



OMBUDSMAN ASSESSMENT REPORT

**Complaint from the Community and Civil Society
Regarding IFC's Involvement in the Panama Canal
Expansion Project (#26665)**

February 2012

*Office of the Compliance Advisor/Ombudsman
International Finance Corporation and
Multilateral Investment Guarantee Agency
www.cao-ombudsman.org*

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LIST OF ACRONYMS

| | |
|------|---|
| ANAM | National Environmental Authority |
| EIB | European Investment Bank |
| IADB | Inter-American Development Bank |
| CAO | Office of Compliance Advisor/Ombudsman |
| CHCP | Hydrographic Basin of the Panama Canal |
| CICH | Interinstitutional Commission of the Hydrographic Basin of the Panama Canal |
| EIA | Environmental Impact Assessment |
| IFC | International Finance Corporation |
| JBIC | Japan Bank for International Cooperation |
| MICI | Independent Consultation and Investigation Mechanism |
| PCA | Panama Canal Authority |

INTRODUCTION

In May 2011, the CAO received a complaint from Alianza Pro Panama, a Panamanian organization consisting of several environmental community grassroots organizations concerned by the expansion of the Panama Canal supported by the IFC and its potential social and environmental impacts on the Panama Canal watershed. In June and July 2011, the first complaint letter was followed by letters of support from organizations and community members located in zones near the Panama Canal watershed, expressing similar concerns and confirming Alianza Pro Panama as the organization filing the complaint on their behalf.

This report describes/summarizes the assessment carried out by the CAO in October 20-27, 2011. It begins with a general introduction of the work of the CAO, a summary of the complaint, and information on the context of the Panama Canal expansion project and IFC's involvement. The report concludes with the CAO's understanding of the concerns and needs presented to our team and the conclusion is accompanied by a description of the next steps. This document is a record of the concerns and views heard by the CAO team during the assessment. It also contains an explanation about the next steps. *This report does not make any judgment on the merits of the complaint.*

About the CAO

The Office of Compliance Advisor/Ombudsman (CAO) is the independent recourse mechanism for the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA) of the World Bank Group. The CAO reports directly to the President of the World Bank Group, and its mandate is to assist in addressing complaints from people affected by IFC/MIGA supported projects in a manner that is fair, objective, and constructive and to enhance the social and environmental outcomes of those projects.

The assessment is performed by the CAO's Ombudsman function. The purpose of CAO's assessment is to: (1) better understand the issues and concerns raised by the complainant(s); (2) gather information on how other stakeholders see the situation; and (3) to help the stakeholders understand and determine whether a collaborative resolution is feasible through a process facilitated by the CAO's Ombudsman, or if the case should be referred to CAO Compliance for its appraisal.

As per CAO's Operational Guidelines¹, the following steps will normally be followed in response to a complaint that is received:

Step 1: **Acknowledgement** of receipt of the complaint.

Step 2: **Eligibility**: Determination of the complaint's eligibility for assessment under the mandate of the CAO (no more than 15 working days).

Step 3: **Ombudsman assessment**: Assessment of the issues and explanation to the stakeholders to understand and determine whether a collaborative resolution is feasible through a process facilitated by the CAO Ombudsman, or if the case should be referred to CAO Compliance for an appraisal of IFC's/MIGA's due diligence and social and environmental performance. The Ombudsman assessment period is limited to 120 working days.

¹ For more details on the role and work of the CAO, please refer to the full Operational Guidelines: <http://www.caoombudsman.org/about/whoware/index.html>

Step 4: Facilitating settlement: If the CAO Ombudsman process continues, this phase involves a dispute resolution process (usually based on, or initiated by, a Memorandum of Understanding and/or mutually agreed upon ground rules between the parties) through facilitation/mediation, joint fact-finding, or other agreed resolution process, leading to a settlement agreement or other mutually agreed and appropriate goal. The major objective of problem-solving approaches will be to address the issues raised in the complaint, and any other relevant issues identified during the assessment or the dispute resolution process, in a way that is acceptable to the parties affected².

Compliance assessment/audit: If the complainants decide that a compliance review should be performed, CAO Compliance shall initiate an appraisal of IFC's/MIGA's social and environmental due diligence³ in relation to the project, in order to determine whether the complaint requires a compliance audit regarding IFC's/MIGA's involvement in the project.

