

PORGANS & ASSOCIATES

~~Environmental Bio-Terrestrial Solutions~~

August 25, 2006

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STATE WATER RESOURCES
CONTROL BOARD

To: State Water Resources Control Board, Division of Water Rights
From: Patrick Porgans & Associates, Inc.

Fax: (916) 341-5400 Tel: 341-5426

Project: SWRCB's North Coast Instream Flow "Policy" Substitute Environmental Document and "Public Scoping" Meeting in Santa Rosa, CA., August 16, 2006

Attention: Karen Niiya or Eric Oppenheimer

1 At the request of its clients, On August 16, 2006, Porgans & Associates (P&A) attended the State Water Resources
2 Control Board-Division of Water Rights' "Public Scoping Meeting" in Santa Rosa, California, regarding the Board's
3 Notice of Preparation and Substitute Environmental Document for the **North Coast Instream Flow Policy**. The
4 purpose of this letter is threefold:

- 5 ① To provide the Board with how P&A and other perceived the so-called "Public Scoping Meeting."
- 6 ② To express both P&A's and its clients' concerns relative to the expeditious and haphazard manner in which
7 the entire meeting/matter was presented to the public and the time constraints imposed by your Board on
8 the public to provide "input" into the so-called "policy."
- 9 ③ Lastly, and most important, to review a portion of the conversation that P&A had with the Board retained
10 facilitator, and with Board personnel, and to provide "input" to the SWRCB's yet-to-be drafted **North Coast**
11 **Instream Flow Policy**.

12 The comments stated herein should not be misconstrued as anything more or less than what they represent - the
13 TRUTH.

14 ① Based upon P&A's 33-plus years of attending government sponsored "public" meetings, this one set a "new"
15 all-time substandard for perfunctionality, disengenousness and meaninglessness. The meeting started off
16 with the Board hired "facilitator" providing an extremely vague synopsis of what the so-called public scoping
17 meeting was suppose to be about. After his brief salique, he introduced Victoria Whitney, Division of Water
18 Rights' Chief and/or former chief, stating that when she completed her comments there would be a Q and
19 A. In addition, the faclitator said that there would be a "power-point presentation" and that several stations
20 had been "set up" around the room, at which Board staff and its retained consultants would be availble for
21 discussion.

22 The fact of the matter is that NO one from the public was given the opportunity to question Ms. Whitney
23 or any other person representing the Board from the floor, during or subsequent to her presentation. There was
24 no "power-point presentation, and most of the people answering the questions, at each of the set-up stations, were
25 not Board personnel. Upon completion of Ms. Whitney's saliquiy, the public was instructed to go to the station(s) of
26 their choice. P&A immediate went to the facilitator to discuss the manner in which the "meeting" was orchestrated,
27 and asked WHO was responsible for its "format." He said it was the Board's doing. He asked for P&A's input, which
28 he received, and it is as follows:

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1 ② According to the SWRCB's statement: "*Effective January 1, 2005, Assembly Bill 2121 (Stats. 2004, ch. 943§*
2 *3) added section 1259.4 to the Water Code, which requires the State Water Resources Control Board (State Water*
3 *Board) to adopt principles and guidelines for maintaining instream flows in coastal waters streams from the Mattole*
4 *River to San Francisco and in coastal streams entering northern San Pablo Bay, for purposes of water right*
5 *administration (North Coast Instream Flow Policy).*" Although approximately 20 months have passed since the bill
6 became effective, the "public notice" regarding the "public scoping meeting" was not published until the August 9,
7 2006, and again on August 13, wherein it stated that the meetings were to be scheduled for August 16, and "*Written*
8 *comments must be received by 25 August.*" Therefore, from the date of the notice to the scheduled date of the
9 scoping meeting provided less than seven (7) days for a member of the public to have read and/or prepared for such
10 a meeting! This time frame, in and by itself, is extremely disconcerting and would be a major challenge for a member
11 of the public to first even been aware of its scheduling, make arrangement to be there, and lastly to have been
12 prepared to participate in a meaningful way; notwithstanding this is the summer season when many people are on
13 vacation.

