



1995 Mekong Agreement and Procedural Rules

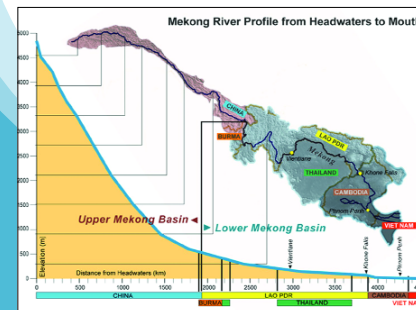


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VISION for the Mekong River Basin:

An economically prosperous, socially just and environmentally sound Mekong River Basin

VISION for the Mekong River Commission:

A world class, financially secure, international river basin organisation serving the Mekong countries achieve the Vision

Mission

in accordance with the 1995 Agreement:

To promote and coordinate sustainable management and development of water and related resources for the countries' mutual benefit and the people's well being by implementing strategic programmes and activities and providing scientific information and policy advice

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Preface

MEKONG RIVER COMMISSION PROCEDURES FOR WATER UTILIZATION UNDER THE AGREEMENT ON THE COOPERATION FOR THE SUSTAINABLE DEVELOPMENT OF THE MEKONG RIVER BASIN

To the User and Reader of the Procedures and Rules for Water Utilization

On April 5, 1995 in Chiang Rai, Thailand, the plenipotentiaries of the four riparian nations of the Lower Mekong Basin - namely The Governments of The Kingdom of Cambodia, The Lao People's Democratic Republic, The Kingdom of Thailand, and The Socialist Republic of Viet Nam - made an historic move by the signing of the Agreement On The Cooperation For The Sustainable Development Of The Mekong River Basin ('95 Mekong Agreement) and Protocol for the Establishment and Commencement of the Mekong River Commission (MRC). This '95 Mekong Agreement reaffirmed and expanded the globally acknowledged "Spirit of the Mekong Cooperation" created in 1957. It adopted a set of mutually accepted and riparian equally fair objectives and principles of cooperation for sustainable development and utilization of the water and related resources and environment of the Mekong River Basin (MRB) (see Map 1 and Map 2). It provides for the upper two riparians - the People's Republic of China and the Union of Myanmar - to join in the cooperation and become a party to this Agreement. It also established an institutional mechanism to implement the substantive provisions of the '95 Mekong Agreement as an international river basin organization, the Mekong River Commission, with three primary functional bodies to make decisions and carry out a wide range of activities. The MRC, through its Council, Joint Committee and Secretariat, is to carry on the cooperative work of their predecessors - Mekong Committee, Interim Mekong Committee and Mekong Secretariat - to implement the far reaching provisions of the '95 Mekong Agreement for the benefit of all its peoples within the MRB and Mekong region.

The '95 Mekong Agreement is a dynamic "framework agreement" that enables and requires the MRC to adopt and refine as needed, rules and procedures to carry out its work in close cooperation and coordination with agencies and peoples of the member countries. It identified key activities and mechanisms to insure sustainable success during implementation, i.e., the basin development plan (BDP); a program for the protection of the environment and ecosystems (EP); and reasonable and equitable programming, utilization and protection of the water resources and environment of the MRB for all beneficial uses under all conditions by the member countries. The latter core activity specifically requires rules and procedures to be adopted by the MRC to implement the fundamental water use and management provisions of the '95 Mekong Agreement.

In 1999, the MRC and member countries adopted and committed to a Water Utilization Program project (WUP), funded by the Global Environmental Fund (GEF) and executed by the World Bank, to develop at least six sets of rules for water utilization.


Contained in this publication is the 1995 Mekong Agreement and the three sets of procedures adopted by the Council of the MRC. These procedures are Procedures for Data and Information Exchange and Sharing (PDIES) and its companion Guidelines on Custodianship and Management of the Mekong River Commission Information System; Procedures for Water Use Monitoring (PWUM); and, Procedures for Notification, Prior Consultation and Agreement (PNPCA).

The two remaining rules - Rules for Maintenance of Flows on the Mainstream (RMFM) and Rules for Water Quality (RWQ) - are under preparation and will be submitted to the Joint Committee and Council of the MRC in 2005.

Moreover, a permanent body of the MRC, the Technical Assistance and Coordination Team (TACT) was established in late 2003 to establish, maintain and improve the MRC- Information System (MRC-IS) and water use monitoring system (MRC-WUMS) under the first two procedures. Additional guidelines to facilitate implementation of these procedures are being prepared for approval of the Joint Committee and adoption by the MRC Council in early 2005.

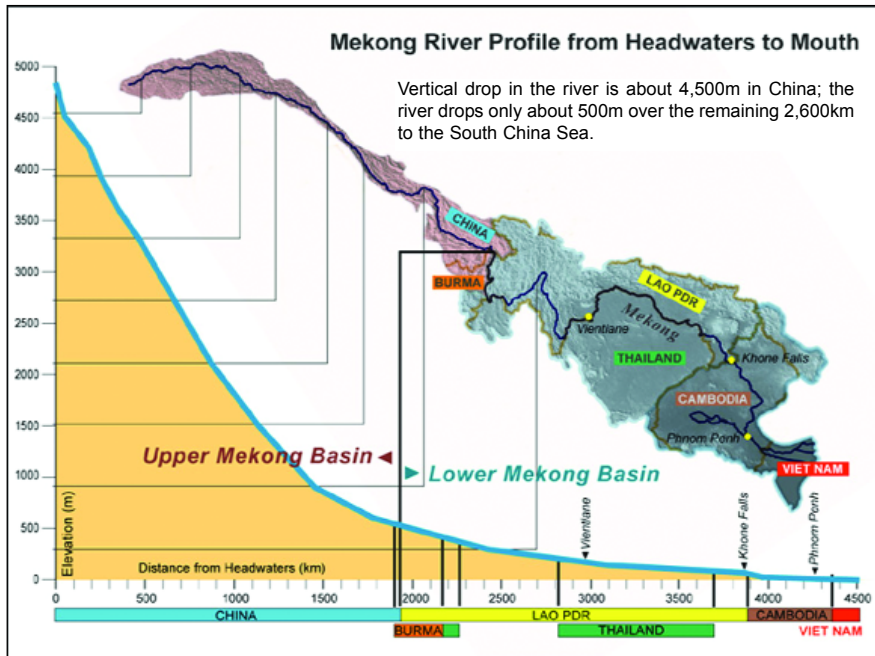
The intent of these procedures and rules and their supporting guidelines are to provide a systematic and uniform process for implementation of the '95

Mekong Agreement on their respective topics by the MRC and member countries. Should the user or reader have any comments or questions on the procedures contained in this publication, please direct them to the Chief Executive Officer (CEO), Mekong River Commission Secretariat, P.O. Box 6101 Unit 18 Ban Sithane Neua, Sikhottabong District, Vientiane 01000, Vientiane, Lao PDR by mail, or by e-mail: mrcs@mrcmekong.org or by : (856) 21 263 263.

