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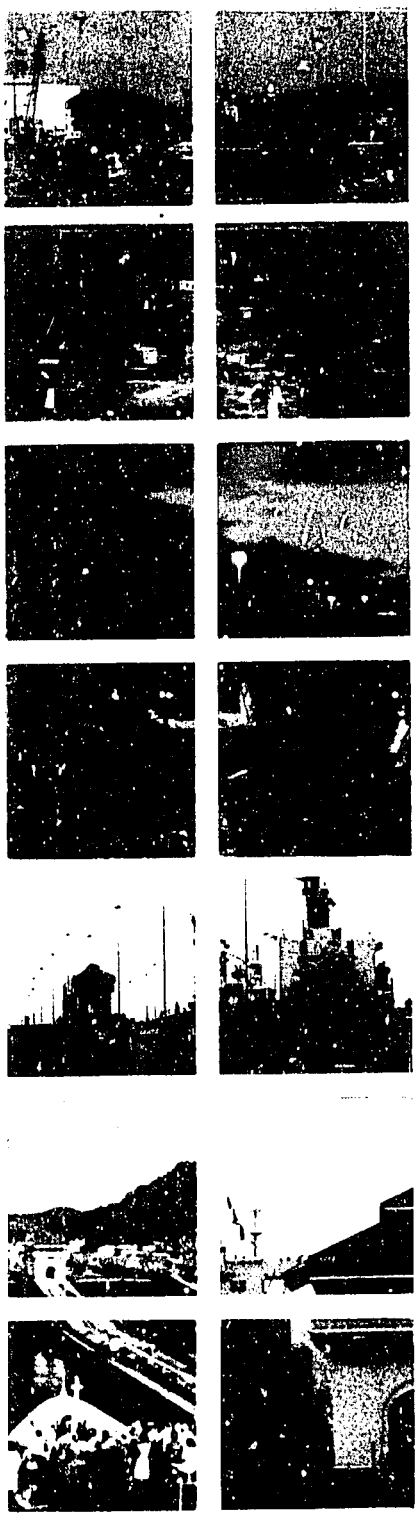

Transition Plan for the Transfer of the Panama Canal

The Presidential Commission for Panama Canal Affairs

April 1994

PN-ACT-919

REMITTANCE LETTER

The Honorable
Guillermo Endara Galimany
President of the Republic of Panama
E. S. M.

Panama, April 14, 1994

Dear Mr. President:

With this letter, I am happy to present the document prepared by the "Presidential Commission for Canal Affairs" that you created through Decree N° 32 of April 5, 1993[1] to make recommendations on a plan for the transfer of the Panama Canal.

After 137 studies, investigations, and consultations in search of a national consensus, the Presidential Commission is respectfully recommending that a full time transition team be created so that when December 31, 1999 arrives, we are perfectly prepared to fully assume the management of our Canal.

It has been a happy coincidence for our country that, while Panama was studying, consulting, discussing, and planning everything related to the functioning of this marvelous work of engineering on an internal level, the Congress of the United States of America ordered its President, Mr. George Bush, and through him, the Board of Directors of the current Canal Commission, to carry out a study of the Canal management[2]. The specific objective of this study was to examine possibilities of modifying the current management, to the maximum extent possible, to the model that Panama will require so that the transition of the Canal to our hands on December 31,1999 will be as smooth and seamless as possible, excepting outstanding mishaps or unforeseen problems. The Panamanian members who represent our government on the Board of Directors of the Panama Canal Commission have participated extensively in the preparation of that document, which was presented to the Office of Management and Budget (OMB) on September 20, 1993 and with whose recommendations we find ourselves fully supporting[3].

The two reports have been mutually beneficial, and as if this coincidence was not enough, in the middle of 1993, President Bill Clinton ordered an ambitious project to restructure his government with the goal of creating an administration that "works better and costs less", that is, a more efficient government that approaches the modern practices of the most successful private firms, offering better service to its constituents and motivating the public servant to

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1 "Which subrogated decree N° 180 of 1991 and created the Presidential Commission for Panama Canal Affairs".

2 Arthur Andersen Report "Panama Canal Commission: Assessment of Governance and Financial Management Structure" September 1993.

3 ibid

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excel in the service rendered, starting with the distinctive systems of evaluation and stimulus adopted from the new "Total Quality" concept.

The dissemination of the "Clinton-Gore" project to "reinvent" public management in all strata of the United States Government will assist in the speeding approval of the recommendations made by the current Board of Directors of the Canal to the US Congress, since, in essence, the philosophy is the same. In turn, the approval of these recommendations by the Congress will prepare the path so that the proposals of our Presidential Commission which are to be carried out during the period of transition, will be better comprehended and accepted by everyone in maritime commerce who has benefitted from the Canal and who have expressed certain doubts respecting the ability of this small republic to replace the United States of America in the historic role of keeping the Canal operating efficiently "for the benefit of the world", but now with greater emphasis on the priority objective of the rightful benefit to all Panamanians, in practice the other side of the same coin.

Mr. President, what the Panamanian people feel and want is unequivocal evidence that management of the Canal will be kept out of ups and downs of political groups and the instability that politics always brings. It is clearly the great desire of our citizens that the authority which will manage the Canal be given the maximum administrative and financial independence which we have noted in this concept of total quality should be our permanent goal so as to manage the Canal with as much competence and efficiency as could the most developed countries in the world.

To this end, it is an indispensable prerequisite that this responsibility be given to the most capable and best prepared Panamanians and that they be guaranteed the stability, responsibility, and authority that this great company needs in order to be turned over to us. The document that we are presenting is faithful to this national demand and to that spirit of compromise and complement.

For all the members of the Commission, I offer you our sincerest thanks for the historic responsibility you have given us to serve our country. We have completed our mission to the best of our abilities; we hope that we served well.

From the Chairman with total consideration and appreciation,

J.J. Vallarino Jr.
Chairman

ACKNOWLEDGEMENTS

The Presidential Commission and its Sub-Committees appreciate the collaboration received from the professionals, unions, institutes, and organizations which provided documents, information, and memoranda of research work done. Equally, the communication media is appreciated for the television and radio interviews, and for the publications which have been done to date provide the widest possible dissemination about the Canal issues for the benefit of all Panamanians.

Asociación de Comerciantes de Bienes y Raíces (ACOBIR)
Asociación de Empleados del Canal (ASODEC)
Asociación Nacional para la Conservación de la Naturaleza (ANCON)
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Universidad Tecnológica de Panamá
Radio Mía (Programa Matutino "Leroy Kitson Hubbard Joseph")
KW Continente (Programa Matutino "La Palabra")
Radio Libre (Programa Matutino "Diálogo entre dos generaciones")
CMQ (Programa Matutino "Parámetro Informativo")
La Exitosa
RPC Radio
Telemetro Canal 13 (Noticiero Matutino)
RPC Canal 4 (Noticiero Matutino)

c

APPRECIATION (cont.)

TVN (Programa Diálogo)
Televisora Educativa Canal 11
La Prensa
El Panamá América
La Estrella de Panamá
Revista Vistazo
Partido Arnulfista
Partido Demócrata Cristiano
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TRANSITION PLAN FOR THE TRANSFER OF THE PANAMA CANAL

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Presidential Declaration of Principles
Presidential Decree 32, April 5, 1993

TRANSITION PLAN FOR THE PANAMA CANAL TRANSFER

EXECUTIVE SUMMARY

The Panama Canal will be transferred from the United States to Panama at noon on December 31, 1999. A strategy and a plan for the transition is therefore needed to assure that a **gradual** transition will take place, that the transfer will not affect the Canal's operations or its customers, and that, once transferred, the adaptation and integration of the new administration will be rapid.

Both governments have begun to consider some of the transition details involved in the transfer of the Canal. The Panamanian government established a Presidential Commission on Canal Affairs to identify options for the Panamanian organization that will run the Canal and to develop an overall plan for the transition. Concurrently, the Panama Canal Commission conducted and recently completed a Congressionally (US) mandated study that has looked at the governance structure of the PCC and has recommended appropriate changes intended to make the transition easier. As the transfer date approaches, both the Panamanian and US governments will have to agree on certain details of the transfer that are not spelled out in the Treaties but which are essential for the future effectiveness of the new organization.

This document identifies some of these issues and recommends a framework for the new Panamanian organization that will operate the Canal (The Panama Canal Authority - PCA) based on a Constitutional revision that was presented to President Endara at the end of June 1993 and approved by the National Assembly in December 1993. The Plan includes and represents an effort to better define:

1. The mission and role of the Transition Commission,
2. Future policies that Panama may adopt in managing the Canal,
3. Actions and steps which must be taken by both governments to implement the new policies, and
4. The structure of the new Canal entity, the PCA.

The purpose of this document is to present a proposal for the transition process and a transition plan that will assure a smooth and seamless transfer. The key principles that are presented in this document for transition planning and the Transition Plan should be reviewed, refined and endorsed by both governments. The adopted plan should then form the basis for a joint Panama/US transition effort using the instrumentalities and agencies that are mentioned herein and others which the two governments may designate.

The basic underlying strategy for the transition is to **minimize changes on the transfer date.** This means that certain actions need to be taken to achieve **gradual** change during the transition period 1994-1999. Based on this strategy, the Plan analyzes options for a decision-making framework and prioritizes the issues and steps that are required during the transition period.

Transition Phases

Required changes associated with the transfer of the Canal can be grouped into the following four phases:

I. Legal and Planning Phase
II. Policy and Strategy Phase
III. Organizational Phase, and
IV. Administrative Phase

Some issues that do not require a decision until the final phase, however, must still be considered early in accordance with an overall schedule of critical events. Therefore, the four phases need to be carried out concurrently to allow for orderly consideration of options and timely decision-making.

First Phase: This phase began with the establishment of the Presidential Commission for Canal Matters, established by President Endara to define the new organization to manage the Canal. All the legal changes required to create an organization with the necessary authority and the desired autonomy and independence will be defined as well as the relationship of the Canal organization to the President of the Republic. This phase requires the approval of the President as well as the National Assembly.

Second Phase: This phase commences with this document, which proposes the establishment of a **Transition Commission** responsible for managing, on behalf of the Government of Panama, all matters relating to the transition, such as the analysis of options and definition of transition policies. At the same time this Commission will continue the efforts of obtaining the necessary legal changes. The Transition Commission will exist only until the permanent organization, the **Panama Canal Authority (PCA),** is established which will then assume total responsibility for executing the transition plan. In order to maintain the momentum which has been developed to date, each phase should be implemented efficiently and without delay.

Third Phase: This phase will begin when the PCA is created and its Board of Directors installed. During this phase, the new Board will select the Administrator, and through him/her, direct the transition activities, strategic direction, and policies of the new organization.

Fourth Phase: During this phase, required adjustments in the administrative systems of the Canal will be finalized. These should be implemented by the Canal's management team under the oversight of top management consistent with the mission and objectives defined by the Board of Directors.

It is anticipated that some changes in the organizational and administrative systems can be implemented on, or after the transfer date. However, the planning and training of personnel utilizing these systems should be done prior to the transfer date. Additionally, although the planning for some of these changes should precede the naming of the new Board of Directors

of the PCA (for example, the preparation of an employee retention plan), it is preferable that critical decisions regarding some of these issues be held until the new Board and leadership are designated. When legal requirements and operational needs permit, decisions regarding changes in administrative systems and/or the organization that will occur during the transition period, (including hiring and promotions of high level personnel, major investment decisions, and other key decisions with post-transfer implications), these decisions should be coordinated between the Panamanian transition team and the PCC.

Table I summarizes the four transition phases, the areas to be addressed and the decision-making responsibility for each phase. Table I also indicates the date when each phase must be initiated and the latest date by which each phase should be completed to assure a seamless transfer for the Canal's users, and a Panamanian organization that is fully ready to assume operational control of the Canal on December 31, 1999. One can imagine that we are in a relay race, where each phase represents a runner that will pass the responsibility for the next phase to the next runner of his team in a fluid and efficient way.

TABLE 1

TRANSITION PHASES				
Phase	Principal Objectives and Considerations	Responsibility	Start Date	End Date
I	Legal & Planning	President/ Natl Assembly/ Pres. Commission	1993	September 1994
II	Policy & Strategy	Transition Commission	1994	End of 1996
III	Organizational	PCA Board of Directors	1996	End of 1998
IV	Administrative	PCA/PCC	1996	Mid 1999

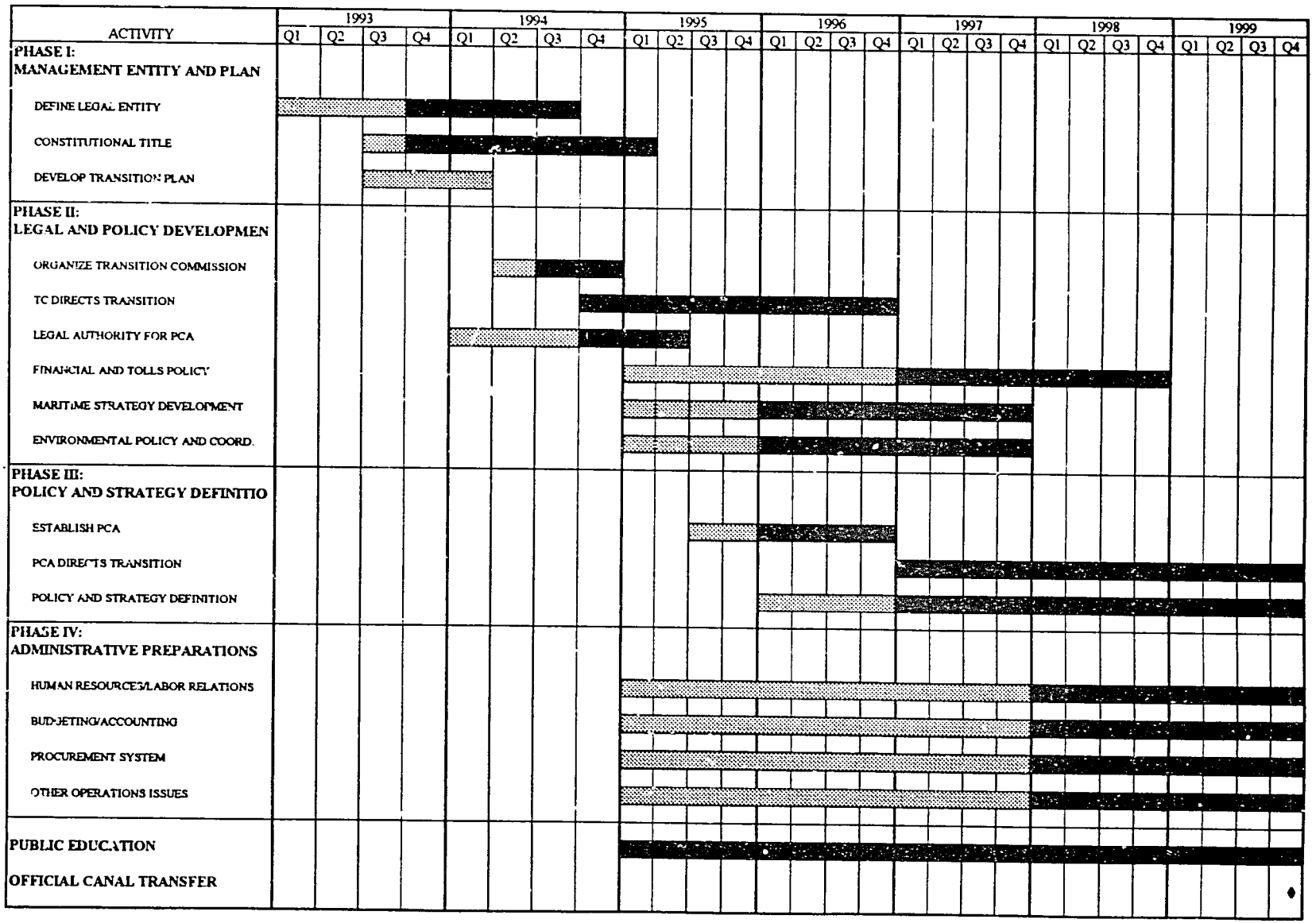
Figure 1 presents graphically the schedule of the four transition phases to and through the transfer date. The first objective, as illustrated in the figure, will be to define the legal changes required by September 1994, although certain changes may still require legislative approval after that date. Similarly, the next objective will be to define the government's strategy and policy with respect to the new Canal entity by the end of 1996. During the period 1996-1999, the new PCA and its leadership will coordinate the implementation of the plans prepared by the Transition Commission with the objective of defining or implementing the required organizational and administrative changes, where possible, prior to the date of transfer. Such implementation will be carried out in a coordinated fashion by the two countries using their respective agencies, the PCA and PCC.

TRANSITION PLAN FOR THE TRANSFER OF THE PANAMA CANAL

PRESIDENTIAL COMMISSION FOR CANAL AFFAIRS

FIGURE 1

SCHEDULE OF THE TRANSITION PLAN PHASES



10-Jun-94

PLANNING AND STUDIES

IMPLEMENTATION OF ACTIVITY

MILESTONE

IV

DECISION-MAKING AND COORDINATION DURING THE TRANSITION

In order to implement a process that culminates in a seamless transfer for the users of the Canal on December 31, 1999, the challenge to the governments of Panama and the US will be to design a **management and decision-making structure that will have the authority, and that will be responsible and held accountable for achieving a smooth transfer.**

Certain actions need to be taken during the transition period to accomplish a **gradual** change. Both governments want to achieve as much **policy continuity** as possible on the date of transfer. Therefore, it appears that the best approach is a joint Panama/US transition process, with clearly defined mechanisms for timely decision-making by the appropriate organization(s) and/or government(s).

COORDINATION FOR THE TRANSITION

Transition Commission and the Panama Canal Authority

Based on the above premises and conclusions, the Presidential Commission, composed of distinguished Panamanians, knowledgable in the subject, recommends that the President of the Republic create a Transition Commission. Primary considerations should be the qualities and professional experience necessary of its members, clearly assigning its responsibilities, and to providing it the authority required to carry out the transition work with political neutrality to serve the nation's best interests. This Commission will coordinate the process with the PCC and will work directly with the Administrator to harmonize its actions, seeking the maximum benefit for all groups that have an interest in the efficient operation of the Canal, particularly the Republic of Panama. To this end, we recommend the following:

1. As soon as possible, through Presidential Decree, establish a Transition Commission consisting of 3 to 5 members with sufficient authority to permit them to make decisions on behalf of the Government of Panama, to report directly to the President of Panama, and to assume full responsibility for administering Panama's transition process.

2. As soon as possible, and no later than 1996, that the necessary effort be made to complete the legal steps required to establish the Board of Directors of the PCA. When the Board of the PCA is installed, it will have to ratify the actions already taken by the Transition Commission. The Transition Commission will continue to function, in a technical support role, as long as the PCA Board considers it necessary.

3. That, as the transfer approaches, the PCA supervise all planning for the transition and develop necessary mechanisms to coordinate those decisions that have post-transfer implications with the PCC. The PCA may obtain the help of independent consultants when special experience or independent opinions are required.

Notes:

In order to achieve coordination and continuity, it is advisable that the Transition Commission include representatives selected from the current PCC Board of Directors, the existing Presidential Commission, the Directors of ARI, and/or the Consultative Committee. Likewise, it would be advisable that the PCA Board include members of the Transition Commission.

The Transition Commission will need a permanent administrative body, composed of at least four professionals dedicated to implementing the transition plan. The group should be headed by a Planning Director with extensive experience in strategic planning and administration. Also, it should include three experts: one in Financial Administration, one in Human Resources management, and one in economic Development and Marketing.

Panama Canal Commission

1. It is recognized that the Panama Canal Commission (PCC) carries out its transition operations in accordance with recommendations of the US Congress and through its own initiatives, and that the PCC is collaborating and coordinating with the government of the Republic of Panama through the Presidential Commission in a positive and increasing manner. It is, therefore, logical to assume that the Administration of the PCC, through appropriate means, will continue its efforts in this direction.

2. The PCC will continue working on the many tasks that are needed to comply with USG transition obligations as it has since the signing of the Treaties. Examples of special significance are the increase in the percentage of Panamanians in the work force, the training of the Panamanian component, and the dissolution of all USG obligations.

3. Although the PCC will retain the responsibility and authority in decision-making related to Canal operations until the transfer takes place, the PCC should participate in the planning and decision-making of actions that will affect activities after the transfer. This coordination should increase over time.

Possible Joint-Action Areas

(For the consideration of both governments)

The Transition Commission will submit to the President of the Republic and through him to the Legislature trimester reports on transition progress, including actions, changes, and/or organizational matters necessary to assure a gradual and seamless transition.

These reports will highlight actions required by the Government of Panama through the Transition Commission and other State agencies. A copy of these reports should be provided to the PCC, through the President of the Board of the PCA, with the objective of resolving the majority of issues at the Administrator level of the PCC and the PCA.

Issues which, according to the Treaties and associated agreements must be handled through diplomatic channels, will be placed in the hands of the President of Panama.

Cost of the Transition

It is our opinion that the "transition" is a bi-national obligation established under the Treaties. Actions required to accomplish the transition should be considered as a cost of operation of the Panama Canal.

LEGAL AND PLANNING PHASE

The highest short-term priorities in this phase are the approval of the Constitutional Title establishing the new entity to manage the Canal, the approval of the transition plan and the establishment of legal authority for the new organization. It is important that this legal authority be in force in a timely manner. This will enable the goal of establishing the PCA Board of Directors by 1997 to be met, so as to assure a smooth and seamless transfer on December 31, 1999. This schedule will allow actions to be taken on critical transition aspects, such as:

1. Approval of a Plan of Succession or the extension of key management, including the selection of the top management team (Chief Executive Officer, Chief Financial Officer, and Chief Administrative Officer) well before the transfer date.

2. Approval of negotiated labor agreements that will go into effect after the transfer date in order to assure harmonious labor relations after the transfer.

3. Evaluation of personnel retirement plans and approval of an Employee Retention Plan to assure that required qualified personnel are available after the transfer.

4. Approval of procurements with long execution lead times (which could be effective long after their approval and beyond the transfer date).

5. Approval of the FY2000 budget and preliminary budgets for FY2001 and 2002 (the budget preparation cycle of the PCC begins nearly three years before the effective date).

STRATEGIC AND POLICY PHASE

There are strategic management areas that may require modification and that need special attention in order to faithfully comply with the spirit of the Treaties and to satisfy the central objectives of the two nations. These are: (1) financial management, (2) economic development, and (3) environmental management. The financial management issues are particularly critical.

Financial Management Structure

- We recommend that the current financial and operating structure be maintained.

- A long-term (5 years) Financial Plan should be prepared beginning in early 1997, as a basis for determining the long-term capital requirements of the PCA in the early years after the transfer (years 2000, 2001, 2002).

- This previous step will establish if the PCA will have liquid assets that can be used for working capital for the operation of the Canal as of January 1, 2000. It has been suggested that the Canal should possess a reserve of sixty days to cover operating costs and unforeseen contingencies as of the transfer date. The Transition Commission or the new PCA should decide which combination of working capital and risk management they prefer, based on the results of a study that has been recommended to be jointly carried out with the PCC in 1996-1997.

Note: In the opinion of the PCC Finance Office, this reserve is not necessary but, due to the importance of this question, it should be carefully analyzed.

- It is appropriate to maintain the present full cost recovery policy and toll rate structure during the early years of the Canal's operation by the Panama Canal Authority until:

  1) Panama has considered its economic development objectives associated with the Canal;
  2) Toll policy studies can provide adequate direction to the PCA; and
  3) The necessary experience is gained in using the criteria to interpret the best interests of the country and the users.

Role of the Canal in National Economic Development Strategy

- The transfer of the Canal represents a unique opportunity for the Canal to potentially become a key element of Panama's economic development strategy. Panama must promote and attract new businesses to replace employment that will be lost as a result of the closure of US military installations. While the Canal cannot itself directly produce more jobs than it currently generates, jointly with the ARI we can promote private sector activities which replace the lost employment.

- A key transition issue concerns the role the Canal should play in the emerging national maritime strategy. Planning for such a broad development strategy goes well beyond the immediate issues associated with the transfer of control of the Canal, except that it impacts other Canal transfer issues, such as the financial and tolls policies, Canal marketing strategy, etc. As a first step, the government of Panama should adopt an approach for developing and implementing a maritime strategy, outside of the immediate need to consider Canal transfer issues. The leadership for the development of this concept can be located within the Ministry (MIPPE) responsible for overall economic development strategy. The Transition Commission and eventually the PCA should participate and assist in this process once the government initiates the process.

- A system should be established to regularly distribute information on the maritime sector in Panama to interested sectors, including the Canal. This is difficult now because each sector operates independently of the others in separate government ministries. Ship Registry, for example, is under the Ministry of Treasury and Finance, while ports (APN) are included in the Ministry of Commerce and Industry. The Ministries of Foreign Affairs as well as Government and Justice are also involved with the Maritime sector. With the transfer of the Canal, it is necessary to rethink this whole issue given its significant importance to the Republic.

Environmental Policy

- The Government of Panama is currently considering environmental decrees to safeguard the Canal and its area of operations. It is of great importance that this major national effort continue to be coordinated and monitored and that the process already initiated be continued. Initially, the PCA should base its environmental regulations on the existing laws, regulations and operating practices of the PCC, including those relating to transport of dangerous cargo.

- A clear institutional context in Panamanian law and a National Environmental Policy will be required to support the coordination among the groups already organized and to take advantage of the efforts currently underway.

- It is important that the GOP continue the initiatives begun by ARI, INRENARE, the Ministry of Planning, IRHE, IDAAN, IPAT, and by the Ministry of Agricultural Development to define an institutional context and develop the policies necessary for watershed protection, conservation, and management. Additionally, criteria and norms need to be established for environmental evaluation and measures adopted regarding proposals for the use/development of natural resources. The Transition Commission and PCA should participate in this process to help maintain the momentum achieved by all the non-governmental organizations that are currently involved in preservation of the watershed.

ORGANIZATIONAL PHASE

Beginning in early 1996, the Transition Commission and PCC should undertake an **organizational review study** which would not only analyze the functions that would no longer be necessary, due to the elimination of US government requirements, but also determine how the organization must change to adjust to changes in the function or other Government of Panama requirements. The identification of key employees that will be eligible to retire prior to the transfer date will also influence organizational decisions. An **Employee Retention Plan** will be prepared as well to address incentives for retention of employees with essential skills who are eligible for retirement. These results, the Organizational Review and the Employee Retention Plan studies, will be integrated into the organizational structure that will take over the Canal operation on the transfer date.

ADMINISTRATIVE PHASE

The key areas of the administrative and support systems that may require adjustment and that need to be considered during the transition phase are Personnel and Labor Relations. Other changes will also be necessary relative to Budgeting, Accounting, and Procurement. Management Information Systems should also be given special attention and a determination made whether any changes are necessary.

Human Resources and Labor Relations

- The PCA should adopt the existing PCC personnel system, implementing an impartial appellate process for labor disputes, adopting the system of merit, and eliminating requirements that relate specifically to USG law that are not appropriate under the Constitutional Amendment or the organic law for the Canal.

- The Transition Commission should determine if additional training beyond the present extensive program will be required in the management and technical areas

associated with the Transition Plan, and the changes required to the organization related to the transfer (employee appellate process, management of the labor relations program, arbitrator training, etc.)

- The PCA organization must institute its own Labor Relations program to assure harmonious labor-management relations in compliance with the Constitutional Amendment and organic law, maintaining the current norms at all times.

- The PCA, jointly with the PCC, should develop a plan to establish how and when to negotiate new labor contracts.

BUDGET AND ACCOUNTING

- We recommend keeping the existing budget and accounting systems as they can be easily adopted to the requirements of Panama.

- The PCA should maintain the fiscal year presently in use by the PCC, thereby separating it from that which applies to the rest of the GOP. A continuation of the October 1-September 30 fiscal year is preferred. If adopted, the first operating budget for the PCA would be a bi-national budget prepared starting January 1998. The first three months of the budget would be administered by the PCC and the last nine by the PCA. There will be one continuous budget as a result. The budget for FY2001 will be approved by the Board of Directors of the PCA in 1999 and should,therefore, be developed jointly by the PCC and PCA.

- Panama and the United States must agree early in the transition process reference the exact disposition of all assets and liabilities on the date of transfer. The Canal Treaty is vague on this issue and does not provide detailed guidance on specific situations. Assets of the PCC that should be included in the negotiations are the funds accrued for future use, reserves for capital improvements, and reserves for marine accidents and casualty losses.

- In order to further the transition process, the PCA and PCC should agree that the PCC contract external auditors. The US Government Accounting Office (GAO) can begin to initiate a transition process by contracting out for the annual audit with an independent auditing firm, rather than doing the audits in-house. The firm selected should be required to conduct the audit using, not only personnel from the U.S., but colleagues from their local branch offices in Panama. The report from the PCC Board to the US Congress, prepared by Arthur Andersen, contained a similar recommendation.

- Rather than eliminating the Office of the Inspector General after the transfer, the office should simply be converted into an internal audit office, basically fulfilling

the same responsibilities that they presently have, but with their foundation in the laws of Panama, rather than those of the US.

This area should be the subject of careful study with the advice of the PCC.

Operations and Maintenance

- One of the most critical operational issues for the transition is to develop a system that is based primarily on the existing Federal Code of Regulations of the US. adapted to fit the Panamanian legal context. Most of the procurement system should remain as it exists in the PCC. This will require a study and a detailed adoption process.

