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BEFORE THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

HEARING IN THE MATTER
CALIFORNIA DEPARTMENT OF WATER RESOURCES AND
UNITED STATES BUREAU OF RECLAMATION
REQUEST FOR A CHANGE IN POINT OF
DIVERSION FOR CALIFORNIA WATER FIX

Clifton Court, L.P. CWF Part 2 Rebuttal Testimony

Qualifications of Sheldon Moore

Sheldon Moore is 86 years old. Due to the construction, maintenance, and operation of Department of Water Resource's (DWR's) Clifton Court Forebay (CCF) as well as the continued operation and maintenance of the Department of the Interior's (DOI's) Central Valley Project (CVP), he has had to acquire expert skills. His expertise includes levee repair; seepage identification; pump repair and replacement; water quality; rodent control; and the nuisances of trespassing and vandalism. Many of the problems were caused by the pumping of 15,000 cfs between CCF and CVP. Some of the problems were caused by maintenance indifference. Sheldon Moore had to become an expert in cost management to pay the for damages. The problems have cost well over \$2 million dollars in today's terms. In 1966 there was no way of knowing that these operations would cause so many damages or that DWR & DOI would not take responsibility for their actions.

In addition to the above mentioned expertise, Mr. Moore holds a B.S. from UC Berkeley and was a Captain in the United States Air Force. He put himself through college by working for the head of the Chemistry department at UC Berkeley and by participating in ROTC. From these experiences, he learned the importance of science, perseverance, and hard work. He believes in taking responsibility for one's actions and fixing problems when they are small so they do not become major headaches.

Qualifications of Suzanne Womack

Suzanne Womack grew up at Clifton Court. At eight years old, she witnessed the construction of the CCF and the subsequent destruction of half of her family farm. For the past 50 years she has witnessed the maintenance and operation problems at the CVP & SWP that directly affected her family's livelihood. She is now a General Partner with Clifton Court, L.P. (CCLP).

Testimony

From the start of the California WaterFix (CWF) Hearings, the DWR and DOI have repeatedly promised that no legal users of water will be harmed by the CWF proposal. Since 2006, CCLP property has been a key parcel in the approved project. Since that time we have been told numerous times that our property will be condemned and we will be made whole. On July 5, 2018, DWR wrote the hearing officers that our property is no longer needed. Although this should be cause for celebration, we find that we will be harmed in multiple ways, all stemming from the old, poorly built and poorly maintained CCF. The point of the CWF is to fix the CCF and all the problems it causes. If under the new plan the CCF is not "extensively modified," the safety and productivity of our farm will continue to be imperiled. After identifying all the problems at the CCF, but then not fixing them, DWR has effectively degraded CCLP's property value. By being under the cloud of condemnation for nearly 20 years, CCLP has been unable to fully & freely pursue its property rights, such as whether to upgrade farmland to permanent crops like almonds or grapes; pursue development plans; or even sell its land and its water rights.

The original DEIR (see generally Chapter 6 of the original BDCP EIR) identified potential issues with levee/embankment failure due to flooding and seepage as well as potential damage due to potential operational and reverse flow issues at Clifton Court. Furthermore, the existing embankments do not meet DHCCP flood protection criterion standards (DWR 212, page 164). Now DWR wants to "create a new Byron Tract Forebay (eliminating the extensive modifications to Clifton Court Forebay)" (Draft Supplemental EIR/EIS [DSEE]1-4 line 16).

~~If the CCF is not extensively modified under seepage will continue to be a public safety problem DWR refused to install a cutoff wall during construction of the CCF. Under seepage became a major problem along the south CCF embankment when the pumping increased and the concrete treated base (CTB) covering the entire CCF failed. To make matters worse, in addition to significant under seepage and piping at the CCF, the CCF intake sits on top of a sand bar. CCLP's tenant farmer complained in 2016 & early 2017 that seepage in the field adjacent to the intake was particularly bad. After informing Delta Field Division (DFD), CCLP received a letter dated 2/14/2017 from DWR DFD's Acting Chief, Amber Candela Cooney, stating that "Based on the Field Division staff investigation, it does not appear that DWR facilities are a source of seepage on your property" (CCLP 32).~~

