

The 5th Regional Stakeholder Forum

First Regional Information Sharing on Pak Lay Prior Consultation Process

20-21 September 2018

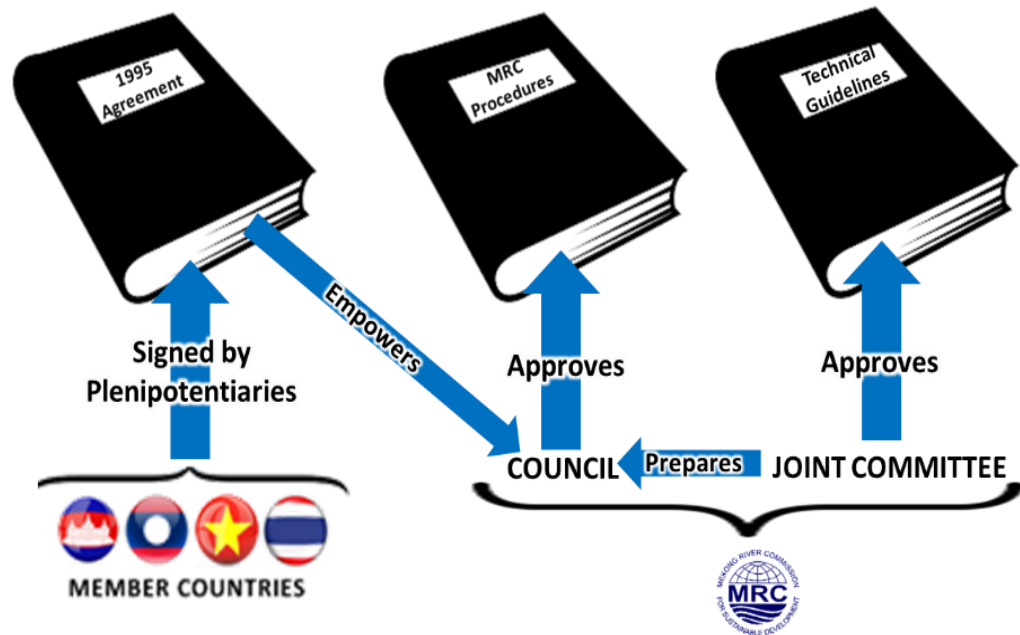
Landmark Hotel, Vientiane, Lao PDR



Overview of PNPCA under overall MRC Procedural Framework and the 1995 Mekong Agreement

