

ERC Journal

An update on news, views and
developments in India's EIA Process

Issue 1, Volume VIII, March, 2015

WHY JAYANTHI NATARAJAN IS WRONG

Ritwick Dutta

The recent disclosure by former Environment Minister, Jayanthi Natarajan about the 'request' she received from the Congress Vice President Rahul Gandhi, with respect to certain projects related to mining, construction and hydro power, needs a critical analysis. The BJP has been quick to respond to the allegation and the Union Environment Minister Prakash Javadekar has been quick to state that his Ministry will review the projects rejected by Jayanthi based on Rahul Gandhi's request. In the letter written by Jayanthi Natarajan, she has stated that specific 'requests' were made with reference to the following projects which led her to take action including rejection of these projects:

Contents

<i>Editorial</i>	<i>.....</i>	<i>1</i>
<i>NGT Update</i>	<i>.....</i>	<i>5</i>
<i>Analysis</i>	<i>.....</i>	<i>11</i>

1. The Vedanta Bauxite Mining Project in Orissa
2. The Adani Port Project in Gujarat
3. The GVK Hydro Power Project in Uttarakhand
4. The Lavasa Township Project in Maharashtra
5. The Nirma Cement Plant in Gujarat

Let us examine the reality with respect to each of these projects. It needs to be highlighted that Jayanthi Natarajan was the Environment Minister from July 2011 to December 2013.

Vedanta Mining Project:

In her letter, Natarajan has specifically mentioned that she has rejected the Environmental Clearance (EC) of Vedanta. This is wrong. The Forest Clearance (FC) was rejected by the Ministry of Environment and Forests on 24.08.2010.

At the time of rejection of the Forest Clearance, it was Jairam Ramesh who was the Minister for Environment and Forests and not Jayanthi Natarajan. The decision of Jairam Ramesh to reject the Forest Clearance was challenged before the Supreme Court by Vedanta and Orissa Mining Corporation. The Supreme Court directed that the Gram Sabhas should

decide on how mining will affect the cultural rights of tribals, if mining is allowed on the Niyamgiri Hills. The Supreme Court also directed that the Ministry of Environment and Forests should take a decision based on the outcome of the Gram Sabha proceedings. All the Gram Sabhas unanimously decided to reject the proposal for mining. The Ministry of Environment and Forests had no option but to accept the verdict of the Gram Sabhas and reject the Forest Clearance. Thus, it is the resolution of the

Gram Sabhas which was accepted by the Ministry of Environment and Forests when Jayanthi Natarajan was the Minister.

In her letter she has referred to the 'Stalled GVK project in Himachal Pradesh'. Let's get the facts right: The GVK Hydro Power Project is neither 'stalled' nor is it in Himachal Pradesh.

Adani Port Project: No Adani Project was ever rejected. Despite violation of environmental laws, the Committee appointed by Jayanthi Natarajan,

which was headed by Sunita Narain, recommended imposing a fine of Rs. 200 crores (which accounts for 1% of the total investments) for the Adani Waterfront and Power Plant project. In her letter, Jayanthi Natarajan has not referred to any specific Adani project.

GVK Hydro Power Project: In her letter, Jayanthi Natarajan has referred to the

'Stalled GVK project in Himachal Pradesh'. Let's get the facts right: The GVK Hydro Power Project is neither 'stalled' nor is it in Himachal Pradesh. The project is located in Uttarakhand and the project construction work is in full swing. The Project was indeed stopped for some time based on orders passed under Section 5 of the Environment (Protection) Act, 1986. This order was issued during her tenure. However, this stop work order was issued in view of a letter written by BJP leader Uma Bharti (presently Water Resources and Ganga Rejuvenation Minister) who had expressed concern over the submergence of the Dhari Devi temple. The decision of the MoEF to direct stoppage of work was challenged before the Supreme Court and the Supreme Court allowed the work on the GVK project to continue.

