

Involuntary Resettlement Due Diligence Report

June 2016

Project Number: 47381-002

SRI: Mahaweli Water Security Investment Program

Minipe Anicut Heightening and Left Bank Canal Rehabilitation (00+000 km to 30+140 km)

Final Report

Prepared by Ministry of Mahaweli Development and Environment
Democratic Socialist Republic of Sri Lanka

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Mahaweli Water Security Investment Program

Program Management, Design and Supervision Consultant

DUE DILIGENCE REPORT 1 - Kilometre 00+000 to 30+140 - FINAL

June 2016



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DUE DILIGENCE REPORT 1: Kilometre 00+000 to 31+00 REPORT - DRAFT**Prepared for:**

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ABBREVIATIONS

ADB	Asian Development Bank
BM	Benchmark
BoQ	Bill of Quantities
CEA	Central Environmental Authority
CS	Canal Spillway
EIA	Environmental Impact Assessment
EOI	Expression of Interest
FAM	Facility Administration Manual
GBL	Geotechnical Baseline Report
GOSL	Government of Sri Lanka
GRC	Grievance Redress Committee
GRM	Grievance Redress Mechanism
IA	Implementing Agency
ICTAD	Institute for Construction Training and Development
ID	Irrigation Department
ISEWP	Improving system efficiencies and water productivity
km	Kilometre
KMTC	Kalu Ganga-Moragahakanda Transfer Canal
m ³ /s	Cubic metres per second
masl	Metres above mean sea level
MASL	Mahaweli Authority of Sri Lanka
MCB	Mahaweli Consultancy Bureau
MCM	Million m ³
MDP	Mahaweli Development Program
MIWRM	Ministry of Irrigation and Water Resources Management
MLBCR	Minipe Left Bank Canal Rehabilitation
MFF	Multitranches financing facility
MFP	Ministry of Finance and Planning
MMDE	Ministry of Mahaweli Development and Environment
MPC	Ministry Procurement Committee
MPP	Master Procurement Plan
MRB	Mahaweli River Basin
NCPCP	North Central Province Canal Project
NPA	National Procurement Agency
NWPC	North Western Province Canal
PD-MWSIP	Program Director Mahaweli Water Security Investment Program
PD-UEC	Project Director –Upper Elahera Canal
PMDSC	Program Management, Design and Supervision Consultant
PPTA	Project Preparatory Technical Assistance
PSC	Program Steering Committee
RF	Resettlement Framework
RIP	Resettlement Implementation Plan
RPC	Regional Procurement Committee
SBD	Standard Bid Documents
SIWRM	Strengthening Integrated Water Resources Management
SPS	ADB Safeguards Policy Statement (2009)
SRG	Radial Gated Spill
TO	Turnout structure

ToR	Terms of Reference
TR	Trough Structure
UEC	Upper Elahera Canal

Table of Contents

1	INTRODUCTION	1
1.1	BACKGROUND	1
1.2	BASIS FOR THIS DUE DILIGENCE STUDY	3
2	BRIEF MWSIP PROGRAM DESCRIPTION	4
2.1	UPPER ELAHERA CANAL (UEC)	4
2.2	NORTH WESTERN PROVINCE CANAL	4
2.3	MINIPE ANICUT HEIGHTENING AND LEFT BANK CANAL REHABILITATION (MLBCR)	4
3	ASSESSMENT OF POTENTIAL IMPACTS	7
3.1	INVENTORY OF ENCROACHING FARMERS	7
3.1.1	Numbers of Encroaching Farmers	7
3.1.2	Land Encroachments	8
3.1.3	Crops and Trees	8
3.1.4	Structures	8
3.2	IDENTIFICATION OF RESERVATION LANDS POTENTIALLY AFFECTED BY CONSTRUCTION	9
3.2.1	Site Accesses	9
3.2.2	Turnouts	10
3.2.3	Gabion Walls	10
3.2.4	Bridges	11
3.2.5	Canal Spillways	11
3.2.6	Dumping Sites	11
3.3	ACCESS TO WATER RESOURCES FROM CANAL	12
4	CONSULTATIONS AND DISCLOSURE	16
4.1	CONSULTATION MEETINGS	16
4.1.1	Farmer Groups Meeting – 25 February 2016	16
4.1.2	Farmers Consultation Meeting – April 8 th 2016	16
4.2	INFORMAL CONSULTATIONS IN AREAS ALONG THE STAGE 1 CANAL SECTION	16
4.3	FARMERS’ AGREEMENT	20
4.4	DISCLOSURE OF DDR FOR THE STAGE 1 CANAL SECTION	20
5	LEGISLATIVE FRAMEWORK	22
5.1	LEGISLATIVE FRAMEWORK OF SRI LANKA	22
5.2	SAFEGUARDS POLICY STATEMENT OF ASIAN DEVELOPMENT BANK (SPS, 2009)	23
5.3	DIFFERENCES BETWEEN SRI LANKA LEGISLATION AND ADB SPS 2009	24
5.4	PRINCIPLES	25
6	GRIEVANCE REDRESS MECHANISM	26

6.1	TYPES OF GRIEVANCE	26
6.2	LEVELS OF GRIEVANCE REDRESS IN THE PROGRAM	26
6.3	GRIEVANCES SUBMITTED TO DATE IN THE MLBCRP KM 0+000 TO KM 30+140	27
7	FINDINGS AND RECOMMENDATIONS	28

List of Figures

Figure 1 - Layout Map of the Mahaweli Water Security Investment Program	2
Figure 2 - Minipe Left Bank Canal Rehabilitation Project.....	5

List of Tables

Table 3-1- Number of Encroaching plots and affected people	8
Table 3-2 – Number of crops allotments.....	9
Table 3-3 - Number of Structures.....	9
Table 3-4 - Accessibility to Project structures to be constructed under Project.....	13
Table 4-1 - Summary of Informal meetings, held on 7 April 2016, along the MLBRC Km 0+00 to km 30+140.....	18
Table 4-2– Farmers’ Agreements Summary	20

List of Annexes

ANNEX A – INVENTORY SURVEY FORMAT	31
ANNEX B – INVENTORY OF ENCROACHING FARMERS	34
ANNEX C – MAPS OF SITE AND STRUTURES TO BE CONSTRUCTED.....	50
ANNEX D – CONSULTATIONS.....	55
ANNEX E – ACESS ROADS	67
ANNEX F – CONSENT LETTER AND FARMERS SIGNATURES	73

1 INTRODUCTION

1.1 Background

1. The Mahaweli River is the largest river basin in Sri Lanka, with a catchment of 10,300 km² and an average flow volume of 5,474 MCM (more than 10% of the national annual renewable water). The headwaters originate in the highlands of the wet zone, and the river flows to the northeast. It represents a large and strategically important water resource, which is being developed to meet the country's energy, water and food needs. The Mahaweli Development Program was initiated in the early 1960s with the objective of developing the water and land resources of Mahaweli River Basin and the dry zone of the northern provinces for irrigation and power generations.

2. The Mahaweli Water Security Investment Program (MWSIP) is the final stage of the Mahaweli Development Plan, a multisector development of the water and land resources of Mahaweli River Basin and North Central Province. This is the end point of an investment program that has spanned more than six decades and is pivotal in meeting national development goals of food security, social development, energy production and environmental protection.

3. The Government of Sri Lanka has received, from the ADB, an ADF Loan of USD 74 Million and USD 76 Million Loan from ordinary capital resources, and has itself contributed USD 40 Million (Total USD 190 Million), in order to support the Mahaweli Water Security Investment Program, which has been split into two phases by the Ministry of Mahaweli Development and Environment. The financing covers Phase 1 of the NCPCP, with tranche 1 also including detailed design for Phase 2 project. Through Multi-Tranche Finance Facility (MFF) modality of 3 tranches in Phase 1, financing allocation is foreseen to be approximately 453 Million USD contribution (refer to **Figure 1**).

4. The Executing Agency (EA) is the MMDE on behalf of the Government of Sri Lanka (GoSL) and the Implementing Agency (IA), responsible for day-to-day management is the Program Management Unit (PMU), based in Colombo, and Project Implementation Units (PIU) for each of the three construction implementation component Projects. The Loan agreement signed between the GoSL and the ADB, stipulates that any "Involuntary Land Acquisition and Resettlement" (LAR) safeguards issues that arise during project implementation will require a Resettlement Implementation Plan (RIP)¹ or other appropriate document showing all impacts are mitigated in accordance with the government's relevant legislation and policies, and the existing Program Resettlement Framework, and particularly with ADB's Safeguard Policy Statement (SPS) 2009 and within the legal framework of Sri Lanka. ADB will only finance projects and programs that fully comply with its SPS 2009.

5. This document focusses on the findings of due diligence investigations, conducted by the PMU and PIU, supported by the "Program Management, Design and Supervision Consultant" (PMDSC), for one such situation where a number of farmers, encroaching on canal reservation land, were identified in the Program' Minipe Stage 1 project location of kilometre 00+000 to 30+140. It was feared, that these farmers may be impacted if required to cease agricultural activities on this reservation land in order to make way for civil works contractors space for construction and access to site, although no construction would occur on that land reserve. However, this study found that the farmers have signed to voluntarily release the encroached reservation lands, if temporarily required, during the construction period. There will also be minimal project induced impacts on

¹ Resettlement Implementation Plan (RIP) is the legally accepted term in Sri Lanka for a Land Acquisition and Resettlement Plan (LARP) or Resettlement Plan (RP)

canal water resources during the two cropping seasons and the off-season periods. The report provides recommendations for the EA and contractor in order to maintain compliance in accordance with ADB SPS 2009 and within the Policies and Laws of Sri Lanka.

