

Government of India
Ministry of Environment, Forest & Climate Change
(Forest Conservation Division)

**MINUTES OF THE FOREST ADVISORY COMMITTEE (FAC) MEETING HELD ON
28TH NOVEMBER, 2019**

Agenda No-1

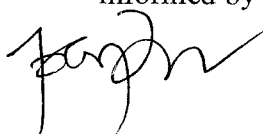
File No. 8-12/2019-FC

Sub: Proposal for diversion of 101.600 hectares of forest land/revenue forest land (30.210 ha. forest land RF + 71.390 ha. Revenue forest land=101.600 ha. forest land) for Tawa-III underground Coal Mining project and use of surface land for infrastructure (96.86 ha. for underground coal mining and 4.74 ha. of forest land for use of surface right) in favour of M/s Western Coalfields Limited, of Pathakhera area Betul District State of Madhya Pradesh - reg.

This proposal was considered in the meeting on 28th November 2019 whose detailed agenda notes may be seen on [www. parivesh.nic.in](http://www.parivesh.nic.in).

FAC, while deliberating on the proposal, observed that:

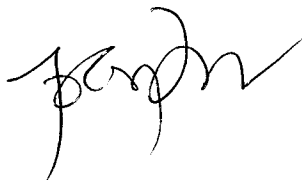
- i. Compensatory Afforestation has been proposed on double degraded forest land (for the forest land required for surface infrastructure).
- ii. The Site inspection report by Regional Office, Bhopal was submitted vide their letter No. 6-MPA06/2019-BHO/268 dated 10.05.2019.
- iii. Additional information required for the proposal were submitted vide letter No. F-1/20920/2016/10-11/2549 dated 05.08.2019 by the State Govt.
- iv. A meeting was held on 06.08.2019, in MoEF&CC, New Delhi with the officials of State Govt. and user agency regarding discussion on the proposals about Shobhapur, Tawa-II and Tawa-III of WCL UG mines at Pathakhera, Betul, Madhya Pradesh.
- v. The minutes of the said meeting were communicated to the concerned officials vide Ministry's letter F.No.8-102/2004-FC dated 13.11.2019. The key decisions were as follows:
 - a. A clarification will be furnished by the user agency from Ministry of Coal regarding applicability of MMDR act on the land acquired by the user agency.
 - b. Details of the entire area of forest land under possession of WCL and extent of forest land remaining with the user agency which requires FC clearance.
- vi. The Committee also noted that the decision of the meeting held on 06.08.2019 has not been replied by the State Government. Various crucial issues of the proposal like proximity to Satpura Melghat Tiger Reserve Corridor and Panchmarhi Biosphere Reserve boundary, were deliberated upon threadbare and Nodal Officer, FCA, informed that the proposed diversion is outside ESZ. Issue of pending penal payment of earlier proposals (amounting to Rs. 23,22,38,877/-) from the Western Coalfield Limited was also considered resolved, as the payments have already been made as informed by Nodal Officer, FCA.



Decision of FAC:

FAC recommended the proposal for in-principle approval with general, standard and following specific conditions:

- i. The mine reclamation plan shall be submitted prior to Stage-II approval.
- ii. Documents regarding deposit of Rs. 23,22,38,877/- in CAMPA in compliance to Stage-I of 90 ha shall be submitted prior to Stage-II approval.
- iii. The information sought vide meeting held on 06.08.2019 shall be furnished before Stage- II approval.
- iv. 25% of NPV as admissible for the region shall be levied, due to the fact that report on Subsidence Prediction and Management for Tawa-III mentions likely subsidence factor is 10 mm or more.



Agenda No-2

F. No. 8-30/2019-FC

Sub: Proposal for diversion of 98.00 hectare of forest land, under Forest (Conservation) Act, 1980, for relocation of Village Malni Part-4 from Satpura Tiger Reserve, District Hoshangabad, Madhya Pradesh State-regarding

This proposal was considered by FAC in its meeting on 28th November 2019. The detailed agenda notes may be seen on [www. parivesh.nic.in](http://www.parivesh.nic.in).

