

Minutes of the Seventh Meeting of Task Force for Interlinking of Rivers held at New Delhi on 11th May, 2017

Seventh Meeting of Task Force for Interlinking of Rivers was held on 11th May, 2017 at New Delhi under the chairmanship of Shri B. N. Navalawala, Chairman, Task Force & Chief Advisor, Ministry of Water Resources, River Development and Ganga Rejuvenation. List of the participants is enclosed as Annex-I.

At the outset, Shri B. N. Navalawala, Chairman, Task Force & Chief Advisor, Ministry of Water Resources, River Development and Ganga Rejuvenation extended a warm welcome to all the Members, Special Invitees and other participants attending the meeting. In his opening remarks, he mentioned that the Legal Group setup by the Task Force under the Chairmanship of Shri A.D. Mohile to look into the legal aspects and required enabling provisions for implementation of ILR programme has completed its assigned task and submitted its report. This meeting has been convened to discuss exclusively the Report of the Group on Legal Aspects submitted by Shri Mohile, Chairman of the Group.

Shri Navalawala also congratulated Shri A.D. Mohile and his team for coming out with a good report covering comprehensively all the legal aspects and further mentioned that the Group while finalizing the report has analyzed all available information to the extent possible at national and international levels related to inter basin water transfer. However, modalities would have to be worked out for proper implementation of the recommendations of the Legal Group. It has also to be ascertained how to pursue the international issues involved in ILR project at this stage. The Chairman, Task Force then requested Director General, NWDA and Member Secretary, Task Force to take up agenda items for discussion.

Item No.7.1: Confirmation of the minutes of the 6th meeting of the Task Force for Interlinking of Rivers held on 13th February, 2017 at New Delhi

The minutes of Sixth meeting of the Task Force for Interlinking of Rivers (TF-ILR) held on 13.02.2017 at New Delhi were circulated to all the members vide letter dated 01.03.2017. No comments were received from any of the Members. As such the minutes of the Sixth meeting of the Task Force for Inter Linking of Rivers were confirmed as circulated.

Item No.7.2: Group on legal aspects under Task Force on Interlinking of Rivers

Chairman, Task Force on Interlinking of Rivers requested Shri A.D. Mohile, Chairman of the Group on legal aspects to make brief presentation on the findings of the Group. Accordingly, Shri Mohile made a power point presentation on the Report of the Group. Later Chairman, Task Force, requested Chairman, CWC to make presentation on views of CWC over the Report of Legal Group. Dr. Naresh Kumar, Chief Engineer (BPMO), CWC made a presentation (Annex-II)

on the views/ suggestions/findings of CWC on the report of Legal Group. CWC, in general, has supported the recommendations of the Group. However, in respect of recommendations relating to ‘Enabling legislation’ CWC has given following observations:

- Entry -56 of List-I has not expressly allowed or disallowed inter-basin water transfer to States other than co-basin States. However, it is a matter of legal interpretation and further deliberations.
- In view of this, it has been suggested in the report to create an agency that allows inter basin transfers. However, it needs to be properly elaborated/strengthened. Further, legal opinion needs to be obtained in the matter.
- It has to be clearly established whether inter basin transfer of waters falls under the category of “regulation and development of river basin”. If not, question of public interest does not arise.
- Normally, a Tribunal is constituted in accordance with the provisions of Inter-State River Water Disputes Act, 1956 for adjudication of disputes amongst basin states relating to waters of inter-State rivers or river valleys (refers Article 262). It needs to be explored whether such Tribunal is empowered to resolve disputes related to inter-basin transfer of waters to non-basin States. This aspect needs to be clearly brought out in the Group’s recommendations but needs further legal consultations.

Chairman, Task Force appreciated the efforts made by CWC in examining the report and giving independent views of the organization. Subsequently, he requested the Members to give their views over the Report.

