

Report No. 66811-MNA

The Inspection Panel 

Report and Recommendation

Red Sea – Dead Sea Water Conveyance Study Program

February 15, 2012

The Inspection Panel
Report and Recommendation
On
Request for Inspection

Red Sea – Dead Sea Water Conveyance Study Program

A. Introduction

This Report

1. In accordance with the Resolution (hereinafter “the Resolution”)¹ establishing the Inspection Panel (hereinafter “the Panel”), the purpose of this Report and Recommendation on Request for Inspection (hereinafter “the Report”) is to determine the eligibility of the Request and to make a recommendation to the Board of Executive Directors as to whether the Panel should investigate the matters alleged in this Request. The Panel’s determination of the technical eligibility of the Request, in accordance with the 1999 Clarifications,² is set out in Section F below. Section G summarizes the Panel’s observations on others factors to be considered before making a recommendation to the Board. The Panel’s recommendation is presented in Section H.

Panel process

2. On June 24, 2011, the Inspection Panel received a Request for Inspection relating to the Red Sea – Dead Sea Water Conveyance Study Program (hereinafter referred to as “the Study Program”). On August 11, 2011, the Panel received a revised and more substantive Request for Inspection (hereinafter “the Request”, see Annex I), which detailed earlier contact between a representative of the Stop the Wall Campaign and the World Bank (hereinafter “the Bank”).
3. The Request was filed by two Palestinian civil society organizations; Stop the Wall Campaign and the Palestinian Farmers Union, and an international human rights non-governmental organization; the Global Initiative for Economic, Social and Cultural Rights. While these organizations are collectively referred to as “the Requesters,” the two Palestinian organizations have been the main point of contact for the Panel. Stop the Wall Campaign and the Palestinian Farmers Union represent many Palestinian residents and farmers of the West Bank.
4. The Panel registered the Request on October 20, 2011, and notified the Executive Directors and the President of the Bank. On November 15, 2011, Management of the

¹ International Bank for Reconstruction and Development (Resolution IBRD 93-10) and International Development Association (Resolution 93-6), “The World Bank Inspection Panel”, September 22, 1993 (hereinafter “the Resolution”), para 19.

² “1999 Clarification of the Board’s Second Review of the Inspection Panel”, April 1999 (hereinafter “the 1999 Clarifications”).

Bank (hereinafter “Management”) submitted its Response to the Request (hereinafter “Management Response”, see Annex II).³

5. In accordance with the Resolution, this Report was due on December 19, 2011. However, in light of the significant time required to acquire the necessary documents for a Panel mission to travel to the region, and after consultation with the relevant Executive Directors, the Panel requested that the deadline for the preparation of the Report be postponed until February 15, 2012. The Panel visited the region from January 29 to February 5, 2012.

Key issues raised in the Request

6. The Request states that Palestinian residents on the West Bank represented by the Requesters have been denied access to fresh water sources from the Jordan River Basin and “*rely on ground water resources that are put at risk by the decline of the Dead Sea and which do not appear to be effectively addressed by the Red Sea Dead Sea Water Conveyance Program.*”⁴
7. Furthermore, the Request states that the studies being funded through the Study Program “*are of such significance that they will likely be the basis for political decisions (...). Consequently, the application of the Bank’s Operational Policies and Bank Procedures is crucial (...) to ensure that all relevant decision-makers and the affected stakeholders have reliable and accurate information.*”⁵ According to the Requesters, the implementation of the Study Program itself and flaws in the Terms of Reference of some of the studies “*would result in inadequate and incomplete Environmental and Social Assessments.*” The Request states that the Palestinian civil society organizations “*require adequate and complete Environmental and Social Assessments, including a full exploration and examination of feasible regional alternatives.*”⁶ The Request calls for “*an investigation of the Red Sea Dead Sea Water Conveyance Study Program to ensure that it comes into full compliance with the World Bank’s Operational Policies and Bank Procedures.*”⁷

B. The Study Program

8. According to the Study Program’s public website, in 2005 the Government of Jordan, the Government of Israel and the Palestinian Authority (collectively referred to as the “Beneficiary Parties”) agreed on the terms of reference of a Study Program to investigate whether and how transfer of water from the Red Sea to the Dead Sea can stop the decline of the Dead Sea water level and restore the unique natural and cultural environment of the Dead Sea.⁸ The Beneficiary Parties jointly and publicly announced their agreement at the World Economic Forum at the Dead Sea in May 2005.

³ The Request, Clarifications, Management Response, and all related documents, are available at <http://web.worldbank.org/WBSITE/EXTERNAL/EXTINSPECTIONPANEL/0,,contentMDK:23029258~pagePK:64129751~piPK:64128378~theSitePK:380794,00.html>

⁴ The Request, dated August 10, 2011, p. 2, para 5.

⁵ The Request, p. 5, para 15.

⁶ The Request, p. 24, para 69.

⁷ The Request, p. 24, para 70.

⁸ Public information related to this Study is available at www.worldbank.org/rds.

9. In a jointly signed letter to the World Bank dated May 9, 2005, the Beneficiary Parties requested the World Bank to coordinate donor financing and manage the Study Program, which the Bank agreed to do. A multi-donor Trust Fund currently amounting to US\$16.7 million was established with funding from the governments of France, Greece, Italy, Japan, South Korea, The Netherlands, Sweden and the United States of America, making the Study Program fully funded. The Study Program includes the preparation of five studies: (i) a Feasibility Study; (ii) an Environmental and Social Assessment; (iii) a Study of Alternatives (which examines other options available to the Beneficiary Parties to address the degradation of the Dead Sea and the production of additional potable water by means other than the identified water conveyance option); (iv) a Red Sea Modeling Study; and (v) a Dead Sea Modeling Study.
10. The shared vision of the proposed Red Sea – Dead Sea Water Conveyance Project (hereinafter “the RSDS Project”) has been formulated as:
- 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.⁹
11. According to a Study Program document, a 1998 pre-feasibility study (financed by the Italian Government and managed by the World Bank) considered fourteen alternatives for alignments and conveyance elevation. The study defined one preferred alignment along Wadi Araba/Arava Valley to be further investigated.¹⁰
12. According to the Terms of Reference for the Feasibility Study and for the Environmental and Social Assessment, the Study Program aims at:
- Carrying out the analysis of a wide range of technical, economic, financial, environmental, social and institutional issues to the highest professional standards;
 - Attaching value to each of these issues to ensure that each receives its appropriate consideration;
 - Evaluating whether the overall benefits exceed the costs to determine whether the RSDS Project is feasible, and if so, at what technical, economic, environmental, and social costs; and,
 - Undertaking these tasks and studies in a way that reflects and respects the unique political context of the Middle East.¹¹
13. Subsequently, a decision was made to carry out a Study of Alternatives to evaluate and compare “*strategic alternatives to address environmental problems, caused by the decline of the Dead Sea, and augment the supply of water to the Beneficiary parties.*”¹² According to the December 2010 “*Annotated Outline of the Study of Alternatives Report and Consultation Plan,*” the Study of Alternatives expects to examine the following alternatives: i) no action alternative; ii) proposed action Red Sea – Dead Sea water

⁹ Management Response to Request for Inspection of the Red Sea-Dead Sea Water Conveyance Study Program, November 15, 2011 (hereinafter, “Management Response”), p. 1 para 5.

