

PROTEST- PETITION

This form may also be used for objections

PETITION FOR TIME EXTENSION, CHANGE, TEMPORARY URGENT CHANGE OR TRANSFER ON

APPLICATION See Attached **PERMIT** See Attached **LICENSE** See Attached
OF See Attached **(DWR & USBR March 18, 2022 TUCP)**

I (We) have carefully read the notice (state name):

Central Delta Water Agency, South Delta Water Agency, and Rudy M. Mussi Investment, L.P.

Address, email address and phone number of protestant or authorized agent: _____

235 E Weber Avenue, Stockton, CA 95202; ngmplcs@pacbell.net; (209) 465-5883

Attach supplemental sheets as needed. To simplify this form, all references herein are to protests and protestants although the form may be used to file comments on temporary urgent changes and transfers.

Protest based on ENVIRONMENTAL OR PUBLIC INTEREST CONSIDERATIONS (Prior right protests should be completed in the section below):

- the proposed action will not be within the State Water Resources Control Board's jurisdiction
- not best serve the public interest
- be contrary to law
- have an adverse environmental impact

State facts which support the foregoing allegations _____

See Attached

Under what conditions may this protest be disregarded and dismissed? (Conditions should be of a nature that the petitioner can address and may include mitigation measures.)

See Attached

Protest based on INJURY TO PRIOR RIGHTS:

To the best of my (our) information and belief the proposed change or transfer will result in injury as follows: See Attached

Protestant claims a right to the use of water from the source from which petitioner is diverting, or proposes to divert, which right is based on (identify type of right protestant claims, such as permit, license, pre-1914 appropriative or riparian right):

Riparian, Pre-1914, Appropriative, Overlying, Recycled/Reclaimed, Salvage and Statutory Rights

List permit or license or statement of diversion and use numbers, which cover your use of water (if adjudicated right, list decree).

S016196, A004979

Where is your diversion point located? NE 1/4 of SW 1/4 of Section 1, T 1S, R 5E, MD B&M

If new point of diversion is being requested, is your point of diversion downstream from petitioner's proposed point of diversion? _____

The extent of present and past use of water by protestant or his predecessors in interest is as follows:

- a. Source Middle River, Sacramento-San Joaquin Delta, Pacific Ocean
- b. Approximate date first use made 9/27/1870 (Statement) + 5/14/1929 (License)
- c. Amount used (list units) Reasonable and Beneficial (Statement) + 514.6 af (License)
- d. Diversion season 3/1-12/1 (License)
- e. Purpose(s) of use All Lawful purposes

Under what conditions may this protest be disregarded and dismissed? _____

See Attached

All protests must be signed by the protestant or authorized representative:

Signed: 
Dante J. Nomellini, Sr., Attorney for Protestants

Date: April 6, 2022

All protests must be served on the petitioner. Provide the date served and method of service used: Served on April 6, 2022 via email.

Attachment to Protest by the Central Delta Water Agency, South Delta Water Agency and Rudy M. Mussi Investment L.P. Against the TUCP Filed by the California Department of Water Resources and United States Bureau of Reclamation on March 18, 2022 Regarding Permits and a License of the State Water Project and the Central Valley Project¹

The CDWA is a political subdivision of the State of California created by the California Legislature under the Central Delta Water Agency Act, chapter 1133 of the statutes of 1973 (Wat. Code, Appendix, § 117-1.1, et seq.) CDWA’s boundaries encompass approximately 120,000 acres, which are located entirely within both the western portion of San Joaquin County and the “Sacramento-San Joaquin Delta.” While the lands within the agency are primarily devoted to agriculture, said lands are also devoted to numerous other uses including recreational, wildlife habitat, open space, residential, commercial, and institutional uses. CDWA’s general purposes are: (1) to protect the water supply of the lands within the agency against intrusion of ocean salinity; and (2) to assure the lands within the agency a dependable supply of water of suitable quality sufficient to meet present and future needs. (Wat. Code, Appendix, § 117-4.1.) CDWA may take actions to protect the vested water rights of landowners, districts, and water right holders within its boundaries, and may represent the interest of those parties in proceedings before the SWRCB and the courts to carry out the agency’s purposes. (Wat. Code Appendix, §§ 117-4.2, subd. (b).) The majority of CDWA’s landowners exercise riparian, pre-1914 appropriative and/or post-1914 permit or license rights to divert water from Delta channels in San Joaquin County.

