

CWFhearing

From: Patrick Porgans <porgansinc@sbcglobal.net>
Sent: Friday, January 22, 2016 7:35 AM
To: CWFhearing
Cc: Alan Lilly Ryan Bezerra (RSB@bkslawfirm.com) 'activistjen86@gmail.com' Aaron Ferguson (aferguson@somachlaw.com) 'ahitchings@somachlaw.com' and 135 more...
Subject: Re: Written Comments for January 28, 2016, Pre-Hearing Conference and Scheduled California Water Fix
Attachments: SWBCAWaterFIXPreHearJan2016FINDFT.pdf

Email to: CWFhearing@waterboards.ca.gov

From: Patrick Porgans & Associates

porgansinc@sbcglobal.net

Attention: State Water Resources Control Board (SWB) Members, Hearing Offices, Counsel and Staff

P/A, in unison with Planetary Solutionaries (P/S), as protestants are reluctant participants in this Pre-Hearing Conference and the so-called "California Water Fix" (CWF) proceedings, as we **DO NOT** expect to receive a fair and impartial hearing and/or an environmental sustainable ruling on this matter from the SWB. The documents to substantiate P/A and P/S's assertions are contained in our previous testimony, and are a matter of record, the documents and supporting data are contained within the SWB File Room, i.e., matters and hearing records pertaining to SWB Water Right Decision 1485 (D-1485; D-1630; D-1641; Bay-Delta Water Quality Control Plans; Suisun Marsh water quality standards; Bay-Delta Accord; CALFED; the 1991-1992 Bay-Delta Water Quality Violations hearings; comments submitted on the Bay Delta Conservation Plan/California Water Fix; Cease and Desist Orders issued by the SWB against DWR and Reclamation (lacking meaningful enforcement), and an assortment of other water right decisions, changes in use petitions, and water transfers.

Introduction My name is Patrick Porgans I serve as a Solutionist, Regulatory Analyst and Forensic Accountant with Porgans & Associates (P/A). For the record, P/A completed more than 75 Fact-Finding reports on water- and water-related issues in the Western United States from the 100th Meridian West (Front Range) to the Canadian and Mexico borders.

[Note: Due to time constraints our comments are being submitted in draft form, as they have not been edited. Also, in order to retain continuity of thought as it pertains to the subject it required a number of redundancies.] If you have any questions regarding the content of this communication or the attached file, please advise me at your earliest convenience. Thank you.

Patrick Porgans, Solutionist
Porgans & Associates
P.O. Box 60940
Sacramento, CA 95860
Telephone: (916) 543-0780
Fax: (916) 771-2264
\l: porgansinc@sbcglobal.net

1 Friday, 22 January 2016

2

3 Email to: CWFhearing@waterboards.ca.gov

4 From: Patrick Porgans & Associates

porgansinc@sbcglobal.net

5

6 **Re: Written Comments for January 28, 2016, Pre-Hearing Conference and Scheduled California Water Fix**

7

8 Dear State Water Resources Control Board Member Hearing Officers, Counsel and Staff carrying out the "California Water Fix"
9 Hearing Process:

10

11 **Introduction:** My name is Patrick Porgans I serve as a Solutionist, Regulatory Analyst and Forensic Accountant with Porgans &
12 Associates (P/A). For the record, P/A completed more than 75 Fact-Finding reports on water- and water-related issues in the
13 Western United States from the 100th Meridian West (Front Range) to the Canadian and Mexico borders.

14

15 **[Note: Due to time constraints our comments are being submitted in draft form, as they have not been edited. Also, in order
16 to retain continuity of thought as it pertains to the subject it required a number of redundancies.]**

17

18 Since the early 1970s, P/A representatives have interacted with the State Water Board (SWB) actively participating in a myriad of
19 water quality issues, water right decisions, and significant involvement in every major government water project proposals made
20 in California over the course of the past 40 years. P/A has worked for farmers throughout the entire Delta to assist them in
21 holding government entities accountable for flood and property damages specifically attributable to the "management and
22 operation" of the SWP and CVP fostered by the SWB's reluctance to hold DWR and Reclamation officials accountable when they
23 violate SWB imposed water quality standards, objectives and other legal requirements enacted to protect the Bay-Delta
24 ecosystem and all those dependent upon it for sustenance.

