

## Appendices

### A. Nepal-India Water Treaties, Agreements and Contracts

#### Appendix 1

### 1920 Sarada Barrage Project Assessment between British India and Nepal

Nepal  
23<sup>rd</sup> August 1920

My dear Colonel Kennion,

With reference to your letter No. 3351/4550-73 dated the 29th July 1920 enclosing copy of a letter from the Chief Secretary to the United Provinces government for sanction to the survey party to finally demarcate the land required for the Sarada canal work and the irrigation branch staff entering on it to start necessary work of construction, order has been issued to the Bada Hakim of Kailali-Kanchanpur Goswara, to permit the said parties to enter Nepalese territory for the purpose mentioned. Please arrange that an intimation a fortnight in advance of their coming be sent to the the said Bada Hakim at Billouri specifying the dates when and on the points where they would enter Nepalese territory so that he may appoint a Nepalese officer to meet the parties and be with them during the demarcation work. In order that the intimation may reach the Bada Hakim without fail it is requested that it be sent by post as well as by messenger, as the delivery from the post office, which is Puranpur (about 28 miles) during the dry season and Palia Kalan (about 36 miles) during the dry-season and rains is not very certain.

In connection with this Sarada canal Project, the construction of the head works and exchange of land relating there to it is understood that it is agreed that:

- (1) The Nepal Government will have a right for a supply of 460 cusecs of water and, provided the surplus is available, for a supply of up to 1,000 cusecs when cultivation grows at any future time from the Sarada canal Head work during the Kharif i.e from 15<sup>th</sup> May to 15<sup>th</sup> October; and of 150, cusecs during Rabi i.e. from the 15<sup>th</sup> October to 15<sup>th</sup> may, the canal head being in the latter period alternately closed and opened for 10 days at a time running 300 cusecs whenever the canal is open.
- (2) That is order to give those supplies all necessary works such as the canal head with regulating gates, quarters from the canal staff i.e. on the left bank of the river and also under-sluices for the purpose of maintaining an open

channel from the river to the canal head will be done by the Government of India at their own expense on the understanding that they shall retain full and entire control of the work with this under-taking that they shall supply to Nepal the quantity of water agreed to free of any charge.

- (3) That the Nepal Government would transfer necessary land for the construction and maintenance of canal works which is provisionally estimated at 4,000 acres and would receive land equal in area from the British Government. The land to be taken from Nepalese territory will, after demarcation be measured and then land equal in area to it will be given to Nepal by the said Government.

I would ask to be kindly informed whether the Government of India has to make any proposal with regard to the disposal of timber obtained from trees felled in the course of demarcation and when the land so demarcated to be taken will be taken and land to be given in lieu thereof will be measured and given also whether they wish that valuable trees standing on the lands to be exchanged are to be given and taken along with those lands.

I am, with kind regards,  
Yours very sincerely,  
(Sd) Chandra

### **Reply of the British Government**

No. 4725/4550-78 of 20

The British Legation, Nepal  
1<sup>st</sup> October 1920

My dear Maharaja,

With reference to your letter dated the 23<sup>rd</sup> August 1920, I write to inform your Excellency that I communicated the contents thereof to the United Provinces Government and enclose herewith a copy of their reply for your Excellency's information.

With kind regards,  
Your very sincerely,  
(Sd.)

To  
General His Excellency  
Maharaja Sir Chandra Shumshere Jung  
Bahadur Rana, G.C.B., G.C.S.I., G.C.M.G.,  
G.C.V.O., D.C.L.,  
Prime Minister and Marshal of Nepal

(Enclosed copy)

Copy of a letter No. 2984, dated the 12<sup>th</sup> October 1920, from the Chief Secretary to the Government of the United Provinces, to the British Envoy at the court of Nepal.

1. With reference to your letter No.3789, dated the 25<sup>th</sup> August 1920, I am directed to say that the land to be acquired in Nepal in connection with the Sarada-Kitcha feeder project is 4093.88 acre. The land this government is offering the Nepal government in exchange is noted in the Margin.

<b>Division</b>	<b>District</b>	<b>Site</b>	<b>Area in Acre</b>
1. Lucknow	Kheri	Sumerpur	2914
2. Fyzabad	Bahraich	Border	569
3. Do	Gonda	Near Koelabasa	65.3
4. Do	Bahraich	Border	516.2
5. Do	Do	Do	29.38

Orders have been issued to the British authorities concerned for the demarcation, on site, of this land and arrangements for the exchange will be made as soon as the land in Nepal and British territory has been demarcated.

2. The summary of the terms regarding the supply of water from the canal to the Nepal government as given in His Excellency the Prime Minister of Nepal's letter is correct.
3. As regards the ownership of the trees felled in demarcating the land in Nepal, I am to say that as it will be necessary to cut up and remove these trees so as to clear the line, this government would suggest that to avoid delay, the trees should be regarded as belonging to the irrigation branch of this province, who could then arrange to the irrigation-Branch of this province, dispose of them immediately. Similarly the trees felled in demarcating the land in British India for transfer to Nepal, may be regarded as belonging to the Durbar if it will arrange to clear them away without delay. This arrangement seems to be simple and equitable as it is probable that the trees felled in

demarcating the land in Nepal will balance the number of trees felled in demarcating the land in British territory.

4. I am to add that the remaining trees on the land will be exchanged along with the land. The Nepal Durbar is not likely to lose by the exchange as the land which this Government is offering in exchange comprises valuable forest and grazing ground.

2nd Clerk,  
copy

## Appendix 2

### **The 1954 Agreement on the Kosi Project (as revised in 19 December 1996)**

Amended agreement between His Majesty's Government of Nepal (hereinafter referred to as 'HMG') and the Government of India (hereinafter referred to as the 'Union') concerning the Kosi Project.

**Whereas** the Union was desirous of constructing a barrage, headworks and other appurtenant works about three miles upstream of Hanuman Nagar town on the Kosi River with afflux and flood banks, and canals and protective works on land lying within the territories of Nepal for the purpose of flood control, irrigation, generation of hydro-electric power and prevention of erosion of Nepal areas on the right side of the river, upstream of the barrage (hereinafter referred to as the 'Project')

**And Whereas** HMG agreed to the construction of the said barrage, headworks and other connected works by and at the cost of the Union, in consideration of the benefits arising therefrom and a formal document incorporating the terms of the Agreement was brought into existence on the 25th April, 1954 and was given effect to;

**And Whereas** in pursuance of the said Agreement various works in respect of the Project have been completed by the Union while others are in various stages of completion for which HMG has agreed to afford necessary facilities:

**And Whereas** HMG has suggested revision of the said Agreement in order to meet the requirements of the changed circumstances, and the Union, with a view to maintaining friendship and good relation subsisting between Nepal and India, has agreed to the revision of Agreement.

Now, therefore, the parties agree as follows:

#### **1. Details of the project**

- (i) The barrage is located about 3 miles upstream of Hanuman Nagar town.
- (ii) The general layout of the barrage, the areas within afflux banks, flood embankments, and other protective works, canals, power house and the lines

of communication are shown in the amended plan annexed to this agreement as Amended Annexure-A.

- (iii) Any construction and other undertaking by the Union in connection with this Project shall be planned and carried out in consultation with HMG,

Provided that such works and undertakings which, pursuant to any provision of this Agreement require the prior approval of HNG shall not be started without such prior approval;

And further provided that in situation described in Clause 3 (iii) and Clause 3 (iv) intimation to HMG shall be sufficient.

- (iv) For the purpose of Clauses 3 and 8 of this Agreement the land under the ponded areas and boundaries as indicated by the plan specified in sub-clause (ii) above, shall be deemed to be submerged.

## **2. Investigations and surveys**

- (i) Whenever the Chief Engineer of Kosi Project, Government of Bihar may consider any survey or investigation to be required in connection with the said project, HMG shall, if and in so far as HMG has approved such survey or investigation, authorise and give necessary facilities to the concerned officers of the Union or other persons acting under the general or special orders of such officers to enter upon such land as necessary with such men, animals, vehicles, equipment, plant, machinery and instruments as necessary to undertake such surveys and investigations. Such surveys and investigations may comprise aerial and ground surveys, hydraulic, hydrometric, hydrological and geological surveys including construction of drill holes for surface and subsurface exploration, investigations for communications and for materials of construction; and all other surveys and investigations necessary for the proper design, construction and maintenance of the barrage and all its connected works mentioned under the Project. However, investigations and surveys necessary for the general maintenance and operation of the project, inside the project area, may be done by the Union after due intimation to HMG.

In this Agreement, the "Project Area" shall mean the area acquired for the project.

- (ii) The provisions of sub-clause (i) of this clause shall also apply to surveys and investigations of storage dams or detention dams on the Kosi, soil conservation measures, such as check dams, afforestation, etc., required for a complete solution of the Kosi problems in the future.
- (iii) The surveys and investigations referred to in sub clauses (i) and (ii) shall be carried in co-operation with HMG.