Dr. Prodipto Ghosh supported the group’s recommendation that the water should not be brought under union or concurrent list as it is not possible under the present political situation.. He mentioned that inter basin water transfer can be accomplished between basin states or non-basin states in two ways, i.e., (i) Regulatory approach, and (ii) Voluntary approach. He favored voluntary approach as in case of regulatory approach, incidences of disputes will increase. Even if regulatory approach is followed, the decisions of regulatory body will be subject to judicial review. Possibility of financial transfers between States should be legally enabled in inter basin water transfer to make it more attractive for donor States.

Shri Narendra Kumar, Chairman, CWC suggested to take advantages of experiences of China and USA for implementing inter basin water transfers in India. Chairman, Task Force and other Members expressed their reservation in following China’s model because of the basic differences in social and political systems in China vis-à-vis India.

Shri Gopalakrishnan mentioned that he in the report on “Restructuring of NWDA” prepared by Sub-committee on Restructure of NWDA setup by the Special Committee on ILR, an exclusive arm of the agency is suggested for dealing with all international aspects of ILR

programme involving international rivers systems. He also referred about Justice Doabia Committee Report. He was not in favour of financial compensation of water transfer mainly since about 90% of the water proposed to be transferred through ILR programme is from Himalayan rivers involving other countries.

Shri Sriram Vedire expressed his agreement with the views of CWC and Dr. Ghosh. In federal structure of our country, it is difficult to define national interest as States have different stand over the issue of inter basin water transfer. In his opinion, it would have been better if water would have been brought under concurrent list. While citing example of Godavari Tribunal award, he mentioned that most of the basin States are enjoying their allocated share of water or planning to utilize the same. These States may not have any issue if the water available over and above the allocated water is considered for transfer.

Shri Vedire further mentioned that the Legal Group has suggested for establishing new agency on the line of NIRA (National Interlinking of Rivers Authority) for implementing ILR Program. However, such agency will have to be suitably empowered so that it acts as Supreme Body for inter basin water transfer.

Shri Jagmohan Gupta, JS & FA, Ministry of Water Resources, RD &GR mentioned that the Ministry is going to set up a Chair in Center for Policy Research who could also look in to various legal aspects connected with ILR. Its TOR could be so drafted so that it can take care of Legal Group's Recommendations.

Shri Mohile, Chairman of Legal Group elaborated the meaning of key words incorporated in Inter State Water Dispute Act, 1956 and expressed the views that there is no need of constitutional amendment. Parliament has to decide what is important in national interest. He, however, suggested the idea of making Presidential Reference to the Supreme Court on this subject.

After detailed deliberations, it was decided to seek legal opinion from one or two eminent legal experts within a time frame of six months. Shri Madhav Menon, Retired Director, National Law University or Justice Doabia may be approached to suggest names of experts and further action can be taken by using their advice. DG, NWDA was advised to establish contact with eminent legal experts for the above purpose.

Item No.7.3: Any other Item with the permission of the Chair

7.3.1 **Constitution of the Financial Sub Committee:** Chairman, Task Force desired to know the status of constitution of the Financial Sub Committee. Shri K.P. Gupta, director (Tech), NWDA informed that out of seven probable Members, three Members have given their consent for joining the Sub Committee. However, Shri Pratip Choudhury, because of

health problem, has expressed inability to join the Sub-committee at this stage. Chairman, Task Force suggested NWDA to constitute the Sub Committee at the earliest. Approval of the payment of TA/DA and sitting fee to the non-officials/private members can be taken from the Ministry separately.

7.3.2 Co-opting Meera Shankar, a Retired IFS Officer from MEA as Member of Task Force: Ms Meera Shankar, Retired IFS Officer from Ministry of External Affairs may be invited as expert Member to attend the meetings of the Task Force as and when required in dealing with bilateral issues of India with Nepal, Bangladesh and Bhutan with reference to ILR program.

7.3.3 Presentation on groundwater recharge- Dr. Ghosh requested the Chairman, Task Force to arrange a presentation on groundwater recharge by an eminent Scientist from Central Ground Water Board in next meeting. Chairman, Task Force advised DG, NWDA to make necessary arrangement accordingly.

