

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
SITTING AT NEW DELHI**

APPEAL NO: _____ OF 2017

IN THE MATTER OF:

HIMANSHU THAKKAR.

...APPELLANTS

VERSUS

UNION OF INDIA & ORS.

....RESPONDENTS

**INDEX
VOLUME -I**

S. NO.	PARTICULARS	PAGE NO.
1	Memorandum of Appeal along with Affidavit and Vakalatnama	2 - 57
2	<u>ANNEXURE A-1</u> A copy of the impugned Environmental Clearance letter dated 28.7.2017	58 - 64

THROUGH

RITWICK DUTTA

RAHUL CHOUDHARY

MEERA GOPAL

COUNSEL FOR THE APPELLANTS

N-71, Lower Ground Floor, Greater Kailash-1,

New Delhi – 110048

Mobile No.: 9810044660

Email:-ritwickdutta@gmail.com

NEW DELHI:-

DATED:- 08.08.2017

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
SITTING AT NEW DELHI**

APPEAL NO: _____ OF 2017

(Under Section 16 (h) of the National Green Tribunal Act, 2010)

IN THE MATTER OF:

1. HIMANSHU THAKKAR

Aged about 56,
S/o Jethalal Thacker
R/o 86-D, AD block, Shalimar Bagh,
New Delhi 110088

...APPELLANT

VERSUS

1. UNION OF INDIA

Through the Secretary,
Ministry of Environment, Forests and Climate Change
Paryavaran Bhawan,
Lodhi Road
New Delhi-110003

2. NATIONAL WATER DEVELOPMENT AGENCY

Through the Director General
18-20, Community Centre,
Saket, New Delhi – 110017

3. STATE OF MADHYA PRADESH

Through the Chief Secretary,
Mantralaya, Bhopal 462 003,
Madhya Pradesh

4. STATE OF UTTAR PRADESH

Through the Chief Secretary,
1st Floor, Room No. 110,
Lal Bahadur Shastri Bhawan,
Secretariat, LUCKNOW – 226 001

MOST RESPECTFULLY SHOWETH:

- I. The address of the Appellants' counsels is given below for the service of notices of this Appeal.
- II. The addresses of the Respondents are given above for the service of notices of this Appeal.
- III. That the present Appeal is being filed before this Hon'ble Tribunal challenging the Environmental Clearance dated 25.08.2017 (hereinafter referred to as the "impugned Environmental Clearance") granted by the Ministry of Environment, Forest and Climate Change to the National Water Development Agency (hereinafter referred to as the "Project Proponent") for the Phase I of the Ken Betwa River Link Project in Panna, Tikamgarhand Chhatarpur District of Madhya Pradesh and Jhansi, Mahoba and Banda districts of Uttar Pradesh.

A copy of the impugned Environmental Clearance letter dated 25.08.2017 is annexed herewith as **ANNEXURE A-1**

FACTS IN BRIEF:-

1. That the Appellant is a concerned citizen and has been working on issues concerning the environment. He is an engineering graduate from Indian Institute of Technology (IIT), Mumbai. He is the Coordinator of South Asia Network on Dams, Rivers & People and has been involved in issues related to water resources in India for more than 25 years. He has made representations with respect to the environmental impact of the project to the Ministry of Environment, Forest and Climate Change as well the various expert committees and Statutory Authorities.
2. That the Respondent No. 1 is the Ministry of Environment, Forests and Climate Change which is the nodal agency to grant environmental

clearance under the provisions of the Environment Impact Assessment Notification, 2006. The Respondent No. 2 is the National Water Development Agency (NDWA) which has been set up with the objective of carrying out the water balance and other studies on a scientific and realistic basis for optimum utilisation of Water Resources of the Peninsular rivers system for preparation of feasibility reports and thus to give concrete shape to Peninsular Rivers Development Component of National Perspective, and is the project proponent in the instant Appeal. That Respondent No. 3 and 4 are the State of Madhya Pradesh and State of Uttar Pradesh respectively wherein the affected districts are situated.

3. That the present Appeal is being filed under Section 16 of the National Green Tribunal Act, 2010, challenging the Environmental Clearance dated 25.08.2017 granted by the Respondent No.1 herein to the Respondent No. 2 for the Phase I of the proposed Ken Betwa River Link Project in Panna, Tikamgarh and Chhatarpur District of Madhya Pradesh and Jhansi, Mahoba and Banda districts of Uttar Pradesh. It is submitted that the said Environmental Clearance was obtained based on inadequate, incomplete and misleading Environment Impact Assessment, based on public hearings that involved violations of the legal norms and by concealing material information. Further, the appraisal of the said project has been conducted in complete violation of the provisions of the EIA Notification, 2006. The EAC (River Valley and Hydroelectric Projects) recommendation is arbitrary and reflects non application of mind to factors which ought to have been considered.
4. That the impugned Environmental Clearance suffers from serious illegality, arbitrariness and unreasonableness. The entire procedure from scoping, public consultation and appraisal was carried out in

haste, reflects arbitrariness, non application of mind, non consideration of relevant factors. It violates the precautionary principle and is against the concept of sustainable development.

BACKGROUND TO THE PROJECT IN QUESTION

5. That the Ken River originates from the north-west slopes of the Kaimur hills in Katni district at an elevation of about 500 m above the mean sea level. It is 427 km long up to its point of confluence with the Yamuna near village Chilla in the Banda district of UP. The Ken basin covers the area of Katni, Sagar, Damoh, Panna, Satna, Chhatarpur and Raisen districts of MP and Hamirpur and Banda districts of Uttar Pradesh. It is bounded by Vindhya ranges in south, Betwa basin is the west, free catchment of the Yamuna in east and the river Yamuna towards the north. The catchment area of Ken Basin is 28 224 km².
6. That the Betwa River rises from Raisen in MP (near village Barkhares, S-W of Bhopal) in the Vindhya Plateau at an elevation of 576 m. It is about 590 km long and meets Yamuna in Hamirpur Dist in U.P. The basin includes parts of a number of districts of Bundelkhand like Sagar, Tikamgarh, Chhatarpur (all MP), Lalitpur, Jhanshi, Jalaun and Hamirpur (all UP). The catchment area of the Betwa basin is 43 895 km².
7. That as per the impugned Environmental Clearance, the project in question has, purportedly, the objective of transferring "surplus water" of Ken basin to water deficit Betwa basin. The project envisages the following components:-
 - Construction of 77 m high & 2,031 m long composite dam across Ken River near village Daudhan in Chhatarpur District of Madhya Pradesh, inside the core area of Panna Tiger Reserve, with gross storage capacity of 2853 Million Cubic Meters and live storage capacity of 2684 MCM. The dam with Full Reservoir

Level of 288 m will impact the habitat of terrestrial, aquatic and avian biodiversity. It will displace at least ten villages and will have downstream impacts which have not been fully assessed.

- The project proponent has justified the need for the project in the name of drought affected Bundelkhand, but as the Detailed Project Report of the project clearly says, basic objective of the project is to facilitate water transfer to Upper Betwa basin, which is outside the Bundelkhand area.
- Two powerhouses, i.e., (i) 2 units of 30 MW capacity each, and (ii) 3 units of 6 MW capacity each are proposed to be constructed.
- Two (2) tunnels of 1.9 km long upper level and 1.1 km long lower level tunnel and 221 km long Ken-Betwa link Canal Phase-I on the left bank of the river are proposed to be constructed.
- The project is based on the claim that Ken River has surplus water and Betwa river has deficit water and it is proposed that the surplus water of Ken river can be transferred to Betwa river through a 221 Km long link canal. It proposes to irrigate parts of six districts, namely: Panna, Tikamgarh and Chhattarpur districts of Madhya Pradesh and Jhansi, Mahoba and Banda districts of Uttar Pradesh.

8. That the total submergence area is estimated at 9,000 ha, out of which 5,258 ha is forestland. However, as per the figures recorded by the Forest Advisory Committee while recommending the project for grant of in principle forest clearance, the forest land requirement is 5761 ha. Further, it is pertinent to note that out of the said forest land, 4,141 ha is within the Panna Tiger Reserve.

9. That it is submitted that the following substantial issues arise which merit the quashing of the impugned EC, among other prayers:

VIOLATION OF TORs INCLUDING MODEL TOR:

10. That the Expert Appraisal Committee (EAC) for River Valley and Hydropower Projects considered the project in question for the grant of Terms of Reference ("TOR") of the EIA in its meetings dated 22 Feb, 2007 and 20-21 Dec, 2010. As per Additional TOR No. (i), the proponent was required to obtain clearance from the Standing Committee of the National Board for Wild Life ("SC NBWL") before conducting the public hearing. However, it is submitted that while the Public Hearings for the project were conducted on Dec 23 and 27, 2014 in Chhattarpur and Panna districts respectively, whereas, the standing committee of the NBWL recommended wildlife clearance to the project only in its meeting in Aug 2016, thus clearly violating the condition of the Terms of Reference.
11. That it is pertinent to note that the even though the EAC had approved the grant of TOR in the year 2010, the Ministry of Environment Forest and Climate Change granted the TOR for the preparation of the EIA Report only in the year 2014 vide letter dated 15.09.2014. Further, it is submitted that as per para 4 of the letter dated 15.09.2014, the following was stipulated:-

"4. ...The EIA/EMP report should contain the information in accordance with provisions & stipulations as given in the Annexure-I."

It is submitted that the TOR Clearance Letter on MoEF website does not contain the Annexure, which it should have since Annexure contains the detailed TOR for EIA/EMP report. The EIA Report dated May 2015 (the latest version available) put up on the MoEF Website in Annexure A contains the TOR Clearance letter with the Annexure-I,

however the same was completely illegible. The EIA has thus failed in containing even readable copy of the TOR. It is pertinent to point out that the 2014 version of the EIA report which was made available to the public for the purpose of public hearing, contained neither the TOR clearance nor the Annexure-I. Thus, there is a clear violation of the TOR, which also lead to a faulty public hearing.

12. Violation of the Model TORs: That further, it is submitted that the EIA report submitted by the Project Proponent has been prepared in violation of the Model TOR for River Valley and Hydropower projects prepared by the Ministry of Environment Forest and Climate Change which lays down a variety of conditions and issues to be included in the EIA Report, which includes amongst others, the following specifications:

"The project layout shall be superimposed on a contour map of ground elevation showing main project features (*viz.* location of dam, head works, main canal, branch canals, quarrying *etc.*) shall be depicted in a scaled map.

"Study Area: The study area should include the following areas:

- Catchment Area
- Submergence Area
- Project Area to be acquired for various appurtenant works area within 10 km from main project components (i.e. Dam/Barrage/Diversion structure, Power house etc).
- To examine the cascading effect, a clear map showing the approved/ under construction/ completed HEPs on the both U/S and D/S to this project. Connect such information to establish the total length of interference of natural river flow, the total length of tunnelling of the river and the committed unrestricted release from the site of diversion into the main river."

Under the head of Baseline data, the following factors have to be looked into:-

"Hydrology of the basin

- Hydro-meteorology, drainage systems
- Catastrophic events like cloud bursts and flash floods, if any would be documented.
- For estimation of Sedimentation rate direct sampling of river flow isto be done during EIA to get actual silt flow rate (to be expressed in ha-m km-2 year-1). The one year of EIA study will provide an opportunity to do this for ascertaining the actual silt flow rate.
- Water availability for the project and the aquatic fauna
- Design discharge and its recurrence interval."

It is submitted that these Conditions have not been included properly, in the EIA Report submitted by the project proponent. The same has been done in a completely unscientific and shoddy manner and cannot be relied upon for estimating actual impact of the project in question. The EAC has not applied its mind while approving the project for grant of Environmental Clearance.

