s extensive commitment and ability to produce and disseminate global knowledge in line with its development mandate and as requested by its shareholder governments.
- vi. ***Management therefore submits that this Request is ineligible for investigation.***

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Map

Map 1. IBRD No. 38932 – Regional Map

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I. INTRODUCTION

1. On October 20, 2011, the Inspection Panel registered a Request for Inspection, IPN Request RQ 11/04 (hereafter referred to as “the Request”), concerning the Red Sea – Dead Sea Water Conveyance Study Program (hereafter referred to as “the Study Program”).

II. THE REQUEST

2. The Request for Inspection was submitted by two Palestinian civil society organizations, *Stop the Wall Campaign* and the *Palestinian Farmers Union*, and the *Global Initiative for Economic, Social and Cultural Rights* of the United States (hereinafter, the “Requesters”).

3. The Request contains claims that the Panel has indicated may constitute violations by the Bank of various provisions of its policies and procedures.

III. MANAGEMENT’S RESPONSE

Scope and Status of the Study Program

4. In a jointly signed letter to the World Bank dated May 9, 2005, the Beneficiary Parties (the State of Israel, the Hashemite Kingdom of Jordan and the Palestinian Authority) requested the World Bank to undertake a Study Program¹ to investigate the feasibility of reversing the environmental degradation of the Dead Sea by transferring water from the Red Sea. The Study Program also aims at fostering regional cooperation.

5. The three Beneficiary Parties have articulated a shared vision of the Study Program, centered on:

- Saving the Dead Sea from environmental degradation;
- Desalinating water and generating energy at affordable prices; and
- Building a symbol of peace and cooperation in the Middle East.

¹ Letter from the Beneficiary Parties (the State of Israel, the Hashemite Kingdom of Jordan and the Palestinian Authority) to the World Bank dated May 9, 2005: “*We request the World Bank to coordinate donor financing and to manage implementation of the Feasibility Study and the Social and Environmental Assessment as stipulated in the TOR. [...] We look forward to continued cooperation with the World Bank in studying the feasibility of this important project.*” (TOR is posted on: <http://go.worldbank.org/12JKADLN10>).

6. In response to this request, the World Bank agreed to coordinate donor financing and manage the implementation of the Study Program. The Study Program involves the preparation of: (a) a Feasibility Study; (b) an Environmental and Social Assessment; (c) a Study of Alternatives; (d) a Red Sea Modeling Study; and (e) a Dead Sea Modeling Study. None of the studies under this program can be considered detailed design and engineering studies. The Bank’s safeguard policies have been used as a reference framework to develop and structure the Study Program, in particular the Environmental and Social Assessment, Study of Alternatives and consultation program. In the event that a decision is taken to support any of the options identified in the Study Program, additional activities would need to be carried out, including appropriate project preparation work. Detailed information on the Study Program, including records of consultations to date, is available at: <http://www.worldbank.org/rds>.

7. *Management would like to note that the Bank has not been requested to consider financing any Red Sea – Dead Sea Conveyance investments by the Beneficiary Parties and has never considered a decision to do so.* The Bank has used own funds to support the cooperative efforts of the Beneficiary Parties. The Bank’s role in the Study Program itself was and is limited to the coordination of financing and management of such program.

8. *If, as the result of the Study Program, the three Beneficiary Parties were to request the Bank to support a Red Sea – Dead Sea Water Conveyance project,* Management would have to take into account many considerations in determining whether or not to proceed. If the Bank did decide to proceed with the preparation of such an investment for Board consideration it would, as in all Bank investment activities, undertake such identification and preparation in a manner consistent with established Bank policies and procedures for project preparation and appraisal, including all applicable safeguard policies. This would necessitate the development of project specific studies and assessments, conduct of project-level public consultations and the disclosure of information.²

Eligibility Considerations

9. The Resolution³ (and its subsequent Clarifications)⁴ contains the following relevant considerations regarding eligibility:

- a. “The affected party must demonstrate that its rights or interests have been or are likely to be directly affected resulting from Bank’s failure to follow its operational policies and procedures with respect to ... *a project* financed by the Bank... pro-

² For example, this would also include compliance with OP/BP 7.50, Projects on International Waterways, which would trigger the policy’s riparian notification provisions.

