

**Meeting with Congressman Jerry McNerney
Regarding the 2-Gates Project**

Monday, December 21, 10:00 a.m.

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Purpose:

- 1. Communicate Concerns with 2-Gates project directly to Congressman McNerney.**
- 2. Seek more complete answers and clarify issues from the agencies involved with 2-Gates.**

Topics:

- I. Project Management and Agency Role Definition**
- II. Public Safety/Boating Safety/Emergency Vessel Transportation**
- III. Water Quality**
- VI. Boating and Recreation Impacts**
- V. Resolution of Issues**

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**Kevin Graves, Director
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Media Relations - Save the San Francisco Bay and Delta Foundation**

**Dave Dove, Discovery Bay Resident
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**Jan McCleery
Discovery Bay constituent**

**Lenora Clark, Commissioner
Department of Boating and Waterways**

Contra Costa County Staff

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Catherine Kutsuris – Director, Conservation and Development

Roberta Goulart – Executive Officer – Water Agency

Talking Points

I. Project Management and Agency Role Definition

1. Project purpose and goals not clearly defined

- There appear to be multiple goals for the 2-Gates Project without a clearly defined purpose or fully defined goals. What is the performance measure that determines success or failure?
- Is the purpose of the project to merely test whether it is possible to reduce entrainment to aid the Delta Smelt's recovery, or is the true purpose to maintain the same level of protection for the fish while increasing water exports from the Delta.

2. Project operations, management, and decision-making

- There is not a clear division between those conducting the research and those who may or may not benefit from the outcome. The water contractors and DWR have an expressed desire to increase the amount of water pumped to points south. Who will have the technical/scientific authority to determine the operational needs, to determine the project's success or failure, and to redesign or revise the operational plan, particularly if conditions indicate that the project may have adverse or negative consequences during the 5-year demonstration?

3. Are there any other gate projects on channels and estuaries designed to demonstrate fish protection elsewhere in the state or county that also involve such a complex management and decision-making structure? Where?

4. Project description lacks explanation of funding/costs

- It is our observation that the gate system project estimated at \$44 million, exclusive of maintenance, monitoring, and removal costs, hardly seems to be a simple 5-year demonstration project, but appears to us and the skeptical public more permanent than temporary.
- This skepticism about the temporariness of the 5-year demonstration project could be relieved if there was an adequate explanation about the costs and the source of funding for the 2-Gates Project.

5. State's Role/Responsibility in the 2-Gates Project

- Based on the Project Description in the Draft EA, it is not clear what role and responsibility the State of California will play in reviewing and approving the 2-Gates Fish Demonstration Project.
- There is no discussion in the Draft EA about whether there is a role and function for various state agencies or departments in the

implementation of the 2-Gates Project and whether any state approval is necessary to carry out the project.

- Are there any other approvals or permits from state agencies or departments needed to implement the project?
- The Draft EA should fully disclose and explain what, if any, state and local actions are necessary to carry out the 2-Gates Project.

6. The project description does not acknowledge role/responsibilities of San Luis and Delta Mendota Water Authority and the Metropolitan Water District of Southern California.

- The project description in the Draft EA does not acknowledge the role and what level of responsibility these two Delta water exporters will have in the implementation of the 2-Gates Project.
- There should be a clear line of separation between water exporters and the science based program in the 5-year demonstration project.

7. Environmental Review under the California Environmental Quality Act (CEQA)

- It is not clear if any potential state approvals or actions necessary to carry out the project would also be subject to environmental review under the State Guidelines for the CEQA, and whether the Draft EA is intended to serve as the environmental review under CEQA.
- A CEQA environmental review is required to list all the governmental approvals or permits (local, state, and potentially federal) necessary to carry out a proposed action and to identify responsible agencies that may need to rely on the environment document for its decision-making other than the lead agency.
- The explanation of the Draft EA's potential function as the environmental review under CEQA appears to be missing.

8. CalFed Science Review of the 2-Gates Project

- The science panel raised substantial concerns with the project as presented to them.
- Concerned that the project goals were not adequately defined
- Project was premised on limited and incomplete results from computer-based modeling that combined hydrodynamics and fish behavior.
- As the science panel points out these are two separate and highly complex relationships affecting the Delta, and wonder whether such modeling was ever intended to be combined to test the significant hydraulic modification to the Delta's channels and estuaries, as contemplated under the project.

- The science panel recommended a set of actions that should occur prior to initiating the project.

9. Consequences to other species not thoroughly evaluated

- The science panel also believed that there remained considerable uncertainty about the potential unintended consequences of the operation of 2-Gates Project for other species of concern in the Delta, such as Chinook Salmon.
- Contra Costa County shares this concern that the Draft EA's evaluation of potential impacts to salmon, steelhead trout, sturgeon, and other threatened fish species in the central Delta, has been rather cursory for a project intended to manipulate water flows in the central Delta that by design is to increase the survivability of just one species of fish, the delta Smelt.

10. Alternatives

- The science panel identified the Georgiana Slough as a location where it might be possible to construct a smaller gate that would be potentially less expensive, presumably less disruptive, and achieve the same diversion objectives that need to be tested as part of the 5-year demonstration project.

11. Facilities Removal and Site Restoration at end of 5-year demonstration.

- There is no discussion about who will be responsible for deciding how and when the gates would be removed, who will fund the removal of the gates, and who or what entity will actually physically remove the gates. Likewise, it is unclear who will be responsible for site restoration once the gates have been removed.
- It is stated that a restoration plan would be developed as required by applicable regulatory agencies and would be complete prior to the onset of construction.
- Given that construction is supposed to begin by summer 2010, is the restoration plan forthcoming as to who will be responsible for preparing the restoration plan?
- Will it be available for public review and comment?
- Is the Draft EA released by the U.S. bureau of Reclamation intended to cover actions necessary to implement the restoration plan?