FAULTS /LACUNAE IN THE EIA STUDY AND REPORT FOR THE PROJECT IN QUESTION:

13. That moreover, the EIA Report submitted by the Project Proponent is full of faults and lacunae thereby rendering the entire exercise void, since the EIA Report is the most basic and most important document which guides the EAC while approving or rejecting a project for the grant of Environmental Clearance. It is the basic document that enables informed participation by all concerned in the public consultation process and also enables informed decision making

process. The Appellant would like to illustrate the following critical and fundamental flaws in the EIA Report, which were completely overlooked by the EAC as well as the Ministry while granting the impugned Clearance. :-

14. No clarity on the optimum Full Reservoir Level (FRL) for the

Daudhan Dam: It is submitted that there is no proper discussion or information on the issue of optimum FRL for the dam. As per the Executive Summary of the EIA Report, the FRL has been mentioned as 288 m. However, Page 428 of EIA states as follows:

"With the above scenario, the operation of the reservoir was simulated by NIH by assuming various values of the maximum storage. It was found that the FRL is kept at 287 m (corresponding storage of 2566 MCM)."

It is submitted that if FRL of 287 m is sufficient, then why was it increased to 288 m, is not explained by the Project Proponent. Further, it is pertinent to note that the NIH study that EIA mentions is not available in public domain. Every meter of additional height has huge additional submergence and therefore, such decisions would have huge and adverse ecological consequences.

15. That it is pertinent to note that both Forest Advisory Committee and the National Board for Wildlife had recommended a reduction of atleast 5 m of the current proposed FRL, since such a reduction can help save about 457 ha of total land from submergence and at least 270 ha of Panna Tiger Reserve land. However, this was rejected by the Ministry of Water Resources without any independent assessment.

16. Discrepancies regarding actual requirement of the forest land

for the project in question: According to EIA (p xvii of Ex Summary), 5399 ha of forest land is required for the purpose of the project in question. Six pages later, the same EIA (p xxiii of Ex

Summary) says 5428 ha of forest land is required, comprising of 5258 ha of area under submergence and 170 ha of land for canal. However, according to the Minutes of Forest Advisory Committee meeting held on March 30, 2017, (as also the Stage I Forest Clearance), the said project needs 6017 ha of forest land (589 ha more than the higher figure mentioned in EIA), comprising of 5761 ha required for submergence (503 ha above the requirement mentioned in EIA), 190.1 ha for canals (20.1 ha more than the EIA figure) and 65.5 ha for power houses, tunnels, roads and other requirements (NIL in EIA). This only goes to show how wrong, misleading and contradictory information has been given in the EIA Report.

Contradictory figures about extent of area of the Panna Tiger Reserve ("PTR") to be impacted due to the project in question: The EIA on page xiv of the Executive Summary says: "The Daudhan reservoir is capable of effecting the distribution of Tigers since the Tiger reserve of 4141 ha (National Park) will be submerged. But at the same time, the reservoir may prevent encroachments of the park and invasion by livestock so that a relatively more secure and compact habitat is formed on Right flank of Daudhan dam which may be beneficial." Elsewhere, the EIA also says the dam will in fact improve the tourism potential of the PTR. However, it is submitted that such statements are completely misleading and false. According to the site inspection report dated Aug 2016 (p 8, section 1.6.2) of the Sub Committee of the NBWL the following was stated:-

"The entire forest area under the proposed submergence both within and outside PTR is tiger habitat, while the non-forest area is potential tiger habitat. Thus, about 90 sq. km. area of tiger habitat, including potential habitat will have to be considered as submergence zone. The areas that are not forests but open areas

are also wildlife habitats (except the village areas but this will also become wildlife habitat if village relocation programs are taken up) and that some of these areas are now part of the buffer zone. Although the project document mentions only 41.41 sq km of forest area for NPV purposes, the entire area of submergence (excluding villages outside the core area) and the area required for operational establishment and other infrastructure will have to be taken into account as total loss for practical purposes. Additionally, the connectivity with Kishangargh Range (Core/Critical Tiger Habitat) with an area of 56.23 sq km and Bhusor and Palkoha circle of Chandranagar Range with an area of 49 sq km will be affected or compromised in the submergence zone."

Therefore, as per above observations of the Committee constituted by the NBWL, the PTR area thus affected comes to $90 + 56.23 + 49$ sq km = 195.23 sq km. The same figure was mentioned in the minutes of the 37th meeting of NBWL Standing Committee held in Feb 2016 when IGF (WL) briefed the committee about the proposal (Agenda 37.5.4, p 22-23) and also the minutes of the 39th meeting of the NBWL Standing Committee held in Aug 2016. The EIA, however, mentions no impact of the project on Panna Tiger Reserve beyond the 4141 ha of submergence area, while official agencies, including reports of Panna Tiger Reserve Field Director, NTCA, NBWL and NBWL committee all highlight that the impact on PTR is not only related to the entire submergence area of 9000 ha, but also additional 10523 ha of PTR getting disconnected. This again shows how shoddy, misleading and wrong has been the impact assessment by the EIA Consultant. Since the EAC accepted this uncritically, it clearly points out to the non application of mind by the EAC and the Ministry while approving and granting the impugned clearance for the project in question.

Copy of the site inspection dated August 2016 of the Sub-Committee of the NBWL is annexed herewith as **ANNEXURE A-2**

17. Complete lack of understanding about Aquatic Ecosystem:

There are several statements in the EIA that shows that the EIA Consultants do not understand basics of Aquatic Ecosystem. On page xiv-xv (Ex Summary) of EIA it has been stated as follows:

"Interlinking of these basins through link canal will facilitate rapid migration of the fish easier. Formation of reservoir, creation of irrigation facilities and changes in cropping pattern are likely to favour aquatic communities including fisheries... The inter linking of rivers provide another route for fish migration from Yamuna to Betwa and ultimately from Betwa to Ken. Further, the distance from Daudhan dam to the place of confluence of Ken with Yamuna is longer as compared to the distance from the place of confluence of Betwa with Yamuna and Daudhan dam through link canal. Thus, this route will facilitate rapid migration of fish."

At page B-37, it has been further stated that:

"The Ranoh fall in the river situated in Chattarpur district of Madhya Pradesh is the highest waterfall in the river. Approximate height of the fall is 30 m. This indicates that the proposed dam height would not be a severe barrier in distribution of fish species, because the fishes are already circumventing the existing natural barriers like Ranoh Fall."

It is submitted that the EIA consultants do not seem to know that there are multiple pathways of connectivity for the fish across the water fall. More importantly, to assume from this that fish can jump up and down over 70 m high dam, without any water connectivity, shows complete lack of understanding by the EIA consultants.

18. That the statement at Page 63 of EIA Report, clearly shows the lack of understanding of the EIA consultants that the dam will stop the flow of nutrient and biota to the downstream:-

"The reservoir affects the sediment load in the in-flowing water by a sedimentation method, where the sediment settles slowly. This also assist in the out flowing a clear water to the downstream. From structural point of view in downstream side, the water is clear without any sediment load."

It is submitted that even the silt is part of the river flow and lack of silt in the water downstream will have huge implications for downstream erosion and aquatic ecosystem and biodiversity. This lack of ecological understanding of aquatic ecosystem is another reason why the EIA should be rejected as valid impact assessment document.

19. EIA in contradiction with protected area status: It is submitted that as per the conditions of the NBWL and FAC, the submergence area is supposed to be maintained as a protected area. However, the EIA Report keeps talking about developing the Daudhan reservoir for fisheries. The Appellant would like to highlight a few such instances:

- "The Daudhan reservoir can be used for development of fisheries." (p xv of Ex Sum)
- "There is a proposal to develop carp based fisheries in Daudhan reservoir with an anticipated production of 470 MT / year that may provide livelihood to 200 fishermen families in fish production and 50 in allied activities. Total cost of Sport Fishing and Conservation of Mahsheer is assessed to be Rs. 385.00 lakh." (P xxv of Ex Summary of EIA)
- "For this purpose the construction and running of Carp and Mahsheer hatcheries are proposed at a cost of Rs. 364.72 lakh." (P xxv of Ex Summary of EIA)

- "Fish production from the reservoir will be increased steadily on a sustainable basis to attain a yield of 60 tones on full development by adopting the measures suggested... The total cost of fisheries development plan is Rs. 660.00 lakh." (P xxv of Ex Summary of EIA)
- "The main positive side of the project is proposed reservoir to be commissioned at Daudhan (approximate area 9,000 ha), which would provide valuable water resource for reservoir fishery." (P 242 of EIA)
- "Daudhan reservoir, with about 9000 ha area for fish production, has enough capacity for rearing and sport fishing of Mahsheer... Rearing of Mahsheer along with other fishes and tapping the developed resources through licensed sport fishing with sticks may also create an avenue for tourism and a source of earning for oustees engaged in fisheries." (P 418 of EIA)

20. That it is submitted that none of the above mentioned fisheries plan is feasible since the reservoir area is to be declared as protected area, thus the whole plan needs to be redone. Thus, this is another major irregularity in the current EIA-EMP which renders the same invalid.

21. Loss of breeding and shelter sites in submergence zone not mentioned in EIA: According to the Site inspection report of the Sub Committee of the NBWL for the Ken Betwa Project (P 14, section 1.6.5 and P 23, section 2.6) dated Aug 2016, the following has been stated with respect to the loss of habitat in the submergence zone:-

"...Ken River along with its tributary is a lifeline of the Park. Ken river basin is full of gorges, caves, rock crevices which are normally occupied by wild mammals for breeding and resting. During hot days in summer, these gorges, caves, rock crevices are major

shelters for some of the animals listed above. Loss of breeding sites will be irreversible after submergence of these critical and specialized habitats, specifically in the major submergence zone... The submergence area is typical habitat of many cave-dwelling species, either full or part (breeding season) of their life and therefore, even if the submergence takes place for a short period of time, the populations of these species populations could be adversely impacted."

Similarly, the subcommittee set up by the FAC (Forest Advisory Committee), and, as reported in the minutes of the FAC meeting held on March 30, 2017 stated as follows:-

"Ken River along with its tributary is a lifeline of the Park. Ken river basin is full of gorges, caves, rock crevices which are normally occupied by wild mammals for breeding and resting. The committee visited the site and observed the wildlife habitat. During hot days in summer, these gorges, caves, rock crevices are major shelters for important birds and other animals. The loss of these critical and specified habitats due to submergence will be irreversible specifically in the major, submergence zone."

However, it is pertinent to note that the EIA report does not say anything about these impacts and this fact has been ignored or not considered at all by the EAC and the Ministry. It is submitted that impact on fauna and flora is an integral part of the EIA Report and unless the same is done it cannot be regarded as a complete scientific document which can lead to informed decision.