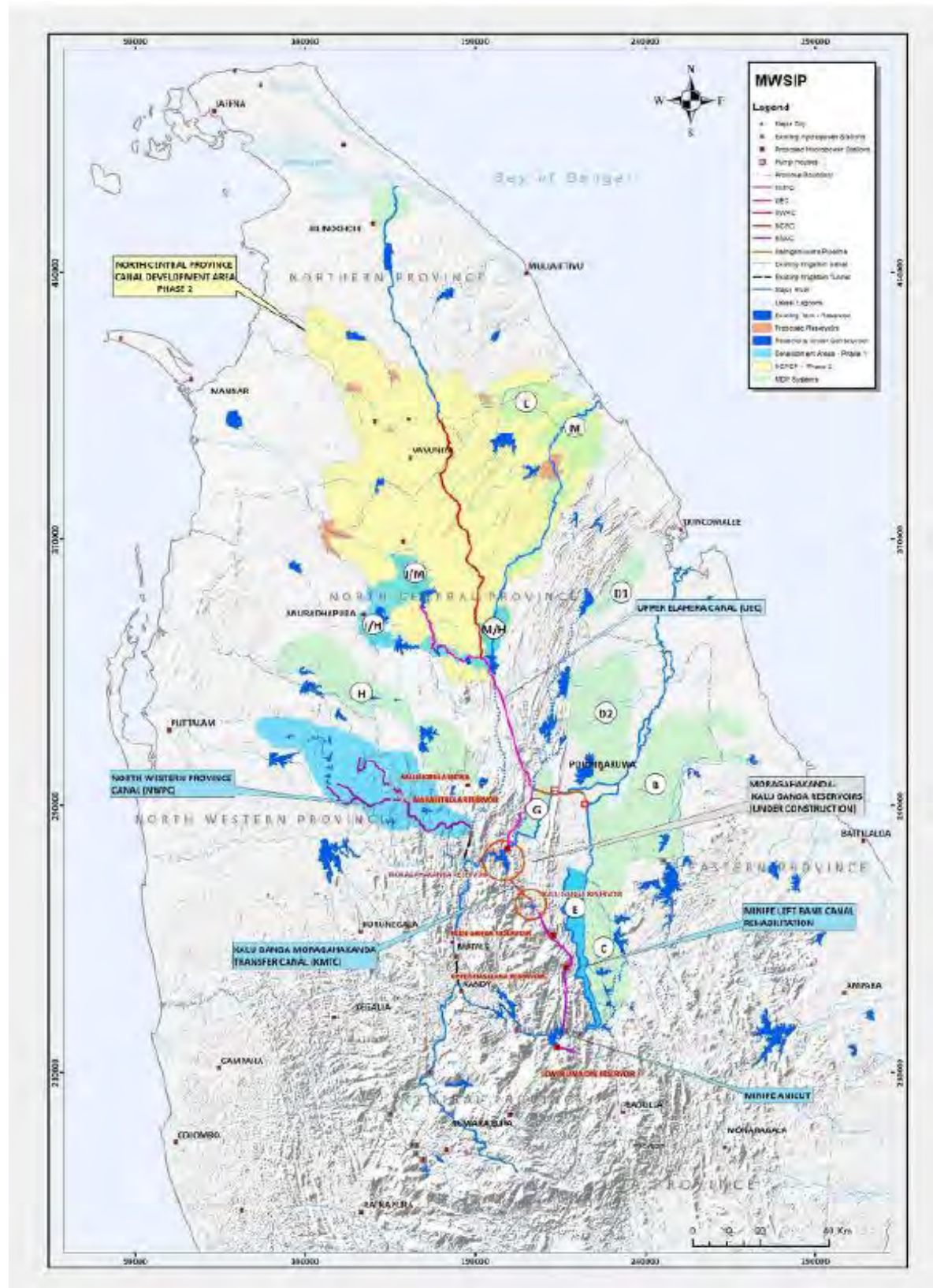


Figure 1 - Layout Map of the Mahaweli Water Security Investment Program

1.2 Basis for this Due Diligence Study

6. In accordance with the Loan Agreement requirements, the EA and IA have informed the ADB that farmers have encroached into canal reservation, conducting agricultural activities. The encroachment area appears to be outside of the canal rehabilitation footprint area along the existing canal. These encroachers do have associated adjacent titled land. It was thought that some of the reserve land areas may be required to be used at times by the contractor during construction. The Farmer Organization Leaders have given an assurance that all encroached farmers will voluntarily suspend their agricultural activities during the construction period, if they are required, in order to allow the Contractor's access to the canal and works sites. However, the Farmer Organization Leaders believed it was not their responsibility to request or enforce the encroached farmers to stop their activities in related reservation areas. Until the Due Diligence Study, there had been no direct consultation with the encroaching farmers on this matter. ²

7. The ADB has requested that an inventory of the reserve land encroachment area be conducted along the 74 kilometres of the canal in which construction will take place, and that a Due Diligence Report be prepared to determine whether or not there will be Involuntary Resettlement impacts, based on SPS 2009 and Sri Lanka laws. This first Due Diligence Report covers the key length of the Minipe Left Bank Canal from Kilometre 00+000 to Kilometre 30+140, encompassing the MLBRCP NCB – 1 Civil Works Contract. A second report will subsequently follow, covering Kilometre 30+140 to Kilometre 73+960.

8. The objectives of this Due Diligence Study are to report the results of the inventory of the encroaching farmers, identifying impacts and results of consultations; followed by making recommendations so as to fill any identified potential gaps with SPS 2009 and the Resettlement Framework policies. The Study has focused on three potential areas in which SPS 2009 IR policy may, or may not, be triggered:

- (i) The Project canal rehabilitation footprint
- (ii) The construction contractor's activities, particularly accessibility through reserve land on which farmers have encroached
- (iii) Potential for loss of access to water from the canal was also examined, given that access to public natural resources for livelihood is also another aspect of the SPS 2009 Involuntary Resettlement policy requirements that has to be considered.

² "Encroachment" in the context of this report refers to encroachment on the canal wayleave and not necessarily on the contractors' wayleaves.

2 BRIEF MWSIP PROGRAM DESCRIPTION

9. Phase 1 Program Outputs include construction of new and improved water conveyance and storage infrastructure. There are five Project Components listed under the Program as shown below, three of which involve civil works (refer to **Figure 1**), split into several International (9) and National (9) Competitive Bidding Contracts, and two of which are consultancies:

- (i) Minipe Anicut Heightening and Left Bank Canal Rehabilitation Project (MLBCRP) (Figure 2) – this report specifically relates to due diligence studies under this MLBCR.
- (ii) Upper Elahera Canal Project (UECP)
- (iii) North Western Province Canal Project (NWPCP)
- (iv) Improving system efficiencies and water productivity (ISEWP)
- (v) Systems for improving water resources management and productivity developed (SIWRM)

2.1 Upper Elahera Canal (UEC)

10. Construction of approximately 82 kilometers of canal (including 28km of tunnels) connecting the Moragahakanda Reservoir to the existing tanks of Huruluwewa, Manankattiya, Eruwewa and Mahakanadarawa. The Kalu Ganga-Moragahakanda Transfer Canal (KMTTC) under this component will include the construction of approximately 9 km of transfer canal (including 8km of tunnels) for the transfer of water between Kalu Ganga and Moragahakanda reservoirs. The civil works will be carried out through 7 international contracts – one contract under Tranche 1; three proposed in Tranche 2; and four in Tranche 3.

2.2 North Western Province Canal

11. NWPC includes the construction of 96 km of new and upgraded canals (including 940 m of tunnel) for transfer of water from the Dambulu Oya River and the existing Nalanda and Wemedilla Reservoirs to the cascade irrigation systems and Mahakithula and Mahakirula Reservoirs with a combined storage volume of approximately 26 MCM linked to the NWPC. It will be constructed through 8 civil works contracts – one national and two international in Tranche 1; and five national contracts for civil works proposed for Tranche 3 inclusion.

2.3 Minipe Anicut Heightening and Left Bank Canal Rehabilitation (MLBCR)

12. The MLBCR component of the program includes the heightening of the Minipe diversion weir (anicut) (downstream of the Rantembe dam) by approximately 3.5 meters, construction of new intake gates to the Minipe Left Bank system, construction of emergency side spillways on both the Left and Right Bank system, and rehabilitation of approximately 74km of the Left Bank system to improve conveyance and reliability of service to existing irrigated lands. All civil works contracts (one international and five National) are covered by Tranche 1 (**Figure 2**).

13. The Minipe Left Bank Canal Rehabilitation Project (MLBCRP), located in the downstream reach of the Mahaweli Ganga, with heightening of the existing concrete weir (anicut) to add upstream storage (needed to compensate for greater daily flow variations due to peaking operation of the upstream power stations) and rehabilitation of regulating structures and desilting of the main canal (**Figure 2**). This report mostly refers to this component of the project, particularly the length of canal rehabilitation covered by National Competitive Bidding 1 (NCB 1) package (Kilometre 00+00 to 30+140).

14. The MLBCR component includes five civil works packages, including one through International Competitive Bidding and four through National Competitive Bidding and one mechanical and electrical component for rehabilitation and motorization of gated structures. The MLBCR-NCB-1 Civil works contract package is due to be awarded soon. This package includes improvements along the existing canal and rehabilitation of flow regulation structures between chainages kilometre 0+000 and Kilometre 30+140.

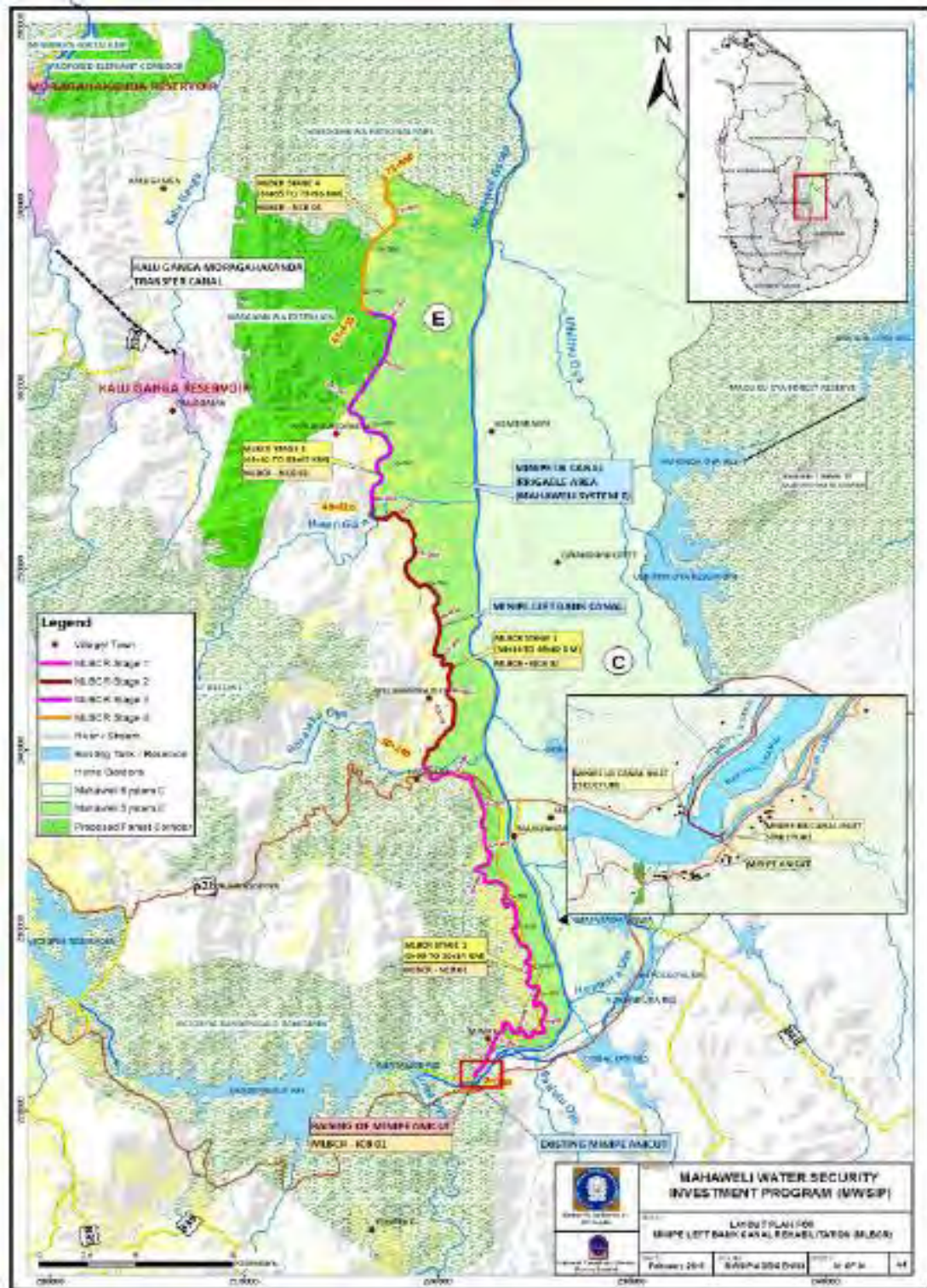


Figure 2 - Minipe Left Bank Canal Rehabilitation Project

15. The scope of this MLBCR-NCB-1 contract package, as written in bidding documents, includes Rehabilitation of Minipe Left Bank Canal – Stage 1 (0+000 km to 30+140 km). The rehabilitation works under this Contract will consist of following work items.

- (i) Clearing vegetation, water weeds in the canal bed, secondary growth in canal banks
- (ii) De-silting along the canal where necessary
- (iii) Grading, levelling, filling pot holes and gravelling the Operation and Maintenance road
- (iv) Construction of new structures: turnout structures and cross regulators
- (v) Construction of a clay curtain wall when required.
- (vi) Construction of definition walls with gabions
- (vii) Modifications and improvements to existing turnout structures, canal spills, aqueducts and siphons
- (viii) Improvements to existing bridges
- (ix) Construction of curtain walls to existing retaining walls and construction of new retaining walls
- (x) Construction of trash racks to existing siphons
- (xi) Construction of bathing steps and side drain inlets at bridges
- (xii) Improvements to existing causeway ramps

3 ASSESSMENT OF POTENTIAL IMPACTS

16. This section assesses potential impacts. Firstly, a summary is provided of the inventory of farmers and other residents that are using reservation areas. An assessment is then presented of key accessibility requirements in the occupied reservation and other areas to the construction sites and of construction activities to water resources availability.

3.1 Inventory of Encroaching Farmers

17. An inventory of assets of encroaching farmers was conducted by the MLBCR PIU and MWSIP PMU in order to quantify the potential impact of the Project on encroaching farm assets that are within the Canal Reserve area for kilometre 00+000 to kilometre 30+140.