Lavasa Township Project: The Lavasa Township project was never stopped by Jayanthi Natarajan. The Environmental Clearance for the project was in fact granted on 09.11.2011 by the Ministry of Environment and Forests during her tenure despite the finding of the Ministry of Environment and Forests that Lavasa Corporation has violated the provisions of the Environment (Protection) Act, 1986 and the Environment Impact Assessment (EIA) Notification, 2006. The project was challenged before the National Green Tribunal (NGT) and is presently before the Supreme Court. The Ministry of

The Lavasa Township project was never stopped by Jayanthi Natarajan. The Environmental Clearance for the project was in fact granted on 09.11.2011 by the Ministry of Environment and Forests

Environment and Forests has defended the grant of approval before both the Courts.

Nirma Cement Plant: This leaves us with only the Nirma Cement Plant in Gujarat. The Environmental Clearance of Nirma was indeed revoked by the Ministry of Environment and Forests on 1-12-2011 during the tenure of Jayanthi Natarajan. The clearance was revoked on the ground that the expert committee constituted by the Ministry of Environment and Forests had come to a categorical conclusion based on a field visit, that the project proponent has deliberately given wrong information. This decision of the Ministry of Environment and Forests was challenged by Nirma before the National Green Tribunal and the NGT in its latest decision has quashed the order of revocation issued by the MoEF. Therefore, the order revoking the Environmental Clearance has been set aside by the NGT.

The Ministry of Environment and Forests has defended the grant of approval before both the Courts.

Review?

This does not mean that one should not review the decisions taken during the era of Jayanthi Natarajan. It is strange that the letter of Jayanthi Natarajan only refers to requests for rejection, but not a word about projects which were approved based on specific requests. Conservative estimates suggest that she would have approved not less than 1,500 projects during her tenure and rejected only about 1 or 2 projects. Jayanthi Natarajan during her tenure was called a Green Minister: She gave a green signal to every project

despite serious environmental and social concerns. She also does not deny it. In her letter to Sonia Gandhi she has clearly stated 'I was never a bottleneck, nor was I ever responsible for unwarranted delays in major projects, and I can prove this at any time'. The National Green Tribunal has repeatedly stated that what ails the MoEF is the hasty decision making process wherein it's various committees, in a mechanical manner approve a large number of projects. It is unlikely that this will be done, but if the Government is serious about good governance and wants to end crony capitalism, then a transparent review of the approvals (both Forest and Environmental Clearances) granted during Jayanthi Natarajan's tenure is called for.

ERC Journal is an Initiative of the EIA Resource and Response Centre (ERC), The Access Initiative India coalition Legal Initiative for Forest and Environment and aims to disseminate information on Forest and Environmental Clearance issues. We invite articles which involve critical analysis of Court judgments, EIA reports and other related issues.

Address: N-71 LGF, Greater Kailash 1, New Delhi, 110048. www.ercindia.org. For articles please email: pushp@ercindia.org

No copyright is claimed and the contents can be freely used.



NGT Update

NGT quashes approval of IL & FS for improper Cumulative Impact Assessment

Preeta Dhar¹

In a significant decision, the National Green Tribunal (NGT) quashed the Environment Clearance (EC) for the 3,600 MW Thermal Power Plant of IL & FS in Cuddalore, Tamil Nadu, on the ground that the project had not conducted a proper Cumulative Impact Assessment (CIA). The Tribunal held that the Cumulative Impact Assessment of the project, was conducted by the project proponent on the basis of incomplete information and “non-existent” standards, and the EC granted by the MoEF was without application of mind.

The project had been proposed to be developed as a part of a Petroleum, Chemicals and Petrochemicals Investment Region (PCPIR) with a port, several

industries and associated development of infrastructure. Further, the area has a high Comprehensive Environmental Pollution Index (CEPI) index, and was, until recently, classified as a “critically polluted area”. It is also located close to the Pichavaram mangroves – an ecologically fragile ecosystem. The project would have a wide range of impacts on the stressed and fragile ecosystem, as well as the health and livelihood of local communities.

The project was granted Environmental Clearance on 31 May, 2010. The NGT, on 23 May, 2012, had stayed the EC and directed a Cumulative Impact Assessment for the project to be conducted by the project proponent.

