

REPORT

OF THE

SPECIAL PROJECT FACILITATOR

ON

MELAMCHI WATER SUPPLY PROJECT
NEPAL

ADB Loan 1820-NEP(SF) (21 December 2000)

(Review and Assessment of the Complaint Received on
3 May 2004)

June 2004

ABBREVIATIONS

ADB	Asian Development Bank
CIRT	community issues resolution team
EIA	environmental impact assessment
EIRT	environment issues resolution team
JRM	joint review mission
MAR	main access road
MWSDB	Melamchi Water Supply Development Board
MWSP	Melamchi Water Supply Project
NRM	Nepal Resident Mission
OSPF	Office of the Special Project Facilitator
SPF	Special Project Facilitator
SUP	social uplift program
VDC	village development committee
WAFED	Water and Energy Users' Federation-Nepal

CONTENTS

	Page
Executive Summary	(i)
A. Project Overview	1
B. Nature of the Complaint	1
C. Initial Determination of Eligibility	2
D. Position of the Complainants	3
E. SPF's Assessment	4
F. Detailed Position of Complainants and SPF's Recommendations	5
G. Discussion of the Seven Issues	9
H. Conclusions	10
I. The Implementation Environment	11
J. Improving Implementation	12

APPENDIXES

1. Location Map	16
2. Letter of Complaint	17
3. Additional Information Submitted to Special Project Facilitator	23
4. List of Documents Requested by Mr. Gopal Siwakoti 'Chintan'	26

SUPPLEMENTARY APPENDIX (available upon request)

Attachments to Letter of Complaint

1. ADB Meeting – 12 Jun Press Release
2. Letter to ADB and the Government of Nepal of 27 Jun 2003
3. Matrix of ADB Response to 27 Jun 2003 Letter
4. Letter to ADB of 15 Dec 2003
5. Matrix of WAFED Response to ADB Letter of 15 Dec 2003
6. Press Release by Melamchi Group – 13 Jan 2004
7. Joint Letter to ADB of 29 Mar 2004
8. IWMI Study on Melamchi Water Sharing of Apr 2002
9. Memo to the Joint Review Mission of 19 Apr 2004
10. Letter in Nepali to WARC on Melamchi Meeting – 22 Apr 2004, Hotel Malla
11. Response by K. Tamaki/ADB of 21Apr04 to WAFED Request of 19Apr04
12. Response by ADB and donors of 27Apr04 to WAFED letter of 19Apr04

Executive Summary

1. Overview

This report contains the findings and recommendations of the Special Project Facilitator (SPF) as required by Step 4 of the Consultation Phase of the Asian Development Bank's (ADB) Accountability Mechanism, undertaken in response to a complaint made against the Melamchi Water Supply Project (MWSP) [Loan No. 1820-NEP(SF)]. The aim of MWSP is to provide a sustainable supply of potable water to the Kathmandu Valley by diverting water through a twenty-six kilometer tunnel from the Melamchi River in the Sindhupalchowk District. The main project components consist of the river diversion and tunnel, a water treatment plant, the bulk distribution system, distribution networks, a groundwater well field, and access roads. The Project includes a "Social Uplift Program" designed to promote the socioeconomic wellbeing of people living in areas covered by 14 Village Development Committees in the Melamchi Valley. There are consulting services for project management, physical infrastructure, social and environmental concerns, public relations and institutional reform. The executing agency for the Project is the Melamchi Water Supply Development Board, (MWSDB) of the Government of Nepal.

The estimated total project cost of \$464 million is financed by the Government of Nepal and seven co-financiers. ADB's loan amounts to \$120 million.

The complaint, made by four individuals claiming to be project-affected persons, was received by SPF on 3 May 2004 and identified seven areas of alleged non-compliance with ADB policies in the design and implementation of MWSP. The seven areas were: access to information; environmental impact assessment; land acquisition; compensation and resettlement; the rights of indigenous people; the social uplift program; and agriculture and forestry.

2. Conclusions and Recommendations of SPF

This complaint has to be examined from two perspectives. At the core of the complaint are the specific issues raised by the four complainants. Two of the complainants are not adversely and materially affected. The remaining two are affected but have been treated fairly by the project and have, where appropriate, received compensation. From a different perspective, the complaint was brought, not so much to seek resolution of the specifics of the situation of the four complainants, but to question the compliance of the project with ADB policies with a view to reopening the debate surrounding the original project design and the potential options for the supply of water to Kathmandu. The specifics of each complaint appear to be secondary to the complainants, particularly Mr. Gopal Siwakoti 'Chintan', representing the Water and Energy Users' Federation. Much more important to Mr. Siwakoti is the aim of reopening the original debate: *changing the process of consultation and participation as it is perceived by the complainants is the main objective*. As such, facilitating solutions for the four complainants is unlikely to satisfy the need of the complainants to reopen fundamental project design discussions. However, for each complainant, SPF has made recommendations for resolution of the issue.

(ii)

Extensive discussions with all parties involved in MWSP, including civil societies and other stakeholders indicate that there is a high level of support for the project. There is some dissatisfaction with the speed of resolution of disputes: for example, there are compensation cases still under consideration with, as yet, no conclusion and there is concern over the speed of implementation of the social uplift program. These cases, and other issues of the implementation of MWSP, would benefit greatly from capacity building at MWSDB. Suggestions for capacity building are given in this report.

Discussions and examination of documents by SPF lead to the conclusion that there is no evidence of serious or systematic non-compliance with ADB policies in terms of the rigor of the design and the implementation of MWSP. On the contrary, there is substantial evidence of additional effort and dedication being applied by ADB, other donors and MWSDB to ensure not only compliance, but fairness and equity in very difficult and often dangerous working conditions. There is, however, room for improvement.

A. Project Overview

1. The Melamchi Water Supply Project (MWSP) [Loan 1820-NEP(SF)] was approved by the Asian Development Bank (ADB) on 21 December 2000. It is a large and complex project that aims to provide a sustainable supply of potable water to the Kathmandu Valley region. The project design provides for the diversion of water from the Melamchi River in Sindulpalchowk District through a 26-kilometer tunnel. The main infrastructure components consist of the Melamchi diversion scheme, a water treatment plant, the bulk distribution system, distribution networks, a groundwater well-field, and access roads related to the diversion scheme (see Location Map in Appendix 1). The executing agency for the Project is the Melamchi Water Supply Development Board (MWSDB) of the Government of Nepal.
2. The Project includes a Social Uplift Program (SUP), designed to promote the socioeconomic wellbeing of people living in areas covered by 14 Village Development Committees (VDCs) in the Melamchi Valley.
3. There is a wide array of consultant services for project implementation in the areas of project management, physical infrastructure, social and environmental concerns, public relations and institutional reform.
4. The estimated total project cost of \$464 million is financed by the Government of Nepal and seven co-financiers.¹ ADB's loan amounts to \$120 million.
5. A key conditionality attached to the external funding for the Project stipulates that the Government agree to charge an appropriate levy on water from the Project from Kathmandu residents for the benefit of the residents of Melamchi Valley.
6. Construction activity is currently confined to the main access road (MAR) and other branch roads from the MAR to the location of the proposed pipeline. The MAR construction, which is financed by the Government, started several years before the donor-financed project. Project implementation is still at a very early stage.

B. Nature of the Complaint

7. On 3 May 2004, the Special Project Facilitator (SPF) received, through e-mail, a complaint regarding MWSP. The letter and the attachments to the complaint are included in Appendix 2. The complaint requests the investigation of policy non-compliance on seven issues of concern:

Issue 1: Access to Information

That the information flow has been restricted, not enough information has been available in Nepali, and that there has been little public participation in the decision making and project design process.