¹⁰ Red Sea – Dead Sea Water Conveyance Study Program, Background Note – October 2010, p. 2.

¹¹ Terms of Reference for the Feasibility Study - Environmental, Technical and Economic and for the Environmental and Social Assessment, April 19, 2005, pp. 1 and 6.

¹² Red Sea – Dead Sea Water Conveyance Study Program, Background Note – October 2010, p. 4.

conveyance; iii) Lower Jordan River options;¹³ iv) other water transfer options;¹⁴ v) desalination options (including the desalination of water from the Mediterranean Sea); vi) technical and water conservation options;¹⁵ vii) additional alternatives identified by the consultants; and viii) the examination of combinations of alternatives.

C. The Request – Claims of Non-Compliance and Harm

14. The Request alleges violation of several Bank operational policies and procedures. According to the Request, *“the Requesters see these glaring oversights as having a serious likelihood to harm the affected parties along the Jordan River Basin.”*¹⁶ The main issues raised are summarized below.
15. With respect to **the Study of Alternatives**, the Requesters claim that *“the Beneficiary Parties and Bank Management have carved the Analysis of Alternatives out of the Environmental and Social Assessment in contravention of best international practices and are in violation of OP/BP 4.01, or at least in violation of OP/BP4.01 in how the Analysis of Regional Alternatives has been implemented.”*¹⁷ According to the Request, the issue of non-compliance is that *“the analysis of regional alternatives is not integrated structurally into the Environmental and Social Assessment reflecting contemporaneously in parallel to the Economic Feasibility study of the proposed project.”*¹⁸
16. According to the Request, the Requesters *“might prefer”* a Jordan River Basin alternative, which entails regenerating the flow of the Jordan River. The Request states that such an alternative *“would not have the serious environmental and social risks that are associated with the Red Sea Dead Sea Water Conveyance project, and would provide the indigenous Palestinians with the opportunity to utilize in future the Jordan River Basin flows which they historically accessed.”*¹⁹
17. Regarding the **selection of experts** for the Study Program, the Requesters allege that the experts selected by certain Beneficiary Parties *“are highly likely to evaluate the analysis of regional alternatives in a light favorable to the desired proposed project,”*²⁰ which they believe would cause harm to stakeholders more broadly by not engaging in a genuine independent and impartial analysis of regional alternatives. In the Requesters’ opinion, the Technical Steering Committee, mandated to review the reports, *“is made up almost entirely of representatives of the beneficiary parties”* rather than *“independent, internationally recognized environmental specialists.”*²¹

¹³ This analysis will include the alternative of *“Full Restoration of Historic Lower Jordan River Flow Levels”* and the *“Partial Restoration of Historic Lower Jordan River at a Variety of Flow Levels.”*

¹⁴ This analysis will include the alternative of *“Transfer of Mediterranean Sea Water to Dead Sea,”* the *“Transfer of Water from Turkey by pipeline,”* and the *“Transfer of Water from the Euphrates River Basin by pipeline.”*

¹⁵ This analysis will include the alternative of *“Changes of Technology Used by the Dead Sea Chemical Industry,”* the *“Increased Water Conservation in the Lower Jordan Basin,”* the *“Increased Use of Treated Wastewater and Greywater,”* and the *“Changes in Crop Types and Cultivation Methods.”*

¹⁶ The Request, p. 9, para 29.

¹⁷ The Request, p. 6, para 19.

¹⁸ The Request, p. 7, para 22.

¹⁹ The Request, p. 9, para 27.

²⁰ The Request, p. 7, para 23.

²¹ The Request, p. 5, para 17.

18. The Request also alleges the lack of proper **disclosure of information** and adequate **consultations** on the draft study reports. It states that *“in fact, more than 20 months after the beginning of the Study of Alternatives, the Requesters and other affected parties are only able to find the Annotated Outline of the Study of Alternatives Report and the Consultation Plan on the World Bank website.”*²² The Request questions the commitment of the Bank to ensure a proper discussion of alternatives, and states that the Technical Steering Committee *“is not taking the alternatives into serious consideration because they have not presented the alternatives for public consultation and incorporated the information into overall assessment of the Environmental and Social Assessment and Economic Feasibility of the Red Sea Dead Sea Water Conveyance Program.”*²³ The Request adds that during the public consultation a number of Palestinians complained that they received almost no notice of the public consultation as it was published in a local paper only a few days prior to the actual consultation meeting, violating the requirements of the safeguard policies and the general Policy on Access to Information.²⁴

19. Furthermore, the Request claims that the **absence of notification to other Jordan River riparians**, notably to Lebanon and Syria, is a violation of the Bank’s Policy on Projects on International Waters. In the view of the Requesters, the Bank, *“by not consulting with Lebanon and Syria, let alone providing formal notification,”* has *“harmed the affected parties,”* and this has been *“an impeding factor to a thorough regional Analysis of Alternatives necessary to identify the optimal solution for the decline of the Dead Sea.”*²⁵

20. In addition to the above-listed claims, the Request considers a lack of compliance with the Bank’s Policies on Natural Habitats, Indigenous Peoples, and Projects in Disputed Areas, and that this lack of compliance with these policies would affect the Requesters’ rights and interests. The Request notes that the United Nations General Assembly and Human Rights Council have adopted resolutions related to the human right to water and sanitation.

21. The above claims expressed in the Request may constitute, *inter alia*, non-compliance by the Bank with various provisions of the following Operational Policies and Procedures:

- OP/BP 4.01 Environmental Assessment
- OP/BP 4.04 Natural Habitats
- OP/BP 4.10 Indigenous Peoples
- OP/BP 7.50 Projects on International Waterways
- OP/BP 7.60 Projects in Disputed Areas

The World Bank Policy on Access to Information, July 1, 2010

D. Management Response

22. The Panel received the Management Response on November 15, 2011. The Panel notes that the Response does not address in substance any of the claims of compliance raised in the Request, as called for by the Resolution.²⁶ The Management Response addresses two

²² The Request, p. 8, para 25.