While deliberating on the proposal, FAC observed that:

- i. The instant proposal is covered under the purview of the Ministry's guidelines dt. 20.05.2019 regarding relocation of villages from National Parks, Sanctuaries and Tiger reserves. CA and NPV are also not applicable in such cases.
- ii. DSS analysis reports that the proposed area is classified as High Conservation value (HVC) zone/Inviolable as per Decision Rule 1 and out of total proposed area, 49 ha of land is having the canopy density of scrub and 49 ha of land as Non forest in terms of forest classes (as per the ISFR 2015).
- iii. The area from where relocation is proposed, has high conservation value.
- iv. Specific recommendation has not been provided by the State Government.

Decision of FAC:

After thorough deliberations and discussions with the Nodal Officer, FCA, Government of Madhya Pradesh and Deputy Director General of Forests, Regional Office, Bhopal, FAC **recommended for in-principle approval** with general, standard and following specific conditions:

1. The complete compliance of FRA, 2006 as per norms shall be submitted.
2. The KML file along with geo spatial details of Village Malni Part-4 which is to be relocated from Satpura Tiger Reserve District Hoshangabad, Madhya Pradesh shall be submitted prior to Stage-II approval.
3. Details of rehabilitation plan and associated funding arrangements shall also be provided for record purposes prior to Stage II approval.



Agenda no 3

File no. 8-23/2013-FC

Proposal for change in land use pattern in already approved land use plan over 304.75 hectares (originally applied 323.09 hectares) of forest land (273.68 hectares within the Dulanga coal block and 31.07 hectares of forest land outside the coal block) including 4.94 hectares of forest land coming within the safety zone area in Dulanga Coal Mining Projects spread over Revenue villages of Dulanga, Majhapara, Manoharpur, Kathafali, Beldihi, Khuntijharia and Khapurikachhar and Dhanuardihi RF, Giripahad RF and Satparlia RF in IB valley coalfields Ltd. in favour of M/s National Thermal Power Corporation Ltd. in Sundargarh Forest Division of Sundergarh District, Odisha

The above stated agenda item was considered by FAC in its meeting on 28.11.19. The corresponding agenda note may be seen at parivesh.nic.in.

FAC after through deliberation and discussion observed that

1. Stage-II/ final approval for diversion of 304.75 ha (originally applied 323.09 hectares) of forest land in favour of M/s National Thermal Power Corporation Ltd. in Sundargarh Forest Division of Sundergarh District, Odisha was granted vide this Ministry's letter dated 23.12.2015.
2. The State Government of Odisha's letter No.10F (Cons) 201/16-16849/F&E dated 31.08.2019 forwarded a proposal for **change in land use pattern in already approved land use plan over 304.75 ha** for consideration and approval of Government of India.
3. It was informed by the representatives of user agency in the meeting that due to Land acquisition and R&R issues the area selected for dumping in non forest area could not be utilized, which is causing the delay in production of minerals in the existing mine.
4. As per approved scheduled land use plan, 510.78 ha (which includes 258.06 ha of forest land and 252.72 ha of non forest land) has been kept as excavation area. Now it is proposed that out of 510.78 ha the user agency may be allowed to use 24.8 ha (7.80 ha forest land and 17.00 ha non forest land) for surface dump prior to excavation. This dump will later be shifted to the area actually allocated for dump once the LA and R&R issues are resolved.

Decision of FAC:

FAC after thorough deliberation and discussion with Nodal office Odisha through video conference, In-charge Regional office, Bhubaneswar and representative of user agency, agreed to the justification of the State Government and observed that the part of area stipulated to excavation can be allowed for utilization of surface dump for a short period till the issue of LA and R&R is settled.

FAC recommended the proposal of state government for change in land use in the approval granted to the said project vide this Ministry's letter dated 23.12.2015.



Agenda No-4

F.No. 8-646/1984-FC

Subject: Re-diversion of 3.574 ha. of forest land (already diverted 41,111.97 ha. of forest land) for Pamkhedi Micro Irrigation Project lifting of water from Narmada Sagar Multipurpose Project, District Khandwa Madhya Pradesh State.

This proposal was considered in the FAC meeting on 28th November 2019 whose detailed agenda notes may be seen on [www. parivesh.nic.in](http://www.parivesh.nic.in).

