

Hydro Power Projects Violating SC order in the *greenest state of India*

Gangtok, 9 October 2013: Deemed as the greenest state in India, the government of Sikkim has drawn flak of the national board of wildlife (NBWL) for blatant violation of the environmental norms and the standing order of the Supreme Court in implementation of several hydro power projects under different stages of construction.

The background: In its 28th meeting held on 20th March 2013, the proposal for 520 MW Teesta Stage-IV Hydroelectric Power Project, on River Teesta in North Sikkim to be developed by NHPC Ltd, was placed before the SC-NBWL (Standing Committee-National Board of Wild Life) for consideration. The Member Secretary had informed the SC-NBWL that the project location falls 4 km away from the Fambonglho Wildlife Sanctuary and was recommended by the State Board for Wildlife.



Photo from SC-NBWL committee report has this caption: Construction of the Teesta III project at Chungthang on the edge of Khangchendzonga National Park proceeding without SC-NBWL clearances. Note the extensive forest cover and large landslides at the site.

Following discussions, the SC-NBWL decided that a team comprising Dr M.K.Ranjitsinh, Kishor Rithe, Dr A.J.T Johnsingh and Dr M.D. Madhusudan would carry out site inspection and submit a report to the committee for its consideration. Following this decision, the above committee visited the project site and nearby areas from 15th to 21st May 2013. The committee met the representatives from the Sikkim Government's Forest, Environment and Wildlife Management Department (FEWMD), the user agency, NHPC Ltd, and people from local citizens' groups. The report of the committee dated Aug 2013 is now available online (<http://envfor.nic.in/division/wl-orders>).

The report raises serious concerns about a number of hydropower projects in Sikkim under construction without wildlife clearance in contravention to the Supreme Court orderⁱ (in the Goa foundation case). The Chamling government in Sikkim has allowed blatant violation of the Supreme Court order, a situation compared by the report with what had happened in Goa with respect to mines which were operating without wildlife clearance in violation of SC orders (the subject of the Shah Commission report). The Union Ministry of Environment and Forests is equally responsible for allowing continuing construction of these projects without legally mandatory clearances. The decision based on this report in the NBWL Standing Committee is still pending.



Map with locations of projects and protected areas from the SC-NBWL committee report

Both before and during site inspection, multiple stakeholders brought to the notice of the NBWL team that there were other proposed and ongoing hydel projects in the Teesta Basin located within the eco-sensitive zone (as defined by the Supreme Court in the Goa Foundation case), of the Khangchendzonga NP and Fambonglho WLS, which had not obtained the Supreme Court mandated clearance from the Standing Committee of the National Board for Wildlife.

Besides this, the team in their journeys saw two projects under active construction—the Dik Chuⁱⁱ and the Teesta IIIⁱⁱⁱ—that were clearly within the Supreme Court mandated eco-sensitive area. For Dik Chu HEP, the report says, **“However, the accompanying FEWMD officials informed us that these mandatory wildlife clearances from the SC-NBWL had, apparently, not been obtained.”** For Teesta III HEP, FEWMD officials were not aware of the SC-NBWL clearance, and the committee noted, we “must therefore conclude, on the basis of information available with us, that such a clearance was not obtained... we are deeply concerned about the advisability of this project.”

Deeply concerned about the likelihood of various hydel projects coming up in violation of the Supreme Court’s order in the Goa Foundation case, the team has requested the MoEF to write to the government of Sikkim, seeking a comprehensive list of completed, ongoing and proposed hydroelectric projects within the Supreme Court mandated 10-kilometre zone of the

Khangchendzonga National Park (KNP) and Fambonglho Wildlife Sanctuary (FWLS). For each project, details sought included: (a) location (latitude-longitude) and distance from KNP and FWLS; (b) current status of the project; and (c) if and when they had obtained the required Environment, Forest and Wildlife Clearances. Even after waiting for 10 weeks, the NBWL team did not receive either an acknowledgment, or a response from the Pawan Chamling government to their query.

The committee, left with no option was compelled to use publicly available information on Environmental Clearances (EC) (<http://environmentclearance.nic.in>), submissions and information provided by other stakeholders, and to examine minutes from the SC-NBWL's meetings, to ascertain if there was merit to the allegations made about the violations of the Supreme Court's order of 12/2006.

