

Privatised Industrial Water Supply In

# DEWAS

A Case Study Of Impacts And Conflicts



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## **About this study**

Dewas town and industrial area has been witnessing water crisis for more than two decades and is heavily dependent on ground water resources. Madhya Pradesh State Industrial Development Corporation (MPSIDC) with active support from Dewas Industrial Association (DIA) planned a privatised industrial water supply project for industries in Dewas through public private partnership (PPP) mode, keeping source of water as Narmada 128 kms away to improve the water scarcity situation faced by industries, in 2002.

However, this study observes that even after implementation of Dewas Industrial Water Supply Project (DIWSP) some of the major objectives have not been achieved including delivery of quality water services to the industries in Dewas. The study makes an effort to understand the efficacy of this PPP project in industrial water supply and also what went wrong with DIWSP? What have been the impacts of the project and the conflicts that have been appearing in the wake of it?

The study tries to analyse the present situation in terms of service delivery by the private concessionaire to the industries, the earlier claims for promoting the project, problems faced by industries and the rural population in enroute villages after the implementation, the status of water resources in the area, and the emerging conflicts around water in the region.

The study also tries to throw light on some of the important contractual clauses of the concession agreement and the obligations of the private concessionaire which it has not been able to fulfill. It also shows that despite the failures in execution the private concessionaire has demanded post-contractual changes from MPSIDC like tariff hikes and extension of concession contract.

The study also deals with some of the issues of water conflicts that have been developing in the region due to the higher priority given to industrial water supply rather than domestic water use, despite water scarcity suffered by the people in both urban and rural areas.

In the context of the DIWSP, it needs to be mentioned that the Report of the Working Group on Urban and Industrial Water Supply and Sanitation for the Twelfth Five-Year- Plan (2012-2017) submitted in Nov. 2011 to the Steering Group on Water Sector, Planning Commission tries to address several aspects related to industrial and urban water supply including privatisation. Among the several recommendations that the report makes it states - "Private investment will not be the answer to the infrastructure challenge. Public-Private Partnership will have to be differently conceptualized in this sector".

However, it stops short of strongly critiquing privatisation and PPP mode to implement water projects in view of the negative experiences and evidences that have been compiled from various projects across the country. The report lists 13 such PPP projects out of which it notes that 4 are facing some kind of problems, in fact there are more projects in the list facing problems if one goes for an in-depth analysis.

In a note attached as annexure to the report Shripad Dharmadhikary and Himanshu Thakkar, members of the working group, critique the Report and state that they “have serious problems with the articulation of the issue of privatisation” in the report. They further add that “In case of privatisation and PPP in water supply, we think that the Report has missed out on highlighting the many serious problems of privatisation and PPPs and has neglected the serious implications of these problems. As a result, its recommendations are weak”.

In this context, it needs to be stressed that in the larger, economic environment, where privatisation and PPPs are being promoted in both infrastructure and service delivery projects to push the national growth rate. Experiences and critiques of such policies and projects have been overlooked rather than being taken on board to serve as important lessons for ongoing and future projects in essential public services. The financial, operational, technical and governance related information available on many PPP projects in water sector shows that these projects are not the answers to varied problems of the sector. Yet, unfortunately such projects continue to be implemented across the country.

□

## **Abbreviations**

**BOT** - Build Operate Transfer

**CrPc** - Criminal Procedure Code

**DIA** - Dewas Industrial Association

**DIWSP** - Dewas Industrial Water Supply Project

**DMC** - Dewas Municipal Corporation

**JNNURM** - Jawahar Lal Nehru National Urban Renewal Mission

**KL** - Kilo Litre

**MBR** - Master Balancing Reservoir

**MLD** - Million Litres Per Day

**MPSIDC** - Madhya Pradesh State Industrial Development Corporation

**PPP** - Public Private Partnership

**PQ** - Pre-Qualification

**RfP** - Request For Proposal

**UIDSSMT** - Urban Infrastructure Development Scheme for Small and Medium Towns

**ULB** - Urban Local Body

**WRD** -Water Resources Department

**WTP** - Water Treatment Plant



## **Introduction**

Dewas is an important industrial township situated in the Malwa Plateau in Madhya Pradesh with an urban population of 2,89,438 according to 2011 census.<sup>1</sup> The district is divided into 6 tahsils viz. Sonkachchh, Dewas, Bagli, Kannod, Tonk-Khurd and Khategaon. Dewas tahsil is situated on the north-western part of the district, Sonkachchh on the north-eastern part, Bagli on the south, Kannod on the south-central part and Khategaon on the South-east. There are two major river basins in the district i.e. Narmada Basin in the southern half and the Ganga Basin (Chambal sub basin) in the northern half of Dewas.

From 1980s onwards, the process of industrialisation and urbanisation increased at a fast pace in Dewas. The industrial township in Dewas has approximately 450 large, medium and small scale industries. With increasing industrialisation and urbanisation, water demand also increased for industrial as well as for urban use in the town. According to the 1991 census, the population of Dewas town was 1,64,364.<sup>2</sup> In 2001, the population of Dewas town grew up to 2,31,672.<sup>3</sup> In the last two decades Dewas has developed more than sixteen new colonies and Dewas has registered approximately 43% growth in population in last two decades. The slum population of Dewas according to the city sanitation plan is 1,11,491<sup>4</sup> which is approximately 40 % of the total population of Dewas town.

Before 1980's there were many traditional water sources in Dewas town which catered the need of drinking water of the city. As the process of industrialisation and urbanisation accelerated, the use of traditional drinking water sources like bavris (Step Wells), dugwells, etc. has deteriorated due to easy access of ground water from bore wells.

With this rapid industrialisation in Dewas, the pressure on the local resources including surface and ground water increased over a period of time. Since 1990s the town and adjoining areas of Dewas district have been suffering from water shortages for drinking, irrigation and for the industrial purpose. Due to incessant ground water extraction by industries since mid 1990s the water situation in Dewas became so grave that water had to be brought-in using railway tankers for drinking purposes to the town. Due to water shortages, industrial production has also started suffering lately. To sustain themselves, some industries started pumping ground water from far off villages to supply their units and others began purchasing water from private water tanker suppliers.

### **Background of DIWSP**

To improve the water situation of industries, the state government agencies like Madhya Pradesh State Industrial Development Corporation (MPSIDC) with active support from Dewas



*Dewas City map*

Industrial Association (DIA) planned for an industrial water supply project for industries in Dewas. In September 2002, offers for Pre-Qualification of Bidders were invited by MPSIDC.<sup>5</sup> Later on in July 2003, Request for Proposals (RfP) and financial bids were also invited for the project from the potential bidders. According to the RfP, “the DIA was receiving 2.4 MLD water against the actual requirement of approximately 15 MLD water. This quantity of 2.4 MLD is being received from tube wells, Kshipra river and tankers operated by local people. Thus the availability and actual demand is having a huge margin adversely affecting the growth of the industries”.<sup>6</sup> As per the president of DIA, Ashok Khandelia, the actual water demand of industries in DIA is not more than 12 MLD in 2012.

