From: Sent: To:	Patrick Porgans <pp@planetarysolutionaries.org> Wednesday, June 08, 2016 1:57 PM abl@bkslawfirm.com; aferguson@somachlaw.com; ahitchings@somachlaw.com; amy.aufdemberge@sol.doi.gov; apeltzer@prlawcorp.com; awearn@nrdc.org; bdalymsn@citlink.net; bjohnson@tu.org; blancapaloma@msn.com; bobker@bay.org; bradpappa@gmail.com; brettgbaker@gmail.com; bwright@friendsoftheriver.org; Wilcox, Carl@Wildlife; caroleekrieger7@gmail.com; colin@ejcw.org; connere@gmail.com; CWFhearing; daladjem@downeybrand.com; daniel@kaydix.com; dcooper@minasianlaw.com; dcoty@bpmnj.com; ddj@cah2oresearch.com; dean@hprlaw.net; deltaactioncommittee@gmail.com; deltakeep@me.com; dkelly@somachlaw.com; dobegi@nrdc.org; dohanlon@kmtg.com; dorth@davidorthconsulting.com; empappa@gmail.com; evielma@cafecoop.org; fetherid@ebmud.com; info@californiadelta.org; Mizell, James@DWR; jailin@awattorneys.com; jconway@rd800.org; jfox@awattorneys.com; jbuckman@friantwater.org; jennifer@spalettalaw.com; Herrick, John @aol.com; Minton, Japas: john Juobberko@ttocktopera.gov; Pubin_Jon@sldmwa.org</pp@planetarysolutionaries.org>
Subject:	Jonas; john.luebberke@stocktonca.gov; Rubin, Jon@sldmwa.org Comments and concerns Regarding the Following Three (3) Issues Pertaining to the CA WaterFix and the SLDMWA Motion for Disqualification of Hearing Officers
Attachments:	Part_1.html; SWBCAWaterFixMay2016FIN.pdf

NOTE: To all CWF participants, please take note that our email address <u>porgansinc@sbcglobal.net</u> was hacked on 3 June 2016 and has been replaced with <u>pp@planetarysolutionaries.org</u>. My apologies to all those that were the recipients of the pathetic plead for money to save a dying family member in the Balkans; appears that the hacker is the one that may require medical and legal attention. The incident was reported; tracking the hackers IP.

Friday 3 June 2016 (Original sent 16 May problems with mailing list revisions) Comments submitted via Email.

To: Tam Dudoc, Co-Hearing Officer and Felicia Marcus Co-Hearing Officer, State Water Board, CAWaterFix and AllParticipants Listed on the Most Recent SWB Generated Mailing List (Notice:P/A's server limits cc's to a maximum of 100; necessitating that this email be sent in two (2) sections.) Sent tothe attention of the <a href="https://www.cwstate.cu.gov">CWFhearing@waterboards.ca.gov</a> and all participants listed on the latest mailing list.

From: Patrick Porgans, Planetary Solutionist, Regulatory-Specialist, De Facto Public Trustee and Forensic Accountant

## Comments and concerns Regarding the Following Three (3) Issues Pertaining to the CA WaterFix:

(1) The so-called California WaterFix proceedings scheduled to be heard before the State Water Board to consider the joint

Petition filed by the California Department of Water Resources (DWR) and the U.S. Bureau of Reclamation (Reclamation) to add three new points of diversion and/or points of re-diversion of water to specified water

right permits for the State Water Project and the Central Valley Project associated with the "Fix". (1)

http://www.waterboards.ca.gov/waterrights/water\_issues/programs/bay\_delta/california\_waterfix/docs/cwfnotic e\_pet\_hrg.pdf

(2) Comments regarding the San Luis-Mendota Water Authority's (SLDMWA) Motion for Disqualification of Hearing Officers Felicia Marcus and Tam Dudoc. SLDMWA contends that we must recused request for the two (2) co-chairs of the Fix be replaced, based on an alleged pre-decisional inferences they made during the Pre-California WaterFix workshop, held on 28 January 2016.

(3) Consummation of "Settlement Agreements" among Petitioners and Protestants outside the public's reach, and before the SWB's formal water right proceedings commence, sends a very distressing signal, which undermines the cohesiveness and effectiveness of developing a comprehensive solution to this 55-year in the making government-induced Delta water crisis.

Introduction: P/A's position and concerns about the issues at hand are weighted and supported by facts contained in the SWB's files and records. The facts depict the deplorable state of the Bay-Delta Estuary, which is indicative of the Board's repetitive failures and shortcomings contained in previous water right decisions', i.e., SWB Water Right Decisions (D-1485. Aborted D-1630 and D-1641), each proved to be inadequate, fragmented, and, apparently extremely detrimental to all those dependent on the Bay-Delta Estuary.

