

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL, AT NEW DELHI.

Original Application No.: 980/2019

**IN THE MATTER OF:**

Harminder Singh & Anr.

....APPLICANTS

**VERSUS**

Union of India & Ors.

.....RESPONDENTS

N.D.O.H. : 24.02.2021  
L.D.O.H. : 01.10.2020

**INDEX**

S NO.	PARTICULAR	PAGE NO.
1.	OBJECTIONS ON BEHALF OF APPLICANTS TO THE REPORT FILED BY CHIEF SECRETARY OF PUNJAB IN COMPLIANCE OF ORDER DATED 01.10.2020 PASSED BY THIS HON'BLE TRIBUNAL AS WELL AS OBJECTIONS TO THE REPORT FILED BY JOINT COMMITTEE COMPRISING OF CPCB, IIT ROORKEE AND STATE PCB IN COMPLIANCE OF ORDER DATED 03.03.2020 PASSED BY THIS HON'BLE TRIBUNAL ALONG WITH AFFIDAVIT.	2-44
2.	Appendix-A Copy of the photographs.	45-47
3.	Appendix-B various Google images/ superimposed with actual area maps.	48-52

  
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**BRIEF SYNOPSIS**

1. That the Applicants had filed this Original application (980/2019) titled as Harminder Singh & Ors. Vs. Union of India & Ors raising substantial questions relating to Environment and man-made damage to the natural flow of river Sisvan by way of filling up and closing a part of it in village Bharounjan and diverting it at another place nearby in village Kansala, Sub Tehsil Majri, District SAS Nagar, Mohali by M/s. Omaxe ( R/9 and R/10) out of sheer greed in order to build their Group Housing Project "The Lake" and its residential township Phase 1 & its Club , throwing all cautions and rule of law to winds and in this huge environmental damage, which has

caused massive flooding in the area damaging the crops and other properties of the villagers, the government agencies/officers concerned have fully connived and their involvement is writ large on the face of this Environmental degradation.

2. That in compliance of the orders dated 25.09.2019, 03.03.2020 and 01.10.2020 of this Hon'ble Tribunal, reports dated 05.12.2019, 08.09.2020, 12.11.2020 and 0302.2021 have been filed by the Officers of the Respondent Authorities. However, the same in fact appear to be tailored to help the wrong doers as they are not in compliance with the orders dated 25.09.2019, 03.03.2020 and 01.10.2020 passed by this Hon'ble Tribunal. The reports are not comprehensive and are non-compliant in all its major aspects. The reports fail to acknowledge important factual aspects that have and are causing damage to the natural flow of river Sisvan.

3. **That this Hon'ble Tribunal taking the report dated 05.12.2019 into consideration, had directed construction of culverts at point A for passing 2000 cusecs of water and at point B for passing of 2650 cusecs of water.** It is pertinent to mention herein that the proposed action plan of the Chief Engineer, Drainage Department of Water Resources, as per the report subsequent dated 12.11.2020 is completely contrary to the directions passed by this Hon'ble Tribunal on 03.03.2020. **It is submitted that the directions of this Hon'ble Tribunal to make culverts at both Point A and Point B have been negated with an oblique motive in order to help "OMAXE" so that the natural curve of Siswan River is completely finished. It is**

submitted that instead of making culverts at Point A and at Point B to restore the natural curve in the form of a loop of the river Sisvan, the Respondent Builder with strong political support and all help from the officers of the Respondent Authorities in total contempt to the orders passed by this Hon'ble tribunal, instead of making culverts at point A and B, has now removed the pipes earlier embedded and completely filled up the area as a consequence of which the natural flow of the river is completely stopped at point A finishing the natural curve that existed in the form of a loop and has rather illegally dug up a new drain from point A to point B diverting the river. Thus instead of complying with the orders of this Hon'ble tribunal, the respondent Builder with active support and connivance of the respondent authorities contemptuously violated the order dated 03.03.2020. The relevant photographs are attached hereto as Appendix-A.

4. That it is submitted that the acts of the Respondent Builder are an eye wash and a consequence of a well-planned conspiracy wherein the protectors of law in the relevant departments of the government have completely closed their eyes. It is a matter of fact that not building culverts and digging a small drain will not help in solving the problem of floods that has arisen as a consequence of the illegal acts of the respondent Omaxe in filling up the river and earlier putting inadequate small pipes and now instead of constructing culverts over the river's natural course and protect the same, remove the pipes and fill up the area. That by not constructing culverts at both point A and point B and removing

the pipes will prove hazardous as the the flow of water will now remain obstructed and the area on the other side of the road, opposite the project, will still remain submerged in the rainy season causing huge flooding.

5. That the report dated 03.02.2021 submitted by JOINT COMMITTEE COMPRISING OF CPCB, IIT ROORKEE AND STATE PCB also recommends that the culverts should be constructed at POINT A and POINT B. It has been recommended by the joint committee that two pipes at Point A and Point B are not adequate. Further as per the above recommendations, in order to avoid environmental damage in the future the course of the river should be restored to its original course as it was before the construction of the project. Therefore, the respondents need to be directed by this Hon'ble Tribunal to forthwith make culverts at point A and B and further should be directed to restore the natural course of the river and also remove all the debris which are still there.

6. That as already stated in the Original Application and further in the Objections dated 10.02.2020, the illegal actions of Omaxe in terms of blocking/diverting the river and raising construction in the riverbed is not limited to village Bharounjian but also extends to village Kansala. That the earlier report dated 05.12.2019 submitted by SEIAA also failed to acknowledge the illegal actions of Omaxe in terms of construction in village Kansala. That in the order dated 0303.2020, this Hon'ble Tribunal had clearly directed the Committee to look into the issue of diversion of river at village

Kansala which has not been gone into so far. That despite the aforesaid directions of this Hon'ble Tribunal, a perusal of the report dated 22.10.2020 makes it crystal clear that the committee constituted by this Hon'ble Tribunal has intentionally in order to save the builder and protect the guilty officers from accountability, failed to take into consideration the illegal construction by the Respondent Omaxe in the riverbed in village Kansala, which has caused extensive damage to the environment by closing, filling up and diverting the course and natural flow of river Siswan. Thus it can be concluded without any doubt that the committee is trying to favour the Wrong Doers as in total disregard to the orders passed by this Hon'ble Tribunal twice, the committee has simply failed to look into the violations at village Kansara as it finds no mention in the report submitted.

7. The Respondent Omaxe instead of obeying the directions of this Hon'ble Tribunal has now blocked the entire natural curve that existed in the form of a loop and further instead of making culverts at Point A and B, has removed the preexisting pipes taking the river flow across the road and has filled up the area completely blocking the river flow, which shall cause massive flooding in the entire area in the rainy season, rendering the action of the Omaxe unsustainable in the eyes of law and in blatant violation of the directions of this Hon'ble Court and the Law in this regard

8. That in compliance of the order dated 03.03.2020 passed by this Hon'ble Tribunal, a report dated 03.02.2021 has been submitted by

JOINT COMMITTEE COMPRISING OF CPCB, IIT ROORKEE AND STATE PCB. It is submitted that as mentioned in the Report the committee sought information from the concerned departments. **It is submitted that there was no response from Chief Town Planner (CTP) regarding information sought on:**

- *Certification that the location of GMADA road is as per the approved master plan and it has not been pushed or deviated from the location shown in the master plan.*
- *Providing Longitude and Latitude of the project boundaries of The Lake project particularly in the area starting from Chandigarh-Kurali Road village Bharronjian to village Kansala adjoining to the river banks, specifically for the length falling between Point-A and B and for the project boundaries near the village Kansala.*

9. It is pertinent to mention herein that the information regarding the change in the natural flow of the river as sought by this committee from the Department of Water resources (Drainage) was received; however the report itself states that the same are not in line of the queries raised. It is thus submitted that the deliberate acts on part of the relevant competent authorities to not furnish information or furnish inadequate information to the Committee are a clear proof of the fact that the Respondent Builder has

connived with the officials and the later are trying to hide the illegal construction done by the Respondent Builder in the river bed. It is hence humbly submitted that the Report dated 03.02.2021 is not based on material and important information as the departments failed to provide the same to the committee.