~~Just two weeks later, on March 1, 2017, DFD informed Dam Safety Branch of "a possible failure of the Clifton Court Intake Structure." According to the 3/10/17 memo written by Engineer Dan Garcia, with an attached DRS Marine Inc. diver report, there is a deep crack on the intake apron floor and the south wing wall is degraded. Regarding the deep crack on the intake apron floor, "at 110', the diver was not able to meet any resistance with the 20' surveyor's measuring stick",~~

regarding the degraded south wing wall, at about the last 45 feet from the south wing "it was determined unsafe to have the diver go any further across closer to the South wing wall due to it being unstable" (CCLP 52, page 4). The CCF was closed from March 17, 2017 to April 16, 2017 (CCLP-53). This put an added strain on the Delta during the Oroville Disaster. The CCF was drained and repaired under emergency circumstances, a sort of band-aid. Now DWR believes it is not important to fix the underlying problems with the CCF with some of the \$17 billion dollars of CWF money. Public safety and public trust are at risk. The intake at the CCF must be completely re-engineered and rebuilt to CWF standards that will meet the challenge of floods and climate change in the future.

According to the Army Corps of Engineers Interim Feasibility Study and Draft EIR/EIS for the Lower San Joaquin, under seepage will cause levee/embankment failure (page 90). Why is this a worry for CCLP? DWR says in DWR 212 that there are significant under seepage problems and that the NCCF/SCCF need to be fortified with a 50 deep slurry cutoff. Now, however, with the DSEE, DWR wants to abandon CCF and pretend that its identified under seepage problems don't exist. The relocated forebay location proposed by DWR does nothing to remedy the adverse impacts from present operations and lack of maintenance with respect to the existing forebay. This leaves CCLP's property (as well as adjacent wetlands and surface water exposed to the now documented problems arising from the existing forebay, such as seepage, levee damage, and potential levee/embankment failure without any mitigation measures whatsoever being proposed by DWR. CCLP requests that the south bank of the CCF, at the very least, be fortified with a 50.0 feet slurry cutoff wall and that the intake control structure be re-designed and built.

WATER QUALITY

Now that we will be left with our farm intact, we have serious concerns how the proposed CWF operations will affect our water quality. Over the past 50 years, the quality of the water we take from Old River between the CVP and CCF entrances continues to degrade. Our intake concrete ditches are covered in mud from the pumping of 5,000 cfs at CVP and 10,000+ cfs at CCF that turns the fresh river water brown. Our pumps on Old River go out with alarming frequency due to all the silt and debris in the water. The productivity of our farm is affected by the water quality in Old River. Since DWR increased their pumping at the CCF our water quality has suffered from silt and debris turning Old River brown, causing our pumps to clog and burn out. We have no guarantees that the new CWF intakes will lead to less pumping at our property. However, we do know that when 9,000 cfs is removed at the new intakes, there will be more salt incursion in the South Delta which will harm our farming operations as our crops do not grow in salt water. This will make our farm no longer a viable operation.

Levee Failure

Our levee at Old River and our islands in Old River have been battered by the pumping of over 15,000 cfs between the SWP & CVP. One island has completely vanished. The 3.7 acre island has shrunk appreciably despite the addition of rip rap in 1980. In 2002 during CALFED negotiations, my father figured that in present day value our farm had spent 1.6 million dollars on rip rap. Now, of course, that figure is much higher. If our farm is not taken, we will continue to incur substantial levee repair costs caused by State and Federal water export. In 1980 the Department

~~of Army issued permit 5820 to allow DWR to add 4 pumps and to raise pumping levels to well over 10,000 cfs. However, permit 5820 “does not authorize any injury of private property or invasion of private rights.” (CCLP 54) CCLP is purportedly protected by this proviso, yet we have been injured and not made whole.~~

~~Despite writing letters documenting damage and asking for compensation, we have received nothing from DWR or DOI for levee damage. Our requests fall on deaf ears, despite the fact that both the State and Federal governments have special levee repair funds, such as the USACE Delta Levee Funding, the Delta Levee Special Improvement Project Program, the State Delta Levee Maintenance Subvention Program, and the Delta Levee Special Flood Project Program.~~

Operations & Maintenance

“The proposed project would not modify the project operations discussed and evaluated for the approved project.” DSEE 3.2.3