Key recommendations Based on examination of available information on legal compliances required for the projects in the Teesta basin, the committee concluded that, with the notable exception of the Teesta IV project (which has currently approached the SC-NBWL for clearance), none of the other projects appear to have sought/obtained this compulsory SC-NBWL clearance, as mandated by the Supreme Court. While the SC-NBWL is fully aware that there are many more proposed/ongoing hydroelectric projects situated within the Supreme Court mandated 10-km eco-sensitive zone of wildlife sanctuaries and national parks in Sikkim, it has not been able to ascertain whether Supreme Court stipulations in their regard are being followed, or being violated, and if latter be the case, the MoEF should take due cognizance of the same urgently.

“We are of the unanimous considered opinion that it is absolutely essential to assess the overall impact of these projects, both from the recent past and those in the pipeline, rather than deal with them in a piecemeal fashion. Hence, we urge the Standing Committee not to consider the Teesta IV project's request for clearance separately, but treat it as part of a larger set of hydroelectric projects in the Teesta Basin, with vast ecological, social and legal portents”, the committee has recommended.

It further recommend that the Standing Committee direct the MoEF to write to the Government of Sikkim asking them to immediately investigate and submit a detailed report listing hydroelectric projects in Sikkim that are being constructed prima facie in violation of Supreme Court's order. Based on the list provided by the government of Sikkim, if it is indeed ascertained that the projects are proceeding in violation of the said Supreme Court ruling, it further adds that the MoEF initiate action by asking the State Government to suspend ongoing work on those projects immediately and to direct user agencies to formally seek clearance for these projects from the SC-NBWL. It adds that the MoEF and the Government of Sikkim thoroughly investigate the circumstances under which the seemingly widespread bypassing of Supreme Court orders in the construction of dams within the 10-km ecosensitive zone of Sikkim has taken place, fix responsibility for the transgressions and violations, and punish the guilty.

About Teesta IV proposal from NHPC, for which the committee visited Sikkim, the report recommends, “Finally, in the light of the devastating June 2013 Uttarakhand floods, we are deeply concerned about the wisdom of such large-scale manipulations of mountain river systems that are being implemented, against all reasonable scientific advice (and the disregard of the CISHME's recommendation against the construction of Teesta III, is a case in point)... Hence, we urge the Standing Committee not to consider the Teesta IV project's request for clearance separately, but treat it as part of a larger set of hydroelectric projects in the Teesta Basin, with vast ecological, social and legal portents.”

The report also recommends that projects already in the pipeline and that may be proposed in future in Sikkim, be placed before the Standing Committee, “chaired by a very senior official of the MoEF, Besides senior officials of the MoEF and the Sikkim Government, this committee must include legal experts as well as experts in hydrology/ geology/ seismology/ social science/ botany/ riverine ecology/wildlife ecology, from reputed research institutions and some representatives of local communities” whenever they fall within the purview of the Supreme Court-mandated 10 km eco-

sensitive area around PAs. The committee report adds that much of the summary and recommendations section of Justice Shah's report (pp. 189-200) is extremely relevant to the case of the hydroelectric dams in Sikkim, and that any committee constituted to examine hydroelectric dams in the eco-sensitive areas of Sikkim, pay close attention to this report.

No ecological flows from NHPC's Teesta V What the report says about this subject makes disturbing reading: "On 16th May 2013, driving upstream of the Teesta V powerhouse, we noted extremely low flow in the river, which was particularly so in the stretch of the river directly downstream of the Teesta V dam (Figure 1), where the river was diverted through a tunnel. Such low flows, where River Teesta has been diverted through tunnels, are a cause for serious concern in the context of maintaining the ecological function of a river. We enquired from NHPC officials about how details of ecological flows were determined, and learnt that ecological flow was not a parameter that was optimised in the planning process. We were told that downstream flows were effectively a consequence of maximising hydropower potential of various river basins as determined jointly by the Central Electricity Authority and the Central Water Commission. These values, in turn, were used as the basis for soliciting proposals for hydroelectric power projects. In other words, we learnt to our great dismay that absolutely no ecological consideration whatsoever was used in the process of determining the hydropower potential of river basins."

