

BDP Independent Panel of Experts (IPOE)

A Strategic Review of the Basin Development Plan Report of the International Team of the IPOE

**Mekong River Commission
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Abbreviations

BDP	Basin Development Plan
CEO	Chief Executive Officer of the MRCS
CTA	Chief Technical Advisor
DOS	Development Opportunity Space
IPoE	Independent Panel of Experts
IWRM	Integrated Water Resources Management
LMB	Lower Mekong Basin
MRC	Mekong River Commission
MRCS	Mekong River Commission Secretariat
NGO	Non-Governmental Organization
NMC	National Mekong Committee
NMCS	National Mekong Committee Secretariat
RTWG	Regional Technical Working Group
SEA	Strategic Environmental Assessment
UMB	Upper Mekong Basin

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1. Our objectives

Our terms of reference: The IPoE was asked to provide a ‘review of the BDP2 outputs and ensure that the BDP process and outputs are of the highest quality, relevance and responsiveness to the prevailing conditions of the region’. The regional team of the IPoE undertook the quality assurance of BDP products over 3 missions. The international team of the IPoE was asked to provide a strategic review of the BDP within a rapidly-changing Mekong environment and MRC, and to offer strategic guidance; this was undertaken over 2 missions.

Who this report is for: Commissioned by the MRC Secretariat, this report is addressed to its management and, should management decide, to MRC decision makers and donors.

What else we have done: In addition, we have produced informal notes/Powerpoints on: main findings, emerging challenges for MRCS, the development opportunity space, and an outline for a summary.

Acknowledgements: we gratefully acknowledge the advice of: two Ministers and their staff; the Joint Committee BDP Working Group; the NMCSs; and the MRCS CEO, CTAs, technical staff and BDP team. All have spoken openly to us. We have spent as much time as possible and consulted closely with the regional team of the IPoE.

2. The Mekong story

A long journey to the present. As with all the great rivers of the world, there is a deep and unbreakable bond between the people of the Mekong basin and the river. The river is and will continue to be a source of livelihoods and production; it can also be a source of disaster, from flood, drought and contamination. Managing the river together to optimize production and minimize disaster is an obvious goal, and one that can only be achieved through cooperation – from the local to the international level. Dialogue among the Mekong countries goes back at least to the 1950s and has survived the trauma of conflict as well as economic, political and demographic change. As competition for resources grew, so did recognition that a more formal mechanism for cooperation was needed, leading to the 1995 Mekong Agreement. Since then, the MRC has built trust and capacity and has slowly evolved into a knowledge organization, with limited engagement in aspects of basin development. Largely donor-funded, donor values and objectives have predominated. All river development has continued to be unilateral and national, with limited trans-boundary impacts because of the remarkable resilience of the river system. Few mitigation strategies have been developed or deployed. This situation is changing now.

Endowed with sound values. The Objectives and Principles of Cooperation set out in Articles 1 to 10 of the 1995 Mekong Agreement provide a sound set of values, upon which the sustainable development of water and related resources of the basin can be cooperatively and effectively built to support growth and

harmony. It is important to emphasize that adopting these values leads to good development; it is also good politics and good business – delivering good projects on time and on budget (without the lost votes and major cost and time over-runs that result from objections and disputes). Like all river basin organizations, the MRC needs to be the ‘guardian’ of these values, while honouring the sovereign equality and territorial integrity of its member states.

Game-changing findings: China dams. The BDP modeling work indicates that the construction of ‘storage’ as well as ‘run of river’ hydropower dams in the China UMB results in a significant shift of flows to the dry season, increasing LMB low flows by about 700m³/sec, providing additional water for consumption (e.g. irrigation) and reducing salt water intrusion in the delta. Sediment flows to the LMB will be significantly reduced, with unknown long-term implications. As the river flow interests of China and LMB are aligned, there is a major opportunity to coordinate low and flood flow management. This would be an important step in China-LMB cooperation.

3. The 2010 Basin Development Plan

key outcomes

Major shift in the development-management balance. BDP has begun to change the nature of the MRC role and focus, moving it from an almost exclusive focus on acquisition of knowledge and on best practice in water management to a focus on water development to support economic growth and poverty reduction. There is no doubt that this is what the MRC countries want, need and must have. However, the move to development must complement, and not replace, the focus on management. This balance is, however, always a difficult one, as there are trade-offs to make and views on both sides to be heard. Managing this balance is at the heart of good water resources management and needs to be the central role of MRC support to its member states.