²³ The Request, p. 9, para 27.

²⁴ The Request, p. 10, para 32.

²⁵ The Request, p. 20, para 53.

²⁶ See the Resolution para 18 and the 1999 Clarifications paras 3-5.

main issues, namely the scope and status of the Study Program, and eligibility considerations.

Scope and status of the Study Program

23. Management Response emphasizes that the Study Program is a “*multi-donor funded effort managed by the World Bank at the request of Israel, Jordan and the Palestinian Authority.*”²⁷ The three Beneficiary Parties requested the Bank “*to undertake a Study Program to investigate the feasibility of reversing the environmental degradation of the Dead Sea by transferring water from the Red Sea.*”²⁸ The Response states that the Bank’s role in the Study Program itself “*was and is limited to the coordination of financing and management of such program.*”²⁹
24. According to Management, the Bank’s safeguard policies have been used as “*a reference framework to develop and structure the Study Program.*”³⁰ In the event that the Bank were to consider a RSDS Project, and did decide to proceed with the preparation of such an investment, this “*would necessitate the development of project specific studies and assessment, conduct of project-level public consultations and the disclosure of information.*”³¹
25. Management Response notes 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.*”³²

Eligibility considerations

26. Management Response makes the claim that the Request is “*ineligible for investigation.*”³³ According to Management, the Request “*fails to comply with the fundamental jurisdictional considerations required under the Resolution,*” and that the Request “*should not be considered admissible.*”³⁴ It is the Panel’s understanding that the Response raises three jurisdictional issues: (a) that the Study Program cannot be considered a ‘project’ as per Bank practice and falls outside the mandate of the Panel; (b) that the Study Program cannot be considered project preparation under Bank policy and practice; and (c) that the Study Program, “*by its very nature,*”³⁵ cannot result in direct harm.
27. As regards what constitutes the definition of a ‘project’, Management states that the Study Program “*is not a Bank-financed project.*” With a reference to a Memorandum on Compensation for Expropriation and Extension of IDA Credits to Ethiopia, dated June 16, 1995, Management asserts that “*the term ‘project’ as used in the [Panel’s] resolution (...) has the same meaning as used in Bank practice,*” and that Bank policy and practice is

²⁷ Management Response, “Executive Summary”, p. i, para i.

²⁸ Management Response, p. 1, para 4.

²⁹ Management Response, p. 2, para 7.

³⁰ Management Response, p. 2, para 6.

³¹ Management Response, p. 2, para 8.

³² Management Response, “Executive Summary”, p. i, para iv.

³³ Management Response, p. 5, para 23.

³⁴ Management Response, p. 5, paras 10-11.

³⁵ Management Response, p. 5, para 21.

governed by OP/BP 10.00.³⁶ According to Management, the Study Program “*possesses none of the project attributes, criteria or requirement of OP/BP 10.00 including for example a Project Information Document, appraisal activities, or legal agreements reflecting borrower undertakings.*”³⁷

28. As regards ‘project preparation’, Management states that 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.*” The Response labels the Study Program a ‘non-project study’, representing a body of Bank activities “*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.*”³⁸
29. As regards a causal link between the Study Program and harm to the Requesters, Management Response states that Management “*carefully and seriously considered the Requesters’ concerns,*” but has 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.*”³⁹ According to Management, the Study Program “*cannot result in direct harm*”⁴⁰ and the Requesters “*have no rights or interests directly affected.*”⁴¹
30. According to Management, the studies carried out as part of the Study Program will provide input to any future consideration regarding any proposed project. Management states that “*the Study Program actually seeks to scrutinize issues raised by the Requesters.*” Management also states that it is “*aware of the region’s complex political dynamics*” and expresses its commitment to support “*better regional cooperation and filling the information void that is currently fueling resource-related tensions in the region.*”⁴²

E. Panel Analysis Relating to Management’s Questions on Mandate and Jurisdiction

31. As noted above, in its Response, Management mainly challenges the Panel’s jurisdiction and notes that “*the Study Program is neither a project, nor is it project preparation as there is no identified investment activity.*”⁴³ Below is the Panel’s analysis as it relates to this specific assertion in the Management Response.

Is the Study Program a ‘project’ as understood in the Panel’s mandate?

32. In the 1996 Clarifications of the Panel Resolution, the Board agreed that the term ‘project’ as used in the Resolution has the same meaning as it generally has in the Bank’s practice,

³⁶ World Bank Operational Policy OP/BP 10.00 - Investment Lending: Identification to Board Presentation.

³⁷ Management Response, pp. 3-4, para 13.

³⁸ Management Response, p. 3, paras 12-13.

³⁹ Management Response, “Executive Summary”, p. i, para iii.

⁴⁰ Management Response, p. 5, para 21.

⁴¹ Management Response, p. 4, para 15.

⁴² Management Response, p. 5, para 20.

⁴³ Management Response, p. 4, para 17.

and includes projects under consideration by Bank Management as well as projects already approved by the Executive Directors.

33. In a previous case in 1995, the then World Bank General Counsel issued a memorandum which indicated that *“the term ‘project’ has been broadly defined in the Bank’s practice and is not limited to specific investments”* and that the term should not have a narrower meaning in the context of the Inspection Panel than it otherwise has in Bank practice.⁴⁴ As a result, the Board’s 1996 Review of the Panel Resolution stated that even though the Resolution speaks of *“projects financed by the Bank,”* a request for inspection might either relate to: (i) a project under consideration by Bank Management, which is, a project in the design, preparation, pre-appraisal, or appraisal stage; or, (ii) a project already approved by the Board that would be or was being financed by the Bank.
34. As noted above, Management Response claims that Bank policy and practice with respect to what constitutes a ‘project’ is governed by OP/BP 10.00, and that the Study Program *“possesses none of the project attributes, criteria or requirement of OP/BP 10.00, including for example a Project Information Document, appraisal activities, or legal agreements reflecting borrower undertakings.”*⁴⁵ Management further explained in a meeting with the Panel that specific bureaucratic requirements need to be completed as formal evidence that an investment activity is ‘under consideration’ by the Bank – i.e. that there is a decision to engage and hence can be referred to as a ‘project’. One such requirement, according to Management, is the entry into the Bank’s Activity Implementation System (AIS). According to Management, the Study Program is not recorded in the AIS.
35. It is the Panel’s view that the intent of the Resolution and its Clarifications is not to restrict the Panel’s jurisdiction by reference to specific administrative procedures, which themselves can be delayed or violated, but rather to allow the Panel to exercise its judgment in specific cases with respect to the modality and purpose of the Bank’s engagement. The Panel also notes that, as indicated in the Letter Agreement between the Bank and the Hashemite Kingdom of Jordan, dated February 22, 2008, the Study Program is financed through a Bank administered multi-donor trust fund, which is governed by the Bank’s then applicable Policy, OP/BP 14.40 on Trust Funds.⁴⁶

Does the Study Program constitute ‘project preparation’ as per Bank practice?