The scope of work included design, construction, commissioning and operation of 5 MGD (23 MLD) water supply project keeping source of water as Narmada from Nemawar 128 kms at the gradient of 303 mtrs. After 30 years, the private concessionaire will have to hand over the project to public agencies.

The last date of submission of the tenders was 30th October 2004. On 17th February 2005, M/s MSK Projects (India) Ltd, Baroda, Gujarat based company was selected for executing the

BOT project.<sup>7</sup> According to the first tender notice, the estimated cost of the project was Rs. 65 crores whereas in the final tender notice the cost of the project jumped up to Rs. 77.58 crores. DIA, MPSIDC and MSK Projects signed a tripartite agreement and agreed that MSK Projects would supply water to DIA at the cost of Rs. 26.50 per KL.

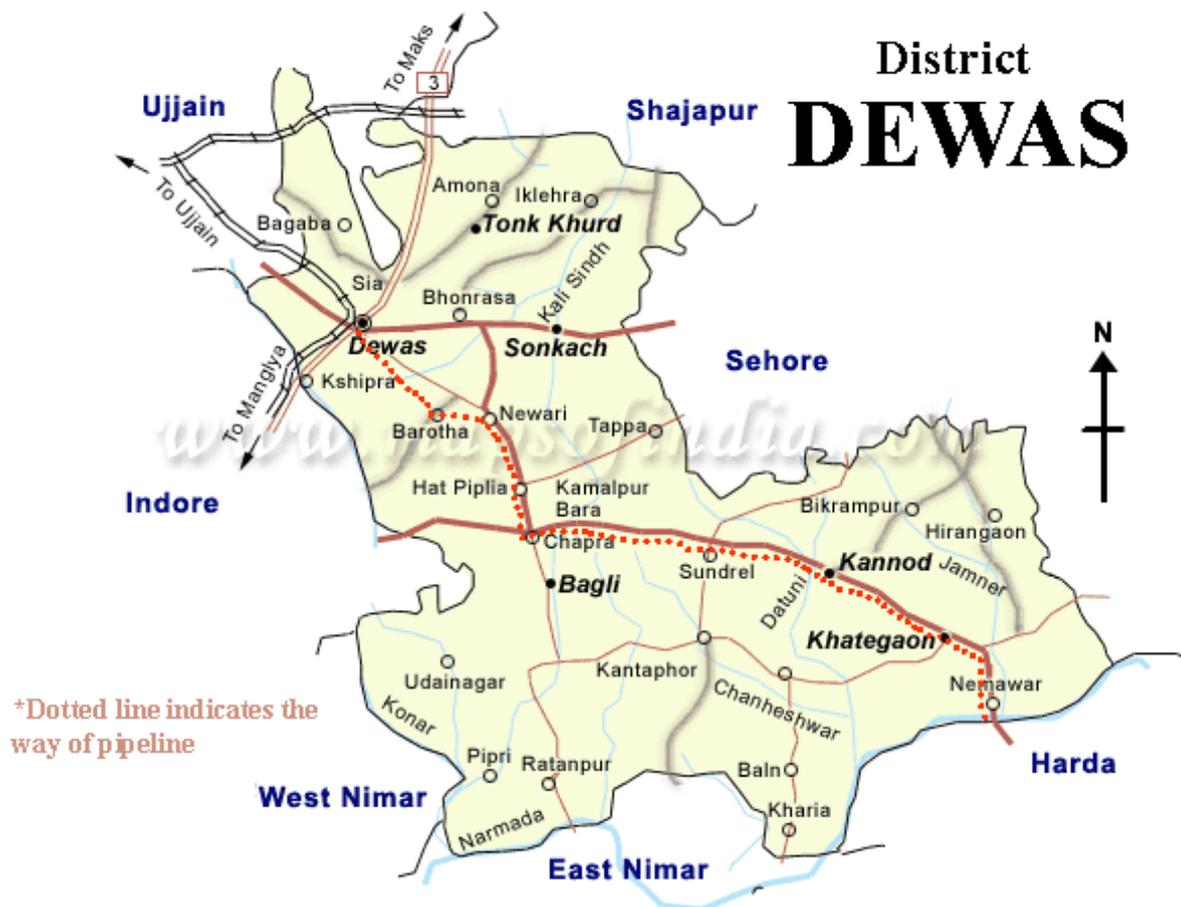
On 16th June 2005, concession agreement was signed between MSK Projects and MPSIDC.<sup>8</sup> In February 2006, MSK Projects started construction work on the project. The project mainly comprises of - construction of intake well and jack well, first pump house, water treatment plant at Nemawar, construction of second pumping house near Kiloda village and third pumping house near Kalapatha, construction of Master Balancing Reservoir (MBR) near Nagda, laying transmission and distribution lines.

The time allocated under the concession agreement for construction and commissioning of the project was 18 months. But, the above construction work was delayed and finished only in September 2008.<sup>9</sup> In October 2008, MSK Projects started supplying water to the industries. Yet, due to various problems faced in the operation of the project like frequent bursting of newly laid bulk pipelines, the laying of new pipelines still continues. As per the brief note of steering group meeting, "In the inspection by the Chief Engineer, MPSIDC, on dated 31st March 2009 and 1st April 2009, it is found that the GRP pipes with variable thickness of 4mm to 7mm used in the project and these pipes cannot sustain in the working pressure as required for 23 MLD water supply."<sup>10</sup>

In the meanwhile, on 18th March 2010, Welspun Infratech Ltd., a 100% subsidiary of Welspun Corp Ltd. signed an agreement with MSK Project India (Ltd.) to acquire majority stake in the company.<sup>11</sup>

When DIWSP was proposed it was assumed that the industries will get reliable water supply from the project. It was understood that this project would benefit 59 large and medium scale industries and 400 small-scale industries. Following were the proposed outcomes of DIWSP:<sup>12</sup>

1. Industries would receive good quality<sup>13</sup> reliable water supply at their units leading to good industrial output which was suffering due to water shortages.
2. The private company would deliver efficient and well managed water services to the industries.
3. The ground water over-extraction by the industries would reduce and therefore would lead to the replenishment and higher levels of ground water tables.
4. The water transfer from a perennial source like Narmada would also have a positive effect on the local surface water sources which have been sucked dry.
5. The water project would also be able to supply water to Dewas Municipal Corporation (DMC) in case of emergencies and dry seasons, helping cover the deficit in drinking water supply.



