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United States General Accounting Office

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Briefing Report to
the Honorable Webb Franklin,
House of Representatives

April 1986

PANAMA CANAL

Establishment of Commission to Study Sea-Level Canal and Alternatives



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NATIONAL SECURITY AND
INTERNATIONAL AFFAIRS DIVISION

April 29, 1986

B-114839

The Honorable Webb Franklin
House of Representatives

Dear Mr. Franklin:

In response to your request of December 10, 1985, and subsequent discussions with a representative of the House Merchant Marine and Fisheries Committee, this is our report on the establishment of the trilateral commission to study alternatives to the existing Panama Canal. The report describes why the State Department-- instead of the Panama Canal Commission or the Department of Defense--led U.S. planning efforts for the study, how the study scope and U.S. financing arrangements were determined, and when these decisions were reached. Our findings and conclusions are summarized in this letter. A chronology of key events surrounding the study is presented in appendix I.

THE PROPOSED STUDY

The Republic of Panama and the United States formally agreed in September 1982 to establish a Preparatory Committee for the study of alternatives to the Panama Canal, including a sea-level canal, and to invite the government of Japan to participate as a full member--an invitation which Japan accepted. The Committee developed terms of reference for a trilateral Study Commission, which were adopted by the three governments in September 1985. These terms included

- the study objectives, i.e., identification of potential transportation alternatives to the existing canal in Panama and detailed study and conceptual planning for the best alternative;
- a description of the transportation alternatives to be analyzed in the study;
- the organizational structure and operating guidelines for the study;
- a proposed study budget of \$20 million, with costs to be equally shared by three governments; and

--an expected commencement of the study in January 1986 with a duration of approximately 5 years.

Through an exchange of diplomatic notes, dated September 26, 1985, the United States and Panama agreed that upon its completion, the study of alternatives will fulfill the parties' mutual treaty obligation to study the feasibility of a sea-level canal in Panama.

TREATY OBLIGATION

Article XII paragraph 1 of the Panama Canal Treaty between Panama and the United States, signed in Washington on September 7, 1977, states that, "...during the duration of this Treaty [which expires on December 31, 1999], both Parties commit themselves to study jointly the feasibility of a sea-level canal in the Republic of Panama...." The Panama Canal Act of 1979 (Public Law 96-70, Sept. 27, 1979) implements this treaty provision in section 1109(a) of the act, which states that "The President shall appoint the representatives of the United States to any joint committee or body with the Republic of Panama to study the possibility of a sea level canal in the Republic of Panama pursuant to Article XII of the Panama Canal Treaty of 1977."

Neither the treaty nor the act is definitive regarding which federal agency should coordinate and direct U.S. planning efforts for the study, how the study should be conducted and financed, or when during the treaty period it was to be conducted. By Executive Order 12215, dated May 27, 1980, the President delegated certain functions vested in him by the Panama Canal Act of 1979 to the heads of federal agencies. This delegation of Panama Canal functions did not address the sea-level canal feasibility study.

WHY STATE DEPARTMENT LED U.S. PLANNING EFFORTS

Since no specific legislative or executive authority was delegated to a particular agency, the Department of State assumed the lead in coordinating U.S. planning efforts for this study by virtue of its customary responsibility for treaty implementation, international negotiation, and conduct of U.S. foreign relations. During the late 1970's, Japan and Panama independently discussed the possibility of a sea-level canal in Panama and sought a U.S. commitment to immediately undertake a joint feasibility study. State's lead role concerning this U.S. treaty commitment evolved out of preliminary discussions with the Panamanians and Japanese in 1980. This role was confirmed in April 1981 when, at the request of the President's National Security Adviser Richard Allen, the State Department agreed to chair a senior interagency group tasked with formulating administration policy to implement the Panama Canal treaty. Defense and Commission officials informed us that they did not object to State taking control of the study preparations.

HOW STUDY SCOPE WAS DETERMINED

The U.S commitment to proceed, in coordination with Japan and Panama, with a new feasibility study of a sea-level canal in Panama emerged from President Reagan's meeting with Japanese Prime Minister Suzuki on May 8, 1981. A question has been raised concerning what this commitment encompassed. Documentation made available to us regarding this matter indicates that the President's commitment was for the United States to participate with Panama and Japan in a sea-level canal study. The administration had not adopted a position on the scope of the study at the time of the meeting between President Reagan and Prime Minister Suzuki. The previously mentioned interagency policy review group, led by the State Department, did not submit its recommendations on how to proceed with the study to the White House until September 1981.

