



Procedures for Notification, Prior Consultation and Agreement under the 1995 Mekong Agreement

PNPCA

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Content

- I. The 1995 Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin
- II. The MRC Procedural Rules of the 1995 Mekong Agreement
- III. The Procedures for Notification, Prior Consultation and Agreement (PNPCA)

I. What is the 1995 Mekong Agreement ?



Character and Principles of the 1995 Mekong Agreement

- **Advisory agreement**
- **Focus on basin-wide benefit-sharing**
- **Spirit of cooperation, joint planning and information sharing**
- **Based on rights, interests and responsibilities of riparian states for water utilization**

Article 1: Areas of cooperation

To cooperate in all fields of sustainable development, utilisation, management and conservation of the water and related resources of the Mekong River Basin ...

- ...including, but not limited to:
- irrigation
 - hydro-power
 - navigation
 - flood control
 - fisheries
 - timber floating
 - recreation and tourism...

Article 2: Projects, Programmes and Planning

To promote, support, cooperate and coordinate in the development of the full potential of sustainable benefits to all riparian States and the prevention of wasteful use of Mekong River Basin waters... through the formulation of a Basin Development Plan

Article 5: Reasonable and Equitable Utilization

To utilize the waters of the Mekong River System in a reasonable and equitable manner ...pursuant to ... Rules for Water Utilization ... (under Article 26).

Article 6: Maintenance of Flows on the Mainstream

To cooperate in the maintenance of flows on the mainstream

6.A: ... no less than the acceptable **minimum** monthly natural **flow** during each month of the **dry season**

6.B: ... acceptable natural **reverse flow** into Tonle Sap...

6.C: ... prevent **average daily peak flows** greater than what naturally occur on the average during **flood season**.

Article 3 (and 7): Protection of the Environment and Ecological Balance

To **protect the environment**, natural resources, aquatic life and conditions, and the ecological balance of the Mekong River **from pollution or harmful effects resulting from any development plans and uses** of water and related resources



II. MRC Procedural Rules

Article 26: Rules for Water Utilization and Inter-basin Diversions

The Joint Committee shall prepare and propose for the approval of the Council, Rules for Water Utilization...:

- 1) Time frame for wet and dry season;
- 2) Location of hydrological stations and determining and maintaining flow levels;
- 3) Criteria for dry-season surplus quantities;
- 4) Mechanism to monitor intra-basin use;
- 5) Mechanism to monitor inter-basin diversions from the mainstream.

Approved and Draft MRC Procedures

PDIES (2001); Guidelines (2002)

Procedures for Data and Information Exchange and Sharing

PWUM (2003); Guidelines (2006)

Procedures for Water Use Monitoring

PNPCA (2003); Guidelines (2005)

Procedures for Notification, Prior Consultation and Agreement

PMFM (2006)

Procedures for Maintenance of Flows on the Mainstream

PWQ (JC endorsed draft)

Procedures for Water Quality



*1995 Mekong Agreement
and Procedural Rules*





III. PNPCA

Article 5 A and B: Reasonable and Equitable Utilization – PNPCA requirements

Tributary hydropower

- *subject to notification to the Joint Committee*

Mainstream

- *subject to prior consultation which aims at arriving at an agreement by the Joint Committee*

Article 5 A and B: Reasonable and Equitable Utilization – PNPCA

Rationale of PNPCA: for Member States to timely receive sufficient information on proposed use; and to:

- 1) optimize water use; *Pareto Optimum Principle*
- 2) determine whether greater benefits can be derived through cooperation and trade-offs;
- 3) establish the right of claim by the proposing party against further proposed uses;
- 4) assess the potential impacts on multi-stakeholder rights and interests;
- 5) avoid inter-state disputes through established due process;
- 6) provide for planning security

Article 5 A and B: Reasonable and Equitable Utilization – PNPCA

experience to date

- Developments so far on tributaries
- 28 Notifications 1995 – 2008
- Initial information on mainstream dams by Lao PDR, Cambodia and Thailand



Article 5 A and B: Reasonable and Equitable Utilization

	Notification	Prior Consultation	Agreement
A. <u>Tributaries:</u>	XXX		
Wet & Dry Season			
B. <u>Mainstream:</u>			
1. Wet Season			
- Intra-basin Use	XXX		
- Inter Basin Div.		XXX	
2. Dry Season			
- Intra-basin Use		XXX	
- Inter-basin Div.			XXX

Under the 95 MA any hydropower development on the Mekong Mainstream requires a Prior Consultation

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Main Elements of a Prior Consultation

Governing documents:

- (i) PNPCA (2003);
- (ii) Technical Guidelines on PNPCA (including forms) (2005)

State responsibility for process:

- NMCSs are submitting party

MRCS:

Proactive assisting role to Joint Committee (G-PNPCA II.)