Important precedent of country-owned cooperative planning. BDP has played both important process and output generation functions. The Basin Development Plan is a fundamental vehicle for cooperation under the Mekong Agreement – described in Article 2. For over 2 years, the MRC member countries have worked together to develop BDP2 in an unprecedented and comprehensive process of information exchange, dialogue, and decision. The Parties have arrived - through constructive consultation - at a common understanding on a set of basin development scenarios, addressing one another’s concerns, understanding one another’s programmes and drawing conclusions together on likely transboundary impacts. The importance of this process of country-owned planning cannot be overstated, as it lays the foundation for the sustained cooperation and difficult joint decisions that will be needed in the future.

Structured products delivered and defined. At the heart of the BDP2 product is the ‘Development Opportunity Space’ (‘DOS’). This is a list of components of national plans for Mekong development, grouped within ‘Scenarios’ that have

been put by the BDP reference group (NMCSs, line agencies, academics, sub-area working groups, etc.) through a review filter comprising 42 technical, economic, social and environmental criteria. The components in the DOS are perceived to be acceptable in terms of transboundary impacts, providing broad endorsement. This implies (but is in fact no guarantee) that any necessary negotiations over projects that might be developed from the national plan components within the DOS are likely to be successful. In addition BDP2 proposes: 7 areas where priority strategic guidance is needed; 11 key studies that need to be undertaken to inform development and its mitigation; and 35 guidelines for water resources management and development (including environmental and social mitigation), to be incorporated within a good practice manual, primarily for project identification, preparation and implementation.

key concerns

What are the basin objectives ... the dams point of departure. The scenarios are defined in terms of tributary and mainstream dams for hydropower, diversions for irrigation and other interventions that control or consume water resources (water supply, flood protection). The rationale provided is that unilateral river development was proceeding rapidly, so that the scenarios were selected on the basis of river flow changes and the assessment criteria ('filters') would account for other major development options (e.g. fisheries, navigation). This nevertheless implies that dams, hydropower, irrigation and water supply are the negotiated objectives, and other economic, social and environmental objectives are secondary. The absence of clear MRC-developed basin objectives (beyond an adopted Vision of 'an economically prosperous, socially just and environmentally sound Mekong River Basin') is striking. Developing multi-sectoral basin objectives needs to be a key priority for MRC.

Clarity over what the BDP endorsement is and is not. The BDP process has delivered important products and plans additional ones (see above). The concern is that the BDP contains projects and programmes that are deemed to be "within acceptable levels of transboundary social and environmental impact". This results not from a screening of the projects and programmes themselves, but because they are located within a scenario characterized as meeting that acceptable level. The BDP has not (and makes no claims to have) undertaken project-specific economic, financial, social or environmental analyses, nor has it designed mitigation measures, all of which are pre-conditions for sound project appraisal – as well as being essential for 'sustainable development', which is a core objective of the Mekong Agreement. However, the BDP Strategy is insufficiently clear about this and other important points. As a negotiated text, where the NMCSs have edited and approved each section, the Strategy document has considerable authority. However, like many negotiated texts, the Strategy has little clarity; it is, for example, easy to conclude that inclusion in the 'DOS' means project selection and approval. This is not the case. The Strategy is an important document and time needs to be taken to make it shorter, clearer and less ambiguous if it is to be understood and useful.

The “avoid or mitigate” gap. The Strategy document makes little reference to impact avoidance or mitigation measures and, while affected people are identified, there is little recognition of the costs of maintaining or improving livelihoods. Given the numbers potentially affected this could run into billions of dollars. Scenario analysis draws attention to the possible extinction of ‘flagship’ species, yet measures to avoid this outcome are not discussed, although of great importance. With such measures, the preservation of these species could become an ‘iconic’ indicator of sustainability and cooperation. While the SEA has examined the impacts of mainstream dams and their mitigation, there remains the particularly urgent question of the ‘Definite Futures’ scenario. Developments completed or under implementation will have significant transboundary impacts. Analysis of these impacts and their mitigation is particularly urgent and there is an important role for the MRC in ensuring that this is done.

Getting to a deal. It is inevitable that countries will start discussing deal structures – which could extend well beyond dams and diversions and might cover navigation, trade, interconnected power grids, other transport, etc. There are also likely to be opportunities for joint or cooperative deals involving more than one country, such as transboundary protected areas, monitoring programmes, etc. The scope for such deals has yet to be adequately explored. MRCS legitimately needs to be an ‘honest broker’ in supporting countries as they develop and evaluate their interests, options and positions, individually and collectively. To do this, Laos and Cambodia need specialist support as soon as possible – preferably in-house. This support needs to go beyond negotiations to specific, tailored capacity building, so that options can be identified and analyzed. The notion that capacity building can only be apportioned equally among four countries is irrational. Equitable apportionment means special preference for Laos and Cambodia, to create the level playing field of knowledge and capacity that is essential for rational and successful negotiations. This is in the interest of all four countries.