- (iv) All data, specimens, reports and other results of surveys and investigations carried out by or on behalf of the Union in Nepal pursuant to the provisions on this clause, shall be made available to HMG freely and without delay. In turn, HMG shall, upon request by the Union, make available to the Union all data, maps, specimens, reports and other results of surveys and investigations carried out by or on behalf of HMG in Nepal in respect of the Kosi river.

### **3. Authority for execution of works and use of land and other property**

- (i) Provided that any major construction work not envisaged in the amended plan (Amended Annexure- A) referred to in clause 1 (ii) shall require the prior approval of HMG, HMG shall authorise the Union to proceed with the execution of the said project as and when the project or a part of the project receives sanction of the said Union and notice has been given by the Union to HMG of its intention to commence work on the respective constructions and shall permit access by the Engineer and all other officers, servants, and nominees of the Union, with such men, animals, vehicles, plant, machinery, equipment and instruments as may be necessary for the direction and execution of the respective constructions, to all such lands and places, and shall permit the occupation, for such period as may be necessary, of all such lands and places as may be required for the proper execution of the respective constructions.
- (ii) The land required for the purposes mentioned in clause 3 (i) above shall be acquired by HMG and compensation therefore shall be paid by the Union in accordance with the provisions of clause 8 hereof.
- (iii) HMG shall, upon prior notification, authorise officers of the Union to enter on land outside the limits of boundaries of the barrage and its connected works in case of any accident happening or being apprehended to any of the said works and to execute all works which may be necessary for the purpose of repairing or preventing such damage. Compensation, in every case, shall be tendered by the Union through HMG to the owners of the said land for all accidents done to the same in order that compensation may be awarded in accordance with clause 8 hereof.
- (iv) HMG will permit the Union to quarry the construction materials required for the project from the various deposits at Chatra, Dharan Bazar or other places in Nepal.

### **4. Use of water and power**

- (i) HMG shall have every right to withdraw for irrigation and for any other purpose in Nepal water from the Kosi river and from the Sun-Kosi river or within the Kosi basin from any other tributaries of the Kosi river as may be required from time to time. The Union shall have the right to regulate all the balance of supplies in the Kosi river at the barrage site thus available from time to time and to generate power in the Eastern Canal.

- (ii) HMG shall be entitled to obtain for use in Nepal any portion up to 50 percent of the total hydro-electric power generated by any Power House situated within a 10- mile radius from the barrage site and constructed by or on behalf of the Union, as HMG shall from time to time determine and communicate to the Union:

Provided that:

HMG shall communicate to the Union any increase or decrease in the required power supply exceeding 6,800 KW at least three months in advance:

- (iii) If any power to be supplied to Nepal pursuant to the provisions of this sub-clause is generated in a power house located in Indian territory, the Union shall construct the necessary transmission line or lines to such points at the Nepal-Indian border as shall be mutually agreed upon.
- (iv) The tariff rates for electricity to be supplied to Nepal pursuant to the provisions of this clause shall be fixed by mutual agreement.

## **5. Lease of the project areas**

- (i) All the lands acquired by HMG under the provisions of clause 3 hereof as of the date of signing of these amendments shall be leased by HMG to the Union for a period of 199 years from the date of the signing of these amendments at an annual Nominal Rate.
- (ii) The rent and other terms and conditions on which lands for Western Kosi Canal shall be leased by HMG to the Union pursuant to this Agreement shall be similar to those as under sub- clause (i).
- (iii) The rent and other terms and conditions of any other land to be leased by HMG to the Union pursuant to this Agreement shall be fixed by mutual agreement.
- (iv) At the request of the Union, HMG may grant renewal of the leases referred to in sub-clauses (i), (ii) and (iii) on such terms and conditions as may be mutually agreed upon.
- (v) The sovereignty rights and territorial jurisdiction of HMG, including the application and enforcement of the law of Nepal on and in respect of the leased land shall continue un-impaired by such lease.

## **6. Royalties**

- (i) MG will receive royalty in respect to power generated and utilised in the Indian Union at rates to be settled by agreement hereafter:  
Provided that no royalty will be paid on the power sold to Nepal.
- (ii) HMG shall be entitled to receive payment of royalties from the Union in respect of stone, gravel and ballast obtained from Nepal territory and used in the construction and future maintenance of the barrage and other connected works at rates to be settled by agreement hereafter.

- (iii) The Union shall be at liberty to use and remove clay, sand and soil without let or hindrance from lands leased by HMG to the Union.
- (iv) Use of timber from Nepal forests, required for the construction, shall be permitted on payment of compensation. Provided that no compensation will be payable to HMG for such quantities of timber as may be agreed upon by HMG and the Union to be necessary for use on the spurs or other river training works required for the prevention of caving and erosion of the right bank in Nepal.

Provided likewise that no compensation will be payable by the Union for any timber obtained from the forest lands leased by HMG to the Union.

#### **7. Customs duties**

HMG shall charge no customs duty or duty of any kind, during construction and subsequent maintenance, on any articles and materials required for the purpose of the Project and the work connected therewith.

#### **8. Compensation for land and property and for land revenue**

- (i) For assessing the compensation to be awarded by the Union to HMG in cash-
  - (a) Lands required for the execution of various works as mentioned in clause 3 (ii) and clause 9(i); and
  - (b) Submerged lands, will be divided into the following classes: -
    1. Cultivated lands,
    2. Forest lands,
    3. Village lands and houses and other immovable property standing on them.
    4. Waste lands.

All lands recorded in the register of lands in the territory of Nepal as actually cultivated shall be deemed to be cultivated lands for the purpose of this clause.

- (ii) The Union shall pay compensation-
  - (a) to HMG for the loss of land revenue as at the time of acquisition in respect of the area acquired, and
  - (b) to whomsoever it may be due for the lands, houses and other immovable property acquired for the Project and leased to the Union.

The assessment of such compensation and the manner of payment shall be determined hereafter by mutual agreement between HMG and the Union.

- (iii) All lands required for the purposes of the Project shall be jointly measured by the duly authorised officers of HMG and the Union respectively.

## **9. Communications**

- (i) HMG agrees that the Union may construct and maintain roads, tramways, railways, ropeways, etc., required for the project in Nepal and shall provide land for these purposes on payment of compensation as provided in Clause 8. Provided that the construction of any roads, tramways, railways, ropeways, etc., outside the Project area shall require the Prior approval of HMG.
- (ii) Any restrictions, required in the interest of construction, maintenance and proper operation of Project, regarding the use of the roads, etc., referred to in sub-clause (i) by commercial or Private vehicles may be mutually agreed upon. In case of threatened breach or erosion of the structures on account of the river, the officers of the Project may restrict public traffic under intimation to HMG.
- (iii) HMG agrees to permit, on the same terms as for other users, the use of all roads, waterways and other avenues of transport and communication in Nepal for bona fide Purposes of the construction and maintenance of the barrage and other connected works.
- (iv) The bridge over Hanuman Nagar shall be open to public traffic. With prior approval of HMG., the Union shall have the right to close the traffic over the bridge temporarily if and in so far as required for technical or safety reasons. In such cases, the Union shall take all measures required for the most expeditious reopening of the bridge.
- (v) HMG agrees to permit installation of telegraph, telephone and radio communications of the bona fide purposes of the construction and maintenance of the project:

Provided that Union shall agree to the withdrawal of such facilities which HMG may in this respect provide in future.

Further provided that the Union agrees to permit the use of internal telephone and telegraph in the Project area to authorised servants of HMG for business in emergencies provided such use does not in any way interfere with the construction and operation of the Project.

## **10. Navigation rights**

All navigation rights in the Kosi River in Nepal shall rest with HMG. Provision shall be made for suitable arrangements at or around the site of the barrage for free and unrestricted navigation in the Kosi River, if technically feasible. However, the use of any water-craft like boats, launches and timber rafts within two miles of the barrage and headworks shall not be allowed on grounds of safety, except by special permits to be issued by the competent authority of HMG in consultation with the executive Engineer, Barrage. Any unauthorised water-craft found within this limit shall be liable to prosecution.

## **11. Fishing rights**

All the fishing right in the Kosi River in Nepal shall continue to rest with HMG. However, no fishing shall be permitted within two miles of the barrage and headworks except under special permits to be issued by the competent authority of HMG in consultation with the Executive Engineer, Barrage. While issuing the special permits within two miles, HMG shall keep in view the safety of the headworks and the permit-holders.

## **12. Use of Nepali labour**

The Union shall give preference to Nepali labour, personnel and contractors to the extent available and in its opinion suitable for the construction of the Project but shall be at liberty to import labour of all classes to the extent necessary.

## **13. Civic amenities in the project area**

Subject to the prior approval of HMG, the Union may, in the project area, establish schools, hospitals, water-supply systems, electric supply systems, drainage and other civic amenities for the duration of the construction of the project. On completion of construction of the projects, any such civic amenities shall, upon request by HMG, be transferred to HMG, and that, in any case, all functions of public administration shall, pursuant to the provisions of clause 5(v) be exercised by HMG.