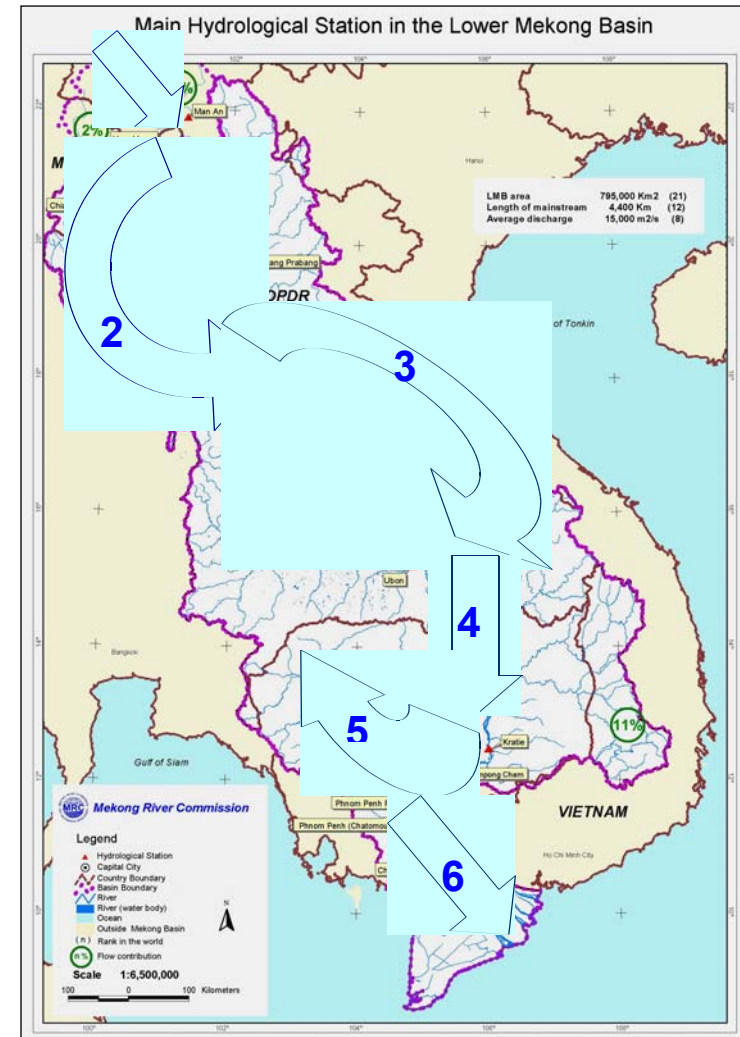


Dr. Olivier Cogels
Chief Executive Officer
Mekong River Commission Secretariat

Map 1. Longitudinal river profile of the Mekong River from source to delta



Map 2. Reaches for implementation of the Rule/Procedures in the Mekong River Basin



**AGREEMENT ON THE COOPERATION
FOR THE SUSTAINABLE DEVELOPMENT
OF THE MEKONG RIVER BASIN
5 APRIL 1995**

**AGREEMENT ON THE COOPERATION FOR
THE SUSTAINABLE DEVELOPMENT OF
THE MEKONG RIVER BASIN**

The Governments of The Kingdom of Cambodia, The Lao People's Democratic Republic, The Kingdom of Thailand, and The Socialist Republic of Viet Nam, being equally desirous of continuing to cooperate in a constructive and mutually beneficial manner for sustainable development, utilization, conservation and management of the Mekong River Basin water and related resources, have resolved to conclude this Agreement setting forth the framework for cooperation acceptable to all parties hereto to accomplish these ends, and for that purpose have appointed as their respective plenipotentiaries:

The Kingdom of Cambodia:

H.E. Mr. Ing Kieth
Deputy Prime Minister and Minister of Public Works and Transport

The Lao People's Democratic Republic:

H.E. Mr. Somsavat Lengsavad
Minister of Foreign Affairs

The Kingdom of Thailand:

H.E. Dr. Krasae Chanawongse
Minister of Foreign Affairs

The Socialist Republic of Viet Nam:

H.E. Mr. Nguyen Manh Cam
Minister of Foreign Affairs

Who, having communicated to each other their respective full powers and having found them in good and due form, have agreed to the following:

CHAPTER I. PREAMBLE

RECALLING the establishment of the Committee for the Coordination of Investigations of the Lower Mekong Basin on 17 September 1957 by the Governments of these countries by Statute endorsed by the United Nations,

NOTING the unique spirit of cooperation and mutual assistance that inspired the work of the Committee for the Coordination of Investigations of the Lower Mekong Basin and the many accomplishments that have been achieved through its efforts,

ACKNOWLEDGING the great political, economic and social changes that have taken place in these countries of the region during this period of time which necessitate these efforts to re-assess, re-define and establish the future framework for cooperation,

RECOGNISING that the Mekong River Basin and the related natural resources and environment are natural assets of immense value to all the riparian countries for the economic and social well-being and living standards of their peoples,

REAFFIRMING the determination to continue to cooperate and promote in a constructive and mutually beneficial manner in the sustainable development, utilization, conservation and management of the Mekong River Basin water and related resources for navigational and non-navigational purposes, for social and economic development and the well-being of all riparian States, consistent with the needs to protect, preserve, enhance and manage the

environmental and aquatic conditions and maintenance of the ecological balance exceptional to this river basin,

AFFIRMING to promote or assist in the promotion of interdependent sub-regional growth and cooperation among the community of Mekong nations, taking into account the regional benefits that could be derived and/or detriments that could be avoided or mitigated from activities within the Mekong River Basin undertaken by this framework of cooperation,

REALIZING the necessity to provide an adequate, efficient and functional joint organizational structure to implement this Agreement and the projects, programs and activities taken thereunder in cooperation and coordination with each member and the international community, and to address and resolve issues and problems that may arise from the use and development of the Mekong River Basin water and related resources in an amicable, timely and good neighbourly manner,

PROCLAIMING further the following specific objectives, principles, institutional framework and ancillary provisions in conformity with the objectives and principles of the Charter of the United Nations and international law:

CHAPTER II. DEFINITIONS OF TERMS

For the purposes of this Agreement, it shall be understood that the following meanings to the underlined terms shall apply except where otherwise inconsistent with the context:

Agreement under Article 5: A decision of the Joint Committee resulting

from prior consultation and evaluation on any proposed use for inter-basin diversions during the wet season from the mainstream as well as for intra-basin use or inter-basin diversions of these waters during the dry season. The objective of this agreement is to achieve an optimum use and prevention of waste of the waters through a dynamic and practical consensus in conformity with the Rules for Water Utilization and Inter-Basin Diversions set forth in Article 26.

Acceptable minimum monthly natural flow: The acceptable minimum monthly natural flow during each month of the dry season.

Acceptable natural reverse flow: The wet season flow level in the Mekong River at Kratie that allows the reverse flow of the Tonle Sap to an agreed upon optimum level of the Great Lake.

Basin Development Plan: The general planning tool and process that the Joint Committee would use as a blueprint to identify, categorize and prioritize the projects and programs to seek assistance for and to implement the plan at the basin level.

Environment: The conditions of water and land resources, air, flora, and fauna that exists in a particular region.

Notification: Timely providing information by a riparian to the Joint Committee on its proposed use of water according to the format, content and procedures set forth in the Rules for Water Utilization and Inter-Basin Diversions under Article 26.

Prior consultation: Timely notification plus additional data and information to the Joint Committee as provided in the Rules for Water Utilization and Inter-Basin Diversion under Article 26, that would allow the other member riparians to discuss and evaluate the impact of the proposed use upon their uses of water and any other affects, which is the basis for arriving at an agreement. 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.

Proposed use: Any proposal for a definite use of the waters of the Mekong River system by any riparian, excluding domestic and minor uses of water not having a significant impact on mainstream flows.

CHAPTER III. OBJECTIVES AND PRINCIPLES OF COOPERATION

The parties agree:

Article 1. Areas of Cooperation

To cooperate in all fields of sustainable development, utilization, management and conservation of the water and related resources of the Mekong River Basin including, but not limited to irrigation, hydro-power, navigation, flood control, fisheries, timber floating, recreation and tourism, in a manner to optimize the multiple-use and mutual benefits of all riparians and to minimize the harmful effects that might result from natural occurrences and man-made activities.

Article 2. Projects, Programs and Planning

To promote, support, cooperate and coordinate in the development of the full potential of sustainable benefits to all riparian States and the prevention of wasteful use of Mekong River Basin waters, with emphasis and preference on joint and/or basin-wide development projects and basin programs through the formulation of a basin development plan, that would be used to identify, categorize and prioritize the projects and programs to seek assistance for and to implement at the basin level.

Article 3. Protection of the Environment and Ecological Balance

To protect the environment, natural resources, aquatic life and conditions, and ecological balance of the Mekong River Basin from pollution or other harmful effects resulting from any development plans and uses of water and related resources in the Basin.

Article 4. Sovereign Equality and Territorial Integrity

To cooperate on the basis of sovereign equality and territorial integrity in the utilization and protection of the water resources of the Mekong River Basin.