Mainstream dams: “look before you leap”. There is a growing body of opinion that ‘run of river’ mainstream dams appear to be more feasible now that China has built or is building ‘storage’ dams in the upper Mekong basin, thanks to increased and regulated low flows. This dramatically changes the choices available to countries and also brings into play significant social and environmental tradeoffs within and between countries. Owing to its particular floodplain configuration, the Mekong directly provides livelihoods and ecosystem services to many millions of people as a natural outcome of its normal seasonal flow pattern. The natural and remarkable “resilience” of the River has largely masked the incremental development that has occurred over the last 50 years and much of the natural production of the river remains in place. Major mainstream development and increasing population pressure will without doubt challenge this resilience. While recognizing the high potential financial and economic returns, it is obvious that the high costs, irrevocable nature and high risks of mainstream dams demand a high degree of knowledge to inform rational decisions. There is much evidence to demonstrate that the current state of knowledge is insufficiently robust to make rational decisions.

Where is the BDP going: a robust development tool?

Clarity over the outcomes of BDP 2. BDP 2 is a very important product in terms of Mekong cooperation. It has dismantled longstanding barriers to substantive cooperation among LMB countries. It has demonstrated that governments will share data and national plans. It has resulted in governments working together to: identify analytical tools such as scenarios and models; classify results; rank development scenarios; and prioritize strategic guidance, special studies and guidelines that they collectively believe will enable the achievement of high and shared standards in water resources development and the mitigation of impacts. This is a path-breaking outcome that can be regarded as a necessary (but alone insufficient) condition for effective cooperation and, particularly, for any joint projects or actions. A question remains, what is the status of the components of scenarios that are within the 'Development Opportunity Space'?

The DOS - a tool that has served its purpose. The 'Development Opportunity Space' concept emerged as a useful tool to rank river basin development scenarios that include dam and diversion project proposals within national plans. The DOS has undoubtedly proved valuable as a tool for learning together and for consensus building and the concept and its results should be presented within the BDP Strategy. However, the status that DOS gives 'projects' is open to too much subjective interpretation and this clearly causes confusion and misunderstanding. To reduce this risk moving forward after this current BDP phase, the DOS should be dropped as a free-standing tool and replaced by long-accepted and well-understood project selection tools, including options analysis, strategic assessment and project cycle procedures.

Sustainable development - protecting future generations. The perception that emerges from reading the documents is that the BDP represents a package of sustainable activities. While the BDP process allows a first cut of activities that may weed out some of the most unsustainable ones, achieving sustainable development requires many more assurances than those involved in project selection. Many of these lie beyond the mandate of MRC cooperation; at the same time, unless the range of mitigation measures, benefit-sharing arrangements and trade-off deals is integrated into project design and implementation, it is very unlikely that the outcomes will be optimal. Care must be taken in the BDP Strategy regarding claims for achieving sustainable development.

Moving towards a 'corporate' BDP. The 1995 Agreement describes the BDP as a general planning tool and process. The pre-1995 Mekong Committee made some headway in developing comprehensive proposals for development, including navigation and fisheries. The first MRC effort (BDP 1) largely ignored hydropower and irrigation development, and the results failed to meet the development expectations of the MRC states. The 2010 'BDP 2' has, first and foremost, developed a robust process of consultation which has in turn built the working-level relationships and trust essential for cooperation. It has also developed consensus over future hydropower and irrigation development

scenarios that are likely to have acceptable and manageable transboundary impacts. However, this product has tipped the balance too far the other way, giving little attention to other important investment needs, including fisheries, navigation and nature conservation, as well as mitigation and management needs. In a next iteration, building upon the process so far, a 'corporate BDP' is needed that is comprehensive in its approach to all MRC sector programmes. Over the medium term, a dynamic, rolling, multi-objective and multi-sectoral Basin Development Plan (BDP3?) could be developed, with two sub-components:

- coordinated national (and possibly joint) Mekong River development projects
- coordinated, collaborative and joint Mekong River management and mitigation projects and actions.

This 'corporate' BDP could become the unified goal of 'one' MRC and a coherent MRCS, encompassing all *'fields of sustainable development, utilization, management and conservation of the water and related resources of the Mekong River Basin...'* (Mekong Agreement, Article 1).

4. The MRC institution

Challenges.