(1) State Water Board Notice of Petition Requesting Changes in Water Rights of the Department of Water Resources and U.S. Bureau of Reclamation for The California WaterFix Project and Notice of Public Hearing and Pre-Hearing Conference workshop scheduled for Thursday, January 28, 2016, at 9:00 a.m. and continue, if necessary, on Friday, January 29, 2016 at Joe Serna Jr.-CalEPA Building, Byron Sher Auditorium 1001 I Street, Second Floor, Sacramento, CA, Part 1.





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Tuesday 7 June 2016 (Original sent 16 May problems with mailing list revisions) Comments submitted via Email.

(Notice: P/A's server limits cc's to a maximum of 100; necessitating that this email be sent in two (2) sections.)

To: Tam Dudoc, Co-Hearing Officer and Felicia Marcus Co-Hearing Officer, State Water Board, CA WaterFix and All Participants Listed on the Most Recent SWB Generated Mailing List

From: Patrick Porgans, Planetary Solutionist, Regulatory-Specialist, De Facto Public Trustee and Forensic Accountant

Sent to the attention of the <u>CWFhearing@waterboards.ca.gov</u> and all participants listed on the latest mailing list.

## Re: Hearing Regarding Petition Filed by the Department of Water Resources and U.S. Bureau of Reclamation Requesting Changes in Water Rights for the California WaterFix Project

(1) The so-called California WaterFix proceedings scheduled to be heard before the State Water Board to consider the joint Petition filed by the California Department of Water Resources (DWR) and the U.S. Bureau of Reclamation (Reclamation) to add three new points of diversion and/or points of re-diversion of water to specified water right permits for the State Water Project and the Central Valley Project associated with the "Fix".<sup>1</sup>

5 <u>http://www.waterboards.ca.gov/waterrights/water\_issues/programs/bay\_delta/california\_waterfix/docs/</u> 6 <u>cwfnotice\_pet\_hrg.pdf</u>

(2) Comments regarding the San Luis-Mendota Water Authority's (SLDMWA) Motion for Disqualification of Hearing Officers Felicia Marcus and Tam Dudoc. SLDMWA contends that we must recused request for the two (2) co-chairs of the Fix be replaced, based on an alleged pre-decisional inferences they made during the Pre-California WaterFix workshop, held on 28 January 2016.

(3) Consummation of "Settlement Agreements" among Petitioners and Protestants outside the public's reach, and before the SWB's formal water right proceedings commence, sends a very distressing signal, which undermines the cohesiveness and effectiveness of developing a comprehensive solution to this 55-year in the making government-induced Delta water crisis.

Introduction: P/A's position and concerns about the issues at hand are weighted and supported by facts contained in the SWB's files and records. The facts depict the deplorable state of the Bay-Delta Estuary, which is indicative of the Board's repetitive failures and shortcomings contained in previous water right decisions', i.e., SWB Water Right Decisions (D-1485. Aborted D-1630 and D-1641), each proved to be inadequate, fragmented, and, apparently extremely detrimental to all those dependent on the Bay-Delta Estuary.

<sup>&</sup>lt;sup>1</sup> State Water Board Notice of Petition Requesting Changes in Water Rights of the Department of Water Resources and U.S. Bureau of Reclamation for The California WaterFix Project and Notice of Public Hearing and Pre-Hearing Conference workshop scheduled for Thursday, January 28, 2016, at 9:00 a.m. and continue, if necessary, on Friday, January 29, 2016 at Joe Serna Jr.-CalEPA Building, Byron Sher Auditorium 1001 I Street, Second Floor, Sacramento, CA, Part 1.

Historical Involvement: Public records on file at the SWB's main office attest that P/A remains actively engaged in all matters pertaining to the disposition of any plan(s) proposed by government that pose an additional threat to the short-2 and long-term sustainability of the Bay-Delta Estuary. The SWB's files contain written comments formally submitted by 3 P/A on the Draft and Supplemental environmental impacts reports for the BDCP and the California WaterFix.<sup>2</sup> Also, P/A 4 submitted a Notice of Intent to participate in the SWB's "California WaterFix" proceeding.<sup>3</sup> 6

Purpose of Participating in the California WaterFix is to Exhaust Administrative Remedies:<sup>4</sup> P/A attended and provided comments before the SWB at its 28 January Pre-Conference workshop. At that time, P/A expressed dismay as to the tenor, disorganization, fast-track expedited hearings, in an atmosphere whatever sticks, along with the SWB's manta make-it-work moving-forward policy that caused a number of Protestants to state their objections to the WaterFix and the manner in which the SWB is conducting the Public's business.

