

Remarks of Robert Pyke, Ph.D., G.E., prepared for the Delta Plan Draft EIR Field Hearing, Clarksburg CA, January 18, 2012

My name is Robert Pyke (p-Y-k-e). I have written formal comments on the Draft EIR and I will push the send button on those, as well as the full text of these remarks, later tonight or tomorrow, but I want to speak in this part of the meeting about the inadequacies of the Delta Plan itself and examine the question of why more than a year has been squandered on its preparation. Because without a meaningful Delta Plan there can be no meaningful EIR.

For the record, I am a civil engineer specializing in geotechnical, earthquake and water resources engineering, but as part of my Ph.D. studies in civil engineering at the University of California I also completed a minor in environmental planning under the guidance of Professor Robert Twiss. I have lived in Lafayette in Contra Costa County for more than 25 years. I have had the privilege of working as part of the UoP team that drafted the Delta Economic Sustainability Plan for the Delta Protection Commission by I am making these remarks as an individual. While these remarks and my formal comments on the Draft EIR are solely my own, I might note that I circulated my draft comments to 20 or more reasonably knowledgeable people, including lawyers who are much more knowledgeable about CEQA than I am, and received many indications of support. Just to quote one, without naming names, "an EIR on no plan is junk".

Almost exactly a year ago, on a foggy night in Stockton, I made two comments on the Notice of Preparation for the EIR plus a comment about the necessity to prepare an EIR in the first place. As usual you listened politely but evidently my message got lost somewhere along the line. One of my comments was that the first bullet in the NOP under Improved Water Storage and Conveyance should be re-written to state "Prompt implementation of the BDCP if it complies with Water Code Section 85320 and/or alternatives designed to accomplish improvements in water conveyance and storage consistent with the co-equal goals of the Delta Reform Act", because it was clear by that time that the BDCP would not be completed in time for inclusion in the Delta Plan. I went on to suggest two important principles that should be followed in order to

simultaneously solve the water storage and conveyance problem and the ecosystem restoration problem. I also suggested that while the Delta Flood Risk element was generally more complete, as it spoke about both prioritization of investments and creation of a Delta-wide flood management and financing entity, it said nothing about the drafting of Delta-specific levee standards, which are sorely needed. Not only did you choose to ignore that suggestion, but you seem to be relying on the DWR Draft Framework for Investments in Delta Integrated Flood Management when that is a backwards-looking rather than a forwards-looking document. Finally, I suggested that you, your staff and consultants had limited time and resources to develop the Delta Plan, and I said that “it would appear that sooner or later you are going to have to devote more effort to studying alternatives for conveyance, ecosystem restoration, flood management and land use, and to developing a meaningful plan that integrates all of these elements, at the expense of completing an EIR. And, if that is true, you had best address this issue sooner rather than later. An EIR for a plan that has no real content, is like a suit of armor with no-one inside it.”

But instead you have come up with a Plan and a project description in Section 2A of the Draft EIR that fails the basic test of having a project description that meets both the requirements of CEQA and the requirements of the Delta Reform Act of 2009, which include that the Delta Plan should include measures to simultaneously improve water supply reliability and to restore the Delta ecosystem, while protecting and enhancing the Delta as a Place. Specifically, in Water Code Section 85308 (b), the Act requires that the Plan “include quantified or otherwise measurable targets associated with achieving the objectives of the Delta Plan”. While the 5th Staff Draft includes laundry lists of possible “performance measures” in partial satisfaction of the requirements of Water Code Section 85211, it includes no “quantified or otherwise measurable targets” except for the surprising requirements that “total agricultural acreage and gross revenue in the Delta will be maintained or increased in the future”, “total annual gross revenue, adjusted for inflation or deflation, from Delta recreation activities will be maintained or increase”, and “annual visitation and total annual gross revenue, adjusted for inflation or deflation, from ecotourism and agritourism will be maintained or increased”. At

least the first two, and possibly all three of these three requirements, in addition to other common-sense arguments such as the need to protect the very significant investment in infrastructure that passes through the Delta, necessitate an aggressive program to maintain and improve Delta levees in the face of the hazards posed by floods, earthquakes and possible sea-level rise. Such a program would have a significant beneficial impact on Delta flood risk that would dwarf the impact on flood risk of all other possible actions that might be taken under the Delta Plan. However, the 5th Staff Draft includes no such program. And, while the 5th Staff Draft places admirable emphasis on promoting statewide water conservation, water use efficiency, and sustainable water use and on reducing reliance on the Delta in meeting California's future water supply needs by investing in improved regional self-reliance and these other good things, it does not come to grips with the fact that reduced reliance on the Delta does not necessarily mean reduced water exported from, through, around or under the Delta. I have suggested elsewhere how, with exports intakes in the Western Delta and additional South of Delta storage, long-term water exports might be held steady at the higher levels of the last decade or even increased, while at the same time the stress on the Delta is reduced. While I have never expected that the Delta Plan would endorse my solution to this problem, or any other specific solution, I believe that as a minimum the Delta Plan can and should specify ranges of exports and through Delta flows that are acceptable in terms of meeting the co-equal goals in order to guide the BDCP or any other combined conveyance and ecosystem restoration program. I also believe that this can be done while maintaining consistency with the longstanding constitutional principle of reasonable use and the public trust doctrine which are the foundation of state water management policy and are particularly applicable to the Delta.

