



Mekong River Commission
Cambodia • Lao PDR • Thailand • Viet Nam
For sustainable development

Summary note

Joint Action Plan for the Implementation of the Statement for the Pak Beng Hydropower Project

Final draft

In an effort to communicate openly with broader stakeholders of the Mekong River Commission (MRC) and to help them participate in MRC's regional stakeholder forums more meaningfully, the MRC Secretariat has prepared this summary report to present key and substantive points from selected on-going technical work of the MRC which is in the process of development and finalization in consultation with its member countries.

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1. Introduction

The Special Session of the MRC Joint Committee (JC) convened at the end of the prior consultation process for the Pak Beng Hydropower Project (PBHPP) agreed a “*Statement on the prior consultation process for the Pak Beng Hydropower Project [PBHPP] in Lao PDR*” (the Statement). In the same week, all the member countries officially endorsed “*the Statement*”, after their comments had been included.

The Statement included a request to the Mekong River Commission Secretariat to prepare a Joint Action Plan (JAP) that outlines a process for implementing the Statement. The proposed content for the JAP was agreed at the 32nd JC Task Force (JCTF) meeting on 28th July 2017. The initial draft of the JAP was circulated to the Member Countries for comment and submitted to the Joint Platform meeting on 5th October 2017. Inputs from this meeting were again circulated to the Member Countries for inputs, with 4 successive drafts being circulated. The final draft has been approved by the delegations from the notified countries as they are waiting for an indication on whether the PBHPP will proceed.

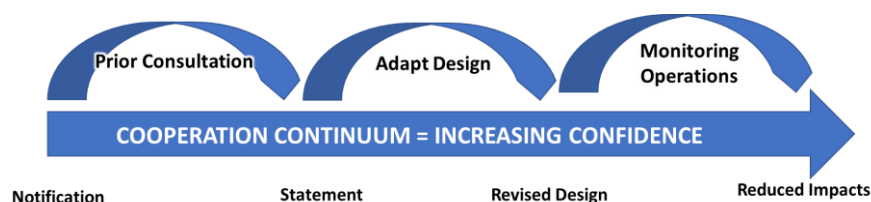
This short note summarises the intention and content of the JAP, and the process is illustrated below.



2. Purpose of the JAP

Background

One of the most important aspects of water diplomacy is to build the confidence in the riparian countries that their concerns are being heard, actioned and monitored in the development of shared watercourses by the other riparian countries. This is illustrated by the continuum below.



In the MRC’s PNPCA, notification of proposed uses on the tributaries informs the other member countries and they can accommodate this use in their ongoing development of the basin. Prior consultation provides the member countries the opportunity to have inputs into the design and operation of the proposed use, and for the notifying country to take these concerns into account by adapting the design and operation. An even greater level of confidence is built when the notified countries can remain engaged in the adapted design and even ongoing monitoring of the construction and operational phases of the proposed use. This is embodied by the

“Mekong Spirit”. Ongoing engagement is even more important when notification takes place at the feasibility stage of development.

The purpose of the JAP

The aim of the JAP is therefore to provide mechanisms for ongoing engagement regarding the ongoing design, construction and ultimately operation of the PBHPP. The intention is to monitor the implementation of the Statement and support Lao PDR in its ongoing efforts to identify measures that may further avoid, minimize, or mitigate the potential impacts of the PBHPP. It also aims at enhancing the benefits of the project and sharing knowledge and experience among the MRC Member Countries. The outcomes of the JAP are advisory in nature and form part of the member countries commitment to good faith cooperation.

3. Principles for Implementation

The JAP will be underpinned by the same spirit of cooperation and practicality as the prior consultation process. To this end, it will be governed by the following principles:

- The JAP is a cooperative mechanism to jointly further explore viable and practical measures to avoid, minimise and mitigate potential transboundary impacts, or enhance any positive impacts and benefits;
- It is founded on the same principles of the PNPCA, viz. ;
 - Sovereign equality and territorial integrity;
 - Equitable and reasonable utilisation;
 - Respect for rights and legitimate interests; and
 - Good faith and transparency.
- It will aim to accommodate the interests and constraints of all the Member Countries, and will address concerns as far as reasonably practicable;
- While promoting the free and open exchange of data, the JAP recognises that certain data and information that may affect the developer’s competitive advantage are confidential;
- The JAP does not include direct engagement of the developer by the MRC, and any discussions with the developer will be through the GoL and/or its Line Agencies; and
- The JAP covers the project design, construction and operational phases of the PBHPP.