- It is possible that the said study will indicate that the new procurement system should have greater flexibility, permitting the users within operations to develop closer, more cooperative relationships with critical suppliers. The procurement organization should assume a more aggressive role in marketing itself and seeking out potential suppliers, particularly for highly specialized equipment. All requirements for national preferences in procurement should be eliminated. Many aspects of the current PCC regulations will be irrelevant and can be eliminated.

- During the transition, relations with suppliers should be maintained to assure that critical goods and services continue to be supplied beyond the transfer.

- The other systems and practices that cover operations, maintenance, and improvements of the infrastructure of the Canal require little change on transfer. For the most part, the systems function well, serving the day-to-day operational needs of the Canal. It is recommended that the PCA adopt most of the systems and operational practices as they now exist, with only those minor changes required to be consistent with Panamanian law. However, some of the studies recommended on operational issues could result in requiring actions during the transition process. In particular, it is anticipated that a legal basis for navigation within Canal waters will need to be developed for application on December 31, 1999, or sooner if possible.

PUBLIC EDUCATION AND INFORMATION PROGRAM

- To complement and support the overall strategy of the transition, a **Communications Program** is proposed to inform and answer questions from the various groups involved in or affected by decisions during the transfer process. The Panamanian Transition Commission should include a staff member with responsibility for this program.

- In order to attain these objectives, a more detailed **Public Information Plan** should be prepared and updated periodically, to highlight critical steps in the process and to coordinate the communications effort with the PCC.

- The Transition Commission should maintain a close relationship with the PCC Public Affairs Office. The public information process will be coordinated with that office, particularly with regard to releases and publications aimed at Canal employees, the US media, and the international maritime community.

This recommendation is consistent with the plans and initiatives of the PCC.

IMPLEMENTATION RESPONSIBILITIES, SCHEDULE AND BUDGET

- Successful Implementation of this transition plan for the transfer of the Panama Canal will require accomplishing the steps and meeting the calendar milestones shown on the proposed Schedule for the Transition.

- It is estimated that the Transition Commission and its support staff will require an annual budget estimated at $1.6 million for transition management personnel. In addition, a number of studies and personnel, administrative, legal, coordination, and organizational actions are necessary, which will require additional outside resources and/or PCC assignment of personnel and resources. All of these costs must be budgeted for and funded. Preliminary estimates for the study efforts anticipated at this time total approximately $4.4 million over the six year transition period. The smooth transfer of the Canal on December 31, 1999 cannot be assured without adequate funding for the transition planning work.

- Although Panama and the United States of America are mutually responsible for the direction and coordination of the transition process, this draft plan, prepared by the Panamanian Presidential Commission, will be submitted formally to the President of the Republic of Panama.

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I. INTRODUCTION

1.1 THE PANAMA CANAL TRANSITION

According to the 1977 Panama Canal Treaties and their associated accords, control of the management, operation, and maintenance of the Panama Canal will be transferred from the US government to that of Panama at noon on December 31, 1999. The governments of both countries are committed to assuring a gradual and smooth transition and transfer process.

The Panama Canal Commission (PCC), the agency of the United States government that operates the Canal, will cease to exist at the time of transfer. The body of laws under which it operates will no longer apply as they relate to the Canal's operation. The Panama Canal Commission Board, which guides the operation of the Canal under US law, will also cease to exist. All of the Canal employees at the time of the transfer will no longer be employees of the PCC. The Canal will begin to operate under the laws, regulations and systems of the new Panamanian organization that are being prepared beforehand and will become effective on that date.

There are two Treaties related to the Panama Canal as well as other laws that establish the legal framework for the Canal's transfer. By the terms of the Panama Canal Treaty of 1977, the Canal will be transferred to Panamanian control in operating condition, free of liens and debts, except as the two parties may otherwise agree. All rights, title and interest of the United States of America in the Canal will be transferred to the Republic of Panama.

At that time, the Republic of Panama, under certain terms of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal (relating to the neutrality, equality and efficiency of its operation), will assume total responsibility for the management, operation and maintenance of the Canal. This will conclude a transition process that began on October 1, 1979.

At noon on December 31, 1999, several ships will likely be in mid-transit between Miraflores and Gatun locks. The vessel owners, the steamship lines and the international trade community that rely on the Canal for the shipment of its products must be completely assured that their vessels will continue to transit without any noticeable difference as a result of the transfer. The PCC employees must be advised well in advance of the transfer date what their employment terms and conditions will be under the new organization, and the Panama Canal Authority (PCA), will want to know as early as possible which employees it can and cannot count on to continue to work.

1.2 THE NEED FOR A TRANSITION PLAN

Fourteen of the twenty years available to plan and execute the transition have already passed. During this period, many changes have occurred. The old Canal Zone Government and Panama Canal Company have been replaced by the present US organization for Canal operations, the PCC. In accordance with the Treaties, the PCC implemented an employment and training program to increase the participation of Panamanians in the operation of the Canal. Today nearly 90% of the Canal employees are Panamanian. Since 1990, the PCC has been run by a Panamanian Administrator.

The transfer of the Canal from one nation to another, concurrent with the dissolution of an organization with over 7000 permanent employees, and the creation of a new organization, which will probably want to employ the majority of these, is a complex and difficult process. Further, the two nations have not always shared the same views. As a result, not all the steps anticipated by the Treaties to facilitate the transition have been carried out in the spirit of achieving the overall objective of a gradual and smooth transition. Much still remains to be accomplished.

Given the above, President Endara identified the need to articulate a transition strategy and plan that can assure the international maritime community and the Canal workforce that a gradual transition will take place and that the Canal's transfer will not affect the efficiency of the Canal's operations. Panama and the United States have already begun to consider some of the transition details involved in the transfer of the operational control of the canal. The PCC has recently completed a Congressionally mandated study that analyzed the governance structure of the PCC and recommended changes intended to facilitate the transition. Concurrently, the Panamanian government established a Presidential Commission on Canal Affairs to define the Panamanian organization that will run the Canal and to recommend an overall plan for the transition[1].

As the transfer date approaches, both governments, Panamanian and the United States, will have to agree on certain terms of the transfer that are not explicitly addressed in the Treaties and the details of the transition process need to be defined in greater detail to assure a smooth transfer on December 31, 1999. For example, agreement should be reached on a process for timely development of the budgets for the years 2000, 2001, and 2002, personnel policies should be adopted reflecting the shift from the US system to a Panamanian one, and changes on the date of transfer should be minimized. The transition process will clearly require decisions by the two governments, as well as by the entities responsible for the Canal operation, both prior to and after the transfer date.

In its proposed Constitutional Amendment, presented to President Endara at the end of June, 1993, the Presidential Commission on Canal Affairs recommended basic guidelines for the new

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[1]. Understandably, there is a strong coincidence in the recommendations of the two efforts.

Panamanian Canal organization. This document, in accordance with the Constitutional process, defines the following:

1. The mission and role of the new entity,

2. Future policies that Panama may adopt in managing the Canal, and

3. Actions and steps to be taken to implement them.

After the transfer, the Canal, which played an important role in the strategic defense and development of the United States for 80 years, can begin to play an equally important role in the future economic development of the Republic of Panama. Panama is preparing to assume this responsibility and seize the opportunities that it presents.

The Presidential Commission has chosen a strategic planning approach to the preparation of a transition plan for the transfer. Such a plan, or navigation chart for the transition, identifies issues critical for the success of the transition; analyzes options to resolve them; sets milestones; identifies organizational and budgetary impacts; and assigns implementation responsibility. At the same time, it is understood that this is not, nor can it be, the last word on the exact manner of executing the steps, since they will need to reflect the policies and/or decisions of both governments, the PCC, the PCA, and many other public and private organizations in both countries that should be consulted during the remaining period.

1.3 OBJECTIVES OF THE TRANSITION PLAN

The key principles for transition planning and for the transition plan that are presented in this document will have to define the basis for a joint Panama/US transition effort.

The basic underlying strategy for the transition is **to make any changes required as soon as possible** in the process, eliminating or minimizing as much as possible changes on the date of transfer. That means that certain actions need to be taken to achieve **gradual** change during the transition period leading up to the transfer date. This plan analyzes options for a decision-making framework and, based on this, prioritizes the issues and steps that are required during the transition period.

The specific objectives of this plan are:

1. to define an overall strategy for the transition;

2. to develop a program to communicate that strategy to key decision makers in the two governments (including the Panamanian National Assembly and the Executive, the US Congress, the US Embassy in Panama, the PCC Board of Directors, the Consultative Committee, and other bi-national organizations), the maritime industry, the Canal employees, and the Panamanian general public;

3. to define the decision-making process during the transition period;

4. to further define the new organizational entity that will assume the operation of the Canal and its mission; and

5. to present the action plan required to implement the transition strategy and other alternatives that can be adopted in response to changing conditions or unforeseen contingencies.

Defining a transition process and plan, as well as a communications program, is intended to set in motion a commitment by all interested parties to take the actions necessary for an orderly and timely transfer of the Canal, and thereby address the following uncertainties and concerns of the various groups having a direct interest in the transition:

- Uncertainties among employees about the labor system under which they will work.

- Uncertainties among Canal customers regarding the price, efficiency and reliability of using the Canal.

- Uncertainties among foreign governments and fleet owners regarding the need to promote the development of or invest in interconnecting routes or product supply chains.

- Uncertainties among the Panamanian people and policy-makers as to the future opportunities for development of the maritime and international service sector related to the Canal.

The Presidential Commission, in recommending this plan, proposes its adoption and distribution as a means of explaining the focus and Canal transition strategy to all interested groups. At the same time, its distribution will help explain to the Panamanian public the future development opportunities for the nation that the Canal and its customers represent. The Presidential Commission views this plan as a vehicle through which to reach a common understanding among the various groups on the steps required for a timely and orderly transition process.

1.4 PLANNING ASSUMPTIONS

This plan is based on the following fundamental assumptions:

(1) The transition wiil take place on December 31, 1999, at noon. The existing Treaties, affecting the transfer and post transfer operations, will continue to guide the actions of the two nations.

(2) Internal political changes in the United States and/or the Republic of Panama will not affect progress or continuity of transition planning and implementation.

(3) Relations between the two countries will remain amicable and both nations will continue to seek a smooth transfer resulting in the long term efficiency of the Canal's operation and better cooperation in developing reasonable transition plans and measures.

(4) Changes in the world economy, trade patterns and maritime shipping will have a predictable impact on the Canal.

(5) The PCC can introduce those changes in the PCC that would facilitate the transition process.

1.5 ELEMENTS OF THE TRANSITION PLAN

The transition plan described in this report includes the following items:

(1) a vision statement of the Presidential Commission for the direction for the new organization, its proposed mission, key policy issues for the transition, organizational impacts on the present PCC and required legal powers;

(2) action steps to implement that focus, milestones, schedule, and assignment of responsibility for implementation of those actions;

(3) a proposed decision-making process for the transition and the organizational entity needed to carry out the transition plan, as well as a definition of the organization, staffing, budget and legal authority required;

(4) a suggested approach for monitoring the progress and coordination in accomplishing those actions;

(5) consequences if the key steps are not carried out in a timely manner; and

(6) a process to amend the transition strategy as conditions may change between now and the transfer date.

1.6 SPECIAL CHALLENGES FOR THE TRANSITION

Aside from its sheer size and complexity, this transition also presents unique challenges. First, the greatest challenge Panama is facing is the establishment the legal basis in Panamanian

law for the operation of the Canal as an apolitical, autonomous, and market-oriented organization, subject to the principles of modern administration, and responsible to the President of the Republic as established by the Constitutional Amendment.

Second, the transition represents a unique opportunity to define the role the Canal can play in the future development of the Panamanian economy and in protecting the environment of the watershed and bordering areas.

Third, Panama must avoid the temptation to view the Canal solely as a revenue generator, and must also balance the financial objectives with broader economic development objectives. This objective can be achieved by having satisfied clients and a good national maritime strategy.

Fourth, the transition process should strengthen relations between the two countries and the morale of Canal employees and the quality of their performance.

1.7 REPORT ORGANIZATION

The report is organized in five chapters. Chapter 2 provides a brief account of the Canal's history, the Treaties, the mechanisms for the transfer as spelled out in the Treaties, as well as the current status of the transition steps. Special attention is given to the role of the Panamanian Interoceanic Regional Authority, the Panamanian Presidential Commission for Canal Affairs, the Panama Canal Commission and the other organizations specifically responsible for various actions related to the transfer.

Chapter 3 presents the goals and policies for the transition.

Chapter 4 describes the recommended organizational entity for Canal management and presents a proposed mission statement for the new Canal entity (which will evolve throughout its future operation).

Chapter 5 presents a recommended approach to decision-making during the transition, including the description of the transitional entity to be created; legal, strategic, organizational and administrative actions that need to be taken; and a public education program to communicate that plan.

More detailed analysis of each of the major legal, strategic, organizational, and administrative changes that should be addressed during the transition have been prepared by the work groups of the Presidential Commission.

II. TRANSITION BACKGROUND

2.1 OVERVIEW OF THE CANAL OPERATION

The Panama Canal is approximately 51 miles long from deep water in the Atlantic to deep water in the Pacific Ocean. It takes less than 24 hours for the average vessel to transit the Canal waters and the locks at Gatun, Pedro Miguel and Miraflores.

During Fiscal Year 1992 (US), a total of 12,636 oceangoing vessels transited the waterway (34 vessels daily). Total cargo moving across the waterway was nearly 160 million tons. Total revenues from transits, pilotage, and other related services exceeded $461 million. The PCC also operates electric power generation and distribution systems in addition to other public services in the Canal operating area, and provides fire fighting services to the US military forces in Panama as well. Total PCC revenues in Fiscal Year 1992 were $505.6 million and the total workforce of the PCC in Panama was 8548, including 1247 temporary employees. Of the 7301 permanent employees in Panama, 88% were Panamanians.

2.2 DIPLOMATIC HISTORY

The extensive negotiations for the transfer of the Panama Canal were concluded with the signing of two documents in 1977. The "Panama Canal Treaty of 1977" defines the terms and conditions for the transfer. The Treaty went into effect on October 1, 1979, after approval by Panama in a plebiscite held on October 23, 1977 and ratification by the US Senate in 1978. In accordance with the treaty, the transition period began in 1979 and will be completed in 1999. The "Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal" defines the agreement between the two countries regarding terms for continuing operations after the transfer.

The Canal was built by the United States in the early years of this century under the Hay-Bunau-Varilla Treaty of 1903. The Treaty authorized the US to build a Canal through a zone ten miles wide and to administer, defend and protect it, in perpetuity, as if it were the sovereign, in exchange for a payment of $10,000,000 and an annuity of $250,000, beginning nine years after the Treaty came into force.

In 1936, the General Treaty of Friendship and Cooperation, in addition to recognizing important conditions of social order, recognized the change from gold to silver as the monetary base, and increased the annual payments to $430,000. This Treaty was followed, in 1955, by a Treaty of Mutual Understanding and Cooperation which, among other things, increased the annual payments to $1,930,000 and afforded Panamanians job and commercial equality with Americans in the Canal Zone. These prior Treaties remained in effect until the Treaties of 1977 became effective.

2.3 ADMINISTRATIVE HISTORY

The entity that operates the Canal has evolved over the years since the Canal opened to traffic in 1914. As originally established, the Panama Canal organization was an appropriated fund agency of the US government responsible for Canal operations and civil government functions in the Canal Zone area, while the Panama Railroad Company was a government owned commercial company which ran the non-Canal related businesses.

This original organizational structure was revised in the 1950s, making the Panama Canal Company responsible for Canal operations (including the railroad and ports) and other related functions. At the same time, the Canal Zone Government was established and made responsible for all civil government functions. The President of the Panama Canal Company was responsible to a Board appointed by the U.S. President and reporting to the Secretary of the Army, the sole stockholder and direct representative of the U.S. President.

After the 1977 Treaties became effective in 1979, Panama assumed jurisdiction over the civil government functions of the Canal area as well as operational control of the ports of Balboa and Cristobal, the Panama Railroad, the dry dock and the ancillary commercial operations. Canal operations became the responsibility of the newly established Panama Canal Commission (PCC). The Commission was run as an appropriated fund agency instead of under a corporate structure. Under the Treaty, a 9-member Board composed of 5 US citizens and 4 Panamanian citizens was established to supervise the operations, functions and administration of the Canal. Under US law (96-70), the US board members vote as directed by the Board Chairman. According to the Treaty, the Canal Administrator was required to be a US citizen and the Deputy Administrator a Panamanian citizen from 1977 until 1990; between 1990 and 1999 the citizenship requirements for the two positions were reversed.

Under the 1977 Treaties, the US retained the right to operate the Canal until the end of 1999. The payment to Panama was changed to an annual tonnage payment, a fixed annual payment of $10 million for the provision of services, an annual annuity of $10 million, and an additional annual sum of up to $10 million if Canal profits permit. Public Law 96-70, passed by the US Congress after the Treaties were negotiated, requires the Canal to operate under a "break-even" budget, theoretically removing any potential for generating a profit, beyond the fixed payments to the government of Panama under the Treaties. In practice, however, the Canal has generated profits in some years and, as a result,has made some payments of these to Panama. In 1988, the Commission was converted to a revolving fund agency by US Public Law 100-203.

It is important to note that throughout its history, the Canal entity, although operating as either a government-owned corporation or as an appropriated fund agency of the U.S. government, remained as an independent, autonomous, and financially self-sufficient organization.

A Congressionally (US) mandated study has recently been concluded by the Board of Directors of the PCC, with the advice of Arthur Andersen & Co, to consider needed changes to the existing PCC organization. Based on this study, recommended changes regarding the

governance structure of the Canal were submitted to the US Congress. This initiative will help establish a structure that corresponds more to that intended in Panama's new Constitutional Amendment.

The Arthur Andersen study recommended that the Commission's status be changed to a government corporation, with a single stockholder and an empowered Board. This study also recommended that the Board elect its own President, from among its members, with no directed votes. The Chairman could be a citizen of either the US or RP. Each country could designate third nation "international advisors" with non-voting status. The study further recommended that the Board involve itself more frequently in a number of policy issues. It would use independent external auditors and reorganize the Inspector General's Office as an internal auditing function, and eliminate the requirement that the President of the US approve toll increases. It also recommended implementation of a dissolution fund based on a separate study, and annual certification that the entity is on course to liquidate all liabilities.

The Congressionally mandated study further recommended to President Bush that the Board, after it becomes empowered, take steps to develop its own practices and procedures in the areas of budgets, procurement, personnel, ethics, and travel in order to reflect more efficient commercial standards and relieve the Commission of needless obligations to comply with US Government regulations. It also suggested that the PCC Board conduct separate studies regarding enhancements to the capital reserve fund and the creation of management incentives for increased efficiency.

2.4 US MILITARY PRESENCE IN THE CANAL AREA

In addition to the PCC and its predecessor US government agencies that managed the services related to the Canal, the US military has had a significant presence in the Canal area since the original Canal Treaty was signed in 1903. The Panama Canal is the headquarters of the US Southern Command. There has been a gradual transition process underway since 1985 for the transfer of US military installations to the RP. Military strength, which currently remains at pre-Treaty levels, will be reduced gradually in accordance with a master plan (Treaty Implementation Plan) developed jointly by the Southern Command's Treaty Implementation Planning Group and Panama's Ad-Hoc Commission appointed by the President of Panama on May 1, 1991 for this purpose.

Today, there are still approximately 10,000 military personnel in the Canal area. This will be reduced in accordance with the master plan starting in 1995. According to the Treaties, all US military installations should be turned over to Panamanian control before or on the date of the Canal transfer.

2.5 CHARACTERISTICS OF PREVIOUS TRANSFERS

Operationally and administratively, the transfers that occurred in 1979 (Ports, Railroad, Bunkering, and Ship Repair) were characterized by:

(1) employees going from one administrative system to up to 6 personnel systems,

(2) many transferred employees going first into multiple wage scale systems, with prior Canal employees initially being paid a higher wage than newer workers, but eventually working under a lower wage scale,

(3) an exodus of management expertise;

(4) a lack of a pre-arranged spare parts and supplies;

(5) inadequate planning to assure continuing preventive maintenance and capital improvements programs; and

(6) the negative financial impact by eliminating cross subsidies from Canal operations.

Moreover, all these changes were accompanied by significant mission changes; the excessive speed in which these changes occurred resulted in abrupt reorganizations and in the loss of the organization's legal and institutional structure. It is precisely this experience that points out the importance of careful and early planning during the transition period leading to the actual transfer of operations.

2.6 TREATY MECHANISMS FOR TRANSITION PLANNING

The Treaties and related agreements provide a number of bi-national mechanisms relating to transition planning for the Canal's transfer, as follows:

(1) The **Panama Canal Commission (PCC) Board** is composed of 5 US and 4 Panamanian members. It is responsible for supervising the Panama Canal Commission staff and operations. The Board's Panamanian members are proposed by the Republic of Panama and appointed by the President of the United States.

In April 1990, the PCC Board adopted a mission statement to take all appropriate steps to have an adequate transfer of control of the Canal to Panamanian authorities on December 31, 1999 and to develop plans to accomplish its mission in the short, medium and long term.

(2) The Panama Canal **Consultative Committee**, composed of 3 high level representatives from each country, functions as a diplomatic forum for the exchange of views between

the two governments (Section 1105 of Public Law 96-70). The Committee is to advise both governments on matters of policy affecting Canal operations in the interest of continuity and future efficiency. These include policies related to tolls; employment and training to increase the number of Panamanian nationals in operations; and international policies concerning the Canal. (PC Treaty, Article III, Paragraph 7)

(3) The **Coordinating Committee**, composed of one representative of each country, and corresponding delegates, performs functions specifically indicated by the provisions of the Agreement on Implementation of Article III of the Panama Canal Treaty and other implementation functions entrusted to it by both Governments. It establishes its own rules and subcommittees and refers any matters it is not able to resolve to the two Governments for consideration through appropriate channels. (Article II of the agreement for Implementation of Article III of the Panama Canal Treaty).

In accordance with this process, the Republic of Panama can receive requests from private concerns to undertake specific activities within the Canal areas. The Coordinating Committee may determine if the proposed use is compatible with the continuous efficient management of the Canal. Permits may be issued for such uses and may be cancelled by either party under certain conditions.

(4) The **Joint Commission on the Environment**, composed of equal representation from both countries, reviews implementation and recommends to the governments ways to avoid or mitigate adverse environmental impacts (Treaty and Section 1106 of Public Law 96-70).

(5) The **Combined Board**, made up of an equal number of military representatives from both countries, is charged with the responsibility to consult and cooperate on matters pertaining to the protection and defense of the Canal. Following operation "Just Cause", the Combined Board ceased functioning.

(6) The **Combined Committee**, composed of equal representation of both countries, has responsibility over administrative matters on defense sites and areas of military coordination. The planning for the future transfer of military areas has been carried out through an ad-hoc group, the "Bi-national Planning Working Group", with civilian Panamanian representation. This group has been meeting and accomplishing this function.

In addition, Section 1110 of US Public Law 96-70 provides that the US Ambassador to Panama is to have full responsibility for the coordination of the Canal's transfer to the Republic of Panama pursuant to the Treaty and related agreements.

The Republic of Panama provides some support and staffing for some of these committees through its Department of Treaty Affairs (DEPAT) in the Ministry of Foreign Affairs, but does not have a fully implemented law similar to the USG PL96-70.

The effectiveness of these bi-national mechanisms through the transition planning period has varied with the relations that have existed between the two governments. The mechanisms made only limited contributions to the technical preparations for the transfer before relations between the two governments deteriorated in the 1980s, making progress impossible. These coordination mechanisms established under the Treaty to facilitate the transition can be expected to contribute more to a smooth transfer if used effectively by the two governments in the years ahead in an ordered and well coordinated fashion.

2.7 PANAMANIAN PLANNING FOR THE TRANSITION

Over the past two years, the government of Panama has undertaken the actions necessary to assume the management responsibility that comes with operating the Canal by the end of the decade. As part of the early efforts to prepare for the transition, the current government established an "Ad-Hoc Commission on the Reverted Areas and the Future Administration of the Panama Canal." This Commission, established in May 1991, was composed of some of the leaders from the country's private and public sectors. The Commission was chaired by Mr. J. J. Vallarino, a member of the Board of the Panama Canal Commission, which presently runs the Canal under the Treaty and US law.

Since under the Canal Treaty, various areas of the Canal have already reverted to Panamanian control, and others including Fort Amador and Fort Davis will be transferred soon, the Ad-Hoc Commission gave priority to the need to establish an organization with sufficient authority to manage these reverted areas as instructed by President Endara.

By recommendation of the Ad-Hoc Commission, and following review and approval by the Cabinet and six months of public discussion and review and approval of the Legislative Assembly, an independent authority, the "Interoceanic Region Authority (ARI)", was established in March, 1993. The ARI Board of Directors has been appointed and is in the process of hiring staff and preparing international public bid documents for the preparation of master and regional plans for use of the reverted lands and facilities, relying on the participation of international organizations and the Interamerican Development Bank (see section 2.8 for a description of ARI's responsibilities).

On February 20, 1992, President Guillermo Endara Galimany issued a Declaration of Principles regarding the future administration, operation, and maintenance of the Canal. With this, and to assure the international maritime community, Panama reinforced its intention to establish an **autonomous, independent administrative and financial organization** to be responsible for operating the Canal under Panamanian control. This Declaration also stated that the future Canal entity would continue to be in charge of the maintenance and capital improvement programs to modernize the waterway and assure its efficiency and capacity. The Declaration states that the labor and personnel norms will continue to function under a merit system; guarantees job security and respects conditions of employment, and assures job stability for highly qualified employees, whatever their nationality. It further provides that the Cabinet shall submit to the

Legislative Assembly the constitutional reforms and legislative bills needed such that the Panamanian law responds to the demands and needs of the Canal.

On April 5, 1993, President Endara signed a decree that established a "Presidential Commission on Canal Affairs," for the purpose of developing a study for the Legislature and other recommendations as well as preparing a detailed strategy and plan for the transition. The Presidential Commission is composed of 10 distinguished and respected Panamanians, most of whom previously participated in the Ad-Hoc Commission and are familiar with the transition issues. Mr. J. J. Vallarino was also appointed as President of this Presidential Commission.

The decree signed on April 5 also established an eight member support group to assist the Presidential Commission in defining policies regarding various technical areas such as, for example, organization, legal, human resources, finance, operations and administration, marketing, user fees, and environmental issues. Ninety two prominent and respected leaders from all sectors have been volunteers in the subcommissions, including specialists in each of these areas. Each Subcommission is headed by one of the eight coordinators. The Panama Canal Commission, at the request of the Presidential Commission, has also named officers to assist in the transition planning. These subcommissions have been meeting regularly over the past year, sometimes on a weekly basis. In September 1993, the eight Subcommissions were combined into three groups (Legal, Entity, and Human Resources; Maritime Strategy, Finance and Marketing; and Operations and Environment) to speed up and integrate the development of this Transition Plan.

2.7.1 The Constitutional Title

In June, 1993, the Presidential Commission presented to the government a supplement to the Panamanian Constitution that would establish a separate title of the Constitution dealing with the Canal. The proposed addition to the Constitution establishes that the Canal shall be open to transit by vessels from all nations. Furthermore, the organizational entity proposed to administer and operate the Canal shall be established as an independent organization, with its own personnel, authority, budget and other administrative systems. The intent of the Presidential Commission is to use and/or adapt to the extent possible the existing Panama Canal Commission systems to assure the continuity of an efficient, safe Canal operation.

In addition to the responsibility of helping to prepare a Constitutional amendment, President Endara also specifically charged the Presidential Commission to:

- Draft proposed enabling legislation for the administration of the Canal.

- Consider the advisability of including under the Canal the responsibilities for the Ports of Balboa and Cristobal, the trans-Isthmic railway, and other areas of transportation that might be considered as integral elements of the Canal, strengthening its international competitiveness as a unit since the United States had managed it in this manner for many years.

- Consider the advisability of including under the Canal the management of the watershed that provides it water.

During its early period, the Presidential Commission and Cabinet considered the possibility of including the Ports under the Canal administratively. The Presidential Commission prepared a document regarding the pros and cons of that proposition. Although the Presidential Commission initially recommended to include them, the Cabinet decided not to formally include the ports as part of the organization being proposed in the Constitutional Amendment.

With respect to the railroad, the Commission recommended that the new Canal authority should not have any responsibility for the railroad unless the railroad function changes in the future. In that case, the government can reconsider this decision.

2.8 INTEROCEANIC REGIONAL AUTHORITY

The Law of the Interoceanic Regional Authority (ARI) grants this new agency exclusive charge for developing and administering the reverted properties, except the Panama Canal and its operating areas, in coordination with appropriate Panama government agencies. In addition, until the Constitutional Amendment becomes effective, ARI has the following specific functions regarding the Canal transition:

- Insure, with the Panamanian Directors of the PCC, the binational committees and commissions and DEPAT, that Panama will assume each and every function of the PCC so as to guarantee uninterrupted, effective operations and maintenance.

- Oversee that Canal assets are received in good condition and provide for their proper valuation.

- Promote the economic development of the region and promote and strengthen the maritime and international service sectors.

- Issue rules to rent, sell, grant concessions and administer the properties not related to the Canal's operations.

- Coordinate with state and municipal agencies regarding compliance with the General Land Use Plan in the area of the Canal and the watershed.

- Take actions to protect and improve the drinking water supply and Canal operating water.

