

# **ASIAN DEVELOPMENT BANK**

**FINAL REPORT**

**OF THE**

**SPECIAL PROJECT FACILITATOR**

**ON**

**THE MELAMCHI WATER SUPPLY PROJECT**

**NEPAL**

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

(complaint received on 3 May 2004)

**December 2004**

## ABBREVIATIONS

ADB	–	Asian Development Bank
AP	–	project-affected persons
EIA	–	environmental impact assessment
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
SARD	–	South Asia Regional Department
SPF	–	Special Project Facilitator
SUP	–	social uplift program
WAFED	–	Water and Energy Users' Federation-Nepal

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## EXECUTIVE SUMMARY

This is the final report of the Special Project Facilitator (SPF) of the consultation phase of the new Accountability Mechanism of the Asian Development Bank (ADB), undertaken in response to a complaint made against the Melamchi Water Supply Project [Loan No. 1820-NEP(SF)]. The aim of the Project is to provide a sustainable supply of potable water to the Kathmandu Valley by diverting water through a 26-kilometer tunnel from the Melamchi River in 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. It also includes 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 of the Government of Nepal.

The estimated total project cost of \$464 million is financed by the Government of Nepal and seven cofinanciers. 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 noncompliance with ADB policies in the design and implementation of Project. 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.

This complaint had to be examined from two perspectives. At the core of the complaint were the specific issues raised by the four complainants. Two of the complainants were not directly affected adversely and materially. They alleged that they were unable to obtain from the Melamchi Water Supply Development Board certain project-related documents that they were seeking. Whether these allegations were true or not, as a result of SPF’s actions, they have now received the documents in question. The other two complainants are affected but have been treated fairly by the project and have, where appropriate, received compensation. SPF’s consultation process has contributed to special attention and accelerated processing of their claims. The complainants had originally claimed that they would arrange meetings in the Melamchi Valley and Kathmandu with about 30 to 50 persons affected by the Project. However, during SPF’s review and assessment of the complaint, they were unable to arrange these meetings. They were offered a second opportunity at a subsequent stage of the consultation process to arrange these meetings. They did not avail of this opportunity. From a different perspective, the complaint also sought to reopen the debate surrounding the original project design and the potential options for the supply of water to Kathmandu. SPF adopted the position that reopening the original debate was outside SPF’s mandate.

The four complainants have now decided to withdraw from the SPF consultation process and to file a complaint with the Compliance Review Panel based on allegations of policy violations. As in the opinion of SPF, no further action or monitoring is warranted, with the approval of the President, SPF has concluded the consultation process.

## I. 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 well-being of people living in areas covered by 14 village development committees in the Melamchi Valley.
3. It also includes consultant services 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 cofinanciers.<sup>1</sup> ADB’s loan amounts to \$120 million.
5. A key condition of the external funding for the Project is that the Government should agree to charge Kathmandu residents an appropriate levy for water from the Project, which will be used for the benefit of the residents of Melamchi Valley.
6. Construction activity is currently confined to the main access road (MAR), a single-lane earth road in the Melamchi Valley, and other similar 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.

## II. NATURE OF THE COMPLAINT

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

### **Issue 1: Access to Information**

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

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<sup>1</sup> 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 had methodological flaws, ignored some of the environmental impacts of the Project, and had inadequate mitigation plans.

### **Issue 3: Land Acquisition, Compensation and Resettlement**

That the land acquisition, compensation and resettlement processes had been arbitrary and that people had not been given enough time to move. In addition, the complainants stated 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 had been denied.

### **Issue 5: Social Uplift Program**

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

### **Issue 6: Agriculture**

That the Project seriously affected agriculture in the Melamchi Valley. The complaint also claimed that there had been inadequate investigation of the downstream impacts upon agriculture of the river diversion.

### **Issue 7: Forestry**

That the Project had 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 indicated 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 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 had made representations to the Government of Nepal, 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 had not received satisfactory responses to the points they raised.