In the judgment delivered on 10 November, 2014, the NGT reiterated that a Cumulative Impact Assessment of the project was a mandatory requirement, flowing from the declaration in column 9.4 of Form-1 of the Environment Impact Assessment Notification, 2006. It was observed that the “cumulative impact due to proximity of other existing or proposed projects” forms a material parameter of the appraisal required to be done by the Expert Appraisal Committee (EAC).

¹ Legal Initiative for Forest and Environment (LIFE), New Delhi

On the quality of the Cumulative Impact Assessment done by the project proponent, the NGT observed that the entire exercise of Cumulative Impact Assessment (CIA) was completed by the project proponent within a period of 2 weeks without collecting any baseline data. Further, a large number of projects were not considered. *“The project proponent considered the data available for eight industries only whereas ... there are at least 45 industries in 25 km radius of the project and no reasons have been given as to why the same have not even found a mention in the study”*, observed the Tribunal. Moreover, it was claimed by the project proponent that future projects are not even required to be considered to be part of the CIA. Ironically, the “Technical EIA guidance manual for thermal power plants” prepared for the Ministry of Environment and Forests, by the IL & FS Ecosmart Limited, *which is a sister concern of the project proponent*, specifically mentions that all direct and indirect impacts of all reasonably foreseeable projects are required to be taken into account.

The relevant standards are NAAQS 2009, which replaced the earlier NAAQS 1998. On the basis of these findings, the Tribunal categorically held that the Cumulative Impact Assessment was inadequate and erroneous.

Most shockingly, the standards used for the entire study were the “non-existent” National Ambient Air Quality Standard (NAAQS), 2005.

The Tribunal was also severely critical of the “casual approach” of the “Expert Appraisal Committee”, which approved the project without any application of mind. It is clear from the appraisal process that there was no independent scrutiny of the Rapid Cumulative Environmental Impact Assessment (RCEIA) study prepared by the project proponent. The facts presented by the project proponent were accepted at face value, and even glaring mistakes were not detected by “expert” appraisal bodies. So much so, they did not even notice the fact that the entire study was conducted on the basis of non-existent standards and several pollutants and industries were inexplicably omitted. Only certain cosmetic and irrelevant conditions were imposed and *“the MoEF did nothing more than merely reiterating the conditions previously stipulated ... in different language”*.

The Tribunal, appreciating the shortcomings at every level of

preparation and appraisal of the cumulative impact assessment study, quashed the EC (corrigendum EC dated 14-08-2012) issued by the MoEF to the project. It directed “a fresh review of the Environmental Clearance on the basis of fresh Cumulative Impact Assessment study as indicated above needs to be ordered.” It was also clarified that additional baseline data of each and every industry- existing as well proposed, falling within 25 km radius of the project, as indicated above, needs to be gathered for the purpose of Cumulative Impact Assessment study.

NGT clears the way for Nirma’s Cement Plant to come up on a Wetland

Pallavi Talware²

The Principal Bench of the National Green Tribunal (NGT) has set aside the order of the Ministry of Environment and Forests through which the Ministry had cancelled the Environmental Clearance (EC) granted to Nirma for setting up of a Cement Plant with a Captive Power Plant. The cancellation order was passed when it came to light that the project site was

² Lawyer, Legal Initiative for Forest and Environment (LIFE), New Delhi

located on a water body - the Samadhiyala Bandhara which had all the characteristics of a wetland. The Tribunal overturned the order on the reasoning that the wetland was recorded as wasteland in revenue records.

The Gujarat Government gave the land of the Samadhiyala Bandhara, a fresh water reservoir, to Nirma Limited for setting up the 1.91 MTPA Cement Plant and the 50 MW Captive Power Plant. Samadhiyala Bandhara is a man-made reservoir that had been set up to resolve the problem of salinity ingress from the Gulf of Khambhat, into the freshwater aquifers of the villages of the Bhavnagar District. The matter to save the Reservoir was taken up at the High Court and then subsequently appealed before the Hon’ble Supreme Court. The land was inspected by two committees of experts while the matter was pending before the Hon’ble Supreme Court. The Hon’ble Supreme Court directed the MoEF to take a decision upon the expert body report. Both Expert Committees concluded that the most of the land allotted to Nirma Limited falls within the wetland/water body area created by the construction of Samadhiyala Bandhara and that the project should not be allowed within a wetland/ water body. The MoEF cancelled the EC.

