

**Board Chair, Felicia Marcus and Members of the Board**

State Water Resources Control Board

Division of Water Rights

P.O. Box 2000, Sacramento, CA 95812-2000

Sent via Email: [Michael.Buckman@waterboards.ca.gov](mailto:Michael.Buckman@waterboards.ca.gov)

16 May 2014

1 **Attn. Michael Buckman and Clerk of the Board**

2  
3 **Re: Formal Protest and Objection to State Board's Approval of a Temporary Urgency Change Petition (TUCP);**  
4 **In the Matter of Specified License and Permits<sup>1</sup> of the Department of Water Resources and U.S. Bureau**  
5 **of USBR for the State Water Project and Central Valley Project APRIL 18, 2014 ORDER MODIFYING AN**  
6 **ORDER THAT APPROVED A TEMPORARY URGENCY CHANGE IN LICENSE AND PERMIT TERMS AND**  
7 **CONDITIONS REQUIRING COMPLIANCE WITH DELTA WATER QUALITY OBJECTIVES IN RESPONSE**  
8 **TO DROUGHT CONDITIONS BY THE EXECUTIVE DIRECTOR**  
9

10 **My name is Patrick Porgans, Solutionist and principal of P/A, representing Planetary Solutionaries (P/S), a not for profit**  
11 **organization, which serves as a de facto public trustee. Its mission is to assist, and, when necessary, compel government**  
12 **entities to perform their respective duties, responsibilities, and Public Trust mandates, accordingly. Porgans & Associates**  
13 **(P/A) carefully read and reviewed the State Water Resources Control Board's (State Water Board's) notice(s) "Notice of a**  
14 **Temporary Urgency Change Petition Filed By California Department of Water Resources (DWR) and the United States Bureau**  
15 **of USBR (USBR) Regarding Permits and License of the State Water Project (SWP) and the Central Valley Project (CVP),"**  
16 **Approved on 31 January 2014 (subsequently modified), pursuant to California Water Code section 1435.**  
17

18 The record attest to the fact that P/A has an extensive history of interaction with the State Water Board, dating back to  
19 1973, on matters pertaining to its jurisdictional responsibilities and powers it exercises over the permits and licenses  
20 issued to the **DWR** and **USBR** for the operation of the (**SWP** and the **CVP**).

21  
22 **Address, email address and phone number of protestant or authorized agent:** P.O. Box 60940, Sacramento, CA  
23 95860, [porgansinc@sbcglobal.net](mailto:porgansinc@sbcglobal.net). Telephone Number (916) 543-0780. Agent for Planetary Solutionaries,  
24 [pp@planetarysolutionaries.org](mailto:pp@planetarysolutionaries.org) website: [www.planetarysolutionaries.org](http://www.planetarysolutionaries.org).  
25

26 **Preface:** P/A attended the State Water Board's workshops and submitted comments and raised questions regarding  
27 the basis, in fact, to support the urgency and approval of the TUCP. P/A found the Board members "response" to the  
28 "drought" and its dependence on the submittal and acceptance of information provided by DWR and USBR, without  
29 providing the public an opportunity to challenge their assertions formally, via a formal evidentiary hearing, as an  
30 obstruction of due process. Furthermore, the accolades and praises that the Board members showered on DWR,  
31 USBR and the fisheries agencies for the effort they have put forth as exemplary, only added insult to injury, and leave  
32 the public with the image of the State Water Board as a lapdog and not as a watchdog. The deplorable condition of the  
33 Bay-Delta Estuary is indicative of governments' failure.  
34

35 **Protest based on Environmental, Public Interest, and Prior Rights: (1) Does not serve the public interest, (2)**  
36 **contrary to certain laws, and (3) has an adverse economic and environmental impact.**  
37

---

<sup>1</sup> The petition was filed for Permits 16478, 16479, 16481, 16482 and 16483 (Applications 5630, 14443, 14445A, 17512 and 17514A, respectively) of the Department of Water Resources for the State Water Project and License 1986 and Permits 11315, 11316, 11885, 11886, 11887, 11967, 11968, 11969, 11970, 11971, 11972, 11973, 12364, 12721, 12722, 12723, 12725, 12726, 12727, 12860, 15735, 16597, 20245, and 16600 (Applications 23, 234, 1465, 5638, 13370, 13371, 5628, 15374, 15375, 15376, 16767, 16768, 17374, 17376, 5626, 9363, 9364, 9366, 9367, 9368, 15764, 22316, 14858A, 14858B, and 19304, respectively) of the United States Bureau of USBR for the Central Valley Project.]

1 **State facts which support the foregoing allegations:**  
2

3 I: Synopsis of P/A's Allegations, Protest and Objection to the TUCP: The scope and breadth of the TUCP, and the  
4 implications of its implementation, is rife with significant uncertainties, assumptions, and conclusions that raise more  
5 questions than answers. P/A submitted a list of questions pertinent to the TUCP; however, answers to those questions  
6 have not been forthcoming from the Board or its staff. For those and other reasons, on behalf of our client, and in the  
7 public interest, P/A request that the State Water Board hold an evidentiary hearing as provided for under section 1435  
8 of the California Water Code; failure to do so would be viewed as an obstruction of my client's due process rights.  
9

10 Section 1435(c) requires the petitioner to demonstrate an "urgent need" and that it exercised "due diligence."  
11 Documents obtained from public records show that the petitioners' have not demonstrated an "urgent need" nor did  
12 they exercise due diligence. In fact, the historical records indicate that their water management and delivery practices  
13 bet on the odds that droughts will not continue, and when they are wrong, they just come back and get the State Water  
14 Board to relax the standards.  
15

16 The following are verbatim quotations extracted from the State Water Board's executive officer's approved TUCP.  
17

18 **18 April 2014 – Seventh Rendition of TUCP [Page 1 of 10]**  
19

20 **1.0 INTRODUCTION**  
21

22 On January 29, 2014, the Department of Water Resources (DWR) and the United States Bureau of USBR (USBR)  
23 (hereinafter Petitioners) jointly filed a Temporary Urgency Change Petition (TUCP) pursuant to Water Code  
24 section 1435 et seq., to temporarily modify requirements in their water right permits and license for the State  
25 Water Project (SWP) and Central Valley Project (CVP) for the next 180 days in response to drought conditions.  
26 An order approving the TUCP was issued on January 31, 2014. That Order was modified on February 7, 2014,  
27 February 28, 2014, March 18, 2014, April 9, 2014, and April 11, 2014. This Order [18 April] further modifies the  
28 TUCP Order.  
29

30 **2.0 BACKGROUND**  
31

32 In the January 29, 2014 TUCP the Petitioners requested temporary modification of requirements included in  
33 State Water Resources Control Board (State Water Board) Revised Decision 1641 (D-1641) to meet water  
34 quality objectives in the Water Quality Control Plan (Plan) for the San Francisco Bay/Sacramento-San Joaquin  
35 Delta Estuary (Bay-Delta) (attached). Specifically, the TUCP requested modifications to the requirement to  
36 meet the Delta Outflow objective during February and the Delta Cross Channel (DCC) Gate closure objective  
37 from February through May 20.  
38

39 **18 April 2014 – Seventh Rendition of TUCP – Excerpts [Page 2 of 10]**  
40

41 The TUCP also proposed modification of limits on exports at the SWP and CVP pumping facilities in the south  
42 Delta and a process to determine other changes that will best balance protection of all beneficial uses. The  
43 **Petitioners requested these temporary modifications in order to respond to unprecedented<sup>2</sup> critically dry**  
44 **hydrological conditions as California** enters its third straight year of below average rainfall and snowmelt  
45 runoff. [Emphasis added] Additional information concerning the drought and the TUCP can be found on the  
46 State Water Board's website at: [http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/drought/tucp.shtml](http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/tucp.shtml)  
47

48 **OBJECTION:** "Petitioners requested these temporary modifications in order to respond to unprecedented critically dry  
49 hydrological conditions as California enters its third straight year of below average rainfall and snowmelt runoff." This  
50 allegation is not supported by the facts or the record, as the prevailing conditions are not unprecedented, but, in fact,  
51 are ranked as the fourth driest in recorded history. Furthermore, testimony and records contained in the State Water  
52 Board's files, attest to the fact that managerial and operational decisions made by DWR and USBR officials SWP and  
53 CVP Delta exports have historically exacerbated and exaggerated water shortages. Their actions, although beneficial

---

<sup>2</sup> **Unprecedented** | [Define Unprecedented at Dictionary.com](http://www.dictionary.com) without previous instance; never before known or experienced; unexampled or unparalleled; an **unprecedented** event. Origin: 1615–25.