While deliberating on the proposal FAC observed that:

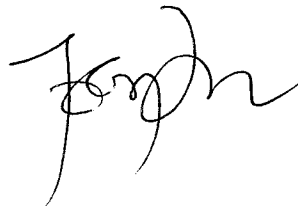
1. The original proposal was accorded approval on 07.10.1987 under FC Act.
2. Further, the State Government vide their letter No. F-5/111/84/10/3 dated 12.11.1999 had sought approval for diversion of 41,111.97 ha. +308.47 ha. of forest land in Khandwa, Dewas Hoshangabad Districts, for the Narmada Sagar Multi-purpose project, for lifting of the ban on felling/cutting of trees and the approval of the same had been issued by Ministry vide letter No. 8-646/84-FC(pt). dated 22.11.2000.
3. Subsequently, the State Government vide their letter No. 92/10/Irrigation/14/54/2834 dated 06.09.2000 had sought approval for diversion of 34.754 ha of forest land to NVDA for construction of Indira Sagar Pariyojana Canal - Main canal Phase-I, district East Nimar (Khandwa), Madhya Pradesh and the Ministry had approved the same vide its lett. Dt. 17.01.2002.
4. Now the State Government vide its letter No. F-3/117/2019/10-11/10/3470 dated 30.10.2019 has submitted the instant proposal for re-diversion of (change in land use) of forest land for Pamkhedi Micro Irrigation Project lifting of water from Narmada Sagar Multipurpose Project, District Khandwa Madhya Pradesh State. The details of change of land use from submergence are provided below in a table:

Component	Area (in ha)
Bund	2.196
Pump House	0.250
Channel	1.128
Total	3.574

5. Para 5.6 (a) of the FCA Handbook, 2019 will be applicable and compensatory afforestation shall not be applicable in this proposal.

Decision of FAC:

FAC after thorough deliberation and discussion with Nodal Officer (FCA) of the State, recommended the proposal for in-principle approval with general and standard conditions.



Agenda No 5

F. No. 8-34/2013-FC

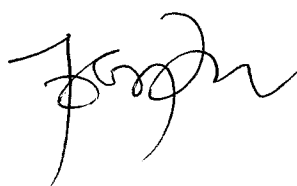
Sub: Diversion of 98.59 ha of Forest Land for Tikok Open Cast Project in Saleki PRF under Digboi Division by North Eastern Coalfield, Coal India Ltd., Assam.

The above stated agenda item was considered by FAC in its meeting on 28.11.19. The corresponding agenda note may be seen at parivesh.nic.in. FAC after through deliberation and discussion observed that

1. The proposal was earlier considered by FAC on 10-11th June, 2013. After detailed deliberation it was recommended for approval with general, standard and following additional conditions:-
 - (i) The user agency will obtain clearance from NBWL before stage-II approval of the proposal and the user agency will be complying with all recommendation/condition imposed by NBWL.
 - (ii) The State Government will also prepare Regional Wildlife Plan for the region and the user agency will be liable to bear the proportionate cost of that plan before Stage-II approval.
 - (iii) Only trees enumerated in the proposal will be felled. The State Government will also institute a study of Biodiversity in that area at the cost of user Agency.
 - (iv) The State Government should raise penal CA over the degraded forest land twice in extent of the area broken up and utilized by the user agency since 2003 i.e. 57.20 ha (44.27 ha broken up and utilized from 2003 and 12.93 ha broken up before 2003 but utilized from 2003 onward) from the funds to be realized from the user agency.
 - (v) The State Government shall realise from the user agency penal NPV @ 20% of the rates applicable on the date of grant of Stage-I approval of the forest land utilized for non-forestry purpose (57.20 ha) without obtaining prior approval of the Govt. of India, under the Forest (Conservation) Act, 1980 for each year or fraction thereof. (Explanation: in case of patch of forest land has been utilized for non-forestry purpose without obtaining prior approval under the Forest (Conservation) Act, 1980 for 3 (three) years, penal NPV to be realized for such forest land will be @ 60% (20%x 3 years) of the rates applicable on the date of grant of Stage-I approval.