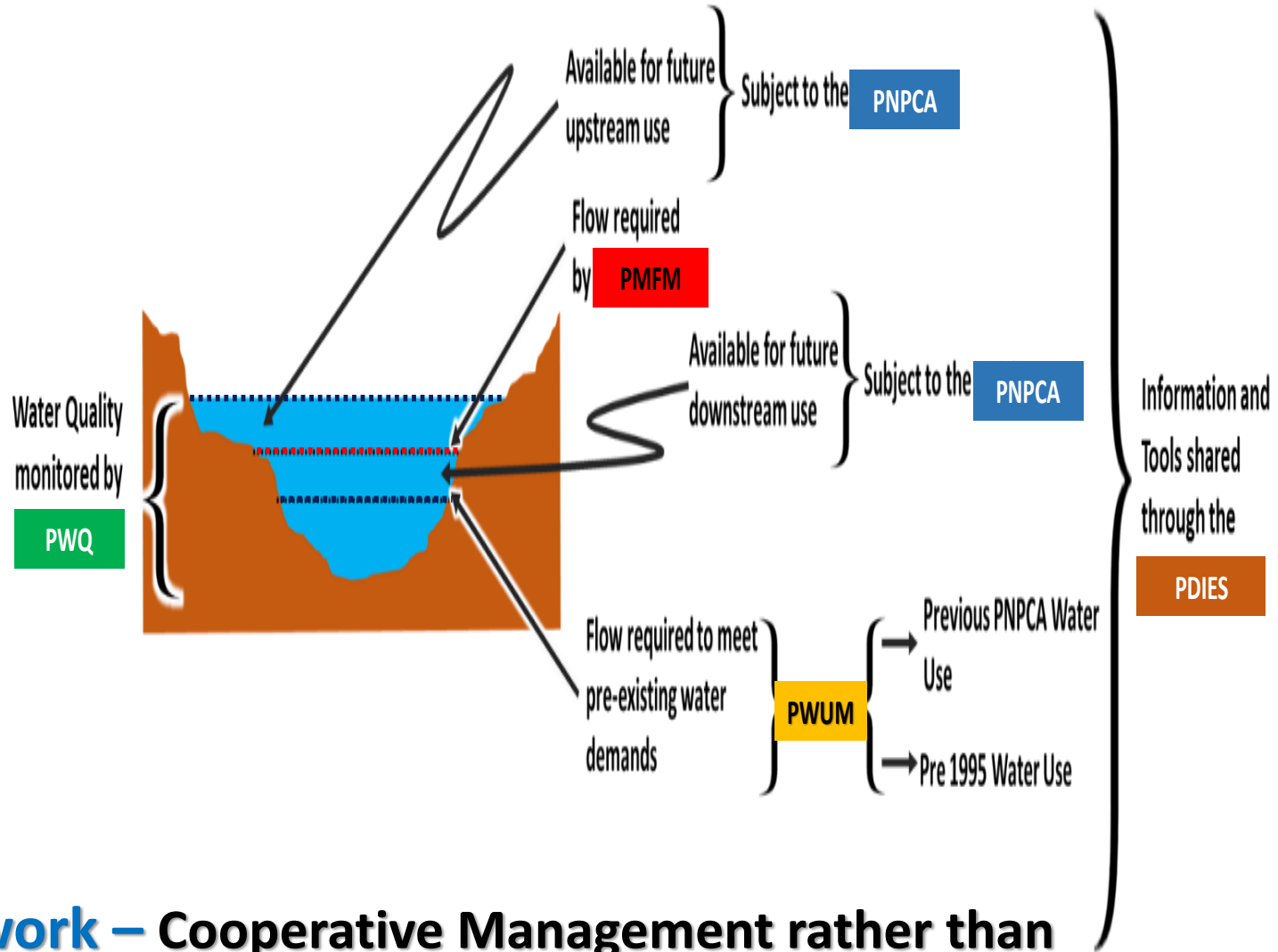
