Strengthening Inter-Provincial/Municipal Cooperation in Gandaki Basin

A Case of Kaligandaki-Tinau Multipurpose Diversion Project

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Baluwatar, Kathmandu, Nepal

October, 2021

Foreword

This research was part of core activity of Jalsrot Vikas Sanstha (JVS)/GWP Nepal. JVS/GWP Nepal would like to thank Mr. Prakash Gaudel for his contribution while preparing the report

Disclaimer

The findings, interpretations and conclusions expressed herein are those of the author (s) and do not necessarily reflect the views of the institutions

Acronyms and Abbreviations

ADS	:	Agriculture Development Strategy
DoED	:	Department of Electricity Development
DoI	:	Department of Irrigation (the then)
DoWRI	:	Department of Water Resources and Irrigation
DPR	:	Detailed Project Report
EIA	:	Environmental Impact Assessment
FY	:	Fiscal Year
GoN	:	Government of Nepal
HEP	:	Hydro-electric Project
IMP	:	Irrigation Master Plan (2019)
IWRM	:	Integrated Water Resources Management
JICA	:	Japan International Cooperation Agency
KTMDP	:	Kaligandaki Tinau Multipurpose Diversion Project
MoEWRI	:	Ministry of Energy, Water Resources and Irrigation
RM	:	Rural Municipality
SMC	:	Sub-metropolitan City
WECS	:	Water and Energy Commission Secretariat
WRA	:	Water Resources Act (1992)
WRS	:	Water Resources Strategy (2002)

Units

ha	:	hectare
km	:	kilometer
m	:	meter
m^3/s	:	cumecs (cubic meter per second)
MCM	:	million cubic meter
MW	:	megawatt

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1. INTRODUCTION

1.1 Background

Kaligandaki-Tinau diversion project was envisaged as early as in the Gandak Basin Master Plan, 1979 (Thapa, 2019). The diversion project intends to provide irrigation water to low lands of Kapilvastu and Rupendehi districts. The feasibility study and research of the project was also highlighted in the 12th plan (FY 2010/11-2012/13). The diversion project was planned to be extended in accordance with the feasibility study, plan formulation and investment plan. With the promulgation of the new Constitution in Nepal in 2015, the federal governance system was established and was divided into three tiers- Federal, Provincial and Local levels. With the execution of new constitution, the debates between Gandaki Province and Lumbini Province regarding the diversion project seems to be a beginning of inter-province disputes over water resources. This study attempts to identify the underlying policy gaps and help strengthen inter-provincial cooperation for water resources development, management and sustainable use.

1.2 Recalling Inter-basin Water Diversion Projects in Nepal

The seasonal variation in surface water availability is quite noticeable. This is mainly influenced by monsoon which extends for four months (June-September) and brings about 80% of the total annual precipitation in the country. Additionally, the temporal variation of water availability adds on to the seasonal variability and creates further challenges in water management. The areas where water can be utilized do not match with the areas where water is easily available (WECS, 2002).

The conventional practice of water management is to transfer water from surplus basins to deficit basins. Interbasin projects are intended for achieving the multiple use of water by transferring water from the water surplus areas to water deficit areas. In Nepal, the interbasin water transfers are being discussed since a quite long time. The river basin master plans (Kosi, Gandak and Karnali-Mahakali) of Nepal prepared in 1980s have identified the potential for such transfers. However, some hydro-project and water supply project are inter-basin in nature. The Kulekhani Storage Hydropower project is the only storage-type hydropower project of Nepal which is in operation at present. This project transfers water from Kulekhani river of Bagmati basin to East Rapti river of Gandaki Basin. This is probably, the first interbasin water transfer project of Nepal, even though the multiple use of water was not achieved. Likewise, the Melamchi water supply project is an interbasin water transfer project which transfers water from Melamchi River (Koshi basin) to Kathmandu (Bagmati basin). These two projects were not envisaged as multipurpose projects. However, in recent times there are some interbasin projects envisioned as multipurpose projects. Much of these inter-basin projects are characterized by conflicts and inter-provincial issues.

Bheri-Babai Diversion Multipurpose Project: This project is being constructed to divert 40m^3/s of water from Bheri River (Karnali Basin) to Babai River (Babai Basin) through 12.2km of tunnel. This project upon completion, will provide year round irrigation to 51,000ha of land in two districts (Banke and Bardiya) and produce 46.8MW of electricity. In the federal governance structure of Nepal, this project diverts water from Karnali Province to Lumbini Province.

Sunkoshi-Marin Multipurpose Diversion Project: A 12m high dam will be constructed to divert 67m^3/s of water from Sunkoshi River (Koshi Basin) through a tunnel of 13.1km into the Marin River (Bagmati Basin). This project intends to irrigate 122,000ha of land in five districts (Bara, Rautahat, Dhanusha, Mahottari and Sarlahi) of Province 2 and generate 28.62MW of energy. The project is also characterized by inter-provincial water transfer where water is transferred from Bagmati Province to Province No. 2.

The Irrigation Master Plan, 2019 have identified a total of 11 multipurpose and large-scale surface water projects so as to expand irrigated area, increase water supply and in some case produce electricity. Out of these 11 projects, **Kaligandaki Tinau Multipurpose diversion Project** is one of the prioritized projects (DoWRI, 2019). The list of such multipurpose projects is presented in Annex 1.

1.3 Project Features

Gandaki River basin has been identified as water surplus basin with potential to irrigate the adjacent Terai area (WECS, 2002). Kaligandaki-Tinau Multipurpose Diversion Project (KTMDP) in an inter-basin and inter-provincial project which intends to divert water from Kaligandaki River (Gandaki Basin) to Tinau River Basin. The following subsection presents the technical details of the KTMDP based on the detailed feasibility report of the project (DoWRI, 2021).

1.3.1 Headworks and Water Conveyance System

The headworks for the project is proposed at Pipaldanda, Ward No. 3 of Rambha Rural Municipality (RM), Palpa district. This location of headworks is about 2.2km downstream from the Ramdi Bridge over Kaligandaki River at the Siddhardha Highway. The water will be diverted to Tinau basin through a tunnel of about 27km from Kaligandaki River leading to powerhouse. The project intends to divert 82m^3/s (design discharge) of water from the Kaligandaki River.

Figure 1: Headworks of Kaligandaki Tinau Diversion Multipurpose Project

Source: https://dwri.gov.np/files/report/20210709080705.pdf

1.3.2 Hydropower Component

The inter-basin project envisages two power houses. The first one is proposed at DovanGau, Dovan Khola, Ward No. 3 of Tinau RM. The second power house will operate as a cascade of first powerhouse and is located at Belbas of Butwal Sub-metropolitan city (SMC) ward No.13, Rupendehi district.

Table 1: Hydropower Component of KTMDP

SN	Features	Powerhouse-I	Powerhouse-II
1.	Location	DovanGau, Tianu RM-3, Palpa	Belbas, Butwal SMC-13, Rupendehi
2.	Dimensions (lxbxh)	55mx19.5mx40.2m	57mx19.5mx38.5m
3.	Type	Surface	Surface
4.	Gross head	105m	110.20m
5.	No. of turbines	3	3
6.	Discharge/unit of turbine	27.32m^3/s	27.32m^3/s
7.	Installed capacity	59.26MW	72.93MW
8.	Energy (GWh)		
	Dry Season	242.37	295.044
	Wet Season	243.32	304.406
	Total/Annual	485.686	599.49
9.			

Source: DoWRI, 2021

1.3.3 Irrigation Component

The Kaligandaki Tianu project aims to provide irrigation to 98,601ha of land in the dry season in the districts of Rupendehi and Kapilvastu of Lumini Province. The irrigation command area is divided into two parts, eastern and western. The Eastern command area lies east to Tinau River and offset area up to 3km west of Tinau River. A maximum of 24,191ha of land in the Rupendehi district will be irrigated in this command area. The eastern command area will be facilitated through Tinau River by maintain water release from the first powerhouse at Dovan.

Table 2: Irrigation Component of KTMDP

SN	Features	Eastern Command Area	Western Command Area	Remarks
1.	Location	Eastern side of Tinau River and 3km offset area west of Tinau River	Lies 3km west of Tinau River	
2.	District	Rupendehi	Rupendehi and Kapilvastu	
3.	Net irrigable command area (ha)			
	Dry season	24,191	74,410	Total: **98,601**
	Wet season	13,534	61,834	Total: **75,368**
4.	Supply of irrigation water	Water released from powerhouse I into Tinau River	Water released from tailrace of powerhouse II	

Source: DoWRI, 2021

2. METHODS AND METHODOLOGY

2.1 Desk Review

Available literature on inter-basin water transfer projects in Nepal were reviewed. The detailed feasibility report of the Kaligandaki-Tinau Multipurpose diversion project was reviewed from the water management perspectives. Since, the environmental impact assessment (EIA) of the project has not been carried out, no detail information on the socio-environmental impacts could be reviewed.

2.2 Policy and Legislation Review

Different national policies, plans, strategies, legislations and guidelines were reviewed. Gandak Agreement of 1959 between Nepal and India was also reviewed in relation to the proposed inter-basin water transfer project. The periodic-plans prepared by the Provincial governments (both Gandaki Province and Lumbini Province) were also reviewed.

2.3 Field Visit

A reconnaissance field visit to project site was carried out in April, 2021. The field visit included the consultation with the key personnel in addition to visit to proposed projects sites. The provincial planning commissions of both province (Gandaki and Lumbini) were consulted and discussed physically in order to seek the views of the provinces regarding the diversion scheme. The following table shows the list of persons visited during the field visit.

Table: List of People Contacted

S.N.	Name	Position	Remarks
1	Dr. Ishwor Gautam	Vice-Chair	Province Planning Commission, Lumbini Province
2.	Dr. Giridhari Sharma Paudel	Vice-Chair	Provincial Policy and Planning Commission, Gandaki Province
3.	Mr. Dhruba Raj Poudel	Division Chief, SDE	Ministry of Physical Infrastructure Development, Lumbini Province
4.	Mr. Bishnu Prasad Bhandari	Chair, Rambha RM	Rambha Rural Municipality, Palpa District, Lumbini Province
5.	Mr. Sundar Prasad Shrestha	Chief Administrative Officer	Tinau Rural Municipality, Palpa District, Lumbini province
6.	Mr. Kishan Kunwar	Engineer	Technical Section, Tinau RM, Palpa District

3. POLICY, LEGISLATION AND INSTITUTIONAL MECHANISM

3.1 Constitutional Provisions

The Constitution of Nepal has adopted the federal governance system where Federation, Province and Local Level are the three tiers of governance units. The Constitution has further differentiated and designated different powers to such governance units. The following table presents the different powers of governance units in relation to water and other natural resources.