When the matter came up before the NGT, Expert Members of the Tribunal carried out an inspection and based on the

Inspection Report of the NGT Expert Members, the Hon'ble Tribunal set aside the order of the MoEF cancelling the Environmental Clearance to the project.

The Tribunal concluded that *the proposed project site has been recorded in revenue records as 'wasteland' and therefore "confusion in understanding of its nature led to such aberration which cannot be termed as an act of deliberate concealment and/or submission of false or misleading information or data to the authorities under the Environment Clearance Regulations 2006."* The Tribunal further stated that *"Having gone through the entire information/data thus made available we are of the considered opinion that the Samdiyala Bandhara serves as a temporary storage of water, which gets used by farmers or gets evaporated due to its largespread or gets percolated due to fairly high porosity of soil and as such cannot be called as a productive wetland having all perennial features of a wetland."*

It is pertinent that the Application was made by the project proponent for

obtaining the EC on 5th September 2007 after the MoEF had issued the Guidelines for "Conservation of Wetlands in India: A profile," on 2nd February 2007 on World Wetland Day, where the characteristics of a Wetland were identified. The Tribunal has failed to note that definition of wetland includes water bodies of temporary nature and the definition does not define a wetland to have perennial features. The Tribunal's decision sets a

dangerous precedent. The lack of appropriate action by the Authorities in recognising and notifying wetlands renders susceptible every wetland which is yet to be notified. This judgment opens them up for development without the scope for their conservation.

The Tribunal's decision sets a dangerous precedent. The lack of appropriate action by the Wetland Authorities in recognising and notifying wetlands renders susceptible every wetland which is yet to be notified

Rs. 5 Crore Fine Imposed on Simbhaulī Sugar Mills for Polluting the Ganga

Neha Kurian³

The National Green Tribunal at its Principal Bench at Delhi ordered (in *Krishankant Singh v. National Ganga River Basin Authority* on 16 October 2014) the Uttar Pradesh Pollution Control Board to order closure of Simbhaulī sugar mills which was emptying their effluents into Simbhaulī drain, if they continued to violate the conditions stipulated in the consent order. The drain which was carrying effluents into the River Ganga, ultimately was making the water brown particularly between Garh Mukteshwar and Narora, due to the discharge of highly toxic and harmful effluents.

There was huge threat to endangered aquatic species such as dolphins, turtles and other aquatic life as well as pollution of ground water also.

Innumerable times there had been non-compliance of the distillery unit to the conditions mandated in both the no-objection certificate and also the stipulated law and on many circumstances the Pollution Control

Board had also denied them consent to operate under Section 25 of the Water (Prevention and Control of Pollution) Act, 1974.

Finally to conduct a proper assessment of the ground reality, the Hon'ble Tribunal directed that the Hon'ble Expert Members of the Tribunal would visit the site on the date and time convenient to them.

“25. The provisions of Section 19 of the NGT Act state that the Tribunal is empowered to regulate its own procedure and is to be guided by the principles of natural justice. In terms of Section 19(4)(c) of the NGT Act, the Tribunal has the same powers for issuance of Commission as are vested in a civil court under the Code of Civil Procedure, 1908 (for short ‘the CPC’) while trying a suit. The Bench of the Tribunal consists of Judicial as well as Expert Members. Thus, wherever it considers it appropriate and in the interest of justice, the Tribunal can direct inspection by the Court/Tribunal as is even contemplated under Order XVIII Rule 18 of the CPC. The Members can prepare an inspection note/memorandum, which would be part of the records....The order of the Tribunal directing inspection by Expert Members has

³ Legal Initiative for Forests and Environment (LIFE), New Delhi

been upheld by the Supreme Court in Civil Appeal No. 8781-83/2013 titled Ministry of Environment & Forests v. Nirma Ltd. and Ors. decided on 4th August, 2014."

