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**From:** Patrick Porgans [<mailto:porgansinc@sbcglobal.net>]

**Sent:** Friday, February 13, 2015 1:29 PM

**To:** commentletters; Satkowski, Rich@Waterboards

**Subject:** Fw: Written Comments - SWB Drought Workshop Feb 17-18 2014 Amendments Comments for upcoming 15 February 2015 Workshop forthcoming

To: Jeanne Townsend and Richard Satkowski

Today, at approximately 11:50 a.m., I spoke with Mr. Richard Satkowski regarding submitting comments on the Board's 18 February 2015 TUCP Workshop. He informed me that comments were due by noon today. I explained to him that my comments would be forthcoming.

Patrick Porgans & Associates comments are brief:

**Introductory Statement/Comments:** There are serious questions as to the motive, and need and purpose of the TUCP's reduction in Delta water quality standards. However, there is no question that the amount of water saved by the SWP/CVP operators will be significant. The TUCP places additional stressors on a system that is already under duress attributable to the DWR/USBR's Delta export operations. Existing storage capacity does not appear to support the extent of the purported need for the request to "save water" to protect health and safety; the petitioners have not provided the public with what that amount of water required. The record indicates that the petitioners have applied for and received "Temporary Urgency Change Petitions" since the late 1960s. Every time the project operators contribute the water shortages, they petition the Board, which, as a rule sanctions their requests, and the Delta water users and users take the hit to make up the difference. DWR and USBR should be required to pay for the water they save, and use it to compensate for losses and damages incurred by Delta users and uses. Based on the record, this appears to be nothing short of a water grab.

(1) P&A does not believe that the TUCP as written is adequately justified for the purposes for which the DWR and USBR assert.

(2) Neither of the petitioners have provided a specific amount of water required to meet health and safety requirements.

(3) There are unresolved questions related to the petitioners' intent to lessen critical economic losses; which appears to be an "addendum" to their 2014 TUCP. If the petitioners are referring to losses that may be incurred by their respective SWP and CVP water contractors, then P&A would have reservations as to the justification for losses and risks that are inherent in the terms and conditions of the respective water supply contracts for the SWP and CVP. Albeit, shortages in water deliveries are a given, while the focus is presently to lessen economic losses, it lacks data that illustrates the tens-of-billions of dollars realized by SWP/CVP contractors that receive water south of the Delta for the past several decades. SWP/CVP contractors knew when they planted permanent crop after the last major drought in 1987-1992 that shortage of water would be a reality; they took a gamble, made a lot of money, and now they are concerned about economic losses. As stated in my 2014 comments, between 2002 and 2012 more than 400,000 acres of new almonds had been planted; I am not even accounting for the grapes. The amount of water required to irrigate the 800,000+ acres of almonds, to keep them alive, requires about 2.7 MAF of water annually; about 500,000 acre-feet more than the Southern California Metropolitan Water District (MDW) provides to all of those customers annually.

(4) Lessening the D-1641 standards, as proposed, will have a direct economic impacts on Delta water users and uses; the extent of which has yet to be quantified; and compensation for losses attributable to the TUCP have not been identified. Therefore, the language contained in the TUCP that **"This order also includes additional requirements to assure that the changes; do not impact other legal users of water, do not have unreasonable impacts of fish and wildlife and other beneficial uses, and are in the public interest."** There is insufficient data in the TUCP and Negative Declaration to justify this assertion.

(5) As written, the primary beneficiaries for the reduction in Delta water quality standards will be DWR/USBR SWP and CVP contractors; as the carriage water and related water attributable to a relaxation of the standards, will be either exported or retained in SWP/CVP storage facilities.

(6) The Negative Declaration is grossly inadequate, and the magnitude of the changes and the impacts associated with the petitioners request necessitate a full blown EIR.