Copy of the relevant pages of the minutes of the meeting of the FAC dated 30.03.2017 is annexed herewith as **ANNEXURE A-3**

22. Impact on Vultures: According to the Site inspection report dated Aug 2016 of the Sub Committee of the NBWL for the Ken Betwa

Project (P 13-14, section 1.6.4), the following has been recorded with respect to the impact of the project on the rare and endangered Vulture species:-

"Panna Tiger Reserve represents a complex terrain with steep escarpments and gorges, which are ideal for vultures to rest and nest. The total population of all vultures is roughly estimated to be anywhere between 1000 and 1500 individuals... In PTR, seven species of vultures have been reported. Of these, (1) King Vulture or Red-headed Vulture (*Sarcogyps calvus*), (2) White-rumped or White-backed Vulture (*Gyps bengalensis*), (3) Long-billed or Indian Vulture (*Gyps indicus*) and (4) Egyptian or Scavenger Vulture (*Neophron percnopterus*) are resident breeders and their population estimates are about 150, 250, 950 and 170, respectively (Figure below showing in pink colour nest/ roost sites of vultures in Panna). Three other species, (5) Eurasian Griffon (*Gyps fulvus*), (6) Himalayan Griffon (*Gyps himalayensis*) and (7) Cinereous Vulture (*Aegypius monachus*) are migratory, winter visitors, with variable numbers... Of the 40 nesting/perching sites officially recorded for vultures in PTR, about 17% of the sites are likely to be affected by submergence, mainly those of long-billed vulture... Also, the vulture habitat in the submergence area is one of the largest concentrations. It is also not clear if there are species-specific preferences among vultures for nesting along the gorge of the River Ken. In the absence of such knowledge, we should use the precautionary principle to consider about 20-25% loss that the project may cause on vulture nesting/perching sites in PTR. This figure lies in between the widely varying estimates from 3% to 50% loss of vulture nesting sites given by different sources. There is thus a need for gaining further knowledge on the breeding

biology and dispersal of vultures, and accordingly, suitable recovery actions would be required, in the event of the project being implemented."

It is noteworthy from the above observation of the Sub-Committee of the NBWL that the submergence area of the Daudhan Dam is the habitat for Rare and endangered species of Vultures, which will be significantly and adversely impacted and that there is a complete lack of information or study about this critical issue in the EIA Report. It is pertinent to note that the as per Condition No. 18 of the In Principle Forest Clearance, the following condition has been prescribed:-

"The task of consultancy for preparation of action plan for conservation of vultures in the affected area of PTR shall be given to BNHS".

This is an admission that, till date there has not been any study of the impact of the project on vulture habitat, nor has the conservation action plan been formulated. It is submitted that such studies and mitigation plans should have been part of the EIA-EMP and cannot be done post approval/ launching of construction, as that would make the entire objective of the EIA study redundant. This is also violation of the Precautionary Principle. The decision maker must evaluate the environmental risks and the mitigation and must weigh the adequacy of the mitigation measures. The final decision with respect to the project will be based on whether the mitigation measures proposed are adequate to deal with the risks faced by the ecosystem.

In the EIA, word Vulture appears only twice. On page ix (Ex Summary) it states as follows:

"King Vulture is endangered among bird species. Most of these are reported from the Panna National Park. There are also a few birds like King Vulture, Peacock and even House Sparrow in this

category. Most of these are reported from the Panna National Park."

On page 141 the EIA says: "Many tourists visit the Panna National Park, which is a real paradise for large populations of deer, antelopes, monkeys and rare birds such as King Vulture and the Peacock." It is submitted that such statements reflect the poor understanding of the EIA consultant about the vultures in PTR and the impact of project on their habitat. This is another example of shoddy work of EIA, since EIA does not even list the rare and endangered vulture species in the impact area, nor does it assess the impact of the project on them or have any mitigation plan in place.

23. Impact of project on Unique Geological site of Ken River

Canyon at Raneh Falls, downstream of Bariyarpur Barrage:

That the project in question is going to have an adverse impact on the unique and beautiful Ken River Canyon about 5-6 km downstream of the Bariyarpur Barrage, many calling it India's Grand Canyon and some even mini Niagra, both rolled in one, due to the change in water, silt and flood in Ken River. But the EIA does not even make a mention of this unique geological monument, leave aside making any assessment of the impact of the project on the site. Aesthetic aspects are important part of Impact Assessment Studies. The non consideration of aesthetic aspects is a serious shortcoming in the EIA report and

24. Impact on Ken Gharial Sanctuary not mentioned in the EIA

Report: The EIA Report should have studied the impact on the Ken Gharial Wildlife Sanctuary. The EIA Report is required to be a complete document and therefore all direct, indirect as well as cumulative impact. The Site Inspection report (Aug 2016, p 7, section 1.5) of the Sub-Committee of the NBWL states unambiguously that:

"Key species include Leopard, Rusty spotted cat, Sloth bear, Wild dog, Wolf, Chinkara, Chausingha (Four-horned antelope), Mugger crocodile, Gharial (long snouted), Mahasheer fish (Tor tor) and several species of raptors. Among many other creatures, Striped Hyena, Jungle cat, Civets, Jackal, Fox, Nilgai, Chital, Sambar, Wild Pig, and two primate species (Common langur and Rhesus monkey) are also found in the area. Given that significant a portion of the riverine habitats will be submerged and flow regime changed, the major impacts would be on the riverine species and the unique habitats. This is possibly the biggest loss with respect to this project."

The committee goes on to recommend (p 19):

"vii. Water flow downstream should be regulated in line with the natural flow regime and, in the lean period, 100% of the existing flow regime should be maintained while in the non-lean period, the prescribed minimum by hydrology and aquatic biodiversity experts should be ensured. Break in release of daily minimum water should be considered as destruction of habitat. The minimum flow of water in the Ken River may save crocodiles (mugger and gharial) and it will also maintain the health of river till it joins the Yamuna."

As against this, the entire EIA mentions Ken Gharial Wildlife Sanctuary just once, on page 184, but provides no impact assessment. It only mentions 2 cumecs water flow to be released from Daudhan Dam for the Sanctuary and strangely says the same amount will be released from the Bariyarpur Dam, which is almost 45 km downstream from Daudhan Dam. Even this 2 cumecs is not based on any scientific assessment, nor are the projected flows in other months based on any assessment. Thus EIA completely fails in doing either impact assessment or providing credible assessment of flows for the

sanctuary. It is pertinent to point out that Gharial is a critically endangered species with a global population of less than 300 individuals. It is surprising that the EIA failed to undertake impact assessment on two species which has seen the most significant decline; Vultures and Gharial as well as Tigers. This reflects a complete lackadical approach on the part of the EIA Consultants to undertake a detailed study. The EIA consultant should disclose before this Hon'ble Tribunal as to the nature of studies done and the qualification of those who had undertaken the assessment of flora and fauna. Given the criticality of this area for the most critically endangered species, the impact assessment studies should have given utmost importance to indepth study on wildlife. Post facto studies do not serve any purpose so far as protection of biodiversity is concerned.

25. Lack of clarity regarding number of trees to be felled for the

project: As per the EIA Report, (p 239), 13.96 lakh trees with girth above 20 cm will need to be felled. However, the details for this given in the Annexure VI.9 of the Report are completely illegible are NOT READABLE. On page 246, however, the EIA says 11.2 lakh trees need to be cut. Further, as per the report of committee appointed by the Forest Advisory Committee ("FAC"), which was also discussed in the FAC meeting held on March 30, 2017, the following was recorded with respect to number of trees to be felled:-

"As per DPR the numbers of trees to be felled is around 23 lakhs (above 20 cm.) This figure had been achieved by sampling in 56 compartment of 1.0 ha each. The trees between 10 to 20 cm have not been enumerated. It has been observed by the Committee that there is a profuse crop of plants below 20 cm. These plants are around 8-10 years old."

The report further stated that by the time it is time to cut the trees, most of the trees in 10-20 cm girth now will have become girth above 20 cm. Thus, it is clear that the number of trees to be cut with girth above 20 cm will be much higher than the current estimate of 23 lakhs. This again shows the serious inadequacy of the EIA, since it assessed the number of trees to be cut at 11.2 lakhs to 13.96 lakhs, when the numbers are far in excess of 23 lakhs.

26. EIA does not assess environment flow; NBWL & FAC ask for

full release in lean season: The EIA defines Environmental Flows on page 212 of EIA: "Environmental flows" is a system for managing the quantity, timing, and quality of water flows below a dam, with the goal of sustaining freshwater and estuarine ecosystems and the human livelihoods that depend on them." It is submitted that the definition in itself is faulty and misleading. It is submitted that environment flow is not just flow of water, but also everything that flows in the river, including silt, nutrients and biota. Secondly, there is also the issue of manner of release of the flow, not just quantum. Thirdly, environment flow is not only about lean season flows, but also flood flows, also to achieve lateral connectivity, as defined by a joint report of the Ministry of Water Resources and Ministry of Environment Forest and Climate Change of March 2015. However, the EIA report is completely silent on this aspect, even when it includes these in the e-flows definition when it says: "The most ecologically important aspects of a river's flow are extreme low flows, low flows, high flow pulses, small floods, and large floods." Lastly, the environment flows need to be assessed through a transparent, participatory process to achieve the objectives set, but the EIA does no such exercise. It just follows the MoEF norms of % releases in monsoon and non-monsoon months, that too in an arbitrary and inconsistent way (as per section 6.4.6.7).

27. That in fact, the EIA Report makes contradictory statements about environment flow releases at other places in the Report. The Appellants would like to highlight a few of such statements:-

- Section 4.8 (P 62) of EIA says: "The minimum flow required at the river course downstream of the project are estimated as the 20% of the lean season (November to May) flow at respective sites. Accordingly, the minimum flow at downstream of Daudhan is estimated at 6 MCM/month."
- Section 6.2.4 (P 184) of EIA says: "Ken Gharial Wildlife Sanctuary is located on Ken River at about 10 km downstream of Bariyarpur Pick UP Weir (PUW). Since the irrigation water requirement of Ken Command in UP is through Bariyarpur PUW and flow of water in irrigation canals is ensured throughout the year except for the month of May the water flows in Ken River between Daudhan dam and Bariyarpur PUW, which is about 45 km stretch of the river, is maintained throughout the year except for May month. Therefore, it is proposed that minimum ecological flows during May will be maintained by releasing minimum of 2 cumecs of water from Daudhan reservoir. The same amount of water will be released in to Ken River from Bariyarpur PUW for the benefit of Ken Gharial Wildlife Sanctuary. The ecological flows required during other months are also worked out in the subsequent paragraphs."

Whereas, it is pertinent to note that Condition No. 11 of the in principle Forest Clearance letter dated May 25, 2017 states as follows:-

"The State Govt and the user agency shall ensure that the water flow downstream shall be regulated in line with the natural flow regime and, in lean period, 100% of the existing flow regime should be maintained while in the non-lean period, the prescribed minimum by hydrology and aquatic biodiversity experts should be

ensured. The minimum flow of water in the Ken river will be maintained till it joins the Yamuna to save wildlife including crocodiles and other aquatic animals.”

28. That similarly, the Sub Committee of the NBWL which had conducted a site visit has made similar recommendation in its report dated August 2016, which were all included in the project clearance as mentioned in the NBWL minutes of Aug 23, 2016 and agreed to by the Ministry of Water Resources as recorded in the minutes. The condition (vii) of the report says:

“Water flow downstream should be regulated in line with the natural flow regime and, in the lean period, 100% of the existing flow regime should be maintained while in the non-lean period, the prescribed minimum by hydrology and aquatic biodiversity experts should be ensured. Break in release of daily minimum water should be considered as destruction of habitat. The minimum flow of water in the Ken River may save crocodiles (mugger and gharial) and it will also maintain the health of river till it joins the Yamuna.”

It is submitted that these conditions of FAC and NBWL are statutory requirements and will need to be implemented by the project. This will also mean fresh assessment of environment flows and the impact that will have on the project costs and benefits. The EIA thus need to be revised accordingly.

29. No Assessment of Backwater Impact: It is submitted that the EIA Report does not assess the backwater impact of the proposed Daudhan Dam. Essentially, when the dam is experiencing, for instance, maximum or one in 100 year flood (or for that matter any flood), if the water level at the dam site is at Full Reservoir Level (“FRL”), then, since the profile of water flow in flooded river is sloping downwards from upstream of the dam to the dam, the water level at the extreme

most upstream point of submergence will be at level higher than the FRL level. The additional submergence that this higher water level at the upstream periphery of the reservoir, above the FRL level at those locations, is called the backwater impact. As mandated by the Narmada Water Disputes Tribunal Award of 1979, those affected due to the additional submergence need to be compensated and if there are any buildings or residential habitats, such properties need to be acquired and the affected people rehabilitated. Therefore, the first step in this process is assessment of backwater impact. However, the EIA Report does not make any such assessment of the backwater impact.