18. The survey was conducted during the period of 26 February to 10 March 2016 led by the Project Director of MLBCR PIU, under the guidance of PMU and resettlement safeguard specialists with the assistance of farmer organizations of Minipe colonization scheme. The methodology adopted for the survey was to fill the questionnaire by the farmer leaders, who are well aware of the locations of the encroachments, their size of the lands and farmers responsible. The task was given to each farmer group leader responsible for respective turnouts who filled the form to give the necessary data and information (Annex A). The forms, completed by the farmer leaders, included all names of farmers who utilize the canal reserve. The data that was collected included:

- (i) Number of encroachments and name of the encroachers
- (ii) Extent of encroached lands
- (iii) Cropping patterns.
- (iv) No. of structures and their purposes
- (v) Farmer organizations
- (vi) Turnouts
- (vii) Cultivation seasons

19. This section discusses the baseline information inventory of encroaching farmers, that may experience impact due to the Project. Annex B also presents the results of the inventory for each individual PAP.

3.1.1 Numbers of Encroaching Farmers

20. There are 521 farmers living along the canal reserve area, although not all these farmers have encroached their farm activities into the canal reserve. The number of encroachments amounts to 498 plots being used by 494 PAPs³. There are 75 farmers who possess at least two allotments and two farmers have encroached three allotments of the reservation area. They are cultivating paddy at one allotment and farm permanent crops (trees and perennials) or buildings on other plot(s).

21. During the survey it was noticed that all encroachers are either legal land holders or their children or relatives of the scheme. Therefore, all the encroachers are settlers of the Minipe colonization scheme who are descendants of existing legitimate land holders.

³ One encroaching farmer is classified as a PAP.

22. When the reservation lands are available close to the legitimate allotments of the farmers, such lands are often occupied without the consent of the authorities in the country. This has been a normal practice throughout modern Sri Lankan history. This is most likely permitted because authorities are not keen to enforce clear reserve land unless the particular land is needed for development purposes of the government. Although this is a reason for lack of enforcement relating to land encroachment, at the same time it does not necessarily make any argument for or against compensatory requirements for land use in the project, in accordance with ADB SPS 2009.

Table 3-1- Number of Encroaching plots and affected people

	Descrip tion	Quantity	Quantity (Ha)
1	Number of Encroachments	498 plots 494 PAPs	
2	Extent of Encroaching Lands by area	Acre: 179 Rood: 2 Perch: 39.5	71.9 Ha (approximately)

3.1.2 Land Encroachments

23. The total land area encroachment amounts to 179 acres, 2 Rood and 39.5 Perch (Table 3.1 above), which is approximately 71.9 Hectares. The encroached land area includes paddy land, perennial crops / fruit trees and some structures.

3.1.3 Crops and Trees

24. The inventory recorded 414 allotments with 15 categories of crops and trees (Table 3.2), the highest number of which were 190 allotments of paddy, followed by coconut (71), banana (39), mixed cropping (22) and mango (20). The farmers earn steady income from permanent crops mostly in the form of a seasonal income, either two times or four times per year, depending upon the crop.

25. Income from paddy provides two incomes per year in the Maha (September to March) and Yala (May to August) rice cropping seasons. It has been observed that over 90% of these encroachers have other legitimate paddy lands in the same scheme, adjacent to the reserve area, which earn them substantial income.

3.1.4 Structures

26. There are 216 structures located on 207 plots in the canal reservation area (Table 3.3). Of the 216 structures, 144 are houses (one was identified as wooden structures), 20 boutiques, two stores and 50 other structures (wells, meeting halls, one bank, one temple etc). It was noted that these structures are using as residential purposes, trading purposes, storage of agricultural products as well as religious needs of the people in the area. There were also two wells constructed in the reservation lands for bathing and drinking purposes. Most of the lands on which there are structures were observed to be in geographically higher land areas, and thus, irrigation water can not be taken from the turnouts for paddy cultivation. Therefore, people use these lands for residential and other purposes. In this project section area, structures are located at least 10-15 metres or more from the canal embankment.

Table 3-2 – Number of crops allotments

Description		Quantity
1	Number of Paddy Allotments	190
2	Number of Mango Allotments	20
3	Number of Permanent Crops Allotments	19
4	Number of Perennial Allotments	2
5	Number of Coconut Allotments	71
6	Number of Mix Crops Allotments	22
7	Number of Banana Allotments	39
8	Number of Jak Allotments	11
9	Number of Breadfruit Allotments	3
10	Number of Arecanut Allotments	18
11	Number of Drumstick Allotments	1
12	Number of Pepper Allotments	13
13	Number of Lime Allotments	1
14	Number of Kithul Allotments	2
15	Number of Teak Allotments	2
Total		414

Table 3-3 - Number of Structures

Description		Quantity
1	Houses	144
2	Boutiques	20
3	Stores	2
4	Other	50
Total		216

3.2 Identification of Reservation Lands potentially affected by Construction

27. An examination of locations of structures to be constructed under NCB-1 package was conducted during a site visit by PMU, PIU and PMDSC in April 2016. These would be the key areas, where access through occupied reservation lands may be required, if it is not possible from the canal embankment road. During the visit, proposed structures to be constructed (reconstruction or rehabilitation of turnouts, definition walls, bridges and spillways) under the project were identified along with their location with information of surrounding land tenure type for accessibility. A summary of this information is presented below and in Table 3.4. Annex C presents four Maps on which the permanent, available road accesses and the project engineering structure locations are marked and Annex D are photographs of structures and road. Also assessed, were logistics in which contractors would need to move machinery and materials and execute construction.

3.2.1 Site Accesses

28. The accesses include main roads, secondary roads and car/jeep tracks. The need for involuntary resettlement will be avoided by the contractor restricting its construction activities, space and accesses as much as possible to the already existing embankment roads and tracks, as

marked on the Map (Annex C). While a number of these structures will be accessible off roads, car tracks and bund roads, there were also a number of structures, being constructed, mostly on the left hand side of the canal which, in some cases, short accesses will be required across reserve area that is being farmed and some areas of encroached reserve farmland may be required for materials stockpiling and to access the canal banks for rehabilitation. Notable from Table 3.4 and the field visit is that for all locations, the access for construction by the contractor will be through Government, reserve titled land and hence, no private land acquisition will be necessary. Farmers (95%) have signed letters which give no objection to the contractors utilising encroached land areas near the canal for construction purposes (Annex F).

29. At this stage the actual magnitude, and exact location, of encroached reserve land that the contractor might need for its access, and for what period of time, is unknown until the contract is awarded, the contractor mobilizes and prepares his construction plan. It will be a requirement that the PIU, with contractor, consult with each (100%) of the farmers on which reserve land will be used by the contractor. If there are any objections or grievances, alternative routes will need to be found or, if no alternatives are possible, the RIP processes will commence to ADB SPS 2009 requirements. No trees or structures will be impacted, otherwise the RIP process will be enacted to ADB SPS 2009 requirements.

3.2.2 Turnouts

30. Sixty-nine turnouts will be rehabilitated or reconstructed under this project. Seven of these are located close to the reservation lands, but will not impact any encroached land (Refer to Annex C Map page 1 and 4 - D1A, D1B, D2, D6B, D8B, and D12&D43). However, reconstruction or rehabilitation of other 62 turnouts may impact on encroached reservation lands, which are presently used by farmers for cultivating paddy during two seasons in the year. The construction space for rehabilitation of each turnout will affect one or two encroached reservation lands which are located one side or both sides of the turnout. The access roads are available for carry the construction materials to the sites (refer to examples in Annex D).

31. Farmers (95%) have signed letters that give no objection to the contractors utilising encroached land areas near the canal for construction contractors' use (Annex F), with the remaining 5% still being contacted since they live away from site. However, it will be a requirement that the PIU, with contractor, consult with each (100%) of the farmers on which reserve land will be used by the contractor, to ensure they still have no objection or claims. Full records will be kept on consultations and reported in PMDSC Resettlement Monitoring reports. Objections or grievances will require alternative routes to be found or RIP processes will commence.

3.2.3 Gabion Walls

32. Sixteen Definition or Gabion walls will be constructed in order to protect the banks of the canal. The materials can be transported via the main roads and canal bund road, but will also need to access the site on the right hand side of the canal, in which most of these walls will be constructed, and which do not have direct road access.

33. The construction materials and machinery will need to be stockpiled at the construction site or moved across the canal area, to avoid the building of large scale access tracks. Bidding documents require that in cases where direct access is not available from the roads and bund roads, then materials and machinery will need to be transported through the canal itself in the off-season. There are times when irrigation canal authorities will close off water supply in the canal (during off-season), which is annual practice, but time lengths and dates change each year. At this time, the communities utilize the common or household wells for their water supply requirements. During this time the contractors will be required to move their machinery and materials. Given that these

are mostly gabion placements, it is possible to send bulk materials and machinery to be stockpiled on the right bank at one or two times, with the contractor only requiring to arrange labour and smaller materials as needed to cross a flowing canal.

34. The contractor will not be permitted, without PMU/the Engineer's approval, to block canal water flow for any reason that is in addition to the regular practice by irrigation authorities. Additional time requirement for using a dry canal, disrupting canal water supply, will be in coordination with dry season closures by authorities and people within the affected areas of water supply shall be consulted. This may only be up to a maximum addition of one month (ie. 3 months from August to October). There may be a requirement for the contractor to supply water for consumption for affected communities if recharging of wells is required, but is not possible through opening the canal. Materials may be stored on the state lands in close proximity to the construction sites.

3.2.4 Bridges

35. Thirty existing vehicle and foot bridges will be rehabilitated. At each bridge rehabilitation site, there are available access roads for transport of materials and availability of state lands for the storing of construction materials. Therefore, there is no effect to the encroachments in the reservation lands from the rehabilitation of bridges (Annex D). However, during construction, the contractor must provide continuous, alternative access across the canal, in close proximity to existing crossings (in the case of walkways) and the closest routing which will be adequate for all vehicular traffic (cars, trucks etc), also providing adequate signage pointing the public through the alternative route.

36. Furthermore, similar to the situation with the gabion walls (3.2.3), the contractor will not be permitted, without PIU/the Engineer's approval, to block canal water flow for any reason that is in addition to the regular practice by irrigation authorities. Cofferdams, diversions and any other similar devices, will be used where possible. During the times when the irrigation canal authorities will close off water supply in the canal (during off-season), the contractors will be required to conduct activities that require a dry canal bed.

3.2.5 Canal Spillways

37. The nineteen existing canal spillways will be rehabilitated under this project. The access is available through the bund road for the transportation of construction materials. However, during the construction period the road shall be closed for the rehabilitation of causeways which are located across the road. Therefore, during construction, the contractor must provide continuous, alternative access in place of the blocked causeways, in close proximity to existing crossings or the closest routing which will be adequate for all vehicular traffic (cars, trucks etc). During the field visit it was found that there are quite a number of alternative roads available in the area for vehicles to use. There will be no effect to the encroachments of reservation lands on the rehabilitation of canal spill ways because they are all accessible from the canal embankment or other roads.

3.2.6 Dumping Sites

38. Two sites for temporary dumping and stockpiling of debris and excavated spoil, removed during the clearing of the canal, were identified (Annex D). The PIU has indicated it will require the contractor to stockpile excavated waste and debris on either of the two identified sites, or on the embankments of the roads⁴, without effect to roads or farmlands. If additional dumping or stockpile

⁴ It may happen the excavated material maybe useful fill in rehabilitation of the canal left side embankment, which the employer and engineers may consider if it fits the specification.

sites are required, they shall be on Government land that is compliant with the EMP and does not impact on any private or encroaching PAPs. The contractor shall be required to make reparation measures to these sites back to the pre-project state, as a minimum standard.

3.3 Access to Water Resources from Canal

39. Although encroaching farmers have assured that they will not farm the reservation areas, in the case that it is needed by the contractor, the investigation also looked into water resources access impacts for all canal water users.

40. According to PPTA studies a majority of water is used for irrigation, particularly during the two cropping seasons. However, there have been no studies of other water users (domestic, small-business, and other non-irrigation uses). Observations on site have shown the canal water is a source for household consumption (washing clothes and bathing and some human consumption) and livestock. This is during the cropping seasons and periods when the canal water is open.