- Promote, with the Panamanian Directors of the PCC and DEPAT, the effective and growing participation of Panamanians with the PCC; study and make recommendations to the Executive Branch regarding laws for Panamanians

working in the Canal at the time of transfer; and help place Panamanians who lose jobs as a result of the transfer in new jobs created by this law.

ARI Board members have made specific recommendations regarding the future Canal entity, including that it should be autonomous, able to elect its own chairman, and independent of the Fiscal Code.

2.9 THE PROPOSED ADDITION TO THE CONSTITUTION

The Presidential Commission recommended to President Endara that a new Title be added to the Constitution. This was modified by the Executive Cabinet and then submitted to the National Assembly for its discussion, review and approval. A brief explanation of the significant chapters of the Constitutional Addition is summarized below.

Article Five, Number 2 of this new Title, provides for the Panama Canal Authority to administer and operate the Panama Canal with the power to fix tolls, subject to the approval of the Cabinet. It would pay fees to the National Treasury equivalent to the amounts paid prior to transfer. Ships transiting the Canal would not be subject to any other taxes. Profits, after deducting payments for costs of operation, accumulated deficits and carefully defined reserve funds, would be paid to the National Treasury.

The Canal Authority would be responsible for the operation of the Canal and for ships transiting the Canal. The construction or expansion of a port on the banks of the Canal will have to be approved by the Canal Authority.

The Canal Authority will coordinate with responsible agencies for the management, maintenance, use, and conservation of the watershed's hydraulic resources, and will determine and approve the uses compatible to the functioning of the waterway.

The Board of the Panama Canal Authority will be made up of 11 directors. Nine directors are to be named to staggered terms by the President with the approval of the Cabinet and ratified by an absolute majority of the Legislative Assembly. One director will be named by the Legislature and will serve at its pleasure, and one director, named by the President, will preside over the Board and will have the additional rank of Minister of State for Canal Affairs.

The enabling law, which is currently being drafted, will establish the qualifications for Directors and other aspects related to the Board of Directors.

The Board will have the sole responsibility for the hiring and dismissing of the Administrator and Deputy Administrator of the Canal, will approve and submit the budget to the Cabinet and the Legislative Assembly, propose regulations, authorize concessions for the delivery of services, define limits of the Canal basin, acquire and dispose of goods and equipment and approve internal regulations.

Article 6 of the Constitutional Amendment provides a degree of fiscal and administrative autonomy for the Panama Canal Authority and for separate budgetary approval.

Article 8 establishes a special personnel system based on merit and, for certain positions, maintains employment conditions and labor rights equal to those that exist on December 31, 1999. Although hiring preference will be given to Panamanians, there will be no discrimination in employment of the Canal labor force for nationality, race, sex, religion, or political affiliation. Labor disputes should be resolved by common accord between employees and management, following mechanisms established in the regulations. The last administrative step will be arbitration.

Article 8 also establishes that permanent employees, including those who take the special retirement in 1999, whose positions are determined to be necessary in accordance with applicable norms, will be guaranteed their employment with the same benefits and conditions that they had previously.

Since, the Canal offers an essential public service, the transit of vessels shall not be interrupted for any reason and the norms applicable to its employees shall also be applied to contractors, subcontractors and concessionaires and their employees, whenever their services are essential for maintenance and operation of the Canal.

The provisions of the Constitutional Amendment have been debated and approved by the current National Assembly. To take effect, it must be passed, with identical wording, by the next Assembly in September 1994.

2.10 STATUS AND IMPORTANCE OF EARLY DECISION ON ORGANIZATIONAL ENTITY

If the next Assembly does not pass the Constitutional Addition, it will have a disastrous effect on Panama's future. Without Constitutional Authority, Panama cannot assure the autonomy and continuity of operations. This means that it will be unlikely that Panama will operate the Canal in an independent and efficient manner, and that the new Authority will not be able to retain nor employ the skills necessary in the labor force. Furthermore, without this Constitutional foundation, the Assembly will have to address every one of the areas requiring legal changes and consider them in extensive and detailed legislation. It will be nearly impossible to establish an organization with the essential independence and autonomy without the Constitutional Amendment. Any delay in resolving the type of organization and the legal basis for the new Panamanian organization that will manage the Canal after year 2000 will have a negative impact on the international perception of Panama's ability to efficiently administer Canal operations.

Furthermore, if the Constitutional reform is not passed in September, 1994, customers of the Canal and the international shipping community could opt to take alternative routes, and the labor force could erode and seek other employment. Up to now, the negative impacts because of the lack of a strategy for operating the Canal have not been very significant. However, in the not distant future, uncertainties about the Canal may lead to alternate route development by shippers and/or shipping lines. It is worth noting that, as planning for the transition of the Canal continues, Canadians are investing in a land-bridge network to compete with that already existing in the United States. Mexico and Costa Rica are also considering establishment of land bridges.

It is extremely important to assure a smooth transition, that the PCC and the Canal Authority cooperate in a gradual and clearly defined process. For that purpose, a legal base for the new Canal entity in Panamanian law should be adopted as soon as possible. This plan assumes that an entity similar to the one described in the Constitutional Amendment, including appropriate autonomy and financial independence, will be created. If uncertainty as to the type of entity to be established develops, it will make it more difficult to accomplish all the other steps for the transition discussed in the next sections and will send a message of uncertainty and insecurity to the Canal employees and users.

This plan also assumes that the primary responsibility for the transition will rest, as recommended in this plan, in a Transition Commission appointed by and reporting directly to the President - with full authority on behalf of the Republic of Panama to plan and implement transition actions until the new Canal organization entity is established.

The following paragraphs describe some of the coordination mechanisms that exist for transition coordination.

III. GOALS AND POLICY DIRECTIONS FOR THE TRANSITION

3.1 JOINT GOALS AND DIRECTIONS

Panama, the United States, and other countries share the common goal of assuring a smooth and seamless transfer. All share the objective of assuring a competitive, efficient and effective interoceanic transit service. Beyond these common goals, there are obviously some differences in perspective and priorities.

The US relies on the Canal for a good share of its foreign trade and national defense. Reliability of the world shipping services have made it possible for commercial enterprises all over the world to reduce inventory needs and in many cases adopt 'just in time' inventory systems that can help them control costs and increase their competitiveness.

From Panama's perspective, the Canal represents a vital resource and a unique opportunity to stimulate its economic development and partially offset the loss of income from the US base closures.

Panama has additional concerns which include a whole array of cultural, political and socio-economic issues which evolve from assuming control of a "business" which will represent a major portion of its budget (10% of its Gross National Product), employs a large number of Panamanians, and has a history going back to the establishment of the nation and generates strong emotions in all Panamanians.

Inseparable from these, are the concerns about the concurrent reduction of the US military presence in Panama. There are 10,000 active US service members and 15,000 dependents. They officially employ about 5,000 Panamanians and indirectly generate economic activity for countless taxi drivers, restaurant, hotel and other service industry employees. Together the Panama Canal Commission, and the US military and civilian employees stationed in the country inject nearly $700 million dollars per year in foreign exchange into the economy.

Many Panamanians are concerned about the stability of their government and its ability to make timely decisions. Many in the international shipping community and the US share that concern. *It is in Panama's interest to address these concerns through the adoption of clear plans and strategies for the transition that ideally will have the approval of the Panamanian and United States governments, and which will be understood by the international maritime community and the Panamanian public.*

3.2 PANAMA'S GOALS FOR THE TRANSITION

The Presidential Commission has articulated the following goals of Panama for the transition.

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3.2.1. Assure continuation of at least the same level of Income from the Canal Operation

The transfer of the canal will place the future responsibility for generating income from the Canal in the hands of the Republic of Panama which currently receives nearly $90 million from the Canal operation. Panama will need to operate the canal efficiently so as to insure that the nation can continue to receive at least this level of income.

3.2.2. Establish in Panamanian Law a Canal Operating Entity Which Best Meets the Nation's Needs.

The Presidential Commission notes the importance of the **uniqueness** of the Canal organization in terms of complexity, user revenue generation, and worldwide implications. Therefore, the Commission recommends that the new operating entity be established as:

- an **autonomous, apolitical and independent** organization without the controls associated with other government agencies or enterprises currently operated by the Panamanian government;

- an organization responsive to the nation's goals and priorities, particularly to maximize the **economic development opportunities** and the **environmental protection needs** that should be considered in managing the Canal for the benefit of all Panamanians;

- a **market-oriented, profit-oriented, financially self-sufficient** organization to a large extent patterned after the current Canal organization with the customer orientation of private sector enterprises.

3.2.3. Minimize organizational and administrative changes during the transition

Panama's foremost objective is to guarantee a **smooth and imperceptible** transition, by establishing the legal base for the efficient operation of the canal once control is transferred to Panama, while minimizing organizational or administrative changes. Such an approach recognizes the desirability of incorporating existing operating systems and procedures rather than attempting to make radical or policy changes during the transition period. The Presidential Commission has therefore, developed this Transition Plan based, among other things and to the extent possible, on incorporating existing PCC procedures and systems into the new Panamanian organization in recognition of the success these have produced after 80 years of testing.

3.2.4. *Maximize the Panamanian Participation and Minimize Changes in the Canal Workforce*

There are over 7,000 Panamanian citizens employed by the US Government in the PCC organization, representing about 90 % of the total Canal workforce. Most of the remaining 10 % of the workforce are US citizens and hold key technical, high skilled, and top level management positions. A goal to increase Panamanian participation in these key positions is appropriate and a realistic program needs to be established for that purpose. However, all PCC Panamanian and non-Panamanian employees are experienced and highly qualified employees who will either be eligible for retirement or may find it attractive to change employment unless the new Canal organization sets up a compensation system and work environment that is attractive to them. Panama needs to work with the PCC to establish employee retention and succession programs that assure continuation of a totally trained and highly qualified workforce to operate the Canal efficiently and professionally beyond the transfer date. The Presidential Commission believes that a 100% Panamanian workforce should not be a critical transition goal in the near term, as it would impact negatively on the need to assure a capable, skilled, and effective workforce. The goal, therefore, is to maximize the percentage of Panamanians in highly skilled and top management positions, consistent with the need to retain employees with highly specialized abilities as indicated by President Endara's Declaration of Principles of February 1992[2].

3.2.5. *Optimize benefits to Panama: Integrating the Canal into Panama's economy based on the nation's economic overall development strategy*

Panama should seek to encourage economic development and growth within and related to the transferred areas so as to optimize the benefits accruing to the society as a whole from the Canal transfer.

There are many ways in which the Canal can serve as the engine and a catalyst to attract new economic activity, ranging from tourism, passenger cruise vessels, maritime and shipping related businesses, cargo transshipment, finance businesses, and land development along certain areas of the Canal.

These specific economic development opportunities need to be prioritized over any others and efforts should be made in coordinated with other national economic development efforts. It is important to understand that Panama is in competition with other countries to attract investment and business, so that to be successful in these efforts, the national investment climate will need to improve

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[2]. The complete text of the declaration is at Appendix A.

and the nation needs to demonstrate to the international community that it has developed politically stable and professionally run institutions. The transfer and future operation of the Canal will be more firmly based to the extent that problems like those discussed, which may affect it, are addressed and resolved.

3.2.6. Protect the Canal Infrastructure and Pursue the Modernization of the Waterway

Panama needs to assure that the Canal facilities continue to be maintained in top operating condition up to and beyond the transfer date. Further, it should insure continuation of the existing maintenance expenditure levels and schedules during the transition. Such actions will assure the continuing efficiency and security of the Canal operations and its ability to remain as a major international trade route and an income producing asset to the country.

3.2.7. Establish a public education program and a user and employee information program to maintain the Canal users, employees and the general public informed about the status of the transition decisions

As the transfer date approaches and as decisions will have to be made regularly on the key strategic and organizational issues that affect the future efficiency and revenue generation potential of the Canal, Panama needs to establish and maintain the following two communications efforts:

A. A public information program to keep Canal users and employees informed as to the key transition decisions, the timetable for a gradual transition, and the Panamanian commitment to a smooth and seamless transfer.

B. A public education program to make sure the Panamanian public understands the importance of the Canal as an economic asset of the nation and as a potential catalyst for future economic development.

3.3 PANAMA'S POLICY DIRECTIONS FOR THE TRANSITION

Panama's policies should be clearly articulated to guide transition efforts and to provide needed assurances to the Canal users and workforce. At the same time, these transition policies can set in motion new directions that can eventually be adopted by the new Canal entity.

As previously discussed, the goal of the transition is to **minimize changes and keep the Canal operating using, as much as possible, the same workforce and the existing operating and administrative systems.** Therefore, in the operations and administrative support system areas, existing policies should be adopted and adjustments should be considered only as would have been the case regardless of the transfer.

Refinements to existing policies and procedures should be considered and a discussion of transfer issues in all these areas is presented in Chapter V.

Policy directions, however, need to be adopted by Panama as soon as possible regarding the Canal and the new organizational entity in other key strategic areas.

The major recommended policy directions for the transition period and the new Canal Authority are described in the following paragraphs categorized by the four areas.

3.3.1. Role of the Canal in Support of Panama's Economic Development Strategy

- To assure the international community and investors of Panama's intent to use the Canal to attract business, the Authority will hire professional managers to assist its staff, based on their experience in managing large enterprises efficiently and their performance in achieving profitable operations.

- Panama will review its investment laws, business climate and overall economic and maritime development strategy so as to encourage, through ARI, the new Canal organization and other government agencies, increased private sector development in the reverted areas.

- The new Panama Canal Authority will participate with ARI and the organization in charge of maritime sector policy to lay out the appropriate role of the Canal in the national economic development strategy and the type of relationships that should exist between all these elements (ports, free zone, ship registration, vessel service industry, international finance and trade businesses, the tourism sector, and the formidable array of maritime industry options).

- It is the consensus of the Presidential Commission that , after the year 2000, the Canal should play an important role in the sustained development of Panama's maritime industry and that good management and leadership of the Canal should stimulate other sectors of the industry. There is great management capacity and technical expertise in the Canal organization which can be utilized in this economic development function.

3.3.2. Financial and Toll Policy

After the transfer:

- The Authority will maximize revenues from related services when it can use its surplus capacity to offer services and expertise to the national and

international maritime service sector, as long as it finds that such capacity must be maintained to assure reliability of Canal transits, it fully recover its costs and a reasonable profit, and it does not unfairly compete with private sector firms.

- The Authority will establish reasonable and competitive tolls to maintain and encourage traffic through the Canal. The policy of the Authority shall be to maximize indirect socio-economic benefits to the nation rather than maximizing direct toll revenue.

- The Authority will continue the policy of fully recovering, through tolls, all Canal operating and capital costs, as well as necessary reserve accounts, while considering the implication of toll rates on the market share of the Canal compared to competitive routes.

- The Authority will provide any surplus revenues to the Treasury, after covering any accumulated deficits and necessary reserves, and will strive to make a contribution to the National Treasury, at least as great as the current Canal operation provides.

- The Authority will hold public hearings when toll increases are necessary and will consider the long and short term potential for market disruption such increases may cause prior to approval of any increase.

3.3.3. Human Resources and Labor Relations Policy

After the transfer:

- The Authority will maintain a personnel system based upon the merit system currently in effect in the PCC.

- Under this merit system, top management will be hired based on extensive experience in both private and public business.

- The Authority will offer employment contracts based on terms and conditions similar to those in force prior to the transfer to all permanent employees working in the Canal at time of transfer.

- The Authority will assure that the Canal will always be open. To this end, among other actions, it will maintain a labor relations management program similar to the current one which will permit the establishment of

collective bargaining units, incorporate a system of impartial arbitration, and provide for negotiation of labor agreements.

3.3.4. Environmental Policy

- Panama, as operator of the Canal will enforce maritime and environmental conventions to which it is a signatory to insure the protection of the waterway and its assets, and avoid environmental damage by its operations or by ships in transit. To this end, the regulations currently in use by the PCC will be adopted.

- The protection of the watershed is vital for Canal operation. The Authority will cooperate with other government agencies and environmental groups to help in the planning, management, and control of all the watershed.

These policy directions can be used as a base for initiating the recommended transition planning process which is described in Chapter V. Prior to the legal establishment of the new organizational entity that will operate the Canal, these policies, as appropriately refined, should be formally adopted by the Transition Commission as soon as it is created so that they are consistently used in guiding the transition effort on behalf of Panama.

IV. MISSION AND BOARD OF DIRECTORS OF THE NEW CANAL ORGANIZATION

4.1 CONSIDERATIONS FOR A NEW MISSION

The Presidential Commission considered various approaches to establishing an organizational entity to take over control of the Canal operation on the transfer date. Options considered ranged from a government agency to a quasi-public or private-public ownership of a corporation. The Commission intends the entity to be:

- Autonomous in Management, Financial, Personnel and Regulatory Matters
- Apolitical in organization and operations
- Entrepreneurial in management structure, and
- Socially responsive to the nation's priorities and economic development strategies

The mission of an organization is what determines the organization's form, its equipment, skills, procedures and policies. A mission change can have an enormous effect on all these elements, and an organization should focus on its mission when it considers changes in any of these areas.

The establishment of the new mission for the Canal will be the responsibility of the Board of Directors of the PCA. They should also develop a vision for the new organization. However, since Panama cannot wait for the formation of the PCA to start planning for the transfer, the Presidential Commission has recommended a temporary mission statement to help guide initial transition planning actions. This mission will serve as a base for that eventually adopted by the PCA.

This chapter presents the Mission statement for the new organization, the main recommendations regarding the Board of Directors of the new PCA and, at the same time, raises some of the major issues regarding organizational entity definition that still remain to be addressed.

4.2 MISSION STATEMENT FOR THE NEW PANAMA CANAL AUTHORITY

The basis of the proposed new mission statement for the Canal organization is drawn from the obligations of the Treaties, the current Panama Canal Commission mission and the key changes that will be made as a result of the Canal becoming a Panamanian operation.

In simple summary, the Treaties provide that:

- The transfer will take place at noon on December 31, 1999.
- Operations will continue, open to vessels of all nations on equal terms.

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- Operations will be efficient.
- Ancillary services will be provided.
- Tolls will be just, reasonable, equitable and consistent with principles of international law.

The mission of the Panama Canal Commission also provides insight into the mission of the future Canal entity, as reflected in the following statements:

(1) "insure the safe and efficient operation of the Canal;"

(2) "take all appropriate steps to have a smooth transition to Panamanian control of the Canal on December 31, 1999;"

(3) "continue to maintain and improve the waterway to assure its value to Panama as well as to maritime and trade interests of the world shipping community well into the next century;" and

(4) "encourage personnel practices which will foster a high level of morale within the Canal organization."

The Presidential Commission reviewed the existing PCC mission statements and the Treaties and proposes the following mission statement for the new Panamanian organization:

(1) "insure the safe and efficient operation of the Canal as a service to vessels in interoceanic transit;"

(2) "take all appropriate steps to have a smooth transition to the transfer to Panamanian control of the Canal on December 31, 1999;"

(3) "continue to maintain and improve the waterway to assure its value to Panama as well as to maritime and trade interests of the world shipping community well into the next century;"

(4) "insure quality performance through personnel practices which will foster a high level of morale within the Canal organization;"

(5) "provide sufficient revenues to cover all operating costs, necessary overhead, improvements, and necessary reserve accounts, and to contribute at least as much to the National Treasury as the current Canal operation provides";

(6) "maximize opportunities to use the Canal to increase the nation's socio-economic development and promote increased transits of those vessels which best contribute to the national economy";

(7) "manage the Canal operation in the spirit of public trust, upholding the highest ethical standards of public or private service, in such a way that there is a clear perception that the Canal resources are being honestly managed so as to make the greatest contribution to the national economy";

(8) "provide oversight over development in the Canal area to assure safe navigation in the waters of the Canal and the ports adjacent to the Canal"; and

(9) "incorporate the Canal into the economic life of the Panamanian nation".

4.3 BOARD OF DIRECTORS

The Constitutional Addition defines the basic legal authority for the new PCA organization. The following paragraphs present some of the major items contained in the Constitutional Title, and some of the considerations that go into the eventual determination of that definition.

4.3.1 Number of Directors

The Constitutional Addition provides for an eleven member board including the Chairman of the Board appointed by the President of Panama and holding the rank of Minister of Canal Affairs, nine members appointed by the President and ratified by two thirds vote of the National Assembly, and one member designated by the Assembly with the approval of 2/3 of its members.

4.3.2 Term of Office for Directors

The length of the term of office is to balance between the need to insulate Directors from short term political winds, yet be responsive to the national long term socio-economic policy. The Constitutional Title proposes staggered, nine year terms of office for the nine members designated by the President, while the Chairman of the Board and the Assembly's representative would be serve at the pleasure of their appointing authorities respectively. The Minister for Canal Affairs will be the liaison to assure coordination between the PCA and the Executive.

4.3.3 Criteria for Appointment of Directors

The criteria for appointment to the Board are not established in the in the Constitutional Amendment, but may be addressed in the enabling legislation. The Presidential Commission proposes to include the following criteria in the legal authority for the PCA:

Board Directors should have experience in the management of large commercial enterprises with all the required skills to serve as Directors of the largest enterprise in Panama, and should not be selected on the basis of political, economic, social, or other affiliation.

The Presidential Commission proposes these general requirements, rather than specific educational or business backgrounds, since the appointing authorities should have flexibility in their selection. It is the Commission's conclusion that the emphasis should be in general management and executive experience, and in proved leadership capacity, future vision, experience in analysis of development problems, and with the capacity and strength of character to make controversial decisions.

4.3.4 Role of the Board of Directors

The creation of an empowered Board, with sufficient autonomy requires the establishment of authority in Panamanian law which would set it apart from other public entities. The role of the Board in setting policy and supervising the organization will also need to be defined after the Board is established. Consideration of Board rules and its relationship to the organization's staff should be carefully considered during the transition[3].

4.3.5 Key Issues and Questions

The issue of selection of a Board Chairman was the object of serious consideration in the Presidential Commission, the Cabinet, and the Legislative Assembly. Analysis of similar organizations around the world indicate the desirability of having the members elect their own Chairman. It is worth noting that members of the Board of ARI were unanimous in their opinion that the Board for the Canal should have authority to elect its own chairman.

The current version of the new Constitutional Title gives the Canal Authority responsibility for navigation in the Canal area and in the ports adjacent to the Canal, as well as in the construction of new ports along the banks of the Canal.

A continuing evaluation was also required of the fact that the Canal employees possess excellent expertise in maritime matters regarding engineering, port construction, compliance with international maritime codes, which can be of great assistance to other maritime sectors of the economy. This expertise should be exploited in whatever relationship is formally determined.

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[3]. The PCC/Arthur Andersen study on the Canal Governance deals at length with empowering the Board, and the criticality of such empowerment. The April 12, 1994 message from President Clinton to the U.S. Congress includes recommendations to provide more independence and authority to the PCC Board of Directors

V. TRANSITION PLAN AND PROCESS

5.1 OVERVIEW OF THE TRANSITION PROCESS

This chapter presents a transition process and plan, including issues and options that should be considered by Panama in preparing to assume control of the Canal operation. **First**, the options for a proposed decision-making process and creation of a new entity to initiate the process are presented. This interim transition entity should manage transition activities until the new Panamanian organizational entity **that will assume the canal operation** is created, once the Constitutional Title is approved by the second Legislature and the law that creates the New Panama Canal Entity comes into effect. The main issues that need to be addressed during the transition period are then presented, preferred options are described where possible, and an implementation program is outlined.

In all cases extensive interaction, cooperation, and mutual support is required between all involved entities in order to facilitate the transition.

Required changes associated with the transfer of the Canal organization can be separated into the following four phases:

I. Legal and Planning Phase
II. Policy and Strategic Phase
III. Organizational Phase, and
IV. Administrative Phase

Certain aspects of the four phases need to be accomplished simultaneously. Various activities should be scheduled to allow for orderly consideration of options and timely decision-making; that is, even though some issues do not require a decision until the final phase, they should be considered in the initial steps to achieve optimum coordination in accordance with the schedule of critical events.

The **first** phase should define the new entity to assume control of the Canal and a transition plan should be prepared. This step began with the creation of the Presidential Commission for Canal Affairs, which was established by the President Endara for the purpose of defining the new entity to manage the Canal and its affairs. All the legal changes must be spelled out so as to establish an organization with the necessary authority, autonomy, and independence desired. This phase requires the approval of the President as well as the National Assembly.

In the **second** phase, the **Transition Commission** should be established to be responsible for handling all matters related to the transition such as analyzing the options, and formally defining

transition policy on behalf of Panama. At the same time, this Commission should continue the efforts to obtain the needed legal changes. The Transition Commission should exist only until establishment of the new permanent entity, the "Panama Canal Authority" (PCA), which will assume total responsibility for executing the transition plan. It is important to proceed rapidly with this phase so that the momentum developed to date is not lost.

The **third** phase will start with the creation of the PCA and, once it is legally established, the naming of its Board of Directors. During this transition phase, the new Board should take the lead for transition activities, organize itself, appoint or ratify the top management for the organization, and should provide a smooth transition in consonance with the process of growing Panamanian participation as stipulated in the Treaties.

Finally, in the **fourth** phase, changes to the administrative systems should be implemented by the organization's middle and lower level management under the oversight of top management.

It should be anticipated that some of the organizational and administrative system changes may be implemented on or after the transfer, but **planning and staff training** for many of these steps needs to take place prior to the transfer date. Although **planning for** these changes also should precede the appointment of the new PCA Board (e.g. preparing the employee retention plan), it is preferable that no crucial decisions be made on these matters until after the **new Board** and top management are appointed. To the maximum extent allowed by legal constraints and operating needs, decisions regarding organizational and administrative system changes during the transition period, including hiring and **promotions** of high level staff, major capital investment programs, and other key decisions with implications beyond the transfer date, should be coordinated between the Transition Commission, the PCA, and the PCC.

Table V-I summarizes the four transition phases, the areas to be addressed, and the decision-making responsibility for each phase. It also indicates the date when each phase should be initiated and the latest timeframe that each phase should be completed so as to assure a transfer which is imperceptible to the Canal's users, and a Panamanian organization that is totally ready to assume operational control of the Canal on December 31, 1999.

Figure V-1 presents a schedule showing the four transition phases through the transfer date. The objective should be to define the legal changes before September 1994, although certain legal changes may still require legislative approval after that date. Similarly, the next objective should be the definition of the Panamanian government's strategy and policy relating to the new Canal entity by the end of 1997. During 1996-1999, the new PCA and the PCC should coordinate the implementation of the plans prepared by the Transition Commission with the objective of defining and executing, <u>to the extent possible</u>, the required organizational and administrative changes before the transfer date.

TABLE V-1

TRANSITION PHASES				
Phase	Principal Objectives and Considerations	Responsibility	Start Date	End Date
I	Legal & Planning	President/ Natl Assembly/ Pres. Commission	1993	September 1994
II	Policy & Strategy	Transition Commission	1994	End of 1996
III	Organizational	PCA Board of Directors	1996	End of 1998
IV	Administrative	PCA/PCC*	1996	Mid 1999

* Although the Board of Directors of the PCA will be responsible during this phase for transmitting information to the government of Panama, it is assumed that the PCC will continue cooperating as required to facilitate the transition process.

The first **priorities** for the government of Panama are therefore to approve the Transition Plan, designate a Transition Commission to manage it, and define the legal authority for the new Canal organization. However, if timely decisions to assure a seamless transfer on December 31,1999 are desired, the other phases of the transition cannot wait. Therefore, while the various legal actions are underway, the Panamanian Transition Commission should be working jointly with the PCC to study the strategic, organizational, and administrative transition issues.