14 **The meeting was a one-way street.** It preempted meaningful input and public dialogue, either between the
15 public and Board staff and/or between the various NGO's. It placed the public at a very distinctive disadvantage
16 relative to getting clarification from either Ms. Whitney or other staff members pertinent to the myriad of
17 ambiguities inherent in the so-called yet-to-be drafted policy. The format, for all intent and purposes, was a facade.
18 Although, to his credit, the facilitator appeared genuinely perplexed when apprised of the dog-and-pony show, he
19 took the initiative to ask if P&A could provide him with a few examples of our take on the meeting. Sensing the
20 sincerity of the facilitator's inquiry, P&A provided him with a few examples referenced above. Ironically, the most
21 pronounced was revealed to him, about one-half hour later, when P&A showed him a copy of the written comments
22 that had been made by two other public participants, which were quite informative, that had been left on the table.
23 Unfortunately, the majority of the other participants present at the "public meeting" did not have the advantage
24 of either reading and/or hearing about those comments. Those comments were in-line with many of the issues and
25 concerns P&A had briefed the facilitator about just minutes earlier. (See attached comments.) The scope and depth
26 of those comments would have been of interest to any member of the public. They would have provided them with
27 a sense of perspective and provoked and/or inspired meaningful interaction among ALL participants.
28 Notwithstanding, the meeting format did not allow for such interaction and/or related dialogue.

29 The issue of not having adequate time to provide meaningful input would have also been an issue that members
30 of the public would have had a mutual interest. Neither the facilitator nor the Board's staff apprised the public as
31 to whys and wherefores behind the extended delay in "setting up" the scoping meeting, and/or the wait and hurry
32 up and get it over with component of the so-called "public" meeting.

33 ③ **The issue of enforcement of the yet-to-be drafted policy would have been of paramount concern to the**
34 **public,** and it would have been refreshing and helpful if your staff informed those present that one of the so-called
35 reasons for the wait and hurry up and get it over with meeting, was the result of the Legislature's failure to provide
36 your Board with the funding to carry out the policy mandate required in AB 2121. More importantly, it would have
37 been extremely beneficial if those members of the public attending the meeting had been apprised of your
38 Board's repetitive failures to protect the waters of the State, in cases involving either other state or federal
39 agencies, who had routinely violated water right permits requirements and/or water quality standards, until Porgans
40 & Associates pushed the issue. The SWRCB's actions and/or failure to act, were the predominant force behind bring

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1 the Sacramento-San Joaquin Delta and the San Francisco Bay Estuary to a near ecological collapse, resulting from
2 massive illegal exports of water from the system which was exported by both state and federal water projects. He
3 SWRCB in conjunction with other federal and state agencies were the primary reason that the Bay/Delta was pushed
4 to a near ecological collapse, during the state's last major drought (1987-1992) which it has yet to recover from and
5 placed a number of species as either threaten and/or endangered on the Endangered Species Act.

6 During the August 16 meeting, P&A expressed that and other enforcement concerns with Ms. Whitney,
7 relative to the Board's deplorable enforcement track record, and asked her just how the Board would enforce such
8 a policy, especially in light of the fact that the Legislature has a pattern not to fund the enforcement component
9 of such policies? Ms. Whitney conceded that it would be extremely difficult. To Ms. Whitney's credit she always
10 seemed to conduct herself in a manner conducive to a responsible public servant; notwithstanding, she is neither a
11 Board member or a policy maker.

12 The deplorable conditions of many of the watersheds throughout the State of California, including those in
13 the North Coast, are the result of the governments' collective actions and/or failure to fulfill their respective public
14 trust mandates. There are a plethora of laws, rules and/or regulations to provide protections for both public trust
15 resources, the waters of the state and private property; however, for there are also a myriad of reasons and/or
16 excuses why the full weight of such laws, rules and/or regulations are either not being enforced or selectively
17 enforced. Your Board has ample existing authority to protect the waters of the state and/or the trust resources
18 therein. Notwithstanding, the record will also attest to the fact that in many of the projects Porgans & Associates
19 have been involved with, wherein your Board had legal jurisdiction, it simply failed to perform its regulatory and/or
20 trust responsibilities. This so-called North Coast Instream Flow Policy will be yet another perfunctory facade that
21 will only be used as a pacification and/or delay tactic that ultimately will do more harm than good. Whether it is
22 the result of no or limited legislative funding for enforcement personnel or do to the political forces and pressures
23 that exert their influence over the Board members, all of whom are pre-screened by the you know whose who.