1 to SWP and CVP contractors, are significant factors contributing to Delta water quality deterioration and loss of pelagic  
2 and anadromous fisheries during pre- and post-drought conditions. The project operators have historically increased  
3 Delta water exports during pre- and post-drought periods. They empty out the storage reservoirs north of the Delta and  
4 store the water in their respective reservoirs in Central and Southern California. Then, they come back before the State  
5 Water Board and request emergency measures to have Delta water quality standards and the terms and conditions of  
6 their respective water right permit modified, under the pretext that they do not have enough water in storage north of  
7 the Delta! During this drought and previous droughts P/A obtained records showing that DWR was dumping water into  
8 the ocean from the terminal reservoirs because they were too full.  
9

10 **II: Sequence of events leading up to Gov. Jerry Brown's 17 Jan 2014 Proclamation of a drought State of**  
11 **Emergency: On 29 January DWR and USBR file a petition with State Water Board, which requested permission for a**  
12 **"temporary" urgency change of their water right permits; on 31 January State Water Board's executive officer, Tom**  
13 **Howard approved the petition. Coincidentally, DWR/USBR's request occurred just days before they would be required**  
14 **to meet specific Delta water quality standards. It is important to note that the rate of SWP and CVP Delta exports**  
15 **during the past four years are as follow: 2010-4.7 million acre-feet (MAF); 2011-5.9 MAF; 2012-4.7 MAF and in 2013-**  
16 **3.2 MAF.**  
17

18 State Health Department officials initial projections of 11 California communities running out of water due to the  
19 drought have been reduce to two.  
20

21 Water officials publicly announced 2013 as **the driest year** since the state began measuring rainfall back in 1849.  
22 However, as a rule, water accounting is not based on a calendar year; rather on a water-year (October through  
23 September of the following year), which indicate the State was less than four months into the water-year. The  
24 Governor's Proclamation claims that 2014 will be the driest year, which has been branded as part of a 500-year  
25 drought cycle. The media ran with the "[500-year drought](http://gov.ca.gov/news.php?id=18368)" story; heightening, public fears.  
26 <http://gov.ca.gov/news.php?id=18368>  
27

28 "We are on track for having the worst drought in 500 years," said B. Lynn Ingram, a professor of earth and planetary  
29 sciences at the University of California, Berkeley.  
30

31 Present day climate models rely on limited measureable data (about 150 years of recorded data) and to a greater  
32 degree on "tree rings" dating back to the 1500's. "With the right selection of trees, the thickness of annual growth rings  
33 indicates the wetness of the season. Tree ring widths are not a perfect match (they did not reproduce the 1976-1977  
34 droughts) but have been useful to investigate how the measured runoff or precipitation record compares with a longer  
35 sweep of history", according to the California Department of Water Resources (DWR).<sup>3</sup> Furthermore, the width of a  
36 tree is also influenced by the amount of sunlight that the tree receives, and can skew the thickness of the tree ring.  
37 **[Refer to Exhibit 1: Epic 500 Year Drought Exacerbated and Exaggerated by Water Officials.]**  
38

39 **III: Scope and breadth of the TUCP, and the implications of its implementation, is rife with significant uncertainties,**  
40 **assumptions, and conclusions that raise more questions than answers. P/A has submitted a list of questions relevant**  
41 **to the TUCP; however, answers to those questions have not been forthcoming from the Board or its staff. Therefore,**  
42 **on behalf of our client, and in the public interest, P/A request that the State Water Board schedule and hold an**  
43 **evidentiary hearing as provided for under section 1435 of the California Water Code; failure to do so would be viewed**  
44 **as an obstruction of my client's due process rights..**  
45

46 During the State Water Board's 6 May Workshop, after receiving public comments, the Board members expressed  
47 concerns regarding the demands and time constraints that would be imposed on staff, if in the event it was to hold an  
48 evidentiary hearing. The consensus among the Board appeared to favor the modification of the existing TUCP, rather  
49 than to have a formal hearing, and to expend time and resources on updating the Bay-Delta Estuary WQCP. P/A is  
50 familiar with the Board's funding and staff conundrum. However, the current deplorable conditions of the Bay-Delta  
51 Estuary, and the uncertainty of its future are to a large extent the result of the State Water Board's failure to ensure its  
52 protection provided for under the existing WQCP and to hold SWP/CVP operators responsible for failure to comply  
53 with the terms and conditions in their permits and licenses.  
54

---

<sup>3</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 **IV: TUCP is a Moving Target:** It is important to keep in mind, that a great deal of the Board's and staff time and  
2 resources have and continue to expend in reviewing and approving the TUCP, which has already undergone seven (7)  
3 modification, and is pending yet another change. The State Water Board's dependence on the executive officer for  
4 guidance and advice, in this case, is inattentive, and the notion that Board members are entertaining circumvention of  
5 an evidentiary hearing, is, to say the least, extremely disconcerting. **The Board members pushed to accelerate**  
6 **comments from protesters is also unfair.**  
7

8 **IV: TUCP is a Moving Target:** It is important to keep in mind, that a great deal of the Board's and staff time and  
9 resources have and continue to be expended in reviewing and approving the TUCP, which has already undergone  
10 seven (7) modification, and is pending yet another change. The State Water Board's dependence on the executive  
11 officer for guidance and advice, in this case, is inattentive, and the notion that Board members are entertaining  
12 circumvention of an evidentiary hearing, is, to say the least, extremely disconcerting, and adds to the diminishing  
13 credibility of the State Water Board.  
14

15 **V: Executive Officer's CONCLUSIONS** (Page 13 of 15)  
16

17 P/A offers the following observations, comments, and objections to the State Water Board, as a means to put the  
18 matter in some relative perspective, beginning with the executive director's conclusions in the TUCP and the  
19 circumstances leading up to his action.  
20

21 The following are excerpts from the 18 April 2014 rendition of the executive officer's modification and approval of the  
22 Department and USBR's TUCP, to wit, P/A submitted draft comments on 24 February and 24 April, wherein it made a  
23 request for clarification and detailed information pertinent to the terms and conditions (bold and underlined text)  
24 contained in the Order(s), which are as follows:  
25

26 The State Water Board has adequate information in its files to make the evaluation required by [Water Code](#)  
27 [section 1435](#).  
28

29 *1435. (a) Any permittee or licensee who has an urgent need to change a point of diversion, place of use, or*  
30 *purpose of use from that specified in the permit or license may petition for, and the board may issue, a*  
31 *conditional, temporary change order without complying with other procedures or provisions of this*  
32 *division, but subject to all requirements of this chapter. [Emphasis added]*  
33

34 **I [Tom Howard, Executive Officer] conclude that, based on the available evidence:**  
35

- 36 1. *The permittee has an **urgent need** to make the proposed changes;*
- 37 2. *The petitioned changes, as conditioned by this Order, **will not operate to the***  
38 ***injury of any other lawful user of water;***
- 39 3. *The petitioned changes, as conditioned by this Order, **will not have an***  
40 ***unreasonable effect upon fish, wildlife, or other instream beneficial uses;** and,*
- 41 4. *The petitioned changes, as conditioned by this Order, **are in the public interest.** [Emphasis added]*  
42

43 Although P/A concedes adequate information exist in the State Water Board's files to make an evaluation as required  
44 by Water Code section 1435. However, we take exception to the executive officer's assertion that, "...based on the  
45 available evidence", there is an urgent need; will not operate to the injury of any other lawful user of water; will not  
46 have an unreasonable effect upon fish and wildlife, and "The petitioned changes, as conditioned by this Order, are in  
47 the public interest."  
48

49 **OBJECTION:** Unless P/A was misinformed, the available evidence that Mr. Howard prefaced his evaluation, decision,  
50 and approval of the TUCP were prefaced on the information submitted by the petitioners; DWR and USBR officials.  
51

52 There is no reference to the executive officer's review or dependence on evidentiary documents contained in the State  
53 Water Board's files, provided heretofore during previous evidentiary hearings. If, that is a fact, then, we respectfully  
54 suggest that the State Water Board hold an evidentiary hearing and provide itself and those impacted by the issuance



1 of the TUCP an opportunity to review the State Water Board's files and examine the historical performance and track-  
2 record of the SWP/CVP operational and water quality compliance activities during previous to prior "droughts".  
3 Unfortunately, however, prefaced on the executive officer's conclusions, there are signs that the State Water Board  
4 has not fully availed itself of the wealth of information in the files, and respectfully suggest it do so with due diligence.

