



Pöyry's Role in the Xayaburi Dam Controversy

International Rivers (February 2013)

Finnish engineering company Pöyry has become embroiled in a high profile water dispute between four governments in Southeast Asia. The dispute focuses on the Xayaburi Dam, which Laos and Thailand are building on the Mekong River despite the concerns of downstream countries. This factsheet describes how Pöyry's participation in the project has fueled the dispute.

Q: WHY IS THE XAYABURI DAM CONTROVERSIAL?

A: Laos is building a dam on the Mekong River that will cause transboundary harm in Cambodia, Thailand, and Vietnam. With Thailand's help, Laos began building the Xayaburi Dam in 2010. It is the first of eleven dams proposed on the Lower Mekong River, nine which will be in Laos. The livelihoods and food security of around 60 million people are at risk. If built, the dams would drastically affect the fisheries that provide jobs and the region's main source of protein. The dams would block nutrients from flowing into agricultural areas and displace over 100,000 people. Many scientists believe there is not enough land or livestock in the Mekong region to fully replace the food security that would be lost.

As the first project to proceed, the Xayaburi Dam has set a dangerous precedent. A 1995 treaty between Cambodia, Laos, Thailand, and Vietnam created the Mekong River Commission (MRC) and requires the four governments to seek agreement before building any Mekong dams. Yet Laos and Thailand are building the Xayaburi Dam despite opposition from downstream countries. In 2011, Cambodia and Vietnam called for the project to be postponed so that transboundary impact studies could be carried out. Laos and Thailand refused to conduct these studies and instead continued construction. Cambodia, Vietnam, and MRC donor governments have expressed numerous concerns with the project, most recently at an MRC meeting in January 2013.

Q: WHAT IS PÖYRY'S ROLE IN THE PROJECT?

A: Pöyry's work is Laos' primary justification for proceeding with the project, despite opposition from neighboring governments. In April 2011, Cambodia and Vietnam asked Laos to postpone the Xayaburi Dam and study the dam's potential transboundary impacts. Instead, Laos hired Pöyry in May 2011 to evaluate whether the project complies with the MRC's standards for

safely building dams on the Mekong River. In an August 2011 report, Pöyry concluded that construction on the project should continue because there will be no transboundary impacts.

The project's original environmental impact assessment only examined impacts 10 kilometers downstream from the dam site, leaving major gaps in basic data. Most scientists expect that the impacts of the dam will extend several hundred kilometers downstream. Pöyry's report was a desk study and did not collect any additional data about the dam's impacts. Nevertheless, Pöyry claimed that all of the dams' impacts could be mitigated by designing new technologies, such as a fish passage to allow migrating fish to travel past the dam.

After completing its August 2011 report, Pöyry remained involved in the project. In November 2012, Pöyry announced that it had been appointed the Lao government's chief engineer for the project. Construction is now underway, and scientists expect that the impacts of the Xayaburi Dam will be significant. Laos and Pöyry claim that they have already addressed Cambodia's and Vietnam's concerns by designing the new technologies.

Q: WHY ARE SCIENTISTS SO CONCERNED WITH PÖYRY'S WORK?

A: Pöyry recommended that construction on the Xayaburi Dam proceed, although the project's impacts have not been fully studied. In its August 2011 report, Pöyry concluded that the project was "principally in compliance" with the MRC's dam-building guidelines, despite identifying over 40 additional studies that are still needed to understand the project's impacts. In cases where the project failed to comply with the MRC's guidelines (e.g. for fish passages or dam safety), the report simply omitted any mention of these requirements. The report recommended continuing with construction and conducting any additional studies at a later time. In other words, Pöyry *guaranteed* that the dam's impacts could be mitigated, while dismissing the prevailing opinion of Mekong scientists that the dams' impacts will be too large to mitigate.

For example, Pöyry claims that a state-of-the-art fish passage will allow migrating fish to safely pass through the dam. Mekong fisheries experts have overwhelmingly expressed doubt that any fish passage can work on the Mekong River, because of the wide diversity of migrating fish species and the large numbers of fish that migrate at peak times. No fish passage has ever been used successfully on a tropical river the size of the Mekong. Without proven mitigation measures in place, Pöyry is essentially treating the Mekong River as a testing grounds for unproven technologies.

