

# Diversion of Protected Areas: Role of the Wildlife Board

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Between 1998 and 2008, the standing committee of the National Board for Wildlife considered 244 cases for diversion of protected areas. It approved diversion covering 2.88% of the area proposed, while rejecting a shift in a smaller area (0.87%). The rest of the area proposed for diversion still awaits a decision. The board has been meeting infrequently and the decision-making process has been slow.

Official statistics of the government of India indicate that 4.8% of the country's land area is protected for the specific purpose of wildlife conservation. Legally recognised under the Wildlife Protection Act (WLPA 1972, amended 2002), there are currently 661 protected areas (PA) in the country. These include 99 national parks, 515 wildlife sanctuaries, 43 conservation reserves and four community reserves (MOEF 2009). Prior to the introduction of the last two categories, our PA system offered little opportunity to manage different landscapes in creative ways based on an assortment of priorities. Even now, it is highly limited compared to the PA systems in some countries in Africa and Latin America, where seven to eight categories of PAs exist, ranging from "strictly protected" to multiple-use areas, based on different systems of governance and land use.

The purpose of this article is to comment upon the procedures that have evolved for the diversion<sup>1</sup> of PA land since the enactment of the WLPA. We focus on the role of the expert body, the National Board for Wildlife (NBWL), in these procedures, on the basis of its functioning in the last decade.

## Are All PAs 'Vulnerable'?

The operational word in the act is "protection" and the law explicitly states that it will not allow any destruction, exploitation or removal of any wildlife (including forest produce) or the diversion, damage or destruction of the protected habitat for wild animals. The method of implementation of these clauses of "protection" is based on a set of regulatory and judicial processes that evaluate proposed activities as being "destructive", "exploitative" or "damaging" before they are granted or rejected permission. In effect, the clauses of the WLPA do not completely put out of bounds any activity whatsoever, within a PA, i e, there are no "banned" or totally prohibited activities.

In the case of wildlife sanctuaries, the procedure entails seeking the permission of the chief wildlife warden (CWLW) of the particular state where the sanctuary is located. However, the CWLW has to consult the concerned State Board for Wildlife (SBWL) (Section 29) before a particular permission is granted. For national parks, the consultation needs to be with the NBWL and its standing committee which has been delegated several tasks of the NBWL (Section 35 (6)). It is important to know that prior to 2002 the NBWL was referred to as the Indian Board for Wildlife (IBWL). Its composition and powers underwent a change in 2002 when the WLPA was amended. However the NBWL was notified only in 2003. Like the IBWL, the NBWL is also chaired by the prime minister of India. The WLPA amendment also stated that the NBWL would have the discretion to constitute a standing committee to which it can delegate specific tasks and duties. Since then the NBWL's standing committee has also been functional. In addition to areas within the PAs, any project requiring environmental clearance (under the Environment Impact Assessment Notification, 2006) or any activity within 10 kilometres of a national park or sanctuary needs the permission of the NBWL. Other than these requirements of law there are a range of judicial orders which also determine the procedure for permissions to use PA land. These are discussed in the last part of the article.

The processes followed for grant of permission are equally applicable to any PA no matter what degree of protection it may enjoy. This implies that all PAs are almost equally susceptible to changes in the economic climate and policy shifts that influence conservation and resource use. An analysis of the implementation of the diversion of PA land over a decade demonstrates this. The implementation usually involves a case-by-case investigation of every proposed activity, a prediction of its impacts and finally the grant or rejection of permission for any proposed use of PA land. As there are no standards for levels of impacts that may be considered acceptable, as in the case of pollution norms, the decision-making on what activities to allow or prohibit in a PA are completely in the

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realm of subjective notions of degradation and damage. The only standardisation that the WLPA has achieved is in terms of the procedure that is to be followed to seek permissions for activities.

During the period from 1998 to 2008, the standing committees of the IBWL/NBWL considered 244<sup>2</sup> cases for diversion. These included proposals for diversion of PAs from 20 state governments. Out of

**Table 1: Number of PAs under Consideration for Diversion in Various States**

State	Number of PAs Considered (1998-2008)	Number of Times Proposals Were Considered by IBWL/NBWL
Andhra Pradesh	7	17
Andaman and Nicobar Islands	1	1
Arunachal Pradesh	1	1
Assam	3	3
Bihar	2	2
Chhattishgarh	1	1
Goa	2	3
Gujarat	6	12
Haryana	2	4
Himachal Pradesh	5	8
Jharkhand	2	2
Jammu and Kashmir	6	11
Karnataka	6	9
Kerala	3	3
Madhya Pradesh	10	24
Manipur	1	1
Maharashtra	7	9
Orissa	3	5
Rajasthan	16	58
Sikkim	2	3
Tamil Nadu	4	5
Uttarakhand	5	32
West Bengal	3	6
Total	98	

Source: Minutes of the meetings of the National Board for Wildlife (1998-2008).

these 20 states, the PAs of Rajasthan were considered 58 times for diversion. The minutes of the board's meetings indicate that during these 58 instances, the diversion of land in the Desert National Park was discussed 19 times. The Desert National Park, covering an area of 316 sq km, is the habitat of the Great Indian Bustard, identified as "highly endangered" by the important bird area database.