41. However, Irrigation Department controls water flow through the canal. The irrigation authorities generally close the canal for repairs for an average of 3 weeks in April/May and then for 2 months in August/September, outside of the cropping seasons depending upon weather, water availability and farmers' requirements (Annex D – Minutes A). With these restrictions, it is understood that households have access to wells also for consumption needs. However, it thought that the wells may need re-charging every two to three weeks. This will impact on the contractor's movement of machinery and construction work, without using diversion mechanisms, while timing for recharging of wells will also affect people.

42. Under the environmental safeguards, a survey was requested by the PMU to be conducted to obtain information on these other canal water uses, in order to ensure that adequate amounts and quality of water resources are maintained⁵. The Environmental Management Plan and the bidding documents for NCB 1 require the contractor to:

- (i) Conduct construction and rehabilitation activities within the canal outside of the two cropping seasons.
- (ii) Ensure coffer dams and diversions are constructed during the construction, in order to allow continued water flow for those using water outside of the cropping seasons.
- (iii) Limit construction and movement of materials/machinery within the canal to the regular annual period when the canal water flow is stopped by authorities. If the contractor requires additional time, a proposal for extending the closure, by no more than 1-month (i.e., maximum 3 months) during the period August - October, and without interruption of the cropping seasons, may be considered and approved by the Engineer and client in consultation with water authorities. The contractor shall be responsible to supply potable water to the affected communities, in the event that regular recharging of wells is not practicable, in order for communities to maintain their livelihoods with as little disruption and possible.
- (iv) Ensure that environmental protection mechanisms, such as silt catchment and mitigations for hazard materials uses, are in place so that water quality is not affected by project construction activities.

⁵ Also refer to Environmental Management Plan for Minipe Stage 1.

Table 3-4 - Accessibility to Project structures to be constructed under Project

SN	Type of structure and structure No. (Refer to Map for location (Annex 3))	Availability of access	GPS coordinates		Comment on ownership of land	Need the Consent of farmers-yes/no
			X	B		
A.	Turnouts (TO)					
01	D1A	Yes	223004	223905	State land	No
02	D1B	Yes	223168	224220	State land	No
03	D2	Yes	223362	224723	State land	No
04	D3A	Yes	223667	224745	Encroached land	Yes
05	D3B	Yes	223919	224307	Encroached land	Yes
06	D4A	Yes	224194	224307	Encroached land	Yes
07	D4B	Yes	224196	224306	Encroached land	Yes
08	D5	Yes	224174	224486	State land	Yes
09	D6A	Yes	224466	224413	Encroached land	Yes
10	D6B	Yes	224466	224413	Encroached land	No
11	D6C	Yes	224757	224065	Encroached land	Yes
12	D7A	Yes	224921	224123	Encroached land	Yes
13	D7B	Yes	224930	224156	State land	Yes
14	D8A	Yes	225324	224259	Encroached land	Yes
15	D8B	Yes	225414	224268	Encroached land	No
16	D9	Yes	225528	224440	Encroached land	Yes
17	D10A	Yes	225394	224732	Encroached land	Yes
18	D10B	Yes	225385	224777	Encroached land	Yes
19	D10C	Yes	225373	224946	Encroached land	Yes
20	D11	Yes	225404	225072	Encroached land	Yes
21	D12	Yes	225536	225430	Encroached land	No
22	D13	Yes	225489	225672	Encroached land	Yes
23	D14	Yes	225329	225885	Encroached land	Yes
24	D15	Yes	225000	225916	Encroached land	Yes
25	D16	Yes	225064	226191	State land	Yes
26	D17	Yes	225215	226777	Encroached land	Yes
27	D18	Yes	225037	226849	Encroached land	Yes
28	D19B	Yes	224796	227862	Encroached land	Yes
29	D20	Yes	224628	228259	Encroached land	Yes
30	D21	Yes	224790	228632	Encroached land	Yes
31	D22	Yes	224537	229005	Encroached land	Yes
32	D23A	Yes	224181	229167	Encroached land	Yes
33	D23B	Yes	224142	229303	Encroached land	Yes
34	D24A	Yes	224118	229436	Encroached land	Yes
35	D24B	Yes	224070	229499	Encroached land	Yes
36	D24C	Yes	223874	229854	Encroached land	Yes
37	D25	Yes	224067	230178	Encroached land	Yes
38	D26	Yes	224013	230652	Encroached land	Yes
39	D27A	Yes	223949	231181	Encroached land	Yes
40	D27B	Yes	223803	231399	Encroached land	Yes
41	D29	Yes	223476	231399	Encroached land	Yes
42	D30	Yes	223515	231755	Encroached land	Yes
43	D31	Yes	223575	232138	Encroached land	Yes
44	D32	Yes	222998	232533	Encroached land	Yes
45	D32C	Yes	222746	232413	Encroached land	Yes
46	D32A	Yes	222590	232490	Encroached land	Yes
47	D32B	Yes	222407	232510	Encroached land	Yes
48	D33	Yes	222406	232981	Encroached land	Yes
49	D33A	Yes	222198	233095	Encroached land	Yes

SN	Type of structure and structure No. (Refer to Map for location (Annex 3))	Availability of access	GPS coordinates X B	Comment on ownership of land	Need the Consent of farmers-yes/no
50	D33B	Yes	222167-233123	Encroached land	Yes
51	D33C	Yes	222209-233535	Encroached land	Yes
52	D34A	Yes	222362-233714	Encroached land	Yes
53	D34	Yes	222630-233777	Encroached land	Yes
54	D34B	Yes	222724-234161	Encroached land	Yes
55	D35	Yes	222707-234237	Encroached land	Yes
56	D36	Yes	222505-234484	Encroached land	Yes
57	D37	Yes	222480-234640	Encroached land	Yes
58	D39A	Yes	222379-235151	Encroached land	Yes
59	D39B	Yes	222418-235240	Encroached land	Yes
60	D40	Yes	222433-235519	Encroached land	Yes
61	D41	Yes	222258-235853	Encroached land	Yes
62	D42	Yes	222339-236200	Encroached land	Yes
63	D43	Yes	222403-236611	Encroached land	No
64	D44	Yes	222248-232142	State land	Yes
65	D45	Yes	222063-237659	Encroached land	Yes
66	D46	Yes	221812-238108	Encroached land	Yes
67	D47	Yes	221670-238492	Encroached land	Yes
68	D48	Yes	221563-238349	Encroached land	Yes
69	D49	Yes	219926-238340	Encroached land	Yes
B.	Gabion Walls				
01	0+650	Yes	222411-222658	State land	No
02	2+365	Yes	223041-224047	State land	No
03	8+590	Yes	225433-225780	State land	No
04	9+145	Yes	225039-225654	State land	No
05	9+610	Yes	225076-226157	State land	No
06	9+800	Yes	225071-226317	State land	No
07	10+800	Yes	224921-226806	State land	No
08	10+950	Yes	224791-226906	State land	No
09	13+510	Yes	224322-228935	State land	No
10	18+850	Yes	222996-232536	State land	No
11	19+350	Yes	222521-232469	State land	No
12	20+370	Yes	222203-233102	State land	No
13	21+409	Yes	222375-233722	State land	No
14	24+100	Yes	222319-235670	State land	No
15	25+300	Yes	-	State land	No
16	24-220	Yes	222243-235730	State land	No
C.	Bridges				
01	0+100	Yes	222971-222129	State land	No
02	1+147	Yes	222518-222969	State land	No
03	2+210	Yes	222947-223805	State land	No
04	2+618	Yes	223117-224197	State land	No
05	3+959	Yes	223810-224578	State land	No
06	4+263	Yes	223932-224305	State land	No
07	5+353	Yes	224549-224139	State Land	No
08	5+874	Yes	224921-224141	State land	No
09	6+732	Yes	225313-224275	State Land	No
10	7+275	Yes	225424-224649	State land	No
11	7+624	Yes	225357-224989	State land	No
12	8+400	Yes	225497-225651	State land	No

SN	Type of structure and structure No. (Refer to Map for location (Annex 3))	Availability of access	GPS coordinates X B	Comment on ownership of land	Need the Consent of farmers-yes/no
13	9+120	Yes	225034-225653	State land	No
14	9+503	Yes	225021-226017	State land	No
15	10+171	Yes	225226-226604	State land	No
16	10+811	Yes	-	State land	No
17	11+834	Yes	224787-227797	State land	No
18	12+024	Yes	224713-227967	State land	No
19	12+255	Yes	224529-228090	State land	No
20	12+554	Yes	224658-228291	State land	No
21	12+823	Yes	224797-228505	State land	No
22	13+315	Yes	224606-228942	State land	No
23	13+800	Yes	224219-229026	State land	No
24	14+239	Yes	224104-229447	State land	No
25	14+878	Yes	223939-229983	State land	No
26	15+066	Yes	224046-230118	State land	No
27	15+514	Yes	224067-230178	State land	No
28	15+984	Yes	224023-231000	State land	No
29	16+352	Yes	223876-231335	State land	No
30	16+704	Yes	223661-231387	State land	No
D.	Canal Spillway (CS)				
01	0+574	Yes	222316-222431	State land	No
02	4+550	Yes	224186-224290	State land	No
03	5+761	Yes	224834-224062	State land	No
04	6+948	Yes	225513-224339	State land	No
05	7+544	Yes	225382-224910	State land	No
06	8+429	Yes	225472-225680	State land	No
07	9+219	Yes	225026-225745	State Land	No
08	9+685	Yes	225064-226191	State land	No
09	10+342	Yes	225204-226775	State land	No
10	12+300	Yes	224502-228132	State Land	No
11	13+569	Yes	224264-228970	State land	No
12	22+686	Yes	222558-234352	State land	No
13	22+946	Yes	222473-234592	State land	Yes
14	23+437	Yes	222351-235043	State land	Yes
15	24+210	Yes	222251-235729	State land	Yes
16	24+612	Yes	222253-236100	State land	Yes
17	25+512	Yes	222240-236902	State land	Yes
18	25+815	Yes	222221-337215	State land	Yes
19	26+625	Yes	221874-237923	State land	Yes

4 CONSULTATIONS AND DISCLOSURE

43. The potentially affected farmers have been consulted through two formal consultation meetings and several smaller informal discussions along the NCB 1 Canal area. This section outlines the consultation and awareness activities occurring during the Due Diligence Studies, spearheaded by the PMU and PIU.

4.1 Consultation Meetings

4.1.1 Farmer Groups Meeting – 25 February 2016

44. The first consultation and awareness meeting was held by the PMU and PIU, with farmers of Minipe Left Bank Canal from kilometer 0+000 to kilometer 30+140 on 25 February 2016. The PMU and PIU representatives attended a meeting of farmers' groups (representing all the farmers along this section of canal). At this meeting the following aspects were discussed with the attendees (English translation of minutes in Annex D):

- (i) Description of the project and its benefits.
- (ii) Request to cooperate with the project and the officers.
- (iii) Establishment of GRC and its role.

4.1.2 Farmers Consultation Meeting – April 8th 2016

45. The second consultation and awareness meeting held by the PIU and PMU, with leaders of potentially affected farmers, and farmers, of Minipe Left Bank Canal from kilometer 0+000 to kilometer 30+140 on 8 April 2016. The PMU, PIU and PMDSC representatives attended a meeting of farmers' leaders (representing all the farmers along this section of canal) and other farmer attendees using affected reservation lands. At this meeting the following aspects were discussed with the attendees (English translation of minutes in Annex D):

- (i) The Project was explained, including information on engineering design.
- (ii) The issue of impacts on farmer reservation lands, including that an average of 10 perch per farmer only would be likely affected, if at all. There would be two key impacts during construction:
 - a) Farmers would not be able to cultivate in some of the reservation land and may lose income
 - b) Contractor may need to store and stockpile materials and excavated spoil from the canal on some reserve areas.
- (iii) If farmers consent to voluntarily stop use of the reservation land during construction, a letter had been prepared for them to review and sign their consent.
- (iv) The opportunity for grievances to be heard

46. Farmer leaders encouraged fellow farmers to volunteer releasing reservation lands for construction periods, due to importance of rehabilitation of the canal and turnout structures.

