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EXTRAORDINARY

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PART I : SECTION (I) — GENERAL

Government Notifications

L.D.-B. 4/81.

THE NATIONAL ENVIRONMENTAL ACT, No. 47 OF 1980

REGULATION made by the Minister of Environment and Natural Resources under paragraph (r) of Sub-section (2), Section 32 of the National Environmental Act, No. 47 of 1980 read with paragraphs (a), (e) and (g) of section 10 of the aforesaid Act.

RUKMAN SENANAYAKE,
Minister of Environment and Natural Resources.

Colombo,
10th April, 2003.

Regulation

1. These regulations may be cited as the National Environmental (Upper Kotmale Hydro-power Project—Monitoring) Regulations No. 1 of 2003.

2. For the implementation of the Upper Kotmale Hydro-power Project (hereinafter referred to as the "Project") comprising of the area specified in Schedule I hereto, the specific environmental monitoring duties in the form of mitigatory measures as are specified in Schedule II hereto, shall be carried out by the Project Proponent. Such duties, which involve the implementation and compliance with the specified mitigatory measures, shall be performed in accordance with the provisions of the National Environmental Act, No. 47 of 1980 and such implementation shall be supervised by such persons as is set out in Schedule II.

3. Any Project Proponent who fails as is required by regulation 2, to implement or comply with any mitigatory measure as is hereinafter specified shall be guilty of an offence in terms of Section 31 of the Act and shall be punished with accordingly.

4. The Central environmental Authority shall appoint for the purposes of ensuring the implementation of these regulations, a Monitoring Committee consisting of -

- (a) a representative of the Ministry of Power and Energy ;
- (b) a representative of the Ministry of Plantation Industries ;
- (c) a representative of the Ministry of Environment and Natural Resources ;
- (d) the Chief Secretary, Central Provincial Council ;
- (e) the District Secretary, Nuwara Eliya ;
- (f) the Divisional Secretary, Nuwara Eliya ;
- (g) the Divisional Secretary, Kotmale New Town ;
- (h) a representative of the Forest Department ;
- (i) a representative of the Irrigation Department ;
- (j) a representative of the Department of External Resources ;
- (k) a representative of the National Planning Department ;
- (l) a representative of the Department of Agriculture ;
- (m) a representative of the Urban Development Authority established under the Urban Development Authority Law, No. 41 of 1978 ;
- (n) a representative of the Geological Survey and Mines Bureau established under the Mines and Minerals Act, No. 33 of 1992 ;
- (o) a representative of the Mahaweli Authority of Sri Lanka established under the Mahaweli Authority of Sri Lanka Act, No. 23 of 1979 ;
- (p) a representative of the Ceylon Tourist Board established under the Ceylon Tourist Board Act, No. 10 of 1966 ;
- (q) a representative of the Central Environmental Authority established by the National Environmental Authority Act, No. 47 of 1981 ;
- (r) the Chairman, Talawakale Urban Council ;
- (s) the Chairman, Kotmale Pradesiya Sabha ;
- (t) the Chairman, Nuwara Eliya Pradesiya Sabha ;
- (u) a representative of the Water Resources Secretariat ;
- (v) a representative of the National Building Research Organisation ;
- (w) a representative of the Environmental Foundation Ltd.

5. For the purposes of this regulation -

"Act" means the National Environmental Act, No. 47 of 1980 ;

"Central Environmental Authority" means the Central Environmental Authority established in terms of section 2 of the National Environmental Act, No. 47 of 1980 ;