30. Impact on Banda District not studied: In fact, the Banda district of Uttar Pradesh is also in the downstream portion of the river and will be majorly impacted because of the project. Page x of the Executive summary notes about fish diversity: "Species richness at Daudhan was maximum (80) followed by Banda (79), Chillaghat (65) and upstream Tegra (64)." It is submitted that both Banda and Chillaghat sites are in Banda district and fish diversity there will be severely impacted because of the project. However, the EIA has not done proper downstream impact assessment and hence all the downstream impacts (e.g. Fisheries, draw down and river bed cultivation, river bed sand mining for household purposes, river bank irrigation, to name only a few) of the project on Banda district has neither been studied, nor reported in EIA.

VIOLATIONS WITH REGARD TO THE PUBLIC HEARING:

31. That the project in question has been approved by the EAC and granted the impugned clearance by the Ministry even though there were several violations of the provisions of the EIA Notification, 2006 with regard to Public Hearing. The Appellants would like to highlight the following violations:-

- i. **EAC did not appraise Public hearing process and outcome:** Section IV of the EIA notification (titled: Stage (4) – Appraisal) states as follows:-

"Appraisal means the detailed scrutiny by the Expert Appraisal Committee or State Level Expert Appraisal Committee of the application and other documents like the Final EIA report, outcome of the public consultations including public hearing proceedings, submitted by the applicant to the regulatory authority concerned for grant of environmental clearance."

However, a bare perusal of the minutes of the EAC would show that the EAC did not consider any of the issues raised and discussed in public hearing, nor has it considered the inadequacy of the public hearings and issue of violations involved in the public hearings, as pointed out in various submissions to the EAC.

- ii. **No Public Hearings in Tikamgarh district in Madhya Pradesh and three project affected districts in Uttar Pradesh:**

That it is submitted that the public hearing for the project in question were conducted in two districts: Panna and Chhatarpur districts of Madhya Pradesh. However, it is pertinent to note that the Project components are also spread over at least four other districts: Tikamgarh district in Madhya Pradesh, Jhansi, Mahoba and Banda districts of Uttar Pradesh. As noted in section 3.13 of the EIA used for public hearing: *"The study area considered as per TOR, approved by Expert Committee (EC) of MOEF, for the Comprehensive Environmental Impact*

Assessment studies and preparation of Environment Management Plan comprises the following:

- I. 1 km on either side of the Link canal.*
- II. 10 km radius around the project area from the periphery of the project site.*
- III. Catchment area of Daudhan reservoir.*
- IV. Command area on the downstream side of reservoir and enroute Link canal,*
- V. Submergence area under the proposed reservoir.*
- VI. Areas of backwater influence on the upstream side of reservoir."*

Thus, all the six districts in Command area of the project, including Banda district of UP which is also in downstream area, are part of the project study and impact area and there should have been public hearing in all these districts. In all these six districts, there will be impacts due to land acquisition for canals, the additional use of water, impact on drainage, impact on health, impact on flora and fauna among others.

Further, the executive summary of the latest EIA states that: "The 218.695 km link canal passes through four district namely Chhatarpur and Tikamgarh districts in MP and Mahoba and Jhansi districts of UP." Therefore, it is clear that the link canal construction, the land acquisition and command area will thus affect these districts.

Similarly, Table 5.50 on page 166 of EIA lists Banda in the Command area of the project with Culturable Command Area of 2.136 Lakh Ha and annual irrigation of 2.52 lakh ha, coming to a huge 48.4% of the geographical area of the district (p 434 of EIA). Page 175 also mentions that Banda will also get drinking

water benefit from the project. As mentioned on page B-2/3 of the EIA, about 1600 MCM of water will be released from the dam for the existing command in Banda district, which will have additional impacts in the command area. Two of the four sampling sites mentioned on page B-7 of EIA for fisheries impact are in Banda district.

As page 274-7 of EIA mentions, Banda district is also in the path of impact in case of Dam break. Further, Page 296 of EIA lists ten villages of Banda district in which beneficiary survey was conducted. Thus, it is clear that there would be a substantial impact on Banda District in Uttar Pradesh. However, no Public hearing was conducted in the said district. It is thus clear that the public hearings for the project should also have been conducted in Tikamgarh district of Madhya Pradesh and also Jhansi, Mahoba and Banda districts of Uttar Pradesh and not conducting the same is in violation of the EIA notification, 2006. It is submitted that the Environmental Clearance should be set aside on this ground only.

- iii. **Public Hearing conducted in violation of the EIA Notification, 2006:** That even at the public hearings (and related public consultations) that were conducted in Panna and Chhattarpur district in Madhya Pradesh, were conducted in complete violation of the EIA Notification, 2006, including the fact that and the EIA used for the public hearing itself was fundamentally flawed. Further, as per the EIA Notification, 2006 project EIA and EMP (Environment Management Plan) should be put up on the website of the Pollution Control Board a month before the actual public hearing. However, the same was not done. There were several lacunae in the Hindi Executive

Summary which was made available to the public, thus rendering the entire objective of conducting the public hearing futile. In fact, before the public hearings were conducted, letters dated Dec 22, 2014 were sent by the Appellant, to the Chairman and Member Secretary, Madhya Pradesh Pollution Control Board Bhopal, Madhya Pradesh, Regional MPPCB office in Sagar (Concerned regional office), and the Member Secretary of EAC on River Valley Projects in MoEF, highlighting the violations in public hearings and EIA. However, no action was taken, and the public hearing was therefore conducted in an illegal manner in complete violation of the EIA Notification, 2006.

Copy of article written by the Appellant which enumerates the various violations relating to the public hearing is annexed herewith as **ANNEXURE A-4**

THE PROJECT PROPOSAL BEFORE THE EXPERT APPRAISAL COMMITTEE IS DIFFERENT FROM WHAT WAS APPROVED BY THE NATIONAL BOARD FOR WILD LIFE:

32. That it is submitted that the Standing Committee of the National Board of Wild Life ("SC NBWL") recommended clearance to the project in question vide meeting dated Aug 23, 2016. The minutes of the NBWL meeting for agenda item 38.2.1.3 (p 3-5) stated as follows:-

"The representative of user agency, Special Secretary, MoWR expressed consent of the Ministry of Water Resources to the conditions as prescribed by site inspection team in the combined report. In response to the Committee's query on the need of the Hydro Power Generation, he explained that all the power

generating facilities shall be established outside the TR (Tiger Reserve)".

However, it is pertinent to note that in the present case, the hydropower component currently is envisaged inside the Panna Tiger Reserve area in the project proposal before the EAC as well as the EIA Report which has been appraised by the EAC which is in complete violation of the undertaking given by the project proponent to the standing Committee of the NBWL.

33. That it is clear that the project proposal that the EC has cleared is in violation of the NBWL clearance conditions. The EAC has completely failed to consider the conditions of the said NBWL clearance while approving the project in question. Since the NBWL Conditions were mentioned in the minutes of the 39th meeting of Standing Committee of NBWL, and the minutes were in public domain in Sept 2016, this was very much known and available to the EAC when it considered the project and recommended EC in its meeting on Dec 30, 2016, in fact minutes of the EAC meeting dated Dec 30, 2016 also mentions about the NBWL clearance. Similarly, it was also known to the Ministry of Environment when it issued the impugned environmental clearance. The EC thus is issued for a project proposal that is in violation of the NBWL condition and thus should be set aside.

34. That further it is submitted that if the hydropower component is to be taken out of the Tiger Reserve Area, that would require fresh impact assessment and appraisal as the same would amount to change in scope of the project which would require a fresh environmental clearance under the provisions of the EIA Notification, 2006.

Copy of the relevant pages of the minutes of the meeting dated 23.08.2016 of the Standing Committee of the NBWL is annexed herewith as **ANNEXURE A-5**

EC IS GIVEN FOR A PROJECT PROPOSAL THAT IS AT VARIANCE WITH THE CONDITIONS OF THE IN-PRINCIPLE FOREST CLEARANCE

35. That Condition No. 17 of the in-principle Forest Clearance issued by MOEFCC dated May 25, 2017 states as follows:

"The state government and the user agency shall ensure that the proposed power house, which have capacity of 78 MW, shall not be constructed in the forest area to be diverted to avoid constant disturbance in the PTR". (emphasis Supplied)

However, the power house, as proposed now in the proposed project for which EAC recommended Environment Clearance and for which the MoEF has now issued the impugned Environmental Clearance, is very much inside the forest area. Thus the EC is for a project proposal that is in violation of the condition of FAC and the condition in the Forest Clearance letter dated May 25, 2017 and therefore the impugned Environmental Clearance should be set aside. It is pertinent to note that the MoEF officials already knew about the conditions of in principle forest clearance given on May 25, 2017, when they issued the impugned clearance letter on Aug 25, 2017, three months later.

Copy of the in principle forest clearance dated 25.05.2017 is annexed herewith as **ANNEXURE A-6**

UPSTREAM KEN BASIN NOT YET DEVELOPED, IN REALITY KEN IS NOT A SURPLUS BASIN

36. That it is pertinent to note that the hydrological basis of the Ken Betwa basin is not in public domain. But available evidence seems to suggest that one of the reasons for surplus water in Ken at Daudhan is because upstream area has not developed and therefore has not used its share of water and once the project comes up, upstream area will remain permanently deprived of its right to use the water, as has happened in several instances in India. The lack of upstream development is also corroborated by EIA Report. In fact, as per letter dated 6.10.2007 of the then District Magistrate of Panna has highlighted this issue by stating that:-

"...To say that the Ken Basin is a "Water Surplus" basin is not only totally erroneous, it holds disastrous implications for the residents of Panna district as also other districts of the Ken river basin. The basin is supposedly water surplus only because there has been scant utilization of upstream/ midstream water- there are very few small dams and no medium/ large dams enroute. It is interesting to note that were these dams to be actually built, there would be no surplus water left at all! ... As per the indicative master plan of the Ken Basin prepared by the State Irrigation Department, the total cultivable area of the Ken river basin is 14381 sqkms... The plan, made way back in the year 1983, has outlined detailed small, medium and major projects for the districts in the Ken river basin which, if actually constructed, will need more water than is actually available in the basin. Thus it is clear that not only is the Ken river basin not water surplus, it is in fact water deficient!..."

Thus, this clearly illustrates that the notion that Ken is surplus is based on fallacy and that the Ken Betwa project is being pushed on the foundation of injustice to the people of the Ken river basin.

Copy of the letter dated 6.10.2007 is annexed herewith as **ANNEXURE**

A-7

MISCONCEPTION THAT THE PROJECT IS FOR BUNDELKHAND

37. That there is a misconception, carelessly conceived that Ken Betwa Project is for solving Bundelkhand's water deficit problems. However, the official executive summary (p ii) of the Detailed Project Report of KBP on NWDA website states as follows:

"The main objective of the Ken-Betwa link project is to make available water to water deficit areas of upper Betwa basin through substitution from the surplus waters of Ken basin."