*Dewas district map*

6. Water would also be supplied to the enroute villages to solve the water crises in these villages.

### **Status and Impacts of DIWSP**

As mentioned earlier the Dewas industrial water supply project began operations in October 2008, after quite a delay in execution. However, the project has been facing controversies since the day it began supplying water. The project is supposed to fulfill the industrial water demand and to supply water as per the agreement. But due to poor execution of the project and poor materials used such as in the bulk water pipelines, the project has not able to provide committed amount of water to the industries in DIA. The industries largely, continue to use ground water and water from other sources like private water tanker suppliers to continue operating. The on-field reports and observations show that as of now the implementation of the project has not been able to solve the water problems of the industries. On the other hand, the project implementation has started and aggravated water conflicts in the urban as well as in the rural areas.

As per the MPSIDC meeting minutes dated 21st March 2011, regarding the DIWSP, MSK

Projects has signed an agreement with 141 industrial units in DIA for supplying 9.89 MLD water.<sup>14</sup> However, according to the concession agreement, the total installed capacity of the project is 23 MLD. MPSIDC has stated that the adequate raw water is available and Water Resources Department (WRD) has already given permission for the off take of 60 MLD.<sup>15</sup> Yet, the project concessionaire is supplying only on an average 3.4 MLD water to the industries. Even though the raw water availability and the installed capacity under the concession agreement is on the much higher side, add to the fact that the industrial demand for water remains high for running operations.

MPSIDC had also assured the potential private bidders for the project during the pre-bid meeting, that for Dewas industrial area, no alternate water supply scheme will be allowed/created till 23 MLD demand is met.<sup>16</sup>

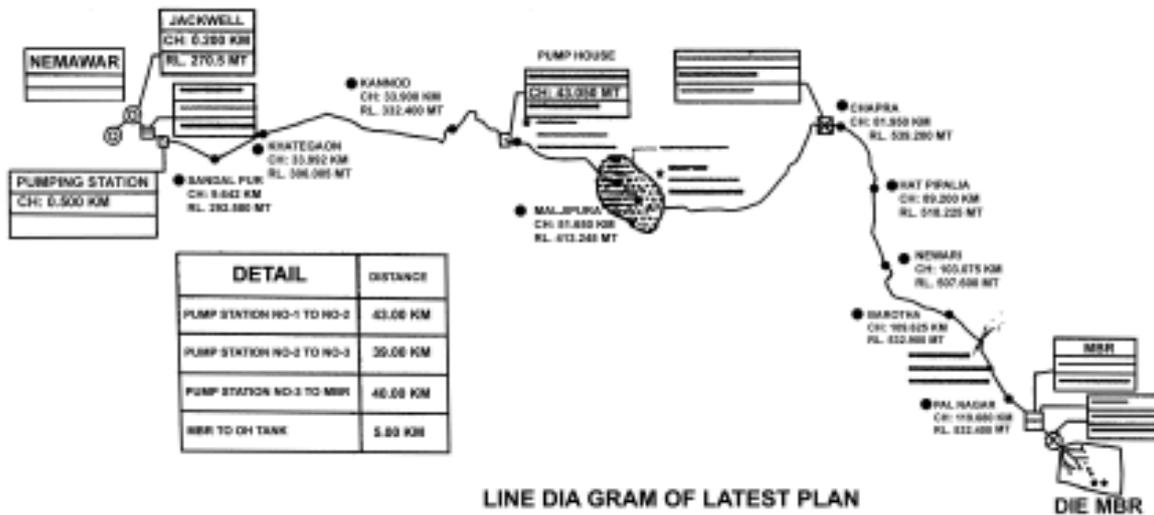
MSK Projects has committed through individual agreements with industries, to supply 9.89 MLD water on regular basis. But according to the data received under RTI, from 15th October 2008 to 31st July 2010, the average supply per day was not more than 3490.29 KL/Day (3.4MLD).<sup>17</sup> Due to irregular water supply by MSK Projects, industries claim that they are facing water shortages and ironically to meet the water demand, they are reverting back to ground water use and private water tanker suppliers. Sources in some of the industrial units stated that MSK Projects is not providing the committed water as per the agreement due to which industries are forced to take water from other sources.<sup>18</sup>

During the course of the field studies and meetings in Dewas, requests for interviews with MSK officials did not prove successful. We tried to get in touch with the officials, but they were not forthcoming to discuss the issues related to DIWSP .

For ensuring industrial water consumption from the project, MSK Projects has signed a minimum off-take agreement with the industries in DIA. According to the minimum off-take agreement, “the consumer agrees to pay minimum water charges determined on the basis of applying the rates of water charges as laid down in the clause 2 of this agreement on the quantity of the water determined @ 65% on the minimum agreed monthly quantity of water as laid down in the preamble and para 3 of the agreement irrespective of consumption subject to force majeure situation in which no minimum charges will be payable by second party.”<sup>19</sup> It needs to be noted here that industry sources stated MSK Projects has failed to provide even committed 65% of minimum agreed monthly quantity of water to them on regular basis.

According to several news reports, the project company has not maintained the quality standards set by MPSIDC according to the concession agreement. The reports also stated that the project concessionaire has done a poor job and used sub-standard material that led to breakdowns and bursting of pipelines, further hampering the water supply.<sup>20</sup> Even though the demand for water is high from the industries, the concessionaire has not been able to meet the demand. Yet, it had signed agreements with Dewas Municipal Corporation (DMC) in 2009 and 2010 for supplying water during the peak summer months to cover the water deficit in the town.<sup>21</sup>

# Dewas Industrial Water supply Project



*Schematic diagram of DIWSP*

According to clarifications given in the pre-bid meeting dated 30 September 2004 for DIWSP it was mentioned that, “After fulfilling the requirements of the industries in DIA and industries in nearby areas bidder is free to sell water on the tariff which will not be more than the tariff charged from industrial users.”<sup>22</sup>

The concession agreement also mentions that, “The concessionaire shall maintain a public relations office and keep it open to public access at all times. At each such office, the concessionaire shall maintain a register/ suggestion box (the “Complaints Register”) for recording of complaints/suggestions by any person (the “Complainant”) at any time of the day.”<sup>23</sup> However, during the interviews with various people in DIA, it was also mentioned that there is no complaint and consumer grievance redressal mechanism set up by the private operator to address industrial complaints regarding water supply. They also added that there was no prior official communication from MSK Projects regarding interruptions in water supply schedules.<sup>24</sup> The industries who had signed the agreement with MSK Projects are now demanding differential incremental cost<sup>25</sup> from it, as the compensation amount for the losses borne by them due to inadequate water supply. During interviews with various industrial units in DIA, it was also mentioned that concessionaire has made the complaint registers available after several reminders but since there is no obligation on timeline, there is lack of action on part of the concessionaire to resolve the complaints of the industries.<sup>26</sup>

As per the pre-bid clarifications given by MPSIDC in the pre-bid meeting held on 30th September 2004 regarding DIWSP, a free supply of 2 MLD to enroute beneficiaries had also been indicated in the proposal.<sup>27</sup> However, later on MPSIDC in its pre-bid clarifications had

said that: “Concessionaire is expected to meet the water demand of enroute villages as a good industry practice.”<sup>28</sup> This has led to dilution of contractual obligations of the private concessionaire of providing water to the enroute villages and now it is entirely on his wish to provide or not to provide water to these villages. During field visits<sup>29</sup> and interviews with villagers we observed that water requirement for domestic use is not met adequately by existing water resources in the area and due to shortage of drinking water in dry season, people's access and availability to water is severely hampered.