## **14. Arbitration**

- (i) Any dispute or difference arising out of or in any way touching or concerning the construction, effect or meaning of this Agreement, or of any matter contained herein or the respective rights and liabilities of the parties hereunder, if not settled by discussion shall be determined in accordance with the provisions of this clause.
- (ii) Any of the parties may by notice in writing inform the other party of its intention to refer to arbitration any such dispute or difference mentioned in sub-clause (i); and within 90 days of the delivery of such notice, each of the two parties shall nominate an arbitrator for jointly determining such dispute or difference and the award of the arbitrators shall be binding on the parties.
- (iii) In case the arbitrators are unable to agree, the parties hereto may consult each other and appoint an Umpire whose award shall be final and binding on them.

## **15. Establishment of Indo-Nepal Kosi Project Commission**

- (i) For the discussion of problems of common interest in connection with the project and for purposes of co-ordination and co-operation between the two Governments with regard to any matter covered in this agreement, the two

Government shall at an early date establish a joint 'Indo-Nepal Kosi Project Commission.'" The rules for the composition, jurisdiction, etc., of the said Commission shall be mutually agreed upon.

- (ii) Until the said Joint Commission shall be constituted the "Co-ordination Committee for the Kosi Project" shall continue to function as follows: -
    - (a) The committee shall consist of four representatives from each country to be nominated by the respective Governments.
    - (b) The Chairman of the committee shall be a Minister of HMG, and the Secretary shall be the Administrator of the Kosi Project.
    - (c) The committee shall consider among others such matters of common interest concerning the Project as land acquisition by HMG for lease to the Union, rehabilitation of displaced population, maintenance of law and order.
  - (iii) As soon as the said joint Commission shall be constituted, the Co-ordination Committee for the Kosi Project shall be dissolved.
- 16.** (i) This present Agreement shall come into force from the date of signatures of the authorised representatives of HMG and the Union respectively and thereafter, it shall remain valid for a period of 199 years.
- (ii) This present Agreement shall supersede the Agreement signed between the Government of Nepal and the Government of India on the 25<sup>th</sup> April 1954 on the Kosi Project.

In Witness Whereof the undersigned being duly authorised thereto by their respective Governments have signed the present Amended Agreement.

Done at Katmandu, in quadruplicate, this day, the 19<sup>th</sup> of December 1966.

For the Government of India  
Shriman Narayan  
Ambassador of India  
in Nepal

For His Majesty's Government of  
Nepal  
Y.P. Pant  
Secretary, Ministry of Economic  
Planning and Finance

**Planning,**

**Ministry of Economic Affairs  
Singh Durbar**

Kathmandu, Nepal  
December 19, 1966.

Your Excellency,

With reference to sub- clause (iv) of clause 5 of the Amended Kosi Project Agreement, our two Governments have reached an understanding that the Government of India will be reasonably compensated in case the Project properties are taken over by His Majesty's Government at the end of the lease period. The compensation will cover the cost borne to date and such other cost as may be incurred in future by the Government of India with the agreement of His Majesty's Government. In that case the depreciation in the value of the Project materials would, of course, be taken into account.

I shall be grateful if Your Excellency will kindly confirm that the above correctly sets out the understanding reached between our two Governments.

This letter and Your Excellency's reply confirming the understanding will constitute an agreement between our two Governments and shall form part of the Amended Kosi Project Agreement and shall come into force from the date of your letter in reply.

Please accept, Your Excellency, the assurances of my highest consideration.

Y. P. PANT,  
Secretary to His Majesty's  
Government of Nepal

His Excellency Shri Shriman Narayan,  
Ambassador Extraordinary and Plenipotentiary  
of India to Nepal,  
Embassy of India, Kathmandu, Nepal.

## Embassy of India, Nepal

Dated the 19<sup>th</sup> December 1966

My dear Dr. Pant,

I acknowledge the receipt of your letter of the 19<sup>th</sup> December 1966 regarding sub-clause (iv) of clause 5 of the Amended Kosi Project Agreement, which is as follows: -

"With reference to sub-clause (iv) of clause 5 of the Amended Kosi Project Agreement, our two Governments have reached an understanding that the Government of India will be reasonably compensated in case the Project properties are taken over by His Majesty's Government at the end of the lease period. The compensation will cover the cost borne to date and such other costs as may be incurred in future by the Government of India with the agreement of His Majesty's Government. In that case the depreciation in the value of the Project materials would, of course, be taken into account.

I shall be grateful if you will kindly confirm that the above correctly sets out the understanding reached between our two Governments

This letter and your reply confirming the understanding will constitute an agreement between our two Governments and shall form part of the Amended Kosi Project Agreement and shall come into force from the date of your letter in reply."

2. I confirm that the foregoing correctly sets out the understanding reached between us.

Yours sincerely,  
Shriman Narayan

Dr. Y. P. Pant, Secretary,  
Ministry of Economic Planning and Finance,  
His Majesty's Government of Nepal, Kathmandu

## Embassy of India, Nepal

Dated the 19<sup>th</sup> December 1966

My dear Dr. Pant,

With reference to sub-clause (ii) (a) of clause 8 of the Amended Kosi Project Agreement, it has been agreed between our two Governments that the Government of India will pay compensation annually at the tare of Rs. 5 NC per Nepali Bigha for all lands that have been acquired so far for the Kosi Project. For lands to be acquired in future, and especially for the Western Kosi Canal, the existing provision under which loss of land revenue is to be determined on the basis of the land revenue payable as at the time of acquisition of the land will be applicable.

With reference to sub-clause (ii) of clause 1 of the amended Kosi Project Agreement, it has been agreed between our two Governments that the land on which the Nepal Link Bund is situated, as shown in Amended Annexure- A referred to in sub-clause (ii) of clause 1, will be surrendered by the Government of India to His Majesty's Government who, on their part, will agree to permit the Government of India to maintain and operate the existing waterways in this Bund.

I shall be grateful if you will kindly confirm that the above correctly sets out the understanding reached between our two Governments.

This letter and your reply confirming the understating will constitute an agreement between our two Governments and shall form part of the Amended Kosi Project Agreement and shall come into force from the date of your letter in reply.

Yours sincerely,  
Shriman Narayan

Dr. Y. P. Pant, Secretary  
Ministry of Economic Planning and Finance,  
His Majesty's Government of Nepal, Kathmandu.

**Planning,**

**Ministry of Economic Affairs  
Singh Durbar**

Kathmandu, Nepal  
December 19, 1966.

Your Excellency,

I acknowledge the receipt of Your Excellency's letter of December 19, 1966 regarding certain clauses of the Amended Kosi Agreement, which is as follows:

"With reference to sub-clause (ii) (a) of clause 8 of the Amended Kosi Project Agreement, it has been agreed between our two Governments that the Governments of India will pay compensation annually at the rate of Rs. 5 NC per Nepali Bigha for all lands that have been acquired so far for the Kosi Project. For lands to be acquired in future, and especially for the Western Kosi Canal, the existing provision under which loss of land revenue is to be determined on the basis of the land revenue payable as that the time of acquisition of the land will be applicable.

With reference to sub-clause (ii) of clause 1 of the Amended Kosi Project Agreement, it has been agreed between our two Governments that the land on which the Nepal Link Bund is situated, as shown Amended Annexure-A referred to in sub-clause (ii) of clause 1, will be surrendered by the Government of India to His Majesty's Government who, on their part, will agree to permit the Government of India to maintain and operate the existing waterways in this Bund.

I shall be grateful if you will kindly confirm that the above correctly sets out the understanding reached between our two Governments.

This letter and your reply confirming the understanding will constitute an agreement between our two Governments and shall form part of the Amended Kosi Project Agreement and shall come into force from the date of your letter in reply."

2. We confirm the understandings as indicated in Your Excellency's letters.

Please accept, Your Excellency, the assurance of my highest consideration.

Y. P. Pant  
Secretary to His Majesty's  
Government of Nepal

His Excellency Shri Shriman Narayan,  
Ambassador Extraordinary and Plenipotentiary of India to Nepal  
Embassy of India, Kathmandu, Nepal

### Appendix 3

## **Agreement between His Majesty's Government of Nepal and the Government of India on the Gandak Irrigation and Power Project (Amended), 30 April 1964**

**Preamble:** Whereas His Majesty's Government of Nepal and the Government of India consider that it is in the common interests of both Nepal and India to construct a barrage, canal head regulators and other appurtenant works about 1,000 feet below the existing Tribeni canal head regulator and of taking out canal systems for purposes of irrigation and development of power for Nepal and India (hereinafter referred to as "the project")

**And whereas** in View of the common benefits, His Majesty's Government have agreed to the construction of the said barrage, canal head regulators and other connected works as shown in the Plan annexed to this Agreement to the extent that they lie within the territory of Nepal, by and at the cost of Government of India.

Now the Parties Agree as Follows:

#### **1. Investigation and surveys**

His majesty's Government authorise the Project Officers and other persons acting under the general or special orders of such officers to move in the area indicated in the said Plan with men, material and equipment as may be required for the surveys and investigations in connection with the Project, before, during and after construction, as may be found necessary from time to time. These surveys include ground, aerial, hydraulic, hydrometric, hydrological and geological surveys; investigations for communication and for alignment of canals and for materials required for the construction and maintenance of the Project.

