OVERVIEW AND PROGRESS TOWARDS COMPLETION OF PNPCA PRIOR CONSULTATION PROCESS FOR LUANG PRABANG HYDROPOWER PROJECT

THE 9TH MRC REGIONAL STAKEHOLDER FORUM
DAY 1: THE 2ND REGIONAL INFORMATION SHARING ON PRIOR CONSULTATION FOR LUANG PRABANG HYDROPOWER PROJECT
05 FEBRUARY 2020, LUANG PRABANG, LAO PDR

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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.

- **LPHPP** 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)

- First Meeting of JCWG 8/Oct/19
- 1st draft of TRR 19/Nov/19
- 2nd Meeting of JCWG and project site visit 3-4/Dec/19
- Official start date 8/Oct/19
- Notification by LNMC 31/Jul/19
- First round of stakeholder consultations
- Second round of stakeholder consultations
- 1st RSF: 06 Nov 19
- 2nd RSF: 5 Feb 20
- Comments from JCWG and National Experts
- 2nd draft of TRR 18/Dec/19
- 3rd Meeting of JCWG 5/Mar/20
- Final TRR 21/Mar/20
2. Progress Overview and Next Steps (2)

- MRCS received “Notification” of LPHPP from Lao PDR on 31 July 2019.

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

- MRCS forwarded submitted documents to notified countries on 03 September 2019 and followed by SAR on 24 September 2019.

- 1st Meeting of PNPCA JCWG on 08 October 2019 – 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)

- **1<sup>st</sup> Regional Stakeholder Forum – 6 November 2019:**
  - PC process and expected end-point was outlined and presented.
  - Forum attracted more than 194 participants representing MRC MCs, DPs, NGOs and CSOs, Research Institutes & Universities, & Media.
  - Report on outcomes of 1<sup>st</sup> Stakeholder Forum is available on MRC’s website
  - Comments have been incorporated in draft TRR
2. Progress Overview and Next Steps (4)

- **1st draft Technical Review Report (TRR)** circulated with MCs on **19 November 2019**.

- **2nd Meeting of PNPCA JCWG** on **3–4 Dec 2019** to discuss **1st draft TRR & visit to LPHP 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 **18 Dec 2019** and to be presented in a **summary form** in **2nd Stakeholder Forum** on **5 February 2020**

- **National meetings** organized by Member Countries:
  - Cambodia: 21 October 2019 & 9 January 2020
  - Viet Nam: 04 November 2019 & 14 February 2020 (to be conducted)
  - Lao PDR: 31 Jan 2020
2. Progress Overview and Next Steps (5)

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

- **3rd Meeting of PNPCA JCWG**: discussion and endorsement of **final draft TRR** – 5 March 2020.

- **JC Special Session**: discussion and negotiation using **final draft TRR** and **Reply Forms** – 7 April 2020

➔ “**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 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.

- **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 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.