

14 December 2015

Sent via Email: commentletters@waterboards.ca.gov

Chair, Felicia Marcus and Members of the Board
State Water Resources Control Board
P.O. Box 2000, Sacramento, CA 95812-2000

16 May 2014



1 **Attn. Tom Howard, Executive Officer and Jeanine Townsend, Clerk of the Board**

2
3 **RE:** Submittal of Comments on Draft Order Denying in Part and Granting in Part Petitions for Reconsideration of and Addressing
4 Objections to the Executive Director's February 3, 2015 Order and Subsequent Modifications to That Order that Approved
5 Temporary Urgency Changes in License and Permit Terms and Conditions for the State Water Project and Central Valley Project
6

7 My name is Patrick Porgans, Solutionist and principal of **Porgans & Associates** (P/A), representing **Planetary Solutionaries** (P/S),
8 a not for profit organization, which serves as a *de facto* public trustee. Its mission is to assist, and, when necessary, compel
9 government officials to perform their respective duties, responsibilities, and Public Trust mandates, accordingly. Contact
10 information: Address, email address and phone number of protestant or authorized agent: Patrick Porgans, Porgans and
11 Associates, P.O. Box 60940, Sacramento, CA 95860, porgansinc@sbcglobal.net .Telephone Number (916) 543-0780. Agent for
12 Planetary Solutionaries, pp@planetarysolutionaries.org **Please confirm receipt of this communication and post it with the**
13 **other comment letters and Protests filed with the State Water Resources Control Board (State Water Board) In the Matter of**
14 **Specified License and Permits¹ of the state Department of Water Resources (DWR)**
15 **and the federal Bureau of Reclamation for the State Water Project and Central**
16 **Valley Project.**

17
18 **Preface:** P/A attended the State Water Board's workshops and submitted
19 comments and raised questions regarding the basis, in fact, to support the urgency
20 and approval of the TUCP. P/A found the Board members "response" to the
21 "drought" and its dependence on the submittal and acceptance of information
22 provided by DWR and USBR, without providing the public an opportunity to
23 challenge their assertions formally, via a formal evidentiary hearing, is viewed as an
24 obstruction of public's due process rights and remedies. Furthermore, the accolades
25 and praises that the Board members showered on DWR, USBR and the fisheries
26 agencies for the effort they have put forth as exemplary, leaves the public with the
27 image of the State Water Board as a lapdog and not as a watchdog. The deplorable
28 condition of the Bay-Delta Estuary is indicative of governments' decades of failed
29 attempts to protect the delta and those that dependent on it.

30
31 At its December 14, 2015 meeting, the State Water Resources Control
32 Board (State Water Board) will consider adopting a draft Order Denying in
33 part and approving in part Petitions for Reconsideration of and addressing
34 objections to the Executive Director's February 3, 2015 Order and
35 Subsequent Modifications to That Order (TUCP Orders) that approved
36 temporary changes in the water right requirements for the State Water
37 Project and the Central Valley Project, according to a 7 Dec. Board [email](#).

NOTE TO REVIEWER

following format, (1) It list verbatim quotations extrapolated from the State Water Board Orders, government documents, FOIA and Public Information Act requests, and other "established" sources.

The preponderance of the text contained in this communication is composed of verbatim quotations from referenced sources. Also, be advised, that P/A participated in the State Water Board's 2014 and 2015 "Drought Emergency Workshops", and provided oral and written comments and stated our objections and protest to each rendition of the TUCP. This DRAFT has a number of redundancies, and due to the limit comment period had not received a final edit.

¹ 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 The draft Order and State Water Board agenda item are posted at:
2 http://www.waterboards.ca.gov/board_info_agendas/2105/dec/121515_with_coverltr.pdf

4 **Water Board Approval of TUCPs FOR THE SWP AND CVP**

5
6 The TUCP Orders conditionally approved a Temporary Urgency Change Petition (TUCP) that sought changes to
7 Delta flow and other water quality requirements filed by the state Department of Water Resources and the U.S.
8 Bureau of Reclamation. In response to the TUCP, the Executive Director of the State Water Board approved
9 changes to the Delta flow and water quality requirements to address water supply limitations due to the
10 drought, and included requirements to protect fish and wildlife, particularly winter-run Chinook salmon.
11 **Despite the measures included in the TUCP Orders and associated plans for winter-run Chinook salmon**
12 **appear to have experienced greater mortality this year than last year as a result of inadequate temperature**
13 **controls actions on the Sacramento River and other operational issues [emphasis added].²**

14
15 **Limited Time to Provide Detailed Comments and Objections:** P/A and its client take offense with the limited time frame that the
16 State Water Board allowed for public comments, less than five-working days, to review, digest and provide written comments on
17 a highly complex matter of critical importance to the people of California and the Nation. Unfortunately, government records
18 attest to the fact that the State Water Board has applied similar fast-track short-term notices that essentially deny the public its
19 due process rights. This finding resulted from an ongoing **Forensic Assessment** of the State Water Board's approval of **all** of the
20 previous TUCPs, requested by DWR and Reclamation officials, which, the executive director and the State Water Board approved
21 and sanctioned. TUCPs that were purportedly designed to be "temporary" and with the public interest in mind, historically have
22 shown that when government proclaims something is temporary, as is the case with the SWP/CVP operations, can go on for
23 decades and often become permanent.