During the year preceding the President's meeting with the Japanese Prime Minister, Panamanian and Japanese officials had expressed their interest in moving ahead with a canal study--one that would explore the feasibility of a sea-level canal in Panama and update a study (known as the Anderson Study) completed in 1970. The Anderson Study concluded that a sea-level canal was not economically justifiable.

President Carter had expressed his willingness to include Japan, a major user of the Panama Canal, in a new feasibility study of a sea-level canal by providing Japan with a copy of the Anderson Study in June 1980 and requesting their comments. Panama expressed continuing interest in pursuing a trilateral feasibility study. An interagency group was convened in July 1980 to formulate a coordinated U.S. position on how to proceed with a new study. In October 1980, the group identified specific areas of inquiry needed to complete a sea-level canal feasibility study and thus discharge the treaty commitment.

In March 1981, Panama formally suggested a broad feasibility study which would encompass economic, social, political, and environmental concerns of a sea-level canal and identify possible alternatives. In April 1981, just preceding the President's May 1981 meeting with the Japanese Prime Minister, the Japanese reaffirmed their strong interest in participating in a new canal feasibility study. During his meeting with President Reagan, Prime Minister Suzuki said that Japan was willing to share in financing the study.

State Department briefing papers for the May 1981 meeting indicate that State was not persuaded that a study limited to the sea-level canal issue would have merit. However, State felt that pursuing an immediate study had advantages because it would allow the United States to

--address most effectively the feasibility of a sea-level canal versus less costly options,

--manage the canal better by examining capital improvement needs before U.S. tenure ended, and

--enhance its bilateral relations with Japan and Panama.

During the spring and summer of 1981, State chaired the interagency review of U.S. policy toward Panama, which included consideration of how to implement the May 1981 decision to proceed with the sea-level canal feasibility study. The review group comprised representatives from the Departments of State, Defense, Treasury, Transportation, Commerce, the Panama Canal Commission and other agencies. In August 1981, State responded to the Panama Ambassador's earlier suggestion that a broad feasibility study be performed by informing him that the United States envisioned a study "...which would not only examine the feasibility of a sea-level canal, but which would also examine possible alternatives to a sea-level canal." State's response, which indicated that the United States was interested in a broader study than that contemplated by the 1977 treaty, was cleared by the National Security Council. State sent copies of the August 1981 response to the Panama Canal Commission and the Defense Department.

In September 1981, the interagency group reported its policy recommendations to the President's National Security Adviser. The recommendations were promptly approved by the White House, including that work begin on the development of study parameters. Specifically, the group recommended that

--the feasibility study should include a range of canal alternatives;

--Japan should be invited to participate in the study;

--a bilateral group established by the Panama Canal Treaty of 1977 (Panama Canal Consultative Committee) should develop recommendations on study parameters;

--a trilateral committee, including Japan, should convene to focus on study scope, timing, financing, and organizational procedure; and

--the Department of State should be designated as the U.S. lead agency.

The Panama Canal Consultative Committee, a high-level diplomatic body established by the treaty to recommend policies concerning Canal operations, began developing guidelines for the study in October 1981 and, in June 1982, recommended that Japan be invited as a full member of a trilateral Preparatory Committee, which was to develop terms of reference for the study. The Preparatory Committee was established by the United States and Panama in

September 1982 and joined by Japan in October 1982. The committee commenced work in December 1982 and was made up in part by U.S. delegates from State, the Office of Secretary of Defense, the Army Corps of Engineers, the Panama Canal Commission, the Smithsonian Tropical Research Institute, and the Agency for International Development. This committee's work culminated in the September 1985 agreement to perform the presently contemplated study.

Following this agreement, the Panama Canal Commission and the Department of Defense expressed reservations to State concerning its handling of the study preparations. They were concerned whether State (1) was adequately equipped to lead a study of such broad magnitude, (2) would designate appropriately qualified deputy commissioners to conduct the study, and (3) would give due attention to ongoing efforts to provide for future traffic demands. In March 1986, the Panama Canal Commission and the Departments of State and Defense reached agreement on a procedure which will require consensus by the three agencies, or eventual resolution of differences at the Secretary level, of matters pertaining to key personnel appointments and policy determinations for the study. The U.S. commissioner and his deputies have not yet been named.

HOW THE STUDY COST IS BEING FINANCED

The arrangement for funding the study is described in the final trilateral Preparatory Committee report, issued in June 1985. It reflects the principle of equal participation by the three member governments in cost-sharing and proportionate distribution of contract services. An estimated budget of \$20 million has been established for the work of the trilateral Study Commission. Each member government will contribute, in cash and/or in kind, one-third of the budget.