(7) According to reservoir storage data posted on DWR's website, water storage has increased significantly since the 15 January 2015 TUCP and drought contingency plan was noticed. As of Midnight 11 February 2015:

**CURRENT RESERVOIR STORAGE IN TRINITY, SHASTA, OROVILLE, BULLARDS BAR, FOLSOM & SAN LUIS**

**7,370,727 acre-feet**

**RESERVOIR LEVELS IN PERCENT OF AVERAGE SINCE 31 JAN TO 11 FEB 2015**

**SHASTA AT 53% OF CAPACITY 76% OF HISTORICAL AVERAGE UP 700,000 AF OVER LAST YEAR THIS TIME**

**TRINITY AT 44% OF CAPACITY 61% OF HISTORICAL AVERAGE UP 80,000 AF OVER LAST YEAR THIS TIME**

**OROVILLE AT 46% OF CAPACITY 69% OF HISTORICAL AVERAGE UP 300,000 AF OVER LAST YEAR THIS TIME**

**FOLSOM AT 54% OF CAPACITY 101% OF HISTORICAL AVERAGE UP 250,000 AF OVER LAST YEAR THIS TIME**

**BULLARDS BAR AT 59% OF CAPACITY 95% OF HISTORICAL AVERAGE COMPARABLE TO LAST YEAR THIS TIME**

**SAN LUIS AT 57% OF CAPACITY 757% OF HISTORICAL AVERAGE UP 1,000,000 AF OVER LAST YEAR THIS TIME**

**CURRENT STORAGE AT JUST THOSE SIX (6) FACILITIES IS 7,370,727 AF**

**HISTORICAL AVERAGE FOR THOSE 6 FACILITIES IS 10,091,985**

(8) This being the fourth year of the current drought indicates that DWR/USBR had not adequately plan for or assessed the impacts associated with ongoing drought.

Under Section 2.1 Bay-Delta Plan and D-1641, on page 2 of 25, "Flow and salinity objectives in the Bay-Delta Plan and D-1641 were developed based on historical hydrologic conditions. Provisions for the extreme dry conditions currently being experienced were therefore not considered in either the Bay-Delta Plan or D-1641. P&A takes exceptions to this

statement. Furthermore, any shortcoming associated with probable severity of extended droughts in California is indicative of government's ability to comprehend its own data.

(9) In the interest of time, and due to the fact comments are due today, our comments have been cut short. Albeit, P&A is requesting that its comments submitted in February 2014 on the TUCP be incorporated with the comments we are submitting today.

(10) The extent and gravity of what is being requested by the petitioners should be the subject of a formal Board meeting, wherein, each of the parties can present facts and evidence and be cross-examined to ascertain the basis of their assertions. However, the Board has been reluctant to hold a formal hearing, which is very disconcerting.

Please be advised that P&A's comments were composed under duress, and have not been edited to our normal standards. It is for this reason, P&A has included its previous comments submitted on 19 February 2014 on the previous TUCP approved by the Board.

On Wednesday, February 19, 2014 5:14 AM, Patrick Porgans <[porgansinc@sbcglobal.net](mailto:porgansinc@sbcglobal.net)> wrote:

----- Forwarded Message -----

**From:** Patrick Porgans <[porgansinc@sbcglobal.net](mailto:porgansinc@sbcglobal.net)>

**To:** Jeanine Townsend <[JTownsend@waterboards.ca.gov](mailto:JTownsend@waterboards.ca.gov)>

**Cc:** "[pp@planetarysolutionaries.org](mailto:pp@planetarysolutionaries.org)" <[pp@planetarysolutionaries.org](mailto:pp@planetarysolutionaries.org)>; [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)

**Sent:** Wednesday, February 19, 2014 5:13 AM

**Subject:** Written Comments - SWB Drought Workshop Feb 17-18 2014

Ms. Townsend

Please see to it that the Board member receive a copy of my written comments before today's, Feb 18 meeting. Thank you.

