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7
8 **BEFORE THE**
9 **CALIFORNIA STATE WATER RESOURCES CONTROL BOARD**

10 **HEARING IN THE MATTER OF CALIFORNIA**
11 **DEPARTMENT OF WATER RESOURCES**
12 **AND UNITED STATES BUREAU OF**
13 **RECLAMATION REQUEST FOR A CHANGE**
14 **IN POINT OF DIVERSION FOR CALIFORNIA**
15 **WATER FIX**

DEPARTMENT OF WATER
RESOURCES' RENEWAL OF
MOTION TO QUASH AND FOR
PROTECTIVE ORDER

16 The California Department of Water Resources ("DWR") renews is Motion to Quash
17 and for Protective Order from Deirdre Des Jardins' July 13, 2018, Notice to the Department
18 of Water Resources Calling Witness to Appear at the WaterFix Hearing.

19
20 **Background**

21 On July 13, 2018, Dierdre Des Jardins filed a notice to attend for a DWR employee,
22 Tim Wehling, pursuant to Government Code sections 11513(b) and section 11450.50. In
23 response, DWR filed a Motion to Quash and for a Protective Order on July 19, 2018, to
24 which Deirdre Des Jardins submitted a response on July 24, 2018. On July 27, 2018, the
25 Board ordered DWR and Dierdre Des Jardins to meet and confer regarding the notice to
26 attend to try to resolve DWR's objections. This ruling permitted DWR to renew its Motion to
27 Quash and for Protective Order should DWR's objections not be resolved.

1 The Board has defined the scope of Part 2 rebuttal as “limited to evidence that is
2 responsive to evidence presented in connection with another party’s Part 2 case-in-chief” or
3 “evidence that is responsive to DWR’s EIR Supplement.” (Board June 18, 2018, ruling on
4 Deadline for Part 2 Rebuttal Testimony.)

5
6 **Discussion**

7 On Friday August 3, 2018, DWR met with Deirdre Des Jardins as directed in the
8 Board’s July 27, 2018, Ruling. During this meeting it became clear that Ms. Des Jardins
9 had no questions for Mr. Wehling within the scope of Part 2 Rebuttal. Ms. Des Jardin stated
10 she plans to question Mr. Wehling based on a memorandum sent to Ms. Womack on the
11 existing Clifton Court Forebay facility. Furthermore, Ms. Des Jardins was unable or
12 unwilling to describe how Mr. Wehling’s knowledge of engineering of the existing Clifton
13 Court Forebay was connected to the Draft Supplemental Environmental Impact
14 Report/Environmental Impact Statement (“DSEIR/EIS”).

15 The only connection Ms. Des Jardins was able to describe was an alleged impact
16 that a potential Clifton Court Forebay failure would have to the proposed Byron Tract
17 Forebay. Importantly, Ms. Des Jardins has presented no information supporting the calling
18 of Mr. Wehling as a witness to answer questions about any susceptibility of the proposed
19 Byron Tract Forebay might have to a failure of Clifton Court Forebay.

20 Ms. Des Jardins has already questioned a knowledgeable witness, Mr. Bednarsky,
21 during Part 2 rebuttal regarding the potential impact a Clifton Court Forebay failure could
22 have upon the proposed Byron Tract Forebay. (Transcript August 3, 2018, 165:5-166:14.)
23 As answered by Mr. Bednarsky potential impacts would be analyzed during preliminary and
24 final design. (Transcript August 3, 2018, 166:8-11.) Mr. Bednarsky further stated that it is
25 standard practice as part of a risk analysis to “consider causes of failure for dams.”
26 (Transcript August 3, 2018, 166:17-20.)

27 While the above line of questioning is within the scope of rebuttal, as already stated
28 above, Ms. Des Jardins plans to question Mr. Wehling regarding the existing Clifton Court

1 Forebay facility and has presented no showing that Mr. Wehling has information related to
2 the proposed Byron Tract Forebay. Ms. Des Jardins questions are based on a
3 memorandum responding to three specific questions sent to DWR by Ms. Womack related
4 to alleged seepage at the existing Clifton Court Forebay facility. (DDJ-302m page 1.) DWR
5 would like to note, as shown by DWR-920, that DWR has already settled any and all
6 damages to Ms. Womack's property resulting "from seepage of water from" Clifton Court
7 Forebay. (DWR-920, page 4.)

8 Questions regarding existing facilities that are not proposed to be modified under the
9 California WaterFix Supplemental EIR are outside the scope of rebuttal.¹ Mr. Wehling has
10 no information related to the materials within the scope of rebuttal, nor is he part of the
11 California Waterfix engineering team. As such, Mr. Wehling is unable to provide any
12 information relevant to Part 2 Rebuttal.

13
14 **Conclusion**

15 Deirdre Des Jardins' questions are outside the scope of rebuttal and Mr. Wehling
16 has no information relevant to Part 2 rebuttal. The attempt to resolve these problems with
17 Ms. Des Jardins was not possible. Appropriately, DWR renews its motion to quash and
18 request for protective order for Mr. Wehling.

19 Executed on this 7th day of August 2018, in Sacramento, California.
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23 _____
24 Emily M. Thor
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26 California Department of Water Resources.

27 _____
28 ¹ The Board has already sustained objections to questions by Ms. Womack on the existing Clifton
Court Forebay facility during Part 2 rebuttal. (Transcript August 2, 2018, 18:6-19:12.)