The issue of which federal agency would fund the U.S. portion of the study budget was resolved early in the planning process. The 1970 Anderson study was funded from the White House budget. According to State Department officials, they felt the new Alternatives Study should also be funded from the White House budget. Following State's consultations with representatives from the Treasury Department and the Office of Management and Budget (OMB), it was decided that the needed funds would be included in the State Department's budget request.

The State Department began estimating a budget for the U.S. share of the cost of the Panama Canal Alternatives Study in 1982. In September 1982, a State Department-commissioned consultant estimated the total study cost in 1983 dollars to be \$12 million. This \$12 million figure was viewed by the State Department as a preliminary figure and not a definitive estimate. The Department of Transportation, the Army Corps of Engineers, and the Japanese predicted higher study costs, ranging from \$13 to \$30 million.

Based on the above estimates, the State Department submitted a budget request of \$2 million for fiscal year 1984, with the understanding that two additional requests for \$2 million each would follow. The budget request was denied by OMB as premature since the Preparatory Committee had not yet issued its report.

The State Department resubmitted its initial budget request for \$2 million in fiscal year 1985. The request was included in the Department's salaries and expenses appropriation (Bureau of Inter-American Affairs) as "Other Program Increases." The justification stated

"a feasibility study of alternatives to the Panama Canal. The study will fulfill our obligation under the Panama Canal Treaty of 1977 to conduct a feasibility study of a sea-level canal in Panama."

Congress approved the request as submitted. The money earmarked for the study was not spent but carried over to fiscal year 1986. In fiscal year 1986, the State Department asked for and received an additional \$2 million for the study, bringing the total amount intended for the study to \$4 million.

The question has been raised as to why the U.S. share of the study cost should not be borne by the Panama Canal Commission from its toll revenues. According to the 1979 act (sec. 1602(b)), tolls are designed to cover canal operation and maintenance costs, including plant expansion and improvements. Although the proposed study will undoubtedly aid in planning future canal capital programs, it is now a tripartite effort which has a different focus and approach than would be the case if it were conducted solely by the Panama Canal Commission, the administrative agency. Furthermore, officials of the Departments of State and Defense and the Panama Canal Commission are of the view that using Commission funds might have a detrimental effect on how Panama and Japan would perceive U.S. participation since Commission toll revenues are derived from canal users, not from government receipts, which Panama and Japan will contribute.

CONCLUSIONS

The proposed study, which will examine transportation alternatives in addition to the feasibility of a sea-level canal in Panama, will discharge a 1977 U.S.-Panama treaty obligation to conduct a sea-level canal feasibility study. While the proposed study is of broader scope than that necessary to discharge the treaty obligation, it is in accord with administration policy established in 1981 on U.S.-Panama treaty implementation. The State Department, having customary responsibility for treaty implementation matters, was designated by the President's National Security Adviser to be the lead U.S. agency for carrying out the plans to comply with this treaty provision. The decision to

proceed at this time with a study that will examine alternatives in addition to a sea-level canal was arrived at by interagency group consensus and approved by the White House. State agreed to finance the U.S. portion of the study cost through its budget following consultations with Treasury and OMB. State requested initial funds for a feasibility study of a sea-level canal and alternatives to the Panama Canal, and the Congress approved its request in fiscal year 1985.

In March 1986, the Departments of State and Defense and the Panama Canal Commission agreed on a procedure which requires consensus among these agencies for making key personnel appointments and deciding policy issues for the study. This should facilitate getting the study under way and promote effective U.S. representation on the Study Commission.

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As requested, we did not obtain official agency comments on this report. We did, however, discuss its contents with State, Defense, and Panama Canal Commission officials, and their views were considered in preparing this final report. Unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date it is issued. At that time, we will send copies to the Chairmen, House Merchant Marine and Fisheries Committee, House Foreign Affairs Committee, Senate Armed Services and Foreign Relations Committees, House and Senate Committees on Appropriations, House Committee on Government Operations, Senate Committee on Governmental Affairs; and to the Director, Office of Management and Budget; Secretaries of State and Defense; the Chairman of the Board of Directors, Panama Canal Commission; and other interested parties.

Sincerely yours,



Frank C. Conahan
Director

CHRONOLOGY OF EVENTS

September 1977: The Panama Canal Treaty is signed by the governments of the United States and Panama. Under the treaty (article XII), they commit themselves to study--during the Treaty's duration (through December 31, 1999)--the feasibility of a sea-level canal in the Republic of Panama.

