CRP REQUEST NO. 2004/2
REPORT ON ELIGIBILITY

TO THE BOARD OF DIRECTORS
ON THE REQUEST FOR COMPLIANCE REVIEW

ON THE MELAMCHI WATER SUPPLY PROJECT
(Loan No. 1820-NEP[SF])
IN NEPAL

17 December 2004
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I. INTRODUCTION

1. This is the Compliance Review Panel's (CRP) Report on the eligibility of a request for compliance review (Request) filed by Mr. Gopal Siwakoti, Coordinator, Water & Energy Users' Federation, Nepal (WAFED); Mr. Hasta Pandit, Representative, Melamchi Local Concern Group; Mr. Ram Bahadur Khadka, WAFED, Melamchi Branch; and Mr. Pitambar Bhandari, Chairperson, Federation of Community Forest Users Nepal (FECOFUN), Sindhupalchowk District Branch, Melamchi Valley, (Requesters) on the Melamchi Water Supply Project (the Project) in Nepal.

2. The CRP registered the Request on 8 December 2004. The Request is in Appendix 1. Based on its review of eligibility of the Request, the CRP provides this Report to the Asian Development Bank's (ADB) Board of Directors, in accordance with paragraph 34 of the CRP Operating Procedures.

II. DESCRIPTION OF THE PROJECT

A. Scope

3. The Project is a large infrastructure project that aims to improve the health and well-being of the people living in Kathmandu Valley by transferring water from the Melamchi Valley into Kathmandu Valley through a water diversion scheme with a 26-kilometer tunnel. The Project's main components include (i) physical infrastructure development; (ii) social and environmental support; (iii) institutional reforms; and (iv) project implementation support. The physical infrastructure includes the Melamchi diversion scheme (MDS), water treatment plant, bulk distribution system, water distribution networks, wastewater systems, and a shallow groundwater wellfield in Manohara. A map with the Project location is in Appendix 2.

B. Agencies and Financing

4. The borrower of the ADB loan for the Project (Loan No. 1820-NEP [SF]) is the Government of Nepal (GON), with the Ministry of Physical Planning and Works (MPPW) as the project executing agency and the Melamchi Water Supply Development Board (MWSDB) as the project implementing agency.

5. The Project cost is $464 million based on the project documents (the Report and Recommendation of the President to the Board) with ADB financing the largest share among the 7 cofinanciers. The ADB loan amounts to $120 million. The ADB loan includes financing or partly financing the following: construction of the MDS; improvement of water distribution network; construction of the bulk distribution system; undertaking of improvements to wastewater system; development and implementation of a social uplift program (SUP), a resettlement action plan, and an environmental management plan (EMP); institutional reforms; and provision of support to carry out Project administration activities.

6. The other 6 cofinanciers are the following: Japan Bank for International Cooperation (JBIC); Norwegian Agency for International Cooperation (NORAD); Swedish International Development Cooperation Agency (Sida); Nordic Development Fund (NDF); Organization of Petroleum Exporting Countries Fund for International Development (OPEC Fund); and the Government of Japan (GOJ) through Japan International Cooperation Agency. The financing by these 6 cofinanciers is on a parallel basis. The JBIC loan is for part financing of construction of a water treatment plant. The NORAD grant is for part financing for construction of the tunnel and for design of the MDS. The Sida credits are for part financing of the tunnel. The NDF loan is for
part financing of construction supervision of MDS. The OPEC Fund loan is for construction of access roads. The GOJ grant is for shallow groundwater development. GON finances the remaining cost of the Project.

C. Status of Project

7. The ADB loan for the Project was approved by the Board in December 2000. The ADB loan became effective in November 2001. The Project completion date is scheduled in March 2007. The Project is currently under implementation at varying stages of the different Project components. ADB's South Asia Department (SARD) is the operations department responsible for implementing the Project. As of 30 November 2004, disbursement of the ADB loan is about 3% and contract awards under the ADB loan are 7%. As of 15 December 2004, major Project activities have not commenced including the construction of the tunnel, construction of the bulk distribution system, and the improvement of the water distribution network, all of which constitute more than 60% of the Project cost.

III. REQUEST FOR COMPLIANCE REVIEW

A. Requesters

8. The Requesters live in Melamchi Valley in Sindhupalchowk District and in Kathmandu Municipality, Kathmandu District in Nepal. Clarifications were sought from the Requesters before the CRP registered the Request with the "requisite basic information" referred to in paragraph 30 of the CRP Operating Procedures. Based on the Request and the email exchange between the CRP and the Requesters, the Requesters claim on their own behalf to be negatively affected by the Project.

9. The Requesters have presented the CRP with letters of authority, in English and Nepali, from 12 persons also claiming to be negatively affected by the Project. The CRP notes that of these 12 persons, 5 have not filed claims with the Special Project Facilitator (SPF) under the consultation phase of the ADB Accountability Mechanism and 7 have filed claims with the SPF but their claims have not been registered as they have not provided the SPF with the information required for registration under the consultation phase.