24
25 P/A carefully read and reviewed the State Water Resources Control Board's (State Water Board's) notice that it will consider
26 adopting a draft Order Denying in part and approving in part Petitions for Reconsideration of and addressing objections to the
27 Executive Director's February 3, 2015 Order and Subsequent Modifications to That Order (TUCP Orders) concerning Board
28 approval of Temporary Urgency Change Petitions (TUCPs) filed by California Department of Water Resources (DWR) and the
29 United States Bureau of Reclamation (Reclamation).

30
31 As stated, in P/A's previous written submittals, the TUCP has been a moving-target, and contrary to the executive director and
32 this Board's assertions that the latest rendition of the proposed TUCP will satisfy the four (4) conditions stated in the Order(s) is
33 simply a misstatement of fact. Conversely, it our client's assertion, based on the record, that:

- 34
35 1). There are serious unanswered questions as to the motives behind the TUCP and questions regarding whether the State Water
36 Board is operating within or beyond the confines of its legal jurisdiction; a matter that may have to be determined by the courts;
37 2). It does not serve the public interest;
38 3).The TUCPs as written is inconsistent with the law, and
39 4).Based on the actual results of its implementation, over the course of the past two (2) years, has and continues to
40 present an unreasonable adverse environmental impact on aquatic species already listed on the state Endangered Species Act
41 and the federal Endangered Species Act (ESAs), impairment of water quality standards and degradation of Delta water quality,
42 which government reports attribute to are attributable to the "operation and management" of government water projects that
43 have been granted water right permits and licenses by the State Water Board.

44

² SWRCB's Draft Order on Petitions for Reconsideration of Executive Director TUCP Orders Modifying Delta Flow and Salinity Requirements in Response to the Drought, 7 December 2015.

P/A Comments to SWB 14 December 2015 Meeting: Reconsideration of Executive Officer's 3 February TUCP Order

1 Furthermore, the record attest to the fact that during drought periods, SWP and CVP officials have been caught stealing and exporting as much
2 as a half-of-million acre feet of water, with a market value of \$29 million; facts obtained as a result of P/A support by ranking members of the
3 State Legislature to hold an evidentiary hearing on the theft of that water, and the failure of the State Water Board to stop the illegal exports.
4 P/A filed a lawsuit against federal and state officials to stop the illegal diversion, which became a matter of statewide interest. Michael Jackson,
5 the attorney for the California Sportfishing Protection Alliance (CSPA) offer his services, and the lawsuit was jointly filed by P/A and CSPA; P/A
6 agreed to pay all of the related court costs. P/A completed a Fact-Finding Report on the State Water Board's failure to hold DWR and
7 Reclamation officials accountable, which contained six (6) volumes of appendices; averaging out to contain 500 pages of public records per
8 volume; copies of which were provided to Attorney Jackson. After exhausting the administrative and quasi-judicial venues, P/A notified
9 government of its intent to sue to stop the illegal diversion. Over the course of a six-month period, P/A met with Attorney Jackson to discuss
10 the contents of our findings and to apply them to the case, accordingly. Unfortunately, during the preliminary motions before the federal
11 judge, Attorney Jackson was thrown out of the court for being unprepared. Fortunately, the drought ended as did the illegal exports, at which
12 point PA dismissed it case against the State.
13

14 P/A actively participated in the State Water Board Water Right Decisions D-1485, the aborted D-1630, the D-1641 hearings, the Cease and
15 Desist Order it issued against DWR and Reclamation officials (which provided more time and delays) and the By-Delta Water Quality Control
16 Plans adopted by the Board. It is now 6:30 a.m. on the morning of 14 December, and the time to comment is running out. P/A is forced to
17 curtail the scope and breathe of its objections and findings, and submits the following abbreviated DRAFT comments.
18

19 **Position Statement: Ongoing Formal Protest** – Petition stating P/A's Objections to the every rendition of the State Water
20 Board's approval of Temporary Urgency Change Petitions (TUCPs) Filed by Federal Bureau of Reclamation and the California
21 Department of Water Resources pertaining to water quality standards and the operations of the federal Central Valley Project
22 (CVP) and the State Water Project, including the rendition scheduled to be discussed at the Board's 14 December 2015 meeting.

23 **Basis for Protest and Request for Relief:** P/A recommends that the State Water Board hold off on any further decisions
24 to modify the TUCP approved by the Board's executive officer on 3 February 2105 until, which time, the State Water Board
25 affords the public an opportunity to participate in an evidentiary hearing to flush out all the facts and public-relations rhetoric
26 associated with the TUCPs, the severity of the drought, and water officials contribution to State's impending water crises.

27 The necessity for such a hearing has become increasing evident by the fact that the Executive Officer, Tom Howard, has
28 repeatedly made unfounded and erroneous statements regarding the TUCPs, which he based on the "available information"
29 (most of which was provided by the project operators). Mr. Howard's assertions that keeping more water in project reservoirs,
30 located North of Delta, to protect endangered species, would not cause unreasonable harm to the environment, and that the
31 TUCP serves the public interest; conform with law, and does not have an adverse environmental impact, proved to be dead
32 wrong for 95 percent or more of the Sacramento River winter run salmon killed in this ongoing failed temporary experience.