4.2 Informal Consultations in areas along the Stage 1 Canal section

47. Further consultation and awareness activities are planned. As formal minutes were not prepared, Table 4.1 provides a summary of the discussions. However, key issues to be considered include:

- (i) During construction, water supply for crops and paddy should be assured;
- (ii) Farmers should be made fully aware of any changes to water supply; and
- (iii) Farmers agreed to the need for voluntarily withdrawing use of reservation land for a period to allow for rehabilitation of their turnouts and canal.



Informal consultation meeting with the farmers on 07/04/2016 on Stage 1 MLBCR Project.

Table 4-1 - Summary of Informal meetings, held on 7 April 2016, along the MLBRC Km 0+00 to km 30+140

Km Chainage (and Turnout number)	Numbers of participants		Points of discussion	Questions and Concerns of people & responses from Consultant/PIU/PMU	Outcomes of discussions
	Male	Female			
Kilometre 2.322 to 7.043 (Turnouts D1A to D9)	3	3	<ul style="list-style-type: none"> - Rehabilitation of turnouts and other structure - Period of Construction - Release of encroached reservation lands for rehabilitation works 	<ul style="list-style-type: none"> - During the Construction period, what is the method of water supply to the paddy lands 	<ul style="list-style-type: none"> - PIU Officers explained that water supply will be maintained for cropping seasons - All farmers agreed to release encroached reservation land for rehabilitation of turnouts
Kilometre 7.734 to 15.133 (Turnouts D11 to D25)	20	12	<ul style="list-style-type: none"> - It was explained that when the rehabilitation of turnouts, cultivated reservation land will be affected 	<ul style="list-style-type: none"> - Few farmers stated that their cultivated reservation lands are will not affect by proposed rehabilitation. - Others stated that their lands will be affected. 	<ul style="list-style-type: none"> - All attended for the urgent necessity for the rehabilitation
Kilometre 15.638 to 21.161km (Turnouts D26 to D33c)		7	<ul style="list-style-type: none"> - Proposed rehabilitation works. - Affect to the cultivated reservation lands 	<ul style="list-style-type: none"> - During the Construction period, what is the method of water supply for cultivation 	<ul style="list-style-type: none"> - It was explained that water supply will be maintained for cropping seasons.

Km Chainage (and Turnout number)	Numbers of participants		Points of discussion	Questions and Concerns of people & responses from Consultant/PIU/PMU	Outcomes of discussions
	Male	Female			
					- All farmer agreed to support works, irrespective of impact, as this was for rehabilitation of turnouts.
Kilometre 22.489 to 31.826km (D35 to D1)		6	- It was explained in detail on proposed construction program and its effect to the farmers and lands	- Farmers requested to not to close the access roads during construction period. - Inquired about the water supply issues for cultivation	- PIU officers gave the assurances that the access roads would not be closed during construct period. - Also PIU gave assurances that water supply will be maintained for cultivation.

4.3 Farmers' Agreement

48. The need for involuntary resettlement will be avoided by the contractor restricting its construction activities, space and accesses as much as possible to the already existing embankment roads and tracks, as marked on the Map (Annex C). However, in some cases, short accesses will be required across reserve areas that are being farmed and some areas of encroached reserve farmland may be required for materials stockpiling and to access banks for rehabilitation.

49. As mentioned during consultations, farmer organization leaders, on behalf of farmers, mentioned that farmers voluntarily agreed to not conduct farming activities on canal reserve lands during the construction periods, if the contractor required. In order to show this agreement, farmers signed a letter of no objection (Annex F).

50. Statistics of signatures to this agreement are presented in Table 4.2. Data indicates that 95% of the farmers have given their consent for the construction/rehabilitation of turn outs in the encroached reservation lands. The PIU informed that 23 farmers have not signed the consent letters as they are absentee land owners who are not residents of the Minipe project. In view of this situation these farmers could not be contacted by the PIU, so that PIU informed them by a letter. The PIU has obtained the consent from almost all the farmers who have encroached reservation lands in the project, irrespective of whether they may be affected or not.

Table 4-2– Farmers' Agreements Summary

SN	Turn out no	Total number of farmers	Number of signatures	Number of farmers not signed	Comments
01	D/01,03,44	53	51	02	23 farmers have not signed the consent letters due to non-availability in the Minipe scheme, as they are residing outside the project according to PIU.
02	D/05,06,07,08,09,10,11	47	45	02	
03	D/12	07	07	-	
04	D/13,14,15	33	25	08	
05	D/16,15	17	17	-	
06	D/19	25	23	02	
07	D/21	13	12	01	
08	D/24	20	20	-	
09	D/25	13	13	-	
10	D/26,27,28	14	14	-	
11	D/31,29,30	31	26	05	
12	D/32,33	39	39	-	
13	D/34	18	18	-	
14	D/35,36,37,38	33	25	08	
15	D/39,40	15	15	-	
16	D/41,42	23	23	-	
17	D/43,44	22	21	01	
18	D/45,46	51	49	02	
19	D/47	03	03	-	
Total		478	455	23	Percentage of signatures 95%

4.4 Disclosure of DDR for the Stage 1 Canal section

51. The PMU, with the support of the consultant, is planning a third set of consultations, in which the results of the Due Diligence studies are to be disclosed. This will also allow affected

farmers to be informed of their rights, updates on the Grievance Redress Mechanism and an opportunity to have queries addressed by the project.

52. Approval and disclosure of this Due Diligence Report will be carried out as a condition for MLBCRP Stage 1 (NCB-1) contract award announcement and notice to proceed. There will be social safeguards monitoring and arrangements with which the contractor must comply and they will be strictly monitored by the social and resettlement specialists of the PIU and PMU, supported by the PDMSC specialists (refer to Sections 7 “Findings and Recommendations”).

53. Copies of the approved report will be made available to stakeholders from the PMU, PIU and Gramma Niladari and District Secretary levels. A copy of the findings of this report will be available in English and local languages and distributed to farmer groups. The PIU, supported by PMU and PDMSC will assist farmer groups to explain some of the key findings of this report and ensure farmers are informed of the Grievance Redress Mechanism, including rights to complain about social, resettlement, environmental and other matters.

5 LEGISLATIVE FRAMEWORK

54. Land acquisition, compensation, relocation and income and livelihood restoration for the MWSIP are guided by the Land Acquisition Act (LAA), 1950 and its amendments, National Involuntary Resettlement Policy (NIRP), 2001, National Policy for the Payment of Compensation, 2008, the Land Acquisition Regulations of 2009 (LA Regulations 2009), National Environmental Act of 1980 and amendments and ADB's Safeguards Policy Statement 2009 SPS (2009).

55. This section provides a summary of key parts of the Sri Lankan legal framework and ADB's Safeguards Policy Statement (2009), which are relevant to the impacts and situation described above in kilometre 00+000 to kilometre 31+000. Additional aspects of the legislative framework may be viewed in the Resettlement Framework and Resettlement Implementation Plan (March 2015), prepared by the Ministry of Mahaweli Development and Environment.

5.1 Legislative Framework of Sri Lanka

56. The LAA provides detailed procedures for land acquisition, consultations, compensation calculations and other assistance packages for resettlement, when acquiring land for "public purposes". It guarantees that no person is deprived of lands except under provisions of the Act, providing compensations for acquisition and disturbances caused by the Project. The normal procedure for Land Acquisition through the LAA is by application to the Ministry of Land and Land Development (MLLD) and once acquired, land is vested in the Government Agency that made application.

57. The LAA is indifferent to the socioeconomic status of the land loser and any adverse livelihood and income compensation. The LAA bases valuation on market rate, while ADB prescribes replacement value.

58. The Government adopted the NIRP in 2001 to ensure that (i) PAPs are fairly and adequately compensated, relocated, and rehabilitated; (ii) delays in project implementation and cost overruns are reduced; and (iii) better community relations are restored among PAPs and lost communities.

59. The NIRP is based on LAA and its amendments, National Environmental Act of 1980 and amendments, and several other applicable laws such as the Urban Development Authority Act and Coastal Conservation Act, Regulations of the Acts and also legal opinions of courts on land acquisition, compensation, consultation and income restoration.

60. Some of the key principles relevant to this due diligence study include:

- (i) IR should be avoided as much as possible by reviewing alternatives to the Project as well as alternatives within the Project.
- (ii) Where IR is unavoidable, PAPs should be assisted to re-establish themselves and improve their quality of life.
- (iii) Gender and equality should be ensured and adhered to throughout.
- (iv) Compensation for loss of land, structures, other assets and income and livelihood losses should be based on full replacement cost and should be paid promptly. This should include transition costs.
- (v) Resettlement should be planned and implemented with full participation of the provincial and local authorities.

- (vi) Participatory measures should be designed and implemented to assist those economically and socially affected to be integrated into their host communities.
- (vii) Common property resources and community and public services should be provided to resettlers.
- (viii) PAPs who do not have title deeds to land should receive fair and just treatment.
- (ix) Vulnerable groups should be identified and given appropriate assistance to improve their living standards.
- (x) Project executing agencies should bear the full cost of compensation and resettlement.

5.2 Safeguards Policy Statement of Asian Development Bank (SPS, 2009)

61. The ADB Policy on Involuntary Resettlement (SPS, 2009) is based on the following principles

- (i) Screen the project early on to identify past, present and future involuntary resettlement impacts and risks. Determine the scope of resettlement planning through survey and/or census of affected persons, including gender analysis, specifically related to resettlement impacts and risks.
- (ii) Carry out meaningful consultations with Displaced Persons (DPs), host communities, and concerned non-government organizations. Inform all DPs of their entitlements and resettlement options. Inform all DPs of their entitlements and resettlement options. Ensure their participation in planning, implementation, and monitoring and evaluation of resettlement programs.
- (iii) Pay particular attention to the needs of vulnerable groups, especially those below the poverty line, the landless, the elderly, women and children, and indigenous peoples and those without legal title to land, and ensure their participation in consultations.
- (iv) Establish a grievance redress mechanism to receive and facilitate resolution of the affected persons' concerns.
- (v) Support the social and cultural institutions of DPs and their host population.
- (vi) Where involuntary resettlement impacts and risks are highly complex and sensitive, compensation and resettlement decisions should be preceded by a social preparation phase.
- (vii) Improve, or at least restore, the livelihoods of all DPs through (i) land-based resettlement strategies when affected livelihoods are land based where possible or cash compensation at replacement value for land when the loss of land does not undermine livelihoods; (ii) prompt replacement of assets with access to assets of equal or higher value; (iii) prompt compensation at full replacement cost for assets that cannot be restored; and (iv) additional revenues and services through benefit sharing schemes where possible.
- (viii) Provide physically and economically displaced persons with needed assistance, including the following: (i) if there is relocation, secured tenure to relocation land, better housing at resettlement sites with comparable access to employment and production opportunities, integration of resettled persons economically and socially into their host communities, and extension of project benefits to host communities; (ii) transitional support assistance, such as land development, credit facilities, training, or employment opportunities; and (iii) civic infrastructure and community services, as required.
- (ix) Improve the standards of living of the affected poor and other vulnerable groups, including women, to at least national minimum standards. In rural areas, provide them with legal and

affordable access to land and resources, and in urban areas provide them with appropriate income sources and legal and affordable access to adequate housing.

- (x) Develop procedures in a transparent, consistent, and equitable manner if land acquisition is through negotiated settlement to ensure that those people who enter into negotiated settlements will maintain the same or better income and livelihood status.
- (xi) Ensure that DPs without titles to land or any recognizable rights to land are eligible for resettlement assistance and compensation for loss of non-land assets.
- (xii) Prepare a resettlement plan elaborating on affected persons' entitlements, the income and livelihood restoration strategy, institutional arrangements, monitoring and reporting framework, budget, and time-bound implementation schedule.
- (xiii) Disclose a draft resettlement plan, including documentation of consultation process in a timely manner, before appraisal, in an accessible place and in a form and language in which the affected persons and other stakeholders will all understand. Disclose the Final resettlement plan and its updates to DPs and other stakeholders.
- (xiv) Conceive and execute involuntary resettlement as part of a development project or program. Include the full costs of resettlement in the presentation of project's costs and benefits. For a project with significant involuntary resettlement impacts, consider implementing the involuntary resettlement component as a stand-alone operation.
- (xv) Pay compensation and provide other resettlement entitlements before physical or economic displacement. Implement the resettlement plan under close supervision throughout project implementation.
- (xvi) Monitor and assess resettlement outcomes, their impacts on the standards of living of affected persons, and whether the objectives of the resettlement plan have been achieved by taking into account the baseline conditions and the results of resettlement monitoring.
- (xvii) Disclose monitoring reports

5.3 Differences between Sri Lanka Legislation and ADB SPS 2009

62. The key gaps between the LAA and IR policy principles of SPS are (i) the entitlements of non-titled PAPs; (ii) compensation at replacement cost; (iii) income restoration and improvement; (iv) consulting PAPs and their host communities on relocation options; (v) special assistance to vulnerable PAPs; (vi) monitoring and assessment of resettlement outcome and impacts; and (vii) the formulation of RIP to address these issues.