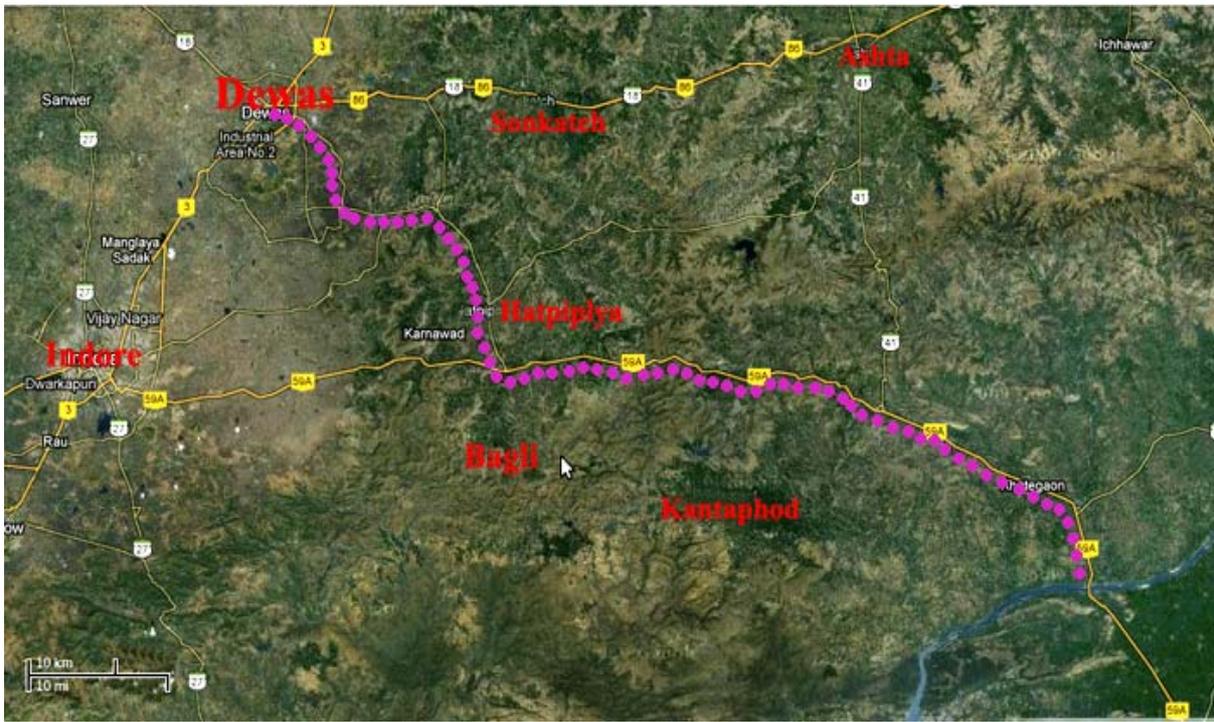
In 2010, news reports stated that the villagers were chargesheeted for breaking and vandalising DIWSP pipelines to get water. The district administration instead of investigating the issue imposed section 144 of the Criminal Procedure Code (CrPc).<sup>30</sup> However, later reports and investigations showed that there was no proof of the involvement of local people in such activities and the pipe bursts happened because of poor design and sub standard use of pipes, which were unable to handle the high pressure of water pumped. Local people are still waiting for water to be delivered to their houses. Their complaints and requests to district administration have not yielded any results as yet.<sup>31</sup>

On the other hand, due to the negligence of the private concessionaire breakdowns and bursting of pipelines thousands of gallons of water was wasted and damaged village lands.<sup>32, 33</sup> During field visits, it was observed that there is no plan and execution of water supply to any of these villages. Since this water has to be provided free of cost to the villages, the project concessionaire is not eager to undertake this. It seems that the earlier promise made was to assuage the feelings and emotions of the rural people so that they do not react sharply to water being piped through their lands and fields without it being supplied to them.<sup>34</sup>

Out of five villages visited during the field visit, only Chapada village panchayat has signed a contract with MSK Projects regarding water supply. According to Dayaram Yadav (Panch of Chapada), as per the agreement with Chapada village panchayat, “MSK Projects has committed to supply 2 lakh litres of water, twice a day for one hour. It will charge Rs. 2 lakh per year from the village panchayat to supply piped water to the village.”<sup>35</sup> But even after signing the agreement MSK Projects has not begun supplying water to Chapada village. This can mean that only those villages who will sign the agreement with MSK will receive water and that too shall not be free.

### **Problems faced by Industries after DIWSP**

Although the planning and execution of the industrial water supply project was done to improve the water scarcity faced by industries in Dewas industrial area. However, information and data from various sources suggest that the situation has not changed much from what it was before the project was implemented. According to news reports<sup>36</sup> and information based on discussions and interviews with local people and some of the staff members working in the industrial area, it was revealed that the industries are facing varied problems related to water supply even after the implementation of DIWSP:



*Satellite image of Dewas region*

1. The industrial area faces water shortages in summer even after the implementation of the project and it has been reported<sup>37</sup> and stated by several people working in Dewas during field interviews<sup>38</sup> that there has been irregular water supply by the project concessionaire to the industrial units.
2. According to industry sources MSK Projects had not given any prior notice about the interruptions in the water supply schedule to the industries.
3. Currently industries are also depending on other alternative sources of water to sustain their operations, mainly ground water.
4. Ground water levels have been decreasing due to which industries face water shortages from groundwater sources.
5. According to industry sources there is no appropriate grievance redressal mechanism to address the complaints regarding water supply and the project concessionaire has not been held accountable to deliver services as per contractual obligations.
6. Industry sources also stated that there has been little improvement in water supply to industries after the implementation of the project .
7. There are many industries where MSK Projects has not been able to lay pipelines according to the concession agreement for water supply.