Article 5. Reasonable and Equitable Utilization

To utilize the waters of the Mekong River system in a reasonable and equitable manner in their respective territories, pursuant to all relevant factors and circumstances, the Rules for Water Utilization and Inter-basin Diversion provided for under Article 26 and the provisions of A and B below:

- A. On tributaries of the Mekong River, including Tonle Sap, intra-basin uses and inter-basin diversions shall be subject to notification to the Joint Committee.
- B. On the mainstream of the Mekong River:
 - 1. During the wet season:
 - a) Intra-basin use shall be subject to notification to the Joint Committee.
 - b) Inter-basin diversion shall be subject to prior consultation which aims at arriving at an agreement by the Joint Committee.
 - 2. During the dry season:
 - a) Intra-basin use shall be subject to prior consultation which aims at arriving at an agreement by the Joint Committee.
 - b) Any inter-basin diversion project shall be agreed upon by the Joint Committee through a specific agreement for each project prior to any proposed diversion. However, should there be a surplus quantity of water available in excess of the proposed uses of all parties in any dry season, verified and unanimously confirmed as such by the Joint Committee, an inter-basin diversion of the surplus could be made subject to prior consultation.

Article 6. Maintenance of Flows on the Mainstream

To cooperate in the maintenance of the flows on the mainstream from diversions, storage releases, or other actions of a permanent nature; except in the cases of historically severe droughts and/or floods:

- A. Of not less than the acceptable minimum monthly natural flow during each month of the dry season;
- B. To enable the acceptable natural reverse flow of the Tonle Sap to take place during the wet season; and,
- C. To prevent average daily peak flows greater than what naturally occur on the average during the flood season.

The Joint Committee shall adopt guidelines for the locations and levels of the flows, and monitor and take action necessary for their maintenance as provided in Article 26.

Article 7. Prevention and Cessation of Harmful Effects

To make every effort to avoid, minimize and mitigate harmful effects that might occur to the environment, especially the water quantity and quality, the aquatic (eco-system) conditions, and ecological balance of the river system, from the development and use of the Mekong River Basin water resources or discharge of wastes and return flows. Where one or more States is notified with proper and valid evidence that it is causing substantial damage to one or more riparians from the use of and/or discharge to water of the Mekong River, that State or States shall cease immediately the alleged cause of harm until such cause of harm is determined in accordance with Article 8.

Article 8. State Responsibility for Damages

Where harmful effects cause substantial damage to one or more riparians from the use of and/or discharge to waters of the Mekong River by any riparian State, the party(ies) concerned shall determine all relative factors, the cause, extent of damage and responsibility for damages caused by that State in conformity with the principles of international law relating to state responsibility, and to address and resolve all issues, differences and disputes in an amicable and timely manner by peaceful means as provided in Articles 34 and 35 of this Agreement, and in conformity with the Charter of the United Nations.

Article 9. Freedom of Navigation

On the basis of equality of right, freedom of navigation shall be accorded throughout the mainstream of the Mekong River without regard to the territorial boundaries, for transportation and communication to promote regional cooperation and to satisfactorily implement projects under this Agreement. The Mekong River shall be kept free from obstructions, measures, conduct and actions that might directly or indirectly impair navigability, interfere with this right or permanently make it more difficult. Navigational uses are not assured any priority over other uses, but will be incorporated into any mainstream project. Riparians may issue regulations for the portions of the Mekong River within their territories, particularly in sanitary, customs and immigration matters, police and general security.

Article 10. Emergency Situations

Whenever a Party becomes aware of any special water quantity or quality problems constituting an emergency that requires an immediate response, it shall notify and consult directly with the party(ies) concerned and the Joint Committee without delay in order to take appropriate remedial action.

CHAPTER IV. INSTITUTIONAL FRAMEWORK

A. MEKONG RIVER COMMISSION

Article 11. Status

The institutional framework for cooperation in the Mekong River Basin under this Agreement shall be called the Mekong River Commission and shall, for the purpose of the exercise of its functions, enjoy the status of an international body, including entering into agreements and obligations with the donor or international community.

Article 12. Structure of Mekong River Commission

The Commission shall consist of three permanent bodies:

- Council
- Joint Committee, and
- Secretariat

Article 13. Assumption of Assets, Obligations and Rights

The Commission shall assume all the assets, rights and obligations of the Committee for the Coordination of Investigations of the Lower Mekong Basin (Mekong Committee/Interim Mekong Committee) and Mekong Secretariat.

Article 14. Budget of the Mekong River Commission

The budget of the Commission shall be drawn up by the Joint Committee and approved by the Council and shall consist of contributions from member countries on an equal basis unless otherwise decided by the Council, from the international community (donor countries), and from other sources.

B. COUNCIL

Article 15. Composition of Council

The Council shall be composed of one member from each participating riparian State at the Ministerial and Cabinet level, (no less than Vice-Minister level) who would be empowered to make policy decisions on behalf of his/her government.

Article 16. Chairmanship of Council

The Chairmanship of the Council shall be for a term of one year and rotate according to the alphabetical listing of the participating countries.

Article 17. Sessions of Council

The Council shall convene at least one regular session every year and may convene special sessions whenever it considers it necessary or upon the request of a member State. It may invite observers to its sessions as it deems appropriate.

Article 18. Functions of Council

The functions of the Council are:

- A. To make policies and decisions and provide other necessary guidance concerning the promotion, support, cooperation and coordination in joint activities and projects in a constructive and mutually beneficial manner for the sustainable development, utilization, conservation

and management of the Mekong River Basin waters and related resources, and protection of the environment and aquatic conditions in the Basin as provided for under this Agreement;

- B. To decide any other policy-making matters and make decisions necessary to successfully implement this Agreement, including but not limited to approval of the Rules of Procedures of the Joint Committee under Article 25, Rules of Water Utilization and Inter-Basin Diversions proposed by the Joint Committee under Article 26, and the basin development plan and major component projects/programs; to establish guidelines for financial and technical assistance of development projects and programs; and if considered necessary, to invite the donors to coordinate their support through a Donor Consultative Group; and,
- C. To entertain, address and resolve issues, differences and disputes referred to it by any Council member, the Joint Committee, or any member State on matters arising under this Agreement.

Article 19. Rules of Procedures

The Council shall adopt its own Rules of Procedures, and may seek technical advisory services as it deems necessary.

Article 20. Decisions of Council

Decisions of the Council shall be by unanimous vote except as otherwise provided for in its Rules of Procedures.

C. JOINT COMMITTEE

Article 21. Composition of Joint Committee

The Joint Committee shall be composed of one member from each participating riparian State at no less than Head of Department level.

Article 22. Chairmanship of Joint Committee

The Chairmanship of the Joint Committee will rotate according to the reverse alphabetical listing of the member countries and the Chairperson shall serve a term of one year.

Article 23. Sessions of Joint Committee

The Joint Committee shall convene at least two regular sessions every year and may convene special sessions whenever it considers it necessary or upon the request of a member State. It may invite observers to its sessions as it deems appropriate.

Article 24. Functions of Joint Committee

The functions of the Joint Committee are:

- A. To implement the policies and decisions of the Council and such other tasks as may be assigned by the Council.
- B. To formulate a basin development plan, which would be periodically reviewed and revised as necessary; to submit to the Council for approval the basin development plan and joint development projects/programs to be implemented in connection with it; and to confer with donors, directly or through their consultative group, to obtain the financial and technical support necessary for project/program implementation.
- C. To regularly obtain, update and exchange information and data necessary to implement this Agreement.
- D. To conduct appropriate studies and assessments for the protection of the environment and maintenance of the ecological balance of the Mekong River Basin.
- E. To assign tasks and supervise the activities of the Secretariat as is required to implement this Agreement and the policies, decisions, projects and programs adopted

thereunder, including the maintenance of databases and information necessary for the Council and Joint Committee to perform their functions, and approval of the annual work program prepared by the Secretariat.

- F. To address and make every effort to resolve issues and differences that may arise between regular sessions of the Council, referred to it by any Joint Committee member or member state on matters arising under this Agreement, and when necessary to refer the matter to the Council.
- G. To review and approve studies and training for the personnel of the riparian member countries involved in Mekong River Basin activities as appropriate and necessary to strengthen the capability to implement this Agreement.
- H. To make recommendations to the Council for approval on the organizational structure, modifications and restructuring of the Secretariat.

Article 25. Rules of Procedures

The Joint Committee shall propose its own Rules of Procedures to be approved by the Council. It may form ad hoc and/or permanent sub-committees or working groups as considered necessary, and may seek technical advisory services except as may be provided for in the Council's Rules of Procedures or decisions.

