



June 15, 2007

To: Chair of the State Water Resources Control Board and All Members of the Board  
From: Patrick Porgans & Associates, Inc.

Re: Electronic Submittal of Comments for Workshop to Receive Information Regarding  
Policy Directions on Water Right Enforcement — Tuesday, June 19, 2007

Attn. Song Her. Clerk of the Board

**Introduction:** Before elaborating on our comments pertinent to "Policy Directions on Water Right Enforcement," Porgans & Associates offers the following statement/information. First, P&A extends its congratulations to the newly appointed members of the State Water Board (SWB), accordingly. For their information, P&A has been actively engaged in protecting the waters of the state and the other trust resources dependent on water, for 37 years, primarily at our expense, and/or in concert with our clients. During the course of that period, P&A have worked with your predecessors, always in good faith and with the expressed interest in assisting and/or compelling the SWB in fulfilling its mandates to protect the public's trust resources. Since the 1970s, P&A has been involved with a pethora of water right issues, including every major water right hearing and/or decision associated with the Department of Water Resources' water right permits and the U.S. Bureau of Reclamation's water right permits, which, would have included all of the water right decisions impacting the Sacramento-San Joaquin Delta and San Francisco Bay Estuary.

Giving the SWB the benefit of the doubt and recognizing the inherent shortcomings either in the laws and/or the proirities and policies of the SWB heretofore, the state is faced with some real challenges that have been piling up over the decades; i.e.,

- 1) There are fundamental jurisdictional issues that heretofore have and/or continue to impede the SWBs ability to effectively administer the water rights process and/or to protect the waters of the state.
- 2) The SWB members need to familiarize themselves with the water right application, permitting and licensing process.  
Currently, it does not appear that the water right process is being administered in a manner that is beneficial either to the users or to the long term economic and/or ecological interest of the state.
- 3) The State of California in conjunction with the SWB needs to make a firm and unwavering commitment to address the issue associated with authorized and/or unauthorized water uses and/or uses and compel compliance based on the impacts such diversion have existing users/uses.
- 4) The SWB needs to make the commitment to identify the extent of the demands on all existing waterways, both authorized and unauthorized, and to quantify the amount of water required to sustain public trust resources and authorized diversions (uses/uses).
- 5) The existing condition of the water right permitting process is in disarray. Before considering the review of new water right applications the SWB need to prioritize the extent of unauthorized diversions from any and/or all waterways to ensure the long-term sustainability of public trust resources and private users/uses. It is imperative that it provide the level of staffing required to assess and reconcile any and/or all diversions that are unauthorized. Currently, there are about six staff members in the water right compliance unit, assigned for the entire state. Most of them are relatively new at that position. Since the "Reagan era" of government, downsizing the Water Rights Division staff has been cut almost in half.
- 6) The SWB needs to establish a public-relation outreach program to apprize the public of what is required of anyone interested in diverting water that requires a permit. There is a need to inform potential users of the absolute need that before they build a project that they have to inform the SWB of there

intention, including a timeframe, which will allow the SWB staff to establish appropriate communication, notification and cutoff dates, relative to the application review and/or approval process.

7) Water is California's most precious natural resources, and the increasing demands being placed on it, necessitate the state's immediate attention; it is imperative that the administration of the water right process become more proactive and less reactive.

**Summary Statement of Support:** Simply stated, P&A has and continues to support the SWB in enforcing existing laws, rules and regulations to protect the waters of the state (uses/users.) P&A supports the comments and suggestions submitted by NOAA Fisheries, in its letter to the SWB, dated, June 5, 2007, "**Water Right Enforcement Workshop**." Therefore, it is not our intention to address each of the questions listed in the SWB notice. Rather, in the interest of time P&A will focus on three primary issues.

(1) The Water Right Compliance Unit is already inundated with more work than it can handle (water right applications, unauthorized diversions and/or changes in use/diversions). Therefore, as requested in P&As letter to the SWB, it should hold all future water right permits in abeyance, until the SWB gets a handle on the existing unresolved and/or yet to be processed applications. This request/suggestion is prefaced to some degree on the SWB information.

2) The SWB needs to ascertain how much water exists within each water body to ensure that the water to sustain public trust resources is available, and not impeded by existing and or future diversions (uses/users).

3). There needs to be an out reach program by the SWB to inform the public of what is required of anyone who diverts water.

**Comments Relative to the Policy Direction in Water Right Enforcement:** Prima facie the SWBs solicitation from the public on developing a policy direction for water right enforcement, would seem to be encouraging; however, if one simply examines the record and reviews the existing condition of the state of the SWBs performance, it raises serious questions relative to the intent and sincerity of the purpose of the workshop and the need for the development of a policy direction in water right enforcement.

It is important to remember that the SWB and/or its predecessors (Water Pollution Control Board, and California Water Quality Control Board and many of the laws empowering them) have been around for decades. The SWB already has within its powers and/or purview the authority to establish and carry out an enforcement policy to protect the North Coast and all other regions of the state. Many of the question contained in the notice are rhetorical and would necessitate an affirmative answer. For example, the SWB asked the following questions:

*Q: Should the State Board adopt enforcement provisions in the AB 2121 policy?*

A: Of course, unless, however, the Board chooses to continue not to take action to fulfill its trust mandates and regulatory obligations to protect the water rights of all beneficial users/uses within its jurisdiction.

*Q: Should the State Water Board adopt an enforcement policy for areas of the state that are outside the mandated geographic scope of the AB 2121 policy? If the State Water Board adopts an enforcement policy that applies to other areas of the state, should it contain the same enforcement provisions as the AB 2121 policy.*

A: Each hydrological region of the state have their own unique characteristics, although it is imperative that policies for each region be adopted with the assurances that such policies will be enforced.

In the SWRs notice, it states, on page 2, "**The State Water Board has pending over 500 water right applications. Many of these applications were filed to seek authorization for existing, but unauthorized, water supply projects.**" The State Water Board has pending over 600 petitions to change existing water right permits or licenses." It also states on page 2, *Currently the State Water Board's*

*Division of Water Rights (Division) identifies one or more watersheds per year in which it will conduct compliance inspections. .... Should the State Water Board continue to focus its water right enforcement resources on specific watersheds? If so, under what circumstances? If not, what other basis should be used?*

In 2005, the SWBs Division of Water Rights conducted a compliance inspection in the Russian River watershed and identified at least 400 unauthorized diversions. Subsequent to that time, letters had been sent to the various parties; however, pursuit of the unauthorized diversions have been placed on hold, because most of the staff, if not all, have been reasigned to address water fee issues.

When the SWB staff held its one and only two segment meeting regarding the North Coast Instream Flow Policy, in Santa Rosa, California, which P&A attend, on a very short notice. Staff informed us that it did not even have money allocated to have staff present at that meeting. Please refer to attached letter sent to SWB. Even if the SWB adopts an enforcement policy, there are yet-to-be answered questions as to whether the money to carry out such a policy will be made available. Please refer to P&As letter to the SWB, August 25, 2007.

P&A cannot attend the workshop for a number of reasons, the primary reasons is do to the fact that it is out in the field protecting the waters of the state for the common good of all. Thank you.