33 Suffice it to say, the State Water Board has a reputation for repeating its mistakes, as was recently reported that the percent of
34 the 2015 winter run Chinook salmon suffered the same fate, the year after the first fatal mistake, the executive officer and the
35 State Water Board proved to be wrong once again. Ironically, unlike a citizen's that harms or "[Take](#)" of an endangered species,
36 such as a winter-run Chinook salmon could serve as a justifiable federal offense.³ However, in this case, not one government
37 officials has been held accountable for the loss of almost the entire population of the 2014 and 2015 winter-run Chinook salmon,
38 a species already listed as endangered.

39 The record attests to the fact that P/A has an extensive history of interaction with the State Water Board, dating back to 1973.
40 Specifically, on matters pertaining to it jurisdictional responsibilities and powers it exercises over the permits and licenses issued
41 to the DWR and USBR for the operation of the State Water Project (SWP) and the federal Central Valley Project (CVP).

³ SUMMARY: This final rule defines the term "harm", which is contained in the definition of "take" in the Endangered Species Act (ESA). The purpose of this rulemaking is to clarify the type of actions that may result in a take of a listed species under the ESA. This final rule is not a change in existing law. It provides clear notification to the public that habitat modification or degradation may harm listed species and, therefore, constitutes a take under the ESA as well as ensuring consistency between NMFS and the Fish and Wildlife Service (FWS). This final rule defines the term "harm" to include any act which actually kills or injures fish or wildlife, and emphasizes that such acts may include significant habitat modification or degradation that significantly impairs essential behavioral patterns of fish or wildlife.

1 **Protest of the TUCP is based on Jurisdictional issues, Public Interest, Conflicts with State and Federal**
2 **Laws, and Present a Real and Unreasonable Threat to Other Water Right Users, Uses and Endangered**
3 **Species.** Therefore, it is our client's assertion that the TUCPs approved heretofore, are in conflict with the State Water Board's
4 assertions, and contrary to the State Water Board's assertions, we respectfully submit the following comments:
5

6 **(1) The Board may be operating beyond the limits of its legal jurisdiction, (2) Does not serve the public interest, (3) contrary to**
7 **certain laws, and (4) has and continues to cause adverse economic and environmental impact on other users/uses.**
8

9 **State facts which support the foregoing allegations:** Regarding Permits and License of the State Water Project (SWP)
10 and the Central Valley Project (CVP)," Approved on 31 January 2014 (subsequently modified TUCPs), pursuant to California Water
11 Code section 1435. The following is a DRAFT Synopsis of our Allegations, Protest and Objections to the TUCP. The scope and
12 breadth of the TUCP, and its implementation, is rife with significant uncertainties, assumptions, and conclusions that raise more
13 questions than answers. P/A submitted a list of questions pertinent to the TUCP; however, answers to those questions have not
14 been forthcoming from the Board or its staff, refer to Exhibit I. For these and other reasons, on behalf of our client, and in the
15 public interest, P/A request that the State Water Board hold an evidentiary hearing as provided for under section 1435 of the
16 California Water Code; failure to do so would be viewed as an obstruction of my client's due process rights.

17 Section 1435(c) requires the petitioner to demonstrate an "urgent need" and that it exercised "due diligence." Documents
18 obtained from public records show that the petitioners' have not demonstrated an "urgent need" nor did they exercise due
19 diligence. In fact, the historical records indicate that their water management and delivery practices bet on the odds that
20 droughts will not continue, and when they are wrong, they just come back and get the State Water Board to relax the standards.
21

22 The following are verbatim quotations extracted from the State Water Board's executive officer's approved TUCP.
23

24 **18 April 2014 – Seventh Rendition of TUCP [Page 1 of 10]**

25 **1.0 INTRODUCTION**

26 On January 29, 2014, the Department of Water Resources (DWR) and the United States Bureau of USBR (USBR)
27 (hereinafter Petitioners) jointly filed a Temporary Urgency Change Petition (TUCP) pursuant to Water Code
28 section 1435 et seq., to temporarily modify requirements in their water right permits and license for the State
29 Water Project (SWP) and Central Valley Project (CVP) for the next 180 days in response to drought conditions.
30 An order approving the TUCP was issued on January 31, 2014. That Order was modified on February 7, 2014,
31 February 28, 2014, March 18, 2014, April 9, 2014, and April 11, 2014. This Order [18 April] further modifies the
32 TUCP Order.
33
34
35

36 **2.0 BACKGROUND**

37 In the January 29, 2014 TUCP the Petitioners requested temporary modification of requirements included in
38 State Water Resources Control Board (State Water Board) Revised Decision 1641 (D-1641) to meet water
39 quality objectives in the Water Quality Control Plan (Plan) for the San Francisco Bay/Sacramento-San Joaquin
40 Delta Estuary (Bay-Delta) (attached). Specifically, the TUCP requested modifications to the requirement to
41 meet the Delta Outflow objective during February and the Delta Cross Channel (DCC) Gate closure objective
42 from February through May 20.
43
44

45 **18 April 2014 – Seventh Rendition of TUCP – Excerpts [Page 2 of 10]**

46 The TUCP also proposed modification of limits on exports at the SWP and CVP pumping facilities in the south
47 Delta and a process to determine other changes that will best balance protection of all beneficial uses. The
48 **Petitioners requested these temporary modifications in order to respond to unprecedented⁴⁵ critically dry**
49

⁴ Porgans & Associates letter to Tom Howard, Executive Director, State Water Board, RE: In the Matter of Specified Licenses and Permits of the Department of Water Resources and the federal Bureau of Reclamation for the State Water Project and the Central Valley Project April 14, P/A Comments to SWB 14 December 2015 Meeting: Reconsideration of Executive Officer's 3 February TUCP Order