¹ ADB, Japan Bank for International Cooperation, Norwegian Agency for International Cooperation, Swedish International Development Cooperation Agency, OPEC Fund for International Development, Nordic Development Fund, and the Government of Japan.

Issue 2: Environmental Impact Assessment (EIA)

That the EIA has methodological flaws, ignores some of the environmental impacts of the project, and has inadequate mitigation plans.

Issue 3: Land Acquisition, Compensation and Resettlement

That the land acquisition, compensation and resettlement processes have been arbitrary and that people have not been given enough time to move. In addition the complainants state that the project 'intentionally' failed to assess all the direct and indirect impacts upon the residents.

Issue 4: Indigenous Peoples

That the rights of the indigenous people have been denied.

Issue 5: Social Uplift Program

That the SUP has been designed with the inadequate involvement of local people and therefore fails to address local needs.

Issue 6: Agriculture

That the project seriously affects agriculture in the Melamchi Valley. The complaint also claims that there was inadequate investigation of the downstream impacts upon agriculture of the river diversion.

Issue 7: Forestry

That the project has had a serious impact on community forests by paying too little attention to the need for access and management of the forests.

8. The complaint also indicates the remedies expected by the complainants.
9. The four complainants, Mr. Gopal Siwakoti 'Chintan', Mr. Hasta Pandit, Mr. Ram Bahadur Khadka and Mr. Pitambar Bhandari have claimed to be 'directly affected individuals and groups' in the Melamchi and Kathmandu valleys, representing the 'wide interests of the people and communities adversely affected by the project'. The complainants have made representations to the Government of Nepal, the Asian Development Bank (ADB) and other financiers in the past regarding the design of the MWSP and its impact upon the people and the environment. In the opinion of the complainants, they have not received satisfactory responses to the points they raised.
10. The complaints made are general in nature and required further investigation in the field.

C. Initial Determination of Eligibility

11. An initial assessment of the eligibility of the complaint and the complainants as 'materially and adversely affected' people, or their representatives, was made prior to the visit to Nepal of SPF through extensive document research and interviews with a range

of concerned parties. On the basis of this research there appeared to be, at least for some of the issues of complaint, prima face evidence that there may be cause for concern and the further involvement of SPF:

12. The aide memoire of the Joint Review Mission (JRM) of the Government of Nepal and the donors states:

'JRM noted that there were serious environmental problems associated with the construction contracts. This is partly due to the fact that environmental, social and occupational safety issues have not been adequately addressed in the earlier contracts, while in later contracts these issues are largely ignored by the contractors.'

(Paragraph 27. Aide memoire, JRM. 29th September 2003)

13. A special review² of the project undertaken as a result of the report of the JRM noted the following with regard to social issues:

'the land compensation process has been very controversial and has thus contributed to the delays in several project components'

'a comprehensive Social Uplift Program has been made. The program has been seriously delayed and the lack of communication between the Melamchi Water Supply Development Board and the affected people has been heavily criticized'

14. The ADB Project Performance Report noted similar concerns (12 February 2004). All three documents above note that actions are being taken, or are proposed, to improve the situation.

15. Interviews with ADB staff and consultants directly involved in MWSP confirmed that there are issues of concern in the social and environmental components of the project.

16. Ideally, a field visit would have been desirable to determine the eligibility of the complaint, particularly given the general nature of the issues raised and the lack of clarity surrounding the nature of the affect of the project upon the complainants and their right to represent adversely affected people. However, since ADB had previously recognized that these complainants could speak on behalf of project affected people and in view of the persistent nature of the social and environmental difficulties, it was decided that the complaint was eligible for consideration under Step 4 of the Accountability Mechanism.

D. Position of the Complainants

17. Notwithstanding the eligibility of the complaint, the following statements, made in the letter of complaint to SPF, make the starting position of the complainants very clear:

'it is also our full understanding that the issues and problems related to the Bank's policy violations and any satisfactory remedies through meetings,

² Review of the MWSP. Sweco Groner, and the Centre for Economic Development and Administration, Tribhuvan University. March 2004.

correspondence and any facilitation by your office will not result to our satisfaction and policy compliance as it appears now.'

'We therefore, would like to request you to thoroughly investigate the above claims and provide us with satisfactory solutions. But at the same time, we firmly believe that some of the issues and problems of the Bank's policy violations in the MWSP are beyond the capacity of the SPF'

18. The lead complainant, Mr. Gopal Siwakoti 'Chintan', representing the Water and Energy Users' Federation-Nepal (WAFED), has issued a note clarifying the position of the complainants (Appendix 3). *It is against this background that SPF's assessment of the complaint was undertaken.*

E. SPF's Assessment

19. Extensive discussions during the assessment process focused upon two critical areas:³

- (i) The extent to which the claims made by the complainants have any substance; and
- (ii) Independent of the complaint, the efficiency and effectiveness of project implementation.

20. In general, SPF's discussions indicate a genuine willingness on the part of the Government to implement the project in line with ADB policies and a dedication to the implementation of the resettlement plans, the EIA, the SUP and the various forms of planned mitigation measures. There is commitment to project success. However, in the current environment, not only must those responsible for the Project work to deliver the intended impacts, they must also be *seen* to be working towards that end. Improvements in communications and participation are required (see Section J below).

21. Discussions at Nepal also focused upon the scientific and social reports which form the basis of the complaints made by Mr. Siwakoti on behalf of WAFED. It is not the function of the Office of the Special Project Facilitator (OSPF) to comment upon the rigor of the science involved in the project design, to attempt to 'second guess' the experts involved in the various investigations and planning processes, nor to reopen the debate on the original project design. However, it is clear, to the objective outsider, that the professional staff, in both Manila and Nepal, are committed to the science and design of the Project, believing that the necessary processes and the appropriate checks and balances are present in all aspects of the investigation and planning. They see no serious flaws in the protocols or the scientific method used to make the assessments and to develop the Project in accordance with the policies and procedures of the Government and the donors.

³ Assessment in the field was carried out by N.P. Samarasingha, Special Project Facilitator and L. McMillan, Consultant from 7-16 June 2004. K. Oswald, Senior Project Facilitation Specialist; R. Robidillo-Ortega, Consultation Coordination Officer; and G. San Agustin, Executive Assistant provided support at ADB headquarters.

22. In addition, detailed discussions on compliance issues and on the implementation of the project were held with all claimants, nongovernment organizations and civil society from both Kathmandu and the Melamchi Valley, local people in the Melamchi Valley (affected and unaffected, compensated and not), representatives of ethnic groupings, experts in water management in Kathmandu (both for and against the project), government officials (both past and present), the Embassy of Norway, the managing consultants for the project, academics and local consulting staff. Apart from isolated personal grievances, generally revolving around compensation, the vast majority of affected people are supportive of the Project and are satisfied with the compensation received, albeit through a slow process. A few groups, however, expressed concerns regarding the impact of the access roads upon community forests and farming, and the possible impact upon irrigation in the Melamchi Valley below the intake point of the tunnel. In addition, there is concern at the slow speed of planning and the delivery and content of the SUP, particularly with respect to ethnic minority groups and women. In the interests of fairness, it should be noted that there is also a vocal minority of stakeholders (lawyers, ex-government officials, journalists, engineers and academics) who question the validity of the whole project design and intent. These people form the constituency of the complaint filed by Mr. Siwakoti.