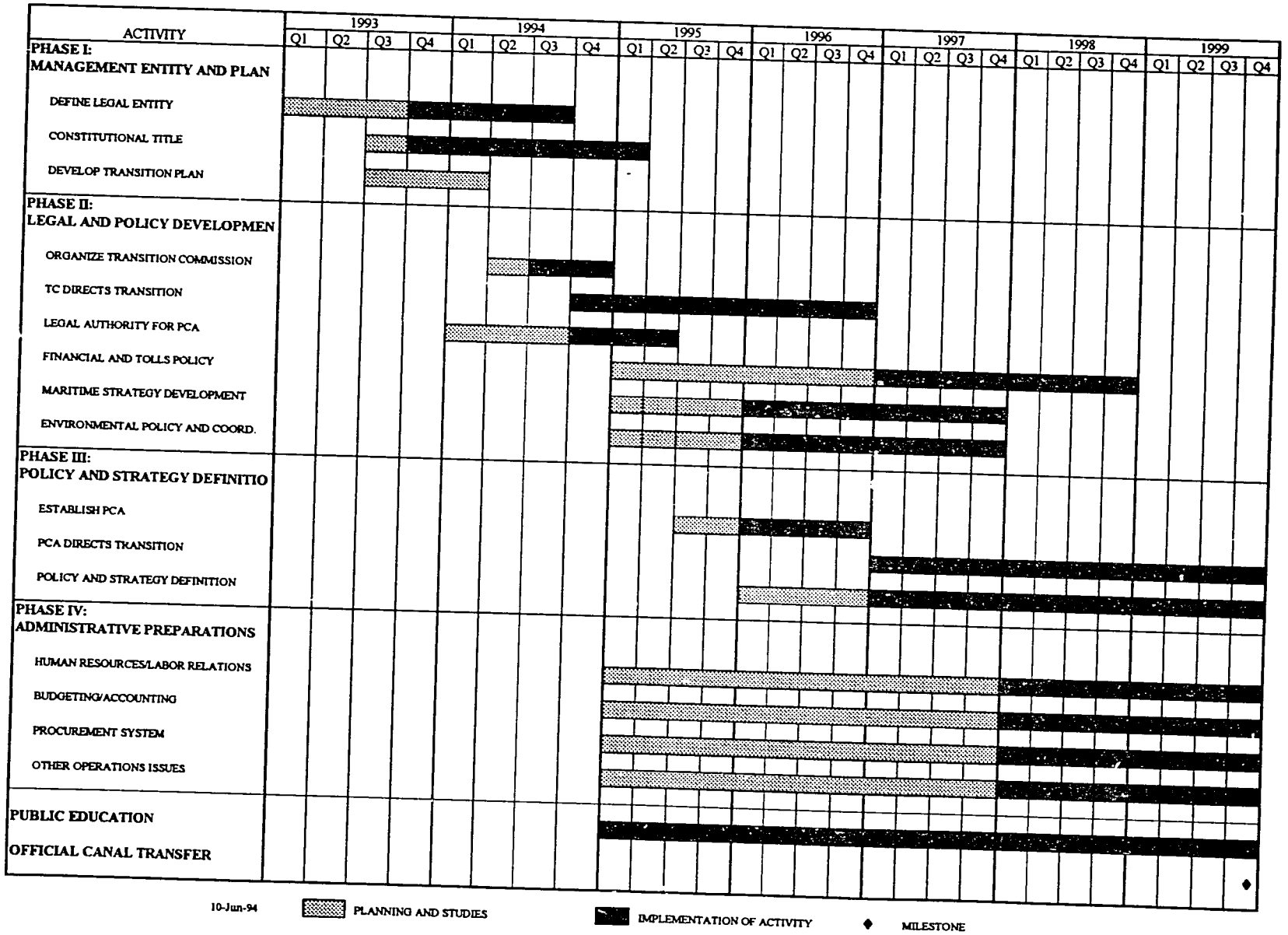
Following the legal authorizations (no later than the end of 1996), a Board of Directors must be appointed for the new entity (Panama Canal Authority or PCA) which will assume control of the Canal on the transfer date. Following its organization, the new Board should approve policies for the new organization and set in motion the implementation of a succession plan for the transfer. The Board of Directors should then prepare for the organizational and administrative changes that will be necessary to assure compliance with Panamanian law as of December 31, 1999. In some cases, issues may need to be brought to the attention of both governments for resolution.

This chapter should serve as a guide during this process and presents the preferred approach for the decision-making process to manage the transition. Finally, it presents the basis for a constructive discussion of the issues that should be addressed in each phase and the proposed timetable and budget. Public education and information dissemination programs are also suggested to communicate decisions and their rationale to the general public, the Canal users, PCC employees,and other interested groups.

TRANSITION PLAN FOR THE TRANSFER OF THE PANAMA CANAL
PRESIDENTIAL COMMISSION FOR CANAL AFFAIRS

FIGURE V-1

SCHEDULE OF THE TRANSITION PLAN PHASES



5.2 TRANSITION DECISION-MAKING AND COORDINATION

To implement a smooth transition process as the year 2000 approaches, the challenges to the governments of Panama and the US will be to:

- continue preparing for the changes that will occur after transfer,
- maintain or improve operational efficiency and reliability of the Canal,
- project a reassuring image to world markets and to the international maritime community,
- develop a vision of the future organizational and financial structure of the Canal,
- build a working relationship based on mutual respect and understanding, and
- implement the plan to achieve this vision.

These challenges can only be met if both governments agree to give the transition process the needed priority and resources. Most important of all, perhaps, is to design a **management and decision-making structure that will have the required authority to be responsible for achieving a smooth transfer.**

The basic underlying strategy for the transition is to **minimize changes on the transfer date.** That means that certain actions need to be taken during the transition period leading up to the transfer date to achieve **gradual change.** To that end, the PCC has been making a significant effort to assure that a fully trained Panamanian work-force is ready to manage, operate and maintain the Canal by the transfer date. Insofar as possible, it is desirable to achieve **policy continuity** on the transfer date to the greatest extent possible. Therefore, a joint Panama/US transition process, and clearly defined mechanisms for timely decision-making by the appropriate government(s) and/or organization(s) appears to be the best approach to the transition.

It is important to differentiate between:

a) government policy decisions regarding the transfer; and

b) decisions about the PCC's organization, and operational and administrative practices that will be necessary during the transition. Clearly, governmental policy decisions by the two countries will be required regarding details not fully defined in the Treaties. Once an overall understanding is reached on the decision-making process for a gradual transition and once Panama defines its transition management organization and installs the new entity that will assume operation of the Canal on December 31, 1999, emphasis should shift to organizational and administrative matters that the PCC will need to study and act on for progressive implementation of agreed-upon transition decisions.

To repeat, as the transfer date approaches, both the Panamanian and US governments will have to agree on certain details of the transfer which are not spelled out in the Treaties.

Both governments have begun to consider these details. In April 1991, the PCC Board approved a resolution authorizing the Administrator to continue planning efforts by producing an list of issues for a successful transition. The PCC recently completed a Congressionally mandated study that reviewed its governance structure and recommended changes to make the transition easier. Concurrently, as this document explains, the Panamanian government's Presidential Commission on Canal Affairs has been planning the details for the assumption of **control of the Canal** by Panama.

The transition process now requires greater attention to detail and improved coordination. The existing **Treaty mechanisms** can be enhanced to reflect the importance of the specific steps required for a seamless transition.

There are three basic requirements for transition coordination:

(1) The most important requirement is for the Republic of Panama to establish a high level body to manage the transition effort and coordinate with the many groups already assigned some responsibility for the transfer. This new "Transition Entity" should be at the highest possible level, full time, should report directly to the President of the Republic, and should speak for the Government of Panama on transition matters. This Transition Entity will need to evaluate policies to be pursued after the transfer as well as actions to be recommended for implementation before the transfer.

(2) The second requirement is to coordinate changes in Canal strategy as agreed upon by both nations.

(3) Finally, it is necessary to identify, analyze and implement gradual changes before the transfer in those areas which both Panama and the United States agree would be beneficial.

Transition actions fall into the three categories: (a) those that require unilateral action of the GOP; (b) those that require unilateral action of the USG; and, (c) those that would best be performed through combined planning and execution. The purpose of this document is to present an outline of a transition process which defines the plan of the **Government of Panama** within a general framework that recognizes the transition responsibilities of the U.S. Government and the PCC, as well as the need for cooperation and coordination in many areas during the transition period.

The first priority of the Republic of Panama is to establish its own transition organization. It should provide for clear policy direction, channels of communications, coordination of outside input, coordination of Panamanian public sector agencies, oversight of staff support, and formulation of recommendations that it wants the Panama Canal Commission to consider. It will

be appropriate to draw on the human resources of Panama's public and private sectors and the Panama Canal Commission and the customers they serve as the transition work moves forward.

The Presidential Commission has obtained office space and equipment and will designate a work group to provide continuity during the period after the Presidential Commission completes its recommendations and until the Transition Commission is officially created.

The following paragraphs describe options for a Panamanian Transition Entity to manage the transition effort on behalf of the government of Panama, and to coordinate with the various US government agencies and bi-national groups. This review of options will be followed by a description of the preferred transition entity and decision-making and management process during this period.

5.2.1 Transition Entity Options

The main objectives and desired characteristics of a government of Panama Transition Entity are:

- High level accountability - reporting directly to the President
- Empowered to make decisions for the GOP, with established channels for interagency coordination and for entry into the legislative process
- Adequately supported with resources, including the staff necessary to follow-up, monitor, and provide professional and technical advice
- Skill in managing successful enterprises businesses and in operating within the political process required to make decisions
- Maximum neutrality and impartiality possible without ties to political, economic, or labor associations to broaden its vision and effectiveness with professionalism and objectivity.
- Stability to provide the continuity over the entire transition period or until the new Panama Canal Authority is established

There are four basic options for the makeup of a Panamanian Transitional Entity which could satisfy the desired characteristics outlined above.

1. *Use the Existing Organizations/Channels without establishing a separate Transition Entity*

The Treaty language establishes bi-national organizations to advise on policy affecting Canal operations in the interest of future continuity and efficiency.

Among these, a Coordinating Committee is established to perform specific functions and other implementation functions entrusted to it by both governments. The Panamanian representatives of this Committee receive personnel support from the DEPAT in the Ministry of Foreign Relations, but this group does not have the required vision and specialization in operational issues of the Canal.

2. Early Activation of the new PCA Board of Directors:

The actual authority charged with the future management and operation of the Canal would be the optimum transition entity. Under this option, the PCA Board would have preliminary planning duties during the transition to coordinate transition activities with other GOP elements, with the bi-national organizations, and with the PCC. However, a legal basis needs to be in place for the PCA itself before this Board could be established.

3. Creation of a Special Transition Entity

Unlike the establishment of the PCA, a Special Transition Commission could be established by Presidential Decree. It could also be easily tailored to provide the coordination and special skills needed in the transition, and to adopt policies for implementation as of, or after, the transfer date.

4. A Temporary Entity followed by early activation of PCA

This option, a combination of the previous two, would first create a Special Transition Commission, which would later be replaced by the PCA once it is established. It would be clearly be desirable for the government to maintain, or name some of the same members of this Transition Commission to serve as members on the Board of Directors of the PCA. Whether or not any of the Transition Entity members eventually become members of the PCA Board, the Transition Commission would cease to exist when the PCA began to function.

A short analysis of each of the above alternatives follows. A matrix of the advantages and disadvantages of each alternative is shown in Table V-2.

1. Use of the Existing Organizations/Channels without establishing a separate Transition Entity:

The major advantage of this option is that the mechanisms currently exist, and the establishment of a new organization is not required. It avoids creation of an additional organization in an area where interagency relationships are already overlapping and difficult to coordinate. On the other hand, the success of these mechanisms to date has been mixed due to lack of resources, and there is no clear-cut authority or single point of decision within the GOP for transition matters. In any case a new PCA Board must be established eventually. In the past, problems have been experienced achieving efficient coordination between the existing bi-national entities, most of which will disappear on the 31st of December of 1999 at noon.

2. *Early Activation of the PCA Board of Directors:*

The major disadvantage of this alternative is the probable delay in creating the PCA because it needs important legal approvals, and the resulting delay in staffing, and funding for the transition planning work. Also, the skills required for the transition are not all the same as required for the future operation. On the other hand, this alternative provides the most continuity, which is the most critical need for the transition planning work. Once the Panama Canal Authority Board is in place, it could take over the functions of the transition.

3. *Creation of a Special Transition Commission:*

A Special Transition Commission could be created **rapidly** by Presidential Decree. Since it would have no "post-transfer" duties, the best individuals could be sought to provide the coordination and special skills needed in the transition. The major disadvantage would be the possible break in continuity going from the transition to the operating entity; therefore it is especially important that the PCA Board assume control of transition work prior to the transfer date to insure an efficient process.

4. *A Temporary Entity followed by early activation of PCA:*

This option, involving a temporary transition entity with a known life-span, permits its early establishment along with a change once the Board of Directors of the PCA is established. To the extent that members of the initial transition group might be named later to the PCA Board, continuity could be maximized. Special skills and relationships could be assured through its structure. This option has the additional advantage of having budget and other key policy decisions made by the actual PCA Board, rather than by an entity that would cease to exist in the year 2000. However, this process is more complicated than if the PCA could be named earlier with no Transition Commission at all, or if the Status Quo organizations could effectively manage the transition until the PCA Board is named. Table V-3 shows some possible membership mixes for this option to assure continuity.

TABLE V-2
COMPARISON OF ALTERNATIVE TRANSITION FORMS

OPTION	*Continuity*	*Creation*	*Responsibility*	*Empowerment*
1: Status Quo	---	+++	---	--
2: PCA Board	+++	--	+++	++
3: Special Commission	---	+	++	+
4: Combination of #2 & #3	++	+	++	++

It would appear that the Transition Commission alternative including the Panamanian members nominated to the PCC Board, the Panamanian delegates to the Consultative Committee, a member of the Presidential Commission, and/or a representative of ARI would have the greatest ability to coordinate policy formulation, effectively speak for the Government of Panama, and make practical recommendations for future implementation by the present and future Panama Canal organizations.

TABLE V-3
POSSIBLE TRANSITION ENTITIES AND RELATIONSHIP TO PCA

TRANSITION COMMISSION	PCA BOARD
1-3 PCC Board Members 1-ARI Board Member, Presidential Commission	3-5 from PCC or Transition Commission 6-8 new PCA Members
1-2-Consult. Committee 1-4 PCC Board Member 1-ARI Board Member, Presidential Commission	3-5 from PCC or TC Boards 6-8 new PCA Members
4-PCC Board Members 1-Presidential Appointee	3-5 from PCC or TC 6-8 new PCA Members

The numbers in all cases above are simply used to show ways of assuring continuity and close coordination between the existing PCC, the Transition Commission and the new PCA. The goal should be to assure membership mixes that provide both **experience and continuity** while bringing a mix of different viewpoints into the board room. The most important point is to establish post-transfer continuity by appointing the PCA Board at some point in the transition process, preferably as early as possible.

Such a group would be authorized by Executive action. This action needs to formalize the relationship of the group to the Government and other authorized transition entities. It must be empowered to make recommendations for implementation of the transition plan.

5.2.1.1 Transition Planning Staff

There are at least 2 major **options** for staffing the transition process under the direction of a Panamanian Transition Commission and eventually, the new PCA Board:

I. Create a new **organization with a policy and administrative staff** that eventually will become the top management and administrative staff of the Panama Canal organization.

II. Form only a new **small transition policy staff** (no more than 5 to 10 employees consisting of a Planning Director, and 2 or 3 specialists in Financial Policy, Human Resources Policy, and Economic Development / Marketing) to manage the process under the direction of the Transition Commission or the PCA Board, and with support from the PCC staff.

To minimize costs and changes required on the transition date, to avoid establishing a parallel organization, and to achieve the overall objective of gradual change, the Presidential Commission believes it is preferable to use a small team for transition policy planning which would work in coordination with the PCC as described in alternative II above.

5.2.2 Coordination for the Transition

The process and mechanism for the coordination between the PCC and the Transition Commission is described below and is graphically presented in Figure V-2.

<u>The Transition Commission and the Panama Canal Authority</u>

The Presidential Commission concludes that Panama needs and has the authority to create a Transition Commission, naming its members considering principally the basis of professional abilities and experience required, clearly assigning their responsibilities, and authority necessary so that they can carry out their work apolitically to serve the basic permanent interests of the Nation. This Commission will coordinate the transition process to harmonize its actions, seek the maximum benefit for all groups that have an interest in the efficient operation of the Canal, especially the Panamanian Nation, and the PCC. The following schedule is established (see also Table V-6):

1. As soon as possible, a Transition Commission will be created by Presidential Decree, composed of 3 to 5 members of such stature that they can make decisions for the government. They will report directly to the President of Panama and assume total responsibility for managing the transition process.

2. Every effort should be made to complete the necessary legal steps to establish the PCA Board as early as possible, but no later than the beginning of 1997. When the PCA starts to function, it should ratify the actions taken by the Transition Commission.

3. As the date of the transfer approaches, the Transition Commission, and later the PCA Board should oversee all transition planning work and develop mechanisms required to coordinate with the PCC on decisions which have implications beyond the transfer date. Independent consultant assistance should be sought when an independent opinion or worldwide expertise is needed.

4. To achieve policy coordination and continuity, it is advisable that the Transition Commission include representatives carefully selected from those already involved in this transition planning. Likewise, it is advisable that the PCA include Transition Commission members.

5. The Transition Commission will need a permanent administrative staff of at least 4 full time professionals dedicated to the execution of the Transition Plan. The person in charge should be Director of Planning and have broad experience in strategic planning and administration. The staff should also include three specialists, one each in Financial Management, Human Resources Management, and Economic Development/Marketing. This administrative staff will be supported as required with experts from other government sectors or by contracting for needed services.

Panama Canal Commission

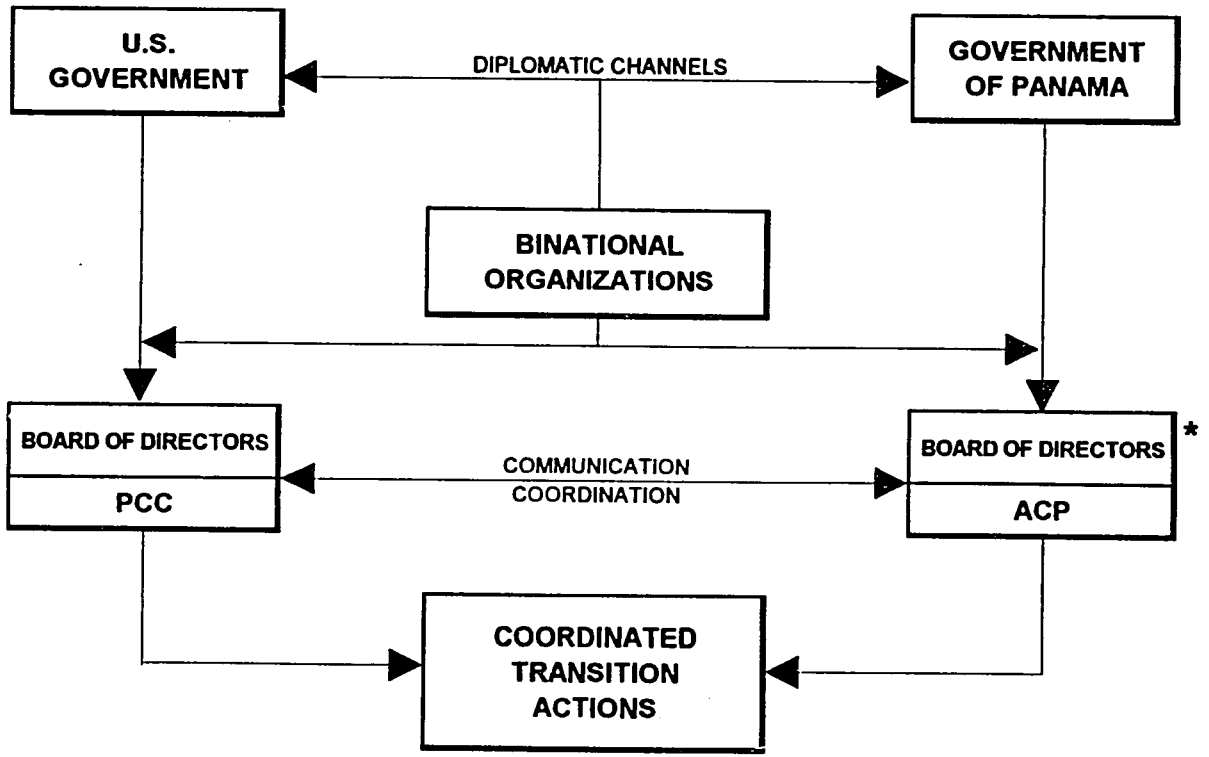
1. The Panama Canal Commission (PCC) must continue its involvement in the transition on behalf of the U.S. Government. The PCC Management will guide the efforts of the administration staff in this area, submitting reports to the Board of Directors as it has to date, and as may be determined from time to time by the Board of Directors.

2. The PCC will actively participate in many of the tasks required to satisfy obligations of the USG dating from the signing of the Treaties. Examples of special significance are the increase in the percentage of Panamanians in the workforce, training of the Panamanian staff, and liquidation of all obligations of the USG.

3. The PCC Board of Directors will keep full responsibility and authority for decision-making related to the Panama Canal operations until the transfer takes place. However, planning and actions that would affect the Canal activities after the transfer need to be consistent with the coordinated transition plan.

4. The PCC will provide the point of contacts for the purposes mentioned above. Excellent information flow between the PCC Top Management and the Transition Commission must be assured. The ideal is to have an exchange of information which produces a clear explanation of the planned transition activities, of areas that require prior coordination, and which provides periodic progress reports.

FIGURE V-2
TRANSITION COORDINATION



* Transition Commission while ACP is appointed

** Recommendations for Joint Actions

5. If the PCC at any time considers itself to be legally constrained from undertaking any effort that would contribute to the progress and success of the transfer (for example: the use of personnel and other resources for duties that will not benefit directly the present Canal operations), the PCC Board of Directors should seek to eliminate or minimize the effects of these obstacles in coordination with the Transition Commission or the PCA.

Joint Actions

Several actions must be carried out in a coordinated manner:

1. To obtain optimum results, the PCA and PCC should agree to begin gradual implementation of a Joint Transition Plan as early as possible, so that organizational and operational changes on December 31, 1999 are minimized.

2. The Transition Commission and later, the PCA, should work jointly with the PCC and should submit quarterly status reports on transition progress through their respective Boards of Directors to the U.S. and to the Panamanian Governments. These reports could include: joint progress, differences between the parties, and the status of decisions for a smooth transfer. The report must also highlight required actions by the GOP through the Transition Commission or PCA, and the required actions by the U.S. Government through the PCC.

3. It is important to identify the decisions whose effects could extend beyond the year 2000 and those which require action before the year 2000. In general, the Transition Commission or PCA will defer to the PCC in communicating with employees on matters related to changes to be adopted immediately, but will coordinate the approach to implementing medium or long term actions.

Transition Cost

The transition is a bi-national obligation and responsibility established by the Treaties. The actions taken to accomplish the transition should be considered as an ongoing cost of operating the Panama Canal.

5.3 TRANSITION PHASE I - DEFINITION OF THE ENTITY AND LEGAL CHANGES - ALTERNATIVES ANALYSIS AND RECOMMENDATIONS

Several alternatives exist regarding a post-transition legal structure for the new entity that will operate the Canal. After considering several options, the Presidential Commission has recommended, in a Constitutional Addition which was presented to the President and approved in the first of two National Legislative Assemblies, a governmental public authority which will operate the Canal with the maximum possible autonomy and financial independence. The

Cabinet added to the proposal a number of controls and governmental links. The National Assembly introduced other modifications when giving final approval to the new Title.

The plan presented here assumes that an organization similar to the one recommended by the Presidential Commission will be authorized. Other legal issues involved are discussed in the following paragraphs.

The legal challenges that Panama must face for the future Canal organization consist primarily of obtaining the second approval (in September 1994) of the Constitutional Title that establishes the future Canal organization and sets the structure for its various administrative systems. In the event that the title succeeds, then Panama needs to concern itself with detailing the other legal instruments that the new Constitutional Amendment directs or authorizes.

This section presents a description of the Constitutional Title and the Constitutional Title process. This is followed with a brief discussion of the alternatives for creating the Transition Commission.

5.3.1 Constitutional Title

As previously noted, Panama has chosen to add a new Title to its Constitution to regulate all matters pertaining to the creation and management of the future Canal organization. A Constitutional Title can be initiated by the Executive, Legislative, or Judicial branches. In this instance, the Title was proposed by the Presidential Commission, was introduced through the initiative of the Executive Branch, submitted for consideration by the Legislative Assembly in September 1993, and received the first approval in December of the same year.

There are two approaches through which a Constitutional reform can be pursued. The first, which is being used in this case, requires the reform be approved by two different Assemblies. The proposed reform, after being presented, is submitted for initial discussion to the Commission of the Canal Affairs and to the Commission of Government and Justice, both parts of the Legislature. Following this, it is submitted to the full Assembly which must approve it by absolute majority vote of its members after three debates. After the election of the next Assembly, and within five days of the start of the next ordinary sessions, it must be presented again for debate and must be approved by the Assembly, without modification, by an absolute majority vote following just one debate.

The second approach requires that the National Assembly approve the reform in three debates by absolute majority in one Legislative session (a legislative period runs from September 1 to August 30 of the following year), and that this reform be approved again by the same Assembly in a new Legislative session, also in three debates, with modification of the prior approved text permitted. After approval by the Assembly during the second period, the reform must be submitted for a National Referendum, which must be held within a period of no less than three months and no more than six months from the date of the second approval.

The Presidential Commission, the Executive Branch, and the current Legislative Assembly opted for the first approach. This is justifiable because, although the risk exists that the reform that is approved by the first Assembly (which ends in August 1994) may not be approved by the second Assembly (which begins in September of the same year), there is not be adequate time to insure a Constitutional Addition by National Referendum before the transfer occurs. This situation could produce ominous consequences for Panama.

5.3.2 The Need for a Constitutional Amendment

The passage of a Constitutional Title conveys an important message to the international community regarding Panama's treatment of the Canal as a major priority. The Title establishes the general framework for the Canal's administration and operations. This underscores a principal advantage of establishing the organization by Constitution Title.

Another important advantage of having the Title is that it guarantees that the Canal organization will have financial autonomy. This is a significant point to understand. Article 264 of the Constitution declares that the Executive Branch has the responsibility for preparing the national budget. The Assembly, however, has the authority to review, approve, or modify it. In modifying it, the Assembly can only decrease costs, and cannot increase them. The proposed Title would subject the Canal organization to the same process. However, there are two very important differences: first, once the budget is approved, the organization can use the funds as it chooses. In other words, it has the right to deviate from the line item allocation of funds originally presented in the budget. This provides certain financial flexibility for when unanticipated events dictate a reallocation of the funds. Second, the Canal's revenues will reside with the organization, and not the national treasury. Therefore, the government will not have access to the Canal's revenues, except as otherwise provided for in the proposed Title, e.g. the Canal organization's annual payment to the national treasury.

5.3.3 Organic Law

The adoption of the new Constitutional Title in accordance with the two assembly formula, is imperative to regulate the creation, organization and administration of the future Canal organization. The void created by the absence of a Constitutional regulation could not be adequately filled by an Organic Law because in some important areas, such as assuring the continuation of Canal Operations, such legislation would be in conflict with the present Constitution.

The Organic Law will implement the Constitutional reform and will prepare the ground for the regulations which will deal with the administrative systems of the organization.

Our studies and discussions have convinced us that an Organic Law will not, by itself, be adequate to establish the future Canal organization and the structure for its administration, nor

does it represent a viable alternative for the customers, employees, and the future of the Canal as a great Panamanian enterprise.

5.3.4 Creation of the Transition Commission

A critical element of the transition is the creation of the entity to guide the planning process. It will require an annual budget of approximately $1.6 million for staff support, with additional funds possibly required to obtain consultants or advisors to undertake special studies. The transition entity can be an organization created temporarily to oversee and plan the transition until the first Board of Directors of the future Canal organization is appointed, or until it can be effectively converted (for example by expanding its membership to be consistent with the proposed Constitutional Title) into the future Canal organization's Board when it is created.

The mechanism by which the Transition Commission is created depends on the level of authority and responsibility desired. An Executive Decree can be issued to establish the entity within the office of the President. This is likely to be sufficient as long as the entity doesn't need its own independent implementing authority (e.g. development of policy for implementation without the need for any other authorization beyond what was already granted in the empowering legislation). The only problem with this approach (unless autonomy is an issue) is that a Decree can also terminate the entity. Thus, a Decree issued by the current President can be reversed by the next President in 1994, although this is unlikely because of the paramount importance given the Canal by Panamanians in general.

5.4 TRANSITION PHASE II - STRATEGY AND POLICY

Three major areas concerning strategic direction and policy issues need to be considered during this phase of the transition:

- Financial Management and Tolls Policy
- Role of the Canal in National Economic Development Strategy
- Environmental Policy

This assumes approval of the Presidential Commission's recommendations that an autonomous, independent Board of Directors be established to run the Canal.

5.4.1 Financial Strategy

5.4.1.1 Issues and Options

As the year 2000 approaches, the following financial management issues will have to be addressed to assure a smooth transfer and an efficient operation after the year 2000:

- Financial Management Policies, Autonomy and Structure
- Capital Investment Program Financing
- Working Capital and Risk Management
- Operational Review
- Toll Policy
- Investment Strategy

5.4.1.2 Financial Management Policies, Autonomy and Structure

Financial managers need to ensure that the Canal remains fiscally self-sufficient. They need to evaluate the adequacy of financial resources to cover both daily operating costs and long-term depreciation as well as the risks now covered by the US Government with a line of credit of $100,000,000.00. In addition, the Canal needs to continue paying the Government of Panama an annuity and tonnage payment. Toll rates also need to be managed carefully to ensure that Canal customers do not seek alternate routes.

To ensure that post-transition financial managers possess an adequate level of financial autonomy and that a commercial philosophy is maintained, a number of basic strategies regarding the future financial structure of the Canal need to be crafted during the next six years. In developing these strategies, the Canal should closely examine the frameworks used by profitable ports and canal authorities around the world. The most common feature of such organizations is that they are **insulated from the vagaries, debt problems, and budgeting difficulties faced on a daily basis by a national government.**

The Presidential Commission recommends that the organizational entity created under Panama law be financially self-sufficient and operate independently and with autonomy from Panama's normal bureaucratic governmental controls. At the present time, the PCC operates the Canal under the US government financial system, with no long-term financial management projections beyond three years. Furthermore, Canal operations and capital investment programs are financed on a pay-as-you-go basis without using debt. There is no real, commercially oriented approach to financial management where the various operations are managed based on a review of their annual revenues and financial performance. The Transition Commission should establish the guidelines for such a commercially oriented approach to be established by the PCA or Panama may run the risk of losing money.

As a first step, a five year financial plan, should be developed based on projections of all income and expenses. This financial planning process should include consideration of long-term maintenance, rehabilitation and capital investment requirements. After the plan is prepared, it

can then be used as a base for triennial budget preparation, and to provide management and the new PCA Board with regular reports on the organization's financial performance.