25

26 P/A, in unison with Planetary Solutionaries (P/S), as protestants are reluctant participants in this Pre-Hearing Conference and the
27 so-called "California Water Fix" (CWF) proceedings, as we **DO NOT** expect to receive a fair and impartial hearing and/or an
28 environmental sustainable ruling on this matter from the SWB. The documents to substantiate P/A and P/S's assertions are
29 contained in our previous testimony, and are a matter of record, the documents and supporting data are contained within the
30 SWB File Room, i.e., matters and hearing records pertaining to SWB Water Right Decision 1485 (D-1485; D-1630; D-1641; Bay-
31 Delta Water Quality Control Plans; Suisun Marsh water quality standards; Bay-Delta Accord; CALFED; the 1991-1992 Bay-Delta
32 Water Quality Violations hearings; comments submitted on the Bay Delta Conservation Plan/California Water Fix; Cease and
33 Desist Orders issued by the SWB against DWR and Reclamation (lacking meaningful enforcement), and an assortment of other
34 water right decisions, changes in use petitions, and water transfers.

35

36 In fact, in 1994, after exhausting our due remedy processes, P/A filed a lawsuit against state and federal water officials for failure
37 to comply with Delta water quality standards. In this case, the California Department of Water Resources (CDWR), responsible
38 for operating the California State Water Project (SWP), and the federal Bureau of Reclamation (Reclamation), responsible for the
39 administration of the federal Central Valley Project (CVP), as a result of the SWB failure to hold DWR and Reclamation
P/As Comments on SWB Pre-Hearing Conference Pertinent to Proceedings on the California Water Fix 22 Jan 2016

1 accountable for illegally diverting and stealing an estimated 500,000 acre-feet of water during the 1991-1992 drought. It took
2 nearly two years to get the SWB to hold a hearing, which was pushed by P/A and some of the State's top legislators. In that case,
3 the SWB was preempted from pleading the ignorance defense because P/A constantly apprised the SWB and staff of the project
4 operators' illegal actions in real time. During the hearing, exhibits provided by DWR and Reclamation revealed that the stolen
5 water, at that time, had a street value of \$29 million. Essentially, the project operators willfully and knowingly opted to violated
6 the Bay-Delta water quality standards and flow requirements contained in SWB Water Right Decision 1485 to the harm and
7 detriment of other water users and uses. The record will also attest that it was during the 1991-1992 period that the SWB was
8 holdings a series of Bay-Delta water right hearings purportedly to strengthen the shortcomings inherit in D-1485!

9
10 It was around that time, that the then seated Governor Pete Wilson applied political pressure to have the SWB abort the seven
11 year in-the-making draft Water Right Decision 1630; a decision that the majority of those involved in the process supported,
12 because it provided viable water quality and flow protections for all beneficial water users and uses in the Delta.

13
14 The SWB's decision to capitulate to the political whims of a governor that had direct ties to those "stakeholders" behind the
15 order to kill D-1630; it was at that point that the SWB lost credibility with many of those involved in water issues. The subsequent
16 adoption of D-1641 proved to be a watered-down version of D-1630, which, as predicted, proved itself to be inadequate. Your
17 records will also attest that P/A and other participants testified during those proceeding that D-1641 was inadequate and would
18 not provide the required protection for the Delta.

19
20 **Subject at Hand:** The California Water Fix as currently proposed does not appear to be in compliance with the requirement of
21 the California Environmental Quality Act (CEQA), the federal Clean Water Act (CWA), and based on the available information,
22 submitted by DWR, Reclamation and the SWB, is faced with major criticism from the U.S. Environmental Protection Agency (EPA)
23 and the independent Delta Science Committee, and appears to fall short of what was intended and required in the 2009 Delta
24 Reform Act.

25
26 **P/A's Review and Comments on the Partially Recirculated Draft Environmental Impact Report/Supplemental Draft**
27 **Environmental Impact Statement (RDEIR/SDEIS) BDCP/California Water Fix, July 2015.**

28
29 *Porgans & Associates' (P/As) comments are presented in the following format:*

- 30
31 (1) It provides a synopsis of P/As 40 year effort working with Delta landowners and reclamation district to require and/or
32 compel government officials to provide the flood protection, water rights assurances, and a means to convey water through
33 the Delta to the State Water Project (SWP) and federal Central Valley (CVP) pumping plants in the southern portion of the
34 Sacramento-San Joaquin Delta. Delta facilities were approved by the State Legislature in 1959 (California Water Code
35 section 12934(d)), Master Levees, and approved and funded by the voters in November 1960. There is an old quotation
36 which says, "Those who fail to learn from history are doomed to repeat it" ...Winston Churchill. The "fix" as described in the
37 preferred Alternative 4A appears to follow the same agenda DWR officials and Governor Jerry Brown have been promoting

1 since the mid-1970s. Therefore, any course of action that involves an isolated water conveyance system around or
2 beneath the Delta, as proposed, will pave the way to the Delta's final demise and serve as a testament to Churchill's
3 warning,

