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PORGANS EXHIBIT-300

PORGANS-310

Note: Porgans-310 was revised by the
hearing team on April 19, 2017

BEFORE THE
CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

HEARING IN THE MATTER OF
CALIFORNIA DEPARTMENT OF WATER
RESOURCES AND UNITED STATES
BUREAU OF RECLAMATION
REQUEST FOR A CHANGE IN POINT OF
DIVERSION FOR CALIFORNIA WATER
FIX

REBUTTAL TESTIMONY OF
PATRICK PORGANS

PETITION: The Department of Water Resources (DWR) and the U.S. Bureau of Reclamation (Reclamation) have filed with the State Water Resources Control Board (State Water Board) a petition to change their water rights (change petition) for the California WaterFix Project (WaterFix Project), formerly part of the Bay Delta Conservation Plan or BDCP. The WaterFix Project involves the construction and operation of new water diversion facilities near Courtland to convey water from the Sacramento River through two tunnels to the existing State and federal pumping facilities near Tracy. In addition to other federal, State and local approvals, the WaterFix Project requires changes to the water right permits for the State Water Project and federal Central Valley Project (collectively Projects) to authorize the proposed new points of water diversion and rediversion. (SWB Fact Sheet, p-1)

KEY ISSUES FOR THE HEARING

The State Water Board's order following this proceeding must be based upon evidence in the record developed at the hearing. Parties to the hearing should submit exhibits and testimony responsive to the following issues that will be considered during the hearing:

Part I – Effects of the Petition on Municipal, Industrial and Agricultural Uses of Water, Including Associated Legal Users of Water

1. Will the changes proposed in the Petition in effect initiate a new water right?
2. Will the proposed changes cause injury to any municipal, industrial or agricultural uses of water, including associated legal users of water?
 - a. Will the proposed changes in points of diversion alter water flows in a manner that causes injury to municipal, industrial, or agricultural uses of water?
 - b. Will the proposed changes in points of diversion alter water quality in a manner that causes injury to municipal, industrial, or agricultural uses of water?
 - c. If so, what specific conditions, if any, should the State Water Board include in any approval of the Petition to avoid injury to these uses?

PREFACE OF THE SO-CALLED CALIFORNIA WATERFIX MISNOMER

The CWF is a misnomer; simply stated, it is just the latest rendition of a 57 year-in-the making to complete portions of the California State Water Project enacted into law by the State Legislature and a mandate by a vote of the people back in November 1960. This would include, but not be limited to the Delta Master Levees and the San Joaquin Master Drain; although both were funded, the money was expended on other portions of the underfinanced SWP. [PORGANS-300, which he referenced during his cross examination, California Water Code section 12934(d)]¹ and [PORGANS-301: Description Delta Levees Neglected – Delta Levees Make It Possible to move SWP.CVP water across the Delta, exhibited during his cross examination]²

Pure and simple the CWF it is yet another scheme to supplement the water supply, predominantly for the contractually overcommitted SWP, which purportedly the net supply in Water Year 2000 provide about six percent of California's water needs; and that number is suspect. The net supply of CVP and other Federal represents about 12%. [EII PORGANS-302 DWR Maurice Roos, Chief Hydrologist (part time) California Department of Water Resources. referenced during his cross examination]³

The CWF, if approved, would enable the SWP and the federal Central Project (CVP) operators not only to provide access to a higher quality of water for their contractors, but it also has the potential to reduce the hundreds of thousands of acre-feet of "carriage water" required to meet Delta Water Quality Standards and flow requirements. [EII PORGANS-304 Cox Delta

¹ I certify that PORGANS Exhibit-106 are verbatim statements from California Water Code section 12934(d) Delta Master Levees, Authorized SWP facilities in 1960, DWR spent the funds to make up for other financial shortcomings inherent in the State Water Project

² I Patrick Porgans certify that PORGANS Exhibit-118 is true and correct copy of verbatim excerpts contained in a DWR publication http://www.water.ca.gov/floodmgmt/docs/DeltaLeveeFailures_FMA_200709.pdf

³ I certify Patrick PORGANS-301 is a true and correct copy of a document produced by Maurice Roos, Chief Hydrologist (part time) California Department of Water Resources, Hydrology of the Recent Drought and Comparison with Past Droughts California Net Water Supply in Water Year 2000, p. 9]

1 ~~Flow Requirements-Carriage Water]~~ Note: The DWR and SWP CWF participants had this
2 ~~document in their possession for almost two weeks.~~

3 ~~SWP-CVP DELTA Exports 1967 through 2012, however, EII PORGANS303 A has been~~
4 ~~upload to FTP site]~~

5 ~~According to DWR's Bulletin 132-63 the SWP yield would depend to a varying extent on~~
6 ~~the amount of Delta "surplus water", which the record attest in dry and critically dry periods,~~
7 ~~there is no surplus water available to supplement the project yield.~~[**PORGANS-2:** DWR, CA
8 ~~State Water Project, Bull. 132-63, p. 121, already added into Exhibit Description Hearing~~
9 ~~Record]⁴ [**PORGANS- 3:** DWR, CA State Water Project, Bull. 132-63, pp. 95-105, , already
10 ~~added into Exhibit Description Hearing Record]~~ ⁵~~

11 Testimony by Petitioners' repeatedly stated their intention to meet the water quality standards
12 SWB sets, including the former DWR Director Mark Cowin. [**PORGANS-1,** already added into
13 Exhibit Description Hearing Record] ⁶

14 **SWB'S PUBLIC HEARING DWR AND BUREAU COMPLIANCE WITH DELTA STANDARDS**

15 During the 1987-1992 drought years, the DWR officials resorted to illegally impounding
16 an estimated 500,000 acre-feet of water in the years of 1990, 1991 and 1992. The amount of
17 water was contained in PORGANS-105: SWRCB DWR-USBR Bay Delta Decision 1485

⁴ ~~I certify Patrick Porgans Exhibit-2 is a true and correct copy of verbatim excerpts contained in DWR-Bulletin 132-63, *The California State Water Project in 1963, Chapter VII. Project Water Yield - Water Demands Upon the Delta Pool*, April 1963, p. 121.~~