5.4.1.3 Capital Investment Program Financing

To ensure that the Canal's financial structure is always able to retain sufficient earnings to cover ongoing operations and maintenance costs, the future financial structure of the Canal must be kept free of debt. This issue is singularly important since first rights have been placed on Panama's Canal revenues on three occasions during the past forty years. In each of these cases, the Government of Panama used its share of Canal revenues as a guarantee for loans not related to Canal operations. In two cases, the government of Panama continues to pay off the loans. It is interesting to note that these are two loans on which the Government of Panama has kept loan repayments up to date.

In practice, it is unlikely that Canal revenue streams accruable to the Government of Panama will be earmarked for particular non-Canal needs because policies were adopted by the international banking community after 1962 which prohibit a national government from earmarking a particular revenue source to pay off a specific debtor ("negative pledge" or "Pari Passu" guidelines). In other words, international agreements theoretically prevent the Government of Panama from obtaining debt secured by Canal revenues.

Unfortunately, the reverse does not always apply. That is, surplus Canal revenues once they are transferred by the PCA to the Government of Panama become general revenues and are subject to the same restrictions that apply to all other revenue sources. Thus, if the Republic of Panama should default on any of its external loans, financial managers would have a difficult time claiming that Canal funds are distinct from other government revenues.

5.4.1.4 Working Capital and Risk Management

There are currently no provisions for supplying working capital to the new Canal administration immediately upon turnover to the Government of Panama. As things now stand, as of January 1, 2000 there will be no liquid assets to be used as working capital for the operation of the Canal unless advance reserves in the range of $40 - $60 million are established.

The Canal will be transferred with no significant outstanding liabilities and with a concurrent substantial reduction in expenses. Therefore, cash will accumulate rapidly. However, even with rapidly increasing liquid capital, there are still risks and insecurity during the first few days of the new operation. Transition planners need to ensure that there will be enough capital available as of the transfer date to cover the obligations and expenses of Canal operations. From the transfer date forward, the Canal organization will begin to accumulate both short-term liabilities and assets. Each day, between $1 million and $1.5 million of revenue will come in. However, action must be taken to assure that the organization's working capital, cash balance and liquidity are maintained. Details, such as how to pay the first bills when they are due, need to be worked out well in advance.

Provisions must be made, therefore, not simply for the Canal to operate under *normal* conditions, but also to allow for contingencies that might result under *extraordinary or unforeseen* circumstances. Among the major issues to be considered are the following:

1. **Line of Credit.** The PCC currently has a $100 million line of credit that allows it to remain liquid even if unexpected events threaten its cash position. The new Canal organization should make sure that it has a similar line of credit of *at least* this amount, perhaps even more. This could fund any cash deficit that might be expected to result from normal operations until sufficient surplus cash is generated through tolls collection. It would also provide a cushion in case of extraordinary events that threaten solvency.

2. **Cash Reserve.** A supplementary measure that could help to prepare the new Canal organization for potential cash crises shortly after transfer would be the accumulation of a cash reserve. This could be obtained by the Republic of Panama and provided to the organization in the form of a loan, repayable once the financial stability of the organization is firmly secured. An idea that has been suggested is that the Republic of Panama "earmark" a portion of the funds received from the annual $90 million payments from the PCC for this purpose.

   The PCC, in a similar manner, is planning a reserve fund for the dissolution costs of that Canal organization.

3. **Joint Contract Liability.** As the transfer date approaches, Canal management will increasingly be faced with uncertain purchasing questions. It is important that PCC officials not be reluctant to initiate critical purchasing/contracting actions and that suppliers not be concerned about whether the new organization will accept responsibility. In fact, there should be no differences of opinion over who will pay for what: e.g. the PCA thinking that the PCC should assume all future liability for current contracts or the PCC believing that the PCA will be responsible for future payments of contracts for items of a capital nature. This is an area which the Commission cannot resolve alone and is one of the serious issues which requires joint consensus.

   Agreements between Panama and the US will be needed on projects that begin before, but end after the transfer. Examples include the Culebra Cut widening whose continuation is planned beyond year 2000, requests for equipment in 1998 and 1999 which won't be received until after the transfer, and other obligations that the Canal may incur in the next six years which cannot be closed out before year 2000.

4. **Capital Investment Plan.** Closely related to the previous issue, the PCA and the PCC should agree upon a capital plan covering at least five years that makes

sense from an operational standpoint. Once this is done, they should then agree in principle on their respective obligations as the plan is implemented. The sooner this is done, the easier it will be to avoid disputes that could threaten procurement of capital items.

5. **Inventory.** It is extremely important to agree on a stockage plan so that inventories will be maintained through the transfer and for several years beyond. Panama needs to be assured that certain stocks will not be depleted in the last months of the transition. A full accounting of inventory should be made and agreement reached on the value and quantity to be transferred as well as a replacement/restocking plan.

6. **Insurance.** The PCC is currently insured against damages and loss of revenue in the event of extraordinary circumstances. Its other liability risks are limited by law. The new organization should endeavor to continue current policies to protect itself against catastrophe. Other than for major catastrophe insurance, the PCC is self-insured. The PCA needs to consider all of its insurance needs and its ability to establish liability limits in law prior to the transfer date, to either confirm the present self-insurance policy or procure additional insurance to be effective on the transfer date. The PCC is presently reviewing its coverage in all these areas.

5.4.1.5 Operational and Organizational Review

A review of the organizational framework for Canal operations needs to be completed to reflect appropriate changes in view of the deletion of functions that are only necessary because the PCC is a US government agency. For example: the functions related to the Treaty implementation obviously will not continue and probably the housing and vehicle maintenance functions will also end. At the same time, new or expanded functions will be required when the organization is transferred, such as a financial management planning group and an internal audit group. Specific operating objectives for each unit should be developed once the Panamanian management team is functioning.

Options include: continuation of the PCC's present practice of conducting most activities "in-house", making extensive use of management contracts, encouraging Canal managers to better utilize their facilities by renting or selling them to organizations outside of the Canal. Transition planners could also consider the Canal's future relationship to the private-sector. In any case, the PCA must control the basic plant of the Canal.

It is possible that Panama may be faced with a critical manpower skill shortage if a significant number of employees in certain areas choose to retire and time is not available for hiring and training new employees. The Commission, or the PCA, could consider contracting with specialized firms for some services such as secretaries, carpenters, and mechanics, in addition

to those currently done by contract by the PCC. This is a sensitive area and needs attention and preparation as well as clear policy definition.

5.4.1.6 Toll Policy

It is impossible to ignore the fact that Panama runs the risk of loss in operating the Canal. The present toll rates charged by the Panama Canal Commission reflect a strategy of full cost recovery including the annual $90 million payment to Panama as explained earlier. In the context of the transfer of control of the Canal, it is appropriate to consider whether this, or some other pricing strategy, is best for Panama. The alternatives include: a continuation of the current policy of operating the Canal on a break-even basis, or alternatively; (a) maximizing profits, (b) maximizing transits, or (c) the establishing a goal which synthesizes profit and transit maximizing objectives through the use of a selective toll structure. It is necessary to balance the risks and benefits, both direct and indirect, of these alternatives.

Previous studies have indicated a **lack of price-demand elasticity**, and a review of these studies confirms their findings. Although the studies are not entirely comparable, the similarity of their results verifies that demand is inelastic. In this context, the implementation of toll rate increases for congestion, cost recovery, or other reasons is feasible within limits of demand elasticity. This is another factor in an environment of growing competition.

Beside the issue of traffic diversion, any proposed variations in toll rates will have to take into account the requirements stipulated in the *Panama Canal Treaty* and the *Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal*, signed in 1977.

> Article I of the *Panama Canal Treaty* states that "the Republic of Panama declares that the Canal, as an international transit waterway, shall be permanently neutral in accordance with the regime established in this treaty."
>
> Article III of the *Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal* provides that, for the purposes of the security, efficiency, and proper maintenance of the Canal, tolls and other charges for transit and ancillary services shall be just, reasonable, equitable, and consistent with the principles of international law".

In the process of ratification of these two treaties, the US Senate introduced an "Understanding" to the Neutrality Treaty that states that "Prior to any adjustment in tolls,... the effects on the trade patterns of the two Parties shall be given full consideration, including consideration of the following factors:

(1) the costs of operating and maintaining the Panama Canal;

(2) the competitive position of the use of the Canal in relation to other means of transportation;

(3) the interests of both parties in maintaining their domestic fleets;

(4) the impact of such an adjustment on the various geographic areas of each of the parties; and

(5) the interest of both parties in maximizing their international commerce."

The four basic toll rate options that Panama can consider are:

(1) Marginal Cost Pricing,

(2) Maximization of Economic Development

(3) Full Cost Recovery Pricing (as is the case today), and

(4) Increasing Revenues.

Under a **marginal cost pricing policy**, toll rates would be set to recover the incremental costs associated with the services provided to the ships transiting the Canal. Marginal cost pricing is only valid up to the point where congestion occurs. Though the Canal is not congested presently, congestion conditions could develop in the future. If congested conditions arise, the optimum economic strategy would be to apply prices in such a way that the extra costs generated by the congestion (i.e. increased delays, higher operating costs, etc.) are absorbed by those responsible for the congestion, either by length of time for the transit or by the cost of the transit. The application of a marginal cost approach to the Canal would result in substantially lower toll rates, and though more traffic might be attracted, it is likely that financial deficits would result.

(2) Under **maximization of economic development**, the Canal would be viewed as part of the infrastructure of the nation, and in this context the Canal's value would not be assessed in terms of the actual cost of the facilities but in terms of the economic and trade development objectives in the Canal area. In this case, whether an element of infrastructure makes a profit or covers costs is less relevant. The primary motive is to maximize the developmental impacts to the nation.

Implementation of this strategy would call for setting toll rates so that they maximize the economic development growth of Panama. Toll rates would have to be set to encourage traffic to not only transit through the canal, but also stop in Panama, thereby stimulating economic development associated with the transiting vessels. Examples of these types of activities include ship repair and refueling facilities; crew change facilities; associated tourist activities; loading and off-loading facilities; free-trade zone development; and transhipment facilities. However, there must be an available pool of skilled labor covering all aspects from the technical to the managerial if the proposed developments are to be feasible. There must also be solid market and private sector investor interest for the proposed services and activities.

(3) **Total Cost Recovery** is a third approach which calls for setting toll rates sufficiently high to **cover all costs** and earn a reasonable profit. It does not take into account economic objectives or economic benefits associated with the facility.

For the Panama Canal Commission, the present operational toll strategy of recovering all operating costs and improvements works very well. The prior experience of the PCC suggests that tolls will rise at rates which are approximately equal to inflation, about 3% per year. Recent toll increases of 9.8 and 9.9% were made in 1989 and 1992. Changing this approach to incorporate economic development criteria makes good sense, but it will require careful study to determine the potential economic benefits generated by such a toll rate strategy, and the financial implications for the PCA organization.

(4) **Higher Income.** A fourth possible strategy is to set tolls to **increase revenues** to a defined point above current levels. Assuming a relatively inelastic demand, it is likely that toll rates could be increased, and though transit traffic might decline, revenues would increase. The drop in transits may not be significant in the near term, but could negatively influence a long-term development strategy.

Increases in revenues may also be enhanced using a toll rate that differentiates between routes, cargo and vessel types. Differentiating between each of these attributes could increase revenues further. This is the system used in the Suez Canal.

In summary, there are substantial potentials for increasing revenues while at the same time maintaining equity among users. The current system is easy to administer but does not promote economic equity on the basis of cost of the service, value of the service to the user, or the user's ability to pay. It does not promote efficiency by encouraging the use of larger sized ships nor does it promote Panama's economic development.

In terms of the need to increase toll rates in the future, financial analyses were undertaken in which net income levels were projected to FY 2010. The results indicated that based on a continuation of the present toll rates (with no increases of any kind) and based on the full cost recovery policy, a toll rate increase will be needed shortly after the transfer date, i.e. around year 2003. This conclusion needs to be reviewed regularly in light of the goals to minimize changes close to the transfer date. On this key issue, the Transition Commission (with assistance of the PCC) should perform an extensive, in-depth study so that both countries agree on the best toll policy to fulfill the objectives of the treaties.

Any proposed toll increases between 1994 and 2000 should be coordinated between the representatives of the two countries.

5.4.1.7 Investment/Financial Strategy

Having established the future organizational framework, financial structure, and financial objectives for the PCA, transition planners will need to develop an investment strategy with regard to both Canal reserves and "excess funds." Excess funds or net profits represent the excess income after all short and long term Canal-related operational, maintenance, and repair obligations are accounted for. Canal reserves represent a portion of net income set aside for staff pension funds, emergency reserves, the replacement of major machinery and equipment, and other canal improvements.

5.4.2. Preferred Option and Implications of Options

5.4.2.1 Financial Management Structure

The Presidential Commission feels that the most prudent option for Panama is to assume the Canal's current financial and operating structure.

Over the medium term, Panama could increase competition by dividing the Canal into separate profit centers which would be evaluated on their ability to control costs and fully use their capacity by contracting with non-Canal entities for some services.

An idea proposed by the Presidential Commission advisors is that, in addition to establishing itself as an apolitical, autonomous organization with social and economics goals, the Canal should also consider the adoption of a "Contract Plan" to govern its relation with the Government. Contract Plans have been used successfully in countries like France and Senegal and could be a valuable instrument for clarifying the objectives and financial obligations of the Government of Panama and the Panama Canal Authority. In addition, a Contract Plan provides a structured forum for conducting the important dialogue that must occur regularly between the Government of Panama and the administrators of the Canal. The absence of a contractual agreement between the Canal Administrators and the GOP could result in a reduction of the Canal autonomy and create tension in relationships between the Canal managers and the Government Ministers. This is a delicate subject that will require attention by the President and the Transition Commission.

5.4.2.2 Capital Program Financing

A long-term financial plan should be prepared as early as possible, as a basis to determine the capital investment requirements of the Canal in the early years after the transfer (see also section 5.6.3.3). Such a study should be the basis for adopting a financial policy for the PCA. The extent to which the PCA will be involved in Panama's long-term development strategy of the maritime industry should also be considered. Until Panama makes such decisions, the present policy of operating as a pay-as-you-go investment should be maintained, except for any short term credit needed for cash management purposes.

5.4.2.3 Working Capital, Risk Management, and Reserve Funds

A rule of thumb regarding the cash balance issue is that the Canal should possess the minimum practical credit or reserve to cover operating costs and unforeseen contingencies. The Transition Commission or the new Panama Canal Authority needs to decide which is the preferred option for working capital and risk management, based on a study that should be conducted in the 1996-1997 timeframe.

It should be mentioned that according to the Chief Financial Officer of the PCC, Panama will not need any funds beyond those that will be received starting the first day of its administration as advance payments for transits, and that there will be no significant expenses due until 15 to 30 days later.

5.4.2.4 Organizational and Operational Review

A review of the organizational framework for Canal operations should be completed by the Transition Commission in cooperation with the PCC in light of the transfer of control. Such a study would be the basis for appropriate organizational changes resulting from the transfer. Other organizational changes should be minimized during the transition period, except as necessary as a result of implementation of the Management Succession Plan and the efforts to maintain critical skills to operate the Canal (see also section 5.5 - Organizational Changes Phase). It is important to establish if the majority of senior managers in the Finance Department of the PCC plan to retire or leave prior to, or on the transfer date. Careful planning and an orderly transition of Financial Management personnel needs to be undertaken as part of the overall Management Succession Plan and Employee Retention Plan (see section 5.6.1)

Changes in the organization and labor relations should be worked out starting early in 1996 and should be finalized in 1998 by the PCA to allow time for both parties to reach an unpressured, rational, and amicable agreement.

In addition planning transition of financial administration personnel, the plan should include the transfer of systems, regulations and procedures for each department, including the adjustments required in the Legal Advisors Office, Industrial Labor Relations, and the Board of Local Inspectors.

5.4.2.5 Investment Strategy

In the early years, any excess revenues should be designated for long-term Canal capital investment needs, since significant capital requirements are anticipated, especially if a decision is made to add a third set of locks after the year 2010.

5.4.3. Role of the Canal in National Economic Development Strategy

5.4.3.1 Issues/Challenges

The Presidential Commission has emphasized in its deliberations the tremendous potential that the Canal represents if it is used as an element of Panama's socio-economic development strategy to attract new businesses and, among other things, compensate for employment that will be eliminated as a result of the closure of US military installations. While it is difficult to calculate indirect effects, it is estimated that US military operations constitute more than four percent (4%) of the nation's gross domestic product (GDP) while the Canal is responsible for an additional eight percent (8%) of Panama's GDP.

Many maritime industry and commerce executives in Panama believe that the nation's maritime sectors could be strengthened both financially and operationally by working toward a set of maritime strategies and goals.

The Presidential commission and its eight subcommittees have presented the basis for a broader national maritime strategy in the following vision statement:

> "The transfer of the Canal and related resources opens significant potential for Panama to develop as a maritime nation and will aid in the national economic development. If properly planned, coordinated and controlled, this emerging "national maritime strategy" will change the way the nation looks at the Canal and the mission of the future Canal Authority."

Elements of this strategy could eventually include the coordinated and optimal utilization of the ports, maritime terminals and maritime properties, the free trade zone, the ship registry office, other reverted maritime properties, and the Canal, as well as services related to maritime transits of the Canal, such as:

> ship construction; repair maintenance; inspection; supplies and lubrication; management and financing of ships; ship related tourism; ship bunkering; ship crew services; maritime training and development; container repair; cargo consolidation; transhipment and distribution.

Although there is general agreement about the potential that a coordinated maritime development strategy represents, the Canal (clearly the most prominent facility) remains the most important and sensitive of the many elements of the strategy. Furthermore, one key aspect of attracting new business to the Canal area is to establish a business climate that will encourage private sector investment, that is, a climate of societal peace and security.

Efforts to develop a Maritime Center as part of the national development strategy must not only have private sector involvement, but also private sector investment. This investment could

include not just direct financial support but also in-kind services, part-time employee sharing, marketing and management support. Currently, Panamanian laws may be working at cross-purposes: i.e., as businesses are provided incentives, but at the same time face comparatively high import duties, and an inflexible labor code that affects management's ability to effectively adjust operations to changing market demands. To be successful, the maritime strategy concept requires legal changes in various labor and trade laws/regulations.

Consideration of the opportunity created by the Canal for a national maritime strategy will be a key transition issue. Planning for such a broad development strategy goes well beyond the immediate issues associated with the transfer. Financial and toll policy, Canal marketing strategy, use of reverted areas by ARI, and others, should in the future be integrated into the National Maritime Strategy.

In this document we cannot deal in depth with such complex and wide ranging matters. The Presidential Commission recommends the creation of a new multi-disciplinary Commission, similar to the Presidential Commission, to study and discuss the subject and make recommendations. As decisions are made by the Republic of Panama to define the maritime strategy and determine how it will be implemented, the Transition Commission and eventually the PCA should participate in this process. The Canal transfer, with specific deadlines, has already set in motion a public/private exchange of ideas, meetings, strategy formulation sessions, legal and administrative discussions, and other activities necessary to develop this emerging national maritime strategy. Other initiatives, notably by CONDESMAR (Council for Maritime Development), indicate that the private sector in Panama is very interested in helping to unify and build upon the future national maritime vision articulated by the Presidential Commission, its subcommittees, and the new Constitutional Title.

Information development and exchange, new ways of commercializing the Canal, linking the Canal services with other maritime sector groups, and creating new pricing strategies will also be appropriate agenda items during the transition process.

Remembering that the stated primary goal of the transition is to establish an entity that will operate the Canal after the year 2000 as efficiently as it operates currently, there may be a need to increase privatization within the PCC to support Panama's evolving maritime development strategy. To successfully achieve this additional goal, it is necessary to understand how marketing functions are integrated throughout the PCC organization, and how Panama's representatives can participate jointly with the PCC in such marketing programs. This will require discussion, negotiation, and understanding by both parties.

5.4.3.2 Preferred Option

The Presidential Commission believes that the complexities inherent in the transition process of the Canal will require a focused and intensive effort for the new Panamanian members of the Transition Commission and the PCA. To facilitate the transition, the Commission favors **the**

formal recognition of the need for special **emphasis on high-level coordination** of the **marketing and marketing/economic research functions during the transition period.** Maritime commerce is complex because the market for water transportation can be segmented by commodity, trade route, geographic region, customer, or available transport mode alternatives (see Chart 1). The sooner the Panamanian Transition Commission is made aware of the latest developments and related threats to Canal use, the better they will be able to formulate their own economic plans and strategies for the future. **A formalized approach is best suited for addressing these challenges.** For that reason, a specialist in Privatization/Economic Development should be hired as a member of Panama's Transition Team staff, reporting to the Director of Planning. This specialist should work on behalf of the Board, coordinating closely with other Panama government agencies, bi-national organizations, and the PCC.

As recommended by the Consultative Committee, an information sharing project should be initiated, involving the various sectors, to distribute information (i.e., data base/network integration) regularly. This is difficult now because each sector (unit) operates independently of the others in separate government ministries. Ship Registry, for example, is under the ministry of Treasury and Finance, while Ports (APN) are included in the Ministry of Commerce and Industry. The Ministries of Foreign Affairs, and Government and Justice are also involved with the Maritime sector. The PCC already has a significant maritime data base developed which includes:

(1) systems integration,

(2) data collection and analysis, and

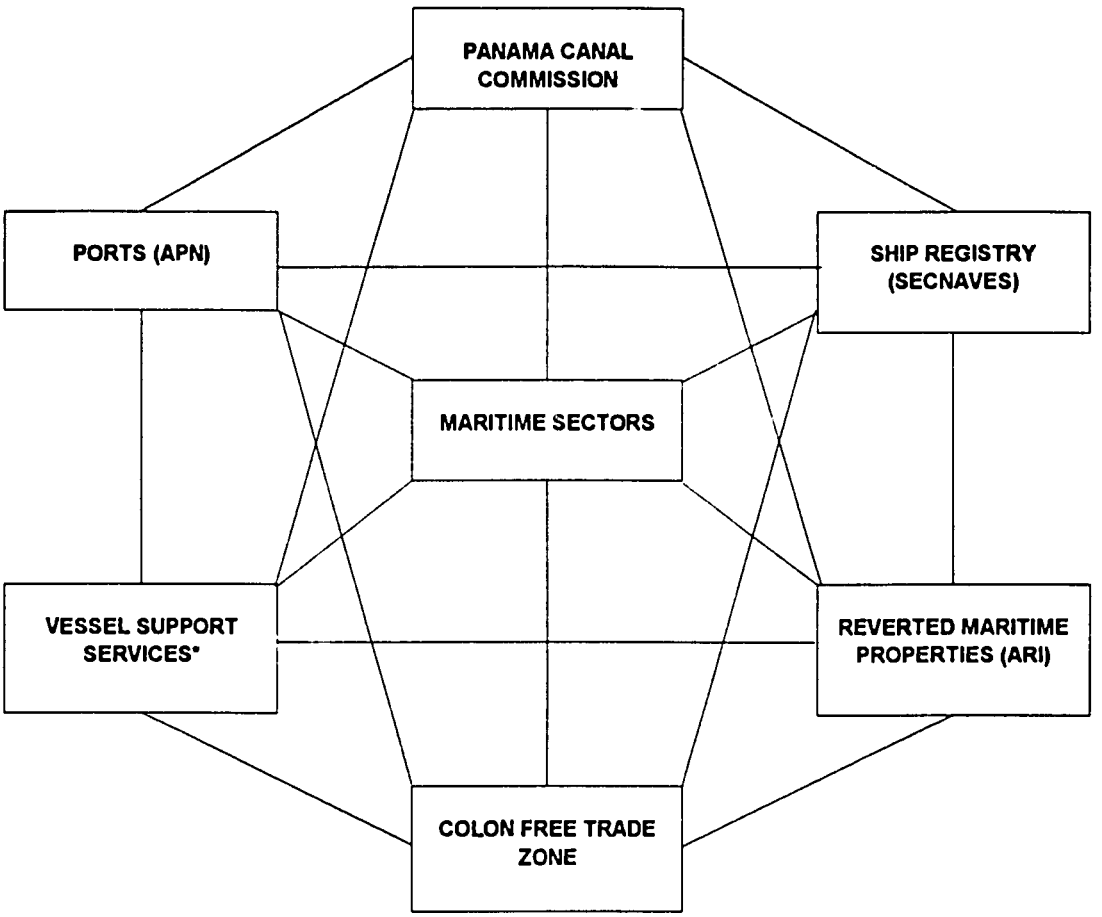
(3) information exchange

These are certainly areas where the PCC and eventually the PCA could collaborate with Panamanian government agencies in defining a National Maritime Strategy.

The creation of a Maritime Center organization is not an immediate issue for the current transition planning effort, and must await direction/insights from the Panamanian government and new Transition Commission relative to mission, goals and objectives, resources required, desired public/private participation, etc. In preparation for such a public debate, an updated survey of the international maritime community using the Canal or other maritime sectors within Panama could provide the basis for considering new marketing initiatives or programs. This survey should not be conducted until early 1995, after the new Panamanian government takes office and the Transition Commission has been established and is able to provide the needed guidance. Legislation directed at providing specific incentives to these sectors should be considered after a clearly articulated maritime strategy has been adopted.

CHART 1

PANAMA'S NATIONAL MARITIME SECTORS



(*) Includes: Bunkering, Chandlery, Support Agencies, Banking, Insurance, etc.

5.4.4 Environmental Policy

5.4.4.1. Issues and Challenges

5.4.4.1.1. Reliability of Water Supply for the Canal, Drinking Water and Electrical Power Generation.

The Presidential Commission recommends that the safe yield model of the watershed, which includes the analysis already underway by the PCC, be identified as soon as possible. This model will permit simulation of water balances under differing conditions of inflows and use, including flood control, potable water, and power generation The model will be invaluable for analyzing and evaluating environmental and economic impacts of proposed development projects in the Canal watershed.

The average yield of the watershed appears to be sufficient for **current** levels of ship traffic and forecast population through the transition as Canal operations affect neither the quality nor quantity of water dedicated to municipal water supply. Until ship transits reach an average of about 46 per day, the estimated current maximum capacity of the Canal, there will almost certainly be enough water yield for both the Canal and for projected water supply and power generation demands. Relatively simple mitigation measures can increase the safe yield of the watershed, but would not be adequate to meet estimated long-term needs.

If Panama decides to construct a third set of locks, it will have to develop significant additional water supply sources. The development plan will require procurement of land outside existing Canal jurisdictions and additional sources of water during construction and operation of expanded Canal facilities.

Even if the Canal operation will not significantly effect areas outside its jurisdiction until the planning and development of the Locks improvements, proposed development projects in the watershed or proposals to increase the hydroelectric power generation could affect the reliable operation of the Canal and its locks.

The environmental impact review process already begun by the Tripartite Commission for Canal Alternatives will be the appropriate mechanism for reviewing the impacts of each project, balancing competing interests and developing reasonable impact mitigation measures. Therefore, for this mechanism to be effective, the Government of Panama must, as soon as possible, establish an environmental review process and its required legal basis. This step is urgent and shouldn't be delayed until beginning work on the third set of locks so that its application is clearly understood before that time. Since water is the principal resource for present and future canal operations, early interaction between PCC and PCA is essential in this area.

5.4.4.1.2. Relationship to Panamanian Environmental Management Agencies

ARI and INRENARE have institutional responsibility for portions of the Canal watershed management for the Government of Panama, but neither their jurisdictions, nor their objectives are sufficiently clear. Further they lack the resources to effectively balance competing demands for the use of Watershed resources. This is a critical concern for the transition because Panama's current watershed management practices mean that watershed yield will be at significant risk unless there is a definitive assignment of responsibility and a system for environmental impact assessment functioning prior to the transfer. Prior to the year 2000, Panama needs to have both the legal and administrative mechanisms for environmental impact review in place for resolving conflicts about public as well as private development projects in the Canal watershed. Without such a context, there will be no legal basis to limit different interests competing for use of watershed resources. In the absence of relevant environmental laws, quality standards, and relevant review procedures, participation of the Panama Canal Authority in watershed management decisions and their implementation would become difficult.

5.4.4.1.3. Environmental Quality Compliance, including Industrial Health and Safety and Environmental Quality Management

The environmental management and quality compliance regulations required to run the Canal safely and responsibly from an environmental perspective already exist and are followed by the PCC in accordance with U.S. laws and regulations. However, nearly all of the existing environmental regulations which govern environmental compliance and management of Canal lands and operations have no current Panamanian equivalents.

From 2000 forward, the Panama Canal Authority should operate within a set of Panamanian environmental standards, compliance procedures, and environmental review processes which define the country-wide institutional context for review of environmental impacts. This would require that Panama begin developing these processes in mid-1994 and complete them by the end of 1996 to allow at least three years of familiarization with the process.

The Transition Commission and later the PCA should review the laws and regulations relating to environmental protection and analyze the present procedures of the PCC, to determine which need to be adopted by the PCA in the Panamanian context and translated into Spanish. The PCA should adopt these before the year 2000.

It should be emphasized that the moment that the activities of the PCA directly impact other interests in Panama, it will be absolutely essential to have a clear institutional context that functions smoothly to balance conflicting interests about the use of environmental resources in the Canal watershed.