It is pertinent to note that the Upper Betwa basin consists of Raisen and Vidisha districts of Madhya Pradesh and is not in Bundelkhand. So the project in question is facilitating export of water from drought-prone Bundelkhand to areas outside Bundelkhand, which, in fact is well endowed with over 900 mm of average annual rainfall. It is clear from the official document that the project will actually facilitate transfer of water from Bundelkhand to Upper Betwa Basin and there is no evidence to suggest that Upper Betwa basin is water deficit, compared to the Upper Ken basin, from where water is being transferred. This is a very relevant fact which ought to have been considered in the EIA Report as also by the EAC. This critical issues was overlooked.

FLAWED ASSUMPTIONS OF SURPLUS AND DEFICIT

38. That the project, in question is being envisaged with the objective of transferring surplus water from the Ken River Basin to the Water

deficit Betwa Basin. However, it is noteworthy here that the hydrological data that is used to conclude that Ken is Surplus and Betwa is deficit basin is neither in public domain, nor is it peer reviewed by any independent credible agency. Secondly, the water balance calculations for this study were done in 1990s and the data then was both limited and also has become out dated in the context of decades of additional data. Thirdly, the NWDA water balance does not properly take into account the groundwater use and its impact on the surface water flows. In fact, NWDA allows states to use as much groundwater as they want and yet assumes that it would not affect the surplus deficit situation. This is also apparent from the Hydrology chapter of the Feasibility report for KBP, even now available on NWDA website, which does not even have the word groundwater mentioned in the whole chapter.

39. That it is further submitted that independent research in recent years, has questioned the basis of surplus and deficit notions based on latest rainfall trends. After analysing the recent trends of IMD data of rainfall, Indian scientists from IIT Mumbai and IIT Madras, supported by Govt of India's Ministry of Earth Scientists have concluded based on analysis of rainfall data from 1901 to 2004: "We found a significant decrease in the monsoon rainfall over major water surplus river basins in India. Hydrological simulations using a Variable Infiltration Capacity (VIC) model also revealed that the water yield in surplus river basins is decreasing but it is increasing in deficit basins. These findings contradict the traditional notion of dry areas becoming drier and wet areas becoming wetter in response to climate change in India. This result also calls for a re-evaluation of planning for river inter-linking to supply water from surplus to deficit river basins." Lead author of the study said:

"One of the plans of interlinking of rivers is supplying water from a surplus basin to a deficient one. But if the surplus basin itself shows a declining trend of water availability, they will find it difficult to both meet their own demands and also supply the quantum of water committed to the deficit river basins. The project may not be sustainable."

In light of the above findings, the team has called for a detailed climate change impact assessment for individual river basins. The Appellant had also made similar submissions to the EAC highlighting the fact that the EIA does not even take into account the climate change impact or how the project will impact the climate change adaptation capacity of the area. But the EIA does not assess the impact of climate change on hydrology and other aspects, nor does it properly assess how the project will impact the adaptation capacity in the context of changing climate and how the reservoir would contribute to methane emission, methane is about 21 times more potent green house gas than CO₂.

NO CUMULATIVE IMPACT ASSESSMENT IN KEN OR BETWA BASIN: VIOLATION OF MOEF'S MAY 2013 NOTIFICATION

40. That it is pertinent to note that both Ken and Betwa basins already has multiple projects, and hence before taking up any new project in either of these basins, it was incumbent upon the EAC as well as the Ministry of Environment and Forest to direct for a cumulative impact assessment and carrying capacity study of the basins be taken up before taking any decision about the project in question, in compliance of the Notification dated May 2013 which also finds mention in the TOR Clearance letter for the project. However, till date no such cumulative study has been conducted for either of the Ken and Betwa

Basins, and in the absence of the same, the project in question should not be permitted to be proceeded with.

NO CLEARANCE OBTAINED UNDER GANGA NOTIFICATION

41. That the preamble of the notification dated 7.10.2017 issued by the Ministry of Water Resources, River Development and Ganga Rejuvenation states as follows:-

"Whereas it is necessary to constitute authorities at Central, State and District levels to take measures for prevention, control and abatement of environmental pollution in River Ganga and to ensure continuous adequate flow of water so as to rejuvenate the River Ganga to its natural and pristine condition and for matters connected therewith or incidental thereto".

Section 42 of the notification reads as follows:-

"Every person, the State Ganga Committees, District Ganga Protection Committees, local authorities and other authorities shall obtain prior approval of the National Mission for Clean Ganga, on the following matters, relating to River Ganga and any area abutting River Ganga or its tributaries, if required to implement the decisions of the National Ganga Council, namely:-

(a) engineered diversion and storage of water in River Ganga without affecting the flow of water downstream of the River Ganga.

...;"

42. That the Notification has defined the term "engineered diversion" at Section 3 (k) as: "'engineered diversion" means a structure or device constructed or installed to transfer the water of River Ganga or its tributaries into canals or other engineering structures;". Thus, it is clear that the project in question would be squarely covered under the said definition, and would therefore, require prior approval of the

District Ganga Protection Committees of all the affected districts, State Ganga Committees of UP and MP and the National Ganga Council.

43. That it is submitted that this issue was indeed brought up before the EAC, as recorded in the minutes (P 7-8) of the EAC meeting dated Dec 30, 2016, where the newly constituted EAC under chairmanship of Shri Sharad Jain decided to recommend clearance to the project without either resolving the issues raised by earlier EAC or resolving the issues raised before the new EAC. The minutes of the EAC notes: "An e-mail was received by the Chairman and the Members of EAC, drawing attention to a notification dated Oct. 2016 from MOWR, RD&GR that prohibits any construction within the larger Ganga basin rivers... After deliberating over the matter, the EAC directed the Member – Secretary to clarify this point with the Director General, NMCG, MOWR, RD&GR before taking approval of the competent authority for issue of EC."

It is not clear why the EAC was in such a hurry to clear the project, even when a bare reading of the notification makes it clear that it is certainly applicable to the project in question. In addition, it is the EAC which should have considered this issue as to the applicability of the Notification and not the Ministry of Environment, Forest and Climate Change which is not the expert body. The EAC thus surrendered its statutory function to the MoEF which is not permitted under the Statutory scheme of the EIA Notification, 2006.

HASTY DECISION BY THE EAC AND NON CONSIDERATION OF RELEVANT ISSUES RAISED IN PREVIOUS EAC MEETINGS:

44. That the EAC for River Valley Projects was reconstituted after the Aug 2016 EAC meeting, and the newly constituted EAC, chaired by Shri Sharad Jain, met for the first time on Dec 30, 2016. It is pertinent to note that one of the projects the newly constituted EAC considered and cleared in its very first meeting, without even waiting to get the

issues raised by the previous EAC resolved, was the Ken Betwa Project, i.e., the project in question which the previous EAC did not find fit to be recommended for clearance in the four meetings where the said project was considered (24-25 Aug 2015, 26-27 Oct 2015, 8-9 Feb 2016 and 2-3 June 2016). The project was considered earlier by the predecessor EAC in its meetings and each time EAC ended up not recommending clearance for the project as a lot of crucial issues remained unresolved. The Appellants would like to highlight some of the critical issues flagged by the EAC regarding the project in question:

- A. The previous EAC had decided that it will wait for the Landscape Management Plan ("LMP") being formulated by the Govt of India institute, Wildlife Institute of India, and get it peer reviewed, before considering the project for clearance, since LMP was key part of the EMP, and it without a full EMP, the project could not be considered for environment clearance. However, for reasons best known to the present EAC, without assigning any credible reason, the newly constituted EAC set aside this by uncritically accepting the decision of the project proponent officials by stating that: "As the scope of the LMP was different and covers beyond the study area of EIA/EMP report of Ken-Betwa Inter-Linking Project, it should be delinked from the perspective of the Environmental Clearance."

It is submitted that the study area of EIA/EMP has been artificially narrowly defined, and there is no scientific reason to support the contention that LMP scope area should not be concern of the EAC. This is a clear illustration of the EAC acting under dictation of the Project Proponent and not applying its mind while approving the project.

B. The June 2016 EAC meeting minutes, the latest EAC meeting before the Dec 2016 EAC meeting where this project was considered, says:

"Reduction of FRL by 10 m: The issue of reduction of water level at FRL by 10 m i.e. from 288 m to 278 m was also deliberated at length. Project proponent informed that the reduction of 10 m in the FRL shall compromise irrigation benefits to about 2.4 lakhs ha of the area. It was also conveyed that the level of 275 m shall be attained by October every year due to release of water in the canal. EAC sought clarifications from Project proponent on this issue, as the water availability above 278 m of FRL shall be only for monsoon months (3 months)."

However, the minutes of the meeting held in December 2016 is completely silent on this critical issue. It clearly means that reconstituted EAC decided to ignore or overrule this outstanding issue of earlier EAC without so much mentioning that decision or the reasons for the decision.

C. The June 2016 EAC meeting minutes further states that:

"EAC suggested to explore the dropping of the hydropower generation component in the Project, including Infrastructure from planning of Ken-Betwa Link Project in view of likely ecological disturbances on wild life. Project proponent assured the committee to review the hydropower component."

Again no mention of anything about this in Dec 2016 EAC meeting. It clearly means that reconstituted EAC decided to ignore or over rule this outstanding issue of earlier EAC without so much mentioning that decision or reasons for the decision.

D. The June 2016 EAC meeting minutes therefore concluded with the decision that:

"Therefore, it was proposed that a meeting may be convened by NWDA with Director, WII, Dehradun, MoEF&CC officials and EAC Vice Chairman, Sh. H.S. Kingra for expedition in the matter."

However, the Dec 2016 meeting makes a rather strange contention: "It was intimated by NWDA that the said meeting could not be convened due to paucity of time among the above officials and subsequently, the tenure of EAC ended on 03.09.2016. As the EAC couldn't be re-constituted immediately after validity period, the Competent Authority in the MoEF&CC approved to convene the aforesaid meeting which was convened on 30.11.2016...". It is submitted that the MoEF could not have taken the decision unilaterally, that EAC was supposed to take, given that the EAC is an independent body. Therefore the EAC in Dec 30 2016 meeting should have objected to the decision of MoEF.

45. That it was obligatory upon the reconstituted EAC, while considering this project in its very first meeting on Dec 30, 2016, to consider the issues raised in these earlier EAC meetings, and assess as to what extent they have been adequately addressed by the EIA consultant and the NWDA, the Project Proponent. However, a bare perusal of the minutes of the Dec 30 EAC meeting, is a clear indication of the bias or lack of application of mind in how the EAC appraised the project. All this showed, undue eagerness on the part of reconstituted EAC to clear the project and clear bias in favour of the project.

Copy of the relevant extract of the minutes of the meeting of the reconstituted EAC dated 30.12.2016 along with relevant extracts of the

minutes of the meeting of the previous EAC dated 24-25 Aug 2015, 26-27 Oct 2015, 8-9 Feb 2016 and 2-3 June 2016 is annexed herewith as **ANNEXURE A-8 (COLLY)**

CONFLICT OF INTEREST FOR THE EAC CHAIRMAN AND OTHER MEMBERS:

46. That the Appellants would like to highlight a very serious issue regarding the appraisal of the project in question. Subsequent to the the decision of the EAC in its meeting dated Dec 30, 2016 to recommend the project in question for grant of Environmental Clearance, Mr. Sharad Jain was appointed Direct General of the NWDA, which is Project Proponent of the project in question. Therefore, this is a clear case of conflict of interest between Mr Jain being chairman of EAC as also DG of NWDA, whose projects the EAC would appraise. It is submitted that many of the concerned individuals and organisations, including the Appellant No.1, had promptly written to the Union Environment Minister, demanding removal of Chairman of the EAC on grounds of conflict of interest, since NWDA projects would keep coming to EAC. It is not sufficient that Mr Jain is no longer Director General of NWDA, since having been the DG even for a few months, makes the conflict of interest issue relevant. Appellant has reasons to believe that decision with respect to the appointment of Mr Jain as chairman would have been initiated when he was chairperson of EAC. There is thus a 'reasonable likelihood' of bias.