A product of its river and its history. The Mekong, through its vast scale, cultural and biological diversity, largely untapped economic potential, and still almost natural flow regime, raises many different emotions. LMB governments increasingly give priority to river development; donors and NGOs primarily want river protection. The MRCS, funded mostly by donors, scrutinized by NGOs, staffed partly by expatriate experts and directed by governments, appears to be caught between these two poles. This tension reveals itself in an apparent clash between the country-driven BDP and the largely donor-driven technical programmes. Other MRCS initiatives, such as the SEA, provide a third stream of advice that contributes to the disaggregated impression of the MRCS.

Today: a knowledge-based MRCS whose role is questioned. LMB countries, all growing at around 7% per year, both demand and need development, including river infrastructure, and an understanding of any trans-boundary impacts this might have. Yet the MRCS continues primarily to be a knowledge centre focused on hydrology and ecology, as well as on capacity building. There are no 'bio-physical' criteria in place for low flow water management, no common environmental standards, no harmonized view on fisheries, etc. so all issues must be 'negotiated' separately.

Leadership, management and incentives. The right incentive structure creates the right behaviour and thus the right outcomes – and the converse is commonly true. There are many perverse incentives within the MRC structure, undermining the corporate culture of the MRCS in particular; these need to be corrected if the institution is to be strong. Direct donor funding of individual

MRC programmes encourages a 'silo' structure in MRCS, with programme accountability to the donor and the absence of an integrated MRCS work programme and agenda. Non-earmarked basket funding of the MRC programme, which can be conditional on objectives, sustained values and audited outputs, ought to be perfectly feasible (it is what most international financial institutions insist upon). The lack of autonomy of MRCS management in the recruitment and retention of all staff is striking. In some cases, the NMCS engages in national staff selection and contract renewal. It is impossible to be accountable for deliverables if the loyalty of your staff lies elsewhere. It is essential to give the CEO the autonomy and trust to make these decisions.

The future: opportunities and needs

Adapting to evolving needs. As the Mekong development and management balance is negotiated, it is clear that riparian expectations of the MRC are changing. A challenging development and management programme in the Mekong River Basin needs a strong and proactive MRCS, beyond simply providing a forum for inter-country cooperation, problem-solving and developing the knowledge base. MRCS needs to be an advocate for the values enshrined in the Agreement. This does not mean that the MRCS can enforce – it cannot without specific authority being given, as the Agreement is explicit on sovereign equality and territorial integrity. However, the Agreement sets high standards and the MRCS can monitor and report on standards transparently. The basin development agenda ahead deserves best practice implementation and the MRCS can support riparian States in their efforts to achieve this. There will be differences of outlook in the journey ahead, but the support of MRCS in mediating between the countries on the one hand, and with other stakeholders on the other, could undoubtedly be valuable.

Attracting and retaining riparian staff. A first riparian CEO is now being recruited, and it is surely time now to increase efforts to recruit staff, directly and competitively, from the open market in the region. The retention of outstanding riparian professional staff is limited to two 3-year terms by Article 33 of the Agreement, unless otherwise decided by the Joint Committee; in some cases permission is needed and not granted for the second 3-year term. Staff turnover is very high. For the MRCS to face the emerging challenges of Mekong development, a cadre of exceptional riparian staff needs to be preferentially developed and retained. A strong case can be made for amending Article 33 to change the term limitations, while retaining the understandable requirement for some balance in staff numbers and associated positions from each country. A similar case can be made for giving autonomy to the MRCS management for staff recruitment and retention. Working for the MRCS needs to be seen as a prestigious job offering competitive terms and conditions, which will attract talented and committed people from the region.

A world-class institution for world-class infrastructure. The LMB states are embarking on a path of substantial hydraulic development on a great river where the knowledge gaps, uncertainties and risks remain substantial. Impacts, including transboundary impacts, and both management and mitigation

challenges will be significant. The MRC must invest in the knowledge needed to: establish 'biophysical' objectives for the river; make sound investment decisions; design effective mitigation actions; and negotiate tradeoffs and outcomes. The MRCS, specifically, will need to: provide timely and objective advice; sustain the values enshrined in the Agreement; facilitate inter-country discussion and negotiation; ensure financing for transboundary dimensions; and become 'one MRCS', beyond its current silos of opinion, modeling the coherent and disciplined behaviour needed across the basin for sustainable development of world-class infrastructure. The MRC can and must become a relevant, world-class institution to support the development and management of a world-class transboundary river basin.

5. Key conclusions and next steps

Significant success. The extraordinary success of the BDP in creating an effective and functioning platform for Mekong River cooperation is recognized and highly commended. The Regional Technical Working Group (RTWG) of the LMB countries, the MRCS BDP team and others involved deserve great credit for this, which is an important step in establishing effective cooperation in the Basin.