63. The issue of non-titled PAPs entitlements is addressed in LAA and elaborated in NIRP and LA regulations 2009. Under the LAA any person having a right title or interested in or over the Land which is to be acquired or over which a servitude is to be acquired (section 10(1)) is entitled to compensation. A person who has interest in land apart from the owner and co-owner's area mortgage, a lessee, or occupier absolutely for himself or in trust for another person or for any charitable, religious or other purpose or a person having servitude over the land (section 65 as amended in 1964). The Court of Appeal in 2001 added tenants to the list. The court also held that the occupier could not in any event be evicted without being compensated in respect for his improvement (if in fact he is the owner of the improvements and owner of the property). This matches ADB's involuntary resettlement safeguards principle that those who do not hold title to land are eligible to resettlement assistances and compensation for loss of non-land assets.

5.4 Principles

64. The ADB can only finance projects that comply with its Safeguards Policy Statement (2009). If gaps exist between ADBs safeguards requirements and countries laws, specific gap-filling measures need to be made to ensure policy and safeguards requirements are achieved. On the basis of differences between the legal framework of Sri Lanka and ADB SPS 2009, the following principles relevant to the Due Diligence Study are as follows:

- (i) Screen each project of the investment program to determine whether it triggers the Involuntary resettlement principles (below) and determine the scope of resettlement planning required.
- (ii) Take every effort to avoid physical displacement and/or any other adverse impacts on livelihood and income sources and community resources and infrastructure. If physical displacement and economic displacement are unavoidable, the actions (below) will be taken to ensure that they improve or at least restore their income and livelihoods and rebuild their socio-cultural systems.
- (iii) Consult and inform all PAPs on land acquisition, compensation, and rehabilitation, and their entitlement and grievance redress mechanism.
- (iv) Provide well-planned and budgeted income restoration and improvement programs for the benefits of PAPs, especially for the poor and vulnerable groups.
- (v) All common property resources lost due to the project will be replaced or compensated by the project.
- (vi) If land acquisition is through negotiated acquisition, the project will ensure that PAPs who enter into negotiated acquisition will maintain the same or better income and livelihood status.
- (vii) PAPs without title to land are eligible for resettlement assistance.
- (viii) Disclose resettlement information and RIPS including consultation documentation to PAPs in a language accessible to the PAPs and other stakeholders.
- (ix) The full cost of resettlement will be included in Project costs.
- (x) Pay compensation and provide other entitlement to each eligible displaced person before displacement and construction commences.
- (xi) Monitor and assess the progress of RIP implementation and prepare monitoring reports to share with ADB, PAPs and other stakeholders.

6 GRIEVANCE REDRESS MECHANISM

65. In order to receive and facilitate the resolution of possibly affected peoples' concerns, complaints, and grievances concerning the project's performance, a Grievance Redress Mechanism (GRM) has already been established for the project, and is being enhanced at local and PIUs level, at the Project sites. The GRM addresses potentially affected people's concerns and complaints proactively and promptly, using an understandable, communicated and transparent process that is gender responsive, culturally appropriate and readily accessible to all community members at no costs and without retribution. The mechanism will not impede access to the Country's judicial or administrative remedies.

6.1 Types of Grievance

66. Legal issues:

- (i) Application of LAA and its limitations to arrive at replacement cost of acquired property.
- (ii) Difficulties in obtaining abstracts of deeds from Land Registry.
- (iii) Rules and regulations determining the ownership of land and amount of compensation.

67. Practical issues:

- (i) Lack of knowledge on the acquisition process and how to present claims.
- (ii) Delays in payment of compensation
- (iii) Delays in payments of resettlement assistance and provision of benefits.
- (iv) Most contracts on leased land are verbal. Difficulty in transforming into written contracts.
- (v) Inability to find new land for building new houses
- (vi) Inability to construct new houses in a short period of time
- (vii) During the construction period: temporary disruptions
- (viii) Cracks in structures
- (ix) Noise pollution
- (x) Environmental Pollution
- (xi) Dust problems
- (xii) Other environmental issues

6.2 Levels of Grievance Redress in the Program

68. This section outlines the 4 levels of grievance redress on the Project plus the additional systems through the Land Acquisition Act and the courts. Many grievances arise because of inadequate understanding of Project policies and procedures, but can be promptly resolved by proper explanation of the situation to the complainant. The four levels of the Project Grievance Redress Mechanism are as follows:

- (i) **Grievance Redress Committee – Grama Niladari Level** - The complainant may submit a Grievance⁶ either in writing or orally to the PIUs Project Resettlement Officer or the PIUs Project Environmental officer or the to Gramma Niladari (GN). The Gramma Niladari is the closest community administrative representative to the affected household, and is under the Divisional administration. It is expected that most complaints will be resolved at this level. A resolution will be determined within 1-week. However, if the complaint cannot be resolved through the Grama Niladari GRC, then the grievance is passed to the GRC – PIU level.
- (ii) **Grievance Redress Committee - Project Implementation Unit (PIU) Level** – A resolution will be determined within one week. If a resolution cannot be determined, then the complaint will be passed to the GRC - District Secretary level by the Project Director.
- (iii) **Grievance Redress Committee - District Secretary Level** – At this level the grievance is considered by representatives of Project related Government agencies such as Land Registration office, Inland Revenue office, Forest Department, Wildlife Department, Samurdhi Officer, surveyor and PIU staff. A resolution is expected to be determined within one week. In case the District Secretary cannot resolve the complaint, the Project Director will then bring the complaint to the Executive Agency GRC.
- (iv) **Grievance Redress Committee – Executive Agency (PMU) at Ministry Level** - In case the complaint cannot be resolved, a resolution could take up to fourweeks (inclusive of GRC levels 1-iv). This is the final level of the GRM system. However, there are still the law courts, although this is time consuming, costly and often not used.

69. ADB's SPS 2009 requires that the Project level system should not impede access to the country's judicial or administrative systems and thus the complainant has the right to access the legal court system at any time of the resolution process. Therefore, the four levels mentioned above are authorized under the Project to consider grievances in relation to land acquisition cases, compensation payments, resettlement issues, ownership disputes, delays of payment of compensation, rehabilitation assistance programs and environmental concerns related to the Project.

70. The GRM does not cover matters pending in the courts or any disputes concerning compensation rates. However, compensation rate disputes do fall under the LAA. Under the LAA, an Appeal Board has to be constituted to deal with appeals against compensation offers. This process will minimize the grievances. However, a person who does not agree with the decision of the Board of Appeal may still take the case before the Supreme Court claiming a higher amount of compensation. This option is costly and time consuming and is rarely used.

6.3 Grievances Submitted to Date in the MLBCRP Km 0+000 to Km 30+140

71. To date, there have been no grievances submitted in relation to the MLBCRP area from km 0+000 to Km 30+140, including through Sri Lanka's formal, legislated complaints procedure.

72. A mass awareness campaign, focusing on the Program's grievance procedure, will be conducted (currently in the planning stage) across all Project sites and PIUs and GRM stakeholders. All GRM levels shall be set up and GRCs operating at each level, as well as awareness campaigns conducted prior to the first civil works contract award.

⁶ A Grievance or complaint may be Project related, environmental or Social

7 FINDINGS AND RECOMMENDATIONS

73. The Due Diligence Report covering the Minipe Left Bank Canal Rehabilitation Project 00+00 to 30+140 has established the following:

- (i) The inventory of the canal reservation found there are 494 farmers encroaching on 498 plots of canal reserve land between Kilometre 00+000 and Kilometre 30+140 of the Minipe Left Bank Canal. They are cultivating mostly paddy in two seasons (Maha and Yala). There are also other plots of tree crops and structures. These farmers are encroaching from legally titled plots adjacent to reserve area.
- (ii) There is adequate access to many of the construction sites by road (or track) along the embankment of the canal, on which there are no encroachments, and there would be space enough for construction activities to occur. However, around some of the structures to be rehabilitated, construction space requirements may impact on agricultural areas. It was thought that some of the reserve land areas may be required to be used at times by the contractor during construction, but not as part of the footprint of project structures to be constructed. For some structures, there may be some locations where diversion tracks are needed by contractor. A small number of areas may be required in occupied reserve areas. Actual space requirements, hence magnitude of affected area for construction, cannot be fully finalized until the contractor is mobilized and the locations, albeit small, are identified. However:
 - a) The PIU will restrict access to sites to the use of existing roads and tracks to the extent possible. The contractor shall as much as possible limit construction work-space to the canal contours and existing access roads and Government lands, as approved by the PMU.
 - b) Farmer Organization Leaders have given an assurance in February that all encroached farmers will voluntarily suspend their agricultural activities during the construction period, if they are required, in order to allow the contractor's access to the canal and works sites. There is documentary evidence that encroachers will refrain from agricultural activities in the cases that encroached lands are required by a contractor. Through Farmer Groups, 455 farmers out of 478 (95%) have signed letters consenting to ***"release the lands which are in our possession under encroachments whenever those lands are wanted for the development activities of the Minipe Left Bank Canal Rehabilitation Project"***.
 - c) No permanent acquisition of land or permanent changes of land use is expected.
 - d) There will be no temporary or permanent impacts on structures or tree crops or forest areas, otherwise an RIP process will be in accordance with the ADB/GoSL requirements in Section 5 (above), and RP implementation will be completed prior to construction commencing.
 - e) The contractor shall be required to prepare a construction plan at mobilization, which will include:
 - Locations, purpose and time periods in which the contractor will be required to utilize the encroached land location;
 - Plans for rehabilitation of the locations back to their pre-project condition, which will be done to the satisfaction of engineer and land user;

- The Contractor will be permitted to utilize a location for the time period when the work is carried out in nearby location, and will be for a maximum of one growing season only, in such times that encroached lands are required during the irrigation season.
- f) The contractor shall allow the farmers time to harvest (where required), prior to using for construction purposes.
- g) The PIU, with the PMDSC support, and the contractor shall:
 - Consult again with those land users, whose lands the contractor wishes to utilize for construction works, to verify and confirm the signed agreement (Annex F).
- h) In the event of objection or grievance, alternatives must be sought to the satisfaction of the land users, alternative locations found and/or RIP processes will be triggered in accordance with the ADB/GoSL requirements in Section 5 (above).
- i) Water resources for irrigation should not be impacted, because internal canal rehabilitation activities will be scheduled outside the two irrigation seasons when canal water resources are required. Canal authorities will annually, for a period during the two off-season times, close off the canal water supply. The surrounding communities use alternative water sources (eg. wells) for their daily needs when the canal water supply is closed by authorities. The following requirements are recommended, in order to minimize any disruption to the community:
 - During the off-season when canal remains flowing, albeit minimal flow, the contractor will be required to install diversions and coffer dam systems, in order to allow water supply to be continued, for off-season requirements.
 - In the event that the contractor requires a dry canal for their work within the canal area, they may, after engineer approval, apply to and coordinate with the canal authorities regarding timing of annual canal closure periods and construction timing. This may be an extension for up to one additional month, provided all communities' alternative water supply is maintained. The contractor may be required to supply potable water to communities if well resources are not adequate – this will be discussed with canal and local authorities.
- j) Most proposed definition walls are located on the right hand side of the canal, which are at minimum 400-500 metres from a road access through gardens and crops. To minimize creating new accesses on the right hand side of the canal, disrupting livelihoods, the contractor shall:
 - Move machinery and materials across the canal from embankment roads during off-seasons, when canal is generally dry.
 - There is adequate space for materials stockpile, and also structure locations are, on public, unoccupied land areas. Therefore, there should be no impact on communities or occupied reserve lands.