4 (2) It list verbatim quotations extrapolated from the RDEIR/SDEIS and other government documents, which references the
5 source document and page number, and

6 (3) It provides comments, concerns and suggestions, as they pertain to the quoted text and the preferred Alternative 4A,
7 contained in the latest version of a myriad of failed plans and a plethora of government studies, spanning over five
8 decades, purportedly to provide a fix for the Delta, which has already cost billions of dollars. Ironically, the Delta is not
9 broken, that is a misnomer. For that matter the name change to the California Water Fix (**CWF**) is also a misstatement of
10 fact; the proposed Action should be properly entitled the State Water Project (**SWP**) Water Fix, designed to bailout its
11 agricultural water contractors and increase water supply reliability for its' contractors south of the Delta. Unfortunately, the
12 success of adopting the CWF will be at the expense and to the demise of the Sacramento-San Joaquin Delta.

13
14 **(1). Previous Input into the so-called BDCP/California Water Fix:** FYI: Be advised, P/A did comment on the BDCP initial DEIR,
15 which, in unison with fisheries agencies and Delta farmers, found it to be grossly deficient, incomplete, myopic, and, most important,
16 it is viewed as an unprecedented "water grab" that makes Mono Lake (Chinatown rip-off as elementary); and will proved to be
17 extremely beneficial to state and federal water project operators and their respective water contractors.

18
19 P/A voiced concerns regarding the DWR's ability to conduct an unbiased and objective study to perform an adequate environmental
20 assessment and needs analysis, compliant with CEQA, ESA, and CWA requirements, which would identify mutually viable "co-
21 equal alternatives to remedy many of the long-standing conflicts amongst different regions of the State and with those entities that
22 have a "stake" in the use and distribution of the public's water resources.

23
24 P/A also attended DWRs public-relations California Water Fix update "meeting", held in Sacramento, California, in July 2015. At that
25 event, DWR, fisheries agencies and government consultants were stationed at different booths, inviting the public to ask them
26 questions regarding the viability of the latest rendition of the "fix". P/A went to each of the booth, on the various subjects, and asked
27 specific questions; such as:

28
29 A). What assurance or confidence should the public and Delta interests place on the proposed fix; in light of the fact that
30 the record indicates that SWP and federal CVP officials have yet to mitigate the ongoing cumulative impacts that has
31 brought the Delta to the verge of ecological collapse; despite the fact that billions of dollars of publicly borrowed funds have
32 been expended by DWR, and hundreds of millions of dollars by Congressional authorization, to restore and protect the
33 Delta. As the public awaits a final decision that could cause the ultimate death of the Delta ecosystem and the
34 sustainability of all those dependent on it as a means of survival. It is important not to lose sight of the fact, that, as
35 mentioned in DWRs publication, this is the last largest remaining Delta on the West Coast of the Americas. It predecessor,
36 the Colorado River Delta, which once empties into the Sea of Cortez, was essentially destroy as a result of the

1 construction and operation of the federal Bureau of Reclamation's dams and reservoirs within the Colorado River
2 watershed.

3
4 **Comment:** At the Sacramento meeting, DWR officials conceded that implementation and success of the proposed assurances and
5 mitigation measures would be difficult to quantify at this stage; essential wait and see.

6
7 B).DWR officials iterate on how the BDCP/California Water Fix will set the stage for water development for the next 100
8 years. It is important to note, that the source of California's half of century in the making water crisis can be traced to the
9 inherent financial and water contractual shortcomings of the SWP, which is administered and operated by DWR.

10
11 **Comment:** Governments failure to provide mandated Delta flood and water rights protection authorized and funded by the
12 Legislature and voter back in 1959 and 1960, which were never provided; however, since that time, state and federal water officials
13 have succeeded in getting the public to approve billions of dollars of give-a-way grant programs, in a failed attempt to keep the
14 underfinanced and contractually overcommitted SWP financial afloat; AKA California Water Fix.

15
16 C).To DWR's and the federal Bureau of Reclamation's credit, they have expended a fortune of publicly-borrowed money
17 and U.S. taxpayers money to fund failed fish-doubling projects, \$500 million spent buying water for fish, self-serving habitat
18 restoration and land acquisitions, and a plethora of Delta and Delta-related studies. Unfortunately, contrary to all the public-
19 relations rhetoric, the public record attest to the fact that DWR, Reclamation, this Board and its predecessors have failed in
20 their mandate, mission and stated objectives to be compliant with the California Environmental Quality Act (**CEQA**), the
21 Porter-Cologne Act, the California Endangered Species Act (**CESA**), the Delta Reform Act (2009); the Federal Clean
22 Water Act (**CWA**). Their cumulative actions, associated with SWP/CVP operations are responsible for the collapse of the
23 Delta's ecosystem; regarding the level of confidence the public is expected to exhibit, in light of DWRs dismal performance
24 to fulfill its mandates to protect the Delta, ensure its sustainability and restore and double endangered fish populations.