#### **2. Authority for the execution of works and their maintenance**

- (i) His Majesty's Government authorise the Government of India to proceed with the execution of the Project and for this purpose His Majesty's Government shall acquire all such land as the Government of India may require and will permit the access to the movement within and the residence in the area indicated in the Plan of offices and field staff with labour force, draught animals, vehicles, plants, machinery, equipment and instruments as may be necessary for the execution of the Project and for its operation and maintenance after its completion.

- (ii) In case of any apprehended danger of accident to any of the structures, the officers of the Government of India will execute all works which may be necessary for repairing the existing works or preventing such accidents and/or danger in the areas indicated in the Plan. If any of such works have to be constructed on lands which do not belong to the Government of India, His Majesty's Government will authorise these works to be executed and acquire such additional lands as may be necessary for the purpose. In all such cases the Government of India shall pay reasonable compensation for the lands so acquired as well as for damage, if any, arising out of the execution of these works.

### **3. Land acquisition**

- (i) His Majesty's Government will acquire or requisition, as the case may be, all such lands as are required by the Government of India for the Project, i.e., for the purpose of investigation, construction and maintenance of the Project and the Government of India shall pay reasonable compensation for such lands acquired or requisitioned.
- (ii) His Majesty's Government shall transfer to the Government of India such lands belonging to His Majesty's Government as are required for the purpose of the Project on payment of reasonable compensation by the Government of India.
- (iii) Lands requisitioned under paragraph (i) shall be held by the Government of India for the duration of the requisition and lands acquired under sub-clause (i) or transferred under sub-clause (ii) shall vest in the Government of India as proprietor and subject to payment of land revenue (malpot) at the rates at which it is leviable on agricultural lands in the neighbourhood.
- (iv) When such land vesting in the Government of India or any part thereof ceases to be required by the Government of India for the purpose of the Project, the Government of India will reconvey the same to His Majesty's Government free of charge.

### **4. Quarrying**

His Majesty's Government shall permit the Government of India on payment of reasonable royalty to quarry materials, such as block stones, boulders, shingles and sand required for the construction and maintenance of the Project from the areas indicated in the said Plan.

### **5. Communication**

- (i) His Majesty's Government shall allow the Government of India to construct and maintain such portion of the Main Western Canal which falls in Nepal territory and to construct and maintain communications for the construction and maintenance of the Project. The road will be essentially departmental

roads of the Project and their use by commercial and noncommercial vehicles of Nepal will be regulated as mutually agreed upon between His Majesty's Government and Government of India.

- (ii) The bridge over the Gandak Barrage will be open to public traffic, but the Government of India shall have the right to close the traffic over the bridge for repair, etc.
- (iii) The Government of India agree to provide locking arrangements for facility of riverine traffic across the barrage free from payment of any tolls whatever, provided that this traffic will be regulated by the Project staff in accordance with the rules mutually agreed upon between His Majesty's Government and the Government of India.
- (iv) His Majesty's Government agree to permit installation of telegraph, telephone; and radio communications as approximately indicated in the Plan for the bona fide purpose of the construction, maintenance and operation of the Project.
- (v) The Government of India shall permit the use of internal telegraph, telephone and radio communications as indicated in the Plan to the authorised servants of His Majesty's Government in emergencies, provided such use does not interfere with the construction, maintenance and operation of the Project.

#### **6. Ownership, operation and maintenance of works**

Subject to the provisions of sub-clause (v) of clause 7, all works connected with the Project in the territory of Nepal will remain the property of and be operated and maintained by the Government of India.

#### **7. Irrigation for Nepal**

- (i) The Government of India shall construct at their own cost the Western Nepal Canal including the distributary system thereof down to a minimum discharge of 20 cusecs for providing flow irrigation in the gross command area estimated to be about 40,000 acres.
- (ii) The Government of India shall construct the Eastern Nepal Canal from the tail-end of the Don Branch Canal up to the river Bagmati including the distributary system down to a minimum discharge of 20 cusecs at their own cost for providing flow irrigation in Nepal for the gross command area estimated to be 1,03,500 acres.
- (iii) His Majesty's Government shall be responsible for the construction of channels below 20 cusecs capacity for irrigation in Nepal but the Government of India shall contribute such sum of money as they may consider reasonable to meet the cost of construction.
- (iv) The Nepal Eastern Canal and the Nepal Western Canal shall be completed, as far as possible, within one year of the completion of the barrage.

- (v) The canal systems including the service roads situated in Nepal territory except the Main Western Canal, shall be handed over to His Majesty's Government for operation and maintenance at their cost.

*<sup>a</sup>Also, the head regulator of the Don Branch Canal shall be operated by His Majesty's Government keeping in view the irrigation requirements of areas irrigated by this branch canal in India and Nepal.*

## **8. Power development and reservation for Nepal**

- (i) The Government of India agree to construct one Power House with an installed capacity of 15,000 kW in Nepal territory on the Main Western Canal.
- (ii) The Government of India also agree to construct a transmission line from the Power House in Nepal to the Bihar border near Bhaisalotan and from Sugauli to Raxaul in Bihar in order to facilitate supply of power on any point in the Bihar Grid up to and including Raxaul.
- (iii) The Government of India shall supply power to His Majesty's Government at the Power House and/or at any point in the Grid up to and including Raxaul to an aggregate maximum of 10,000 kW up to 60 percent load factor at power factor not below 0.85. The charges for supply at the Power House shall be the actual cost of production, and on any point on the Grid up to Raxaul it shall be the cost of production plus the cost of transmission on such terms and conditions as may be mutually agreed upon.
- (iv) His Majesty's Government will be responsible for the construction at their own cost of the transmission and distribution system for the supply of power within Nepal from the Power House or from any point on the Grid up to and including Raxaul.
- (v) The ownership and management of the Power House shall be transferred to His Majesty's Government on one year's notice in writing given by them to the Government of India after the full load of 10,000 kW at 60 percent load factor has been developed in Nepal from this Power House.
- (vi) The ownership of the transmission system constructed by the Government of India at its cost shall remain vested in the Government of India, but, on transfer of the Power House, the Government of India shall continue the arrangements for transmission of power, if so desired by His Majesty's Government, on payment of the cost of transmission. Provided that His Majesty's Government shall have the right to purchase the transmission system from the Power House to Bhaisalotan situated in Nepal territory on payment of the original cost minus depreciation.
- (vii) The Government of India shall be free to regulate the flow into or close the Main Western Canal Head Regulator temporarily, if such works are found to be necessary in the interest of the efficient maintenance and operation of the

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<sup>a</sup> This has been added in accordance with the revised agreement signed on the 30<sup>th</sup> April 1964.

Canal or the Power House, provided that in such situations the Government of India agree to supply the minimum essential power from the Bihar Grid to the extent possible on such terms and conditions as may be mutually agreed upon.

**9. #Protection of Nepal's riparian rights:**

His Majesty's Government will continue to have the right to withdraw for irrigation or any other purpose from the river or its tributaries in Nepal such supplies of water as may be required by them from time to time in the Valley.

For the trans-Valley uses of Gandak waters, separate agreements between His Majesty's Government and the Government of India will be entered into for the uses of waters in the months of February to April only.

**10. \*Deleted:**

**11. Sovereignty and Jurisdiction**

Nothing in this Agreement shall be deemed to derogate from the sovereignty and territorial jurisdiction of His Majesty's Government in respect of lands acquired by His Majesty's Government and made available to the Government of India for investigation, execution and maintenance of the Project.

**12. Arbitration**

- (1) Any dispute or difference arising out of or in any way touching or concerning the construction, effect or meaning of this Agreement or of any matter contained herein or the respective rights and liabilities of the parties hereunder, if not settled by discussion, shall be determined in accordance with the provisions of this clause.
- (2) Any of the Parties may by notice in writing inform the other party of its intention to refer to arbitration any such dispute or difference mentioned in sub-clause (1) and within 90 days of the delivery of such notice, each of the two parties shall nominate an arbitrator for jointly determining such dispute or difference and the award of the arbitrators shall be binding on the parties.

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# This has been amended vide the revised agreement signed on the 30<sup>th</sup> April 1964. The original clause read as follows: "**9. Protection of Nepal's riparian rights:** His Majesty's Government will continue to have the right to withdraw for irrigation of any other purpose from the rive or its tributaries in Nepal such supplies of water as may be required by them from time to time and His Majesty's Government agree that they shall not exercise this right in such manner as is likely in the opinion of the parties hereto prejudicially to affect the water requirements of the Project as set out in the schedule annexed hereto." The scheduled referred to may be seen in Appendix II.

\* This has been deleted in accordance with the revised agreement signed on the 30<sup>th</sup> April 1964. The original clause read as follows: "**10. Pro rata reduction of supplies during period of shortage:** Whenever the supply of water available for irrigation falls short of the requirements of the total area under the Project for which irrigation has to be provided the shortage shall be shard on pro rata basis between the Government of India and His Majesty's Government."

(3) In case the arbitrators are unable to agree, the parties hereto may consult each other and appoint an Umpire whose award shall be final and binding on them.