Also to the argument raised by the Respondent that it was not economically viable for them to set up an incinerator as had been stipulated by the UPPCB the Tribunal held:

"There cannot be a negative discrimination in law and furthermore, economic burden per se cannot be raised as a tenable plea for preventing and controlling excessive pollution caused by Respondent No. 7 by its activities."

Also, it was held that in light of the vast powers granted to the Pollution Control Boards to mandate even closure of an industry, there should be no way that a concept of deemed consent should be allowed. It was held that the consent is valid only for the period when it is valid and not after that and that just applying for consent will not be enough.

"53...In view of the clear provisions of Section 22 to 27 and the scheme of the Water Act, it cannot be said that filing of

application even for renewal of consent, be treated as deemed consent in law..."

Therefore in view of the offending conduct of the unit over such a long period, it was held that strict action ought to be taken by the Tribunal and that liability should be imposed upon the unit in consonance with the principle stated under Section 15 read with Section 20 of the NGT Act. A hefty fine of Rupees 5 Crores was thus imposed for cleaning up the drain and also for managing ground water. Finally, the Tribunal ordered a Special Committee to monitor the site and check compliance and held that closure of the industry could be ordered by the UPPCB and consent to operate withdrawn if there was further violation of the conditions mandated.

Analysis

The efficacy of State Level Environment Impact Assessment Authority

Maneka Kaur

The Environmental Impact Assessment Notification of 2006, the substructure for securing India's environment, was drafted to ensure that all developmental projects abide by the country's environmental laws. In furtherance of this goal, a clear demarcation was made between various categories of projects and the authorizing agencies. All Category B projects, which include projects with lesser size or capacity and smaller impacts than Category A,⁴ came under the purview of the State Level Environment Impact Assessment Authority (SEIAA). The SEIAA was further directed to base its decision, recommending or denying the Environmental Clearance, on the

recommendations of a State or Union Territory Level Expert Appraisal Committee (SEAC). The Notification aimed at making sure that all projects were considered and carefully scrutinized for the environmental impacts. "In absence of a duly constituted SEIAA or SEAC, a Category 'B' project shall be treated as a Category 'A' project."⁵ The EAC and the SEAC were directed to "screen, scope and appraise projects or activities in Category 'A' and Category 'B' respectively," with a strict timeline to meet every month and a reconstitution of the committee itself, every three years.⁶

Further, via EIA Notification (amendment) 2009 dated 01.12.2009⁷, it

⁴ "All projects or activities included as Category 'B' in the Schedule, including expansion and modernization of existing projects or activities as specified in sub paragraph (ii) of paragraph 2, or change in product mix as specified in sub paragraph (iii) of paragraph 2, but excluding those which fulfill the General Conditions (GC) stipulated in the Schedule, will require prior environmental clearance from the State/Union territory Environment Impact Assessment Authority (SEIAA)."

⁵ EIA Notification, 2006. Point 4(iii).

⁶ EIA Notification, 2006. Point 5.

⁷ S.O. 3067(E). EIA Notification (Amendment) 2009. Point IV. Available at: <http://www.moef.nic.in/downloads/rules-and-regulations/3067.pdf>

was clarified that the appropriate mode of communication to be followed for Category B projects will involve putting the said clearance in 'public domain on Governmental Portal.'

"10. Post Environmental Clearance Monitoring: (i)(b) In respect of Category 'B' projects, irrespective of its clearance by MoEF/ SEIAA, the project proponent shall prominently advertise in the newspaper indicating that the project has been accorded environmental clearance and the details of the MoEF website where it is displayed.

(c) The Ministry of Environment and Forests and the State/ Union Territory Level Environmental Impact Assessment Authority (SEIAAs), as the case may be, shall also place the Environmental Clearance in the public domain on Governmental portal."