1 hydrological conditions as California enters its third straight year of below average rainfall and snowmelt
2 runoff. [Emphasis added] Additional information concerning the drought and the TUCP can be found on the
3 State Water Board's website at: http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/tucp.shtml
4

5 **Objection:** Petitioners requested these temporary modifications in order to respond to unprecedented critically dry
6 hydrological conditions California experienced over the course of the past four (4) years. There is no question that this is a
7 serious drought; however, the claim that this is the worst drought the State has experienced in the past 500 years, is simply not
8 supported by viable data, and relies too heavily on tree-rings, which did not identify the most extreme two-year critically dry
9 period that occurred during 1976-1977. It is conceivable, if one puts any faith in computer models, that areas south of the Delta,
10 such as the San Joaquin Valley may be experiencing the worst drought in 500 years; however, as stated in an article published by
11 Professor Lund, at the University of Davis, all models are wrong, some are useful.
12

13 There are numerous other unfounded assertions being made by water officials that are not supported by the record that have
14 contributed to the seriousness of the drought that was induced by water officials and not nature. Testimony and records
15 contained in the State Water Board's files, attest to the fact that managerial and operational decisions made by DWR and USBR
16 officials SWP and CVP Delta exports have historically exacerbated and exaggerated water shortages. Their actions, although
17 beneficial to SWP and CVP contractors, are significant factors contributing to Delta water quality deterioration and loss of pelagic
18 and anadromous fisheries during pre- and post-drought conditions. The project operators have historically increased Delta water
19 exports during pre- and post-drought periods. They empty out the storage reservoirs north of the Delta and store the water in
20 their respective reservoirs in Central and Southern California. Then, they come back before the State Water Board and request
21 emergency measures to have Delta water quality standards and the terms and conditions of their respective water right permit
22 modified, under the pretext that they do not have enough water in storage north of the Delta! During this drought and previous
23 droughts P/A obtained records showing that DWR was dumping water into the ocean from the terminal reservoirs because they
24 were too full. All of this information is contained in the State Water Board File Room.
25

26 As stated, at previous drought meeting, P/A provided the State Water Board with official records that showed that during the
27 1976-1977 drought, DWR opted to provide its agricultural contractor to purchase 600,000 acre-feet of surplus water, in the first
28 year of that drought. The water was released from the SWP's Oroville facilities, pumped from the Delta and shipped down to
29 Kern County area for \$2.95 an acre-foot.
30

31 During the 1987-1992 drought period, P/A provided the State Water Board with public records that showed that DWR delivered
32 more water in the first four (4) years of that drought period, than any other previous four (4) years of water delivered by the
33 SWP.
34

35 Records obtained from DWR indicate that since this current drought began, circa 2011, DWR had delivered more water in the
36 past four years than it provided to contractors in the four (4) years before the drought commenced. More important, DWR has
37 increased this year's water deliveries to SWP contractor to 20 percent, in the previous year it claims it only provided five (5)
38 percent of the water to its contractors.
39

40 During the 2014 and 2015 workshops, P/A provided the State Water Board with data that showed that almond acreage had
41 expanded from 440,000 acres back in 2002 to about 880,000 acres in 2012. Even more astonishing is that almond acreage has
42 continued to expand by 20,000 acres in the past two (2) years. Vineyard acreage and wine grape production has reached record
43 breaking high during this drought.
44

45 Water conservation efforts imposed by the state Water Board in response to Gov. Jerry Brown's January 2014 drought
46 proclamation has fallen on urban water users, and legitimate questions regarding how the conserved water is being used; one
47 thing for sure, it has not stopped unbridled agricultural expansion and or urban sprawl. The primary beneficiaries of this TUCPs
48 have been the SWP and CVP contractors. The TUCP has provided a significant amount of water, which is now going to shore up
49 DWR and Reclamation water deliveries.
50

2014 Order Modifying an Order That Approved a Temporary Urgency Change in License and Permit Terms and Conditions Requiring
Compliance with Delta Water Quality Objectives in Response to Drought Conditions, 25 April 2014.

⁵ **Unprecedented** | [Define Unprecedented at Dictionary.com](#) without previous instance; never before known or experienced; unexampled or
unparalleled: an **unprecedented** event. Origin: 1615–25.

P/A Comments to SWB 14 December 2015 Meeting: Reconsideration of Executive Officer's 3 February TUCP Order

1 **Sequence of events leading up to Gov. Jerry Brown's 17 Jan 2014 Proclamation of a drought State of**
2 **Emergency:** On 29 January DWR and USBR file a petition with State Water Board, which requested permission for a
3 "temporary" urgency change of their water right permits; on 31 January State Water Board's executive officer, Tom Howard
4 approved the petition. Coincidentally, DWR/USBR's request occurred just days before they would be required to meet specific
5 State Health Department officials initial projections of 11 California communities running out of water due to the drought have
6 been reduce to two.

7
8 **Scope and breadth of the TUCP**, and the implications of its implementation, is rife with significant uncertainties, assumptions,
9 and conclusions that raise more questions than answers. P/A has submitted a list of questions relevant to the TUCP; however,
10 answers to those questions have not been forthcoming from the Board or its staff. Therefore, on behalf of our client, and in the
11 public interest, P/A request that the State Water Board schedule and hold an evidentiary hearing as provided for under section
12 1435 of the California Water Code; failure to do so would be viewed as an obstruction of my client's due process rights..