So, what is in fact in the 5th Staff Draft or "the Proposed Project" as it is called in the EIR? - twelve policies plus a number of recommendations that have about as much chance of being honored as my New Year's resolutions. The twelve policies include three that have to do with making consistency determinations; two that are demands of others

to finish certain tasks; four that are possible restraints on any other actions prior to definition and funding of ecosystem restoration measures; one that is a backwards-looking policy on levees and two that relate to a map of habitat types based on present elevations that again is basically just a place holder pending development and funding of a real plan for ecosystem restoration. A Delta Plan that relies on other agencies to do the heavy lifting is not much of a plan. The 5th Staff Draft, i.e. “the project”, largely relies on the Bay Delta Conservation Plan (BDCP) to address water conveyance issues through the Delta; it relies on BDCP and/or the Delta Conservancy for a strategic plan to address ecosystem restoration; it relies on the State and or Regional Water Boards to come up with flow criteria and water quality criteria; it relies on the Department of Water Resources to complete a totally inadequate draft document on levee standards and policies; and it relies on the Delta Protection Commission to come up with an Economic Sustainability Plan that will provide a basis for protecting and enhancing the Delta as a Place. Oh, wait a moment – that has actually been done but its recommendations were not included in the 5th Staff Draft and are not included in the alternatives that were studied for the Draft EIR!

Additionally, the entire process used to develop the Draft EIR strains credulity. First the 5th Staff Draft contains no measurable or otherwise quantifiable targets, except as noted above, and proposes no mechanisms for achieving the co-equal goals other than waiting for reports and recommendations by others. Second, the descriptions of possible projects in the Draft EIR are vague or inconsequential. Third, the thresholds of significance are of dubious significance in the Delta. Fourth, the potential increases in flood flows, elevations, and velocities that could be caused by the implementation of the ill-defined or uncertain projects are evaluated using projects which are completed or under construction. It is widely agreed that the Delta is in peril so that it seems unlikely that any earlier or current project has the sweep or the impact that will be required of projects implemented under a Delta Plan that might have a prayer of achieving the co-equal goals, however they are quantified.

At the risk of causing some discomfort I want to conclude by suggesting some reasons why the last year has been wasted and the opportunity to make a breakthrough in Delta and California water policy and planning has been squandered. Where has the vision that was expressed in Delta Vision gone? How did Delta Vision morph into Delta Regulation?

Basically I think this has occurred because the Council has followed the Chairman's lead in believing that experts and others will never agree on anything and therefore the Council will make Solomon-like decisions in the public interest. But the Council has not done that. I believe that has happened in part because you have been hampered by inheriting your staff from CALFED and by the fact that the staff had essentially completed the selection of your prime consultant before you were even sworn in. It does not matter that the consultants and the staff of the Office of the Attorney General have worked long and hard on the EIR – that kind of effort is misplaced without vision and leadership. Without adequate staff and consultant support you have not learned to distinguish between the respective merits of different expert opinions. And, it is of little value that you have been so generous and patient in listening to stakeholders of all descriptions when you have just been providing a platform for polarization rather than a mechanism for facilitating communication and consensus. I can testify that communication and consensus are in fact possible and that North Delta CARES, a community organization based here in Clarksburg, has actually accomplished more in that regard than the Council has in all your meetings and with your fancy and self-congratulatory web site and newsletters.

So, what needs to be done to return to the task of turning Delta Vision into a Delta Plan? While decisive action is not the norm in Sacramento, if I were a turn-around specialist, like Bain Capital for example, I would recommend that you consider the following course of action going forward:

1. Abort the current EIR effort;
2. Fire the staff and consultants who have created this mess;

3. Engage new staff and consultants, of your own choosing, to help you come up with a Delta Plan that contains some Delta vision;
4. Rely much more on facilitated communication with stakeholders in that process; and
5. Then persuade the Office of the Attorney General that CEQA was not intended to be a make-work program for lawyers and that an EIR is not required.

You have already missed the legislatively mandated deadline for completing the Delta Plan. To prove that you are not just a debating society or a monthly TV show, why not now take the time to develop a real plan that is worthy of the people of the Delta region and the State of California.

Thank you for your attention.

Contact details:

Robert Pyke

bobpyke@attglobal.net

925 323 7338

Dr Pyke is an individual consultant based in Lafayette with 40 years experience in geotechnical, earthquake and water resources engineering in both Australia and California.