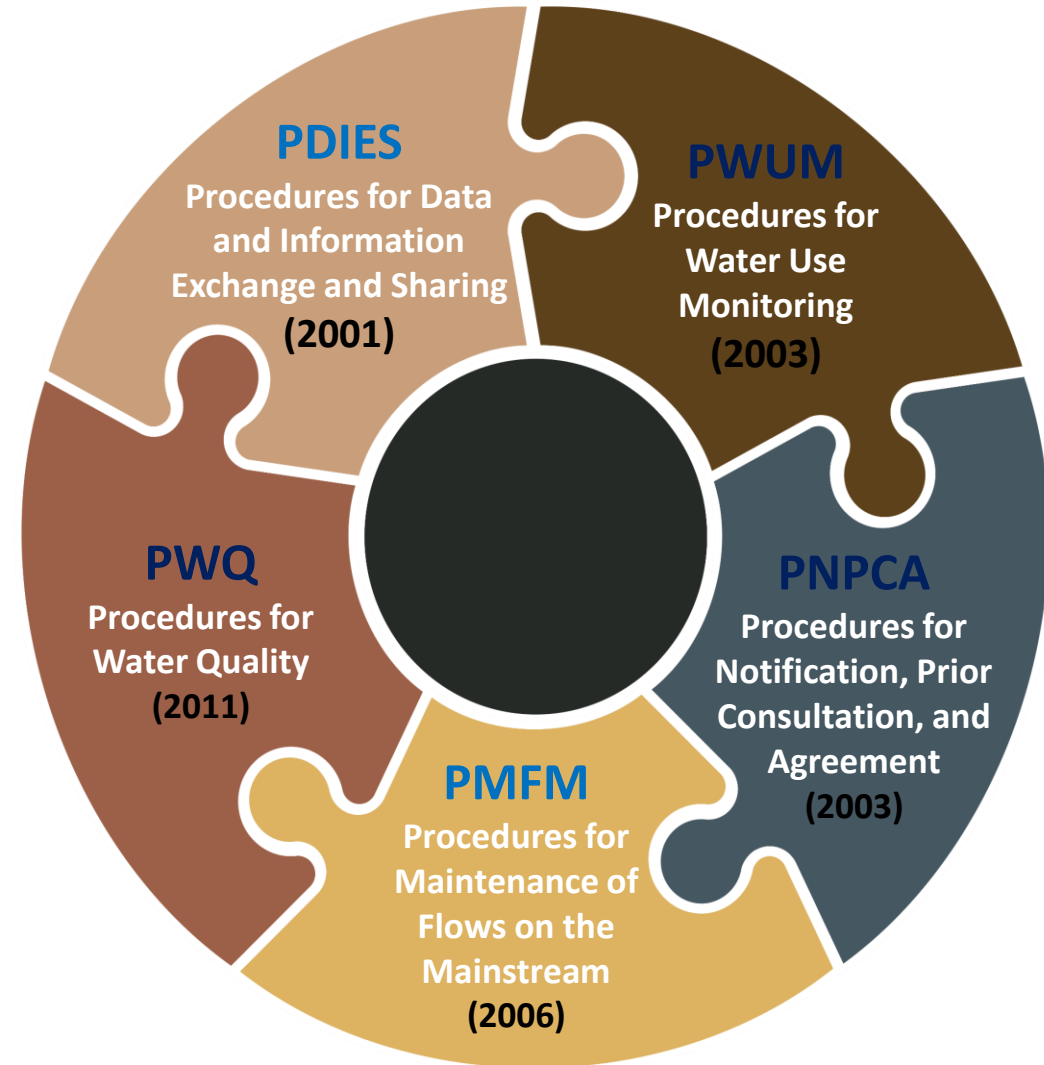