⁵ ~~I certify Patrick Porgans Exhibit-3 is a true and correct copy of verbatim excerpts contained in DWR-Bulletin 132-63, *The California State Water Project in 1963, Chapter V. Water Supply - Delta Pooling Program*, April 1963, pp. 95 - 105.~~

⁶ ~~I Patrick Porgans certify that PORGANS Exhibit-118 is true and correct copy of verbatim excerpts contained in a DWR publication http://www.water.ca.gov/floodmgmt/docs/DeltaLeveeFailures_FMA_200709.pdf~~

1 Violations, 1987 through 1992 (recorded hundreds of violations; ~~already added into PORGANS-~~
2 ~~PORGANS Exhibit-110 is in the previous Index Description]~~⁷

3 ~~SENATOR MILTON MARKS ET AL LETTER TO SWB CHAIR JOHN CAFFREY REGARDING~~
4 ~~BOARD'S FAILURE TO ENFORCE DELTA STANDARD [PORGANS Exhibit-111, is in the~~
5 ~~previous Index Description]~~⁸

6 **SWB'S PUBLIC HEARING DWR AND BUREAU COMPLIANCE WITH DELTA STANDARDS**

7 During the initial year of drought periods, after exporting record-breaking amounts of
8 Delta water, the DWR and Bureau officials Petition the SWB to relax Delta water standards,
9 which save more water for SWP and CVP contractors. The potential water supply and storage
10 improvements from the changes approved by this and the February 3 and March 5 Orders total
11 more than 1.2 million acre-feet (MAF). [PORGANS-6: April 6, 2015 Order that Approved and
12 Denied in Part ...DWR and USBR Petition for Temporary Urgency Changes to License and
13 Permit Terms and conditions Requiring Compliance with Delta Water Quality Objections in
14 Response to Drought Conditions, p.5; is in the previous Index Description.]⁹

15 **DIRECTOR MARK COWIN'S COMPLIANCE WITH SWB STANDARDS**

16 You will hear in coming months from those who believe our proposed project will harm other
17 legal users of water or fish and wildlife in the Delta. Modeling data may ne offered as evidence.
18 As you consider these claims, I DWR Director Mark Cowin] hope you will bear mind: Models do
19 not run water projects. Experienced human operators run water projects. The human factor
20 allows us to stay in compliance with water quality standards nearly all the time. Models are a
21 useful tool to analyze changes in a variety of factors that affect project operations. But even the
22 advanced models in use today are not capable of simulating the full extent of the complexities of

⁷ I certify Patrick Porgans Exhibit-105 is a true and correct copy of verbatim excerpts contained SWRCB Public Hearing, Subject, Consideration of Compliance with Water Right Requirements for the Sacramento-San Joaquin Delta and Suisun Marsh, Nov.20, 1992.

⁸ ~~I certify Patrick PORGANS Exhibit-110 and PORGANS Exhibit-111 are true copies of documents contained in the SWB's Hearing Record files.~~

⁹ I certify Patrick Porgans Exhibit-6 is a true and correct copy of verbatim excerpts from SWRCB April 6 2015 Order that Approved and Denied in Part a Petition for Temporary Urgency Changes to License and Permit Terms and Condition Requiring Compliance with Delta Water Quality Objectives in Response to Drought Conditions.

1 the watershed or simulating the real-time human response necessary to deal with that
2 complexities.

3 Only in extraordinary circumstance have we exceeded the water quality standards you set. And
4 rarely if ever do we use our full capacity to divert water. None of that would change with the
5 California WaterFix. Porgans Exhibit-1, DWR, Director Mark Cowin's Policy Statement 29 July,
6 2016; is in the previous Index Description ¹⁰

7 Relaxation of Delta standards impedes Delta salinity protection and reduces Projects
8 requirements to release "carriage water" to meet Bay-Delta requirement or standards.

9 **[PORGANS302 EII: DWR Jerry Cox Memo]** ¹¹

* Note: Porgans 302 was renumbered to Porgans-319 due to duplicate numbering

10 It is during drought years that the violations tend to occur. When questioned as to the
11 validity of their 98.9% compliance percentage (between wet and drought years), the
12 PETITIONERS could not answer the question. Although PORGANS made a request to break
13 those percentages down for dry and drought years, we have yet to receive a response.

14 ~~DWR, Sacramento River Unimpaired Runoff, 1906 thru 2015] [PORGANS Exhibit-104,~~
15 ~~PORGANS104A in the previous Index Description: Drought Cycles in three 16-year periods]~~
16 ~~[PORGANS Exhibit-104B: DWR, Sacramento River Unimpaired Runoff, 1970 thru 2015, in the~~
17 ~~previous Index Description.]~~

18 The DWR after dropping Oroville Reservoir 25 feet in December 1990, shipped the water
19 south of the Delta, on March 15, 1991, requesting the SWB to temporarily modify terms and
20 conditions in the water right permits and licenses held by the Department of Water Resources
21 and the USBR in response to drought conditions. [**PORGANS-110**: DWR after dropping Oroville

¹⁰ I certify Patrick Porgans Exhibit-1 is a true and correct copy of verbatim excerpts from DWR's Director Mark Cowin's Policy Statement 29 July, 2016.

¹¹ I certify Patrick Porgans Exhibit-6 is a true and correct copy of verbatim excerpts from **PORGANS Exhibit-4: DWR Jerry Cox Memo**], December 27, 1984.