36. Management Response states that *“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.”*
37. As explained in detail below, the Panel considers that one important objective of the Study Program has been to develop preparatory or preliminary design studies (including a study of alternatives, a feasibility study, and an impacts assessment study) to assist the preparation of a potential project, namely the RSDS Project.

⁴⁴ 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. Also referred to in Management Response, p. 3, footnote 8.

⁴⁵ Management Response, pp. 3-4, para 13.

⁴⁶ The Letter Agreement between the Bank and the Hashemite Kingdom of Jordan is referred to in the Letter Agreement of the Government of Israel and the Letter Agreement of the Palestinian Authority.

38. As noted above, the Study Program involves the preparation of five separate studies. To determine whether these studies can be considered as part of project preparation for the proposed Conveyor Project, the Panel reviewed the World Bank's own document "*How the Project Cycle Works*"⁴⁷ which describes project preparation as follows:
- "The borrower government and its implementing agency or agencies are responsible for the project preparation phase, which can take several years to conduct feasibility studies and prepare engineering and technical designs. Beneficiaries and stakeholders are consulted to obtain their feedback and enlist their support for the project. Due to the amount of time, effort and resources involved, the full commitment of the government to the project is vital (...). Earlier screening by Bank staff may have determined that a proposed project could have environmental or social impacts that are included under the World Bank's Safeguard Policies. If necessary, the borrower now prepares an Environmental Assessment Report that analyzes the planned project's likely environmental impact and describes steps to mitigate possible harm (...). These plans are integrated into the design of the project."*
39. In the Panel's view, according to the definition of 'project cycle' in the document quoted above, the Feasibility Study under the Study Program must be seen as part of the project preparation phase. The focus of the study is on one alternative only, however with different configurations. As in any feasibility study the purpose of the study is to define the project, assess its value, risks and environmental and social impact and to provide a basis for decision making. As noted above, the selection of the alternative has been done on the basis of an earlier pre-feasibility study.⁴⁸
40. The Environmental and Social Assessment Study would also be considered part of the project preparation phase. This stems clearly from the Bank's policy on Environmental Assessment which states that Environmental Assessment "*is an integral part of project preparation.*"⁴⁹ Similarly, the Dead Sea and Red Sea modeling studies, to analyze the impact of the abstraction of water in the Red Sea and the mixing of water and brine in the Dead Sea, belong to the project preparation phases because they explore the impact of the configuration developed in the Feasibility Study. As a result, the Feasibility Study, Environmental and Social Assessment Study and Studies on the Dead Sea and Red Sea all present characteristics of studies belonging to the project preparation phase, irrespective of a future decision of the Beneficiary Parties on the Project's final configuration and financing.
41. In addition, contrary to Management's assertion, the Panel could not find any reference in World Bank documents confining project preparation to detailed design and engineering studies.
42. The Panel notes that the joint letter of the State of Israel, the Hashemite Kingdom of Jordan and the Palestinian Authority, dated May 9, 2005, confirming the Terms of

⁴⁷ This information is available on the World Bank's Website, at: <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/0,,contentMDK:20120731~menuPK:41390~pagePK:41367~piPK:51533~theSitePK:40941,00.html>.

⁴⁸ Red Sea – Dead Sea Water Conveyance Study Program, Background Note – October 2010, p. 2.

⁴⁹ World Bank Policy on Environmental Assessment, BP 4.01 para. 7.

Reference (TOR) for the Study Program and requesting the Bank to coordinate donor financing and to manage implementation of the Feasibility Study and the Social and Environmental Assessment, refers to a specific investment project called “*the Red Sea-Dead Sea Water Conveyance Project.*”

43. Furthermore, and in contrast to Management’s assertion that the Bank’s safeguard policies have been used only as a reference framework to develop and structure the Study Program,⁵⁰ the joint letter of the three Beneficiary Parties requesting the Bank to manage the Study reflects the understanding of the three Beneficiary Parties that the Bank’s Operational Policies and Procedures will apply to the Study Program. The joint letter states that “*World Bank Policies and Guidelines regarding the Safeguards, financial, and procurement aspects of conducting the Feasibility Study and Environmental and Social Assessment will apply.*”
44. The Panel notes that a Bank document on environmental screening and classification states that: “*While studies themselves may not have any adverse environmental impacts, some of the future investments arising out of these studies, as well as some of the actions resulting from sectoral reforms (e.g., involving privatization of public enterprises) could have potential adverse environmental impacts. When the Bank is supporting such feasibility studies, safeguards instruments including EAs, RAPs, and IPP, must also be prepared in accordance with the respective policies (...).*”⁵¹
45. Hence, in the Panel’s view, the starting point of the Study Program is the proposed RSDS Project; thus, the processes leading up to the decision point with regards to future financing and implementation would be, by definition, part of a project preparation process. This would not be the case if the starting point had been, for instance, to address the issue of reversing the decline of the Dead Sea more broadly. Then the Study Program would be contributing to a general body of knowledge which may, or may not be used in the context of project preparation. The Panel notes that the Study Program has components of different nature. While the Study of Alternatives has the characteristics of an upstream (strategic) study, all other studies belong to the project preparation phase, irrespective of a future decision of the project sponsors on the final configuration and whether to move ahead with implementation.
46. Finally, the Panel was informed that the Government of Jordan is preparing a Jordanian project (Jordan Red Sea Project - JRSP), which at the conceptual stage is quite similar to the proposed RSDS Project. The main objective is to establish a secure and affordable water supply for Jordan, involving desalinization of sea water from the Gulf of Aqaba/Eilat and transport potable water to Amman through pipelines. The concept includes discharging excess seawater and desalinization brine to the Dead Sea. The plan is to finance this project through private/public partnerships.
47. The Panel learned that it is proposed to use the JRSP to facilitate piloting the mixing of sea water/brine and Dead Sea water. The JRSP was described to the Panel as a possible pilot first phase of the RSDS Project, to be followed by subsequent phases. The plan is to carefully monitor the consequences of adding brine and Red Sea water to the Dead Sea.

⁵⁰ Management Response, p. 2, para 6.

⁵¹ World Bank, Operations Policy and Country Services (OPCS), “*Guidelines for Environmental Screening and Classification,*” February 2007.

