

PCA Case No. 2023-01

IN THE MATTER OF AN ARBITRATION

-before-

**THE COURT OF ARBITRATION CONSTITUTED
IN ACCORDANCE WITH THE INDUS WATERS TREATY 1960**

-between-

THE ISLAMIC REPUBLIC OF PAKISTAN

-and-

THE REPUBLIC OF INDIA

PROCEDURAL ORDER NO. 14

**(FURTHER DIRECTIONS REGARDING THE PRODUCTION
OF PAPERS AND OTHER EVIDENCE; FURTHER COMMENTS
BY THE PARTIES ON PARTICULAR MATTERS)**

COURT OF ARBITRATION:

**Professor Sean D. Murphy (Chairman)
Professor Wouter Buytaert
Mr. Jeffrey P. Minear
Judge Awn Shawkat Al-Khasawneh
Dr. Donald Blackmore**

SECRETARIAT:

The Permanent Court of Arbitration

6 December 2024

WHEREAS paragraph 20 of Annexure G to the Indus Waters Treaty 1960 (the “**Treaty**”) provides that “[t]he Court [of Arbitration] shall have the right to require from the Agents of the Parties the production of all papers and other evidence it considers necessary and to demand all necessary explanations. In case of refusal, the Court shall take formal note of it”;

WHEREAS on 31 March 2023, the Court issued its Supplemental Rules of Procedure, in which it determined, amongst other things, that “[t]he Court may take all appropriate measures in order to establish the facts” and that, “[p]ursuant to paragraph 20 of Annexure G to the Treaty, the Court may, at any time during the proceedings, require the Parties to produce documents, exhibits, or other evidence within such a period of time as the Court shall determine”;

WHEREAS on 6 July 2023, the Court issued its Procedural Order No. 6, determining that the Court would conduct these proceedings in a phased manner, and that the next phase of the proceedings (the “**First Phase on the Merits**”) would address certain questions that arise from Pakistan’s Request for Arbitration concerning the overall interpretation or application of Article III of the Treaty, and paragraph 8 of Annexure D thereto, in addition to a related question concerning the legal effect of past decisions issued by dispute resolution bodies established pursuant to Article IX of the Treaty;

WHEREAS on 22 March 2024, Pakistan submitted its Memorial for the First Phase on the Merits, together with accompanying exhibits and authorities, including some materials relating to the Permanent Indus Commission, the *Baglihar* neutral expert proceedings, and the *Indus Waters Kishenganga Arbitration*;

WHEREAS on 27 May 2024, the Court issued its Procedural Order No. 11 (“**PO11**”), in which the Court directed Pakistan to produce papers and other evidence falling within certain specified categories (“**Required Documents**”) in order to ensure that the Court has available to it a comprehensive record of the views and positions of the Parties on the matters at issue before the Court in the First Phase on the Merits;

WHEREAS on 1 July 2024, Pakistan submitted a first tranche of the Required Documents responsive to PO11, along with two indexes of the records produced;

WHEREAS from 8 July 2024 to 12 July 2024, and from 15 July 2024 to 16 July 2024, the Court held an oral hearing for the First Phase on the Merits (the “**Hearing**”) in the Peace Palace, The Hague, the Netherlands, in which Pakistan appeared and participated, but India did not appear or participate;

WHEREAS on 13 August 2024, the Court issued its Procedural Order No. 13 (“**PO13**”), in which the Court, amongst other things, provided further directions regarding the production of the Required Documents pursuant to PO11, and indicated the scope of the issues to be addressed by Pakistan in post-hearing submissions;

WHEREAS on 30 August 2024, Pakistan submitted to the Court additional documents from the neutral expert proceedings concerning the *Baglihar Hydroelectric Plant*, to supplement the records already filed pursuant to paragraph 1.2 of PO11;

WHEREAS on 30 September 2024, Pakistan submitted the final tranche of the Required Documents responsive to PO11 and PO13, and submitted an explanatory memorandum addressing the document production exercise that had been undertaken by Pakistan (“**Explanatory Memorandum**”), pursuant to paragraph 2.6 of PO13;

