

**Contra
Costa
County**



To: Board of Supervisors
From: Mary N. Piepho, District III Supervisor
Date: February 3, 2009

Subject: Report on Isolated Water Transfer/Peripheral Canal: Legislative Authority and Temporary Entry Permits

RECOMMENDATION(S):

1. Support the state legislature having a role in the approval of any isolated transfer/peripheral canal conveyance project.
- 2.

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY
ADMINISTRATOR

☐ RECOMMENDATION OF BOARD
COMMITTEE

Action of Board On: **02/03/2009** ☐ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

VOTE OF SUPERVISORS

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: February 3, 2009

Contact: Roberta Goulart
(925) 335-1226

David Twa, County Administrator and Clerk of the Board of
Supervisors

By: , Deputy

cc:

RECOMMENDATION(S): (CONT'D)

Authorize the Chair, Board of Supervisors, to sign a letter to Senator Wolk and the County's legislative delegation, expressing support for the legislature having a role in approval of any isolated conveyance/peripheral canal project.

- Direct staff to work with the Delta Counties Coalition on a joint letter to Senator Wolk supporting the legislature having a role in approving any isolated transfer/peripheral canal project, or absent this, on a 'statutory framework for water management decisions that affect the Delta Counties'.
- Provide direction to staff on processing requests from the State Department of Water Resources (DWR) to execute temporary entry permits on property owned by the County.

FISCAL IMPACT:

There will be some staff time involved in working with the Delta Counties Coalition and drafting a joint letter of support to Senator Wolk. There will also be some staff time involved in reviewing and processing requests by DWR for temporary entry permits. It would be a positive gesture on the part of DWR if they offered to pay the County staff time necessary to process their entry permits.

BACKGROUND:

1. Support Legislative Approval of a Peripheral Canal Project

Background. There has been some question as to whether the state Department of Water Resources (DWR) has existing authority to construct a Peripheral Canal. A recent Legislative Counsel Opinion dated May 29, 2008, (attached) would indicate that indeed DWR does have existing authority. However, to our knowledge the Attorney General has not reviewed this issue since 1984, and the opinion issued at that time indicated that DWR may not have authority to build facilities outside of existing channels.

The more important issue may be whether the legislature should have some level of oversight of a multi-billion dollar project that the taxpayers will be helping to pay for in some capacity, and that has such significant environmental implications.

2. Letter to Senator Wolk.

Background. Senator Lois Wolk has been at the forefront and has been quite vocal on the question of Peripheral Canal authority. She questioned DWR's authority to the Governor's Delta Vision Blue Ribbon Task Force and others, voicing the need for legislative involvement in a project of this magnitude. Senator Wolk has asked for letters supporting the legislature having a role in approving any peripheral canal conveyance project, which is consistent with the board's position on the peripheral canal. As a result, it is recommended that a letter be addressed to the Senator expressing our support.

3. Delta Counties Coalition

Background. Four of the five Delta Counties have some acreage within Lois Wolk's Senate District. She has requested that the five Delta counties support legislative authority over a peripheral canal. In discussions with the other Delta counties, it is becoming apparent that one or more of the Counties may not be able to express support for Peripheral Canal legislative authority specifically, but may be able to support more general language relative to 'statutory framework for management decisions'. Discussions with the other Counties are ongoing.

4. DWR Temporary Entry Permits

Background. DWR and others are conducting a Bay Delta Conservation Plan (BDCP) to study alternatives for conveying waters through the Delta. The BDCP projects include a peripheral canal with two primary potential alignments; the western alignment goes through Contra Costa County (there is also a revised through-Delta alignment). The BDCP is currently working on an Environmental Impact Report (EIR) and Environment Impact Statement (EIS) that will analyze the peripheral canal alignment through Contra Costa County. The County owns property the proposed canal alignment passes through and DWR needs to enter the property to conduct a wide variety of biological, geotechnical and other surveys for their environmental processes. One identified parcel to date is at the Byron Airport. DWR is requesting the County, as the property owner, to execute an entry permit to access our property. Public Works received an entry permit on January 21, 2009, however it is not in a form that is acceptable to the County and will need to be modified. County staff is seeking direction from the Board on the County's response to DWR's request for property access.

Notification Process.

DWR conducted meetings with landowners in the County along the canal alignment in August and November of 2008. DWR provided notice to the County of these meetings through a general County email address. The County felt this was not adequate and requested, in the future, DWR also notify Board members and key County staff. Public Works received a notification from DWR dated January 6, 2009, that Temporary Entry Permits would be mailed out in two weeks. Public Works received this notice because the County owns property on the canal alignment, not because the County is the jurisdiction where the property resides. This notice was transmitted to the Board in a memo from Public Works dated January 8, 2009. As far as we can tell the requested notification protocol was not followed before the entry permits were mailed out.

To Sign or Not to Sign. The Board's adopted Delta Water Platform includes a position on conveyance. Our position is that key planning issues must be addressed in a timely manner or a renewed opposition to the isolated water transfer facility (peripheral canal) will be considered. It could be argued that the key planning issues cannot be fully addressed until information is gathered and analyzed on the various alignments of the peripheral canal. Many of the key planning issues of interest to the County were included

in the Delta Vision Task Force's Strategic Implementation Plan and the Delta Committee's recommendations. It is really too early, however, to know if our key planning issues will be addressed or not.

If the County decides not to sign a Temporary Entry Permit, DWR could try and seek a right of entry through the courts. This is something we do on a routine basis for our own county projects. Whether DWR would be successful is unknown.

Permit Review. County staff will be reviewing this request for a Temporary Entry Permit by DWR as we would any other permit, to make sure it does not interrupt or impact county operations or our rights as a property owner. The parcel DWR requests access on is at the end of the runways at Byron Airport. The submitted permit reads as if the parcel is vacant agricultural property and not near an airport. Public Works, Airport and County Counsel staff will be reviewing the provisions and making suggested modifications as necessary before the permit is ready for signature, should the Board decide it is appropriate to sign.

CLERK'S ADDENDUM

ADOPTED Recommendations as listed in the Revised Board Order, with the understanding that granting the state access to County land does not constitute support for any project. Vote: 5-0

ATTACHMENTS

REVISED Board Order