5  
6 Furthermore, neither the petitioners nor the State Water Board have satisfied the requirements of section 1435 (c),  
7 and in the absence of doing so, it would be presumptuous for the executive officer to assert that the TUCP will not  
8 injure other lawful users; not have an unreasonable effect upon fish; and is in the public's interest. Contrary to the  
9 executive officer's conclusions, the record proves that petitioners' project operations have and continue to cause  
10 irreparable and unmitigated damage to other users, uses, and, therefore, is not in the public's interest. [Refer to Exhibit  
11 2: **History of SWP/CVP Noncompliance and State Water Board's Nonexistent Enforcement-Track Record.**]

### 12 **Additional Comments Regarding the Executive Officer's (EO's) Conclusions:**

13  
14  
15 Regarding the **EOs** conclusions "... **based on the available evidence**. In the absence of a list of the evidence upon  
16 which the EO prefaced his conclusions, it places a protestant in a difficult position to discern if his findings are prefaced  
17 upon conjecture or on the basis of the all of the relative "evidence" contained in the record. P/A is quite familiar with the  
18 State Water Board records and files, as we have spent countless days, over the years, going through the files, and  
19 placing documents into the record, to support our assertions.

20  
21 **(A):** P/A concurs with the executive officer that an emergency of sorts, does exist, however, evidence in the State  
22 Water Board's files will support the fact that in the past three (3) droughts experienced in California since the mid-  
23 1970s were exacerbated by the manner in which DWR/USBR operated, managed, and schedule water deliveries to  
24 their respective SWP/CVP contractors south of the Delta.

25  
26 In fact, P/A provided State Water Board members and personnel documentation as far back as 1976, the first year that  
27 the SWP and CVP were put to the test. There was no doubt that 1976 and 1977 water years were classified as  
28 "critically dry". However, in 1976, DWR opted to provide 600,000 acre-feet of "surplus" water from the SWP Oroville  
29 facilities to its contractors in Kern County for \$2.95 per acre foot delivered! P/A advised DWR and the State Water  
30 Board that was not a good idea, and protested DWR's action. History, and evidence contained in the State Water  
31 Board files attest to the folly of DWR's decision, as the following year proved to be a back-to-back critically dry year;  
32 simultaneously, DWR/USBR petitioned the State Water Board to relax water quality protection for the Delta.

33  
34 **(B):** EO's comment "... **will not operate to the injury of any other lawful user of water;**"

35  
36 There again, it is difficult to place any confidence in the executive director's statement "... **will not operate to the injury**  
37 **of any other lawful user of water**". The project operators have and continue to cause injury to private property, loss of  
38 sustainable farm lands, and destruction of public trust resources; including species that are currently listed on the  
39 Endangered Species Act (ESA).

40  
41 As the executive officer knows, the State Water Board's performance, enforcement policies, and historical Board  
42 adopted Delta water quality standards/objectives, pertinent to the operation of the SWP/CVP, have routinely been  
43 violated by DWR and USBR personnel.

44  
45 Even in cases where it was documented at State Water Board hearings such as during the 1987-1992 six-year drought  
46 event, DWR/USBR resorted to violating both the State Water Board and North Delta Water Agency agricultural water  
47 quality standards and in so doing rustle up some 500,000 acre feet of water with an estimated value of \$29 million. P/A  
48 apprized the State Water Board of DWR/USBR's illegal activities, which, to its credit it held a hearing on the violations;  
49 however opted not to take an enforcement action against the SWP/CVP operators. Ironically, while the violations were  
50 taking place the State Water Board as holding Phase I of the hearings to improve Delta water quality standards!

51  
52 **(C):** During the 1987-1992 droughts, the projects failure to meet Delta Water Quality Standards, even after being  
53 relaxed, ultimately put third and fourth generation Delta farmers on Sherman Island out of business. The water quality  
54 was so bad that they could no longer farm, even though they had a contract with North Delta Water Agency that

1 ensured them of a dependable water supply of adequate quality.<sup>4</sup> DWR now owns more than 90 percent of the island.  
2 The State Water Board's inaction contributed to the loss of those lands by its failure to hold DWR responsible for  
3 violating D-1485 water quality standards.  
4

5 As pointed out BY PA's ON 16 February 2014, at the State Water Board's workshop, had the executive officer availed  
6 himself of the evidence contained in the Board's files, he or staff would have noticed that there is a pattern as to how  
7 DWR and USBR schedule and deliver water prior to, during, and subsequent to a drought. This type of operating  
8 procedure exacerbates naturally occurring drought condition; i.e., making record-breaking water deliveries during such  
9 events; emptying storage reservoirs in the north to fill terminal storage facilities south of the Delta and then come back  
10 petitioning the State Water Board for a relaxation in the permits and related water quality standards. It would behoove  
11 the State Water Board to conduct a review of its previous droughts and use change petitions made by DWR and  
12 USBR. During two of the droughts, DWR had so much water stored in the terminal reservoirs that it was reported that  
13 it had dumped billions of gallons of water into the ocean.  
14

15 **(D): P/A takes exception to the EO's conclusion two (2).** The State Water Board files and records contain  
16 documentation to corroborate our assertions. Public trust resources have and continue to be significantly impacted by  
17 the mismanagement of the operations of the SWP and CVP. The record attest to the fact the projects continue to  
18 effect the rights and uses of other beneficial users and uses; which heretofore, have gone unabated, and even  
19 sanctioned by State Water Board actions and/or failure to act, in fulfilling its regulatory, statutory and Public Trust  
20 mandates.  
21

22 Recommendations: Albeit, P/A respectfully recommends that the State Water Board hold an evidentiary hearing and  
23 provide itself and those impacted by the issuance of the TUCP an opportunity to review the Board's files and examine  
24 the historical performance and track-record of the SWP/CVP operational and water quality compliance activities during  
25 past "droughts." Unfortunately, however, prefaced on the executive officer's conclusions, there are signs that the State  
26 Water Board has not fully availed itself of the wealth of information in the files, and respectfully suggest it do so with  
27 due diligence.  
28

29 As P/A pointed out at the State Water Board's February workshop, if the executive officer availed himself of the  
30 evidence contained in the Board's files, he or staff would have noticed that there is a pattern as to how DWR and  
31 USBR schedule and deliver water prior to, during, and subsequent to a drought. DWR and USBR operating procedure  
32 are exacerbating naturally occurring drought condition. They make record-breaking water deliveries during such  
33 events; emptying storage reservoirs in the north to fill terminal storage facilities south of the Delta, and then petition the  
34 State Water Board for a relaxation in the permits and related water quality standards. It would behoove the State  
35 Water Board to conduct a review of its past droughts and use change petitions made by DWR and USBR.  
36

37 **VI: DWR/SWP and USBR/CVP Compliance Record:** Documents submitted into the record, during formal State Water  
38 Board "evidentiary proceedings" attest to the fact that DWR and USBR officials have repeatedly failed to operate their  
39 respective projects in compliance with the terms and conditions of their water right permits and licenses. Furthermore,  
40 the SWP and CVP have been managed and operated in violation of State Water Board Water Quality Control Plans  
41 (WQCPs) adopted in protracted and formal proceeding to protect the San Francisco Bay and Sacramento-San Joaquin  
42 Delta Estuary (**Bay-Delta Estuary**). During the 1987-1992 droughts, the projects failure to meet Delta Water Quality  
43 Standards, even after being relaxed, ultimately put third and fourth generation Delta farmers on Sherman Island out of  
44 business. The water quality was so bad that they could no longer farm, even though they had a contract with North  
45 Delta Water Agency that ensured them of a dependable water supply of adequate quality.<sup>5</sup> DWR now owns more than

---

<sup>4</sup> The North Delta Water Agency represents agricultural water users in northern and western portions of the Delta. In January 1981, the Department of Water Resources and the Agency signed a contract that provided a dependable water supply of adequate quality to the Agency. The contract sets water quality standards to be met by the State Water Project and requires the Agency pay for benefits arising from project operations. The standards are parallel to Decision 1485 standards, but at times are more stringent. The extra outflow required to meet these more stringent standards could reduce the critical period yield of the State Water Project by more than 100,000 acre-feet per year.