1 Reservoir 25 feet in December 1990, on March 15, 1991, requesting the SWB to temporarily
2 modify terms and conditions in the water right permits and licenses.] ¹²

3 **BUREAU'S VERNALIS WATER RIGHT D-1422 NON COMPLIANCE DATA**

4 PORGANS acquired the Vernalis D-1422 Non Compliance with SWB Water Right
5 Decision 1422 Water Quality Standards via a Freedom of Information Act request, documenting
6 hundreds of water quality violations of SWB Decision 1422 of the Vernalis Delta requirements
7 from 1987 thru 1990. [PORGANS-119: Data Obtained from USBR-CVP Operations Center,
8 Received 13 July, 1990; EII PROGANS-305.] ¹³ *Note: Porgans-119 was renumbered as Porgans-305

9 **STATE WATER PROJECT EXPORT DELIVERIES FROM 1967 THRU 2012**

10 ~~The numbers contained in SWP export deliveries were extrapolated from a spreadsheet~~
11 ~~provided to Patrick Porgans, and to the best of my knowledge are the water deliveries from~~
12 ~~1967 thru 2012. [EII PORGANS-303: TedThomasSWP-CVP - ANNUAL PUMPING 1951-2012 -~~
13 ~~That spreadsheet is here in my computer.]~~

14 In 1993 PORGANS filed a law suit against DWR and the Bureau for the illegal resorted to
15 absconding water, in more than 200 documented violations of the terms and conditions of their
16 SWB issued permits, and the 1981 North Delta Water Agency's contract with the DWR.
17
18 State Water Board permits contain terms and conditions that the Permittee is required to meet;
19 i.e., provide salinity protection for the Delta to assure water users therein of a useable supply of
20 water, some dating back almost a century ago in the California's State Finance's water rights

¹² I certify Patrick Porgans Exhibit-3 is a true and correct copy of the SWRCB's Consideration of Drought-Related Emergency Water Right Order and Related Actions in Response to a request for a hearing from the Department of Water Resources, March 15, 1991. .

¹³ I certify Patrick Porgans Exhibit-3 is a true and correct copy of verbatim excerpts contained form the USBR-CVP Operations, via a FOIA request, received on 13 July 1990.

1 assignments which were given to the Bureau for water supply for the federal CVP. Those
2 assignments contained provisions for salinity protection for the Delta, which, were contained in
3 Water Right Decision 990. To this day, compliance with said protection remains a moving target.

4
5 The Bureau's permits also include conditions that require it to determine the amounts of water
6 required to meet water users in the Area of Origin, which included the Delta, and that no water
7 other than "surplus water" would be exported from the Delta by the Projects!

8 ~~DWR AND BUREAU RESORT TO EXPORTING ABANDONED WATER, WATER~~

9 ~~DESIGNATED FOR FISH AND MANDATORY CUTBACK IMPOSED BY THE SWB.~~

10 ~~How CVP-SWP operations are making up for surplus water deficits by exporting "abandoned"~~
11 ~~water, CVPIA's water for fish, and water realized from mandatory cutbacks imposed on urban~~
12 ~~water users." This information was obtained from an extensive review of Public Record to~~
13 ~~ascertain if CVP-SWP operations cause injury to Sacramento-San Joaquin Delta water users. It~~
14 ~~includes an accounting of the applications, permits, and licenses issued to the Bureau and DWR~~
15 ~~by the State Water Board or its predecessors to ascertain if all of their permits are valid;~~
16 ~~emphasis on Bureau. If not valid alert SWB CWF Team, and if valid, are they compliant with the~~
17 ~~Terms and Conditions of their respective water right permits. It examines the public record to~~
18 ~~discern reasons why the SWB, DWR and the Bureau apparently failed to provide flow~~
19 ~~requirements for Delta salinity protection, required before water needs of residents within the~~
20 ~~Area of Origin could be given the opportunity to file for their ultimate water needs.~~

21 ~~SWB'S LACK OF DUE DILIGENCE AND ENFORCEMENT HAVE EXACERBATED~~

22 ~~VIOLATIONS~~

23 ~~Lastly, it examined the SWB's apparent lack of due diligence to compel the Bureau and DWR to~~
24 ~~comply with the Terms and Conditions imposed in their permits, licenses, Cease and Desist~~
25 ~~Orders, and Water Right Decisions adopted and issued by the State Water Board or its'~~

1 predecessors; i.e., purpose and effectiveness of issuing Cease and Desist Orders against the
2 CVP and SWP for failure to comply with the water quality assurances to provide salinity
3 protection for Delta water users.

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PORGANS/ASSOCIATES REBUTTAL TESTIMONY FOCUS ON THE KEY HEARING ISSUES

Part I – Effects of the Petition on Municipal, Industrial and Agricultural Uses of Water, Including

Associated Legal Users of Water¹⁴ [Preliminary Response to Question 1:]

1). Will the changes proposed in the Petition in effect initiate a new water right?

This is a valid question, however, in order to answer this question subjectively, it would be necessary to discern if the Bureau provided the canals and conveyance systems as referenced in the Public Record (documents) to ensure the future water needs of users located in the Area of Origin.¹⁵ Preface on the data contained in the State Water Resources Control Board (State Water Board) Public Record files (Water Right Decision 990), indicate that certain water conveyance systems intended to provide water in the Counties of Origin, via the initial plan for the Central Valley Project **apparently were not provided.**

ARE ALL OF THE BUREAU'S PERMITS VALID

More important, is the need to determine whether some of the Bureau's permits inclusive in the Petition are valid, as documents contained in Water Right Decision 990, and supported by SWB legal staff analysis raise questions as to their status.

The Chief Counsel for the Board has prepared a valuable and helpful treatise on the subject of the power of the Board to condition permits issued to the Bureau. The problem of the Board in this regard is confined to two main categories. These are: (1) the inclusion of the Watershed Protection Law so that potential users of water in the Sacramento Valley will receive a priority when contracting for new or supplemental

¹⁴ http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/docs/cwfnotice_pet_hrg.pdf

¹⁵ California's Area of Origin Laws have long been in the background of the State's major water issues. They were enacted 50-80 years ago, are written very generally, and have not been subject to a lot of interpretation by the courts. However, they remain a potential linchpin to resolving many of California's most vexing water disputes. For that reason alone, the Area of Origin Laws are worthy of attention. It is the purpose of this report to: provide a brief description of the Area of Origin Laws, to discuss recent court cases that have discussed them, and to summarize the major principles embodied in the laws.