Article 26. Rules for Water Utilization and Inter-Basin Diversions

The Joint Committee shall prepare and propose for approval of the Council, inter alia, Rules for Water Utilization and Inter-Basin Diversions pursuant to Articles 5 and 6, including but not limited to: 1) establishing the time frame for the wet and dry seasons; 2) establishing the location of hydrological stations, and determining and maintaining the flow level requirements at each station; 3) setting out criteria for determining surplus quantities of water during the dry season on the mainstream; 4) improving upon the mechanism to monitor intra-basin use; and, 5) setting up a mechanism to monitor inter-basin diversions from the mainstream.

Article 27. Decisions of the Joint Committee

Decisions of the Joint Committee shall be by unanimous vote except as otherwise provided for in its Rules of Procedures.

D. SECRETARIAT

Article 28. Purpose of Secretariat

The Secretariat shall render technical and administrative services to the Council and Joint Committee, and be under the supervision of the Joint Committee.

Article 29. Location of Secretariat

The location and structure of the permanent office of the Secretariat shall be decided by the Council, and if necessary, a headquarters agreement shall be negotiated and entered into with the host government.

Article 30. Functions of the Secretariat

The functions and duties of the Secretariat will be to:

- A. Carry out the decisions and tasks assigned by the Council and Joint Committee under the direction of and directly responsible to the Joint Committee;
- B. Provide technical services and financial administration and advise as requested by the Council and Joint Committee;
- C. Formulate the annual work program, and prepare all other plans, project and program documents, studies and assessments as may be required;
- D. Assist the Joint Committee in the implementation and management of projects and programs as requested;
- E. Maintain databases of information as directed;
- F. Make preparations for sessions of the Council and Joint Committee; and,
- G. Carry out all other assignments as may be requested.

Article 31. Chief Executive Officer

The Secretariat shall be under the direction of a Chief Executive Officer (CEO), who shall be appointed by the Council from a short-list of qualified candidates selected by the Joint Committee. The Terms of Reference of the CEO shall be prepared by the Joint Committee and approved by the Council.

Article 32. Assistant Chief Executive Officer

There will be one Assistant to the CEO, nominated by the CEO and approved by the Chairman of the Joint Committee. Such Assistant will be of the same nationality as the Chairman of the Joint Committee and shall serve for a co-terminus one-year term.

Article 33. Riparian Staff

Riparian technical staff of the Secretariat are to be recruited on a basis of technical competence, and the number of posts shall be assigned on an equal basis among the members. Riparian technical staff shall be assigned to the Secretariat for no more than two three-year terms, except as otherwise decided by the Joint Committee.

CHAPTER V. ADDRESSING DIFFERENCES AND DISPUTES

Article 34. Resolution by Mekong River Commission

Whenever any difference or dispute may arise between two or more parties to this Agreement regarding any matters covered by this Agreement and/or actions taken by the implementing organization through its various bodies, particularly as to the interpretations of the Agreement and the legal rights of the parties, the Commission shall first make every effort to resolve the issue as provided in Articles 18.C and 24.F.

Article 35. Resolution by Governments

In the event the Commission is unable to resolve the difference or dispute within a timely manner, the issue shall be referred to the Governments to take cognizance of the matter for resolution by negotiation through diplomatic channels within a timely manner, and may communicate their decision to the Council for further proceedings as may be necessary to

carry out such decision. Should the Governments find it necessary or beneficial to facilitate the resolution of the matter, they may, by mutual agreement, request the assistance of mediation through an entity or party mutually agreed upon, and thereafter to proceed according to the principles of international law.

CHAPTER VI. FINAL PROVISIONS

Article 36. Entry into Force and Prior Agreements

This Agreement shall:

- A. Enter into force among all parties, with no retroactive effect upon activities and projects previously existing, on the date of signature by the appointed plenipotentiaries.
- B. Replace the Statute of the Committee for Coordination of Investigations of the Lower Mekong Basin of 1957 as amended, the Joint Declaration of Principles for Utilization of the Waters of the Lower Mekong Basin of 1975, the Declaration Concerning the Interim Committee for Coordination of Investigations of the Lower Mekong Basin of 1978, and all Rules of Procedures adopted under such agreements. This Agreement shall not replace or take precedence over any other treaties, acts or agreements entered into by and among any of the parties hereto, except that where a conflict in terms, areas of jurisdiction of subject matter or operation of any entities created under existing agreements occurs with any provisions of this Agreement, the issues shall be submitted to the respective governments to address and resolve.

Article 37. Amendments, Modification, Supersession and Termination

This Agreement may be amended, modified, superseded or terminated by the mutual agreement of all parties hereto at the time of such action.

Article 38. Scope of Agreement

This Agreement shall consist of the Preamble and all provisions thereafter and amendments thereto, the Annexes, and all other agreements entered into by the Parties under this Agreement. Parties may enter into bi- or multi-lateral special agreements or arrangements for implementation and management of any programs and projects to be undertaken within the framework of this Agreement, which agreements shall not be in conflict with this Agreement and shall not confer any rights or obligations upon the parties not signatories thereto, except as otherwise conferred under this Agreement.

Article 39. Additional Parties to Agreement

Any other riparian State, accepting the rights and obligations under this Agreement, may become a party with the consent of the parties.

Article 40. Suspension and Withdrawal

Any party to this Agreement may withdraw or suspend their participation under present Agreement by giving written notice to the Chairman of the Council of the Mekong River Commission, who shall acknowledge receipt thereof and immediately communicate it to the Council representatives of all remaining parties. Such notice of withdrawal or suspension shall take effect one year after the date of acknowledgment or receipt unless such notice is withdrawn beforehand or the parties mutually agree otherwise. Unless mutually agreed upon to the contrary by all remaining parties to this Agreement, such notice shall not be prejudicial to nor relieve the noticing party of any commitments entered into concerning programs, projects, studies or other recognized rights and interests of any riparians, or under international law.

Article 41. United Nations and International Community Involvement

The member countries to this Agreement acknowledge the important contribution in the assistance and guidance of the United Nations, donors and the international community and wish to continue the relationship under this Agreement.

Article 42. Registration of Agreement

This Agreement shall be registered and deposited, in English and French, with the Secretary General of the United Nations.

IN WITNESS WHEREOF, the undersigned, duly authorized by their respective governments have signed this Agreement.

DONE on 5 April 1995 at Chiang Rai, Thailand, in English and French, both texts being equally authentic. In the case of any inconsistency, the text in the English language, in which language the Agreement was drawn up, shall prevail.

PROTOCOL

TO THE AGREEMENT ON THE COOPERATION FOR
THE SUSTAINABLE DEVELOPMENT OF THE
MEKONG RIVER BASIN
FOR THE ESTABLISHMENT AND COMMENCEMENT
OF THE MEKONG RIVER COMMISSION

The Governments of the Kingdom of Cambodia, Lao People's Democratic Republic, Kingdom of Thailand, and Socialist Republic of Viet Nam, have signed on this day the AGREEMENT ON THE COOPERATION FOR THE SUSTAINABLE DEVELOPMENT OF THE MEKONG RIVER BASIN.

Said AGREEMENT provides for in Chapter IV the establishment of the Mekong River Commission as the institutional framework through which the AGREEMENT will be implemented.

BY THIS PROTOCOL, the signatory parties to the AGREEMENT do hereby declare the establishment and commencement of the MEKONG RIVER COMMISSION, consisting of three permanent bodies, the COUNCIL, JOINT COMMITTEE and SECRETARIAT, effective on this date with the full authority and responsibility set forth under the AGREEMENT.

IN WITNESS WHEREOF, the undersigned, duly authorized by their respective governments have signed this Protocol.

DONE on 5 April 1995 at Chiang Rai, Thailand.

PROCEDURES FOR DATA AND INFORMATION EXCHANGE AND SHARING (PDIES)

PREAMBLE

Recognizing the existing cooperation in data and information collection, exchange, sharing and management through the Mekong cooperation frameworks from 1957 to date;

Affirming the imperative for operationalizing an effective, reliable and accessible data and information system for the Mekong River Commission (MRC) and its member countries to implement the AGREEMENT ON THE COOPERATION FOR THE SUSTAINABLE DEVELOPMENT OF THE MEKONG RIVER BASIN, signed in Chiang Rai, Thailand on 5th April 1995, hereinafter referred to as the "Mekong Agreement";

Pursuant to the Council Resolution on the Water Utilization Programme of 18th October 1999, and the Decision of the 13th Meeting of the Joint Committee of 8th March 2001,

WE hereby approve the following procedures for data and information exchange and sharing:

1. Definition of Key Terms

For the purpose of the present Procedures, the following terms shall mean, unless otherwise stated:

Data: representations of facts, in a formalized manner, suitable for communication, interpretation or processing.