Step 5: Monitoring and follow-up.

Step 6: Conclusion/Case closure.

After carefully reviewing the complaint submitted by Alianza Pro Panama in May 2011 on behalf of several members of the communities located in zones near to the Panama Canal watershed, the CAO determined on July 27, 2011, that the complaint met its three eligibility criteria:

1. The complaint pertains to a project that IFC/MIGA is participating in, or is actively considering.
2. The issues raised in the complaint pertain to the CAO's mandate to address environmental and social impacts of IFC/MIGA investments.
3. The complainant (or those whom the complainant has authority to represent) may be affected if the social and/or environmental impacts raised in the complaint occurred.

Subsequently, according to CAO's Operational Guidelines, the CAO Ombudsman began the assessment of opportunities for resolving the issues in the complaint.

The complaint was also submitted to the Complaints Mechanism of the European Investment Bank (EIB); the Complaints Mechanism of the Japan Bank for International Cooperation (JBIC) and the Independent Consultation and Investigation Mechanism (MICI) of the Inter-American Development Bank (IADB). The CAO has coordinated and shared information with these independent accountability mechanisms when possible to avoid duplication of efforts.

² Where stakeholders are unable to resolve the issues through a collaborative process within an agreed time frame, the CAO Ombudsman will first seek to assist the stakeholders in breaking through impasse(s). If this is not possible, the CAO Ombudsman will inform the stakeholders, including IFC/MIGA staff, the President and Board of the World Bank Group, and the public, that CAO Ombudsman has closed the complaint and transferred it to CAO Compliance for appraisal.

³ See: <http://www.ifc.org/enviro> and <http://miganet.worldbank.org/wb/index.cfm>

1. The complaint

From May to June 2011, the CAO received complaint letters from several local and national civil society and environmental organizations and members of the organization Alianza Pro Panama⁴, requesting CAO's assistance in addressing a number of environmental and social concerns related to the Panama Canal expansion project which, from their point of view, would have wide economic consequences. The complainants cited concerns related to IFC's due diligence process in assessing and approving the Panama Canal expansion project and outlined, inter alia, specific environmental and social concerns related to community health and safety given that, from their perspective, the expansion places its structures above or near important seismic faults and does not strengthen the current canal against seismic risks that would threaten the waterway in its totality; does not present proven methods to avoid or mitigate impacts to the marine ecology and water sources; as well as issues related to loss of land and relocation of communities as a result of the expansion.

In the complaint filed with the CAO, the various civil society organizations and environmentalists expressed, among other things, the following social and environmental concerns related to the operations of the Panama Canal Authority (PCA) and the expansion project:

- Reduction in the canal's safety due to not strengthening the existing structures and the increased risk of seismic activity given the location of the expansion and the bypass of Lake Miraflores;
- The inefficient use of national water resources, as a result of excluding additional water saving methodologies, increases the possibility of a lack of drinking water for rural and urban communities located in the Canal watershed and surrounding areas;
- Intrusion of brackish water in Lake Gatun and the lack of mitigating methods to eliminate such water, considering that the lake is one of the sources of potable water to several zones, including the City of Panama and Colon;
- Possible construction of several dams to supply water to the new locks, even though the PCA and the Panamanian Government pledged that this would not occur because of the use of water-saving basins;
- Probable creation of a "salt water corridor" through the canal without having proven methods that could control or prevent the introduction of non-endemic species due to exchange of ocean waters, or the irreversible damage to the marine ecology on both sides of the Canal and in further areas;
- Concerns about IFC's due diligence and the apparent lack of independent assessment of the studies, data and analysis underpinning the project's assessment and the decision to expand the Canal, as well as the perception that basic aspects of the project's configuration and inconsistencies were not questioned;
- Lack of transparent consultations with professional and experts not economically involved with the project and the apparent agreement – by IFC and other financial institutions – to technical discrepancies and omissions, such as the limited definition of which are the "affected communities";

⁴ Alianza Pro Panama consists of the following groups and grassroots organizations: Unión Campesina Panameña (UCP), Frente Campesino contra los Embalses y la Minería de Coclé y Colon (FCCM), Frente Campesino Colonense (FCC), Organización Campesina Coclesana 15 de Mayo (OCC-15 de Mayo), Unión Indígena y Campesina (UIC), Comité Pro Defensa del Lago Gatún, Coordinadora para la Defensa de Tierras y Aguas (CODETIAGUAS), Asociación Pro Defensa de las Cuencas Hidrográficas, Frente de Resistencia Coclesano (Movimiento – área de Coclé del Norte), Coordinadora Campesina por la Vida and several Panamanian community members in their personal capacity. The group of individuals who supported the complaint includes two engineers who have registered patents for their respective specific models for the partial or whole design of the expansion.