The plans to proceed with the JRSP by one of the Beneficiary Parties as a follow up to the Study Program, further clarifies the nature of the Study Program as project preparation. In a publically available document prepared on behalf of the Government of Jordan the link between the JRSP and the Study Program is described as follows:⁵²

“Under the current JRSP conceptual plan, excess seawater and desalination brine will be discharged to the Dead Sea. Phase I of the JRSP will include a full-scale pilot testing plant to evaluate the impacts of mixing desalination brine/Red Sea water with the Dead Sea water. The analyses and environmental studies undertaken in the World Bank’s feasibility studies and elsewhere will be fully considered and evaluated along with the results of the JRSP Phase I pilot testing plant studies.”

48. In addition, the recent Country Partnership Strategy for the Hashemite Kingdom of Jordan, approved by the Bank’s Board of Executive Directors on January 24, 2012, referred to the RSDS Project and noted that the Bank Group can provide support through a range of instruments including *“IBRD and MIGA guarantees to attract private participation.”*⁵³

Does the Panel’s mandate cover Bank actions during project preparation?

49. The Panel considers that its mandate extends to the project preparation phase, as described above. The Panel notes that its mandate includes reviewing cases of alleged failure by the Bank to follow its operational policies and procedures with respect to the design, appraisal and/or implementation of projects, including cases of alleged failure by the Bank to follow-up on the borrowers’ obligations under loan agreements, with respect to such policies and procedures. The Panel also notes that its Resolution includes a provision related to Panel investigations prior to the approval of Bank financing and states that in such cases *“the findings of the Panel and the actions completed during project preparation also will be discussed in the Staff Appraisal Report when the project is submitted to the Executive Directors for financing.”*⁵⁴

50. Based on the above, the Panel considers that the studies conducted under the Study Program have all characteristics belonging to a project preparation phase and that the Panel’s mandate extends to this Study Program.

F. Panel Determination of Technical Eligibility

51. The Panel must determine whether the Request satisfies the eligibility criteria set forth in the Resolution and further elaborated in the 1999 Clarifications in the form of six technical eligibility criteria.⁵⁵ The Panel’s determination is based on information presented in the Request, on the Management Response and on other documentary evidence.⁵⁶ The Panel may also conduct field visits if it believes that this is necessary for the determination of eligibility.

⁵² See <http://www.jrsp-jordan.com/imgs/JRSP%20Project%20Description.pdf>.

⁵³ The International Bank for Reconstruction and Development and the International Finance Corporation, Country Partnership Strategy for the Hashemite Kingdom Of Jordan for the Period Fy12-Fy15, December 23, 2011, Report No. 58114-JO, p. 26 para 80.

⁵⁴ The Resolution para 23.

⁵⁵ 1999 Clarifications, para 9(a)-(f).

⁵⁶ 1999 Clarifications, para 7.

52. The Panel has carefully reviewed the Request for Inspection and the Management Response. The Panel Chairperson, Alf Jerve, together with Panel Member Eimi Watanabe, Deputy Executive Secretary Dilek Barlas, and Senior Operations Officer Serge Selwan visited Israel, the West Bank and Jordan between January 29 and February 6, 2012. During that visit, the Panel team met with representatives of the two requesting Palestinian civil society organizations; Stop the Wall Campaign and the Palestinian Farmers Union. The Panel also met with villagers and farmers around Jericho and other representatives of Palestinian civil society organizations in Ramallah.⁵⁷ Additionally, the Panel team met with officials representing the three Beneficiary Parties.⁵⁸
53. The Panel is satisfied that the Request meets all six technical eligibility criteria provided for in paragraph 9 of the 1999 Clarifications.
54. Criterion (a): *“The affected party consists of any two or more persons with common interests or concerns and who are in the borrower’s territory.”*
55. The Panel confirms that the Requesters have rights and interests as residents of one of the Beneficiary parties of the Study Program, with concerns about the Dead Sea environment and about access to water, and that they are affected parties. Hence, the requirement of paragraph 9(a) is met.
56. Criterion (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.”*
57. The Panel confirms that the Requesters allege that they may potentially be harmed by Management’s non-compliance with Bank policies and procedures applicable to the Study Program. During the course of the field visit, the Requesters and other Palestinian residents of the West Bank elaborated further on several of their key allegations, informing the Panel that, inter alia, the Study Program, a proposed pilot project, and ultimately the proposed RSDS Project potentially could: i) have adverse effects on the Dead Sea from the mixing of the waters (coloring and formation of potentially damaging algae and gypsum); ii) have adverse effects on sources of water for the population in the West Bank; and, iii) further legitimize the current off-take of water resources in the upper Jordan River Basin and by the mineral/extractive industries in the lower Dead Sea.
58. The Requesters believe that the studies undertaken under the Study Program are part of a planning process for a RSDS Project, and *“are of such significance that they will likely be the basis for political decisions (...). Consequently, the application of the Bank’s*

⁵⁷ The Panel team met with EWASH (Emergency Water, Sanitation and Hygiene), UAWC (Union of Agriculture Work Committees), PENGON (Palestinian Environmental NGOs Network), PNGO (Palestinian NGOs Network), Bisan Research Center, and Ma’an Development Center.

⁵⁸ In Jerusalem, the Panel team met with the Governor of the Central Bank of Israel, Mr. Stanley Fisher, and with staff from the Israeli Ministry of Foreign Affairs, the Ministry of Regional Cooperation, and the Governmental Authority for Water and Sewerage. In Ramallah, the Panel team met with the Palestinian Minister of Agriculture, Dr. Ismail Daiq, with the Minister to the Palestinian Economic Council for Development and Reconstruction, Dr. Mohammad Shtayyeh, with the Chairman of the Palestinian Water Authority, Dr. Shadad Attili, and with Mr. Ghassan Khatib, Director of the Government Media Center in the Prime Minister’s Office. In Amman, the Panel team met with the Jordanian Minister of Planning and International Cooperation, Mr. Jafar Abed Hassan, and with staff of the Ministry of Water and Irrigation.

*Operational Policies and Bank Procedures is crucial (...) to ensure that all relevant decision-makers and the affected stakeholders have reliable and accurate information.*⁵⁹

The Panel finds that the concerns alleged by Requesters about issues of non-compliance and potential harm are prima facie justified, and meet the requirements of paragraph 9(b).