Data and information exchange: reciprocal transfer of data and information among the member countries.

Data and information sharing: provision of full access to data and information maintained in the MRC-IS to the member countries through MRCS.

Information: data interpreted, processed and refined, and then displayed by the competent authorities having ownership or possession thereof, which is required for exchange and sharing for the purpose of the implementation of the Mekong Agreement.

Standards: guidelines for data handling that are recognized as best practice in their relevant scientific or technical disciplines, with the objective to minimize the transaction costs of using data.

2. Objectives

The objectives of the undertakings under the present Procedures are to:

- Operationalize the data and information exchange among the four MRC member countries;
- Make available, upon request, basic data and information for public access as determined by the NMCs concerned; and
- Promote understanding and cooperation among the MRC member countries in a constructive and mutually beneficial manner to ensure the sustainable development of the Mekong River Basin.

3. Principles

In conformity with the provisions of the Mekong Agreement, the data and information exchange and sharing among the MRC member countries should be governed by the following principles:

- Subject to the laws and regulations in their respective countries, in particular concerning the national defense or security, and commercial-in-confidence and copy right protection, exchange, on a regular basis, data and information that are necessary to implement the Mekong Agreement;
- Data and information exchange and sharing, including the prioritization of information needs should be based on an efficient, equitable, reciprocal and cost effective manner.
- The data and information contained in the MRC-Information System that is maintained by MRCS (hereinafter referred to as "the

MRC-IS"), should be relevant, timely and accurate, and exist in established usable formats for MRC and its member countries through an appropriate network and communication system.

- Any additional and unavailable data and information that is required from time to time to facilitate MRC activities, programs and projects will be agreed by the MRC Joint Committee, including procedures and cost sharing arrangements for collecting the minimum necessary data at the lowest feasible cost in a timely and equitable manner.

4. Data and Information Exchange and Sharing

Each NMC and MRCS shall cooperate with one another in the following:

- a. Supporting and promoting the implementation of the present Procedures;
 - b. Providing data and information to the MRCS, as appropriate and where applicable subject to the following requirements:
- Major Groups/types of data and information required for implementation of the MRC program/activities and Mekong Agreement, inter alia:
 - Water Resources;
 - Topography;
 - Natural Resources;
 - Agriculture;
 - Navigation and Transport;
 - Flood Management and Mitigation;
 - Infrastructure;
 - Urbanization/Industrialization;
 - Environment/Ecology;
 - Administrative boundaries;
 - Socio-economy; and
 - Tourism.
 - Standards to be determined by MRCS and approved by the Joint Committee, including but not limit to the format, standardization, classification, and acceptable level of data quality;
 - Delivery schedules; and
 - Modalities for exchange and sharing.

- c. Endeavouring to provide, on a case-by-case basis, historical data required for the implementation of the Mekong Agreement.

Cost for collecting additional data and information other than those required for the implementation of the MRC projects, programs, and not available shall be borne by any requesting party.

Channel of communication shall be made through MRCS.

5. Implementation Arrangements

The MRC Joint Committee shall oversee the effective implementation of the present Procedures as required by the Mekong Agreement.

5.1 Custodianship of MRC-IS

The MRC Secretariat shall be responsible, as custodian, for the following:

- A/ Obtaining and updating of required data and information;
- B/ Managing of this on behalf of the Mekong River Commission (MRC);
- C/ Ensuring proper access to, and maintenance and quality of the data and information that meet the required standards;
- D/ Providing a recognized contact point for the distribution, transfer and sharing of the data and information;
- E/ Estimating and collecting cost incurred according to Section 4; and
- F/ Preparing the MRC guidelines on custodianship and management to be adopted by the MRC Joint Committee.

The obligations and responsibilities of users, on the use of the data and information shall be elaborated in the MRC guidelines on custodianship and management of the MRC-IS.

5.2 Reporting

Report will be made annually by the MRCS to the MRC Joint Committee and Council respectively as to the overall effectiveness of the present Procedures, the status of the MRC-IS and the suitability of the technical guidelines and standards for ensuring the protection and integrity of the data, information and systems and its accessibility and quality, as well as the remedial and rectifying measures taken, and recommendations for further guidance and direction, including modification and amendments of the Procedures and related guidelines, if any.

6. Entry into Force

The present Procedures shall take effect among the member countries on the date of the signature by the MRC Council Members.

Adopted by the Council on 1st November 2001 at its Eighth Meeting in Bangkok, Thailand.

GUIDELINES ON CUSTODIANSHIP AND MANAGEMENT OF THE MEKONG RIVER COMMISSION INFORMATION SYSTEM

GUIDELINES ON CUSTODIANSHIP AND MANAGEMENT OF THE MEKONG RIVER COMMISSION INFORMATION SYSTEM

The member countries of the Mekong River Commission (MRC) recognise that the objectives of the "Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin" signed in Chiang Rai, Thailand on 5th April 1995 (hereinafter referred to as the "Mekong Agreement") can only be achieved when its implementation is supported by the acquisition, updating, and exchange of the necessary data and information for planning, development, and monitoring purposes.

At its Eighth Meeting held on 01 November 2001 in Bangkok, Thailand, the MRC Council approved the Procedures for Data and Information Exchange and Sharing (hereinafter referred to as the Exchange and Sharing Procedures).

As provided in the Exchange and Sharing Procedures, a series of technical guidelines and standards need to be developed. These Guidelines on Custodianship and Management (hereinafter referred to as the Guidelines) have been developed under the provisions of Clause 5.1 of the Exchange and Sharing Procedures in order to define the key operating principles and activities of data custodianship and management.

Section 1 - Management of the MRC Information System

In order to provide data and information services to the MRC, its member countries, and projects and programmes, the MRC-Information System (hereinafter referred to as the MRC-IS) is being established. The MRC-IS is a structured communication and management system for data and information. Its ultimate goal is to support the activities (planning, development, decision making, and monitoring) in the framework of the Mekong Agreement. The MRC-IS includes the following components:

1. MRC-Integrated Database;
2. Models, and other data processing tools;
3. Institutional and technical mechanisms for data and information sharing and exchange;

4. People involved in developing, maintaining, and using the MRC-IS.

The MRC member countries entrust the MRC Secretariat with the management of the MRC-IS.

In order to achieve an effective management, the Information System Design and Implementation Team (ISDIT) comprising of representatives of MRC Secretariat divisions/programmes and those of National Mekong Committees (NMCs) has been established, with functions and responsibilities as defined in its Terms of Reference. Its goal is to help the MRC Secretariat in the development of technical guidelines and standards for all matters relevant to the implementation of, and in conformity with, the Exchange and Sharing Procedures.

Section 2 - Data and Information Custodianship

2.1 Data and Information Custodianship

MRC Secretariat shall be "Custodian of the MRC-IS" with duties as specified in the Procedures for Data and Information Exchange and Sharing.

NMCs/Line Agencies of each riparian country, as the ones that initially collect process, and store the data and information to be exchanged and shared under the Exchange and Sharing Procedures, shall be "Primary Custodians".

2.2 Rights and Responsibilities of custodians

The MRC Secretariat in its role as the Custodian of the MRC-IS, holds data and information in the MRC-IS on behalf of the MRC member countries.

The Custodian of the MRC-IS, in consultation with the NMCs, and through the ISDIT, is responsible for determining appropriate standards for approval by the Joint Committee.

Each custodian shall develop and implement data management plans in order to ensure the continuity of collection, processing and maintenance of necessary data and information.

Each custodian is the authoritative source for the fundamental dataset(s) in its care.

Each custodian is accountable for the integrity of the data in its care and for maintaining agreed access even if the custodian contracts another party to collect some or all of the required data.

Each custodian shall establish and exchange metadata of the dataset(s) in their respective care in accordance with the approved standards.

2.3 Selection of Nominated Agencies as Primary Custodians

Each NMC shall be responsible for the selection of custodians for the datasets in its country that are required for implementation of the Mekong Agreement. The MRC Secretariat, through ISDIT, may assist by the preparation of suggested selection criteria.

