



## CENTRAL DELTA WATER AGENCY

235 East Weber Avenue • Stockton, CA 95202  
P.O. Box 1461 • Stockton, CA 95201  
Phone (209) 465-5883 • Fax (209) 465-3956

### DIRECTORS

*George Biagi, Jr.  
Rudy Mussi  
Edward Zuckerman*

### COUNSEL

*Dante J. Nomellini, Sr.  
Dante J. Nomellini, Jr.  
Brett G. Baker*

March 29, 2022

Email: Bay-Delta@waterboards.ca.gov  
State Water Resources Control Board  
And  
Email: remerson@usbr.gov

Re: Opposition to 2022 Exchange Agreement for Water in San Luis Reservoir and Millerton Lake to Facilitate Water supply for the Exchange Contractors and Friant Division Contractors-CGB-EA-2022-020 and CGB-FONSI-2022-020 (March 2020)

To all:

The USBR and others are seeking to circumvent the USBR decision to supply Exchange Contractors with water from Friant by exchanging the Friant water for water stored in San Luis. The water is stated to be 100,000 acre feet stored in the name of two state water contractors.

As clearly stated in the above documents:

**“Due to the extreme drought conditions and severe restrictions on export of water from the Sacramento-San Joaquin River Delta (Delta) at the Jones Pumping Plant, Central Valley Project (CVP) water supplies in San Luis Reservoir are critically low and the Bureau of Reclamation (Reclamation) has insufficient Delta and San Luis Reservoir water supplies to meet the demands of the San Joaquin River Exchange Contractors (Exchange Contractors).”**

It appears that the SWP and CVP have concluded that they cannot meet the D-1641 water quality standards (Without change) or have not set forth a plan to meet D-1641 standards in the current or subsequent years if conditions remain dry.

Given the above recognition of the problem for meeting salinity control and cold water fish requirements in the Delta watershed there is clearly a need to reduce exports from the Delta and the shift of the Exchange Contract burden from the Delta back to Friant where the burden originated is appropriate. The circumvention should not be allowed.

The proposed exchange agreement is a work around arrangement that will still result in the water being supplied by way of exports from the Delta. The justification offered is that the proposed exchange will avoid losses of 40% in the section of the San Joaquin River used for delivery of Friant water to the Exchange Contractors.

The CDWA concern is that the water in San Luis Reservoir is water prematurely exported from the Delta without regard to meeting senior water needs within the Delta and in particular salinity control during the current year and subsequent dry or critical years. Such water and any additions should not be removed until it is clear that the senior water needs including the D-1641 salinity standards, without relaxation by Temporary Urgency Change or otherwise, will be met in the current and following years. There is likely a need to directly or indirectly recapture water from San Luis Reservoir and other water sources in the San Joaquin Valley to meet water quality and other senior watershed requirements. Delivery of water stored in San Luis can be used to reduce the amount that is allowed to be diverted from the Delta while there is no plan to meet senior requirements in the Delta Watershed. Export pumping from the Delta increases the draw of saline water from the west thereby making salinity control more difficult.

Since the water from the Delta stored in San Luis is saltier than the water in Friant there will be a greater amount of salt percolating into the soil, groundwater and San Joaquin River from Exchange Contract deliveries which ultimately reaches the Delta. Whether water deliveries to SWP and CVP will not exceed historic average deliveries is not the relevant issue. The issue is whether or not the water in San Luis is needed to help achieve salinity control and meet other senior obligations including mitigation of the CVP circumvention of the San Luis Unit prerequisite of a valley drain with an outlet to the Ocean. If the San Luis water is needed but not used to help provide salinity control then the needed water will likely come from the Sacramento River thereby reducing the flow available for other purposes.

The San Joaquin River Exchange Contract is a water right settlement contract based on the Miller Lux successors retaining the right to exercise their

riparian and pre-1914 rights to water from the San Joaquin and Kings Rivers. To the extent that the underlying rights are riparian, or otherwise deemed appurtenant to the land, the settlement water should be used on such land and not transferable. To the extent that the underlying Miller Lux rights were based on Pre-1914 rights there is still a question as to whether the continuing use requirement has been met. It is unclear as to whether the Exchange Contract requires that the water replacing the water from the Delta is CVP project water or water from the Exchange Contractor right to exercise the preexisting rights to the San Joaquin River and Kings River.

The CVP obligation to provide salinity control extends to the Friant facilities and excluding the High Sierra Snow Melt hydrology from contribution for providing salinity control to the DELTA and mitigation of the CVP circumvention of the requirement to provide a Valley Drain with an outlet to the Ocean is unjustified.

There has been a pattern and practice extending over many years of the DWR and USBR operating the SWP and CVP without planning to meet D-1641 and other senior obligations in a series of dry years. This has resulted in the export of water that could and should have been used to meet the senior requirements. The SWP and CVP have failed to develop the dams and tunnels including those planned for the North Coast watersheds, necessary to provide the desired amount of surplus water to meet the needs within the watersheds of origin and the demands of their contractors. The DWR, USBR and SWRCB actions including transfers and changes have resulted in increased permanent residential and agricultural demand on arid and desert land for which there is no firm supply. The problem is growing and appears to be further aggravated with climate change. The solution is not in shifting the shortage onto the Delta Watershed as the hydrology will not support even the present demand.

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.

Respectfully submitted,



Dante John Nomellini Sr

CC:

Erik.Ekdahl@waterboards.ca.gov

Scott.Frazier@waterboards.ca.gov

Michael.George@waterboards.ca.gov

[Lindsay.Kammeier@waterboards.ca.gov](mailto:Lindsay.Kammeier@waterboards.ca.gov)

[James.Mizell@water.ca.gov](mailto:James.Mizell@water.ca.gov)

Amy.Aufdemberge@sol.doi.gov