Copy of article dated 3.06.2017, titled "Conflict of interest charge: Chief of panel that cleared Ken-Betwa link is now govt agency head" published in the Indian Express is annexed herewith as **ANNEXURE**

A-9

GROUND

47. That the instant Appeal is being filed on the following grounds amongst others that the Appellant may take up at the time of hearing:-

- A. Because the instant Appeal has been filed under the provisions of Section 16 (h) of the National Green Tribunal Act, 2010 challenging the Environmental Clearance dated 25.08.2017 granted to the Phase I of the Proposed Ken Betwa River Link Project.
- B. Because the construction of 77 m high & 2,031 m long composite dam across Ken River near village Daudhan in Chhatarpur District of Madhya Pradesh as part of the project in question, has been proposed inside the core area of Panna Tiger Reserve, with gross storage capacity of 2853 Million Cubic Meters and live storage capacity of 2684 MCM. The dam with Full Reservoir Level of 288 m will impact the habitat of terrestrial, aquatic and avian biodiversity. It will displace at least ten villages and will have downstream impacts which have not been fully assessed.
- C. Because the impugned Environmental Clearance suffers from serious illegality, arbitrariness and unreasonableness. It is submitted that the impugned clearance has been granted without proper appraisal as the EAC (River Valley and Hydroelectricity Projects) did not consider the blatant illegalities in respect of the project in question including including grossly inadequate Environmental Impact Assessment, Public Hearing involving violations and not even held in all the affected districts, necessary studies not done, contradictions in facts, concealment of hydrological basis, inadequate assessment of

submergence area, contradictions with conditions of other statutory clearances.

D. Because the EIA Report has been prepared in violation of the model TOR as well as various TOR conditions stipulated by the Ministry. The EIA Report is completely lacking and not in compliance of most of the TORs which were issued to the Project Proponent. In the matter of *The Sarpanch, Gram panchayat Tiroda & Ors. v. MOEF and Ors.* (Appeal No. 3 of 2011) (2011 SCC OnLine NGT 10), the Hon'ble Tribunal has held that an EIA Report which was not in compliance with the granted TOR cannot be valid: -

"...

*It is very surprising to notice that the EIA report is prepared by the project proponent through his own consultants at his own expenditure. In such case, there is every possibility of concealing certain intrinsic information, which may go against the proponent, if it is revealed. This is the area, the proponents take advantage. Here comes, the great role to be played by the EAC in making proper evaluation of the EIA report.**

...

In view of our findings noticed above, we are of the considered opinion that the EIA report cannot be said have been properly prepared since sufficient and appropriate data was not collected and presented as per the awarded ToR as elaborated infra.

...

For the reasons recorded at para no. 19; we are in full agreement with the submissions made by the learned counsel for the appellant that the EIA report which was prepared at the behest of project proponent, does not disclose proper and sufficient facts and information. For example, the entire baseline data pertains to a period much prior to award of ToR. More important issue relates to the fact that at the time of award of ToR, as many as 16 additional ToR were prescribed (p 5, Vol V, Annexure 29). Out of which, condition no. iv, v, vii, ix, x, and xii were not complied with at the time of EIA report which are crucial for taking a final decision regarding recommending the project for grant of EC, which reads as under:..."

E. Because the impugned Environmental Clearance has been obtained by fraud, concealment and misrepresentation of material facts. Material information including exact extent of forest land involved, impact on vulture habitat, impact on the ken gharial sanctuary, etc., have not been dealt with at all in the EIA Report. It is submitted that the concealment and misrepresentation of material facts would necessarily attract the provisions of Para 8 (vi) of the EIA Notification, 2006 which mandates that in such a case, the regulatory authority has to cancel the Environmental Clearance so obtained.

F. Because the EAC failed to verify the statements made by the Project Proponent and its consultant, and simply accepted their statements as the gospel truth without any application of mind. This has also been observed in by this Hon'ble Tribunal in the matter of Jeet Singh Kanwar v. Union of India &Ors. (Appeal No. 10 of 2011) wherein the impugned clearance was quashed on the grounds that EAC did not apply its mind, amongst other grounds.

In this regard, in the matter of Himparivesh &Ors Vs State of Himachal Pradesh &Ors, (2012 SCC OnLine HP 2690) the Hon'ble Himachal Pradesh has succinctly observed as follows:

"65. ...

In this behalf, we may submit that the Pollution Control Board, the MoEF and the EAC must play a more pro-active role than what is being done at present. Sitting in the Green Bench, we have heard hundreds of matters and we are constrained to observe that in almost all, if not all, cases the word of the project proponent is accepted to be the gospel truth. Obviously, the project proponent and/or the consultants who prepare the project reports will paint a rosy picture about the project and will gloss over and in fact hide the ill effects of the project. This is where the role of the Pollution Control Board and the MoEF starts. Why should we wait for NGO's or local inhabitants to come to

Court to question the validity of the project. They do not have the wherewithal, the finances, the capability or the knowledge to oppose the report. We are of the considered view that the duty of the Pollution Control Board and the Officers of the Board or the MoEF is to verify the facts stated by the Project Proponent...." (Emphasis Supplied)

Thus, in light of the fact that the EIA Report is completely lacking with respect to various critical issues as have been detailed at paragraphs 13 to 32 of the instant Appeal as well as issues including impact on Vulture, Gharial,, impact of the project on Biodiversity, inadequate cost benefit analysis which does not include ecosystems services of forest, river etc., inadequate attention to alternatives like dewas/ tanks, impact of climate change/ impact of project on Climate Change (deforestation – destruction of carbon sink, reservoir emitting methane, destruction of adaptation capacity), the impugned Environmental Clearance is liable to be quashed.

G. Because the impugned clearance has been granted by the Ministry despite being apprised of the several illegalities and violation of the EIA Notification with respect to the public hearing conducted for the project in question. Further, public hearing was not even conducted in all affected districts including Tikamgarh district of Madhya Pradesh and also Jhansi, Mahoba and Banda districts of Uttar Pradesh.

H. Because the impugned clearance has been granted even though the Project proposal before the EAC and the Ministry for grant

of Clearance is at complete variance from the project which was approved by the Standing Committee of the NBWL and was granted in principle Forest Clearance by the Ministry. Therefore, the impugned clearance is liable to be quashed.

- I. Because there has been no cumulative impact assessment/study till date which has been placed before the EAC or the Ministry, in complete violation of the Ministry's Notification dated 28.05.2013, states as follows:-

"(iii) Cumulative Impact Study:

Cumulative Impact study of a basin would reflect the cumulative impact of commissioned/up-coming hydro-power projects in the basin on environmental flow, bio-diversity, muck disposal sites, traffic flow in the region, R&R issues, etc. While, the first project in a basin could come up without insisting on cumulative study, for all subsequent hydro-power projects in the basin, it should be incumbent on the developer of the second/other project(s) to incorporate all possible and potential impact of other project(s) in the basin to get a cumulative impact assessment done. This condition shall be stipulated at the ToRs stage itself during the EC process. Once such a cumulative impact- study has been done, the same could be shared by EAC with FAC. The Cumulative impact study in respect of bio-diversity component may be separately got done by one of the specialized institutes as stated at (ii) above. While making recommendation on EC/FC for such projects, the EAC/FAC will take into account the results of such cumulative studies."

- J. Because till date, the Project Proponent has not obtained any clearance from the various agencies/authorities specified under

the Ganga Notification dated 7.10.2016, in violation of the provisions of Section 42 of the Notification.

K. Because, in addition to the illegal conduct of the Project Proponent, the EAC completely failed in discharging its statutory duty as per Para 7 read with Appendix V of the EIA Notification, 2006 by not scrutinising the project and conducting the proceedings in complete haste. In this regard, this Hon'ble Tribunal has observed in the *The Gram Sarpanch* (Supra) case that the act of EAC/MoEF in completely ignoring the non-compliance of the awarded ToR for EIA studies at the time of appraisal and/or grant of EC is totally unreasonable and that such an approach made by the EAC/MoEF requires to be avoided. The relevant part of the judgment is reproduced as hereunder:-

"This was, however, seems to have not been objected to by the MoEF/EAC at the time of appraisal, on the other hand, it had repeated the same at the time of recommending grant of EC by stipulating as specific conditions to be adhered to after the grant of EC (condition no. v, vi, xiv, xv, and xvii of EC letter). The matter assumes greater significance in view of the fact that as per the procedure laid in EIA notification 2006, Appendix V, para 2, it was the duty of Respondent No. 1 to scrutinize the documents strictly with reference to the ToR and take a note of the inadequacies in the Final EIA report and communicate to the

EAC. Compliance of these ToR cannot be postponed to be complied with, after the grant of EC. There are conditions and conditions. The conditions (ToR) which are mandatory cannot be ignored at the time of appraisal of EIA by EAC. In this case, as noticed above, the crucial and mandatory conditions (ToR) were not complied with by the project proponent at the time of EIA report. If ToR are not in the nature of pre-EC compliance, there was no necessity of additional ToR fixed by EAC. Even a bare look would show that almost all the additional ToR conditions are mandatory and when such conditions are not complied with, it must be deemed that the whole decision-making process was vitiated.

....

Here, we are constrained to record that the act of EAC/MoEF in completely ignoring the non-compliance of the awarded ToR for EIA studies at the time of appraisal and/or grant of EC is totally unreasonable. This approach made by the EAC/MoEF requires to be avoided." (Emphasis Supplied)

- L. Because in the present case, it is submitted that both EAC and Ministry have not considered many critical issues pertaining to the project in question and have not conducted the appraisal in accordance with the Precautionary Principle and principle of

Sustainable Development. Further, the EAC has appraised the project in complete haste without scrutinising the EIA Report and the other relevant documents submitted by the Project Proponent, and therefore the impugned environmental clearance is liable to be quashed. Further, in the matter of **Samata Vs Union of India [2014 ALL (I) NGT REPORTER (1) (SZ) 1]** this Hon'ble Tribunal has held that it is the duty of the EAC to strike a balance between the development and environment and it cannot be dispensed away by the EAC in a hasty manner.

M. Because there is a fundamental issue of conflict of interest with regard to the Chairman of the EAC (River Valley and Hyrdro Electric Power Projects). Mr. Sharad Jain, was appointed as the Chairman of the reconstituted EAC (RV & HEP) which recommended the project in question for grant of Environmental Clearance in its meeting dated 30.12.2016. Subsequently, in March 2017, he assumed the additional charge of Director General of NWDA, which is the project proponent in the present case. In the matter of Utkarsh Mandal v. Union of India (2009 X AD (Delhi) 365) the Delhi High Court while observing in respect of the Expert had categorically stated that a person having a direct interest in the outcome of the decision, cannot be made part of the decision making process. The relevant portion of the judgment is reproduced as hereunder:-

"44. As regards the EAC (Mines) it is surprising that the 12 member EAC was chaired by a person who happened to be Director of four mining companies. It matters little that the said four mining companies were not in Goa. Appointing a person who has a direct interest in the promotion of the

mining industry as Chairperson of the EAC (Mines) is in our view an unhealthy practice that will rob the EAC of its credibility since there is an obvious and direct conflict of interest." (Emphasis Supplied)

- N. Because the EC is also in violation of Article 14 as it is arbitrary and suffers from Wednesbury unreasonableness (*Tata Cellular vs Union of India* (1994) 6 SCC 651) since relevant facts were not considered while recommending the project and the granting the impugned clearance.
- O. Because in the present Appeal, the Appellants have sought the quashing of the impugned clearance on the grounds of arbitrariness and unreasonableness. In the matter of *In V. Ramana v. A.P. SRTC*, (2005) 7 SCC 338, the Hon'ble Supreme Court has observed as follows:

"Lord Greene said in 1948 in the famous *Wednesbury case* [*Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn.*, (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] that when a statute gave discretion to an administrator to take a decision, the scope of judicial review would remain limited. He said that interference was not permissible unless one or the other of the following conditions was satisfied, namely, the order was contrary to law, or relevant factors were not considered, or irrelevant factors were considered; or the decision was one which no reasonable person could have taken. These principles were consistently followed in the UK and in India to judge the validity of administrative action. It is equally well known that in 1983, Lord Diplock in *Council of Civil Service Unions v. Minister for Civil Service* [1985 AC 374 : (1984) 3 All ER 935 : (1984) 3 WLR 1174 (HL)] (called the

CCSU case) summarised the principles of judicial review of administrative action as based upon one or other of the following viz. illegality, procedural irregularity and irrationality. He, however, opined that "proportionality" was a "future possibility".