<sup>5</sup> The North Delta Water Agency represents agricultural water users in northern and western portions of the Delta. In January 1981, the Department of Water Resources and the Agency signed a contract that provided a dependable water supply of adequate quality to the Agency. The contract sets water quality standards to be met by the State Water Project and requires the Agency pay for benefits arising from project operations. The standards are parallel to Decision

1 90 percent of the island. The State Water Board's inaction contributed to the loss of those lands by its failure to hold  
2 DWR responsible for violating D-1485 water quality standards. [Refer to Exhibit 2: **History of SWP/CVP**  
3 **Noncompliance and State Water Board's Nonexistent Enforcement-Track Record.**]  
4

5 **VII: History of State Water Board's Actions, Decisions, and Plans to Protect the Bay-Delta Estuary:** From **1958-**  
6 **1970:** Board adopted six different decisions approving permits for the CVP (Decisions 893, 990, 1020, 1250, 1308 and  
7 1356). **1976:** Board adopted D-1275, approved permits for DWR's SWP and conditioned the permits on meeting water  
8 quality criteria at several Delta locations. **1978:** Board adopted the 1978 Plan and D-1485. **1991:** Board adopted the  
9 1991 WQCP for salinity for the Bay-Delta Estuary. **1995:** Board adopted the 1995 WQCP for the Bay/Delta Estuary.  
10 **1995:** Board adopted Order 95-6 temporarily amending DWR's and USBR's water rights for the SWP and the CVP to  
11 be consistent with the 1995 Plan. **1998 to 1999:** Board conducted hearings to implement 1995 Plan. **December 1999**  
12 **and March 2000-**Board adopted D-1641.<sup>6</sup>  
13

14 All of the State Water Board's Decisions and Plans were purportedly enacted to ensure the protection and  
15 sustainability of the Bay-Delta Estuary; however, the existing conditions of the Bay-Delta estuary are indicative of its  
16 apparent failure to exercise its responsibility and enforcement authority over the DWR and USBR management and  
17 operation of the SWP and CVP.  
18

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

26 Essentially, DWR/USBR drains SWP/CVP northern California reservoirs and exports the water to their reservoirs south  
27 of the Delta. Afterwards, they petition the State Water Board for a relaxation in the Delta water standards in effect for  
28 the SWP/CVP for the use of temporary fixes, such as barriers, in an attempt to make up for DWR's failure to provide  
29 water right and flood protections mandated by State law and a vote of the people 53 years ago. Ironically, even though  
30 the State Water Board granted each of DWR/USBR's prior petitions, the records attest to the fact that DWR and USBR  
31 officials even violated minimum Delta water quality requirements.  
32

33 The records attest to the fact that DWR/USBR made record-breaking water exports during the first four years of the  
34 1987-1992 "drought". In 1990, DWR dropped its SWP Oroville Reservoir by 30 feet and sent that water south of the  
35 Delta for delivery or storage in their respective storage facilities. Subsequently, DWR/USBR submitted a petition to the  
36 State Water Board to have the Delta water quality standards relaxed, primarily because they had limited amounts of  
37 water left in their north state reservoirs. The State Water Board has approved previous DWR/USBR's petition and  
38 allowed for a reduction in water quality for all other beneficial uses and users in the Delta. Again, although the  
39 standards were relaxed, the project operators failed even to meet the minimum standard.  
40

41 **IX: Fisheries Experts and computer modeling have repeatedly wrong.** The State Water Board files are replete  
42 with documents that attest to the fact that DWR/USBR and the fisheries agencies have expended billions of dollars,  
43 primarily from public sources, in their decades of failure to increase and/or double salmonid populations (CVPIA) to  
44 offset the impacts of pre-existing, and yet to be fully assessed and/or mitigated impacts upon fish, wildlife, or other  
45 instream beneficial uses. Albeit, P/A understands that State Water Board members rely heavily on the fisheries  
46 agencies and the project operators information and advice; however, as stated, the state of the resources are  
47 indicative of their lack-luster "performance".  
48

---

1485 standards, but at times are more stringent. The extra outflow required to meet these more stringent standards could reduce the critical period yield of the State Water Project by more than 100,000 acre-feet per year.

<sup>6</sup> California State Water Resources Control Board, Order 2006-0006: In the Matter of Draft Cease and Desist Order Nos. 262.31-16 and 262.31-17, Against the DWR and the USBR, Under their Water Permits and License and In the Matter of Petitions for Reconsideration of the Approval of a Water Quality Response Plan Submitted by the DWR and the USBR for their Joint Points of Diversion in the Sacramento-San Joaquin Delta, 15 February 2006.

1 The question is how accurate are models water officials' use for management and operation of the State Water Project  
2 (SWP). Ironically, it is common knowledge that "[All models are wrong](#), some are useful," according to an article  
3 published by [Professor Jay Lund, UCD](#), quoting statistician [George Box](#). [Refer to Exhibit 1.]  
4

5 As a *de facto* public trustee, with four decades of interaction with State Water Board personnel, on matters specifically  
6 related to DWR/USBR's historical request for "temporary" relaxation of State Water Board Delta water right decisions  
7 designed to protect all beneficial uses and users in the legally define Delta we cannot find the basis in fact of Mr.  
8 Howard's assurances that approval of the TUP is in the "public's interest"  
9

10 **P/A's Conclusions:** (1) The TUCP, as approved, presents serious uncertainties that the State Water Board needs to  
11 resolve, and unless reconciled, will only further exacerbate this and future droughts. (2) We concur with the E.O. that  
12 an urgency does exist; however, the difference is in how and why the urgency exists and the events leading up to the  
13 extraordinary turn-around time involved in SWP approval and the lack of factual data to support the petitioners' and/or  
14 the executive officer's conclusions. (3) Issuance of the TUC, as written, provides the project operators with too much  
15 latitude, and sends the wrong message; and, as has been the case with the proposed "temporary barriers" that have  
16 seemingly become permanent, and the need for them are the result of the DWR's 53 year failure to provide the Delta  
17 with water rights and flood protection.  
18

19 **P/A's Recommendation:** We respectfully request that the State Water Board schedule an evidentiary hearing on the  
20 subject matter forthwith to ascertain and discern the facts upon which the State Water Board executive officer based  
21 his decision; otherwise, the public's perception of the TUCP will remain in doubt, and the Order and the drought,  
22 construed as another Delta water grab via "abandoned" water and water transfers.  
23

24 Because of the Board imposed time constraints, P/A had to submit its Draft comments, at this point, in the hope that  
25 they will be inclusive in the State Water Board's next modified version of the TUCP.  
26

27 Respectfully,  
28

29 Patrick Porgans, Solutionist  
30

31 cc: Planetary Solutionaries  
32 Interested Parties  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43



# EXHIBIT 1

## Epic 500-year drought forecast is not supported by the facts: Part One

Public Service Announcement – Immediate Release

2 April 2014

Patrick Porgans, [www.planetarysolutionaries.org](http://www.planetarysolutionaries.org)

SACRAMENTO, CA

Water officials' and scientists' claims that the Golden State is in the grips of an epic 500 year drought is not supported by the facts. Government documents show back in January that this year's drought was not the worst in 500 years.