5.4.4.2. Conclusions

It is very important that Panama continue moving forward rapidly to define the institutional context for management and protection of the Canal watershed and this definition should be considered by the Transition Commission or PCA during the transition. This process is already underway as ARI and INRENARE are developing plans for the management of the watershed with assistance from USAID, but much remains to be done. PCA regulations for environment protection regulation and the management of the water resources should be based on the existing regulations of the PCC, including the following:

> *Compliance with Environmental Quality Standards*: for industrial health, ship spills, remediation of contamination, hazardous materials, dangerous cargoes, etc.
>
> *Environmental Quality Management*: protection of land and water plant and animal life, protection of natural resources, management of water releases in the watershed, standards for air, water, and noise quality, as well as analysis and review of environmental impacts.

Ensuring safe and reliable operation of Canal facilities does not absolutely require a broader institutional context until the Canal Authority might begin the High-Rise Locks Improvement project. The transition process should be coordinated with the watershed management plan being developed by ARI and INRENARE. Coordination of watershed management studies and activities requires a complete institutional context for environmental decisions before any new locks project is started. Current practices for coordination of water flows from Alajuela and Gatun dams with IDAAN (water supply) and IRHE (power generation) are adequate and can be continued. Likewise, completion of the PCC's watershed safe yield model should be expedited.

This approach satisfies the requirements for Canal Authority operation of the existing Canal facilities, and provides for timely development of the institutional context needed. On its own, the Transition Commission can only address the tasks to institute the environmental compliance and management regulations needed to operate the Canal under the new PCA. Panama must be responsible for instituting environmental quality management programs that balance the interests competing for use of watershed resources. If need be, the current regulations of the PCC for protection, conservation, and impact analysis should continue to be applied by the PCA until Panama establishes its own legislation.

5.5 TRANSITION PHASE III - ORGANIZATIONAL

5.5.1 Board of Directors of the PCA

The Organizational Phase will begin after legal establishment of the new organizational entity, the Panama Canal Authority (PCA), and the naming of its Board of Directors. From that point, the new Board will direct the transition activities for Panama, organize itself, undertake the

selection process to appoint the organization's top management, determine the Board's role and that of top management in running the organization, and adopt the organization's mission, strategic direction, and policies.

The organization of the new entity which will manage the Canal will be profoundly affected by its legal authority, the selection process of the Board of Directors, and the naming of the Administrator. The ability to implement organizational changes gradually and in an orderly manner will also be profoundly affected by the internal organization of the Canal administration at that time and by the ability of the new Board to legally and cooperatively work with the PCC in instituting those changes. Finally, the process will also be influenced by the relationship of the new Board to other maritime entities and agencies of the Republic of Panama which have specific transition roles.

The primary requirement for the Board of Directors is to assure the necessary degree of competence and autonomy to guarantee the quality of its appointments and a fair appointment process with the objective of selecting the best candidates. Granting fiscal independence and flexibility in rule making will also be critical. These issues will be determined in the approval of the Constitutional Title now pending for the next Legislature, and by the legislation establishing the PCA once it becomes effective. It would be best to appoint the new Board as early as possible to assure a smooth transition.

5.5.2 The New Mission of the PCA

One of the new PCA Board's first actions should be the adoption of a mission statement to guide policy development and organizational review. This step should also include a review of all major prior decisions regarding strategic and policy directions made by the Transition Commission. Based on the PCA Board-adopted mission, strategic direction, and policies, the Organizational Phase of the transition should begin with the selection of the Administrator who will be responsible for implementing Board-approved policies and plans.

5.5.3 Top Management of the PCA

The most important step in the appointment of qualified professional management to run the Canal organization is the selection of the Administrator. The most important criterion for this appointment, based on a review of approaches in similar organizations around the world, is the experience of the individual in a top management role in a similar large organization, preferably with a background in public administration, finance, or management and experience in a commercial or engineering enterprise. The key skills required are leadership ability and communication skills, decision-making, negotiation, conflict resolution and human relations skills.

After the Administrator of the PCA (who will function as the CEO) has been named, focus should shift to appointing the top management group who will report to the CEO. This Board decision should be based on the recommendation of the CEO, and should include consideration

of the required changes to the PCC organizational structure as outlined in studies previously conducted by the Transition Commission. After the PCA is organized, it will control all activities and personnel related to the transition.

5.5.4 Required Studies Affecting the Organization

Before the PCA Board of Directors assumes control for the transition process, several studies need to be started by Panama's Transition Commission. These studies are discussed in detail in Section 5.6.1, "Personnel and Human Resources", and should be completed during the fourth transition phase (Administrative) when the new personnel systems of the PCA are developed. The conclusions of these studies will guide the organizational modifications required during the transition.

Beginning in early 1996, an **Organizational Review** should be undertaken which would not only analyze the functions that would no longer be necessary due to the elimination of US government requirements, but also determine how the organization should change due to changes in the mission or other Panamanian requirements. Another related study should be to prepare a **Management Succession Plan** dealing with the need to prepare selected existing employees to replace incumbents who are expected to retire, be promoted, or reassigned. If key employees who plan to retire after the transfer are identified, steps should be taken to decide whether retention efforts would be appropriate. A study to develop an **Employee Retention Plan** is recommended for this purpose.

These 3 studies: Organizational Review, Management Succession Plan, and Employee Retention Plan should all be integrated into development of an organizational structure that will take over the Canal operation on the transfer date. The Administrator and his top management team will make decisions on how they wish to organize the PCA. Some of the organizational decisions could be implemented before the transfer date, while others can only be implemented as of December 31, 1999. All PCC employees should be given early notification of their status and role in the new organization. From this point forward, the new organizational team should hold regular meetings on the final preparations for taking over control of the Canal.

5.6 TRANSITION PHASE IV - ADMINISTRATIVE

Five major areas concerning changes to administrative and support systems need to be considered during the transition phase, i.e.:

- Personnel and Human Resources
- Labor Relations
- Budget and Accounting
- Procurement
- Other Operational Matters

5.6.1 Personnel and Human Resources

5.6.1.1 Major Transition Issues/Challenges

The personnel system of the Panama Canal Commission (PCC) is a derivative of the broader U.S. Civil Service system encompassing the laws, rules, regulations, and practices through which personnel functions are conducted. The system is designed primarily around two objectives: the enhancement of administrative efficiency and the maintenance of employee rights. To achieve these objectives, the PCC employs a merit system to make hiring and promotion decisions, and provides an appellate system in the event an employee believes the merit system has been unfairly applied. The PCC personnel system also provides the opportunity for employees to improve their skills through various training and development programs.

Article 8 of the new Constitutional Addition (*Titulo XV, El Canal de Panama*) declares that the personnel system will be based on the principles of merit and equal opportunity, and that the basic conditions related to these that exist on December 31, 1999 will be retained by the future Canal organization. It is therefore clear that one of Panama's objectives is that the personnel system of the future Canal organization retain the same principles found in the current system.

The challenge for Panama is to have in place a personnel system that can immediately serve the needs of the future Canal organization, maintain the merit system, and eliminate any US-specific requirements. Issues to consider include the framework for the future personnel system, the transition towards a Panamanian workforce, retention of PCC employees, succession planning, compensation system, training and development, and Canal organization functions.

5.6.1.1.1 Framework for the Future Personnel System

The PCC's personnel system's primary features are encompassed in two elements:

1) a merit system that governs recruitment, hiring, promotion, and termination procedures; and

2) an appeals system that employees may use in the event that they feel a merit-related action was unfairly applied. As noted above, the proposed Constitutional Title for the future Canal organization authorizes its Board to create its own personnel system. The issue here, then, is to determine the best way to assure that merit system principles are in place by the year 2000.

5.6.1.1.2 Panamanian Workforce

The PCC currently estimates that, by the turn of the century, 80 percent of its workforce will be under Panama's Social Security Retirement System, the vast majority of whom will not yet

be retirement eligible. The remaining 20 percent is expected to be composed of 200-300 U.S. citizens and 1,200-1,300 Panamanians, all of whom will be retirement eligible. This means that potentially only 3-5 percent of the workforce will be U.S. citizens. The percentage could actually be lower depending on how dual passport holders are considered. Panama currently treats dual passport holders as Panamanian citizens. Therefore, the Panamanian workforce objective of the Panama Canal Treaty will generally be met without difficulties and without risking the efficient performance of Canal operations.

5.6.1.1.3 Retention/Attraction of Employees

Although the majority of the Canal's workforce will likely continue working after the Canal's transfer, the top executive ranks of the PCC may change since nearly all are eligible for retirement now (see Table V-4). The 20 percent who will be eligible for retirement also could leave some offices virtually without experienced senior staff. In the Office of Executive Planning, for example, 12 of 16 individuals in grades of NM-12 and above (which the PCC has identified as key personnel) are, or will be, retirement eligible before the year 2000. This situation also is true in the Engineering and Construction Bureau, where 80 percent (56 individuals) are, or will be, eligible for retirement before the year 2000. Panama will have to focus on strategies to mitigate this impact. These actions need to be discussed and coordinated for everyone's benefit.

TABLE V-4: RETIREMENT ELIGIBILITY, HIGHEST EXECUTIVE RANKS

TITLE	Grade/ Citizen.	Can Retire Now	Can Retire On	Must Retire On
Director, Executive Administration	ES/US	Y*	–	–
Director, Executive Planning	NM-15/US	N	5/97	–
Director, Canal Improvements	NM-15/P	Y	–	–
General Counsel	ES/US	Y	–	–
Director, Industrial Relations	NM-15/US	Y	–	–
Chief, Administrative Services Division	NM-14/US	Y	–	–
Director, Public Affairs	NM-15/US	Y	–	–
Director, Equal Opportunity	NM-14/P	Y	–	–
Inspector General	ES/US	Y	–	–
Chief Financial Officer	ES/US	Y**	8/95	–
Personnel Director	ES/P	Y	–	4/98
Director, Marine Bureau	ES/US	Y	–	–
Director, Engineering/Construction Bureau	ES/P	Y	–	–
Director, General Services Bureau	ES/P	Y	–	

Source: Panama Canal Commission-10/93. *Note: Retired December 31, 1993. **Can retire now under pension qualifications attained while working in the private sector.

5.6.1.1.4 Succession Planning

One strategy for mitigating the impact of a large number of retirement eligibles is succession planning, where qualified current employees are prepared to eventually succeed incumbents who expect to leave, retire, be transferred, or be promoted. Although the PCC engages in career planning, this focus is only on individual needs for career advancement purposes. A general Succession Plan needs to be available. If a plan of this nature is created and properly executed, it would not breach the provisions for merit system protection and would help smooth this essential aspect of transition.

5.6.1.1.5 Training and Development

Today, 16 different training or development categories exist within the PCC, some of which were specifically designed to address critical areas for the Canal's operations, including the apprentice program, and programs for pilot training, towboat master training, and marine engineer training. The majority of the training/development programs have shown increasingly greater percentage participation by Panamanians, although Panamanian participation in senior level management has been less. There needs to be a greater focus on increasing Panamanian participation in the executive ranks and on training programs designed primarily to address needs for continuing development of the employee's knowledge, skills, and abilities (KSAs). In the future, training and development activities will also have to address new needs resulting from adoption or modification of new administrative systems and succession planning.

5.6.1.1.6 Canal Organizational Functions

In general the intent of the transition is to minimize change to the PCC organization. However, the scope or focus of certain functions may be reduced. Alternately, functions not currently being performed by the PCC and which Panama wishes the Canal organization to do in the future (e.g. employee appellate system, grievance, conflict arbitration management) need to be defined.

These decisions may require organizational changes that cause a creation of offices, and redistribution of human resources. Further, Panama may decide to change the structure and management's span of control in an effort to improve organizational efficiency and to increase the responsiveness to market and operational conditions. Such decisions will have implications for some personnel related issues, including the extent to which classifications will have to be updated, the number of employees that need to be retained, the number of personnel identified as candidate successors, and subsequent training and development requirements in terms of both the number of people to be trained as well as the subjects that training needs to address.

5.6.1.1.7. Compensation System

In addition to concerns about the need and ability to retain retirement eligible employees, another issue that the PCA will eventually to have address is the long term compensation policy of the

new organization.The Presidential Commission has determined that the creation of a double scale salary system (one for new employees and another for those employed before the transition) should be avoided based on previous related experiences with the PCC, the prior APN, and others.

The future compensation policy of the PCA needs to be based on a comparative analysis of compensation (salaries and benefits) in private sector organizations in Panama as well as internationally prevailing compensation for similar classifications. The proposed Constitutional Title stipulates that the employees working at the PCC at the time of the Canal's transfer will be guaranteed employment under the same terms and conditions of employment. However, the future Canal organization will likely inherit vacancies from both retirees not desiring to remain as well as through normal attrition. The PCA needs to consider the most appropriate rate of compensation for individuals filling these positions. At this point in time, it is not possible to estimate the number of vacancies that will exist at the turn of the century.

Because this issue is important, and because there may be vacancies immediately after the Canal's transfer, it is prudent to conduct a compensation study, to encompass all employees, prior to the Canal's transfer. In this way, a compensation program can be in place at the time the Canal is transferred, while simultaneously providing important inputs into the planning and budgeting processes. The Commission must include such a study among its critical activities during the transition period.

5.6.1.2 Preferred Option

It is very important that the PCA have a special personnel system due to the uniqueness of its facilities. Moreover, the Canal employees will not be familiar with the new system, and will require extensive training. Otherwise the new system wouldn't contribute to Panama's goal of insuring a smooth transfer.

Due to the reliability of the present personnel system and the desire to mitigate the impact caused by the resignation of experienced employees both the retention and succession plans should be done concurrently. An adequate strategy to assure a smooth transition would be to delay retirement of qualified personnel. It is necessary to weigh the need to retain employees against the ability of replacing the KSAs that they represent if staff eligible to retire leave.

The succession planning effort will help decide which employees need to be retained to fill gaps until such time as new employees are adequately prepared. In the event that KSAs of retirees will be needed at the turn of the century, a training program should be started as early as possible. A retention program is also needed to assure the availability of some key skills.

All of this will undoubtedly be impacted by organizational decisions that will have to be made regarding the future Canal organization. An organizational review must be done to consider changes to reflect new administrative policies. This undertaking will impact personnel requirements (including staffing levels, succession planning, training requirements, and

compensation levels), financial resources, and other organizational factors, such as reporting relationships and management responsibility. A Compensation Study should also be considered by the Transition Commission or the PCA prior to the transfer date.

Because of the potential changes the organization will undergo and the impact of these changes, training activities will have to go beyond the programs now offered. Transition training requirements will encompass two additional areas, including:

1) specialized training related to the succession planning efforts; and

2) training associated with future administrative/institutional changes to the organization (e.g. employee appeals process, labor-management relations systems, arbitrator training, etc.).

5.6.2 Labor Relations

The Constitutional Title (*Título XV, El Canal de Panama*) states that labor conflicts between Canal employees and the Authority will be resolved through reconciliation mechanisms as established by law, and as a last resort, through arbitration in accordance with procedures established in the law. Finally, the Title declares that the administration and operation of the Canal is an essential international public service, and, therefore, that the continuous transiting of vessels shall not be interrupted.

5.6.2.1 Issues/Challenges

The post-transfer continuation of the labor unions which presently have collective bargaining agreements with the PCC is a special situation which must be taken into account so that the unions can be kept informed early on. These organizations are founded on US law, and it will be necessary that the law and regulations called for by the Constitutional Title guarantee the same rights and conditions in labor relations that now exist.

5.6.2.1.1 Collective Bargaining Agreements

The Panama Canal Commission has five collective bargaining unit agreements which must be respected. Article 415 assures the continuation of the terms and conditions established in the agreements, even if the agreements themselves expire or are annulled in 1999.

5.6.2.1.2 Establishing the LMR Framework

Panama needs to continue the current LMR practices of maintaining an office whose functions include certification of collective bargaining units, collective bargaining unit agreement administration, union member dues collection/ administration, mediation of disputes, and arbitration administration. The existing framework has clear and effective regulations which

could be adopted by simply adapting them to the Constitutional Title through the organizational law. An important issue is when this new office should be created.

5.6.2.2 Preferred Option

The new Constitutional Title obligates the PCA to resolve labor disputes through an agreement following the procedures for dispute resolution established by law or regulations. At the same time it establishes that the decision of the arbitrator(s) is binding as arbitration is declared to be the last administrative step for dispute resolution. Further, it states that it will be within the Board's regulatory power to establish its own procedures for resolving labor conflicts and, as discussed earlier, Panama has permitted other public sector organizations to institute their own programs via their organic law.

The decision that is adopted should take into account that the existing negotiating parties will continue, especially the collective bargaining entities. This has the advantages of stability and continuity and avoids the confusion of reconciling two different frameworks into a single agreement at
the same time that it provides a certain degree of security to the workforce, which is an incentive to continue as part of the future workforce.

5.6.3 Budget and accounting

In general, the budget and accounting systems in place can be easily adopted to the requirements of the PCA. The major issues in the Budgeting and Accounting systems that need to be addressed to ensure a smooth Canal transition are:

- Autonomy,
- Financial Accounting,
- Budget,
- Auditing System, and,
- Treasury Functions.

5.6.3.1 Autonomy and Responsibility

5.6.3.1.1 Issues and Challenges

Providing autonomy and responsibility in the operation of the Canal under the Panamanian government administration is critical to the PCA. If an organization with autonomy and responsibility is not established, it will expose the Canal to bureaucracy and instability. The PCA needs the flexibility to make its own final decisions in order to operate efficiently. This is essential for and the essence of success.

5.6.3.1.2 Preferred Option

Once the proposed Constitutional reform is enacted, the PCA will have the necessary financial autonomy. A principle to help in maintaining Canal autonomy is institution of a separate fiscal year, different from that of the rest of the Government of Panama. An October 1 - September 30 fiscal year is preferred. The principal objective of having a separate fiscal year for the Canal, is to avoid any mixing of the Canal's budget with that of the rest of the government. Another advantage to the separate fiscal year, is that, since Canal profit is to be turned over to the Panamanian Treasury as established in the new Constitutional Title, the government can consider the revenue received from the Canal as income for their upcoming fiscal year budget.

5.6.3.2 Financial Accounting

5.6.3.2.1 Issues and Challenges

Although changeover of the accounting system from the U.S. system does not appear to present any major problems in terms of conforming to new laws or regulations, the following accounting issues will have to be resolved during the transition:

Disposition of assets and liabilities

The U.S. and Panama must agree on the exact disposition of all assets and liabilities prior to the time of transfer of the Canal. Responsibilities of the two administrations must be delineated well ahead of time and dates negotiated for the transfers.

Pre-audit control

It is worth mentioning that the Constitutional Title exonerates the PCA from the pre-audit control in the execution of its budget. Post-audit control will be exercised through the Comptroller of Panama.

Chart of Accounts

A new Chart of Accounts will need to be drafted during the transition, particularly to eliminate accounts no longer needed to deal with US government requirements. New accounts may also need to be established to reflect PCA transition decisions.

Revaluation of fixed assets

According to some, an auditing firm of recognized ability should be contracted to determine if it is necessary to inventory and revaluate the assets of the PCC in order to enter current values on the books of the new owner. This way the current financial value of property, plant and equipment can be restated compared to their depreciated values as shown on the PCC books on the date of transfer. It will also be possible to establish a useful life for each asset.

Parallel Accounting System and Initial Financial Statement

The PCC should establish and operate a parallel accounting system for the PCA's interests in the Canal for the last year before the transfer. Although this would have very little activity, the system is needed to provide an account by mutual assent for assets and liabilities of the PCA for the year before the transfer date. In this way the PCA would have a current financial statement as it begins operations.

The current software systems for general ledger, budget control, accounts payable and procurement were purchased in 1984 and upgraded in October, 1986. No upgrades are currently planned for the software except for maintenance. It is not known if the system is available in Spanish, what the cost is for upgrading to real-time, what different hardware systems might be required, or if a complete upgrade is necessary. This should be studied in 1996 and implemented by 1997 for the 1998 budget. This is another task for a competent and experienced accounting firm and needs to be negotiated and coordinated with the PCC.

5.6.3.2.2 Preferred Option

The Presidential Commission's preliminary opinion is that the present accounting procedures are compatible with Panamanian requirements and should be continued. Updating of existing software should be considered prior to the transfer. Panama and the United States should agree on the exact disposition of all assets and liabilities as of the date of the turnover. The Canal Treaty is vague on this issue and does not provide detailed guidance on specific situations. Assets of the PCC that should be included in the negotiations are, among others: the funds accrued for future use, reserve for capital improvements, and the reserve for marine accidents and casualty losses.

5.6.3.3 Budget

5.6.3.3.1 Issues and Challenges

The PCC has been operating the Canal to be both self-financing and break-even. The PCA should continue the self-financing aspect, but there is no particular reason that the Canal should continue to operate on a "break-even" basis as required by Law 96-70 of the USG. There advantages and disadvantages which must be considered.

In the PCC, the budget is prepared much like it is in a private business. First, the sales forecasts are prepared by the economists and then the budget parameters are set based on those projections. The budget is prepared "from the ground up", with the managers being allowed to prepare their own budgets and, after approval, those managers can adjust their expenditures to adapt to changing business conditions, reallocating their funds among budget line items, as long as they remain within their overall budget. This flexibility gives the managers the ability to adjust quickly to variations in income generation. The PCC has vast experience in managing its budget and has demonstrated impressive management performance in this respect.

In addition, the process of preparing the new PCC budget begins 3 years in advance. This process must be maintained the same way as a system of continuous review and anticipated preparation of the "premises" under which the budget is currently prepared.

5.6.3.3.2 Preferred Option

The preparation of the Canal budget under the PCA should be reduced to a ten-month process, with the same eight months of preparation time used by the PCC and two months for consideration. Assuming that approval is to be obtained no later than March of each year for the fiscal year beginning in July, the preparation of the first PCA operating budget should start no later than July 1998, even though the first budget will not take effect until January 1, 2000.

A five-year financial plan is a beneficial financial tool. It would not only help with capital improvement planning, but also would provide the Government of Panama with projections of expected income. Such a plan is very helpful for planning purposes but is always subject to changes.

The first projections for the year 2000 budget should be made at the beginning of 1996. From then on, the five year financial plan should be updated annually in the same manner as the budget is presently done.

Before the year 2000, the Transition Commission and the PCA should agree on planned budgeting activities that will be critical after the year 2000.

5.6.3.4 Auditing System

Existing external and internal auditing systems are operating efficiently and should be emulated. The GAO of the USA can begin a transition through contracting out for the annual audit with an independent auditing firm. The Office of the Inspector General (OIG) of the PCC is responsible for performing internal audits of the Canal and informing the Board of Directors of the PCC and the U.S. Congress of any problems. The Canal can either create its own internal audit office or convert the existing Office of Inspector General. These aspects are being considered in the reports submitted to the Congress by the PCC which were developed with assistance of the accounting firm of Arthur Andersen.

The change from American laws to Panamanian laws will be felt most in the area of criminal investigation. From one day to the next, an act could change from criminal to legal, or vice versa, depending on how Panamanian or U.S. law addresses the matter. Many of the techniques and methods of criminal investigation that are currently being used by the OIG can be learned and utilized in the new internal audit office of the PCA, in the application of Panamanian laws after the turnover. We recommend that investigative methods remain almost the same, even if the underlying laws change.

5.6.3.4.1 Preferred Option

The PCA should contract for external audits. The GAO can begin the transition through contracting out the annual audit with an independent auditing firm, rather than doing the audits in-house. The firm selected should be required to conduct the audit using, not only personnel from the U.S., but also colleagues from their local branch offices.

During the last two years of U.S. ownership of the Canal, the PCA and the PCC should consider the possibility that the external audit reports be submitted in both English and Spanish, with the English copy being submitted to the GAO and the Spanish copy being presented to the PCA. This should be the basis for the continuous interchange of information that should prevail in this period.

Rather than eliminating the OIG after the transfer, the office should simply be converted to an internal audit office, basically fulfilling the same responsibilities that they do now, but with their foundation in the laws of Panama rather than the U.S. laws. An agreement will need to be reached about the resolution of any on-going criminal investigation at the time of the transfer of the Canal. The U.S. should request that Panama allow them continued access to evidence until they can finish their investigation.

5.6.3.5 Treasury Functions

The treasurer's office of the PCC is presently responsible for the collection, custody, and disbursement of funds, and serves as a liaison with the U.S. Department of the Treasury.

The majority of functions of this office could remain basically the same after the transfer to Panama, in that it exercises internal control over the flows of cash within the PCC and the management of the checking accounts. In fact, some of the procedures could be simplified since some requirements will be eliminated with the new Panamanian administration.

All procedures that exercise control over the receipt of tolls, the handling of petty cash, cashing of checks, etc., can be retained since they are purely internal procedures and currently have good internal controls in place.

New treasury procedures will have to be written for those areas that come under the jurisdiction of Panamanian Law. As the new procedures are written, they should be in Spanish, eliminating the need for later translation.

A lot of minor details will have to be dealt with toward the end of the U.S. administration, such as the designation of the treasurer(s), fulfilling the legal requirements necessary in order to sign checks, opening the checking accounts, establishing the signature authority for the accounts, and ordering facsimile signature dies for check signing. These steps will be part of the responsibilities of the new Administrator designed by the PCA's Board of Directors.

5.6.4 Procurement System

The procurement system presently employed by the Panama Canal Commission (PCC) is based on the Federal Acquisition Regulations (FAR), the code of regulations used by all US Federal Agencies to govern procurement of goods and services. The FAR is supplemented by the Panama Canal Commission Acquisition Regulations (PAR), which tailor many of the general FAR system provisions to the specific needs of the management of the Panama Canal.

5.6.4.1 Issues and Options

The analysis of options for a new procurement system for the PCA must be based on the ability to meet the operational needs for goods and services. For any organization, public or private, the ideal system provides the best balance between the need for controls and operational needs. Three options were considered for the new Canal entity:

(1) The system presently in place at the PCC;

(2) The one use by the Government of Panama; and,

(3) A typical private-sector industrial organization

The current PCC system is the logical point of departure, since it has been used successfully for some time and it has been tailored to the specific necessities of the Canal.

Despite this adaptation, it represents a procurement system modelled on a US public-sector organization. Besides agencies of the federal government, many States, Public Authorities and Municipalities share similar characteristics. The interests of assuring fairness and satisfying other social objectives unrelated to the mission of the organization in such systems lead to greater control at the expense of operational efficiency.

It is appropriate to consider the system presently used by the GOP. This system is similar to the US public-sector model in many respects. It is more extreme in its sacrifice of operational efficiency for a great deal of control, but does not necessarily offer the degree of fairness that would be hoped for.

A typical private-sector organization offers a stark contrast, in that less emphasis is placed on the assurance of fairness and obsession with control in order to achieve a greater degree of operational efficiency. This is perhaps not the most appropriate for even an extremely autonomous new Canal organization because it will still bear the burden of the public interest, and never be free to completely abandon the responsibility to assure fairness and impartiality.

5.6.4.2 Preferred Option

After analyzing the three alternative procurement systems, the preferred approach for the new Canal organization is to adopt a system based largely on the existing code of regulations, adapted to fit the Panamanian legal and operating context. Most features of the procurement system should remain as they currently exist under the PCC.

The new Canal organization should adopt the basic structure of the present PCC system for the following reasons:

- Appropriate degree of delegated authority;
- Built-in flexibility;
- Accountability leading to effective control;
- Regulations make process clear to contractors;
- *System works* -- only *compelling* reasons should be allowed to justify a change;
- The PCC's greatest advantage is the professional, highly trained staff that is well-versed in application of regulations is a strength to build from.

Nevertheless, the new system should have greater flexibility and eliminate all requirements for national preferences in procurement. Changes are proposed for the following basic reasons:

- The Canal organization should maintain closer relations with suppliers of materials critical to operations, particularly those that are highly specialized;
- Marketing efforts by procurement staff would help to expand the network of contractors interested in supplying critical supplies and services;
- National preferences limit competition and ultimately affect the quality of winning bids; and,
- Many aspects of the current PCC regulations are irrelevant and can be eliminated;

If the current GOP procurement system were imposed on the Canal in its entirety, operational efficiency would be placed in jeopardy. Particularly undesirable characteristics are the great degree of centralized authority, the requirement for pre-expenditure auditing, the lengthy duration of the process and inadequate contract documents and procedures. The potential harm to operations if the procurement system does not deliver what is needed in a timely manner is great enough to rule out the GOP system in its entirety as a viable option.

Table V-5 summarizes the features of the preferred system, indicating the area in which changes to the PCC system are required.

5.6.4.3 Transition Issues

The process of developing and implementing the recommended system requires various actions in order to assure a smooth transition. The detailed schedule of the transition plan includes these steps, but it is still worth discussing several key items briefly as follows:

1. **Technical Working Group.** The Presidential Commission agrees with the Consultative Committee and the PCC Board in the sense that the PCC staff, supplemented by representatives of the Transition Commission, should work on adapting the present PCC regulations to reflect the recommendations of the transition plan. This process will require a great deal of work, with legal support and translation of documents into Spanish. The PCC staff must be included to benefit from their experience in the application of the current system.

2. **Dispute and Claims Resolution.** It is desirable to make relations between the PCA and contractors as clear as possible and avoid all unnecessary uncertainty. If suppliers perceive a great degree of risk in contracting with the PCA, the costs of goods and services will increase, or worse, the PCA will be unable to find suppliers of critical goods. Under the technical working group, with outside legal support, a specialized system of dispute and claims resolution should be developed based on independent arbitration.