Meeting ended with vote of thanks to the chair.

List of Participants of the Seventh Meeting of the Task Force for Interlinking of Rivers held on 11.05.2017 at New Delhi.

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| 1. | Shri B.N. Navalawala,
Chief Advisor,
Ministry of WR, RD & GR | Chairman |
| 2. | Shri Narendra Kumar,
Chairman,
Central Water Commission | Member |
| 3. | Dr. Prodipto Ghosh,
Former Secretary, MoEF | Member |
| 4. | Shri A.D. Mohile,
Former Chairman,
Central Water Commission | Member |
| 5. | Shri M. Gopalakrishnan,
Former Secretary-General, ICID | Member |
| 6. | Shri Jagmohan Gupta,
JS&FA, MoWR, RD&GR | Member |
| 7. | Shri SriramVedire,
Adviser,
MoWR, RD & GR | Member |
| 8. | Dr. Sharad K. Jain,
Director General, NWDA | Member-Secretary |

Special Invitee

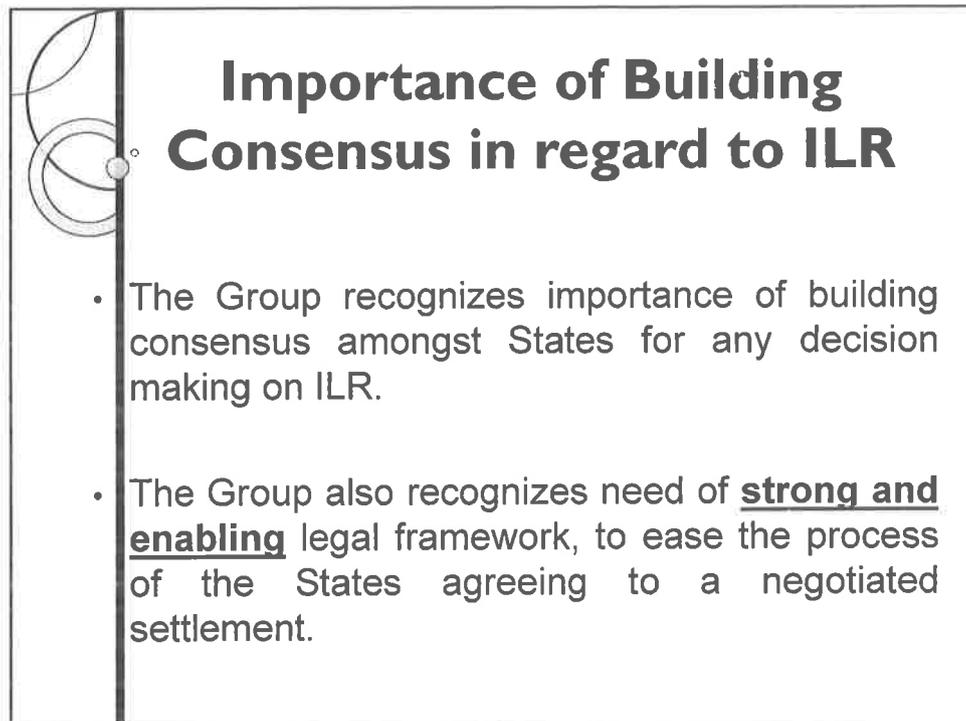
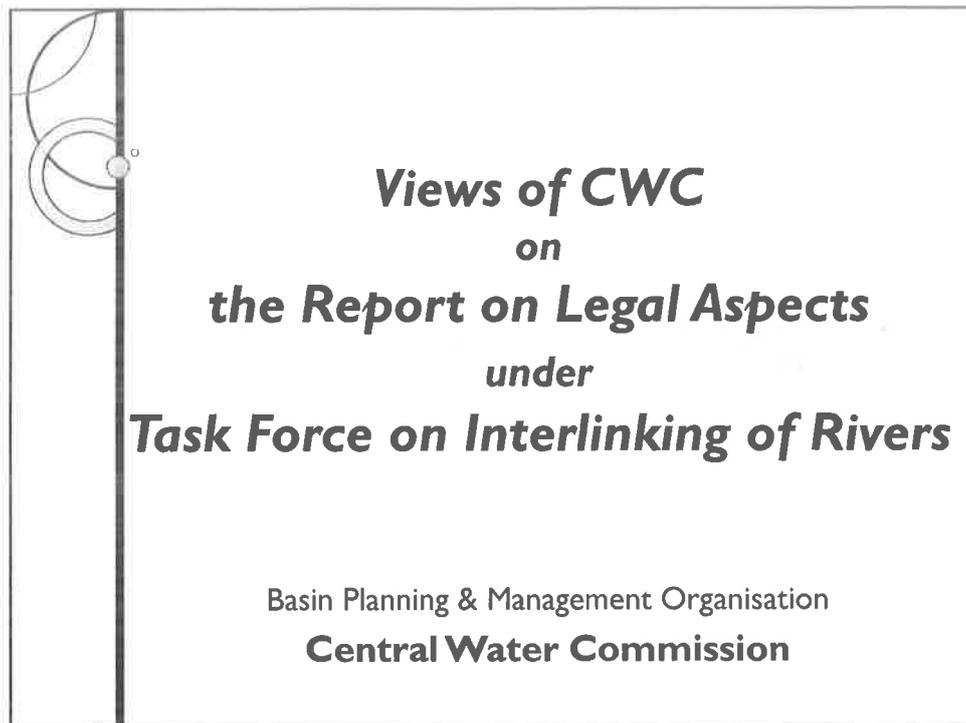
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| 9. | Shri S. Masood Husain,
Member (WP&P), CWC | |
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Officers from CWC