23. An essential aspect of the situation surrounding the complaint centers on perceptions of what constitutes appropriate, high quality research, feasibility study, design work and participation. The position of the complainants is not necessarily that there are serious scientific flaws in the process. Their position, rightly or wrongly, is that there was insufficient public discussion and consultation during project design, particularly regarding other possible options for providing water to the Kathmandu Valley. They are more concerned with the *processes of decision making and consultation* adopted by ADB and the other institutions involved than they are with the specifics of the complaints. Resolving the current complaint therefore, from the point of view of the complainants, requires revisiting of the original planning and decision making. While the individual complaints and complainants require proper attention, it is clear that the documentation has been filed to attempt to open a *process debate* with ADB regarding all projects of this size in Nepal in general and MWSP in particular.

F. Detailed Position of Complainants and SPF's Recommendations

24. Each complainant was interviewed regarding their situation as potentially adversely and materially affected people. The following paragraphs summarize the conclusions and recommendations of SPF as a result of the discussions. Where recommendations and actions are offered, these have been discussed with the complainants and a solution reached, subject to review where shown.

1. Complainant: Mr. Gopal Siwakoti 'Chintan'

Complainant's Position: "Co-ordinator, WAFED and affected person in the Kathmandu Valley"

Nature of the Complaint

Mr. Siwakoti accepts that he is not personally and materially affected by the project. He has submitted no claims. His issues are general in nature and revolve around the availability of information and the participative process. His

detailed position is shown at Appendix 3. His concerns are on the broad issues discussed at G. below. As noted above, and stated in detail in Appendix 3, Mr. Siwakoti's intention is to use the compliance review process to attempt to open a public debate on the merits of MWSP. He wishes to discuss, in open forum, with all parties concerned, the relative merits of MWSP and other potential options in solving the water problems of Kathmandu. His requests for information are in furtherance of this aim. Through SPF, and, if necessary, through ADB's compliance review process, he intends to attempt to force a public debate with the senior management of ADB and other donors/funding sources. As such, the specifics of his complaint are a means to an end.

As regards the role of Mr. Siwakoti in the complaints made by the other three complainants, he initially agreed to visit the Melamchi Valley to discuss the complaint in the presence of Melamchi residents, but during the visit of SPF changed his decision and did not accompany SPF to the field. No reason was given for the change. WAFED was represented in the Melamchi Valley only by Mr. Ram Bahadur Khadka, a complainant. Regarding the eligibility of Mr. Siwakoti to represent the interests of the people of the Melamchi Valley, SPF was presented with no further evidence, other than a claim by Mr. Siwakoti to have a further 180 cases which he could bring to the attention of ADB.⁴

Recommendation

The recommendation of SPF is that Mr. Siwakoti be provided with access to ADB-owned documents and the reports on the provision of water to the Kathmandu Valley by Binnie and Partners UK 1988, Stanley and Associates 1990, Snowy Mountains Engineering Corporation, Australia 1992 and Acres International, Canada.⁵ Both the Nepal Resident Mission (NRM) of ADB and MWSDB insist that these documents have been available publicly for some time and that WAFED and its associated organizations have received copies. Whether this is true or not, it is the recommendation of SPF that MWSDB, supported by NRM, proactively provide Mr. Siwakoti with all relevant project documentation. Where the documents do not belong to ADB, SPF recommends that both NRM and MWSDB provide Mr. Siwakoti with all possible assistance in obtaining copies of the documentation.

SPF and the relevant operational departments of ADB, together with NRM and MWSDB, have a responsibility to monitor the flow of documentation to Mr. Siwakoti to ensure he receives access to all information in accordance with ADB policies. All parties have agreed to this role. Mr. Siwakoti should maintain communication with SPF, monitoring the information situation and informing SPF of any violations. Mr. Siwakoti has agreed to allow a period of three months to pass to allow for improvements in document flow before taking any further action. After three months, a review of the flow of information should be held by all parties involved.

⁴ On 22 June 2004, Mr. Siwakoti forwarded claims on behalf of five additional claimants. These claims will be processed separately.

⁵ See Appendix 4 for e-mail letter from Mr. Siwakoti received on 22 June 2004 for the list of documents.

2. Complainant: Mr. Hasta Pandit

Complainant's Position: "Representative, Melamchi Local Concern Group and affected person/family. Ichowk VDC 6, Melamchi Valley."

Complaint

Mr. Pandit's complaint is general in nature. His claim is that he has not received the report on irrigation and water flow below the tunnel intake on the Melamchi River. In particular, he wants to understand the projections for water flow and usage in the rice fields below the point where water is drawn off.

In addition, Mr. Pandit would like to receive, in writing, a *guarantee* that there will be sufficient water for irrigation below the pipeline. Provision of such a guarantee is beyond the terms of reference of SPF. However, it was pointed out to Mr. Pandit that the Project provides for such guarantees. MWSP should make sure, through its communications and community liaison activities that people in the Melamchi Valley are aware of the guarantees provided.

Recommendation

The recommendation of SPF, discussed and agreed with Mr. Pandit, is that Mr. Pandit will be given full access to the reports regarding irrigation. This recommendation is made despite the insistence of both NRM and MWSDB that the reports have been made available to him and to related organizations several times.

MWSDB has agreed to copy the relevant reports and to inform Mr. Pandit of their availability. Mr. Pandit will collect the documents by arrangement from MWSDB or NRM. NRM would oversee and verify the transfer of documents, which should take place within one month, depending upon Mr. Pandit's availability. As was the case with Mr. Siwakoti, general progress towards information sharing should be assessed at the end of three months.

3. Complainant: Mr. Pitambar Bhandari

Complainant's Position: "Chairperson, Federation of Community Forest Users Nepal, Sindhupalchowk District Branch. Kiul VDC 3, Melamchi Valley".

Complaint

Mr. Bhandari is claiming for damages to a canal and loss of earnings for his water-mill for a period commencing 1997 when road construction was the responsibility of the Melamchi Water Company (a company of the Government of Nepal which predates ADB involvement in the project). His land lies two kilometers upstream from Chanute Bazaar. He is further claiming that a landslide caused by road construction damaged forestry on his property and has filed an additional claim for compensation (May 2004). Mr. Bhandari's claim is complex as it involves estimates of lost income over several years which predates the involvement of ADB. The issue is further compounded by the

agreement of the Melamchi Water Company to contract him to repair the damage to his canal and to provide him with the equipment to make the repairs. If carried out properly, these measures should have minimized the loss of earnings caused by the damage to the canal, thereby affecting the level of the claim. In addition, there is some evidence that the opening of another water-mill close to that of Mr. Bhandari may have contributed to his reduced earnings through increased commercial competition. If this is found to be true, it may not be the responsibility of the project to provide compensation.

Recommendation

Mr. Bhandari has received partial compensation amounting to NRs 592,832 (approximately \$8,300) for land from the project, although he is unhappy that the value allocated to his land was lower than in other areas. (The process of valuation was undertaken by a committee comprising both experts and local representatives). The claims for the canal, for lost income from the water-mill and for the landslide are under investigation by MWSDB.

As part of the normal processes, this complex claim would, in time, have been investigated and eventually settled. However, as a gesture of good faith, SPF has asked MWSDB to give priority to the claim and to expedite its processing. SPF will remain in close communication with both MWSDB and Mr. Bhandari to review progress.

4. Complainant: Mr. Ram Bahadur Khadka

Complainant's Position: "Representative, WAFED, Melamchi Branch and affected person/family. Palchowk VDC 4, Melamchi Valley."

Complaint

Mr. Khadka is claiming for *actual damages* to an irrigation canal which feeds his rice fields. Further, he is claiming for *anticipated damages* to his agricultural land which may be incurred as a result of falling rock caused by the eventual blasting of a large rock downstream from Chanute Bazaar on the opposite bank of Melamchi River.