The ERC research team, in October 2014, decided to conduct a rapid research on the SEIAAs constituted nation-wide in order to ascertain the category, number and size of projects getting clearances. The team was astonished to know that even after 7 years from the release of the Notification, SEIAAs presence in the online world, which is the most important tool for public to access information was virtually non-existent, let alone them

complying with the 2009 amendment of the EIA Notification. Studies conducted in the months of October and November showed disappointing results:

- Out of 29 odd-States/ Union Territories, only a dozen had separate SEIAA websites. The rest had engulfed SEIAA in their respective State Pollution Control Board websites.
- Out of those dozen, only 6-7 SEIAA's⁸ had made available the minutes of the meetings along with all the clearance letters issued. The rest, from the dozen, had only the minutes of the meetings and a list of cleared projects available. In some cases, where a link to environmental clearance was available, the link was not accessible.
- For 10 States/ UTs there was not even a mention of any SEIAA being constituted, let alone having a functional website.⁹

ERC research team decided to follow up on the issue and filed RTIs with the 29 States/ Union Territories. The team limited the information sought to the last SEIAA notified and the Environmental Clearances issued by them. The immediate result of our filing RTIs and

⁸ Bihar, Andhra Pradesh, Chattisgarh, Kerala, Karnataka, Madhya Pradesh, Uttarakhand

⁹ Meghalaya, Mizoram, Nagaland, Telengana, Tripura, West Bengal, etc.

follow up is that there is some improvement in the management of SEIAA websites. In some cases, faulty links have been corrected and the lists and status of projects have been updated.¹⁰ However, even now only a handful of states have uploaded the Environmental Clearances, which remains a massive drawback for exercising the right to access information.¹¹

(The author is an Environmental Lawyer with Legal Initiative for Forest and Environment, LIFE, New Delhi)

¹⁰ SEIAA Harayana – has information on projects that came before it, minutes of meetings, list of approvals granted but the clearance letters are not uploaded. <http://www.seiaahry.in/>; SEIAA Punjab has not uploaded the environmental clearance <http://www.seiaapunjab.co.in/page36.html>

SEIAA Gujarat has not uploaded the environmental clearances and is not up-to-date <http://seiaa.gujarat.gov.in/>; etc.

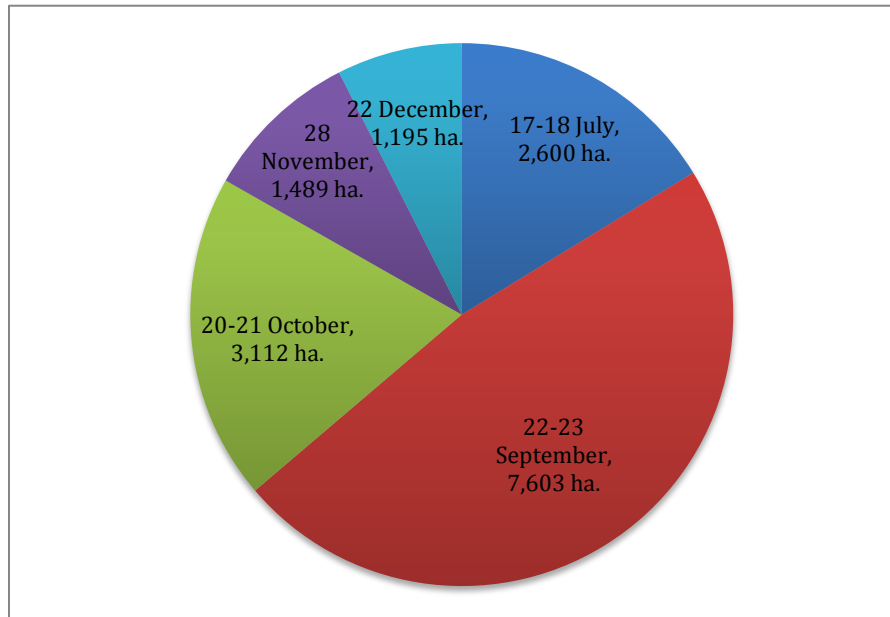
¹¹ SEIAA UP <http://www.seiaaup.in/AllProject.aspx?StatusId=0> and Bihar <http://seiaabihar.org/ec.html> have uploaded environmental clearances. In November of 2014, these were not available.

