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## State Water Resources Control Board

August 14, 2018

VIA ELECTRONIC MAIL

TO: [CURRENT SERVICE LIST](#)

### **CALIFORNIA WATERFIX HEARING – RULING ON THE DEPARTMENT OF WATER RESOURCES' (DWR) RENEWED MOTION TO QUASH AND FOR PROTECTIVE ORDER**

This ruling addresses the [Department of Water Resources' \(DWR\) renewed motion to quash and for protective order](#) from [Deirdre Des Jardins' July 13, 2018 Notice to DWR Calling Witnesses to Appear at the WaterFix Hearing](#).<sup>1</sup> For the following reasons, the motion is GRANTED, and the notice to appear is VACATED.

Ms. Des Jardins seeks to compel the attendance of Tim Wehling, a DWR employee, as a witness. On July 19, 2018, DWR filed a [motion to quash and for protective order](#). On July 24, 2018, Ms. Des Jardins filed a [written opposition to DWR's motion](#). Ms. Des Jardins explained in her opposition that she intends to question Mr. Wehling about the engineering and structural integrity of the existing Clifton Court Forebay. In our [ruling letter of July 27, 2018](#), we directed Ms. Des Jardins and DWR to meet and confer regarding the notice to attend. In that ruling, we allowed DWR the option of renewing its motion to quash if DWR's objections were not resolved. DWR filed a renewed motion to quash and motion for protective order on August 7, 2018, after meeting and conferring with Ms. Des Jardins. In its renewed motion, DWR asserts that questions about the existing Clifton Court Forebay are outside of the scope of Part 2 rebuttal. Ms. Des Jardins filed a [written response](#) on August 8, 2018, [as did Clifton Court, L.P.](#), on August 9, 2018.

In our [ruling letter of June 18, 2018](#), we described the appropriate scope of rebuttal in Part 2 of this proceeding, which includes (1) evidence presented in connection with another party's Part 2 case-in-chief, or (2) evidence that is responsive to DWR's EIR supplement, even if not responsive to evidence raised during cases-in-chief. The only connection that Ms. Des Jardins draws between her questions about the structural integrity of the existing Clifton Court Forebay and the project changes described in the EIR supplement is the potential failure of the new Byron Tract Forebay due to failure of Clifton Court Forebay. Ms. Des Jardins already cross-examined Mr. Bednarski about this issue during the hearing on August 3, 2018. Ms. Des Jardins additionally suggests that construction of the Byron Tract Forebay instead of enlargement of the Clifton Court Forebay may mean that existing Clifton Court Forebay structures will not be remediated to the extent that they would have been under the initial project. The scope of this proceeding, however, does not encompass the foregone benefits of changes to Clifton Court Forebay that DWR is no longer proposing to make.

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<sup>1</sup> DWR [reaffirmed its renewed motion](#) to quash and for protective order on August 13, 2018.

Clifton Court, L.P., reiterates in its filing concerns about ongoing seepage, levee scouring, and other alleged damages to its land from operations at Clifton Court Forebay. In our [ruling letter of February 21, 2017](#), we recognized that evidence of past construction and economic impacts may be relevant to demonstrate that similar impacts could occur related to the expanded Clifton Court Forebay. Clifton Court had the opportunity to submit evidence on the issue of seepage both during Part 1 and Part 2 of this proceeding. Clifton Court has not, however, identified how the project as amended in the EIR supplement might alter the seepage issues in a manner that Clifton Court has not already had the opportunity to address and about which Mr. Wehling could testify based on his knowledge.

Therefore, we find that the questioning of Mr. Wehling on the topics raised by Ms. Des Jardins and Clifton Court are unlikely to result in non-duplicative and admissible evidence relevant to the scope of this proceeding. Furthermore, any relevant evidence that Mr. Wehling may be able to offer has or could have been obtained in a more timely and less burdensome means through questioning of DWR's other witnesses. We therefore vacate the notice calling Mr. Wehling to appear.

If you have any non-controversial, procedural questions about this ruling or other matters related to the California WaterFix Hearing, please contact the hearing team at [CWFhearing@waterboards.ca.gov](mailto:CWFhearing@waterboards.ca.gov) or (916) 319-0960.

Sincerely,

*ORIGINAL SIGNED BY:*

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Felicia Marcus, State Water Board Chair  
WaterFix Project Co-Hearing Officer

*ORIGINAL SIGNED BY:*

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Tam M. Doduc, State Water Board Member  
WaterFix Project Co-Hearing Officer