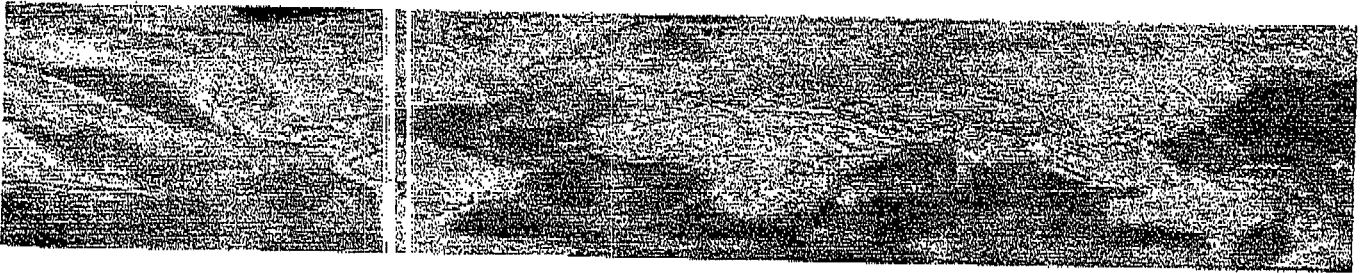


PATRICK PORGANS & ASSOCIATES, INC

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Elemental-Bio-Terrestrial Solutionists

FAX COVER SHEET

Number of Pages 2
April 30, 2008

2008 MAY -1 PM 3:31
Patrick Porgans & Associates
Sacramento, CA

To: Karen Niiya, Senior Engineer, State Water Resources Control Board, Division of Water Rights

Fax: (916) 341-5400

Tele. 341-5365

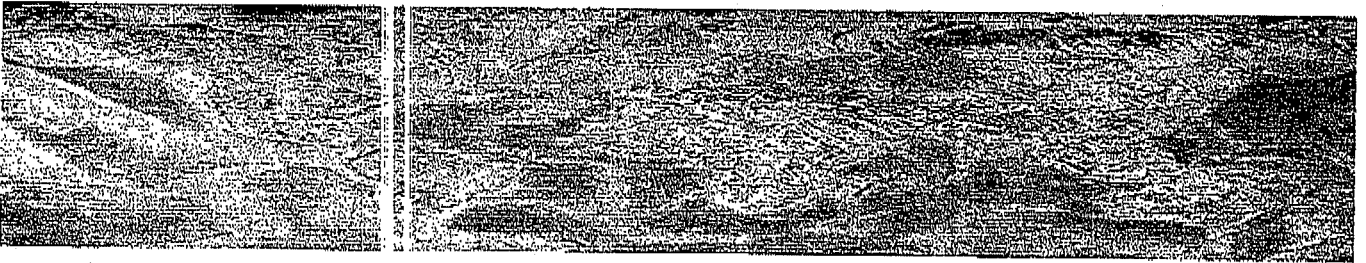
From: Patrick Porgans & Associates, Inc.

Re: *Submittal of Comments to the State Water Board's Draft North Coast Instream Flow Policy for the Area Between San Francisco Bay and the Mattole River along California's North Coast — AB2121 and Support of NMFS' AB2121 Comments of April 30, 2008*

ab2121policy@waterboards.ca.gov

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Elemental-Bio-Terrestrial Solutionists

To: All Members of the State Water Board — Attn. Karen Nilya Fax: (916) 341-5400 April 30, 2008
 From: Patrick Porgans & Associates, Inc. [Comments Supported by PCCFA, however, not formally read.]

Re: **Submittal of Comments to the State Water Board's Draft North Coast Instream Flow Policy for the Area Between San Francisco Bay and the Mattole River along California's North Coast — AB2121 and Support of NMFS' 4/30/08 Comments**

On several occasions, Porgans & Associates' (P&A) submitted comments, suggestions and recommendation to the State Water Board (SWB) pertinent to its proposed Draft North Coast Instream Flow Policy' mandated by Assembly Bill 2121 (legislation "championed" by Trout Unlimited.) Please refer to your files for P&A's comments. In Trout Unlimited's (TU) "legislative action alert," it states:

In 2004, Trout Unlimited championed legislation known as "A.B. 2121" to direct the State Water Board—the agency that administers water rights—to adopt a policy for the North Coast "for maintaining instream flows." The policy is needed to ensure that thousands of unregulated or poorly regulated water diversions in coastal areas are operated with protective measures for fish. The draft policy is out now and the State Water Board is soliciting comments from the public.

