

## CWFhearing

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**From:** Patrick Porgans <pp@planetarysolutionaries.org>  
**Sent:** Wednesday, August 31, 2016 1:25 PM  
**To:** abl@bkslawfirm.com; aferguson@somachlaw.com; ahitchings@somachlaw.com; amy.aufdemberge@sol.doi.gov; apeltzer@prlawcorp.com; awaren@nrdc.org; barbara@restorethedelta.org; barbarav@aqualliance.net; barry@solagra.com; bdalymns@citlink.net; bjohnson@tu.org; blancapaloma@msn.com; bobker@bay.org; bradpappa@gmail.com; brettgbaker@gmail.com; bwright@friendsoftheriver.org; Wilcox, Carl@Wildlife; caroleekrieger7@gmail.com; colin@ejcw.org; connere@gmail.com; CWFhearing; daladjem@downeybrand.com; daniel@kaydix.com; dcooper@minasianlaw.com; dcoty@bpmnj.com; ddj@cah2oresearch.com; dean@hprlaw.net; ltaactioncommittee@gmail.com; ltakeep@me.com; elly@pcwa.net; kelweg1@aol.com; kharrigfeld@herumcrabtree.com; kobrien@downeybrand.com; deltaactioncommittee@gmail.com; deltakeep@me.com; dkelly@pcwa.net; dobegi@nrdc.org; dohanlon@kmtg.com; dorth@davidorthconsulting.com; empappa@gmail.com; evielma@cafecoop.org; fetherid@ebmud.com; fmorrissey@orangecoveid.org; friendsoffestuary@gmail.com; gadams@fclaw.com; info@californiadelta.org; jailin@awattorneys.com; jtb@bkslawfirm.com; jconway@rd800.org; jfox@awattorneys.com; Mizell, James@DWR; jennifer@spalettalaw.com; Herrick, John @aol.com; Minton, Jonas; john.luebberke@stocktonca.gov; Rubin, Jon@sldmwa.org; jph@tulareid.org; jrobinson@cityofsacramento.org  
**Subject:** CWF Proceedings - Request to Modify Porgans NOI Oversight on Case-in-Chief  
**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

[lcaster@fclaw.com](mailto:lcaster@fclaw.com)

**31 August 2016 Sent in Two Batches**

**To: Tam Dudoc, Co-Hearing Officer and Felicia Marcus, Co-Hearing Office**  
**TIMELY RESPONSE REQUESTED**

**Re: California WaterFix Proceedings Request to Modify Notice of Intent to Include Case-in-Chief the Result of an Oversight**

From: Patrick Porgans, Solutionist, Planetary Solutionaries

This is a request to modify Porgans' Notice of Intent (NOI). The reason for this request stems from the fact that heretofore Petitioners' expert witnesses could not answer simple questions pertaining to specific issues regarding the Fix, the benefits and adverse impacts attributable to a change in the point of diversion. The Petitioners request to modify the terms and conditions of their respective SWB issued licenses and permits, is extremely myopic and difficult to challenge. As it stands now, the Fix is viewed as a moving target, with crucial aspect of the proposed action, wafting in the ethos.

Specific locations of the proposed tunnel intakes are still uncertain; the Petitioners' Engineering Panel conceded that the proposed project is only at 10 percent of the design phase; the preferred Alternative is still up in the air; the Biological Opinions and the 401 Certification, renegotiation of the ESA approval, as well as many other

fundamental issues remain unanswered. It is not reasonable to expect members of the public to participate in a wait-and-see what sticks and move FORWARD.

It is important that we not lose sight of the fact that the Petitioners, not the Protestants, have to prove the merits of their proposed action. As stated, in my previous comments before the CWF Hearing Team, this process is moving at a break-neck pace, which is placing an undue economic burden, increased workloads, and unnecessary stress on Protestants. There have been more than 15 updates, revisions and delays in the CWF to date.

In my initial NOI, Porgans/Associates did not anticipate the need to call witnesses, because it is our understanding that the Petitioners would provide expert witnesses that would give answers to relatively simple questions; unfortunately, that was not the case. It is always our intentions of providing a Case-in-Chief, and to use relevant government records to support our case. During the proceedings Co-Chair Tam Dudoc kept reminding me that my assertions can be included in my Case-in-Chief. However, yesterday, while in discussion with CWF personnel, I was informed that they questioned my Case-in-Chief status. P/A has had the opportunity to cross-examine four of the Petitioners' expert witness panels, and with few noted exceptions, the experts were not able to respond to crucial questions regarding the Fix.

In light of the fact, that a great deal of the Petitioners' testimony is being spearheaded by DWR consultants; SWP contractors, and other vested interest, none of whom could say with certainty what the ultimate project design looks like, and the only partial peer review of CALSIM II, was conducted by a DWR employee, who also wrote an article that he had published in a journal.

IN P/As initial NOI it was our intention to rely solely on government, publications, documents, correspondences, and data obtained under the California Public Records Act and the federal Freedom of Information Act. We planned to use these document in our Case-in-Chief. P/A understands DWR's inherent conflicts as a water purveyor and as a Trustee of Public Trust resources.

P/A attempted to obtain an answer to the Genesis of the BDCP/CWF, which stems back to legislative and voter approval of the SWP, going back more than 55 years; unfortunately, the experts could not provide the Genesis of the WaterFix. Instead, Protestants are being subject to what appears to be a fact-track approach, to get on with the proposed fix.

In Porgans Case-in-Chief, we plan to provide government documents that will prove that the Department of water Resources and, in some cases, the U.S. Bureau of Reclamation have operated their respective water projects in a manner that has exacerbated every drought that California has experienced since the SWP and CVP became operable. In the process, the operations of the respective projects have been held responsible for damages incurred by property owners. In the case of Sherman Island, included in the NDWA contract, farmers had to sell their land because the poor water DWR provided increased the salinity levels in the soil profile. DWR now owns and manages almost the entire 10,000 acres.

In our cross examination of the Operation Panel we established the fact DWR relies on "surplus" and "abandoned" flow that pass through the Delta. The record will attest to the fact that DWR and USBR had resorted to stealing water, knowingly violating regulatory protections for the Bay-Delta ecosystem; emptying upstream reservoirs, then appealing to the SWB for a relaxation in the standards; as a means to increase storage and water supply reliability for its SWP contractors. DWR and the Bureau continue to abscond with millions

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