1 ~~water; and (2) a provision for salinity control. If the Board can condition permits for~~
2 ~~watershed protection, it can, in my opinion, condition them for salinity control.~~¹⁶

3 This information, along with insufficient responses from Bureau and DWR's expert witnesses,
4 participating in the SWB evidentiary hearings, regarding detailed information of the status of their
5 permits, sources of water, compliance with the Area of Origin Laws, and Delta salinity protections,
6 contained in the Terms and Conditions of SWB issued permits, lack of knowledge of the Delta Cross
7 Channel current capacity or current diversion rates, and lack of pertinent evidence and testimony
8 provided by Petitioners' expert witnesses prompted PORGANS/ASSOCIATES (P/A) to file a **MOTION TO**
9 **DISMISS.**¹⁷) Refer to details regarding those issues in the MOTION TO DISMISS; (Tr. Sept 27, 2016: p.
10 103, line 2 through 5);¹⁸ (SWRCB-13, p. 168 and p. 32 of Decision 990.) (SWRCB-13, p. 154) (SWRCB-14,
11 p. 140) P/A is awaiting a response from the SWB CWF Team on Porgans Motion to Dismiss. (Refer to
12 Exhibit A.)

13 Since the Bureau has not provided information to indicate that the total rates of diversions will
14 be within permitted limits, the permit is a new water right and requires a new application.

15 **~~Validation of Bureau's Permits~~**

16 PORGANS line of questioning at the 27 September hearing was to discern what applications and
17 permits that the SWB, including its predecessors, approved and denied the Bureau, pertaining to Water
18 Right Decision 990.

¹⁶ William R. Attwater, Chief Counsel, SWRCB letter to Robert H. Connett, Assistant Attorney General **Re: Sacramento River and Delta Water Association, an Unincorporated Association, et al., v. California Water Commission, Sacramento Superior Court No. 126921**, March 25, 1980, pp. 1, 2 and 3.

¹⁷ http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/docs/petitions/2016dec/20161213_porgans_motion.pdf I certify that the foregoing is true and correct and that this document was executed on December 13, 2016.

¹⁸ http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/water_right_petition.shtml

~~CHIEF COUNSEL ATTWATER: WHAT STATE WATER BOARD APPROVED/DENIED IN D990 DUE TO LITIGATION~~

~~Please proceed to dismiss the above-entitled action. Application No. 5626, Permit No. 12721; Application 5628, Permit No. 11967; Application 5636, Permit No. 11887; Application 9363, Permit 12722; Application 9364, Permit No. 12723; Application 9366, Permit No. 12725; Application 9367, Permit No. 12726; Application No. 9368, Permit No. 12727; Application 13370, Permit No. 11315; Application No. 13371, Permit 11316; all were "Denied because of lawsuit filed challenging D 990.~~

* Note: Graphic stricken.

STATUS OF PETITIONS TO CHANGE PLACE OF USE AND TO ADD POINTS OF DIVERSION AND OF REDIVERSION				
APPLICATION NO.	PERMIT NO.	LICENSE NO.	STATE FILING/ RELEASE OF PRIORITY	STATUS
23	---	1986	No	Granted
234	11885		No	Granted
1465	11886		No	Granted
5626	12721		Yes	Denied because lawsuit pending
5628	11967		Yes	No action because lawsuit filed
5636			Yes	Cancelled
5638	11887		Yes	No action because lawsuit filed
7940			Yes	Cancelled
9363	12722		Yes	Denied because lawsuit filed
9364	12723		Yes	Denied because lawsuit filed
9366	12725		Yes	Denied because lawsuit filed
9367	12726		Yes	Denied because lawsuit filed
9368	12727		Yes	Denied because lawsuit filed
13370	11315		Yes	No action because lawsuit filed
13371	11316		Yes	No action because lawsuit filed
15374	11968		No	Granted
15375	11969		No	Granted
16767	11971		No	Granted
17374	11973		No	Granted
17376	12364		No	Granted

~~For more detailed documentation visit this site~~

~~http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/docs/petitions/2016dec/20161213_porgans_motion.pdf~~

1 **VERIFICATION OF BUREAU'S PERMITS INCLUSIVE IN WATER RIGHT DECISION 990**

2 If the documents in the Record are correct, then, It appears that the SWB CWF Team
3 should direct staff to conduct a review of the entire Decision 990 record, not just the few pages
4 included in the CWF hearing record regarding D 990, but also to assess other previous
5 decisions regarding those permits or related Petitions for Temporary changes in points of
6 diversions or for relaxation of the Delta water quality standards. Rather, the CWF Team should
7 review those tens-of-thousands pages that address the Area of Origin and Delta salinity
8 protection, terms and conditions of their respective water right permits to ascertain the
9 dispositions of the Bureau's compliance with the Permits issued by the SWB.

10 Furthermore, the terms and conditions contained in the Bureau's Permits require it to
11 provide the SWB and those in the **Area of Origin** of the amount of water needed to meet Delta
12 salinity requirements, which was required in the State Department of Finance's applications and
13 permits that were granted to the Bureau back in 1927 and 1938. *

14 PA's review of the documents to date, indicate the absence of this data, may have
15 preempted Area of Origin users from filings for their ultimate water requirements. P/A is
16 awaiting a reply from both the SWB CWF Team and the Bureau as to the current disposition of
17 the Bureau's effort to provide the salinity flow requirements. [Emphasis added.]

18 **2 Will the proposed changes cause injury to any municipal, industrial or**
19 **agricultural uses of water, including associated legal users of water?** ¹⁹
20

21 **[Preliminary Response 2:]**

22 This is also a very important question and needs to be answered. While it would be
23 presumptuous to assume that the proposed changes will unequivocally cause injury to

¹⁹ http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/docs/cwfnotice_pet_hrg.pdf

1 other water users and uses. However, as is customary, if one reviews the Bureau and
2 DWR's compliance track-record, available in the Public Record, documents and evidence
3 contained therein attest that there is no question during dry and critically dry periods
4 Project operators Petitions approved by the SWB to relax Bay-Delta standards and
5 related requirements have proven to be extremely problematic exacerbating injury to
6 other water users and public trust resources. Details are contained herein.