13
14 During the State Water Board's 6 May Workshop, after receiving public comments, the Board members expressed concerns
15 regarding the demands and time constraints that would be imposed on staff, if in the event it was to hold an evidentiary hearing.
16 The consensus among the Board appeared to favor the modification of the existing TUCP, rather than to have a formal hearing,
17 and to expend time and resources on updating the Bay-Delta Estuary WQCP. P/A is familiar with the Board's funding and staff
18 conundrum. However, the current deplorable conditions of the Bay-Delta Estuary, and the uncertainty of its future are to a large
19 extent the result of the State Water Board's failure to ensure its protection provided for under the existing WQCP and to hold
20 SWP/CVP operators responsible for failure to comply with the terms and conditions in their permits and licenses.

21
22 In good conscience, P/A suggest that the State Water Board recognized that DWR and Reclamation's modus operandi,
23 managerial and project operations, have and continue to place the Delta and all life dependent upon its sustainability at an
24 unreasonable level of risk. It is time to step back, and know discern the impacts caused by the TUCPs, before moving forward,
25 because, the Delta ecosystem is on the edge of collapse.

26
27 **TUCP is a Moving Target:** It is important to keep in mind, that a great deal of the Board's and staff time and resources have
28 and continue to expend in reviewing and approving the TUCP, which has already undergone seven (7) modification, and is
29 pending yet another change. The State Water Board's dependence on the executive officer for guidance and advice, in this case,
30 is inattentive, and the notion that Board members are entertaining circumvention of an evidentiary hearing, is, to say the least,
31 extremely disconcerting.

32
33 In the interim, P/A offers the following observations, comments, and suggestions to the State Water Board, as a means to put
34 the matter in some relative perspective, beginning with the executive director's conclusions in the TUCPs and the circumstances
35 leading up to his action.

36
37 The following are excerpts from the 18 April 2014 rendition of the executive officer's modification and approval of the
38 Department and USBR's TUCP, to wit, P/A submitted draft comments on 24 February and 24 April, wherein it made a request for
39 clarification and detailed information relevant to the terms and conditions (bold and underlined text) contained in the Order(s),
40 which are as follows:

41
42 **Executive Officer's CONCLUSIONS** (Page 13 of 15)

43
44 The State Water Board has adequate information in its files to make the evaluation required by [Water Code section 1435](#).

45
46 *1435. (a) Any permittee or licensee who has an urgent need to change a point of diversion, place of use, or purpose of*
47 *use from that specified in the permit or license may petition for, and the board may issue, **a conditional, temporary***
48 ***change order without complying with other procedures or provisions of this division, but subject to all requirements***
49 ***of this chapter.** [Emphasis added]*

50
51 *I [Tom Howard, Executive Officer] conclude that, based on the available evidence:*

- 52
53 *1. The permittee has an **urgent need** to make the proposed changes;*
54 *2. The petitioned changes, as conditioned by this Order, **will not operate to the***
55 ***injury of any other lawful user of water;***
56 *3. The petitioned changes, as conditioned by this Order, **will not have an***

1 *unreasonable effect upon fish, wildlife, or other instream beneficial uses; and,*
2 **4. The petitioned changes, as conditioned by this Order, are in the public interest. [Emphasis added]**
3

4 Although, P/A concedes the State Water Board has adequate information on file to make an evaluation as required by Water
5 Code section 1435. However, P/A takes exception to the executive officer's assertion that, "...based on the available evidence,"
6 there is an urgent need; will not operate to the injury of any other lawful user of water; will not have an unreasonable effect
7 upon fish and wildlife, and "The petitioned changes, as conditioned by this Order, are in the public interest."
8

9 **Objection:** Unless P/A was misled the "available evidence" that Mr. Howard prefaced his evaluation, decision, and approval of
10 the TUCP was from information submitted by the petitioners; DWR and USBR officials. There is no reference to the executive
11 officer's review or dependence on evidentiary documents contained in the State Water Board's files, provided heretofore during
12 previous evidentiary hearings. Furthermore, neither the petitioners nor the State Water Board satisfied the requirements of
13 section 1435 (c). In the absence of doing so, it would be presumptuous for the executive officer to assert that the TUCP would
14 not injure other lawful users; not have an unreasonable effect upon fish and, is in the public's interest. Contrary to the executive
15 officer's conclusions the data indicate that the petitioners' project operations have and continue to cause irreparable
16 unmitigated damage to other users and uses. Therefore, issuance of the TUCP is not in the public's interest.
17

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

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

32 **DWR/SWP and USBR/CVP Compliance Record:** Documents submitted into the record, during formal State Water Board
33 "evidentiary proceedings" attest to the fact that DWR and USBR officials have repeatedly failed to operate their respective
34 projects in compliance with the terms and conditions of their water right permits and licenses. Furthermore, the SWP and CVP
35 have been managed and operated in violation of State Water Board Water Quality Control Plans (**WQCPs**) adopted in protracted
36 and formal proceeding to protect the San Francisco Bay and Sacramento-San Joaquin Delta Estuary (**Bay-Delta Estuary**). During
37 the 1987-1992 droughts, the projects failure to meet Delta Water Quality Standards, even after being relaxed, ultimately put
38 third and fourth generation Delta farmers on Sherman Island out of business. The water quality was so bad that they could no
39 longer farm, even though they had a contract with North Delta Water Agency that ensured them of a dependable water supply
40 of adequate quality.⁶ DWR now owns more than 90 percent of the island. The State Water Board's inaction contributed to the
41 loss of those lands by its failure to hold DWR responsible for violating D-1485 water quality standards. [Refer to Exhibit 2:
42 **History of SWP/CVP Noncompliance and State Water Board's Nonexistent Enforcement-Track Record.**]
43

