

Note: CCLP-60 was revised by hearing team staff in accordance with the hearing officers' oral ruling on 9/28/18.

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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
STATES BUREAU OF RECLAMATION
REQUEST FOR A CHANGE IN POINT
OF DIVERSION FOR CALIFORNIA
WATER FIX

PART 2 SURREBUTTAL
TESTIMONY OF SUZANNE
WOMACK & SHELDON MOORE OF
CLIFTON COURT, L.P. (CCLP)

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18
19 Qualifications of Sheldon Moore

20 Sheldon Moore is 86 years old and began farming 1157 acres at Clifton Court in 1961.
21 Working hard, by 1966 he created an asparagus and row crops farm with a flood gate
22 on the Western Canal and a syphon pump on the DMC Intake. The construction,
23 maintenance, and operations of the Department of Water Resources' (DWR's) Clifton
24

1 Court Forebay (CCF) and Department of Interior's (DOI's) Central Valley Project (CVP)
2 caused many injuries. In 1970, Sheldon first became an expert in levee repair when he
3 and his workers spent months repairing the levee damage caused by the construction of
4 the Clifton Court Forebay. Not accounting for Sheldon & his worker's wages, the farm
5 spent \$52,150 with Olympic Dredging Co. & Basalt Rock Co. (CCLP 15). DWR made
6 our farm whole with \$15,000 (CCLP 36). Sheldon became a seepage & drainage expert
7 when the DWR refused to install a cutoff wall on the CCF. Working with the 1960's
8 proposed SWP design plan- CCF pumping 5,000 cfs in the winter months, Sheldon
9 became an expert in installing a tile drainage system. In addition, he had to learn how to
10 redesign his entire drainage system and install drainage pumps that drained into south
11 embankment of the CCF because the CCF cut off his simple drainage system to Italian
12 Slough.

13
14 He became an under-seepage expert when DWR added four 1067 cfs pumps (total
15 4,268 cfs) in the 1980's to add to the 6,300 cfs that DWR now admitted to pumping -
16 $6,300 + 4,268 = 10,568$ cfs.(CCLP 61). The added 4,268 cfs pumping caused huge
17 seepage problems. The extra pumping, which DWR now admits to being over 15,000
18 cfs at times (DWR-1251, page 83 (pdf 97) paragraph 2), caused havoc with our water
19 quality, pumps, and levees. Brown, silty water filled with debris caused pumps to fail
20 and farmyard water to turn brown. Sheldon who had previously dealt with a flood gate
21 and syphon pump now had to become a pump repair & replacement expert. Sheldon
22 also had to become a finance expert because pump repairs alone from 5-14-1984 to 7-
23 18-2016 cost \$255,198.26 (CCLP 17).

1 Furthermore the increased pumping caused topping of our rip-rap. Although the Final
2 EIR (1986) for the additional 4 new pumps at the SWP required that the banks of Old
3 River be rip-rapped (CCLP 69), DWR didn't approach us about rip-rapping our levees.
4 Instead, Sheldon became an expert in levee topping repair and spent over \$40,000 on
5 rip-rap in the 1980's. In 1998 & 1999, he had to again use his skills and \$90,747 (CCLP
6 15 pg.3) for an emergency repair of the levee caused by excessive pumping.

7
8 Sheldon became an expert in rodent control so that the rodents would not eat crops or
9 create burrows weakening the SWP or CVP embankments (CCLP 56, CCLP 19 pgs 18,
10 43, 44). He had to deal with trespassers and their vandalism caused by a lack of
11 effective security at the SWP & CVP CCLP 8, (CCLP 9, CCLP 10 CCLP 19 pgs. 32, 33,
12 37, 38, 57, 58). Sheldon Moore simply wanted to farm. However for the past 50 years,
13 Sheldon Moore was forced to become an expert in all the stated areas just to be able to
14 farm.

15 16 Qualifications Suzanne Womack

17 Suzanne Womack is a retired teacher. She grew up at Clifton Court and witnessed the
18 construction of the CCF and the subsequent destruction of half of her family farm. For
19 the past 50 years she has witnessed the maintenance and operation problems caused
20 by the CVP & SWP that directly affected her family's livelihood. She is a General
21 Partner with Clifton Court, L.P. (CCLP).