Due diligence requirement before use (PNPCA 5.4.3.)



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Forms for Prior Consultation

(Submission: Form IIA (4.2.))

4.2

Annex II (A)

**Mekong River Commission Procedures for
Notification, Prior Consultation and Agreement**

Form/Format for Prior Consultation

1. **Proposing State(s):**
2. **Date of submission:**
3. **Proposing Ministry (ies)/Agency (ies)** (Name, mail/email address, telephone, fax):
4. **Contact person/facilitator** (Name, address, telephone/fax/e-mail):
5. **Name of the project:**
6. **Location of the project:**
7. **Nature of the proposed use:**

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8. **Purpose of the proposed use:**
.....
.....
9. **Expected date for the implementation:**
 - a) Date for starting the construction
 - b) Date for finishing the construction
 - c) Date for the operation
10. **Duration and timing for the utilization of the proposed use of water:**
.....
.....
11. **Description of the project** (scope, scale, site, type, quantity, capacity, and characteristic, etc.):
.....
.....
12. **Observation or comment:**
.....
.....
13. **Attached available data and information and/or documents,** e.g. summary of feasibility study (FS), initial environmental evaluation (IEE), etc.
.....
.....

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Forms for Prior Consultation

(State Response: Form II B (4.3))

4.3

Annex II (B)

**Mekong River Commission Procedures for
Notification, Prior Consultation and Agreement**

Form/Format for Reply to Prior Consultation

1. **Replying State(s):**
2. **Date of reply:**
3. **Replying Ministry(ies)/Agency(ies)** (Name, mail/e-mail address, telephone, fax):
4. **Contact person/facilitator** (Name, mail/e-mail address, telephone, fax):

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- Inter-basin diversion from the mainstream during wet season
- Intra-basin use on the mainstream during dry season
- Inter-basin diversion of the surplus water from the mainstream during dry season

8. **Purpose of the proposed use:**
9. **Expected date for the implementation:**
 - a) Date for starting the construction
 - b) Date for finishing the construction
 - c) Date for the operation
10. **Duration and timing for the utilization of the proposed use of water:**
11. **Description of the project** (scope, scale, site, type, quantity, capacity, and characteristic, etc.):
12. **Observation or comment:**
13. **Attached available data and information and/or documents**, e.g. summary of feasibility study (FS), initial environmental evaluation (IEE), etc.

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Submission Requirements – What?

PNPCA (5.2.1.) & G-PNPCA (I.B.2):

- (i) data required for Notification;
- (ii) summary of FS and EIA;
- (iii) additional available data (I.B.2)
- (iv) English language

➔ Enable an informed consideration of proposed use and evaluation of impacts by other riparian states



PNPCA Prior Consultation Requirements - When?

Owner: Compile Submission	Line Agency: to NMCS	NMCS check: - Complete - Consistent	NMCS submit to MRCS	MRCS check: send to JC; cc: NMCs	JC decision	Project Start?
			1 month	5 months		
?	?	?	6 months			
				JC can extend		

M/S reply: Form A II B
 (via NMCs: includes LAs)

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Prior Consultation Requirements Accompanying Activities

- Joint Committee can establish:

- (i) JC Working Group;
- (ii) MRC Technical Advisory Team;
- (iii) Fact finding mission; site visit
- (iv) JC special sessions

- Disclosure requirements: Nat'l. Legislation, MRC Policy, National consultations?

- Consider time and resource requirements:
→ start early



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Prior Consultation Requirements

Process Closure

The Joint Committee shall:

- aim at arriving at an agreement and issue a decision containing agreed upon conditions that is recorded; and
- make a record of the use when it commences

(PNPCA 5.4.3.)

*Developers Meeting
29 May 2009
Phnom Penh*



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