44 **History of State Water Board's Actions, Decisions, and Plans to Protect the Bay-Delta Estuary:** From **1958-**
45 **1970:** Board adopted six different decisions approving permits for the CVP (Decisions 893, 990, 1020, 1250, 1308 and 1356).
46 **1976:** Board adopted D-1275, approved permits for DWR's SWP and conditioned the permits on meeting water quality criteria at
47 several Delta locations. **1978:** Board adopted the 1978 Plan and D-1485. **1991:** Board adopted the 1991 WQCP for salinity for the
48 Bay-Delta Estuary. **1995:** Board adopted the 1995 WQCP for the Bay/Delta Estuary. **1995:** Board adopted Order 95-6 temporarily

⁶ 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.

1 amending DWR's and USBR's water rights for the SWP and the CVP to be consistent with the 1995 Plan. **1998 to 1999:** Board
2 conducted hearings to implement 1995 Plan. **December 1999 and March 2000-**Board adopted D-1641.⁷
3 All of the State Water Board's Decisions and Plans were purportedly enacted to ensure the protection and sustainability of the
4 Bay-Delta Estuary; however, the existing conditions of the Bay-Delta estuary are indicative of its apparent failure to exercise its
5 responsibility and enforcement authority over the DWR and USBR management and operation of the SWP and CVP.
6

7 **Historical SWP/CVP Pre-Post Drought Conditions:** The records attest to the fact, that prior to, during, and subsequent
8 to the three previous droughts, DWR and USBR officials managed to make record-breaking Delta water exports. This water was
9 exported to SWP/CVP agricultural and urban contractors in central and southern California. During each of those events, P/A, as
10 a *de facto public trustee*, apprised the State Water Board and staff of the fact that DWR and USBR's operational, management,
11 and water delivery scheduling have been used to exacerbate drought conditions.
12

13 Essentially, DWR/USBR drains SWP/CVP northern California reservoirs and exports the water to their reservoirs south of the
14 Delta. Afterwards, they petition the State Water Board for a relaxation in the Delta water standards in effect for the SWP/CVP for
15 the use of temporary fixes, such as barriers, in an attempt to make up for DWR's failure to provide water right and flood
16 protections mandated by State law and a vote of the people 53 years ago. Ironically, even though the State Water Board granted
17 each of DWR/USBR's prior petitions, the records attest to the fact that DWR and USBR officials even violated minimum Delta
18 water quality requirements.
19

20 Regarding the **EOs** conclusions "... *based on the available evidence*". In the absence of a list of the evidence upon which the EO
21 prefaced his conclusions, it places a protestant in a difficult position to discern if his findings are prefaced upon conjecture or on
22 the basis of the all of the relative "evidence" contained in the record. P/A is quite familiar with the State Water Board records
23 and files, as we have spent countless days, over the years, going through the files, and formally submitting documents into the
24 record, to support our assertions.
25

26 **Comments regarding the Executive Officer's (EO's) conclusions:**
27

28 **(A):** P/A concurs with the EO that an emergency of sorts, does exist, however, evidence in the State Water Board's files will
29 support the fact that in the past three (3) droughts experienced in California since the mid-1970s were exacerbated by the
30 manner in which DWR/USBR operated, managed, and schedule water deliveries to their respective SWP/CVP contractors south
31 of the Delta.
32

33 In fact, P/A provided State Water Board members and personnel documentation as far back as 1976, the first year that the SWP
34 and CVP were put to the test. There was no doubt that 1976 and 1977 water years were classified as "critically dry". However, in
35 1976, DWR opted to provide 600,000 acre-feet of "surplus" water from the SWP Oroville facilities to its contractors in Kern
36 County for \$2.95 per acre foot delivered! P/A advised DWR and the State Water Board that was not a good idea, and protested
37 DWR's action. History, and evidence contained in the State Water Board files attest to the folly of DWR's decision, as the
38 following year proved to be a back-to-back critically dry year; simultaneously, DWR/USBR petitioned the State Water Board have
39 previous water right decisions to protect the Delta relaxed. Since 2011through 2014 DWR delivered more water to its SWP
40 contractors than in the previous four years.
41

42 **(B): EO's comment "... will not operate to the injury of any other lawful user of water;"**
43

⁷ 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 Here again, it is difficult to place any confidence in the executive director's statement "... will not operate to the injury of any
2 other lawful user of water". The project operators have and continue to cause injury to private property, loss of sustainable farm
3 lands, and destruction of public trust resources; including species that are currently listed on the Endangered Species Act (ESA).
4

5 As the executive officer knows, the State Water Board's performance, enforcement policies, and historical Board adopted Delta
6 water quality standards/objectives, pertinent to the operation of the SWP/CVP, have routinely been violated by DWR and USBR
7 personnel.
8