12 P/A views any attempt by the Board or hearing participants to fast track the WaterFix proceedings as an obstruction to 13 meaningful public input and an impediment to the public's due process rights. P/A assessment of the proposed WaterFix 14 is typical government overkill. It is our position, prefaced on the public record and an independent Forensic Account of 15 the proposed "Fix" (Delta tunnel project) that the WaterFix, as proposed, is grossly inadequate and lacking critical data 16 to support or justify the need for the action. P/A provided testimony to that effect at the DWR's public comment session 17 on the revised WaterFix, back in July 2015.<sup>5</sup> Board members and participants promoting the Fix were apprised at the 18 SWB Pre-Hearing that there are those of us that have no intentions of standing by and allow the Board or any other 19 entity permit the destruction of the last remaining San Francisco Bay and Sacramento-San Joaquin Delta Estuary be 20 destroyed/ Let's not forget what the Bureau of Reclamation, state water officials and water districts were responsible for 21 22 the destruction of what was once the largest Delta that emptied into the Sea of Cortez. 23

1), Synopsis of Porgans/Associates concerns/comments pertaining to the shortcomings of the CWF: The so-24 25 called California WaterFix proceedings scheduled to be heard before the State Water Board to consider the Joint Petition filed by the California Department of Water Resources (DWR) and the U.S. Bureau of Reclamation (Reclamation) to add 26 three new points of diversion and/or points of re-diversion of water to specified water right permits for the State Water 27 28 Project and the Central Valley Project associated with the "Fix".6

http://www.waterboards.ca.gov/waterrights/water\_issues/programs/bay\_delta/california\_waterfix/docs/cwfnotice\_pet\_hrg.pdf 29 30

31 Misnomer Number One - the Delta is not broken! However, the record attests to the fact that those dependent on the 32 Delta are the recipient of a litany of broken promises espoused by water officials, such as Department of Water 33 Resources (DWR) personnel for more than a half a century. The inherent shortcomings contained in the updated 34 35 WaterFix, as written, poses an unacceptable level of risks and a serious threat to the sustainability of the Bay-Delta Estuary for both humans and other species that depend on the imperil Estuary. 36

Serious concerns regarding the adequacy of the environmental documentation and assessment of the impacts of the 38 proposed action have been raised by the U.S. Environmental Protection Agency, and federal and state fisheries 39 40 agencies. Furthermore, the petitioners have vet to specifically identified the locations of the Delta tunnels or addressed 41 the adverse impacts associated with the WaterFix. Furthermore, recent settlement agreements have once again revised the proposed action by including additional features to WaterFix, and, as in previous outside-the-Board Settlement 42 Agreement (D-1641) among the Petitioners and Protestants undermined the Process, and by doing so negated the push 43 to provide meaningful water quality standards and flows that provide protection for all beneficial uses and users in the 44 45 San Francisco Bay and Sacramento-San Joaquin Delta Estuary.

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- <sup>4</sup> Exhaustion of Administrative Remedies, <u>http://administrativelaw.uslegal.com/judicial-review-of-administrative-remedies-/ p. 1.</u>
- <sup>5</sup> Bay-Delta Conservation Plan/California WaterFix, Recirculated Draft Environmental Impact Statement, and Supplemental Draft

<sup>6</sup> California Department of water Resources, Environmental Impact Report, Public Open House, Reporter's Transcript of Comments by Patrick Porgans, Porgans/Associates providing information that indicates that the California Water Fix is Unnecessary, and presented a Viable Alternative to the Delta Tunnels, Tuesday, 28 July 2015, pp. 48-50.

COMMENTS REGARDING THE STATE WATER BOARD'S CALIFORNIA WATERFIX PROCEEDINGS MAY 2016 PATRICK PORGANS-SOLUTIONIST

<sup>&</sup>lt;sup>3</sup> NOTICE OF INTENT TO APPEAR, Patrick Porgans, Solutionist, Porgans/Associates plans to participate in the State Water Board's water right hearing regarding CALIFORNIA WATERFIX HEARING California Department of Water Resources and U.S. Bureau of Reclamation, The Public Hearing scheduled to commence on Thursday, April 7, 2016, NOI filed 4 April 2016.

Decades of SWB Hearings Placated as the Means to Provide Water Rights and Flow Protection for All Beneficial Uses and Users in the Bay-Delta Estuary. Despite More Than 12 Years of Bay-Delta Water Rights Hearings the SWRCB Failed to Provide Numerical Flow Values for the Protection of Salmonid and Other ESA Listed Species in Its Water Right Decision 1641: During the more than 12 years of "Bay-Delta Water Right Hearings", commencing in 1987 and climaxing in December 1999. The SWRCB's asserts that the proceeding only took about two years to reach a decision to adopt Water Right Decision 1641 (D-1641), that assertion is misleading.<sup>7</sup>

Disclosure and transparency are imperatives, mandated by existing law are not options, they are requirements, which,
in the present sense the Petitioners have yet to accomplished. Details of the petitioners proposed actions are comparable
to a moving target subject to change without notice. It is not the responsibility of the public to bear the burden of proof
as to the nature of the proposed action; that is the Petitioners' and the SWB responsibility.

**The WaterFix in Perspective:** It is important that the SWB, Petitioners, and Protestants not lose perspective, and remember that the California WaterFix is nothing more than a morphed up version of a 55-year in the making Plan to "fix" the Sacramento-San Joaquin Delta, which, contrary to popular rhetoric is not broken.