**13. This Agreement will come into force with effect from the date of signatures of the authorised representatives of His Majesty's Government and Government of India respectively.**

**In witness whereof** the undersigned being duly authorised thereof by their respective Governments have signed the present agreement in Nepali, Hindi and English in duplicate, all three texts being equally authentic, at Katmandu this 19th day of Marg Sambat 2016 corresponding to December 4, 1959. For purposes of interpretation the English text shall be used.

.....  
For the Government of India  
For and on behalf of the  
President of India  
Bhagwan Sahay  
Ambassador of India

.....  
On behalf of  
His Majesty's Government  
of Nepal  
Subarna Shamshere  
Deputy Prime Minister

## *Appendix I*

### **Correspondence Connected with the Agreement**

1. Embassy of India, Nepal  
Kathmandu.

Dated the 4<sup>th</sup> December 1959

My Dear,

There are a few matters pertaining to the Gandak Irrigation and Power Project Agreement in respect of which certain understandings are necessary. They are detailed below:

- (a) Sub-clauses (i) and (ii) of clause 3 lay down that the Government of India shall pay reasonable compensation for acquisition or requisition of any lands which may be required for the Project. It is agreed that for purposes of fixation of rates of compensation His Majesty's Government would appoint an Expert Committee with which Revenue Officers of the Gandak Project would also be associated. The Committee will visit the area of the Project and fix the principles for assessment of compensation payable for such lands. The total compensation payable for the lands acquired or requisitioned will be calculated on the basis of the agreed rates fixed by the Committee. The Government of India shall deposit the agreed amount of compensation to the credit of His Majesty's Government in the Rashtra Bank. Thereupon His Majesty's Government will make the required arrangements for payment of compensation to those persons to whom it may be due.
- (b) Clause 4 provides that His Majesty's Government will grant permission to the Government of India for the quarrying of materials required for the construction and the maintenance of the Project in the areas shown in the Plan annexed to the Agreement. It is our understanding that if suitable materials are not available from these areas in sufficient quantities His Majesty's Government will permit on the request of the Government of India quarrying in such other areas as may be mutually agreed upon.
- (c) Sub-clause (ii) of clause 7 of the Agreement states that under the Eastern Nepal Canal the gross commanded area will be 1,03,500 acres. It may be explained that this gross commanded area will be possible only on the execution of the training works on the river Bagmati for which certain

proposals have already been under discussion with His Majesty's Government. The river has been taking a westward course and certain training works are required to be set up in order to divert it back into its old eastern channel to flow under the Bagmati Railway Bridge. Without the river training scheme the gross commanded area will not exceed 93,000 acres.

- (d) Sub-clause (iii) of clause 7 of the Agreement refers to a contribution by the Government of India of a sum which they consider reasonable towards the cost of construction of channels below 20 cusecs capacity for irrigation in Nepal. It is our understanding that such contribution would not cover any cost of land acquisition for the channels but would be related only to the actual expenditure on works. As regards the latter it is estimated that a sum of rupees fifteen lakhs will be sufficient and accordingly the Government of India will make this sum available to His Majesty's Government in suitable installments according to the progress of construction.
- (e) Sub-clause (v) of clause 8 provides that the ownership and management of the power house shall be transferred to His Majesty's Government on one year's notice by them after the full load of 10,000 K.W. at 60 percent load factor has been developed in Nepal from this power house. It is our understanding that for a period of fifteen years after obtaining the ownership and management of the power house His Majesty's Government would be generating secondary power to the full extent possible and supplying it to the Government of India on payment of its actual cost of production.
- (f) The schedule annexed to clause 9 gives the minimum quantities of water required for the Project after making the allowance for the withdrawal of water from the upper reaches of the Gandak river and its tributaries sufficient for the irrigation of two lakh acres which is the maximum area estimated to be available for the purpose. It is our understanding that if at any time, due to natural causes, the supplies in the river are insufficient for all the purposes His Majesty's Government will be entitled to continue to withdraw water sufficient for the irrigation of such area.
- (g) His Majesty's Government and the Government of India also agree to set up as early as possible a Co-ordination Committee consisting of three representatives of each Government with a Minister of His Majesty's Government as its Chairman and the Chief Administrator of the Project as its Secretary. The committee will meet from time to time to consider such matters of common interest concerning the Project as may be referred to it by either Government with a view to expedite decisions for the early completion of the Project. The Government of India will bear all expenditure in

connection with the working of the Committee, such as salaries of special staff, if any, traveling allowance of members, etc.

2. I shall be grateful if you will kindly confirm the understandings explained above.

His Excellency Sri Subarna Shamshere  
Deputy Prime Minister  
His Majesty's Government of Nepal

Yours sincerely,  
Bhagwan Sahay  
Ambassador of India

**Singh Durbar, Nepal**  
**Kathmandu**

Dated the 4<sup>th</sup> December 1959

My Dear,

I acknowledge the receipt of your letter of the 4th December 1959, regarding the Gandak irrigation and Power Project which is as follows:

“There are a few matters pertaining to the Gandak Irrigation and Power Project Agreement in respect of which certain understandings are necessary. They are detailed below:

- (a) Sub-clauses (i) and (ii) of clause 3 lay down that the Government of India shall pay reasonable compensation for acquisition or requisition of any lands which may be required for the Project. It is agreed that for purposes of fixation of rates of compensation His Majesty's Government would appoint an Expert Committee with which Revenue Officers of the Gandak Project would also be associated. The Committee will visit the area of the Project and fix the principles for assessment of compensation payable for such lands. The total compensation payable for the lands acquired or requisitioned will be calculated on the basis of the agreed rates fixed by the Committee. The Government of India shall deposit the agreed amount of compensation to the credit of His Majesty's Government in the Rashtra Bank. Thereupon His Majesty's Government will make the required arrangements for payment of compensation to those persons to whom it may be due.
- (b) Clause 4 provides that His Majesty's Government will grant permission to the Government of India for the quarrying of materials required for the construction and the maintenance of the Project in the areas shown in the Plan annexed to the Agreement. It is our understanding that If suitable materials are not available from these areas in sufficient quantities His Majesty's Government will permit on the request of the Government of India quarrying in such other areas as may be mutually agreed upon.
- (c) Sub-clause (ii) of clause 7 of the Agreement states that under the Eastern Nepal Canal the gross commanded area will be 1,03,500 acres. It may be explained that this gross commanded area will be possible only on the execution of the training works on the river Bagmati for which certain proposals have already been under discussion with His Majesty's Government. The river has been taking a westward course and certain training works are required to be set up in order to divert it back into its old eastern channel to flow under the Bagmati Railway Bridge. Without the river training scheme the gross commanded area will not exceed 93,000 acres.

- (d)<sup>v</sup> Sub-clause (iii) of clause 7 of the Agreement refers to a contribution by the Government of India of a sum which they consider reasonable towards the cost of construction of channels below 20 cusecs capacity for irrigation in Nepal. It is our understanding that such contribution would not cover any cost of land acquisition for the channels but would be related only to the actual expenditure on works. As regards the latter, it is estimated that a sum of Rs. 52.85 lakhs (Rupees fifty two point eighty-five lakhs) will be sufficient for the construction of channels below 20 cusecs capacity of the Nepal Eastern Canal and accordingly the Government of India will make this sum available to His Majesty's Government in suitable installments according to the progress of construction.
- (e) Sub-clause (v) of clause 8 provides that the ownership and management of the power house shall be transferred to His Majesty's Government on one year's notice by them after the full load of 10,000 K.W. at 60 per cent load factor has been developed in Nepal from this power house. It is our understanding that for a period of fifteen years after obtaining the ownership and management of the power house His Majesty's Government would be generating secondary power to the full extent possible and supplying it to the Government of India on payment of its actual cost of production.
- (f) The schedule annexed to clause 9 gives the minimum quantities of water required for the Project after making the allowance for the withdrawal of water from the upper reaches of the Gandak river and its tributaries sufficient for the irrigation of two lakh acres which is the maximum area estimated to be available for the purpose. It is our understanding that if at any time, due to natural causes, the supplies in the river are insufficient for all the purposes His Majesty's Government will be entitled to continue to withdraw water sufficient for the irrigation of such area.
- (g) His Majesty's Government and the Government of India also agree to set up as early as possible a Co-ordination Committee consisting of three representatives of each Government with a Minister of His Majesty's Government as its Chairman and the Chief Administrator of the Project as its Secretary. The Committee will meet from time to time to consider such matters of common interest concerning the Project as may be referred to it by either Government with a view to expedite decisions for the early completion of the Project. The Government of India will bear all expenditure in

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<sup>v</sup> (d) **This has been amended on the 29th November 1973. The original clause read as follows:**  
(d) Sub-clause (iii) of clause 7 of the Agreement refers to a contribution by the Government of India of a sum which they consider reasonable towards the cost of construction of channels below 20 cusecs capacity for irrigation in Nepal. It is our understanding that such contribution would not cover any cost of land acquisition for the channels but would be related only to the actual expenditure on works. As regards the latter it is estimated that a sum of rupees fifteen lakhs will be sufficient and accordingly the Government of India will make this sum available to His Majesty's Government in suitable installments according to the progress of construction.

connection with the working of the Committee, such as salaries of special staff, if any, traveling allowance of members, etc.

