



To: All Members of the State Water Resources Control Board (Board)

14 April 2010

From: Patrick Porgans & Associates, Inc.

Re: Submittal of Comments Pertinent to the Non-Binding, Toothless, Public-Relations Program to Develop a New Flow Criteria for the Sacramento-San Joaquin Delta (Delta) Purportedly to “Protect” Public Trust Resources That the Board and Members of the CALFED Team Are Responsible for Destroying

Patrick Porgans & Associates (P&A), Inc., submits the following comments regarding the “informational proceedings” pertinent “***To Develop Flow Criteria for the Delta Ecosystem Necessary to Protect Public Trust Resources***”. The flow criteria must be developed within nine months after the enactment of SB 7X 1, and submitted to the Delta Stewardship Council within 30 days of completion. **Note:** The Board has the legal authority to set flow standards for public trust resources; not the politically appointed Delta Stewardship Council. The records attest to the fact that the Board has failed to exercise its authority to do so, in the Delta and elsewhere.

P&A submitted its Notice of Intent to Appear, in accordance with the Board’s requirements. Although P&A did participate in the “Pre-Proceeding Conference” on 7 January 2010, and stated its position accordingly, it was unable to identify and/or retain a competent “scientist” to appear and provide the board with scientific “information” to develop a “new” flow criteria for the Sacramento-San Joaquin Delta (Delta) ecosystem necessary to protect public trust resources pursuant to the board’s public trust obligations in compliance with Senate Bill No. 1 of the 2009-2010 Seventh Extraordinary Session (Stats. 2009 (7th Ex. Sess.) ch. 5, § 39(SB 1). Albeit, P&A, Board staff (involved in the Board aborted Water Right Decision 1630) and others, such as California Fishery and Water Unlimited, over the past several decades provided the Board with “scientific” data, prefaced entirely upon government records, that indicated the probable causes of the Delta demise and the required flows necessary to protect all beneficial users/uses in the Delta; however, the Board opted to ignored this invaluable public input.

To our knowledge, P&A was the only entity that plotted government Delta exports and anadromous fishery declines in the Bay-Delta Estuary, from 1986 through 2006, despite the fact that it is undoubtedly one of the most extensively studied-to-death ecosystems on Earth. According to Richard Ross-Collins, one of the “collaborators” present at the 7 January Public Information Proceeding, he told the Board that the Delta is the most studied system in the Universe. One would have to question the credibility of Mr. Ross-Collins’ statement, unless of course, he has some “connection” with exterritorial collaborators.

At the onset of the 7 January 2010 “public informational proceeding” P&A obtained clarification from the board about the language contained in the board’s “Notice of Public Informational Proceeding and Pre-Proceeding Conference “, which stated, on page two (2): **“The flow criteria developed through this informational proceeding do not have any regulatory or adjudicated effect.”** Having established that simple fact, it revealed what the proceedings were really all about.

As stated, in P&A’s 7 January 2010 comments to the board, the “informational proceedings” are more about a public-relations promotion to aid and abet the passages of the \$11 billion “Water Package” bond act, slated for the November election than about the board doing anything meaningful to fulfill its public trust mandates. After all, the record will attest to the fact that the Board’s conduct, performance and “actions” and/or failure to act to protect the trust resources, in the Delta, are replete with inexcusable and contemptuous acts of willful dereliction of duties.

As you may recall, P&A expressed its disdain to the Board members regarding its repetitive failures to fulfill its public trust resources to protect all beneficial users/uses in the Delta. In addition, P&A pointed out that the “proceedings” were not only disingenuous but constituted another insult to the people of the State of California by an unaccountable Board, along with its sister agencies, the Department of Water Resources and Department of Fish & Game, The Resources Agency, CalEPA, and the other consortium of cohorts included in the CALFED charade; all of whom are unquestionably “responsible” for the existing deplorable condition and demise of the Delta ecosystem.