**10. That Importantly further in response of the information sought from SEIAA Punjab regarding the mention of Siswan river in the Terms of Reference (TOR) issued to the project proponent at the time of grant of Environment Clearance, response from SEIAA Punjab states as follow:**

***SEIAA vide email dated 22/9/2020 informed that the matter of Siswan River passing through the project site was neither deliberated upon nor any specific TOR was imposed while granting the Term of References to the promoter company.***

In this regard, the Applicant would like to draw the attention of this Hon'ble Tribunal towards the fact that the application for EC or application for expansion in EC submitted by the Respondent Builder has no mention about the fact that there is a river passing adjacent to the proposed project site. That having done so, the Respondent Builder has committed a violation of the mandatory disclosure requirements and,

therefore, its action falls within the scope of Regulation 8(vi) of the EIA Notification, 2006 which reads as under:

8(vi) Deliberate concealment and/or submission of false or misleading information or data which is material to screening or scoping or appraisal or decision on the application shall make the application liable for rejection, and cancellation of prior environmental clearance granted on that basis. Rejection of an application or cancellation of a prior environmental clearance already granted, on such ground, shall be decided by the regulatory authority, after giving a personal hearing to the applicant, and following the principles of natural justice."

A perusal of the above thus makes it absolutely clear that while granting environmental clearance to the respondent Omaxe the issue of damage to the environment especially this river Siswan was not taken into consideration at all by SEIAA. The applicant through his friend has applied under RTI the documents relating to the environmental clearance of this project, however the same have fill date not been supplied by the authorities, it is submitted that the interest of justice requires that this Hon'ble Tribunal takes a suo-moto cognizance of the fallacious environmental clearance granted to Omaxe for this

project and set aside the same. It is further submitted that respondent Omaxe has not taken environmental clearance for individual components of the project and has a single environmental clearance for a huge area which is illegal and contrary to the law laid down by this Hon'ble tribunal in the matter of Janta Land Promoters Vs PPCB.

11. That it is important and extremely relevant to point out here that this committee, it seems has either committed a grave error or has been influenced by the respondent Builder and the conniving officers to completely ignore in the report the relevant area of the village Kansala where Omaxe has systematically over the years diverted the natural flow of the river in order to raise construction of their clubhouse and other plotted colony, the complete detail of which has been demonstrated alongwith google images from the relevant years. This committee has deliberately, may be malafidely, chosen a different area of village Kansara where there is much lesser violation. For the kind perusal of this Hon'ble Tribunal the Applicants are attaching hereto as Appendix-B, various Google images/ superimposed with actual area maps, perusal of which would bring home the fact that the area considered by this Committee is different and distinct from the actual area where river flow has been diverted and construction raised be filling up the riverbed.

**OBJECTIONS ON BEHALF OF APPLICANTS TO THE REPORT FILED BY  
CHIEF SECRETARY OF PUNJAB IN COMPLIANCE OF ORDER DATED  
01.10.2020 PASSED BY THIS HON'BLE TRIBUNAL.**

1. That the Applicants had filed an Original application (980/2019) titled as Harminder Singh & Ors. Vs. Union of India & Ors raising substantial questions relating to Environment and man-made damage to the natural flow of river Sisvan by way of filling up and closing a part of it in village Bharounjian and diverting it at another place nearby in village Kansala, Sub Tehsil Majri, District SAS Nagar, Mohali by M/s. Omaxe ( R/9 and R/10) out of sheer greed in order to build their Group Housing Project "The Lake" and its residential township Phase 1 & its Club , throwing all cautions and rule of law to winds and in this huge environmental damage, which has caused massive flooding in the area damaging the crops and other properties of the villagers, the government agencies/officers concerned have fully connived and their involvement is writ large on the face of this Environmental degradation.
2. That the Hon'ble National Green Tribunal vide its order dated 25.09.2019 constituted a committee of Additional Chief Secretary, Housing and Urban Development Punjab, Secretary Irrigation Department Punjab and SEIAA Punjab to submit factual and action taken report through SEIAA Punjab as nodal agency.

3. That the Committee submitted its report to the Hon'ble National Green Tribunal through SEIAA Punjab on 05.12.2019 with the following recommendations:

- I. **GMADA will construct culverts at point A for passing 2000 cusecs of water and at point B for passing of 2650 cusecs of water after vetting drawings from the Water Resources Department.**
- II. M/s Omaxe Chandigarh Extension Developer Pvt. Ltd. shall remove the debris from the water way of the natural drain and restore the Level of the land to the original level. GMADA shall ensure the compliance of the notice issued by it.
- III. M/s Omaxe Chandigarh Extension Developer Pvt. Ltd shall protect the left side of creek of the reach adjoining to The Lake' Project and the left edge of the road from point A to B along the creek with the help of stone pitching as per the undertaking 22/10/2019 submitted by it. GMADA and Water Resource Department shall ensure the compliance of the same.

4. That the Applicants herein thereafter filed Objections dated 10.02.2020 to the report dated 05.12.2019 submitted by SEIAA Punjab before this Hon'ble Tribunal. It is submitted that through the objections dated 10.02.2020, the Applicants pointed out that the Report fails to acknowledge relevant factual matrix and was not comprehensive and an incomplete report contrary to the directions by this Hon'ble Tribunal in its order dated 25.09.2019. The report did not comply with the directions of the Tribunal and the grievance of the Applicants in its true spirit and substance.
5. That thereafter, this Hon'ble Tribunal in the light of the report submitted by SEIAA Punjab and the objections dated 10.02.2020 filed by the Applicants herein, inter alia ordered on 03.03.2020:
- "The State PCB may assess and recover compensation on 'Polluter Pays' principle. The GMADA may also enforce its directions in letter dated 28.03.2014, Annexure B-1 to the report. The Committee may look into the issue of diversion of river at village Kansala which has not been gone into so far. Illegal filling up of the river and raising illegal construction and remedial action be also examined by the Committee. The illegal construction may either have to be removed or compensation assessed and recovered. For this purpose, representatives of the***

**Central Pollution Control Board (CPCB), IIT Roorkee and the State PCB will be a separate Committee. The nodal agency for compliance and coordination would be the State PCB."**

6. That a report in view of the above directions was submitted before this Hon'ble Tribunal by the Chief Engineer, Drainage Punjab through SEIAA on 08.09.2020, which stated as below:

*"The flow of the creek passing through the pipe culverts near 'The Lake' project again returns to the right side and runs through the old bed of river and flows downstream, At present, there is no obstruction in the natural flow of the river near village Kansala."*

7. That this Hon'ble Tribunal in view of the report dated 08.09.2020 submitted by the Chief Engineer, Drainage Punjab through SEIAA and in view of the submissions made by the Applicants herein on 01.10.2020, ordered:

*"4. Learned Counsel for the applicants submits that the above report does not show compliance of the order of this Tribunal. Mere statement that the flow of the river is not*

obstructed is not adequate and is in conflict with the earlier reports referred to in the order dated 03.03.2020. It is also pointed out that the matter has been dealt with only by the Executive Engineer of the Water Resources Department, without involvement of other concerned Departments, including GMADA, Housing and Urban Development Department, the Environment Department and the Irrigation Department.

5. In view of above, we direct the Chief Secretary, Punjab to call a meeting of the concerned departments viz. GMADA, the Housing and Urban Development Department, the Irrigation Department, and the Environment Department within one month to look into the matter and take remedial action and furnish a report after taking information from all the said departments within three months by e-mail at [judicialngt@gov.in](mailto:judicialngt@gov.in) preferably in the form of searchable PDF/OCR Support PDF and not in the form of Image PDF."