Other leading scientists in the Mekong region have criticized Pöyry's work, as well. This includes the MRC's Secretariat, the International Centre for Environmental Management (which conducted the MRC's 2010 strategic environmental assessment on the proposed Mekong dams), WWF, and scientific advisors of the Cambodian and Vietnamese governments. The MRC's Secretariat concluded in November 2011 that "even if the recommendations in the Pöyry Report are followed, the Xayaburi Project would be considered only partly compliant [with MRC standards] in the area of fish bypass facilities and fisheries ecology as well as in terms of dam safety." The MRC secretariat also recommended that the project developers delay construction while further studies were carried out. Yet Laos and Pöyry disregarded these views. Construction continues on schedule.

Q: DID PÖYRY INTERVENE IN DIPLOMATIC DISCUSSIONS?

A: Laos also relied on Pöyry to undermine the MRC’s diplomatic discussions. In June 2011, Pöyry advised Laos that all of its obligations under the 1995 Mekong treaty were completed, including the obligation to consult with neighboring governments. In contrast, the official MRC position at the time was that “there is still a difference in views from each country on whether the prior consultation process should come to an end,” and that the MRC’s Joint Committee “agreed that a decision on the prior consultation process...be tabled for consideration at the ministerial level, as they could not come to a common conclusion on how to proceed with the project.”

Pöyry’s advice undermined the MRC’s diplomatic process, in which the four governments are required to seek agreement before building any dams. In a letter on 8 June 2011, Laos informed the dam developers that the MRC’s prior consultation was completed, specifically citing Pöyry’s opinion. As a result, construction continued. In a letter on 5 October 2011, Laos informed the Thai government of Pöyry’s opinion. Days later, the Thai government signed an agreement to purchase the dam’s electricity and agreed to provide financing for the project. Since that time, numerous construction-related activities on the Xayaburi Dam have proceeded, and further discussions under the MRC have faltered.

Q: DID PÖYRY HAVE A CONFLICT OF INTEREST?

A: Pöyry had strong financial incentives to recommend that construction on the Xayaburi Dam continue, despite lack of knowledge about the project’s impacts. At the time of Pöyry’s hiring in May 2011, two factors existed that gave Pöyry a strong incentive to provide a positive review and downplay the project’s risks.

First, Pöyry had close business ties to Xayaburi Dam builder Ch. Karnchang, the company it was hired to evaluate. As of May 2011, Pöyry and Ch. Karnchang were jointly involved in another hydropower project in Laos, the Nam Ngum 2 Dam. In other words, Pöyry agreed to evaluate the performance of a company with which it was already doing business.

Second, Pöyry had a strong incentive in May 2011 to ensure that construction on the Xayaburi Dam continued. At the time, Pöyry had already been promised additional work on the project if construction moved forward. In its August 2011 report, for example, Pöyry wrote that it “has been nominated as Government of Laos Engineer” for the Xayaburi project. If Pöyry concluded that the Xayaburi project complied with the MRC’s standards, then construction could proceed and Pöyry would receive additional contracts to help implement the project. If Pöyry concluded that the project did not comply with the MRC’s standards, then Pöyry would not receive those additional financial benefits. This is a clear example of a conflict of interest.

Unsurprisingly, Pöyry’s August 2011 report recommended that the project move forward. On 9 November 2012, only two days after Laos held the official ground-breaking on the Xayaburi Dam, Pöyry announced that it had taken on a role as the Government of Lao’s engineer for the project.

Q: HAVE ANY EXPERTS SUPPORTED PÖYRY'S WORK?

A: Laos hired a French company to review Pöyry's work, but the company distanced itself from many of Pöyry's recommendations. To date, Pöyry's work has received no public support from other experts in the region. After Cambodia and Vietnam criticized Pöyry's work in late 2011, the Lao government hired the Compagnie Nationale du Rhône (CNR) of France to provide a peer review of Pöyry's work related to sediments. CNR completed its report in April 2012 and suggested several changes to Pöyry's sediments work. CNR's report did not examine Pöyry's work on fisheries or dam safety.