The PAs in the state of Uttarakhand were listed for discussions before the IBWL/NBWL standing committee on 32 occasions. These included discussions on the Askot Musk Deer Sanctuary on 12 occasions and the Rajaji National Park on 11 occasions.

The states of Madhya Pradesh, Andhra Pradesh, Gujarat and Jammu and Kashmir follow with 24, 17, 12 and 11 proposals, respectively. The rest of the states account for less than 10 proposals (Table 1).

### Development Demands on PAs

As mentioned earlier, during the 10-year time period, the standing committees of the IBWL/NBWL considered 244 cases from various sectors like road construction, dams, irrigation and mining. In the years 2002 and 2008, the IBWL/NBWL considered almost half these cases (47 in 2002 and 68 in 2008). During both these years, the standing committee met thrice each year.

However, it is important to note that the functions of the board go beyond reviewing proposals for diversion of PA. They have other important functions relating to policy formulation, implementation, budget allocation for wildlife schemes and conservation. These might include the wildlife action plan, or amendments to the wildlife law or review of schemes and programmes already underway in the country. Their meetings are also a forum to deliberate upon these roles and coordinate next steps on each one of these.

An analysis of the minutes of the meetings of the board reveal that the year 2002 was one of the most active years for the committee. As a result of the three meetings held that year, the maximum number of cases were both granted clearance and rejected. The NBWL committee approved 11 and rejected 14 cases. The approval of 11 cases meant that 1,078 hectares<sup>3</sup> (ha) of PA land was approved for other uses. The rejected proposals add up to 2,330 ha.

After 2002, the standing committee members rejected one case each in 2003, 2004 and 2005. It approved two cases in 1998, nine in 2003, one in 2005 and two in 2007. However, the year 2007 saw the standing committee approve the largest area of PA land for non-forest purposes. A total of 6,453 ha was approved for just two instances. One of these led to the denotification of 4,453 ha of Saraswati Wildlife Sanctuary in Haryana. The other instance involved the diversion of 2,000 ha for uranium mining in Chital Nidigul Reserve Forest in Andhra Pradesh.

The overall status of clearance of PA land for the period 1998-2008 is the following: diversion of 7,949 ha of PA land has been approved and the use of 2,399 ha of PA land has been rejected. Out of the total land approved, 4,453 ha was for denotification of PAs, 2,102 ha was cleared for mining, 625 ha for other projects (transmission lines, wind projects, etc), 271 ha for purposes of rehabilitation, 237 ha for dam projects, 170 ha for road projects and 90 ha for construction projects.

The data on the proposals which have been rejected clearance reveals interesting observations. As per the minutes of meetings, the standing committee has not rejected any mining project in the 10-year period from 1998 to 2008. It has rejected proposals seeking 446 ha for dams, 210 ha for rehabilitation, 1.9 ha for roads and 42 ha for other projects. The maximum area rejected is for construction projects proposals such as townships and real estate development projects, i.e., 1,699 ha.

### A Different Clearance Process

Out of the 244 cases considered by the standing committee of the IBWL/NBWL between 1998 and 2008, 25 cases were approved, 17 rejected and 202 cases were kept pending<sup>4</sup> for decision. These proposals were for the non-forest use of 2,75,875 ha<sup>5</sup> within PAs. Out of this total area, the standing committee approved 7,949 ha for 25 cases. This accounts for 2.88% of the total area of 2,75,875 ha for which data is available in the minutes of the meeting. For the same period, the standing committee rejected 2,399 ha for diversion, which amounts to 0.87% of the total proposed PA land for diversion.

However, the decision on the area of 2,65,528 ha + 47 km has been pending before the standing committee. Despite the large number of cases that are on hold for final decision, the rate of diversion of PA land, that are supposedly under the strictest protection, is still more than the rate of rejection. The rate of approvals being higher than the rate of rejections is common to other environmental regulations too, such as the Environment Impact Assessment (EIA) and Coastal Regulation Zone (CRZ) notifications (issued under the Environment Protection Act, 1986) and the Biological Diversity Act. The liberal