74. The findings of this Due Diligence Study will need to be provided to the contractor at the time of contract negotiation, since bidding has already been completed. The Environmental Management Plan and the bidding documents for NCB 1 require the contractor to:

-
- (i) Conduct construction and rehabilitation activities within the canal outside of the two cropping seasons.
 - (ii) Ensure coffer dams and diversions are constructed during the construction, in order to allow continued water flow for those using water outside of the cropping seasons.
 - (iii) Limit construction and movement of materials/machinery within the canal to the regular annual period when the canal water flow is stopped by authorities.
 - (iv) Ensure that environmental protection mechanisms, such as silt catchment and mitigations for hazard materials uses, are in place so that water quality is not affected by project construction activities.

75. Given that the exact amounts and locations of encroached reserve land required for construction purposes will not be fully known until the contractor submits a Construction Plan, a Monitoring Plan will be prepared by the MLBCRP PIU, with support of the PMDSC Specialists, once this is known.

ANNEXES

ANNEX A – INVENTORY SURVEY FORMAT

Minipe Left Bank Canal Rehabilitation Project
Inventory Farmers using Reservation Areas - Chainage Km 0+000 to 31+000

SN No.	Farmer's Name	N.I.C. No.	Location along Canal		Size of Land in Reservation/ Encroachment			Crop Type		Structure in Reservation/Encroachment	
			Turnout	Name of Farmer Organization	A	R	P	Maha	Yala	Type of Building	Value (Rs.)
					(Acres)	(Rood)	(Perches)				

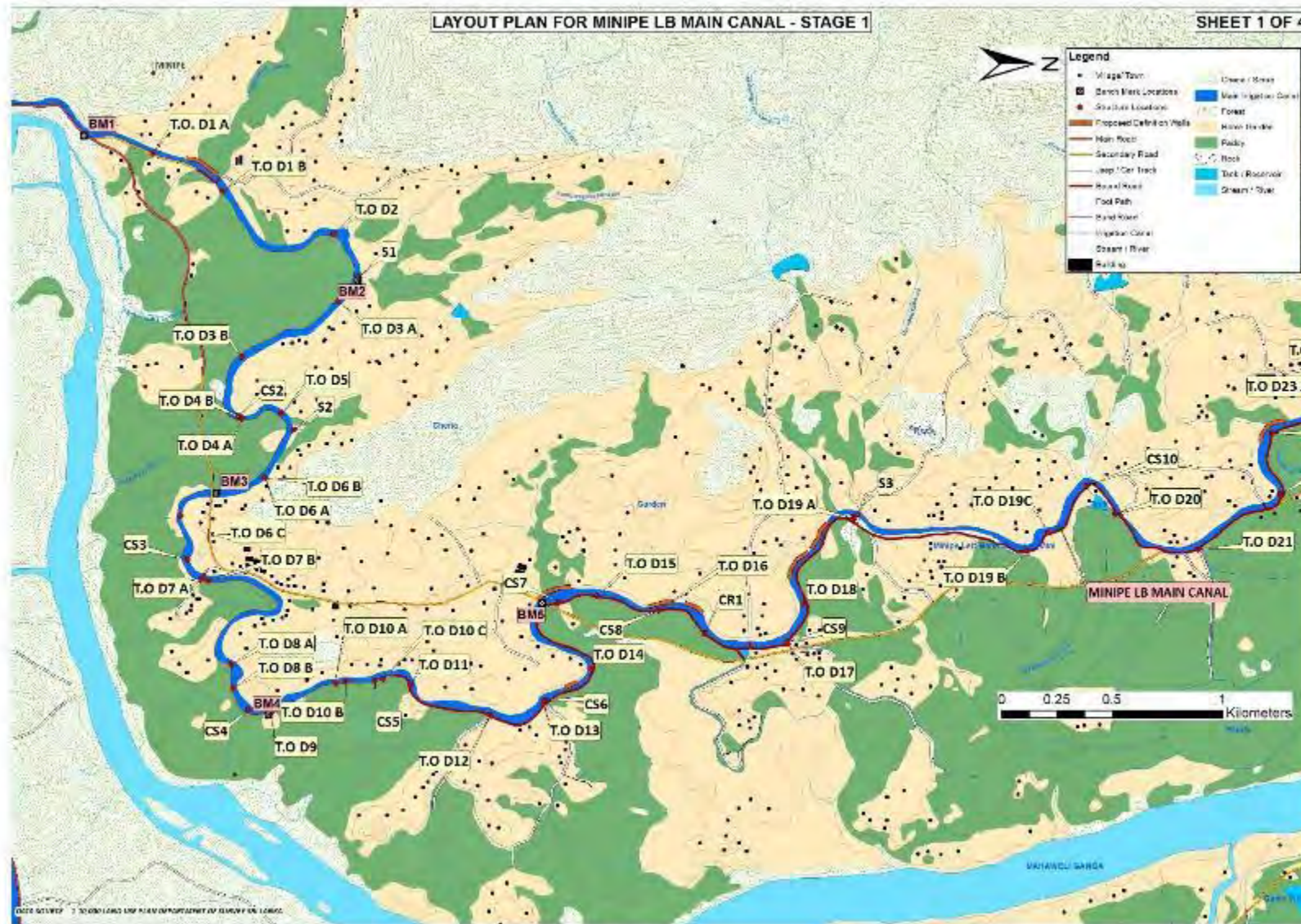
Name of Farmer Leader :

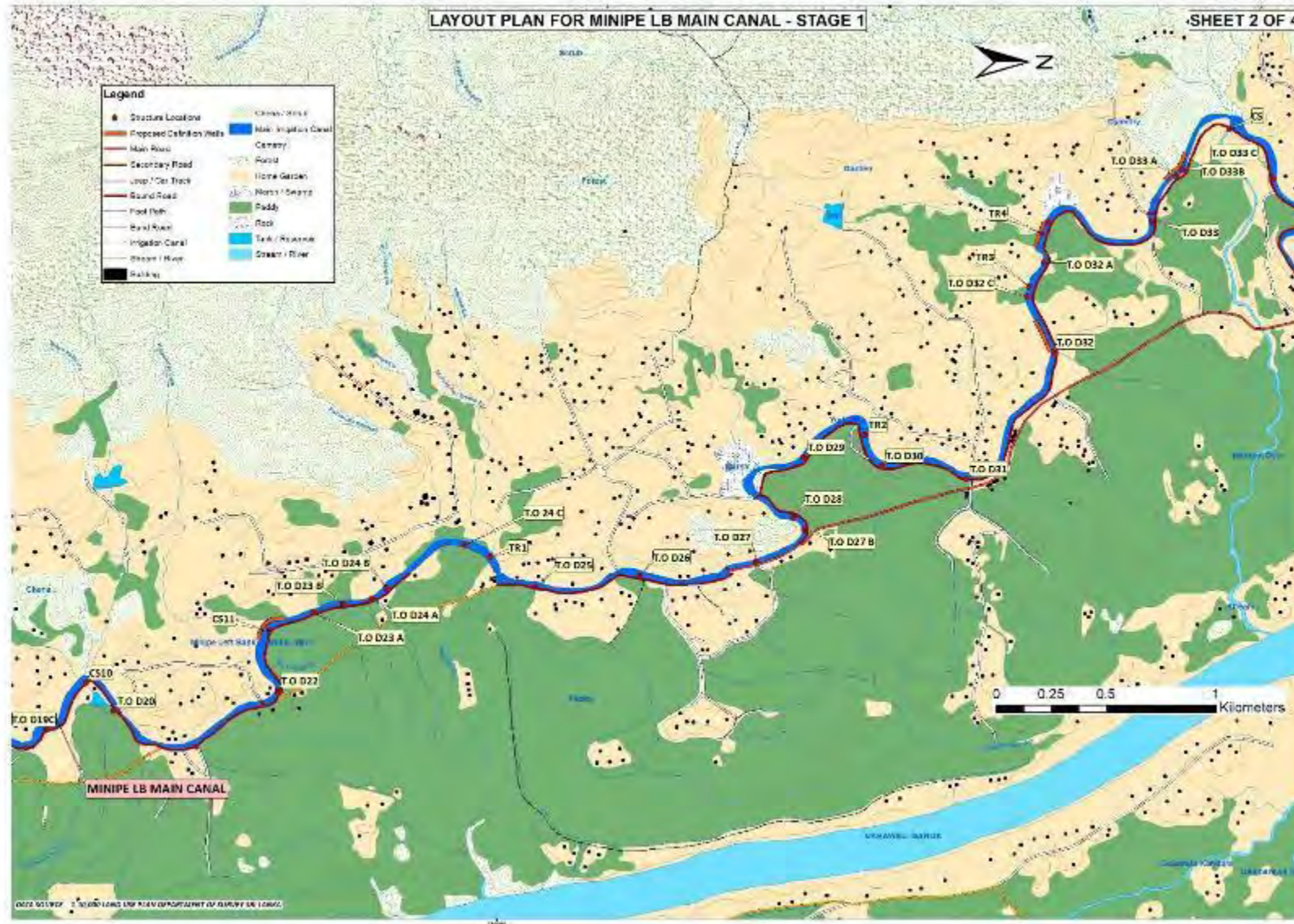
Tel. No. :

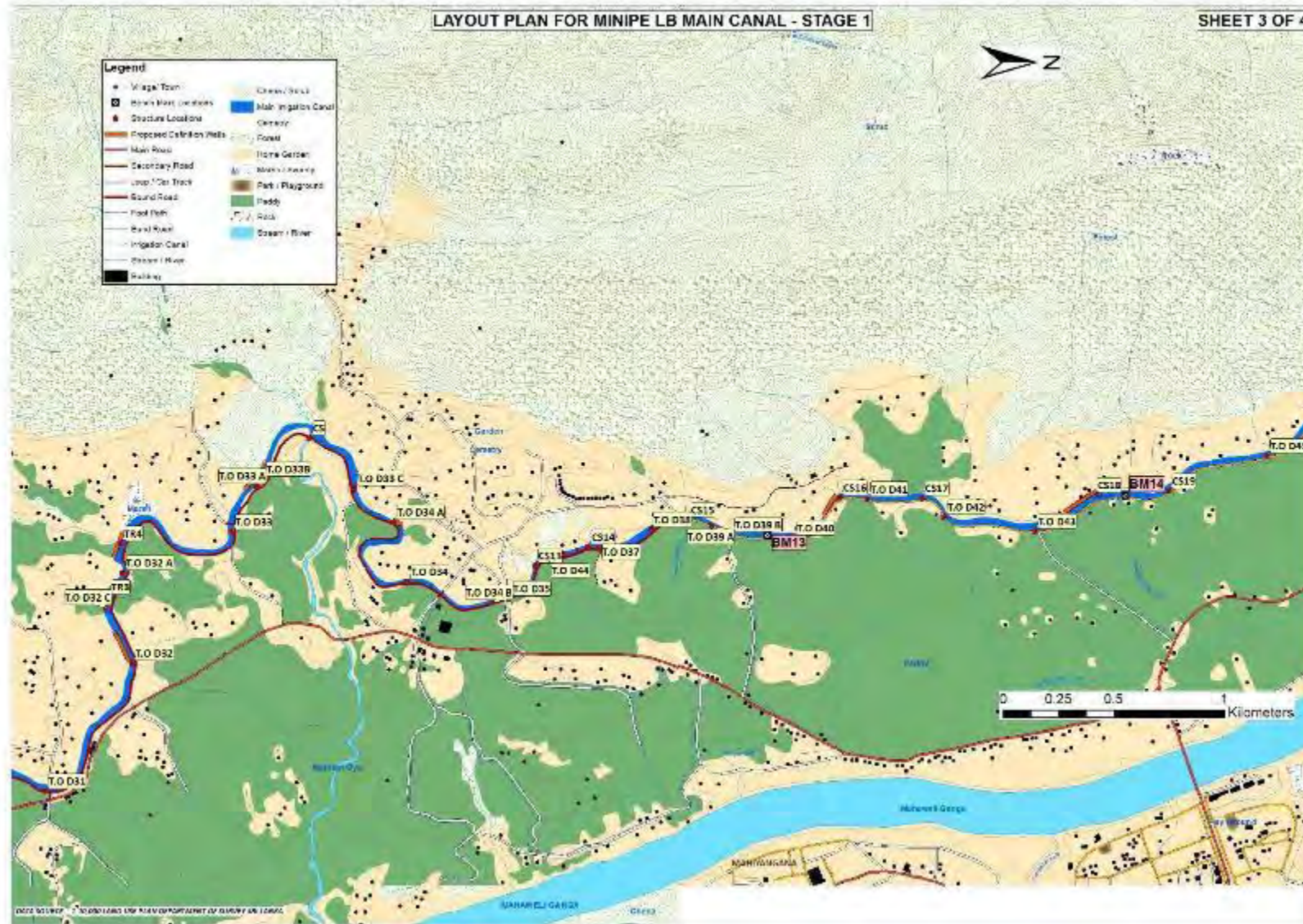
Signature :

Date :

ANNEX C – MAPS OF SITE AND STRUTURES TO BE CONSTRUCTED









ANNEX D – CONSULTATIONS**A) Minutes of the cultivation committee meeting of Minipe scheme held on 2016.02.25 at Minipe**

Place-Cultural centre at Udawela

Date- 2016.02.25

Time-10.00 AM.