Just as the board did in the so-called “Bay-Delta Water Right Hearings “, spanning more than a decade, it started off with disinformation and over-inflated base flows. Here again, it prefaced the non-binding informational flow criteria on “existing” Delta conditions; i.e., SWP and CVP exports. As stated, during my comments on 7 January, the Board failed to include a flow narrative for salmonid species in its “Water Right Decision 1641”; which turned out to be an orchestrated heavily taxpayer subsidized General Obligation (GO) bond fiasco - that paid to keep up the let’s save the Delta charade.

Members of the Board are beyond isolated from conducting themselves as “public” servants, with perhaps one or “maybe” two exceptions. It would be apparent to a person without sight, that the majority of the Board members are self-serving tactless political puppeteers. As for the “team of scientists” and their unwavering sense of uncertainties as to the severity of the impacts attributed to SWP and CVP exports on anadromous species, it is equally apparent that the majority of them will continue to waiver, providing, of course, there is enough GO bond funds to conduct an endless plethora of meaningless and inconclusive Delta studies to sanction water exports.

In light of the deplorable conditions of the Bay-Delta Estuary, and the orchestrated and unrelenting failures by the Board to conduct itself in a manner consistent with its Public Trust and legal mandates, it would be disingenuous for P&A not to express its disdain to the Board and CALFED for their collective longstanding shortcomings. Furthermore, based upon its 40 years of experience in California’s water world, P&A places no faith in the Delta Stewardship Council or any other politically appointees, been there and seen that many times before.

The Board’s action and behavior as “public servants” are, to say the least, contemptible and reprehensible. Unfortunately, although P&A made a several attempt to retain the services of a “qualified” non-compromising law firm to sue each of the Board members, and the other “responsible” culprits, we have, to date, been unsuccessful in that endeavor. Finding a good attorney may be an oxymoron, and is paramount to finding a rare and endangered species that has been brought to the brink of extinction because of government “management” and “political policy” apathy. Nevertheless, P&A will continue to find such a species, as we are firm believers that **“All things are possible with God.”** Mathew 19:26.

In the past, the Board has failed, on occasions, to post P&A's comments, for one excuse or another, we expect the Board to post our comments, as we have complied with all of the Board imposed requirements, an act the Board should consider undertaking in conformance with its Public Trust and regulatory mandates. **Lastly, please confirm receipt of P&A's comments.**

5 October 2009

Charles Hoppin, Chair
California State Water Resources Control Board

1001 "I" Street

Sacramento, CA 95812

Re: Electronic Submittal of Formal Protest Notification by Patrick Porgans & Associates, Inc., to the U.S. Bureau of Reclamation Petition for Extension of Time for the Federal Central Valley Project Water Right Permits and/or Applications to the Year 2030

Attn: Ms. Katherine Mrowka, Engineer, Division of Water Rights kmrowka@waterboards.ca.gov

Please let this electronic submittal serve as a formal protest notification of Porgans & Associates (P&A's), Inc., of the U.S. Bureau of Reclamation's (Bureau's) petition for extension of time to the year 2030 to put water to full beneficial use for the federal Central Valley Project Water (CVP). P&A protest includes all of the permits and/or applications referenced in the State Water Resources Control Board's notice.¹

Basis for Protest: The basis for P&A's protest is prefaced and supported by the manner in which the Bureau administers the water permitted by the SWRCB, which it has and continues to cause injury to public trust values, the "taking and harming of listed endangered species, and contributing to the significant degradation of both the surface and groundwater resources of the State; all of which have yet to be abated by the SWRCB. Furthermore, **to apprise the SWRCB that it is not above the law**, that it also has a duty and responsibility to ensure that its decision-making actions are consistent with the intent of its statutory, regulatory, public trust mandates, and compliant with the provisions of the federal Endangered Species Act. In May 2009, P&A's attorney served a Sixty Day Notice of Intent to Sue the SWRCB et al, as a third party, for the "take" of listed species, resulting from "permitted" water right diversions by the Bureau at its Delta Tracy Pumping Plant facilities. The SDN is currently under review by our attorney for a follow up action. The SDN states, in part:

This Sixty-Day Notice (SDN) of our intent to sue, is prefaced on the fact that depriving listed, threatened and/or endangered species water constitutes a violation of the provisions and intent of the federal Endangered Species Act (ESA), §9(a)(1) "Take" Listed Species (16 USC §1532(19)) and "Harass" (50 CFR Section17.3) et seq. California Water Code §100, 1200, 1201,1825 et seq., California Fish and Game Code §5937. ²

¹ State Water Resources Control Board, Notice of Petition for Extension of Time for the Central Valley Project of U.S. Bureau of Reclamation, 3 September 2009, pp. 1 through 15.

² Law Office of Joel C. Baiocchi, on behalf of Patrick Porgans & Associate, Inc., serving notice to Joseph P. Russoniello, United States Department of Justice, Edmund G. Brown Jr., Attorney General, California Department of Justice, Gary Locke, Secretary, U.S. Department of Commerce, and Linda S. Adams, Secretary, California Environmental Protection Agency, RE: *Sixty-Day Notice of Intent to Sue for: Violations of Federal Endangered Species Act (16 U.S.C. § 1531): "Take" of a Listed Species, Steelhead Trout (Onchorynchus mykiss), Coho Salmon*

The record indicates that the SWRCB has already over-appropriated the waters of the State by 500 percent, and in the process has failed to exercise its expressed authority to ensure that water required to sustain other public trust resources, such as fish, are provided for in the terms and conditions of permits issued by the SWRCB. The records attest to the fact that the federal government, including the Bureau, hold the majority of the water right permits issued by the SWRCB.

Solution-Relief Requested: Before the SWRCB considers granting the Bureau an extension of time, P&A respectfully request that the SWRCB exercise, to the fullest extent provided by law, including, but not limited to *California Water Code §§100, 1200, 1201,1243 et seq., California Fish and Game Code §5937*, and other applicable laws, to ensure that each and every permit listed in the referenced notice, are revisited and that water required to sustain public trust resources are provided for accordingly; i.e., contains Permit Terms 60, 63 and/or 69, required for fish protection, and that the Bureau be required to be fully compliant with the terms and conditions of its respective water right permits; *California Water Code §1825 et seq.* Any action by the SWRCB to entertain the Bureau's petition for an extension of time for the CVP water right permits, in the absence of P&A's request, would be viewed as a willful act by the SWRCB to knowingly and willfully partake in, and abet the "take" of listed species, resulting from Bureau Delta water exports and/or circumvention of its implied statutory, regulatory and public trust mandates.

As stated in the notice, the Bureau has filed petitions for extension of time for the permits used to operate the Central Valley Project. The Bureau' CVP diversion facilities are located in Contra Costa, Sacramento, El Dorado, Trinity, Shasta, Glenn, Tehama, Alameda, Calaveras, and Tuolumne Counties. Water is diverted from the Trinity River and tributaries to the Sacramento-San Joaquin Bay Delta.

P&A's Standing, Interest and Actions to Protect the Waters of the State: The SWRCB's records will attest to the fact that P&A has had a longstanding interest in the U.S. Bureau of Reclamation's water right permits, diversions, places of use, and compliance and/or failures to comply with the terms and conditions of its respective permits and/or applications.

- ① Over the course of the past several decades, P&A has actively participated as a party in a series of "water right" proceedings; more recently, in the Bureau's failure to comply with the terms and conditions of its Sacramento-San Joaquin Delta diversion. The SWRCB issued a "Cease and Desist Order" (*Order WR 2006-0006*), requiring compliance; however, according to the records, both the Bureau and the California Department of Water Resources (DWR) have continued to violate the terms and conditions of their respective water right permits.
- ② P&A participated in the SWRCB's Bay-Delta Water Right hearings, that went on for more than a decade, and during the "process" P&A opposed the SWRCB's decision not to provide numerical flow values for salmonid species in the Delta, which would have attached specific terms and conditions to all water right permits, diverting water from the Delta, and protested the manner in which the SWRCB abdicated its responsibilities in the process.