7 **a. Will the proposed changes in points of diversion alter water flows in a**
8 **manner that causes injury to municipal, industrial, or agricultural uses of**
9 **water?**

10
11 **[Preliminary Response to Note 2a:]**
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13 Documents contained in the Public Record attest that existing SWP/CVP Delta
14 operations have and continue to cause significant injury to Delta water users. Failure by the
15 Project operators to be compliant with Delta water standards and related requirements
16 contained within the Terms and Conditions of their State Water Board issued permits caused
17 farmers to sell thousands of acres of land to the Department of Water Resources because of it
18 and the Bureau's apparent failure to provide a supply of usable water for Delta users. This injury
19 led to the acquisition of nearly the entire 10,000 acres of Sherman Island, which, coincidentally,
20 provides a potential windfall of hundreds-of-thousands of acre-feet of water for the Projects
21 future water needs and intrinsic contractual shortcoming.

22 The damages in the Sherman Island injuries were also attributable to the SWB's failure to
23 exercise its enforcement authority, and by the SWB's repeatedly approval of DWR and the
24 Bureau of Reclamation's Petition to relax Delta water quality standards and related regulatory
25 requirements.

26 The Record also will also reveal that during every major drought since 1977 to present
27 the Project operators delivered record-breaking amounts of water to their State Water Project
28 and federal Central Valley (CVP) contractors, in the early years of each drought.

1 **INJURY CAUSED BY SWP AND CVP OPERATION ON DELTA WATER USERS**

2 As in Sherman Island and other related injuries, it was at the expense and to the demise
3 of non SWP-CVP contractors. Delta water quality requirements in the 1981 North Delta Water
4 Agency’s contract, insurance policy, to meet the Emmaton standard that in theory insured
5 farmers with a suitable supply of useable water, it take 49 acre-feet of water per one acre-foot of
6 usable water at Emmaton; resulting in hundreds of thousands of acre-feet of water of carriage
7 water.

8 **Preliminary Response to 2a:]**

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10 Sherman Island Irreparable Injury was due to SWP-CVP Projects and SWB Failure to Enforce
11 the Law
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13 If the historical record is any indication as to what may occur, the documents
14 indicate that previous changes in CVP-SWP points of diversion were problematic;
15 especially in drought years.

16 A case in point occurred on Sherman Island, during the 1987-1992 drought years,
17 when the water the Projects provided was laden with salts. Evidence retained at the
18 SWB’s office, exhibits submitted by DWR and Bureau officials documenting 100’s of
19 violations, where submitted at a SWB hearing on the illegal diversions and violations of
20 the Delta water protections requirements.

21 During the drought, the Bureau and DWR unilaterally decided to illegally impound
22 and export water not surplus to the Delta, and not permitted in the terms and conditions
23 of their Permits. The water was intended for Delta water users and uses to dilute the
24 levels of salts to insure that their soils would not be impaired from the saline water, which
25 has made it difficult even to grow drought resistant crops.

1 Sherman Island water rights were theoretically protected by the terms and
2 conditions embedded in the initial water right filings by the State Department of Finance;
3 Area of Origin Laws, Delta Protection Act, SWB Water Right Decisions and an insurance
4 policy it signed via a 1981 North Delta Agency Water Contract. The evidence in the
5 Public Record indicates that previous approved points of diversions did cause significant
6 and irreparable injury to Delta water users, especially agriculturalist, and Public Trust
7 resources (aquatic, terrestrial and avian species, a number of which are listed on the
8 Endangered Species Act (ESA).

9 The Public Record also attests that the SWB predecessors' apparent decision not
10 to enforce the hundreds of violations of the terms and conditions of the Project operators
11 permits appears to have contributed to the injury sustained by Delta water users.

12 ~~**CEASE AND DESIST ORDERS APPEAR TO BUY MORE TIME FOR PETITIONERS**~~

13 ~~Instead, the SWB waited a decade later to issue a Cease and Desist Order~~
14 ~~against the Bureau and DWR for "threatening to violate" Delta salinity objectives. P/A~~
15 ~~intends to discern the logic and reasoning for state water regulators to have taken almost~~
16 ~~a century to provide Delta salinity protection, water rights assurances for users in the~~
17 ~~County of Origin, and, subsequent flood control protection, authorized and funded by the~~
18 ~~State Legislature and a voter-mandate from the people, which have not been provided.~~

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~~1 Status of the Bureau and DWRs requirement to provide water needs for those in the Area~~
~~2 of Origin.~~

~~3~~
~~4 The SWB is required to consider the Public Interest in its decisions to approve the use of~~
~~5 the “public’s water” resources, and that the terms and conditions in permits issued by the SWB~~
~~6 should be compliant within a reasonable period. The question is what constitutes a “reasonable~~
~~7 period of time” for the SWB to require a Permittee to be compliant with the terms and conditions~~
~~8 of their permit. Salinity and water rights protection assured for the Delta 90-Years ago in a State~~
~~9 Filed Application 5626 (Decision 990), listed the permits inclusive in that Decision, which, have~~
~~10 not been provided.~~

~~11~~
~~12 Public Records were inspected to discern the status of the water rights, salinity and flood~~
~~13 protections assured Delta users, dating back to 1927. To determine why after nearly 100 years,~~
~~14 these protections have not been provided or fulfilled in a manner consistent with the terms and~~
~~15 conditions of the Bureau’s and DWR’s SWB permits, licenses, pending CDOs, adopted Water~~
~~16 Quality Plans, and SWB Water Right Decisions. Furthermore, there appears to be ambiguities~~
~~17 and incongruities in documents contained in the Public Record, raising legitimate questions as~~
~~18 to the apparently failure of the SWB to provide and enforce Delta salinity objectives, and provide~~
~~19 flows required to maintain the Delta salinity objectives, and impeded residents within the Area of~~
~~20 Origin to file for their ultimate water needs. Lastly, documents in the Record raise questions as~~
~~21 to the validity of certain Bureau permits, and the operating criteria of the CVP and SWP over-~~
~~22 dependence on Delta “surplus water.” The Record attests DWR and the Bureau resorted to~~
~~23 illegally diverting Delta users’ water. As of late, they resorted to exporting abandoned and~~
~~24 “unclaimed” water.~~

~~25~~
~~26 Status of 20 year litigation; *Sacramento River and Delta Water Associations v State Water*~~
~~27 *Rights Board*; MOTION TO DISMISS Decision 990.~~
~~28~~
~~29~~