2.4 Scope of Data and Information

MRC Secretariat, through ISDIT as appropriate, shall develop, issue and regularly update the detailed specification required for each of 12 major groups/types of data and information provided for in the Exchange and Sharing Procedures.

Collection or processing of additional and/or unavailable data and information that is required from time to time to facilitate MRC activities, programs, and projects, is subject to the agreement of the MRC Joint Committee as to procedures and cost sharing.

Section 3 - Obligations and Responsibilities of Users

There are four classes of data and information users, each with varying obligations and responsibilities.

3.1 Internal Data and Information Users

All bodies of the MRC (Council, Joint Committee, and Secretariat), NMCs and Line Agencies are internal data and information users and have full access to all data and information available in the MRC-IS.

Internal Data and Information Users shall respect the rights of the original data owner in relation to copyright, intellectual property and any specified confidentiality requirement, and acknowledge the source when appropriate on publication.

3.2 Other Data and Information Users

3.2.1 Commercial Data and Information Users

These users are those who intend to use MRC-IS data and information for profit or other commercial gain. They include, but are not limited to the following:

1) *independent commercial data and information users* (such as a development company using MRC data to design a private commercial project).

Their use of the data and information shall be subject to a legally binding licence issued by the MRC Secretariat. This licence will be specific to the particular requirements of each situation and, among other things, may include:

- Permission to use from the original sources
- Limitations on publication
- Matters of intellectual property rights
- Fees and charges

2) *directly contracted commercial data and information users* (such as a consultant contracted by MRC Secretariat, or NMCs and Line Agencies).

Their obligations and responsibilities, including among other things, matters of copyright and intellectual property, will be specified by the terms of the standard contract of engagement.

3) *commercial data and information users associated with MRC partners* (such as a consultant contracted by a MRC partnership organization for MRC purposes).

For users contracted by MRC partners, their use of data and information shall be governed by a license issued by MRC Secretariat. To ensure this, the MRC Secretariat will include appropriate provisions in partnership agreements.

3.2.2 Research /academic or Civil Society Data and Information Users

The regular conventions of international copyright shall be applied to these users.

The MRC Secretariat shall issue a license, in which conditions for use of data and information shall be specified, for these users.

The release of data and information by the MRC Custodian must be in accordance with the Objectives and Principles of the Exchange and Sharing Procedures.

3.2.3 Public Data and Information Users

The MRC, in line with established policies, will make appropriate data and information available to the public through various media. No special obligations and responsibilities apply to the general public other than those provided by any applicable laws.

Section 4 - Implementation and Review of these Guidelines

4.1 Implementation

The MRC Secretariat, together with the NMCs, shall be responsible for implementation of these Guidelines.

The ISDIT shall serve as the forum for coordination between the MRC Secretariat and the NMCs for all matters relevant to the development and implementation of the MRCIS, and shall help the MRC in the development of technical guidelines and standards in conformity with the Procedures for Data and Information Exchange and Sharing.

4.2 Review

The MRC Secretariat shall be responsible for conducting a review of these Guidelines, and for making appropriate recommendations for further guidance and direction. This review, including recommendations, shall form part of the annual report to the Joint Committee and Council, required by the Exchange and Sharing Procedures.

In formulating the report, the MRC Secretariat needs to take into account the views of NMCs, other custodians, and users of exchanged and shared data and information, including the extent to which their needs are met.

Any proposed amendment, modification, or revision of these Guidelines is subject to the Joint Committee's approval.

Adopted by the Joint Committee on July 2002 at its 16th Meeting in Phnom Penh, Cambodia.

**PROCEDURES FOR WATER USE
MONITORING
(PWUM)**

PREAMBLE

Reaffirming the political will to continue to cooperate and promote in a constructive and mutually beneficial manner in the utilization and development of the Mekong River Basin and water related resources as recognized in the Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin, signed at Chiang Rai, Thailand on 5 April 1995, hereinafter referred to as "the Mekong Agreement";

Pursuant to the MRC Council's Resolution on the Water Utilization Program of 18th October 1999, and confirmation of the establishment of the Technical Drafting Group 3 for the Procedures for Water Use Monitoring, hereinafter referred to as "the Procedures", by the MRC Joint Committee (JC);

Recognizing that the reasonable and equitable use of water resources will not be possible if water uses are not monitored;

We hereby approve the following:

1. Definitions

Water Use/Utilization: For the purpose of the present Procedures, it means any use of water which may have a significant impact to the water quality or flows regime of the mainstream of the Mekong River System by any member State. The Joint Committee may review and revise this definition from time-to-time as required for effective implementation of the Procedures.

Inter-Basin Water Diversion: The diversion of water from the mainstream or a tributary of the Mekong river system into another basin.

Water Use Monitoring System: The water use monitoring system of the MRC (Monitoring System) is the system established by the MRC and member States to monitor water use in the Mekong Basin and inter-basin diversion into another basin. The components of the Monitoring System and its management/operation are stipulated in 4.2.

2. Objectives

The objectives of the Procedures are:

- 2.1 To provide a comprehensive and adaptive framework and process to support effective implementation of the intra-basin water use monitoring and the monitoring of inter-basin diversions.
- 2.2 To promote better understanding and cooperation among the member States through transparency and confidence in the water use monitoring system.

3. Principles

In conformity with the provisions of the Mekong Agreement, the water use monitoring shall be governed by the following principles:

- a. Efficiency;
- b. Coordination;
- c. Transparency;
- d. Cost effective;
- e. Dynamism;
- f. Adjustability; and
- g. Mutual benefit.

4. Water Use Monitoring

4.1. Scope

The water uses to be monitored under the Procedures include intra-basin water uses and inter-basin water diversions.

4.2. Monitoring System

The Monitoring System consists of three components:

- Physical equipment and related structures, which are normally located in and managed/owned by the respective State;
- Various technological procedures; and
- Related personnel/institutions/organizations.

Details of these components shall be determined by a technical support team.

4.3. Institutional Arrangements

Operation and management of the Monitoring System shall involve the MRC JC, the MRC Secretariat and the National Mekong Committees (NMCs), with respective roles/functions/responsibilities as follows:

4.3.1. MRC Joint Committee

In addition to those stipulated in the Rules of Procedures of the MRC JC and other relevant rules/procedures approved by the MRC Council, the roles and responsibilities of the MRC JC for water use monitoring shall include, but not limited to:

- a) Establishing and/or strengthening and maintaining the Monitoring System in cooperation with member States;
- b) Ensuring the effectiveness and efficiency of the Monitoring System;
- c) Ensuring the accuracy and transparency of the Monitoring System, including field inspections when necessary;
- d) Improving continuously the Monitoring System in a manner that is coordinated with other MRC procedures and consistent with the relevant MRC standards;
- e) Reviewing and recommending any amendment to the Procedures if necessary.

The MRC JC may delegate all or some responsibilities to a technical support team.

4.3.2. MRC Secretariat

The roles and responsibilities of the MRC Secretariat for water use monitoring shall include carrying out the directives of the MRC JC and supporting and cooperating with the NMCs in the implementation of the Procedures.

In addition to duties and responsibilities stipulated in the Mekong Agreement, and assigned to it by the MRC Council and the MRC JC and in other relevant rules/procedures, the roles and responsibilities of the MRC Secretariat are to assist the MRC JC, or implement as delegated by the MRC JC, duties and responsibilities mentioned in 4.3.1, but specifically as follows:

- preparing reports relevant to water use monitoring, including the annual report that documents water use monitoring results, appropriateness and effectiveness of the Water Use Monitoring Procedures, and status of the Monitoring System;
- assisting the NMCs financially and technically in strengthening the water use monitoring system, including field visits as required;
- making recommendations to the MRC JC on technical and other matters, including improvements, related to the Procedures; and
- providing technical advice and, when required, legal advice to support the implementation of the Procedures.

4.3.3. National Mekong Committees

The roles and responsibilities of the NMCs for water use monitoring shall include, but not limited to:

- cooperating with the MRC JC in establishing, maintaining and strengthening the Monitoring System in their respective countries;
- supplying water use data for monitoring purposes; and
- engaging and assisting the line agencies in the country to implement the Procedures.