P. Because the impugned Environmental Clearance is in violation of the doctrine of public trust as well as the species best interest standard as enunciated by the Hon'ble Supreme Court in **Centre for Environmental Law, WWF-India v. Union of India, (2013) 8 SCC 234**.

Q. Because, in **T.N. Godavaram v. Union of India (2012) 3 SCC 277** it has been held that environmental justice could be achieved only if we drift away from the principle of anthropocentric to eco-centric. It is further stated that principles like sustainable development, polluter pays principle, inter-generational equity have their roots in anthropocentric principles. In other words, human interest does not take automatic precedence and humans have obligations to non-humans independently of human interest. Eco-centrism is therefore life centered, nature centered where nature includes both humans and non-humans.

R. Because, in **Center for Environmental Law, WWF India v. Union of India & Ors. (2013) 8 SCC 234** it has been held to the effect that Article 21 of the Constitution of India protects not only human rights but also casts an obligation on human beings to protect and preserve a species from becoming extinct. Conservation and protection of environment is an inseparable part of right to life.

LIMITATION

48. That the impugned clearance was uploaded on the website of the Ministry only on the 11.09.2017, and therefore, the instant Appeal is being filed within the 30 days of the date of communication. It is pertinent to note that till date, the project proponent has not published the impugned clearance in any local newspaper. However, as a matter of abundant caution, the Appellant is filing a separate application seeking condonation of delay of 17 days from 30 days from date of the impugned clearance.

PRAYER

In light of the above stated facts and circumstances, it is most respectfully prayed that this Hon'ble Tribunal may be pleased to pass the following order:-

- (A) Quash the Environmental Clearance dated 25.08.2017 granted by the Ministry of Environment Forest and Climate Change to the National Water Development Agency for the proposed Phase I of the Ken Betwa River Link Project;
- (B) Direct that the EIA of the KBP done by AFCL is cancelled and fresh EIA is assigned to an independent credible agency, after EAC deliberating on Fresh set of Terms of Reference. A entire process should start afresh.

- (C) Direct the MoEF to initiate action against the EIA Consultant for preparation of a misleading document and for concealment of material information;
- (D) Direct for fresh Public hearings as part of the Public consultation process be conducted Panna and Chhattarpur district based on a fresh EIA Report.
- (E) Direct that Public hearings for the Project be conducted in Tikamgarh district of MP & Jhansi, Mahoba and Banda districts of UP based on a fresh EIA Report;
- (F) Direct MoEF to ensure implementation of Ganga Notification of Oct 7, 2017 for all dams and hydropower projects in Ganga Basin, including KBP;
- (G) Direct that cumulative impact assessment and carrying capacity study of the Ken and Betwa basin be done by a credible agency;
- (H) Direct that the fresh EIA studies should include full downstream impact assessment including social aspects be done, including impact of project on Ken Ghariyal Sanctuary and Raneh Falls. The EIA study should address the inadequacy as highlighted in the Appeal;

Pass any other orders as the Hon'ble Tribunal may deem fit and proper in facts and circumstances of the case.

Himanshu J. Thakkar

APPELLANT NO.1

THROUGH

Ritwick Dutta

RITWICK DUTTA

RAHUL CHOUDHARY

MEERA GOPAL

ADVOCATES

COUNSELS FOR APPELLANTS

N-71, Lower Ground Floor, Greater Kailash-I,

New Delhi- 110048

VERIFICATION

Verified by Himanshu Thakkar, aged about 56, S/o Jethalal Thacker, R/o 86-D, AD block, Shalimar Bagh, New Delhi 110088, do hereby verify that the contents of Paragraphs 1 to 47 are true to my personal knowledge and that I have not suppressed any material fact.

Himanshu J. Thakkar

APPELLANT NO.1

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
SITTING AT NEW DELHI**

APPEAL NO: _____ OF 2017

IN THE MATTER OF:

Himanshu Thakkar & Ors.

...Appellants

Versus

Union of India & Ors.

...Respondents

AFFIDAVIT

I, Himanshu Thakkar, aged about 56, S/o Jethalal Thacker, R/o 86-D, AD block, Shalimar Bagh, New Delhi 110088; presently at New Delhi, do hereby solemnly affirm and declare as under:

1. That I am the Appellant No.1 in the above titled Appeal and I am conversant with the facts and circumstances of the case and I am competent to swear this affidavit.
2. That the contents of the accompanying Appeal are true and correct and nothing material has been concealed therefrom.

Himanshu J. Thakkar

DEPONENT

VERIFICATION

Verified on this 11 OCT 2017 day of October 2017 that the contents of the present Affidavit are true and correct to my knowledge and belief and nothing material is concealed therefrom.



Certified that the foregoing statement was declared on solemn affirmation before me which has been read over to the deponent who has admitted

it as correct

Himanshu J. Thakkar

DEPONENT

Notary, DELHI

BEFORE NATIONAL GREEN TRIBUNAL

○ Application No. _____ of 2017

57

In re: Himanshu Thakker & ors Applicant

VERSUS

U O T & ors Defendant/Respondent

KNOW ALL to whom these present shall come that I/We Himanshu Thakker the above named Applicants do hereby appoint (herein after called the advocate/s) to be my/our Advocate in the above noted case authorized him :-

Ritwick Dutta, Rahul Choudhary, and Meera Gopal Advocates, N-71, LGF, Greater Kailash-I, New Delhi- 110048

To act, appear and plead in the above-noted case in this Court or in any other Court in which the same may be tried or heard and also in the appellate Court including High Court subject to payment of fees separately for each Court by me/ us. To sign, file verify and present pleadings, appeals cross objections or petitions for execution review, revision, withdrawal, compromise or other petitions or affidavits or other documents as may be deemed necessary or proper for the prosecution of the said case in all its stages.

To file and take back documents to admit and/or deny the documents of opposite party.

To withdraw or compromise the said case or submit to arbitration any differences or disputes that may arise touching or in any manner relating to the said case. To take execution proceedings. The deposit, draw and receive money, cheques, cash and grant receipts thereof and to do all other acts and things which may be necessary to be done for the progress and in the course of the prosecution of the said case. To appoint and instruct any other Legal Practitioner, authorizing him to exercise the power and authority hereby conferred upon the Advocate whenever he may think it to do so and to sign the Power of Attorney on our behalf.

And I/We the undersigned do hereby agree to ratify and confirm all acts done by the Advocate or his substitute in the matter as my/our own acts, as if done by me/us to all intents and purposes.

And I/We undertake that I / we or my /our duly authorized agent would appear in the Court on all hearings and will inform the Advocates for appearance when the case is called.

And I /we undersigned do hereby agree not to hold the advocate or his substitute responsible for the result of the said case. The adjournment costs whenever ordered by the Court shall be of the Advocate, which he shall receive and retain himself.

And I /we the undersigned do hereby agree that in the event of the whole or part of the fee agreed by me/us to be paid to the Advocate remaining unpaid he shall be entitled to withdraw from the prosecution of the said case until the same is paid up. The fee settled is only for the above case and above Court. I/We hereby agree that once the fee is paid. I /we will not be entitled for the refund of the same in any case whatsoever. If the case lasts for more than three years, the advocate shall be entitled for additional fee equivalent to half of the agreed fee for every addition three years or part thereof.

IN WITNESS WHEREOF I/We do hereunto set my /our hand to these presents the contents of which have been understood by me/us on this 11 day of 10 2017.

Accepted subject to the terms of fees.

Advocate

Himanshu J. Thakker
Client

Client

No. J-12011/20/2013-IA-I

Government of India
Ministry of Environment, Forest & Climate Change
(IA-I Division)

Indira Paryavaran Bhawan
3rd Floor, Vayu Wing
Jor Bagh Road
New Delhi-110 003

Dated: 25.8.2017

To

The Chief Engineer

M/s. National Water Development Agency
Ministry of Water Resources, RD & GR
18-20, Community Centre, Saket
New Delhi -110 066

Subject: Ken-Betwa Link Project Phase-I in Panna & Chhatarpur District of Madhya Pradesh M/s Water Resources Department, Government of Madhya Pradesh and M/s. National Water Development Agency - Environmental Clearance (EC)-regarding.

Sir,

This is with reference to your letter No. NWDA/SE-II/152/22/2015/Vol-I/10409 dated 20.7.2015, 7.10.2015, 14.10.2015, 9.2.2016, 2.6.2016, 17.11.2016, 8.12.2016, 26.12.2016 and 30.6.2017 on the above mentioned subject.

2. The above referred proposal was appraised by the Expert Appraisal Committee (EAC) for River Valley and Hydro Electric Power Projects (RV&HEP) in its meetings held on 24-25th August, 2015; 26-27th October, 2015; 8-9th February, 2016; 2-3rd June, 2016 and 30th December, 2016. The comments and observations of EAC of this project may be seen in the Minutes of these Meetings which are available on the web-site of this Ministry.

3. The project envisages construction of 77 m high & 2,031 m long composite dam across Ken river near village Daudhan in Chhatarpur District of Madhya Pradesh to provide irrigation facility to 6.35 lakh ha area, drinking water facility and generation of 78 MW hydropower. Two (2) powerhouses, viz., (i) 2 units of 30 MW capacity each, and (ii) 3 units of 6 MW capacity each are proposed to be constructed. Two (2) tunnels of 1.9 km long upper level and 1.1 km long lower level tunnel and 221 km long Ken-Betwa link Canal Phase-I on the left bank of the river are proposed to be constructed. Total submergence area is 9,000 ha, out of which 5,258 ha is forestland (includes 4,141 ha in Panna Tiger Reserve). A total of 10 villages consisting of 1,585 families are likely to be affected by this project. Panna Tiger Reserve falls within the 10 km radius of the project. The total cost of the project is about Rs.9,393 Crores and it is likely to be completed in 9 years.

4. The Public Hearing for the project was conducted on 23.12.2014 at Government School Ground, Silone Village in Chhattarpur District and on 27.12.2014 at Forest Guest House, Hinnota Village in Panna District of Madhya Pradesh.

5. The Expert Appraisal Committee (EAC), after due consideration of the relevant documents submitted by the project proponent and clarifications furnished in response to its observations, have recommended for grant of Environmental Clearance for this project. Accordingly, the Ministry of Environment, Forest and Climate Change hereby accords necessary Environmental Clearance for the above project as per the provisions of Environmental Impact Assessment Notification, 2006 and its amendments thereof, subject to compliance of the following conditions:

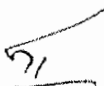
Part A: Specific Conditions

- i. The proposed Catchment Area Treatment (CAT) Plan as proposed in EIA/EMP (May, 2015) for 8 years with biological and engineering measures shall be implemented in consultation with Madhya Pradesh Forest Department. The CAT proposed is 2413.67 Sq. km. Allocated amount of Rs. 272.58 crores for this purpose be fully utilized and not to be diverted for any other purpose.

