

1 Deirdre Des Jardins
2 145 Beel Dr
3 Santa Cruz, California 95060
4 Telephone: (831) 423-6857
5 Cell phone: (831) 566-6320
6 Email: ddj@cah2oresearch.com

7 Principal, California Water Research

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 MOTION FOR RECONSIDERATION OF
20 HEARING RULING VACATING NOTICE
21 FOR TIM WEHLING TO APPEAR

22 Deirdre Des Jardins, principal at California Water Research, ("California Water
23 Research"), respectfully requests reconsideration of the Hearing Officers' August 14, 2018
24 ruling vacating California Water Research's Notice for Tim Wehling, Chief of the Dams and
25 Canals Section of DWR's Geotechnical and Engineering Service Branch, to appear, and granting
26 the motion for a protective order by the Department of Water Resources ("DWR.")

27 The August 14, 2018 hearing ruling states, "[t]he scope of this proceeding, however, does
28 not encompass the foregone benefits of changes to Clifton Court Forebay that DWR is no longer
proposing to make." (p. 1.) Clifton Court Forebay impounds up to 28,600 acre-feet of water
(DWR-212, p. 60.) While that may not seem like a lot of water in comparison with enormous
Central Valley Project and State Water Project dams such as Shasta, Oroville, and San Luis, but
it is the same size as the St. Francis Dam that failed in 1928, taking 431 lives. California Water

1 Research therefore respectfully requests that the Hearing Officers reconsider their ruling on the
2 scope of the proceeding.

3 California Water Research provides this argument in support of the motion for
4 reconsideration. An impoundment structure that does not endanger lives and property should not
5 be considered a “benefit” to third parties, as stated in the hearing ruling, but a fundamental
6 constitutional right under Article 7 of the California Constitution and the 14th Amendment to the
7 United States Constitution. The right to not be deprived of life or property by failure of a dam is
8 one which the Board should recognize in determining whether the WaterFix project will be a
9 reasonable diversion of water under Article X, Section 2 of the California Constitution.

10 If the question of the safety of Clifton Court Forebay is not beyond the scope of this
11 proceeding, then the issue is whether the hearing has provided adequate opportunities for cross-
12 examination of DWR’s employees on the issue of safety of Clifton Court Forebay, consistent
13 with rights to due process and equal protection under the law under the California and United
14 States Constitutions.

15 The ruling states on p. 2, “any relevant evidence that Mr. Wehling may be able to offer
16 has or could have been obtained in a more timely and less burdensome means through
17 questioning of DWR’s other witnesses.” California Water Research respectfully points out that
18 the Hearing Officers’ assumption that DWR’s WaterFix project design witnesses could have
19 provided testimony about hazard evaluation of Clifton Court Forebay is incorrect. While DWR
20 identified these witnesses as an “Engineering panel,” they are in fact project managers, not
21 project engineers, and two of them work for MWD, not DWR.

22 Mr. Bednarski is MWD’s Section Manager for Water Supply Initiatives. (Exhibit DWR-
23 17.) Sergio Valles is MWD’s Engineering Project manager for the WaterFix project. (Exhibit
24 DWR-18.) When cross-examined, neither Bednarski nor Valles had knowledge of seismic
25 hazard evaluations by the Department of Water Resources of Clifton Court Forebay.

1 California Water Research cross-examined Mr. Bednarski and Mr. Valles on the seismic
2 hazard re-evaluation of Clifton Court Forebay on August 9, 2016 (R.T. August 9, 2016, 96:9-
3 106:12.) Bednarski testified that he had no knowledge of whether a seismic hazard re-evaluation
4 had been done. (R.T. August 9, 2016, 96:25-97:1.) California Water Research introduced the
5 most recent published seismic hazard re-evaluation of Clifton Court Forebay, dated 1982. On
6 cross-examination on the document, Mr. Bednarski testified he had no knowledge of the
7 document. (R.T. August 9, 2016, 99:19-20.) Sergio Valles only mentioned DWR's Division of
8 Safety of Dams (R.T. August 9, 2016, 97:14-16.)

9 Shanmungan Pirabarooban, DWR's Project Coordinator for the California WaterFix, was
10 characterized by Mr. Bednarski as "our geotechnical engineer." (R.T. August 9, 2016, 103:4-6.)
11 But Pirabarooban's duties are listed in Exhibit DWR-17 as

12 Provide guidance, and technical direction on engineering issues related to obtaining
13 permits from State and Federal Agencies. Manage Architectural and Engineering
contracts and interagency agreements.

14 (p. 1.)

15 Pirabarooban testified only that hazard re-evaluation would be done for Clifton Court Forebay as
16 part of the design for the WaterFix project, and that the dam's foundations would be improved as
17 part of the reconstruction. (R.T. August 23, 2016, 31:23-33:6.)

18 The ruling also states

19 Clifton Court has not, however, identified how the project as amended in the EIR
20 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.

21 (p. 2.)

22 DWR's engineers in the Dams and Canals Section did not formally evaluate Ms.
23 Womack's reports of seepage from Clifton Court Forebay until May 26, 2017 (Exhibit DDJ-302)
24 which was in the middle of surrebuttal for Part 1. Therefore, it was not possible for Ms.
25 Womack, or any other protestant, to address the adequacy of the formal evaluation of the
26 seepage hazard by DWR's Dams and Canals Section in Part 1.

1 In conclusion, no engineers from DWR's Division of Engineering with any detailed
2 knowledge of hazard evaluations Clifton Court Forebay have appeared in this proceeding,
3 including seepage. The evaluation by DWR's Dams and Canals Section of Ms. Womack's
4 reports of seepage from Clifton Court Forebay was not done until the middle of surrebuttal for
5 Part 1, so neither Ms. Womack nor any other protestant could not have addressed the adequacy
6 of the evaluation in Part 1.

7 In addition, calling a witness on dam safety issues appeared unnecessary because of
8 Pirabaroban's testimony that DWR would do a hazard re-evaluation as part of the
9 reconstruction of Clifton Court Forebay and improve the foundations of the dam. Knowledge
10 that Clifton Court Forebay would no longer be reconstructed was not available until Part 2
11 rebuttal.

12 For these reasons, and considering the potential consequences of the Department of
13 Water Resources' failure to adequately evaluate or remediate hazards in a 50-year-old dam
14 impounding up to 28,600 acre-feet of water, California Water Research respectfully requests that
15 the Hearing Officers reconsider their August 14, 2018 ruling vacating California Water
16 Research's notice calling Tim Wehling and sustaining DWR's motion for a protective order.

19 Dated August 15, 2018

Sincerely,

20 

21
22 Deirdre Des Jardins
23 Principal, California Water Research
24
25
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

STATEMENT OF SERVICE

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

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

**California Water Research's Motion for Reconsideration
of Hearing Ruling Vacating Notice for Tim Wehling to Appear**

to be served by Electronic Mail (email) upon the parties listed in the Current Service List for the California Water Fix Petition Hearing, dated August 14, 2018, posted by the State Water Resources Control Board at

http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/service_list.shtml

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

I certify that the foregoing is true and correct and that this document was executed on August 15, 2018.



Signature:

Name: Deirdre Des Jardins
Title: Principal, California Water Research

Party/Affiliation:
Deirdre Des Jardins

Address:
145 Beel Dr
Santa Cruz, California 95060