1 Summary of Testimony

2 The Supplemental EIR and associated documents fail to adequately describe the new
3 proposed facilities to be constructed in the south Delta as part of the modified CWF
4 Project. As confirmed by Mr. Chilmakuri and Mr. Valles during their cross-examination
5 by CCLP, DWR has not conducted studies or investigations as to how new project
6 facilities and operations will impact CCLP. Because the impacts are unknown to DWR
7 (and to CCLP) it is impossible for CCLP to know what mitigation will be necessary.
8 While DWR has stated it will mitigate project impacts to CCLP, DWR has failed to
9 provide any specific mitigation proposals. Here towards the end of the hearing process,
10 DWR changed the project once again and leaves CCLP and its property (including
11 water rights) without adequate information to determine impacts. What can be said is
12 that existing impacts which CCLP has described from the operations at Clifton Court
13 Forebay by DWR will not be mitigated due to the new Byron Tract Forebay. It would be
14 difficult to imagine a worst case scenario for CCLP.

15
16 Testimony

17 When Clifton Court, L.P. (CCLP) reviewed the Supplemental EIR/EIS (SEIR/EIS) we
18 found it difficult to respond to the SEIR/EIS because we did not understand what was
19 happening to our water rights and therefore our farmland due to wholly insufficient
20 information. In August 2016 at the CWF hearing, DWR clearly announced that the CWF
21 would take all of CCLP's property, Thus CCLP had no reason to question CWF facilities
22 and operations at the CVP & SWP in Part One or Part Two of the CWF. It was only in
23 July of 2018 that DWR expressly told CCLP that they would not take any of their

1 property. At that time, CCLP began to look carefully at the proposed project and found
2 the CWF would indeed injure CCLP as a legal user of water.

3
4 Clifton Court, L.P.'s Water Diversion in the DMC Intake

5 According to Mr. Valles' testimony "we didn't know that you had pumping out of the
6 channel" (8-10-18 page 209 line 12). It is frightening that Petitioners, who claim no legal
7 users of water will be harmed, placed a 14.8 acre control structure at our diversion site
8 but did not look at the actual site or even a water diversion map. Petitioners (DOI)
9 clearly knew about the diversion because they gave us a copy of the 1955 contract
10 when they first approached Sheldon Moore in 2000 about buying our farm for CALFED
11 (2000 Letter & 1955 Contract CCLP 62). This water diversion is vital for most of our
12 farm's water.

13
14 The Control Structure on the DMC Intake at CCLP's diversion and its operations.

15 There is no conceptual rendering of this 14.8 acres Control Structure facility and the
16 Control Structure Plans and Sections is simplistic (DWR 1305 pdf 87 & 88). When
17 asked how the control structure gate on the DMC would work in relationship to CCLP's
18 diversion, Mr. Valles said, "That will be determined in the future with the operations. I
19 don't have an answer for you." (8-10-18 Page 194 lines 7-9). There is no modeling
20 according to Mr. Chilmakuri, "It appears that the control structure is on—within the DMC
21 intake channel. And so our modeling does not address the changes in those—in that
22 channel" (8-10-18 page 190 lines 16-19.) Because there is no modeling or analysis,
23 CCLP has no way to look at the impact on CCLP's water rights by this control structure.

1
2 Isolate North Delta Operation

3 “Only the BTF is used in this scenario, and the CCF intake and the Tracy Fish Facility
4 gates will be closed.” (DWR 1304, 5-6, 5.1.6.2).(Mr. Valles testimony 8-10-18 Page 193
5 lines 7-14 corrected that this operation referred to gates at the Control Structure on the
6 DMC as there are no gates at the TFF.) When CCLP tried to ask Mr. Valles how we
7 would access our year round, senior water rights if the gates are closed? Mr. Mizell said
8 “It appears that the question will have to be referred to a written response on
9 Tuesday.(8-10-18, page 194 lines 24-25) this important question was not answered.
10 Nor did DWR answer a similar question in testimony or writing regarding what would
11 happen to our diversion if the control structure gates were closed under the Isolated
12 North Delta Operation and the Tracy Fish Facility was plugged with debris (Picture of
13 Water Hyacinth CCLP 39). When Mr. Emerick tried to clarify the modeling, Mr
14 Chilmakuri said, “The modeling I was referring to is the DWM-2 model, and it does
15 include a – include the intake channel in general but not the specificity we need to
16 analyze Ms. Womack’s diversion.” (8-10-18 page 196 lines 11-15). CCLP believes that
17 any obstruction of the DMC Intake will injure CCLP’s senior, riparian, year-round,
18 licensed, contracted water rights.