## **III. ELIGIBILITY OF THE COMPLAINT**

10. Prima facie, the complaint appeared to meet the criteria for eligibility. Document research and interviews with a range of concerned parties led the Special Project Facilitator (SPF) to conclude that there appeared to be, at least for some of the issues of complaint, evidence that there may be cause for concern and further involvement of OSPF. Accordingly, the complaint was deemed “eligible” on 11 May 2004.

11. Notwithstanding the eligibility of the complaint, the following statements, made in the letter of complaint to SPF, made 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, 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.

#### **IV. SPF'S ASSESSMENT AND RECOMMENDED ACTION**

12. SPF's review and assessment process relied on the following.

- (i) Extensive document research by OSPF. This included a review of project-related reports and other documents, back-to-office reports and other reports of various missions and correspondence with the Water and Energy Users' Federation-Nepal (WAFED), among others.
- (ii) Interviews with ADB staff (present and former) and consultants associated with MWSP.
- (iii) A field visit.
- (iv) Detailed discussions on the implementation of MWSP with all complainants, NGOs and civil society groups from both Kathmandu and the Melamchi Valley, local people in the Melamchi Valley (affected and unaffected, compensated and not), representatives of ethnic groups, experts in water management in Kathmandu (for and against MWSP), government officials (past and present, including senior officials of MWSDB and the Ministry of Finance), representatives of cofinanciers, the Embassy of Norway, consultants for MWSDB and academics.
- (v) Services of an independent consultant.
- (vi) A very detailed response by MWSDB to the issues raised by WAFED which was cross-checked by SPF and the consultant.

13. Before SPF's field visit, the complainants informed OSPF that they would arrange two meetings for SPF with several project-affected persons (APs): one in Melamchi with 20-30 APs and another in Kathmandu with 10-20 APs. The complainants did not arrange these meetings, nor did they present any evidence that they represented any others who may have been adversely affected by MWSDB. Instead the lead complainant, Mr. Siwakoti, representing WAFED, issued a note clarifying his position (Appendix 3). The three others had their own individual complaints. In the interests of fairness, it should be noted that Mr. Siwakoti arranged a meeting in Kathmandu with about 10 persons (lawyers, ex-government officials, journalists, engineers, and academics) who questioned the validity of the project design and intent. These individuals were not APs

and did not claim to represent APs. It was against this background that SPF's review and assessment of the complaint was undertaken.

14. Mr. Siwakoti accepted that he was not directly affected materially and adversely by MWSP. He had submitted no claims. His demands included the provision of a long list of project-related documents; two public debates or seminars on MWSP; a new EIA; and an indefinite deferment of the Melamchi water diversion scheme (which is at the core of MWSP), among other things. In the note submitted to SPF, he expressed his views and demands pertaining to external assistance for the water supply in Nepal and MWSP in particular. Mr. Siwakoti also threatened to start public agitation against MWSP in and outside Nepal and to submit repeated claims to the Accountability Mechanism, in the event ADB and other donors did not agree to enter into a dialogue with the complainants on the issues that he had raised.

15. Mr. Pandit's complaint was general in nature. He claimed that he had not received the reports on irrigation and water flow below the tunnel intake in the Melamchi River. He wanted to understand the projections for water flow and usage in the rice fields downstream of the diversion point. He was concerned about the adequacy of water for irrigation purposes during the dry season. Mr. Bandari and Mr. Khadka were directly affected materially and adversely by MWSP. Mr. Bandari was claiming for damages to a canal and loss of earnings for his water mill when access road construction was the responsibility of the Melamchi Water Company (a government company that predated ADB's involvement in MWSP) and for damage caused by a landslide which he attributed to road construction. Mr. Khadka made a claim for actual damages to an irrigation canal which fed his rice fields and for anticipated damages to his agricultural land which may be incurred as a result of falling rocks by the blasting of rock on the opposite bank of Melamchi River.

16. The overt claims of each of the four individuals could be accommodated through the effective delivery of documentation or by expedited processing.