8. That consequently in part compliance of the order of this Hon'ble Tribunal, an action taken report has been filed by

Chief Secretary of Punjab dated 12.11.2020. However, the same in fact appears to be made to help the wrong doers as it is not in compliance with the order dated 01.10.2020 passed by this Hon'ble Tribunal. The report is not comprehensive and non-compliant in all its major aspects. The report fails to acknowledge important factual aspects that have and are causing damage to the natural flow of river Sisvan.

9. That this Hon'ble Tribunal in its order dated 03.03.2020 had directed GMADA to construct culverts at point A and at point B. The operative part of the same is being reproduced herein below:

***I. GMADA will construct culverts at point A for passing 2000 cusecs of water and at point B for passing of 2650 cusecs of water after vetting drawings from the Water Resources Department.***

That the proposed action plan of the Chief Engineer, Drainage Department of Water Resources, as per the report dated 12.11.2020 is completely contrary to the directions passed by this Hon'ble Tribunal on 03.03.2020. The relevant portion of the report dated 12.11.2020 is being reproduced herein below for the ready reference of this Hon'ble Tribunal:

*"9(j). That the 2 pipes of 5 feet diameter, being inadequate to take the 700 cusec discharge of the tributary of Siswan river, need to be replaced with a bridge of 50 feet span at Point B in Annexure A. The cost should be paid for by Omaxe."*

That a perusal of the aforesaid action plan proposed by the Chief Engineer, Drainage Department of Water Resources clearly shows that Point A has been deliberately overlooked and ignored with a oblique motive in order to help "OMAXE" so that the natural curve of Siswan River is completely finished. Moreover, the directions of this Hon'ble Tribunal to make culverts at both Point A and Point B has not been taken into consideration and instead it has been planned and proposed to build a bridge of 50 feet span at Point B, which will not serve the purpose at all, rather the departments concerned shall themselves be interfering in the natural flow of the River Siswan by taking out the pipes at both point A and B, completely finishing the curve and stopping the natural flow of the river.

10. That it is submitted that the proposed action plan to build a bridge of 50 feet span at Point B is an eye wash and a consequence of a well-planned conspiracy wherein the protectors of law in the relevant departments of the

government have completely closed their eyes siding with respondent Omaxe, as the latter has considerable political clout. It is a matter of fact that building a bridge will not help in solving the problem of floods that has arisen as a consequence of the illegal act of Omaxe Builders of putting a small pipe instead of culverts over the river's natural course and protect the same which otherwise the law mandates them in such a case to do so. That by not constructing culverts at both point A and point B will prove hazardous, the flow of water will still remain obstructed and the area on the other side of the road will get submerged in the rainy season causing huge flooding.

**11. It is submitted that the directions of this Hon'ble Tribunal to make culverts at both Point A and Point B have been negated with an oblique motive in order to help "OMAXE" so that the natural curve of Siswan River is completely finished. It is submitted that instead of making culverts at Point A and at Point B to restore the natural curve in the form of a loop of the river Siswan, the Respondent Builder with strong political support and all help from the officers of the Respondent Authorities in total contempt to the orders passed by this Hon'ble tribunal, instead of making culverts at point A and B, has now removed the pipes earlier embedded and completely filled up the area as a consequence of which the natural flow of the river is completely stopped at point A finishing the natural curve**

that existed in the form of a loop and has rather illegally dug up a new drain from point A to point B diverting the river. Thus instead of complying with the orders of this Hon'ble tribunal, the respondent Builder with active support and connivance of the respondent authorities contemptuously violated the order dated 03.03.2020. That photographs attached hereto as Appendix - A are sufficient to bring home this contemptuous action on the part of the Respondents. That the illegal act of the Respondents to completely fill up the natural course of the river clearly substantiates that fact that this is a fit case where this Hon'ble Tribunal apart from directing Omaxe to put culverts at Point A and Point B and further to restore the natural flow of the river by removing the impeding constructions raised by them should also impose **very heavy Environmental Compensation for the damage caused to the environment by the Respondent Builder as well as the officers concerned.**

12. That in compliance of the order passed by this Hon'ble Tribunal on 03.03.2020, recently a report dated 03.02.2021 has been submitted by JOINT COMMITTEE COMPRISING OF CPCB, IIT ROORKEE AND STATE PCB. That the relevant recommendations of the committee are as follow:

*13(a) Provided two pipes each of 5 ft diameter at the crossings of the river Siwan with the*

project road at Points A and B are not adequate and would inundate the area towards west side of the project road even during moderate flow in the river. Such obstruction in flow may divert the main channel and the river may follow a straight path in future which would cause erosion of the agricultural

land. **To avoid such damage is recommended**

**that culverts of suitable size be constructed**

**both the points A & B.** The concerned Dept, may engage some expert agency to carry out study to design the culverts and the cost of the construction of the culverts shall be levied from M/s Omaxe Chandigarh Extension Developers Pvt. Ltd.

13(b)The course of the river and Choe at their confluence have been shifted towards north and the left food plain of the Choe and Siswan river have also been encroached near the confluence. **To avoid the environmental damage in future, the committee recommends that the course of the river shall be restored to its original course as it was before the construction of the project.** Alternatively, a suitable section of the Siswan river from Point A to B and the Choe from the Culvert on the

Chandigarh-Kurali road to its confluence with Siswan river be excavated and debris be cleared so that flood water can be contained in the channelized section of the river and the Choe to avoid inundation and soil erosion in the nearby area. The concerned Dept. may engage some expert agency to carry out study to fix the size of the section of the river and the Choe. The cost towards the restoration or the channelization including land cost is required to be borne by M/s Omaxe Chandigarh Extension Developers PL Ltd.

13. That after the perusal of the aforesaid recommendations **the need to make culverts at POINT A and POINT B becomes crystal clear. It has been recommended by the joint committee that two pipes at Point A and Point B are not adequate.** Further as per the above recommendations, in order to avoid environmental damage in the future the course of the river should be restored to its original course as it was before the construction of the project. Therefore, it is humbly prayed by the Applicant that Respondent builder should be directed to make culverts at point A and B and further should be directed to restore the natural course of the river and also remove all the debris.

14. That a further perusal of the report dated 12.11.2020 submitted by the Chief Engineer, Drainage Department of Water Resources shows a mention that: "***the creek forming a loop toward the Omaxe site does not exist but has been created due to man-made embankments in the river bed.***" It is submitted that the images taken from Google Earth starting from the year 2003 along with super-imposed images on maps (collectively attached as Annexure-A/2 (Colly) in the Original Application) on a glance show and establish that there is a distinct curve (in the form of a loop) being taken by the river. The area in question where the curved portion existed, falls in village Bharounjian, Hadbast No. 160 and a perusal of Google images / Google Maps, {{Annexure A/2 (Colly)}, would show that the course of river can clearly be seen along with the curve in the images dated 22<sup>nd</sup> of November, 2003, 2<sup>nd</sup> of October, 2006, 30<sup>th</sup> of April, 2009, 16<sup>th</sup> of December 2012, however, thereafter Omaxe started construction of the road named **VR6-Road**, which is appearing as two lines in these Google maps initially, and thereafter in a very planned and clandestine manner by getting even the Master Plan manipulated, the natural course of the river was blocked.

