

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 ***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 ignore 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.**