

 CDM: FORM FOR SUBMISSION OF A "LETTER TO THE BOARD" (Version 01.2)	
<p>This form should be used only by project participants and other stakeholders for submitting a "Letter to the Board" in accordance with the latest version of the <i>Modalities and procedures for direct communication with stakeholders</i></p>	
Name of the stakeholder ¹ submitting this form (individual/organization):	Tania Lee International Rivers
Address and contact details of the individual submitting this form:	Address: 2150 Allston Way, Suite 300 Telephone number: +1 510 848 1155 E-mail address: tlee@internationalrivers.org
Title/Subject (give a short title or specify the subject of your submission)	Request for the CDM Executive Board to review the Project 9038: Nam Ngum 5
Please mention whether the submitter of the form is:	<input type="checkbox"/> Project participant <input checked="" type="checkbox"/> Other stakeholder, please specify International NGO
Specify whether you want the letter to be treated as confidential ² :	<input type="checkbox"/> To be treated as confidential <input checked="" type="checkbox"/> To be publicly available (UNFCCC CDM web site)
Please choose any of the type(s) below ³ to describe the purpose of this submission.	
<input type="checkbox"/> Type I: <input type="checkbox"/> Request for clarification <input type="checkbox"/> Revision of existing rules <input type="checkbox"/> Standards. Please specify reference <input type="checkbox"/> Procedures. Please specify reference <input type="checkbox"/> Guidance. Please specify reference <input type="checkbox"/> Forms. Please specify reference <input type="checkbox"/> Others. Please specify reference <input type="checkbox"/> Type II: Request for Introduction of new rules <input checked="" type="checkbox"/> Type III: Provision of information and suggestions on policy issues	
Please describe in detail the issue on which you request a response from the Board, including the exact reference source and version (if applicable).	

¹ DNAs and DOEs shall use the respective DNA/DOE forms for communication with the Board.

² As per the applicable modalities and procedures, the Board may make its response publicly available.

³ Latest CDM regulatory documents and information are available at: <http://cdm.unfccc.int/Reference/index.html>.

Dear CDM Executive Board,

On behalf of International Rivers, I am writing to express concern about the proposed CDM Project 9038: Nam Ngum 5 in Lao PDR. Registration has been requested following a validation report by China Environmental United Certification Centre, Ltd. (Report No.11011127), which recommends approval. As a decision is expected to be made soon by the Executive Board, International Rivers trusts that you will consider these concerns seriously and carry out an immediate review of the project. On the basis of the project's failures to meet UNFCCC's own standards, we are urging you to reject its request for registration.

The 120MW Nam Ngum 5 Hydropower Project is located on the Nam Ting River, a main tributary of the Nam Ngum. The powerhouse is located 15km south, on the Nam Ngum, into which water is discharged. The Nam Phat and Nam Sout are the two main tributaries nearby that run into the Nam Ting and are affected by the project. The project was built by China's Sinohydro Corporation and Lao PDR's Electricite du Laos (15% stake). The dam's construction began in 2008 and was completed by December 2012. The dam's PDD was done by CF Carbon Fund II Ltd.

Due to significant faults and gaps in information provided in the validation report and revised PDD, we believe that the project requires urgent review of the following issues, which make the project's request for registration highly questionable:

- The validation report lacks proof of additionality, relying on flawed conclusions related to external investment, common practice, and financial viability;
- The project does not meet CDM requirements regarding sustainable development as the validation report and the PDD are based on an incomplete environmental impact assessment, and a failure to assess cumulative impacts as required by Lao law (Decree 112, Part I., Article 4.6);

Based on these concerns, we respectfully request the CDM Executive Board to conduct an immediate review of the project and examine the reasons we have identified as a basis for a rejection of the project.

Sincerely,



Tania Lee

Lao Program Coordinator, International Rivers
E: tlee@internationalrivers.org

Please provide any specific suggestions or further information which would address the issue raised in the previous section, including the exact reference source and version (if applicable).

The validation report lacks accuracy and proof of additionality: The project received a \$140 million loan from the National Bank of China as early as 2007. The remainder was financed by Sinohydro (85% stake in the project) and Electricite du Laos (15% stake). Investment licenses were granted in 2007. The Validation Report also states that a progress report on investment by Sinohydro North Surveying and Designing Institute Co., Ltd. was conducted on 05/12/2012 and that a total investment of USD\$227.23 million for the project was completed (pg. 26). The report therefore does not make a convincing argument that the project was financially unviable before receiving CDM credits.

