

**THE NEPAL-INDIA  
SHARED WATERCOURSES TREATY  
(2017)**

## PREAMBLE

Nepal India Shared Watercourses<sup>1</sup> Treaty (hereinafter the Watercourses Treaty) Between the Government of India as represented by the Minister of Water Resources and Ganga Rejuvenation and Minister of Water Resources, Government of Nepal

Hereinafter referred to collectively as "the Parties"

WHEREAS the waters shared by Nepal and India are a precious resource to mankind linked with intergenerational rights and intergenerational equity of people in the Basins shared by two countries;

AND WHEREAS all shared waters in the basins shared by both countries should be managed to preserve the Ecological Integrity of the Aquatic Ecosystem; and to facilitate reasonable, equitable, sustainable and beneficial use of this precious and depleting resource for present and future generations;

AND WHEREAS cooperative management of the shared waters requires the application of consistent guiding principles of international environmental law and international water law;

AND WHEREAS the Parties have been cooperating on water resource development projects on Kosi, Gandak and Mahakali rivers as per the terms of the specific legal instruments agreed between them

AND WHEREAS enhanced cooperative water management mechanisms supported by inclusive institutional regime will encourage the assessment of water issues and promote future sustainable water resource use, development and management;

AND WHEREAS cooperative water management agreements are the most appropriate means of addressing inter-jurisdictional water quality, quantity and related trans-boundary issues on shared water management

RECOGNISING the relevant provisions of Agenda 21 of the United Nations Conference on Environment and Development and concepts of environmentally sound management, sustainable development and equitable utilisation of shared watercourses between India and Nepal

BEARING in mind the progress with the development and codification of international water law initiated by the Helsinki Rules and that the United Nations subsequently adopted the United Nations Convention on the Law of the Non-Navigational Uses of International Watercourses;

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<sup>1</sup> Shared Watercourses will have to be defined by Nepal and India and a consensus definition will have to be evolved on a mutually agreed basis

CONSIDERING the existing and emerging socio-economic development in the shared basins of India and Nepal

DESIROUS of developing close cooperation for judicious, sustainable and co-ordinated utilisation of the shared watercourses and water based resources in the India-Nepal shared basins

CONVINCED of the need for better coordination and environmentally sound development of the resources of shared watercourses in the shared basins of India and Nepal in order to support sustainable socio- economic development;

RECOGNISING that there are as yet no regional frameworks, conventions or institutions regulating common utilisation and management shared watercourses in South Asia

**MINDFUL** of the existence of specific Agreements on Kosi, Gandak and Pancheshwar Projects between India and Nepal and past cooperation for common utilisation and development of shared watercourses of Kosi, Gandak, Karnali and Mahakali Rivers;

FURTHER RECOGNIZING the unique geographical and socio-cultural ties between the people of two countries and ecological, social, cultural and economic interdependence and its deep linkages with shared waters

DESIROUS of promoting the modernization of Kosi, Gandak Agreements with the objective to improve the governance of these vital and complex river systems

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

#### ARTICLE 1

#### OBJECTIVE

The overall objective of the Shared Watercourses Treaty is to establish common principles for the cooperative management of all Shared Watercourses and improve institutional mechanism to facilitate application of these principles, and to make provisions for enhanced water cooperation between the Parties to foster closer cooperation for judicious, sustainable and co-ordinated management, protection and utilisation of shared watercourses and advance the bilateral cooperative agenda of friendship and mutual cooperation on issues of mutual concern. In order to achieve this objective, the Treaty seeks to:

- (a) promote and facilitate the modernization of all existing agreements and treaties and institutions created there under for the improved and equitable governance of Water courses shared between India and Nepal;

- (b) advance the sustainable, equitable and reasonable utilisation of shared watercourses;
- (c) promote the harmonisation and monitoring of legislation and policies for planning, development, conservation, protection of shared watercourses, and allocation of the resources thereof; and
- (d) promote research and technology development, information exchange, capacity building, and the application of appropriate technologies in shared watercourses management.