1 ~~Some assurances date back nearly 100 years; however, they have yet to be provided. It~~
2 ~~is important to note that this is the last remaining Delta on the West Coast of the Americas;~~
3 ~~the Bureau is responsible for the destruction of the Delta that once entered into the Gulf of~~
4 ~~California, also known as the Sea of Cortez; upon completion of the Colorado River Project.~~
5 ~~P/A notified the SWB CWF Team that the focus of the CWF hearing is myopic, limited in~~
6 ~~scope, and impedes participants the opportunity to focus on major peripheral issues germane~~
7 ~~to the CWF. The CWF hearing process is entrenched in mediocrity and legalize, orchestrated~~
8 ~~by government attorneys skilled in the art of water law and maceration of the Delta.~~
9 ~~The time to submit rebuttal comments are just about due 23 March 2017; therefore, I have to~~
10 ~~stop here, when there is so much more to cover.~~

11
12 Sincerely,
13 Patrick Porgans

14
15 ATTACTMENTS 1 thru 4 included in this email.

- 16 1). List of Exhibits Identification Index
17 Attachment 2
18 2). List of PORGANS STATEMENT OF QUALIFICATIONS
19 **3).** Patrick Porgans Rebuttal Bibliography
20 4). SWB CWF Attachment 4 SWP Financial and Bay-Delta Reports.docx
21

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7
8 **STATEMENT OF SERVICE**
9

10
11 **CALIFORNIA WATERFIX PETITION HEARING**
12 **Patrick Porgans/Association and Planetary Solutionaries (Protestants)**
13

14 I hereby certify that I have this day submitted to the State Water Resources Control
15 Board and caused a true and correct copy of the following document(s):
16

17 **TESTIMONY OF PATRICK PORGANS**
18

19 to be served **by Electronic Mail** (email), in parts due to server limitations, upon the parties
20 listed in Table 1 of the **Current Service List** for the California WaterFix Petition Hearing, dated
21 November 15, 2016, posted by the State Water Resources Control Board at
22 [http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix](http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/service_list.shtml)
23 [/service_list.shtml](http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/service_list.shtml)
24

25 I certify that the foregoing is true and correct and that this document was executed on
26 March 22, 2017.
27

28
29 Signature:

30
31 */sg/ Patrick Porgans*
32

33 Name: Patrick Porgans

34 Title:
35

36 Party/Affiliation:

37 Patrick Porgans
38

39 Address: P.O. Box 60940, Sacramento, CA 95860
40

41 ATTACHMENTS 1 thru 4 included in this email.

42 1). List of Exhibits Identification Index

43 Attachment 2

44 2). List of PORGANS STATEMENT OF QUALIFICATIONS

45 **3).** Patrick Porgans Rebuttal Bibliography

46 4). SWB CWF Attachment 4 SWP Financial and Bay-Delta Reports.docx

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EXTRA COMMENTS THAT CONTAIN REDUNDENCIES (Out of time)

TESTIMONY OF PATRICK PORGANS, PORGANS/ASSOCIATES ON BEHALF OF PLANETARY SOLUTIONARIES

Petitioner PATRICK PORGANS on behalf of PLANETARY SOLUTIONARIES submits this Statement of Issues

Proposed to Be Addressed in Closing Briefs for Part 1 of this hearing in response to the Hearing Officers' ruling of

19 December 2016. The ruling invites parties to submit a concise statement of the issues that they would like

addressed at the end of Part 1, including an explanation why such issues would more appropriately be briefed at the

end of Part 1 rather than Part 2. The issues that PORGANS believes would be appropriately addressed at the end

of Part 1 rather than Part 2 are as follows:

Issue Number I: Would granting the Petition in effect require the issuance of a new water right?

Based upon a review of the State Water Board's (SWB) files there are questions that raise issues as to

whether the PETITIONERS, in particular, the U.S. Bureau of Reclamation have met the terms and conditions

imposed in permits issued by the SWB. In particular, did the Bureau provide the conveyance canals to meet the

water needs of those within the Area of Origin (where the water originates)? Details pertaining to this issue are

contained in **PORGANS MOTION TO DISMISS** submitted to the SWB. *[Attach file]

Issue Number II: Has the Bureau met the terms and conditions of their water right permits to provide for salinity

protection in the Delta?

According to SWB documents the Bureau has failed to provide the flow data or means required to meet

salinity objectives. Failure to comply has and continues to cause injury to private property and Public Trust

Resources. Therefore, it would be in the Public Interest for the SWB to include this information in a brief.

***Note: text on PDF pages 19-25 of this document are not considered to be testimony.**

1 **Issue Number III:** The Availability of Water in the Delta for SWP and CVP [**PORGANS Exhibit 2:** DWR, CA State
2 Water Project, Bull. 132-63, p. 121]²⁰ [**PORGANS Exhibit 3:** DWR, CA State Water Project, Bull. 132-63, pp. 95-
3 105]²¹

4 SWB records indicate that due to the inherent shortcomings of the federal Central Valley Project, and the
5 State Water Project, both dependent to some degree on the export of “surplus” water from the Delta, which as
6 witnessed, during this and previous drought events, was devoid of “surplus” water.