- Inadequate dissemination of the project's real costs, which include possible impacts to the canal's bridges and costs related to the construction of new bridges that were excluded from the budget;
- Inadequate dissemination of information about the economic, environmental and social risks of the project, such as the probabilities for a successful expansion and the possible mitigation options; and
- Inadequate consultation with the communities.

2. The project

According to IFC, the Panama Canal expansion project is designed to increase the capacity and efficiency of the Panama Canal through⁵:

- The construction of a third set of locks, including two lock facilities—one on the Atlantic side and another on the Pacific side—each with water-saving basins;
- The deepening of the Atlantic and Pacific entrances of the canal; and
- The deepening and widening of the navigational channel in Gatun Lake, the deepening of the Culebra Cut, and the elevation of Gatun Lake's maximum operating level.

Since December 31, 1999, the Panama Canal Authority (PCA), a government agency with financial autonomy and legal standing is responsible for the management of the Panama Canal and its functioning, as well as the management, maintenance, use and conservation of the water resources in the Canal watershed. The PCA was established under the Political Constitution of the Republic of Panama and has exclusive responsibility for the administration, operation, preservation, maintenance and modernization of the Canal and ancillary services since Panama took control of the Canal in December 1999. In addition since 1997, it is responsible for coordinating with other governmental and nongovernmental entities for the administration, conservation and use of the natural resources of the watershed that feeds the Canal.

The total cost of the project is estimated at \$5.25 billion, and IFC's investment is \$300 million. This is a Category "A" project according to IFC's environmental and social review procedure.

Apart from the IFC, other lenders include: IADB (\$400 million), EIB (\$500 million), JBIC (\$800 million) and Andean Development Corporation (\$300 million).

⁵See: <http://www.ifc.org/ifcext/spiwebsite1.nsf/b7a881f3733a2d0785256a550073ff0f/b49f4d44a82f064c852576ba000e2c7a?OpenDocument>

The location of the project is illustrated below⁶:



- A. Deepening and widening of the Atlantic entrance.
- B. Post Panamax locks in the Atlantic
- C. Elevation of Gatun Lake's maximum operational level.
- D. Deepening and widening of the navigational channels of Gatun Lake and Culebra Cut.
- E. Access channel to the Post Panamax locks in the Pacific.
- F. Post Panamax locks in the Pacific.
- G. Deepening and widening of the Pacific entrance.

3. Context of the expansion project

In regards to the Panama Canal watershed, it should be noted that it comprises the geographic area whose waters -both surface and underground- flow towards the Canal or empty into it, as well as its dams and lakes, according to the Organic Law of PCA, Law Number 19 from June 11, 1997. The watershed was subsequently defined by Law 44 passed on August 18, 1999⁷. The law defined the boundaries of the Canal watershed, adding about 212,000 hectares west of what was traditionally known as the Canal watershed. This territory was called the western region of the watershed. Following the enactment of Law 44, the watershed covered an area of 552,761 hectares, comprising eleven districts and 48 counties distributed between the provinces of Cocolé, Colón, and Panamá⁸. However, on June 21,

⁶ See: <http://www.pancanal.com/esp/ampliacion/rpts/components/componentes-2010-01.pdf>

⁷ See: <http://www.pancanal.com/esp/plan/documentos/referencia/acp-plan-ref-ley-44.pdf>

⁸ See: <http://www.pancanal.com/esp/general/canal-faqs/watershed.html>

2006, Law 20⁹ repealed Article 1 of Law 44 of 1999, which defined the limits of the Panama Canal watershed¹⁰ and the Canal again has the watershed that was defined in 1904.