WHEREAS on 14 October 2024, Pakistan applied for permission to submit a short supplementary memorandum regarding the content of the Required Documents (“**Supplementary Memorandum**”), pursuant to paragraph 2.7 of PO13;

WHEREAS on 21 October 2024, the Court granted Pakistan’s application for permission to file a Supplementary Memorandum by 8 November 2024, and invited India to provide any comments in respect of the Supplementary Memorandum by 22 November 2024;

WHEREAS on 1 November 2024, Pakistan submitted its Post-Hearing Submission, pursuant to paragraphs 3.1 and 3.2 of PO13 (“**Post-Hearing Submission**”);

WHEREAS on 8 November 2024, Pakistan submitted its Supplementary Memorandum, and to date, no comments have been received from India on Pakistan’s Supplementary Memorandum;

THE COURT OF ARBITRATION HEREBY DECIDES:

1. Further Directions regarding the Production of Papers and Other Evidence

Required Documents Excluded from Production

- 1.1 In its Explanatory Memorandum, Pakistan observed that “the enclosures to two of the documents submitted in response to the Court’s Request 1.6.2 [of PO11] are extremely voluminous and, having been superseded by the *Baglihar* proceedings themselves, have not been provided” and that “Pakistan stands ready to provide scans of these voluminous enclosures upon the Court’s request”.¹
- 1.2 Pakistan is directed to resubmit the following exhibits, including the enclosures specified therein, on or before **Friday, 10 January 2025**:
 - 1.2.1 Note Verbale No. ISL/112/1/96 dated 15 December 2004 (**P-0651.26**); and
 - 1.2.2 Note Verbale No. 6399/JS(PAI)/2005 dated 10 October 2005 (**P-0651.28**).

Required Documents Apparently Missing from Production

- 1.3 The Court has identified a number of Required Documents that appear to be missing from the record, as well as certain documents provided in incomplete form, including:
 - 1.3.1 *Referenced communications*: Several letters between the Commissioners for Indus Waters refer to earlier correspondence (or the enclosures thereto) that appear to address matters at issue before the Court in the First Phase on the Merits, but do not appear to have been submitted by Pakistan. These include, but may not be limited to, the documents numbered 1 to 13 in Annexure A appended to this Order (“**Annexure A**”).
 - 1.3.2 *Incomplete Documentation*: Several letters between the Commissioners for Indus Waters (or the enclosures thereto) that are in the record appear to have only been produced in part. This includes, for example, the documents numbered 14 to 16 in Annexure A. Certain records of the meetings of the Permanent Indus Commission (for example, the document numbered 17 in Annexure A) also appear to be incomplete.
- 1.4 Pakistan is directed to submit (or resubmit in complete form, as the case may be) the documents identified in paragraphs 1.3.1 and 1.3.2 above, or to indicate if such materials cannot be located, on or before **Friday, 10 January 2025**.

¹ Pakistan’s Explanatory Memorandum dated 30 September 2024, para. 3.3.

- 1.5 Pakistan is further directed to re-review the papers and other evidence submitted pursuant to PO11 and PO13 and, where necessary, submit any other Required Documents that are missing from the record, and resubmit any other Required Documents that are incomplete.²
- 1.6 Pakistan shall submit an updated consolidated index of Factual Exhibits (together with a ‘redline’ comparison against the current index) together with its submission of further documents pursuant to paragraphs 1.2, 1.4 and 1.5 above.

