

Title: Agreement between His Majesty's Government of Nepal and the Government of India on the Gandak irrigation and power project

Parties: India, Nepal

Basin: Brahmaputra, Ganges

Date: 12/4/1959

96. AGREEMENT ¹ BETWEEN HIS MAJESTY'S GOVERNMENT OF NEPAL AND THE GOVERNMENT OF INDIA ON THE GANDAK IRRIGATION AND POWER PROJECT, SIGNED AT KATHMANDU, DECEMBER 4, 1959 ²

PREAMBLE

Whereas His Majesty's Government of Nepal and the Government of India consider that it is in the common interests of both Nepal and India to construct a barrage, canal head regulators and other appurtenant works about 100 feet below the existing Tribeni canal head regulator and of taking out canal systems for purposes of irrigation and development of power for Nepal and India (hereinafter referred to as "the Project").

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

NOW THE PARTIES AGREE AS FOLLOWS

1. INVESTIGATION AND SURVEYS

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

2. AUTHORITY FOR THE EXECUTION OF WORKS AND THEIR MAINTENANCE

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

(ii) In case of any apprehended danger or accident to any of the structures, the officers of the Government of India will execute all works which may be necessary for repairing the existing works or preventing such accidents and/or danger in the areas indicated in the Plan. If any of such works have to be

constructed on lands which do not belong to the Government of India, His Majesty's Government will authorise these works to be executed and acquire such additional lands as may be necessary for the purpose. In all such cases the Government of India shall pay reasonable compensation for the lands so acquired as for damage, if any, arising out of the execution of these works.

3. LAND ACQUISITION

(i) His Majesty's Government will acquire or requisition, as the case may be, all such lands as are required by the Government of India for the Project, i.e., for the purpose of investigation, construction and maintenance of the Project and the Government of India shall pay reasonable compensation for such lands acquired or requisitioned.

(ii) His Majesty's Government shall transfer to the Government of India such lands belonging to His Majesty's Government as are required for the purposes of the Project on payment of reasonable compensation by the Government of India.

(iii) Lands requisitioned under para. (i) shall be held by the Government of India for the duration of sub-clause (i) or transferred under-subclause (ii) shall vest in the Government of India as proprietor and subject to payment of land revenue (Malpot) at the rates at which it is leviable on agricultural lands in the neighbourhood.

(iv) When such land vesting in the Government of India or any part thereof ceases to be required by the Government of India for the purposes of the Project, the Government of India will reconvey the same to His Majesty's Government free of charge.

4. QUARRYING

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

5. COMMUNICATIONS

(i) His Majesty's Government shall allow the Government of India to construct and maintain such portion of the main Western Canal which falls in the Nepal territory and to construct and maintain communications for the construction and maintenance of the Project. The roads will be essentially departmental roads or the Project and their use by commercial and non-commercial vehicles of Nepal will be regulated as mutually agreed upon between His Majesty's Government and Government of India.

(ii) The bridge over the Gandak Barrage will be open to public traffic but the Government of India shall have the right to close the traffic over the bridge for repair, etc.

(iii) The Government of India agree to provide locking arrangements for facility of riverine traffic across the Barrage free from payment of any tolls whatever, provided that this traffic will be regulated by the Project staff in accordance with the rules mutually agreed upon between His Majesty's Government and the Government of India.

(iv) His Majesty's Government agree to permit installations of telegraph, telephone, and radio communications as approximately indicated in the Plan for the bona fide purpose of the construction, maintenance and operation of the Project.

(v) The Government of India shall permit the use of internal telegraph, telephone and radio communications as indicated in the Plan to the authorised servants of His Majesty's Government in emergencies, provided such use does not interfere with the construction, maintenance and operation of the Project.

6. OWNERSHIP, OPERATION AND MAINTENANCE OF WORKS

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

7. IRRIGATION FOR NEPAL

(i) The Government of India shall construct at their own cost the Western Nepal Canal including the distributary system thereof down to a minimum discharge of 20 cusecs for providing flow irrigation in the gross commanded area estimated to be about 40,000 acres.

(ii) The Government of India shall construct the Eastern Nepal Canal from the tail end of the Don Branch Canal up to river Bagmati including the distributary system down to a minimum discharge of 20 cusecs at their own cost for providing flow irrigation in Nepal for the gross commanded area estimated to be 103.500 acres.

(iii) His Majesty's Government shall be responsible for the construction of channels below 20 cusecs capacity for irrigation in Nepal but the Government of India shall contribute such sum of money as they may consider reasonable to meet the cost of construction.