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| 10. | Dr. Naresh Kumar,
Chief Engineer, BPMO | |
| 11. | Shri G. L. Bansal,
Director, NWP | |

NWDA Officers

12. Shri R.K. Jain,
Chief Engineer (HQ)
13. Shri K.P. Gupta,
Director (Technical/SCILR)
14. Shri Nagesh Mahajan,
Deputy Director (SCILR)
15. Shri M. K. Sinha,
Senior Consultant



The Constitutional Provisions

The Group is not in favour of any constitutional amendment for bringing 'water and its management' under Concurrent or Union list. Sarkaria (1983-88) and Punchhi (2007-10) Commissions also opposed this.

- According to the Group, Entry 56 of List-I for regulation and development of Inter-State river basins is enough for passing of suitable legislation by the Parliament.

Recommendations by the Group: The Enabling Legislations

The Group recommends passing of one or more **Central legislation** for facilitating inter-basin transfer to States other than co-basin States.

- **Essential Features** of the legislation:
 - a) may be declared in public interest to adopt "National Water Policy, 2012" for inter-State rivers
 - b) may encourage National Framework Law as recommended in "National Water Policy, 2012"
 - c) The Group recommends expeditious follow up action on Doabia Committee Report (November, 2012). Committee has proposed a new River Basin Management Act, 2012 in place of existing River Boards Act, 1956. Creation of River Basin Authorities could help in the implementation of ILR.

Essential Features - contd.

- d) Creating a new agency or empowering an existing agency to lay down methodologies required for planning such transfers.
- e) Its decisions regarding surplus water and their transfer to non-basin States would be quasi judicial. Aggrieved States having option to appeal to National Tribunal for River Linking.
- f) may create a standing National Tribunal for River Linking (inter-basin transfers to non-basin States), under Article 262 of the Constitution.

in place of two separate Tribunals, proposal of National Permanent Tribunal may be modified to hear disputes related to inter basin transfer along with normal disputes.

Essential Features - contd.

- g) River Basin Authority bound by the decision of agency or Tribunal to allow surplus water being transferred to non-basin States. Existing inter-State agreement or water dispute tribunal award to be reworked, if required.
- h) neither Supreme Court nor any other court has jurisdiction over proposal of agency.
- i) provide for creation of machinery for execution and subsequent operation of the scheme etc.