2. Further Comments by the Parties on Particular Matters

Historic Practice of the Parties when Calculating Maximum Allowable Pondage

- 2.1 In its Further Questions to be addressed at the Hearing for the First Phase on the Merits dated 13 July 2024, the Court invited Pakistan to address, amongst other things, how “the positions of the Parties [have] changed over time with respect to the calculation of maximum Pondage pursuant to Annexure D, paragraph 8(c), including: (a) during the negotiation of the Treaty; (b) with respect to the [Hydro-Electric Plants (“HEPs”)] notified prior to the Baglihar proceedings; (c) following the *Baglihar* Determination; and (d) following the *Kishenganga* proceedings”.
- 2.2 Since Pakistan provided its responses to the Court’s question at the Hearing,³ further materials submitted into the record by Pakistan have been reviewed by the Court regarding the positions of the Parties with respect to the calculation of maximum Pondage pursuant to Annexure D, paragraph 8(c).
- 2.3 In particular, the Court has reviewed correspondence between the Commissioners for Indus Waters in which Pakistan’s Commissioner refers to the relevance of load fluctuations and/or load curves to the calculation of maximum Pondage, including with respect to the Stakna HEP,⁴ the Sumbal HEP,⁵ the Lower Jhelum HEP,⁶ the Upper Sindh-II HEP,⁷ the Kargil HEP,⁸

² The Court notes that, in some instances, the same document appears to have been submitted into evidence twice. For example, Exhibits P-0649.0114 and P-0649.0143 appear to be the same document (Letter No. WT(16)/(2295-A)/PCIW dated 9 May 1969). The Court brings this to the attention of the Parties, but does not require the Parties to take any steps to address such duplication at this time.

³ Hearing Tr., (Day 2), 9 July 2024, pp. 103:13–104:18; Hearing Tr., (Day 7), 16 July 2024, pp. 80:15–90:13. See also, Pakistan’s Post-Hearing Submission dated 1 November 2024, paras. 2.6–2.29.

⁴ See, e.g., Letter No. WT(16)/(2201-A)/PCIW dated 5 November 1968 (P-0649.0137); Letter No. F.4(1)/66-IC dated 24 December 1969 (P-0649.0163); Letter No. WT(16)/(2453-A)/PCIW dated 18 April 1970 (P-0649.0168).

⁵ Letter No. WT(16)/(2202-A)/PCIW dated 5 November 1968 (P-0649.0136); Letter No. 4(13)/65-IC dated 10 February 1969 (P-0649.0140); Letter No. WT(16)/(2295-A)/PCIW dated 9 May 1969 (P-0649.0143); Letter No. F.4(13)/65-IC dated 9 April 1970 (P-0649.0166); Letter No. 4/13/65-IC dated 28 September 1970 (P-0649.0174); Letter No. WT(16)/(2488-A)/PCIW dated 30 May 1970 (P-0649.0171); Letter No. WT(16)/(2726-A)/PCIW dated 20 August 1971 (P-0649.0215).

⁶ See, e.g., Letter No. F.4(1)/62-IC(IT) dated 21 November 1974 (P-0649.0268); Letter No. F.4/1/62-IC(IT) dated 12 May 1976 (P-0649.0356); Letter No. WT(85)/(3567-A)/PCIW dated 26 July 1976 (P-0649.0361).

⁷ See, e.g., Letter No. F.11(2)/82-I.T/135 dated 18 May 1984 (P-0649.0500); Letter No. WT(16)/(4618-A)/PCIW dated 18 August 1984 (P-0649.0503).

⁸ See, e.g., Letter No. F.3(5)/83-I.T/227 dated 30 January 1986 (P-0649.0534); Letter No. WT(124)/(4774-A)/PCIW dated 20 April 1986 (P-0649.0543); Letter No. 3(5)/83-I.T./502 dated 20 June 1990 (P-0649.0706); Letter No. 3(5)/83-I.T./519 dated 30 October 1990 (P-0649.0723).

the Parnai HEP,⁹ the Dul-Hasti HEP,¹⁰ the Chinani HEP,¹¹ the Asthan Nalla HEP,¹² and the Uri I HEP.¹³

- 2.4 The Parties are invited to provide, on or before **Friday, 10 January 2025**, their comments on the historic practice of the Parties with respect to the calculation of maximum Pondage pursuant to Annexure D, paragraph 8(c), in light of the views expressed by the Commissioners for Indus Waters in the above-referenced correspondence. The Parties are further invited to elaborate on the extent to which their respective Commissioners for Indus Waters during these periods had previously been involved in the negotiation of the Treaty and the relevance, if any, of the involvement of such persons in the practice of the Parties in the implementation of the Treaty.¹⁴