5. Final Provisions

5.1. Amendment and Modification

Any amendment or modification to the Procedures shall be approved by the MRC Council.

5.2. Entry into Force

The Procedures shall take effect on the date of the approval of the MRC Council Members.

Approved by the MRC Council on the thirtieth day of November of the year two thousand and three at its Tenth Meeting held in Phnom Penh, Cambodia.

PROCEDURES FOR NOTIFICATION, PRIOR CONSULTATION AND AGREEMENT (PNPCA)

PREAMBLE

Reaffirming the political will to continue to cooperate and promote in a constructive and mutually beneficial manner in the utilization and development of the Mekong River Basin water and related resources as recognized in the Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin, signed at Chiang Rai, Thailand on 5 April 1995, hereinafter referred to as "the Mekong Agreement";

Pursuant to the Mekong River Commission (MRC) Council's Resolution on the Water Utilization Programme of 18th October 1999, and the decision of the MRC Joint Committee (JC) in February 2003 on the Establishment of the Technical Drafting Group 4 for the Procedures for Notification, Prior Consultation and Agreement, hereinafter referred to as "the Procedures";

Recognizing the adaptive approach to the development of water utilization rules and the nature of the Procedures which are an integral part of the Rules for Water Utilization and Inter-Basin Diversions;

Reconfirming the commitment to work together to address the protection of the environment and the ecological balance in the Mekong Basin including the prevention of harmful effects and taking actions in emergency situations as covered by other Rules/Procedures approved by the MRC Council;

We hereby approve the following Procedures for Notification, Prior Consultation and Agreement:

1. Definitions of Key Terms

Wet and Dry Seasons: The dates of the start and end of the wet and dry seasons vary throughout the basin due to regional variations. According to the preliminary analyses of the relatively long time series of hydro-meteorological data, the wet season may start during mid-May to mid-June and end from mid-November to mid-December. The MRC JC will decide on the actual dates of the start and the end of the wet and dry seasons, based on analyses by the MRC Secretariat together with the National Mekong Committees (NMCs) of long term mainstream flow data.

Mainstream of the Mekong River: The river flowing through six countries, namely China, Myanmar, Lao PDR, Thailand, Cambodia and Viet Nam to the sea via My Thuan and My Tho in Viet Nam.

Mekong Tributary: A natural stream of the Mekong River System. For the purposes of the present Procedures, a tributary as decided by the JC is a natural stream of the Mekong River System whose flows have a significant impact on the mainstream. This definition is subject to be reviewed and agreed upon after some time of implementation if any concern is raised.

Water Use/Utilization: For the purpose of the present Procedures, it means any use of water which may have a significant impact to the water quality or flows regime of the mainstream of the Mekong River System by any member State. The Joint Committee may review and revise this definition from time-to-time as required for effective implementation of the Procedures.

Inter-Basin Water Diversion: A diversion of water from the mainstream or a tributary of the Mekong River System into another basin.

Relevant and Key Definitions from the Mekong Agreement :

Agreement under Article 5: A decision of the Joint Committee resulting from prior consultation and evaluation on any proposed use for inter-basin diversions during the wet season from the mainstream as well as for intra-basin use or inter-basin diversions of these waters during the dry season. The objective of this agreement is to achieve an optimum use and prevention of waste of the waters through a dynamic and practical consensus in conformity with the Rules for Water Utilization and Inter-Basin Diversions set forth in Article 26.

Notification: Timely providing information by a riparian to the Joint Committee on its proposed use of water according to the format, content and procedures set forth in the Rules for Water Utilization and Inter-Basin Diversions under Article 26.

Prior consultation: Timely notification plus additional data and information to the Joint Committee as provided in the Rules for Water Utilization and Inter-Basin Diversion under Article 26, that would allow the

other member riparians to discuss and evaluate the impact of the proposed use upon their uses of water and any other affects, which is the basis for arriving at an agreement. 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.

Proposed use: Any proposal for a definite use of the waters of the Mekong River system by any riparian, excluding domestic and minor uses of water not having a significant impact on mainstream flows.

2. Objectives

The objectives of the Procedures are:

- a. To provide steps for the MRC member States to support the establishment of the Rules for Water Utilization and Inter-Basin Diversions.
- b. To promote better understanding and cooperation among the MRC member countries in a constructive and mutually beneficial manner to ensure the sustainable development, management and conservation of the water and related resources of the Mekong River Basin;

3. Principles

The Procedures shall be governed by the following guiding principles:

- a. Sovereign equality and territorial integrity;
- b. Equitable and reasonable utilization;
- c. Respect for rights and legitimate interests;
- d. Good faith; and transparency.

4. Notification

4.1 Scope of Notification

4.1.1

In accordance with Article 5 of the Mekong Agreement, notification on any proposed use stipulated in 4.1.2 shall be timely submitted to the MRC JC consistent with the format and content, schedules and principles prescribed in the Procedures, as appeared in Annex I.

4.1.2

Notification requirement and procedures shall be applied to the following proposed uses:

- a. intra-basin use and inter-basin diversion on the tributaries, including Tonle Sap; and
- b. intra-basin use during the wet season on the mainstream;

4.2 Content and Form/Format of Notification

4.2.1 Content

The Notification shall include feasibility study report, implementation plan, schedule and all available data.

4.2.2 Form/Format

To facilitate the notification formulation, the form/format for notification is provided as Annex I of the Procedures.

4.3 Institutional Mechanism for Notification

Mechanism for handling Notification under the Procedures shall involve National Mekong Committees (NMCs) and MRC's bodies with their respective roles/functions, responsibilities which are as follows:

4.3.1 The National Mekong Committee (NMC)

The roles/functions/responsibilities of each NMC under the Procedures are:

- a. To inform the relevant line agencies of the scope, content and form for Notification of a proposed use as stipulated in 4.1 of the Procedures;
- b. To review and check Notification received from line agencies concerned to ensure that data and information for Notification are complete and consistent with the content and form/format;

- c. To assemble, record and transmit the Notification with appropriate documents to the MRC Secretariat for its submission to the MRC JC and transmission to the other NMCs.

4.3.2 The MRC Secretariat

The roles/functions/responsibilities of the MRC Secretariat under the Procedures are:

- a. To receive, check for completeness, record and make files on the Notifications according to the form/format as appeared in Annex I;
- b. To submit the Notification to the MRC JC and copy to each other NMCs;
- c. To enter the relevant data and information into the MRC Secretariat Data and Information System; and
- d. To place any comments on a Notification in the file, and submit to the MRC JC.

4.3.3 The MRC Joint Committee

The roles/functions/responsibilities of the MRC JC under the Procedures are to acknowledge any Notification submitted to it and take note of the comment, if any, submitted through the MRC Secretariat;

4.4 Process for Notification

Notification shall be transmitted by the relevant NMC to the MRC JC through the MRC Secretariat in conformity with their respective roles/functions/responsibilities as stipulated in 4.3 of the Procedures.

4.5 Timing for Notification

Notification of proposed use shall be transmitted to the MRC JC in a timely manner prior to implementation.

4.6 Absence of Notification

In case that the Notification has not been provided, the MRC JC will request the relevant NMC to fulfill its duties/responsibilities as provided in 4.3.1 of the Procedures.

5. Prior Consultation

5.1 Scope of Prior Consultation

Taking into account Article 5 of the Mekong Agreement and aiming at arriving at an agreement, the following proposed uses shall be subject to Prior Consultation:

- a. Inter-basin diversion from mainstream during wet season;
- b. Intra-basin use on the mainstream during the dry season; and
- c. Inter-basin diversion of the surplus quantity of water during the dry season.

5.2 Content and Form/Format of Prior Consultation

5.2.1 Content

In addition to the data and information required for Notification, the notifying State shall timely provide the MRC JC with available and additional technical data and information on its proposed use of waters for an evaluation of impacts by the other riparian States, as appeared in Annex II (A).

5.2.2 Form/Format

The form/format and information checklist to be used by a notifying country is set out in Annex II (A).

5.2.3 Form/Format for Reply by Notified State(s)

The form/format to be used by the notified State(s) to reply to the proposed use is set out in Annex II (B).