Table 3: Power of Different Governance Units as per Constitution of Nepal

Constitution of Nepal (Schedule)	Power of Governance Unit		
	Federation	**Province**	**Local level**
Schedule 5 : List of Federal Powers	• Policy related to protection/ conservation and multiple use of water resources • Central level large electricity, irrigation and other projects • Inter-Provincial electricity transmission line • National and international environment management	-	-
Schedule 6: List of Provincial Powers	-	• Provincial level electricity, irrigation and water supply services, navigation • Management of national forests, water resources and environment within the Province	-
Schedule 7: List of Concurrent (federal and provincial) Power	• Inter-Provincial forests, water uses, river, waterways, environment protection, biodiversity • Water supply and sanitation • Utilization of water stretching in interstate form		
Schedule 8: List of Local level Power	-	-	• Environment protection and bio-diversity • Irrigation • Water supply, small hydropower projects • Protection of

Constitution of Nepal (Schedule)	Power of Governance Unit		
	Federation	**Province**	**Local level**
			watersheds
Schedule 9: List of concurrent power of Federation, State and Local Level	• Services such as electricity, water supply, irrigation • Royalty from Natural Resources		

3.2 Policy Review

3.2.1 National Water Resources Policy, 2020

National Water Policy was adopted by GoN in July 2020 with long term vision of achieving economic prosperity and social transformation through multidimensional, equitable, multiple use and sustainable development of water resources.

Objective	Strategy	Policy and working Policy
To contribute to increase national production by developing and utilizing water resources in a multipurpose and equitable manner.	IWRM and multiple use of water resources will be prioritized while utilizing and managing water resources.	In order to ensure year round availability of water for different uses, the multipurpose, storage as well as interbasin transfer projects will be given priority.

3.2.2 Irrigation Policy, 2013 (2070)

The Irrigation Policy, 2013 aims to promote ***multipurpose*** and ***interbasin water transfer projects*** so as to support the aim of providing year round irrigation. It includes policies to, *inter alia*, follow IWRM principle during the planning of irrigation projects; and implement reservoir-based and inter-basin water transfer project on a priority basis (No. 1.5.5 and 1.5.8).

3.2.3 Hydropower Development Policy, 2001

The Policy came up with the objective of generating electricity at low cost by utilizing water resources available in the country so as to extend the reliable and quality electricity service at a reasonable price. For this, the Policy takes the strategy of implementing small, medium, large and storage type projects for hydropower development focusing on national interest, environmental protection and maximizing benefits in the water resources development sector in Nepal. More clearly, the Policy has adopted the strategy to adopt a broader perspective on national economic development by developing and managing hydropower in line with the concept of integrated water resources management (Strategy 4.7).

The Policy, 2001 focuses on continuing **large storage type hydropower projects** and **multi-purpose projects** which are to be developed in such a way that the **downstream**

benefits resulting from the project would yield maximum benefits to the nation (Policy 5.5). Possibility of irrigation development shall be considered in such projects.

EIA are prescribed for hydropower projects which will be governed by the prevailing environment-related laws. The most notable part of this Policy is that it made a provision to release such quantum of water, downstream of the diversion structure, which is higher of either at least ten per cent of the minimum monthly average discharge of the river/stream or the minimum required quantum as identified in the EIA report (Working Policy 6.1.1).

Another relevant provision of this policy is related to provision concerning water rights (Working Policy 6.2). The Policy prescribes for formulation of legal provision to prevent adverse impact on the availability of water or water right of the projects. The Policy further highlights the importance of evaluating non-power benefits such as irrigation and flood control from large multipurpose storage projects are recommends for utilizing within the country.

3.2.4 National Climate Change Policy, 2019 (2076)

The policy calls for the ***multiple use of water*** and low carbon energy production so as to ensure energy security. Further, the Policy envisages to implement mitigation measures to address the adverse impact on river ecosystem while producing hydropower.

3.2.5 Water Resources Strategy, 2002

There are 10 strategic outputs presented in the Strategy order to achieve the goal of significantly improving the living condition of Nepalese people in a sustainable manner. One of the outputs of the Strategy states 'appropriate and efficient irrigation available to support optimal, sustainable use of irrigable land' (Output 4, WRS, 2002). The strategy intends to provide 90% of all irrigable land with year-round irrigation by 2027. For this, where possible, the Strategy, 2002 envisages for developing irrigation by integrating with ***multipurpose storage projects*** and ***inter-basin transfers***.

3.2.6 Water Resources Plan, 2005

The Water Resources Plan, 2005 highlights the importance of coordination in water resources management so as to avoid potential conflicts. Therefore, the Plan, 2005 calls for restructuring and strengthening of water and energy commission (WEC), which will provide techno-economic clearance to water resources projects. Such clearance from WEC will be made mandatory for the following type of projects

- *Hydropower projects of more than 10MW installed capacity;*
- *Irrigation projects of more than 5,000ha command area;*
- *Projects designed for **multipurpose projects**;*

- *Projects with trans-boundary implications; and*
- *Project involving **inter-basin water transfer***

Further, to meet the targets set out by the WRS, 2002, the Plan suggest for improved planning and implementation of new irrigation system as one of the action programs. The key activities within this action program include the "*Initiation of **multipurpose irrigation projects** (with a hydroelectric generation component such as Bheri-Babai diversion, Sunkoshi-Kamala Diversion and West Rapti storage*)".

3.2.7 Agriculture Development Strategy (2015-2035)

The Agriculture Development Strategy (ADS) is a twenty-year vision for development of agriculture in Nepal. The Strategy has identified the low availability of year-round irrigation as one of the major issues for low productivity. The ADS includes four main outcomes, 35 outputs and 232 activities. Out of the four main outcomes, the second outcome is 'higher productivity'. For achieving this outcome, the ADS intends to improve catchment management and construct *inter-basin transfer schemes*.

The water from permanent to seasonal rivers will be transferred to augment water supply in water-short irrigation systems if economically justified by generation of hydropower. The specific activities included in the ADS regarding the inter-basin transfer schemes are presented in the table below.

Outcome	**Outputs**	**Activities**		**Specific Activities**
Higher Productivity	Irrigated area expanded equitably and viably, and improved irrigation efficiency and management	Increase irrigation intensity	Improve catchment management	management and restoration of catchment including program of Churia Area Conservation
			Construct inter-basin transfers	*DoI to review East-West water transfer project proposal*
				Design and construct 7 inter-basin systems for hydro-electricity power and irrigation with full EIA and safeguards.

3.2.8 Water Induced Disaster Management Policy, 2015 (2072)

The policy aims to reduce loss of life and property from floods, landslide and other water induced disasters through structural and non-structural technologies. With this, the Policy further aims to conserve aquatic ecology and manage natural resources and water related infrastructures and uses sustainable. Preparation of master plans for river basins/watersheds at national and local levels so as to implement the integrated conservation program in river watersheds (Policy 1.6.1) and implementation of IWRM principles and river basin concept for the control of water induced disaster (Policy 1.6.3) are the major commitments made in the Policy, 2015.

3.3 Legislation Review

3.3.1 Environment Protection Act, 2019 and Rules, 2020

The Act mandates the environmental assessment of development projects prior to their execution. The Act has further categorized the environmental assessment into three types- Brief Environmental Study (BES), Initial Environmental Examination (IEE) and Environmental Impact Assessment (EIA). The level of the environmental assessment required depends upon the threshold of the project feature and the environmental sensitivity of the project area which has been prescribed in the Schedules of Environment Protection Rules, 2020. As per Schedule 3 of the EPR, 2020 [amendment of schedules (cha.5), May 2021], any inter-basin water transfer project like Kaligandaki-Tianu diversion project requires EIA, which is the highest level of environmental assessment for projects.

3.3.2 Water Resources Act, 1992 and Rules, 1993

The Water Resources Act of 1992, which is also regarded as the umbrella legislation in water resources management of Nepal, has a provision of not to cause substantial adverse effect on the environment while utilizing water resources (Section 20). The Act, 1992 determines which uses of water are given priority and in what order. The use of water for drinking and domestic purposes is given first priority. The priority given to the different uses of water is set out in Section 7 of the WRA, 1992 as follows: 1) Drinking water and domestic use; 2) Irrigation; 3) Agricultural use such as animal husbandry and Fisheries 4) Hydroelectricity; 5) Cottage industry, industrial enterprises and mining; 6)Navigation; 7) Recreational use; and 8) Other uses.

The Water Resources Rules, 1993 framed under the Water Resources Act, 1992 has made it mandatory to accomplish the Environmental Impact Analysis in order to obtaining License for utilization of water resources [Rule17 (1e)]. Even though the project is government initiated and does not require license, the EIA of the project has to be carried out.

3.3.3 Electricity Act, 1992 and Rules, 1993

The Electricity Act, 1992 has provision of not to cause substantial adverse effect on the environment while carrying out electricity generation, transmission or distribution (Section 24). Similarly, the Electricity Rules, 1993 has made it mandatory to carry out Environmental Impact Assessment for obtaining License for Production [Rule 12 (f)] or Transmission of Electricity [Rule13 (g)]. As the Kaligandaki-Tianu diversion project has envisioned the production of electricity, the legislations related to electricity is to be complied with.

3.3.4 Intergovernmental Fiscal Arrangement Act, 2017

This act has provisioned the criteria for distribution of royalty obtained from natural resources among the federal government, provincial government and local levels (Section 7). Schedule 4 of the Act has allocated 50% of the royalty from natural resources (including water resources and hydroelectricity) to Federal Government, 25% to the concerned Provincial Government and remaining 25% to the concerned Local levels.

3.3.5 Aquatic Animal Protection Act, 1960

For mitigating the adverse effect of the any dyke, on rivers or aquatic bodies, for electricity, water supply or irrigation or any other purpose, Aquatic Animal Protection Act, 1960 has made some important provisions. First amendment of this Act in 1997 has included a provision for construction of a fish ladder wherever possible so as not to affect the movement of aquatic animals when construction of any dykes. In the case, where there is no possibility to build such ladder, the water development project need to make an aquatic animal hatchery or nursery in vicinity of project area so as to have artificial breeding of aquatic animals (Section 5B). Furthermore, the Act prohibits the closing or destroying the fish ladder and other structures which are made for the protection of any aquatic animals (Section 3A).