(Oncorhynchus kisutch), and Chinook Salmon (O. tshawytscha); Failure to Comply with California Water Code Section 1825 et seq., May 27, 2009, postmarked 4 June 2009.

- ⑤ P&A participated in and opposed the SWRCB and the Central Valley Regional Water Quality Control Board's approval of the Grasslands Bypass Project and the subsequent decade of extensions, which sanctioned the ongoing degradation of the waters of the State, in a manner inconsistent with the SWRCB's Anti-Degradation Policy.³ According to data, published by the U.S. Environmental Protection Agency, the Grassland Bypass Project, which is provided water by the Bureau's CVP-San Luis Unit, along with other CVP contractors in the San Joaquin Valley, are located in the single-largest contiguous "More Serious Water Quality Problems – High Vulnerability" area in the United States, caused by water deliveries from the CVP!⁴

- ④ P&A worked relentlessly, to have the SWRCB hold hearings on the Bureau's and DWR's illegal diversions during the years of 1991 and 1992, at which time those agencies collectively violated the terms and conditions of their respective water right permits on more than 218 occasions. The records, based on the Bureau and DWR's admissions, prove that they illegally exported or impounded an estimated 500,000 acre-feet of water, worth about \$29 million. Water that was intended for public trust resource protection and in-Delta water users. (Please refer to the SWRCB "hearing" record, USBR/DWR Exhibits 10 through 20.)⁵ Coincidentally, those violations occurred at the same time the SWRCB was holding the Bay-Delta Water Right hearings; under the pretext that it was going to provide even more assurance, via the water rights process, to ensure additional protection for the public trust resources and in-Delta water users! The existing conditions of the Bay-Delta Estuary are a testament to the SWRCB's failure.

- ⑤ During the past three years, P&A has completed its study identifying those factors and forces responsible for the salmon collapse in California's Great Central Valley and along the Pacific Coast, and is in the process of completing its report, entitled: ***Salmon Collapse – Natural Phenomenon and/or a Government-Induced Disaster?*** The data, which is based upon government documents, indicate that the SWRCB and other state and federal agencies are the primary cause for the salmon collapse.

In closing, we appreciate the SWRCB's review and consideration of our comments, and trust that the SWRCB will rise to the occasion and conduct itself in a manner consistent with its regulatory, statutory and public trust mandates. To that end, P&A is prepared to assist, and, if warranted, compel the SWRCB to conduct itself in a manner that fully considers the public trust resources and provides for full disclosure of the impacts attributable to the Bureau's request; as is provided for by the ***California Environmental Quality Act*** and the ***National Environmental Policy Act***. P&A request that you list and record us as a protestant, party of interest, in the Bureau's petition for an extension of time. P&A also request copies of all filings by the USBR. If you have any questions regarding the content of this "protest" or require any additional information, please advise P&A accordingly. Thank you.

Sincerely,

Patrick Porgans, Solutionist

cc: To "Concerned" Parties

fnl:lapone.swrcbusbrprotestextensionofpermits

³ State Water Resources Control Board's ***Resolution No. 68-16, Statement of Policy with Respect to Maintain High Quality of Waters in California***, 28 October 1968, p. 1.

⁴ U.S. Environmental Protection Agency, National Watershed Characterizations, Index of Watersheds, 30 June 1997.

⁵ State Water Resources Control Board's ***Public Hearing, Subject: Consideration of Compliance with Water Right Requirements for the Sacramento-San Joaquin Delta and Suisun Marsh***, DWR/USBR Exhibits 10, 19 and 20, November 30, 1992.