September 1979: The Panama Canal Act of 1979 is enacted. Section 1109(a) of the act implements article XII of the 1977 treaty by requiring that the President appoint the representatives of the United States to any joint committee or body with the Republic of Panama to study the possibility of a sea-level canal in the Republic of Panama.

March 1980: The Secretary of State told the Japanese Foreign Minister that the U.S. would be favorably disposed to join with Panama and Japan in a new study of the feasibility of sea-level canal in Panama.

May/June 1980: President Carter met with Japanese Prime Minister Ohira, again welcoming Japanese participation in the proposed study and gave Japan a copy of a comprehensive 1970 interoceanic canal study for its review and comment in planning the new study.

July 1980: The Panama Canal Consultative Committee, a U.S.-Panama diplomatic body established by the treaty, held its first meeting in Panama. Members of both governments indicated a continuing interest in pursuing a trilateral feasibility study for a new sea-level canal. Meeting discussions were limited to organizational and procedural matters.

A U.S. interagency group met to discuss the need for a U.S. coordinated position on how to proceed with a sea-level canal feasibility study in light of results already obtained through the 1970 interoceanic canal (Anderson) study.

October 1980: Preliminary U.S. review of 1970 Anderson Study is completed, identifying specific areas of inquiry needed to complete a sea-level canal feasibility study.

March 1981: Panama formally proposed that the United States join it and Japan in conducting a broad feasibility study of a sea-level canal, one which encompassed economic, political, social, and environmental effects and searched for better alternatives.

April 1981: The Department of State was tasked by the President's National Security Adviser to chair an interagency group effort to formulate administration policy for implementing the Panama Canal treaty. Japan informed the United States that it had completed its review of the 1970 study and had a "strong interest" in participating in the proposed feasibility study.

May 1981: In briefing papers for President Reagan's upcoming meeting with Japanese Prime Minister Suzuki, the State Department indicated it was not persuaded that a sea-level canal itself would be meritorious, but State saw several advantages in pursuing the study immediately. State felt an immediate study would allow the U.S. to

- address most effectively the feasibility of a sea-level canal versus less costly options,
- manage the canal better by addressing capital improvement issues before the U.S. tenure draws to an end, and
- enhance bilateral relations with Japan and Panama.

During their May 8 meeting, Prime Minister Suzuki expressed to President Reagan Japan's interest in participating in a feasibility study of a sea-level canal and contributing toward its cost. President Reagan responded by indicating that the United States would support proceeding with the study effort.

August 1981: By letter dated August 27, 1981, the Secretary of State informed the acting Panamanian Ambassador that the United States was "committed in principle" to participate with Panama and Japan in the proposed feasibility study, one "which would also examine possible alternatives to a sea-level canal." State coordinated the letter with the National Security Council and sent copies to the Defense Department and Panama Canal Commission.

September 1981: The State Department submits to National Security Adviser, and the White House approves, a senior interagency group policy paper which recommended that work begin on the development of study parameters. Participating in the group or approving the submission were representatives from State, Defense, the Panama Canal Commission, Treasury, Transportation, Commerce, and other agencies.

October 1981: The Panama Canal Consultative Committee formed a subcommittee charged with developing guidelines for a tripartite study arrangement.

February 1982: In its fiscal year 1981 report to the Congress on the 1977 Panama Canal treaty, State reported progress toward development of study parameters and that the United States had made it clear that it envisioned a study which would include a range of possible alternatives to a sea-level canal.

June 1982: The Panama Canal Consultative Committee recommended that Japan be invited as a full member in the formation of a trilateral Preparatory Committee to develop the terms of reference for the study. Specifically, the Committee recommended that the participating governments agree to study the feasibility of a sea-level canal through the Republic of Panama and other

alternatives to the Panama Canal. Representatives from State, Defense, and the Panama Canal Commission participated in this exercise.

The State Department, following a legal review and approval by the Under Secretary for Political Affairs to negotiate and conclude an agreement leading to the sea-level canal feasibility study, requested and received interagency personnel support to serve and provide guidance to U.S. representatives on the proposed Preparatory Committee.

In justifying moving ahead with a feasibility study at an early date which would look at alternatives to the existing canal, State used the rationale that such a study would

" ...facilitate the management of capital improvements to the existing canal; lessen the overall cost to the United States because of Japanese participation; make dispassionate consideration of alternatives easier since it is removed from the time when Panama will assume full control of the canal; strengthen our ties with Japan and Panama; and reaffirm our commitment to maintain a long-term cooperative relationship concerning the existing canal, the Treaty, and any future canal."