The committee also recommended that State Govt. may undertake following studies and submit reports to the Ministry:

- a. For extensive and intensive habitat management for targeted species (elephants, hoolock gibbon, leopard, avifauna) and floral diversity through a detailed impact study of surrounding area and preparation of time bound Biodiversity Management Plan focusing also on watershed protection and protection of natural aquatic systems available around the mines of NEC at the cost of user agency.
- b. For carrying capacity study of the remaining biodiversity rich area adjoining NEC coalfield in Margherita from a view point whether any more diversion of forest land shall be proper or not for the existence of the faunal species.




2. The recommendations of the FAC was moved on file for approval of competent authority when the then DGF&SS vide his note dated 12.07.2013 directed to *take up studies for extensive and intensive habitat management. The wanting report of the Chief Wildlife Warden as stated, should first be called for before obtaining the approval of the competent authority for this project.*
3. The observations of DGF was conveyed to the state government vide Ministry's letter dated 05.08.2013 with request to submit the report of Chief Wildlife Warden, mentioned in Part-II of the proposal immediately.
4. MoEF&CC did not receive any reply from the state government till 19.11.2019. The FAC took note of latest communication by the state government in which Chief Wildlife Warden had clearly conveyed that the matter has been placed before State Board of Wildlife, which had forwarded the proposal to National Board of Wildlife (NBWL) with recommendation to comply with the mitigation measures as suggested by Expert committee.
5. It is further informed that at present the proposal is under consideration of the Standing committee of NBWL, MoEF&CC and CWLW office is not in position to furnish comments in this regard.
6. FAC also took a note of the site inspection report submitted by Regional Office.

Decision of FAC

FAC had thorough deliberation and discussion with Dy DG regional office Shillong through Video conference and Nodal officer (Assam) through telephone. The matter was further discussed with the representatives of user agency. After discussion it was observed that site Inspection carried out by regional office recently clearly pointed out that the user agency is continuing with mining activity over the forest area after the proposal was recommended by FAC in 2013. It also conveyed that the user agency is continuously working in the area after expiry of original lease period in 2003. In this regard FAC observed that the violation done by user agency since 2003 to 2013 had been appropriately discussed in 2013 by FAC and accordingly it had recommended appropriate action. As on date, state government should not have allowed mining in the area prior to final approval under FCA 1980. There has been gross neglect on this account on behalf of state government. After perusing all records and facts related to the project proposal FAC **recommended the proposal for approval of Stage-I** with Standard, General and following specific Conditions.

1. State government to abide by all conditions as specified in its recommendations of FAC on dated 10-11th June 2013.
2. In addition to above, State government shall take action for the violation, carried by the user agency after 10-11th June 2013, as per para 1.21. of Comprehensive guidelines dated 28th March 2019.
3. State government shall inquire into the matter of gross violation and identify officials responsible for this violation and action should be taken against them, under intimation to the MoEF&CC.
4. User agency shall not carry out any work in violation of the provisions of FCA 1980 till all penalty and compensatory levies are deposited and Stage II approval for the project is granted by MoEF&CC.
5. Chief wild life warden shall submit his independent comments as requested by MoEF&CC vide letter dated 5.8.2013.



Agenda No-6

Policy issue no.: 1

F.No.FC-11/224/2019-FC

Subject: Matters raised by the Regional Office, Bangalore for clarification on the rate of interest to be levied for the delayed payment of NPV and since when it has to be realized, and Notification of non-forest land for compensatory afforestation as PF/RF prior to the Stage-II approval.

Regional Office, Bangalore vide their letter no. 4-KRC 326/2007-BAN/985 dated 24.09.2019 and no. 4-KRC 1029/2014-BAN/1078 dated 21.10.2019 raised the following issues for clarification from this Ministry:

- (i) **Advised about the rate of interest to be levied for the delayed payment of NPV and since when it has to be realized:**

Facts about the case

In-principle approval for renewal of lease for diversion of 10.117 ha of forest land in Sy. No. 25 A1 of Avarguppa village in Siddapur taluk for existing Mahatma Gandhi Centenary College building, playground in favour of Shikshana Prasarak Samithi, Siddapur was granted by Regional Office vide their letter dated 23.07.2008 subject to realization of NPV from user agency. Since the compliance report is not received within 5 years from the date of Stage-I clearance, Regional office requested the State Government to direct for submitting action taken report.