2. I shall be grateful if you will kindly confirm the understandings explained above.”

3. We confirm the understandings as indicated in your letter.

His Excellency  
Bhagwan Sahay,  
Ambassador of India, Kathmandu.

Yours sincerely,  
Shri Subarna Shamshere.

Kathmandu  
April 30, 1964.

Excellency,

In the course of recent discussions it has been decided by our two Government that certain clauses of the Gandak Project Agreement require amendment. The terms of this decision are as follows:

- (i) It is agreed between His Majesty's Government of Nepal and the Government of India that Clause 10 of the Gandak Irrigation and Power Project Agreement entered into on December 4, 1959, shall be deleted and Clause 9, shall be modified and shall hereafter read as under:

'Clause 9 Protection of Nepal's Riparian Rights:

“His Majesty's Government will continue to have the right to withdraw for irrigation or any other purposes from the river or its tributaries in Nepal such supplies of water as may be required by them from time to time in the Valley.

For the trans-Valley uses of Gandak water, separate agreements between His Majesty's Government and the Government of India will be entered into for the use of water in the months of February to April only.”

- (ii) The following shall be added under clause 7 (v):

“Also, the head regulator of the Don branch canal shall be operated by His Majesty's Government keeping in view the irrigation requirements of areas irrigated by this branch canal in India and Nepal.”

‘I shall be grateful to have your confirmation that the amendments agreed upon which will take effect immediately, are correctly set out above.’

Accept, Excellency, the assurances of my highest consideration.

His Excellency  
Major-General  
Padma Bahadur Khatri,  
Foreign Secretary,  
His Majesty's Government of Nepal,  
Kathmandu.

Harishwar Dayal,  
Ambassador of India,  
at the Court of Nepal.

Kathmandu,  
April 30, 1964.

Excellency,

I have the honour to acknowledge receipt of your letter dated April 30, 1964 reading as follows:

“In the course of recent discussions it has been decided by our two Governments that certain clauses of the Gandak Project Agreement require amendment. The terms of this decision are as follows:

“(i) It is agreed between His Majesty's Government of Nepal and the Government of India that Clause 10 of the Gandak Irrigation and Power Project Agreement entered into on December 4, 1959 shall be deleted and Clause 9, shall be modified and shall hereafter read as under:

Clause 9: Protection of Nepal's Riparian Rights:

His Majesty's Government will continue to have the right to withdraw for irrigation or any other purpose from the river or its tributaries in Nepal such supplies of water as may be required by them from time to time in the Valley.

For the trans-Valley uses of Gandak waters, separate agreements between His Majesty's Government and the Government of India will be entered into for the uses of water in the months of February to April only.”

(ii) The following shall be added under clause 7 (v):

“Also, the head regulator of the Don branch canal shall be operated by His Majesty's Government keeping in view the irrigation requirements of areas irrigated by this branch canal in India and Nepal.”

I shall be grateful to have your confirmation that the amendments agreed upon which will take effect immediately, are correctly set out above.”

I hereby confirm that this correctly sets out the agreed amendments, which are to take effect immediately.

Accept, Excellency, the assurances of my highest consideration.

His Excellency  
Shri Harishwar Dayal.  
Ambassador of India,  
at the Court of Nepal,  
Katmandu.

PADMA BAHADUR KHATRI  
Foreign Secretary,  
His Majesty's Government of  
Nepal

## *Appendix II*

### Schedule of water requirements op the Gandak Project in cusecs

(Vide clause 9 of the original agreement signed on December 4, 1959)

<b>Months</b>	<b>Western Canal system and power House in Nepal.</b>	<b>Eastern Canal system and power House in India.</b>	<b>Total.</b>
January	6,960	4,540	11,500
February .	6,100	3,900	10,000
March .	5,960	3,690	9,650
April	5,760	4,340	10,100
May	8,270	7,980	16,250
June	11,190	14,000	25,190
July	15,240	13,980	29,220
August	14,980	14,000	28,980
September	14,980	14,000	28,980
October	16, 060	14,110	30,170
November	11,070	13,240	24,310
December	10,410	9,290	19,700

## Appendix 4

### **Tanakpur Agreement Concluded at the Time of Prime Minister Girija Prasad Koirala, dated on 6 December 1991**

#### **Tanakpur Barrage Project**

- (i) The site at Mahendranagar Municipal area in the Jimuwa village will be made available for tying up of the Left Afflux Bund, about 577 meters in length (with an area of about 2.9 hectares) to the high ground in the Nepalese side at El. 250. The availability of land for construction of bund will be affected in such away by HMG/N that the work could start by 15<sup>th</sup> of December 1991.
- (ii) India will construct a head regulator of 1,000 cusecs capacity near the left under sluice of the Tanakpur Barrage, as also the portion of canal up to Nepal- India border for supply of up to 150 cusecs of water to irrigate between 4,000-5,000 hectares of land on Nepalese side. The releases from head regulator will be increased as and when substantial upstream storage at Pancheswor, or similar, is developed on the Mahakali River: and
- (iii) In response to a request from Nepalese side, as a goodwill gesture, the Indian side agreed to provide initially 10MW of energy annually free of cost to Nepal in spite of the fact that this will add to a further loss in the availability of power to India from Tanakpur power station.

It was agreed that investigations of the road connecting the Tanakpur Barrage to the East-West Highway at Mahendranagar would be undertaken by the government of India.

Sincerely,

Gaurinath Rimal

Secretary

His Majesty's Government of Nepal

Nepal Gazette, 2048 Push 8 (1991 December 23)

## Appendix 5

### **Treaty His Majesty's Government of Nepal and the Government of India concerning the Integrated Development of the Mahakali River Including Sarada Barrage, Tanakpur Barrage and Pancheshwar Project (12 February 1996)**

His Majesty's Government of NEPAL and the Government of INDIA (hereinafter referred to as the "parties")

Reaffirming the determination to promote and strengthen their relations of friendship and close neighborliness for the co-operation in the development of water resources;

Recognizing that the Mahakali River is a boundary river on major stretches between the two countries;

Realizing the desirability to a treaty on the basis of equal partnership to define their obligations and corresponding rights and duties thereto in regard to the waters of the Mahakali River and its utilization;

Noting the Exchange of Letters of 1920 through which both the Parties had entered into an arrangement for the construction of the Sarada Barrage in the Mahakali river, whereby Nepal is to receive some waters from the said Barrage;

Recalling the decision taken in the Joint Commission dated 4-5 December, 1991 and the Joint Communiqué issued during the visit of the Prime Minister of India to Nepal on 21<sup>st</sup> October, 1992 regarding the Tanakpur Barrage which India has constructed in a course of the Mahakali River with a part of the eastern afflux bund at Jimuwa and the adjoining poundage area of the said Barrage lying in the Nepalese territory;

Noting that both the Parties are jointly preparing a Detailed Project Report of the Pancheshwar multipurpose project to be implemented in the Mahakali River;

Now, therefore, the Parties hereto hereby have agreed as follows:

## **Article-1**

1. Nepal shall have right to a supply of 28.35m<sup>3</sup>/s (1000 cusecs) of water from the Sarada Barrage in the wet season (i.e. from 15<sup>th</sup> May to 15<sup>th</sup> October) and 4.25m<sup>3</sup>/s (150 cusecs) in the dry season (i.e. from 16<sup>th</sup> October to 14<sup>th</sup> May).
2. India shall maintain a flow of not less than 10m<sup>3</sup>/s (350cusecs) downstream of the Sarada Barrage in the Mahakali River to maintain and preserve the river eco-system.
3. In case the Sarada Barrage becomes non-functional due to any cause:
  - (a) Nepal shall have the right to a supply of water as mentioned in paragraph 1 of this Article, by using the head regulator(s) mentioned in paragraph 2 of Article 2 herein. Such a supply of water shall be in addition to the water to be supplied to Nepal pursuant to paragraph 2 of Article 2.
  - (b) India shall maintain the river flow pursuant to paragraph 2 of this article from the tailrace of the Tanakpur Power Station downstream of the Sarada Barrage.

## **Article-2**

In continuation of the decisions taken in the Joint Commission dated 4-5 December 1991 and the Joint Communiqué issued during the visit of the Prime Minister of India to Nepal on 21<sup>st</sup> October, 1992, both the Parties agree as follows:

1. For the construction of the eastern afflux bund of the Tanakpur Barrage at Jimuwa and tying it up to the high ground in the Nepalese territory at EL 250 m, Nepal gives its consent to use a piece of land of about 577 meters in length (an area of about 2.9 hectares) of the Nepalese territory at the Jimuwa village in Mahendranagar Municipal area and a certain portion of the No-Man's Land on either side of the border. The Nepalese land consented to be so used and the land lying on the west of the said land (about 9 hectares) upto the Nepal-India border which forms a part of the poundage area, including the natural resources endowment lying within that area, remains under the continued sovereignty and control of Nepal and Nepal is free to exercise all attendant rights thereto.
2. In lieu of the eastern afflux bund of the Tanakpur Barrage, at Jimuwa thus constructed, Nepal shall have the right to:
  - (a) A supply of 28.35m<sup>3</sup>/s (1000 cusecs) of water in the wet season (i.e. from 15<sup>th</sup> May to 15<sup>th</sup> October) and 8.50m<sup>3</sup>/s (300 cusecs) in the dry season (i.e. from 16<sup>th</sup> October to 14<sup>th</sup> May ) from the date of the entry into force of this treaty. For this purpose and for the purpose of Article I herein India shall construct the head regulators near the left under sluice

of the Tanakpur Barrage and also the waterways of the repaired capacity upto the Nepal-India border. Such head regulators and waterways shall be operated jointly.