17. At a more general level, the claims, as evidenced by Mr. Siwakoti's submission, sought to open a much wider debate on the legitimacy of MWSP as a key solution to the water problems of Kathmandu. The position of the complainants, rightly or wrongly, was that there was insufficient public discussion and consultation during project design, particularly regarding other possible options for providing water to the Kathmandu Valley. Resolving the complaint, therefore, from the point of view of the complainants, would require revisiting the original planning and decision-making.

18. SPF explained to the complainants that it was not the function of OSPF to comment upon the rigor of the science involved in MWSP design, to attempt to "second guess" the experts involved in the various investigations and planning processes, nor to reopen the debate on the original MWSP design. SPF adopted the position that reopening the original debate went beyond the terms of reference of OSPF and that the focus for problem-solving should be upon the specifics of the complaint. SPF was able during the review and assessment phase to agree with the Government, ADB's Nepal Resident Mission and ADB's South Asia Regional Department (the operations department in charge) on actions designed to address the overt claims of the complainants. These actions and the status of implementation are given in Appendix 4.



19. Extensive discussions with all parties involved in MWSP, including civil society groups and other stakeholders, indicated that there was a high level of support for the Project. A few individuals, while supporting MWSP, expressed general concerns regarding the impact of the access roads upon community forests and farming, and the possible impact upon irrigation during the dry season in the Melamchi Valley below the intake point of the diversion tunnel. As noted above in para. 13, others were opposed to the Project as well. However, other than the complainants, only two of whom may be considered as APs, no APs came forward with complaints during SPF's field visit.

20. The seven issues raised in the letter of complaint (see para. 7 above) were general in nature and not linked to any specific complaint. They were of limited relevance, since physical implementation of MWSP is at an early stage. It was clear from SPF's discussions and from an examination of the documentation that there was considerable ongoing commitment to planning and mitigation work in each of the seven specified areas of complaint:

- (i) The information flow has improved. Information is readily available in libraries in Kathmandu and Melamchi. The website contains relevant documents. Many documents are published in Nepali.
- (ii) There has been a wide-ranging process of participation by MWSP, including workshops and consultation meetings. This process will improve with further capacity building and improvements in the security situation.
- (iii) MWSP has been the subject of repeated environmental assessments. It also has a provision for periodic environmental review by external experts. The results of a comprehensive review were reported in November 2003. Mitigation of environmental and agricultural damage caused by access road construction is ongoing. The services of a contractor for road works that failed to carry out measures to mitigate environmental and agricultural damage have been discontinued. This issue is being dealt with by MWSDDB and the cofinanciers.
- (iv) The majority of the current land acquisition, compensation and resettlement cases have been settled. Of the 328 cases that have been carried over from the original government work on the MAR, 300 have been settled. The remainder, which are more complex for variety of reasons, are receiving attention.
- (v) The SUP is intended to provide for the general social improvement of the people in the Melamchi Valley. A significant part of the budget is exclusively for the improvement of socially disadvantaged sections of the population, including women and ethnic groups. Preference for education, training and scholarships is being given to those groups. The Program by its nature would not cause direct and material harm to people. On the contrary, the SUP, as planned, provides significant benefits both for people affected by the project and for unaffected groups in the Melamchi Valley. Implementation of the SUP is, however, constrained by the security situation.

- (vi) Rigorous monitoring of water flow in the Melamchi river by external experts is continuing, with a view to ensuring adequate water for agriculture and irrigation.
- (vii) Forests and residents in four of the seven community forests affected by MWSP had been taken care of. The remaining three are in progress.
- (viii) Conflict response teams—the Environmental Issues Resolution Team and the Community Issues Resolution Team—have recently been created. They operate regularly in the Melamchi Valley and handle grievances.