The Validation Report admits that the “Lao government has experience in building hydropower projects across the country” (p. 123) and that “in terms of CDM application, this does call into question the claim that the proposed project activity is financially unattractive.” At the time of project construction (2008), at least nine large hydropower projects were already in operation in Laos, and at least ten were under construction. The validation report skirts the fundamental issue by simply relying on the additionality tool, which many experts have already cited as being flawed⁴ from practical experience. Such projects that even the Validator has admitted is common practice, should not be allowed to receive credits until the Common Practice Analysis has been significantly improved as part of the CDM’s reform process.

The Validation Report claims that the project is for the Lao and Thai national grids, which are interconnected. However in the common practice analysis, only Lao PDR is considered as the applicable geographic area (p. 32). If the project is for electricity export to Thailand, Thailand should also be considered as geographically relevant. Hydropower in Thailand is a common project type and represented 15% of its power generation in 2010 (11% domestic, 4% imports), with 4,567.8 GWh being produced annually by domestic projects.⁵ According to the Electricity Generating Authority of Thailand, Thailand currently has fourteen major dams in operation across the country⁶.

The Validation Report also did not require the revised PDD to include other available alternatives to the project. The PDD vaguely discusses “grid-connected power plants” and new generation sources. This ignores the fact that hydropower is the dominant energy source in Laos, which also means that the project does not replace any fossil fuel projects in the grid. For example, up until December 2012, when the project began operations, no coal fired plants were in operation in Laos.

The Validation Report states that the start date was chosen as July 9, 2008 because that is the date that the turbine and generator purchase contracts were signed. However, the project was considered as early as 2004, when a Memorandum of Understanding (MoU) on the project was signed between the Lao government and Sinohydro Corporation⁷. Investment licenses were approved by the Ministry of Planning and Investment in 2007.

It is clear that funding was available for the project well before CDM consideration began in 2008 (Validation Report, p. 22), otherwise the project would not have started before construction or contracts for equipment were signed. Now that Nam Ngum 5 is already generating electricity, as of December 2012, it clearly was financially attractive before CDM consideration and is therefore non-additional.

The project does not meet CDM requirements regarding sustainable development: The report states that environmental impacts have been addressed in the project’s WCD compliance report (p. 101). A link to WCD report was not included.

The Validation Report states that cumulative impacts are not required by national laws and regulations in Laos (p. 108) and that they were not highlighted in the EIA report. In fact, according to the Lao PDR Prime Minister’s Decree 112 on Environmental Impact Assessments, cumulative impact assessments are recommended (Part I, Article 4.6). The validator’s insistence that cumulative impacts are not important environmental considerations ignores this recommendation, as well as earlier studies carried out on the Nam Ngum River Basin, such as those completed by the Asian Development Bank in 2008⁸ and 2009 to “prioritise recommendations for urgent implementation” applicable to the entire river basin. These studies took into consideration planned and current dams located within this watershed, including Nam Ngum 5. By 2009, the studies had found that issues around environmental flow management, water quality monitoring, aquatic conservation, improvement of benefit sharing mechanisms with affected communities, and provisions for ensuring control led flow releases to “prevent catastrophic pulse events which could cause danger to property and even loss of life in the down-stream areas” require urgent attention by all hydroproject developers in the entire Nam Ngum River Basin⁹. While the Validation Report only discusses the impacts to the immediate communities affected by Nam Ngum 5 and notes that commercial fishing is not present at this reservoir, it does not recognize the cumulative impacts that this project can have in combination with the other dams on the Nam Ngum River Basin downstream where fisheries are an important source of income. Furthermore, it does not take into account the statements about fisheries in the project’s EIA, which states: “Fishing is an important source of secondary activity for rural households and in general fish are the main source of protein in the household diet as well as being a source of cash income” (p. 3-24). The project’s EIA also indicates the importance of the surrounding forest for non-timber forest products relied upon for both food and income by local communities (pps. 3-24, 3-25).

