

23/10/2017

To,

The Expert Appraisal Committee

River Valley Projects

Ministry of Environment, Forests and Climate Change, Govt. of India

**Subject:** Submission with regard to the Environment Clearance for the 5040 MW Pancheshwar Multipurpose Project in Uttarakhand and Nepal

Sir/Madam,

We write this with reference to the 5040 MW Pancheshwar Multipurpose Dam Project proposed to be constructed in Uttarakhand on the Mahakali River. The mega project is going to impact 3 districts on the India side and 3 districts of Nepal. Apart from giving our detailed objections about the project's environment and social impact assessment reports, we would also like to submit to the Expert Appraisal Committee our objections related to the improper and even illegal manner in which the entire public hearing proceedings were conducted in Champawat, Pithoragarh and Almora amidst clear opposition and massive protest by project affected people.

**I. About the Environment Clearance Public Hearing Process:**

It is utterly shameful that more than a decade after the drafting and passing of the EIA Notification 2006, numerous court orders outlining the mandatory elements and processes of a fair and effective Public Hearing process, there still seems to be no improvement or diligence in the implementation of the Environment Clearance Public Consultation for any project in this country. We have been tracking these consultations for more than ten years and find that the commitment to genuinely consult affected communities and people is not only completely missing but the MoEFCC and the respective appraisal committees seem to have not instilled amongst the project proponents or the implementing agencies a sense of responsibility towards this process and so the failures in compliance and absence of diligence continues unabated. The lacunae highlighted below are nearly identical - in both number and severity - to the faults noted by the NGT in *Adivasi Majdoor Kisan Ekta Sangathan v. Ministry of Environment and Forests & Ors.* (Appeal no. 3/2011, decided on April 20, 2012), wherein it observed multiple violations of the principles of natural justice in conducting the public hearing, and cancelled the EC on this ground alone - noting the critical importance of the public hearing to the EIA process. Moreover,

1. **Announcing an environment clearance Public Hearing in the monsoons:** The project affected villages in this part of Uttarakhand lack proper road connectivity and are known for landslides during the monsoon. The decision to announce the Public Hearing in the month of August was a faulty one because of this reason that it would be difficult for the news to reach the affected people and then the people to reach the Public Hearing venue.

2. **Choosing District headquarters as centre for the hearing:** Additionally, the public hearings were held in the district headquarters. Given the fact that only 50% of the 134 villages are connected by motorable roads the administration should have planned for public consultations in various locations. The number of people who could finally make it for the public hearings were much fewer (in hundreds perhaps) and those who were allowed to go inside the venue were still fewer and finally those who got a chance to make oral submissions were around 50 odd people. Even then there are many who could not make written submissions and their objections have not been recorded in the public consultation minutes.
3. **Inadequate arrangements to ensure full and fair participation of the Public:** If 31023 families in 134 villages are being impacted the administration should have made arrangements of an open pandal where the consultation should have been held to allow the public to participate. The entire proceedings of the consultation went on in closed premises with many people being left outside the venue.
4. **Curbing protest, objections:** As a result of the nature of public consultation, the lack of availability of complete information about the project, the lack of access to relevant documents (EIA-EMP report in Hindi, Executive Summary in Hindi and Social Impact Assessment Report in Hindi) as well as lack of clarity about the objective of the public consultation process, the affected people were agitated before the public consultation. Several submissions were made asking for postponements of the hearings to the State Pollution Control Board vide the District Administration. However no heed was paid to these appeals by the government.
5. **Failing to provide adequate information about the project along with relevant documents to the affected villages:** As far as the local panchayats go, they had no clue of the process and the documents – the EIA-EMP report in Hindi, Executive Summary in Hindi and Social Impact Assessment Report in Hindi were not available with the local people. This was reported by most people during the Public Consultation.
6. **Public Hearing Minutes Do not cover the process:** The Public Hearing Minutes however, do not reflect the scenario of what happened on the days of the Public Consultations at Champawat, Pithoragarh and Almora. There is no mention of the protests that took place, people were forced to disperse from the venue even (**videos links and news links attached in Annexure 1**) before they got a chance to enter the PH premises and voice their concerns and queries. None of the queries were responded to. However, this should have been factored in by the Pollution Control Board and Administration, given the size of the project and the number of affected people. Members of the ruling party of the state were manipulating the proceedings of hearing and were also occupied the panel in Pithoragarh and Champawat consultations. Several people presented oral testimonies which have not been covered or recorded in the Public Hearing Minutes, especially in Pithoragarh District. The heavy presence of the police, inside and outside, the Public Consultation premises was intimidating for the people and compromised severely the Public Consultation process. The Public Hearing/ Consultation did not end with the mandatory closure notes/ reading out of proceedings as mandated in the EIA notification. The entire Public Consultation became unwieldy and unmanageable simply because of the short sightedness of the administration and the way it was organized.