3.3.6 Soil and Watershed Conservation Act, 1982 and Rules, 1985

The Act defines 'soil and water conservation' as acts to prevent or save any area from being destroyed from natural calamities such as flood, landslide and soil erosion and keep the volume and flow of water in a normal condition or keep on maintaining cleanliness by preventing the flow of water from being muddy. With the objective of conserving soil and watershed, the Act, 1982 (and the Rules, 1985) have the provisions for declaring, by a notification in the national gazette, any area within Nepal as a protected watershed area where such conservation needs are felt (Section 3). However, the Act does not prevents GoN from using and distributing water resources (section 24).

3.4 Institutional Mechanism

3.4.1 National Natural Resources and Fiscal Commission

The National Natural Resources and Fiscal Commission Act, 2017 envisages a national level Commission so as to facilitate and provide assistance necessary to resolve disputes between the Federation, Province or Local levels mainly in relation to distribution of revenues. Further the Commission is empowered to provide suggestion to government of Nepal, province or local level in relation to protection and utilization of natural resources (Section 3g).

4. ISSUES AND CHALLENGES

4.1 Provincial Issues

4.1.1. Lumbini Province

A discussion meeting was made with the Vice-Chair of the Provincial Planning Commission of Lumbini Province, Dr. Ishwor Gautam. The Kaligandaki-Tinau diversion project is realized as a project to support expand the irrigation coverage of the province, mainly in Ruepndehi and Kapilvastu districts. As the water in Tinau River is not sufficient to meet the existing and increasing demands mainly from drinking water and irrigation sectors, the diversion from the Kaligandaki River is deemed necessary for the province.

The Planning Commission was well aware of the ongoing disputes between two provinces, however due to the unclear provisions about the jurisdiction of the nature of the project, nothing has moved forward. Dr. Gautam highlighted that no coordination has been initiated between federal and provincial governments. Probably, because the project is of central government, there has been no such need. However, the first five-year plan (FY 2076/77- 2080/81) of Lumbini Province has set the objective of expansion of reliable and sustainable irrigation services within the province. The plan has further set strategy of prioritizing irrigation as a province pride project and has envisioned the multipurpose diversion projects including Kaligandaki-Tinau project (p. 161).

4.1.2 Gandaki Province

The Provincial Planning Commission has put on concerns about the downstream issues of the proposed project. As the project plans to divert water from Kaligandaki River, there are different water users downstream from the project headworks. There are some existing and planned lift systems downstream which is considered to be impacted with the proposed diversion. In addition, the Province believes that the cultural and religious aspect of Devghat (the confluence of Kaligandaki River and Trishuli River) will be seriously impacted with the diversion of the Kaligandaki water to Tinau River. The riverine forest and aquatic ecosystems in the downstream will also be affected by the diversion.

4.2 Municipal Level Issues

4.2.1 Rambha Rural Municipality

The diversion project has to be understood from the cost and benefit sharing. Only the equitable sharing will help implementing the project successfully. The RM is concerned that the diversion will impact the downstream water used including drinking water and irrigation which are mainly done by lifting the water from the Kaligandaki River.

4.2.2Tinau Rural Municipality

No coordination and no information sharing about the proposed project has been carried out.

4.3 Other Pertinent Issues

The study team has identified other pertinent issues, in addition to the Province/ Municipal level issues. These include ***technical issues, environmental issues, religious issues and socio-economic and cultural issues,*** which are discussed based on the following sections;

4.3.1 Upstream Issues in Kaligandaki River

a. Kaligandaki A HEP: In the upstream of the proposed project, there exists Kaligandaki 'A' Hydroelectric Plant with an installed capacity of 144MW which operates on a daily peaking basis. So, this peaking operation will potentially impact the operation of the diversion scheme.

b. Inundation: The proposed headworks for the diversion project is about 2.2km downstream of Ramdi Bridge. The reservoir/pondage created due to diversion structure will possibly result in loss of key/valued resources (agriculture land, forests or other land uses). Further, such impoundment of water will also affect the microclimate of the area.

Picture 1: Kaligandaki River (downstream of Ramdi Bridge and upstream of proposed diversion site)

Source: Field Visit, 2021

4.3.2 Downstream of Kaligandaki River

Low flows: With the execution of the diversion scheme, a significant stretch of the Kaligandaki River will experience low flow condition. The impacts of such flow in downstream of Kaligandaki (after diversion) are of concern as no major tributary joins the river in this stretch.

The design discharge of the project is 82.00m^3/s whereas the minimum riparian release proposed by the feasibility report is 8.06m^3/s. This riparian release recommended by the report is 10% of the driest mean monthly flow which is guided by the national policy framework. However, the report acknowledges the religious value of the Kaligandaki River at Devghat and therefore suggests for re-discussion on the downstream release provisions.

Table 4: Changes in Flow of Kaligandaki River after Project Execution

Month	Mean monthly flow at Ramdi (m^3/s)	Riparian Release (m^3/s)	Average water available for diversion after releasing minimum flow (m^3/s)	Flow downstream (riparian release +surplus flow) (m^3/s)	Percentage of natural flow (%)
January	96.80	8.06	82.00	14.80	15.29
February	85.30	8.06	77.24	8.06	9.45
March	80.60	8.06	72.54	8.06	10.00
April	89.10	8.06	81.04	8.06	9.05
May	131.40	8.06	82.00	49.40	37.60
June	389.80	8.06	82.00	307.83	78.97
July	1154.70	8.06	82.00	1072.70	92.80
August	1352.50	8.06	82.00	1270.50	93.94
September	845.80	8.06	82.00	763.80	90.31
October	371.20	8.06	82.00	289.20	77.91
November	179.00	8.06	82.00	97.00	54.19
December	119.80	8.06	82.00	37.80	31.55

Changes in Microclimate: The reduction of the flow downstream of the diversion structure will impact the microclimate of the Kaligandaki River valley.

4.3.3 Issue of Tinau River

With the diversion of water from Kaligandaki basin to Tinau basin, the possible high flow in Tinau River may result in increased flood zone or riverbank cutting and may impact bridges, existing hydropower project and riverside settlements. Further the mixing of water from Kaligandaki into Tinau, the physico-chemical parameters of Tinau will also change. Such changes in water quality of Tinau can impact the aquatic biodiversity and other ecosystem services. Such addition of water through interbasin transfer can also affect the micro-climate of the Tinau region.

Picture 2: Settlement nearby Tinau River, Butwal Sub-Metropolitan City

Source: Field Visit, 2021

4.3.4 Ownership of River

Some level of analysis might be required on who owns legally these big rivers - Federal or Provincial or Local levels. For this, policy analysis has to be carried out. The further clearance is required in the upcoming national water resources act.

4.3.5 Transboundary Issue

Kaligandaki River is a major tributary river of Sapta Gandaki River (which is named as Gandak River as it enters India). Nepal and India entered in Gandak Treaty in 1959 which was amended later in 1964. The Treaty not only provision of construction of barrage at Nepal-India border for managing water, but also has kept restrictions on the upstream water uses within Nepal. Clause 9 of the Gandak Treaty makes it mandatory for Nepal to make a separate agreement with India regarding the trans-valley use of Gandak waters in the months of February to April.

4.3.6 Supreme Court's Stay Order

The generation of considerable opposition from the Gandaki Province Government as well as the local levels was noticed with the allocation of funds by GoN for study of the diversion project in 2011. Different concerns and issues were raised by local levels, provincial governments and political elites. Some of these issues are presented in the Annex 5 and Annex 6. The recent setting up of office at Butwal to push forward the diversion project re-ignited the issue and generated strong oppositions from the Gandaki Province as well as other local levels (of Syangja, Palpa, Tanahu, Chitwan and Nawalparasi East). The Gandaki Province and local levels fear that the diversion project will create a conundrum of negative impacts on the downstream ecosystem, farmlands, livelihoods and cultural aspects as the diversion project will turn the river almost dry, mainly in lean flow season. A petition was filed in the Supreme Court and the Court issued a stay order on the project (Annex 7).

5. OPPORTUNITIES FOR COOPERATION

5.1 Alternatives Analysis

Analysis of the alternatives available for any project is one of the best practices to make the project economically and socially feasible. Such analysis will help to justify the need of the project. Therefore, for this Kaligandaki-Tianu Diversion Project, the study of all potential alternatives should be studied in details. Such detail analysis of the alternatives should be presented in the detailed project report (DPR) and environmental impact assessment (EIA). Section 4 of the Environment Protection Act (2019) clearly mentions the need for carrying out alternative analysis in detail and select appropriate alternative with reasons. The following sub-section discusses in brief some of the potential alternatives to the diversion project.

5.1.1 Alternatives to Diversion Project

a. Potential for Expansion of Surface and Groundwater Irrigation

Rupendehi and Kapilvastu districts have high potential for agricultural production. Banganga, Tinau and Rohini are the major rivers in these two districts. The existing surface and groundwater irrigation project in these two districts are listed in Annex 3. The expansion of conjunctive use of surface and groundwater irrigation can be one of the potential alternatives to the diversion project.

b. Storage Projects within Tinau Basin

The Tinau River originates from the Mahabharat range in Palpa district. The river is characterized by floods in monsoon and low flow in dry season. The average monsoon flow in August can be as high as 110m^3/s and the peak flood is close to 2500m^3/s whereas the minimum flow of the river at Butwal in April is 1m^3/s (Poudel, 2012). This seasonal variation of water availability calls for seasonal water storage in the basin. The storage water project will not only control the annual devastating floods during monsoons but also provide regulated water in the dry season which is much needed in the basin.

The option for storage or detention of flood water was studied as an option for the flood mitigation plan for the Tinau River (JICA and DoI, 1999). However, no storage dams were proposed in the plan referring to the poor geological condition in the Siwalik region and thus making the project economically unfeasible. In the present context, with the increasing need of managing water the option for storage projects need to be reassessed. So, the potential for season storage of water within the Tinau Basin can be one of the alternatives to the diversion project.

c. Other Diversion Options- Naumure Diversion Project

Naumure Storage Project was one of the highly prioritized project by JICA in 2014. Recently, Department of Electricity Development (DoED) has re-initiated the project. The department has also submitted its EIA to ministry for approval.

This diversion project also plans to irrigate 29,736ha of land in Kapilvastu district. On the contrary, Kapilvastu district is also to be irrigated by the Kaligandaki-Tinau diversion project. With both the project irrigating Kapilvastu district, is there any overlapping of command area? Though the Irrigation Master Plan (2019) has presented different command areas of these projects, none of these project offices nor have their project reports discussed and clarified this issue. This elucidates the gap in coordination between two departments of federal ministry (MoEWRI). The Department of Electricity Development (DoED) has initiated the Naumure Diversion multipurpose project whereas the Department of Water Resources and Irrigation (DoWRI) has initiated Kaligandaki Tinau diversion project.