B. Request

10. The Requesters claim to be suffering from, or will be suffering from, harm as a result of alleged noncompliance by ADB of its operational policies and procedures under the Project as follows:

   (i) inappropriate or inadequate decisions affecting the rights and interests of the claimants and other affected people and communities in the absence or the denial of timely information disclosure;

   (ii) displacement and the lack of adequate compensation and resettlement in a timely manner;

   (iii) loss of livelihoods due to the shutting down of water mills (grain mills) and micro hydro for local energy consumption;

   (iv) destruction of community forests;
(v) destruction of irrigation canals, including those funded by the ADB;

(vi) damage to crops and livelihoods due to reduced flows; and

(vii) displacement and other adverse effects without an Indigenous Peoples Development Plan for indigenous peoples and communities, including the Majhi (fisherfolk) who rely on fishing and fish from the Melamchi River for survival.

11. The Requesters have specifically stated alleged violations of ADB's operational policies and procedures which have caused harm to them, including: information disclosure; resettlement; water; environment; forestry; indigenous peoples; and poverty reduction strategy.

12. The Requesters seek the following specific remedies from the ADB:

   (i) "Immediately undertake the following priority steps to avoid unnecessary harm and damages from materializing":

        (a) undertake a comprehensive assessment of current and future water needs for agriculture, ecology, fisheries and other purposes in Melamchi Valley;
        (b) conduct a comprehensive assessment of alternative options to water supply in Kathmandu Valley after reviewing all other options assessments that have been conducted but not made available to all stakeholders in Kathmandu;
        (c) disclosure of all feasibility studies, options assessments, and other relevant studies pertaining to the Project that have been conducted and/or completed in the past carried out by independent institutions, consultants and other expert bodies;
        (d) disclosure of all legal agreements and memoranda between GON and MWSDB with the donors and lending agencies and ADB, including the public-private partnership arrangements; and
        (e) review or reassessment of all past and present compensation measures, including community forests, in accordance with the terms of ADB's resettlement policy (including land for land) compensation.

(ii) re-design of the SUP in a participatory and effective manner; and

(iii) provision of Project benefits through guaranteed levy system.

13. The Requesters state in their Request of 12 November 2004 that they are referring the matter to the CRP because the outcome of their previous efforts with ADB staff and the SPF was "unsatisfactory". The Requesters by email of 8 October 2004 had notified the SPF of their disengagement in the consultation process under the consultation phase of the ADB Accountability Mechanism.
IV. ASSESSMENT AND FINDINGS

A. Conduct of Eligibility Assessment

14. The CRP obtained from the SPF materials relating to the complaint in the consultation phase including the SPF's determination of eligibility criteria. The SPF stated in the SPF's Final Report of December 2004 that "Prima facie, the complaint appeared to meet the criteria for eligibility."

15. A desk-based review of relevant materials from ADB Management and public sources was carried out. The CRP consulted with stakeholders concerned, including the Requesters; ADB Management and staff; the Board member representing the borrower; GON officials, including the Ministry of Finance (MOF) and MPPW; MWSDB; and cofinanciers, including NORAD and Sida. The CRP also carried out an eligibility review mission in Nepal from 10 to 13 December 2004, where meetings were held with ADB staff at ADB's Nepal Resident Mission, MOF, MPPW, MWSDB management and staff, the Project director, the Requesters at WAFED premises, and civil society. A site visit to the Project area, including the main access road, was conducted to gather information and make an assessment of the harm suffered as claimed by the Requesters. A meeting with the CRP was organized by about 15 project-affected people at the main access road.

16. The CRP held a plenary meeting from 14 to 16 December 2004 to consider the eligibility of the Request.

B. Findings

17. The CRP found that the Request was not subject to any exclusions under paragraph 26 of the CRP Operating Procedures.

18. The CRP noted that during the meeting in WAFED premises in Kathmandu, the Requesters presented the harm they experienced as claimed in the Request, but they were not present at the Project site. Three representatives of one of the Requesters showed a damaged canal and an abandoned water mill, which they claimed was damaged as a result of the flooding in the river caused by the construction of the main access road. The CRP mission could not verify whether the allegation was true as floods occur from time to time, both before and after the road construction.

19. The CRP mission also interviewed several individuals who had received compensation to construct new and better houses along the main access road. They were satisfied both with the improved road and their new houses but wanted more compensation. Separately, at the meeting organized by about 15 project-affected people (not the Requesters) held at the main access road, they also expressed similar views.

20. The CRP mission found that there was no Indigenous Peoples Development Plan as claimed by the Requesters, but there was an Ethnic Minority Development Plan. The CRP mission also made a surprise visit to the information centers at two Project offices, one in Kathmandu Valley and the other in Melamchi Valley, and found that these centers had information on the Project which could be accessed by the public. The CRP mission noted that timely access to and quality of information is claimed to be an important problem. Documents in the information centers revealed that consultations on project preparation and implementation,
including environmental impact assessment and SUP, were held and were attended by project-affected people.

