

January 28, 2013

To:

1. Smt Jayanthi Natarajan, Union Minister of State for Environment and Forests (IC),
Ministry of Environment and Forests,
Paryavaran Bhawan, New Delhi 3

2. Secretary, Union Ministry of Environment and Forests, Govt of India
Paryavaran Bhawan, New Delhi 3

3. Chairman and Members,
Expert Appraisal Committee on River Valley Projects,
Ministry of Environment and Forests,
Paryavaran Bhawan, New Delhi 3

**Sub: Reject Environment Clearance for the proposed 775 MW Luhri hydropower project
on Sutlej River in Himachal Pradesh**

Respected Minister, Chairman and Members of EAC,

1. We would like to draw your attention to the decision of the Expert Appraisal Committees (EAC) on River Valley Projects to recommend environment clearance (EC) to the proposed 775 MW Luhri Hydropower project on Sutlej river in Himachal Pradesh. The EAC took this decision in its meeting in November 2012, the minutes of the meeting were available only in last week of December 2012.

2. Sutlej was known to be already an over developed basin when the Luhri project came up for first stage clearance before the EAC in April 2007 (see for Sutlej basin map: http://www.sandrp.in/basin_maps/Hydro_Electric_Projects_on_Sutlej_River_in%20HP.pdf or attached file). The EAC should have refused to consider the project then without an independent credible cumulative basin level study looking into the carrying capacity with respect to various aspects. Such a credible cumulative impact assessment of the Sutlej river basin, including the carrying capacity is not available.

3. Here we would like to draw your attention to the fact that recommending Environment clearance without first undertaking carrying capacity and cumulative impact assessment is in violation of Supreme Court order (see attached) in "Karnataka Industrial Areas ... vs Sri C. Kenchappa & Ors on 12 May, 2006" which has said:

A. "The pollution created as a consequence of environment must be commensurate with the carrying capacity of our ecosystem. In any case, in view of the precautionary principle, the environmental measures must anticipate, prevent and attack the causes of environmental degradation."

B. "...the preventive measures have to be taken keeping in view the carrying capacity of the ecosystem operating in the environmental surroundings under consideration."

C. "The pollution created as a consequence of development must not exceed the carrying capacity of ecosystem."

Here it should be noted without knowing carrying capacity of the Sutlej basin it cannot be ascertained if the proposed project is "commensurate with the carrying capacity of our ecosystem" and ecosystem in this context is the Sutlej basin. Hence the EAC decision is in violation of this SC order.

4. The minutes of the EAC meeting in April 2007, where the Terms of Reference (TOR) of EIA came up for approval for the Luhri project, says that the project is going to have 45 m high dam affecting a maximum of 45 project affected families and 13 villages. Now from the EIA it is clear that dam height is not 45 but 86 m, the project will affect not 45 families but 2337 land owners and 9674 persons, Luhri project will affect not 13 but over a hundred villages including

78 village along the world's longest Head Race Tunnel. Any competent body would have questioned these very serious nature of changes in basic project parameters of the project from TOR to EC stage, but EAC did not. The EAC did not even ask the project promoter for an explanation for these changes.

5. Even legally, the TOR clearance is supposed to be valid only for 2 years. When the project first came up for final environmental clearance before the 56th meeting of EAC towards the end of March 2012, it was almost five years since the TOR was cleared. TOR clearance was no longer valid than, but the EAC ignored the legal norms too.

6. The legally mandatory Public hearings for the project were held in May and August 2011, but the EIA made available a month before the public hearing as required under the EIA notification did not have the basic information about the names and impacts on the 78 villages along the path of the tunnels of the project. The local groups had written to the ministry, the Pollution Control Board that is supposed to conduct the hearings and the EAC about these and other issues. But the EAC did not even take note of such serious legal lapses. Even just on this count of violations in the public hearing process the MoEF should not have forwarded the proposal and the EAC should have refused to consider the project. But EAC did not even discuss this issue!

7. In repeated representations to the EAC, the Himachal Pradesh based groups Sutlej Bachao Sangharsh Samiti and Himdhara have been bringing to the notice of EAC that there has been no compliance with the Forest Rights Act for the forest land required for the project and the local administration has been indulging in manipulations and pressure tactics to get the mandatory gram sabha resolutions for the FRA compliance, as also reported in the media. In fact these groups have been sending representations to the EAC on all these issues since October 2011 and has already sent five representations, but the EAC has never even acknowledged, leave aside discussing any of these representations in its meetings. In fact the EAC should have invited the people who sent such representations and heard them and also allowed them to be present when the project is discussed in the EAC. This behaviour of the EAC is also in violation of the Delhi High Court order in Utkarsh Mandal case where the High Court has expressly asked the EAC to show that it has applied its mind to each representation it receives and the decision it takes in that regard.