1. Background – MRC Establishment and Important Things to Remember



- **MRC** was established by the 4 Member Countries who conferred powers and functions on the **Council, Joint Committee** and **Secretariat**;
- **MRC can only work within the powers and functions it has been given**;
- **Decisions** are made by **consensus**;
- **Maintaining cooperation** is its most important function – i.e. *Mekong Spirit and Mekong Water Diplomacy*; and
- **MRC cannot instruct the Member Countries**.

2. The MRC's 5 Procedures and It's Linkages

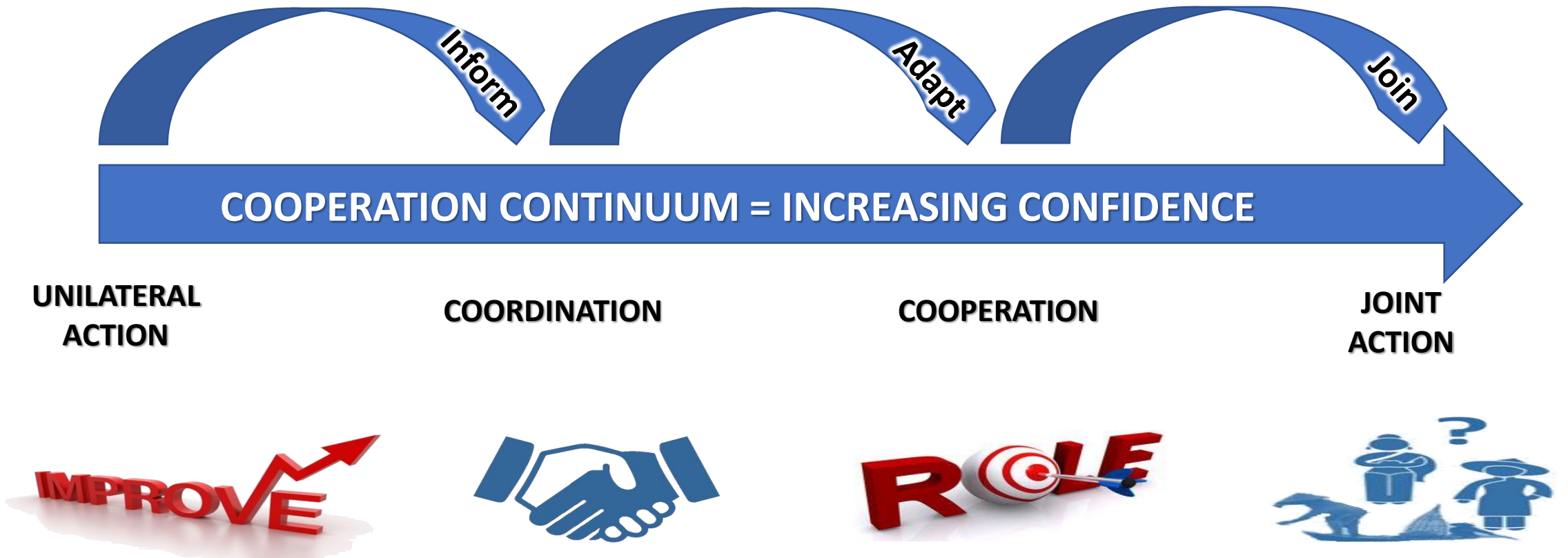


Water Diplomacy Legal Framework – Cooperative Management rather than Regulatory Approach to Cooperation

3. What is the Mekong Water Diplomacy?

The Mekong Water Diplomacy:

Giving all the Riparian States the **confidence** that their **concerns** are being **heard, considered** and **acted** on in the ongoing development of the basin.

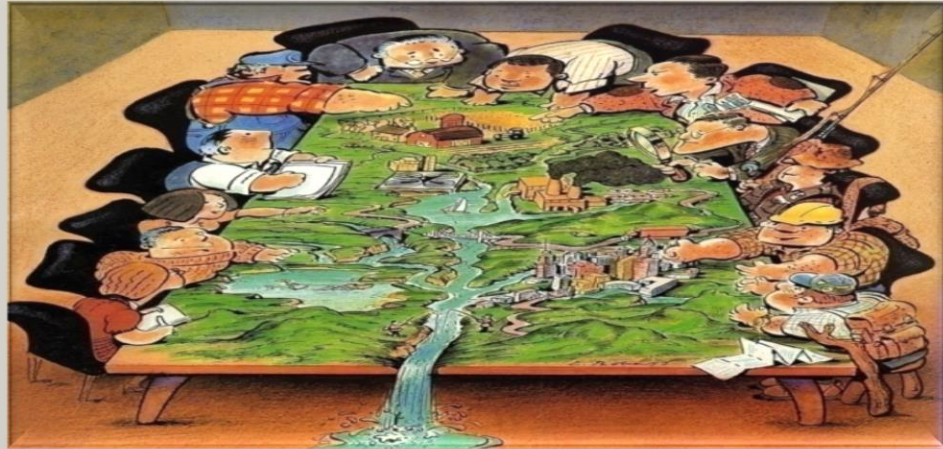
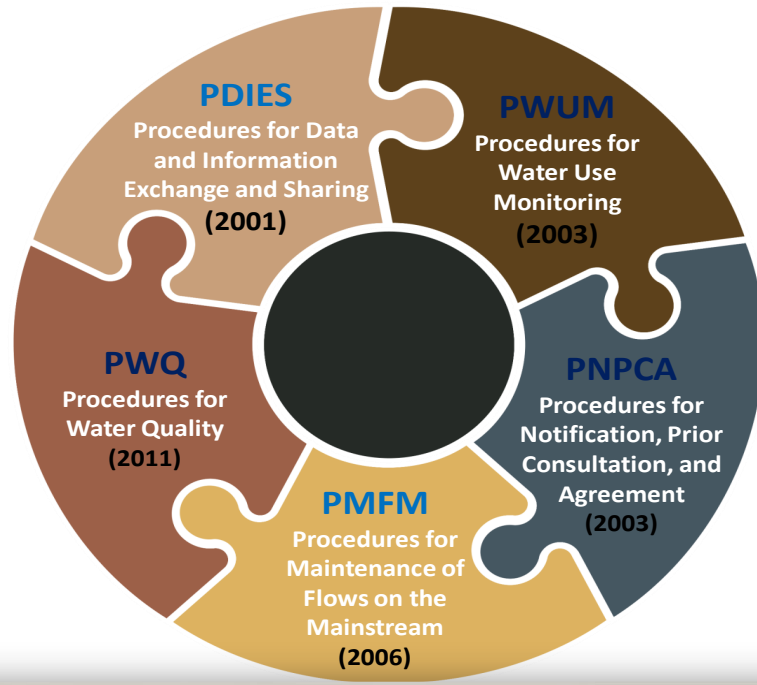