Ironically, although protection and assurances were mandated to protect the Bay-Delta Estuary and provided Delta Master Levees design to convey water through (across) the Delta were identified, authorized and funded by the voters in November 1960. Unfortunately, those facilities and protections mandated by the voters were never built. The funds earmarked for those protections were spent expended to make up for other inherit financial deficiencies of the knowingly underfinanced and contractually overcommitted SWP.

Misnomer Number Two: This is not a California WaterFix, nor a Delta Fix; pure and simple, it is an ingenious scheme to bailout the underfinanced and contractually overcommitted State Water Project and should be identified as the SWP/Fix. Contrary to what water officials espouse, the Fix will increase the reliability of SWP deliveries and place additional stressors on the Bay-Delta ecosystem.

(2): Comments regarding the San Luis-Mendota Water Authority's (SLDMWA) Motion for Disqualification of
 Hearing Officers Felicia Marcus and Tam Dudoc. SLDMWA contends that we must recused request for the two (2)
 co-hearing officers for the Fix be replaced, based on an alleged pre-decisional inferences they made during the Pre California WaterFix workshop, held on 28 January 2016.

34 Appropriate Delta Flow Criteria – According to State Water Board:

Several parties, including petitioners, objected to the statement in our [SWB] February 11 [2016] ruling that the "appropriate Delta flow criteria" that must be included as a condition of any approval of the WaterFix petition will be more stringent than petitioners' existing obligations. The preliminary view that we expressed on this issue was based on the fact that the Delta Reform Act of 2009 requires the "appropriate Delta flow criteria" to be informed by the State Water Board's 2010 Delta flow criteria report, which found that current flow requirements are insufficient to protect public trust resources in the Sacramento-San Joaquin Delta (Delta).

- http://www.waterboards.ca.gov/waterrights/water\_issues/programs/bay\_delta/California\_waterfix/docs/c
   wf\_final\_03041\_ruling.pdf
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<sup>&</sup>lt;sup>7</sup> State Water Resources Control Board, Revised Water Right Decision 1641, Implementation of the Water Quality Objectives for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary; A Petition to Change Points of Diversion of the Central Valley Project and the State Water Project, Adopted December 29, 1999 Revised March 15, 2000, in accordance with Order WR- 2000-02, p. 3.

- Nonetheless, we agree with the parties who objected to our statement regarding the "appropriate Delta 1 flow criteria" that this issue should be decided after having considered all of the relevant arguments and 2 3 evidence in the administrative record. Accordingly, the statement in our February 11 letter should not be considered a final determination with respect to the stringency of "adequate Delta flow criteria." 4
- As a 43-year veteran, seasoned participant, and witness, in State Water Board's Water Right Decisions D-1485; D-1630 6 7 (Aborted); D-1641, the 1975 Bay-Delta Water Quality Control Plan and the 1995 Bay-Delta Water Quality Control Plan 8 and the Regional Water Quality Control Plans for many of the State's nine Hydrological Regions; Porgans/Associates' take exception to the San Luis Delta-Mendota Water Authority's allegation of a pre-judgmental decision regarding the 9 10 need for additional water required to protect all users and uses.
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12 Prior Knowledge Regarding Water Requirements for Fish, Could Preempts Ignorance Defense: The Authority, along 13 with many of the other federal and state water contractors, actively participated in many of those proceedings; opposing a numeric flow value for the protection of salmonid and other Bay-Delta species listed under the federal Endangered 14 15 Species Act (ESA). P/A respectfully suggest Protestants review the language contained in SWB D-1641 and the "Hearing Record". It should become obvious to them that the matter of providing water for fish was essentially tabled', 16 however, as it states in D-1641, not forgotten, "...adequate monitoring of fish populations, was necessary before it could 17 18 determine whether additional implementation measures are needed." What fish!

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On December 29, 1999, the SWRCB adopted Decision 1641, which implements many of the objectives by conditioning existing water rights. D-1641 does not contain terms and conditions directed specifically to implementing the narrative salmon objective. The objective may be achieved incidentally by ensuring the terms and conditions imposed in D-1641 are met by implementation of non-flow measures outside the SWRCB's process. The SWRCB found that a period during which there would be compliance with the numerical flow objectives in the Bay-Delta Plan, coupled with actions undertaken by other agencies and adequate monitoring of fish populations, was necessary before it could determine 26 whether additional implementation measures are needed.8 [Emphasis added]

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Requiring a flow narrative to protect endangered salmon species as a condition in DWR and Reclamation's water right 29 permits (conditions imposed in D-1641) would require a significant amounts of water (carriage water) to be released by 30 DWR, USBR and others water purveyors to meet Delta water quality and flow requirements contained therein. 31