The Public Consultation proceedings on the State Pollution Control Board website are in Hindi and contain no responses to the concerns and queries raised during the consultation. The Minutes on the MoEFCC website contain the responses by the project proponents/consultants but these are only available in English. Even assuming this is adequate (which it was not), the proponent and state authorities are well aware that access to documents on the internet alone is not sufficient for such remote areas.

## **II. A compromised EIA process and An incomprehensible Environment Impact Assessment Report (Annexure 2)**

We are extremely concerned about the rushed manner in which the entire EIA process was conducted. The discussions in the EAC meetings held on 23<sup>rd</sup> April and 1<sup>st</sup> May 2016 revealed that the project was being considered for scoping clearance and granting of TORs. Interestingly, the process of primary data collection took place in 2015 (The data collection was done in May-June 2015 (Summer), August-September 2015 (Monsoon), December 2015-January 2016 (Winter) – without a Terms of Reference and based on the Model TOR). There is no mention of this in the minutes of April and May 2016. When the matter came up for discussion in the EAC meeting of 31<sup>st</sup> May 2017, the EAC was informed then that the EIA report was finalized based on the Model TOR and the same was accepted by the EAC.

The EIA report states that the scoping clearance was granted on 13 October 2016 and that a TOR has been issued for the purpose of conducting of a comprehensive EIA for the multipurpose project. However, the EIA report does not include the Terms of Reference and just has a copy of the letter granting TOR. Neither does the EIA report have the checklisted TOR in the index as mandated.

### **Two important additional conditions of the EAC while granted TOR were:**

- Minimum e-flow discharge of 20%, 25% and 30% should be planned for lean season, non-lean season & non-monsoon and monsoon, respectively.
- The EIA/EMP report for the full project should be placed before the entity established through the Joint Mechanism mentioned earlier for examination. Recommendation would be given to the Ministries of Environment in both the countries for acceptance.

If we look at the EIA report, it does not have any mention of the impacts on the Nepal side. Infact there are two separate dams (Rupaligad and Pancheshwar) going to be built under this multipurpose project and the impacts of each of them should have been assessed separately within the EIA report which has not been done adequately. The decision of the joint mechanism was reversed/over ruled without any adequate reasoning.

*“As far as Joint Mechanism Set up is concerned, the EAC is of the view that as of now and considering the progress of preparation of EIA reports, setting up of the Joint Mechanism would rather delay the process of this important international project. Hence, let the Public Hearing be conducted based on the EIA report for Indian portion and the PP may approach the Ministry for final appraisal for environmental clearance”*

*It is important to note that this reversal is also opposed to and in direct violation of the principles of the Mahakali Treaty of 1996, wherein this project has its conceptual roots. Further, the decision that a scientific study would be conducted, to ensure “the minimum e-flow discharge of 20%, 25% and 30% for lean season, non-lean season & non-monsoon and monsoon” seems have been completely overlooked completely. There is a section on e-flows in the report which does not speak of the percentage of e-flows that can be ensured seasonally and is far from adequate.*

- 1. Methodology proposed under model ToR (in 93rd Meeting of the Expert Appraisal Committee (EAC)) for the river valley project is not followed for the selection of sample sites for the collection of biodiversity in EIA/EMP report**
- 2. Flora Fauna Study is highly inadequate and very poor** - Mostly the EIA report has been generated on the basis of secondary data from Forest Department and concerned departments. The methodology is not well defined for the study of Flora and Fauna. No sampling efforts or intensive study area mentioned (poorly conducted – as mentioned above).

EIA report has concluded no impact on the movement of large animals with any robust scientific study. Secondary data and indirect evidence based study is not enough to conclude about the mammal diversity of this area especially about nocturnal/cryptic animals (without installation of camera traps).