59. Criterion (c): *“The request does assert that its subject matter has been brought to Management's attention and that, in the Requester's view, Management has failed to respond adequately demonstrating that it has followed or is taking steps to follow the Bank's policies and procedures.”*
60. The Panel notes that on July 15, 2011, after receiving the initial Request for Inspection, the Panel asked the Requesters for clarifications on whether the issues had been raised between affected people and Management. On July 26, 2011, the Panel received information that an organization EWASH (Emergency Water, Sanitation and Hygiene), representing a coalition of international and Palestinian NGOs (i.e. Stop the Wall Campaign) *“as well as UN agencies,”* raised a series of concerns in a phone conversation with relevant Bank staff in September 2010. The Requesters were informed that there had *“not been any noticeable reaction on behalf of the World Bank to address the concerns raised in this conversation.”* Subsequently, the Panel received minutes of the phone conversation mentioned above and which took place on September 2010.⁶⁰
61. On August 26, 2011, in response to an earlier proposal to meet, the Requesters wrote Management asking for the meeting to be at *“the soonest possible date.”* On September 9, 2011, the representative of the Requesters stated to the Panel that they received no response to their correspondence and that their concerns have still not been addressed. On September 19, 2011, following another inquiry from the Panel, the representative of the Requesters confirmed that they still had not received any acknowledgement from Management concerning their agreement to meet. The following day, the Requesters received a correspondence from the Bank suggesting a meeting in the West Bank on October 16. The Requesters acknowledged the letter asking for an earlier date. They informed the Panel that Management's responses seem to be forthcoming only when they make renewed requests to the Panel to move forward on their Request for Inspection.⁶¹ The Panel has no record on whether this meeting between Management and the Requesters occurred. The Panel confirms that the requirements of paragraph 9(c) have been met.
62. Criterion (d): *“The matter is not related to procurement.”* The Panel is satisfied the claims with respect to harm and non-compliance included in the Request do not raise issues of procurement under the Study Program and, therefore, meet the requirement of paragraph 9(d).
63. Criterion (e): *“The related loan has not been closed or substantially disbursed.”* The Panel confirms that at the time it received the initial Request for Inspection, the disbursement rate was slightly over 59.75 per cent. Hence, the requirement of paragraph 9(e) is met.

⁵⁹ The Request, p. 5, para 15.

⁶⁰ Letter from the Requesters to the Panel, dated July 26, 2011.

⁶¹ Email exchanges between Inspection Panel and Requesters from August 19 to October 17, 2011.

64. Criterion (f): “*The Panel has not previously made a recommendation on the subject matter or, if it has, that the request does assert that there is new evidence or circumstances not known at the time of the prior request.*” The Panel confirms that it has not previously made a recommendation on the subject matter of the Request, and that the requirement of 9(f) is met.

G. Observations

65. The present case has raised two additional issues relevant to the Panel’s determination of whether or not to recommend an investigation in the present case. The first relates to the question of a linkage between the Study Program, issues of compliance, and the allegations of harm in the Request. The Panel notes that Management has challenged the existence of such a linkage in its Response to the Request. The second relates to special circumstances and uncertainties in the present case that the Panel has considered in making its recommendation to the Board.⁶² These issues are considered below.

(a) The linkage between the Study Program and allegations of harm

66. In the context of the circumstances raised in the present case, and in light of the position taken by Management in its Response to the Request, the Panel has examined the question of the probability of a causal link between the Study Program and issues of harm as alleged in the Request.

67. The Request for Inspection alleges a number of harms could potentially arise, at least partly, as a result of non-compliance by Bank Management with applicable operational policies and procedures with respect to its management of the Study Program. These harms *inter alia* include: environmental effects on the Dead Sea; adverse effects on existing water sources for the population in the West Bank; and legitimizing current off-take of water in the Jordan River Basin and from the Dead Sea.

68. Management states in its Response that it has “*carefully and seriously considered the Requesters’ concerns,*” but has 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.*”⁶³ According to Management, the Study Program “*cannot result in direct harm*”⁶⁴ and thus the Requesters “*have no rights or interests directly affected.*”⁶⁵

69. However, in the Panel’s view, given that the Study Program is part and parcel of the project preparation process, triggered by the proposed RSDS Project, shortcomings in the Study Program, if not corrected, can potentially lead to shortcomings in the design of the RSDS Project. Therefore, in principle, potential harms that may result from the RSDS Project may plausibly be linked back to non-compliance in the Study Program. The

⁶² The Panel has informed the Board in recent cases that it will endeavor to provide additional information where useful to help explain its findings and recommendations at this stage of its process, including on the probability of a causal link between Bank-financed activities and harms alleged in a request which may be related to non-compliance.

⁶³ Management Response, See “Executive Summary”, p. i, para iii.

⁶⁴ Management Response, p. 5, 21.

⁶⁵ Management Response, p. 4, para 15.

Panel's observations related to the probability of a causal link between the Study Program and harms claimed by the Requesters are noted below.

Environmental effects on the Dead Sea

70. The Requesters claim that *“there is concern ... about detrimentally altering the chemical makeup of the Dead Sea which jeopardizes the future uses of the Dead Sea and its coastline which the Palestinians would hope to access subsequent to the end of the occupation.”*

71. During the Panel's visit, the Requesters and representatives of other civil society organizations stated that they are concerned that mixing the brine from the desalination plants and seawater from the Red Sea, with Dead Sea water, may possibly have negative consequences on the Dead Sea as a heritage site, not only in terms of affecting the appearance through coloring and formation of algae with its consequences for tourism and the health industries, but also other potential ecological impacts. Panel notes that Study Program documents recognize that mixing the waters may result in significant environmental effects which cannot be easily predicted or modeled. The TOR of the Red Sea – Dead Sea Water Conveyance - Feasibility Study and Environmental and Social Assessment (April 19, 2005) notes that:

“The physical, chemical and biological characteristic of the two water bodies, the Red Sea and the Dead Sea, are significantly different (...) the outcome of mixing of these two water bodies over a time scale of decades is unknown and is extremely difficult to model and predict.”

The TOR adds that:

“The magnitude and dynamics of the change in these characteristics (e.g. rate of mixing, surface water density, chemical composition, water temperature, rate of evaporation, mineral precipitation, biological activity, depth of stratification, etc.,) which are all interrelated, can only be determined following careful limnological modeling based on deep insight into the unique Dead Sea system.”⁶⁶

72. Also, according to the TOR, *“in addition to chemical/physical impacts, the proposed inflows to the Dead Sea may have ecological consequences (...). Over time, inflows of seawater and/or desalination reject brine will alter the salinity gradient and chemical composition and inoculate the Dead Sea with potentially alien species, some of which may survive. Furthermore, the pollution from the Red Sea, especially from oil spills in the Gulf of Aqaba / Eilat, might find its way to the Dead Sea intake so that nutrients and toxic contaminants could make their way to the Dead Sea.”⁶⁷*

73. The Panel further notes that subsequent draft reports confirm that progress has been made in the understanding of the consequences of mixing the Red Sea and Dead Sea, while also stating that the *“studies and mathematical modelling alone would not be adequate to determine with any degree of confidence what the impacts would be of introducing large quantities of Red Sea water into the Dead Sea. The concepts of an initial pilot project and*

⁶⁶ Terms of Reference, Red Sea – Dead Sea Water Conveyance Project, Feasibility Study - Environmental, Technical and Economic and Environmental and Social Assessment, April 19, 2005 (hereinafter “the Feasibility Study TORs”), p. 28, Section 6.2.2.

