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8
9 **BEFORE THE**
10 **CALIFORNIA STATE WATER RESOURCES CONTROL BOARD**
11

12 HEARING REGARDING PETITION
13 FILED BY THE DEPARTMENT OF
14 WATER RESOURCES AND U.S. BUREAU
15 OF RECLAMATION REQUESTING
16 CHANGES IN WATER RIGHTS FOR THE
17 CALIFORNIA WATERFIX PROJECT

18 CALIFORNIA WATER RESEARCH'S
19 RESPONSE TO THE CALIFORNIA
20 DEPARTMENT OF WATER
21 RESOURCES' RENEWED MOTION TO
22 QUASH THE NOTICE CALLING TIM
23 WEHLING

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25 Deirdre Des Jardins, principal at California Water Research ("California Water
26 Research") hereby requests that the Hearing Officers deny the California Department of Water
27 Resources' Renewed Motion to Quash the Notice calling Tim Wehling, Chief of the
28 Geotechnical and Engineering Services Branch of the Department of Water Resources' Dams
and Canals Section to appear as a witness in Part 2 rebuttal.

The Hearing Officer's June 18, 2018 Hearing ruling stated, "the parties may submit
evidence that is responsive to DWR's EIR Supplement, even if that evidence touches on matters
not directly raised during the case-in-chief phase of Part 2." (p. 2.) Mr. Wehling's appearance is
directly responsive to the change in WaterFix project description in the WaterFix Administrative
Draft Supplemental EIR/EIS. This was clearly explained in California Water Research's July
24, 2018 response to DWR's motion to quash ("July 24, 2018 response.") At the meet and

1 confer on April 3, 2018, DWR’s attorneys appeared to categorically reject California Water
2 Research’s explanation of the relation between Mr. Wehling’s appearance and the changes to the
3 WaterFix project in the July 24, 2018 response.¹
4

5 I. RELATION OF WEHLING’S APPEARANCE TO ADSEIR/EIS

6 Petitioners are now proposing to build a new impoundment structure, Byron Tract
7 Forebay, adjacent to Clifton Court Forebay, instead of expanding Clifton Court Forebay.
8 California Water Research’s July 24, 2018 response explained that Prada Pirarooban testified on
9 cross-examination in Part 1 that new embankments for Clifton Court Forebay would be re-built
10 inside the existing Clifton Court Forebay as part of the expansion, and that the safety of the
11 embankments would be evaluated as part of the design. Pirabarooan also testified that he
12 expected that the foundation solids under the existing embankments would be improved. (R.T.
13 August 23, 2016, 31:23-33:6.) Pirarooban’s testimony appeared to make issues of the adequacy
14 of the existing Clifton Court Forebay embankments moot. But with the change to Byron Tract
15 Forebay, there are now no plans for reconstruction of the Clifton Court Forebay embankments or
16 improvement of the foundation under the forebay embankments.

17 It is not disputed that John Bednarski acknowledged on cross-examination in Part 1
18 rebuttal that uncontrolled release of the water from Clifton Court Forebay could be a cause of
19 failure of the new Byron Tract Forebay, which is adjacent to Clifton Court Forebay. Nor is it
20 disputed that Bednarski stated that it is a standard practice as part of a risk analysis to “consider
21 causes of failure for dams.”

22 But as explained in California Water Research’s July 24, 2018 response to DWR, Tim
23 Wehling, Chief of the Geotechnical and Engineering Services Branch of the Department of
24 Water Resources’ Dams and Canals Section, sent a memo to Ms. Womack evaluating seepage,
25

26 ¹ California Water Research’s July 24, 2018 Response to the California Department of Water Resources’ Motion to
27 Quash the Subpoena of Tim Wehling is incorporated as if set forth in full herein.

1 dated May 26, 2017 (Exhibit DDJ-302.) Based on the forebay embankments consisting of clay
2 soils, Mr. Wehling made an official assessment that seepage through the embankments was not
3 likely to occur. Wehling's memo cited DWR's *Bulletin 200, California State Water Project,*
4 *Volume III: Storage Facilities* (Exhibit DDJ-303.)

5 But as Dr. Clyde Thomas Williams will testify, Bulletin 200, Volume III documents that
6 there is one to twelve feet of peat soil under the Clifton Court Forebay embankments (Exhibit
7 DDJ-301.) Dr. Williams testifies that significant underseepage would be expected with this
8 depth of peat soils in the foundation for the embankments. Furthermore, adequate evaluation and
9 monitoring of seepage from dam embankments is a standard practice, as documented by FEMA
10 guidelines (Federal Emergency Management Agency, Evaluation and Monitoring of Seepage
11 and Internal Erosion, Interagency Committee on Dam Safety, 2015, Exhibit DDJ-304.)