In March 2000, the Organic Law of the Panama Canal created the Interinstitutional Commission of the Hydrographic Basin of the Panama Canal (CICH)¹¹ for the sake of coordinating the efforts of the government entities and the PCA for the preservation of natural resources in the region. In accordance with this law, the CICH would be integrated by the PCA, the Ministry of Government and Justice, the Ministry of Housing, the Ministry of Agricultural Development, the National Environmental Authority, the Ministry of Economy and Finance, and Cáritas Arquidiocesana and Fundación Natura, two non-governmental organizations.

The first expansion considerations in 2005 considered the construction of reservoirs in the western region, which was considered part of the Panama Canal watershed according to Law 44. Various social groups organized themselves and protested against this option as these reservoirs, in case of being constructed, would displace a number of communities.

On July 17, 2006, Law 28 was passed in Panama, approving the proposal for the construction of a third set of locks in the Panama Canal¹². Article 1 of this law provides that the proposal for the construction of a third set of locks in the Panama Canal is approved. It consists of an integral program to expand the capacity of the Canal with an estimated cost of 5,250 million balboas. The three main components are: (1) the construction of two lock facilities, one on the Atlantic and another on the Pacific, each with three levels and water reutilization basins; (2) the excavation of access channels to the new locks and the widening of existing navigational channels, and (3) the deepening of the navigation channels and the elevation of Gatun Lake's maximum operating level. Law 28 also provides that no reservoirs shall be built for the operation of the third set of locks¹³.

Law 28 also orders the Electoral Court to submit to national referendum the proposal for the construction of the third set of locks, and grants it powers to organize and regulate the national referendum. Under the terms of this Law, the national referendum must be held within a three-month period from the date of enactment of the Law, so that all citizens decide whether or not to approve the proposal for the construction of a third set of locks by free, universal, direct, equal and secret ballot.

For the purposes of the referendum, the Law provided that citizens would answer the following question: Do you approve the proposal for the construction of a third set of locks in the Panama Canal? YES NO

According to the PCA, from the presentation of the expansion proposal to the country and the date of the referendum, the PCA implemented a 6-month disclosure period that included various informational and opinion programs in several media channels, informational presentations explaining the expansion proposal to over 200,000 Panamanians in the nine provinces and in the region of Kuna Yala, a free of charge telephonic line, two mobile PCA units that travelled to 63 districts in the provinces of Chiriqui, Herrera, Veraguas, Colon, Darien, Cocolé, Los Santos and Panama, centers of information were established, and information was also distributed on the PCA's website (www.pancanal.com). Additionally information on the proposal was included in all newspapers at the national level and

⁹ See: <http://docs.panama.justia.com/federales/leyes/20-de-2006-jun-27-2006.pdf>

¹⁰ Ver: <http://www.pancanal.com/esp/general/canal-faqs/watershed.html>

¹¹ See: <http://www.cich.org/noticias/2000/03/15/news1.html>

¹² G.O. 25590 National Assembly, Republic of Panama, Law No. 28 of July 17, 2006, approving the proposal for the construction of a third set of locks in the Panama Canal, submitted by the Executive Branch, and other provisions". See: <http://www.pancanal.com/esp/plan/documentos/referencia/acp-plan-ref-ley-28.pdf>

¹³ Article 2 of Law 28 of July 17, 2006.

information was provided as a response to several requests from schools, associations, government entities, forums and other events.

The referendum took place on October 22, 2006, and approximately 77 percent of the citizens voted in favor. The percentage of the Panamanian population that went to the polls to vote was 43%¹⁴.

According to information published on the Panama Canal webpage, the PCA indicates that for the expansion¹⁵:

- More than 100 studies were conducted.
- Multiple alternatives were evaluated to choose the best option.
- Internationally recognized firms participated.
- Panamanian and international experts participated.
- Rigorous standards were met.

4. CAO ASSESSMENT

4.1 Methodology

The CAO assessment seeks to clarify issues and concerns raised by complainants, to gather information on how other stakeholders perceive the situation, and to assist the parties in determining whether a collaborative resolution is feasible through a process facilitated by the CAO Ombudsman, or if the case should be referred to CAO Compliance for its review. *The CAO Ombudsman does not gather information to make judgments on the merits of a complaint.*

4.2 Assessment and summary of concerns

During the assessment, the CAO Ombudsman team met with PCA representatives, members of communities located near Gatun Lake and others who live in the former western region of the watershed of the Panama Canal, and individuals and representatives of organizations that form part of Alianza ProPanama. The objective of these meetings was to better understand the issues and concerns raised in the complaint, as well as to hear the stakeholders' views on the current situation. Below is a list of the different concerns expressed by the various stakeholders. The list is not expressed in order of priority or importance.