15. That a perusal of the report further shows a mention that: "It was informed that Lake project developed by Omaxe is not in the riverbed." It is clear that relevant questions raised by the Applicants herein in the Original Application and further

in the objections dated 10.02.2020 related to the obstruction and usurpation of the river Siswan have been left unacknowledged. The report nowhere has a mention about the unauthorized construction carried out by Omaxe Chandigarh Extension Developers Private Limited in the river bed. **It is submitted that Omaxe has illegally set up a Hot Mix Plant in the basin of river Siswan and are operating this hot mix plant illegally apart from raising construction of towers of their project in a portion of the area where river Siswan used to take a curve during its natural course of flow.** It is submitted that in village Kansala structures, club building/towers et cetera including other encroachments have been made by the respondent Omaxe for their group housing project "The Lake" and in their plotted colony Omaxe Chandigarh extn. phase 1 in the river Siswan, and it's basin and in and around its catchment area forthwith. It clearly points out that the license granted to Omaxe to raise construction in the river basin of Siswan is not only illegal but shows connivance of concerned officers posted in the relevant departments at that point of time, whom the present Administration set up wants to shield.

**16. That as already stated in the Original Application and further in the Objections dated 10.02.2020, that the illegal actions of Omaxe in terms of construction is not limited to village Bharounjian but also extends to village Kansala. That river Siswan further down flows to the village Kansala, and the**

Google images taken from the year 2003 till 2018 again demonstrate and substantiate the usurpation/expropriation of river Siswan by Omaxe in order to construct their club and other parts of this township. If the images dated 22<sup>nd</sup> of November 2003, 2<sup>nd</sup> of October, 2006, 17<sup>th</sup> of August, 2007 are perused there is a clear course of the river shown which while coming downstream from the left side of the photograph goes meandering and takes a turn towards left and goes straight and takes a sharp turn towards right to further go down to take another left and flow onwards. If the image of 30<sup>th</sup> of April, 2009 is perused, it shows that Omaxe had started filling up the course of the river from where it takes a sharp turn right and the image dated 16<sup>th</sup> of December, 2012 thereafter shows that portion of the river eliminated completely and where existed the natural flow of the river, now construction is shown along with a boundary wall which in fact is the club and other plotted colony being constructed for the township.

17. That as already stated in the Original Application and further in the Objections dated 10.02.2020, the illegal actions of Omaxe in terms of blocking/diverting the river and raising construction in the riverbed is not limited to village Bharounjian but also extends to village Kansala. That the earlier report dated 05.12.2019 submitted by SEIAA also failed to acknowledge the illegal actions of Omaxe in terms of construction in village Kansala. That in the order dated

0303.2020, this Hon'ble Tribunal had clearly directed the Committee to look into the issue of diversion of river at village Kansala which has not been gone into so far. That despite the aforesaid directions of this Hon'ble Tribunal, a perusal of the report dated 22.10.2020 makes it crystal clear that the committee constituted by this Hon'ble Tribunal has intentionally in order to save the builder and protect the guilty officers from accountability, failed to take into consideration the illegal construction by the Respondent Omaxe in the riverbed in village Kansala, which has caused extensive damage to the environment by closing, filling up and diverting the course and natural flow of river Siswan. Thus it can be concluded without any doubt that the committee is trying to favour the Wrong Doers as in total disregard to the orders passed by this Hon'ble Tribunal twice, the committee has simply failed to look into the violations at village Kansara as it finds no mention in the report submitted.

18. That this Hon'ble Tribunal in its order dated 01.10.2020 had issued directions to take remedial action. The committee has nowhere referred as to what action is required to be taken and what measures should be adopted to remedy this very serious wrong committed by the Respondent Builder OMAXE. The report nowhere mentions that what is the extent of damage done by the builder to the ecology and environment of the area in question.

19. That the directions passed by this Hon'ble Tribunal on 03.03.2020 have also not been complied with. The operative part of the order dated 03.03.2020 is reproduced herein below for the ready reference of this Hon'ble Tribunal:

**"The State PCB may assess and recover compensation on 'Polluter Pays' principle. The GMADA may also enforce its directions in letter dated 28.03.2014, Annexure B-1 to the report. The Committee may look into the issue of diversion of river at village Kansala which has not been gone into so far. *Illegal filling up of the river and raising illegal construction and remedial action be also examined by the Committee. The illegal construction may either have to be removed or compensation assessed and recovered. For this purpose, representatives of the Central Pollution Control Board (CPCB), IIT Roorkee and the State PCB will be a separate Committee. The nodal agency for compliance and coordination would be the State PCB."***

It is important to mention herein that the Committee in its report dated 12.11.2020 has failed to assess and recover compensation on 'Polluter Pays' principle till date. Also, as

per directions neither has the illegal construction been removed nor compensation for the same has been assessed and recovered.

20. That further the report dated 12.11.2020 has failed to take into consideration the fact that the Respondent Builder has illegally set up a Hot Mix Plant in the basin of river Siswan and are operating this hot mix plant illegally apart from raising construction of towers of their project in a portion of the area where river Siswan used to take a curve during its natural course of flow, till the year 2014 i.e. before the construction of the road in question began by Omaxe. Copy of photographs showing Hot Mix Plant in the basin of river Siswan are already annexed with the main petition as Annexure A/4 at page 88 of the main petition. .

**21. That the Respondent Omaxe has stopped/diverted a naturally flowing river and further made an eye wash attempt by putting a concrete pipe diverting it, filling up the portion of its curve and raising illegal construction upon it, which caused massive flooding in the entire area apart from later on further diverting the river at village Kansala for its club house and other urban construction, , rendering the action of the Omaxe unsustainable in the eyes of law and in blatant violation of the law in this regard.**

22. That in view of the illegal acts of the Respondents and also in view of the recommendations by the report dated - 3.02.2021 submitted by JOINT COMMITTEE COMPRISING OF CPCB, IIT ROORKEE AND STATE PCB, the Respondents should be directed to put culverts at both Point A and point B and forthwith restore the relevant portion of river Sisvan closed/diverted by them to its original position as it existed prior to construction of the main road (as per master plan) and construction of other buildings of Omaxe project and township. Further, exemplary Environmental Compensation should be imposed upon the Respondent Omaxe as well as other official respondents found guilty of connivance and dereliction of duty and the same be spent in the restoration of the damage caused on account of such interference with the natural flow of river Sisvan.

23. That the Respondents should also be directed to remove all structures, club building/towers et cetera including other encroachments made by the respondent Omaxe for their group housing project "The Lake" and in their plotted colony Omaxe Chandigarh extrn. phase 1 in the river Sisvan, and it's basin and in and around its catchment area forthwith at village Kansala. Further the committee needs to clearly demarcate the river and its riverbed as it existed in the villages mentioned hereinabove and have it restored forthwith to its original position as shown by the attached google maps.

**OBJECTIONS ON BEHALF OF APPLICANTS TO THE REPORT FILED BY  
JOINT COMMITTEE COMPRISING OF CPCB, IIT ROORKEE AND STATE  
PCB IN COMPLIANCE OF ORDER DATED 03.03.2020 PASSED BY THIS  
HON'BLE TRIBUNAL.**

1. That this Hon'ble Tribunal in the light of the report submitted by SEIAA Punjab and the objections dated 10.02.2020 filed by the Applicants herein, interalia ordered as under on 03.03.2020:

*"The State PCB may assess and recover compensation on 'Polluter Pays' principle. The GMADA may also enforce its directions in letter dated 28.03.2014, Annexure B-1 to the report. The Committee may look into the issue of diversion of river at village Kansala which has not been gone into so far. Illegal filling up of the river and raising illegal construction and remedial action be also examined by the Committee. The illegal construction may either have to be removed or compensation assessed and recovered. For this purpose, representatives of the Central Pollution Control Board (CPCB), IIT Roorkee and the State PCB will be a separate Committee. The nodal agency for compliance and coordination would be the State PCB."*

2. That in compliance of the order dated 03.03.2020 passed by this Hon'ble Tribunal, a report dated 03.02.2021 has been submitted by JOINT COMMITTEE COMPRISING OF CPCB, IIT ROORKEE AND STATE PCB. It is submitted that as mentioned in the Report the committee sought information from the concerned departments. **It is submitted that the there was**

**no response from Chief Town Planner (CTP) regarding information sought on:**

- *Certification that the location of GMADA road is as per the approved master plan and it has not been pushed or deviated from the location shown in the master plan.*
- *Providing Longitude and Latitude of the project boundaries of The Lake project particularly in the area starting from Chandigarh-Kurali Road village Bharronjian to village Kansala adjoining to the river banks, specifically for the length falling between Point-A and B and for the project boundaries near the village Kansala.*

3. It is pertinent to mention herein that the information regarding the change in the natural flow of the river as sought by this committee from the Department of Water resources (Drainage) was received; however the report itself states that the same are not in line of the queries raised. It is thus submitted that the deliberate acts on part of the

relevant competent authorities to not furnish information or furnish inadequate information to the Committee are a clear proof of the fact that the Respondent Builder has connived with the officials and the later are trying to hide the illegal construction done by the Respondent Builder in the river bed. It is hence humbly submitted that the Report dated 03.02.2021 is not based on material and important information as the departments failed to provide the same to the committee.