12 Since the Department of Water Resources' engineers will likely be involved in the future
13 engineering assessments of the Clifton Court Forebay embankments, the adequacy of DWR's
14 engineers' evaluation of the seepage reported by Ms. Suzanne Womack is highly relevant to
15 whether any future assessments by DWR of this potential root cause of failure is likely to be
16 adequate, and also relevant to terms and conditions that protestants might ask the Board to
17 impose as a condition of approval of permits.

18 Tim Wehling, Chief of the Geotechnical and Engineering Services Branch of the
19 Department of Water Resources' Dams and Canals Section was called as a witness to examine
20 why his branch's memo evaluating seepage from Clifton Court Forebay failed to even mention
21 the issues with the foundation of the Clifton Court Forebay embankments, let alone analyze
22 them. During the meet and confer, the attorneys for the Department of Water Resources
23 mischaracterized Wehling's geotechnical evaluation of CCF seepage as simply a document
24 obtained under a Public Records Act request by Ms. Womack, and persisted in this
25 mischaracterization even after the error was pointed out to them.

1 DWR's renewed motion to quash refers to Wehling's memo, stating that DWR is not
2 responsible for any damages resulting "from seepage of water from' Clifton Court Forebay
3 (DWR-920, page 4.)" It is unclear if DWR's assertion of indemnity extends to claims resulting
4 from personal injury or death of Ms. Womack, Ms. Womack's family, or Ms. Womack's tenants
5 resulting from seepage-related failure of the Clifton Court Forebay, but this is a clearly
6 foreseeable risk if the seepage is not adequately evaluated and any necessary remediation is not
7 done.

9 II. REASONABLE METHOD OF DIVERSION IS AN ABSOLUTE STANDARD

10 Article X, Section 2 of the California Constitution provides that the right to the use of
11 water "does not and shall not extend to the [...] unreasonable method of diversion of water." As
12 California Water Research attempted to explain to DWR's attorneys, the constitutional standard
13 of "reasonable method of diversion" should be applied to the entire impoundment complex
14 consisting of Byron Tract Forebay and Clifton Court Forebay, not just to the new construction.
15 Given DWR's own witness' acknowledgement that the failure of Clifton Court Forebay could
16 cause the failure of Byron Tract Forebay, the Board must not accept DWR's argument that the
17 Board should not receive or consider testimony in this hearing about DWR engineers' evaluation
18 of potential failure modes of the existing Clifton Court Forebay embankments.

19 As to DWR's argument that the cross-examination of Tim Wehling is "beyond the scope
20 of rebuttal," such an argument would provide *no* opportunity for protestants to present evidence
21 in this Hearing related to this potential failure mode of the new Clifton Court Forebay/Byron
22 Tract Forebay complex after the WaterFix project was changed in the Administrative Draft
23 Supplemental EIR. For this reason, California Water Research also requests that the Hearing
24 Officers deny DWR's motion for a protective order. If Wehling's testimony is ruled beyond the
25 scope of rebuttal, it would clearly be responsive to rebuttal testimony by John Bednarski.

1 In deciding whether to consider Wehling's testimony in this hearing, the Hearing Officers
2 must also consider the potential consequences of failure to consider Wehling's testimony not
3 only to residents of Clifton Court LLP, but also to the 13,000 residents of Discovery Bay, who
4 are clearly near the new Byron Tract Forebay, as shown in the map on p. 13 of the 2018
5 Conceptual Engineering Report mapbook, Exhibit DWR-1306, which is reproduced on the next
6 page. While it is standard practice to do needed remediation of dams that are a risk to lives and
7 property, we have the recent example of the Oroville dam, which had design deficiencies in the
8 main and emergency spillways and needed remediation for years. The Department of Water
9 Resources' failure to adequately evaluate and remediate those deficiencies resulted in the
10 evacuation of 200,000 people, as testified to by Ms. Suard in Part 2 cross-examination. DWR's
11 attorneys also categorically rejected the argument in our meet and confer that DWR does not
12 have the best record on dam safety. It became clear that there were irreconcilable differences of
13 opinion about Mr. Wehling's appearance.

14 In conclusion, California Water Research asserts that cross-examination of Mr. Wehling
15 is relevant to whether the proposed Clifton Court Forebay / Byron Tract Forebay complex will
16 be a reasonable diversion of water under Article X, section 2 of the California Constitution, to
17 whether the new impoundment structures in the project are in the public interest, and also to
18 permit terms that the Board might impose as part of any order approving the Change Petition.
19 For these reasons, the Hearing Officers should deny DWR's motion to quash the notice calling
20 Mr. Wehling.