**Table 2: Diversion of PAs from 1998-2009**

Year	No of Meetings	No of Projects Considered	Total Area Considered (Ha)	No of Projects Cleared	Area Cleared (Ha)	No of Projects Rejected	Area Rejected (Ha)	No Left Pending*
1998	1	2	4225	2	0.42	0	0	0
1999	0	0	0	0	0	0	0	0
2000	0	0	0	0	0	0	0	0
2001	0	0	0	0	0	0	0	0
2002	3	47	5,185.7935	11	1,077.841	14	2,329.95	22
2003	2	21	43,967.658	9	404.63	1	19.503	11
2004	2	8	858.7422+ 47 km	0	0	1	49	7
2005	2	38	6,601.2	1	12.68	1	0.0604	36
2006	3	19	9,541.5934	0	0	0	0	19
2007	1	41	16,569.78	2	6,453	0	0	39
2008	3	68	1,93,149.45	–	0	–	0	68
2009	4	46	18,140+600 metre+16/10 km	29	1,935.1	6	244.595	10
Total	21	290	2,94,014 ha+ 47km+16/10 km+ 600 metre	54	9,883.67 12+16/1 0 km	23	2,643.11 04+600 metre	212

(i) \*The total area of pending projects has not been included in this year-wise table. This is primarily because among pending projects, it is difficult to ascertain whether a certain area has been pending for a particular year or has been carried over for the last two-three years. The figures available in this analysis are of the total amount of area which continues to be pending for clearances before the standing committee of the NBWL.

(ii) The area figures are as mentioned in MoEF records.

implementation of environment laws which favour the grant of clearance to development projects and allow them access to sensitive environments has been a cause for concern among environmental groups and communities facing the impacts of these projects.

However, what is unique about the PA related clearance process when compared to the other regulatory regimes related to environment and forests is its relatively slow pace.

The standing committee of the NBWL has met for a maximum number of four times in the year 2004. This is very less when compared to the two-day long monthly meetings each of the seven sectoral expert appraisal committees (EACS) for the grant of environment clearance (in fact, the sectors of mining and construction projects have multiple committees since the work is too much for a single committee to handle).

The infrequent meetings of the NBWL might be due to the fact that the NBWL is chaired by the prime minister. It is a politico-bureaucratic body with sectoral experts. This is different from the clearances, say, under the EIA where the body of experts recommending clearances essentially comprises a set of scientists and professionals. Getting a multiple-layered and multiple-interest group to meet and take decisions has proved to be a slower process than the

expert group that meets on a scheduled date and time every month.

Further, the NBWL minutes indicate that non-official members bring in new and varied considerations into the discussion regarding PA diversion or denotification. In many cases, specific species such as tigers or specific ecosystems that may be endangered are the centre of discussions. When compared with the discussions of the EACS, the minutes of these meetings indicate that the meta-narrative of economic growth is challenged and sometimes displaced by one of conservation.

**Layers of Protection**

The multilayering of the clearance process and the involvement of the executive, judiciary and of the state and central governments is perhaps one of the foremost reasons why PA diversion processes have not been “streamlined” as much as other regulations. As per the minutes of the NBWL meetings, 2,65,528 ha + 47 km of land is pending permission for diversion. Apart from the SBWL and NBWL permission (as mentioned in the first part of this article), the use of PAs for development projects also require additional layers of approvals. This is unlike an instance where a reserved forest or private forest involves only the procedures under the Forest Conservation Act (1980) or an

environment clearance, where procedures specified under the Environment Impact Assessment Notification (2006) is all that is needed for grant of clearance.

If a project involves the non-forest use of a PA, it also attracts the provisions of the order (14 February 2000) issued under the *T N Godavarma Thirumulpad vs Union of India and Ors* (Writ Petition 202/1995). The latter is an ongoing case in the Supreme Court which has had far-reaching consequences in determining the nature of forest management in the country. This order bans the removal of dead, diseased or wind fallen trees, drift wood and grasses, etc, from any national park, game sanctuary or forest. Therefore, any activity in a PA that amounts to such removal entails seeking permission from the Supreme Court.

However, the Godavarma case is not applicable when a project requires de-reservation/denotification of the PA land. Dereservation/denotification means that it is not just that the PA or reserved forest land that is being used for non-forest purpose, but that the legal status of the land will undergo a change. The Supreme Court has another ongoing case which comes into play here. This is the *Centre for Environment Law (CEL) vs Union of India and Ors* (Writ Petition 337/1995). This case is essentially related to the issue of settlement of rights of communities in national parks and sanctuaries, and also deals with other issues as mentioned above, which relate to the WLPA. The CEL bench had issued an order on 13 November 2000 which mandated that no dereservation of forests/sanctuaries/national parks shall take place, without the case being heard by the Supreme Court.

Over the years, the practice of the Supreme Court has been to refer cases for use of PA land for diversion, denotification

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or dereservation to the NBWL. Therefore it has been observed that state governments first approach the NBWL (rather than wait for the Supreme Court to forward the case) for the use of a sanctuary or national park land before the case is presented before the Supreme Court.