September/October 1982: Through an exchange of diplomatic notes in September 1982, the United States and Panama agreed to establish a Preparatory Committee and to invite Japan as a member. Japan accepted the invitation to participate in the study and the trilateral Preparatory Committee was formally established in October 1982.

A consultant, commissioned by the State Department, presented budget estimate for a feasibility study of alternatives to the Panama Canal. State used the estimate as a basis to submit the first of three planned requests of \$2 million each for the U.S. portion of the study cost.

October 1982: A conference on "Future Trans-Isthmian Transportation Alternatives" was held by The Futures Group (at a cost of approximately \$60,000), under contract to the Department of State, in Washington, D.C. The purpose of the conference was to assess the viability of the Panama Canal over the next 30 years and to provide U.S. government representatives with conclusions and recommendations about the appropriateness of other trans-Isthmian transportation options. The conference included representatives from various government agencies, shipping companies that use the Panama Canal, transportation engineers, international economists, and private sector and World Bank financial consultants. The conference concluded that the main issue was whether a larger canal or enlarged transit capacity was needed, not whether a sea-level canal was needed.

December 1982: Preparatory Committee met (for first of seven times) to draft terms of reference for the proposed study. The U.S. delegation to the Preparatory Committee comprised representatives from State, the Office of the Secretary of Defense, the Army Corps of Engineers, the Panama Canal Commission, the Smithsonian Tropical Research Institute, and the Agency for International Development.

Fiscal year 1985: The Department of State submitted, and the Congress approved, an appropriation request for \$2 million as the initial U.S. contribution to a feasibility study of alternatives to the Panama Canal. The request was included as "Other Program Increases" in the salaries and expenses of the Bureau of Inter-American Affairs. As part of the justification, State indicated that the study would (1) fulfill the U.S. obligation under the Panama Canal Treaty of 1977 to conduct a feasibility study of a sea-level canal in Panama and (2) look at various alternatives in addition to a sea-level canal, such as widening the present canal and the construction of a third lane of locks.

June 1985: Representatives of the three member governments initialed the Final Report to the Preparatory Committee, establishing the terms of reference for the Canal Alternatives Study and recommendations for organizational structure; they also initialed draft diplomatic notes creating a Commission for the Study of Alternatives to the Panama Canal.

July 1985: The Panama Canal Commission and the Department of State begin active discussions over the composition of U.S. membership on the Canal Alternatives Study team. The Panama Canal Commission advocates participation of the Defense Department and the Panama Canal Commission at the deputy commissioner level.

September 1985: The agreement to establish the Canal Alternatives Study Commission is signed by the Secretary of State and the Foreign Ministers of Panama and Japan.

September/October 1985: The Panama Canal Commission and the Defense Department express concern to the State Department regarding the stature of suggested appointees to the Study Commission, arguing that the qualifications of such appointees would elevate the study too high and create an unwieldy bureaucracy.

December 1985: Panama Canal Commission expresses concern that the State Department lacks knowledge and expertise to conduct the proposed study and requests Defense Department help in seeking balanced government and industry participation on the Study Commission in dictating the scope and conduct of the study.

January 1986: The first trilateral Study Commission meeting scheduled for January 19, 1986, is postponed until the United States names its members to the Commission.

March 1986: The Departments of State and Defense and the Panama Canal Commission reach agreement on procedure to appoint personnel to the U.S. study team and decide policy issues which may come before the Study Commission. At month-end, the U.S. members to the Study Commission had not been named.

OBJECTIVES, SCOPE, AND METHODOLOGY

At the request of Representative Webb Franklin, House Merchant Marine and Fisheries Committee, we are providing a chronological report on how the Department of State coordinated U.S. plans for a trilateral (U.S.-Panama-Japan) study of alternatives to the existing Panama Canal. Our review focused on the scope and financing of the study, which is designed to discharge a U.S.-Panama treaty obligation to conduct a sea-level canal feasibility study in Panama.

Our review, was performed during January and February 1986 in Washington, D.C., in accordance with generally accepted government audit standards.

We interviewed State and Defense Department, Panama Canal Commission, and Army Corps of Engineers officials. We reviewed briefing papers, memorandums, cables, studies, and reports to observe the timing of events and to identify interagency and congressional coordination. We compared the public statements of State Department officials with supporting documentation and assessed the reasonableness of State's planning actions in light of the U.S. treaty obligation and the Department's assigned role and responsibilities.

We did not obtain official agency comments on information contained in this report. However, we discussed our observations with State and Defense Department and Panama Canal Commission officials, and their responses were considered in preparing this report.

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