Recommendation

Mr. Khadka's claim for damages caused to his canal was discussed with MWSDB and the project management consultant. The conclusion is that the canal is subject to a build up of silt and other matter which would occur during the normal course of events and is unaffected by the project.

The claim for compensation for land that may be flooded due to falling rock changing the direction of the river anticipates future adverse material affects. Mr. Khadka was assured that systems exist to investigate his complaints if future damage is incurred. Further, the blasting of the rock has been delayed for two years due to the activities of insurgents. There is no immediate prospect of blasting in the area downstream of Chanute Bazaar.

SPF has agreed with the project-managing consultant that, as a gesture of goodwill, Mr. Khadka's irrigation canal should be cleared. However, it is the opinion of the project management consultant that the canal, because of its position, will continue to silt up naturally every year. It is recommended that Mr. Khadka consider relocating the canal. NRM and MWSDDB should continue to monitor the situation regarding the potential flooding of Mr. Khadka's land due to future blasting of the rock. If flooding occurs, there is an effective system for considering claims at that time.

G. Discussion of the Seven Issues

25. The allegations made on each of the seven issues are very general and are related more to the wider aims of the complainants than to a specific violation of ADB policy. *Other than the specifics of each individual complaint discussed above, the complainants provided no concrete evidence of systematic and serious non-compliance with ADB policy.* It is clear from SPF's discussions and from examination of documentation that there is ongoing and considerable commitment to planning and mitigation work in each of the seven specified areas of complaint:

- (i) Improvements in information flow have been implemented, which will be further assisted by recommendations made in this report;
- (ii) There has been a wide ranging process of participation undertaken by MWSP including workshops and consultation meetings. This process will improve with further capacity building and any improvement in the security situation;
- (iii) Information is readily available in libraries in Kathmandu and Melamchi. The website contains relevant documents. Many documents are published in Nepali;
- (iv) Mitigation of environmental and agricultural damage caused by access road construction is ongoing;
- (v) The majority of the current land acquisition, compensation and resettlement cases have been settled. Three hundred of the 328 cases which have been carried over from the original government work on the MAR have been settled. The remainder, which are more complex, are receiving attention;
- (vi) The SUP is intended to provide for the general social uplift of the people in the Melamchi Valley. A significant part of the budget is exclusively for the uplift of socially disadvantaged sections of the population, including women and ethnic groups, with preference for education, training and scholarships being given to those groups. The SUP, as planned, provides significant benefits for both project affected and unaffected groups in the Melamchi Valley;
- (vii) Rigorous monitoring of water flow in the Melamchi river is ongoing with a view to ensuring adequate water for agriculture and irrigation;

- (viii) Forests and residents in four of the seven community forests affected by the project have already been taken care of. The remaining three are in progress; and
- (ix) Newly created conflict response teams, namely the Environment Issues Resolution Team (EIRT) and the Community Issues Resolution Team (CIRT) operate regularly in the Melamchi Valley and have handled grievances. These teams represent a significant innovation for MWSDB.

H. Conclusions

26. This complaint has to be looked at from two perspectives. At a superficial level, there are four complainants who assert that they have been affected by the implementation of the project. The overt claims by each of the four individuals are discussed in F. above. *Each specific claim can be accommodated through the effective delivery of documentation or by expedited processing as recommended.*

27. At a more general level, as discussed above, the claims can be seen as merely the means to access the process of compliance review, not with any great hope or expectation that the individual claims will be found to be examples of policy non-compliance but as tools in opening a much wider debate on the legitimacy of MWSP as a key solution to the water problems of Kathmandu. As noted in para 21, SPF adopted the position that reopening the original debate went beyond the terms of reference for OSPF and that the focus of investigation should be upon the specifics of the complaints. *As such, while there are opportunities for improvement, there would appear to be no grounds for accepting claims of non-compliance in the implementation of the Project.* However, in identifying the potential need for performance improvement and by ensuring that all parties involved in implementing MWSP do so in the interests of the Nepali people, the four complainants have played a valuable role.

28. The provision of documentation is an important step in ensuring that civil society play its rightful role in project monitoring. If, after receipt and review of the documentation requested, the complainants, in particular Mr. Siwakoti of WAFED, still have cause for concern regarding project design and implementation, they should be free to bring their complaints to the attention of the Government of Nepal and the co financiers.

29. SPF's role with regard to the complaint could end after the recommended action is satisfactorily implemented.

I. The Implementation Environment

30. While there is no concrete evidence of serious non-compliance with policy which would precipitate investigation by the compliance review panel, there is scope for improvement in project implementation.

31. SPF's assessment of the complaints, therefore, also focused upon the progress and effectiveness of the implementation of the project. The operating environment within which implementation is taking place is difficult. This has, in the opinion of all parties concerned, produced major delays. These delays have given rise to a level of dissatisfaction with the project among certain groups which is reflected in the types of complaints being received.

32. In facilitating a solution to the current complaint, it was clear to SPF that addressing issues of capacity building in MWSDB is critical to project success. The project is at an early stage of implementation. Capacity and organizational shortcomings must be dealt with now if they are not to inhibit performance in the future as the project moves into more complex stages of implementation including major engineering works, further land acquisition and resettlement, the complex participative discussions regarding the water distribution system in Kathmandu and the further involvement of key stakeholders, including civil society. In particular, management systems, communication, participation, the delegation of authority and staff responsibility require improvement. The position adopted by SPF regarding management capacity is consistent with the final report of *Sweco Grøner AS and the Centre for Economic Development and Administration at Tribhuvan University, March 2004: "Review of the Melamchi Water Supply Project"*, which identified management capacity, structure, decision making processes, the membership and organization of the Board of Directors, and the lack of clarity in staff roles and responsibilities as clear barriers to performance improvement.

33. It is not the intention of OSPF to suggest wholesale solutions to the problems discussed above. However, in the interests of contributing to an immediate improvement in project implementation, a range of measures are discussed at J below. These measures are compatible with those of the report referred to above.

34. The critical operating environment factors from the point of view of implementation are:

35. *The continuing problem of security in the Melamchi Valley.* The takeover by insurgents of areas of Nepal through which the access roads and the tunnel will run, severely hampers progress. It is difficult to maintain good participative and implementation practices in an environment of personal risk. As a result of the security situation, the ability of MWSDB to make physical progress in the Melamchi Valley and to manage the perceptions of local people is very constrained. The lack of visible presence of senior officials of MWSDB results in a *perception of a lack of on-the-ground progress* on the part of some residents in the valley. However, in fairness to the position of MWSDB, it may be pointed out that the day before the visit of SPF to the Melamchi Valley a policeman was killed in an ambush attack on the MAR and in the past there have been attacks upon the contractor's camp using explosives. These incidents put the problems faced by MWSDB into context.

36. *The relative 'newness' of the requirements of managing a large, complex project to the officials of MWSDB.* MWSDB management freely admit that they had little experience of running projects of this nature and complexity and that there was a very sharp learning curve in terms of both personal development and organizational systems. This learning curve is continuing.

37. *The commitment of the project to honor claims for compensation which extend back in time to the original construction of the MAR which was under the control of the Government of Nepal and therefore not subject to ADB policies.* The decision to accept claims for compensation/resettlement for actions carried out several years before ADB involvement illustrates the willingness of the project to be fair and equitable and to comply with the policies of ADB, but it increases the administrative task enormously, resulting in processing delays.

38. *In many cases, the lack of legal paperwork by the claimants has delayed the processing of claims.* While the intent is to maintain goodwill and community involvement in the project, the reality of maintaining the fairness and legality of the system has inevitably created delays.