5.3 Institutional Mechanism for Prior Consultation

The Institutional Mechanism for handling the Prior Consultation process under the Procedures shall involve the NMCs and the MRC's bodies with their respective roles/functions/responsibilities which are as follows:

5.3.1 The National Mekong Committees (NMCs)

The roles/functions/responsibilities of each NMC under the Procedures are:

- a. To inform the relevant line agencies of the scope, content and form/format required for Prior Consultation of a proposed use covered by the Procedures;

- b. To receive, review and check documentation for any Prior Consultation submitted to it to ensure that it is complete and consistent with the content and form/format;
- c. To assemble and transmit the proposal with appropriate documents to the MRC Secretariat for their submission to the MRC JC and transmission to the other NMCs;
- d. To facilitate any consultations, presentations, evaluation and site visit as requested by the MRC JC for the proposed use; and
- e. To record and transmit copies to respective line agencies or party(ies) making the proposal for a definite use of water through the Prior Consultation process of any comments or response received from the MRC Secretariat.

5.3.2 The MRC Secretariat

The roles/functions/responsibilities of the MRC Secretariat under the Procedures for Prior Consultation are:

- a. To receive, check for completeness, record and make a file of the documents for Prior Consultation according to the form/format in Annex II (A) and replies from notified States according to the form/format in Annex II (B);
- b. To submit the documents for Prior Consultation for the proposed use to the MRC JC and copy to each other NMCs;
- c. To review, analyze and provide technical advice to the MRC JC as may be requested by it;
- d. To supply available additional data and information and facilitate the meetings as requested by member State(s) concerned;
- e. To provide available technical support for any evaluation. If required, the MRC JC may set up fact-finding team supported by the Secretariat to visit the project site; and
- f. To enter the relevant data and information into the MRC Data and Information System.

5.3.3 The MRC Joint Committee

The roles/functions/responsibilities of the MRC JC under the Procedures for Prior Consultation are:

- a. To acknowledge and review documents of any Prior Consultation submitted to it through the MRC Secretariat;

- b. To review any comment submitted to it by any member State;
- c. To carry out consultation on the proposed use among parties concerned with the support of the MRC Secretariat. The MRC JC, under Rule 4 of its Rules of Procedures, set up a Working Group to assist in the Prior Consultation process aiming to arriving at an agreement on the proposed use.
- d. To make every effort to address any matters that may arise during the process of Prior Consultation.
- e. To verify and unanimously confirm availability of surplus quantity of water on the mainstream in accordance with criteria approved by the MRC Council under Article 26 of the Mekong Agreement should there be a proposed use for inter-basin diversion in the dry season.

5.3.4 The MRC Council

The function of the MRC Council under the Procedures is in accordance with the stipulation of the Mekong Agreement.

5.4 Process for Prior Consultation

5.4.1 Submission of documents for prior consultation

Documents for Prior Consultation on any proposed use specified in 5.2.1 and Annex II (A) shall be submitted by the NMC of the notifying State(s) to the MRC JC through the MRC Secretariat in a timely manner. The MRC Secretariat shall transmit copies of the documents to other member State(s) for their evaluation and reply.

5.4.2 Evaluation and Reply to proposed use

Upon receiving the documents from the notifying State(s) submitted to the MRC JC through the MRC Secretariat, the other member(s) should evaluate the proposed use and reply to the MRC JC through the MRC Secretariat according to the form/format in Annex II (B).

If necessary, through the MRC JC, the notified State(s) may request additional information, a consultation or presentation, and/or a field visit to the project site in order to evaluate the possible impacts of the proposed use and any other affects on their rights and to facilitate the aim of reaching an

agreement by the MRC JC.

During the evaluation process period, the notifying State(s) shall provide, if requested, available data and information and facilitate an appropriate evaluation. If necessary, the MRC JC may direct the MRC Secretariat or appoint a working group or technical advisory team to assist in the evaluation of the proposed use and possible impacts on existing uses and rights of other riparian State(s).

5.4.3. Decision by MRC JC

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.

The notifying State(s) shall not implement the proposed use without providing the opportunity of the other member States to discuss and evaluate the proposed use. The MRC JC shall take note of replies and place in the record for the proposed use of any concerns or reservations made by the notified State(s).

5.5 Timing for Prior Consultation

5.5.1 The timeframe for Prior Consultation shall be six months from the date of receiving documents on Prior Consultation.

5.5.2 If necessary, an extended period shall be permitted by the decision of the MRC JC.

5.6 Absence of Prior Consultation

In case that the required documents for Prior Consultation has not been provided, the MRC JC will request the relevant NMC to fulfill its duties/responsibilities as provided in 5.2.1 of the Procedures.

6. Specific Agreement

Any inter-basin diversion project during the dry season from the mainstream shall be agreed upon by the MRC JC through a Specific Agreement for each

project prior to any proposed diversion. Such a Specific Agreement, signed/approved by all members of the MRC JC, sets out agreed terms and conditions such as timing, quantity of diversion, etc. While the format and content of the Specific Agreement shall be established by the MRC JC on a case-by-case basis, the format and content for Notification and Prior Consultation shall apply.

7. Final Provisions

- a. The Annexes shall form an integral part of the Procedures.
- b. Reporting to the MRC Joint Committee
The MRC Secretariat will report annually to the MRC JC on relevant matters regarding the implementation of the Procedures, including necessary recommendations.
- c. Amendments to the Procedures
Any amendment or revision to the present Procedures shall be approved by the MRC Council.
- d. Entry into Force
The Procedures shall take effect among the member States on the date of the approval of the MRC Council.

Approved by the MRC Council on the thirtieth day of November of the year two thousand and three at its Tenth Meeting in Phnom Penh, Cambodia.

4.1

Annex I

**Mekong River Commission Procedures for
Notification, Prior Consultation and Agreement**

Form/Format of Notification

1. **Notifying State:** -----

2. **Date of submission:** -----

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

4. **Contact person/address** (Name, address, telephone/fax/e-mail): -

5. **Name of the project:** -----

6. **Location of the project:** -----

7. **Nature of the proposed use:**

- a) **On tributary:**
 - Intra-basin uses
 - Inter-basin diversion
- b) **On the mainstream**
 - Intra-basin use during wet season

8. **Purpose of the proposed project:** -----

9. **Expected date for the implementation:**
 - a) Date for starting the construction -----
 - b) Date for finishing the construction -----
 - c) Date for the operation -----
10. **Duration and timing for water use :** -----

11. **Description of the project** (i.e.: scope, scale, site, type, quantity, capacity, and characteristic, etc.): -----

12. **Attached documents:** -----

**Mekong River Commission Procedures for
Notification, Prior Consultation and Agreement**

Form/Format for Prior Consultation

1. **Proposing State(s):** -----

2. **Date of submission:** -----

3. **Proposing Ministry (ies)/Agency (ies)** (Name, mail/email
address, telephone, fax): -----

4. **Contact person/facilitator** (Name, address, telephone/fax/
e-mail): -----

5. **Name of the project:** -----

6. **Location of the project:** -----

7. **Nature of the proposed use:**

- Inter-basin diversion from the mainstream during wet season
- Intra-basin use on the mainstream during dry season
- Inter-basin diversion of the surplus water from the mainstream during dry season

8. **Purpose of the proposed use:** -----

9. **Expected date for the implementation:**
 - a) Date for starting the construction -----
 - b) Date for finishing the construction -----
 - c) Date for the operation -----
10. **Duration and timing for the utilization of the proposed use of water:** -----

11. **Description of the project** (scope, scale, site, type, quantity, capacity, and characteristic, etc.): -----

12. **Observation or comment:** -----

13. **Attached available data and information and/or documents,**
e.g. summary of feasibility study (FS), initial environmental
evaluation (IEE), etc.-----

Annex II (B)

**Mekong River Commission Procedures for
Notification, Prior Consultation and Agreement**

Form/Format for Reply to Prior Consultation

1. **Replying State(s):** -----

2. **Date of reply:** -----

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

4. **Contact person/facilitator** (Name, mail/e-mail address,
telephone, fax): -----

5. **Name of the proposed use/project:** -----

6. **Location of the proposed use:** -----

7. **Nature of proposed use**
 - Inter-basin diversion from the mainstream during wet season
 - Intra-basin use on the mainstream during dry season
 - Inter-basin diversion of the surplus water from the mainstream during dry season
8. **Date of receipt of the documents:** -----

9. **Reply to proposed use:** -----