Patrick Porgans, Porgans & Associates

1 **STATE WATER BOARD ORDER APPROVING A TEMPORARY URGENCY CHANGE**  
2 **(TUC) IN LICENSE AND PERMIT TERMS AND CONDITIONS REQUIRING COMPLIANCE**  
3 **WITH DELTA WATER QUALITY OBJECTIVES IN RESPONSE TO DROUGHT**  
4 **CONDIITIONS, AND PUBLIC WORKSHOP REGARDING THE TEMPORARY URGENCY**  
5 **CHANGE PETITION FOR THE CENTRAL VALLEY AND STATE WATER PROJECTS AND**  
6 **STATE WATER AVAILABILITY ACTION**

7  
8 RE: Patrick Porgans & Associates (P/A) Response to State Water Board's (SWB) TUC  
9 CONCLUSIONS

10  
11 My name is Patrick Porgans, Solutionist and Principal of Porgans & Associates (P/A), here  
12 today representing our client, **Planetary Solutionaries** (P/S), a not for profit organization,  
13 which serves as a **de facto public trustee**; assisting, and, when necessary compelling  
14 government to perform its respective duties and Public Trust mandates, accordingly..

15  
16 **P/A has a long history of interacting with the SWB** on matters pertaining to its jurisdictional  
17 responsibilities and powers it exercises over the permits and licenses issued to the California  
18 Department of Water Resources (DWR) for the operation of the State Water Project (SWP),  
19 and the federal Bureau of Reclamation's Central Valley Project (CVP).

20  
21 **Before commenting on the TUC there are several points that are in need of clarification.**  
22 The executive director's TUC order issued on 31 Jan 2014 limited the SWP/CVP Delta  
23 exports to 1,500 cfs for a period of 180 days, subject to change, depending on weather  
24 conditions. However, subsequent to SWB's announcement it rain, and that SWP/CVP export  
25 limitations had been "temporarily" postponed. Data posted on government websites late last  
26 week revealed that combined SWP/CVP Delta exports were around 5,500 cubic feet per  
27 second. There are questions regarding the source of the water DWR and Reclamation are  
28 currently pumping, which is not being released from storage.

29  
30 **Scope and breadth of the TUC**, and the implications of its implementation, is rife with major  
31 uncertainties, assumptions, and conclusions that raise more questions than answers. For that  
32 and many other reasons, on behalf of our client, and in the public interest, P/A request that the  
33 **SWB schedule and hold an evidentiary hearing** as soon as possible; taking into account  
34 the urgency of the Governor's Proclamation of a Drought State of Emergency and issuance of  
35 the TUC.

36  
37 In the interim, P/A offers the following observations, comments, and suggestions to the SWB,  
38 as a means to put the matter in some relative perspective, beginning with the executive  
39 director's conclusions in the TUC and the circumstances leading up to his action.

40  
41 **Sequence of events subsequent to Gov. Brown's 17 Jan 2014 Proclamation of a**  
42 **drought State of Emergency**; on 29 January DWR and Bureau of Reclamation file a petition  
43 with SWB, which requested permission for "temporary" changes of their water right permits;  
44 on 31 January SWB's executive officer, Tom Howard approved the petition.

45  
46 Water officials publicly announced that 2013 as **the driest year** since the state began  
47 measuring rainfall back in 1849. However, as a rule, water accounting is not based on a  
48 calendar year; rather as a water-year (October through September of the following year) that  
49 indicates the State was less than four months into the water-year. The Governor's  
50 Proclamation claims that 2014 will be the driest year, which has been branded as part of a

1 500-year drought cycle. The media has ran with the “[500-year drought](http://gov.ca.gov/news.php?id=18368)” story;  
2 heightening, public fears. <http://gov.ca.gov/news.php?id=18368>] “We are on track for  
3 having the worst drought in 500 years,” said B. Lynn Ingram, a professor of earth and  
4 planetary sciences at the University of California, Berkeley.