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The statements in our February 11, 2016, ruling merely acknowledges the reality of the petition before us, as prepared by petitioners. In addition, the Delta Reform Act of 2009 requires the "appropriate Delta flow criteria" to be informed by the State Water Board's 2010 Delta flow criteria report, which found the current flow requirements insufficient to protect public trust resources in the Delta. The State Water Board's periodic review of the Bay-Delta Plan also indicated that changes to existing water quality objectives, including Delta outflow objectives, including Delta outflow objectives, are needed to prevent the continued decline of numerous fish species.9 [Emphasis added]

40 Comments on the ruling to extend the time period and Petitioners' request have both co-hearing officers to recuse 41 themselves from the proceeding because of an alleged pre-decisional determination that additional water may be 42 required in future State Water Board decisions pertaining to the operation of the State Water Project (SWP) and the 43 federal Central Valley Project (CVP), prima facie a defensive tactic, apparently designed to undermine the process. 44 45

<sup>9</sup> *Ibid.*, p. 7.

<sup>&</sup>lt;sup>8</sup> SWRCB, Notice of Public Workshop, **Delta Decision 1641**, 5 December 5, 2001.

**Delta Reform Act of 2009 Enabling Legislation Leading up to the WaterFix:** The bill (SBX7 1, 2009), the enabling authorization would require the State Water Resources Control Board to establish an effective system of Delta watershed diversion data collection and public reporting by December 31, 2010. The bill would require the board to develop new flow criteria for the Delta ecosystem, as specified.<sup>10</sup> [Emphasis added] The information and data required in the bill, has not been provided to date. The SWB is dependent on DWR and Reclamation for flow and Delta export data for the SWP and CVP.

8 Delta-Mendota Canal as a Source of Selenium Contamination: Fifty-six year, government-induced drainage crisis: It is also important to reiterate the fact that neither the SWP nor the CVP have constructed drainage 9 facilities required to drain the toxic agricultural runoff attributable to Project water deliveries, which contribute to the 10 degradation of the Bay-Delta Estuary, and other major surface and subsurface contamination. Let's not lose sight of the 11 simple fact, toxic agricultural drainage is either being "banked" in the soil profile or migrating into the ground and surface 12 waters of the state, in conflict with both federal and state anti-degradation policies. Furthermore, DWR and Reclamation 13 failed to provide viable solutions to resolve the projects self-imposed drainage crises. This matter was also brought up 14 by P/A during the D-1630 (Aborted) and D-1641 proceedings, a matter that the SWB considered but fell short of requiring 15 the project operators to develop a drainage solution; this matter must be addressed during the CWF proceedings. In 16 Fact, in 2009, P/A provided DWR and Reclamation with a plan to reduce the threat of toxic agricultural drainage, at no 17 cost; they did not implement the cost-effective and environmentally sustainable solutions. 18

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The preponderance of the evidence indicate that the disastrous decline of the Pelagic and salmonid species imperiled 20 by the SWP and CVP Delta pumps and project operations should have necessitated an action by the SWB to adopt flow 21 narratives to protect threatened Bay-Delta Estuary species listed on the federal Endangered Species Act (ESA) decades 22 ago. The public record also confirms that SWB members, and their predecessors, had ample time to reconcile this 23 drainage dilemma. In fact, P/A provided testimony and obtained government records and media publications which 24 25 warned of the Kesterson National Wildlife Refuge before it happened, in the early 1980s, killing more than 10,000 migratory birds from selenium poisoning. Selenium deposits on the Westside of the San Joaquin Valley were identified 26 in the late 1930's. Toxic agricultural drainage continues to contribute to the dramatic decline of listed threatened and 27 endangered species. 28

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The major source of supply water to the Grassland Marshes and to the agricultural lands of the 30 Grassland Drainage Area is the Delta-Mendota Canal (DMC), via the Mendota Pool and the Central 31 California Irrigation District Nain Canal (CCID) Main Canal). Selenium concentrations in all three of these 32 waters have exceeded the 2ppb monthly means limit on several occasions since the Grassland Bypass 33 Project was implemented [late 1990s]. Sources of the selenium to the DMC include: groundwater 34 pumping into the Mendota Pool, recycling of San Joaquin River drainage into the federal pumps in the 35 south Delta, flood flow and sediment loading from the Panoche and Silver Creek watersheds, and 36 discharge from DMC subsurface drains and six shallow groundwater sumps (Firebaugh sumps) 37 operated by Reclamation in the Firebaugh Canal Water District (Pierson et al., 1987; Chilcott, 2000). 38

In the 1950's Reclamation installed check drains and the Firebaugh sumps between mile posts 99 and 110, parallel to the DMC, to collect small quantities of seepage water of surface runoff to prevent accumulation and possible damage to the canal bank or adjacent lands. Water collected in the subsurface drains is discharged into the DMC by the sumps through six drainage outlets structures. Although flows from Reclamation Firebaugh sumps are relatively small, **selenium concentrations in** 