39. *These factors combine to create the perception that little is happening in terms of project implementation.* The affected people and the general population that would benefit under the SUP and from additional employment, for some time, have been living with the *promises* of benefits to come with little evidence that they can expect action in the near future. From their perspective, the *reality was that nothing tangible was happening*—that the benefits would accrue in the future was still *only a promise*. Past experience on the part of some of the marginalized groups in the Melamchi Valley make them suspicious of, as yet, undelivered promises. The early shortcomings of MWSDB in terms of organizational capability and the operating environment in the Melamchi Valley created the conditions for others to interpret the perceived lack of activity as policy non-compliance.

J. Improving Implementation

40. There is no doubt that if the security situation were to ease, reform of the operations of MWSDB would produce significant performance improvements in the delivery mechanisms of the project. Indeed, in spite of the organizational and operating environment difficulties, significant improvements in delivery are in progress or about to be launched: the vast majority of compensation claims have been processed and concluded; the SUP is launching initiatives in local services and infrastructure including ambulance services, nurseries and school sanitation. In environmental management, significant steps have been taken to mitigate or to repair environmental damage around the quarry and the MAR.

41. However, operating on the assumption that the security situation will not improve markedly in the short term, any further improvement in implementation must be generated by improvements in the capacity of MWSDB. Critically, these improvements must be implemented with well-defined results targets which are in the public domain, together with the changes in management decision making and behaviors which necessarily underpin this type of results focus. Giving MWSDB a results-based focus, open to public discussion, would go a long way to altering the perceptions held of MWSDB by sections of the population.

42. The critical issues for improvement and the development of a results focus, identified through discussions with MWSDB staff, consultants, NRM, civil society and the residents of the Melamchi Valley and Kathmandu are:

43. *Communication and Participation.* A critical role of communications in the management of a complex undertaking such as MWSP is the creation of 'meaning' for all stakeholder groups. Stakeholders must be given the information they require in a form that allows them to understand what the project 'means' to them. If project managers do not create 'meaning' for affected people, the affected people (and others) will create their own, often opposing, 'meaning' from the same published facts. Delays and a lack of presence in the Melamchi Valley have enabled this to happen with some groups. The only way to solve this problem is increased visibility, improved dialogue with all stakeholders, and a dedication to creating and managing real 'meaning'.

Recommendations:

- (i) *Review of the public relations policy and terms of reference to widen the scope. Incorporation of a measurable results focus;*
- (ii) *Training for MWSDB management in communication skills, focusing particularly on two-way communication with all stakeholders (both supportive and critical);*
- (iii) *Training of MWSDB staff in the operation of participatory mechanisms of project planning and implementation, following ADB models of participation developed by the Regional and Sustainable Development Department of ADB. These models have been given to staff of NRM for discussion with MWSDB;*
- (iv) *Review of the operation of steering groups, ensuring that they incorporate all stakeholders (for example women, local people etc); and*
- (v) *In the interests of transparency, scientific measurements, (for example, of river volume), should be taken with the participation of representatives of the community.*

44. *Visibility.* It is essential that means are found to further enhance visibility in the Melamchi Valley. There is a history of short-term involvement by officials in the valley which ends with changes in the security situation. In addition, allowances and living conditions provided for MWSDB officials in the Melamchi Valley are inadequate.

Recommendations:

- (i) *Senior management must show a presence in the Melamchi Valley at regular intervals. It is only by maintaining presence that people will learn to trust the actions and promises of the project and MWSDB. However, it is accepted that this recommendation may be difficult to implement in the current security situation;*
- (ii) *Regular visits to the Melamchi Valley must be undertaken by technical officials of MWSDB. It is not sufficient to leave the work of liaison to*

consultants or to lower ranking officials. People expect to be able to talk to officials who can make decisions and explain practices. The creation of the innovative EIRT and CIRT have made a significant recent contribution to the aim of raising visibility. Their work may be further enhanced by the delegation of more decision making authority;

- (iii) Development of a results focus in the management of participation and visibility; and*
- (iv) Immediate improvement, in advance of the establishment of the contractor's camp, in the expenses, security and living conditions for middle ranking MWSDB officials for visits to the Melamchi Valley.*

45. *Decision Making, Responsibility and Authority.* The culture of Nepal, with respect to decision making, responsibility and authority, is hierarchical, where decisions are traditionally taken by the most senior officials. A culture such as this can make the management of complex projects difficult. The hierarchical culture is particularly strong in government, from where the staff of MWSDB are drawn. More junior officials wait for direction from above, even when the most senior management have attempted to make it clear that they want to delegate responsibility for decision making. To date, from the perspective of project consultants working with MWSDB and the staff of NRM, there is evidence that despite the commitment of MWSDB senior management to devolved decision making, there remains a reluctance to assume responsibility at the lower levels. Project implementation would be accelerated if real decision making were to be devolved.

Recommendations:

- (i) For individuals to feel comfortable in accepting decision making responsibility there must be clarity regarding the extent of their decision making authority. Internal discussions are required to bring clarity to issues of decision making authority and responsibility and to enable officials to begin to exercise judgement and initiative. This process may benefit from external facilitation;*
- (ii) In line with the above discussions, MWSDB needs the immediate creation of clear job descriptions and results based target setting for all staff. If medium and long term improvements in the management of the project are to be achieved, an appropriate and transparent results focus should be developed in the operations of MWSDB. The results focus should provide indicators of performance for activities and for staff;*
- (iii) The need to clearly delegate authority is also present at the highest level of MWSDB. For the Executive Director to be able to take timely decisions there has to be a clear separation of the roles of the Executive Director and the Board of Directors, delegating to the Executive Director the ability to make high-level decisions that fall within policies set by the Board. This separation would result in faster decision making; and*
- (iv) An enhanced role for the managing consultants in the project, extending their brief to cover 'management issues' in the operation of MWSDB.*

46. *Building Management Capacity.* The management of MWSDB have experience of managing technical projects in Nepal. However, by their own analysis, they are inexperienced in managing a project which has a complex interaction of technical, social and environmental issues and which operates under a policy regime as rigorous as that of ADB. In a short time, MWSDB have learned quickly and have adjusted to the new realities, performing well enough to ensure compliance. They now need to consolidate their learning through facilitated planning, not of the *issues and technicalities of the project*, but of the *management processes* required to efficiently and effectively run all aspects of the work of MWSDB.