EIA report has mentioned only 70 species of birds which appears to be a gross underestimation of species diversity. Despite conducting seasonal sampling it's strange that only one migratory species of bird has been recorded from the affected area. Report has stated that reservoir will provide additional habitat for migratory waterbirds but there is no mention about terrestrial birds (what impact will be on habitat of terrestrial birds). No information on status (abundance/density estimation) despite conducting spatio-temporal sampling.

Study of plant species and review of literature has not been done intensively. EIA report states, “As per Red Data Book of Indian plants and following IUCN red list of Threatened plants, no rare, endemic, endangered and threatened plant species are reported from the project areas.” However, *Leptodermis riperia*, an endemic has been rediscovered within 2-3 km radius of project site (Rai et al. 2015).

The recent record of Tiger (*Panthera tigris*) from Askot Wildlife Sanctuary is the highest record of tiger in India (Bhattacharya & Habib, 2016) adds possibility of presence of tiger/ corridor for ‘national animal’ in this area which requires further study. Therefore, National Tiger Conservation Authority (NTCA) should be one of the stakeholders or should be informed about this project. This will also require the project to seek additional clearance from the National Board for Wildlife (NBWL) as per section 29 of the Wild Life (Protection) Act, 1972.

- 3. Geological fragility, earthquake and landslide proneness not studied**
- 4. Impacts due to landuse change not studied**
- 5. Impact on fish fauna- The EIA report states on page 48 of Chapter 13: Prediction of Impacts, “The lack of information on the importance, abundance and life history of migratory fishes, and freshwater mussels of Mahakali River it is difficult to measure the exact impacts on such species. Many studies suggest that such changes are deleterious to the natural history of the river, not just within the impoundment, but below it as well. Unfortunately, these long term effects are**

*often over shadowed by the perceived and immediate needs of 'development' and 'civilization' (Watters 1996)."*

#### **6. Incomplete data on Roads going to be affected by dams**

**The EIA report is incomplete and to measure the impact on flora and fauna the methodology given in ToR is not followed.** The entire report shows that the areas which are not accessible through road are not included in the survey. It is required and mandated by law that **the whole study be done again with number of samplings sites selected as per ToR, to get a representative samples, on which impacts of the project can be studied. We also demand that the same be done jointly with Nepal as per the mandate of the Mahakali Treaty of 1996. As per decision of the EAC during Scoping Clearance a joint EIA mechanism was to be set up for the purpose of this project. This process was short circuited to hasten the project which has led to patent illegalities in the EIA. The environmental and social impacts of a project of this magnitude are going to be far reaching for vulnerable populations of both countries and short circuiting a process in the planning and EIA stage will only cause hurdles in the following stages of the project. This project demands a thorough multi-disciplinary and participatory environmental and social impact assessment process to be put in place and the EAC must ensure this.**

#### **III. Objections to the Social Impact Assessment report(Annexure 2)**

Shodder and even more disappointing than the EIA report of the project is the Social Impact Assessment Report which has failed to fulfill most of the basic requirements of the a standard SIA as defined under the SIA notification issued under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Social Impact Assessment and Consent) Rules, 2014 were published as required under section 112 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, by the Ministry of Rural Development on 8<sup>th</sup> August 2014.

##### **1. Absence of Cost Benefit Analysis and Alternatives, Options Assessment**

##### **2. Absence of Analysis on the actual socio-economic impacts**

No enlisting of forest based uses and user groups have been done and as a result there is no provision for these losses in the Rehabilitation policy. One of the biggest lacunae of the report is that it has no mention of the fact that a **Primitive Tribal Group** called **Van Raji or Ban Rawats**, who are a native endangered ethnic minority group, originating and living in Uttarakhand, India are also going to be affected by the project. Two villages, namely Kimkhola and Jamtadi are Ban Rawat inhabited are in the submergence zone and there will be other Ban Rawat villages in the project affected area.