### **Contractual obligations under DIWSP**

DIA, MPSIDC and MSK Projects signed a tripartite agreement on 16th June 2005 and it was agreed that MSK Projects would supply water to DIA. The concession agreement enlists

several contractual clauses that the project concessionaire needs to honour in order to fulfil the contractual responsibilities of the project. These contractual clauses form an important part of the obligations of the project concessionaire for successful execution and operation of the project. These are also integral to ensure that the project is efficiently operated and provides better services to the industrial units. Among the many contractual clauses that the project concessionaire needs to fulfill, some of the relevant clauses are mentioned below:

### 1. Timeline for Construction Phase -

“The Concessionaire guarantees that the Project Completion shall be achieved in accordance with the provisions of this Agreement on a date not later than 18 (Eighteen) months from the Commencement date (“Scheduled Project Completion Date”).”<sup>39</sup> The project construction work started in February 2006 and the operations of the project started from October 2008. The

start of the operations date shows that the project completion was delayed beyond the period agreed in the concession agreement by several months. As per the principles of concession agreement, “Concession Period starts from the date of completion of the project or 24 months which ever is earlier.”<sup>40</sup> Taking into account the date of the signing of concession agreement in June 2005, the project was supposed to be completed in June 2007, keeping in mind the 24 month deadline mentioned in the agreement. However, the water supply commenced to the industrial area only in October 2008.<sup>41</sup> Again in June 2011, MPSIDC stated that the project is incomplete and needs to be completed on an urgent basis.<sup>42</sup> The project remains incomplete because bulk pipelines need to be changed and distribution lines have to be laid down in uncovered areas<sup>43</sup>. It is not clear, though what action has been taken against the project concessionaire for the delay in completing the construction phase of the project.

### 2. Water Supply and Levy of Charges -

According to the concession agreement, it is the obligation of MSK Projects to maintain the water supply as per the agreement with MPSIDC but right from the inception of the project, industry sources stated that MSK Projects has not been able to supply and maintain committed water services to the industries in Dewas.

As per the concession agreement, “Concessionaire to levy and collect water charges

### Box - DMC and DIWSP

According to the figures provided by DMC, in 2009, MSK Projects supplied on an average 3.6 MLD water to DMC from 15th January 2009 to 30th July 2009. In 2010, MSK supplied on an average 4.3 MLD water to DMC from March 2010 to July 2010 at the rate of Rs. 26.50 per KL.

Interestingly City Development Plan (CDP) of Dewas which was prepared by a private consultancy firm recommended DMC to procure water from DIWSP as a much feasible and sustainable option. According to the CDP, “The current UIDSSMT project which is supposed to take water from Kshipra and Lodhari river has been under suspicion of sustainability source. Some stakeholders are of opinion that the current project is not sustainable and would not serve water to the required demand in future as the rivers are not perennial. In such case, water pipeline from Narmada could be looked into for a detailed feasibility. Such water supply line has already been developed on BOT basis to supply water to the industries”\*.

*\*CDP-Dewas, Submitted by ICRA Management Consulting Services Limited, Noida on behalf of Madhya Pradesh Urban Services for the Poor, Urban Administration and Development Department, Government of Madhya Pradesh, June-2011, Page-93*



*Project concessionaire MSK Projects (now Wellspun) office*

from the users of the Project at the rates set forth in the Fee Notification and in accordance with this Agreement and maintain the water supply from the Project in accordance with the agreement.”<sup>44</sup> As per the industry sources, MSK has been collecting users charges from the industries for the actual water supplied to the industries but the actual quantity supplied by MSK is much less than originally agreed quantity of water as per the minimum off take agreement. MSK has even failed to maintain regular water supply in accordance with the agreement.

**3. Transparency and Communication with Users** - As per the concession agreement the concessionaire has to “Make reasonable efforts to maintain harmony and good industrial relations among the personnel employed in the connection with the performance of the concessionaire's obligations under this Agreement.”<sup>45</sup> Industry sources stated that there are no formal communication channels in place and no transparency in the actions of the project concessionaire. There is no complaints registration/ grievance redressal mechanism set up by the project concessionaire and even after repeated complaints from industrial units regarding the unscheduled stoppages, irregular and lack of water supply. MSK has not able to maintain transparency and properly communicate and address the complaints of the industrial units in Dewas.

**4. Water Supply to Other Users** - The concession agreement notes that, “the Concessionaire can supply excess residual water to user other than industry only on the following

terms: residual water available only after fulfilling the demand of the existing and new industry can be used for supply to other than industrial use. Rates for such supply will be agreed rate between the buyers and the supplier but in any case will not be higher than industrial rate. Such supply can be done only after obtaining the written permission from MPSIDC and will be limited to the amount and time for which such permission holds good.”<sup>46</sup>

Over the period of operations, since 2008, it has been mentioned earlier that DIWSP has not been able to supply more than 3.4 MLD water to the industries at any given time. This figure is well below the committed quantity of 12 MLD required for the industrial units in Dewas. It is strange to note that on the one hand the project has not been able to meet its commitments under the agreement yet it was able to supply water to DMC for meeting its domestic requirements for Dewas city. MPSIDC gave the permission to MSK Projects to supply 2 - 5 MLD water to DMC.<sup>47</sup> A letter from the MD, MPSIDC states that, “MPSIDC has taken up the matter for supplying water to the Nagar Palik Nigam with the concessionaire of the project M/s. MSK Projects (I) Ltd. And obtained their consent to supply 4.2 MLD water surplusly available with them after meeting the requirement of industries of Dewas”.

As mentioned the basis for permission to MSK Projects by MPSIDC to supply water to DMC was given on the understanding that it has surplus amount of water after supplying to the industries in Dewas.<sup>48</sup>

Apart from the above, there are some other obligations related to industries and MPSIDC included in the concession contract. Following are some of the important clauses:

**5. Other Obligations** - According to the concession agreement between MSK Projects Pvt. Ltd and MPSIDC, it is MPSIDC's obligation to “ensure that no ground water extraction shall be carried out in the project area. Also a suitable penalty shall be imposed on the person carrying out ground water extraction during the project period”.<sup>49</sup> However, as has been observed that as the project remains unsuccessful in delivering the committed amount of water to the industries, the industries on the other hand are continuing to use ground water to run operations.

According to the agreement with the industries for the minimum off take from DIWSP, “the consumer agrees not to take any water from ground water for industrial use irrespective of whether such ground water source is installed in its own premises or is from an outside source and the ground water tube well installed in the premises of the industry for drawing water for industrial use will be closed and sealed by the customer / industries within a period of one month of completion certificate issued by MPSIDC. Only upon such certification by MPSIDC the action about closing and sealing of ground water tube-wells installed in the premises of consumer for drawing water for industrial use will be taken and thereafter a certificate to this effect shall be obtained from MPSIDC by the consumer and shall be submitted to the developer”.<sup>50</sup>

However, again as has been observed during the field visit to some of the industrial units in Dewas, the groundwater use has not completely stopped. This is largely due to the inability of DIWSP to supply regular and committed water to the industrial units as yet.

