

Title: Amended agreement between His Majesty's Government of Nepal and the Government of India to as the concerning the Koshi Project

Parties: India, Nepal

Basin: Kosi

Date: 12/19/1966

18. AMENDED AGREEMENT <sup>1</sup> BETWEEN HIS MAJESTY'S GOVERNMENT OF NEPAL (HEEREINAFTER REFERRED TO AS "HMG" AND THE GOVERNMENT OF INDIA (HEREINAFTER REFERRED TO AS THE "UNION") CONCERNING THE KOSI PROJECT, SIGNED AT KATMANDU ON 19 DECEMBER 1966 <sup>2,3</sup>

WHEREAS the Union was desirous of constructing a barrage, headwords 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 hydroelectric 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, headwords 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 HMG 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 subclause (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.

## 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 hydroelectric 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 subclause 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.

#### 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.

#### 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 Governments 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.

<sup>1</sup> Came into force on 19 December 1966.

<sup>2</sup> Separate publication of the Ministry of Water and Power, Nepal (1 975).

<sup>3</sup> Supersedes the Agreement of 25 April 1964, in Legislative Texts and Treaty Provisions Concerning the Utilization of Intematonal Rivers for Other Purposes than Navigatoa, UN doc. ST/LEG/SER.B/1 2 (1963), P. 290.