- (b) A supply of 70 millions kilowatt-hour (unit) of energy on a continuous basis annually, free of cost, from the date of the entry into force of this Treaty. For this purpose, India shall construct a 132 KV transmission line upto the Nepal-India border from the Tanakpur power station (which has at present, an installed capacity of 120,000 kilowatt generating 448.4 millions kilowatt-hour of energy annually on 90 percent dependable year flow).
3. Following arrangements shall be made at the Tanakpur Barrage at time of development of any storage projects including Pancheshwar Multipurpose project upstream of the Tanakpur Barrage:
    - (a) Additional head regulator and the necessary waterways, as required, up to the Nepal-India border shall be constructed to supply additional water to Nepal. Such head regulator and waterways shall be operated jointly.
    - (b) Nepal shall have additional energy equal to half of the incremental energy generated from the Tanakpur power Station, on a continuous basis from the date of augmentation of the flow of the Mahakali River and shall bear half of the additional operation cost and, if required, half of the additional capital cost at the Tanakpur Power Station for the generation of such incremental energy.

### **Article-3**

Pancheshwar Multipurpose Project (hereinafter referred to as the "Project") is to be constructed on a stretch of the Mahakali River where it forms the boundary between the two countries and hence both the parties agree that they have equal entitlement in the utilization of the waters of the Mahakali River without prejudice to their respective existing consumptive uses of the waters of the Mahakali River. Therefore, both the parties agree to implement the project in the Mahakali River in accordance with the Detailed Project Report (DPR) being jointly prepared by them. The project shall be designed and implemented on the basis of the following principles;

1. The Project shall, as would be agreed between the parties, be designed to produce the maximum total net benefits. All benefits accruing to both the parties with the development of the project in the forms of power, irrigation, flood control etc., shall be assessed.
2. The Project shall be implemented or caused to be implemented as an integrated project including power stations of equal capacity on each side of the Mahakali River. The two power stations shall be operated in an

integrated manner and the total energy generated shall be shared equally between the parties.

3. The cost of the project shall be borne by the parties in proportion to the benefits accruing to them. Both the parties shall jointly endeavor to mobilize the finance required for the implementation of the project.
4. A portion of Nepal's Share of energy shall be sold to India. The quantum of such energy and its price shall be mutually agreed upon between the parties.

#### **Article-4**

India shall supply 10m<sup>3</sup>/s (350 cusecs) of water for the irrigation of Dodhara-Chandani area of Nepalese Territory. The technical and other details will be mutually worked out.

#### **Article-5**

1. Water requirements of Nepal shall be given prime consideration in the utilization of the waters of the Mahakali River.
2. Both the parties shall be entitled to draw their share of waters of the Mahakali River from the Tanakpur Barrage and/or other mutually agreed points as provided for in this treaty and any subsequent agreement between the parties.

#### **Article-6**

Any project, other than those mentioned herein, to be developed in the Mahakali River, where it is a boundary river, shall be designed and implemented by an agreement between the parties on the principles established by this Treaty.

#### **Article-7**

In order to maintain the flow and level of the waters of the Mahakali River, each party undertakes not to use or obstruct or divert the waters of the Mahakali River adversely affecting its natural flow and level except by an agreement between the parties provided, however, this shall not preclude the use of the waters of the Mahakali river by the local communities living along both sides of the Mahakali River, not exceeding five(5) percent of the average annual flow at Pancheshwar.

#### **Article-8**

This Treaty shall not preclude planning, survey, development and operation of any work on the tributaries of the Mahakali River, to be carried out

independently by each party in its own territory without adversely affecting the provision of Article 7 of this Treaty.

#### **Article-9**

1. There shall be a Mahakali River Commission (hereinafter referred to as the "commission"). The Commission shall be guided by the principles of equality, mutual benefit and no harm to either party.
2. The commission shall be composed of equal number of representatives from both the parties.
3. The functions of the Commission shall, inter alia, include the following:
  - (a) To seek information on and if necessary, inspect all structures included in the Treaty and make recommendations to both the parties to take steps which shall be necessary to implement the provisions of this Treaty.
  - (b) To make recommendations to both the parties for the conservation and utilization of the Mahakali River as envisaged and provided for in this Treaty.
  - (c) To provide expert evaluation of projects and recommendations thereto.
  - (d) To co-ordinate and monitor plans of actions arising out of the implementation of this Treaty, and
  - (e) To examine any differences arising between the parties concerning the interpretation and application of this Treaty.
4. The expenses of the commission shall be borne equally by both the parties.
5. As soon as the Commission has been constituted pursuant to paragraph 1 and 2 of this Article, it shall draft its rules of procedure which shall be submitted to both the parties for their concurrence.
6. Both the parties shall reserve their rights to deal directly with each other on matters which may be in the competence of the commission.

#### **Article-10**

Both the parties may form project specific joint entity/ies for the development, execution and operation of new projects including Pancheshwar Multipurpose Project in the Mahakali River for their mutual benefit.

#### **Article-11**

1. If the commission fails under Article 9 of this Treaty to recommend its opinion after examining the differences of the parties within three (3) months

of such reference to the Commission or either party disagrees with the recommendation of the commission, then a dispute shall be deemed to have been arisen which shall then be submitted to arbitration for decision in so doing either party shall give three (3) months prior notice to the other party.

2. Arbitration shall be conducted by a tribunal composed of three arbitrators. One arbitrator shall be nominated by Nepal, one by India, with neither country to nominate its own national and the third arbitrator shall be appointed jointly, who, as a member of the tribunal, shall preside over such tribunal. In the event that the parties are unable to agree upon the third arbitrator within ninety(90) days after receipt of a proposal, either party may request the Secretary-General of the Permanent Court of Arbitration at the Hague to appoint such arbitrator who shall not be a national of either country.
4. The procedures of the arbitration shall be determined by the arbitration tribunal and the decision of a majority of the arbitrators shall be the decision of the tribunal. The proceeding of the tribunal shall be conducted in English and the decision of such a tribunal shall be in writing both the parties shall accept the decision as final, definitive and binding.
5. Provision for the venue of arbitration, the administrative support of the arbitration tribunal and the remuneration the expenses of its arbitrators shall be as agreed in an exchange of notes between the parties. Both the parties may also agree by such exchange of notes on alternative procedures for setting differences arising under this Treaty.

## **Article-12**

1. Following the conclusion of this Treaty, the earlier understandings reached between the parties concerning the utilization of the waters of the Mahakali River from the Sarada Barrage and the Tanakpur Barrage, which have been incorporated herein, shall be deemed to have been replaced by this Treaty.
2. This Treaty shall be subject to ratification and shall enter into force on the date of exchange of instruments of ratification. It shall remain valid for a period of seventy-five (75) years from the date of its entry into force.
3. This Treaty shall be reviewed by both the parties at ten (10) years interval or earlier as required by either party and make amendments thereto, if necessary.
4. Agreements, as required, shall be entered into by the parties to give effect to the provisions of this Treaty.

In Witness Whereof the undersigned being duly authorized thereto by their respective governments have hereto signed this Treaty and affixed thereto their seals in two originals each in Hindi, Nepali and English languages, all the texts being equally authentic. In case of doubt, the English text shall prevail.

Done at New Delhi, India on the twelfth day of February of the year one thousand nine hundred and ninety six.

Sd.  
P.V. Narasimha Rao  
Prime Minister  
Government of India

Sd .  
Sher Bahadur Deuba  
Prime Minister  
His Majesty's Government of Nepal

## His Majesty's Government of Nepal, Kathmandu

Excellency,

I have the honour to refer to the Treaty concluded between us concerning the Integrated Development of the Mahakali River including Sarada Barrage, the Tanakpur Barrage and Pancheshwar Project (Treaty). At this juncture, may I also recall for your Excellency the decisions taken in the Joint Commission dated 4-5 December, 1991 and the Joint communiqué issued during the visit of the Hon'ble Prime Minister of India to Nepal on 21<sup>st</sup> October 1992.

In order to give effect to the desires expressed by our respective Governments, I have to make the following proposals on the basis of the provisions of the said understandings and the said Treaty.