CCLP have several questions:

- Will Operations & Maintenance have two divisions: DFD – CCF and a DFD –BTF?
- Will there be one security fence around the two Forebays or will there be two fences – one for each Forebay? Will there be a CCF & BTF division to maintain the security fences when they are vandalized? Will CCF continue to maintain only a partial portion of their security fences on the south side of CCF? (CCLP-55)
- Will the division of DFD that takes care of squirrels at CCF also be in charge of rodent control at the BTF? DSEE fails to mention the importance of rodent control of the CCF embankment and the BTF berm. The south embankment of the CCF has been periodically infested with squirrels and other rodents nesting in the embankment when DFD fails to control rodents(CCLP-56). Squirrel and rodent burrows are known to cause seepage and embankment/berm failure.
- Will DWR/DFD ignore public safety requests by BTF’s Discovery Bay neighbors the same as they do CCF’s neighbor CCLP?

Recreation

Much of the south embankment of the CCF is bordered by CCLP property. Although the security fences are locked, CCLP has terrible problems with trespassers who walk about ½ mile across our fields, cut the security fences, and fish on the south banks of the CCF. (CCLP-19-33). Trespassers wreck the fields and cause thousands of dollars of vandalism damage. The construction of the new Byron Tract Forebay will exasperate this trespassing and vandalism problem. According to the DSEE (15.3.1.2 pg. 15-4 lines 9-13) “Indirect effects on recreation experiences may occur as a result of impaired access, construction noise, or negative visual effects. Overall, construction and geotechnical exploration may occur year-round and last from 2.5 to 11 years.” We believe these adverse effects will cause bank fishermen to gravitate to our property. There is no parking or restroom facilities on the south side of the CCF.

Transportation

If CCLP's land is not taken, the construction of the all of the facilities near the CCF for the CWF will cause grievous traffic congestion on the surrounding roads and highways. Such congestion clearly makes our farm less desirable for our tenants. Our farmer will have trouble moving machinery and transporting goods. This will cut into profits. We believe the use of barges will only cause more traffic on the single lane Byron Hwy as motorists attempt to avoid bridges raised for the barges on Hwy 4. When farming tenants are diminished, our profits are diminished.

SEISMIC RISK

DWR readily admits that the Byron Tract Forebay will be built in greater proximity to the West Tracy fault than the modified Clifton Court Forebay. Because it will store water more than 6 feet higher than the surrounding land, it will be designed and constructed according to DOSD requirements and subject to periodic inspections by DOSD. (9-14 l. 34-36) CCF is subject to DOSD as well. Since DWR is choosing to ignore serious problems at CCF rather than fix them, one has to wonder how effective is DOSD?

"Additionally, the Byron Tract Forebay would impound water behind embankments rather than within an excavated basin, as would be the case with the expanded Clifton Court Forebay. Seismically induced failure of the embankments, unless properly engineered and constructed, could cause an uncontrolled release of the impounded water, possibly causing loss of property, personal injury, or death" (9-13 l. 33-37)

"The shaking could also result in a greater potential for subsequent catastrophic release of impounded water, posing a greater risk of loss of property, personal injury, and death than with the modified Clifton Court Forebay because the Byron Tract Forebay would be located closer to developed areas than would the Clifton Court Forebay and because more water would be impounded behind berms instead of within an excavation" (9-5 l. 30-34). What DWR does not tell you is that currently 3 people live on our farm next to Clifton Court Forebay. As of 2010, 13,352 people live at the developed area - Discovery Bay. Taking an objective view on this relocated Forebay, this revised plan appears to put many thousands more people and their property at risk.

Control Structure on DMC intake

According to DWR's July 5, 2018 letter to the Hearing Officers, CWF will no longer take any of CCLP's property even at the Control Structure. DWR supplies no drawing of the "Control Structure," and the details remain vague. However, one thing is very clear, the Control Structure on the DMC intake will take or impede CCLP's water right as our pump sits right in middle of the DMC intake (CCLP57) and the proposed control structure.

Conclusion

For all the above reasons, we feel that DWR's decision to build the new Forebay and leave the CCF unmodified (i.e. unrepaired) will cause damage to our property and our senior water rights.