9 Even in cases where it was documented at State Water Board hearings such as during the 1987-1992 six-year drought event,
10 DWR/USBR resorted to violating both the State Water Board and North Delta Water Agency agricultural water quality standards
11 and in so doing rustle up some 500,000 acre feet of water with an estimated value of \$29 million. P/A apprized the State Water
12 Board of DWR/USBR's illegal activities, which, to its credit it held a hearing on the violations; however opted not to take an
13 enforcement action against the SWP/CVP operators. Ironically, while the violations were taking place the State Water Board as
14 holding Phase I of the hearings to improve Delta water quality standards!
15

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

24 In light of the fact that there is very limited data to quantify and qualify the adverse impacts that SWP/CVP exports have on other
25 Delta water users and the dramatic decline in the Bay-Delta Estuary, which have yet to be fully identified and/or mitigated, it
26 would be in the public's interest for the State Water Board to provide the full disclosure and transparency on this matter.
27

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

34 Neither the water officials nor fishery agencies personnel have yet to quantify or qualify the vast numbers of aquatic species that
35 have and continued to be killed as a result of SWP/CVP Delta exports and that DWR and USBR's management tactics have
36 already taken thousands of acres of productive farmland out of production, as a result of the historical management and current
37 joint-operations of the SWP/CVP failure to meet State Water Board adopted water quality standards.
38

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

46 As a *de facto* public trustee, with four decades of interaction with State Water Board personnel, on matters specifically related to
47 DWR/USBR's historical request for "temporary" relaxation of State Water Board Delta water right decisions designed to protect
48 all beneficial uses and users in the legally define Delta we cannot find the basis in fact of Mr. Howard's assurances that approval
49 of the TUCP is in the "public's interest"
50

1 **P/A's Conclusions:** (1) The TUCPs, as approved, presents serious uncertainties that the State Water Board needs to resolve,
2 and unless reconciled, will only further exacerbate this and future droughts. (2) We concur with the E.O. that an urgency does
3 exists; however, the difference is in how and why the urgency exists and the events leading up to the extraordinary turn-around
4 time involved in SWP approval and the lack of factual data to support the petitioners' and/or the executive officer's conclusions.
5 (3) Issuance of the TUC, as written, provides the project operators with too much latitude, and sends the wrong message; and, as
6 has been the case with the "temporary barriers" that have seemingly become permanent, and the need for them are the result
7 of the DWR's 53 year failure to provide the Delta with water rights and flood protection.
8

9 **P/A's Recommendation:** We respectfully request that the State Water Board schedule an evidentiary hearing on the subject
10 matter forthwith to ascertain and discern the facts upon which the State Water Board executive officer based his decision;
11 otherwise, the public's perception of the TUCP will remain in doubt, and the Order and the drought, construed as another Delta
12 water grab via "abandoned" water and unreported water transfers.
13

14 Patrick Porgans, Solutionist
15 cc: Interested Parties
16 Attachment
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DRAFT

EXHIBIT 1

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.¹ 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.² 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."*³ 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 1485.⁴

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."*⁵ 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 1485.⁶ 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 1987-1992 droughts 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.**⁷

Porgans & Associates Sued DWR and USBR to Stop Illegal Exports: P&A was forced to sue DWR and the USBR for the illegal taking of water and violating their permits, *Porgans et al v. Babbitt*. Subsequent to the lawsuit, in 1993, the illegal

1 diversions ceased. Albeit, as stated earlier, DWR and its water contractors contrived a host of other ingenious schemes and
2 policies to increase the SWP's water supply reliability at the public's expense. They included, but were not limited to the
3 following; amending the SWP Water Supply Contracts, via the "Monterey Agreement," Bay-Delta Accord, Framework Agreement,
4 and CALFED. As stated, one especially artful maneuver was development and use of Environmental Water Account, which uses
5 taxpayer funds, via bonded indebtedness, to increase "water supply reliability" and to "buy water for fish", which, DWR is
6 responsible for killing. Then DWR and the USBR can recapture the "fish water" and export it from the Delta for its contractors in
7 the San Joaquin Valley and southern California; some of whom may have initially sold the water for the fish – and doubled or
8 triple dipped on the same source of water!

9
10 **State Water Board has Smaller Fish to Fry – Sues Local Delta Farmers for "Illegally" Diverting Water:**

11
12 California Supreme Court Upholds Water Board Action to Protect the Delta. Largest Penalty to Date for Illegal
13 Water Diversions in the Delta. Sacramento—On Wednesday, February 13, [2008] the California Supreme Court
14 upheld \$62,000 in penalties against persons for illegally pumping water in the Sacramento-San Joaquin Delta.
15 The penalties were assessed by the State Water Resources Control Board in 2004, because the parties were
16 pumping water from the Delta in violation of their water right permits. The permits contain conditions to
17 protect water quality in the Delta for fish, agriculture and drinking water supplies.

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

23
24 The permits in question include limitations on the holders' water rights, which require the permit holders to
25 cease pumping when flows are insufficient for senior right holders and Delta water quality objectives. Under
26 those circumstances, the state and federal water projects are required to release water from upstream
27 reservoirs to meet those objectives, and some other water users are required to protect water used for
28 agricultural irrigation from excessive salinity and to protect Delta water quality for fish and drinking water
29 supplies. The provision is also designed to ensure that the reservoir releases made by the water projects reach
30 the Delta to meet their intended purposes and are not diverted by junior water right holders.

31
32 I am pleased that the courts have upheld the State Water Board's ability to enforce laws designed to protect
33 water quality and water rights," said Tam Doduc, Chair of the State Water Resources Control Board. "California
34 faces enormous challenges with respect to the Delta. Enforcing existing requirements is an important
35 component of protecting and ultimately restoring the health of the Delta.