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<sup>&</sup>lt;sup>10</sup> <u>http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb\_0001-0050/sbx7\_1\_bill\_20091112\_chaptered.html</u>

discharged water have ranged from 57 - 2,100 ppb between 1985 and 2000 (U.S. Bureau of 1 Reclamation, April 2002). Reclamation monitoring data up to 1994 revealed water discharged 2 from sump "K" exceeded California California's hazardous waste threshold for selenium (1.000 3 ppb) in one or more months sampled annually. However, Reclamation subsequently adopted a 4 bi-annual monitoring schedule in 1995, with the CVRWQB's approval, that discontinued 5 sampling of the sumps during months with the highest concentrations (early winter). 6 Unfortunately, with this reduced monitoring regime it is no longer possible to fully assess the 7 extent to which these sumps contribute to selenium concentrations in the DMC, and wetlands 8 supply channels.<sup>11</sup> [Emphasis added.] 9

11 Runoff water can carry pesticides, animal feces and other pollutants into rivers and streams. An 12 estimated 1.5 trillion gallons of excess rain and irrigation water drain from valley farms each year, 13 threatening drinking-water supplies and wildlife. Some experts consider runoff as the No. 1 water-14 pollution problem.<sup>12</sup>

Parenthetically, those that profess to be concerned about measurements and numbers are directed to the 16 State Water Board), California Water Quality Control Board, Central Valley Region (Regional Board), Bureau 17 of Reclamation's so-called public hearings on the Grassland Bypass Project (GBP), initiated in 1995. 18 Porgans/Associates (P/A) attended those "hearings" and submitted testimony, prefaced on government data 19 to protest Reclamation, the San Luis Delta Mendota Water Authority, NRDC, EDF, Bay Institute and others, 20 associated with the GBP or any proposed change in the water quality monitoring, "predominantly grab-21 samples". Water Quality Monitoring is conducted by Reclamation, Authority, regional board or GBP 22 consultants, such as Joe McGahan. As a primary contractor for the GBP there have been numerous occasions, 23 at "public meetings" that Mr. McGahan's water quality sampling results didn't add up. The "numbers issues" 24 was questioned by State Board member, Tam Dudoc, during a meeting in the Spring 2011. Mr. Gahan was 25 unable to provide an answer; prefacing his remarks, when asked, he said, GBP used the same protocols and 26 water sampling criteria as in previous tests. P/A also questioned Mr. McGahan as tp the source of his 27 numbers; he responded by saying "What number do you want! 28

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(3) Consummation of "Settlement Agreements" among Petitioners and Protestants outside the public's reach, and before
 the SWB's formal water right proceedings commence, sends a very distressing signal, which undermines the
 cohesiveness and effectiveness of developing a comprehensive solution to this 55-year in the making government induced Delta water crisis.

The public record attests that this type of process (Settlement Agreements made outside the public process), were employed during the D-1641 proceedings. During those proceeding, P/A testified before the SWB that D-1641 that the so-called protections contained in that Decision were inadequate, shortsighted and doomed to fail. Failure would result as soon as the free money, being distributed from the sale of General Obligation Bonds, ran out, which happened.

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P/A obtained the support and assistance from elected members of the state legislature to pressure the SWB to enforce Bay-Delta water quality protections: During the 1987-1992 drought years, having exhausted the

<sup>&</sup>lt;sup>11</sup> David L. Harlow, Acting Field Supervisor, U.S. Fish & Wildlife Service, Sacramento Office correspondence to Robert H. Schneider, Chair, Regional Water Quality Control Board, Central Valley Region,

<sup>&</sup>lt;sup>12</sup> Ag runoff program hits delays, by Audrey Cooper, staff writer, San Joaquin Record 30 October 2003.

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administrative process, on 7 December 1993 P/A filed a lawsuit against DWR and Reclamation for violating the terms
 and conditions contained in the respective water right permits.

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Letter from the State Senate to Patrick Porgans wishing him well in lawsuit<sup>13</sup> to force the State Department of Water Resources and the Bureau of Reclamation to bear the responsibility for innumerable violations of the D-1485 water standards that were intended to provide protection for the Suisun Marsh and the Bay-Delta Estuary, which have since been replaced by SWB Water Right Decision 1641.