## ARTICLE 2

### GENERAL PRINCIPLES

For the purposes of this Treaty the following general principles shall apply:

1. The Parties to this Treaty recognise that the principle of the unity and coherence of shared watercourses is a fundamental principle to ensure that all necessary water resource development interventions are consistent with the sustainable development of the two watercourse states.
2. The utilisation of shared watercourses in Nepal and India shall continue unimpaired within their territories and without prejudice to their sovereign rights, in accordance with the principles contained in this Treaty. The utilisation of the watercourses shall include agricultural, domestic, industrial, navigational, recreational and environmental uses and other ecosystem functions and services.
3. The Parties undertake to respect the principles and rules under the multilateral environmental agreements ratified by the Parties and customary or general international law relating to the utilisation and management of shared watercourses.
4. The Parties undertake to pursue and establish close cooperation with regard to the study and execution of all water resource development projects that are likely to have an effect on the regime of the shared watercourses.
5. The Parties undertake to ensure that in their respective territories a watercourse is utilized in an equitable and reasonable manner. In particular, the parties undertake to ensure that the development of a watercourse is consistent with the ecological protection of the watercourses and socio-economic needs of communities dependent on them.

6. Utilisation of a shared watercourse in an equitable and reasonable manner within the meaning of Article (5) requires taking into account all relevant factors and circumstances including:
  - (i) geographical, hydrographical, hydrological, climatic, ecological and other factors of a natural character;
  - (ii) the social, economic and environmental needs of the basin communities
  - (iii) the population dependent on the shared watercourses in each country;
  - (iv) existing and potential uses of the watercourse;
  - (v) conservation, protection, development and economy of use of the water resources of the shared watercourse and the costs of measures taken to that effect; and
  - (vi) The availability of alternatives, of comparable value, to a particular planned or existing use.
  - (vii) The weight to be given to each factor is to be determined by its importance in comparison with that of other relevant factors. In determining what is an equitable and reasonable use, all relevant factors are to be considered together and a conclusion reached on the basis of the whole.
7. As far as possible, the Parties, in utilizing a watercourse shared between them, take all appropriate measures to prevent the causing of significant harm to the Party and in case of potential harm shall be duty bound to consult each other so as to eliminate or mitigate such harm and where appropriate discuss the questions of compensation.
8. The Parties hereby agree the protection of water rights and interests of communities living and dependent on shared watercourses are their primary responsibilities. In case harm likely to be caused or suffered by the communities as a result of water related development activities, the Parties shall not discriminate on the basis of citizenship or place where the injury has occurred and in accordance with mutually agreed terms provide compensation or other relief in respect of significant harm.

### ARTICLE 3

#### INSTITUTIONAL FRAMEWORK FOR IMPLEMENTATION

1. The Parties hereby establish the following institutional mechanism responsible for the implementation of the Watercourses Treaty-
  - (a) India-Nepal Shared Watercourses Institutions
    - (i) The Shared Watercourses Secretariat
    - (ii) The Inter-Ministerial Committee of Watercourse states
    - (iii) The Administrative Committee

- (iv) The inter-sectoral Coordination Committee
- (v) The Committee of Local Representatives and Civil Society Organizations

2. Functions of Shared Watercourses Institutions:

- (i) *The Shared Watercourses Secretariat* shall be the executing agency for the purposes of implementation of this Treaty. The Unit shall be jointly headed by two coordinators appointed by the Parties. All works related to monitoring, liasoning, interpretation, advise, technical and policy meetings and networking with watercourse institutions shall be undertaken by the Secretariat
- (ii) *The Inter-Ministerial Committee*: Will comprise of water resource ministers not only at the central level but from the watercourse states as well. The Committee will oversee and monitor the Treaty and assist in resolving potential conflicts by engaging with political leadership at the local level. The Ministerial Committee will also guide and coordinate cooperation and harmonization of legislation, policies, strategies and projects.
- (iii) *The Administrative Committee*: All administrative functions related with the implementation of this Treaty will be performed by this Committee
- (iv) *The Inter-sectoral Coordination Committee*: Shall be responsible for all tasks related with coordination, liasoning, advising and organizing technical and policy meetings
- (v) *Technical Forum of CSOs and experts from other disciplines (The Technical Committee)*: The Committee will provide technical assistance and bring in community concerns to the notice of the Secretariat and the Inter-ministerial Committee