25
26 **Comment:** P/A questioned government fisheries personnel, at the July 2015 meeting, about the SWP/CVP operators' historical
27 failure to mitigate for the massive decline in Delta dependent species, already listed as threatened or endangered under the federal
28 Endangered Species Act (**ESA**) and the California Endangered Species Act (**CESA**). The question was how do they expect the
29 public to believe that they will make good on future assurances to improve fisheries and the Delta, when, government documents
30 indicate that is in worse condition now, then ever before. They could not provide a definitive or logical statement or data to back up
31 their assumptions.

32
33 Furthermore, the lead entity behind the "fix", DWR personnel (and other former members of the now defunct CALFED team)
34 personnel have repeatedly failed to address P/As primary concerns regarding the Fix, i.e., inadequate justification for the need for
35 the BDCP twin-tunnel Delta conveyance alternative; lacking credible data to support the validity of the assumptions being espoused
36 by government officials; water officials failure and protracted delay in providing the required environmental assessment; ongoing
37 attempts to bifurcate full disclosure of the impacts of the proposed Fix, have raised legitimate concerns and doubts regarding the

1 assurances and modified mitigation measures alluded to in the RDEIR/SDEIS, as being feasible or if they will ever come to fruition.
2 If one examines DWRs historical track record in making good on its legally required mandates to protect the Delta are replete with a
3 litany of broken promises and false assurances. Furthermore, the deplorable conditions of the imperil Sacramento-San Joaquin
4 Delta can be linked directly to the gross mismanagement of the SWP and CVP.

5
6 **Government's Failure to Explore All Feasible and Sustainable Alternatives:** Contrary to DWR and Reclamation's
7 assertion that the RDEIR/SDEIS are CEQA and NEPA compliant, the record indicate that DWR officials failed to explore all of the
8 feasible alternatives throughout the entire environmental review process. P/A discussed an alternative with DWR personnel that
9 **would not require construction of the tunnels; eliminates the need for new off-stream storage facilities; utilize existing**
10 **laws to provide the authorized Delta facilities**, initially designed to provide flood, water rights and a viable conveyance route to
11 move SWP/CVP through the Delta; stabilize declining aquatic species; reduce surface and groundwater contamination attributable
12 to the water project operations; **provides ample mitigation; increases water supply, promotes and funds land retirement**, and
13 up-to-date technology to better utilized and manage the Golden States precious surface and groundwater resources. Much, if not all
14 of this can be accomplished with an existing source of funds and in conjunction with other water-related projects currently
15 underway.

16
17 **Environmental Compliance Issues:** The environmental documents, as presently composed, do not appear to be compliant
18 with the implied intent and purpose of CEQA. Title 14. Natural Resources, Division 6. Resources Agency. Chapter 3. Guidelines for
19 Implementation of the California Environmental Quality Act (CEQA).

20
21 **§ 15003. Policies.**

22
23 In addition to the policies declared by the Legislature concerning environmental protection and administration of
24 CEQA in Sections 21000, 21001, 21002, and 21002.1 of the Public Resources Code, the courts of this state have
25 declared the following policies to be implicit in CEQA:

- 26
27 (a) The EIR requirement is the heart of CEQA. (*County of Inyo v. Yorty*, 32 Cal. App. 3d 795.)
28 (b) The EIR serves not only to protect the environment but also to demonstrate to the public that it is being
29 protected. (*County of Inyo v. Yorty*, 32 Cal. App. 3d 795.)
30 (c) The EIR is to inform other governmental agencies and the public generally of the environmental impact of a
31 proposed project. (*No Oil, Inc. v. City of Los Angeles*, 13 C. 3d 68.)
32 (d) The EIR is to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered
33 the ecological implications of its action. (*People ex rel. Department of Public Works v. Bosio*, 47 Cal. App. 3d
34 495.)
35 (e) The EIR process will enable the public to determine the environmental and economic values of their elected
36 and appointed officials thus allowing for appropriate action come election day should a majority of the voters
37 disagree. (*People v. County of Kern*, 39 Cal. App. 3d 830.)
38 (f) CEQA was intended to be interpreted in such a manner as to afford the fullest possible protection to the
39 environment within the reasonable scope of the statutory language. (*Friends of Mammoth v. Board of*
40 *Supervisors*, 8 Cal. 3d 247.)
41 (g) The purpose of CEQA is not to generate paper, but to compel government at all levels to make decisions with
42 environmental consequences in mind. (*Bozung v. LAFCO (1975)* 13 Cal.3d 263)