⁶⁷ The Feasibility Study TORs, p. 28, Section 6.2.2.

*later a phased development, with the first phase acting as prototype project, have been raised during the implementation of the Feasibility Study.”*⁶⁸

74. In short, the documentation acknowledges that the transfer and mixing of water may result in significant adverse environmental impacts on the Dead Sea, as alleged in the Request, and that there is a high degree of uncertainty about what these might be.⁶⁹ This issue currently is under scrutiny and discussion in the context of the Study Program and among civil society of the three Beneficiary Parties. Program draft reports state that given the inherent uncertainties of modeling, additional work is recommended, especially for larger volumes of flow. This, apparently, would entail piloting mixing of waters directly in the Dead Sea. During its field visit, the Panel team heard serious concerns among stakeholders related to the suggested piloting and how this process could be conducted and monitored without causing irreversible harm to the Dead Sea.

Adverse effects on sources of water for the population in the West Bank

75. The Request also states that *“the project as envisioned also poses risks to Palestinians who depend on water sources that could be detrimentally impacted, for instance should the Red Sea Dead Sea Water Conveyance program fail to investigate the freshwater and saline water interface in the Eastern aquifer.”*

76. According to the same World Bank study, the Eastern aquifer, one of the three aquifers supplying water in the West Bank area, lies almost completely within the West Bank and discharges towards the Dead Sea. The study states that: *“Palestinians abstract about 20% of the ‘estimated potential’ of the aquifers lying beneath the West Bank, Israel abstracts the balance, and in addition overdraws on the “estimated potential” by more than 50%.”*⁷⁰ The study also quotes the Chairman of the Israeli Water Authority stating that *“abstraction over the last five years have brought aquifer levels ‘to the point where irreversible damage is done to the aquifer’,”* and that *“this situation has contributed to a decline in water available to Palestinian people.”*⁷¹ Given their dependence on the Eastern aquifer and the significant reduction in water availability from the aquifer to the Palestinians, it is thus understandable that the Requesters and other Palestinians are critically concerned about any potential impact from the RSDS Project to their existing water sources.

77. The Panel further notes that the TOR for the Study Program states:⁷²

⁶⁸ Red Sea – Dead Sea Water Conveyance Study Program Feasibility Study, Draft Report on Sub-Studies B and D (including Project Integration), Summary (Amended December 2010), p. 49, para 24.1.

⁶⁹ The potential for adverse impacts on the Dead Sea environment and unique natural habitat is also reflected in other studies and documentation. See, e.g., *“Better Red than Dead: Can Red Sea waters revive the Dead Sea?”*, Nature, 22 April 2010 (describing potential impacts); *“Water for the Future”*, Committee on Sustainable Water Supplies in the Middle East; Israel Academy of Sciences and Humanities; Palestine Academy for Science and Technology; Royal Scientific Society, Jordan; and the U.S. National Academy of Sciences, 1999 (noting that environmental impact is unclear); *“A Multi-Component Chemistry-Based Model for the Dead Sea”*, Ittai Gavrieli et al., Jerusalem 2006, published by the Geological Survey of Israel with support from USAID and Friends of the Earth Middle East.

⁷⁰ World Bank Report No. 47657-GZ, West Bank and Gaza, Assessment of Restrictions on Palestinian Water Sector Development, Sector Note, April 2009 (hereinafter “the Water Sector Note”), p. 11, para 4

⁷¹ The Water Sector Note, p. 12, paras 37-38.

⁷² The Feasibility Study TORs, pp. 28-29, Section 6.2.3.

“Under current conditions, the groundwater aquifers are being drained at an accelerated rate due to the falling water level of the Dead Sea. There is evidence that freshwater springs on the hill slopes around the Dead Sea have dried up due to the fall of the groundwater level (...). A major issue to be evaluated is the specific hydrogeological relationship between the water level of the Dead Sea and the behavior of groundwater aquifers around it.”

78. Further, the Interim Report for Sub-Studies (Feasibility) identifies the following analytical tasks:⁷³

- “- Identify the limits of aquifers affected by the Dead Sea water levels.*
- Describe the current aquifer parameters, describe how these have responded to the historic falls in the Dead Sea water level and project how they will continue to react in the No Project Case in the future.*
- Identify current abstractions from the affected aquifers, review the available data and discuss the quality and quantity of abstracted water.*
- Review how abstractions might change in the future in light of changed demand / usage of water and falling aquifer levels.*
- Discuss the aquifer water levels and the fresh / saline interface and project how this will react to a continuing fall in the Dead Sea water level in the No Project Case.*
- Discuss and quantify the contribution of groundwater depletion to the Dead Sea water mass balance and how this will develop as the Dead Sea water level continues to fall in the No Project Case.*
- Quantify the volume of groundwater depletion and continued lowering of the groundwater level as the Dead Sea continues to decline.”*

79. From these documents, it is noted that the impact of the changes in the Dead Sea water levels and the interface with the surrounding groundwater and aquifers have been identified as an issue in the Study Program.

Legitimizing current off-take of water in the Jordan River Basin and from the Dead Sea

80. Of great concern to Requesters, farmers, village council representatives, and representatives of civil society organizations the Panel met during its visit to the West Bank is the issue that by attempting to resolve the problem of declining Dead Sea levels through conveying water from the Red Sea, the RSDS Project “forecloses the option” of addressing the root cause of the decline, which would involve changing the way that the surface and ground waters of the Jordan River Basin are managed. The Requesters, in particular, indicated their fear that the RSDS Project may legitimize current inequitable and unsustainable off-take of water resources in the Jordan River Basin, and the extraction of water from the Dead Sea by potash and fertilizer industries.

81. The Requesters claim that affected parties they represent ‘*might prefer*’ a Jordan River Basin alternative, which entails regenerating the flow of the Jordan River. According to the Requesters, such an alternative “*would not have the serious environmental and social risks that are associated with the Red Sea Dead Sea Water Conveyance project, and would provide the indigenous Palestinians with the opportunity to utilize in future the Jordan River Basin flows which they historically accessed.*”⁷⁴

⁷³ Red Sea - Dead Sea Water Conveyance Project Feasibility Study, Interim Report for Sub-Studies, September 25, 2008, p. 13 of 25, Section 2.4 “Hydrogeology.”