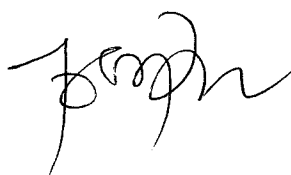
The state government vide their letter date 04.02.2019 furnished the compliance report and while forwarding the compliance report, the PCCF has stated that the user agency has continued the use of forest land in question without renewal under Forest (Conservation) Act, 1980 after expiry of original lease period on 03.09.2004 and recommended for realization of penalty/interest for delayed payment of NPV from user agency.

Regional Office also mentioned that there is no specific guideline for imposing penal interest for delayed payment of Compensatory levies and this issue also examine in light of guideline issue by Ministry's letter no. 11-42/2017-FC dated 29.01.2018 and observed that it is not covered in under any clause in the said guideline.

Accordingly, Regional Office requested to advise about the rate of interest to be levied for the delayed payment of NPV and since when it has to be realized.

Decision of FAC

After thorough deliberation and discussion on the issue FAC observed that this is a peculiar case, which is different from mining and other activities which require constant breaking of land. In all those cases, after expiry of original lease period/FC approval period, the committee can recommend to stop the work immediately prior to appropriate approvals. In the instant case a land was on lease and infrastructure is already constructed over forest land and the proposal is for the approval at the time of renewal. The proposal was considered and in-principle approval was granted in 2008 with stipulation of payment of compensatory levies. The user agency had not complied with the stipulations. At present there is no provision of interest on delayed payment of NPV, as normally stage II cannot be granted without compliance of such payment. In this case it is seen that the user agency is in possession of forest land after expiry of lease



period in 2004 till date. This is technical violation of the provisions of FCA 1980. User agency was expected to take all statutory clearances after expiry of lease period which it seems it deliberately delayed. Considering this peculiar situation, it is recommended that user agency shall deposit penal NPV @ 20 per cent of forest land per ha for each year of violation from the date of Actual diversion i.e from the date of expiry of original lease period with maximum up to five times the NPV plus 12 per cent simple interest till the deposit is made

(ii) Notification of non-forest land for compensatory afforestation as PF/RF prior to the Stage-II approval- clarification:

Facts:

Regional Office, Bangalore referred the Handbook of guidelines under FCA, 1980 as issued vide MoEF&CC's no. 5-2/2017-FC dated 28.03.2019 wherein it was stipulated that the non-forest land transferred and mutated for compensatory afforestation has to be notified as RF/PF prior to the Stage-II approval. As per earlier guidelines, the non-forest land for compensatory afforestation has to be notified by the State Government as PF/RF under Indian Forest Act, 1927 or the State Forest Act within six months of the Stage-II approval. Accordingly, the notification of CA land as RF/PF was not stipulated in respect of proposals given Stage-I approval prior to the issue of the guidelines dated 28.03.2019.

Recommendation of FAC

After thorough deliberation and discussion FAC recommended that MoEF&CC may clarify that the provisions related to declaration of RF /PF prior to Stage II approval shall be applicable on all such proposal to which Stage I approval has been accorded on or after 28.03.19.

Policy issue no.: 2

Sub: Modification in CA guidelines 2.3 (iv) &(v). Inclusion of degraded forest for CA can be done in other states.

FACTS

1. Principle Chief Conservator of Forests, Goa vide their letter no. 6-853-2019-FD/3896 dated 13.11.2019 informed that several proposals for diversion of forest land pertaining to infrastructure projects of national importance are pending in Goa for approval of the Central Government under the Forest (Conservation) Act, 1980. The main reason being non-availability of required non-forest or degraded forest land in the State for carrying out compensatory afforestation. The three important projects requiring diversion of forest land awaiting clearance under FCA are mentioned below:
 - i. Doubling of railway lines by the South Western Railway – 138.39 ha of forest.
 - ii. Construction of power transmission lines by Goa Tammar Transmission Project Ltd – 145.94 ha of forest.
 - iii. Construction of road by National Highway Authority of India – 93.45 ha of forest.
2. These three projects require diversion of forest land of around 400 ha and the compensatory afforestation to be carried out in suitable degraded forest land. This amounts to around 800 ha i.e. twice the area of forest land being diverted. However, Goa being a small State with forest and tree cover, together accounting to 68.94% of the total geographical area, finding