##### **3. Absence of Analysis on Socio-cultural aspects of the impacts of the project**

##### **4. Absence of information on the Social Impact Assessment Team and its members**

##### **5. The joke of a Rehabilitation and Resettlement Plan: Poor SIA is equal to Poorer R & R policy - No land for land, disparities in circle rates and compensation offered, Forest and commons based livelihoods not compensated for**

#### **III. WHY THE EAC NEEDS TO REVIEW THE ENTIRE EIA PROCESS FOR THE PANCHESHWAR MULTIPURPOSE DAM PROJECT:**

We would like to remind the respected members of the Expert Appraisal Committee about the report no. 39 brought out by the Comptroller and Auditor General of India (CAG) on the Performance Audit on 'Environmental Clearance and Post Clearance Monitoring' in the year 2016 which unambiguously stated that the existing processes for grant of Environmental Clearance are fraught with serious violations, non-compliance and deficiencies. In fact River Valley and Hydroelectric Projects have been highlighted for poorest quality of Environmental Impact Assessment (EIA) Reports, maximum irregularities during Public Hearings, and non-compliance of Environmental Clearance conditions.

According to the CAG scrutiny for six out of seven projects the RVP EIA reports did not comply with the Terms of Reference granted by EAC as well as generic structure stipulated in the EIA notification. Even though the sample size is smaller in RVHP projects percentage wise non-compliance is highest. CAG also highlights the fact that the projects have been granted ECs despite evident shortcomings in the preparation of the EIA reports with respect to the ToRs. CAG observed that the due diligence process as prescribed in the EIA Notification for the conduct of Public Consultation was not followed in any of the seven sectors examined in Audit. The non-compliance was maximum in case of River Valley and Hydro Electric projects.

[http://saiindia.gov.in/sites/default/files/audit\\_report\\_files/Union\\_Government\\_Report\\_39\\_of\\_2016\\_PA.pdf](http://saiindia.gov.in/sites/default/files/audit_report_files/Union_Government_Report_39_of_2016_PA.pdf)

**It is a matter of grave concern that the indictment by a body like CAG has not served as any feedback for the EAC River Valley Projects and it has shown a complete lack of diligence in the same areas where red flags have been raised by the CAG. It is the responsibility of the EAC to exercise caution and commitment in cases of projects that are having such a far reaching impact.**

Sirs, in the age when the west is decommissioning dams and the very nature of this kind of development is being questioned, at a time where hydropower projects in the Himalayan region have come in for such severe scrutiny and critique for being unsustainable, at a time when hydropower projects under construction are facing continuous delay due to 'geological surprises' and local opposition due to the socio-economic and environmental impacts, the EAC for once should re-examine its own role while recommending these projects. It is because of lack of careful planning, procedural compliance and environmental assessments that these projects later face so many problems. Today, the government is considering a bail-out package of 26000 crores for such delayed and financially fraught hydropower projects. A project like Pancheswar Dam will alter the ecology, economy, culture, geology of the Kumaon region irreversibly. The Mahakali River, being a major tributary of the Ganga, is a 'living legal entity' according to the Uttarakhand High Court's recent judgment.

It is based on the above that the EAC needs to re-consider the process of the EIA for this project. We appeal that the environment clearance for the Pancheshwar Multipurpose not be granted at this point. The EAC should insist on:

- Implementation of the Indo-Nepal Joint Mechanism for the EIA study
- Complete list of TORs for the EIA specific to this project be made public
- Compliance to TORs be reviewed thoroughly and be made part of the EIA

- The EIA should assess the impacts of the Pancheshwar and Rupaligad Dams thoroughly and separately, as well as cumulatively
- Once a complete EIA is ready with all the gaps filled, the EIA and its executive summary should be made public with full regard to the mandate of clause 7(I).III of the EIA Notification of 2006, which has been violated thus far.
- The Public Consultations must be held again, with due regard to the principles of natural justice – either the number of locations of the public hearings needs to be increased to cover the entire affected area or the number of days to carry out the public hearing for each district may be increased. The Public Consultations should be held in a season in which people are able to attend easily (for instance winter). The panel has to only comprise of officials of the administration and no members of the political parties and project proponents should be allowed to sit on the panel.
- Free and fair consultations should also be held vis a vis the Social Impact Assessment and the R and R Policy before taking consent and NOCs of the affected gram sabhas.

We hope that the Expert Appraisal Committee will act in the spirit true to its mandate of protecting the interests of environment and the people dependent on nature as well as in consonance with the principles and laws of environmental and natural justice. Also, given that there have been so many procedural violations at this stage, a review of the same will set an example that will establish public faith in the Ministry of Environment, Forests and Climate Change as well as in the scientific community.

Signatories

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