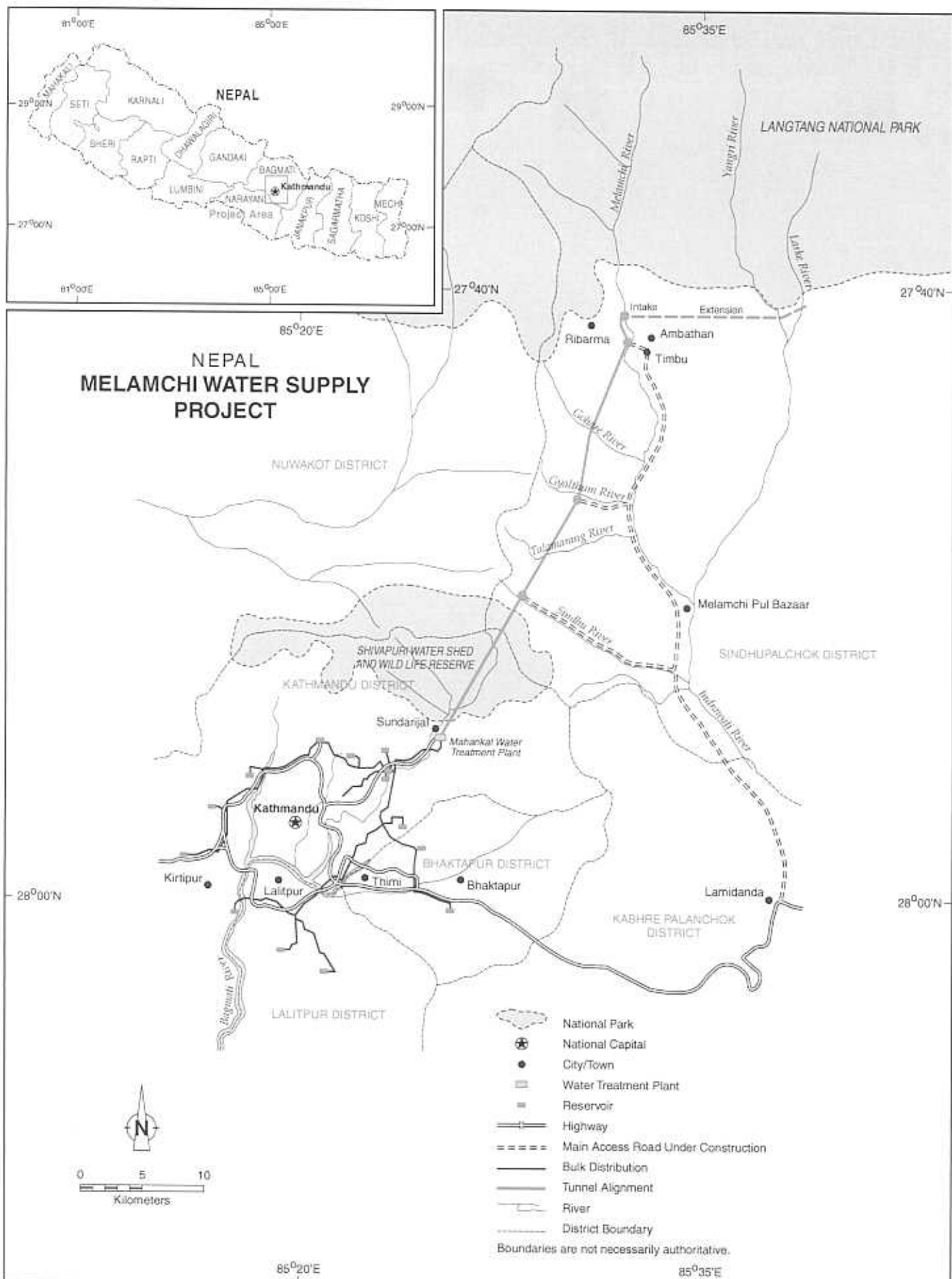
Recommendations:

- (i) *An effective way of raising competence levels in senior management is to study a model of good management operating in circumstances similar to those of MWSDB. Visiting and analysing the management of an ADB project similar in objectives and complexity to those of MWSP would produce a jump along the learning curve. ADB may wish to consider offering support for such a development initiative; and*
- (ii) *Extending the role of the project management consultants to include mentoring and coaching.*

47. As discussed above, in the following weeks and months there is potential for significant and tangible improvement in on-the-ground delivery of project benefits. This alone should make a significant contribution to improvement in community relations and perception of project effectiveness. The recommendations made above are intended, over a reasonable period, to build upon the implementation processes already developed by MWSDB.

48. Even at the risk of exceeding SPF's mandate, the above improvements, which are achievable, are recommended for consideration by MWSDB, the Government of Nepal, ADB, and the other co-financiers of the Project.

LOCATION MAP



LETTER OF COMPLAINT

Embargo date
May 1, 2004

Special Project Facilitator
Office of the Special Project Facilitator
Asian Development Bank
6 ADB Avenue, Mandaluyong City
Manila, Philippines

**Ref: Request for the investigation of policy non-compliance in
Melamchi Water Supply Project (MWSP)**

Dear Sir/Madam:

First of all, we would like to welcome the new accountability mechanisms that the Asian Development Bank has put in place – both the Office of the Special Project Facilitator (SPF) and the Compliance Review Panel (CRP). We hope that the people affected by ADB-funded projects will have better security and protection of their rights and interests contrary to the past.

The case that we are bringing into your investigation today is related to the Melamchi Water Supply Project (MWSP) funded by the Bank and other donors/lenders. This project intends to divert the Melamchi River to Kathmandu, the capital of Nepal, for drinking water supply from one watershed to another – the inter-basin transfer.

We, the undersigned representatives, are directly affected individuals and groups both in Melamchi and Katmandu Valleys. As local group and a national federation of water and energy users and communities, we also represent the wide interests of the people and the communities adversely affected and would be affected by the MWSP.

In the past, we held series of meetings, discussions and correspondence with the ADB officials, both in Kathmandu Office and Manila Headquarters regarding the various issues of concerns and the non-compliance of Bank's policies (*see the attachments*). These issues and problems of non-compliance and the expected remedies can be summarized as below:

1. Access to information

In the first place, there has been no availability of critical information and documents to the claimants and others in an adequate manner before the project was finalised. All the major decisions were made about the MWSP without the release of such information and meaningful public participation. Some information provided during the project implementation process also found not sufficient. The lack of availability of information

in local Nepali language has also remained a major problem for the affected people and the families to fully understand the gravity of impacts to their rights and interests and the mitigation plans, except a few leaflets describing the project and the 'benefits' that it would bring. The problem is that the majority of the people both in Melamchi and Kathmandu Valley do not understand English language.

Expected remedies:

The release of all critical and relevant project documents and information in local language as to the satisfaction of the claimants before the project implementation, including the feasibility studies and options assessments, cost-benefit analysis and agreements with the donors/lenders as well as the lending conditionalities that may adversely affect our rights and interests now and in the future.

2. Environmental Impact Assessment

The main problem about the Environmental Impact Assessment (EIA) is the process and methods of these studies in the absence of basic information and documents in local language in a timely manner. There also have been serious flaws in the EIA process. It seriously fails to study and incorporate all the environmental/ecological impacts by the project on the local ecology as well as the local livelihoods, e.g. the effects on the agricultural land in Palchowk 4. The suggested mitigation plans are also grossly inadequate.

Expected remedies:

There is an urgent need to provide the main EIA documents in local language and their scientific review by independent experts, including the claimants. There is also an urgent need to identify the lacunae in the present EIA and conduct a participatory, supplementary or another study incorporating the neglected/left out areas of present and future social, cultural, ecological and economic impacts and mitigation, including local training and employment. We also demand for the construction of the bridge in Chanaute only after re-routing the access road through Chanaute Bazaar to avoid the high cost as well as to safeguard the Bazaar from indirect displacement.

3. Land acquisition, compensation and resettlement

The land acquisition, compensation and resettlement process and related activities have been grossly arbitrary. There was and still is the lack of minimum standards to be made applicable to all the affected persons and the families when making decisions about who to displace, how and where. The displaced families have not been given adequate time to move and resettle and there has been no reasonable offer for resettlement. The payment of cash compensation in an arbitrary manner has been the main practice. The project also failed knowingly and intentionally to assess all the direct and indirect impacts by the project activities and provide adequate compensation and relocate them, e.g. the effects and displacement of the traditional *ghattas*, water mills and electricity-run economic activities.

Expected remedies:

In the absence of a clear national policy or guidelines for resettlement and rehabilitation of project affected families and/or peoples, there is an imperative for a complete and

rigorous review and assessment of the land acquisition, compensation and resettlement process, and there has to be a sufficient provision for compensation and relocation or resettlement of affected persons, families and income-generating cottage industries, including compensation to the loss of future income as applicable, e.g. the permanent loss of employment. The rehabilitation aspects of this package must be very carefully examined to ensure that displaced families are not worse off with the project.