1. The all-weather link road connecting the Tanakpur Barrage to the East-West Highway at Mahendranagar in Nepal shall be completed by India within one (1) year from the date of the entry into force of the Treaty.
2. The supply of 20 millions kilowatt-hour (unit) of energy annually free of cost, to Nepal from the Tanakpur Power Station as indicated in the said Joint communiqué from the date of commissioning of the Tanakpur Power Station in July 7, 1992 till the start of the supply of 70 millions kilowatt-hour (unit) of energy annually, free of cost, to Nepal as provided for in the Treaty, shall be reconciled with the energy procured or to be procured by Nepal from India under the existing power exchange arrangement.
3. Regarding Pancheshwar Multipurpose Project (Project), the following principles shall be adopted and arrangements made for finalization of the Detailed Project Report (DPR) , completion of negotiation and implementation of the project.
  - (a) The DPR shall be finalized by both the countries within six (6) months from the date of the entry into force of the Treaty. For this purpose, necessary data and reports shall be exchanged expeditiously. While assessing the benefits from the Project during the preparation of the DPR, net power benefit shall be assessed on the basis of, *inter alia*, saving in costs to the beneficiaries as compared with the relevant alternatives available. Irrigation benefit shall be assessed on the basis of incremental and additional benefits due to augmentation of river flow and flood control benefit shall be

assessed on the basis of the value of works saved and damages avoided.

- (b) It is understood that Paragraph 3 of Article 3 of the Treaty precludes the claim, in any form, by either Party on the unutilized portion of the shares of the waters of the Mahakali River of that Party without affecting the provision of the withdrawal of the respective shares of the waters of the Mahakali river of each Party under this Treaty.
- (c) Agreement for the financing and implementation of the project, including the proposal for the establishment of the Pancheshwar Development Authority shall be negotiated and finalized by both the countries within one (1) year from the finalization of the DPR.
- (d) In order to expedite the implementation of the Project, field investigation and detailed design including tender document preparation shall start immediately after the finalization of the DPR and run parallel to the negotiation on agreement for implementation of the Project. For this purpose, a separate financing arrangement for such activities shall be agreed upon by both the countries.
- (e) The project shall be aimed to be completed within eight (8) years from the date of the agreement for its implementation, subject to the provision of the DPR.

I shall be grateful if your Excellency will kindly confirm that the above correctly sets out the understanding reached between our two Governments which also shall come into force on the date of exchange of instruments of ratification between the Parties as set forth in Paragraph 2 of Article 12 of the Treaty.

Please accept, Your Excellency, the assurances of my highest consideration.

(Sd.)  
(Sher Bahadur Deuba)  
Prime Minister  
His Majesty's Government of Nepal

To H.E. Mr. P.V. Narasimha Rao  
Prime Minister of India  
New Delhi

**Prime Minister**  
**New Delhi**

February 12, 1996

Excellency,

I have the honour to acknowledge the receipt of your letter of today's date which read as follows:

"I have the honour to refer to the Treaty concluded between us concerning the Integrated Development of the Mahakali River including Sarada Barrage, the Tanakpur Barrage and Pancheshwar Project (Treaty). At this juncture, may I also recall for Your Excellency the decision taken in the Joint Commission dated 4-5 December, 1991 and the Joint Communique issued during your visit to Nepal on 21<sup>st</sup> October, 1992.

In order to give effect to the desires expressed by our respective Governments, I have the honour to make the following proposals on the basis of the provisions of the said understandings and the said Treaty.

1. The all-weather link road connecting the Tanakpur Barrage to the East-West Highway at Mahendranagr in Nepal shall be completed by India within one (1) year from the date of the entry into force of the Treaty.
2. The supply of 20 millions kilowatt-hour (unit) of energy annually, free of cost, to Nepal from the Tanakpur Power Station as indicated in the said Joint communiqué from the date of commissioning of the Tanakpur Power Station in July 7, 1992 till the start of the supply of 70 millions kilowatt-hour (unit) of energy annually, free of cost, to Nepal as provided for in the Treaty, shall be reconciled with the energy procured or to be procured by Nepal from India under the existing power exchange arrangement.
3. Regarding Pancheshwar Multipurpose Project (Project), the following principles shall be adopted and arrangements made for finalization of the Detailed Project Report (DPR), completion of negotiation and implementation of the Project.

- (a) The DPR shall be finalized by both the countries within six (6) months from the date of the entry into force of the Treaty. For this purpose, necessary data and reports shall be exchanged expeditiously. While assessing the benefit from the Project during the preparation of the DPR, net power benefit shall be assessed on the basis of, inter alia, saving in costs to the beneficiaries as compared with the relevant alternatives available. Irrigation benefit shall be assessed on the basis of incremental and additional benefits due to augmentation of river flow and flood control benefit shall be assessed on the basis of the value of works saved and damages avoided.
- (b) It is understood that Paragraph 3 of Article 3 of the Treaty preclude the claim in any form by either Party on the unutilized portion of the shares of the waters of the Mahakali River of that Party without affecting the provision of the withdrawal of the respective shares of the waters of the Mahakali River by each Party under this Treaty.
- (c) Agreement for the financing and implementation of the Project, including the proposal for the establishment of the Pancheshwar Development Authority shall be negotiated and finalized by both the countries within one (1) year from the finalization of the DPR.
- (d) In order to expedite the implementation of the Project, field investigation and detailed design including tender document preparation shall start immediately after the finalization of the DPR and run parallel to the negotiation on agreement for implementation of the Project. For the purpose, a separate financing arrangement for such activities shall be agreed upon by both the countries.
- (e) The project shall be aimed to be completed within eight (8) years from the date of the agreement for its implementation, subject to the provision of the DPR, implementation, subject to the provision of the DPR.

I shall be grateful if Your Excellency will kindly confirm that the above correctly sets out the understanding reached between our two governments. This letter and Your Excellency's reply confirming the understanding will constitute an agreement between our two Governments which also shall come into force on the date of exchange of instruments of ratification between the Parties as set forth in Paragraph 2 of Article 12 of the Treaty."

I have the honour to confirm that the foregoing correctly sets out the understanding reached between our two Governments.

Please accept, Your Excellency, the assurances of my highest consideration.

Sd/-

P.V. Narsimha Rao  
Prime Minister of India

To  
H.E. Mr. Sher Bahadur Deuba  
Prime Minister of Nepal  
Kathmandu

## Appendix 6

### **The India-Nepal Power Trade Agreement**

Agreement between His Majesty's Government of Nepal and the Government of India Concerning the Electric Power Trade

**Whereas**, His Majesty's Government of Nepal (herein referred to as "HMGN") and the Government of India (herein after referred to as "GOI") desire to further promote and strengthen the friendly relations existing between them.

**Whereas**, both HMGN and GOI have adopted the policy of economic liberalization with the intention to promote participation of private sector also in the development of their respective countries.

**Whereas**, both HMGN and GOI have emphasized quicker and enhanced development of the power sector through participation of local and foreign private investors also, in the power industry of their respective countries.

**Whereas**, both HMGN and GOI envisage the development of a number of power projects within the foreseeable future in their respective countries; and

**Whereas**, both HMGN and GOI in view of the upcoming power projects in their respective countries, have held mutual discussions and have reached an understanding that this Agreement shall facilitate the process of electric power trade between the two countries.

Now, Therefore, HMGN and GOI have agreed as follows:

#### **Article 1**

Any party, in Nepal or India, may enter into an agreement for power trade between Nepal and India irrespective of such parties being Governmental, Semi-governmental or Private enterprise.

#### **Article 2**

The parties entering into such an agreement for power trade, may determine the terms and condition of such an agreement including the quantum and parameters of supply, the points of delivery and the price of supply of electrical power to be traded between them.

**Article 3**

The parties entering into such an agreement for power trade shall be afforded all necessary assistance by respective Governments, in accordance with the laws and regulation of respective countries, for conduct of surveys including field investigations and for construction, installation, operation and maintenance of facilities required for generation and transmission of power in the territories of both the countries, required for such power trading.

**Article 4**

The parties entering into such agreement for power trade, shall be granted all the incentives and concessions by respective governments, available under relevant laws and regulation of respective countries for generation and transmission of power.

**Article 5**

The parties entering into such an agreement for power trade, shall fulfill all necessary requirements stipulated in relevant laws and regulations of respective countries as well as comply with necessary technical requirements of each country.

**Article 6**

Notwithstanding anything contained herein, both HMGN and GOI may enter into separate arrangements between themselves or with third countries on power trading for the benefits of their respective countries.

**Article 7**

Any difference regarding interpretation and application of this Agreement shall be resolved by mutual consultation between the two Government.

**Article 8**

This Agreement shall be subject to ratification and shall enter into force on the date of exchange of instruments of ratification. It shall remain valid for a period of fifty (50) years from the date of its entry into force and its validity shall be extended by mutual consent.

**Article 9**

The provisions of this Agreement shall be reviewed at ten (10) years interval or earlier as required by either Government and amended, if required, by mutual consent.

Initialed at Mumbai, India, on this Seventeenth day of February, Nineteen Hundred and Ninety-Six in two (2) original copies in English language.

On behalf of the  
Government of India

On behalf of His Majesty's  
Government of Nepal

Sd/-  
(P. Abraham)  
Secretary  
Ministry of Power

Sd/-  
(Dr. D.N. Dhungel)  
Secretary  
Ministry of Water Resources