## Post Contractual Changes

Along with the implementation of private projects also comes a serious issue of post-contractual changes demanded by the private companies once they are firmly settled in the driving seat. We have seen in several private projects in past as well as in the current ones that the private companies do not hesitate to hold the government agencies to ransom and push for post-contractual changes profiting them.<sup>51</sup> Even though it is well known and accepted that it is against business ethics and values to call for such changes once the contract has been signed and is under operation. This is more evident in public services projects operated by private companies like water supply among others. There are several post contractual changes that have been called for by Welspun Infratech Ltd (the parent company of MSK Projects) to MPSIDC, for making fundamental changes into the original concession agreement. Here in this section, we would discuss some of the important developments in this regard -

- 1. Installed Capacity and Concession Period** - According to the DIWSP concession agreement, the total installed capacity of the project is 23 MLD. However, as per the minutes of the meeting held on 21 March 2011 regarding DIWSP, between Welspun and MPSIDC, Vijay Agarwal, Executive Director, Welspun Infratech Ltd. said that to continue improvements in the current project, changes should be made in the project and total installed capacity of 23 MLD should be increased to 45 MLD. He further added that there is also the need to extend the concession period from 30 years to 45 years. According to these minutes the new estimated cost of the expenses for implementation of the project would be Rs.110 crores.<sup>52</sup>

*Flow metre installed in industrial units by concessionaire*



However, at the moment DIA and MPSIDC, both have resisted these modifications in the concession agreement and have dismissed the statement of Mr. Agarwal clarifying that as per the existing agreement, MSK Projects is bound to supply 23 MLD and that too in the specified timeline.<sup>53</sup> Yet, this could just be the beginning of a long drawn process of renegotiating the original concession agreement.

- 2. Construction Phase completion Schedule** - According to the concession agreement, it is the obligation of the project concessionaire to complete the project as per scheduled project completion date.<sup>54</sup> Even after considerable delay in completing the project as discussed earlier, MPSIDC instead of taking action for the delay caused by the concessionaire has declared that the project is incomplete.<sup>55</sup> According to the clauses under the concession agreement MPSIDC has the power to terminate the contract<sup>56</sup> and ask for compensation for the breach of agreement.

As per Clause 14.4 of the Concession Agreement between MSK and MPSIDC, “If the Project Completion is not achieved by the Scheduled Project Completion Date or such extended date by MPSIDC, for any reason other than conditions constituting Force Majeure or for reasons attributable to MPSIDC, the Concessionaire shall be liable to pay to MPSIDC as weekly damages for delay **in the achievement of the Completion Date, upto an amount calculated at the rate of Rs. 10,000/- per day (Rupees Ten Thousand Only) for such delay.** MPSIDC may either recover such Damages from the Performance Security or demand payment thereof from the Concessionaire”.<sup>57</sup> (Emphasis in Original)

- 3. Water Supply to Industrial Units** - According to the information gathered it has been found that MSK Projects has started supplying water to industries from October 2008 onwards and has been collecting users charges from the industries in Dewas. So practically, the project operations began from October 2008 and the concession period would also start from October 2008. But as per the meeting minutes held between MPSIDC and Welspun on 10th June 2011, MPSIDC has decided to consider concession period of 30 years from the date of renovation/up-gradation/ completion of the project.<sup>58</sup> It is not clear though, when the renovation/ up-gradation/ completion work will be completed.

- 4. Water Tariffs** - On water tariffs agreed in the original contract, DIA, Welspun Projects Ltd and MPSIDC have agreed to increase water tariffs from Rs 26.50 to Rs 34.77 per KL.<sup>59</sup> However, it has been added that the increased water tariffs as per the agreement would be applicable only after the project is completed with the supply capacity of 23 MLD.<sup>60</sup>

During the course of the above meeting the project concessionaire had also proposed a new condition that for supply of water over and above 13 MLD for industrial users, a rate of Rs 50 per KL should be made applicable.<sup>61</sup> DIA has asserted that they have no objection to the concessionaire charging a higher rate for water supply over and above 13 MLD. However, it said that the concessionaire needs to explain the basis of arriving at the rate of Rs 50 per KL over and above 13 MLD supply.<sup>62</sup> MPSIDC has decided that it will take legal opinion and thereafter seek approval of the state government on the concessionaire's proposal to apply increased rate for water supply over and above 13 MLD.<sup>63</sup>



## **Conflicts around Water**

Water sector and conflicts have a strong relationship emerging from various aspects of water as a resource; rapidly increasing competing uses of water in domestic, agricultural, commercial and industrial sectors; changes in technological aspects to access surface and ground water resources leading to unprecedented exploitation of water resources for increasing supplies to wider areas and large number of users; environmental impacts of such technological changes; increasing demand supply gap due to over-exploitation of water resources and inefficient water use; pollution, contamination and encroachment of water resources like rivers and lakes by industries and real estate for short-term gains; deteriorating water quality in several places and increasing private control over a common pool resource among others.

It needs to be noted that such conflicts in water sector arise because of lack of proper policy and governance frameworks and also because of lack of legal, regulatory and administrative structures that are required to address the fundamental issues behind such conflicts in the changing modern times. This lack of adequate frameworks and structures, with the changing times and conditions, leads to further escalation of water conflicts at a much larger scale. This in turn affects the social, environmental and economic progress in not only the specific conflict zones and but other regions as well.

As rightly noted in the introduction to 'Water Conflicts in India'<sup>64</sup> - "In India, water conflicts are likely to get worse before they begin to be resolved. Till then they pose a significant threat to economic growth, social stability, security and ecosystem health. And under threat are the poorest of the poor as well as the very sources of our water - rivers, wetlands and aquifers".<sup>65</sup>

The other important aspect related to water is the decision making process, influenced by the state agencies without proper involvement of different sets of users, lack of transparency and accountability in decision making process, lack of effective enforcement of rules and guidelines due to weak institutional structures, social and political dynamics and not the least lack of updated and detailed information and analyses of such information related to water sector. The decision-making clearly lacks a transparent, democratic and informed public discussion on the issues involved.

Such skewed policies, processes and structures further lead to increasing the intensity of the conflicts rather than moving towards a sustainable, long-term and balanced resolution of the conflicts in an already socially and politically volatile environment.



*Industrial water pipeline from Kshipra river*

### **Water Conflicts in Dewas**

Here, in the above context of water conflicts in India, and the lack of proper policy and governance frameworks in the country there are several water conflict zones that are emerging in the country. Majorly due to the rapidly increasing competing uses of water in various sectors of the economy, including domestic, industrial and agriculture. Here, in this study and in the context of Dewas Industrial Water Supply Project, we shall discuss about two emerging water conflicts. The first one is between the industrial water supply and the urban water supply wherein the contention is, due to the implementation of DIWSP in the region, water supply to industries has been prioritised above the drinking needs of the population. This despite the fact that the State Water Policy of Madhya Pradesh gives higher priority to drinking water than the industrial supply. Aggravating the situation further are the facts that the water supply from this industrial project reaches the industrial area on the outskirts of the town to fulfill their needs but not within the town to quench the thirst of the urban people and that the cost of water pumped from great distance and gradient is such that it would be very difficult for the local municipal body to procure water from this project and distribute it evenly without taking a serious financial hit.