24 P&A would be extremely please if the SWRCB just fulfilled its existing regulatory mandates. However, when P&A
25 participated in the SWRCB's 15-plus years of so-called public hearings to strengthen the minimal water quality
26 standards to protect the Sacramento-San Joaquin Delta and the San Francisco Bay, P&A and you staff documented
27 hundreds of violations of the existing standards, which your Board failed to enforce. For detailed information please
28 refer to the SWRCB's hearing records, wherein P&A pushed for and participated in the separate "public" hearings
29 related to the state and federal governments' failure to comply with their respective water right permits.

30 Please enter P&A's statement into the record, and IF you are posting other participants' comments on your website,
31 include P&A's. I would appreciate a telephone call when your receive these comments to confirm that they were
32 received. Thank you.

33

Respectfully,



Patrick Porgans

fni:lapone/swrcb/nowwe/ncinstreamflowpolicy

cc: Interested Parties

8/16/06

Written Comment Form
Public Scoping Meeting
SUBSTITUTE ENVIRONMENTAL DOCUMENT FOR
THE NORTH COAST INSTREAM FLOW POLICY

State Water Resources Control Board, Division of Water Rights

Your input is important to us; please use this sheet to submit written comments concerning policy alternatives, significant effects, and mitigation measures that should be included in the Substitute Environmental Document (SED). Your comments will assist in preparation of the SED. Please be sure to provide your name and address, below.

- ① POLICY IMPLEMENTED BY STATE OR LOCAL AGENCY?
- ② ENFORCEABILITY OF POLICY? POTENTIAL OVERLOAD OF CODE ENFORCEMENT (LOCAL) - TEETH?
- ③ ~~SEE~~ EFFECT ON LOCAL PERMIT/REGULATORY AGENCY IF LOCAL RESPONSIBILITY
- ④ EASE OF IMPLEMENTATION BY LOCAL AGENCY - MINISTERIAL OR DISCRETIONARY APPROX
- ⑤ POLICY EXTEND TO PRIVATE WATER WELLS? SEE ③ & ④ & ②
- ⑥ POLICY TO COVER EXISTING WELLS & WATER DIVERSIONS/DAMS RETROACTIVE?
- ⑦ POLICY TO COVER BLUE LINE STREAMS? TRIBUTARIES? EPHEMERAL? PERENNIAL?
WHERE WILL LINE BE DRAWN? BASIN PLAN MAY NEED TO DEFINE EPHEMERAL/PERENNIAL ^{DEF}
- ⑧ CAN POLICY PROVIDE CONCISE CLARITY WITHOUT AMBIGUITY?
- ⑨ HOW DO YOU PROVIDE INTELLIGENT COMMENTS TO AN AS YET UNDEFINED POLICY?
- ⑩ IF LOCAL RESPONSIBILITY, POLICY SHOULD NOT LENGTHEN LOCAL PERMIT PROCESS ③
- ⑪ POLICY MAKERS SHOULD ANTICIPATE UNINTENDED CONSEQUENCES
- ⑫ EFFECT ON LOCAL GENERAL PLANS? CONSISTENCY? CONFLICTING?
- ⑬ POLICY FUNDED MANDATE?

Additional space? Please use other side.

Name* DEWAYNE STARNES

Address _____

City/State/Zip Code _____ 3

Comments, including names and home addresses of respondents, will be made available for public review. Individual respondents may request their home address be withheld from public disclosure. Please check this box if you wish your name and/or address withheld from public disclosure.

Please submit your comments at the Comment Station or send your comments to:

Karen Niiya or Eric Oppenheimer
State Water Resources Control Board
P.O. Box 2000, 1001 I Street, 14th Floor
Sacramento, CA 95812-2000

or

via e-mail to: FlowPolicy@waterboards.ca.gov

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2006 AUG 32 AM 11:36

To ensure that your comments are considered in the SED, written comments must be received by August 25, 2006.