4.2.1 Summary of concerns

Concerns expressed by community members and civil society organizations

Overall, both the members of the communities who filed the complaint with the CAO and Panamanian civil society organizations that support the complaint share the following concerns regarding the expansion of the Canal:

1. Loss of lands adjacent to Gatun Lake.
2. Vulnerability resulting from displacements if more reservoirs are required.
3. Land insecurity.
4. Lack of information (costs, environmental impact, design and alternatives).
5. Possible water shortages.
6. Environmental impacts.
7. The possibility of a natural disaster.

¹⁴ Electoral Court of Panama.

¹⁵ See: <http://pancanal.com/esp/general/canal-faqs/watershed.html>

8. Future reductions in the use of the Canal.
9. Destruction of Panama's archaeological heritage.

1. Recovery of lands adjacent to Gatun Lake.

From the standpoint of the communities, the expansion project implied that some owners would lose 30 meters of land that border Gatun Lake and they would be unable to build with cement since, for purposes of the expansion project, it would be necessary to increase the storage capacity of the Lake by one meter. They argue that this loss of land has not yet been compensated.

2. Vulnerability derived from displacements if more reservoirs are required.

The communities and civil society representatives believe that sooner or later more reservoirs will be needed so that the Canal operates at maximum capacity and freshwater needs for human consumption are met. They expressed concern about the imminent fear of forced eviction without alternatives that would be equivalent to what they currently have. Such possibility makes them feel vulnerable due to the following reasons:

- Lack of certainty on where they would be taken and if there is still land to relocate them. They fear there are no available lands where they can resettle.
- Potential conflicts resulting from relocation with people of different ethnicity/community/religion.
- Concerns about what they will do with their dead and their cemeteries.
- Potential conflicts between communities in favor of or against displacements.
- Possible loss of good quality land for significantly lower quality land.
- Possible difficulty or impossibility in adapting to a new way of life that implies leaving agriculture as a livelihood and/or getting used to living in a completely alien place, such as a city.
- The reservoirs would limit or end their mobility, mostly done in canoes, and fishing activity.
- Potential loss of valuable natural resources, such as quality water, flowers, plants, wildlife and natural medicine.

In addition, the communities fear that they are being used to justify future reservoirs under the argument that the government shows a picture of peasants that, from their viewpoint, does not reflect reality. They feel that the images broadcasted on TV make them look very poor and in need of aid, which they say is far from reality as they are self-sufficient.

3. Land insecurity

Respondents expressed concern because they do not feel completely confident that they own their land. Although a titling process began and some already have titles, they perceive that additional fee and tax payments are still pending that prevent them from being the "legal" owners of their land. This situation is a concern due to the following reasons:

- They are unable to sell their land, borrow and/or resolve conflicts.
- They fear that if they default, payments they have already made will not be taken into account.
- Possible conflicts for failing to ask adjacent landowners if they agreed with the demarcation of the land.
- Reduced land prices because some farmers prefer to sell cheap.
- Lack of clarity regarding land use, i.e. urban, conservation or agriculture.
- They state that Sabanitas, Quebrada López and other communities in the eastern watershed of the Canal (near Colón) are being displaced due to different land titling conflicts and not by the reservoirs.

4. Lack of information

The lack of accessible, clear and reliable information was a concern shared by the communities and civil society. In particular, the following issues were mentioned:

- A. Clarity about the **real cost of the works**, including the cost of debt (interest), dredging, tugboats, possible modifications needed due to inadequacies in the design and others not planned, such as the deterioration of the Bridge of the Americas and possible removal, which will need to be modified so that Post Panamax vessels may pass through.
- B. The need for reliable and independent **environmental impact** studies.
- C. Lack of access to specific and reliable information (in Spanish) regarding the design and operation of the new **locks and its operational impacts**, detailed **studies** on the alternatives that were ruled out, **earth movements** and **salinization** of water resources.
- D. Lack of meaningful public consultation, and prior information. The community members expressed that they did not vote in the referendum as a way of protest, and that voting centers were located far from their territories; according to them the centers near their territories had been eliminated.
- E. Lack of analysis of all the **alternatives** and that the chosen option consumes more water and moves ships in the least effective and cost-efficient way.