Sedimentation and the Possible “Weaponization” of the Western Rivers

- 2.5 During the Hearing, the Court expressed interest in the relevance of reservoir sediment accumulation with respect to the potential weaponization of HEPs on the Western Rivers. In particular, the Court asked how long it would take for sedimentation to reach the sill level of the low-level outlet for reservoirs on the Western Rivers, such as the Baglihar HEP.¹⁵
- 2.6 In the neutral expert proceedings concerning the *Baglihar Hydroelectric Plant*, India submitted an expert report providing simulated reservoir bed profiles for the Baglihar HEP, which projected that sediment accumulation could begin affecting Pondage within a matter of a few years, given the manner in which the accumulation builds up as it approaches the dam.¹⁶ Pakistan did not appear to contest such potential near-term effects of sediment accumulation on Pondage during the *Baglihar* neutral expert proceedings, nor did it address in this proceeding such effects for HEPs generally on the Western Rivers.
- 2.7 The Parties are invited to provide, on or before **Friday, 10 January 2025**, their comments on the near-term effects of sediment accumulation on Pondage for HEPs on the Western Rivers, and its relevance when interpreting the Treaty’s provisions on the calculation of Pondage.

⁹ See, e.g., Letter No. 4(1)/86-I.T./485 dated 15 January 1990 (**P-0649.0695**); Letter No. WT(16)/(5138-A)/PCIW dated 14 April 1990 (**P-0649.0703**).

¹⁰ Letter No. F.10(4)/62-IT dated 3 July 1978 (**P-0649.0408**); Letter No. WT(104)/(4565-A)/PCIW dated 11 February 1984 (**P-0649.0493**).

¹¹ Letter No. F.4(7)/64-IC(IT) dated 14 March 1978 (**P-0649.0403**); Letter No. WT(14)/(4023-A)/PCIW dated 4 August 1979 (**P-0649.0425**).

¹² Letter No. 3(6)/87-I.T./392 dated 29 September 1988 (**P-0649.0628**); Letter No. WT(15)/(5021-A)/PCIW dated 5 December 1988 (**P-0649.0637**); Letter No. 3(6)/87-I.T./681 dated 11 January 1994 (**P-0649.0803**).

¹³ Letter No. 3(26)/72-I.T./450 dated 11 August 1989 (**P-0649.0669**); Letter No. WT(103)/(5082-A)/PCIW dated 7 September 1989 (**P-0649.0677**); Letter No. 3(26)/72-I.T./470 dated 27 November 1989 (**P-0649.0687**).

¹⁴ See, e.g., India’s Counter-Memorial dated 23 September 2005, *Baglihar* Proceedings (**BR-0008**), pp. 118-120, Annexure 2.6.

¹⁵ See, e.g., Hearing Tr., (Day 4), 11 July 2024, pp. 47:2–50:4.

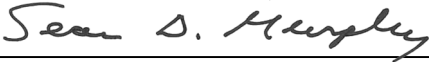
¹⁶ See, e.g., India’s Rejoinder dated 20 March 2006, *Baglihar* Proceedings (**BR-0012**), p. 102 (“The latest study carried out by DHI, Denmark also indicates that in a few years after commissioning of Baglihar Plant, the Pondage in the Operating Pool would only be about 12 MCM. Pakistan in its reply has also affirmed such conclusion on drastic reduction in the Pondage in the Operating Pool”); Danish Hydraulic Institute – Water & Environment, *Baglihar Reservoir Sedimentation Study* dated 15 February 2006, *Baglihar* Proceedings (**BR-0021**), section 4.5.5, Fig. 4.10.

- 2.8 Further, the Court remains interested in any available data (including in the public domain) regarding the actual or estimated sedimentation accumulation rates of reservoirs on the Western Rivers, including the Baglihar HEP, and the resulting loss in the volume of Pondage and controllable storage.¹⁷ For example, the following documents in the public domain have recently come to the Court's attention:
- 2.8.1 Kumar, et al., 'Sediment Budget and Sediment Trap efficiency of Baglihar Hydroelectric project Reservoir – a calibrated model for prediction of longevity of the Dam' (2021) 38(1) *Journal of The Indian Association of Sedimentologists* 65; and
- 2.8.2 Muhammad Nouman, Analysis of Silt Transport, Deposition and Its Management in the Reservoirs Built on Run-off the Rivers Case Study: Modeling of Silt Flushing through Sluice Gate in Baglihar Hydroelectric Generation Plant, India (Thesis, 2020).
- 2.9 The Parties are invited to provide, on or before **Friday, 10 January 2025**, their comments on the available data (including in the public domain) on the actual or estimated sedimentation accumulation rates of reservoirs on the Western Rivers, including the Baglihar HEP.