21. While it is evident that there is considerable effort being applied by ADB, other donors and the Government to ensure fairness and equity in very difficult and often dangerous working conditions imposed by the security situation in the project area, there is room for improvement. At the suggestion of the Government, SPF's review and assessment included recommendations for improving the implementation of MWSP. The proposed measures were well received by the Government and are in the process of being implemented.

22. SPF's review and assessment report (RAR) was released to ADB's President, Vice-President (Operations 1), SARD and the complainants on 28 June 2004. The complainants were very critical of the RAR, alleging that it was biased in favor of the Government and ADB. They also strongly disagreed with SPF's position that reopening a debate on the original MWSP design was outside SPF's mandate. Notwithstanding their disagreement with SPF's review and assessment, the complainants decided to carry on with the consultation process.

23. At step 6 of the consultation process (which is the stage at which SPF makes a recommendation based on the comments on the RAR by the complainant and the operations department) with the President's approval, SPF offered the complainants a fresh opportunity to convene a meeting with APs in the Melamchi Valley with SPF (since they had not been able to arrange the meeting during SPF's field visit in connection with step 4 of the process). The offer was subject to the following conditions:

- (i) The participants had to be restricted to people who were directly materially and adversely affected by MWSP.
- (ii) They should authorize WAFED to represent them.
- (iii) OSPF should be provided the names of APs in advance, together with evidence of their consent for WAFED to represent them.
- (iv) For each AP, OSPF would require in advance detailed information on:  
(a) how he or she was affected, (b) when he or she was affected, (c) when the matter was referred to MWSDB or other concerned government agency and/or ADB, and (d) when and how the issue was dealt with.
- (v) SPF would not entertain new claims related to claims that had already been settled.

- (vi) The presence of Mr. Siwakoti as the coordinator of the complainants at the meeting would be required.

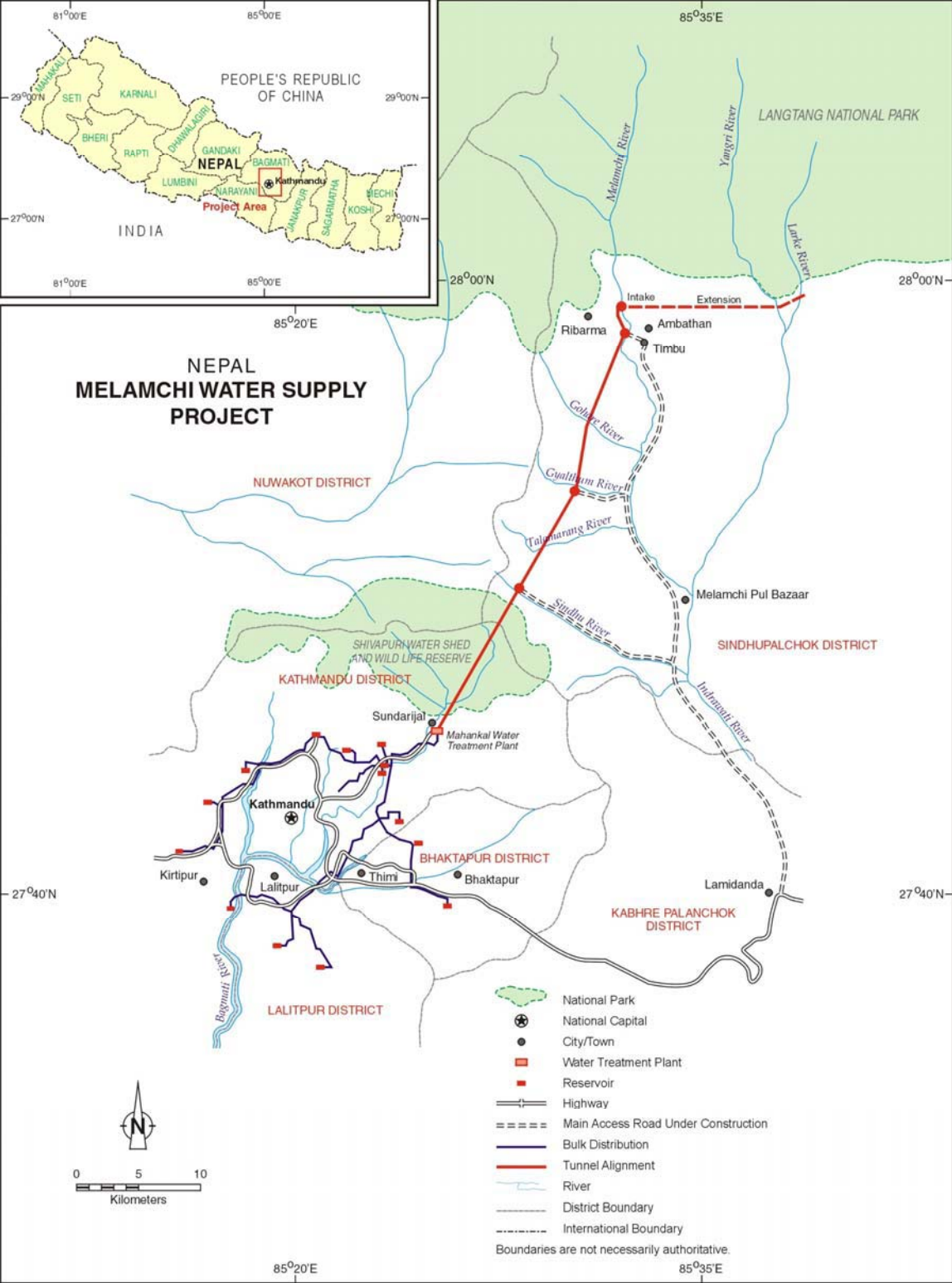
24. SPF also offered to arrange a meeting with MWSDB, SARD, representatives of the cofinanciers, and consultants, for the complainants to discuss any concerns that they and others might have with the project design.