4. Engagement of Stakeholders

The MRC has committed to improve the engagement of stakeholders at all levels. The MRC Council, the Joint Committee and the Secretariat, as well as other government agencies in the Member Countries will be primarily responsible for the implementation of the JAP through the administrative mechanisms already in place in the MRC. These are the internal stakeholders to the process.

External stakeholders such as development partners, NGOs, implementing partners, civil society organizations, research institutions, academics, individuals and other interested groups will be kept informed of progress with the implementation of the JAP through the MRC’s regular stakeholder engagements.

5. A Phased Approach

The JAP will be undertaken 4 overlapping Phases as follows:

- **Phase 1: Initiation** - This will start immediately after approval of the JAP and the budget by the Joint Committee, and will focus on mobilising the resources required for implementation; **Phase 2: Project Design** – This will aim at working with relevant Line/Implementing Agencies in the GoL to explore measures that may further improve the project design and operations of the PBHPP, and address the concerns raised during the Prior Consultation process;
- **Phase 3: Construction** – This will start once construction on the PBHPP starts, and will aim at appraising the progress with construction, monitoring of impacts during construction and having input into any design changes; and
- **Phase 4: Operations** – This will include agreement by the Joint Committee on a set of monitoring and reporting parameters for the operational phase of the PBHPP and will be completed as operations commence.

A broad Scope of Work (SoW) for these Phases is presented in more detail below.

Phase 1: Initiation

This phase will start when the PBHPP development process is re-initiated and aims at:

- Mobilising resources required for implementation;
- Informing stakeholders of the outcomes of the prior consultation process and the JAP.;
- Initiating the implementation of the JAP. This will include agreement in the JC on the modalities of collaboration, and lines of communication and reporting; and
- Development of a Monitoring/Lessons Learnt Matrix, to be maintained by the MRCS, so that the JC can exercise effective oversight over the implementation of the JAP.

Phase 2: Project Design (including Operating Rules)

This Phase will aim to exchange information between the GoL and the MRCS and Member Country experts on the ongoing design of the infrastructure and operating rules. This Phase will also develop mechanisms to monitor the implementation of the agreed outcomes of the discussions. These include:

- Mechanisms to maximise the technical expertise available to support the implementation of the Statement;
- Working sessions at key design milestones bringing together the relevant expertise around key subjects;
- Working sessions to gain a better understanding of potential transboundary socio-economic and ecological impacts, and options to further reduce these as far as reasonably practical – in line with Sections 4 and 7 of the Statement; and
- After review by the JC, making recommendations on the project design and operating rules for the GoL to consider.

Progress with the implementation of the JAP will be reported as part of the overall implementation of the MRC Procedures. This will run in parallel to discussions on the ongoing review of the PNPCA and will contribute information on how the implementation of the Statement could support the effective implementation of the PNPCA. Discussions will also aim at identifying monitoring indicators to assess the efficacy of the design and operations. This will include recommendation by the JC on the modalities of exchanging data on a regular basis.

This phase concludes with the submission of the final designs and operating rules through LNMC, for inclusion in PWUM.

Phase 3: Construction

This phase will be initiated with the commencement of construction of the PBHPP and will start after review by the JC making recommendations for the monitoring the implementation of the Statement during construction. Activities will include at a minimum:

- Periodic visits to the site by the MRCS and Member Country experts to observe the process. These visits will be arranged through the GoL;
- Working sessions or meetings to discuss any major design changes made during the construction phase;
- Exchange of data on the efficacy of measures agreed to avoid, minimise and mitigate impacts during construction; and
- Regular updates on progress with construction, provided via the LNMC and MRCS as outlined in the following section.

Given the costs of these working sessions, these will only be held when significant milestones have been reached with construction, or where input into design changes is desirable.

Phase 4: Operations

This phase will start after commissioning of the PBHPP and will aim at developing an Operations Monitoring Scheme in line with the MRC Joint Environmental Monitoring Programme (JEM), to be based on monitoring indicators that have emerged from the previous Phases. These indicators will aim at monitoring the efficacy of the infrastructure to minimise potential adverse impacts.