1 (h) The lead agency must consider the whole of an action, not simply its constituent parts, when determining
2 whether it will have a significant environmental effect. (*Citizens Assoc. For Sensible Development of Bishop Area*
3 *v. County of Inyo*(1985) 172 Cal.App.3d 151)

4 (i) CEQA does not require technical perfection in an EIR, but rather adequacy, completeness, and a good-faith
5 effort at full disclosure. A court does not pass upon the correctness of an EIR's environmental conclusions, but
6 only determines if the EIR is sufficient as an informational document. (*Kings County Farm Bureau v. City of*
7 *Hanford* (1990) 221 Cal.App.3d 692)

8 (j) CEQA requires that decisions be informed and balanced. It must not be subverted into an instrument for the
9 oppression and delay of social, economic, or recreational development or advancement. (*Laurel Heights*
10 *Improvement Assoc. v. Regents of U.C.*(1993) 6 Cal.4th 1112 and *Citizens of Goleta Valley v. Board of*
11 *Supervisors*(1990) 52 Cal.3d 553)

12
13 Note: Authority cited, Section 21083, Public Resources Code. Reference: Sections 21000-21176, Public
14 Resources Code.

15 The California DWR's dismal historical track-record on environmental protection, and its inability to make good on past water right,
16 flood protection, and fish and wildlife mitigation and enhancement assurances, mandated by law more than a half-a-century ago,
17 have yet to be mitigated.

18
19 P/As initial comments clearly states that the DWR, the lead agency preparing the CEQA document, and Reclamation as lead on the
20 National Environmental Policy Act (NEPA) failed to identify a viable alternative to the proposed twin-tunnel conveyance system
21 identified in the BDCP/California Water Fix as Alternative 4A; the preferred alternative. As stated, P/A discussed an alternative that
22 would not require tunnels or an isolated conveyance system to convey SWP/CVP water to their pumping plants in the southern
23 portion of the Delta.

24
25 **Synopsis:** DWR and Reclamation personnel are to be commended for their "response" to the 12,000 comment letters regarding
26 public concerns as to the impacts attributable to the proposed action. It is apparent that DWR and Reclamation officials dug deep
27 into the "tool box" to conjure up the California Water fix; formerly referred to as the BDCP; Delta Vision, Bay-Delta Accord,
28 Peripheral Canal, Delta Master Levees, and so on. Unfortunately, those familiar with "California's water world", view the "Fix" as just
29 another "monkey wrench" that would compound the irreparable harm and unmitigated damage attributable to conveyance and
30 export of state and federal water via the Delta. In the past 30 years, the SWP/CVP pumped and exported more than 200 million
31 acre-feet of water through the Delta that is enough water to flood the State's entire 200 million acres of land two feet deep in water.

32
33 The preferred alternative is weighted in favor of DWR, Reclamation and SWP and CVP contractors, respectfully. In 1959, DWR
34 officials were given a mandate by the state legislature and by voter mandate in 1960 to provide flood, and water right protection, for
35 the Delta and serve as a conveyance system to transport SWP/CVP water across the Delta.

36
37 **Hundred-Year California Water Fix Moves Forward While The Past 50-Years Of Government Assurances To**
38 **Protect The Delta Have Yet To Be Provided:** Water officials have had more than 50-years to provide a viable and
39 sustainable solutions for the imperil Delta; although they have expended billions of dollars of publicly borrowed money to
40 develop proposals and plans to protect Delta property owners and public trust resources; i.e., doubling Delta dependent fish

P/As Comments on SWB Pre-Hearing Conference Pertinent to Proceedings on the California Water Fix 22 Jan 2016

1 populations, the record attest that they have failed. An independent forensic assessment conducted by P/A revealed the
2 deplorable track record and “performance” of water officials and how their actions or failure to act contributed to the deplorable
3 condition of the Bay-Delta estuary. Therefore, there are no real assurances that water officials will comply with the requirements
4 contained in the 2009 Sacramento-San Joaquin Delta Reform Act.

5
6 P/A attended DWR’s July 2015 “public affairs California Water Fix presentation, and asked DWR and fisheries personnel as to what
7 level of confidence that they expect the public to have in DWR and Reclamation, based on their track record. It is important to keep
8 in mind that DWR and Reclamation have inherent conflict as “water purveyors and protectors of Public Trust Resources”, which
9 includes water and aquatic resources.