The second part of the conflict is related to rural drinking water supply versus industrial supply specifically in the enroute villages through which the bulk pipelines of the project are

laid to pump water from the river to the industrial area. These enroute villages were promised water from the industrial project in the earlier stages of the project conception. However as the project implementation progressed the promised water supply was delayed and then denied by the project concessionaire. The state government agencies instead of penalising the private company sided with it and charged-sheeted the villagers for bursts and water theft. Even though the bursts and leakages happened due to the incompetence, poor design and use of low grade pipes. Such private water supply projects which are now spreading thick and fast across the whole country, wherein groups that have the purchasing power and are influential enough can dominate the decision making and control the common resources, pose a serious concern and can lead to increasing intensity of conflicts rather than bringing about long term sustainable, equitable and long-term solutions to water issues.

### **Conflict between Industrial and Urban Water Supply**

The conflict between industrial water supply and the urban water supply is an emerging conflict in this region and at this point is not directly visible in Dewas. To understand this conflict we have to go back in time to the 1990s and observe how the conflict evolved over a period of time.

The process of industrialisation and urbanisation quickened during the 1980s in Dewas and since 1990s both the industries as well as the urban population has been facing water shortages in summer months. The water availability for industries as well as urban areas has been affected due to substantial increase of water consumption in the region in the last two decades.

According to the Madhya Pradesh State Water Policy, 2003, the state government has given drinking water supply as its first water priority and industrial and other uses as its third priority.<sup>66</sup> However, in case of DIWSP, the state government agencies instead of urban drinking water have focussed more on fulfilling industrial water demand. It also needs to be noted that even though during the later stages drinking water projects have been approved under UIDSSMT, yet they look likely to fall short of meeting the growing urban demands. It can also be summed in this regard that reversing the priorities mentioned in State Water Policy has aggravated the water crisis in the town and has also increased DMC's dependency for procuring water from other sources like private water tankers and DIWSP.

In the same breath it also needs to be noted that in the last two decades, Dewas region has witnessed sharp decline in ground water availability, due to increasing water demand of town and with the rapid and haphazard use of ground water for industrial, domestic, irrigation and other uses. This decline in ground water has also increased the dependency of DMC for procuring drinking water from other sources to manage the urban water shortage. Despite the commissioning of DIWSP the industries in Dewas continue to use ground water because the industrial water supply project has not been able to deliver on the contractual obligations. Discussions with the residents of Dewas town during our field visit in January 2011, some of the residents shared that the ground water levels in the town have been going down. The residents added that

ground water levels in many parts of the Dewas town, during peak summer season go down to more than 400 feet. The surface water availability of the town is also not enough to fulfil the urban water supply need especially in summer season when most of the surface water reservoirs and ground water resources get dry. In the past three years (from 2008 to 2011), during summer months people in Dewas were supplied water by DMC after a gap of 4 - 5 days, during this period it has been quite common for the people to get into petty disputes over water supply.

One of the primary objectives of DIWSP was to discourage the industries from pumping ground water and therefore increase the ground water levels. However, after the implementation of the DIWSP, the state government agencies didn't ensure that the project was delivering on its contractual obligations and supplying committed water to the industries nor were any concrete steps to stop ground water use by the industries.

In the context of Dewas the implementation of industrial water supply project and the neglect of water schemes for the drinking water needs of the already water scarcity hit town has aggravated the situation in Dewas. This situation can potentially lead to larger conflicts in the region if not addressed on a priority basis.

### **Conflict between Industrial and Rural Water Supply**

The conflict between industrial water supply and rural drinking water supply for the enroute villages<sup>67</sup> is based on the similar principles of prioritisation of water supply, as the one discussed above between industrial and urban drinking water supply. However, in this case the conflict has become more visible because MSK Projects and the state government agencies have not only allowed the private concessionaire to not supply water to the enroute villages by diluting the contractual obligations under the concession agreement but also broken the promises made to village population in this regard.

As per the MPSIDC tender documents provided to the private companies on 13th September 2004 under Project Design Criteria for DIWSP, it was mentioned that “The project will provide clear water, by way of bulk connections to 12 wayside villages and towns, **free of cost or by alternate means i.e. by digging tubewells free of cost.**”<sup>68</sup> (Emphasis in Original) However, during the pre-bid clarifications on 30 September 2004 when a private bidder raised concerns over supplying 2 MLD water free of cost to the 12 enroute villages, MPSIDC stated in the pre-bid clarifications on it “the concessionaire is expected to meet the water demand of the enroute villages as a good industry practice.”<sup>69</sup>

At the time of laying of bulk pipelines under DIWSP, villagers were promised by state government agencies as well as by the private concessionaire that 12 enroute villages would receive 2 MLD water from DIWSP, this water supply from the private project would be free of charges.<sup>70, 71</sup> However, once the project operations began MSK Projects have not taken any concrete steps to supply water to the villages. Some of the village population and their leaders were banking on the private project to solve the drinking water scarcity problems of these villages. However, the promises made during the early phases of the project were non-starters and noth-

ing came out of them. In the hindsight it seems likely, although there is nothing concrete to suggest so, that the promised water supply to the villages earlier would have been mentioned so that the project does not face any opposition from the villages. To assuage the demands of rural population for water, this would have been the best way forward, without hurting their sentiments.

As per the discussion with Chapada village panchayat, panch Dayaram Yadav, “MSK has signed an agreement with Chapada village Panchayat and according to the agreement, MSK has to supply 2 lakh litres of water, two times a day for one hour and MSK will charge Rs. 2 lakh per year from the village Panchayat for supplying piped water to the village.”<sup>72</sup> He even added that, “due to MSK pipeline burst water was logged in the fields of four farmers (Mukesh Babulal Bhagat, Shyamji Malpani, Sagar Umravji Yadav and Gendalal Balaji Yadav) and these farmers had to bear losses due to water logging. No compensation has been provided by MSK to farmers for losses incurred.”<sup>73</sup>

The obligations of MSK Projects under DIWSP were to provide water to the enroute villages free of cost as envisaged under the original tender documents. However, later on as mentioned above it was stated by MPSIDC that “concessionaire is expected to meet the water demand of the enroute villages as a good industry practice.”<sup>74</sup> This dilution of the contractual obligation by MPSIDC would benefit private concessionaire at the cost of water supply to the rural population.

The conflict between villagers and MSK Projects started escalating in year 2007 when the villager's petitioned the district authorities that MSK Projects is not supplying water to the enroute villages and instead creating problems for villagers. The villagers added that they had been observing frequent pipe bursts in DIWSP pipeline from 2007 and due to frequent pipe bursts they have to bear losses and damages due to water logging in several of their agricultural fields.