suitable degraded forest land for compensatory afforestation is becoming extremely difficult. Remaining lands are covered under CRZ, riverine/ water bodies, habitation, agriculture etc. and are not available for afforestation. Besides, low density forest cover areas comprising open forest/ degraded forest have lateritic rocks and are not suitable for taking up CA. Further, State Government of Goa requested to grant approval of the Ministry for taking up of CA in the neighbouring states in lieu of forest land diverted in state of Goa for the FCA proposals.

3. In this context, Para 2.3 (iv) & (v) of the Handbook of FCA-1980 states that:

(iv) In case, non-forest land for CA is not available in the same district, it should be identified anywhere else in the concerned/State/Union Territory near to the site of diversion as far as possible, so as to minimize adverse impact on the microecology of the area.

(v) In exceptional cases where non-forest land for CA is not available in the same State/UT in which the diversion of forest land is proposed, land for CA can be identified in any other State/UTs, preferably in neighbouring State/UTs. The corresponding amount for carrying out CA shall be deposited in the CAMPA account of the State/UT in which CA is proposed.

It is proposed that the State Government may also take non-forest land/ degraded forest land as the case may be.

Decision of FAC:

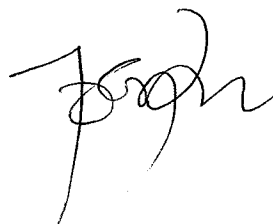
After thorough deliberation and discussion FAC recommended that CA guidelines 2.3 (iv) &(v). issued vide MoEF&CC's no. 5-2/2017-FC dated 28.03.2019 which is stipulated as *iv) In case, non-forest land for CA is not available in the same district, it should be identified anywhere else in the concerned/State/Union Territory near to the site of diversion as far as possible, so as to minimize adverse impact on the micro-ecology of the area.*

v) In exceptional cases where non-forest land for CA is not available in the same State/UT in which the diversion of forest land is proposed, land for CA can be identified in any other State/UTs, preferably in neighboring State/UTs. The corresponding amount for carrying out CA shall be deposited in the CAMPA account of the State/UT in which CA is proposed.

May be read as

*iv) In case, non-forest land/**Degraded forest land, as the case may** be for CA is not available in the same district, it should be identified anywhere else in the concerned/State/Union Territory near to the site of diversion as far as possible, so as to minimize adverse impact on the micro-ecology of the area.*

*v) In exceptional cases where non-forest land /**Degraded forest land, as the case may** for CA is not available in the same State/UT in which the diversion of forest land is proposed, land for CA can be identified in any other State/UTs, preferably in neighboring State/UTs. The corresponding amount for carrying out CA shall be deposited in the CAMPA account of the State/UT in which CA is proposed.*



Policy issue no.: 3

Sub: Seismic survey guidelines are also applicable for coal sector – clarification is to be issued.

FACTS

A meeting was held with the Secretary, Ministry of Coal in which Ministry of Coal asked for clarification if the Guidelines specific to hydrocarbon sector for undertaking 'seismic surveys and exploratory drilling in forest areas as issued vide no 11-423/2011-FC dated 30.09.2019 by MoEF&CC is also applicable for coal sector or not. It was further informed that the procedure and extent of intervention required of seismic survey in coal sector is of similar nature. Thus it was requested that the coal sector shall also be brought under ambit of above stated guidelines.

Decision of FAC

FAC after thorough deliberation and discussion recommended that MoEF&CC may clarify that the instant guidelines can be made applicable to seismic surveys for purpose of prospecting of different minerals including coal.

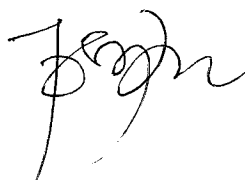
Policy Issue no. 4

Subject: Prior Approval under Section-2 (ii) of Forest (Conservation) Act, 1980 of Central Government for various transmission lines under construction/proposed in the state by Uttar Pradesh Power Transmission Corporation Limited and various transmission licences of Uttar Pradesh.