"We are on track for having the worst [drought in 500 years](#)," 500 years," said B. Lynn Ingram, Paleoclimatologist, professor of earth and planetary sciences at the University of California, Berkeley. That story was released on January 30. Although an effort was made to reach Ingram to ascertain the scientific data to support her contention, she has yet to respond.

Contact was also made with NOAA's World Data Center for Paleoclimatology, Boulder, Colorado to ascertain quantifiable data to validate Ingram's assertion. Based upon a discussion with personnel assigned to Center for Paleoclimatology, there is not enough data to say with certainty that this is the worst drought in 500 years.

Data obtained from the California Department of Water Resources' (DWR) Public Information Office indicate that, at best, the state may be experiencing the fourth driest water year in recorded history. (A water-year is measured by the Sacramento River Unimpaired runoff dating back to 1906 and, by definition, begins on October 1 and ends on September 30 of the following year; currently, we are in water year 2014.) DWR officials depend heavily on Sacramento River watershed runoff to meet State Water Project demands.

In DWR's February 1 report, Bulletin 120, DWR officials' forecasted water year 2014 for the Sacramento River Unimpaired Runoff at 6.1 million acre-feet (MAF). One-acre foot of water contains 325,851 gallons of water. Critics point out that when DWR's forecast was made we were only 16 weeks into the water year. However, in DWR's March 1, 2014 report showed that this water year forecast at 6.2 MAF, stating it as the fourth driest on record. The March rains will require water officials to go back to the drawing board, casting doubts on the motives and severity of this drought.

Contrary to Ingram's and water officials forecast, public records show that the driest recorded water year occurred in 1977 (5.1 million acre-feet (MAF)), followed by 1924 (5.7 MAF), and 1931 (6.1 MAF); data extrapolated from a 2010 DWR report

According to the record, the worst set of extended drought events occurred during 1929-1934, the 1976-1977 and 1987-1992 period, respectfully, according to DWR's Figure 1. The 1976-77 and 1987-1992 drought occurred post SWP construction, as indicated in DWR's graph, Figure 1, [Comparison of Previous Droughts](#).

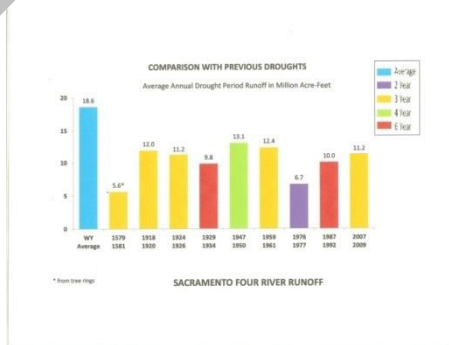


Figure 1

1 **Government Projects Operate on Flawed Computer Models**

2 The facts contained in the public record do not support government officials and scientists assertion that the Golden  
3 State is currently in the grips of an epic 500 years drought. Their comments are prefaced on tree rings and limited  
4 Paleoclimatological information and computer-generated models.

5 The question is how accurate are models water officials' use for management and operation of the State Water Project  
6 (SWP). Ironically, it is common knowledge that "[All models are wrong](#), some are useful," according to an article  
7 published by [Professor Jay Lund, UCD](#), quoting statistician [George Box](#).  
8

9 Dependence on tree-ring records have intrinsic shortcomings, including [divergence problems](#) and [proxies](#) applied in  
10 the models. Furthermore, the models failed to identify California's worse drought of record in recent history (post  
11 SWP), which occurred in the 1976-1977 water years.  
12

13 "Every day this drought goes on we are going to have to [tighten the screws](#) on what people are doing" said Gov. Jerry  
14 Brown, who was governor during the last [major drought here, in 1976-77](#).  
15

16 Although California has experienced its share of notable droughts since 1906, officials could not provide a drought  
17 contingency plan, when request last month; instead they are holding public workshop to get the peoples input on what  
18 to do about the drought.  
19

20 Officials made it clear that there is no universal definition of when a drought begins or ends. Drought is a gradual  
21 phenomenon, according to DWR.  
22

23 **[Sacramento River Unimpaired Runoff— Sacramento Valley Floor](#)**

24 These values in Figure 2 represent the estimated unimpaired flow for the Sacramento Valley floor and the minor  
25 streams from the Stony Creek drainage area to the Cache Creek drainage area, from the Cache Creek drainage area  
26 to the mouth of the Sacramento River, and from the Feather River drainage area to the American River drainage area.  
27  
28  
29

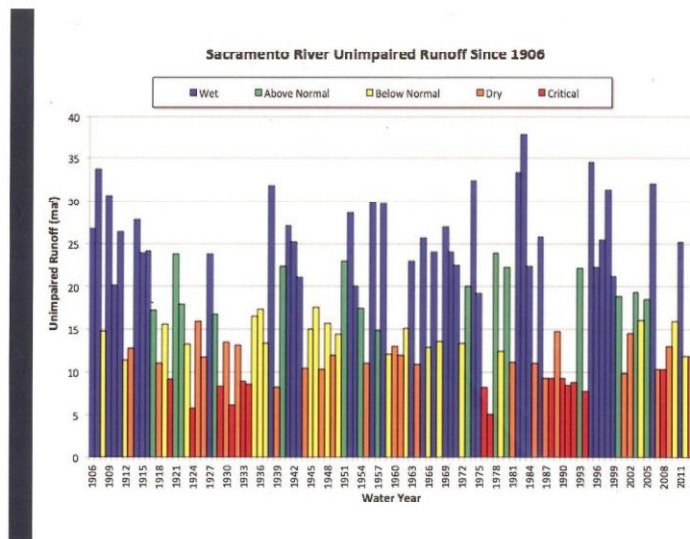


Figure 2

30  
31

32 **[Monthly Average Runoff of Sacramento River System](#)**  
33

1

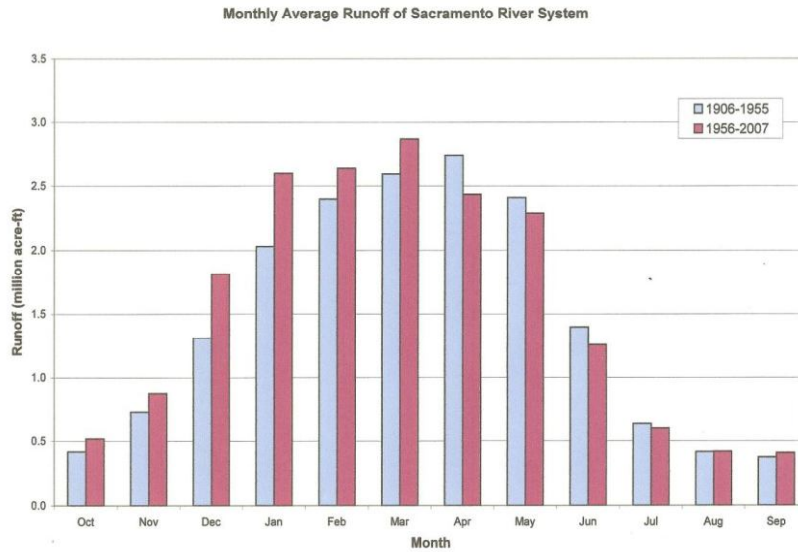


Figure 3

2  
3

4

5

6

7

8

9

Figure 3, provides the average runoff for the Sacramento River system, which illustrates that March, April, and May as three of the five highest months that runoff occurred historically. All the numbers are in millions of acre-feet of water. Figure 4, indicates the water year in precipitation, when comparing the severity of historical drought. Critics point out that this is where DWR officials began to compare apples with oranges, as it is common knowledge in the water world water years are measured in acre-feet.