5.1.2 Alternatives in Project Designs

Different alternatives in project design need to be considered for minimizing the social, environmental and economic costs. Much of these is done in optimization of the project for the preparation of the detailed project report (DPR).

a. Options in Design Discharge and Riparian Release

The design discharge is one of the determining factors for economic feasibility and financial viability of the project. The energy generation and expansion of irrigation command area directly depends on the design discharge of the project. The detail feasibility study report (DoWRI, 2021) seems to define the design discharge (82.00m^3/s) for diversion just by considering the minimum downstream release (10% of the minimum monthly flow). But the estimation of downstream riparian release is to be defined by considering different water requirement in the downstream (including the existing and planned water uses; environmental, social, cultural, and aesthetic water requirements and others). For assessment of the downstream water requirement, details study should be carried out during EIA. Then only the design discharge can be finalized. Agreeing on the design discharge and downstream release would require to analyze different options for making the project successful from not only technical and economic perspectives but also from social and environmental perspectives.

b. Dry Season Augmentation

Construction and operation of storage projects in the upstream region of the Kaligandaki Basin shows the potential for dry season augmentation through the provision of regulated water. As Kaligandaki River is characterized by high flows in Monsoon Season and low flows in the dry season, the storage projects on the main stem

Kaligandaki River or its major tributaries can help augment the dry season flow and have potential to meet the demand of both the Tinau basin and downstream water uses.

There are different projects identified, planned or being studied in the upstream region of the Kaligandaki basin. Kaligandaki Storage Project, Lower Badigad Storage Project and Andhikhola Storage Project are the major storage project in the upstream region of the basin. In addition, an inter-basin storage project–Uttarganga will also augment the flow in the Kaligandaki by diverting water from Bheri/Karnali Basin. The total storage volume of these planned projects is about 3895.15MCM. Uttarganga Storage project, if implemented, can alone contribute as much as 26.86m^3/s of regulated water in the dry season. Therefore, the implementation of storage projects in the upper catchment provides full assurance to meet the water requirements of both Kaligandaki and Tinau Basins. The details of these proposed projects are presented in Annex 2.

The Gandak Agreement, 1959 indicates some restriction on inter-basin water transfer from Gandak Basin in some months. However, this is applicable for the natural flow of the river and not applicable to the regulated water produced from the storage projects (Upadhyay and Gaudel, 2014). Therefore, the additional water generated from the storage projects (including Budhi Gandaki Storage Project) in the dry season can be utilized within the country without violating the existing Gandak Treaty and existing water allocation (Gaudel, 2013). The assurance of sufficient water downstream of the diversion project will help to address the oppositions and concerns of the downstream communities and Local Levels to a large extent.

5.2 Benefit Sharing

When the best alternative of the project is selected and when the project is to be implemented, the next level of assessment related to benefit sharing is to be carried out. The evaluation of the different costs and benefits of the proposed project, a mechanism needs to be developed to share the benefits as well as the costs in equitable manner. This needs to be worked out from the project affected communities to local levels and to province levels. So, defining and agreeing on the models of sharing of benefits as well as the cost will help to translate the existing conflict on the project to possible cooperation between and among local levels and Provinces.

6. CONCLUSIONS AND RECOMMENDATIONS

Inter-basin diversion projects are characterized by socio-political conflicts and socio-environmental impacts. However, in order to address the issue of spatial variation of water and to meet the water requirement, the conventional practice is to transfer water from the water surplus basin to water deficit basin. The Kaligandaki-Tinau Diversion Project is one of its kind.

The Kaligandaki-Tianu Diversion project seems to suffer from low level of co-ordination between different stakeholders, ranging from upstream-downstream communities to Local Levels and Provinces. In the context of new federal governance system and the Constitution of Nepal which is based on the principle of cooperation, coexistence and coordination; any project with inter-provincial impacts needs to acknowledge the existence of all governance units. After coordination and cooperation with Provinces and local levels, the final decision is to be made by the federal government.

Though the project intends to irrigate 98,601ha of land in two districts and produce 132MW of electricity, less is known about the socio-environmental impacts. The impacts are anticipated not only in upstream and downstream region of Kaligandaki River but also in Tinau basin and two water receiving districts. Detail assessment of these impacts in coordination with all relevant stakeholders is deemed necessary. Further, the detail analysis of alternatives and selection of best alternative will help to translate the existing conflicts into potential cooperation. The cultural and religious aspect of Kaligandaki River should be acknowledged during such assessment. The devising of benefit and cost sharing plans will further enhance the cooperation among and between provinces and municipals. The Supreme Court of Nepal has rightly pointed out to carry out all studies related to the project before decisions are made.

With the increasing water demands and increasing water conflicts, there is a need of basin wide approach to water resources development in Nepal which has been also highlighted by different water related policies. Further, the Constitution of Nepal has empowered the federal government to frame and implement water resources related policies. Formation of strong institution or a river basin organization with enough resources and expertise can contribute translating the water conflicts into cooperation and help achieve sustainable development of water resources in Nepal. Therefore, in the context, where the ownership of the water resources of the country is with the State and the federal laws over-rule the provincial laws, it is the duty of the federal government to decide the future of Kaligandaki-Tinau Diversion Multipurpose Project. The delay in decision making of such a project can trigger a series of inter-provincial disputes over implementing the water resources development projects in Nepal.

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Annex 1: List of Multipurpose Projects

(Surface Irrigation Development Scenarios, Irrigation Master Plan, 2019)

S. N.	Name of Project	design flow (m^3/s)	command area	Energy generation-MW (approx.)	Remarks
1.	Bheri-Babai Diversion Multipurpose Project	40	45,100ha (including 3,000ha new irrigated lands)	46	under construction
2.	Karnali Diversion Project	59	46,000ha (including 33,000ha new irrigated lands)	80	
3.	Madi-Dang Diversion Project	24	17,000ha	61	
4.	Naumure Dam, Rapti-Kapilbastu Diversion Project		40,849ha	100	
5.	**Kaligandaki Tinau Diversion Project**				
6.	Kaligandaki Nawalparasi Diversion Project	17	11,500ha	4	uneconomical as per IMP, 2019
7.	Trishuli-Shaktikhor Diversion Project	51	35,000ha	0	uneconomical as per IMP, 2019
8.	Sunkoshi Diversion Project				
	Sunkoshi Marin Diversion	77	55,000ha	41	
	Sunkoshi-Kamala Diversion	72	129,000ha		
9.	Tamor Morang Diversion Project		45,000ha (option I) 114,000ha (option II)	90	
10.	Kankai Multipurpose Project		40,000ha	90	uneconomical as per IMP, 2019
11.	Chatara Barrage Project		66,000ha	0	

Source: Irrigation Master Plan, 2029

Annex 2: Upstream Storage Projects (Planned)

Features	Uttarganga Storage HEP#	Andhikhola Storage HEP#	Lower Badigad Storage HEP*	Kaligandaki Storage HEP	Total
Location	Baglung and Rukum East	Syangja	Gulmi	Parbat and Baglung	
Installed Capacity (MW)	828.0	180.0	380.3	844.00	2229.3
Status of the project	DPR to be carried out; feasibility and EIA completed by NEA		Prioritized in Storage project master plan	Study (technical and EIA) being carried out by DoED	
Catchment Area (km^2)	269.6	475.0	2050		
Dam height (m)	**200.0**	**167.0**	191.0	220.0	
FSL (amsl)	**2885**	700.0		750.0	
MOL (amsl)	**2798**	623.0			
Total Storage Volume (MCM)	455.15	401.10	995.9	2043.0	**3895.15**
Effective Storage Volume (MCM)	**419.98**	**341.42**	**505.5**		
Water availability in dry season (m^3/s)*	**26.86**				
Regulating capability factor (%)		**37.3**	**19.1**		
Reservoir Area (km^2) at FSL	12.18	7.52	13.7		
Reservoir length (km)	14.0	21.7			
Design Discharge (m^3/s)	78.06	73.0	232.6*	479.88	
Gross Head (m)	1345.48	328.6		217.0	
Net Head (m)	(650.75+627.45)			206.15	
Total Annual Energy (GWh)	1299.36	676.29	1366.0	3075.12	
Dry Season Energy (GWh)	**1299.36**	**270.53**	**354.7**		
Operation schedule	6 months a year(5hr in April to 12hrs in Jan)	Throughout the year, (3.5hr in Nov. to 18hr in July, Aug)		Throughout the year, Minimum 6hrs a day	
Project Cost		498.496 MUSD			

 # EIA Reports

***JICA Master Plan, 2014**

Annex 3: Existing Irrigation Projects in Rupendehi and Kapilvastu districts

S.N.	Irrigation Project	Command Area (ha)	Remarks
Rupendehi District			
	KanchanDanav	10,000	
	Marchawar Lift	56,000 (CCA-3500)	
	Char Tapaha IP	2,570	(Motipur, Sauraha Pharsatikar, Butwal MC 14&15, Semlar-1,2,3,4,7,,8,9, Khadwa Banagai-1,2,6 Manapakadi 5,6,8; Amuwa 2,3,4
	Danda IP	800	(Basantpur, Bagha-6,9)
	Dumdumuwa IP	150	(Siddharthanagar -9)
	Jhimjhile IP	240	
	ItiyaKulo IP	2500	
	16/36 mauja IP	3500	Butwal-13, Shankarnagar, Anandaban, Karahiya, Akrahar
	BhairahawaLumbini Groundwater IP		
	Total		
Kapilvastu District			
	Banganga	8,000	
	Kothibandh IP	138 (net c. area)	Patna RM
	Janakalyan lift IP	102 (net c. area)	Buddhi RM
	Gangatahawa IP	66.8	
	Beti Khola IP	108	
	SapahiBandh	147.3	
	Jaypurbandh	56.2	
	Surjabaliya	113	
	Birpurbandh	66.6	
	Horilabandh	200	
	Due MuhaneKulo	58	
	SamayathanTaal	66	
	Sirkhabandh	198	
	Mahendrakot	46	
	pratappur	66	
	Khariahawabandh	199.75	
	Kajararibandh	66.3	
	Sukulekothi	164	
	Basudawa	46	
	Pichurakhi	42	
	Kundre Khola	120	
	Dhanchaura Tall and Ghorahi Bandh	146	