19
20 Potential Dual Operation with the WaterFix BTO

21 “Under the dual source operation scenario, control gates will control flow out of the BTF,
22 CCF, and the Old River to meet target deliveries at both Banks and Jones PPs...The
23 control scheme will require flow meters, WSE transmitters and a sophisticated SCADA
24

1 system controls ...downstream of the Skinner Fish Facility and downstream of the Tracy
2 Fish Facility must maintain a lower WSE.” (DWR 1304 5-6, 5.1.6.3) Lowering of water
3 levels causes CCLP and their tenant farmer higher pumping costs and can lead to
4 pump destruction. This operation, which will have a devastating effect on our farm, has
5 not been modeled or even created. “The location and design of structures capable of
6 operating in a dual source scenario needs to be explored in further design phases of the
7 project. Such work will refine the configuration of facilities necessary to achieve the
8 mode of operation.” (DWR 1304 5-6, 5.1.6.3)

9
10 I asked Mr. Chimakuri, “how will this affect my – my pumping, my water levels? I
11 depend on tides now. Will this change my water – how I get my water? Witness
12 Chilmakuri: “Again, the modeling I’m describing does not take that into account or
13 cannot be used to analyze that.” (8-10-18 testimony page 197 lines 12-17)

14
15 South Tunnel & South Tunnel Outlet Structure

16 The approved plan had a simple, relatively inexpensive channel connection between the
17 CVP & the NCCF. The BTF plan utilizes a new 1.6 mile South Tunnel and a huge South
18 Tunnel Outlet Structure on 127 acres of land (DWR 1305 pdf 84). When asked if there
19 are any studies and modeling that show how the CCLP diversion in the DMC intake will
20 be affected by these structures, Mr. Valles stated: That modeling has not been done, or
21 those studies have not been done.” (Testimony 8-10-18 page 209 lines 4-5).

22 Furthermore, the South Tunnel Outlet Control Structure is not included in DWR 1304 5-
23 8, 5.3.2 Overall Operation of System Components. CCLP needs to see modeling and

1 impact reports before they will be able to assess how CCLP's diversion will be impacted
2 by the operations of these two new facilities.

3
4 Implications of WaterFix BTO on Current SWP & CVP Operations

5 According to the CER, The State Water Project Delta Export Facilities include "Clifton
6 Court Forebay, Skinner Delta Fish Protection Facility (Skinner Fish Facility), Banks PP
7 and Banks PP Intake Channel, which connect CCF to the Banks Pumping Plant (DWR
8 1304 5-1, 5.1.3) while the Central Valley Project Delta Export Facilities "The Jones
9 Pumping Plant is at the end of 2.5 mile-long tidally-influenced, unlined intake channel
10 that begins at the Tracy Fish Collection Facility." (DWR 1304 5-3, 5.1.4.2)

11
12 "The WaterFix BTO changes the way water is conveyed to both Banks and Jones
13 pumping plants as follows: ...

- 14 • Removing tidal influence on water levels upstream of both export pumping plants
15 when diverting from BTF."(DWR 1304 5-14, 5.5) CCLP believes that
16 removing tidal influence will cost CCLP and their tenant farmer money in
17 increased pumping costs and pumping repair and replacement cost.
- 18 • Receiving water from BTF will require a greater level of daily operation as
19 coordination between DWR and Reclamation .(DWR 1304 5-14, 5.5) DWR and
20 Reclamation were unable to communicate regarding something as simple as a
21 pre-existing contract with CCLP and there are no operational plans in the
22 SEIR/EIS, CCLP believes we will be injured by poor communication between
23 DWR and Reclamation.

- 1
- 2 • Common scheduling of individual pump operations at both Banks and Jones PP
- 3 will be needed to manage the WSEs and volumes in both BTF and CCF
- 4 associated conveyance facilities. (DWR 1304 5-14, 5.5) CCLP believes that any
- 5 operations that unnaturally affect WSE in the CVP will injure CCLP.
- 6

7 Liquefaction

8 “Available subsurface information indicates that the potential for liquefaction exists

9 along all sides of the existing Clifton Court Forebay. For the purpose of the conceptual

10 design, it is assumed that this analysis is valid for the area of the BTF.”(DWR 1304 4-

11 11, 4.2.1.6) If Liquefaction occurs not only will our tenants lives, property and livelihood

12 be endangered, but CCLP will be unable to use their water rights thus causing injury.