The Operations Monitoring Scheme developed under this Phase will include recommendations on the frequency of reporting to the MRC, who is responsible for the monitoring, the internal processing and reporting mechanisms by the MRCS, and the regular reporting to the JC. Monitoring may therefore be done by the Developer (and reported through LNMC), and the Member Countries through the MRC JEM. This monitoring will form part of the PWUM.

6. Financing the JAP

The following activities in the JAP will have to be financed:

- Working sessions between the Member Countries and the MRCS experts;
- Regional stakeholder engagements as per normal MRC process;
- Internal MRCS staff attendance of the above;
- Training for internal stakeholders; and
- Field monitoring / inspection and site visit activities.

It is proposed that the following funding mechanisms should be considered:

- MRC basket funds; and
- Funding support from interested development partners, and other sources.

7. Institutional Responsibilities

Joint Committee (JC)

The MRC Joint Committee will maintain oversight of the implementation of the JAP and will approve any updates to the JAP that may be proposed from time-to-time. The JC will make recommendations to the GoL in the spirit of the Statement.

The Lao National Mekong Committee (LNMCM)

In keeping with the spirit of the Statement and the commitment to engage the MRC with respect to ongoing efforts to avoid, minimise and mitigate the potential transboundary impacts, and to enhance the benefits of the project; the GoL is requested to provide regular updates on progress with the design, construction and operations of the PBHPP, including at MRC JC meetings. It is noted with appreciation that the LNMCM, through its Secretariat (LNMCS), has already presented a Preliminary Response to the Statement in this regard.

The National Mekong Committees of the notified Countries

Similarly, in keeping with the spirit of good faith cooperation and the Principles outlined in Section III, the NMCs of the notified countries are requested to maintain open and good faith communication with a view to advising the GoL on viable measures that will further avoid, minimise and mitigate potential adverse transboundary impacts from the PBHPP, and to enhance the benefits of the project and the sharing of knowledge and experience amongst Member Countries.

The NMCs may identify national experts (consultants) and implementing/line agencies' staff to support the implementation of the JAP, and will avail these experts for workshops, meetings and providing comments on any documentation produced. The NMCs will form the primary point of liaison with their respective countries and should pass information to their national experts as expeditiously as possible, consistent with their national mandates.

The Mekong River Commission Secretariat (MRCS)

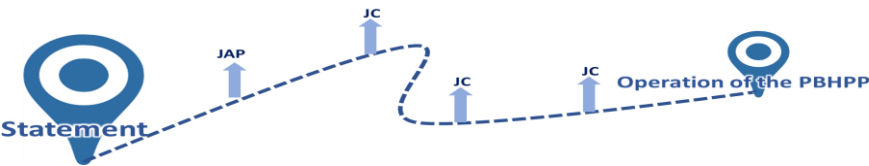
The MRCS will provide a summary of progress with implementation of the JAP, and any data provided, as a standing item on the JC Agenda. The MRCS will make the arrangements for any

working sessions agreed by the JC. The MRCS may request the LNMC for an update on progress to prepare for the JC meetings prior to these meetings.

If agreed by the JC, the MRCS will appoint any external specialists/consultants to support any workshops with specialist inputs.

Once the MRCS receives documentation outlining technical progress milestones, it will undertake an internal assessment, and provide feedback to the JC, with suggestions as to the ongoing process. The MRCS may take proactive action to prompt the LNMC to provide documentation in a timely manner.

The MRCS will develop and maintain a JAP Tracking Matrix which will be used to track and report progress with the implementation of the JAP to the JC, as illustrated below.



8. The way forward

The Final Draft Version 5 of JAP was submitted to the JC delegations from the notified countries for consideration and approval through an exchange of letters and the MRC Secretariat has obtained approval from these delegations and is awaiting the official reply from notifying country. The MRCS has used this Version to guide the preparation of JAP implementation report as part of the Annual Work Plan for 2018. Upon approval from notifying country the MRCS will further develop the Tracking (Monitoring) Matrix to be used as a mechanism to track progress with the implementation of the JAP and for the MRCS to report to the Joint Committee. The Tracking Matrix aims to track actions and efforts made with the implementation of the JAP by outputs i.e. workshops/reports, data shared, and revised design etc. and is only intended to keep the JC apprised of progress.



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