The SDWA is a political subdivision of the State of California created by the California Legislature under the South Delta Water Agency Act, chapter 1089 of the statutes of 1973 (Wat. Code, Appendix, § 116-1.1, et seq.) SDWA’s boundaries encompass approximately 148,000 acres, which are located entirely within both the western portion of San Joaquin County and the “Sacramento-San Joaquin Delta.” While the lands within the agency are primarily devoted to agriculture, said lands are also devoted to numerous other uses including recreational, wildlife habitat, open space, residential, commercial, and institutional uses. SDWA’s general purposes are: (1) to protect the water supply of the lands within the agency against intrusion of ocean salinity; and (2) to assure the lands within the agency a dependable supply of water of suitable quality sufficient to meet present and future needs. (Wat. Code, Appendix, § 116-4.1.) SDWA may take actions to protect the vested water rights of landowners, districts, and water right holders within its boundaries, and may represent the interest of those parties in proceedings

¹ The petition was filed for Permits 16478, 16479, 16481, 16482 and 16483 (Applications 5630, 14443, 14445A, 17512 and 17514A, respectively) of the Department of Water Resources’ State Water Project and License 1986 and Permits 11315, 11316, 11885, 11886, 11887, 11967, 11968, 11969, 11970, 11971, 11972, 11973, 12364, 12721, 12722, 12723, 12725, 12726, 12727, 12860, 15735, 16597, 20245, and 16600 (Applications 23, 234, 1465, 5638, 13370, 13371, 5628, 15374, 15375, 15376, 16767, 16768, 17374, 17376, 5626, 9363, 9364, 9366, 9367, 9368, 15764, 22316, 14858A, 14858B, and 19304, respectively) of the United States Bureau of Reclamation’s Central Valley Project.

before the SWRCB and the courts to carry out the agency's purposes. (Wat. Code Appendix, §§ 116-4.5, subd. (b).) The majority of SDWA's landowners exercise riparian, pre-1914 appropriative and/or post-1914 permit or license rights to divert water from Delta channels in San Joaquin County.



CENTRAL DELTA WATER AGENCY

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April 6, 2022

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Re: Objection to 4-4-2022 SWRCB Order Approving
DWR and USBR Temporary Urgency Change Petition to
Modify Delta Water Quality Objectives

To all:

We acknowledge and appreciate the inclusion of the statement that the order is conditional to allow for response to subsequent public comment which is due by 12 noon on April 6, 2022.

Our concern and objection continues as to what we view as an abuse of emergency authority, denial of due process and lack of respect by the administration for the need of the State Water Resources Control Board to act independently. The involvement of the SWRCB in formulating such abuse is undisclosed.

Droughts vary but are not unforeseeable. There is a clear pattern and practice of the SWP and CVP being operated without the objective of meeting water quality objectives and other senior requirements (including permit conditions) if subsequent years are part of a reoccurrence of a drought. The SWRCB has facilitated this practice by approving temporary change after temporary change. This has resulted in the export of water from the Delta watershed which could have been used to meet D-1641 and other requirements. The planning for the Projects anticipated the reoccurrence of droughts and focused on the 1928/29 through 1934 six or seven year drought and planned for an additional 5 million acre feet of surplus water to be annually delivered to the Delta

from water projects in the North Coast by the year 2000. Such projects were not constructed and no replacement has been provided.

The current TUC looks like just another politically driven reduction of water quality objectives in the series of reoccurring temporary urgency changes resulting in degradation of water quality while allowing the continuing export of water to areas outside the Delta watershed.