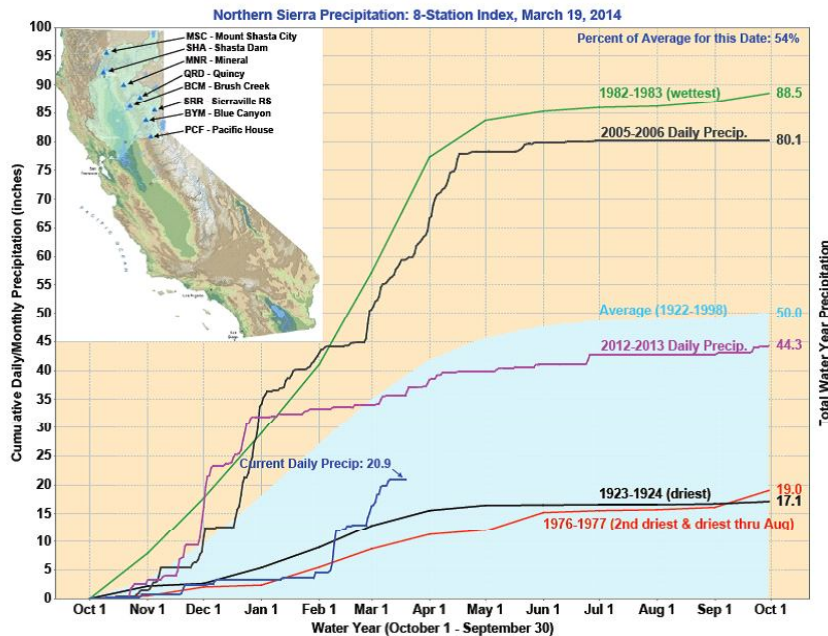


Figure 4

10  
11

12

13

## 1 **Cloud of Doubt Rising as to the Severity of the Drought**

2  
3 [Figure 1 and Figure 2](#) failed to list the driest individual water years, 1977 (5.1 million acre-feet (MAF), 1924 (5.7 MAF),  
4 1931 (6.1 MAF), respectfully. however, the recent series of storms experienced in March may require it to amend that  
5 forecast. Figure 4 does not include the 1987-92 droughts, which was comparable to the six-year drought event that  
6 occurred during the 1929-1934 six-year droughts, as shown in Figure 1.

7 In the first year of the 1976-77 droughts, DWR officials delivered 600,000 acre-feet of water, stored at the SWP's  
8 Oroville reservoir, to agricultural contractors in Kern County for \$2.95 delivered, even though it was warned that was  
9 not a prudent management decision.

10 During the 1987-92 droughts, DWR delivered record-breaking amounts of water to its contractors in central and  
11 southern California in the first four years, playing the odds that the drought would not continue. DWR officials water  
12 management and delivery practices exacerbated the severity of the droughts.

13 DWR officials responded to the dry conditions by exporting and delivering significant amounts of water to SWP  
14 contractors; i.e., in 2010 it delivered 2.44 million-acre feet (MAF), in 2011, 3.55MAF, and in 2012, 2.84 MAF.

15  
16 In light of all the recorded data questions are being raised as to the motive behind Gov. Brown's, water officials' and  
17 Ingram's claim that this is the worst drought in 500 years. Critics claim that it is all promoting more water development  
18 and bilking the public out of hundreds of millions of dollars for drought relief giveaway grants, the majority of those  
19 funds is borrowed money that is given to some of the biggest water districts and landowners in the state. Back during  
20 the 2007-2009 "drought" DWR held grant giveaway meetings at the Irvine Ranch Water District's Duck Club.

## 21 **Drought Proclamation Opens Floodgate Releasing \$870 Million in Public Funds**

22  
23 DWR personnel claim that this is the third dry year in a row, , includes water year 2012, 2013, and 2014, yet it was not  
24 until mid-January that California Governor Jerry Brown issued a [Proclamation](#) , declaring the drought as a State of  
25 Emergency.

26  
27  
28 "With California facing water shortfalls in the driest year in recorded state history, Governor Edmund G. Brown Jr.  
29 today [January 17] proclaimed a [State of Emergency](#) and directed state officials to take all necessary actions to  
30 prepare for these drought conditions."

31 Corporate media ran with the "500-year drought" story, heightening public fears and uncertainties, claiming that the  
32 drought will devastate California's \$44.7 billion agricultural industry and result in massive [farm-related jobs losses](#),  
33 higher unemployment rates, rise in food prices, relaxation of water quality standards and environmental protections..

34 The situation apparently was so bad that President Obama flew in on Air Force One to Fresno and observed the  
35 devastation personally and immediately pledged [\\$183million](#) from existing federal funds for drought relief programs in  
36 California.

37  
38 Meanwhile, Gov. Brown's Administration opened the floodgates and is doling out [\\$687million](#) in drought relief grants  
39 using borrowed money that will ultimately cost state taxpayers in excess of \$1 billion in new debt to offset the  
40 devastation.

41 The largest share of the drought relief package - \$549 million - comes from accelerated spending of General  
42 Obligation (G.O.) bond money voters previously approved in two ballot propositions.

43 "This legislation (appropriating drought relief funds) marks a crucial step - but Californians must continue to take every  
44 action possible to conserve water," Brown, a Democrat, said in a statement.

45 As of late, government officials are holding hearings laying out plans for a new \$4 billion reservoir, when the Golden  
46 State is already inundated with \$74.6 billion in G.O. [bond debt](#), of which \$19.6 billion was expended on water- and  
47 drought-related give away grants.



1 According to the state treasurer, Bill Lockyer, it cost \$2 for every dollar borrowed using G.O. bonds. The money to  
2 repay the bonds comes from the state's heretofore deficit-ridden General Fund.

3 Ironically, California agriculture experienced a nearly three percent increase in the sales value of its products in 2012.  
4 The state's 80,500 farms and ranches received a record \$44.7 billion for their output in 2012, up from \$43.3 billion in  
5 2011 and \$37.9 billion during 2010, according to the latest published government reports.

6 Almond acreage during the period of 2009 through 2012 increased from 720,000 acres to 780,000 acres in 2012;  
7 averaging to [20,000 acres a decade](#). Between 1995 and 2010, almond acreage expanded from 440,000 to 870,000  
8 acres in 2010; increasing cash receipts to growers from \$800 million to more than \$4 billion, respectively.  
9

10 Using a conservative average of 3.4 acre-feet of water per acre to grow almonds indicate that the demand on  
11 California's developed water supply and groundwater would have increased by about 1.36 million acre-feet of water.

12 The amount of water required to irrigate just the 870,000 acres of almonds planted would require an estimated 2.9  
13 MAF of water that is about 800,000 acre-feet more than the Metropolitan Water District of Southern California provides  
14 annually to 18 million urban water users in its service area.

15 Essentially, DWR and SWP agricultural contractors gambled on the odds that even if the drought continued, they  
16 would get the unsuspecting public to bail them out by issuing G.O. bonds.

17 Because DWR has not produced all of the pertinent information, it is difficult to account for the extent and gravity of  
18 this drought. Currently, Planetary Solutionaries (PS) is conducting a forensic accounting of the "management" of the  
19 SWP going back to the worst drought experienced since the SWP became operable. PS' findings will be continued in  
20 Part two of this series. ###

## EXHIBIT 2

### History of SWP/CVP Noncompliance and State Water Board's Nonexistent Enforcement-Track Record

**DWR and U.S. Bureau of USBR Resort to Illegally Taking Water Designated for Fish and Other Beneficial Uses and Users in the Delta:** In the interim, DWR resorted to a myriad of tactics to get additional water to increase the SWP's reliability; including stealing water. During the 1987-1992 droughts, DWR had to come to grips with a problem it created back in the 1960's, when it contracted more water than the SWP would be able to provide. P&A monitored and review of the amounts of water both the SWP and CVP exported from the Delta during the 1987 to 1992 drought, and made public the fact that those two projects exported more water from the Delta, during the first four years of the drought, than in any other four years of the operation of those two projects. In addition, P&A established the fact that the DWR and the USBR illegally exported and/or failed to release water required for salmonid species flow requirements and other designated purposes in the Delta.<sup>1</sup> According to documents, generated by SWRCB staff, with the assistance of the authors, the 350,000 to 500,000 acre-feet of water illegally acquired by the DWR and USBR, was worth and estimated at more than \$29 million, and resulted in more than 289 violations of the terms and conditions of their permits.<sup>2</sup> The Board did not take an enforcement action against either the DWR or the USBR; they were not held accountable for the 289 violations. *"This is to advise you [DWR and USBR] that the Board will not take an enforcement action regarding the 1991 and 1992 exceedences of the D-1485 standards."*<sup>3</sup> More than a dozen California legislators sent a letter to the Board stating that they were deeply distressed by the Board's failure to enforce the provisions of Water Right Decision 1485.<sup>4</sup>