4. That further in response of the information sought from SEIAA Punjab regarding the mention of Siswan river in the Terms of Reference (TOR) issued to the project proponent at the time of grant of Environment Clearance, response from SEIAA

Punjab states as follow:

***SEIAA vide email dated 22/9/2020 informed that the matter of Siswan River passing through the project site was neither deliberated upon nor any specific TOR was imposed while granting the Term of References to the promoter company.***

In this regard, the Applicant would like to draw the attention of this Hon'ble Tribunal towards the fact that the application for EC or application for expansion in EC submitted by the Respondent Builder has no mention about the fact that there is a river passing adjacent to the proposed project site.

That having done so, the Respondent Builder has committed a violation of the mandatory disclosure requirements and, therefore, its action falls within the scope of Regulation 8(vi) of the EIA Notification, 2006 which reads as under:

8(vi) Deliberate concealment and/or submission of false or misleading information or data which is material to screening or scoping or appraisal or decision on the application shall make the application liable for rejection, and cancellation of prior environmental clearance granted on that basis. Rejection of an application or cancellation of a prior environmental clearance already granted, on such ground, shall be decided by the regulatory authority, after giving a personal hearing to the applicant, and following the principles of natural justice."

5. That in furtherance to the above-mentioned facts, it is stated in the report dated 03.02.2021 that on examination of the information provided by various departments, the Committee found that the same was conflicting with the ground reality. Hence, thereafter, to reach a conclusion a study of morphological changes in the change in the course of the river Siswan and choe near the project was undertaken by a technical expert of the Committee using

Google Earth Images. It is thus submitted by the applicant herein that the report dated 03.02.2021 submitted by the JOINT COMMITTEE COMPRISING OF CPCB, IIT ROORKEE AND STATE PCB is not based on physical site visit and is only based on Google Earth Images selectively picked up and used ignoring some of the relevant ones at village Kansara and hence lacks relevant factual information.

6. That though the report has been prepared without complete information from the relevant departments yet the report correctly details out the illegal acts of the Respondent Builder of tampering with the natural flow of the river. It is submitted that the joint committee has been adequately environment conscious to find and observe that:

***12(d) After the commencement of the project, the confluence point of River Siswan and Choe was shifted by 300 feet (90m) approx. Towards the northern side near Tower-Isbella of the project. It is also evident from the Fig.2 that the development of the project has shifted the main course of the river and Choe and also encroached their flood plain near Tower-Isbella. Such encroachment may result in more inundation of the area towards the right side***

**(north) during high flow in the river and the Choe.**

**12(e)** A bridge of 400 ft width is provided on river Siswan at its crossing with Chandigarh-Kurali road and culverts of 75ft and 45 ft width are provided on the Choe joining to the river. Strangely, only two pipes of 5 ft. dia. each at point A and B are provided across the project road to pass the flow of the river.

**13(a)** Provided two pipes each of 5 ft diameter at the crossings of the river Siswan with the project road at Points A and B are not adequate and would inundate the area towards west side of the project road even during moderate flow in the river. Such obstruction in flow may divert the main channel and the river may follow a straight path in future which would cause erosion of the agricultural land. **To avoid such damage is recommended that culverts of suitable size be constructed both the points A & B. The concerned Dept. may engage some expert agency to carry out study to design the culverts and the cost of the construction of the culverts shall be levied from**

**M/s Omaxe Chandigarh Extension Developers****Pvt. Ltd.**

**13(b)**The course of the river and Choe at their confluence have been shifted towards north and the left food plain of the Choe and Siswan river have also been encroached near the confluence. **To avoid the environmental damage in future, the committee recommends that the course of the river shall be restored to its original course as it was before the construction of the project.** Alternatively, a suitable section of the Siswan river from Point A to B and the Choe from the Culvert on the Chandigarh-Kurali road to its confluence with Siswan river be excavated and debris be cleared so that flood water can be contained in the channelized section of the river and the Choe to avoid inundation and soil erosion in the nearby area. **The concerned Dept. may engage some expert agency to carry out study to fix the size of the section of the river and the Choe. The cost towards the restoration or the channelization including land cost is required to be borne by M/s Omaxe Chandigarh Extension Developers PL Ltd.**

7. The perusal of the aforesated findings and recommendations as stated by the Joint Committee in its report dated 03.02.2021, without any doubt demonstrates and substantiates that Omaxe for this project of theirs have played havoc with the topography and natural flow of the river Sisvan and by blocking it/changing its course have raised construction of this project, which is completely illegal and highly damaging to the environment and the biodiversity/aquatic life (flora and fauna) in the area, apart from the entire area having become susceptible to high flooding which has caused damage to the houses of the villagers and crops being sown in their lands in the vicinity where these changes in the natural flow of river have been made by Omaxe and is a big threat for the future as well.
8. That though the Joint Committee has appropriately and rightly pointed out the acts of the Respondent Builder in interfering with the normal flow of river Sisvan and closing a part of it whereas the diverting another part of the river causing enormous environmental damage as well as total flooding of the area at village Bharounjjan, however have **erroneously observed that the change in the flow of the river near village Kansala is attributable to natural change of the river.** The observations of the committee in this regard are reproduced herein below for the ready reference of this

Hon'ble Tribunal:

**12(f)** The historical 'Google earth images' reveals that the river Siswan has wandering behavior at village Kansala. The main course of river near village Kansala during pre- and post construction of the project is shown in the Fig. 3. Some patch of land towards right side of the river is low lying and gets inundated frequently during the monsoon period. The river has also eroded the right bank at some places. **Inundation and some erosion towards the right bank of the river Siswan near the village Kansala can be attributed to natural change of the river.**

**13(c)** **Inundation and some erosion towards the right bank of the Siswan river near the Kansala village can be attributed to natural change of the river.** However, to control loss of pricey land against erosion, it is recommended that the concerned department may take suitable measures to protect the right bank of the river near the Kansala village.

9. That the illegal actions of Omaxe in terms of construction is not limited to village Bharounjian but also extends to village Kansala. That river Siswan further down flows to the village Kansala, and the Google images taken from the year 2003

till 2018 again demonstrate and substantiate the usurpation/expropriation of river Siswan by Omaxe in order to construct their club and other parts of this township. If the images dated 22<sup>nd</sup> of November 2003, 2<sup>nd</sup> of October, 2006, 17<sup>th</sup> of August, 2007 are perused there is a clear course of the river shown which while coming downstream from the left side of the photograph goes meandering and takes a turn towards left and goes straight and takes a sharp turn towards right to further go down to take another left and flow onwards. If the image of 30<sup>th</sup> of April, 2009 is perused, it shows that Omaxe had started filling up the course of the river from where it takes a sharp turn right and the image dated 16<sup>th</sup> of December, 2012 thereafter shows that portion of the river eliminated completely and where existed the natural flow of the river, now construction is shown along with a boundary wall which in fact is the club and other plotted colony being constructed for the township.