8. The Environment Impact Assessment itself has so serious inadequacies that even the EAC notes in the minutes of the March 2012 meeting that "the EIA/EMP report is inadequate", consultant has presented "poor quality of material". The EAC minutes records many of the serious deficiencies of the EIA in its March 2012 meeting. The minutes of the 56th meeting of EAC saying about this project:

"The Committee also expressed its concern over the long stretch of river of about 50 km getting dry due to a long HRT, large reservoir length and large number of people getting affected due to the submergence. The Committee felt that the TORs of the project were decided during April-May 2007 when the water environment issues were not as conspicuous or serious as they are in the current times. Otherwise, such a long diversion of river water through the HRT which would affect continuous river length of 46 km would have been objected at that time. The Committee felt that the consultant/s to the project who have been interacting with the MoEF/EAC in various presentations with respect to other projects should have advised the Project Proponents and alerted them regarding the recent criteria of the EAC. Also, the SJVN who have been interacting with MoEF/EAC with respect to other projects should have been more cautious. The only remedy now available is to consider mitigating measures such as larger environmental flows, reducing the dam height, reducing the HRT length etc. The Committee strongly felt that the Project Proponent should explore the various possibilities of all mitigating measures."

Here the non-consideration of the crucial issues highlighted here at the TOR stage cannot be a reason for not rejecting the project in present form. The implication that once the TOR

clearance is given, the project with all its parameters becomes fait accompli is completely uncalled for, unjustified and wrong. In any case, there was enough grounds for the EAC to reject that consideration also considering the significant change in the project parameters from the TOR proposal and TOR clearance having already lapsed as highlighted above in para 4 and 5 above.

9. The EIA was so inadequate, full of contradictions and misrepresentations that the EAC should have rejected it and asked for fresh EIA while recommending black listing of the consultant. None of those issues were resolved till Nov 2012 when EAC next discussed the project. By then EAC had also received representations from affected people, issues raised in which too remained unresolved. And yet, the EAC decided to quietly recommend environment clearance to the project without referring to its own observations or those of the representations and getting the issues raised therein resolved.

10. The response of the developer and consultant in response to the issues raised by the EAC in March 2012 meeting was supposed to be made available at least ten days before the November 2012 EAC meeting when EAC next considered the project, as per the orders of the Central Information Commission (CIC) in Feb 2012 and CIC notice to MoEF following SANDRP appeal in May 2012. Violating the CIC orders, the responses were not in public domain.

11. The project violated the EAC's own norms, but EAC did not even discuss it, let us see how. The Full Reservoir Level of the Luhri dam is 862.9 m and the tail water level of the immediate upstream Rampur project is also 862.9 m, which means there is zero distance of flowing river between the two projects. This is incomplete violation of the recommendation of the Avay Shukla (former additional Chief Secretary of Himachal Pradesh) Committee appointed by the HP High Court and also the reported recommendation of the BK Chaturvedi Committee appointed by the Prime Minister headed National Ganga River Basin Authority. Both the committees' recommendations are for minimum of 5 km distance of flowing river between any two projects. Even EAC has been following the recommendation of at least 1 km distance between two projects. But EAC did not even discuss this issue and cleared the project violating its own norms.

12. Similarly, the full reservoir level of the downstream Kol dam is 642 m, whereas the invert level of the Tail Race Channel of Luhri dam is 1 m below this that is 641 m, which means again there is zero length of flowing river between the two projects. The EAC again violated the recommendations of Avay Shukla Committee and its own norm. Why did the EAC not even discuss this issue? Why did the developer Sutlej Jal Vidhyut Nigam and the EIA consultants, who were familiar with the EAC norm did not raise these issues for both upstream and downstream situation? Why did the MoEF officials who are part of EAC and knew the importance of these issues did not raise these issues? This collective silence on such a crucial issue raises too many questions for anyone's comfort.

13. Here it should be noted that the Luhri project has head race tunnel length of 38.14 km, which is the longest in the world. As the EAC itself noted, the tunnel will bypass over 50 km length of the river, in addition to the 6.8 km long reservoir. So the project will destroy close to 60 km length of the mighty, already over-dammed Sutlej River. To see the callous treatment the EAC has given to such unprecedentedly impactful project is shocking.

One possible option left for the EAC to clear the air is an urgent, transparent review of this decision. We urge EAC to do that soon and cancel its recommendation for approving environment clearance for the project.

We urge MoEF to reject the recommendation of the EAC and reject the proposal to clear the Luhri HEP urgently.

Thanking you and looking forward to early response,

Yours sincerely,

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