On the other hand in 2008, according to a letter written to Managing Director, MPSIDC by MSK Projects, it was stated that MSK has lodge an FIR against the unidentified villagers for damaging the pipeline.<sup>75</sup>

The district administration instead of ensuring water supply to the villages through DIWSP, imposed section 144 of Criminal Procedure Code (CrPC)<sup>76</sup> along the 128 kms of bulk pipeline route from Nemawar to Dewas after large-scale theft of water was reported in June 2009.<sup>77</sup>

However, later on Praveen Garg, MD, MPSIDC accepted that there were mistakes and technical problems in the project as a result, pipe bursts and leakages were caused due pumped water pressure.<sup>78</sup> This public statement from the MD, MPSIDC puts beyond doubt that the villagers were wrongly charged of pipe bursts and large scale theft of water from DIWSP bulk pipelines. One reason can be to suppress villagers demand for water from the private project, the police complaint against the villagers was registered. So far, the affected farmers have not been compensated by the private concessionaire for the loss caused by the private concession-

aire due to frequent pipe bursts and water logging in cropping areas.

Since the early days of project planning, the rural population was promised water supply from DIWSP. However, as the project moved ahead this contractual obligation was diluted to good industry practice of the private concessionaire by MPSIDC. The private concessionaire has not been forced to come good on this contractual obligation as yet. The villagers of the region have experienced that instead of supporting their demands for water from the project the district administration has been aligning with the private company and penalising them for asking to implement what is an important component of project. The private concessionaire and the district administration both have also wrongly blamed them for damages due to technical and low quality material use. In the recent past this has lead to conflict escalation in the area giving reasons to the district authorities to impose Section 144 of CrPc and punishing the village population. With no resolution in sight it looks likely that as the water scarcity increases in the rural areas this conflict between the industrial and rural water supply could intensify further.

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## **To Conclude**

The various sets of official documentation, field visits, interviews, observations and experiences during the study period suggest that DIWSP has not been able to meet the objectives that it had planned during the past years of its operation. The much awaited improvements in water supply delivery directly to the industries have still not reached the majority, in cases where it has reached the supply is irregular and insufficient. The water supply to the rural population has been withheld, but the people are pressing with their demands for it. On the contrary, the incorrect prioritisation of water needs between drinking water and industrial demand is creating conflicts among these groups and with increasing demands these conflicts have the potential to further intensify in future.

Dewas district and adjoining areas of the Malawa region in Madhya Pradesh are facing water scarcity due to withdrawal of large amounts of surface and ground water for industrial, agricultural and urban needs. In such a scenario the priority for water supply was given to industrial needs in terms of executing DIWSP. On the other hand, the preliminary evaluation of Kshipra water supply augmentation project shows that it would not be able to meet the demands of urban water supply of Dewas in the long term. Increasing the dependency of Dewas Municipal Corporation to procure water from other sources including DIWSP at higher tariffs. The Kshipra augmentation project has been sanctioned under UIDSSMT, and under the UIDSSMT reforms agenda (See Annexure 1) DMC would have to recover full cost of operation and maintenance of the project through implementation increased water tariffs.

DIWSP also shows that the private concessionaire, DIA and agencies like MPSIDC have not been able to keep the project on the correct path, right from the very beginning. The poor project planning and execution has ensured that the project has been facing problems on various fronts from its commencement.

Over a period of time DIWSP's failure or even under-achievement in Dewas will show that the time, money and efforts put into conceiving and executing this project have been wasted. More importantly it will also go on to show that the policies and projects to solve water problems are going in the wrong direction.

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22. Pre-bid clarification given by MPSIDC in the pre-bid meeting dated 30 September 2004 for DIWSP, Page-9, Sr. No - 32
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24. Interview held with different stake holders in DIA which included key officials of the individual industries in DIA during our field visit in March 2011.
25. If the total water demand of an industry in Dewas is 100 KL per day then the base figure for demanding differential incremental cost would be on 65 KL per day( on the basis of minimum off take agreement @65%). If M/s MSK has supplied only 20 KL per day of water to the industry then the difference between minimum off take committed and water supplied by M/s MSK on that day would be calculated first and then the difference would be multiplied by the difference

in market rate and M/s MSK rate at which water is procured which will give total differential incremental cost for an industry.

The Concession Agreement gives the formula for calculating Differential Incremental Cost for procuring water from alternative source as = Cost Increase (Market rate - MSK rate)\*No of litres\* Days. E.g. ABC Co. Pvt. Ltd. in Dewas purchased water from market at the rate of Rs. 58.33 per KL during the water shortage for 41 days for the agreement quantity 51 KL/day then the incremental cost according to above formula would be Rs. 31.83 per KL (58.33 - 26.50) and total differential incremental cost for 41 days using the above formula would be Rs. 66557 (= Rs. 31.83 \* 41 \* 51)

26. Interviews with several people in DIA which included key officials of the individual industries in DIA during our field visit in August-2012
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44. Concession Agreement between MPSIDC and M/s. MSK, 2005, clause-8.1 (xiii), page-38
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## **Chronology of Events**

### **Dewas Industrial Water Supply Project**

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09 Sep. 2002	- Offers for Pre- Qualification of Bidders were invited.
18 Oct. 2002	- Last date for submission of the completed PQ documents.
31 July 2003	- RfP and financial bid invited.
30 Oct. 2004	- The last date of submission of tenders.
17 Feb. 2005	- M/s MSK has been selected as concessionaire.
16 June 2005	- Concession Agreement between MSK and MPSIDC.
08 Feb. 2006	- IDFC Loan Sanctioned in favour to MSK.
21 June 2006	- State Support Agreement was signed between State Govt, MSK and MPSIDC.
04 Sept. 2006	- Substitution Agreement was signed between MSK, MPSIDC and IDFC.
07 Oct. 2006	- Escrow Agreement was signed between MSK, MPSIDC, IDFC and Bank of India.
23 July 2007	- SQC Appointment- M/s Span Consultant.
08 Aug. 2007	- SQC Agreement between MPSIDC and SPAN.
23 Feb. 2008	- Letter written by MSK to the Managing Director, MPSIDC regarding sabotage and encroachment on the laid pipeline by the villagers.
29 Sept. 2008	- Provisional Completion Certificate issued.
09 Oct. 2008	- Water supply commenced to Industries.
04 June 2009	- The district administration imposed section 144 of Criminal Procedure Code (CrPC) along the 128 kms of bulk pipeline route from Nemawar to Dewas after large- scale theft of water was reported in June 2009.
14 May 2010	- Praveen Garg, Managing Director, MPSIDC accepted that there are mistakes and technical problems in the project as a result pipe burst and leakages were caused.
21 Mar. 2011	- Welspun raised the issue of increasing install capacity of the project from 23 MLD to 45 MLD and further emphasised to extend the concession period to 45 years.
10 June 2011	- Welspun asserted to increase the project cost by stating the need of additional Rs.130 crores. Welspun also demanded increase in water tariff to Rs. 38.35/KL and also suggested an enhanced rate of Rs.50/KL for the supply of water over and above 13 MLD.
10 June 2011	- MPSIDC has stated that the DIWSP project is incomplete and concession period of 30 years may be deemed to commence from the date of renovation/upgradation/ completion of the project.
16 June 2011	- Association of Industries Dewas agreed to give the enhanced rate of Rs.34.77/KL after the project is completed with the supply of 23 MLD.

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