10
11 **Quotation: <http://baydeltaconservationplan.com/2015PublicReview/2015HowtoComment.aspx>**

12
13 The Partially Recirculated Draft Environmental Impact Report/Supplemental Draft Environmental Impact
14 Statement (RDEIR/SDEIS) is being made available to the public in accordance with the California Environmental
15 Quality Act (CEQA), and the National Environmental Policy Act (NEPA).

16 The comment period begins July 10, 2015. Comments must be received electronically or postmarked on or before
17 October 30, 2015. For more information on how to submit comments, [click here](#).

18
19 The RDEIR/SDEIS has been prepared by the lead agencies (California Department of Water Resources and U.S.
20 Bureau of Reclamation) to provide the public and interested agencies an opportunity to review engineering
21 refinements made to the water conveyance facilities; to introduce new sub-alternatives: Alternatives 4A (California
22 WaterFix), 2D and 5A; to explore multiple regulatory approaches; and, to include updated environmental analyses
23 that, in part, were conducted in response to issues raised in the more than 12,000 comments received on the
24 2013 Draft Bay Delta Conservation Plan (BDCP) Environmental Impact Report/Environmental Impact Statement
25 (EIR/EIS).

26
27 Alternative 4A is the new California Environmental Quality Act (CEQA) Preferred Alternative, replacing Alternative
28 4 (the proposed BDCP). Alternative 4A is also the National Environmental Policy Act (NEPA) Preferred
29 Alternative, a designation that was not attached to any of the alternatives presented in the Draft EIR/EIS.
30 Alternative 4A includes water conveyance facilities (three new intakes along the Sacramento River and dual-bore
31 tunnels to convey water to the existing state and federal pumping facilities) and operations elements similar to the
32 BDCP (Alternative 4) and habitat restoration measures and other environmental commitments necessary to
33 satisfy State and Federal environmental laws.

34
35 Alternative 4A embodies a new regulatory approach for gaining necessary permits and authorizations for
36 implementation under the California Endangered Species Act (CESA) and Federal Endangered Species Act
37 (ESA). The RDEIR/SDEIS evaluates the potential impacts related to changes to Alternative 4, the proposed
38 project (Alternative 4A) and two additional sub-alternatives, Alternatives 2D and 5A. The RDEIR/SDEIS also
39 includes other substantive changes, and information added in response to technical comments received on the
40 December 2013 public review draft documents. The RDEIR/SDEIS only includes those sections where changes
41 or modifications have been made that necessitate additional public review according to the California
42 Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA).

43
44 ***All substantive comments received on the RDEIR/SDEIS (and those previously received during the comment***
45 ***period for the 2013 BDCP Draft EIR/EIS) will be responded to in the Final EIR/EIS and considered in the***
46 ***decision-making process. No final decisions have been made regarding going forward with the proposed***
47 ***project or in selecting an alternative; those decisions will only occur after completion of the CEQA and NEPA***

1 processes. The comment period ends 45-days after the publication of the Environmental Protection Agency's
2 (EPA) Federal Register notice.¹ [Emphasis added.]

3
4 Bay Delta Conservation Plan/California Water Fix - Partially Recirculated Draft EIR and Supplemental Draft EIS
5 Executive Summary.

6
7 ES.1 Introduction 4 ES.1.1 Background and Context: The Sacramento-San Joaquin Delta (the Delta) is a vitally
8 important ecosystem that supports hundreds of aquatic and terrestrial species, many of which are threatened or
9 endangered. Located at the crux of two major watersheds that capture runoff from approximately 40 percent of
10 the land in California, the Delta is also at the core of the state's most important water system, which serves
11 millions of Californians throughout the San Francisco Bay Area, the Central Valley, the Central Coast, and
12 southern California. This water supports agricultural, municipal, and industrial land uses that, taken together, are
13 the source of much of California's financial stability and prosperity. The benefitting areas include farms and
14 ranches from the north Delta to the Mexican border, as well as Silicon Valley, portions of the East Bay, and most
15 of urban southern California.

16
17 Unfortunately, the Delta is in a state of crisis. Several threatened and endangered fish species, including Delta
18 smelt and winter-run Chinook salmon, have recently experienced the lowest population numbers in their recorded
19 history. Meanwhile, Delta levees and the infrastructure they protect are at risk from earthquake damage,
20 continuing land subsidence, and rising sea level. A major seismic event causing levee failure could cause an
21 interruption of water exports for as long as several months or even years. And the amounts of water available for
22 human use south of the Delta have already decreased significantly in recent years, independent of the drought,
23 due to regulatory actions by the United States Fish and Wildlife Service (USFWS), the National Marine Fisheries
24 Service (NMFS), and the California Department of Fish and Wildlife (CDFW). Applying federal and state
25 endangered species laws, these entities have required the Department of Water Resources (DWR) and the
26 United States Bureau of Reclamation (Reclamation) to substantially alter the manner in which they jointly operate
27 the State Water Project (SWP) and the federal Central Valley Project (CVP).