5 Present day climate models rely on limited measureable data (about 150 years of  
6 recorded data) and to a greater degree on “tree rings” dating back to the 1500’s. “With  
7 the right selection of trees, the thickness of annual growth rings indicates the wetness  
8 of the season. Tree ring widths are not a perfect match (they did not reproduce the  
9 1976-1977 droughts) but have been useful to investigate how the measured runoff or  
10 precipitation record compares with a longer sweep of history”, according to the  
11 California Department of Water Resources (DWR).<sup>1</sup>

12 **Executive Officer’s CONCLUSIONS** (Page 13 of 15)

13  
14 The State Water Board has adequate information in its files to make the  
15 evaluation required by Water Code section 1435.

16  
17 *1435. (a) Any permittee or licensee who has an urgent need to change a point  
18 of diversion, place of use, or purpose of use from that specified in the permit or  
19 license may petition for, and the board may issue, **a conditional, temporary  
20 change order without complying with other procedures or provisions of this  
21 division, but subject to all requirements of this chapter.** [Emphasis added]*

22  
23 *I [Tom Howard, Executive Officer] conclude that, based on the available  
24 **evidence:***

- 25  
26 *1. The permittee has an urgent need to make the proposed changes;*  
27 *2. The petitioned changes, as conditioned by this Order, will not operate to the*  
28 *injury of any other lawful user of water;*  
29 *3. The petitioned changes, as conditioned by this Order, will not have an*  
30 *unreasonable effect upon fish, wildlife, or other instream beneficial uses; and,*  
31 *4. The petitioned changes, as conditioned by this Order, are in the public interest.*

32  
33 P/A agrees with the executive director’s comment that the **SWB has adequate**  
34 **information in its files** to make the section 1435 evaluation requirements; however,

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<sup>1</sup> California Department of Water Resources, **The Hydrology of the 1987-1992 California Drought**, Technical Information Paper,  
Prepared by Maurice Roos, Chief Hydrologist, Oct. 1992, p. 7.

1 unless P/A were misinformed, the available evidence that Mr. Howard prefaced his  
2 decision was information submitted by the petitioners, DWR and the Reclamation.  
3 If, that is a fact, then, we respectfully suggest that the SWB hold an evidentiary hearing  
4 and provide itself and those impacted by the issuance of the TUC an opportunity to  
5 review the SWB's files and examine the historical performance and track-record of the  
6 SWP/CVP operational and water quality compliance activities during previous to prior  
7 "droughts". Unfortunately, however, prefaced on the EO's conclusions, there are signs  
8 that the SWB has not fully availed itself of the wealth of information in the files, and  
9 respectfully suggest it do so with due diligence.

10

11 **As pointed out here in my presentation, had the EO availed himself of the evidence**  
12 **contained in the SWB files, he or staff would have noticed that there is a pattern as to**  
13 **how DWR and Reclamation schedule and deliver water prior to, during, and**  
14 **subsequent to a drought. This type of operating procedure exacerbates naturally**  
15 **occurring drought condition; i.e., making record-breaking water deliveries during such**  
16 **events; emptying storage reservoirs in the north to fill terminal and storage facilities**  
17 **south of the Delta and then come back petitioning the SWB for a relaxation in the**  
18 **permits. It would behoove the SWB to conduct a review of its previous drought and**  
19 **use change petitions made by DWR and Reclamation.**

20

21 **HISTORICAL SWP/CVP PRE-POST DROUGHT CONDITIONS:** The records attest to the  
22 fact, that prior to, during, and subsequent to the three previous droughts, DWR and  
23 Reclamation officials managed to made record-breaking Delta water exports. This  
24 water was exported to SWP/CVP agricultural and urban contractors in central and  
25 southern California. During each of those events, P/A, as a *de facto public trustee*,  
26 apprised the SWB and staff of the fact that DWR and Reclamation's operational,  
27 management, and water delivery scheduling have been used to exacerbate drought  
28 conditions.

