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Contra
Costa
County

TO: BOARD OF SUPERVISORS
FROM: Catherine O. Kutsuris, Director
Department of Conservation and Development

DATE: November 11, 2009

SUBJECT: 2-Gates Fish Protection Demonstration Project, Old River and Connection Slough,
Sacramento-San Joaquin Delta

SPECIFIC REQUEST(S) OR RECOMMENDATION(S) & BACKGROUND AND JUSTIFICATION

RECOMMENDATIONS:

AUTHORIZE the Chair of the Board of Supervisors to submit two letters to: (1) Regional Director, U.S. Bureau of Reclamation, requesting a 30-45 day extension to the comment period on the Environmental Assessment (EA)/Finding of No Significant Impact (FONSI) prepared for the 2-Gates Fish Protection Demonstration Project; and, (2) District Engineer, U.S. Army Corps of Engineers, Sacramento District, requesting a 30-45 day extension to the comment period for the 2-Gates Fish Protection Demonstration Project permit applications before the U.S. Army Corps of Engineers.

FISCAL IMPACT:

None.

BACKGROUND/REASONS FOR RECOMMENDATIONS:

The 2-Gates Fish Protection Demonstration Project has been proposed by the San Luis and Delta-Mendota Water Authority and the Metropolitan Water District of Southern California to test alternative ways of protection for the Delta Smelt fish species. They are proposing a 5-year experiment to modify the flows in the Sacramento-San Joaquin Delta ("Delta") to reduce entrainment of the Delta Smelt and other aquatic species in the export pumps near the Clifton Court Forebay that serve the Central Valley Project and State Water Project. Several scientific studies indicate that current conditions, including tidal flows, channel geometry, and other factors, are conducive to Delta Smelt movement, and influence the movement of this fish into the south Delta toward the water export facilities of the Central Valley Project (CVP) and the State Water Project (SWP). The water agencies that export water from this location are proposing to place two gates at strategic locations on Old River and Connection Slough in the central Delta, which are intended to evaluate the ability to provide temporary protection to the Delta Smelt from entrainment at the CVP and SWP water export facilities (pumps).

CONTINUED ON ATTACHMENT: YES NO SIGNATURE *C. Kutsuris*
___ RECOMMENDATION OF COUNTY ADMINISTRATOR ___ RECOMMENDATION OF BOARD COMMITTEE
___ APPROVE ___ OTHER

SIGNATURE(S):
ACTION OF BOARD ON November 10 2009 APPROVED AS RECOMMENDED OTHER ___

VOTE OF SUPERVISORS
 UNANIMOUS (ABSENT None)
AYES: _____ NOES: _____
ABSENT: _____ ABSTAIN: _____

Contact: P. Roche (925-952-4739)
cc: Department of Conservation and Development (DCD)
CAO
County Counsel
Public Works Dept.

I HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF AN ACTION TAKEN AND ENTERED ON THE MINUTES OF THE BOARD OF SUPERVISORS ON THE DATE SHOWN.
ATTESTED November 10 2009
DAVID TWA, CLERK OF THE BOARD OF SUPERVISORS AND COUNTY ADMINISTRATOR
BY Jane M. [Signature], DEPUTY

BACKGROUND/REASONS FOR RECOMMENDATIONS - continued

The gates would be operated to manipulate the flow of water to reduce turbidity near the CVP and SWP export pumps in the south Delta and keep the fish away from the export pumps. The project is premised on a belief that the Delta Smelt will not enter into an area of reduced turbidity and so would not migrate close to the export pumps. The proposed project includes constructing, operating, and maintaining butterfly gates in Old River and Connection Slough for up to a 5-year period to affect water movement when turbidity and salinity conditions during certain months of the calendar year are expected to support migration of the Delta Smelt. The proposed project would involve the installation and operation of two gate structures mounted on submerged cargo barges ballasted to the river bottom by rock, one in Old River and one in Connection Slough. Sheet pile walls would extend from the levees to the gate structures. Boat ramps would be provided to portage small boats around the gates when they are closed. A boat safety exclusion zone would be established to keep boats clear of the closed gates and channel markers would be installed to indicate that the center opening (between the gate pivot posts) is the only navigable opening in the structure. The 2-Gates facility would be owned the U.S. Bureau of Reclamation as part of the Central Valley Project, but responsibility for operation and maintenance of this facility will be delegated to the San Luis and Delta-Mendota Water Authority. See Exhibit "A" to this report for more background information on the 2-Gates Fish Protection Demonstration Project.