Laos treated CNR's report as proof that Pöyry's work had been verified. Pöyry also claimed that CNR had "confirmed and verified" its work. However, in an August 2012 press release, CNR distanced itself from Pöyry's and Laos' claims. CNR emphasized that it had not examined the fisheries issue, one of the most controversial parts of Pöyry's work. On the issue of sediments, CNR emphasized that its proposed solutions were "conceptual" and "need to be developed and their costs evaluated." Furthermore, CNR did not examine Pöyry's work on dam safety. As a result, much of Pöyry's work remains unsupported.

The Lao government continues to claim that CNR verified Pöyry's work. On 4 February 2013, for example, the Lao government reported in the Vientiane Times that "Laos [had] hired another acclaimed consulting firm, Compagnie Nationale du Rhône, and it, too, gave the green light to the project." This is inconsistent with CNR's April 2012 report and its August 2012 press release.

Q: WHY SCRUTINIZE PÖYRY WHEN IT IS NOT THE LEAD PROJECT DEVELOPER?

A: Pöyry has argued that "it is only a consultant." According to global standards for corporate responsibility, however, this does not free Pöyry from responsibility for the Xayaburi Dam's impacts. Pöyry's work has played an essential role in moving the project forward, despite opposition from neighboring governments. Pöyry also exercises significant influence over the project. According to its own press release on 9 November 2012, the company now has responsibility for "reviewing the design and supervising the construction of the project."

According to global standards for corporate responsibility, consulting companies are expected to respect human rights and the environment, even if they are not the lead developers on a project. This reflects the reality that modern infrastructure projects often involve the participation of multiple companies. For example, the OECD Guidelines on Multinational Enterprises require all companies to avoid contributing to human rights and environmental harm. Similarly, the UN Guiding Principles on Business and Human Rights require all companies to take precautionary steps to avoid becoming complicit in human rights violations. Finland has endorsed both of these standards.

Q: CAN PÖYRY BE PENALIZED FOR ITS ROLE IN THE XAYABURI PROJECT?

A: The Finnish government is investigating Pöyry's role in the Xayaburi Dam. Although the Finnish government does not regulate the human rights and environmental performance of its companies operating overseas, it is investigating Pöyry's role in the Xayaburi Dam. In June 2012, civil society organizations brought a complaint against Pöyry to the Finnish government through its OECD National Contact Point. This dispute mechanism investigates whether companies have violated the principles of the OECD Guidelines on Multinational Enterprises, which Finland has committed to follow. The Finnish government's investigation is an important step in evaluating whether Pöyry is undermining Finnish development policy in the Mekong region.

In July 2012, the World Bank placed Pöyry's management consulting arm on its blacklist of non-responsible vendors, based on allegations of "submitting false invoices and providing improper benefits to World Bank Group staff." There is no direct connection between this incident and Pöyry's role in the Xayaburi project. Nevertheless, the recurring ethical violations indicate that Pöyry's internal corporate responsibility systems—if they have any—do not work. Investors have an opportunity to investigate this pattern of behavior and identify potential reforms.

Q: WHAT WOULD A MORE RESPONSIBLE COMPANY HAVE DONE?

A: A responsible company would have insisted on a study of the dam's transboundary impacts and full respect for the MRC's diplomatic process, before any construction began. Credible scientific studies have already demonstrated that the risks of the Mekong dams are quite high and are likely to impact millions of people. Such high risks merit a more cautious approach, especially because the impacts will be transboundary. Furthermore, the Xayaburi Dam is the first ever attempt by the MRC governments to consult with one another on a proposed Mekong mainstream project. Whatever happens with the Xayaburi Dam will set a precedent for the future. By the time that Pöyry was hired in May 2011, it was already clear that a diplomatic dispute had emerged over the Xayaburi Dam. More time was needed to reach a mutually acceptable solution.

A responsible company would have conducted due diligence on the situation before becoming involved. If the company detected a conflict of interest, it would have excused itself from the project. It would have recommended completing the transboundary impact studies requested by Cambodia and Vietnam. It would have recommended setting aside adequate time for the MRC diplomacy to run its course before any construction activities began. Consultations with the MRC and its donors, including Finland, would have also been appropriate.

Instead, Pöyry urged Laos to take a reckless approach that disregards the dam's high risks and undermines regional cooperation under the Mekong River Commission. The company has directly contributed to a situation where Laos is violating international law at the expense of other countries and millions of people.

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