4. Indigenous peoples

There has been a gross denial of the rights and interests of the indigenous peoples who are and will be affected by the project – both directly and indirectly. They include the *majhis* (traditional fishermen/women) in the downstream as well as the majority *Tamang* communities in Melamchi Valley.

Expected remedies:

There has to be a separate study of the effects on the traditional livelihoods of the indigenous communities in Melamchi who are and will be affected by the project activities directly and indirectly. There must be a guarantee of free, prior and informed consent about their displacement and mitigation plans.

5. Social Uplift Programme

The Social Uplift Programme (SUP) has been grossly criticized and rejected by the claimants and other affected communities in Melamchi Valley. The problem with the SUP is the lack of adequate consultation and involvement of the local people throughout its planning, implementation and monitoring. The SUP has been largely consultant-imposed from the top. The SUP seriously fails to address the local needs, the local priorities and the locally-managed democratic process. It also fails to include the most neglected and marginalised communities, both socially and economically, in the SUP and integrate it into the overall short-term and long-term local development activities, the trafficking-prone *Tamang* communities suffering mainly from the worsening social and economic conditions and cultural exploitation.

Expected remedies:

The SUP document must be provided to the local people in local language and re-design it by applying the free, prior and informed consent of the local people and the communities who are supposed to benefit from this.

6. Agriculture

The project has seriously affected the agriculture system in the Melamchi Valley due to the construction of the access road(s) through the most fertile land by the bank of the Melamchi River although it could be avoided to a greater extent. The loss of small and large scale irrigation canals after the diversion of the Melamchi River will have further loss in food security, including the adverse effects in local ecology and bio-diversity. There is also a question of inadequate investigation on the downstream impacts of the river diversion to the long-standing agricultural lands of the indigenous people and others in Melamchi Valley.

Expected remedies:

There is an urgent need to re-assess the agricultural system and water consumption pattern/needs, both now and in the future, and guarantee the minimum flow of water all the time. The water right of the local people and the communities, especially the local and indigenous peoples, must be guaranteed through a legally binding agreement and whether the proposed 'minimum' flow is actually the needed minimum flow has to be determined after a constructive and representative scientific debate and discussion in public. The present and future, direct and indirect economic loss should be adequately addressed by properly compensating the affected/would be affected farmers from the loss of irrigation canals and facilities.

7. Forestry

The Melamchi Valley is rich in community forestry. The project has caused and will cause serious impacts in some community forests. The current problem is the lack of adequate arrangement for the continuing access to and management of these forests..

Expected remedies:

There has to be a proper assessment of the community forestry loss and adequate compensation has to be offered to the communities who are benefiting from these resources.

In the case of the effects of the MWSP in Kathmandu Valley with its mix largely urbanized, migrant and semi-rural population with a very burgeoning lower income segment due to the long-standing situation in the country, there are perhaps even more serious problems than in Melamchi Valley. However, the main demand of the claimants with regards to Kathmandu Valley is the release of all documents and information relating to the MWSP, including all studies on options assessments, recent studies on water optimization and management, and lending agreements, including grants.

We are pleased to note that the Bank and the project officials, including the officials at the Melamchi Water Supply Development Board (MWSDB), His Majesty's Government of Nepal, were open in discussing issues and maintaining active communications during this period. But our main problem throughout these meetings and correspondence is that they largely ended up as the "public relation" and "damage control" exercises rather than addressing the actual problems and ensuring compliance.

On our side, we, with great amount of patience and efforts, gave the Bank unique opportunities, as well as the MWSDB for this matter, to correct the policy violations and ensure compliance. In our letter of 29 March 2004 in Nepali, we requested the Bank to urgently address the issues and problems caused by the MWSP which we also copied to SPF, but we failed. We also submitted a joint memorandum to the Bank and other donors on April 19 to address the problems of non-compliance during the Joint Review Mission (JRM), held in Kathmandu on April 19-27 and provide us some satisfactory remedies. In addition, we also made our sincere requests to the Bank as well as other donors to arrange a meeting with us and other affected people and the communities during their field visit in Melamchi Valley, and if possible, in Kathmandu before or after the JRM meeting, but we failed.

Furthermore, instead of finding solutions to these problems through face to face meetings during the JRM, we faced a situation in which the Bank officials together with MWSDB officials and other donors linked our untiring efforts of dialogue and negotiations to the general civil society meetings and public relation exercise. When we raised the issue of how, we, the claimants, have different concerns as directly affected stakeholders continuously engaged with the Bank since June 27, 2003 as regards to other non-governmental organisations who may have other concerns in MWSP, we were criticized for conducting "grossly inappropriate and misleading" activities which we totally disagree (*see the letter, dated April 27, 2004 by Mr. Keiichi Tamaki, Senior Urban Development Specialist/Mission Leader, ADB and others*). We, unfortunately, were compelled to consider this letter as an example of the complete breakdown and ineffectiveness of our efforts of ensuring policy compliance but the desire of getting engaged in serious accusations and *fake* civil society representations in relation to our directly affected rights and interests.

As a last resort to our efforts of finding solutions to the affected people and the communities in Melamchi and Kathmandu Valley, we generously accepted a sudden visit of Mr. Edward M. Haugh, Jr, Director, Social Sectors Division, South Asia Department, who was joined by Mr. Keiichi Tamaki, Mission Leader and Peter Logan et al of ADB's Nepal Resident Mission at our office on April 28, 2004 and expressed our concerns. But, unfortunately, this meeting also ended up with a strong feeling of lack of needed seriousness, particularly on the part of the Mission Leader and the ADB's Resident Mission staff. At one point, when we raised the issue of our requests for separate meeting with the claimants and other directed affected/engaged stakeholders, we were accused of trying to establish a "monopoly" in civil society engagement, and we refused.

Apart from these unpleasant pettinesses, we did elicit two extremely important admissions from the ADB team led by Mr Haugh. First of all, the team did admit unanimously that the technical basis of the Melamchi diversion was founded on an "inexact science" and that one can never be sure about these flow calculations and measurements from year to year. This was an important admission as the concerned communities of Melamchi have been raising precisely this very same issue of the exactness of these figures and what they will mean for them and the environmental needs once the project is commissioned.

Secondly, the team also clearly stated that the water needs of Melamchi, particularly the needs of those who depended on the river below the point of diversion, had priority over the needs of Kathmandu. This was the ready admission of the project management when a pointed question to this effect was asked by Mr Haugh. These two admissions lead us to be, in our turn, very puzzled why the Bank's management team has behaved in a very inflexible and disingenuous manner for so long; and is still continuing to do so when such issues as have been raised by the Melamchi communities and the claimants are admittedly quite valid and warrant further examination.

To conclude, we are now fully convinced that the Bank officials and the project staff are only interested in meetings and correspondence as a public relation exercise as they do to other groups, and not address the specific issues and problems of Bank's policy violations. We are also fully convinced that there will be more dirty politics to divide the civil society and affected groups as we have clearly seen in the past two weeks. It is also our full understanding that the issues and problems related to the Bank's policy violations and any

satisfactory remedies through meetings, correspondence and even any facilitation by your Office will not result to our satisfaction and policy compliance as it appears now.

We, therefore, would like to request you to thoroughly investigate the above claims and provide us the most satisfactory solutions. But at the same time, we firmly believe that some of these issues and problems of the Bank's policy violations in the MWSP are beyond the capacity of the SPF. We have done all that we could with the great amount of patience and trust for about a year on a continuous basis with the Bank Management and the project officials. However, we faced a complete breakdown of the dialogue and gave up any hope for satisfactory solutions through communications (*please see the letter to us by the Bank and other donors dated April 27, 2004*).