**SWRCB Apprised of Its Sister Agency DWR and the USBR Violations of the Terms and Conditions of Their Water Right Permits and Bay-Delta Water Quantity and Quality Standards, for Two Years; It Took No Enforcement:** The Board did not take an enforcement action against either the DWR or the USBR; they were not held accountable for the 289 violations. \* *"This is to advise you [DWR and USBR] that the Board will not take an enforcement action regarding the 1991 and 1992 exceedences of the D-1485 standards."*<sup>5</sup> More than a dozen California legislators sent a letter to the Board stating that they were deeply distressed by the Board's failure to enforce the provisions of Water Right Decision 1485.<sup>6</sup> As of late, DWR and USBR are still violating the terms and conditions of their respective permits and SWRCB Decision 1641 and the Bay-Delta Water Quality Control Plan.

***Sen. Milton Marks, D-San Francisco, called the drought, deliveries "the biggest environmental crime of the decade in California. They stole up to a half a million acre-feet of water," Marks said at a Capitol news conference. This was during the drought, when fish and wildlife were even more stressed than usual. These are public resources, which belong to the people.***

***Porgans said, state Water Resources Department records show more water being delivered during the first four years of the drought than in any other four-year period in history. Government officials were quick to enforce the law against citizens who were caught illegally diverting water from the bay-delta during the drought, Porgans said. However, when department and bureau officials pulled off the largest water heist in modern times, no enforcement action was taken. It is the classic case of selective enforcement.***<sup>7</sup>

1 **Porgans & Associates Sued DWR and USBR to Stop Illegal Exports:** P&A was forced to sue DWR and the USBR  
2 for the illegal taking of water and violating their permits, *Porgans et al v. Babbitt*. Subsequent to the lawsuit, in 1993,  
3 the illegal diversions ceased. Albeit, as stated earlier, DWR and its water contractors contrived a host of other  
4 ingenious schemes and policies to increase the SWP's water supply reliability at the public's expense. They included,  
5 but where not limited to the following; amending the SWP Water Supply Contracts, via the "Monterey Agreement,"  
6 Bay-Delta Accord, Framework Agreement, and CALFED. As stated, one especially artful maneuver was development  
7 and use of Environmental Water Account, which uses taxpayer funds, via bonded indebtedness, to increase "water  
8 supply reliability" and to "buy water for fish", which, DWR is responsible for killing. Then DWR and the USBR can  
9 recapture the "fish water" and export it from the Delta for its contractors in the San Joaquin Valley and southern  
10 California; some of whom may have initially sold the water for the fish – and doubled or triple dipped on the same  
11 source of water!

12  
13 State Water Board has Smaller Fish to Fry – Sues Local Delta Farmers for "Illegally" Diverting Water:

14  
15 *California Supreme Court Upholds Water Board Action to Protect the Delta. Largest Penalty to Date*  
16 *for Illegal Water Diversions in the Delta. Sacramento—On Wednesday, February 13, [2008] the*  
17 *California Supreme Court upheld \$62,000 in penalties against persons for illegally pumping water in*  
18 *the Sacramento-San Joaquin Delta. The penalties were assessed by the State Water Resources*  
19 *Control Board in 2004, because the parties were pumping water from the Delta in violation of their*  
20 *water right permits. The permits contain conditions to protect water quality in the Delta for fish,*  
21 *agriculture and drinking water supplies.*

22  
23 *California's water right system sets up priorities for which users are allowed to take and use water*  
24 *when supplies are not sufficient to meet the needs of all users. When there is insufficient water, more*  
25 *junior water right holders (generally those whose rights were established more recently) are required*  
26 *to curtail their diversions so that more senior water right holders have sufficient water to meet their*  
27 *needs. Water right permits may also be subject to conditions intended to protect fish and water quality.*

28  
29 *The permits in question include limitations on the holders' water rights, which require the permit*  
30 *holders to cease pumping when flows are insufficient for senior right holders and Delta water quality*  
31 *objectives. Under those circumstances, the state and federal water projects are required to release*  
32 *water from upstream reservoirs to meet those objectives, and some other water users are required to*  
33 *protect water used for agricultural irrigation from excessive salinity and to protect Delta water quality*  
34 *for fish and drinking water supplies. The provision is also designed to ensure that the reservoir*  
35 *releases made by the water projects reach the Delta to meet their intended purposes and are not*  
36 *diverted by junior water right holders.*

37  
38 *I am pleased that the courts have upheld the State Water Board's ability to enforce laws designed to*  
39 *protect water quality and water rights," said Tam Doduc, Chair of the State Water Resources Control*  
40 *Board. "California faces enormous challenges with respect to the Delta. Enforcing existing*  
41 *requirements is an important component of protecting and ultimately restoring the health of the Delta.*

42  
43 *The California Supreme Court decision leaves in place a unanimous decision of the Third District*  
44 *Court of Appeal, which had affirmed the water board's enforcement action. (Phelps v. State Water*  
45 *Resoures Control Board (2007) 157 Cal.App.4<sup>th</sup> 89.<sup>8</sup>*

1 **Despite More Than 12 Years of Bay-Delta Water Rights Hearings, the SWRCB Failed to Provide Numerical**  
2 **Flow Values for the Protection of Salmonid and Other ESA Listed Species in Its Water Right Decision 1641:**

3 During the more than 12 years (began in 1987 and decision adopted in 1999) in which the State Water Resources  
4 Conducted the San Francisco Bay and Sacramento-San Joaquin Delta Water Rights Hearing which was supposed to  
5 provide “greater protection” for fisheries and other beneficial uses/users, it failed to develop numerical flow values for  
6 listed salmonid species, as stated:

7  
8 *On December 29, 1999, the SWRCB adopted Decision 1641, which implements many of the*  
9 *objectives by conditioning existing water rights. D-1641 does not contain terms and conditions*  
10 *directed specifically to implementing the narrative salmon objective. The **objective may be achieved***  
11 ***incidentally** by ensuring the terms and conditions imposed in D-1641 are met **by implementation of***  
12 ***non-flow measures outside the SWRCB's process.** The SWRCB found that a period during which there*  
13 *would be compliance with the numerical flow objectives in the Bay-Delta Plan, coupled with actions*  
14 *undertaken by other agencies and adequate monitoring of fish populations, was necessary before it*  
15 *could determine whether additional implementation measures are needed.<sup>9</sup>*

16  
17 Requiring a narrative salmon objective in the terms and conditions in the Delta, for the protection of salmonid species,  
18 could have cost DWR, USBR and others, water releases required to meet a specific flow objective. The disastrous  
19 conditions of the salmonid species that are impacted by the SWP and CVP Delta pumps should have necessitated an  
20 action by the SWRCB by now; however, the last time the author checked, with SWRCB personnel, one has yet to be  
21 adopted. However, there have been violations by both DWR and the USBR of the terms and conditions of their  
22 SWRCB permits and licenses, and other Bay-Delta water quality objectives, which are still going on, unabated.