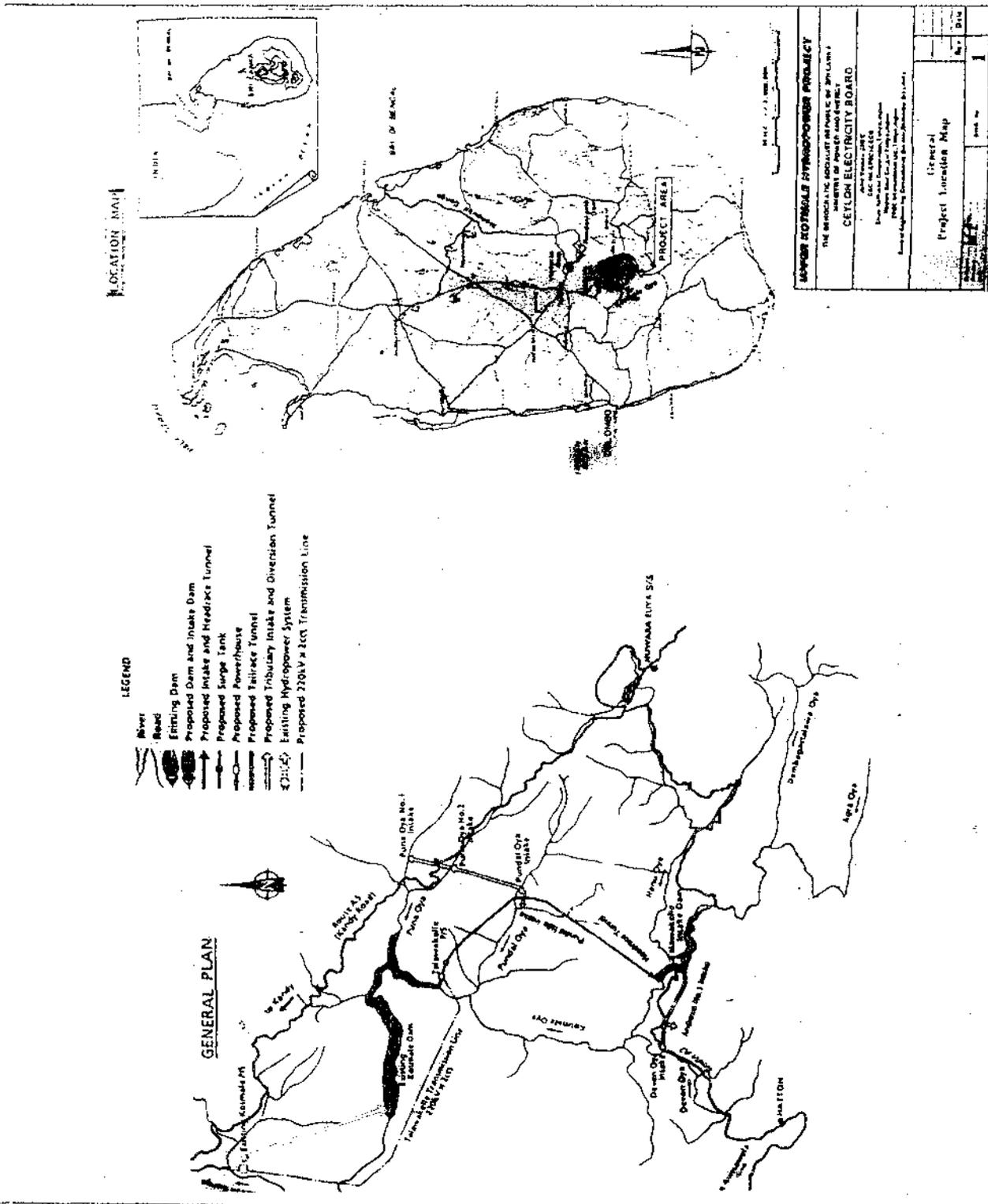
"Project Proponent" means the Ceylon Electricity Board established under the Ceylon Electricity Board Act, No. 17 of 1969 ;

"Urban Development Authority" means the Urban Development Authority established under the Urban Development Authority Law, No. 41 of 1978.

SCHEDULE I

(Regulation 2)

AREA COMPRISING THE UPPER KOTMALE HYDRO-POWER PROJECT



SCHEDULE II

(Regulation 2)

MITIGATORY MEASURES TO BE IMPLEMENTED BY THE PROJECT PROPONENT

1. *Waterfalls and Stream Flow.*— (a) The Ministry of Irrigation and Water Management shall ensure that the following measures be implemented and complied with in relation to the under-mentioned waterfalls, in order to preserve and maintain the aesthetic values of such waterfalls : -