Table V-5
Summary of Recommendations for New Procurement System

Feature	Recommendation	Elements Requiring Change
1. Delegation of Authority	• Maintain PCC's existing degree of decentralization	• Code of regulations
2. Competitive Bidding Procedures	• Maintain PCC's existing degree of flexibility • More open communication with contractors	• Code of regulations • Advertisement and marketing practices • Organization
3. Audit/Control Procedures	• Maintain post-expense audit system	• Code of regulations • Audit practices
4. Integrity Assurance Procedures	• Maintain PCC's existing degree of stringency in ethics guidelines	• Code of regulations • System of investigation and penalty
5. National Purchasing Preferences	• Remove all national preferences	• Code of regulations
6. Supplier Relations	• Develop closer relations between users and suppliers	• Code of regulations • Organization
7. Claims Resolution Mechanism	• Maintain existing PCC system	• Code of regulations • New arbitration body
8. Organization	• Maintain existing reporting structure • Develop marketing function, to suppliers	• Organization

Note that the majority of changes are to be implemented in redrafting the code of regulations.

3. **Supplier Communications.** To reduce the risk that current contractors will react to the uncertainty surrounding the transfer by refusing to provide their goods and services to the PCA, a communications program should be undertaken. This program should include a survey of present suppliers to determine their concerns and identify the actions required to address them. When the new regulations and dispute resolution system are developed, it will be necessary to communicate relevant aspects to the contractor community.

4. **Organizational and MIS Changes.** Within the context of the overall review of these aspects of Canal operations during the transition, necessary changes should be identified to satisfy the needs of the procurement and inventory control systems.

5. **Taxes.** As a part of the US government, the PCC currently does not pay taxes for the goods/services it purchases. The Constitutional Title continues this policy for the PCA.

6. **Early Implementation of New System.** The preferred plan is based on the premise that the USG will take action to enable the PCC to adopt new regulations that are different from, and independent of, those of other US government agencies. This would allow the system to evolve during the transition period and would reduce the possibility of having problems immediately around the transfer date. The PCC should seek the required US Congressional action.

5.6.5 Operation and Maintenance

The systems and practices that govern engineering, maintenance and operation for the Canal's infrastructure -- arguably the most important aspect of Canal management -- require little change on transfer. For the most part these systems function well, serving the day-to-day needs of Canal operations and will not be impacted significantly by the transfer from one government to another. The rules and regulations, equipment they apply to, and the personnel who administer them fit together as integral parts of a whole. It is recommended that the new PCA adopt most operational systems and practices as they presently exist, with changes made only as is necessary to fit Panama's legal context.

From the perspective of the transition process some action is required on the part of the transition planning staffs. In many cases, aspects of Canal operations are governed by regulations that are part of the U.S. Code of Federal Regulations (CFR), with underpinnings in U.S. law. In all cases, documentation of rules and practices must be translated into the Spanish language. Prior to the transfer, a comprehensive review of all operational documentation should be conducted and recommendations for necessary modifications should be made. Some aspects of current PCC regulations can be eliminated in the interest of streamlining operations, particularly where applications of the US CFR are irrelevant to the necessities of the Panama Canal and the Government of Panama.

The following actions are recommended to address other important operations transition issues.

1. **Overall Review of Operations.** A study should be conducted that assesses all aspects of operations, identifying those areas in which action is needed during the transition process. This should include an inventory of all rules, regulations and other documents that govern Canal operations. The guiding assumption is that PCC regulations will be adapted intact by the new PCA.

2. **Review of Information Systems.** The PCC's management information system (MIS) should be examined to determine whether action might be required prior to transfer. This should include: assessment of the need to upgrade or change hardware and software components due to obsolescence; determination of the need for change to accommodate changes made to other administrative systems such as that for accounting/budgeting or procurement; and assurance that vendors will continue to support their product after the transfer.

3. **Review of Navigation Regulations, Laws and Practices.** The navigable waterways in and around the Canal and ports of Panama are currently under the jurisdiction of the PCC. This means that all vessels that traverse the Canal are legally responsible to comply with the US CFR, maritime law and various international treaties to which the US is signatory. Panama has signed many international agreements that could affect the regulation of navigation. A study should be made of these implications and an approach should be articulated for developing an appropriate body of Panamanian law and regulation, including a board of investigation for maritime accidents. This is especially important because it will call for legislative action beyond the immediate control of the PCC and PCA planning staff.

4. **Review of Existing Support Services.** Currently, services that support the operation of the Canal are provided by the government of Panama, the US military, or the PCC as provided for (in many cases) by the Treaties. It is recommended that a review be conducted to identify areas where action is needed to assure the uninterrupted provision of services up to and beyond the transfer. This may involve merging activities provided by the PCC or by the military with those that the GOP could provide, such as fire fighting services. In other cases, such as security and first aid, it may be preferable to contract out services to the private sector. Obviously, any changes that imply changes to the size of the workforce should be carefully considered in conjunction with the studies conducted in the Organizational Phase of the transition.

   Examples of support services to be reviewed are:

   - Fire protection
   - Security

- Power provision
- Potable water distribution
- Telecommunications
- Housing
- Transportation
- Printing and Graphic Services

5. **Adaptation of Existing Regulations and Documentation.** All relations with the international maritime industry need to continue in English, the international maritime language. Therefore, it will be necessary to maintain a bi-lingual workforce in many areas of the organization. However, rules and regulations that govern operations must be adapted to suit post-1999 operations and translated into the Spanish language. This activity logically follows the first action listed above. Many documents are quite straightforward and require no change other than translation. Others may call for change to address legal issues or simply to streamline away cumbersome regulations imposed by the US CFR. Some operational areas requiring action, other than those previously mentioned, are the following:

   - Occupational safety and health
   - General engineering and maintenance
   - Preventive maintenance program
   - Inventory control and warehousing

5.7 COMMUNICATIONS STRATEGY FOR PUBLIC EDUCATION

The Board of the PCC and the advisors of the Presidential Commission have emphasized that the implementation of the Transition Plan is of great public interest due to the important role the Canal plays in world trade and to its role in the Panamanian economy. In addition, the transfer is a historic event of great significance to the people of Panama. Therefore, a public education program is recommended to keep everyone informed, minimize adverse impacts, and promote consensus.

To complement and support the overall strategy of the transition, the Presidential Commission proposes that a communication program be developed to inform and answer questions from the different groups involved in or affected by decisions about the transfer process. The Transition Commission should include a staff member with responsibility for this program, who will supervise the public relations specialists that may be retained. This staff member will be responsible for coordination of effort, interaction with, obtaining input from, and disseminating information to:

- Other local agencies and parties involved with the process, i.e.: PCC, ARI, INRENARE, Consultative Committee, DEPAT,
- Canal employees,

- Canal customers,
- The general public,
- Maritime and international organizations, and,
- The US public media and government organizations.

In order to attain these communication objectives, a more detailed Public Information Plan should be prepared and updated periodically, to highlight critical steps in the process, to establish the information and education processes to be used, and to coordinate the communications effort.

The Transition Commission staff should maintain a close relationship with the PCC Public Affairs Office. The public information process should be coordinated with that office, particularly regarding releases and publications aimed at Canal employees, the US media and the international maritime community.

5.7.1 Program Objectives

The purpose of the Public Information Program is to inform and educate the public about Panama's responsibility in the future operation of the Canal, and the efforts underway by Panama and the United States to effect a smooth and trauma-free transition. It should assure:

1. the coordination and dissemination of information on the efforts and decisions being made by Panamanian authorities for the assumption of responsibilities for operations and management of the Canal.

2. the dissemination of trends, practices, regulations and/or policies established to comply with the objectives of the Panama Canal Treaty;

3. the dissemination of information on all matters related to the Canal Operation (legal, organizational, financial, budgeting, maintenance and capital programs, human resources, labor relations, etc.) which must be decided during the transition phase;

4. a sense of confidence among the various sectors that might be affected by the transfer of the Canal;

5. the selection and maximum effective use of mass media resources to reach the local and international public; and,

6. the evaluation of public interest surveys in relation to the Canal.

5.7.2 Interest Groups

As noted above, the principal target audiences of the Public information and education efforts are the Canal employees, the Panamanian public, and the international maritime industry. As

the date of the transfer nears, these target groups will become more interested in the transition decisions and the status of transition planning. Major interest groups include:

Panama

1. Top Management of the PCC
2. Future employees of PCA
3. Personnel involved in transition implementation.
4. Public Sector (Executive, Judicial and Legislative Branch representatives, institutions, and ARI members)
5. Importers and exporters, commercial, banking, financial, and industrial representatives and insurance agencies
6. Civic and social associations, and non-governmental associations (NGO's)
7. Students at all levels, farmers, workers and the general public.

International

1. Maritime Industry (steamship lines and agencies)
2. Consular and Commercial Attaches (embassies)
3. Foreign Trade Organizations and industry trade groups
4. United Nations
5. Organization of American States

US

1. Senate and Congress
2. Trade and shipping industry
3. Government agencies
4. Educational centers and Universities
5. Study Centers (think tanks)

5.7.3 Mass Communication

Panama

The purpose of the information effort is to inform and explain the decisions the Government of Panama is taking to comply with Treaties to all the different parties involved. The program can also create a consciousness and generate public awareness of Canal issues, and allow a better understanding of the different activities involved. Therefore, a combination of printed, oral and audiovisual elements of information should be used, including radio, television, magazines, daily and weekly newspapers, magazines, etc., as well as, seminars, conferences, and workshops. A combination the following communications resources is desirable:

1. Print: newspapers, magazines, bulletins, booklets, circulars, and newsletters.

2. Oral: press conference, press releases, meeting, workshops, speeches, seminars, radio and television broadcasts, conferences, interviews, Canal tours, and recordings.

3. Audiovisual: television broadcasts, displays/exhibits, video films.

International

The major concern of the international world trade communities is to be informed of the modernization, improvements and maintenance programs that have been accomplished to keep the Canal's high quality transit service, and to be assured that the transfer will result in a continuation of efficient and safe service. The PCA, in conjunction with the PCC, should use a combination of the following communications means:

1. Print: major leading world newspapers and magazines, international trade and shipping magazines and media, bulletins and reports.

2. Oral: speeches, workshops, conferences, seminaries and forums.

3. Audiovisual: closed-circuit television, displays at international trade shows.

5.7.4 Public Information Work Plan

Organization and Administration

A member of the Transition Commission support staff should initially be responsible for coordination of the public information efforts. Management and funding, as well as the use of part time consultant specialists, will be required to achieve the desired results .

Steps to study:

1. Plan, establish, and implement the public information program for the new Panamanian transition entity early, and based on well-defined goals.

2. Plan adjustments in the public affairs structure to include development of fully and carefully updated job descriptions for every position.

3. Create and establish a long-term working coordination process with the PCC Public Affairs Office.

4. Establish a working relationship with other Panamanian entities involved with Canal issues, i.e., ARI, INRENARE, Consultative Committee, DEPAT, etc.

Communications

The key to public acceptance of the transition steps, employee confidence that their jobs will be preserved, and international shipping's assurance that the Canal will continue to be a viable route depends in large part on the communications efforts of the Transition Commission. Therefore, it should develop the following approaches:

1. Encourage the PCC Public Affairs Office to coordinate and develop a monthly information program for PCC employees, and for the international maritime community, publish relevant news as well as policies established and decisions made by both U.S. and Panamanian governments.

2. Program and organize and joint conferences, seminars and periodic local meetings with the different parties involved.

3. Analyze results and comments from the different activities involved.

4. Impress upon local and international markets, the serious and responsible interest Panamanians take towards controlling the Canal.

5. Consider producing information spots about the Canal's overall operations for the local public radio and television.

5.8 IMPLEMENTATION RESPONSIBILITIES, SCHEDULE AND BUDGET

5.8.1 Steps, Milestones

The analysis of issues and options for the various phases of the transition has identified the major steps that need to accomplished to assure a smooth and seamless transfer. Many of these steps are already underway, mainly those related to establishing the legal authority for the PCA and the PCC program underway to assure a fully trained and effective Panamanian workforce by the transfer date.

Implementation of this transition plan for the Panama Canal transfer will require accomplishing the steps and meeting the calendar milestones shown on the proposed Schedule for the Transition (Table V-6). The description of its steps is included in the Appendix. This Table lists the steps and milestones for the transition, the responsible agency/individual for the accomplishment of each step, and the recommended time frame for accomplishment.

The task/action listing, while generally chronological, is also organized functionally to highlight an orderly hierarchy of actions, and at the same time separate decisions/actions needed during the various transition phases (legal, strategic, organizational, and administrative/support system actions).

As indicated in previous sections, many actions have already been taken in moving towards the transfer. The next important step is the adoption of a transition plan and its assignment to competent authority to oversee its implementation.

TABLE V-6

ACRONYMS USED IN TASK SCHEDULE LISTS
(See Following Charts)

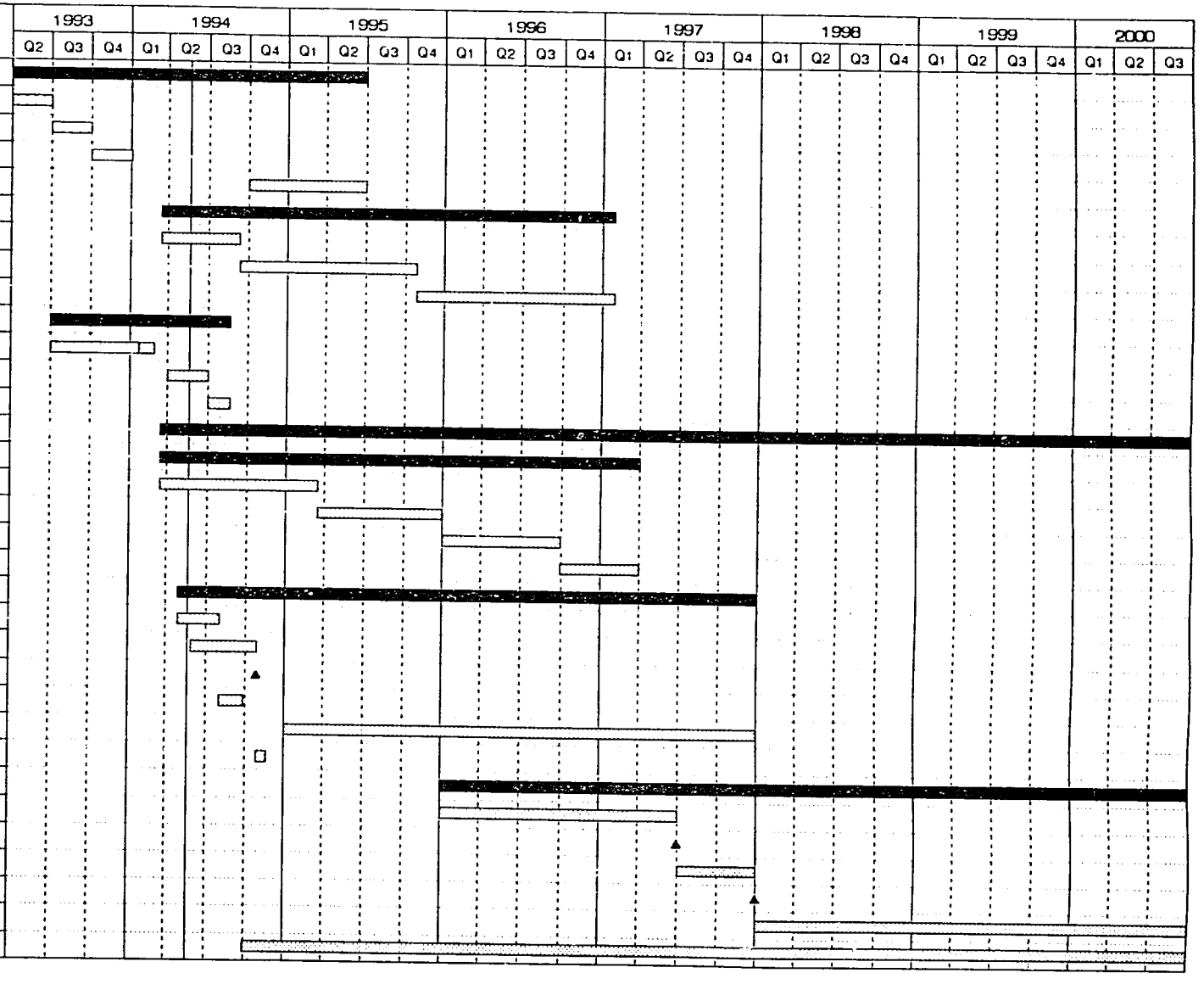
ACRONYM	FULL TITLE/NAME
PC	Presidential Commission for Canal Matters
RP	The Republic of Panama
RPC	Cabinet of the Republic of Panama
RPA	National Assembly of the Republic of Panama
RPP	President of the Republic of Panama
USG	Government of the United States of America
SA	Secretary of the Army of the United States
TC	Transition Commission of the Republic of Panama
PCC	The Panama Canal Commission
PCA	The Panama Canal Authority

TRANSFER OF CONTROL OF THE PANAMA CANAL

TRANSITION PLAN - LEGAL AUTHORITY AND ORGANIZATIONAL CHANGES

05/15/94

Task Name	Resp
CONSTITUTIONAL REFORM	
Constitutional Reform Draft	PC
Cabinet Review of Amendment	RPC
1a. Assembly Approval	RPA
2a. Assembly Approval	RPA
LEGAL AUTHORITY	
Prepare Draft Law	PC
Cabinet Review of Law	RPC
Assembly Approves Law	RPA
TRANSITION PLAN DEVELOPMENT	
Develop Transition Plan	PC
Persidential Review/Approval	RPP
Present Plan to Public	RPP
ORGANIZATIONAL ENTITY CHANGES	
PCC Board Governance	
US Agency Review	USG
Draft Legislation	SA
Review/Approval of US Congress	USG
Revise PCC Governance	SA
Transition Entity Created	
Decree Established	RPP
Prepare TOR/Update Transition	TC
Submit Plan to USG	TC
Support Staff Assigned	TC
Commission Directs Transition	TC
PCC Names Transition Staff	PCC
Create New Canal Authority	
Planning and Preparation	TC
President Names PCA Board	RPP
PCA Board Organizes	PCA
PCA Adopts Policies of TC	PCA
PCA Board Directs Transition	PCA
TRANSITION PLAN STEPS	

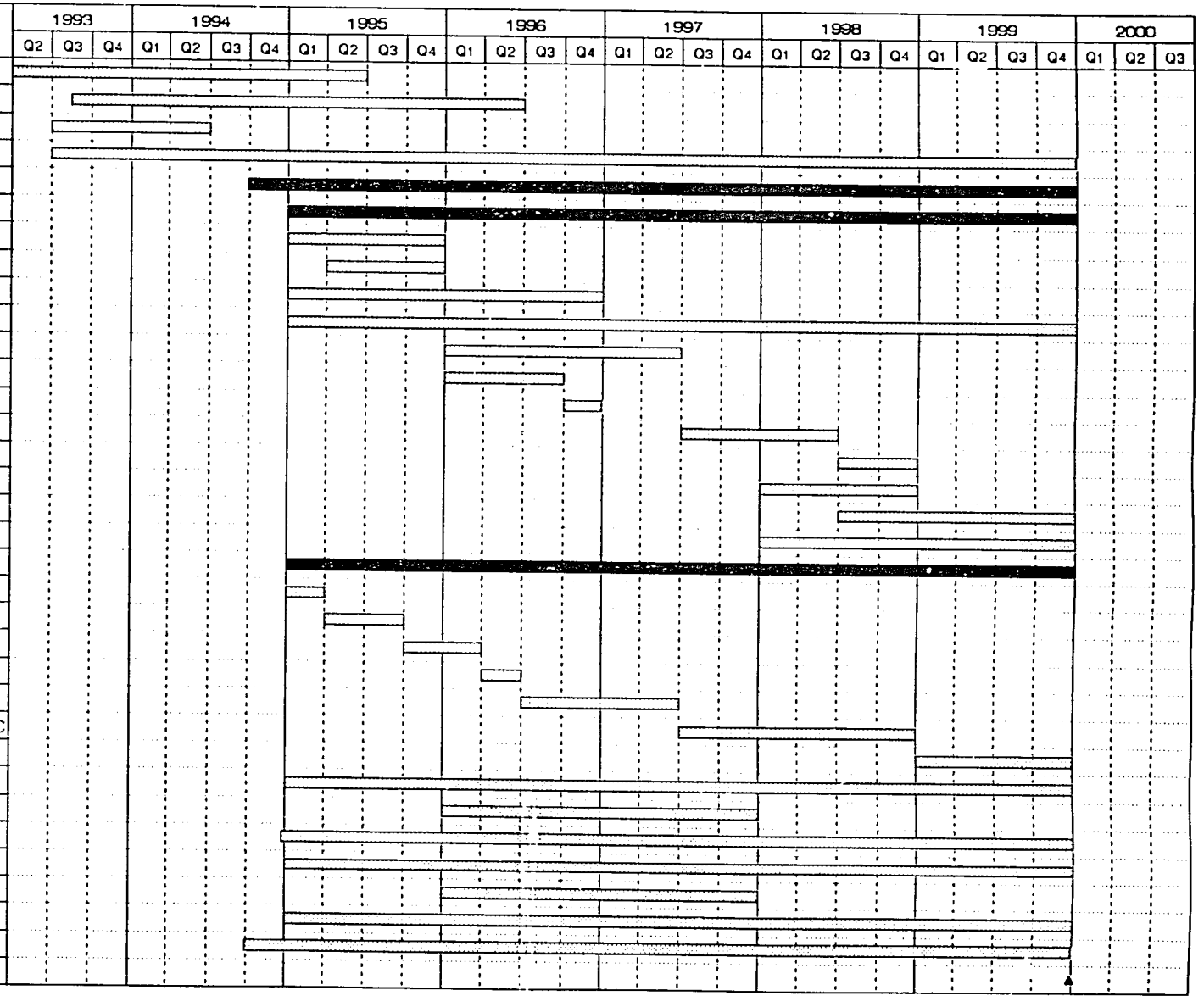


TRANSFER OF CONTROL OF THE PANAMA CANAL

TRANSITION PLAN - HUMAN RESOURCES AND LABOR RELATIONS

05/15/94

Task Name	Resp
CONSTITUTIONAL REFORM	
LEGAL AUTHORITY	
TRANSITION PLAN DEVELOPMENT	
ORGANIZATIONAL ENTITY CHANGES	
TRANSITION PLAN STEPS	
Human Resources Transit. Plan	
Adopt PCC System	TC
Establish Appellate Procedures	TC
Develop Succession Plan	PCC
Succession Training	PCC
Employee retention Program	TC
Study/Approve Appellate System	TC/PCC
Develop Arbitrator Regulations	TC
Make Organiz. Changes	PCA
Compensation Study	PCA
ID Key Retiree Candidates	PCC
Negotiate w/ Retirees	PCA
Train Core Appellate Staff	PCC
Labor Relations	
Etablish LMR System	TC
Contract for LMR Study	TC
Conduct LMR Study	TC
Approve LMR Program	TC
Establish Regulations	PCA
Change PCC Organization	PCA/PCC
Negociate Labor Agreements	PCA
Financial Policy Actions	
Toll Policies	
Financial Budget System	
Procurement System	
Environmental Actions	
Marketing Actions	
Public Education	
Official Transfer of the Canal	RP/USG



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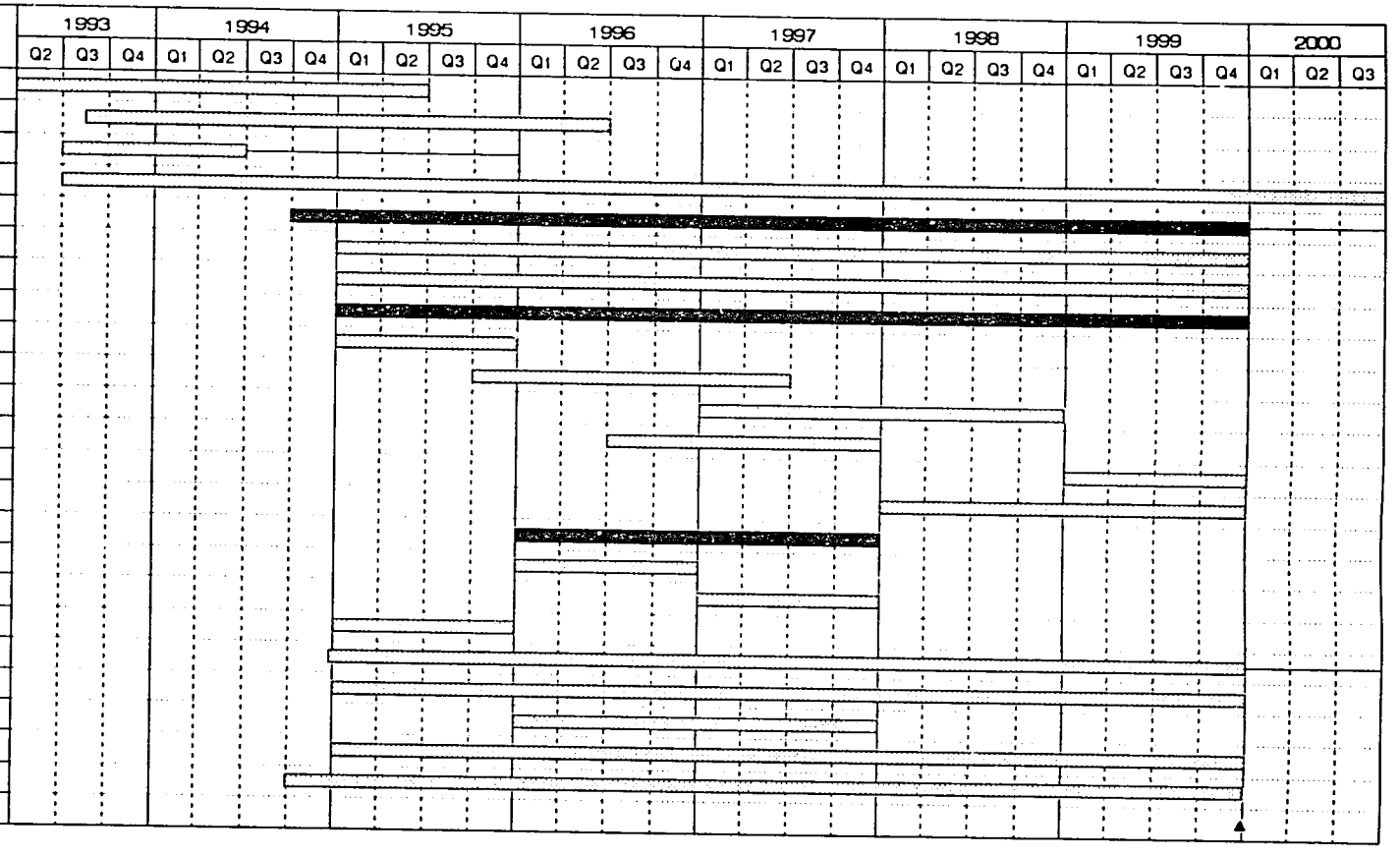
TRANSFER OF CONTROL OF THE PANAMA CANAL

TRANSITION PLAN - FINANCIAL POLICIES

05/15/94

Task Name	Resp
CONSTITUTIONAL REFORM	
LEGAL AUTHORITY	
TRANSITION PLAN DEVELOPMENT	
ORGANIZATION ENTITY CHANGES	
TRANSITION PLAN STEPS	
Human Resources	
Labor Relations	
Financial Policy Actions	
Prepare Study TORs	TC
Conduct Financial Policy Study	TC
Financial Management Transit.	TC/PCA
Organiz./Operations Review	TC
Financial Policy Development	TC/PCA
Estab. Financial Structure	PCA
Toll Policies	
Tolls Study	TC
Review/Set Tolls Policies	PCA
Fiscal Year Approval	TC
Financial Budget Systems	
Procurement System	
Environmental Actions	
Marketing Actions	
Public Education	
Official Transfer of the Canal	RP/USG