7 **Issue Number IV:** Compliance with the Terms and Conditions of the Bureau and DWR Permits

8 The Project operators’ statements that the CVP and SWP have been compliant with Delta water quality
9 protections contained in their respective permits 98.9 % of the time requires vetting, as that number is
10 misleading. [DWR-4: Operation – Modeling SWP/CVP 98.9% Success Meeting Bay-Delta Req.] DWR-51 Memo to C.
11 Corthers Re: CalSim II 82 vs 16 years] [**PORGANS Exhibit-101:** All Models Are Wrong, but, Some Are Useful, Jay
12 Lund, UCD]

13 Compliance with Delta salinity protection does not always require the Projects to release “carriage
14 water” to meet Bay-Delta requirement or standards. [**PORGANS Exhibit-4: DWR Jerry Cox Memo**] It is during
15 drought years that the violations tend to occur. When questioned as to the validity of this compliance percentage
16 (wet and drought years), the PETITIONERS could not answer the question. [**PORGANS Exhibit-104:** DWR,
17 Sacramento River Unimpaired Runoff, 1906 thru 2015] [**PORGANS Exhibit-104A:** Drought Cycles in three 16-year
18 periods] [**PORGANS Exhibit-104B:** DWR, Sacramento River Unimpaired Runoff, 1970 thru 2015 SWRCB-DWR-USBR
19 Violations 1987-1992] [**PORGANS Exhibit-119** has hundreds of violations by the USBR-DWR of the Vernalis and
20 Emmaton Delta requirements] [**PORGANS Exhibit-5:** DWR: State Water Project Deliveries, 1967 thru 2015]

***Note: Porgans-119 was renumbered as Porgans-305**

²⁰ I certify Patrick Porgans Exhibit-2 is a true and correct copy of verbatim excerpts contained in DWR-Bulletin 132-63, *The California State Water Project in 1963, Chapter VII. Project Water Yield - Water Demands Upon the Delta Pool*, April 1963, p. 121.

²¹ I certify Patrick Porgans Exhibit-3 is a true and correct copy of verbatim excerpts contained in DWR-Bulletin 132-63, *The California State Water Project in 1963, Chapter V. Water Supply – Delta Pooling Program*, April 1963, pp. 95 - 105.

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1 [PORGANS **Exhibit-6: SWRCB-6:** 6 April 2015 Order that Approved and Denied in Part ...
2 Relaxation of Delta Standards]

3 During a 1993 SWB hearing, on this matter of the several hundred violations of Delta standards,
4 committed by the Bureau and DWR, the Board, opted not to take an enforcement action against the DWR and the
5 Bureau. Based on the SWB, DWR, and Bureau exhibits entered into the record, they illegally impounded and
6 diverted an estimated 500,000 acre-feet of water, valued at \$29 million. [PORGANS **Exhibit-110:** SWB Public
7 Hearing - DWR and USBR Compliance with Delta Standards] [PORGANS **Exhibit-111:** Senator Milton Marks et al
8 letter to SWB John Caffrey regarding Board's Failure to Enforce Delta Standards] [PORGANS Exhibit Exhibit-112:
9 SWB Enforcement Actions] [PORGANS **Exhibit-113:** SWB letter to DWR Director David Kennedy No Enforcement
10 Action] [PORGANS Exhibit-114: SWB letter to Porgans it will take no enforcement action against the SWP/CVP
11 Operators]

12 In this current drought the Bureau and DWR have resorted to exporting "abandoned" water flowing
13 through the Delta and water realized from the mandatory 25 percent cutback in urban water users. [PORGANS
14 Exhibit-115: Email to SWB CWF staff – SWB TUCP (Mandatory Water Conservation) Water Save 3.2 MAF – Market
15 Value of more than \$3 Billion – Need Disposition of saved water]

16
17 Table 2
18 Summary of Reclamation's Subject Water Rights Requested Changes
19 Complete Use Date (Footnote 13)
20

21
22
¹³ Water right permits issued by the State Water Board specify a development schedule to complete construction and beneficial use of water. When a permit development schedule has elapsed, no further development of water use may occur. The permittee is limited to the maximum annual quantity put to use during the permit development schedule unless the permittee is granted an extension of time to extend the development schedule. Reclamation's time to complete construction for the subject permits elapsed on a range of dates from December 1, 1964 through December 1, 1985. Reclamation's time to complete beneficial use of water for its subject permits elapsed on December 1, 1990. On September 19, 1985, Reclamation filed a petition for an extension of time to the year 2030. On June 26, 2009, Reclamation filed a petition to extend the development schedule until December 1, 2030, for the subject 11 permits and 21 other Reclamation permits. The June 26, 2009 petition superseded the September 19, 1985 petition. The State Water Board noticed all 32 Reclamation petitions on September 3, 2009, and received 17 protests, of which 11 were accepted, in whole or in part, as valid protests. The protests have not been resolved and the petitions requesting time extensions are still pending.

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http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/water_right_petition.shtml

http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/water_right_petition.shtml

The Bureau of Reclamation is seeking to add three new points of Direct Diversion to Permits 12721, 12722, and 12723, which total 18,000 cfs. The source for these permits is the Sacramento River and the Delta.

The information in the permits on the Bureau's existing diversion works clearly show that the California WaterFix would create additional diversion capacity in exceedance of the permitted rates of direct diversion authorized under the existing permits. The Bureau failed to provide sufficient information with the Change Petition to show that the Bureau's diversions would stay within the permitted total of 18,000 cfs.

According to the Board's 2009 ruling on reconsideration of the City of Santa Cruz Change Petition,

"The common feature among the changes that have been found to constitute the creation of a new right, as opposed to a change in an existing right, is that the changes that initiate a new right *increase the amount of water taken from a water source at a given time*. (See *Johnson Rancho County Water District v. State Water Rights Board*, supra, 235 Cal.App.2d at 879 [approving as "commonsense" the granting of a change in a water right application that did not increase the amount of water appropriated or its source]; *State Water Board Decision 940* (1959) ["a direct diversion right can be converted to a storage right only to the extent there is *no change in rate of diversion from the stream ...*"]; *George A. Gould, Water Rights Transfers and Third-Party Effects*, 23 *Land and Water Law Review* 1 (1988) p. 9 ["To paraphrase Mead, 'the later comers had an equal claim to protection from the enlargement of prior uses which reduced the flow available to satisfy their appropriations' ... consequently, *a rate of diversion ... limits the 'flow' to which each appropriator may claim a priority....* Some states later added a volume ("quantity") limitation."] referencing *E. Mead, Irrigation Institutions* 66, 67 (1903).)

(p. 6, emphasis added.)

In Decision 990, which granted the permits 12721, 12722, and 12723 the Board did not carefully examine the rates of direct diversion in the applications, but stated:

In fixing the rates of direct diversion to be allowed, the Board is inclined to greater liberality than usual because of the magnitude of the Project and the complexities involved in determining at this time the direct diversion as distinguished from rediversions of stored water. However, notwithstanding these considerations, we would require greater particularity in proof of direct diversion requirements were we not assured that no prejudice to others will result from failure of applicant to produce such proof. This assurance is provided by conditions which will be imposed

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in the permits subjecting exports of water from the Delta to use within the Sacramento River Basin and Delta so that there can be no interference with future development of these areas. (p. 40.)

