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9 Clifton Court, L.P.

10 BEFORE THE
11 CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

12 **CALIFORNIA STATE WATER**
13 **RESOURCES CONTROL BOARD**
14 HEARING IN THE MATTER OF
15 CALIFORNIA DEPARTMENT OF
16 WATER RESOURCES AND UNITED
17 STATES BUREAU OF RECLAMATION
18 REQUEST FOR A CHANGE IN POINT
19 OF DIVERSION FOR CALIFORNIA
20 WATER FIX

21 MOTION FOR CLARIFICATION
22 AND RECONSIDERATION OF
23 SEPTEMBER 10, 2018 HEARING
24 RULING ON CLIFTON COURT,
25 L.P.'S OBJECTIONS AND MOTION
26 TO STRIKE

27 **Introduction and Request for Clarification**

28 Clifton Court, L.P. ("CCLP") respectfully moves that the Hearing Officers
29 reconsider – and clarify - their September 10, 2018 ruling on CCLP's August 23, 2018
30 "Objection and Motion to Strike DWR Responses to Clifton Court, L.P.'S Cross
31 Examination Questions" ("Objection and Motion to Strike.") Clifton Court, L.P. was
32 denied the opportunity to ask cross-examination questions on impacts on CCLP's water

1 rights when the witnesses for Department of Water Resources (“DWR”) testified during
2 the Part 2 rebuttal hearing, and over CCLP’s objections, the Board ruled that Clifton
3 Court L.P.’s cross-examination was limited to one hour, and that CCLP could ask further
4 questions in writing.

5 Clifton Court L.P. appreciates the Hearing Officers’ ruling that DWR’s responses to
6 CCLP’s written questions were evasive and legally inadequate (p. 2-3.) CCLP also
7 appreciates the ruling that CCLP should have another opportunity to question
8 Petitioners’ most knowledgeable witnesses under oath about the potential impacts to
9 CCLP’s water rights (p. 3.)

10 CCLP, however, respectfully requests confirmation and/or clarification about the
11 ruling. It is CCLP’s interpretation/reading of the ruling that:

12 DWR will provide witnesses who will provide actual real written testimony and
13 appear at the hearing during the sur-rebuttal phase for cross-examination by
14 CCLP. DWR’s written Sur-Rebuttal testimony should address CCLP’s written
15 questions in a way that actually answers CCLP’s questions. CCLP can cross-
16 examine these witnesses as to their answers to CCLP’s questions within the
17 scope of the witnesses’ Sur-Rebuttal written testimony. If these witnesses do
18 not provide sufficient answers, then CCLP may renew its motion to strike with
19 further objections to any Sur-Rebuttal testimony provided by DWR as to
20 CCLP’s water rights.

21 **Motion for Reconsideration**

22 CCLP, however, is concerned that the ruling could potentially be interpreted
23 differently. For example, the ruling limits the scope of cross-examination during

1 sur-rebuttal to the testimony, if any, that DWR's witnesses provide on sur-rebuttal about
2 CCLP's water rights (p. 3.). But DWR did not ask for *any* sur-rebuttal, so the ruling is
3 somewhat unclear as to whether the Board is directing DWR to provide such sur-
4 rebuttal witnesses to testify as to potential impacts on CCLP's water rights or whether
5 CCLP is limited to cross-examination of only witnesses DWR voluntarily provides.

6 Further, if the Hearing Officers are directing on p. 3 that DWR's witnesses provide
7 direct testimony in sur-rebuttal on CCLP's written Part 2 cross-examination questions,
8 such testimony would not be properly within the scope of sur-rebuttal, and would allow
9 DWR to pick and choose which of CCLP's cross-examination questions DWR
10 answered. This unusual procedure for answering Part 2 rebuttal cross-examination
11 questions would provide no opportunity for CCLP to rebut DWR's witnesses' direct or
12 cross-examination testimony, which would be against CCLP's due process rights.

13 The September 10, 2018 ruling also does not strike DWR's responses to CCLP's
14 written questions, which potentially puts the written responses in the record. Under the
15 ruling, CCLP would thus have no choice but to attempt to respond to DWR's written
16 responses on sur-rebuttal, making the Hearing Officers' rulings on CCLP's Objections
17 and Motion to Strike moot.

18 To the extent that the Board relies on DWR's witnesses Part 2 rebuttal testimony or
19 the Supplemental EIR/EIS for the Board's ultimate decision, without CCLP having a full
20 opportunity to properly cross-exam, CCLP's due process right to cross-examination
21 would be impacted (*Goldberg v. Kelly* (1970) 397 U.S. 254, 269, 90 S. Ct. 1011, 25
22 L.Ed.2d 287, *Manufactured Home Communities v. County of San Luis Obispo* (2008)
23 167 Cal.App.4th 705, 712.)

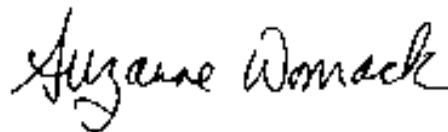
1 Clifton Court L.P. did timely submit CCLP's Objection and Motion to Strike during the
2 rebuttal phase of the hearing, and CCLP has a due process right to rebut any testimony,
3 including both direct and cross-examination testimony, by DWR's witnesses. CCLP
4 therefore requests that, following the procedure used with the State Water Contractor's
5 questions for Mr. Burke, that the Hearing Officers schedule another rebuttal hearing
6 date for CCLP to ask CCLP's remaining cross-examination questions of DWR's Part 2
7 rebuttal witnesses.

8 If the Hearing Officers decline to do so, Clifton Court L.P. requests that, following the
9 procedure that the Hearing Officers used with written cross-examination questions by
10 Patrick Porgans, the Hearing Officers require DWR to provide complete and legally
11 adequate responses to CCLP's written Part 2 rebuttal cross-examination questions prior
12 to sur-rebuttal.

13 In either case, Clifton Court L.P. requests that the Hearing Officers provide at least
14 two weeks to evaluate and respond to answers by DWR's witnesses to CCLP's Part 2
15 rebuttal cross-examination questions.

16
17 Dated: September 13, 2018

Respectfully,

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21 Suzanne Womack

22 General Partner, Clifton Court, L.P

1 **STATEMENT OF SERVICE**

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

5 I hereby certify that on September 13, 2018 I submitted to the State Water
6 Resources Control Board and caused a true and correct copy of the following
document(s):

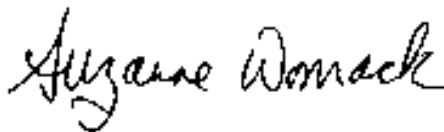
7 **Motion for Reconsideration of September 10, 2018**
8 **Hearing Ruling on Clifton Court LLP's Objections and Motion to Strike**

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

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

15 I certify that the foregoing is true and correct and that this document was executed on
16 September 13, 2018.

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18 Name: Suzanne Womack

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