29

30 Essentially, DWR/BOR drains SWP/CVP northern California reservoirs and exports the  
31 water to their reservoirs south of the Delta. Afterwards, they petition the SWB for a  
32 relaxation in the Delta water standards in effect for the SWP/CVP for the use of  
33 temporary fixes, such as barriers, in an attempt to make up for DWR's failure to provide  
34 water right and flood protections mandated by State law and a vote of the people 53  
35 years ago. Ironically, even though the SWB granted each of DWR/BOR's prior petitions,

1 the records attest to the fact that DWR and Reclamation officials even violated  
2 minimum Delta water quality requirements.

3 Regarding the **EOs** conclusions “... **based on the available evidence**. In the absence of a  
4 list of the evidence upon which the EO prefaced his conclusions, it places a protestant  
5 in a difficult position to discern if his findings are prefaced upon conjecture or on the  
6 basis of the all of the relative “evidence” contained in the record. P/A is quite familiar  
7 with the SWB records and files, as we have spent countless days, over the years, going  
8 through the files, and placing documents into the record, to support our assertions.

9

10 **Comments regarding the Executive Officer’s (EO’s) conclusions:**

11

12 **(1):** P/A concurs with the EO that an emergency of sorts, does exist, however, evidence  
13 in the SWB’s files will support the fact that in the past three (3) droughts experienced in  
14 California since the mid-1970s were exacerbated by the manner in which DWR/BOR  
15 operated, managed, and schedule water deliveries to their respective SWP/CVP  
16 contractors south of the Delta.

17

18 In fact, P/A provided SWB members and personnel documentation as far back as 1976,  
19 the first year that the SWP and CVP were put to the test. There was no doubt that 1976  
20 and 1977 water years were classified as “critically dry”. However, in 1976, DWR opted  
21 to provide 600,000 acre-feet of “surplus” water from the SWP Oroville facilities to its  
22 contractors in Kern County for \$2.95 per acre foot delivered! P/A advised DWR and the  
23 SWB that was not a good idea, and protested DWR’s action. History, and evidence  
24 contained in the SWB files attest to the folly of DWR’s decision, as the following year  
25 proved to be a back-to-back critically dry year; simultaneously, DWR/BOR petitioned  
26 the SWB have previous water right decisions to protect the Delta relaxed.

27

28 **(2):** EO’s comment “... **will not operate to the injury of any other lawful user of water;**”

29

30 There again, it is difficult to place any confidence in the executive director’s statement  
31 “... **will not operate to the injury of any other lawful user of water**”. The project  
32 operators have and continue to cause injury to private property, loss of sustainable  
33 farm lands, and destruction of public trust resources; including species that are  
34 currently listed on the Endangered Species Act (ESA).

35

1 As the executive officer knows, the SWB's performance, enforcement policies, and  
2 historical Board adopted Delta water quality standards/objectives, pertinent to the  
3 operation of the SWP/CVP, have routinely been violated by DWR and BOR personnel.  
4

5 Even in cases where it was documented at SWB hearings such as during the 1987-1992  
6 six-year drought event, DWR/BOR resorted to violating both the SWB and North Delta  
7 Water Agency agricultural water quality standards and in so doing rustle up some  
8 500,000 acre feet of water with an estimated value of \$29 million. P/A apprized the  
9 SWB of DWR/BOR's illegal activities, which, to its credit it held a hearing on the  
10 violations; however opted not to take an enforcement action against the SWP/CVP  
11 operators. Ironically, while the violations were taking place the SWB was holding Phase  
12 I of the hearings to improve Delta water quality standards!  
13

14 The records attest to the fact that DWR/BOR made record-breaking water exports  
15 during the first four years of the 1987-1992 "drought". In 1990, DWR dropped its SWP  
16 Oroville Reservoir by 30 feet and sent that water south of the Delta for delivery or  
17 storage in their respective storage facilities. Subsequently, DWR/BOR submitted a  
18 petition to the SWB to have the Delta water quality standards relaxed, primarily  
19 because they had limited amounts of water left in their north state reservoirs. The SWB  
20 has approved previous DWR/BOR's petition and allowed for a reduction in water  
21 quality for all other beneficial uses and users in the Delta. Again, although the  
22 standards were relaxed, the project operators failed even to meet the minimum  
23 standard.  
24