For further details, please refer to various attachments enclosed herewith regarding the outcomes of previous meetings and communications.

The claimants,

Gopal Siwakoti 'Chintan
Co-ordinator, WAFED
and affected person in Kathmandu Valley

Hasta Pandit
Representative, Melamchi Local Concern Group
and affected person/family
Ichowk VDC 6, Melamchi Valley

Ram Bahadur Khadka
Representative, WAFED, Melamchi Branch
and affected person/family
Palchowk VDC-4, Melamchi Valley

Pitambar Bhandari
Chairperson, Federation of Community Forest
Users Nepal (FECOFUN), Sindhupalchowk District Branch
Kiul VDC 3, Melamchi Valley

ADDITIONAL INFORMATION SUBMITTED TO SPECIAL PROJECT FACILITATOR



**"Water and Energy Users'
Federation-Nepal"**
<wafed@ntc.net.np>

22/06/2004 01:37 PM
Please respond to "Water and
Energy Users' Federation-Nepal"

To: <spf@adb.org>, <nsamarasingha@abd.org>
cc: <hsanagustin@adb.org>, <liam.mcmillan@btinternet.com>,
"Sameer Dossani" <sdossani@forum-adb.org>, "Jessica Rosien"
<jrosien@forum-adb.org>, <icforum@yahoogleroups.com>
Subject: Additional information and list of priority documents

Dear Nalin et all,

Two documents as mentioned earlier.

Regards,



Gopal Additional informaion to SPF, 15 June Kathmand List some key documents and information.

June 15, 2004, Kathmandu

Following our series of meetings during the visit of SPF over the claims on Melamchi Water Supply Project (MWSP), this additional information is provided for further clarity of our claims and positions of contention and agreement with the Asian Development Bank Management and other donors.

1. First of all there are two constituencies that we are dealing with - the Melamchi and Kathmandu Valleys. This current claim is mainly related to the issues in the Valley. An additional claim for Kathmandu Valley-related issues may be filed at a later date.
2. The minimum expectations that we have from the on-going process or from the SPF is the release of all project-related studies, documents and information, including the pre-1990 feasibility studies, 2001 and 2002 water optimization studies, lending agreements and donors' conditionalities. This should immediately be followed by at least two expert level public debates or seminars relating to the MWSP before any further decisions are made with regards to the project, including the selection of the private operator and signing of the management contract. The claimants have no concerns on who did those studies and when since all of those studies are used to justify the MWSP unless the ADB and other donors have conducted their own studies independently. In the later case, it is even more important to release the information.
3. Regarding access to information, it is our firm position that all parties/stakeholders should have equal right and opportunity in this case.
4. A next remedial step would be to conduct an additional Environmental Impact Assessment, particularly on the existing and future water needs in the Melamchi Valley and access road-related compensation and resettlement issues in addition to legally binding local water right and benefit-sharing issues.
5. In the case of Kathmandu, we are beginning to realise that there is and will be enough water available in Kathmandu Valley with existing infrastructure rehabilitation, expansion of distribution network and affordable/subsidised as necessary but universal water tariff. The available information shows that it immediately leads to leakage control, which at the moment is estimated at between 70 and 90% as well as groundwater and rainwater harvesting. In this case, the MWSP will not be needed for some decades to come. The demand of water supply also depends on the population in Kathmandu Valley which is on the massive increase due to the on-going civil war.
6. The present condition of the project offers a perfect opportunity to stop MWSP for an indefinite period of time while continuing to plan and debate on when the MWSP could really be needed for Kathmandu Valley and in that case how it could be made more affordable. One problem with MWSP is that donor' conditionality makes it absolutely unaffordable to the water users as well as the country as a whole. Donors should provide more grants than loans to Nepal if they are really sincere about helping Nepal, and even

in loans, there should be no conditions attached to them except the use of that money for the stated purpose. The rest has to be left to the Nepalis to decide and we are fully capable of it. Nepal's Department of Road can build the roads and the Nepal Water Supply Corporation, the five Kathmandu municipalities and other local cooperatives, the communities and even the local private sector could form a consortium to distribute the Melamchi water once it is available. Therefore, we do not need and we will totally oppose any privatisation of water supply deal in Kathmandu Valley in any form, direct or indirect, now or later, as well as the introduction of a foreign private operator.

7. The donors and the MWSP must understand and recognise the value of water in Nepal as a social, religious, cultural and spiritual good. We respect water as a human right and. We simply do not accept the corporate approach to water for privatisation for commercial purposes.
8. So the meeting point with the ADB Management will be its willingness to engage in dialogue on these issues, start implementing the existing alternatives in Kathmandu Valley which we support in principle and pull out from MWSP for now but continue planning and dialogue for its need and the right timing for construction in the future depending on the future need of water supply in Kathmandu Valley as well as the political situation in the country in general, and the security situation in the Melamchi Valley in particular.
9. But if the SPF finds that the ADB Management and the others donor are not interested to consider these most viable and appropriate options then we will ask the SPF to immediately refer the claim to the Compliance Review Panel as well as inform them to prepare for more claims, more actions and more campaigns locally, nationally and internationally.
10. What the donors/lenders as well as all the others concerned need to understand is that we are doing all this for the following reasons:
 - a. establish a process of democratic decision-making on development projects
 - b. ensure compliance with relevant and appropriate laws as well as the international treaty obligations of both the recipient and donor countries, as well as policy compliance for International Financial Institutions.
 - c. natural resource management with community participation, ownership and prosperity
 - d. guarantee of basic public services such as water and education as the duty of the government and the right of the citizens
 - e. give priority to locally available raw materials, manufactured goods, human resources and skills to make very projects economically cheap and viable
 - f. implement immediately the available alternatives for water supply in Kathmandu Valley and do not impose the MWSP as the only option or the best
 - g. option in the gross absence of transparency but plan it according to the needs in the future and the overall project construction environment in the Melamchi Valley

LIST OF DOCUMENTS REQUESTED BY MR. GOPAL SIWAKOTI 'CHINTAN'

Claim for Access to Information

Selected List of Documents

The 23 July 2003 letter sent by Melamchi Water Supply Development Board mentions the following studies, information and documents which we have been demanding for their full disclosure. The ADB also has responsibility to ensure the release of their release as it has relied on them for lending support to the Melamchi Water Supply Project.

These documents are:

1. 20 different options to supply the water to the Kathmandu Valley from outside the valley sources were studied by Binnie & Partners, UK in 1988. The study short-listed Melamchi and Roshi as potential sources on economic and long-term sustainability grounds.
2. The above study was followed by environmental study on 1990 by Stanley and Associates, which recommended Melamchi as the best option on environmental grounds.
3. The Feasibility Study (that also included the assessment of environmental impacts and mitigation) by Snowy Mountains Engineering Corporation, Australia in 1992 established Melamchi as the best option on environmental, social and economic grounds.
4. Recent study by Acres International, Canada has also recommended the need for Melamchi as a long- term sustainable source of water supply to KV.

The other main information and documents include:

1. MWSP feasibility studies, socio-economic analysis reports and all loan and grant agreements
2. All the Bank's studies relating to Optimising Water Use in Kathmandu Valley 2002-03
3. Special Assistance for Project Implementation (SAPI) on Melamchi Water Supply Project Phase I, 2003 & Phase II, 2004
4. Review of Melamchi Water Supply Project by Norwegian Embassy in March 2004
5. Terms of reference for the management contract

All other information and document that may be requested by the complainants and stakeholders.