(iv) The Nepal Eastern Canal and the Nepal Western Canal shall be completed, as far as possible, within one year of the completion of the barrage.

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

8. POWER DEVELOPMENT AND RESERVATION FOR NEPAL

(i) The Government of India agree to construct one Power House with an installed capacity of 15,000 KW in the Nepal territory on the Main Western Canal.

(ii) The Government of India also agree to construct a transmission line from the Power House in Nepal to the Bihar border near Bhaisalotan and from Sagauli to Raxaul in Bihar in order to facilitate supply of power on any point in the Bihar Grid up to and including Raxaul.

(iii) The Government of India shall supply power to His Majesty's Government at the Power House and/or at any point in the Grid up to and including Raxaul to an aggregate maximum of 10,000 KW up to 60% load factor at power factor not below 0.85. The charges for supply at the Power House shall be the actual cost of production, and on any point on the Grid up to Raxaul it shall be the cost of production plus the cost of transmission on such terms and conditions as may be mutually agreed upon.

(iv) His Majesty's Government will be responsible for the construction at their own cost of the transmission and distribution system for supply of power within Nepal from the Power House or from any point on the Grid up to and including Raxaul.

(v) The ownership and management of the Power House shall be transferred to His Majesty's Government on one year's notice in writing given by them to the Government of India after the full load of 10,000 KW at 60% load factor has developed in Nepal from this Power House.

(vi) The ownership of the transmission system constructed by the Government of India at its cost shall remain vested in the Government of India, but, on transfer of the Power House, the Government of India shall continue the arrangements for transmission of power, if so desired by His Majesty's Government on payment of the cost of transmission, provided that His Majesty's Government shall have the right to purchase the transmission system from the Power House to Bhaisalotan situated in the Nepal territory on payment of the original cost minus depreciation.

(vii) The Government of India shall be free to regulate the flow into or close the Main Western Canal Head Regulator temporarily, if such works are found to be necessary in the interest of the efficient maintenance and operation of the Canal or the Power House, provided that in such situations the Government of India agree to supply the minimum essential power from the Bihar Grid to the extent possible on such terms and conditions as may be mutually agreed upon.

9. PROTECTION OF NEPAL'S RIPARIAN RIGHTS

His Majesty's Government will continue to have the right to withdraw for irrigation or any other purpose from the river or its tributaries in Nepal such supplies of water as may be required by them from time to time and His Majesty's Government agree that they shall not exercise this right in such manner as is likely, in the opinion of the parties hereto, prejudicially to affect the water requirements of the Project as set out in the schedule annexed hereto.

10. PRO RATA REDUCTION OF SUPPLIES DURING PERIOD OF SHORTAGES

Whenever the supply of water available for irrigation falls short of the requirements of the total area under the Project for which irrigation has to be provided the shortage shall be shared on *pro rata* basis between the Government of India and His Majesty's Government.

11. SOVEREIGNTY AND JURISDICTION

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

12. ARBITRATION

(1) Any dispute or difference arising out of or in any way touching or concerning the construction, effect or meaning of this Agreement, or of any matter contained herein or the respective rights and liabilities of the parties hereunder, if not settled by discussion, shall be determined in accordance with the provisions of this clause.

(2) Any of the parties may by notice in writing inform the other party of its intention to refer to arbitration any such dispute or difference mentioned in sub-clause (1); and within 90 days of the delivery of such notice, each of the two parties shall nominate an arbitrator for jointly determining such dispute or difference and the award of the arbitrators shall be binding on the parties.

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

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SCHEDULE OF WATER

REQUIREMENTS OF THE GANDAK PROJECT IN CUSECS (Vide clause 9 of the Agreement)

<i>Months</i>	<i>Western Canal system and power house in Nepal</i>	<i>Eastern Canal system and power house in India</i>	<i>Total</i>
January	6,960	4,550	11,500
February	6,100	3,900	10,000
March	5,960	3,690	9,650
April	5,760	4,340	10,100
May	8,270	7,980	16,250
June	11,190	14,000	25,190
July	15,240	13,980	29,220
August	14,980	14,600	28,980
September	14,980	14,000	28,980
October	16,060	14,110	30,170
November	11,070	13,240	24,310
December	10,410	9,290	19,700

¹ Came into force upon signature according to article 13 of the Agreement.

² Nepal, Trade and Information Directory, New Delhi, 1960 - 61, p. 113.