This policy matter has genesis in reference vide letter no. 1327/14-2-2019-190/G/2018 dated 28.06.2019 made by Principal Secretary, Department of Forests, Government of Uttar Pradesh to the Secretary, MoEF&CC, Govt of India. The reference is regarding expediting time consumed in obtaining NOC (No Objection Certificate) from land owning agencies by user agency/project proponent due to right of way of transmission lines cutting various linear protected forests owned by National Highway Authority of India, State PWD, State Irrigation Department and Indian Railways.

Most of the roads, canals & railway lines have declared protected forests along them. These PFs are criss-crossed while aligning transmission lines and alignment without crossing is inevitable. While aligning transmission lines from power production to consumption centres several such PFs are crossed and these patches proposed for diversion are very small in size but being owned by different divisions of same organisations as well as different organisations obtaining NOC prior to submission of proposal to concerned DFO takes lot of time.

This time can be curtailed, if the submission of NOC is made parallel till the proposal is submitted to the deciding authority i.e. State Government if proposal is less than 1 ha in extent, Regional Office from 1ha to 5 ha and Regional Empowered Committee above 5 ha.



It was also observed that mandatory condition of carrying out plantation of dwarf medicinal plants on small patches of diversion below RoW of transmission line becomes wasteful expenditure as managing (protecting) very small patches of insignificant size in field is nearly impossible.

FAC noted that, the matter pertains to seeking NOC (No Objection Certificate) from land owning agencies mainly protected forests in case of linear diversions like road side PF, canal side PF, railway side PF etc. prior to submission to the concerned DFO for processing the FCA proposal for Stage-I approval. Usually linear infrastructure with multiple road, canal, railway crossings etc. entails NOC from land owning department/authority which entails lot of time.

Decision of FAC:

During deliberations on the matter, FAC recommended that in order to expedite the proposal this NOC submission can be parallel processed and made mandatory prior to reaching to the approving authority i.e. State Govt. in case of general approval: Regional Office upto 5 ha and Regional Empowered Committee more than 5 ha.

FAC also deliberated on the matter that creation and maintenance of plantation of dwarf species (preferably medicinal plants) in the right of way under transmission line in case of small areas (below 0.1 ha) are not cost effective and productive in nature. Therefore, FAC recommended that in such cases the user agency in consultation with State Forest Department shall identify a degraded forest area adjoining to the proposed Transmission line and plantation of dwarf species (preferably medicinal plants) in the right of way under transmission line in case of small areas (below 0.1 ha) shall be carried out on such degraded forest area.

Policy issue no.: 5

File No.11-423/2011-FC

Sub: Proposal seeking diversion of forest land for non-forestry purposes under the Forest (Conservation) Act, 1980 – Special consideration of compensatory afforestation in forest rich States-reg.

A clarification on the date of applicability of point (b) of the guideline no 11-423/2011-FC dated 22nd may 2019 has been sought by many states:

which reads as

b) Isolated patches having area less than 5 ha are difficult to manage as forests. Hence, no non-forest, having area less than 5 ha area shall be accepted for CA purpose. However, land parcels, if contiguous to RF/PF, can be accepted for CA irrespective of their sizes, subject to their suitability for CA. In case of forest area under diversion is less than 5 ha, efforts should be made to identify non-forest land contiguous to some RF/PF. User agency shall fence all such land parcels properly and mutate the same in the name of Forest Department before handing them over to the Forest Department. All such land parcels shall



be compact (i.e. without any pockets of habitation or non-forest land) and free from any encumbrances

Recommendation of FAC:

The issue was deliberated in detail and it was recommended to clarify that this provision shall be applicable for all proposals which are submitted for approval for non forest use of forest land under FCA 1980 to MoEF&CC by the state government after 22nd may 2019.

Policy issue 6

Regarding refund of interest accrued on compensatory levies in respect of proposal withdrawn/closed by the State Government – reg.