#### **V. COMPLAINANTS' DECISION**

25. The complainants informed SPF by letter dated 8 October 2004 that they had decided to withdraw from the SPF process and take their complaints to the compliance review panel. Their letter did not indicate whether they were prepared to avail of the opportunity provided by SPF for further consultation.

#### **VI. SPF'S ACTION**

26. As reported in Appendix 4, action has already been taken or is well underway to address the grievances of the complainants. There is commitment by ADB and the Government to ensure that the remaining actions will be satisfactorily completed. In the opinion of SPF, the existing mechanisms for monitoring the progress of these actions are adequate. In view of this, with the President's approval OSPF has concluded the consultation process.



**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@yahogroups.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.

## DETAILED POSITION OF COMPLAINANTS AND SPF'S RECOMMENDATIONS

1. Each complainant was interviewed regarding his situation as a potentially adversely and materially affected person. The following paragraphs summarize the conclusions and recommendations of the special project facilitator (SPF) as a result of the discussions. Where recommendations and actions are offered, these have been discussed with the complainants and a solution reached.

### 1. Complainant: Mr. Gopal Siwakoti 'Chintan'

**Complainant's Position:** "Co-ordinator, Water and Energy Users' Federation-Nepal (WAFED) and affected person in the Kathmandu Valley"

#### Nature of the Complaint

Mr. Siwakoti accepted that he was not personally and materially affected by the Project. He had submitted no claims. His issues were general in nature and revolved around the availability of information and the participative process. His detailed position is shown in Appendix 3. He wished to discuss, in open forum, with all parties concerned, the relative merits of the Melamchi Water Supply Project (MWSP) and other potential options to solving the water problems of Kathmandu. Through SPF, and, if necessary, through the compliance review process of the Asian Development Bank (ADB), he intended to attempt to force a public debate with the senior management of ADB and other donors or funding sources.