28
29 For both environmental and economic reasons, there is an urgent need to improve and modernize the existing
30 SWP/CVP conveyance system, which was designed and built long before the "environmental era." Many of the
31 current systemic problems stem from the fact that both the SWP and the CVP export water from intake facilities,
32 including pumps that are located at the far southern edge of the Delta, near the City of Tracy. Because of their far
33 southerly location and their elevation above sea level, these pumps create "reverse flows" that pull river water
34 southward (upstream, in effect) towards the intakes, rather than allowing it to flow downstream towards San Pablo
35 Bay, San Francisco Bay, and, ultimately, the Pacific Ocean. Not surprisingly, these reverse flows cause, or
36 contribute to, direct and indirect impacts on fish species such as Delta smelt, which are pulled towards the pumps,
37 where adverse conditions, including the presence of predator species, await them. The reverse flows also
38 adversely affect salmon migration patterns. To try to reduce these adverse effects on fisheries, regulators have
39 substantially reduced water exports to SWP and CVP service areas, to the economic detriment of those areas.
40 The recent historic drought has only made matters worse.

41
42 These agencies' initial approach, going back as far as 2006, focused on the development of an extensive
43 conservation plan known as the Bay Delta Conservation Plan, or BDCP, which would add new intakes in the north
44 Delta while at the same time pursuing a very large-scale long-term habitat restoration program within the greater
45 Delta. Under this potential approach, DWR would achieve compliance with the federal Endangered Species Act
46 (ESA) through a habitat conservation plan (HCP) approved by both USFWS and NMFS under Section 10 of the
47 ESA, and would achieve compliance with state endangered species laws through approval by CDFW of a natural
48 community conservation plan (NCCP) prepared under the California Natural Community Conservation Plan Act
49 (NCCPA). Both the HCP and NCCP would provide incidental take authorization for a period of 50 years.
50 Reclamation would achieve compliance with ESA through Section 7 of that Act.

51 ES-3

52
53 Section 3.1 of this Partially Recirculated Draft EIR/Supplement to Draft EIS 1 (RDEIR/SDEIS); and the Draft
54 EIR/EIS text changes needed to reflect the modifications are shown in "track changes" in Appendix A of this
55 RDEIR/SDEIS. Among the key changes are (i) the elimination of three pumping plants associated with new intake
56 facilities; (ii) associated reductions in construction-related air pollutant emissions at intake sites; (iii) substantial

¹ http://baydeltaconservationplan.com/2015PublicReview/PublicReviewRDEIRSDEIS/PublicReviewRDEIRSDEIS_508.aspx

1 reductions in the amount of construction occurring on Staten Island; (iv) reductions in water quality effects; and (v)
2 the relocation of key project features from private property to public property already owned by DWR.
3

4 The three new sub-alternatives (4A, 2D, and 5A) developed by the Lead Agencies embody a different
5 implementation strategy that would not involve a 50-year HCP/NCCP approved under ESA Section 10 and the
6 NCCPA, but rather would achieve incidental take authorization under ESA Section 7 and California Endangered
7 Species Act (CESA) Section 2081(b) assuming a shorter project implementation period. These new sub-
8 alternatives address the reverse flow problem by focusing on the construction and operation of new north Delta
9 intakes and on habitat restoration commensurate with the footprint of these new facilities. This alternative
10 implementation strategy would allow for other state and federal programs to address more extensive long-term
11 habitat restoration efforts for species recovery in programs separate from the proposed project.
12

13 The construction and operation of new conveyance facilities, as now proposed under Alternatives 4A, 2D, and 5A,
14 would help resolve many of the concerns with the current south Delta conveyance system while otherwise helping
15 to reduce threats to endangered and threatened species in the Delta through limited but substantial amounts of
16 habitat restoration, as necessary to mitigate significant environmental effects and satisfy applicable ESA and
17 CESA standards. Implementing a dual conveyance system, in which water could be diverted from either the north
18 or the south or both, depending on the needs of aquatic organisms, would align water operations to better reflect
19 natural seasonal flow patterns by creating new water diversions in the north Delta equipped with state-of-the-art
20 fish screens. The new system would reduce the ongoing physical impacts associated with sole reliance on the
21 southern diversion facilities and allow for greater operational flexibility to better protect fish. Minimizing south
22 Delta pumping would provide more natural east–west flow patterns. The new diversions would also help protect
23 critical water supplies against the threats of sea level rise and earthquake.
24

