

Mekong River Commission Procedures for Notification, Prior Consultation and Agreement

Form/Format for Reply to Prior Consultation

1. Replying State(s):

Kingdom of Cambodia

2. Date of reply:

April 13, 2011

3. Replying Ministry(ies)/Agency(ies) (Name, mail/e-mail address, telephone, fax):

Cambodia National Mekong Committee (CNMC)

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5. Name of the proposed use/project:

Xayaburi Hydroelectric Power Project

6. Location of the proposed use:

KM 1930.7, Xayaburi District, Xayaburi Province, Northwestern Lao PDR,
Upstream Lower Mekong Basin (Vientiane-Luang Prabang Stretch).

7. Nature of proposed use

Intra-basin water use on the mainstream during wet and dry seasons

8. Date of receipt of the document:

October 22, 2010

9. Reply to proposed use:

It is appreciated the prior consultation (PC) process carried out under the MRC Procedures for Notification, Prior Consultation and Agreement (PNPCA) for the proposed Xayaburi Hydropower Dam Project of the Lao People Democratic Republic. The PC has allowed the riparian states to discuss and evaluate the impacts of the proposed project and any other affects which is the basis for arriving at an agreement upon conditions by the Joint Committee. *Prior consultation is neither a right to veto the use nor unilateral right to use water by any riparian without taking into account other riparians' rights.* In this context, the concerns, findings and recommendations are expressed in this Reply Form for Prior Consultation.

The Reply Form submitted to the MRC JC through the MRC Secretariat related to the proposed Xayaburi Hydropower Dam Project, having taken into accounts the comments and recommendations obtained from various stakeholders, government ministries, local communities and civil society organizations during the prior consultation period.

The Reply Form covers (i) the need for further information particularly related to the trans-boundary environmental impacts and cumulative impact, and mitigation measures (ii) key concerns requiring due considerations and strategic measures in practical terms and (iii) other findings and recommendations of the MRCS review report with regards to hydrology, fisheries, sediment, water quality, dam safety, trans-boundary issues, and monitoring programme to be properly addressed.

Some concerns are such the lack of sufficient information being timely disclosed to the public for use as the basis for stakeholders' consultation, the limited prior consultation timeframe and wider participation, the design and operations of the proposed dam including dam safety, the potential trans-boundary social and environmental impacts to downstream (fisheries, flow change, sediment balance, erosion, eco-system and agriculture land, livelihood), monitoring programme and the mitigation measures. The details could be found in the country consultation report submitted to the MRCS via CNMC's facsimile No.CNMC-487/11 of 11 March 2011.

It is appreciated the MRCS Review Report produced and shared with the Member Countries though the final report was disclosed to the public after the national consultations completed. It is noted with appreciation of the review report and the decision on its disclosure to public at the 33rd JC Meeting. It is valued the importance of the Review Report findings and recommendations on the proposed Xayaburi hydropower dam project. The details of the recommendation could be found in the review report. However, it is questionable on how the review report recommendations are further taken into account by the notifying country and/or project developer.

Due to the fact that the Xayaburi Hydropower Dam Project is the first proposed mainstream dam and is considerably large project, the six months period for PC is not enough to cover many efforts such as comprehensive study on relevant project documents, comprehensive consultation both for national and regional levels, technically study on project relevant documents and technical preparation by MRCS PNPCA Task Group, preparation of the three meetings of Joint Committee Working

Group (JCWG) on PNPCA and of the national public consultation meetings, and consolidation of the findings for MRC JC conclusion.

There still remain considerable technical concerns from Member Countries, which required the notifying country and/or project developer to fulfill before continuing further the project implementation. The findings by MRCS PNPCA Task Group have shown that there are considerable technical studies, justification and modification needed, which may require appropriate time for the notifying country and/or the project developer to fulfill the requirements before the implementation of the proposed project.

It is seen the need for hydropower development within the Member Countries, including the Mekong mainstream dams. Sufficient information is needed and essential for the review and should be provided in a timely manner for effective consultations with key stakeholders at the country and regional levels. With the limited information related to the Project, it is therefore suggested the Prior Consultation period be extended to allow the required additional information be provided and be further consulted with the Member Countries to fill the knowledge gaps for the sustainable hydropower development.

There is a recommended need for a comprehensive study and assessment of transboundary environmental impacts including the cumulative impact assessment. The enabling countermeasures and solutions for strategic actions to mitigate or minimize such transboundary impacts need to be clearly developed and affecting countries should be allowed to participate in the following up and monitoring on the implementation of such proposed transboundary countermeasures. Benefits sharing to affecting countries and the transboundary environmental management and social fund need to be jointly elaborated and put into practice.