II. Public Safety/Boating Safety/Emergency Vessel Transportation

12. How will the construction of the Old River fish gate affect the ability of the Office of the Sheriff to provide boating safety and enforcement on the waterways within Contra Costa County?

- The Office of the Sheriff Marine Patrol is staffed with five Marine Enforcement Officers specifically trained to protect life and property on the waterways within Contra Costa County. Duties of the Marine Patrol include providing a first response capability for waterborne emergencies, conducting search and rescue operations and enforcing laws and regulations governing the operation of vessels.
- The draft proposes a 21 week period for the construction of the fish gates, beginning June 2010. The plan provides for the use of navigational markers to prevent boaters from entering the immediate construction area, and speed limits would be posted. Our experienced Marine Patrol staff indicated the gate construction and associated controlled speed zones will cause an increase in calls for service in the proposed construction area, requiring an increase patrol presence throughout the duration of the construction period.

13. How will the closure of the Old River fish gate impact Marine Patrol response to emergencies on the waterways within Contra Costa County?

- The Marine Patrol is responsible for patrolling nearly 240 miles of waterways in the Bay and Delta regions within Contra Costa County. Minimum staffing levels equate to increased response times with respect to calls for service, including search and rescue operations and vessel accidents. How will this project impact patrol needs?
- According to the proposed action plan, the Old River gate would be staffed with a gate operator 24 hours a day while the gates were being "Operated", to include flood events and emergencies. The gate operators would open the gates as needed for emergency vessels, presumably within minutes of an official request. The placement of a gate on Old River, a major waterway connecting the northern and southern end of eastern Contra Costa County, will delay Marine Patrol crews responding to emergencies in the southern Delta.
- The need for increased patrol and enforcement operations in the gate construction area will place an additional burden on a Marine Patrol already constrained by a lack of adequate funding and minimum staffing. Moreover, the closure of a major waterway in the Delta will delay response time to life-threatening emergencies and jeopardize the safety of the boating community.

14. Navigation/Boat Safety/Emergency Vessel Transportation

- Old River is the main channel for vessels access and movement between the central Delta and the south Delta, it is the main link for the boating community between Discovery Bay and the central Delta, and it is a vital channel for emergency vessels operated by both the Contra Costa Sheriff and the east County Fire Protection District.
- Both the construction and operation of the gate on Old River between Holland Tract and Bacon Island has the potential to significantly impede both recreation boaters and emergency vessels moving through Old River.
- The Draft EA provides only a limited description and evaluation of how the gates would be operated when there is an emergency, and does not fully evaluate how the gates would be disruptive and cause major trip diversions for recreational boaters.
- As for emergency vessel transportation, the Draft EA acknowledges that the gates would restrict access and movement on Old River when in operation and that it would take approximately 3 minutes for the gate to fully open after a request is made to the operator to open the gates.
- The evaluation does not consider the time it may take for emergency vessel to contact the operator and for the operator to respond and open the gates would likely be greater than 3 minutes in total
- This time penalty would be unacceptable in an emergency situation when time is of essence.

III. WATER QUALITY

15. Water Quality Impacts – Groundwater

- The Draft EA does not evaluate the water quality impacts resulting from the 2-Gates Project on groundwater.
- Degraded water quality and increased pollutant loading resulting from the operation of the 2-Gates Project may adversely affect the ground water resources in Contra Costa County when it infiltrates into the aquifers serving the communities in east Contra Costa County.
- How will the U.S. Bureau of Reclamation or the project proponent determine the potential impacts of the “2-gates” project on the ground water in Contra Costa County?
- Will the project included these additional ground water test well facilities?

REQUEST: An adequate groundwater monitoring program should also include the installation and monitoring of water wells in the Knightsen, Sand Mound and Bethel Island communities.

REQUEST: This project should include an adequate groundwater monitoring program that should assess water quality from the existing municipal wells operated in Discovery Bay and by the City of Brentwood.

16. Water Quality Impact – National Pollutant Discharge Elimination Permit.

- It is foreseeable that future Municipal National Pollutant Discharge Elimination Systems (NPDES) will contain restrictions on the quality of storm water discharges based on Total Maximum Daily Loads and the quality of the delta receiving waters.
- Potentially, Contra Costa County, its cities and the Contra Costa Flood Control District will be required to improve the quality and reduce the pollutant loading of the storm water they discharge solely due to the degradation of the delta receiving waters resulting from the 2-Gates Project.
- How will the 2-Gates Project mitigate the local municipalities’ increased costs for compliance with future NPDES permits that result from the 2-Gates Project?

17. Water Quality Impacts – Additional Monitoring Station at Indian Slough

- Residents in Discovery Bay are greatly concerned with potential water quality impacts to water within Indian Slough that connects this water-oriented community to Old River.
- Many residents are concerned that the restrictions in water flows by the 2-Gates Project when the gates are closed will unduly influence tidal action flushing Indian Slough and thereby degrade the water quality.

REQUEST: To address these concerns, we request that additional monitoring stations be provided in the vicinity of Indian Slough to address and monitor potential water quality impacts within the Discovery Bay and the surrounding areas.

IV. Boating and Recreation Impacts not defined

- Gate closure impeding boaters - open 15 minutes every 2 hours
- Construction Impediments to boating
- Communications with boating community about delays, etc.

V. Resolution of Issues