³ IBRD/IDA Resolution establishing the World Bank Inspection Panel, September 22, 1993.

⁴ The 1999 Clarification of the Board’s Second Review of the Inspection Panel (1999 Clarification) provides further clarification on the issue of eligibility. The Board has to be satisfied that the request does assert in substance that a serious violation by the Bank of its operational policies and procedures has or is likely to have a material adverse effect on the requester. 1999 Clarification, para 9.

vided in all cases that such failure has had, or threatens to have, a material adverse effect.”⁵

- b. The alleged violation of the Bank’s policies and procedures is of a serious character.⁶

10. ***While the Panel is required to determine the eligibility of a request for inspection independently of any views that may be expressed by Management, in deciding whether to recommend that an investigation be carried out, the Panel is obliged to satisfy itself that “all the eligibility criteria provided for in the resolution have been met.”***⁷ Even if the Board’s intention is to defer actual examination of the merits raised in a request for inspection to a subsequent investigation phase, it is necessary for both the Panel and the Board to deem that the assertion laid out in the request complies with the eligibility requirements of the Resolution and the Clarifications. Without this determination, the request should not be considered admissible.

11. ***Management submits that the Request for Inspection should be considered ineligible in accordance with the Inspection Panel Resolution.*** As discussed below, the Request fails to comply with the fundamental jurisdictional considerations required under the Resolution. Therefore there is no valid basis to support a recommendation to investigate.

12. The World Bank Group produces and releases on average more than 5,000 studies (including formal and informal research papers, analytical and advisory work, economic and sector work, evaluations, country focus reports, etc.) annually that are purely knowledge products which are either independent of a specific lending operation, or geared towards a potential project approach but insufficient to serve as part of the project appraisal or preparation.

13. ***Management notes that the Study Program is neither a project, nor is it project preparation as there is no identified investment activity.*** The Study Program does not comprise any detailed design and engineering studies relating to an identified project, and would not be sufficient to be considered project preparation under Bank policy and practice. Management notes that in a previous request for inspection, after an exchange between the Inspection Panel and the then General Counsel, an understanding was reached and communicated to the Board that *“the term ‘project’ as used in the resolution ... has the same meaning as used in Bank practice.”*⁸ In this vein Management also agrees with the Requesters’ assertion that the Study Program *“is not yet a formal ‘project’.”*⁹ With

⁵ Para 12 of the Resolution (Emphasis added).

⁶ Para 13 of the Resolution requires the Panel to satisfy itself of this criteria before a request for inspection is heard.

⁷ 1999 Clarification, paras 6 and 7.

⁸ Memorandum by the Vice President and Secretary to the Executive Directors and Alternates, Scope of the Mandate of the Inspection Panel: Compensation for Expropriation and Extension of IDA Credits to Ethiopia dated June 16, 1995.

⁹ Request for Inspection, August 10, 2011, para 14.

respect to projects, Bank policy and practice is governed by OP/BP 10.00, Investment Lending: Identification to Board Presentation. Importantly, the Study Program possesses none of the project attributes, criteria, or requirements of OP/BP 10.00, including for example, a Project Information Document, appraisal activities, or legal agreements reflecting borrower undertakings.

14. ***Management has carefully and seriously considered the Requesters' concerns, and determined that the issues raised by the Requesters do not relate to the Study Program managed by the Bank,*** but rather focus on potential harm that could derive from the construction, operation and/or failure of a possible Red Sea – Dead Sea Water Conveyance investment which has not yet been defined or developed and to which the Bank has never made a commitment of any sort. Hence, the Requesters fail to demonstrate how their rights or interests are directly affected by the Study Program.