The U.S. Bureau of Reclamation has issued an Environmental Assessment and Finding of No Significant Impact for the 2-Gates Fish Protection Project. The 30-day comment period on the Finding of No Significant Impact for the project is due to end on Tuesday, November 17, 2009.

Pursuant to Section 10 of the Rivers and Harbors Act for structures affecting the navigable waters of the United States and Section 404 of the Clean Water Act for discharge of dredged fill material in the waters of the United States, the U.S. Army Corps of Engineers is reviewing the permit application to construct the 2-Gates facilities. The 30-day comment period on the permit before the U.S. Army Corps of Engineers is due to end on Monday, November 30, 2009.

County Code Section 25-2.206 (Better Government Ordinance) requires that "all such staff material must be distributed to the policy body and be made available to the public 96 hours before the scheduled meeting". The code further allows the policy body, by a three-fourth vote, to waive these limits "when, in its judgment, it is essential to do so, providing that the County Administrator, appropriate Department Head, or staff member furnishes to the Board of Supervisors or other policy body a written explanation as to why the material could not be provided to the Board or other policy body and the general public within the above time limits".

In accordance with the above referenced provisions under the Better Government Ordinance, the acceptance of this report and its recommendations is requested of the Board, because it was not until late last week that the Department became aware of both the Finding of No Significant Impact issued by the U.S. Bureau of Reclamation and the permit notice issued by the U.S. Army Corps of Engineers for the 2-Gates Fish Protection Demonstration Project. Based on a cursory review of documents for the 2-Gates Fish Protection Demonstration Project released by both federal agencies, the proposed project could have potentially significant impacts within Contra Costa and San Joaquin counties. These impacts include:

- Potentially lengthy disruption and inconvenience for boaters using Old River during months of gate operations;
- Possible delays for emergency vessels operated by both the Sheriff Department Marine Patrol Unit and the East County Fire Protection District during gate operations; and,
- Potential alteration of the water flow or tidal movement during certain months downstream from the gates within the south Delta, including the Discovery Bay area.

BACKGROUND/REASONS FOR RECOMMENDATIONS - continued

More time is required to review, evaluate, and understand the full implications and potential impacts associated with 2-Gates Fish Protection Demonstration Project. The Department recommends the Board authorize the Chair to submit a letter to the Regional Director, U.S. Bureau of Reclamation, and a letter to the District Engineer, U.S. Army Corps of Engineers, requesting that each federal agency extend the comment period to enable the public an additional 30-45 days to review and comment on the 2-Gates Fish Protection Demonstration Project. See draft letters to each federal agency attached as Exhibit "B" to this report.

CONSEQUENCES OF NEGATIVE ACTION:

The comment period on the 2-Gates Fish Protection Demonstration Project is closing rapidly. More time is needed to review documents issued by the two federal agencies on the 2-Gates Fish Protection Demonstration Project. A letter from the Board of Supervisors requesting an extension of the public review and comment period needs to be submitted to the Regional Director, U.S. Bureau of Reclamation before the close of comment deadline on Tuesday, November 17, 2009. Failure to act before November 17th could hinder the County's interest in seeking longer public review and comment period on the 2-Gates Fish Protection Demonstration Project.