25 In light of the fact that there is very limited data to quantify and qualify the adverse  
26 impacts that SWP/CVP exports have on other Delta water users and the dramatic  
27 decline in the Bay-Delta Estuary, which have yet to be fully identified and/or mitigated,  
28

29 **P/A takes exception to the EO's conclusion two (2).** The SWB files and records contain  
30 documentation to corroborate our assertions. Public trust resources have and continue  
31 to be significantly impacted by the mismanagement of the operations of the SWP and  
32 CVP. The record attest to the fact the projects continue to effect the rights and uses of  
33 other beneficial users and uses; which heretofore, have gone unabated, and even  
34 sanctioned by SWB actions and/or failure to act, in fulfilling its regulatory, statutory and  
35 Public Trust mandates.  
36

37 Neither the water officials nor fishery agencies personnel have yet to quantify or qualify  
38 the vast numbers of aquatic species that have and continued to be killed as a result of

1 SWP/CVP Delta exports and that DWR and Reclamation’s management tactics have  
2 already taken thousands of acres of productive farmland out of production, as a result  
3 of the historical management and current joint-operations of the SWP/CVP failure to  
4 meet SWB adopted water quality standards.

5

6 **Fisheries Experts and computer modeling have repeatedly wrong.** The SWB files are  
7 replete with documents that attest to the fact that DWR/BOR and the fisheries agencies  
8 have expended billions of dollars, primarily from public sources, in their decades of  
9 failure to increase and/or double salmonid populations (CVPIA) to offset the impacts of  
10 pre-existing, and yet to be fully assessed and/or mitigated impacts upon fish, wildlife,  
11 or other instream beneficial uses. Albeit, P/A understands that SWB members rely  
12 heavily on the fisheries agencies and the project operators information and advice;  
13 however, as stated, the state of the resources are indicative of their lack-luster  
14 “performance”.

15

16 (4) As a *de facto* public trustee, with four decades of interaction with SWB personnel,  
17 on matters specifically related to DWR/BOR’s historical request for “temporary”  
18 relaxation of SWB Delta water right decisions designed to protect all beneficial uses and  
19 users in the legally define Delta we cannot find the basis in fact of Mr. Howard’s  
20 assurances that approval of the TUP is in the “public’s interest”

21

22 **P/A’s Conclusions:** (1) The TUC, as approved, presents serious uncertainties that the  
23 SWB needs to resolve, and unless reconciled, will only further exacerbate this and  
24 future drought. (2) We concur with the E.O. that an urgency does exist; however, the  
25 difference is in how and why the urgency exists and the events leading up to the  
26 extraordinary turn-around time involved in SWP approval and the lack of factual data to  
27 support the petitioners’ and/or the executive officer’s conclusions. (3) Issuance of the  
28 TUC, as written, provides the project operators with too much latitude, and send the  
29 wrong message; and, as has been the case with the “temporary barriers” that have  
30 seemingly become permanent, and the need for them are the result of the DWR’s 53  
31 year failure to provide the Delta with water rights and flood protection 54 years ago.

32

33 **P/A’s Recommendation:** We respectfully request that the SWB schedule an evidentiary  
34 hearing on the subject matter forthwith to ascertain and discern the facts upon which  
35 the SWB executive officer based his decision; otherwise, the public’s perception of the

1 TUC will remain in doubt, and the Order and the drought, construed as another Delta  
2 water grab via “abandoned” water and water transfers.

3

4 Patrick Porgans, Solutionist

5

6 P.S. P/A are forwarding our written comments to the SWB; during my presentation, I  
7 was suffering with a migraine headache and did not hand my written comments to the  
8 Board members.

DRAFT