4. Member Countries also Agreed to Certain Actions

- Cooperate in the **sustainable development** of the Mekong River Basin – including on **hydropower**;
- Develop a **Basin Development Plan** with a preference for **joint projects**;
- Protect the **environment** and **ecological balance**;
- Respect **sovereign equality** and **territorial integrity**;
- Use the waters in **a reasonable and equitable way** – subject to the PNPCA...









5. Member Countries also Agreed to Certain Things



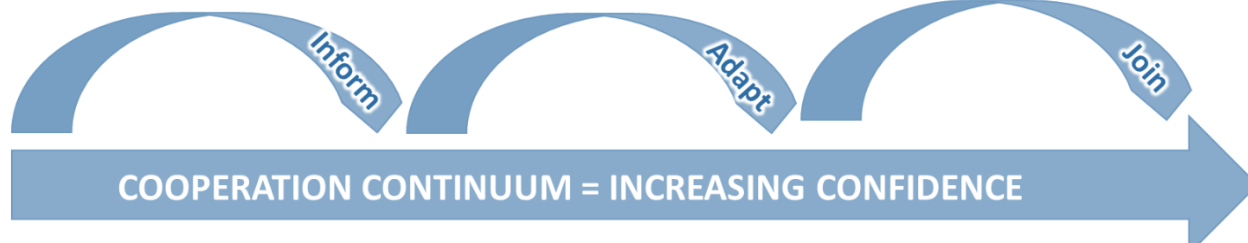
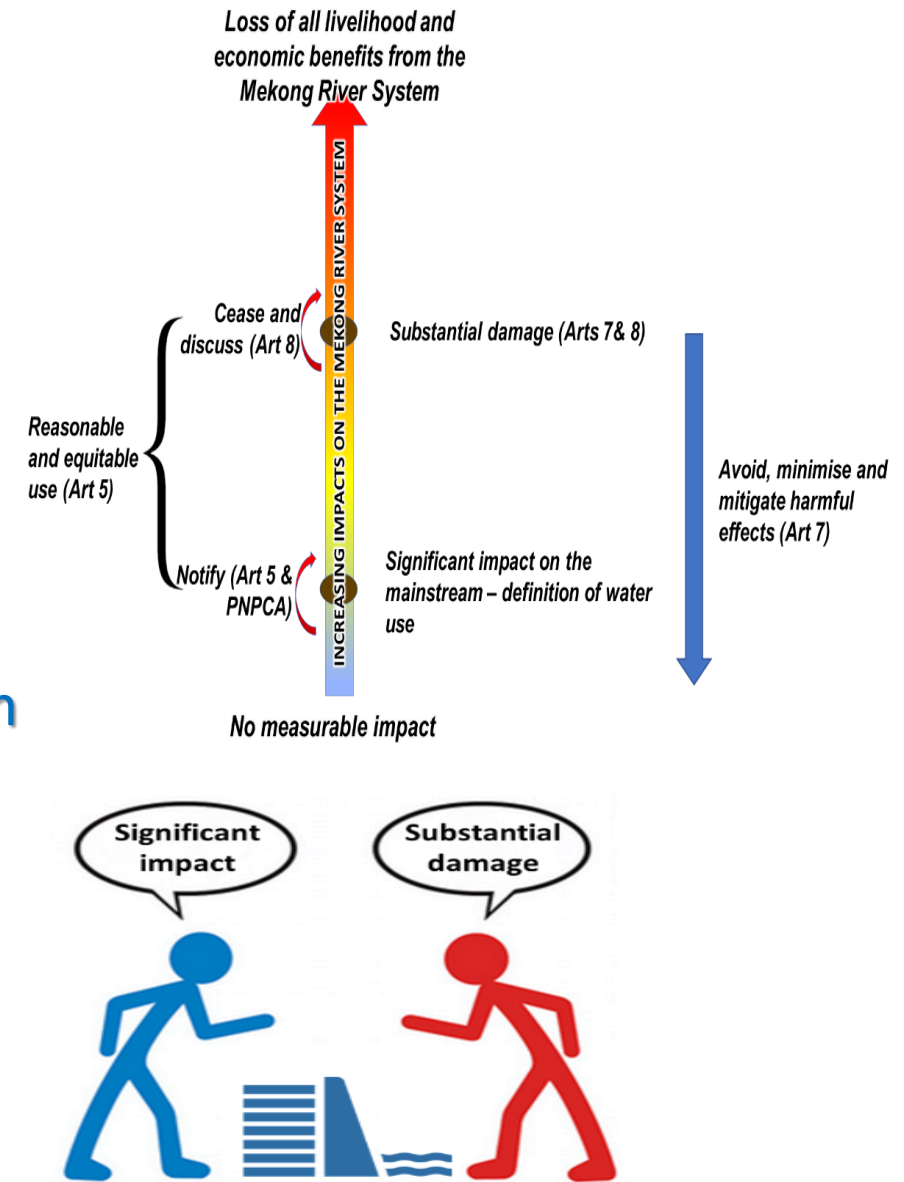
- **Maintain flows** on the mainstream;
- **Make every effort** to *avoid minimise and mitigate* harmful effects;
- **Cease activities** that cause substantial damage when proof is provided by the affected countries;
- **Discuss compensation** where substantial damage is caused;
- **Allow freedom of navigation** on the mainstream; and
- **Notify emergency situations.**