36
37 The California Supreme Court decision leaves in place a unanimous decision of the Third District Court of
38 Appeal, which had affirmed the water board's enforcement action. (Phelps v. State Water Resources Control
39 Board (2007) 157 Cal.App.4th 89.⁸

40
41
42 **Despite More Than 12 Years of Bay-Delta Water Rights Hearings, the SWRCB Failed to Provide Numerical**
43 **Flow Values for the Protection of Salmonid and Other ESA Listed Species in Its Water Right Decision 1641:**

P/A Comments to SWB 14 December 2015 Meeting: Reconsideration of Executive Officer's 3 February TUCP Order

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

5
6 On December 29, 1999, the SWRCB adopted Decision 1641, which implements many of the objectives
7 by conditioning existing water rights. D-1641 does not contain terms and conditions directed specifically to
8 implementing the narrative salmon objective. The **objective may be achieved incidentally** by ensuring the
9 terms and conditions imposed in D-1641 are met **by implementation of non-flow measures outside the**
10 **SWRCB's process**. The SWRCB found that a period during which there would be compliance with the numerical
11 flow objectives in the Bay-Delta Plan, coupled with actions undertaken by other agencies and adequate
12 monitoring of fish populations, was necessary before it could determine whether additional implementation
13 measures are needed.⁹

14
15 Requiring a narrative salmon objective in the terms and conditions in the Delta, for the protection of salmonid species, could
16 have cost DWR, USBR and others, water releases required to meet a specific flow objective. The disastrous conditions of the
17 salmonid species that are impacted by the SWP and CVP Delta pumps should have necessitated an action by the SWRCB by now;
18 however, the last time the author checked, with SWRCB personnel, one has yet to be adopted. However, there have been
19 violations by both DWR and the USBR of the terms and conditions of their SWRCB permits and licenses, and other Bay-Delta
20 water quality objectives, which are still going on, unabated.

21
22 According to the State Water Resources Control Board, It Issued a Cease and Desist Order Against DWR and USBR for Violations
23 of Their Permit and D-1641 Requirements.¹⁰ However, with the Exception of Issuing a Cease and Desist Order, No Other
24 Enforcement Action has Been Taken as of Yet (DWR and the USBR Monitor and Report Their Violations to the SWRCB in a
25 Monthly Report). Essentially, the Board **has provided DWR and Reclamation with nearly a decade to institute temporary fixes,**
26 **to become compliant, the Delta and all those that depend on its sustainability have been placed at an unacceptable level of**
27 **risk that can be directly linked to the mismanagement and operation of the SWP and CVP.**

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

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

39
40 **DWR and USBR have violated the standards in the past, which is why the CDO, however, as stated, there does not appear to**
41 **be any other enforcement action taken to date, even though the objectives have been exceeded.** It is important to note that
42 DWR and USBR do their own monitoring and compliance, and send that “data” to the SWRCB. Furthermore, DWR and USBR are
43 taking exception to the SWRCB position that they are solely responsible for meeting D-1641. P&A made an issue out of who

1 would be responsible, and stated during the D-1641 “hearings” that this issue and other issues relating as to whom would be
2 responsible would surface during the next drought.

3

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

6

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

12

13 Contrary to the Governor’s position, this is not about *people versus fish*, but is about his administration’s mismanagement of
14 public funds and natural resources. The State Water Board is responsible for the administration of water rights appropriations;
15 its records show that it has over-appropriated the waters of the state by as much as 300 million acre-feet of water; on average
16 the state receives about 80 million acre-feet of water annually.

17

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

21

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

26

27 While officials are not providing water for fish, according to California’s Legislative Analyst’s Office, since 1996, voters have
28 approved \$27 billion in General Obligation Bonds for water-related programs, which included buying water for fish. More than
29 \$5 billion has been expended on a myriad of water supply reliability and fish-doubling programs. Five-hundred million was
30 expended to buy water for fish! Most of those funds were administered through CALFED, a consortium of federal and state
31 agencies, a number of which are directly responsible for the disastrous decline in salmonid populations, such as the Department
32 and Bureau of USBR. They are also major water purveyors, regulators, Public Trustees and unaccountable violators of the law.

33

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

37

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

42

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

46

1 Unfortunately, despite the plethora of studies conducted, no quantitative analysis has been done to validate the effectiveness of
2 the programs or the fish-doubling effort. Conversely, officials admit that there does not appear to be any increase in the doubling
3 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 fish-
6 doubling goal, which was supposed to occur around the year 2002, and the other \$5,000,000,000 in related efforts, is another
7 taxpayer subsidized disaster. In fact, based on the government's data, which are dubious, salmonid populations are worse now
8 than ever.

9

10 ENDNOTES

¹ 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.

² 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.

³ 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.

⁴ Senator Milton Marks, et al, letter to John Caffrey, Chaiman, State Water Resources Control Board, 12 July 1993.

⁵ 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.

⁶ Senator Milton Marks, et al, letter to John Caffrey, Chaiman, State Water Resources Control Board, 12 July 1993.

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

⁸ 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.

⁹ SWRCB, *Notice of Public Workshop, Delta Decision 1641*, 5 December 5, 2001.

¹⁰ 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.*

¹¹ Dorothy Rice, Executive Dirrector, 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.