13 The CCF will be unable to be a part of the WaterFix BTO

14

15 Flood Protection

16 ~~“The conveyance facilities are considered to be critical lifeline facilities for the State of~~

17 ~~California.” (DWR 1304 4-12, 4.2). CCLP does not believe the CCF is safe given the~~

18 ~~fact that the embankments of the CCF do not meet 200-year flood safety standards and~~

19 ~~are riddled with “desiccation cracking, animal burrows, and potential piping” (Report~~

20 ~~page 5, bullet 7 - CCLP 63) and the fact that during a Diving Report of the Clifton Court~~

21 ~~Intake on March 4, 2017, “it was determined unsafe to have the diver go any further~~

22 ~~across closer to the South wing wall due to it being unstable” (Report page 8, CCLP 64)~~

23 ~~thus causing the CCF to be shut for many weeks in March of 2017. If the CCF fails, the~~

24

1 ~~CCF will not be able to be a part of the WaterFix BTO. Furthermore, our tenants lives,~~
2 ~~property and livelihood be endangered, and CCLP will be unable to use their water~~
3 ~~rights thus causing injury.~~

4
5 Operations

6 There are no new operations in the SEIR/EIS (SWRCB 113 ch 3, 3-8, 3.2.3). There are
7 no changes. CCLP is particularly concerned with this lack of new operations as DWR's
8 operations injure CCLP's water rights. On September 19, 2018, we received a call from
9 our tenant farmer telling us that for he is unable to use our water rights due to DWR-
10 DFD operations. Our tenant was told by Amber Candela-Cooney, DFD, that on
11 September 12, 13, & 14, 2018 DWR-DFD was replacing their 50 years old leaking
12 drainage pipes that connects our drainage pump to the CCF. (It should be noted that
13 the crew in the field replacing the pipe did not agree with Amber's assessment of how
14 long the pipe repair would take, but they were not in charge.) Apparently Amber did not
15 plan for sufficient days to replace the pipe. Now it appears that my farmer will not have
16 water for another week to ten days. My farmer planned to begin watering on Monday,
17 September 17, 2018. He was not consulted as to when DFD would replace this pipe.
18 Furthermore the landowner, CCLP, was not notified.

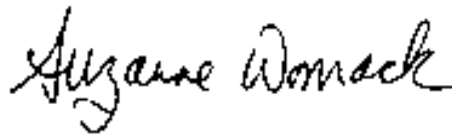
19
20 We would write this off to bad luck, except this leaking pipe debacle has been going on
21 for well over a year. This is the most recent example of how DWR-DFD operations of
22 their SWP property affects CCLP's water rights. Apparently this team will continue
23 operations with the CWF. Here is how the 9-17-18 taking of water rights unfolded:

- 1 • August 2, 2017 DWR-DFD letter erroneously tells CCLP that we have met and
2 agreed to replace/fix leaking drainage pipes on DWR property.(CCLP 40)
- 3 • August 10, 2017 CCLP letter to DWR-DFD informs them that the leaky drainage
4 pipes on their property are theirs and it is their responsibility to fix. (CCLP 65)
- 5 • August 30, 2017, DWR’s Catherine Cavanaugh states that “all drainage system
6 equipment is in working order”. (CCLP 66). Why is DWR ignoring the problem?
- 7 • July 31, 2018 CCLP picture of leaking pipes and pond abutting CCF. (CCLP 67)
- 8 • September 12, 2018 DFD begins work without contacting landowner and has
9 tenant farmer uncouple drainage pipe on CCLP side. CCLP is alarmed by lack of
10 legal communication and coordination. Will this same team will be in charge of
11 the WaterFix BTO operations?
- 12 • September 15, 2018 CCLP letter to Catherine Cavanaugh, DWR, requiring that
13 CCLP be present when drainage pipe is attached. (CCLP 68)

14
15 DWR-DFD is unable to fix a simple leaking drainage pipe in a professional, competent,
16 and timely manner. This same DWR states in the SEIR/EIS that there are no changes
17 to the proposed operations of which the SWP is an important part. This same DWR
18 wants to build and maintain a control structure on or next to CCLP’s water diversion on
19 the DMC intake. They want CCLP’s to believe this control structure, the South Tunnels,
20 the South Tunnel Outlet Structure, and the complex WaterFix BTO operations they are
21 dreaming about will not injure CCLP’s water rights or 1955 contract with DOI.

1 CCLP does not believe Petitioners are able to create and maintain their CWF project
2 without injuring CCLP's water rights. We believe Petitioners continued inverse
3 condemnation, as shown in CCLP's exhibits, will only increase if they are allowed to
4 take or move our diversion in the DMC intake. We wish to be made whole. We ask that
5 as part of a condition of the permit term, that Petitioners be required to compensate
6 CCLP for the loss of use of its property and corresponding damages resulting from the
7 CWF Project as set forth by CCLP – or in the alternative, purchase all of CCLP
8 property. This should be required before DWR begins the project so that DWR can
9 determine how to operate the CWF without injuring CCLP water rights and contract with
10 DOI.

11
12 Executed on this 20th day of September 2018, in Sacramento, California.

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16 Suzanne Womack
17 General Partner, Clifton Court, L.P.
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