3. Leave to Apply

- 3.1 Any Party has leave to apply to the Court for a variation of this Order, giving particulars of the variation sought and the reason for it.
- 3.2 Any Party may, at any point in these proceedings, request that the Court convene a conference with the Parties to address any procedural aspect of these proceedings. The Court shall arrange to confer with the Parties in person or by videoconference, according to the circumstances.

Dated: 6 December 2024



Prof. Sean D. Murphy
Chairman
On behalf of the Court of Arbitration

¹⁷ See, e.g., Gregory L. Morris, 'Reservoir Sedimentation and Sustainable Development in India: Problem, Scope and Remedial Strategies', Proceedings of the 6th International Symposium on Reservoir Sedimentation, 1995, New Delhi (**KR-0092**), Annex IN-137, pp. 2974–2975.

ANNEXURE A: Missing and/or Incomplete Documentation

No.	DOCUMENT	DESCRIPTION
1.	Letter No. WT(14)/(49-A)/PCIW dated 25 July 1961 (referenced in P-0649.0026)	Referenced communications missing from the record
2.	Letter No. F 16(13)/61-IT dated 27 January 1962 (referenced in P-0649.0012)	Referenced communications missing from the record
3.	Letter No. F.4(1)/66-IC dated 9 September 1968 (referenced in P-0649.0137; P-0649.0163; P-0649.0491)	Referenced communications missing from the record
4.	Letter No. F.4(13)/65-IC dated 11 September 1968 (referenced in P-0649.0136; P-0649.0174)	Referenced communications missing from the record
5.	Letter No. F.4(10)/63-IC dated 6 October 1970 (referenced in P-0649.0182; P-0649.0183; P-0649.0197)	Referenced communications missing from the record
6.	Letter No. F.16(4)/62-I.T/78 dated 8 November 1983 (referenced in P-0649.0493; P-0649.0513)	Referenced communications missing from the record
7.	Letter No. WT(86)/(4692-A)/PCIW dated 6 June 1985 (referenced in P-0649.0521)	Referenced communications missing from the record
8.	Letter No. WT(15)/(5002-A)/PCIW dated 5 November 1988 (referenced in P-0649.0672)	Referenced communications missing from the record
9.	Letter No. WT(103)/(5006-A-A)/PCIW dated 22 November 1988 (referenced in P-0649.0645)	Referenced communications missing from the record
10.	Letter No. F.3(8)/88-I.T./447 dated 29 July 1989 (referenced in P-0649.0679)	Referenced communications missing from the record
11.	Letter No. 3(4)/88-I.T./511 dated 31 August 1990 (referenced in P-0649.0722)	Referenced communications missing from the record
12.	Letter dated 4 April 2006 (ICIW/PCIW) (referenced in P-0054)	Referenced communications missing from the record
13.	Letter No. 3/1/03-I.T./1796 dated 17 June 2010 (referenced in P-0649.1291)	Referenced communications missing from the record
14.	P-0649.0569, Letter No. 4(9)/83-I.T/272 dated 28 October 1986	Incomplete Documentation (enclosure missing)
15.	P-0649.0140, Letter No. 4(13)/65-IC dated 10 February 1969	Incomplete Documentation (pages missing from enclosure)
16.	P-0649.0706, Letter No. 3(5)/83-I.T./502 dated 20 June 1990	Incomplete Documentation (page missing from enclosure)
17.	P-0647.43, Record of the 43rd Meeting of the Permanent Indus Commission, 26-30 April 1976	Incomplete Documentation (pages 16 onwards missing / incorrectly scanned)