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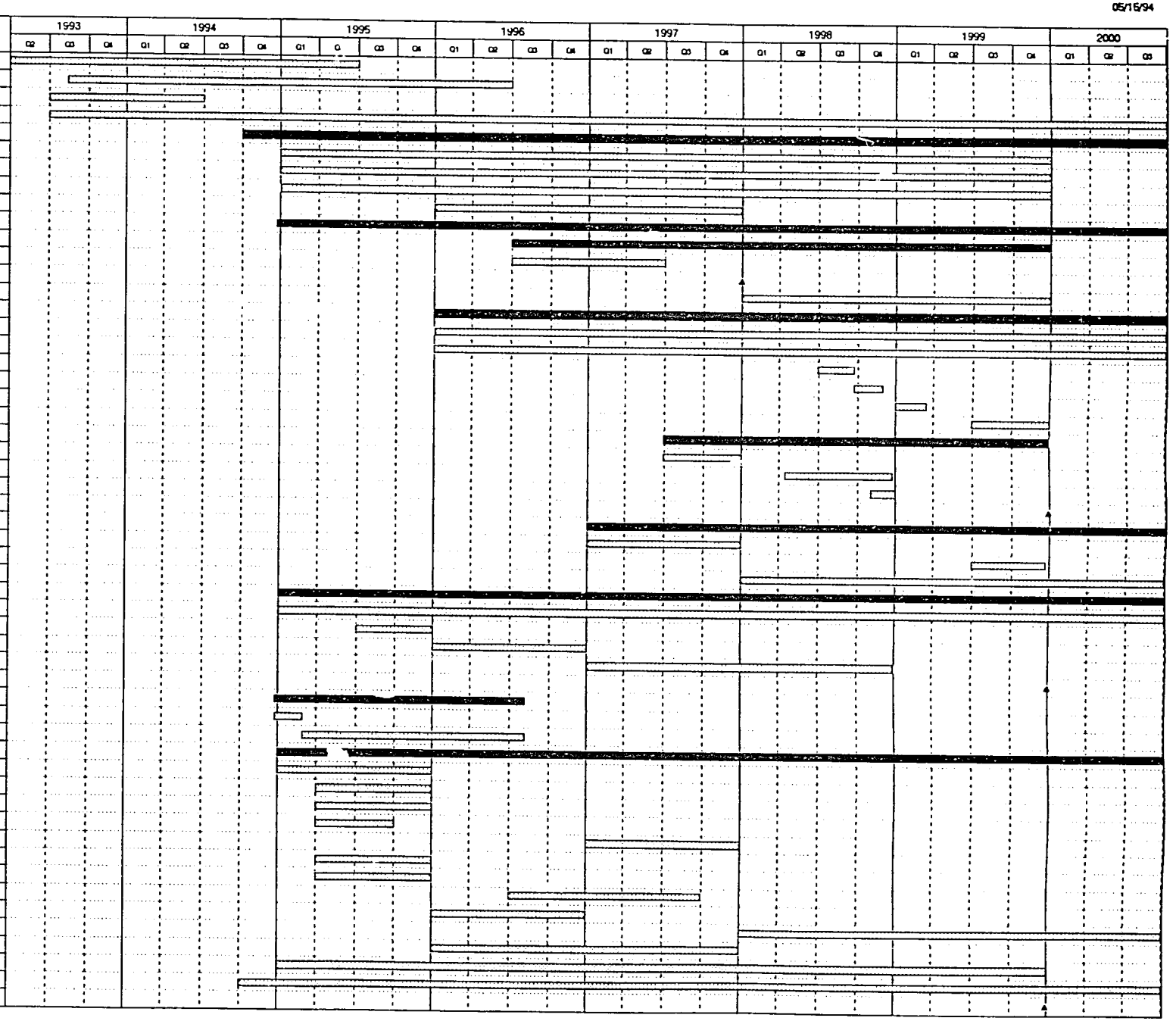
TRANSFER OF CONTROL OF THE PANAMA CANAL

TRANSITION PLAN - FINANCIAL/BUDGET SYSTEMS

05/15/94

Task Name	Resp
CONSTITUTIONAL REFORM	
LEGAL AUTHORITY	
TRANSITION PLAN DEVELOPMENT	
ORGANIZATION ENTITY CHANGES	
TRANSITION PLAN STEPS	
Human Resources	
Labor Relations	
Financial Policy Actions	
Tolls Policies	
Financial Budget System	
Working Capital	
Study of Need	TC
Decision on System	PCA
Obtain Working Capital	PCA
Budget Actions	
Five Year Plan Preparation	PCC
Income Projections	PCC
Budget Projections - 2000	PCC
Management Review	PCA
Approval of Budget	PCA
Begin next Cycle	PCC
Finance and Accounting	
Chart of Accounts	PCC
Revalue Fixed Assets	PCA
Parallel Accounting System	PCC
Close Books, USG	PCC
Treasury Functions	
New Proceedures	PCA
Establish PCA Checking Accts	PCA
Training	PCC
Auditing	
Contract External Auditors	PCC
Create Internal Audit Office	PCC
Develop Audit Norms	PCA
Train Investigators	PCC
Finish USG Investigations	PCC
MIS	
Evaluate MSA Software	PCC
Upgrade/Update as Required	PCC
Procurement Actions	
Define Procurement System	TC
Draft New Regulations	TC/PCC
Design Claims Dispute System	TC
Survey Suppliers	TC/PCC
Establish Supplier Comm. Prog	TC
Organizational Analysis	TC/PCC
MIS Analysis	TC/PCC
Review Organization	TC/PCC
MIS Changes	PCC
Start New Procurement System	TC/PCC
Environmental Actions	
Marketing Actions	
Public Education	
Official Transfer of the Canal	RP/USG

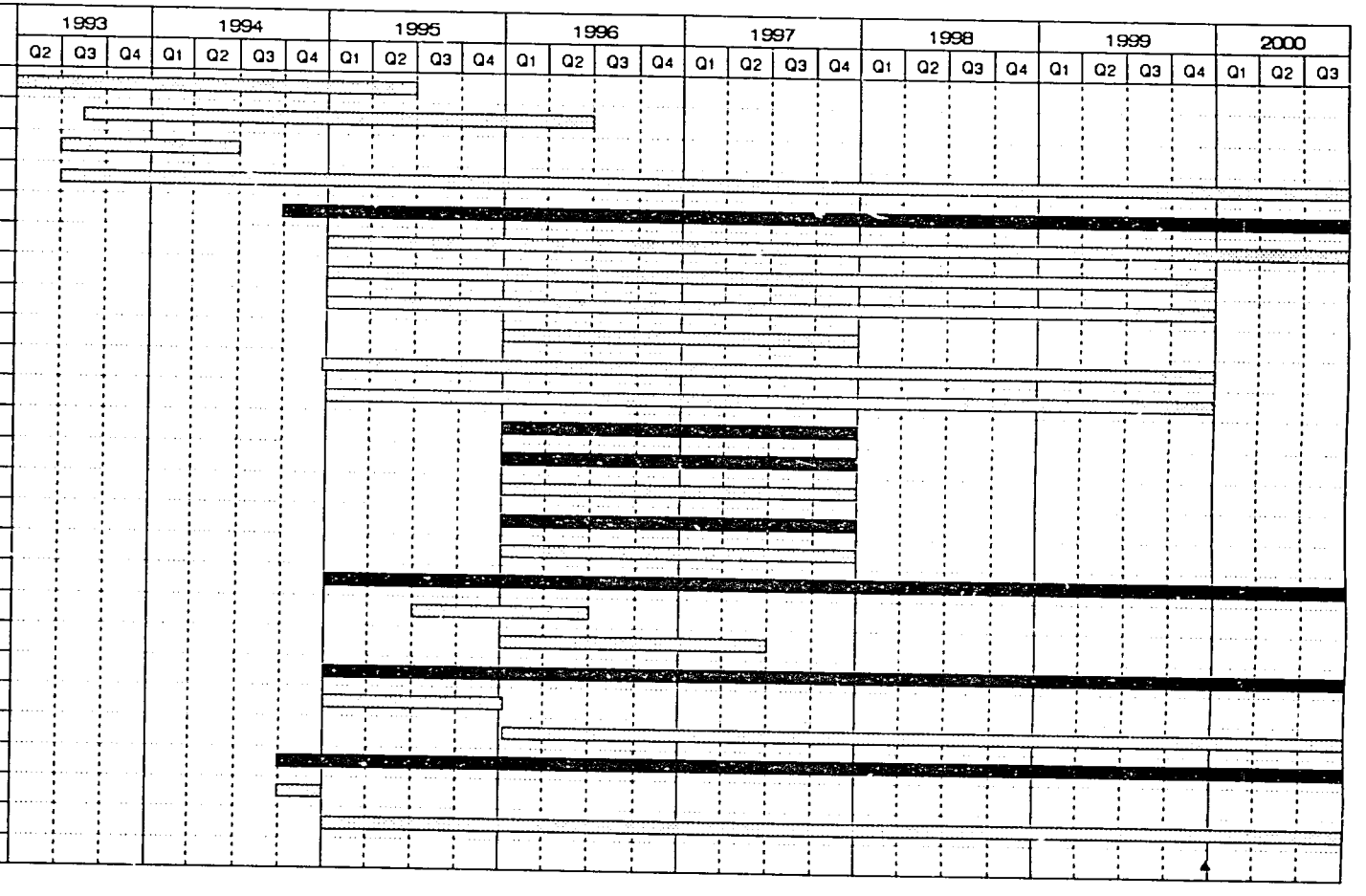


TRANSFER OF CONTROL OF THE PANAMA CANAL

TRANSITION PLAN - ENVIRONMENTAL, MARKETING, AND PUBLIC EDUCATION

05/15/94

Task Name	Resp
CONSTITUTIONAL REFORMAL	
LEGAL AUTHORITY	
TRANSICION PLAN DEVELOPMENT	
ORGANIZATIONAL ENTITY CHANGES	
TRANSITION PLAN STEPS	
Human Resources	
Labor Relations	
Financial Policies	
Toll Policies	
Financial Budgetary System	
Procurement System	
Environmental Actions	
Watershed Management	
Safe Yield Study	PCC
Env. Quality Compliance	
Adopt PCC Regulations	TC
Marketing Actions	
Survey Maritime Sector	TC
Information Systems	TC
Maritime Center	
Concept Development	MIPPE
Implementation	RP
Public Education	
Prepare Information Plan	TC
Conduct Education Program	TC
Official Transfer of the Canal	RP/USG



5.8.2 Budget

The transition process involves many steps and significant costs. In addition to the salaries of the Transition Entity and its support staff, estimated at $1.6 million per year for both Panamanian and PCC transition management personnel, a number of studies, personnel, administrative, legal, coordination, and organizational actions are necessary. These actions will require additional outside resources and/or transfer of personnel or resources (See preliminary estimate in table V-7) All of these have costs which must be budgeted for and funded. Without adequate funding for the transition planning work, there is no way to assure the smooth transfer of the canal on December 31, 1999.

The definition and approval of a budget for the transition is the responsibility of the Transition Commission of the government of Panama and of the PCC for the US government. Full coordination and reconciliation of the budgets between these two will be necessary. Funding of the transition actions as previously described, should be assumed by the Panama Canal Commission as costs of operation of the Canal.

5.8.3 Responsibility for Approval, Coordination and Management of the Transition Plan

The governments of Panama and the United States of America are mutually responsible for the direction, management, and coordination of the transition process. This plan sets the framework for carrying out the Panamanian government responsibilities and indicates areas where US support, through actions and activities of the PCC are indispensable to plan implementation.

This draft plan prepared by the Presidential Commission will be submitted formally to the President, Mr. Endara, President Clinton, and the US government. The PCC, the Consultative Committee, and various other Panamanian and US organizations with an interest in assuring a smooth transfer should also receive a copy. The Presidential Commission will formally submit the plan to the President of Panama letting him know that all the observations we received were evaluated. Upon approval of this plan by the Panamanian government, the President of Panama will name a Transition Commission to coordinate and direct the transition on behalf of the government. This Commission will be replaced as soon as practical, but not later than the end of 1997 by the PCA's Board of Directors who will manage the Canal after the transfer.

TABLE V-7

TRANSITION BUDGET
ESTIMATED SPECIAL STUDIES

TASK AREAS	ESTIMATED BUDGET
FINANCIAL POLICY	$1,200,000
ENVIRONMENTAL POLICY	$ 874,000
TOLLS POLICY	$ 500,000
MARKETING POLICY	
SURVEY MARITIME SECTOR	$ 50,000
INFORMATION SYSTEMS	100,000
LABOR MANAGEMENT RELATIONS	
LMR PROGRAM TOR/STUDY	$ 185,000
LMR TRAINING	200,000
REGULATIONS/LEGAL CHANGES	15,000
PERSONNEL	
ORGANIZATIONAL REVIEW TOR/STUDY	$ 840,000
APPELLATE STUDY (COORDINATE WITH LMR STUDY)	205,000
APPELLATE TRAINING	145,000
RULES AND REGULATIONS	45,000
COMPENSATION STUDY	500,000
OPERATIONS	
PROCUREMENT	$ 320,000
GLOBAL ACTION	78,000
MANAGERIAL INFORMATION SYSTEM	35,000
MARITIME INFORMATION SYSTEM	45,000
ADAPTATION/TRANSLATION OF REGULATIONS	50,000
PUBLIC EDUCATION	$ 60,000
BUDGET AND ACCOUNTING	
STUDIES	$ 35,000
REVALUE FIXED ASSETS	800,000
PARALLEL ACCOUNTING SYSTEM	625,000
TOTAL	$4,402,000

NOTE: Not all of the stated costs are specifically related to the transfer.

5.8.4 Performance Monitoring

Responsibility for monitoring progress and performance of the transition plan will rest initially with the Transition Commission and then with the PCA, which eventually will take over full responsibility for all transition actions on behalf of Panama. The Transition Commission and the PCA Board of Directors will coordinate their actions with the President, the Minister of Foreign Relations, the US Ambassador, PCC Board and the PCC Administrator. Regular quarterly progress reports on the status of the transition planning work will be prepared by the head of the Panamanian Transition staff for transmittal to the Transition Commission or PCA Board, the PCC Board, and the Consultative Committee. These groups will monitor progress against the transition plan objectives and milestones, and raise serious deviations or delays to the respective governments for timely resolution.

5.8.5 Implications if a Formal Transition Plan and Process is not Undertaken

The history of transfer of assets by the US government to the Panamanian government demonstrate the benefits of careful and timely planning and preparation prior to the transfer date. This Transition Plan is a guide which highlights the importance of establishing decision-making responsibilities, schedules, and budget reources to assure a smooth and imperceptible transfer. The Plan identifies the key required actions and puts them into a logical timeframe to insure continuity of activity and orderly decision-making. Like any plan, it is subject to modification and change as time passes and the internal and external environments change.

At this stage in the transition process, there are many other issues and problems that can be raised, which will, eventually, also require early study and action before the transfer date. The challenge to the government of Panama is to clearly define a process and a plan as soon as possible, so that it can proceed to develop the needed internal and external agreements, and so that it can truly assure the Panamanian public, the Canal employees, and the international maritime community that Panama will be fully prepared to efficiently and safely run the Canal for its benefit and for the benefit of increased world trade in the 21st century.

ANNEX

TRANSFER OF CONTROL OF THE PANAMA CANAL
DESCRIPTION OF SCHEDULE TASKS
(Refer to Chart for Schedule)

This list provides abbreviated descriptions of the tasks shown on the charts (pages 87-91) for the purpose providing insight into the issues involved. It is **not** all-inclusive, nor complete.

1: HUMAN RESOURCES ACTIONS

Adopt the PCC System:

The existing personnel system of the PCC will be modified as necessary and adopted by the Transition Entity and later by the new entity (PCA) once it is formed.

Establish Appellate Procedures:

Design an impartial review/mediation board and procedures by which employee appeals of management actions and decisions can be heard and differences resolved.

Develop Succession Plan:

For each position in which a vacancy is reasonably likely as a result of the transfer, or which is uniquely critical, describe how incumbents will be replaced, feeder positions for higher level positions, and formal and on-the-job training required to obtain a fully qualified replacement.

Succession Training:

Using the Succession Plan, assign the replacements and conduct the formal and on-the-job training

Employee Retention Program:

Survey employees regarding retirement or resignation, and develop plans to retain employees with key knowledge and skills.

Study/Approve Appellate System:

Determine the essential elements of an Appellate system. The system will be designed and approved by the Government of Panama.

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Develop Arbitrator Regulations:

Regulations for the appellate system, selection of arbitrators, and conduct of the appeals process will be prepared and approved.

Make Organizational Changes:

The PCC organization will be modified as necessary to permit early implementation of the arbitration process and other necessary changes.

Conduct Compensation Study:

A compensation study will be done to identify market values and current costs of selected positions to serve as a base for design of compensation ranges.

Identify Key Retiree Candidates:

Identify those persons occupying key positions who will be eligible to retire on, or before the transfer date. Decide which of these to replace and which are wanted in the post-transfer organization.

Negotiate with Retirees:

For those persons identified for retention in the prior step, negotiate contracts for their employment in the PCA.

Train Core Appellate Staff:

Train the appropriate personnel staff members in the new appellate system.

2. LABOR RELATIONS ACTIONS

Establish a Labor Management Relations System:

Decide the major features, appropriate organization, and staffing for a new LMR system and the terms of reference for a study of system needs and design.

Contract for a Labor Relations Management Study:

Write and award a contract for the study.

Conduct the Labor Relations Management Study:

Supervise the study effort, review progress and direction.

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Approve the Labor Relations Management Program:

Using the study results and the system developed in the steps above, approve the new labor management relations system and fund its operation.

Establish Regulations:

Write the implementing regulations for the new LMR system and obtain government approval by the USG and RP.

Change the PCC Organization:

Modify the PCC as necessary to implement the new LMR system and establishment of the successor employee associations.

Negotiate Labor Agreements:

With the new organization in place, the PCA will negotiate the post transfer labor agreements with the successor employee associations.

3: FINANCIAL POLICY ACTIONS

Prepare Study Terms of Reference:

Write the terms of reference and contract preparation for studies of financial management policies.

Conduct Financial Policy Studies:

Contract /conduct studies to determine recommended financial policies.

Financial Management Transition:

Overlay the new financial policies and procedures on the current PCC system and train and test their implementation over two annual cycles.

Organization/Operations Review:

Review organizational structure and operations to identify needed changes as a result of transfer.

Financial Policy Development:

Document the new system; enunciate, and formalize the new PCA financial policies.

Establish the Financial Structure:

Determine functional breakouts, position descriptions, recruit, staff, and begin operating as a parallel management system.

4: TOLLS POLICY ACTIONS

Conduct Tolls Studies:

Perform studies to determine alternative toll rates and related issues to evaluate the feasibility of linking toll rates to economic development, commodity value, and congestion costs.

Review/Set Tolls Policy:

Review tolls policy alternatives against expected outcomes, set new policies, and communicate them to clients.

5: FINANCE AND BUDGET ACTIONS

New Fiscal Year Approval:

Consider the current PCC and RP fiscal schedules and approve an PCA fiscal year to facilitate national fiscal programming.

Study the Working Capital Needs:

Determine what amount of working capital should be available to the PCA on the date of transfer and how much of that should be in cash.

Decide on the System to Fund the Working Capital Account:

The PCA needs to decide how to obtain the cash needed for the working capital.

Obtain Working Capital:

Once the decision is made on how much and how, the PCA must actually obtain the needed cash or credit.

Prepare Five Year Financial Plan:

The new PCA should have a five-year projection of revenues and expenses to include a capital expenditures plan. This should be updated annually.

Income Projections:

The PCC currently tracks and updates income projections regularly. This effort would continue through the transition period and these projections shared with the TC/PCA.

Budget Projection -2000:

The FY-2000 budget will need to be prepared using the system compatible with the RP system and forwarded to the PCA Board.

Management Review:

The PCA Board will review and approve the FY-2000 budget and forward to the National Assembly.

Approval of Budget:

The PCA Board approves the budget and forwards it to the National Assembly for its information.

Begin the Next Cycle:

The Planning, Programming, and Budgeting cycle is continuous. The PCC will need to begin the FY-2001 budget cycle by July 1999.

Chart of Accounts:

The new Chart of Accounts will have to be drafted and translated, and any new accounts required for operations under the RP system need to be created.

Revalue Fixed Assets:

The property, plant, and equipment need to be entered onto the financial statement of the PCA at current value and estimated (and depreciable) life. This re-valuation should be completed by the end of 1998 and parallel records maintained from then until the transfer.

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Parallel Accounting System:

For the last year of operation, finance and accounting should be run on parallel systems to insure a fully operating PCA system prior to the shutdown of the PCC accounts.

Close Books, USG:

The final event of the PCC finance and accounting process will be to formally turn the assets over to the PCA and close the PCC books. The continuing closure actions of the USG in settling accounts, claims, etc would be handled by a separate USG agency.

Establish New Treasury Procedures:

While treasury functions can remain basically the same, some US procedures can be simplified, and new PCA procedures will have to be formed.

Establish PCA Checking Accounts:

The PCA will require their independent accounts to temporarily hold revenues, and to pay obligations of the PCA. Other, revolving and capital investment accounts may also be needed and might be maintained as investment type accounts.

Training:

The need to adopt to the new system will require a training regimen to insure employees understand and can operate it. Additionally the large number of US citizens planning to leave the Controller's office on or before the transfer exacerbates the need for training.

Contract External Auditors:

The TC/PCA should to develop agreements with qualified auditing firms well in advance of the transfer.

Create Internal Audit Office:

The Office of the IG now serves this function, and a portion of this office could be realigned to assume the post-transfer internal audit function.

Develop Audit Norms:

Standards and norms need to be established for internal audits.

Train Investigators:

Auditors and investigators need to be trained on the new norms and procedures.

Finish USG Investigations:

The PCA will need to cooperate with the USG as it concludes investigations underway prior to the time of transfer.

Evaluate MSA Software:

The software being used by the PCC since 1984 should be evaluated for suitability for continuation by the PCA.

Upgrade/Update MSA Software:

Any recommended updates/upgrades should be considered for implementation prior to the transfer.

6: PROCUREMENT ACTIONS

Define the Procurement System:

The current system should be modified to simplify and streamline it.

Draft New Regulations:

Once the new system is defined, it needs to be codified and internal instructions disseminated.

Design a Claims Dispute System:

An equitable and impartial system, similar to the current arbitration board is needed to settle disputes between the PCA and its contractors and suppliers.

Survey Suppliers:

The PCA must establish sources of supply and mutually agreeable payment terms prior to the transfer. Some current PCC sources will not be available to the PCA, but greater flexibility may exist in source and origin of goods.

Establish Supplier Communications:

Closer supplier relations, similar to the private sector industrial organization will help offset the loss of emergency transportation capability. The PCA must be assured of responsive sources for critical items.

Organizational Analysis:

The PCC procurement system relies on the larger USG supply base and a purchasing and shipping office in the US. Changes to the organization may be required to offset the loss of GSA procurement support. The US office viability needs to be determined.

MIS Analysis:

The current system relies on communications systems, computers, and software that may need to be revised to better serve the PCA.

Organizational Changes:

Make procurement organizational changes so as to permit the new system to be staffed and operating with trained people prior to transfer.

MIS Changes:

Like the organization, the management system changes need to be incorporated early enough to allow the people to become familiar with them and to insure they perform as needed.

Start New Procurement System:

The entire new procurement system should be operational early enough to permit testing and revision as necessary.

7: MARKETING ACTIONS

Survey the Marine Sector:

Obtain industry views of market potential of maritime related services for shipping which transits the Canal.

Information System Integration:

Determine feasibility of integrating maritime related information systems to include ports, intermodal systems, merchant marine activities, etc.

Develop Maritime Center Concept:

Determine elements which should be included in a maritime "Service Center" based on market/cost feasibility assessments, and examine alternatives for implementation.

Implement Maritime Center:

Establish the legal base and organizational responsibilities for implementation of an integrated maritime development strategy.

8: PUBLIC EDUCATION ACTIONS

Prepare Information Plan:

Determine key steps for education of each of the effected target audiences and develop a plan for disseminating the information.

Conduct the Education Program:

In conjunction with other information services of the Government of Panama and the Public Affairs Office of the PCC, use various media forms to educate the target audiences.

APPENDIX

APPENDIX 1

Republic of Panama

Office of the President

DECLARATION OF PRINCIPLES

The National Government, aware of the importance of the Panama Canal to our country and to the international community, deems it appropriate to issue this Declaration of Principles with regard to the administration, operation and maintenance of the Canal, with a view toward ensuring its continuance and efficiency once it has been transferred to the Republic of Panama.

1. The administrative entity to be established or constituted will be autonomous and independent in regard to both its administrative and financial structure as well as its responsibilities.

2. The policy governing the maintenance and implementation of improvements to the Canal will continue in effect by means of programs and projects in order to ensure its continuous upgrading, capacity, efficiency and usefulness, in accordance with the maritime and commercial demands and interests of the users of the interoceanic waterway.

3. The norms and regulations regarding the hiring of personnel and the determination of the framework of their employment will include a merit system, employment policies, training and educational programs, and programs to provide compensation in the areas of personnel benefits, salaries, and social benefits designed to ensure the security, increase the morale and promote the productivity of workers, without violating the existing terms and conditions of employment, which will continue to be respected.

4. Those highly qualified workers possessing the skills, training and experience necessary to provide for the proper administration, operation and maintenance of the Canal will be given assurances with regard to their continuation in their jobs, regardless of nationality.

5. The Cabinet of Ministers shall authorize the appropriate Minister to submit to the Legislative Assembly any draft constitutional amendments and draft laws as may be deemed necessary to enable Panamanian legislation to respond to the demands and needs of the Canal, as well as to the principles set forth herein.

Panama, February 20, 1992

GUILLERMO ENDARA GALIMANY
President of the Republic

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APPENDIX 2

DECREE 32

(dated April 5, 1993)

"By means of which Decree No. 180 of 1991 is subrogated and the Presidential Commission for Panama Canal Affairs is created."

THE PRESIDENT OF THE REPUBLIC
by virtue of his constitutional and legal authorities,

WHEREAS:

The Ad Hoc Commission for the Panama Canal and Reverted Areas has patriotically and effectively fulfilled its mandate to study, prepare a draft law, advise the Cabinet of Ministers with regard to the preparation of the Draft Law for the Interoceanic Regional Authority (IRA), [and] counsel the Honorable Legislators with regard to the approval of the Law by means of which the IRA is created.

The Ad Hoc Commission has had under consideration a draft of a document proposing constitutional amendments and a draft Organic Law to govern the entity to be charged with administering the Canal.

The Ad Hoc Commission has created subcommissions that are carrying out extremely important efforts in the preparation of the items mentioned in the preceding paragraph.

It is advisable that Decree No. 180 of 1991 by means of which the Ad Hoc Commission was created be subrogated and that in its place this entity be granted the rank of Presidential Commission and that the coordinators of the subcommissions that to date have been conducting activities be recognized as the Support Group.

THEREFORE DECREES:

ARTICLE 1: The creation of a Presidential Commission for Panama Canal Affairs. This Commission shall have the following functions:

1. To prepare draft constitutional amendments and a draft Organic Law to govern the operations of the entity to be charged with administering the Canal. Toward this end,

it will study in depth, among other things, the following documents and subject matter: i. the operation of the Canal; ii. the various legislative experiments that have been prepared in the past with regard to the Canal; iii. Public Law 96-70 of the United States of America; iv. the by-laws of the former Panama Canal Company; v. the norms governing labor relations in the Panama Canal Commission; vi. the financial structure of the Canal; vii. the policy regarding tolls and the norms governing the application of such tolls, as well as the procedures for their review; viii. the rules governing navigation in the Canal; ix. the norms covering indemnification in the event of accidents occurring in the Canal; x. the norms covering the preparation and approval of the budget; and xi. auditing and oversight mechanisms.

2. In preparing the draft Organic Law to govern the entity to be charged with the administration of the Canal, it shall also consider the desirability of making that entity responsible for the administration of the hydrographic watershed in order to ensure the availability of a sufficient flow of water, an element that is vitally important for the operation of the Canal. In addition, it shall consider the desirability of vesting in such administrative entity the ownership and administration of the port areas of Balboa and Cristóbal and of the trans-Isthmian railroad, as well as of other means of transportation which, by virtue of their nature, should be considered to be integral elements of the operation of the Canal, thus strengthening the competitiveness of the trans-Isthmian complex at the international level.

3. To develop recommendations for the National Government regarding the reforms that should be implemented over the coming years within the administrative scheme of the currently existing Panama Canal Commission, in order to facilitate its transition from its current status as an agency of the government of United States to its future status as a Panamanian entity responsible for the administration of the Canal.

4. To carry out an extensive process of consultation as regards these draft laws with all of the sectors of the country, including, among others, the following individuals and organizations: i. Professional, technical, civic and political associations and organizations; ii. business and labor organizations; iii. specialized entities and offices of the National Government and autonomous government entities involved with both issues; iv. the universities; v. the Panama Canal Commission; vi. national educational institutions.

5. To prepare the draft laws and the draft constitutional reforms with regard to the entity to be charged with the administration of the Canal within the framework of these recommendations, and submit them for the consideration of the Executive Branch, together with their corresponding statements of rationale.

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6. To cooperate in the task of illustratively elaborating on such draft laws for the benefit of the Cabinet of Ministers and, once they have been formally submitted, for the benefit of the Legislative Assembly and public opinion in general.

7. For the above-mentioned purposes, the Commission may, in representation of the President of the Republic, discuss with the Board of Directors and Management of the Panama Canal, as well as with the Commander-in-Chief of the Southern Command, all matters related to the utilization and improved administration of the Panama Canal.

ARTICLE 2: The appointment of the members of the Presidential Commission for Panama Canal Affairs, as follows:

Mr. Joaquín J. Vallarino, who will chair the Commission
Dr. Juan Cristóbal Zúñiga
Dr. Diógenes de la Rosa
Lic. Roberto Brenes
Ing. Luis Eduardo Guizado
Arq. Guillermo Elías Quijano, Jr.
Arq. Jorge R. Riba
H.L. Olimpo Sáez
H.L. Carlos Arellano Lennox

ARTICLE 3: The creation of the Support Group for the Presidential Commission for Panama Canal Affairs, whose primary function will be to coordinate the efforts of the commissions created by the above-mentioned Presidential Commission and to generally provide advice thereto.

ARTICLE 4: The appointment of the members of the Support Group for Panama Canal Affairs (sic), as follows:

Mr. Ricardo Brin
Dr. Richard Durling
Sr. Salvador Sánchez
Sr. Marco De Obaldía
Sr. Carlos González de la Lastra
Ing. Rogelio Delgado
Sr. Carlos Valencia
Arq. David Samudio

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ARTICLE 5: This Decree will become effective following its approval.

TO BE ANNOUNCED AND PUBLISHED

GUILLERMO ENDARA GALIMANY
President of the Republic

JULIO (ILLEGIBLE)
Minister of the Presidency

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