Significant concerns. A key concern is the river flows and diversions point of departure for the BDP, resulting in a primary focus on hydropower and irrigation, with other areas covered through special studies, strategic guidance and technical guidelines. While hydropower and irrigation are obviously very important for development, the relative absence of other development sectors, including fisheries and navigation, and management options, including social and environmental actions, is striking. This outcome reflects the coherence challenge faced by the MRCS and underscores the imperative of a "One MRC" approach. The BDP Strategy document is a negotiated and country-owned product that is important as the record of the BDP consultative process. Nevertheless, and perhaps because of its negotiated status, it is confusing, repetitive and difficult to read and use. In particular, the Development Opportunity Space (DOS) concept is easily misunderstood and misrepresented, with the serious risk that it represents a clearance procedure for a list of approved projects and suggests a contribution to sustainability that cannot be assured.

Immediate next steps. The key points, arguments and conclusions of the BDP report (including the DOS) could be summarized (in, say, 10 pages plus annexed tables) in a formal brief for decision makers. The MRC Council could potentially consider and endorse this document in its meeting December 2010. The existing (negotiated) Strategy document, edited for clarity and to remove obvious concerns, could serve as a supporting document and record of the BDP's work. An immediate action that needs to commence is to determine the full impacts of the Definite Future scenario and to promote the implementation of any mitigation or benefit-sharing measures needed.

Medium term steps. The BDP2 Strategy needs to be deepened and broadened into a multi-sector, multi-objective 'corporate' BDP (BDP3?) that would include

development, management and mitigation actions. The country-owned approach of a RTWG supported by MRCS sector programmes is a proven mechanism and would facilitate this 'One MRC' outcome. The DOS has served its purpose and should be replaced by more robust tools for scenario analysis.

Mainstream dams. An agreement needs to be sought with China on operating rules for Lancang (UMB) dams, to provide favourable and predictable low flows for the LMB, assuring additional flows for consumptive use. The analysis required to gain the knowledge necessary for rational decisions on the LMB mainstream dams, particularly on the 6 dams above Vientiane, needs to be prioritized. Good politics requires that the necessary time be given to do this well, as poorly-informed decisions will have major social, environmental and reputational risks and could have irrevocable impacts. In the meantime, there is a range of dam sites available for development on the tributaries, with lower costs and risks.

MRCS effectiveness. It is essential to reform the MRCS if the new development challenges are to be met. The new riparian CEO to be recruited needs to be given the budget and staffing autonomy essential for effective leadership and corporate culture. Without this autonomy, a prerequisite for good management, it will be harder to recruit a CEO of the caliber the MRC needs and deserves. The MRC needs to negotiate with donors non-earmarked basket funds, to sever the link between MRC staff and programmes, and individual donors. The MRCS CEO needs to be able to hire and retain riparian staff, without the clearance of NMCSs. There is justification to revisit Article 33 of the Agreement so that longer-term career paths can be developed for high-calibre regional staff, while maintaining some balance between countries. This will facilitate the evolution of the MRC into a world-class institution with an integrated, corporate view and able to deliver a 'One MRC' approach to helping riparian countries meet their development challenges.

6. Policy recommendations for Decision-Makers

1. Seek agreement with China to lock in dam operating regimes favourable to LMB. These are likely to be mutually compatible.
2. Lock in the low flow regime in LMB in accordance with Article 6.
3. Ensure the robust knowledge base necessary to inform decisions on development of mainstream dams; today this is insufficient.
4. Give priority to capacity building in Cambodia and Laos, to 'level the playing field' of knowledge and skills and enhance their contribution to BDP processes.
5. Remove the disincentives that undermine the performance of the MRCS, to enable it to support the growing development and management agenda in a rapidly changing environment:
 - a) give the MRCS CEO responsibility for staff recruitment and retention without interference, within an approved budget and programme;
 - b) negotiate 'non-earmarked basket' funding with donors, to facilitate 'one' corporate MRCS; and
 - c) consider amending Article 33 to improve incentives for regional staff.
6. Endorse the BDP Strategy Brief (a short policy- and action-focused strategy document).
7. Determine the impacts of the Definite Future scenario and promote implementation of mitigation and benefit-sharing measures.
8. Initiate the development of multi-sector basin Objectives and Standards, to guide basin management and development.
9. Develop the BDP over the medium-term into a dynamic, rolling, multi-objective and multi-sectoral plan, with two sub components:
 - coordinated national (and possibly joint) Mekong River development projects
 - coordinated, collaborative and joint Mekong River management and mitigation projects and actions.