21. The CRP recognizes that there may be harm which is either tangible or intangible such as physical damage to the environment, peoples' lives adversely affected, damage to fragile ecosystems, and disruption of community patterns, in the design and implementation of such a major infrastructure project. Based on the Request and onsite evidence presented to the CRP by the Requesters, the allegations of direct and material harm suffered or to be suffered are difficult to link to the Requesters and to ADB's alleged failure to follow its operational policies and procedures in formulating, processing, or implementing the Project.

22. The CRP may reconsider a request on this Project if more information on the harm suffered is presented to the CRP resulting from alleged violation of ADB's operational policies and procedures in formulating, processing, or implementing the Project.

23. The CRP notes that the 12 persons referred to in paragraph 9 of this Report have not gone through the consultation process fully, and advises them to address their problems with the concerned authorities such as the EA, ADB operations department, or SPF so that their problems on the ground may be satisfactorily addressed. They are free to raise compliance issues before the CRP if they have first addressed their complaints with the SPF.

24. The CRP will also inform the Requesters that they have avenues in addressing their claims at this early stage of project implementation, including getting more information from ADB under its information disclosure policy, and the range of plans in place such as the Ethnic Minority Development Plan and the EMP.

V. CONCLUSION

25. Based on the above, the CRP determines that the Request is not eligible and informs the Board of its decision. The CRP has informed the Requesters of its decision that it has determined that the Request is ineligible for compliance review. This Report will be posted on the CRP website upon its circulation to the Board.

/S/ Augustinus Rumansara
Chair, Compliance Review Panel
The Secretary  
Compliance Review Panel  
Asian Development Bank  
6 ADB Avenue  
Mandaluyong City 1550  
Philippines  

Sub: Melamchi Water Supply Project [Loan 1820-NEP(SF)]

Dear Secretary:

We, who have signed this letter, live in Melamchi Valley in Sindhupalchowk District and Kathmandu Municipality, Kathmandu District in Nepal, and ask that the Compliance Review Panel (CRP) help us by examining ADB’s compliance with its own policies and procedures with regard to the mentioned project. We are familiar with the Operating Procedures of the CRP, and understand that the CRP will first examine whether this request meets its eligibility requirements.

The name of the project that has harmed us is Melamchi Water Supply Project (MWSP), located at Melamchi and Kathmandu Valleys in Nepal.

We believe that the ADB has failed to follow its policies/procedures, especially with regard to information disclosure; resettlement; water; environment; forestry; indigenous peoples and poverty reduction strategy and that due to this failure so we have suffered or will suffer clear damages that we can describe.

Some specific damages related to these policy violations that are happening or will happen are:

a) Inappropriate or inadequate decisions affecting the rights and interests of the claimants and other affected people and communities in the absence or the denial of timely information disclosure;

b) Displacement and the lack of adequate compensation and resettlement in a timely manner;

c) Loss of livelihoods due to the shutting down of water mills (grain mills) and micro hydro for local energy consumption;

d) Destruction of community forests;

e) Destruction of irrigation canals, including those funded by the ADB;

f) Damage to crops and livelihoods due to reduced flows; and

g) Displacement and other adverse effects without an Indigenous Peoples' Development Plan for indigenous peoples and communities, including the Majhi who rely on fishing and fish from the Melamchi River for survival.

Other damages are narrated in the documentation supporting this claim.
We would like the ADB to immediately take the following priority steps in order to avoid unnecessary harm and damages from materializing:

1) Undertake a comprehensive assessment of current and future water needs for agriculture, ecology, fisheries and other purposes in Melamchi Valley;

2) Conduct a comprehensive assessment of alternative options to water supply in Kathmandu Valley after reviewing all other options assessments that have been conducted but not made available to all stakeholders in Kathmandu, Nepal;

3) Disclosure of all feasibility studies, options assessments, and other relevant studies pertaining to the project that have been conducted and/or completed in the past carried out by independent institutions, consultants and other expert bodies;

4) Disclosure of all legal agreements and memorandums between the Government of Nepal and/or Melamchi Water Supply Development Board with the donors and lending agencies and the ADB, including the public-private partnership arrangements; and

5) Review or reassessment of all past and present compensation measures, including community forests, in accordance with the terms of ADB's resettlement policy (including land for land) compensation.

Other demands and recommendations are made in the documentation supporting these claims. They include the re-design of current Social Upliftment Programme (SUP) in a participatory and effective manner, and the provision of project benefits through guaranteed levy system.

We previously have repeatedly attempted to address our concerns with the Bank staff and Special Project Facilitator (SPF). The CRP has been provided the copies of all the major communications between the claimants and the SPF. Please refer to your files as well as those of the SPF for details. We are referring our complaint to the CRP because the outcome of those previous efforts was unsatisfactory in that the SPF made judgments about policy compliance which were not only false but also inappropriate, thereby resulting in a loss of confidence in the SPF process.

Aside from the information already provided above, there are various documents that would help the CRP to understand our situation. We attach a list of those documents, noting where the CRP can obtain copies.

Our names, addresses and contact information are provided below.

(SGD.) Gopal Siwakoti “Chintan”, Co-ordinator, WAFED
and affected person in Kathmandu Valley (full address as shown in this letterhead)

(SGD.) Hasta Pandit
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