Overview and Progress

- Towards completion of a 6-month PNPCA Prior Consultation Process for Pak Lay Hydropower Project

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• PNPCA and Prior Consultation Process
• Progress Overview and Next Steps
• What happens after a 6-month Prior Consultation
1. PNPCA and Prior Consultation Process (1)

- PNPCA based on Article 5 of 1995 MA – **Reasonable** and **Equitable** use of Mekong River system.

- 3 distinct forms inter-State communication:
  i. **Notification** – tributary uses, and wet-season uses in mainstream
  ii. **Prior Consultation (PC)** – dry-season uses in mainstream, and inter-basin uses in wet-season.
  iii. **Specific Agreement** – inter-basin use in dry-season.

- **PLHPP** represents a year-round use of Mekong mainstream therefore subject to PC.

- PNPCA is based on following principles:
  - **Sovereign equality and territorial integrity**;
  - **Equitable and reasonable utilisation**;
  - **Respect for rights and legitimate interests**; and
  - **Good faith and transparency**.
1. PNPCA and Prior Consultation Process (2)

- PC is neither a veto right, nor a right to unilaterally proceed without taking legitimate concerns of notified countries into account – Not a “yes” or “no” decision process.

- Rather, a “Statement” calling on notifying country to include “a set of measures” in ongoing development of proposed project to be unanimously agreed by JC (Art. 5.4.3 PNPCA).

- “A set of measures” will serve as basis for formulation of a Joint Action Plan provides for ongoing involvement of MRC and Stakeholders.

- Agreement on a set of measures does not imply “tacit approval” of project, but rather agreement that additional steps could be taken to reduce potential risks and TB impacts, if project proceeds.
2. Progress Overview and Next Steps (1)

- **Notification by LNMC**: 13/Jun/18
- **Submitted to MCs**: 12/Jul/18
- **Final Meeting - Special Session of JC**: 29/Mar/19
- **Official start date**: 8/Aug/18
- **1st Meeting of JCWG**: 8/Aug/18
- **1st draft of TRR**: 12/Oct/18
- **2nd Meeting of JCWG and project site visit**: 5-7/Nov/18
- **2nd draft of TRR**: 12/Nov/18
- **3rd Meeting of JCWG**: 22/Feb/19
- **Comments from JCWG and National Experts**: 22/Feb/19
- **Final draft of TRR**: 15/Mar/19
- **1st RSF**: 20-21 Sep 18
- **2nd RSF**: 17 Jan 18
- **First round of stakeholder consultations**
- **Second round of stakeholder consultations**
2. Progress Overview and Next Steps (2)

- MRCS received “Notification” of PLHPP from Lao PDR on 13th June 2018.

- MRCS checked “Completeness” and prepared a “Scoping Assessment Report (SAR)”.

- MRCS forwarded submitted documents to notified countries on 11th July 2018 and followed by SAR on 16th July 2018.

- 1st Meeting of PNPCA JCWG on 08th August 2018 – agreed on start date (the same day), roadmap & scoping report, experts, key technical issues to be addressed in TRR.
2. Progress Overview and Next Steps (3)

- **1st Regional Stakeholder Forum** – 20 Sep 2018:
  - ✓ PC process and expected end-point was outlined and presented.
  - ✓ Forum attracted more than 160 participants representing MRC MCs, DPs, NGOs and CSOs, Research Institutes & Universities, & Media.
  - ✓ Report on outcomes of 1st Stakeholder Forum is available on MRC’s website
  - ✓ Responses from Stakeholders was positive – increased transparency of PC process was recognised
2. Progress Overview and Next Steps (4)

• 1st draft Technical Review Report (TRR) circulated with MCs on 17 October 2018.

• 2nd Meeting of PNPCA JCWG on 5–7 Nov 2018 to discuss 1st draft TRR & visit to Pak Lay project site.

• Comments & information obtained from 2nd Meeting of JCWG, site visit and written comments from MCs were used to come up with 2nd draft TRR.

• 2nd draft TRR was circulated with MCs on 03 Dec 2018 and to be presented in a summary form in 2nd Stakeholder Forum on 17 January 2019.

• National meetings organized by MCs:
  ✓ Cambodia: 28 Sep 2018 & 14 Dec 2018
  ✓ Thailand: 09 Nov 2018
  ✓ Viet Nam: 18 Sep 2018
2. Progress Overview and Next Steps (5)

➔ **Outcomes** of 2\textsuperscript{nd} round regional and national consultations, and comments from JCWG will be used to prepare final draft TRR.

• **3\textsuperscript{rd} Meeting of PNPCA JCWG**: discussion and endorsement of final draft TRR – 22\textsuperscript{nd} February 2019.

• **JC Special Session**: discussion and negotiation using final draft TRR and Reply Forms – 29 March 2019.

➔ “**Statement**” including “**a set of measures**” to be unanimously agreed by JC for ongoing involvement of MRC and Stakeholders through project development.
3. What happens after a 6-month Prior Consultation (1)

Success of PC lies in establishing an enabling environment for JC to agree “a set of measures” to assist developer to avoid, minimise and mitigate potential TB impacts, if the project proceeds.

- **A set of Measures** will outline what are recommended, how to response and adapt it, and how it could be monitored and communicated to MRC and other stakeholders.

- **Agreed Measures** will not reflect “tacit approval” by notified countries to proceed with PLHPP.

- As, **Notified Countries** will separately reflect their views and position in their formal reply forms to be part of official records of JC Special Session.
3. What happens after a 6-month Prior Consultation (2)

- Agreement on a set of measures does not prevent Member Countries from negotiating and agreeing anything outside a 6-month Prior Consultation process.

- The rollout of a set of measures need to be detailed in a Joint Action Plan (JAP) to be endorsed by JC.

- JAP will provide opportunities for developer through Lao Government to share details of on-going design, and how agreed measures have been taken up and addressed, with MRC and other stakeholders.
Thank you