Violations galore, government unresponsive In a submission made by Tseten Lepcha in his capacity as the then Honorary Wildlife Warden of North Sikkim to Jayanthi Natarajan in 8th October 2011, Lepcha had contended that how the 1750 MW Demwe Lower by the Athena group is being considered by the SC-NBWL for wildlife clearance, when a project by the same promoters (1200 MW Teesta III) is under construction in violation of Supreme Court orders (without wildlife clearance). The current NBWL report confirms that the 1200 MW Teesta III is under construction illegally, violating SC orders. In an earlier submission he had made to the SC-NBWL on April 19, 2011 he mentioned violation of the WLPA (killing of a Serow - Schedule I species) in the 1200 MW Teesta III project being developed by the Athena group. The developer of the project, Teesta Urja Ltd (a special purpose vehicle of M/S Athena Pvt. Ltd.), through its sub-contractor, SEW Infrastructure Ltd, was involved in the death of a Serow (*Capricornis sumantraensis*), a Schedule I animal, at the project site on June 4, 2008.



Photo from SC-NBWL com report with this caption: The Teesta V dam showing the virtual absence of flow in the river downstream of the dam, which can have devastating consequences for river-dwelling and river-dependent species

Several attempts by this correspondent, to contact the PCCF –cum-Secretary of the FEWM department of Sikkim Mr. Arvind Kumar on his cell phone, and his official e-mail address to get the Sikkim government’s official version on the controversy, remained unanswered.

How IPPs are cheating by flouting norms Sikkim Bhutia Lepcha Apex Committee (SIBLAC) convenor Tseten Tashi Bhutia, while speaking to this correspondent expressed immense joy at the NBWL report. “We have been protesting cultural and religious genocide being committed by the Sikkim government in the name of developing hydro power, apart from severely degrading the environment, this is a moral boost. I hope GOI takes strong action”, he said. Bhutia added that there are violations of the Places of Worship (special provisions) Act 1991, extended to Sikkim, and the gazette notifications of the Chamling government, in allowing the Tashiding project on holy river Rathong Chu.

SIBLAC along with another apolitical group Save Sikkim on September 28th, 2013 filed FIRs against an IPP, Shiga Energy Pvt Ltd, developer of the 97 MW Tashiding hydro power project for alleged cheating, distortion of facts and violation of environmental norms and the SC order. This is in addition to an ongoing PIL at the Sikkim High Court.

The facts revealed by Tseten Tashi Bhutia in his FIR are startling and shocking. As per the requirement of the Environment Ministry (MoEF, Government of India), the executing agency i.e. Shiga Energy Private Limited, is required to submit a Six-monthly compliance report^{iv} on the status of the 97 MW Tashiding HEP to the stipulated environmental conditions in a prescribed format .However, while going through the latest Six monthly report dated 22.11.2012^v submitted by the executing agency to the concerned authority i.e. North Eastern Region Office, Ministry of Environment & Forest, Government of India , it is found that as against the IX necessary conditions required in the prescribed format, the executing agency have intentionally deleted Stipulation No. VIII, jumping to the next condition.

The Monitoring report of MEF regional office (signed by DR S C KATIYAR, SCIENTIST ‘D’) dated Oct 2012^{vi} says about Stipulation VIII: “the proposed site is about 5 Km away from the buffer zone of the Khangchendzonga Biosphere Reserve as per Supreme Court order clearance from NBWL may be obtained (if required).” Status of Compliance: “Not complied with” and further writes; “the project also falls within 10 Kms from the Fambomgla Wildlife Sanctuary, as such; NBWL clearance needs to be obtained.”

Thus the agency has not complied to nor has obtained NBWL clearance yet as evident from the Monitoring Report on the Implementation Status of Conditions of Environmental Clearance dated Oct 4th, 2012. In other words, the executing agency has simply and swiftly been misleading and cheating the authorities till date by submitting wrong report to Ministry of Environment and Forest, Govt. of India. More surprising is to witness the lack of action by the MoEF on these manipulations and lack of action even after the Monitoring Report clearly reports non compliance.

