

The 6th Regional Stakeholder Forum

Second Regional Information Sharing on Pak Lay Prior Consultation Process

17 January 2019

Luang Prabang, Lao PDR



Overview and Progress

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

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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.*
- **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.*

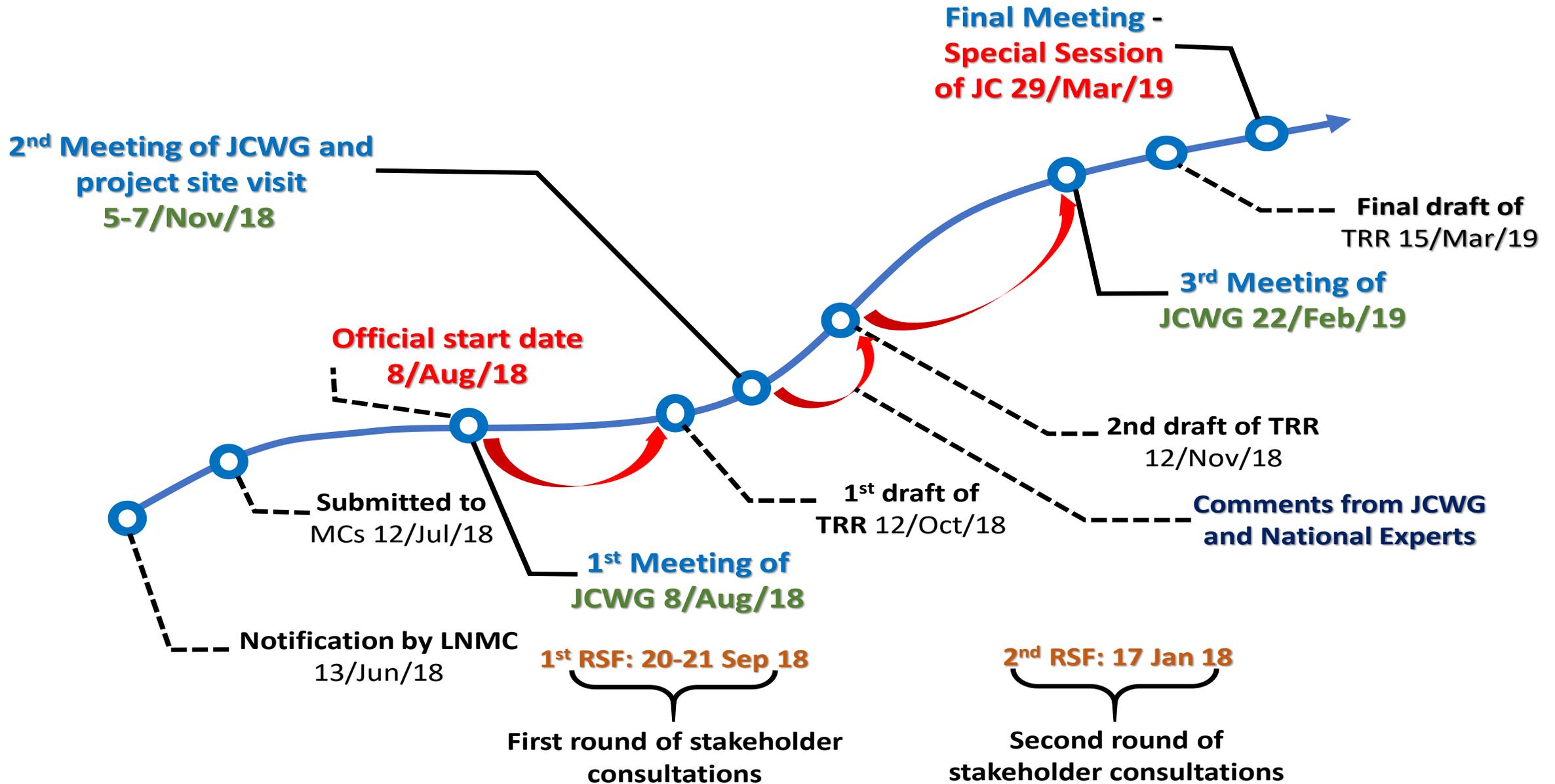


1. PNPCA and Prior Consultation Process (2)



- 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)



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 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** – **22nd 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)

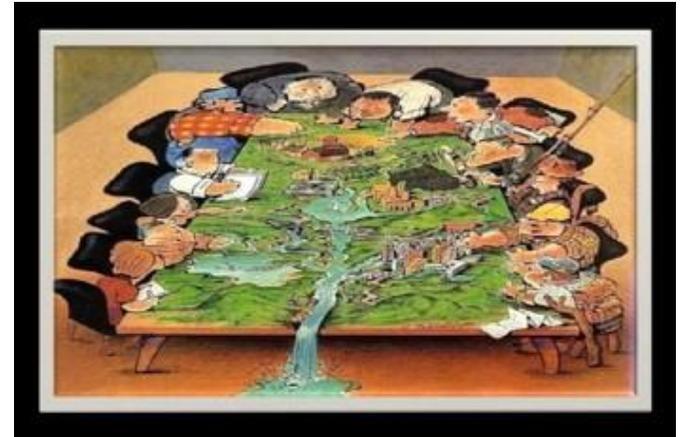
Success of PC lies in establishing an enabling environment for JC to agree “**a set of measures**” to assist developer to *avoid, minimise* and *mitigate* potential TB impacts, **if the project proceeds**.

- **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