Analysis of Forest diversion by Forest Advisory Committee

Terence Jorge¹²

A review of Forest Advisory Committee's recommendations during July-December 2014

FAC Recommended Diversions = 16,000 ha. (July-December 2014)



During the second half of 2014, 16,000 ha. (160 sq. km.) of forest land for 82 projects has been recommended for Forest Clearance by the FAC (Forest Advisory Committee). Again, FAC did not decline any proposal. The expert committee, FAC is constituted as per the requirements of the Forest (Conservation) Act 1980. On an average about 80% of the fresh projects that came up for discussion for Forest Clearance were recommended. The other 20% were either sent back for more information or deferred.

States losing their forests: Proposals from 16 states made their way to the five meetings during the period. Arunachal Pradesh led with maximum recommendation for diversion i.e.

¹² EIA Resource and Response Centre (ERC), Goa

4917 ha. or 31% of the total diversions. With 2522.381 ha. of forest recommended for diversion, Madhya Pradesh's forest loss would amount to 16% of the area recommended in these meetings and Odisha stands to lose 10% of the total.

Sectors consuming forests: Projects of 11 different sectors were recommended for Forest Clearance during the review period.

Hydel projects constituted the maximum area for recommendation of 34%, followed by mining taking 21% of the area. Transmission lines, Irrigation and Railways take up 9% each, of the total recommended area. The other sectors include Wind Power, Defence, Forest Village Conversions, Industry, Roads /Highways and Others.

State wise Forest land recommended for Diversion (in hectare)

(FAC Meetings from July-December 2014)

Sr. No.	State	Total	% Area
1	Andhra Pradesh	991.01	6.19312
2	Arunachal Pradesh	4917.37	30.7301
3	Chhattisgarh	1288.19	8.05027
4	Gujarat	55.67	0.3479
5	Himachal Pradesh	1051.08	6.56852
6	Madhya Pradesh	2522.38	15.7631
7	Maharashtra	686.97	4.29308

8	Manipur	1005.06	6.28089
9	Odisha	1532.76	9.57868
10	Punjab	53.4632	0.33411
11	Rajasthan	452.686	2.82897
12	Tamil Nadu	457.25	2.85749
13	Telangana	428.88	2.6802
14	Tripura	15.25	0.0953
15	Uttar Pradesh	466.017	2.91228
16	West Bengal	77.77	0.48601
-	Total	16001.80	100

Sector wise Forest land recommended for Diversion (in hectare)

(FAC Meetings from July-December 2014)

Sr. No.	Sector	Total	% Area
1	Defence	339.53	2.12
2	Forest Village Conversion	1101.82	6.89
3	Hydel	5486.84	34.29
4	Industry	60.29	0.38
5	Irrigation	1446.43	9.04
6	Mining	3269.36	20.43
7	Others	614.59	3.84
8	Railway	1422.99	8.89
9	Road & Highways	746.25	4.66
10	Transmission Line	1448.26	9.05
11	Wind Power	65.45	0.41
-	Total	16001.80	100.00

Examples of environmentally sensitive projects being recommended: In these meetings some very sensitive projects have been recommended merely by imposing conditions. Some examples are Gondia Jabalpur Railway expansion in Madhya Pradesh, 4-6 laning of existing NH 215 in Odisha, JVR OC-II Coal Mine in Andhra Pradesh and Dibang Multipurpose dam project in Arunachal Pradesh.

Gondia Jabalpur Railway: The expansion to broad gauge railway (75.971 ha in Madhya Pradesh) resurfaced despite previously being declined. A joint inspection by Railway Authorities and Shri Ravikiran Govekar AIG (NTCA) found that the proposed railway line running along 48.2 km cuts across the vital Kanha Pench Corridor. The corridor is essential for the long term survival of the tiger, as it permits gene flow in a Meta population frame work in the Central Indian landscape. This should have been sufficient reason for declining the project and yet it was recommended in the December 2014 meeting of the FAC.

NH 215: 4-6 laning of existing highway (174.1595 ha in Odisha) was recommended in the November 2014 FAC meeting, despite causing disturbance to Elephant Habitat Zone 2.

JVR OC-II: Coal Mine (565.66 ha in Andhra Pradesh) of Singareni Collieries Company Limited was recommended in the October 2014 meeting of the FAC despite involving threat to Schedule I species and felling of 3.24 lakh trees.