The Enabling Legislations

- Water is a State subject under Entry 17 of List-II subject to Entry 56 of List-I. Parliament can't legislate on State matters.
- In this context, some relevant paras from the report are reproduced:
 - The constitution does not have, expressly any provision about the transfer of water to a non-basin States (p.42).
 - Further, in Supreme court judgement (1964), the concept implies that one can not encroach upon the government functions or instrumentalities of other, unless the Constitution expressly provides for such interference (p.52).
 - Thus, the above wording of judgment give abundant caution that the Union cannot legislate on a subject that is under the State's mandate, unless there exists an agreement. The relevance of this, to the proposals of ILR, needs to be considered (p.52).

The Enabling Legislations – contd.

- Supreme court made an attempt to gather the true meaning of Entry 56 of List I. However, judgment does not detail any discussion with respect to other important and essentially primary aspects of a river, without which interlinking would not be possible (p.54).
- Some relevant extracts from Supreme Court order dated 2012 on W/P 668/2002 filed on networking of rivers as
 - ✓ To constitute a Special Committee for Interlinking of Rivers for speedy implementation of ILR in National interest. We see no reason why any state should lag behind in contributing its bit to bring ILR a success (p.57).- means not binding rather optional for states

The Enabling Legislations – CWC's Views

- Water is a State subject under Entry 17 of List-II subject to Entry 56 of List-I.
- Entry 56 of List-I enables "Regulation and development of inter-State rivers and river valleys to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest".
- This has not expressly allowed or disallowed inter-basin transfer to States other than co-basin States. However, it is a matter of legal interpretation and further deliberations.
- In view of this, it has been suggested in the report to create an agency that allows inter basin transfers. However, it needs to be properly elaborated/strengthened. Further, legal opinion needs to be obtained in the matter.
- It has to be clearly established whether inter basin transfer of waters falls under the category of "regulation and development of river basin". If not, question of public interest does not arise.

The Enabling Legislations – CWC's Views

- The Group recommends that aggrieved States due to any decision of the agency have option to appeal to National Tribunal for River Linking created under Article 262 of the Constitution.
- However, a Tribunal is constituted in accordance with the provisions of Inter-State River Water Disputes Act, 1956 for adjudication of disputes relating to waters of inter-State rivers or river valleys (refers Article 262).
- It needs to be explored whether such Tribunal is empowered to resolve disputes related to inter-basin transfer of waters to non-basin States.
- This aspect needs to be clearly brought out in the Group's recommendations. This needs further legal considerations.



**Recommendations by the Group:
Issues of Surplus Water in a River Basin**

- a. The Group supports enough flexibility in planning of the links; these need not strictly be from surplus basin to a deficit basin, terms being defined as per Guidelines of the TAC.

- b. The Group supports transfer from areas or basins which are comparatively water rich to areas which are comparatively water poor, after considering the demand and supply position, without going into strict definition.

CWC supports the above

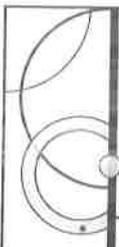


**Recommendations by the Group:
Impact of Tribunal Awards on Water Transfer**

- In the Group's view, the possibility and requirement of water transfer should flow from the ground reality in regard to supply available from nature, demands for human and other need after projection of reasonable future aspiration and engineering possibility.

- The Group is of the view that the **future legal instruments should provide for water transfer from surplus basin** even if this involves the review of the tribunal awards.

CWC supports the above



Recommendations by the Group: Dealing with International Issues

The Group is of the opinion that the international legal issues may be given large attention. Much detail study in regard to the legal instruments which were available and required for enabling the implementation of the inter basin water transfers in other countries is required to be conducted in NWDA.

- The Group is of the view, that in the International negotiations for individual projects, the interest of India in regard to use of the waters for its ILR programme, may be admitted as a parameter.

CWC supports the above



Thank You