23  
24 **According to the State Water Resources Control Board, It Issued a Cease and Desist Order Against DWR and**  
25 **USBR for Violations of Their Permit and D-1641 Requirements;<sup>10</sup> However, with the Exception of Issuing a**  
26 **Cease and Desist Order, No Other Enforcement Action has Been Taken as of Yet (DWR and the USBR Monitor**  
27 **and Report Their Violations to the SWRCB in a Monthly Report):**

28  
29 *In Order WR 2006-0006, the State Water Resources Board issued a Cease and Desist Order (CDO)*  
30 *against DWR and the U.S. Bureau of USBR for threatened violation of the 0.7 millimhos per*  
31 *centimeter (mmhos/cm) electrical conductivity objective (EC) applicable from April through August*  
32 *of each year at station C-6 (San Joaquin River at Brandt Bridge), C-8 (Old River near Middle River),*  
33 *And P-12 (Old River at Tracy Road Bridge) (interior southern Delta stations).*

34  
35 *In 2006, the Projects informed the State Water Board that their plan for obviating the threat of*  
36 *noncompliance with the 0.7 EC objectives is to install permanent operable gates in the southern*  
37 *Delta. DWR's recent correspondence indicates that the Projects will not be able to install the gates*  
38 *by July 1, 2009, or possibly at all, due to endangered species concerns and related issues.<sup>11</sup>*

39  
40 **DWR and USBR have violated the standards in the past, which is why the CDO, however, as stated, there does**  
41 **not appear to be any other enforcement action taken to date, even though the objectives have been exceeded.**  
42 It is important to note that DWR and USBR do their own monitoring and compliance, and send that “data” to the



1 SWRCB. Furthermore, DWR and USBR are taking exception to the SWRCB position that they are solely responsible  
2 for meeting D-1641. P&A made an issue out of who would be responsible, and stated during the D-1641 “hearings”  
3 that this issue and other issues relating as to whom would be responsible would surface during the next drought.  
4

5 **Government Reports Show that the Collapse of Salmonid Populations Was Not Unforeseen - It Was the Result**  
6 **of a Government-Induced Disaster, in the Making for Decades:**

7  
8 Patrick Porgans, a solutionist, and long-time advocate of Public Trust protection and government accountability,  
9 stated, “Based on the information from “official” sources, the salmon collapse is not the result of natural phenomenon,  
10 it is the direct result of a government-induced disaster which has been in the making for decades. The crux of the  
11 matter is premised on the fact that government is required to provide water for fish; it has failed to do so, and is in  
12 violation of the federal Endangered Species Act and other laws that provide protection for listed species.”  
13

14 Contrary to the Governor’s position, this is not about *people versus fish*, but is about his administration’s  
15 mismanagement of both financial and natural resources. The State Water Resources Control Board (Board) is  
16 responsible for the administration of water rights appropriations; its records show that it has over-appropriated the  
17 waters of the state by 500 percent.  
18

19 Furthermore, neither the Board nor the Department of Fish and Game can provide a readily available accounting of the  
20 amount of water provided for fish needs, primarily because, in most cases, they do not set a numerical flow value  
21 required to sustain listed species. It does not monitor to ensure the fish water needs are being met – that is the  
22 diverter’s job.  
23

24 In cases when the SWRCB was fully aware of the fact that illegal diversions, such as the 1,771 illegal diversions in the  
25 North Coast Region, most in “Wine Country”, the Board simply failed to abate the unlawful diversions. The National  
26 Marine Fisheries Service advised the Board that the unauthorized diversions in that area were responsible for the  
27 “Take” of listed species and violated the provisions of the ESA; it took no action.  
28

29 While officials are not providing water for fish, according to California’s Legislative Analyst’s Office, since 1996, voters  
30 have approved \$14 billion in General Obligation Bonds for water-related programs, which included buying water for  
31 fish. More than \$5 billion has been expended on a myriad of water supply reliability and fish-doubling programs. Most  
32 of those funds were administered through CALFED, a consortium of federal and state agencies, a number of which are  
33 directly responsible for the disastrous decline in salmonid populations, such as the Department and Bureau of USBR.  
34 They are also major water purveyors, regulators, Public Trustees and unaccountable violators of the law.  
35

36 Government officials are not penalized when they curtail water exports from the Delta, as a result of killing listed  
37 species; they get paid and are rewarded for purportedly not pumping. At times, when officials exceeded the “take”  
38 limits under the ESA, they got back together and increased the number of fish they could “legally” kill.  
39

40 To date, the only so-called relief available to abate the carte blanche killing at the Delta pumps is when a non-  
41 governmental entity files a lawsuit requesting judicial intervention. Ironically, this de facto action does not address the  
42 fundamental unaccountability of officials’ business-as-usual kill and get paid for not killing fish. It simply affords officials  
43 more free press, public empathy and free money to ensure the water supply reliability of SWP and federal Central  
44 Valley Project contractors.  
45

46 Coincidentally, the project operators count the fish they kill and they pass the “data” down the food chain to their sister  
47 “responsible” for fish and wildlife protection. P&A formally requested scientific proof from officials that would validate  
48 the effectiveness of the CALFED decade-in-the-making Delta improvement and fish-doubling effort.  
49

1 Unfortunately, despite the plethora of studies conducted, no quantitative analysis has been done to validate the  
2 effectiveness of the programs or the fish-doubling effort. Conversely, officials admit that there does not appear to be  
3 any increase in the doubling of fish populations or that the water for fish is even working.  
4

5 The \$345 million spent from the Environmental Water Account (EWA), for buying water for the fish to help achieve the  
6 fish-doubling goal, which was supposed to occur around the year 2002, and the other \$5,000,000,000 in related  
7 efforts, is another taxpayer subsidized disaster. In fact, based on the government's data, which are dubious, salmonid  
8 populations are worse now than ever.  
9

10 ENDNOTES

---

<sup>1</sup> W. Don Maughan, Chairman, State Water Resources Control Board letter to Patrick Porgans, ***Response to Your Request for Information on the 1991 and 1992 Decision 1485 Violations***, 30 September 1992.

<sup>2</sup> State Water Resources Control Board's ***Public Hearing, Subject: Consideration of Compliance with Water Right Requirements for the Sacramento-San Joaquin Delta and Suisun Marsh***, SWRCB Exhibits 19 and 20, November 30, 1992.

<sup>3</sup> Walt Pettit, Executive Director, SWRCB letter to David Kennedy, Director, Department of Water Resources and Roger Patterson, Regional Director, U.S. Bureau of USBR, ***Re: Compliance During 1991 and 1992 with Water Right Decision 1485***, June 11, 1993.

<sup>4</sup> Senator Milton Marks, et al, letter to John Caffrey, Chairman, State Water Resources Control Board, 12 July 1993.

<sup>5</sup> Walt Pettit, Executive Director, SWRCB letter to David Kennedy, Director, Department of Water Resources and Roger Patterson, Regional Director, U.S. Bureau of USBR, ***Re: Compliance During 1991 and 1992 with Water Right Decision 1485***, June 11, 1993.

<sup>6</sup> Senator Milton Marks, et al, letter to John Caffrey, Chairman, State Water Resources Control Board, 12 July 1993.

<sup>7</sup> Associated Press, The Fresno Bee, ***Suit Calls Water Shipments Illegal***, 15 December 1993.

<sup>8</sup> State Water Resources Control Board, For Immediate Release, ***California Supreme Court Upholds Water Board Action to Protect the Delta-Largest Penalty to Date for Illegal Water Diversions in the Delta***, 15 February 2008.

<sup>9</sup> SWRCB, ***Notice of Public Workshop, Delta Decision 1641***, 5 December 5, 2001.

<sup>10</sup> California State Water Resources Control Board, Order 2006-0006: In the Matter of Draft Cease and Desist Order Nos. 262.31-16 and 262.31-17, Against the Department of Water Resources and the United States Bureau of USBR, Under their Water Permits and License and In the Matter of Petitions for Reconsideration of the Approval of a Water Quality Response Plan Submitted by the Department of Water Resources and the United States Bureau of USBR for their Joint Points of Diversion in the Sacramento-San Joaquin Delta, 15 February 2006.\*

<sup>11</sup> Dorothy Rice, Executive Director, State Water Resources Control Board letter to Katherine F. Kelly, Chief, Bay-Delta Office, California Department of Water Resources, Re: ***February 2009 Quarterly Status Report Pursuant to Order 2006-0006***, 7 May 2009.