S.N.	Irrigation Project	Command Area (ha)	Remarks
	Bharat Ghat	145	
	Ratnapur	140	
	Abhiraw lift	75	
	Pandedhi lift	88	
	Janachetana lift	75	
	Mahuwa lift	174	
	GudrungRangai lift	83	
	JamunBagiya lift	66.38	
	Gudrung Khola	400	

Source: https://www.adb.org/sites/default/files/project-documents/38417/38417-022-pcr-en.pdf
https://www.dwri.gov.np/iwrmp/images/PCR_final.pdf

Annex 4: Technical Features of Naumure Multipurpose Project

S.N.	Features	Description	Remarks
	Installed capacity (MW)	218.34MW **a. Naumure HEP** **b. Lamatal (reregulating) HEP** Capacity-8MW design discharge-136.20m^3/s **c. Surai Khola HEP-54.7MW**	
	Catchment area		
	Dam height	169m	
	Total storage volume	1066.85MCM	
	Effective storage volume	694.33MCM	
	Reservoir area	18.03km^2	
	FSL	524masl	
	MOL	473masl	
	Rated gross head	164m	
	Rated net head	160.3m	
	Rated power discharge		
	Total energy	874GWh	
	Dry energy	305.90GWh (35%)	

EIA Draft, 2020

Annex 5: Newspaper Coverage (Online and Print Media)

संघीयतामा सुरु भयो स्रोत बाँडफाँडको सकस

कालीगण्डकी डाइभर्सनमा गण्डकी र प्रदेश ५ बीच विवाद

■ सरकारले कालीगण्डकीको पानी तिनाउ नदीमा मिसाएर सिँचाइ र जलविद्युत् उत्पादन गर्न कालीगण्डकी डाइभर्सन परियोजना अघि बढाउँदै छ

■ तर, गण्डकी प्रदेश कुनै पनि हालतमा कालीगण्डकीको पानी तिनाउमा लैजान नदिने पक्षमा छ भने प्रदेश ५ जसरी पनि डाइभर्सन बनाएरै छोड्ने अडानमा

यो आयोजना विवादको विषय बन्नु हुँदैन

विष्णु पौडेल
महासचिव, नेकपा

दुईवटा प्रदेशको सिमानामा पर्ने नदीलाई डाइभर्ट गर्दा तल्लो तटमा पानीको अभाव हुने मुख्य चिन्ता छ। दुई प्रदेशबीचको बहस यसै विषयमा हो। नदी डाइभर्ट गरेपछि तल्लो तटमा पानी अभाव हुन नदिने अरू धेरै विकल्प छन्। कालीगण्डकीकै माथिल्लो तटमा पर्ने रिडी र रुद्रवेणीको बीचमा २ हजार ५ सय मेगावाटको जलाशययुक्त जलविद्युत् आयोजनाको अध्ययन विद्युत् प्राधिकरणले गरिरहेको छ। त्यो पानी मात्रै डाइभर्ट गरियो भने पनि तल्लो तटमा पानी अभाव हुँदैन। त्यसकारण यो आयोजना प्रदेश ५ र गण्डकीबीचको विवाद वा झगडाको विषय बन्नु हुँदैन।

गण्डकीका ५ जिल्लालाई मरुभूमीकरण गर्न मिल्दैन

पृथ्वी सुब्बा गुरुङ
मुख्यमन्त्री, गण्डकी

पानी, सिँचाइ, बिजुली नेपालका सबै भूभागका लागि आवश्यक छन्। तर, यसका लागि कहाँको, कुन खोला, कसरी प्रयोग गर्ने भन्ने मुख्य कुरा हो। रुपन्देही र कपिलवस्तुमा सिँचाइ नै गर्नुपरे राप्ति डाइभर्सन गरी पानी लैजान सकिन्छ। तर, पाल्पा, स्याङ्जा, तनहुँ, नवलपुरलगायत ५ जिल्लाको आधार बनेको कालीगण्डकी नै डाइभर्सन गर्न खोजिएको छ। २ जिल्लालाई हरियाली बनाउन ५ जिल्लालाई मरुभूमीकरण गर्न मिल्छ र? यो आयोजनाको औचित्य कसरी पुष्टि हुन्छ? त्यसो हुँदा सही र औचित्य पुष्टि हुने किसिमको विकल्प खोजेर ती दुई जिल्लामा पानी पुर्‍याउनुपर्छ भन्ने मेरो धारणा हो।

पुष्प कोइराला/नयाँ पत्रिका
काठमाडौं, ४ भदौ

अहिलेसम्म अवधारणामै सीमित कालीगण्डकी नदीको पानी तिनाउ नदीमा खसाउने डाइभर्सन परियोजनाका विषयमा गण्डकी र प्रदेश नम्बर ५ बीच तीव्र विवाद सुरु भएको छ।

कालीगण्डकी डाइभर्सनबाट तराईका जिल्लामा सिँचाइ सुविधा उपलब्ध गराउनुका अतिरिक्त १ सय ४० मेगावाट विद्युत् पनि उत्पादन गर्ने योजना केन्द्र सरकारले बनाएको छ। तर, आफ्नो प्रदेशका पाँच जिल्लाका तल्लो तटीय क्षेत्र सुक्खाग्रस्त हुन सक्ने भन्दै गण्डकी प्रदेशले यो योजनालाई कुनै पनि हालतमा बन्न नदिने घोषणा गरेको छ।

उता, प्रदेश ५ ले पनि कालीगण्डकीको डाइभर्सनबाट १ सय ४० मेगावाट बिजुली उत्पादन गर्न सकिने र तराईका आफ्ना जिल्लामा सिँचाइ सुविधा पुर्‍याउन सक्ने तर्क गर्दै योजना बन्नैपर्ने अडान राखेको छ।

>> पृष्ठ १७ मा क्रमशः

दुई प्रदेशबीच विवाद गराउने आयोजना यस्तो छ

■ **चालू आवभित्रै डिपिआर सकिने ३ वर्षभित्र निर्माण सुरु हुने**

कालीगण्डकी-तिनाउ डाइभर्सन आयोनजाको विस्तृत परियोजना प्रतिवेदन (डिपिआर) निर्माण भइरहेको छ। यो चालू आर्थिक वर्ष भित्रै सकिने लक्ष्य छ। सबै प्रक्रिया पूरा गरी आयोजना निर्माण थाल्न ३ वर्ष लाग्ने अनुमान छ।

■ **रुपन्देही र कपिलवस्तुका १ लाख ४२ हजार हेक्टरमा सिँचाइ**

पाल्पाको पिपलडाँडास्थित राम्दी पुलबाट डेढ किलोमिटर तल्लो तटमा आयोजनाको बाँध (हेडवर्क्स) निर्माण गरिनेछ। उक्त बाँधमा कालीगण्डकीको पानी थुनेर २५.३ किलोमिटर लामो र ९ मिटर चौडा सुरुङमार्फत ८१.९२ क्युसेक पानी तिनाउ नदीमा खसालिनेछ। यसबाट रुपन्देहीको ९३ हजार ९ सय हेक्टर र कपिलवस्तुको ४८ हजार १ सय हेक्टर जमिनमा सिँचाइ सुविधा पुर्‍याउने सरकारको लक्ष्य छ।

■ **१ सय ४० मेगावाट विद्युत्**

आयोजनाको वैकल्पिक उत्पादन (बाई-प्रडक्ट) का रूपमा १ सय ४० मेगावाटसम्म विद्युत् उत्पादन गर्ने लक्ष्य छ।

कान्तिपुर | सोमबार २६ साउन, २०७६ (Monday, August 12, 2019)

कालीगण्डकी-तिनाउ डाइभर्सन

पौडेल–गुरुङ जुहारी

■ लालप्रसाद शर्मा र माधव अर्याल

डाइभर्सन आयोजना पूरा गराएरै छाड्छु।
- विष्णु पौडेल
महासचिव नेकपा

विष्णु होइन, ब्रह्मा नै आए पनि बन्द सक्दैन।
- पृथ्वीसुब्बा गुरुङ
मुख्यमन्त्री, गण्डकी

"गण्डकी प्रदेशको सहमति विना कसैले पनि डाँडो छेडेर कालीगण्डकी नदी डाइभर्सन गर्छु भन्ने नसोचे हुन्छ। यो नदी प्रदेश-५ को मात्र होइन।"

पृथ्वीसुब्बा गुरुङ
मुख्यमन्त्री, गण्डकी प्रदेश

"संविधान बनाउँदा कति प्रदेश र के नाम राख्ने भनेर अल्झियौं, प्राकृतिक स्रोतसाधनको बाँडफाँड लगायतका विषयमा ध्यान नपुर्‍याउँदा संविधानमा त्रुटि रहन गए, संविधान संशोधन गरेर मिलाउनुको विकल्प छैन।"

शक्तिबहादुर बस्नेत
वन तथा वातावरण मन्त्री

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NATIONAL

Gandaki Province govt against Kaligandaki-Tinau Multi-purpose Project

Himalayan News Service
Pokhara, May 4

The government in Gandaki Province has protested the multi-billion-rupee Kaligandaki-Tinau Diversion Multipurpose project that figured in the recent government policies and programmes for the upcoming fiscal.

The Kaligandaki-Tinau Diversion Multipurpose Project expected to cost some 40 billion rupees was first proposed during the tenure of Nepal Communist Party leader and former finance minister Bishnu Poudel. As per the concept of the project, water in the Kaligandaki River will be channelled to the Tinau River though a tunnel to irrigate over 100,000 hectare farmland in Rupandehi and Kapilvastu, and produce 424MW of electricity alongside.

While the detailed field report of the project has been completed, geological study of the project is under way, according to a report of Ministry of Energy, Water Resources and Irrigation.

As per the design, a 22km long tunnel will carry 90.6 cusec water from the Kaligandaki River to the Tinau River. For the same purpose, a dam will be built at Parewadanda on the border of Palpa's Pipaldanda and Syangja's Malunga.

The project figures on the priority list of the federal government's policies and programmes for the upcoming fiscal that was presented by President Bidhya Devi Bhandari yesterday.

"Once the study of the project is over, construction will start," reads the government's policies and programmes.

The protest has to do with the residents' concerns that the diversion project will have a negative impact on the ecosystem in the lower basin area adversely affecting farming. Chief Minister of the province Prithvi Subba Gurung has long been protesting the project.

"The diversion project will dry the lower basin area of the river thereby impacting the ecosystem farmland, so we can't let the project go ahead," he explained.