5. Possible water shortages

They are concerned that the expanded Canal will under-optimize the usage of the major water resource of the nation and would create a system of permanent misuse of this freshwater source in Panama. The possible salinization of the lake could reduce the availability of freshwater for human and animal consumption and could affect the forests around Gatun Lake. This concern regarding water shortages is also derived from the possible contamination caused by the machinery used for the expansion – even when it is acknowledged this is a short-term effect.

6. Environmental impacts

Another concern is the possible reduction in available freshwater for human consumption, the flora and fauna and possible salinization of the lake, which could promote the installation of invasive species in the two oceans.

7. Possibility of a natural disaster

Several seismic faults are located under the Lake and there is fear that an earthquake of great magnitude could significantly affect the canal infrastructure.

8. Future reductions in the use of the Canal

Some representatives of civil society are concerned that other maritime transport options could be available in the future to replace or compete with the Panama Canal, specifically referring to three options:

- Changes in fuels (changes in fuel or technology prices).
- Climate change (opening of a passage in the north as a result of thawing conditions).
- Opening of alternate routes: Guayaquil railway: Ecuador and Brazil; multimodal system: Peru and Bolivia; Colombia railway to transport coal to China.

9. Destruction of Panama's archaeological heritage

Civil society is concerned by the destruction of Panama's archaeological heritage during the expansion of the Canal, specifically the remnants of the Afro descendant communities (Antilleans) at the Pacific entrance, as well as pre-Columbian and paleontological remains.

Concerns not directly related to the canal expansion project

Overall, both the communities and civil society representatives are concerned by the lack of compliance with the demands of the communities and promises made at different times by the PCA and the government in general. Some of these non-compliances are to employ people from the communities for the expansion and lack of compensation for those displaced as a result of other projects in diverse zones of Panama. More broadly, they are concerned

about the potential contamination of the water and the impact on the environment as a result of other projects, such as mining activities.

They are concerned that the referendum was not equitable, specifically in terms of available resources to disseminate the views of those who supported the expansion versus those who were opposed, adding that polling stations were far away from communities opposed to the expansion.

Concerns expressed by the PCA

During the meetings held with PCA representatives, they explained the operation of the Canal, the challenges entailed by the expansion, and how they have been dealt with. The following concerns were expressed during these meetings:

- The activities of the PCA are constantly and independently evaluated as required by the government. This is reflected in several reports. They are concerned that although this information is available to the public, it is not consulted.
- The social programs such as the organization of community watershed councils remain in the whole watershed; however land titling will reduce the dynamics of the PCA due to legislative changes that eliminated the western region, restricting the PCA's ability to act in that region. For over 5 years, the western region of the watershed has not been under the jurisdiction of the PCA.
- They are concerned that the CAO receives complaints from civil society organizations who claim to represent members of potentially affected communities, and the role of these organizations in the complaint process.
- They are unable to engage in a dialogue with the communities located in the western region that claim to be affected by the expansion because they are outside the jurisdiction of the PCA as a result of a policy change.
- The PCA expressed a general concern about the long-term availability of water in the watershed, given human water consumption demand in growing urban areas, and the operation of the Canal. They believe this is an issue of national concern, irrespective of the expansion of the Canal, which will need to be addressed by the Government of Panama.

5. Conclusions and next steps

In the course of its assessment, the CAO understood from community members, civil society organizations and the company¹⁶ that they did not wish to pursue a dispute resolution process. Given the voluntary nature of a dispute resolution process, and the lack of interest and willingness of the parties to pursue this option, the CAO Ombudsman concludes that this complaint is not amenable to resolution through dispute resolution at this point in time.

In February 2012, in accordance with the CAO's Operational Guidelines, the CAO Ombudsman concluded its process and referred the complaint to CAO Compliance for initial appraisal. The appraisal will determine if an IFC audit is necessary to provide assurances to the President and the public that the IFC is complying with the relevant social and environmental policies.

¹⁶ The PCA has expressed that by law they cannot address the needs of the community members that are located in the western region of the watershed.