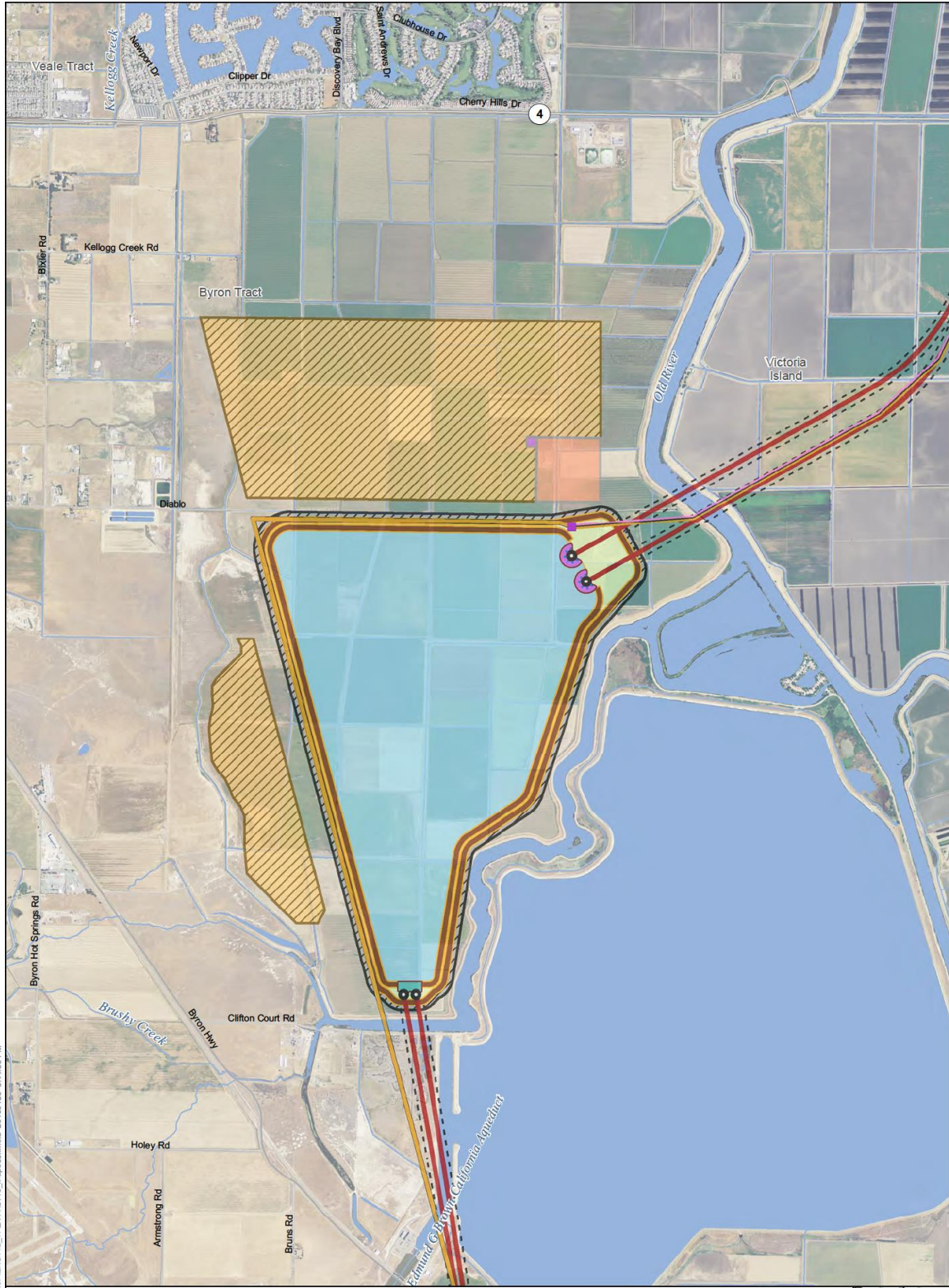
21
22 Dated August 8, 2018

Respectfully submitted,

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25 Deirdre Des Jardins
26 Principal, California Water Research

P. 13 of 2018 CER mapbook, Exhibit DWR-1306, showing CCF, BTF, and Discovery Bay



1 **STATEMENT OF SERVICE**

2
3 **CALIFORNIA WATERFIX PETITION HEARING**
4 **Department of Water Resources and U.S. Bureau of Reclamation**
5 **(Petitioners)**

6 I hereby certify that I have this day submitted to the State Water Resources
7 Control Board and caused a true and correct copy of the following document(s):

8 **California Water Research's Response to the California Department Of**
9 **Water Resources' Renewed Motion to Quash the Notice**
10 **Calling Tim Wehling**

11 to be served by Electronic Mail (email) upon the parties listed in the Current Service List
12 for the California Water Fix Petition Hearing, dated August 7, 2018, posted by the State
13 Water Resources Control Board at
14 http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/service_list.shtml

15 *Note: In the event that any emails to any parties on the Current Service List are
16 undeliverable, you must attempt to effectuate service using another method of service, if
17 necessary, and submit another statement of service that describes any changes to the
18 date and method of service for those parties.*

19 I certify that the foregoing is true and correct and that this document was executed on
20 August 8, 2018.

21 Signature:



22 Name: Deirdre Des Jardins

23 Title: Principal, California Water Research

24 Party/Affiliation:

25 Deirdre Des Jardins

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