⁴ See for example: Haya, B. and P. Parekh, “Hydropower in the CDM: Examining Additionality and Criteria for Sustainability” http://erg.berkeley.edu/working_paper/2011/Haya%20Parekh-2011-Hydropower%20in%20the%20CDM.pdf (Nov. 2011) and “Is the CDM fulfilling its environmental and sustainable development objectives? An evaluation of the CDM and options for improvement” <http://www.oeko.de/oekodoc/622/2007-162-en.pdf> (Nov. 2007)

⁵ Electricity Generating Authority of Thailand, “Thailand PDP 2010”

⁶ Information Centre of Hydropower Plants. April 2013. <http://ichpp.egat.co.th/>

⁷ “Nam Ngum 5 dam powers up,” *Vientiane Times*, 11 Dec 2012. http://www.vientianetimes.org.la/FreeContent/FreeContent_Nam%20Ngum%205.htm

⁸ “Nam Ngum Hydropower Cascade Threatens Poverty Reduction in Laos” <http://www.internationalrivers.org/node/3836> (Jan. 2008)

The Validation Report also makes flawed statements regarding fish biodiversity and riverine ecology based on an incomplete EIA. For instance, it claims that for existing fish species in the project area, "it is surmised that those species which can not live in a lentic environment will migrate to suitable habitats upstream" (p. 108). However the ADB CIA clearly warns against blocked migration routes for commercially important fisheries and calls for urgent attention to meaningful compensation for loss of wild -catch fisheries. The project EIA's mitigation measures section claims that "with the increase in nutrients in the water body, the varieties, quantities and biomasses of plankton flora will also increase, and so will the aquatic fauna" (p. 109). The scientific basis for this statement is not sound, and does not reflect the realities of the significant loss of fish species evident at other current large hydropower projects operating in central Laos, such as the Nam-Theun and Theun-Hinboun Hydropower Projects. The chemical properties of the reservoir will have changed, but this does not mean biodiversity will improve. High levels of algae can also decrease water quality for drinking and other household uses, and clog water supply intakes. The EIA makes light of these water quality issues (p. 110-1) and offers no mitigation measures to improve water quality at the reservoir, nor mention of potential impacts for surrounding communities that rely on the water for drinking and other daily uses. What it does note regarding monitoring of water quality (p. 109) is vague; for instance, it does not define what "observed quality constraints" or how it would adjust reservoir management to reflect this. However, the project's own EMMP admits that monitoring of the impacts on fish, most particularly varieties of 'rare fish' in the project area need to be monitored in order "to allow for the elaboration of mitigation measures," and that similarly, water quality needs to be monitored for changes in quality. The validation report should take these indications that mitigation measures are needed seriously, rather than keeping details vague and incomplete.

The Validation Report also does not provide any concrete detail on expected river flows for the Nam Ting and its tributaries, and assumes that the combined inflows will be sufficient to maintain minimum flows for domestic and conservation purposes (p. 109) without defining what an adequate minimal environmental flow should be. Furthermore, no information is provided on how the two tributaries that feed into the Nam Ting, the Nam Phat and Nam Sout will be affected, or how the impacts to the two affected national protected areas, Phou Da Phor and Phou Pha Day, will be mitigated.

The Validation Report claims there is no household resettlement. However, according to the Government of Lao PDR's Ministry of Energy and Mines website, one village with a population of 994 people was categorized as "resettled." The Validator should explain this discrepancy.

Public Consultation Methodologies and Grievance Mechanisms for Affected People Unclear: Although the report states that concerns about public participation have been addressed in the project's WCD compliance report (p. 101), a link to WCD report was not included.

Emissions Calculations Incomplete: The Validation Report ignores recent research on methane degassing from turbines and spillways.¹⁰ The project should also now be able to do actual on-site measures of emissions based on the UNESCO/IHA GHG measurement guidelines,¹¹ which should be factored into the calculations on baseline emission reductions. When actual measurements can be taken, they should be used instead of theoretical calculations based on power density.

If necessary, list attached files containing relevant information (if any)

Section below to be filled in by UNFCCC secretariat

Date when the form was received at UNFCCC secretariat	10 April 2013
Reference number	2013-250-S

History of document

Version	Date	Nature of revision
01.2	08 February 2012	Editorial revision.
01.1	09 August 2011	Editorial revision.
01	04 August 2011	Initial publication date.
Decision Class: Regulatory Document Type: Form Business Function: Governance		

⁹ Asian Development Bank. Technical Assistance Consultant's Report: Preparing the Cumulative Impact Assessment for the Nam Ngum 3 Hydropower Project (Project: 40514). Dec. 2009.

¹⁰ Fearnside, M. "Methane Emissions from Hydroelectric Dams". http://philip.inpa.gov.br/publ_livres/2011/Methane%20Emissions%20from%20Hydroelectric%20Dams.pdf (July 2011).

¹¹ GHG Measurement Guidelines for Freshwater Reservoirs. <http://www.hydropower.org/iha/development/ghg/guidelines.html>