Dibang Multipurpose project: The Dam project (4577.84 ha in Arunachal Pradesh) was recommended in the September 2014 meeting of the FAC despite involving loss of large area of very good forest. The FAC in its meeting on 12.07.2013 recommended rejection of the proposal as the proposed area has huge forest area with very good forest cover. The proposal was revised and forest area reduced slightly. It was not considered in the FAC meeting of 29-30 April 2014 on the ground that the revised proposal neither addressed the concerns raised by the FAC nor User Agency had given any convincing justification for their stand of not reducing the Dam height by more than 10 meter. MEF & CC rejected the proposal on 28 August 2014. Despite the clear rejection, the Dibang project suddenly appeared on the FAC Agenda with some changes and was recommended in the September 2014 meeting.

FAC needs to be a watchdog and not merely a recommending committee: From the review undertaken, it is found that the while no project has been declined, the quality of recommendations are not in tune with the interest of forest conservation. FAC needs to act objectively as per the mandate and as a sincere watchdog.

Forest Clearance for Jamrani Irrigation Project in Uttarakhand

Pushp Jain

Use of forest land for non-forestry purpose compulsorily requires government permission under the Forest (Conservation) Act, 1980. There are prescribed rules and procedure for this purpose. The permission is called Forest Clearance (FC). There is an expert body, Forest Advisory Committee (FAC), which looks at projects for FC. Every month there is a meeting of the FAC to consider and recommend/decline projects for Forest Clearance. We have been reviewing some of the important proposals on the agenda of FAC meetings regularly and sending comments to the Committee/MEF & CC. Here we present, one such rapid review sent to the FAC Meeting on 28-29 November 2014.

Proposal

Diversion of 381.43 ha. of forest land in favour of Water Resources Department, Government of Uttarakhand for construction of Jamrani Dam Project in District Nainital, Uttarakhand.

Biodiversity rich, thickly forested area

Density of vegetation is generally around 0.60 and ranges up to 1.0, but no species-wise and diameter class wise enumeration of trees has been provided in the fact sheet. Part of the proposed

forest area falls within the notified Shivalik Elephant Reserve.

Highly vulnerable area – the project can lead to a disaster

The report of the geologist clearly outlines the vulnerability of the area and adverse impacts of the project. As per the fact sheet, the report of the geologist states:

- (i) In the reservoir area, the rise and fall of the ground water table may weaken the rocks and soil and reduce shear strength and its fluctuation produces alteration in the pore water pressure which may promote landslides along the bank of reservoir.
- (ii) (Impounded) Reservoir is under faulted, fissured, jointed area and above 100 M mark and may cause induced seismicity.
- (iii) The reservoir of this area may cause loss of forests, pastures, agriculture fields and migration of wild life.

Regional Office Report: Biodiversity importance & huge number of trees in the area, R & R issue, previous rejection, incomplete proposal

The report from the Regional Office, MoEF clearly outlines the biodiversity importance, huge number of trees involved and R & R issue. It outlines all kind of flaws with the project and documents submitted or not submitted. It outlines that the project has been previously rejected by FAC and MoEF. Some of the issues stated are:

'The area in Nainital division is very eco-sensitive and many endangered faunal species are found here, According to DFO Nainital's report habitat's of many endangered species would be affected and this would increase the man animal conflicts in the area. The breeding and survival of Golden Mahaseer found in the river would be effected, NOC of Fisheries department is required specially in this context'.

'In the proposal number of trees to be felled are 85794, which is to the tune of 225 trees per hectare. 84891 trees are of girth below 60 cm and the remaining 903 trees are of above 60 cm girth. The cutting/felling of existing trees will affect the eco-system of the area'.

'The proposal involves rehabilitation of around 782 people (as per 2008 survey) of 6 villages which are coming in the submergence area. But the R&R plan has not been prepared by the user agency. The proposed diversion also involves resettlement of Haidakhan Ashram & Temple.'

Suggestion to FAC

The factsheet clearly outlines issues which make the proposal unsuitable for recommendation.

(The author is the Director of EIA Resource and Response Centre, ERC, New Delhi)