**10. That it is important and extremely relevant to point out here that this committee, it seems has either committed a grave error or has been influenced by the respondent Builder and the conniving officers to completely ignore in the report the relevant area of the village Kansala where Omaxe has systematically over the years diverted the natural flow of the river in order to raise construction of their clubhouse and other plotted colony, the complete detail of which has been demonstrated alongwith google images from the relevant**

years. This committee has deliberately, may be malafidely, chosen a different area of village Kansara where there is much lesser violation. For the kind perusal of this Hon'ble Tribunal the Applicants are attaching hereto as Appendix-B, various Google images/ superimposed with actual area maps, perusal of which would bring home the fact that the area considered by this Committee is different and distinct from the actual area where river flow has been diverted and construction raised be filling up the riverbed.

11. Therefore, it is humbly submitted by the Applicant herein that the change in the flow of the river near village Kansala is not a natural change and is rather attributable to the illegal acts of construction of the Respondent Builder in village Kansala, which has caused extensive damage to the environment by diverting the natural course of the river, filling up the riverbed and raising illegal construction. The Joint Committee has intentionally or unintentionally failed (though this seems unlikely) to take into consideration the illegal construction by the Respondent Omaxe in village Kansala and it is thus humbly prayed that the same needs to be investigated and remedial actions taken apart from directions for registering FIRs / launching prosecution against the guilty builder and the conniving officers as well as imposition and recovery of heavy environmental compensation.

Therefore, in view of the averments made hereinabove it is respectfully prayed that the facts stated in the written submissions and objections to the reports by the Applicants may kindly be taken on record for just and proper adjudication of this matter.

Through

  
  
(A.R. JAKKHAR, SHRIYA JAKKHAR, AMARJEET KUMAR, UNNATI ANAND

  
& SYASHU PESSWANI)

**ADVOCATES**

**ARTLO**

# A-25/12,

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GURGAON - 122002

SR. CLERK: 9582209633

Email ID: [artlokar@artlo.in](mailto:artlokar@artlo.in)

41

BEFORE THE NATIONAL GREEN TRIBUNAL AT NEW DELHI.

IA NO /2021 IN

Original Application No. of 2019

IN THE MATTER OF:

HARMINDER SINGH & ANR

...APPLICANT

VERSUS

STATE OF PUNJAB & ORS.

...RESPONDENTS

Affidavit Of Harminder Singh S/o Sh  
Ajmer Singh Aged About 48 Years, R/o  
Village, Bharunjan, SAS Nagar, (Mohali)  
Punjab



I, the above named deponent do hereby solemnly affirm  
and state as under:

- 1 That the above titled accompanying *objections*, has been drafted under the authority and instructions of the deponent and after perusing its contents, the deponent has duly signed it, and the contents of paragraph Nos. 1 to thereof are true and correct to the knowledge of the deponent, and the same may be read as contents of this affidavit also, which are not being reproduced for the sake of brevity. No part of it is false and nothing material has been kept concealed therefrom.



42

2 That the annexures attached with the accompanying objections are true Copies of their Respective originals.

PLACE:



DEPONENT

DATE:

VERIFICATION:

Verified that the contents of para 1 and 2 of my affidavit are true and correct to my knowledge. No part of it is false and nothing material has been kept concealed therefrom.



PLACE:



DATE:

DEPONENT

ATTESTED AS IDENTIFIED

Certified that the Affidavits/objections has been read over and examined by the deponent, reviewed and sealed perfectly to the contents of the subject at the time of making thereof.

NOTARY, CHANDIGARH

13/1/21

43

BEFORE THE NATIONAL GREEN TRIBUNAL AT NEW DELHI.

IA NO /2021 IN

Original Application No. of 2019

IN THE MATTER OF:

HARMINDER SINGH & ANR

...APPLICANT

VERSUS

UNION OF INDIA & ORS.

...RESPONDENTS

Affidavit Of Manjinder Singh S/o Sh

Ajmer Singh Aged About 49 Years, R/o

H no 26, Sector- 20-A, Chandigarh

I, the above named deponent do hereby solemnly affirm and state as under:

1 That the above titled accompanying *objections* has been drafted under the authority and instructions of the deponent and after perusing its contents, the deponent has duly signed it, and the contents of paragraph Nos. 1 to thereof are true and correct to the knowledge of the deponent, and the same may be read as contents of this affidavit also, which are not being reproduced for the sake of brevity. No part of it is false and nothing material has been kept concealed therefrom.