Participants-A copy of the attendant list attached

Name of the officer And institution	<u>Subject</u>
Resident project Manager (RPM)	Received by the RPM and religious rituals.
RPM	<p>Discussed about objectives of the meeting as given Below.</p> <ol style="list-style-type: none"> 1. Determination of dates on cultivation program of yala season. 2. Clarification on issue of chemical fertilizer under new system. 3. Discussion on Constraints on sale of paddy and resolution 4. Discussion on condition of the cultivation and its drawbacks. 5. Discussion on national food production campaign of 2016-2018. 6. Discussion on Proposal to raise Minipe anicut and water distribution. 7. Discussion on development of D canals. 8. Discussion on providing of services. 9. Discussion on participatory development. <p>It was discussed on future program of consolidated farmer organization, issue of water shortages, and subsidiary crops cultivation program at YAYA 02, usage of new technology for agriculture and issue of parachute plates.</p>
Secretary of project committee mittee	It was produced the report of proceedings of the last com- Meeting.
RPM	It was mentioned that there is no constitution for the Divisional famer organizations and agreed to prepare a Constitution by the chairman, stage 02, Guruwela.
Institutional development Officer, Thusara	It was thankful to everybody who have given support for having a successful famer summit of consolidated

Farmers' organization.

The Institutional development activities discussed as Given below.

01. It was educated farmers on subsidiary crops cultivation with the assistance of the agricultural officers.
02. It was conducted 02 programs of demarcation of reservation area.
03. It was mentioned that there are 12 maintenance programs were conducted.
04. It was conducted 03 elections, 12 annual general meetings and 18 committee meetings at Stages 1&2.
05. It was mentioned that unaudited farmer organizations should audited before March 2016.

RPM
It was mentioned that funds will not release for the Farmer organizations which are not audited there Accounts.

Institutional development Officer, stage 03& 04
It was mentioned that it was conducted AGMs for D42, D5, D4 and D2 and 10 committee meetings. It was conducted 08 audits for stage 4.

RPM.
It was held 06 subsidiary crops developments programs Within one day with the assistance of agri-officers. It was prohibited transport of sands in some agriculture. Roads.

Anoma Batagalla
Resettlement consultant
It was stated that rehabilitation of Minipe left bank Canal and anicut will complete within 04 years. She further stated that development program of Will appraise to the farmers in future and in time to Time. It was mentioned that grievance committees Will establish with the participation of Divisional Secretary, RPM, Resident engineer, farmer leaders Gramaniladaris.

Project officer Costha
He explained about the proposed development program. He requested from farmers to cooperate With the project and the officials.

Project director Mediwake
He stated about the project and explained long term Benefits for the farmers and requested to give fullest Cooperation for implementation of the construction Activities particularly from the encroachers who have Possessed reservation areas by cultivating paddy and Other crops. Accordingly all farmers agreed to give Fullest support to release the reservation land Whenever requested by the authorities.

Agrarian development officer
Ulpathgama, Morayaya
He explained about issuance of fertilizer and asked To open an accounts at the banks.

Farmer leader Mr. Gunathilake	Requested to resolve the barriers to open banks Accounts and asked about prices of fertilizer.
Divisional secretary	she stated about road development program will Will be held on 15 march to 22 for a week and a Agricultural day. The assistance of followings will Be given under this program. Parachute plates, fruits, inland fishes, seeds of onions Beans, chillies etc.
Ranjith Kumara chairman, divisional Farmer organization	He stated that constraints faced by the farmers on sale of paddy and scarcity of storage facility. It was discussed in details and requested to provide Seeds.
Chairman Wevpaha Samual Farmer leader Mr.Upatissa	He stated that to be resolved on low prices of paddy. He explained that they have face lots of problems on Elephants conflicts, delay of preparation of land Ownership documents and other constraints faced By them which lead to lots of hardships.
Secretary of stage 02. RPM	He requested to extent the period of water issue. He stated that water issue has been stop until 26. 02. 2016 on the decision taken at Maha/2015/2016 Cultivation Committee meeting.
Farmer leader, stage 01.	He requested that if they need to increase subsidiary crop Cultivation all facilities should increase. He further said that Water distribution period should be extended to march 05.
RPM Irrigation Engineer	He expressed that outcome of the proceedings of the meet- ing. He said that water issue will implement up to 3.3.2016. The Gamipubuduwa will implement 15.3 to 22.03.2016.
Subject matter officer.	Gemi pubuduwa progam will implement under the ADB Assistance and requested to cooperate all farmers in the Scheme.
Officer of Aluttarama seeds Farm Aluttrama	He explained about prices of the crops.
<u>Officer of PMB</u>	He stated about prices of paddy as well as sale of bags. <u>It was decided to give fullest cooperation on construction activities For the Minipe anicut and rehabilitation of left bank canal under the assistance of ADB. Further all farmers agreed to release reservation land for the construction if necessary. This proposal was made by B.M. Abeyaratne chairman, Farmer organization and seconded by E.M.Heenbanda, chairman, stage 3, farmer organization.</u>

Minutes approved by A.M.Darmasena
Project committee secretary and M.A.D.Bandara Resident project manager

Decisions of the 2016 YALA KANNAYA meeting of Minipe Project

Subject	1 st stage	2 nd stage	3 rd stage	4 th stage
Cultivable acreage	5643	4819	3482	2668
% of paddy	60%	60%	60%	60%
Other crops	40%	40%	40%	40%
Date of 1 st issue water	04/05	04/05	03/25	03/25
Date of clearing of the canal	03/30	03/30	03/20	03/20
Date of land preparation	04/05	04/05	03/25	03/25
Cultivation of seeds/crops	04/26	04/26	04/20	04/20
Water issuance	05/02	05/02	04/25	04/25
Last water issue for paddy	07/26	07/26	07/20	07/20
Last date of harvesting	08/25	08/25	08/20	08/20
Last date of insurance	04/26	04/26	04/20	04/20

The regulations formulated under the sub section 1.2 of the section 11 of the irrigation ordinance no 48 of 1968 as amended by the no 13 of 1968 act of parliament

01. To surcharge Rs. 200.00 per acre for the maintenance for field and distribution canals.
02. To surcharge penalty for the persons who are misuse water and doing disruption to the Irrigation system.
03. To surcharge Rs.1000.00 for the farmers who are not doing clearing of the canals and those who are not paying this penalty which should recover through the Peace council.
04. To surcharge Rs.1000.00 those who are firing the hays.
05. To compulsory to apply 2000kg of compost fertilizer per 01 acres.

It was prohibited to cultivate reservation area with the consent of the farmers.

1. Signed by District secretary/government agent and additional secretary of ministry of home affairs, Matale.
2. Signed by District secretary/government agent and additional secretary of ministry of home affairs, Kandy.

Photographs of Farmers Group Meeting (Minipe – February 2016)



B) Minutes of the meeting on farmers of encroached reservation lands held on 07.04.2016

Miss Anoma Batagalla Resettlement Specialist/PMU welcomed the gathering and explained the purpose of the meeting. She further explained that farmers who have encroached the reservation lands where the turnouts are located (0-30km) will be affected by the rehabilitation of turnouts under proposed ADB assisted rehabilitation project. The objective of this meeting is to hear the grievances of farmers and find the suitable remedial measures to overcome such grievances. Especially, she needs to record the objections of the farmers if any, for the disturbances of their cultivated reservation lands by the turnout rehabilitation works. Resettlement specialist further stated that under ADB guidelines, if there are grievances faced by the farmers due to this project, those should find out and suitable action be taken by the authority.

It was mentioned that 69 turnouts will be affected by the proposed rehabilitation project where the maximum of 138 reservation allotments are located. But only 62 turnouts are located in the encroached reservation lands whereas balance 07 turnouts are located in the state lands, she further stated. When the construction is going on 02 types of effects occur to the reservation lands which are:

- a) farmers are not in a position to cultivate these lands and they lose the income from the cultivation.
- b) Storing of construction materials at the reservation lands which also affect their cultivation.

She explained, it has been observed that extent of the encroached reservation lands are not more than 10 perch by a farmer in large. Resettlement specialist stated that PMU & PIU have prepared a letter to take the consent of farmers on release of encroached reservation lands for proposed construction activities and requested their consent in writing.

The PDMSC Consultant Irrigation Engineer stated on technical aspect of the construction activities. It was requested to submit their grievances of the farmers in this respect.

Farmer Leader Mr.T.M.Lokubanda is of the view that rehabilitation of turnouts is long standing necessity which may occur the disturbances to the farmers. But such things should tolerate and cooperate with the project in order to expedite the construction. He further requested from the farmers to sign the consent letter without delay.

Farmer leader Mr. H.M. Somaratne stated that all farmers who are cultivating reservation lands should be given their consent for release of reservation lands for this project, otherwise it will lead to delay of the rehabilitation of turnouts. He further stated that when it get delay that will badly effect to all the farmers in the project. Therefore, all should sign this consent letter and hand over to PIU. Finally all farmers agreed to give their consent in writing to release of encroached reservation lands for the rehabilitation project.

The attendance list is attached.



Consultation meeting with the farmers on 08/04/2016. At Minipe, 02



Consultation meeting with the farmers on 08/04/2016. At Minipe, 03.

ANNEX E – ACCESS ROADS



Overlooking the access road with left bank canal of Minipe



Site of one proposed definition wall



Overlooking the access road of Minipe left bank canal



Proposed rehabilitation of the bridge at Minipe left bank canal



Overlooking the access road to the turnout which is located at state land



Overlooking the bridge and intake of turnout which are to be rehabilitated



Minipe left bank canal along with the access road.



Turn out close to encroached reservation land



Turnout located at state land



Proposed rehabilitation of spillway of Minipe leftbank canal.



State land for dumping debris

ANNEX F – CONSENT LETTER AND FARMERS SIGNATURES**Minipe left bank canal rehabilitation project**

We do hereby agree to release the lands which are in our possession under encroachments whenever those lands wanted for the development activities of the Minipe left bank canal rehabilitation project.

SN	Turnout and farmer organization Numbers	Name of the farmer	I.D. Number	Signature of the farmer

වසමක් අවසන්ව,
මිනිසන් වහන්සේ අධිකාරියට පත්වන සඳහා වගකීම

ආයු වන්දිත වගකීමක් ඇති බව ගැන නිරවද්‍ය

ඉහත කාරණාව සාක්ෂි සහිතව සලකා බැලූ පසුව පහත සඳහන් තොරතුරු සහිතව පලකරනු ලබන මහලුබෝගෝල සේවකයන් ලෙසට සේවය ලැබීම සඳහා වන අයුරු සහිතව වහන්සේ වෙත සහතිකයක් දීමට සූදානම් වෙමිනි.

අත්හැරීමේ ප්‍රධානියාගේ නම: තොරතුරු සහ සේවය
එම්.එම්.පී. අක්.පෙරේරා (සාධාරණ නියෝජිතයා) :- 021, 025, 026, 034

ඉහත සඳහන් කරුණු අදාළව අදාළව පවතින බව සහ සහතිකයක් සඳහා වගකීම පූර්ණයෙන්ම සම්පූර්ණ කිරීමට අවබෝධය.


අත්සන