15. ***The Requesters have no rights or interests directly affected.*** As noted above, a key aspect of eligibility is not met, on which both the Panel and Board must be satisfied; namely, that the affected party has demonstrated that its rights or interests have been or are likely to be directly or materially affected resulting from the Bank's failure to follow its operational policies and procedures.

16. ***Management notes that the Board endorsed the Panel's decision to consider a Request for Inspection ineligible in a similar case (Tajikistan: Energy Loss Reduction Project) in which the Request focused on the possible outcome of a potential investment that the Bank had neither financed nor committed to finance.*** The circumstances here present the same grounds regarding eligibility. Consequently, Management agrees with the rationale and conclusion adopted by the Panel in its Eligibility Report¹⁰ that the eligibility criterion of paragraph 9 (b) has not been satisfied in this Request.¹¹

Conclusion

17. ***The Study Program managed by the Bank is neither a project, nor is it project preparation as there is no identified investment activity.*** The Study Program does not comprise any detailed design and engineering studies relating to an identified project and cannot be considered part of project identification and preparation under Bank policy and practice.

18. ***The Bank has not been requested to support a Red Sea – Dead Sea Water Conveyance investment by the Beneficiary Parties, nor has the Bank taken any decision or***

¹⁰ Para 53, Inspection Panel Eligibility Report, Tajikistan: Energy Loss Reduction Project, December 23, 2010.

¹¹ Paragraph 9(b) of the Second Clarification: *If the Panel so recommends, the Board will authorize an investigation without making a judgment on the merits of the claimants' request, and without discussion except with respect to the following technical eligibility criteria: (b) The request does assert in substance that a serious violation by the Bank of its operational policies and procedures has or is likely to have a material adverse effect on the requester (Resolution paras. 12 and 14a).*

made any commitments to that effect. Management underscores that there has been no decision to provide any financial support beyond managing the ongoing Study Program.

19. *The issues raised by the Requesters focus on potential harm that could derive from the construction, operation and/or failure of a possible Red Sea - Dead Sea Water Conveyance investment, but not from the Study Program that the Bank is managing at the request of the three Beneficiary Parties.* There is no basis upon which to conclude that there is a causal link between the Study Program and any direct, potential or actual harm to the Requesters as required by the Resolution.

20. *In Management's view, the studies carried out as part of the Study Program will provide input to any future considerations regarding any proposed project.* In this vein the Study Program actually seeks to scrutinize issues raised by the Requesters. Management is aware of the region's complex political dynamics and is committed to supporting better regional cooperation and filling the information void that is currently fueling resource-related tensions in the region. This is a critical element for longer term development and stability in the region. Assessments or studies, such as the Study Program, are essential to generating and providing impartial and objective knowledge that can serve as the basis for decision-making processes, while ensuring consideration of stakeholder concerns and the incorporation of international technical expertise. By doing so the Bank also contributes to increasing the transparency and capacity in such processes.

21. *The Study Program, by its very nature, cannot result in direct harm.* Management submits that the Study Program should be viewed as an explorative tool to assist all stakeholders in the decision-making process with regard to any proposed investment. There is a distinction to be made between the assessments and recommendations of consultants, which are intended to inform a decision-making process, and any subsequent decision to fully or partially accept and implement or alternatively, refuse or ignore such assessments and recommendations. Management, therefore, does not see how the Bank's support to the Study Program could lead directly to actual or potential harm, as required under the Resolution.

22. *Management views with extreme concern, any suggestion that Bank support for non-project studies could make it subject to claims regarding actions or omissions under a potential future project concerning which it has made no decision regarding financial support.* Attempts to subject such studies to investigation would seriously undermine the Bank's extensive commitment and ability to produce and disseminate global knowledge related to its development mandate and as requested by its shareholder governments. Management is of the view that the mere generation and dissemination of knowledge in the form of studies, can neither be regarded as a project, nor can it result directly in material harm to the Requesters, as required by the Resolution.

23. *Therefore, Management submits that the Request is ineligible for investigation.*