Ray Sahlberg's written testimony (DOI-4) was proposed to authenticate Reclamation's permits. That testimony stated on p. 4:

Reclamation holds 22 water rights permits for the CVP (plus nine permits for hydroelectric power). 11 of these permits are the subject of this petition: Permits 11315, 11316, 11967, 11968, 11969, 11971, 11973, 12364, 12721, 12722, and 12723 (SWRCB-10 through SWRCB-20)⁷

Footnote 7 stated:

True and correct copies have been provided by the SWRCB as SWRCB-10, SWRCB-11, SWRCB-12, SWRCB-13, SWRCB-14, SWRCB-15, SWRCB-16, SWRCB-17, SWRCB-18, SWRCB-19, and SWRCB-20.

However, when SWRCB-13 and SWRCB-14 were introduced in cross-examination in the Hearing by Patrick Porgans on September 27, 2016, both Maureen Sergent and Ray Sahlberg testified that SWRCB-13 and SWRCB-14 were not permits, but only petitions for temporary transfer. Kevin Long, a member of the Hearing Team, stated that the original permit was at the back of the 145 page(pdf) document, but both Ms. Sergent and Mr. Sahlberg appeared to be unfamiliar with the document and did not corroborate Mr. Long's statement. (Tr. Sept. 7, 2016, 99:15, reproduced in Attachment A.) Based on this lack of authentication of the document, the Hearing Chair requested that there not be further cross-examination on the permits, based on not wanting to "spend time doing a document search." (*Id.*)

Because both Mr. Sahlberg and Ms. Sergent failed to recognize the permits, it was not possible for Mr. Porgans to ask detailed questions on the Bureau's compliance with the permit terms in Decision 990. The information submitted with the Change Petition also did not address the Bureau's future compliance permit terms in Decision 990. For this reason, the Board will have wholly insufficient information to determine if the Bureau has been complying the permit terms set in Decision 990 to ensure no prejudice to others, and if the operations with the additional points of diversion will comply in the future with the permit terms in Decision 990 to assure no

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1 prejudice to others. These permit terms go beyond the water quality standards set by the Board, most recently
2 in Decision 1641.

3 In the Change Petition, the Bureau did not disclose the current or proposed maximum total rates of direct
4 diversion under the Bureau's permits. Neither the Change Petition nor the Petitioners' Case in Chief provides
5 clear information on the current and proposed total rates of direct diversion from the Sacramento River and the
6 Delta under these permits. Thus the Board does not have sufficient information to even determine if the
7 permitted rate of diversion will be exceeded with the 9,000 cfs of new diversions. The current and proposed
8 diversion schedules are also required under Cal. Code Regs. Title 23 § 794.

9 When cross-examined by Mr. Porgans on September 27, 2016, Mr. Sahlberg could not even provide any
10 information on the current capacity or current diversion rate of the Delta Cross Channel. (Tr. Sept 27, 2016: p.
11 103, lines 2 through 5, reproduced in Attachment A.) The Delta Cross Channel is listed in the Bureau's
12 applications as having a planned capacity of 9,500 cfs, and is included in the Bureau's permits of 18,000 cfs of
13 direct diversion from the Sacramento River. (Exhibit SWRCB-13, p. 168 and p. 32 of D 990.) The applications show
14 that the Delta Cross Channel capacity, together with the 4,600 cfs Delta Mendota Canal, totals 14,100 cfs. (Exhibit
15 SWRCB-13, p. 154.)

16 The maximum combined rate of diversion and rediversion under these permits from both the Banks
17 Pumping Plant and the Tracy Pumping Plant shall not exceed 4,600 cubic feet per second. (Exhibit, SWRCB-14, p.
18 140.)

19 With the new 9,000 cfs conduits, the total capacity of the diversion works will be significantly higher than
20 the 18,000 cfs limit set in the Bureau's permits. (See Attachment A.) Since the Bureau has not provided
21 information to indicate that the total rates of direct diversion will be within the permitted limits, the
22 permit is a new water right and requires a new application.

23
24 PORGANS line of questioning at the 27 September 2016 hearing was to discern what applications and
25 permits that the SWB, including its predecessors, approved and denied the Bureau.

26
27 SWB Exhibits 13 and 14 were submitted as PETITIONS FOR TEMPORARY CHANGE INVOLVING THE
28 TRANSFER OF WATER. It was discovered that D 990, and all of the files associated with that decision, was
29 not submitted into the record. PORGANS requested that D 990, in its entirety be submitted into the
30 record and is currently awaiting a decision from the CWF Team for that request. The information
31 contained in those files is necessary for participants to be more informed about the issues and findings
32 contained therein, because 11 of the permits that the Bureau list in the Change Petition, were inclusive in
33 D 990.

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Attachment: Status of Petitions to Change Place of Use and Points of Diversion and of Rediversion²²

ATTWATER: WHAT STATE WATER BOARD APPROVED/DENIED IN D990 DUE TO LITIGATION

Please proceed to dismiss the above-entitled action. Application No. 5626, Permit No. 12721; Application 5628, Permit No. 11967; Application 5636, Permit No. 11887; Application 9363, Permit 12722; Application 9364, Permit No. 12723; Application 9366, Permit No.12725; Application 9367, Permit No. 12726, Application No. 9368, Permit No. 12727; Application 13370, Permit No. 11315; Application No. 13371, Permit 11316; all were "Denied Application 13370, Permit No. 11315; Application No. 13371, Permit 11316; all were "Denied" because of lawsuit filed challenging D 990

²² William R. Attwater, Chief Counsel, SWRCB letter to Robert H. Connett, Assistant Attorney General Re: **Sacramento River and Delta Water Association, an Unincorporated Association, et al, v. California Water Commission, Sacramento Superior Court No. 126921**, March 25, 1980, pp. 1, 2 and 3.