Since 2006 (effective since January 2008), another critical step has been added for anyone seeking to use PA land. As per the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act (2006), no modification of rights or relocation from a sanctuary/national park can take place without the consent of local communities. In effect, this means that denotification, dereservation or even a diversion of the originally defined use is not possible if the process of claiming rights under the Forest Rights Act is incomplete. However, it is not clear if this would apply to the entire PA, or only to the forest lands within it.

This complex and layered clearance process has had a role to play in the slower clearance/approval rate for PA land as compared to the other regulatory mechanisms of environment and forest clearance.

### Was 2009 Any Different?

In 2009, the new minister of state (independent charge), Jairam Ramesh took over the helm of affairs at the MoEF. He has since then promised better implementation of environmental laws.

In 2009, four meetings of the standing committee of the NBWL took place in May, July, September and December. It received 46 proposals, of which approvals were granted for 29 cases, rejections to six proposals and 11 proposals are pending decision. On an overall note, the percentage of approvals and rejections indicate a shift from the pattern observed in the previous years. The approvals amount to 64.44% and the rejections constitute 13.33% of the total proposals received in 2009.

In 2009, the NBWL considered proposals for the diversion of 1,60,838 ha.<sup>6</sup> Out of this, 1,935 ha were approved for non-forest purposes and 245 ha were rejected. An area of 1,58,661 ha was pending decision as on March 2010. This means that 1.2% of the PA land has been approved for diversion in 2009 and 0.15% has been

rejected by the committee for diversion. About 98.65% of area was pending decision as of March 2010.

In 2009, out of 29 cleared proposals, the committee had approved 312 ha of PA land for a limestone mining plant within 10 km boundary of the Rajiv Gandhi Wildlife Sanctuary in Andhra Pradesh, 65 ha for three roads passing through Gangotri National Park, a tiger habitat, and the submergence of 1,016 ha of forest for a dam at Narasimha Wildlife Sanctuary in Andhra Pradesh, home to the critically endangered Jerdon's Courser (MoEF 2008). Proposals approved also include diversion of 242 ha of forest land for transmission lines and 21 ha for an underground oil pipeline at the Wild Ass Sanctuary in Gujarat, only home to the Indian Wild Ass. Diversion of forest land for a high-power transmission line by the Power Grid Corporation has been approved in Chandaka Wildlife Sanctuary – home to elephants, barking deer, sloth bears and leopards. Diversion of forest land for road-widening by the Border Roads Organisation has been approved in Askot Musk Deer Sanctuary – home to the highly endangered musk deer. In Rajasthan, 70 ha of land have been diverted for rehabilitation at the Nahargarh Sanctuary (MoEF 2008).

Interestingly, out of the six rejected cases, five were road projects. These were 240 ha of PA land in the Kachchh Desert Wildlife Sanctuary in Gujarat, 26 ha (two projects of 13 ha) in the National Chambal Ghariyal Sanctuary (Rajasthan), nine ha in the Nidgul Reserve Forest, Nagarjunasagar-Sirailam Tiger Reserve (Andhra Pradesh) and six ha in Karnala Wildlife Sanctuary (Maharashtra). The sixth project was for mining, proposing the use of 600 metres of land from Netravali Wildlife Sanctuary (Goa).

Figures for diversion between 1998 and 2009 show that maximum number of cases were cleared in 2009. However, in terms of the total land area diverted, it stands second after 2007 when 6,453 ha was approved for just two projects (see Table 2, p 20). It seems that in relation to the cases coming up before the NBWL, larger proposals have remained pending or have run into rough weather while smaller proposals have found favour with the committee members.

### NOTES

- 1 In this article, we use the word diversion to mean the use of PA land for various purposes such as development projects, rehabilitation and so on, which might or might not require its denotification or dereservation. The section "Layers of Protection" in this article explains the legal meaning of these three terms.
- 2 This is based on information provided by the ministry of environment and forests on protected areas for the period 1998-2008 on RTI application.
- 3 All figures for area in this section are rounded off to whole numbers.
- 4 The official records like minutes of meetings do not indicate what has been done with pending projects. The NBWL might ask for more clarifications from the state or any other agency, or the project may not come back for consideration.
- 5 This does not include the area of the 28 proposals which have not been mentioned in the NBWL meeting minutes. Therefore this data has not been available for analysis. Out of the 28 cases, two cases were approved and four were rejected; thereby leaving 22 cases as pending. Further it also does not include 47 km of another proposal as it has not been possible to convert it into ha. Therefore a total of 215 proposals have been calculated for the area that has been diverted.
- 6 This does not include projects which required 600 metres and 16/10 km PA land which were also considered by the NBWL.

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