- 9 It is appalling that the agencies responsible for upholding the law gave instead directly violated federal
- and state law. Their actions gave greatly harmed Delta farmers, fish, wildlife and public trust resources.
- 11 This situation is particularly alarming because these standards are known to be inadequate to protect
- 12 the Estuary and its resources and the standards the federal government will shortly promulgate are even
- 13 less likely to be enforced, Senator Milton Marks and 13 other ranking members of the State Legislature.<sup>14</sup>
- We are deeply distressed by the Board's recent failure to enforce water quality standards for the Sacramento-San Joaquin Delta as required by Water Right Decision 1485. Salinity standard contained in D-1485 were violated on 289 separate occasions in 1991 and 1992.
- Following the decision to withdraw D-1630, the Board's failure to enforce even the less stringent requirements of D-1485 further throws into question the State's willingness to achieve the increased level of protection that the Governor in his water policy statement and the Board in D-1630 have acknowledged as necessary to prevent the collapse of fish and wildlife populations in the Bay and Delta.
- Allowing these violations to go unpunished almost certainly guarantee future noncompliance with water quality requirements.<sup>15</sup>
  - The State water Project and the federal Central Valley Project violated San Francisco Bay-Delta water quality standards 281 times last year and the year before. The standards are too weak to begin with and the state and federal water agencies did not even comply with these weak standards. The 281 violations happened during the drought, when standards are even weaker and when fish and wildlife already are even more (sin) stressed than usual. It's highly unlikely the violations demographic
  - wildlife already are even more (sic) stressed than usual. It's highly unlikely the violations damages these natural resources even further.
  - Then last month, the State Water Resources Control Board (sic) quietly decided to do nothing about the 281 violations. No permit revocation. No fines. No requirements to make up for the water pumped illegally. No new conditions to assure it won't happen again. Nothing.
    - Governor Wilson once claimed to be an environmentalist. He still claims to be for tough law enforcement.

But one of his agencies, along with a federal agency, committed what may be the biggest environmental violation of 1991 and 1992 in California, and now his board [State Water Board] that's supposed to police violations has decided to look the other way. These outrages came on top of Governor Wilson's decision to abandon efforts to upgrade the existing water quality standards.<sup>16</sup>

<sup>&</sup>lt;sup>13</sup> Patrick Porgans, an individual and California Sportfishing Protection Alliance vs. Bruce Babbitt, Secretary of the Interior; Dan Beard, Commissioner, United States Bureau of Reclamation; Roger Paterson, Director, Mid-Pacific Region, United States Bureau of Reclamation, Doug Wheeler, Secretary, California Department of Resources, David Kennedy, Director, Department of water Resources; and DOES 1 through 100, inclusive, Case Number 537641, filed in Superior Court of the State of California, County of Sacramento, 7 December 1993.

<sup>&</sup>lt;sup>14</sup> Senator Milton Marks and Senator Nicolas C. Petris letter to Patrick Porgans, dated 10 December 1993.

<sup>&</sup>lt;sup>15</sup> Senator Milton Marks, along with nearly two dozen legislators, letter to John Caffrey, Chairman, State Water Resources Control Board, 12 July 1993, p. 1.

<sup>&</sup>lt;sup>16</sup> Bulletin: from the Office of Senator Milton Marks Thursday, 15 July, 1993, p.1.

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It is important to note, that the estimated 500,000 acre-feet of water illegally diverted or stored, was worth \$29 million.<sup>17</sup>

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P/A have been effective in working with clients, throughout the Bay-Delta Estuary and the Suisun Marsh, in identifying and quantifying impacts to Delta landowners resulting from the conveyance of SWP and CVP water through the Delta. Our Fact-Finding Reports provided the documentation and leverage required to prove and quantify the damages; our efforts obtained \$120 million from an existing source of funds, which, with the assistance of the state legislators, redirected those funds for much-needed levee improvement and revetment projects.

As a seasoned veteran of the so-called California so-called Water Wars, and author of 80 Fact-Finding Reports on water-and water-related projects in the West, we view the proposed FIX as simply a rebranding of a Plan to protect the Bay-Delta that dates back to November 1960. At that time, voters approved former Governor Edmund G. "Pat" Brown, Sr.
\$1.75 billion California Water Resources Development Bond Act (enabling legislation for the State Water Project (SWP)).
Essentially, Californians borrowed the money by the issuance of General Obligation Bonds, which are backed by the full-faith and credit of the State; there is still and outstanding debt and unissued bonds from the \$1.75 billion, amounting to \$310 million.<sup>18</sup>

P/A cast a vote of no confidence in the SWB's ability to provide the long-overdue measures to protect the Bay-Delta Estuary. As stated, during my presentation at the SWB's preconference workshop earlier this year, P/A has no confidence in the Board to make an unbiased decision prefaced on the facts as opposed to endless conjecture and logorrhea placated during the process, which fails to fully identify and mitigates the impacts attributable to the proposed California WaterFix.

As predicted, the Board and the water managers' assurance to provide protections did not materialize, and they are back at the drawing board conjuring up a "Fix" that has been classified by the U.S. Environmental Protection Agency as grossly inadequate. So while in the throes of what may be the end of the drought and on the threshold of a deluge of floods, the Secretary for Natural Resources Agency recently testified before the State Legislature that the drought and flood phenomenon is the best of all worlds for those in the water "business".

29 Settlement agreements conducted during Water Right D-1641 preempted meaningful input and continuity as many of 30 the participants involved in those proceedings had no knowledge of the "back-door" negotiation settlements between the 31 various "stakeholders"; purportedly to protect all water users and uses; apparently didn't work, back to the drawing board.

On that note, the public awaits the fate of a "Fix" that the data indicates will surely destroy the largest remaining Bay Delta ecosystem located on the West Coast of the Americas. The previous ranking Delta was destroyed by federal and
 state water projects developed within the Colorado River watershed that cut off the water flow that once fed the Delta
 that emptied into the Sea of Cortez.