Measures	I Year	II Year	III Year	IV Year	V Year	VI Year	VII Year	VIII Year	Total
Biological Measures									
Afforestation/ Reforestation (ha)	--	1249	1874	2498	2498	2498	1249	625	12490
Pasture Improvement (ha)	--	345	517	690	690	690	345	172	3448
Social forestry (ha)	--	225	338	450	450	450	225	113	2250
Engineering Measures									
Stone wall check dams (Nos)	32	61	61	61	20	20	20	15	292
Loose Boulder check dams (Nos)	46	88	88	88	29	29	29	21	419
Stone Contour Bunds (ha)	2395	4573	4573	4573	1524	1524	1524	1089	21776
Mini Percolation tanks (Nos)	1	2	2	1	--	--	--	--	6
Staggered Contour Trenches with plantation (ha)	994	1898	1898	1898	633	633	633	452	9036

- i. The R&R benefits for the land losing will have to comply with "The Right to fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013" which has come in force on 1.1.2014. Adequate publicity of the compensation package should be circulated in the affected villages. All R&R issues shall be completed before commissioning of the project.
- ii. A monitoring Committee for R&R shall be constituted which shall include representatives of project affected persons including representative from SC/ST category and a woman beneficiary.

- iii. All commitment made during the public hearing should be fulfilled completely by the project proponent and record maintained.
- iv. The Command Area Development (CAD) plan as proposed in EIA/EMP report (May, 2015) shall be strictly implemented.
- v. The Water User Association's (WUAs)/ Co-operative shall be formed and involvement of the whole community for disciplined use of available water shall be ensured.
- vi. Conjunctive use of surface water shall be planned to check water logging as well as to increase productivity.
- vii. Consolidation and compaction of the generated muck should be carried out at the muck dumping sites. As proposed in the muck disposal plan, out of 12.3 Mm³ generated. Out of which, 7.38 Mm³ lakh m³ is to be utilized for construction purpose and remaining should be dumped in designated disposal sites. The muck disposal sites should be reclaimed/restored with vegetative cover once capacity is utilized and it should be strictly adhered to.
- viii. The proposed compensatory afforestation programme in 10,856 ha shall be developed in consultation with State Forest Department. An amount of Rs.3061 Crores have been allocated for this purpose. A part of the Panna Tiger Reserve is coming under submergence, proposed Biodiversity Conservation and Management Plan in consultation with State Forest Department shall be implemented in toto. Allocated amount of Rs. 27.47 Crores for this purpose should be fully used and not to divert for any other purpose.
- ix. The equipment likely to generate high noise levels during the construction period or otherwise shall meet the Ambient Noise level standards as notified under the Noise Pollution (Regulation and Control) Rules, 2000, as amended in 2010 under the Environment Protection Act (EPA), 1986.
- x. The On Farm Development (OFD) works shall be completed and WUAs (Water User Associations) shall be made functional before commencement of irrigation.
- xi. The Fishery Development and Management Plan shall be developed in consultation with the State Fishery Department. Under the fisheries management plan, stocking of fish seed in Daudhan & Rangwan reservoirs, upstream/downstream of the river should be implemented strictly. The proposed Mahsheer hatchery taken-up strictly. The allocated grant Rs.14.09 crores for this purpose shall be fully utilized and shall not be diverted for any other purposes.
- xii. Six monthly compliance reports shall be submitted to the Regional Office of the Ministry located at Bhopal without fail until completion of the project along with the monitoring data. It should also to be uploaded in the own website of the project as a part of information to the General Public.
- xiii. Periodical soil health shall be verified in command area during operation phase to ensure maintenance of soil fertility.



- xiv. Occurrence of stagnant pools/slow moving water channels during construction and operation of the project providing breeding source for vector mosquitoes and other parasites. The river should be properly channelized so that no small pools and puddles are allowed to be formed. Even after taking precaution, due to unforeseen situations, breeding of mosquito and resultant malaria or mosquito borne diseases can increase. If such a situation arises, it will be the responsibility of project proponent to take all steps i.e. residual insecticidal spray in all the project area and its surrounding 3 km area keeping the flight range of mosquitoes in consideration.
- xv. Any other clearance from other organization/department, if required, should be obtained as and when necessary.
- xvi. Solid waste generated especially plastic waste should not be disposed of as landfill material. It should be treated with scientific approach and recycled.
- xvii. As the submergence area is very large (about 9,000 ha), micro-climatic change conditions in the project area during construction/post-construction period to be brought-out/reported at regular intervals.
- xviii. Impact due to habitat change having effect like corridor and loss of migratory path for wildlife including birds and impact on the breeding ground of species should be recorded during pre-construction/post - construction stages.
- xix. Plans for greenbelt development and reservoir rim treatment plan have to be made in consultation with State Forest Department. Preference shall also be given to plant local indigenous species. If possible, transplantation of trees from the submergence area of the project be taken up and these may be re-planted in the affected area of the project as a part of LMP.
- xx. The Panna Tiger Reserve is facing acute shortage of water and due to creation of reservoir; the water regime will improve to a great extent. The extent of creation of pasture land due to receding of submergence, increase of herbivorous population, growth in vulture population as well as increase in Tiger population be recorded in the project area.
- xxi. While implementing the LMP for PTR, as and when the Land Management Plan, etc. are taken up in the affected areas of the Ken-Betwa Link Project Phase-I, status of implementation of the same shall be submitted to the Ministry and Regional Office, MoEF & CC, Bhopal for its monitoring on six monthly basis.
- xxii. All conditions stipulated in the NBWL Clearance letter No. 6-109/2016-WL (39th Meeting) dated 21.9.2016 should be strictly adhered-to including the resultant reservoir area shall be retained as core area with minimum activities for management purpose under close consultation with Tiger Reserve Management.
- xxiii. Six monthly compliance reports shall be submitted to Regional Office, MoEF& CC, Bhopal without fail until completion of the modernization works.

Part B: General Conditions

- i. Adequate arrangements for providing free fuel like LPG/kerosene shall be made at the project cost for the labour force engaged during the construction work so that indiscriminate felling of trees is prevented that is located adjacent to the proposed project site
 - ii. Medical facilities as well as recreational facilities shall also be provided to the labourers at the construction sites. First aid facility at the project site shall also be provided with proper signage.
 - iii. The labourers to be engaged for construction works shall be thoroughly examined by health personnel and adequately treated before issuing them work permit to avoid contraction of any disease to the local people.
 - iv. Water sprinkling arrangements shall be made to control the fugitive dust and fugitive dust, ambient air quality etc. be monitored during the period of construction according to the CPCB guidelines to meet the NAAQ standards.
 - v. Potable drinking water and proper sanitary facilities shall be provided for the labour force. Any solid waste generated at the colony of the labour force shall be collected and suitably disposed of.
 - vi. Restoration of construction area including muck dumping sites of excavated materials shall be ensured by leveling, filling up of borrow pits, landscaping, etc. The area should be properly treated with suitable plant species preferable local indigenous species for better survival of plants and also to enrich the local habitat.
 - vii. Environmental parameters shall be monitored and "six monthly monitoring reports" shall be submitted to the Regional office of the Ministry located at Bhopal as per guidelines.
6. The Project Proponent shall provide full cooperation and all required documents / data to the Officer (s) of the Regional Office of the Ministry located at Bhopal who would be monitoring the implementation of environmental safeguards.
7. The responsibility of implementation of environmental safeguards and carrying out environmental monitoring rests fully with the Water Resources Department, Government of Madhya Pradesh and M/s. NWDA.
8. Besides the above stated conditions, the Project Proponent shall also implement all environmental safeguards, as proposed in the EIA/EMP report and other reports from time to time. The Regional Office, MoEF & CC, Bhopal shall monitor implementation of EMP at regular intervals.
9. The Environmental Management Plan (EMP) shall be strictly adhered to. The total cost of implementation of mitigation measures as per EMP is Rs 5073 crores. In case of revision of the project cost or due to price level change, the cost of EMP shall also be updated proportionately.



10. In case of change in the scope of the project, the same shall be intimated to the Ministry and fresh approval, if required, shall be taken from the Ministry accordingly.

11. The Ministry reserves the right to add additional safeguard measures subsequently, if found necessary and to take action including revoking of the clearance under the provisions of the Environment (Protection) Act, 1986, to ensure effective implementation of the suggested safeguard measures in a time-bound and satisfactory manner.

12. The project proponent should advertise at least in two local newspapers widely circulated in the region around the project, one of which shall be in vernacular language of the locality concerned informing that the project has been accorded environmental clearance and copies of clearance letters are available with the State Pollution Control Board / Committee and may also be seen at the Website of the Ministry of Environment, Forest & Climate Change at <http://www.moef.nic.in>.

13. A copy of the clearance letter shall be marked to concerned Panchayat/ZillaParishad/Municipal Corporation, Urban local body and local NGO, if any, from whom any suggestion/representations were received while processing the proposal. The clearance letter shall also be put in the website by the project proponent. Compliance to the condition shall be ensured by the project and intimated to the state accordingly.

14. State Pollution Control Board / Committee shall display a copy of the clearance letter at the Regional Office, District Industries Centre and Collector's / Tehsildar's Office for 30 days.

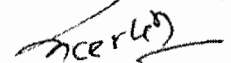
15. This clearance letter is valid for a period of 10 years from the date of issue of this letter for commissioning of the project.

16. After 5 years of the commissioning of the Project, a study shall be undertaken regarding impact of the project on the environment and downstream ecology. The study shall be undertaken by an independent agency, decided in consultation with the Ministry.

17. The project proponent shall also submit six monthly reports on the status of compliance of stipulated EC conditions including the results of monthly monitored data (both in hard copies as well as by email) to the Regional Office of MoEF & CC, Bhopal.

18. Any appeal against this environmental clearance shall lie solely with the National Green Tribunal, if preferred, within a period of 30 days from the date of issue, as prescribed under Section-16 of the National Green Tribunal Act, 2010.

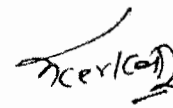
Yours faithfully,


(Dr. S. Kerketta)
Director

64

Copy to:

1. The Secretary, Ministry of Water Resources, RD & GR, Shram Shakti, Bhawan, Rafi Marg, New Delhi 110 001.
2. The Principal Secretary (Water Resources Department), Government of Madhya Pradesh, Secretariat, Bhopal -462 016.
3. The Secretary, Department of Environment, Government of Madhya Pradesh, Secretariat, Bhopal -462 016.
4. The Chief Engineer, Project Appraisal Directorate, Central Water Commission, SewaBhawan, R.K. Puram, New Delhi-110 066.
5. The Chief Engineer, National Water Development Agency, 18-20 Community Centre, Saket, New Delhi - 110017.
6. Shri. O. P. S. Kushwah, Superintending Engineer, National Water Development Agency, 205 - PalikaBhavan, RK Puram, New Delhi - 110066.
7. The Additional PCCF (Central), Regional Office (WR), Ministry of Environment, Forest & Climate Change, KendriyaParyavaranBhavan, Link Road No-3, Ravi ShankerNager, Bhopal -462 016..
8. The Member Secretary, Madhya Pradesh State Pollution Control Board, ParyavaranParisar, E-5, Arera Colony, Bhopal -462 016.
9. NIC Cell - uploading in MoEF&CC's website.
10. PPS to JS (GB)/Director (SKK)/ DD (NS).
11. Guard file.



(Dr. S. Kerketta)
Director

T. C.
a