Attachments (2 items)

- Exhibit "A": Fact Sheet on 2-Gates Fish Protection Demonstration Project
- Exhibit "B": Letters to Regional Director, U.S. Bureau of Reclamation, and District Engineer, U.S. Army Corps of Engineers

The Board of Supervisors

County Administration Building
651 Pine Street, Room 106
Martinez, California 94553-1293

John Giola, 1st District
Gayle B. Uilkema, 2nd District
Mary N. Piepho, 3rd District
Susan A. Bonilla, 4th District
Federal D. Glover, 5th District

Contra Costa County



David J. Twa
Clerk of the Board
and
County Administrator
(925) 335-1900

November 10, 2009

Colonel Thomas C. Chapman, District Engineer
U.S. Army Corps of Engineers
Sacramento District
1325 J Street, Rm. 1480
Sacramento, CA 95814-2922

Subject: *Request for Extension of Comment Period
Permit Application (Action ID: SPK: 2009-01197)
2-Gates Fish Protection Demonstration Project*

Dear Colonel Chapman:

On behalf of the Contra Costa County Board of Supervisors, I am submitting this request to the U.S. Army Corps of Engineers to consider an extension to the comment period on the pending permit applications for the proposed 2-Gates Fish Protection Demonstration Project.

The 2-Gates Fish Protection Demonstration Project is one of many projects being considered by state and federal agencies that will profoundly affect the future of Sacramento-San Joaquin Delta. We believe it is vitally important for the public and local agencies to participate and shape decisions about the future of Sacramento-San Joaquin Delta. Unfortunately, the initial 30-day public comment period on the permits for the 2-Gates Fish Protection Demonstration Project now pending before the Corps of Engineers does not provide Contra Costa County, County residents, and the stakeholders in the Delta with enough time. Many parties, including Contra Costa County, have just now begun to review, evaluate, and fully understand the information and data about the project, as described in the 300 plus pages of the *Draft* Environmental Assessment (including its many appendices) and the Finding of No Significant Impact, which was released on October 17, 2009 by the U.S. Bureau of Reclamation.

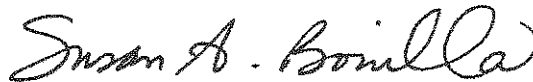
We respectfully request that the 30-day comment period, which is due to end on Monday, November 30, 2009, be extended an additional 30 to 45 days so as to allow Contra Costa County, County residents, and the numerous stakeholders concerned about the Delta's future, sufficient time to review and comment on the applications for the proposed 2-Gates Fish Protection Demonstration Project now pending before the Corps of Engineers.

Please understand that in requesting this extension on the comment period, Contra Costa County is not seeking to obstruct or delay this 5-year demonstration project that is intended to test or resolve scientific questions about the Delta's water flow and the survival of the Delta Smelt. However, we believe that this 5-year demonstration should not be conducted without fully understanding its effects and whether it will be beneficial and not detrimental to all Delta stakeholders. To us, this means that all of the stakeholders be given more time to review information and data contained in the rather voluminous *Draft* Environmental Assessment prepared for the 2-Gates Fish Protection Demonstration Project.

Note that Contra Costa County has submitted a similar request to the Regional Director, U.S. Bureau of Reclamation, for a 30-45 day extension on the 30-day comment period for the *Draft* Environmental Assessment and the Finding of No Significant Impact, which is due to close on Tuesday, November 17, 2009.

Thank you in advance for your timely consideration of our request for an extension of the comment period. Should you or your staff have any questions regarding Contra Costa County's request, please contact Ms. Catherine Kutsuris, Director, Department of Conservation and Development, at (925) 335-1260, or Mr. Patrick Roche, Principal Planner, Department of Conservation and Development, at (925) 335-1242.

Sincerely,



Supervisor Susan Bonilla, District IV
Chair, Contra Costa County Board of Supervisors

CC: Regional Director, U.S. Bureau of Reclamation, Mid Pacific Regional Office
CCC-Congressional Delegation
CCC- State Legislative Delegation
Delta 5 Counties
President, Town of Discovery Bay Community Services District
Chair, Bethel Island Municipal Advisory Council
Chair, Byron Municipal Advisory Council
Mayor, City of Oakley
Sheriff Warren Rupf, Contra Costa County
Chief Henderson, East Contra Costa Fire Protection District

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Susan A. Bonilla, 4th District
Federal D. Glover, 5th District