6. When PNPCA is Applied?

Type of River	Season	Scope of water-use	Required procedure
 Mainstream	 Dry	Inter-basin (from the Mekong basin to another basin)	 Specific Agreement
		Intra-basin (within the Mekong basin)	 Prior Consultation
	 Wet	Inter-basin (from the Mekong basin to another basin)	 Prior Consultation
		Intra-basin (within the Mekong basin)	 Notification
 Tributary	 Both	Both inter and intra-basin	 Notification

Adapt

Inform

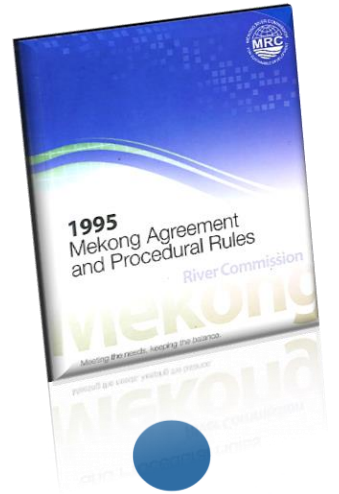


7. What is Prior Consultation?

Prior consultation is **neither a right to veto** the use **nor unilateral right** to use water by any riparian without taking into account other riparian's rights.



It is about adapting the proposed use to make it more **reasonable** and **equitable**.



8. What is the aim of Prior Consultation?

Article 5.4.3 of the PNPCCA:

*“The MRC JC shall aim to arriving at **an agreement** on the proposed use and issue a **decision** that contains the **agreed upon conditions**. **That decision shall become part of the record of the proposed use and of the record of the use of the waters when commenced.**”*