Upon hearing the central government's policies and programmes, Financial Affairs and Planning Minister Kiran Gurung of Gandaki Province also said he was against the project. "There is no way we will allow a project that is against the welfare of the people of this province," he said.

Meanwhile, even local residents of Syangja, Palpa, Tanahun, Nawalpur and Chitwan have voiced their concerns about the project.

"The river is linked to our life and our faith, so we won't tolerate deforming the river under any name," said Rampur Municipality Mayor Raman Bahadur Thapa.

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myRepública

Monday, 03 May 2

Govt intensifies study on Kaligandaki-Tinau Diversion Project

Published On: March 8, 2018 02:40 AM NPT By: Mukti Prasad Nyaupane

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onlinekhabar EN

River diversion plan tests Nepal's federal Constitution

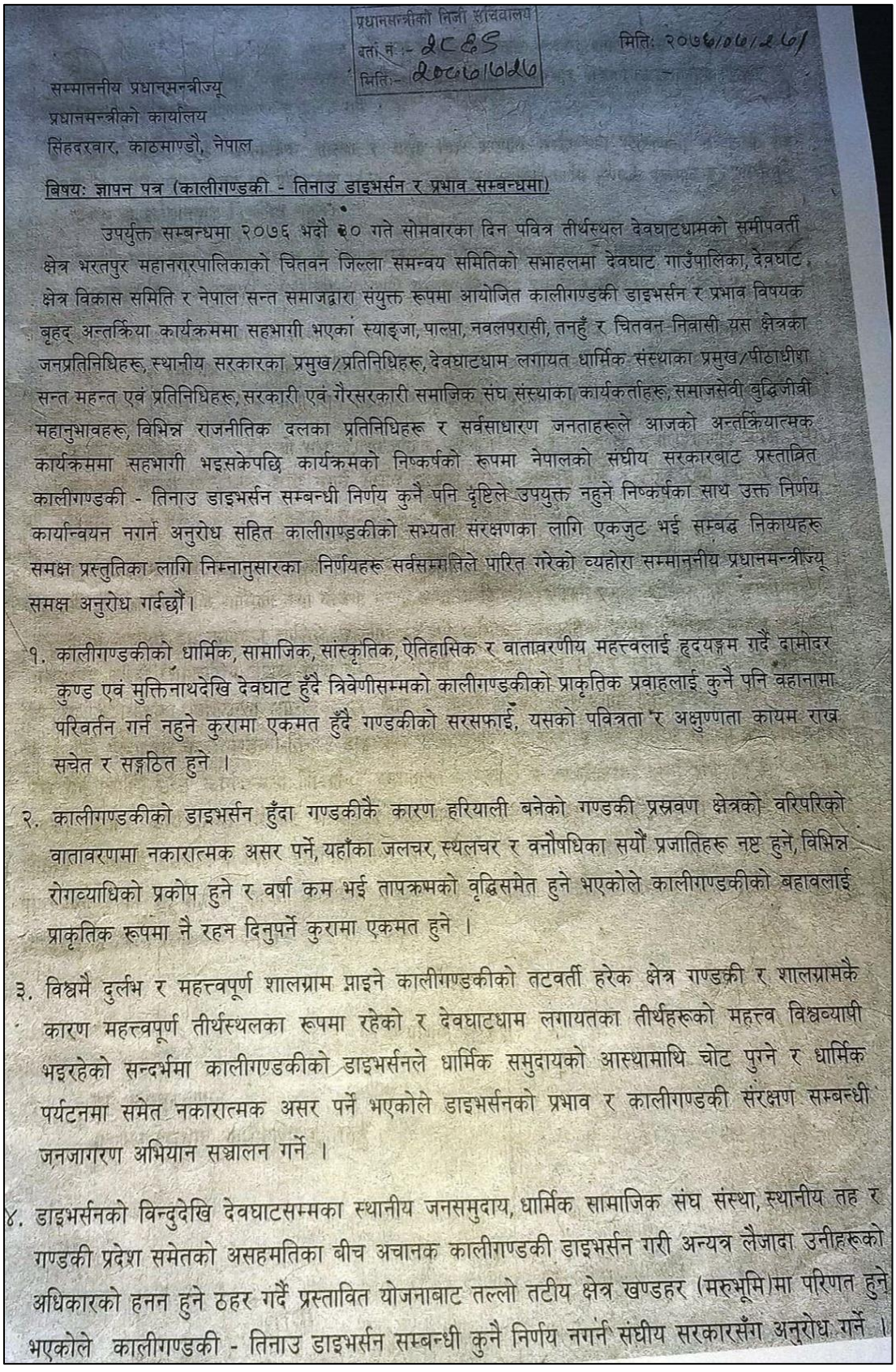
Abhaya Raj Joshi
November 1, 2019

0 Comments

The Kali Gandaki case shows that political leaders at the centre, the provinces and the local governments will lock horns in the quest for water

When anyone utters 'Kali Gandaki' around Malunga Bazaar in the Syangja district of western Nepal, the entire settlement is drawn in. Men in their twenties rush to the person uttering the words; busy shopkeepers ask assistants to take over so they can attend to the discussion on Kali Gandaki.

Annex 6: Local Level Concerns



प्रधानमन्त्रीको निजी सचिवालय
दर्ता नं :- २८६५
मिति:- २०७६/०६/२६

मिति: २०७६/०६/२६

सम्माननीय प्रधानमन्त्रीज्यू
प्रधानमन्त्रीको कार्यालय
सिंहदरबार, काठमाण्डौ, नेपाल

विषयः ज्ञापन पत्र (कालीगण्डकी - तिनाउ डाइभर्सन र प्रभाव सम्बन्धमा)

उपर्युक्त सम्बन्धमा २०७६ भदौ ३० गते सोमवारका दिन पवित्र तीर्थस्थल देवघाटधामको समीपवर्ती क्षेत्र भरतपुर महानगरपालिकाको चितवन जिल्ला समन्वय समितिको सभाहलमा देवघाट गाउँपालिका, देवघाट क्षेत्र विकास समिति र नेपाल सन्त समाजद्वारा संयुक्त रूपमा आयोजित कालीगण्डकी डाइभर्सन र प्रभाव विषयक बृहद् अन्तर्क्रिया कार्यक्रममा सहभागी भएका स्याङ्जा, पाल्पा, नवलपरासी, तनहुँ र चितवन-निवासी यस क्षेत्रका जनप्रतिनिधिहरू, स्थानीय सरकारका प्रमुख/प्रतिनिधिहरू, देवघाटधाम लगायत धार्मिक संस्थाका प्रमुख/पीठाधीश सन्त महन्त एवं प्रतिनिधिहरू, सरकारी एवं गैरसरकारी समाजिक संघ संस्थाका कार्यकर्ताहरू, समाजसेवी बुद्धिजीवी महानुभावहरू, विभिन्न राजनीतिक दलका प्रतिनिधिहरू र सर्वसाधारण जनताहरूले आजको अन्तर्क्रियात्मक कार्यक्रममा सहभागी भइसकेपछि कार्यक्रमको निष्कर्षको रूपमा नेपालको संघीय सरकारबाट प्रस्तावित कालीगण्डकी - तिनाउ डाइभर्सन सम्बन्धी निर्णय कुनै पनि दृष्टिले उपयुक्त नहुने निष्कर्षका साथ उक्त निर्णय कार्यान्वयन नगर्न अनुरोध सहित कालीगण्डकीको सभ्यता संरक्षणका लागि एकजुट भई सम्बद्ध निकायहरू समक्ष प्रस्तुतिका लागि निम्नानुसारका निर्णयहरू सर्वसम्मतिले पारित गरेको व्यहोरा सम्माननीय प्रधानमन्त्रीज्यू समक्ष अनुरोध गर्दछौं।

१. कालीगण्डकीको धार्मिक, सामाजिक, सांस्कृतिक, ऐतिहासिक र वातावरणीय महत्त्वलाई हृदयङ्गम गर्दै दामोदर कुण्ड एवं मुक्तिनाथदेखि देवघाट हुँदै त्रिवेणीसम्मको कालीगण्डकीको प्राकृतिक प्रवाहलाई कुनै पनि वहानामा परिवर्तन गर्न नहुने कुरामा एकमत हुँदै गण्डकीको सरसफाई, यसको पवित्रता र अक्षुण्णता कायम राख सचेत र सङ्गठित हुने ।

२. कालीगण्डकीको डाइभर्सन हुँदा गण्डकीकै कारण हरियाली बनेको गण्डकी प्रस्रवण क्षेत्रको वरिपरिको वातावरणमा नकारात्मक असर पर्ने, यहाँका जलचर, स्थलचर र वनौषधिका सयौं प्रजातिहरू नष्ट हुने, विभिन्न रोगव्याधिको प्रकोप हुने र वर्षा कम भई तापक्रमको वृद्धिसमेत हुने भएकोले कालीगण्डकीको बहावलाई प्राकृतिक रूपमा नै रहन दिनुपर्ने कुरामा एकमत हुने ।

३. विश्वमै दुर्लभ र महत्त्वपूर्ण शालग्राम प्राइने कालीगण्डकीको तटवर्ती हरेक क्षेत्र गण्डकी र शालग्रामकै कारण महत्त्वपूर्ण तीर्थस्थलका रूपमा रहेको र देवघाटधाम लगायतका तीर्थहरूको महत्त्व विश्वव्यापी भइरहेको सन्दर्भमा कालीगण्डकीको डाइभर्सनले धार्मिक समुदायको आस्थामाथि चोट पुग्ने र धार्मिक पर्यटनमा समेत नकारात्मक असर पर्ने भएकोले डाइभर्सनको प्रभाव र कालीगण्डकी संरक्षण सम्बन्धी जनजागरण अभियान सञ्चालन गर्ने ।

४. डाइभर्सनको विन्दुदेखि देवघाटसम्मका स्थानीय जनसमुदाय, धार्मिक सामाजिक संघ संस्था, स्थानीय तह र गण्डकी प्रदेश समेतको असहमतिका बीच अचानक कालीगण्डकी डाइभर्सन गरी अन्यत्र लैजादा उनीहरूको अधिकारको हनन हुने ठहर गर्दै प्रस्तावित योजनाबाट तल्लो तटीय क्षेत्र खण्डहर (मरुभूमि)मा परिणत हुने भएकोले कालीगण्डकी - तिनाउ डाइभर्सन सम्बन्धी कुनै निर्णय नगर्न संघीय सरकारसँग अनुरोध गर्ने ।