Board members acknowledged that any decision to move forward with the Fix would result in a storm of lawsuits. However, in any future case, opponents of the "Fix", including the Board, will not be able to "legitimately" plea the "ignorance defense", as pointed out by opponents they were informed, as a matter of record.

Despite overwhelming opposition toward any decision to move "forward" with the proponents request for an "expedited
hearing," the tenor of the Board members' discussions left opponents with some real and serious doubts about the
Board's ability to conduct a fair and impartial hearing.

Participants in the pre-hearing were reminded that in 1992 the Board aborted a Draft water right decision (D-1630), which took nearly a decade to achieve; a water right decision that was accepted by the majority of those in the water and environmental communities. The Board was set up as an independent entity and has the authority to adjudicate water-related issues, which, once adopted, carry the full weight of the law.

The record indicates that the Board relinquished its autonomy when it succumbed to the political pressure imposed on Board members by former Gov. Pete Wilson to abort D-1630. Critics contend that was the beginning of the end for the

<sup>&</sup>lt;sup>17</sup> Department of water Resources Exhibit 19 and 20 entered into the record during the SWB water-rights hearings pertaining to the 1991 and 1992 Bay-Delta water quality violations, Notice of Public Hearing, Consideration of Compliance with Water Right Requirements for the Sacramento-San Joaquin Delta and Suisun Marsh, Friday, 20 November 1992.

<sup>&</sup>lt;sup>18</sup> Authorized and Outstanding General Obligation Bonds as of 04/01/2016, according to the State Treasurer.

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Board's credibility and the long-term sustainability of a Delta that has been brought to the brink of extinction by the very
 government entrusted to protect the waters of the state.

Even in light of the lack and or refusal to disclose critical data and a description of the Fix and other legally required disclosure requirement, the tenor of the discussion indicated that the Board is still moving "forward" with a modified rendition of DWR and the water contractors' request for an expedited hearing.

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In conclusion, presently, neither time nor resources permit me to give the California WaterFix the attention it requires. As a participant, with standing, P/A intends to vet out the details of its findings during the formal hearing process. P/A has been inundated with a host of emergency related regulations and ever-changing agendas that placate the moving target syndrome promoted and sanctioned by the SWB, DWR, Reclamation, state and federal water contractors and the Association of California Water Agencies (AWCA). The power and force behind the WaterFix is ACWA, which expended millions of dollars promoting the Fix, when it launched the first of a series of public relations reports on No Time to Waste: a Blue Print for California Water. <u>http://www.acwa.com/spotlight/no-time-waste</u>

P/S has every intention to deter government-appointed officials from inflicting any further damage to an irreplaceable treasure, The San Francisco Bay and the Sacramento-San Joaquin Delta Estuary, has and remains the property of the people; neither DWR nor Reclamation own the SWP or CVP, they are also publicly owned resources, they don't own the water, it has and remains a National Treasure and is a Public Trust resource. Please enter these comments into the record and confirm receipt of this email. Thank you.

22 Respectfully,23

- Patrick Porgans, Solutions, De Facto Public Trustee
- 27 cc: Interested parties

P.S. Please excuse the fact that DRAFT comments did not provide the time for a thorough edit. If there is any problem
 with the transmission of this email, please telephone Patrick Porgans at (916) 833-8734.

# STATEMENT OF SERVICE

## CALIFORNIA WATERFIX PETITION HEARING Department of Water Resources and U.S. Bureau of Reclamation (Petitioners)

I hereby certify that I have this day submitted to the State Water Resources Control Board and caused a true and correct copy of the following document(s):

Hearing Regarding Petition filed by the Department of Water Resources and U.S. Bureau of Reclamation Requesting Changes in Water Rights for the California WaterFix Project

to be served **by Electronic Mail** (email) upon the parties listed in Table 1 of the **Current Service List** for the California WaterFix Petition Hearing, dated <u>3 June 2016</u>, posted by the State Water Resources Control Board at

http://www.waterboards.ca.gov/waterrights/water\_issues/programs/bay\_delta/california\_waterfix/service\_list.shtml:

Note: In the event that any emails to any parties on the Current Service List are undeliverable, you must attempt to effectuate service using another method of service, if necessary, and submit another statement of service that describes any changes to the date and method of service for those parties.

For Petitioners Only:

caused a true and correct hard copy of the document(s) to be served by the following method of service to Suzanne Womack & Sheldon Moore, Clifton Court, L.P., 3619 Land Park Drive, Sacramento, CA 95818: Method of Service: EMAILED

I certify that the foregoing is true and correct and that this document was executed on

Date

Signature: <u>Satura & Organs</u> Name: Patrick Porgans Title: De Facto Public Trustee Party/Affiliation: Porgans/Associates Address: P.O. Box 60940 Sacramento, CA