FACTS

1. Extant case pertains to the refund of interest amount of Rs. 44,50,606/- accrued on compensatory levies realized from the User Agency M/s Aji Engineering in lieu of diversion of 4.16 ha of forest land. Fact of the case, in brief are given as under:
2. Proposal involving project cost of Rs. 59 crores, had been granted Stage-I approval for diversion of 4.16 ha of forest land on 22.11.2007 by the Regional Office of the Ministry at Bangaluru. However, before grant of Stage-II approval, it was revealed that an area of 75 ha, coming under the submergence, was not included in the proposal. Accordingly, Regional Office, after obtaining clarification from the Ministry, requested the State Government to include area of 75 ha in the proposal. However, user agency in view of the fact that inclusion of additional area will render the project financially unviable, scrapped the project and withdrawn the proposal under the FC Act.
3. Subsequently on the request of the User Agency, compensatory levies of Rs. 45,26,080/- were refunded to the User Agency by the CAMPA. However, User Agency, adverting to the cost of Rs. 90 lakh incurred on the project during the intervening period, had further sought intervention from the Hon'ble High Court of Karnataka to get refund of 44,50,606/- on account of interest accrued on the sum during the intervening period. It is also to mention that CAMPA had earlier turned down the request to refund the interest amount on the ground that User Agency has withdrawn the proposal voluntarily.
4. Hon'ble High Court vide its recent order dated 12.07.2019 has directed as under:
 5. *I have considered the submission made by learned counsel for the parties.*
 6. *In view of the assertion made by learned counsel for the petitioner that petitioner is entitled to interest under the Act and in the fact of the case, I deem it appropriate to direct that in case the petitioner submit a fresh representation to the competent authority with regard to non payment of interest under the Act with in a period of two weeks from the date of receipt of certified copy of the order passed today, the competent authority shall decide the same in light of provisions of the Act by a speaking order within a period of three months from the date of receipt of such representations.*
 7. *It is made clear that this has not expressed any opinion on the merit of the case.*
 8. *Accordingly, the writ petition is disposed of.*



Decision of FAC:

The issue was deliberated and discussed in detail in the FAC. It is observed that the MoEF&CC accords prior approval for non forest use of forest land under the provisions of FCA 1980. The decision is taken as per request and recommendation of the state government.

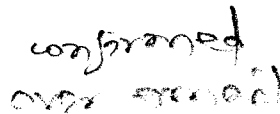
In the instant case, it is a fact that 75 ha was part of submergence, but was not included in the initial proposal. It was at later stage, when MoEF&CC was informed that the area of 75 ha is also a part of the total project. For all such approvals regarding non forest use of forest land, the compensatory levies especially NPV is charged as per the direction of Hon'ble Supreme Court.

From the perusal of records, it is clear that the user agency voluntarily applied for diversion of 4.16 ha of forest land and later preferred to withdraw the proposal. On withdrawal of the proposal the amount deposited against the compensatory levies was refunded to the applicant. But his request for payment of Interest amount on compensatory levies cannot be accepted, as

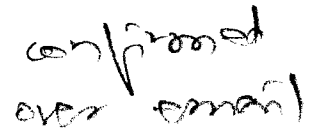
- i. The Adhoc CAMPA has entirely different mandate than that of a commercial bank.
- ii. After the stage-I approval in 2007, the proposed project in the demarcated forest area prevented any other potential non-forest use there since 2007.
- iii. More over in the process of considering the request of user agency to divert forest land for non-forest purpose, lots of time and money in the form of work hours and services has been consumed by government machinery. It is a fact that 75 ha additional forest area required for non-forest use was not reported by the user agency and later when the facts got verified it voluntary preferred to withdraw the proposal. This is a negligence on part of user agency for which user agency need not be compensated.



(AK Mohanty)
IG(FC) and MS (FAC)



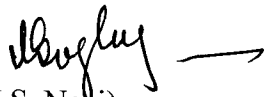
(Sanjay Deshmukh)
Member, FAC



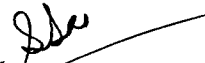
(Anmol Kumar)
Member, FAC

Absent
(SD Vora)
Member, FAC

Absent
Addl. Commissioner (Soil Conservation)
Ministry of Agriculture, Member (FAC)



(M.S. Negi)
ADG and Member, FAC



(Siddhanta Das)
DGF&SS and Chairperson (FAC)