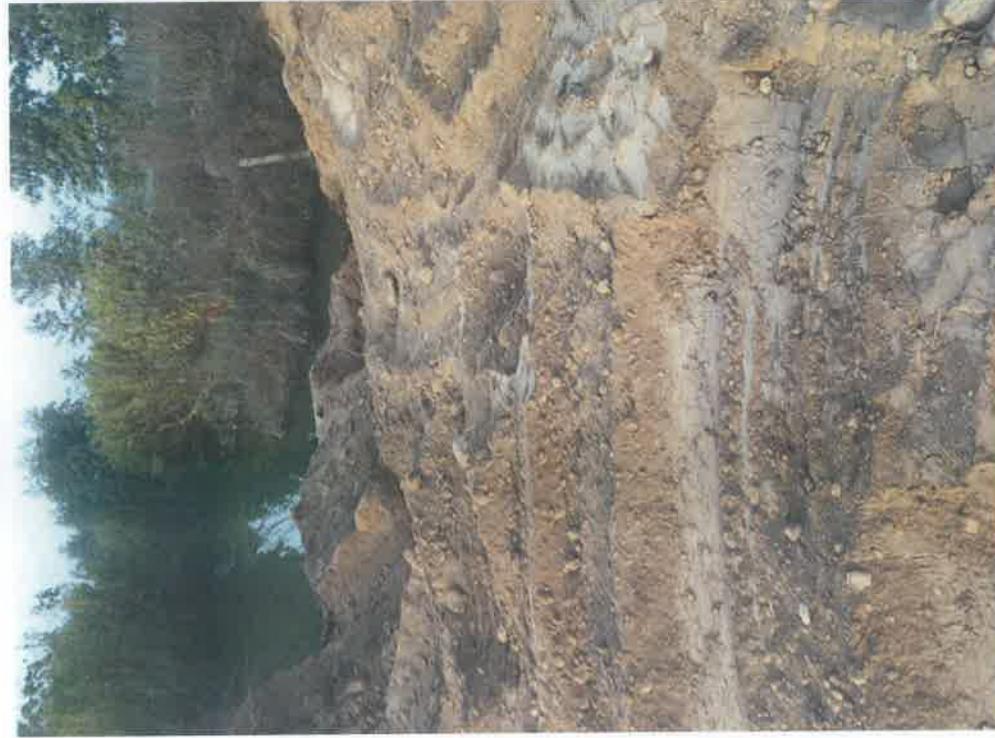




Appendix-A  
45



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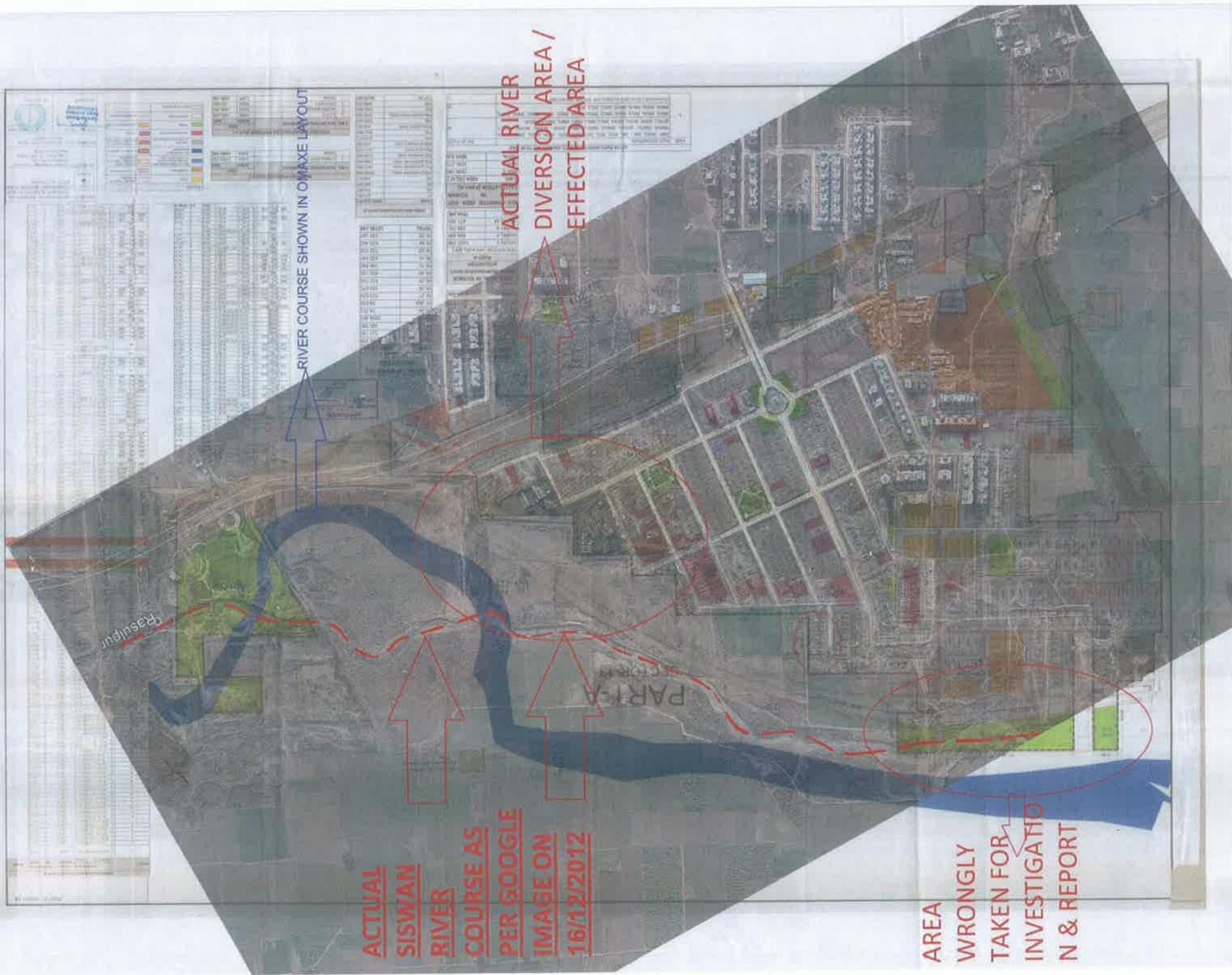
5A



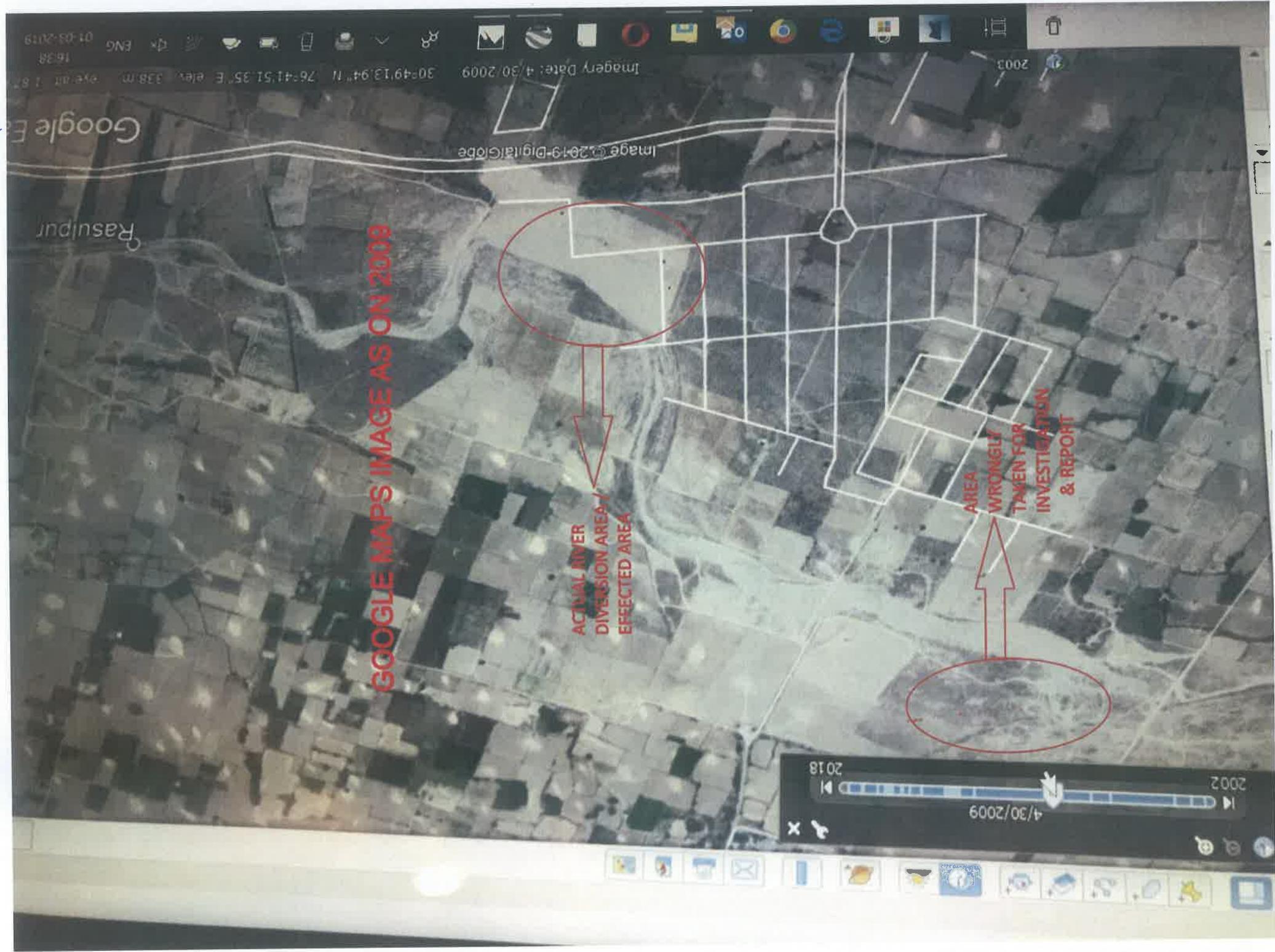
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Appendix - B



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**ACTUAL  
SISWAN  
RIVER  
COURSE AS  
PER GOOGLE  
IMAGE ON  
14/08/2017**