With a strong response from conservationists like you, the final policy could be a big step forward for water management in California... to ensure that water diversions do not harm fish, and to encourage landowner stewardship activities to go above and beyond the law, such as Trout Unlimited's Water and Wine initiative. It should also include measures for monitoring and reporting of water diversions and stream flows, and steps to eliminate widespread illegal diversions. [Source: TU, Action Alert, 4/23/08.]

P&A, at the request of the Pacific Coast Federation of Fishermen's Associations (PCFFA), was a party to a telephone conference sponsored by TU, in January 2008, regarding the draft policy. P&A provided input and shared its concerns with TU's Brian Johnson and others, elaborating on the following:

- ① AB2121, on the face of it, appears to be a worthwhile attempt to address a number of the fundamental shortcoming attributable to the SWB's lack luster performance to carry out its legal mandates and trust responsibilities to protect the public's water and fisheries resources. However, as previously stated in P&A's communications to the SWB and staff, there are real questions as to the need for such a policy, because the SWB already has the authority and the so-called "regulatory tools" to provide for the maintenance of instream flows and to ensure compliance and protection of trust resources. Based solely on the SWB's own performance activities, there is a real question as to whether the SWB has either the will or the commitment to carry out its existing policies, and/or mandates let alone another policy.
- ② P&A's research and interaction with SWB personnel indicate that "NO" funds had been specifically appropriated for development or implementation of the policy, and even if funding forthcoming there are no guarantees they will be used for such.
- ③ Currently, there are more than 700 existing unauthorized diversions in Napa and Sonoma counties, which have yet to be abated. SWB data also indicates that enforcement actions between the years 1997-2007 were virtually non-existing. Furthermore, due to funding shortcomings, limited SWB personnel had to be taken from their enforcement responsibilities to deal with other SWB tasks.
- ④ In 2002, both the National Marine Fisheries Service and the California Department of Fish & Game adopted a joint "Instream Flow Policy" which your Board could have used as a model to adopt.
- ⑤ While we support and appreciate all viable efforts to protect the waters and fisheries of the State, we have legitimate concerns, based on the SWB's adoption of similar water protection policies, that were geared toward defusing public indignation, while doing election-year grand standings, at the expense of the taxpayers and to the demise of the trust resources; i.e., the Bay-Delta Water Rights proceedings, the deplorable conditions of the San Joaquin River/Valley and the collapse of the salmon are all indicative of how the SWBs conduct the public's business. We are hopeful that TU's efforts and press releases will amount to something; however, our time would be better spent getting existing laws and/or policies enforced or implemented, because if anyone truly believes that the SWB will step up to the plate, they simply need to go back and review the SWB's "enforcement-track record" which, to say the least, is shamefully deplorable. Note: P&A is preparing several "White Papers" which, among other issues, will discuss the SWB's "performance."

¹Patrick Porgans & Associates' correspondence to the State Water Resources Control Board, Division of Water Rights, Attention: Karen Nilya or Eric Oppenheimer, Re: SWRCB's North Coast Instream Flow "Policy" Substitute Environmental Document and "Public Scoping" Meeting, August 16, 2006, in Santa Rosa, CA., August 25, 2006.

Patrick Porgans & Associates, Inc. Correspondence to Chair of the State Water Resources Control Board and All Members of the Board, Attn. Song Her, Clerk of the Board, Re: Electronic Submittal of Comments for Workshop to Receive Information Regarding Policy Directions on Water Right Enforcement — Tuesday, June 19, 2007, June 15, 2007

Tele. 916-543-0780 Fax 543-4490 Cellular 833-8734 email porgansinc@sbcglobal.net P.O. Box 60940, Sacramento, CA 95850