Overview of PNPCA under overall MRC Procedural Framework and the 1995 Mekong Agreement
1. Background – MRC Establishment and Important Things to Remember

- **MRC** was established by the 4 Member Countries who conferred powers and functions on the **Council, Joint Committee** and **Secretariat**;
- **MRC** can only work within the powers and functions it has been given;
- **Decisions** are made by **consensus**;
- **Maintaining cooperation** is its most important function – i.e. Mekong Spirit and Mekong Water Diplomacy; and
- **MRC** cannot instruct the Member Countries.
2. The MRC’s 5 Procedures and Its Linkages

**PDIES**
Procedures for Data and Information Exchange and Sharing (2001)

**PWUM**

**PNPCA**

**PWQ**
Procedures for Water Quality (2011)

**PMFM**

---

**Water Diplomacy Legal Framework** – Cooperative Management rather than Regulatory Approach to Cooperation
3. What is the Mekong Water Diplomacy?

The Mekong Water Diplomacy:

Giving all the Riparian States the **confidence** that their **concerns** are being **heard, considered and acted** on in the ongoing development of the basin.

**COOPERATION CONTINUUM = INCREASING CONFIDENCE**

- **Inform**
- **Adapt**
- **Join**

**UNILATERAL ACTION**

**COORDINATION**

**COOPERATION**

**JOINT ACTION**
4. Member Countries also Agreed to Certain Actions

- Cooperate in the **sustainable development** of the Mekong River Basin – including on **hydropower**;
- Develop a **Basin Development Plan** with a preference for **joint projects**;
- Protect the **environment** and **ecological balance**;
- Respect **sovereign equality** and **territorial integrity**;
- Use the waters in a **reasonable and equitable way** – subject to the PNPCA...
5. Member Countries also Agreed to Certain Things …..

- Maintain flows on the mainstream;
- Make every effort to avoid minimise and mitigate harmful effects;
- Cease activities that cause substantial damage when proof is provided by the affected countries;
- Discuss compensation where substantial damage is caused;
- Allow freedom of navigation on the mainstream; and
- Notify emergency situations.
6. When PNPCA is Applied?

<table>
<thead>
<tr>
<th>Type of River</th>
<th>Season</th>
<th>Scope of water-use</th>
<th>Required procedure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mainstream</td>
<td>Dry</td>
<td>Inter-basin (from the Mekong basin to another basin)</td>
<td>Specific Agreement</td>
</tr>
<tr>
<td></td>
<td>Wet</td>
<td>Inter-basin (from the Mekong basin to another basin)</td>
<td>Prior Consultation</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Intra-basin (within the Mekong basin)</td>
<td>Prior Consultation</td>
</tr>
<tr>
<td></td>
<td>Both</td>
<td>Intra-basin (within the Mekong basin)</td>
<td>Notification</td>
</tr>
<tr>
<td>Tributary</td>
<td></td>
<td>Both inter and intra-basin</td>
<td>Notification</td>
</tr>
</tbody>
</table>

COOPERATION CONTINUUM = INCREASING CONFIDENCE
7. What is Prior Consultation?

Prior consultation is **neither a right to veto** the use **nor unilateral right** to use water by any riparian without taking into account other riparian's rights.

It is about adapting the proposed use to make it more **reasonable** and **equitable**.
8. What is the aim of Prior Consultation?

Article 5.4.3 of the PNPCA:

“The MRC JC shall aim to arriving at an agreement on the proposed use and issue a decision that contains the agreed upon conditions. That decision shall become part of the record of the proposed use and of the record of the use of the waters when commenced.”

No absolution requirement to agree on the proposed use.
9. Important Things to Remember about Prior Consultation

• It is a **cooperation mechanism** not a policing action, i.e. not a ‘yes’ or ‘no’ (*Chapter II*);

• It should aim at a **decision** on whether the proposed use is **reasonable** and **equitable** (*Article 5*);

• Failing this, it should **identify measures** that would **make it more reasonable and equitable** (*Article 7*);

• It is a **6-month process**, but can be extended in special circumstances; and

• Member countries can discuss issues outside the process.
10. What Happens after Prior Consultation?

- **Prior consultation** provides all Member Countries and Stakeholders the opportunity to discuss their concerns;

- **Technical Review Report (TRR)** presents the impacts and measures to avoid, minimise and mitigate these impacts;

- **A Statement** summarises the measures and calls on the notifying country to make every effort to address the concerns raised; and

- **Joint Action Plan (JAP)** supports the implementation of the **Statement**, and provides for ongoing exchange of data, and expertise.
11. Why the Record of Use once Commenced is Important?

- Establish the use as an existing use. Subsequent uses must consider this use in their feasibility and design processes.
- Allow the MRC to include the water use in its impact models;
- Give confidence to Member Countries and new users that the agreed operating rules are being implemented;
- Supports conjunctive operations; and
- This is included in the PWUM.
Prior consultation and the post-prior consultation process are not about requiring that there are no impacts, but about making sure that all viable and reasonable measures to avoid, minimise and mitigate possible impacts are identified and implemented.
Thank you