**RIVER COURSE SHOWN IN OMAXE LAYOUT**

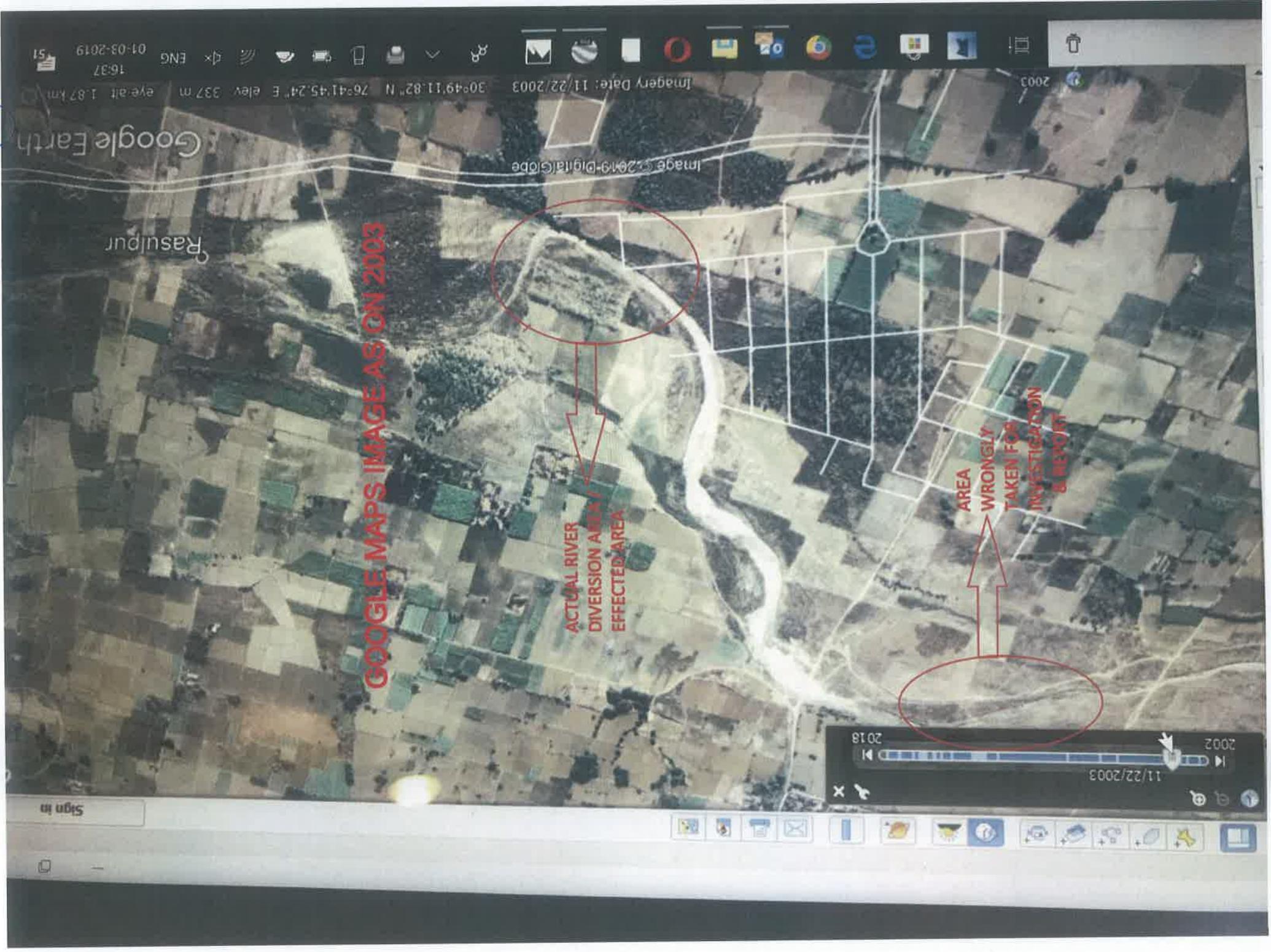
**ACTUAL RIVER  
DIVERSION AREA /  
EFFECTED AREA**

**AREA  
WRONGLY  
TAKEN FOR  
INVESTIGATION  
N & REPORT**

Technical drawing overlays including a legend with color-coded boxes, a table with columns and rows, and various engineering symbols and notes. The text is small and difficult to read, but appears to be a standard technical drawing layout.

PART A

Rasulpur



Google Earth

Rasulpur

GOOGLE MAPS IMAGE AS ON 2003

ACTUAL RIVER  
DIVERSION AREA /  
EFFECTED AREA

AREA  
WRONGLY  
TAKEN FOR  
INVESTIGATION  
& REPORT

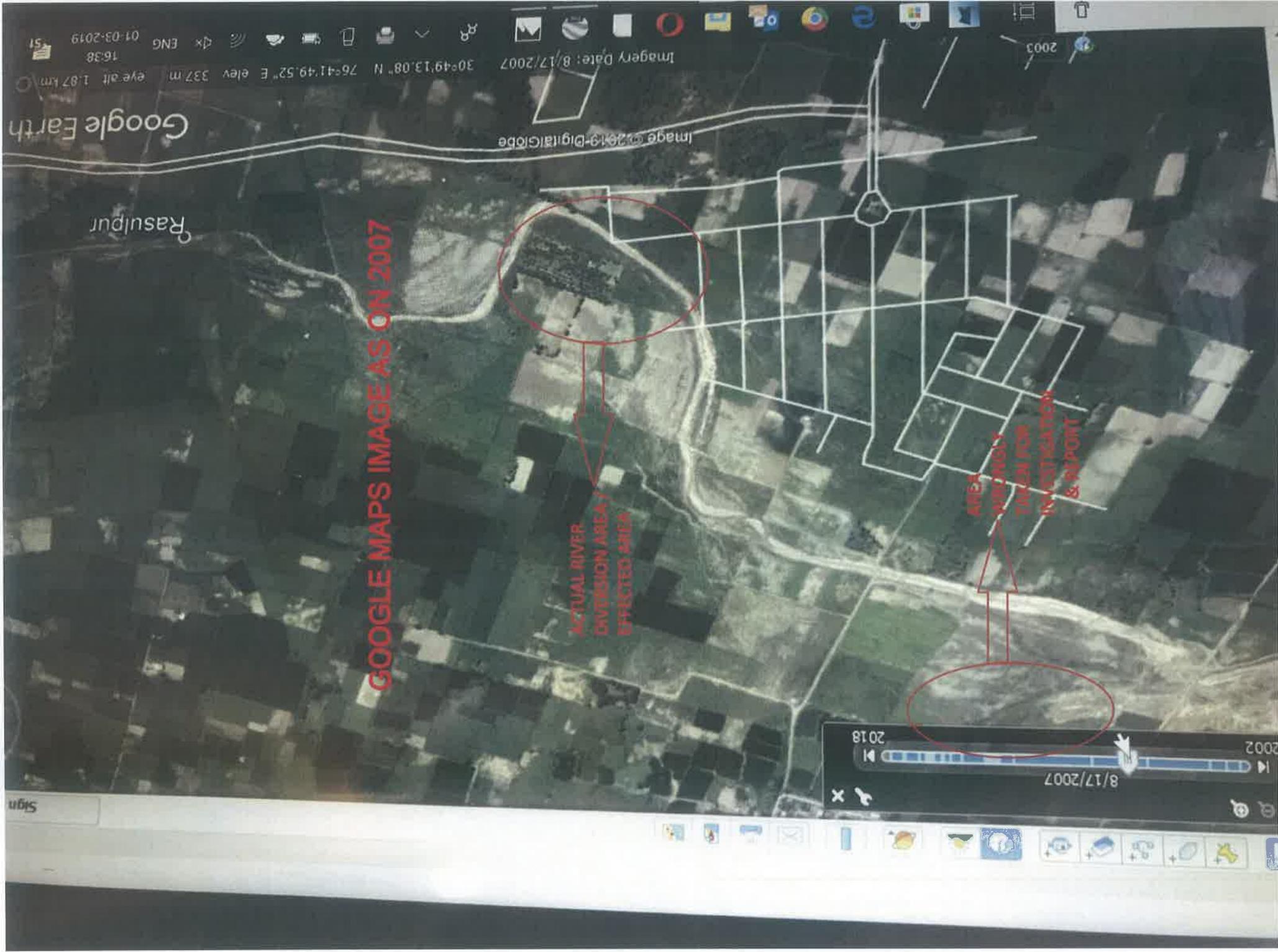
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Image © 2019 DigitalGlobe  
Imagery Date: 11/22/2003  
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2018  
2002  
11/22/2003  
2003

Sign in

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True Copy