25 Although Alternatives 4A, 2D, and 5A include only those habitat restoration measures needed to provide
26 mitigation for specific regulatory compliance purposes, habitat restoration is still recognized as a critical
27 component of the state’s long-term plans for the Delta. Such larger endeavors, however, will likely be
28 implemented over time under actions separate and apart from these alternatives. The primary parallel habitat
29 restoration program is called California EcoRestore (EcoRestore), which will be overseen by the California
30 Resources Agency and implemented under the California Water Action Plan. Under EcoRestore, the state will
31 pursue restoration of more than 30,000 acres of fish and wildlife habitat by 2020. These habitat restoration actions
32 will be implemented faster and more reliably by separating them from the water conveyance facility
33 implementation.
34

35 Alternative 4A is also known as “The California Water Fix.” It is now DWR’s preferred alternative under the
36 California Environmental Quality Act (CEQA) and Reclamation’s preferred alternative under the National
37 Environmental Policy Act (NEPA).
38

39 ES.1.2.2 Modified Project Objectives and Purpose and Need: One of the primary challenges facing California is
40 how to comprehensively address the increasingly significant conflict between the ecological needs of a range of
41 at-risk Delta species and natural communities that have been, and continue to be, affected by human activities,
42 while providing more reliable water supplies for people, communities, agriculture, and industry. This challenge
43 must be addressed in decisions by DWR, the CDFW, and the State Water Resources Control Board as they
44 endeavor to strike a reasonable balance between these competing public policy objectives and various actions
45 taken within the Delta, including this proposed project. State policy regarding the Delta is summarized in the
46 Sacramento–San Joaquin Delta Reform Act of 2009, which states:
47

48 “it is the intent of the Legislature to provide for the sustainable management of the Sacramento-1 San Joaquin
49 Delta ecosystem, to provide for a more reliable water supply for the state, to protect and enhance the quality of
50 water supply from the Delta, and to establish a governance structure that will direct efforts across state agencies
51 to develop a legally enforceable Delta Plan.” (California Water Code, Section 85001, subd. [c]).
52

53 The Delta “serves Californians concurrently as both the hub of the California water system and the most valuable
54 estuary and wetland ecosystem on the west coast of North and South America.” (California Water Code, Section
55 85002).
56

57 The ecological health of the Delta continues to be at risk, the conflicts between species protection and Delta water
58 exports have become more pronounced, as amply evidenced by the continuing court decisions regarding the
59 intersection of ESA, CESA, and the operations criteria of the SWP and the CVP. Other factors, such as the
60 continuing subsidence of lands within the Delta, increasing seismic risks and levee failures, and sea level rise
61 associated with climate change, serve to further exacerbate these conflicts. Simply put, the overall system as it is
62 currently designed and operated does not appear to be sustainable from an environmental perspective, and so
63 the proposal to implement a fundamental, systemic change to the current system is necessary. This change is
64 necessary if California is to “[a]chieve the two coequal goals of providing a more reliable water supply for

1 California and protecting, restoring, and enhancing the Delta ecosystem.” (California Public Resources Code
2 Section 29702, subd. [a]).

3
4 A statement of Project Objectives by the Lead Agencies is required by the State CEQA Guidelines, and a
5 Purpose and Need Statement is required by the CEQA/NEPA Regulations.

6 **Comment:** The proposed preferred alternative does not appear to meet the aforementioned criteria, and as a result of those
7 inherent shortcomings, raises doubts about CEQA/NEPA compliance, and the feasibility and effectiveness of the proposed “fix” as
8 described in Alternative 4A. Suffice it to say, that P/A cannot support the preferred alternative, and asserts that the CEQA/NEPA
9 documents are inadequate.

10 **Recommendation:** Delay the California Water Fix hearings until which time all of the required environmental assessment is
11 completed and all of the other requirements contained in the 2009 Sacramento-San Joaquin Reform Act (commencing with
12 California Water Code, Div. 35, Section 85000 et seq.

13 **Note:** It is now 5:05 a.m., PST, and the comments are due today by noon; therefore, P/A will not be able to
14 complete all of its comments; unfortunately, it is preoccupied with the numerous other projects that are
15 tied to the so-called California Water Fix. Please confirm receipt of this email transmission, and post the
16 comments, accordingly. Thank you.

17 Respectfully,
18 Patrick Porgans, Solutionist
19 Patrick Porgans & Associates
20 P.O. Box 60940, Sacramento, CA 95860
21 Telephone: (916) 543-0780
22 Fax: (916) 771-2264
23 Email: porgansinc@sbcglobal.net