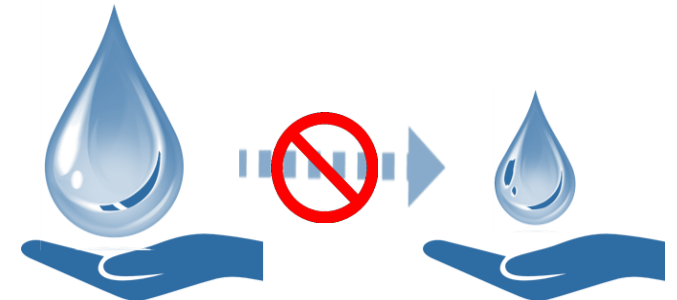


No absolute requirement to agree on the proposed use



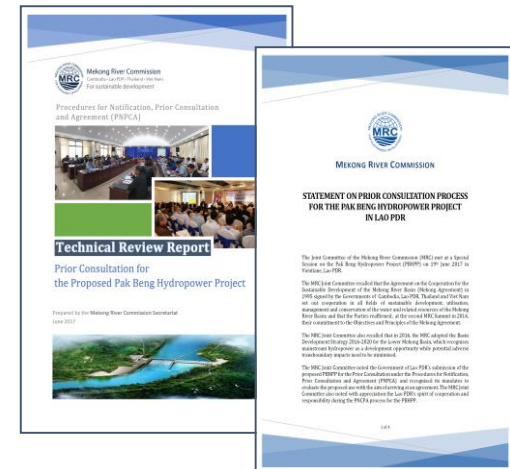
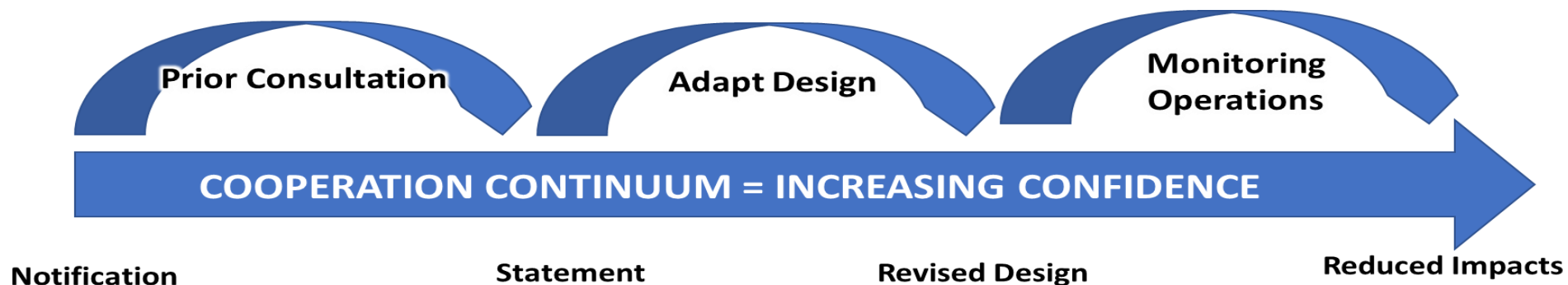
9. Important Things to Remember about Prior Consultation

- It is a **cooperation mechanism** not a **policing action**, i.e. not a **'yes'** or **'no'** (*Chapter II*);
- It should aim at a **decision** on whether the **proposed use is reasonable and equitable** (*Article 5*);
- Failing this, it should **identify measures** that would **make it more reasonable and equitable** (*Article 7*);
- It is a **6-month process**, but can be extended in **special circumstances**; and
- **Member countries can discuss issues outside the process.**