५. यस क्षेत्रको धार्मिक पर्यटनलाई दृष्टिगत गर्दै गण्डकीको बहावलाई यथावत् राखी जलसम्पदाको सदुपयोग गर्ने बारे अन्य सम्भावित विकल्पहरूको खोजी गर्ने र यसबाट सम्बन्धित क्षेत्रका समुदायलाई लाभान्वित गराउन विभिन्न परियोजनाहरू सञ्चालन गर्ने ।

६. विभिन्न जाति, धर्म, राजनीतिक आस्था र समूह भिन्न भएपनि गण्डकीको संरक्षणका सबालमा सबै सरोकारवालाहरू एकजुट हुने प्रतिबद्धता सहित गण्डकीको डाइभर्सनका लागि जुनसुकै पक्षबाट हुने जस्तोसुकै दबाव वा प्रलोभनबाट विचलित नहुने।

७. जनजीवनमा गण्डकीको महत्त्व र प्रभावसम्बन्धी धार्मिक सामाजिक र वातावरणीय महत्त्वसम्बन्धी अनुसन्धानात्मक विचारपत्र समेटी कालीगण्डकी संरक्षण विशेषाङ्क प्रकाशित गर्ने ।

८. गण्डकीको डाइभर्सन गर्दा हुने हानी र दुष्प्रभाव बारे भएका अध्ययन, तथ्याङ्क र गण्डकीको प्रवाह परिवर्तन गर्नुहुदैन भन्ने स्थानीय एवं विश्वभरका हिन्दु धार्मिक समुदायको जनभावनाको कदर गर्दै विगतमा यससम्बन्धी भए गरेका निर्णय अविलम्ब फिर्ता लिन सरकार र राजनीतिक दलका जिम्मेवार व्यक्तिहरूलाई अनुरोध गर्ने

९. कालीगण्डकी पानी मात्र हैन यो सभ्यता, संस्कृति र पहिचान समेत भएकोले यी सवालहरूलाई उपेक्षा गरी एकतर्फी रुपमा परियोजना लागू नगर्न संघीय सरकार समक्ष अनुरोध गर्ने र सरकारका विभिन्न तह र विभागहरूमा समेत यसको जानकारी गराउने सर्वसम्मत निर्णय गरियो।

नेपाल सन्त समाजका अध्यक्ष स्वामी ज्ञानानन्द सरस्वतीको सभापतित्वमा भएको अन्तरक्रिया कार्यक्रममा गण्डकी प्रदेशका आर्थिक मामिला तथा योजना मन्त्री माननीय किरण गुरूङको प्रमुख आतिथ्यतामा कालीगण्डकी सभ्यताका अध्येता डा. कुलराज चालिसे, कालीगण्डकीको धार्मिक, सांस्कृतिक एवम् पौराणिक महत्व बारे डा. गुरूप्रसाद सुवेदी (महासचिव नेपाल सन्त समाज), नेपाल सरकारका पूर्व सचिव एवम् कालीगण्डकी उपत्यका विकास अभियानका अभियन्ता शान्ताबहादुर श्रेष्ठ र कालीगण्डकी ज्ञानविज्ञान प्रतिष्ठानका अध्यक्ष चैतन्य कृष्णजीले प्रस्तावित कालीगण्डकी-तिनाउ डाइभर्सन परियोजनाका दुष्परिणाम बारे विभिन्न पक्षमा अवधारणा पत्र पेश गर्नु भएको उक्त कार्यक्रममा शिक्षाविद् रमाकान्त सापकोटा र लक्ष्मीकान्त शर्मा पौडेलले टिप्पणी गर्नु भएको थियो। कार्यक्रममा गलेश्वर आश्रमका पीठाधीश स्वामी आत्मानन्द गिरि, महेश सन्यास आश्रमका पीठाधीश स्वामी रमणानन्द गिरि, प्रतिनिधि सभा सदस्य माननीय तिलक महत सहित प्रदेश सभाका माननीय सदस्यज्यूहरूको सहभागिता रहेको कार्यक्रम देवघाट क्षेत्र विकास समितिका सदस्य सचिव श्री धिरण बाबु घिमिरेले सञ्चालन गर्नुभएको थियो।

आयोजक मण्डल

१. दुर्ग बहादुर थापा
अध्यक्ष देवघाट गाउँपालिका, तनहुँ

दस्तखत:

दुर्ग बहादुर थापा
अध्यक्ष

आयोजक

६. रन बहादुर राना
अध्यक्षः घिरिङ गाउँपालिका, तनहुँ

दस्तखतः

७. राजेन्द्रकृष्ण श्रेष्ठ
अध्यक्षः रिसिङ गाउँपालिका, तनहुँ

दस्तखतः

८. दुर्ग बहादुर थापा
अध्यक्षः देवघाट गाउँपालिका, तनहुँ

दस्तखतः

दुर्ग बहादुर थापा
अध्यक्ष

९. छत्रराज पौडेल
प्रमुखः गैडाकोट नगरपालिका, नवलपुर

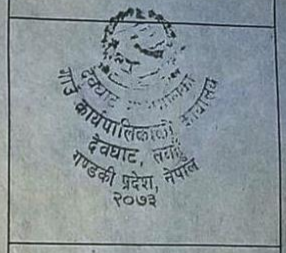
दस्तखतः

१०. दुर्गा बहादुर राना
अध्यक्षः बुङ्दीकाली गाउँपालिका, नवलपुर

दस्तखतः

११. शशी किरण बस्ताकोटी
अध्यक्षः बुलिङटार गाउँपालिका, नवलपुर

दस्तखतः



<u>बोधार्थ एवम् कार्यार्थः</u>

~ माननीय मुख्यमन्त्रीज्यू, गण्डकी प्रदेश, पोखरा
~ माननीय मुख्यमन्त्रीज्यू, ३ नं. प्रदेश, हेटौंडा
~ श्री संस्कृति, पर्यटन तथा नागरिक उड्डयन मन्त्रालय, सिंहदरवार, काठमाण्डौ
~ श्री उर्जा, जलस्रोत तथा सिंचाई मन्त्रालय, सिंहदरवार, काठमाण्डौ
~ श्री राष्ट्रिय योजना आयोग सिंहदरवार, काठमाण्डौ
~ श्री आर्थिक मामिला तथा योजना मन्त्रालय, गण्डकी प्रदेश, पोखरा

२. शिवराज पौडेल
अध्यक्षः देवघाट क्षेत्र विकास समिति, तनहुँ

दस्तखतः

आयोजक

३. ज्ञानानन्द सरस्वती
अध्यक्षः सन्त समाज नेपाल

दस्तखतः

आयोजक

कालीगण्डकी - तिनाउ डाइभर्सन र प्रभाव विषयक अन्तरकृया कार्यक्रममा प्रस्तुत अवधारणा पत्र र त्यस उपर टिप्पणी कर्ताहरूको टिप्पणी र सुझावलाई केन्द्रमा राखि माथि उल्लेखित ९ बटा बुँदामा हामी तपशिलका नगरपालिका र गाउँपालिकाका प्रमुख/अध्यक्षहरू पूर्ण समर्थन जनाउँदछौं।

१. रमन बहादुर थापा
प्रमुखः रामपुर नगरपालिका, पाल्पा

दस्तखतः

२. विष्णु भण्डारी
अध्यक्षः रम्भा गाउँपालिका, पाल्पा

दस्तखतः

३. मुक्त बहादुर थापा
अध्यक्षः निस्दी गाउँपालिका, पाल्पा

दस्तखतः

४. भूपराज अधिकारी
प्रमुखः गल्याङ्ग नगरपालिका , स्याङ्जा

दस्तखतः

५. शिव गिरी
प्रमुखः चापाकोट नगरपालिका, स्याङ्जा

दस्तखतः

Annex 7: Supreme Court Order/Decisions

सर्वोच्च अदालत, संयुक्त इजलास

माननीय न्यायाधीश श्री प्रकाशमान सिंह राउत

माननीय न्यायाधीश श्री हरिप्रसाद फुयाल

आदेश

०७७-WO-१२२१

विषयः उत्प्रेषण।

अधिवक्ता तुलसीराम पोखरेलसमेत ----------१ निवेदक

विरुद्ध

लुम्बिनी प्रदेशको मुख्यमन्त्रीको कार्यालय, बुटवलसमेत ----------१ विपक्षी

यसमा अन्तरिम आदेश जारी हुने वा नहुने भन्ने विषयमा छलफलको लागि पेश हुन आएको प्रस्तुत रिट निवेदनसहितको मिसिल संलग्न कागजातहरू अध्ययन गरी निवेदक अधिवक्ता तुलसीराम पोखरेलसमेतको तर्फबाट उपस्थित विद्वान् वरिष्ठ अधिवक्ताहरु श्री हरिहर दाहाल, श्री प्रेमबहादुर खड्का, श्री यदुनाथ खनाल तथा विद्वान् अधिवक्ताहरु श्री सुरेन्द्र विक्रम के.सी., श्री पदमबहादुर श्रेष्ठ, श्री तुलसीराम पोखरेल, श्री पारसमणी भट्टराई, श्री सन्तोष भण्डारी, श्री गोविन्दराज वसौला, श्री नवराज पाण्डे, श्री सुजन नेपाल, श्री जनक सिंह साउद, श्री विक्रम नगरकोटी र श्री रामबहादुर शाही तथा विपक्षी नेपाल सरकारको तर्फबाट उपस्थित सहन्यायाधिवक्ता श्री गोपालप्रसाद रिजालले गर्नु भएको बहससमेत सुनियो।

यसमा कालीगण्डकी डाइभर्सन गर्ने सरकारको निर्णय माथि तल्लो तटका स्थानीय निकायहरुको तिव्र असन्तुष्टि र गण्डकी प्रदेश सरकारसमेतले विरोध गरिरहेको कालीगण्डकी तिनाउ डाइभर्सन बहुउद्देश्यीय परियोजना नेपालको संविधान विपरीत भएकोले उत्प्रेषणको आदेशद्वारा अमान्य र बदर गरी कालीगण्डकी तिनाउ डाइभर्सन बहुउद्देश्यीय परियोजनाबाट हुने सम्पूर्ण कामकारवाही नगर्नु, नगराउनु भनी परमादेशसहित अन्तरिम आदेशसमेत जारी गरिपाउँ भन्ने रिट निवेदन जिकिर रहेको देखियो।