D-1641 was the result of many days of public hearings where evidence was presented, cross-examination was allowed and the decision was made after briefing by the interested parties. Although the organizational conflicts of interest existed along with evidence of possible SWRCB staff involvement in negotiation with export interests as to the outcome of the hearings and there was no guarantee that politics didn't play a part, at least the SWRCB members were exposed to much of the evidence and argument in what was a very complex matter involving thousands of pages written and oral record.

The current circumstances are even more complex than they were then. Political intervention is more apparent. The intervention is more intense and more greatly reflected in Governor executive orders directly affecting decisions. There is greater involvement of SWRCB staff in nonpublic collaboration with DWR, USBR, fishery agencies and Project contractors. Adding to the conflicts is the SWRCB program to curtail senior water rights which includes the assistance from DWR personnel.

Changes in maintaining water quality objectives greatly affects the environment, including fish and wildlife, health and safety, recreation and the economy of the watersheds from which the water is diverted. The CVP and SWP have had huge impacts on the areas of origin many of which are detrimental and are their responsibility to mitigate. There are water right priorities which must be honored and statutory obligations imposed on the Projects. An open process with thorough examination of the evidence and compliance with law is critical to due process. The public interest is not served by predetermination of outcomes, urgency change after urgency change, workshops rather than hearings with only 3 to five minute presentations, no testimony under oath and no cross examination of witnesses.

THE OVERRIDING QUESTION THAT IS CRITICAL IS WHETHER THE CHANGES IN WATER RIGHT PERMITS, APPROVAL OF TRANSFERS OF WATER, PROJECT DIVERSIONS TO STORAGE, AND PROJECT

DIVERSIONS TO PROJECT CONTRACTORS BOTH WITHIN THE WATERSHED AND FOR EXPORT ADVERSELY IMPACT THE ABILITY OF THE PROJECTS TO MEET THEIR OBLIGATIONS TO MEET THE D-1641 WATER QUALITY OBJECTIVES INCLUDING SALINITY CONTROL(without change) AND OTHER SENIOR OBLIGATIONS WITHIN THE DELTA INCLUDING THOSE FOR FISH AND WILDLIFE, IF THE CURRENT AND SUBSEQUENT YEARS ARE DRY

No export of water from the Delta watershed should be allowed if D-1641 objectives (without change) will not be met in the current and near future water years. Planning based on exceedance levels relating to the reoccurrence of past hydrology does not test the ability of the Projects to meet objectives if the current and near future water years are actually dry. At the very least a repeat the hydrology of the 1928/29 through 1934 drought should be the test. With climate change it appears likely that a more constrained hydrology will occur and such should be the basis of the analysis. Honest assessment and disclosure of the SWP and CVP limited ability to deliver firm water to contractors that is truly surplus to meeting needs in the Delta watershed would best serve the public interest. Transferring the water shortage to the Delta watershed is both contrary to law and unsustainable.

1. The TUC allows exports up to 1500 cfs if at the time D-1641 (without changes) is being met. Compliance for the water year is the requirement not the instantaneous condition.

Change (3) should be revised to provide: **“No exports from the Delta are allowed if it is not assured that D-1641(without changes) will be met in the current water year and in near future water years.”**

2. Exports have been ongoing even though there has been no assurance or showing that there is a plan in place to meet D-1641 (without changes) in the current water year and in near future water years.

A Change (5) should be added to provide: **“The water exported from the Delta during such periods when there is no assurance that D-1641(without changes) will be met in the current water year and in near term future years which is stored in San Luis Reservoir, water banking facilities or other similar facilities shall not be diverted until there is such assurance.”**

Water stored south of the Delta may, if necessary, be needed for release or facilitation of release into the San Joaquin River and thence into the Delta to maintain salinity control in compliance with D-1641 (without changes).

