



CALIFORNIA CHAMBER of COMMERCE

January 6, 2005

VIA FEDERAL EXPRESS

Amicus Curiae Letter in Support of Review (Rule 14(b)) Filed By the California Chamber of Commerce

The Honorable Chief Justice Ronald M. George
and Associate Justices
California Supreme Court
350 McAllister Street
San Francisco, CA 94102

RE: *Central Delta Water Agency, et al. v. State Water Resources Control Board*
Supreme Court Case Nos. 01CS00345 & 01CS00824
Court of Appeal Case No. C041749

To the Honorable Chief Justice and Associate Justices of the California Supreme Court:

This letter is written on behalf of the California Chamber of Commerce requesting that the Court grant the State Water Resources Control Board's petition for review of the above-referenced decision of the California Court of Appeal, Third Appellate District.

1. Nature of the Applicant's Interest

The California Chamber of Commerce is the largest, voluntary business association within the state of California, with more than 14,000 members, both individual and corporate, representing virtually every economic interest in the State. The Chamber acts on behalf of the business community to improve the State's economic and jobs climate by

representing business on a broad range of legislative, regulatory and legal issues. The Chamber often advocates the interest of the California business community in the courts by filing *amicus curiae* briefs in cases involving issues of paramount concern to the business community. For the reasons set forth in greater detail below, the decision rendered by the Court of Appeal in the above-captioned action is but one example.

2. Why This Court Should Grant Review

For nearly a century, California has relied extensively on the State Water Resources Control Board (“SWRCB”) and its predecessors to administer a fair and reliable water rights appropriation system. Enormous investments have been made and continue to be made in reliance on the certainty that the process affords to water rights holders and water supply projects. In issuing its decision, the Third District Court of Appeal has called into question every administrative procedural decision the SWRCB makes in issuing a permit and authorizing water projects, beginning with the SWRCB’s decision even to accept an application as complete to initiate the permit process.

The Third District Court of Appeal has, in this case, directed that permits issued by the SWRCB after a 17-year administrative process must be set aside, primarily because, in the court’s view, the SWRCB should not have accepted the project’s initial water rights applications 17 years ago. This decision will spawn litigation and create uncertainty, since applicants (whose water rights challenges all will end up in the same Third District Court of Appeal) would now be prudent to file declaratory relief actions to have a court confirm that an application has been properly accepted by the SWRCB. Projects now have no way to know that they can rely on even the most mundane SWRCB administrative determinations regularly made in administering the state water right appropriation process.

Further, the court’s decision in this matter clouds key California Environmental Quality Act (“CEQA”) processes. Major projects rely on provision in CEQA that allow programmatic environmental analyses to be made for projects. The court’s decision in this case strongly suggests that any environmental document would have to have great specificity with regard to end users of water before any environmental document could be certified. This is so extraordinarily impracticable as to be impossible. The Third District Court of Appeal has not simply thrown a new “wrench” into the mix of water rights and CEQA issues; it has issued a decision which strips the SWRCB of its statutorily created and clearly delegated authority to administer water rights in California.

3. Conclusion

The Supreme Court should grant the SWRCB’s petition for review in this case. The case has created major issues of statewide concern. Granting review in this case is essential, since depublication provides no lasting remedy for pending projects whose permits will end up before the Third District Court of Appeal if challenged. The California Chamber of

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Commerce therefore respectfully requests that this Court grant the State Water Resources Control Board's petition for review in the above-referenced case.

Respectfully submitted.

A handwritten signature in cursive script that reads "Valerie Nera".

Valerie S. Nera
California Chamber of Commerce

cc: See attached service list