Rathongchu is a sacred river according to the Denjong Neyig and Nesol texts having its source at various secret and sacred lakes at Khangchendzonga, Sikkim’s supreme guardian deity and runs independently till it meets River Rangit at the lower reaches; This sacred Rathongchu is the source to the annual Tashiding *Bumchu ceremony* which is held in the first lunar month, corresponding to the months of February and March. In fact, this *Bumchu* (Sacred Water) ceremony has been continuing for centuries and attracts thousands of devotees and pilgrimages from far across including Bhutan, Nepal, and entire Himalayas.

Ironically, a one-man Professor P S Ramakrishnan committee, of the JNU School of Environmental Sciences, submitted a report titled Ecology and Traditional Wisdom, on October 9th 1995, to the government of Sikkim where he categorically stated, “on social, cultural, and religious considerations, apart from the rich bio-diversity and fragile ecology of the Yuksom valley region, I strongly recommend that no hydro power or other projects should be allowed on River Rathongchu, deemed

extremely sacred by Buddhists”. Under the circumstances, how was the Tashiding HEP allotted to the Shiga Energy Ltd by the Sikkim Government and cleared by the MoEF is moot question.

Some of the other proposed projects that are mentioned in the SC-NBWL committee that are also coming up requiring the SC-NBWL clearance include the 300 MW Panan HEP, the Ting Ting HEP, besides the ones mentioned above, see the accompanying map from the SC-NBWL report. Other hydropower projects of Sikkim that are being considered by the MoEF for clearances and that are also close to the protected areas include: 63 MW Rolep HEP on Rangpo river in E Sikkim (5-6 km from Pangolakha and Kyongnosla WLS), 126 MW Ralong HEP (4.05 km from Kangchendzonga Biosphere Reserve and 1.8 km from Maenam Wildlife Sanctuary), 96 MW Chakung Chu HEP in North Sikkim district (1.8 km from Kangchendzonga Biosphere Reserve). Other such possible projects include: 71 MW Sada Mangder, 60 MW Rangit III, among others.

Let us hope now following the SC-NBWL report, the MoEF will promptly order stoppage of illegally ongoing construction of the guilty HEPs, not waiting for the SC-NBWL committee to meet, since the new Standing Committee of the NBWL remains to be constituted after the term of the earlier committee ended. The evidence provided by the SC-NBWL committee is sufficient to take prompt action. The fact that the MoEF has not taken action yet, weeks after submission of the SC-NBWL report speaks volumes about the possible collusion of the MoEF in this murky affair.

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END NOTES:

ⁱ WP 406/2004, Goa Foundation vs. Union of India, Order dated 04/12/2006: “The MoEF would also refer to the Standing Committee of the National Board for Wildlife, under Sections 5 (b) and 5 (c) (ii) of the Wild

Life (Protection) Act, the cases where environment clearance has already been granted where activities are within 10 km. zone”

ⁱⁱ Strangely, the Environment clearance letter for the project does not even mention the need for SC-NBWL clearance, see:

<http://environmentclearance.nic.in/Auth/openletter.aspx?EC=5766>

ⁱⁱⁱ The Six monthly compliance report for Teesta III dated June 2013 also is quite on the issue of compliance with SC-NBWL clearance, see: http://environmentclearance.nic.in/writereaddata/Compliance/57_Teesta%20HEP-III%20_june2013.pdf, the condition for this was mentioned in the MoEF letter dated 30-04-2010 with additional condition: “Considering the proximity of Khangchendzonga National Park from the project site, clearance from the Standing Committee of the National Board for Wildlife (NBWL) should be obtained”.

^{iv} For latest version of the compliance report, see:

http://environmentclearance.nic.in/writereaddata/Compliance/34_Tashiding%20Six%20Monthly%20Compliance%20Report_May%202013.pdf. In this report, the column before the condition VIII says: NA (not available).

^v See the report here: http://environmentclearance.nic.in/writereaddata/Compliance/21_Shiga_15052012.pdf, the said condition is also missing from this earlier report:

http://environmentclearance.nic.in/writereaddata/Compliance/53_Shiga%20six%20monthly%20compliance%20report%20%2012_10.112010.pdf and also from this report in Nov 2012:

http://environmentclearance.nic.in/writereaddata/Compliance/23_THEP%206%20MONTHLY%20Compliance%20report%20Shiga%20copy.pdf

^{vi} See the report here:

http://environmentclearance.nic.in/writereaddata/Monitoring/57_Monitoring%20Report%20of%20Tashiding%20HEP.pdf