3. Health and safety and habitat needs in areas receiving export water from the Delta should be met with local water. There are State and Federal programs available to address such needs. Water reclamation, desalination, conservation, land fallowing, facilitation of interties and other local measures are available. Water used for golf courses, artificial lakes, the growing of cannabis whether in hot houses or warehouses and even local general agricultural use can be redirected to health and safety and habitat uses. Forcing such measures onto those within the watersheds of origin rather than those in the area of need is simply a shift of burden from the benefitted area to the watersheds of origin.

In the May 10, 2021 Proclamation of Emergency the Governor Ordered in paragraph 10:

“To proactively prevent situations where a community runs out of drinking water, the Water Board, the Department of Water Resources, the Office of Emergency Services, and the Office of Planning and Research shall assist local agencies in identifying acute drinking water shortages in domestic water supplies, and shall work with local agencies in implementing solutions to those water shortages.”

Water exported from the Delta is a general supply that goes into canals, reservoirs and pipelines with no specific isolated delivery to the particular health and safety or environmental need. The need to be addressed can be more appropriately and legally addressed with local supplies.

The Health and Safety and environmental need for exports from the Delta when there is no assurance D-1641 (without relaxation) will be met in the current year and near future years is simply a way to provide greater exports from the Delta while shifting the burden onto those in the Delta watershed whose needs have priority over exports.

4. A Change 6 should be added to provide: **“No water shall be diverted from the Delta for health and safety, fire, habitat, cannabis or other similar purpose unless it is first determined that such water cannot be supplied from**

local sources through conservation, reclamation, regulation, purchase, transfer, groundwater substitution, fallowing or other means.”

Due to the lack of available CVP water from the Delta the USBR has pursuant to the provisions of the Exchange Settlement directed that the Exchange Contractors receive the Settlement Contract water from Friant. There is however a plan to circumvent such directive by exchanging the Friant water for non-CVP water stored in San Luis Reservoir which appears to have been diverted from the Delta without compliance with D-1641 (without changes). Such San Luis stored water should not be diverted unless there is assurance that D-1641 (without changes) will be met in the current water year and near future years. Attached hereto and incorporated herein by reference is the CDWA letter dated March 29, 2022 in opposition to such exchange.

5. A Change 7 should be added to provide: **“No water diverted from the Delta whether previously diverted and stored or newly diverted shall be used to supply the CVP Exchange Contract unless there is assurance that D-1641 (without changes) will be met in the current water year and near term future water years”**

6. San Joaquin River Fish Restoration water was intended to be allowed to flow down into the Delta to be recirculated back to the areas providing the same through the SWP and CVP diversion facilities. Such flow would help maintain salinity control and address the alleged physical needs to operate the export pumps.

A Change 8 should be added to provide: **“All San Joaquin River Fish Restoration water shall be allowed to flow down into the Delta and recirculated back to the south through the CVP and SWP Delta diversion facilities near Tracy.”**

No change in water rights, export of water or transfer of water from the Delta Watershed to serve uses outside the watershed should be allowed unless D-1641 requirements (Without change) and other senior requirements are and will be met. The water exported or otherwise removed from the Delta Watershed should be limited to that which is truly surplus to the present and future needs within the watershed including the needs of fish and wildlife, the needs of properly functioning habitat and the needs to secure groundwater sustainability. Approval of any such changes, transfers or exports should require adequate evaluation,

monitoring and accounting including verification of the quantities of water and timing of related actions.

Attached hereto and incorporated herein by reference are copies of the following:

1. 1-7-2022 Objection to 12-15-2021 SWRCB Draft Order etc.
2. 8-16-2021 Objection to SWRCB Curtailment Regulation
3. 3-15-2022 CDWA Term 91 Comments
4. 3-29-2022 Objection to Exchange of Friant water for San Luis water to serve Exchange Contract
5. 4-6-2022 SDWA Comments to 4-4-2022 SDWA TUC Order.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Dante John Nomellini Sr.", written in a cursive style.

Dante John Nomellini Sr

CC:

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Michael.George@waterboards.ca.gov

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