- (i) *Devon Falls.*— In order to maintain a continuous flow over the waterfall, a total volume of 18,000m³ of water shall be released, per day, for a minimum of ten (10) hours daily between sunrise and sunset, provided that such quantity of water shall be available from the natural flow of the stream : The flow of water from the catchment as is not impounded by the Project shall be permitted to run over the falls at all other times.
- (ii) *St. Clair Falls.*— In order to maintain a continuous flow over the waterfall, a total volume of 47,250m³ of water shall be released, per day, for ten (10) half hour periods, daily between sunrise and sunset, provided that such quantity of water shall be available from the natural flow of the stream : The flow of water from the catchment as is not impounded by the Project shall be permitted to run over the falls at all other times.
- (iii) *Puna Oya Falls.*— Two streams commonly referred to Puna Oya, one flowing through the Palagolla Grama Niladhari Division and the other flowing through Wedamulla Estate have their confluence at the location of this waterfall. The stream flowing through the Palagolla Grama Niladhari Division shall be utilised for this Project to a maximum of 79 percentum of the area of the catchment upstream of this waterfall. The other stream shall be permitted to flow unimpeded at all times over this waterfall.
- (iv) *Ramboda Falls.*— A maximum of 58 percentum of the area of the catchment upstream of this waterfall shall be utilised for this Project, and the balance flow within the catchment shall at all times flow unimpeded over this waterfall.
- (v) *Dunsinane Falls.*— No impoundment shall be permitted unstream of this waterfall at any time.

(b) From the date of the commencement of this Project, the Project Proponent shall under the supervision of the Central environmental authority, collect and maintain as frequently as possible, but not less frequently than once in every month, a complete standardized photographic record of the waterfalls listed above so that a continuous assessment can be objectively carried out (against flow and weather regimes) of the visual appearance of each individual waterfall.

2. *Watershed Management.*— The Watershed Management Plan for the Upper Kotmale Catchment area should be prepared by the Ceylon Electricity Board with a view to mitigating the impacts arising from the project on the environment such as landslides within the area comprising the Project. The Watershed Management Plan shall focus on afforestation within the area with indigenous species. The Ministries in charge of the subjects of water management, forestry and environment shall also approve the plan. The implementation of this plan shall commence on or before January 1, 2004. The present Upper Watershed Management Project of the Ministry of Environment shall supervise the implementation of the plan.

3. *Biodiversity.*— The Project Proponent shall carry out an assessment of the bio-diversity in the streams impacted by the Project. Greater consideration should be placed on and possible threat to the survival of any species presently considered to be endangered found within the project area and any species that are endemic to the streams impacted by the Project. The Central Environmental Authority shall be responsible for setting out the terms of reference for this assessment and the details to be adhered to in its execution. Where any such assessment indicates that, that project poses a threat the species considered to be endangered or who are endemic to the streams impacted by the Project, the Project Proponent shall set in place remedial or mitigatory action. This remedial or mitigatory action shall be carried out under a plan which shall be approved and monitored by the Department of Wild Life and The Project Proponent shall cause records to be maintained of all activities being carried out in the area and product the same for inspection whenever the same is required.

4. *Water-table.*— The Monitoring Committee shall be responsible for the preparation of a monitoring programme for the water table in the area. The plan shall be prepared under the supervision of the Central Engineering Consultancy Bureau and be approved by them prior to its implementation. The project shall monitor the implementation of the programme. In the event any de-watering occurs as a result of any project activity, the Project Proponent shall make compensation in the full amount of the loss, as determined by the Chief Government Valuer, to the affected landowners for any loss in respect of their agricultural productivity in relation to these lands.

5. *Landslide Mitigation.*— The Project Proponent shall in consultation with the Monitoring Committee, the Central Environmental authority, the National Building Research Organisation and the Geological Survey and Mines Bureau adopt a plan to mitigate as far as possible the risk from landslides in known high risk areas within the area comprising the project and set out safeguards to minimise such risk. These measures shall be implemented as and when the need to do so arises. A geological information base shall be maintained of all this information in order to prevent as far as possible all danger from such risks. The Monitoring Committee shall approve and supervise all action being taken in this regard.

6. *Excavated materials.*— All excavated materials including tunnel muck shall as far as possible be used in the construction of landfill land road works, which are associated with the project. Care must be taken by way of adequate safeguards being put in place to prevent erosion and washing away of any of this material into the water ways within the Project. Any balance material shall be disposed of in an environmentally safe manner in consultation with and under the supervision of the Monitoring Committee and such implementation shall be to the satisfaction of the Central Environment Authority.

7. *Social Responsibility.*— The Project Proponent shall make available any available reservoir within the project area for the purposes of day to day activities, recreational tourism and inland fisheries. These activities shall be carried out in accordance with plans approved by the Ministry of Housing and Plantation Infrastructure, and in accordance with the provisions of the relevant local government legislation.

The Project Proponent shall provide all necessary amenities to the project area and all houses and other buildings necessary for life of the community in accordance with plans approved by the relevant local authority and the Urban Development Authority (established under the Urban Development Authority Law, No. 41 of 1978.) and the National Involuntary Resettlement Project of the Ministry of Lands.

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