नै महत्वपूर्ण कुरामा पर्यास अध्ययन, अनुसन्धान नगरी नदी नै डाइभर्सन गर्ने नाममा कालीगण्डकी नदीको स्वभाविक बहाव र स्वरुप कसैले पनि बिगार्न र परिवर्तन गर्न हुँदैन। नदी भनेको प्राकृतिक श्रोत पनि हो र सम्पदा पनि हो। शदियौंदेखि यस नदीसँग जोडिई आएको प्रकृति, संस्कृति र सभ्यता वास्तवमा हाम्रा धरोहर नै हुन्। यिनलाई क्षत विक्षत हुन दिनु हुँदैन। सबैले मिलेर यसलाई जोगाउनु, बचाउनु र संरक्षण गर्नुपर्दछ।

हाम्रो आस्था, प्रकृती र वातावरणका सम्बन्धमा निम्नानुसारको संवैधानिक तथा कानूनी व्यवस्था रहेको देखिन्छ:

धारा २६. धार्मिक स्वतन्त्रताको हक: (१) धर्ममा आस्था राख्ने प्रत्येक व्यक्तिलाई आफ्नो आस्था अनुसार धर्मको अवलम्बन, अभ्यास र संरक्षण गर्ने स्वतन्त्रता हुनेछ।
(२) प्रत्येक धार्मिक सम्प्रदायलाई धार्मिक स्थल तथा धार्मिक गुठी सञ्चालन र संरक्षण गर्ने हक हुनेछ। तर धार्मिक स्थल तथा धार्मिक गुठीको सञ्चालन र संरक्षण गर्न तथा गुठी सम्पत्ति तथा जग्गाको व्यवस्थापनका लागि कानून बनाई नियमित गर्न बाधा पुगेको मानिने छैन।

धारा ३०. स्वच्छ वातावरणको हक: (१) प्रत्येक नागरिकलाई स्वच्छ र स्वस्थ वातावरणमा बाँच्न पाउने हक हुनेछ।

वातावरण संरक्षण ऐन, २०७६ को दफा २(घ) "राष्ट्रिय सम्पदा" भन्नाले नेपालभित्रका प्राकृतिक, सांस्कृतिक, ऐतिहासिक, पुरातात्विक, वैज्ञानिक, आध्यात्मिक, सौन्दर्यपरक वा सामाजिक दृष्टिबाट मानव जातिका लागि महत्वपूर्ण मानिने वातावरणसँग सम्बन्धित कुनै पनि वस्तु, भौतिक संरचना, स्थान, वनस्पित वा जीवजन्तु सम्झनु पर्छ।

दफा २(न) "वातावरण" भन्नाले प्राकृतिक, सांस्कृतिक र सामाजिक प्रणाली, आर्थिक तथा मानवीय कियाकलाप, यिनका अवयवहरु तथा ती अवयवहरुको बीचको अन्तरक्रिया तथा अन्तरसम्बन्ध सम्झनु पर्छ।

दफा २(प) "वातावरणीय अध्ययन प्रतिवेदन" भन्नाले संक्षिप्त वातावरणीय अध्ययन, प्रारम्भिक वातावरणीय परीक्षण वा वातावरणीय प्रभाव मूल्याङ्कन सम्बन्धमा तयार गरिएको प्रतिवेदन सम्झनु पर्छ।

दफा २(फ) "वातावरणीय प्रभाव मूल्याङ्कन" भन्नाले कुनै प्रस्तावको कार्यान्वयन गर्दा सो प्रस्तावले वातावरणमा उल्लेखनीय प्रतिकूल प्रभाव पार्ने वा नपार्ने सम्बन्धमा यकिन गर्नुको साथै त्यस्तो प्रभावलाई कुनै उपायद्वारा निराकरण वा न्यूनीकरण गर्नका लागि अवलम्बन गरिने उपायको सम्बन्धमा विस्तृत रुपमा गरिने अध्ययन तथा मूल्याङ्कन सम्झनु पर्छ।

यसैगरी कुनैपनि विकास कार्य, भौतिक क्रियाकलाप वा भु-उपयोगमा परिवर्तन गर्ने कुनै योजना, आयोजना वा कार्यक्रम सञ्चालन गर्दा वातावरणीय अध्ययन प्रतिवेदन स्वीकृत हुनु पर्ने, वातावरणीय अध्ययन प्रतिवेदन स्वीकृत नगराई कुनै पनि प्रस्ताव कार्यान्वयन गर्न गराउन नहुने, आयोजना कार्यान्वयन गर्नु अगाडी रणनीतिक वातावरणीय विश्लेषण गर्नुपर्ने भन्ने बाध्यात्मक कानूनी प्रावधान वातावरण संरक्षण ऐन, २०७६ को दफा २(ट),७,८,९ मा रहेको देखिन्छ।

यसरी कालीगण्डकी नदीलाई डाइभर्सन गरी कालीगण्डकी-तिनाउ डाइभर्सन बहुउद्देश्यीय परियोजना सञ्चालन गर्दा हजारौं मानिसको आस्थामा भावनात्मक रुपले चोट पुग्ने, उल्लिखित संवैधानिक एंव कानूनी व्यवस्थाको विपरित हुने गरी कालीगण्डकी नदी डाइभर्सन गर्न नमिल्ने तथा यस भन्दा अघि यसै विषयमा यस अदालतबाट मिति मा २०७८।०३।२९ मा ०७७-WO-१२५६ को उत्प्रेषणसमेतको रिट निवेदनमा विपक्षीहरुको नाममा अन्तरिम आदेश जारी भई सकेको परिप्रेक्ष्यमा प्रस्तुत रिट निवेदनको अन्तिम टुंगो नलागेसम्म कालीगण्डकी नदीको प्राकृतिक बहावलाई डाइभर्सन (दिशान्तरण) नगर्नु तथा जलवायु/पर्यावरण प्रतिकूल हुने कुनै काम कारवाही नगर्नु एवं कालीगण्डकी-तिनाउ डाइभर्सन बहुउद्देश्यीय परियोजना सञ्चालन नगर्नु भनी विपक्षीहरुको नाउँमा सर्वोच्च अदालत नियमावली, २०७४ को नियम ४९(२)(ख) बमोजिम यो अन्तरिम आदेश जारी गरी दिएको छ। अन्तरिम आदेश जारी गर्न नमिल्ने भनी मा.न्या श्री हरिप्रसाद फुयालबाट व्यक्त रायसंग सहमत हुन नसकेकोले अब यसमा सर्वोच्च अदालत नियमावली, २०७४ को नियम २३ को उपदफा (२)(क) बमोजिम प्रस्तुत निवेदन सुनुवाईको लागि पूर्ण इजलासमा नियमानुसार गरी पेस गर्नु।

प्रकाशमान सिंह राउत
न्यायाधीश

माननीय न्यायाधीश श्री हरिप्रसाद फुयालको रायः

कालीगण्डकी नदी प्राग ऐतिहासिक रहेको र यसमा प्राप्त गरिने शालिग्रामले पृथ्वीका प्राणीको उत्पतिभन्दा पहिलेका वस्तुगत प्रमाण अन्तर्निहित रहेको र विशेषत धार्मिक रूपमा उक्त नदीको पवित्रता र ज्ञान तथा भक्ति मार्गमा लाग्ने र मोक्षको खोजी गर्ने व्यक्तिहरुको यौगिक स्थल मात्र नभई दुध कुण्डदेखि त्रिवेणीसम्म विभिन्न आश्रम, धाम, तीर्थस्थलहरु भई

संविधानको धारा २६ सँग प्रत्यक्ष रुपमा सम्बन्धित विषय भएकोमा विवाद देखिँदैन। त्यस्तै उक्त नदीको वहाव क्षेत्रमा वातावरणीय प्रभाव क्षेत्र रहेको, सिचाई तथा जीविका अन्तर्निहित रहेको र जैविक विविधताको प्रचुरता रहेको र कालीगण्डकी नदी क्षेत्र संविधानको धारा ३० तथा उक्त नदीमा गरिने कुनै ठूला प्रकृतिको विकास आयोजनामा प्रचलित वातावरण संरक्षण ऐन कानूनको विषयवस्तु रहेकोमा पनि विवाद गर्नु पर्ने देखिँदैन। कालीगण्डकी नदीको प्राचिनता, धार्मिक र सांस्कृतिक महत्व तथा उक्त नदीसँग गहिरो रूपमा अन्तर्निहित रहेको वातावरण तथा पर्यावरणीय विविधता अन्तर्पुस्ता हस्तान्तरण भई यथावत रहनु पर्ने विषयमा पनि विवाद गर्नु पर्ने देखिँदैन। यद्यपी प्राचिनता, धार्मिक महत्व र आस्था तथा वातावरण र पर्यावरणलाई यथोचित संरक्षण गर्दै उक्त नदीमा कुनै आयोजना बनाउन सकिन्छ की सकिँदैन भन्ने विषय त्यस क्षेत्रमा रहेका वासिन्दाको मात्र नभई धार्मिक आस्था, वातावरण र विकास बिचको समन्वयको विषय हो। यस परिप्रेक्ष्यमा मुलतः रिट निवेदनमा विवादित भनिएको कालीगण्डकी पथान्तरण सम्बन्धी आयोजना हाल प्रारम्भिक अवस्थामा रहेको, प्रारम्भिक Detail Project Report (DPR) मात्र तयार रहेको र वातावरण संरक्षण ऐन अन्तर्गत तयार पार्नुपर्ने प्रारम्भिक कार्यहरु बाँकी नै रहेको तथा रिट निवेदनमा उठाइएका कतिपय विषयवस्तुहरु उक्त वातावरणीय प्रभाव प्रतिवेदन तयार पार्दा उजागर हुने र नेपालको संविधानको धारा २६ तथा ३० मा अन्तर्निहित विषयहरुको संरक्षणको अवस्था आयोजनाको उपभोगकर्ता र नदी तटीय क्षेत्रको स्थानीय जनसहभागिताको आधारमा समेत सम्बोधन हुने भएकाले उक्त आयोजनाका प्रारम्भिक कार्यहरु नै रोक्ने गरी हाल अन्तरिम आदेश जारी गर्न मिलेन। अन्तरिम आदेश जारी गर्ने भन्ने माननिय न्यायाधीश श्री प्रकाशमान सिंह राउतको रायसँग सहमत हुन नसकेकोले सर्वोच्च अदालत नियमावली, २०७४ को नियम २३ को उपदफा (२)(क) बमोजिम प्रस्तुत निवेदन सुनुवाईको लागि पूर्ण इजलासमा पेस गर्नु।

हरिप्रसाद फुयाल
न्यायाधीश

इति संवत् २०७८ साल साउन ४ गते रोज २ शुभम् .....।