



January 6, 2005

**Amicus Curiae Letter in Support of Review (Rule 14(b)) Filed By
Consulting Engineers and Land Surveyors of California**

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

Re: *Central Delta Water Agency, et al. v. State Water Resources Control Board*,
Supreme Court Case, 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 Consulting Engineers and Land Surveyors of California who are 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. CELSOC is a 50-year-old, nonprofit association of private consulting engineering and land surveying firms who are dedicated to enhancing the environment and quality of life for all Californians. CELSOC members provide services for all phases of planning, designing and constructing of public and private infrastructure projects.

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 that 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 great 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 provisions 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.

The Supreme Court should grant the SWRCB's petition for review in this case. The case has created major issues of state-wide 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.

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

Yours very truly,



KEITH N. DUNN

Consulting Engineers and Land Surveyors of California

cc: See attached service list