⁷⁴ The Request, p. 9, para 27.

82. The Panel notes that the annual flow of the River Jordan before discharging into the Dead Sea has been reduced by 98% percent in the last 40 years – from 1300 MCM in the mid-1960s to 20-40 MCM today. This has primarily been caused by diversion of water from Lake Tiberias/Sea of Galilee, upper River Jordan and upstream tributaries.⁷⁵
83. The Panel further notes that, according to a recent World Bank study “*in the Eastern Aquifer, there is evidence of deep Israeli wells affecting Palestinian wells and springs (...). By one report, half of Palestinian wells have dried up over the last twenty years and effects are particularly severe for the generally more vulnerable population groups living in Area C.*”⁷⁶ During its visit to the region, the Panel was informed that traditionally, the Jordan River Valley was the breadbasket of the area, with rich soil and abundant water, but that since 1967, Palestinian farmers have increasingly lost access to these lands and water sources. In one village visited, a village council member stated that “*in 1967 there were some 200 wells, now there are only 83, many of which have dried up, and that permissions to construct new, or rehabilitate non-functioning wells are rarely granted.*” The Panel was told that the lack of irrigation water has resulted in 70% of the agricultural workforce to leave their farms. In a second village visited, the Panel was informed that their “*wells are drying up as they are only allowed wells that are much shallower than those that are drilled by Israeli settlers or Mekorot*” (Israel’s national water company that *inter alia* provides water in the West Bank). The Panel was also informed by some villagers that they buy water from Mekorot, which according to them extracts water from the aquifers lying beneath their villages.
84. The Panel notes that the situation for the Palestinians with regards to the Jordan River is pre-existing the Study Program, and that it is in this context the Requesters focus on the importance of getting an impartial and thorough study of regional alternatives to inform decisions not only of how to arrest the decline of the Dead Sea, but also regarding Palestinians’ access to the River’s waters and the Dead Sea in the event of a political settlement.

Linkage between the Study Program, compliance and potential harm

85. As noted above, the Study Program involves the preparation of studies that inform and relate to the design of the proposed RSDS Project, potential measures to mitigate and avoid negative impacts that might arise from such a project, and possible design alternatives that could avoid or reduce negative impacts. The claims of non-compliance and harm are described in more detail in Section C above. The Panel considers that the Requesters raise important and legitimate concerns that non-compliance with Bank policies, if it were to occur, could potentially contribute to one or more of the harms of the type noted above.
86. The Panel cannot, at this stage in the Panel process, make any definitive assessment on issues of compliance and harm.⁷⁷ The Panel, however, needs to reflect in its reporting to the Board its assessment of “*whether the Bank’s compliance or evidence of intention to*

⁷⁵ Ma’an Development Center, “*Destructive Environmentalism. The impact of the proposed environmental initiatives regarding the Dead Sea*”, Ramallah, 2011.

⁷⁶ The Water Sector Note, p. 12, para 38. See also Sector Note p. ix, footnote 4, “*Per Oslo, Area C is under Israeli territorial jurisdiction.*”

⁷⁷ 1999 Clarifications, para7.

comply is adequate.” As noted in Section D above, Management Response does not address questions of whether it has complied with the relevant policies.⁷⁸ The Panel therefore is not in the position to make any further comments on this aspect of Management’s response.

87. The Panel notes the importance of compliance with applicable Bank policies in carrying out this preparatory work as a means to support positive development outcomes and avoid or reduce adverse impacts that might arise from such a water transfer system or an alternative to it. The Panel also notes that efforts being undertaken by Bank Management to support the work of these studies is itself an indication of their importance in this context.

(b) Special circumstances and uncertainties related to the Study Program

88. The Panel notes, at the same time, that there are several unique factors and uncertainties in the present context that have a bearing on its consideration of how the Panel itself should proceed on this matter at this current stage.

89. As noted above in this Report, at the start of the Study Program, one of the shared visions of the proposed RSDS Project, also referred to as the ‘*Peace Conduit*’,⁷⁹ articulated by the Beneficiary Parties was to build a symbol of peace and cooperation in the Middle East. The TOR of the Study program noted that the RSDS Project would constitute a major opportunity for the stakeholders to work together in its preparation, construction, and operation and, if successful, this would constitute a breakthrough in relationship building in the region. A Technical Steering Committee composed of representatives of the Government of Jordan, the Government of Israel, the Palestinian National Authority and the World Bank was set up to oversee the Study Program. In addition a joint project management unit was established to supervise and manage the preparation of the studies. The representatives of all three Beneficiary Parties that the Panel team met confirmed how the Study Program facilitated dialogue and cooperation at a technical level, and that this effort continued even in times of conflict.

90. The Panel acknowledges that the Study Program is a politically complex process that is still ongoing. Water has always been a politically sensitive issue in the region, and the Panel understands that a mega water project, like the RSDS Project, highlights complex issues surrounding water management and riparian rights. The Panel further notes that the Beneficiary Parties have neither decided on whether to proceed with the RSDS Project nor on the final configuration/design of the proposed Project, and Bank Management has informed the Panel that this is a complex process that may take many years for important questions to be resolved. At the present stage, the Panel understands that there also are many unresolved questions with respect to the financing required – with estimates ranging from several hundred million dollars for a first phase to about 12 billion dollars for the full extent of the Project, excluding potable water transmission systems.

91. Finally, the Panel notes that the remaining phases of the Study Program involve negotiations and reaching agreement among the Beneficiary Parties on the draft final Feasibility Studies and the Study of Alternatives. This, according to the Panel’s

⁷⁸ See the Resolution para 18 and the 1999 Clarifications paras 3-5.

⁷⁹ The Feasibility Study TORs, p. 1, Section 1.1.

understanding, will be followed by disclosure of these drafts and a period for public hearings. These hearings may provide scope for civil society organizations to have their concerns raised, and the remaining phases may influence both the quality and the content/recommendations of the studies and how to proceed with a possible project.

H. Recommendation

92. The Panel notes that the Requesters are raising legitimate concerns. Given the unique and special circumstances surrounding this unprecedented regional collaborative effort, however, as mentioned above, the Panel does not recommend an investigation of whether the Bank has complied with its operational policies and procedures related to the Study Program.
93. The Panel notes that this recommendation does not preclude the possibility of a future claim, relating to compliance and harm, in the event that the Bank decides to support the proposed RSDS Project or a related alternative.