Contra Costa County



David J. Twa
Clerk of the Board
and
County Administrator
(925) 335-1900

November 10, 2009

Mr. Donald Glaser, Regional Director
U.S. Bureau of Reclamation
Mid Pacific Regional Office
Federal Office Building
2800 Cottage Way
Sacramento, CA 95825-1898

Subject: *Request for Extension to 30-day Comment Period
Draft Environmental Assessment and Finding of No Significant Impact
2-Gates Fish Protection Demonstration Project*

Dear Mr. Glaser:

On behalf of the Contra Costa County Board of Supervisors, I am submitting this request to the U.S. Bureau of Reclamation to consider an extension to the comment period on the *Draft Environmental Assessment and Finding of No Significant Impact* issued for the proposed 2-Gates Fish Protection Demonstration Project.

The 2-Gates Fish Protection Demonstration Project is one of many projects being considered by state and federal agencies that could profoundly affect the future of Sacramento-San Joaquin Delta. We believe it is vitally important for the public and local agencies to participate and help shape the decisions about the future of Sacramento-San Joaquin Delta. Unfortunately, the initial 30-day public comment period on *Draft Environmental Assessment and Finding of No Significant Impact* for the 2-Gates Fish Protection Demonstration Project does not provide Contra Costa County, County residents, and the stakeholders in the Delta with enough time. Many parties, including Contra Costa County, have just now begun to review, evaluate, and fully understand the information and data about the project, as described in 300 plus pages of the *Draft Environmental Assessment* (including its many appendices) and the *Finding of No Significant Impact*, which was released on October 17, 2009.

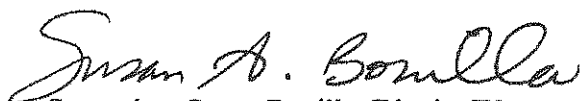
We respectfully request that the 30-day comment period, which is due to end on Tuesday, November 17, 2009, be extended an additional 30 to 45 days so as to allow Contra Costa County, County residents, and the numerous stakeholders concerned about the Delta's future, with sufficient time to review and comment on the environmental review.

Please understand that in requesting this extension on the 30-day comment period, Contra Costa County is not seeking to obstruct or delay this 5-year demonstration project intended to test or resolve scientific questions about the Delta's water flow and the survival of the Delta Smelt. However, we believe that this 5-year demonstration should not be conducted without fully understanding its effects and determining whether it will be beneficial and not detrimental to all Delta stakeholders. To us, this means that all of the stakeholders should be given more time to review the information and data about the 2-Gates Fish Protection Demonstration Project contained in the rather voluminous *Draft Environmental Assessment*.

Note that Contra Costa County has submitted a similar request to the District Engineer, U.S. Army Corps of Engineers, for a 30-45 day extension on the 30-day comment period for the permit applications now pending before the Sacramento District, Army Corps of Engineers, which is due to close on Monday, November 30, 2009.

Thank you in advance for your timely consideration of Contra Costa County's request for an extension to the 30-day comment period for the *Draft Environmental Assessment* on the 2-Gates Fish Protection Demonstration Project. Should you or your staff have any questions regarding Contra Costa County's request, please contact Ms. Catherine Kutsuris, Director, Department of Conservation and Development, at (925) 335-1260, or Mr. Patrick Roche, Principal Planner, Department of Conservation and Development, at (925) 335-1242.

Sincerely,



Supervisor Susan Bonilla, District IV
Chair, Contra Costa County Board of Supervisors

CC. CCC-Congressional Delegation
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Delta 5 Counties
President, Town of Discovery Bay Community Services District
Chair, Bethel Island Municipal Advisory Council
Chair, Byron Municipal Advisory Council
Mayor, City of Oakley
Sheriff Warren Ruff, Contra Costa County
Chief Henderson, East Contra Costa Fire Protection District

District Engineer, U.S. Army Corps of Engineers, Sacramento District
Michael Jackson, Area Manager, Fresno, U.S. Bureau of Reclamation
Mario Manzo, Project Manager, U.S. Bureau of Reclamation