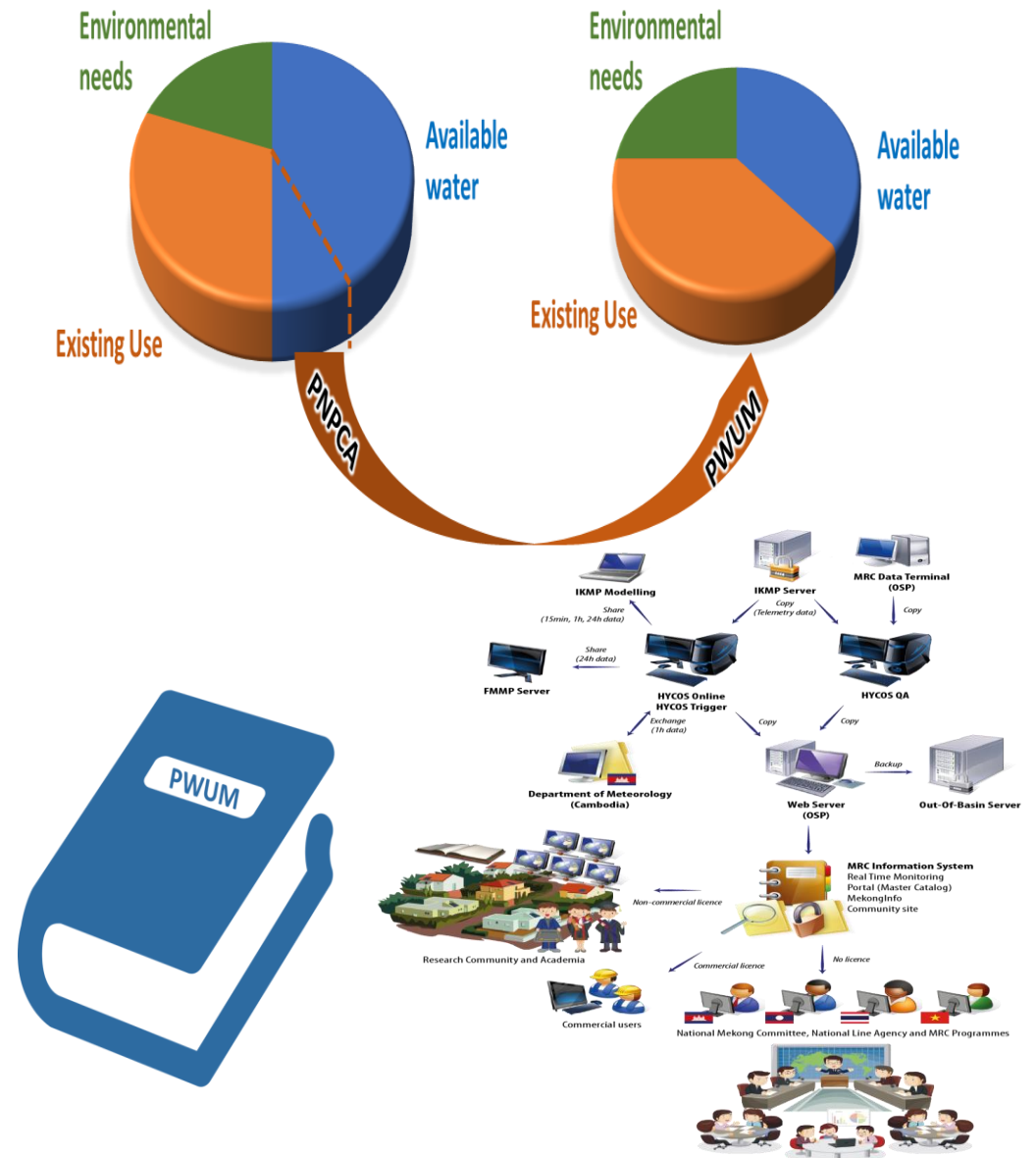
10. What Happens after Prior Consultation?

- **Prior consultation** provides all Member Countries and Stakeholders the **opportunity to discuss their concerns**;
- **Technical Review Report (TRR)** presents the **impacts and measures** to avoid, minimise and mitigate these impacts;
- **A Statement** summarises the **measures** and **calls on the notifying country to make every effort to address the concerns raised**; and
- **Joint Action Plan (JAP)** supports the **implementation of the Statement**, and provides for ongoing exchange of data, and expertise.



11. Why the Record of Use once Commenced is Important?

- **Establish the use as an existing use.** Subsequent uses must consider this use in their **feasibility and design processes**
- Allow the MRC to **include the water use in its impact models;**
- **Give confidence** to Member Countries and **new users** that the **agreed operating rules are being implemented;**
- **Supports conjunctive operations;** and
- **This is included in the PWUM.**



12. Conclusion

*Prior consultation and the post-prior consultation process are not about requiring that **there are no impacts**, but about making sure that **all viable and reasonable measures** to avoid, minimise and mitigate possible impacts are identified and implemented.*



Thank you