#### SPF's Action

The recommendation of SPF was 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.<sup>1</sup> Both the Nepal Resident Mission (NRM) of ADB and the Melamchi Water Supply Development Board (MWSDB) insisted that these documents had been available publicly for some time and that WAFED and its associated organizations had received copies. Whether this was true or not, it was the recommendation of SPF that MWSDB, supported by NRM, provide Mr. Siwakoti with all relevant project documentation. Where the documents did not belong to ADB, SPF recommended 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, had a responsibility to monitor the flow of documentation to Mr. Siwakoti to ensure he received access to all information in accordance with ADB policies. All parties had agreed to this role. Mr. Siwakoti was advised to maintain communication with SPF, monitoring the information situation and informing SPF of any violations.

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<sup>1</sup> See Appendix 3 for e-mail letter from Mr. Siwakoti received on 22 June 2004 for the list of documents.

### **Current Position**

Mr. Siwakoti has acknowledged receiving the documents. He has not made any subsequent follow-up with SPF. Arrangements in place for providing any other documents for Mr. Siwakoti or other interested persons in the future are satisfactory.

## **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 was general in nature. His claim was that he had not received the report on irrigation and water flow below the tunnel intake on the Melamchi River. In particular, he wanted to understand the projections for water flow and usage in the rice fields below the point where water was drawn off.

In addition, Mr. Pandit would like to receive, in writing, a *guarantee* that there would be sufficient water for irrigation below the pipeline. Provision of such a guarantee was beyond the terms of reference of SPF. However, it was pointed out to Mr. Pandit that the Project provided for such guarantees.

### **SPF's Action**

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 was 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 agreed to copy the relevant reports and to inform Mr. Pandit of their availability. Mr. Pandit would collect the documents by arrangement from MWSDB or NRM. NRM would oversee and verify the transfer of documents depending upon Mr. Pandit's availability. MWSP should make sure, through its communications and community liaison activities, that people in the Melamchi Valley were aware of the guarantees provided.

### **Current Position**

Mr. Pandit has acknowledged receiving the report. Arrangements have been made for him to receive future reports as well.

## **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 was 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 government company that predated ADB involvement in the project). He was further claiming that a landslide caused by road construction damaged forestry on his property and he had filed an additional claim for compensation (May 2004).

## **SPF's Action**

Mr. Bhandari's claim is complex as it involves estimates of lost income over several years which predate 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 was 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 were found to be true, it might not be the responsibility of the project to provide compensation.

Mr. Bhandari had received partial compensation amounting to NRs592,832 (approximately \$8,300) for land from the project, although he was unhappy that the value allocated to his land was lower than that in other areas. (The valuation was carried out 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 were 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 and MWSDB has agreed 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.

## **Current Position**

Mr. Bhandari has accepted additional compensation of NRs12,000. Mr. Bhandari's verbal request for an additional NRs3,500 is being processed. No further monitoring by SPF will be needed.

#### **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 was claiming for actual damages to an irrigation canal which feeds his rice fields. Further, he was claiming for anticipated damages to his agricultural land, which may be incurred as a result of falling rocks caused by the blasting of a large rock on the opposite bank of Melamchi River.

### **SPF's Action**

Mr. Khadka's claim for damages caused to his canal was discussed with MWSDDB and the project management consultant. The conclusion was that the canal was subject to a build up of silt and other matter which would occur during the normal course of events and was 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 should future damage be incurred. Further, the blasting of the rock had been delayed for two years due to the activities of insurgents. There was no immediate prospect of blasting in the area downstream of Chanute Bazaar.

SPF agreed with the project management consultant that, as a gesture of goodwill, Mr. Khadka's irrigation canal should be cleared. However, it was the opinion of the project management consultant that the canal, because of its position, would continue to silt up naturally every year. It was 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 occurred, there would be an effective system for considering claims at that time.

### **Current Position**

Mr. Khadka has subsequently changed his claim and has asked MWSDDB to acquire his land. This claim is now being reviewed by the Government. It will be taken care of under the normal administrative procedures that exist for dealing with such claims. In the meantime, the canal will be cleared. No further action or monitoring by SPF is considered necessary, as the South Asia Regional Department will oversee further action.