

Clifton Court, L.P.
3619 Land Park Drive
Sacramento, CA 95818

August 9, 2018

Hearing Chair Tam Doduc
Hearing Chair Felicia Marcus
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Dear Hearing Officers and Board,

These are my written questions for the Department of Water Resources' witnesses, submitted per the hearing ruling.

All background information is intended to provide context for the questions.

New Byron Tract Forebay (BTF) Design represents huge changes in how Clifton Court, L.P. (CCLP) will be injured by the CWF. In the approved project, the California WaterFix (CWF) took CCLP. In the proposed change, the CWF claims to not take CCLP property. Due to our 50 years of experience with DWR and the Bureau of Reclamation, CCLP is fundamentally opposed to the California WaterFix tunnel project. However, given our history of injuries due to poorly designed Clifton Court Forebay (CCF) & Tracy Fish Facility (TFF) and those injuries compounded by poor maintenance and operations at both facilities, CCLP has no desire to experience another 50 years of injury. If CWF wants to cast a shadow on our farm by taking or compromising our water rights, they can take our entire property.

History of CCLP diversion in DMC

CCLP has 3 diversion points - licensed (1925), pre-14, riparian water rights that date back to the 1870's. In 1955, the Bureau of Reclamation took one of the farm's flood gates for the "Tracy Fish Facility (TFF)." The diversion pump was placed according to Government Construction Engineers specifications at Delta Mendota Canal station L53 + 50.

The DMC Intake has a history of erratic water levels caused by plugged TFF trash racks. In 1980, we tried to installing a new third water diversion (\$40,000 + administrative costs) in front of the TFF. This diversion was ineffective because Jones pumping draws an enormous amount of trash at the TFF. Therefore, the diversion on the DMC is an important way our farm gets water.

In 1955 when the agreement with the Bureau Reclamation was made, no one knew that the Tracy Fish Facility would not only screen fish from the DMC Intake, but would also remove hundreds of millions of pounds of water hyacinth and trash from the Delta. Even in 1980, no one knew all the negative impacts of pumping 5,000 cfs at Jones PP.

Around September 4, 2001, a drastic drop in DMC Intake water levels, due to plugged trash racks at the TFF, caused our pump to burn out. Because the access roads on the DMC Intake embankment had not been maintained by the Bureau of Reclamation, we had to strengthen their access road before we could bring in the huge crane necessary to replace this pump. Unfortunately, we were forced by the Bureau to put in the exact same pump with the specifications from 1955. Since 2001, cavitation problems with the pump due to low water levels have plagued CCLP. This has caused increased pumping costs and many pump repairs. We received no money for our injuries. This is inverse condemnation.

THE 14.8 ACRE FOOTPRINT OF THE CONTROL STRUCTURE WILL CHANGE THE DMC INTAKE

1. Questions regarding Control Structure (CS) on DMC Intake (Jones Channel)
 - A. Does the proposed Control Structure take out our diversion at Delta Mendota Canal station L53 + 50?
 - B. If so, why?
 - C. How will the CWF mitigate CCLP injury if our water diversion is taken?
2. Questions if CWF moves Control Structure to accommodate our diversion
 - A. "The footprint of the structure changed from 2.2 acres to 14.8 acres" (SWRCB 113 3-2 line 12). The Conceptual Engineering report has no conceptual rendering of this new structure. What will the 7X bigger structure look like? How tall will it be?
 - B. The "Control Structure Plan and Sections" in DWR-1305 (p. 87-89) appears simplistic. Where are details that show the changed Control Structure that is now 7X larger – 14.8 acres?
 - C. Why is the footprint of the structure 7X larger?

- D. Is there modeling¹ or an engineering analysis as to how this Control Structure will work in relation to my diversion in the DMC Intake?
- E. How will the Control Structure operations affect tidal flow in DMC Intake? Has this been modeled? If so, where is the modeling?
- F. CCLP has year round water rights/license. During construction, will CCLP be compensated for every day that water is not available? CCLP would like permit terms that beyond one single day that water is not available, CWF will pay \$50,000 per day without going through any claim process as no water at crucial times can ruin crops. Since CWF claims that the DMC Intake will not be without water for more than part of one single day, this term should be no problem.

3. Questions about the Control Structure and Subsidence

- A. Impact Soils-3 in the Supplemental EIR/EIS, Exhibit 113, Chapter 10, refers to “Property Loss, Personal Injury, or Death from Instability, Failure, and Damage from Construction on or in Soils Subject to Subsidence as a Result of Constructing the Proposed Water Conveyance Facilities. (p. 10-6 at 8-10.) Are the soils for where the Control Structure is located subject to subsidence?
- B. What impacts would there be if there was subsidence during construction? During operation?
- C. Chapter 10 of the Supplemental EIR/EIS states that risks of subsidence will be addressed by geotechnical studies and “state and federal design standards and guidelines” (Exhibit SWRCB-113, p. 10-6 at 38.) Where are those studies?
- D. Why is the draft 2011 geotechnical data report the last report listed in the Supplemental EIR (Draft Phase II Geotechnical Investigation— Geotechnical Data Report—Pipeline/Tunnel Option. August 22, 2011. Revision 1.1. Delta Habitat Conservation and Conveyance Program, p. 10-9.) Was this report ever finalized? If not, why not?
- E. Have any geotechnical studies been done in the area of the Control Structure?

¹ Throughout this document all references to “modeling” also includes studies and investigations.

F. What “state and federal design standards and guidelines” apply to the Control Structure?

G. Who will review the Control Structure design and construction plan for conformance with the guidelines?

4. Operation Isolated North Delta Operation (DWR 1304 5-6, 5.1.6.2).
“Only BTF is used in this scenario, and the CCF intake and the Tracy Fish Facility gates will be closed.”

A. How will CCLP access its year round water rights if the gates are closed?

B. If the “Tracy Fish Facility gates” refer to the Control Structure on the DMC Intake, how will water be drawn to our diversion if the CS gate is closed? What if the TFF trash racks are plugged with debris?

C. Where is this modeled how the Isolated North Delta Operation will affect my diversion in the DMC intake?

5. Potential Dual Operation with WaterFix BTO (DWR 1304 5-6, 5.1.6.3).
“Under the dual source operation scenario, control gates will control flow out of BTF, CCF and the Old River to meet target deliveries at both Banks and Jones PP’s... “The control scheme will require flow meters, WSE transmitters, and a sophisticated SCADA system controls.”

A. Could you explain the SCADA system and how it relates to the CWF operations?

B. How is CCF not considered part of the CWF if it is part of this sophisticated SCADA system?

C. Where is there a model of this sophisticated system? What would be the impact to CCLP’s water rights and diversions?

D. What happens when the sophisticated system fails?

E. What happens 10 years down the road when the sophisticated system is obsolete and is not maintained properly? Will DWR/CVP/CWF pay for higher pumping costs, burnt out pump replacement, and lost crops caused by SCADA system failure? Will DWR agree to immediate payments to CCLP for damages without going through any claim process as a permit term?

6. Throttling the WSE at Control Structure

“The open channels that feeds Banks and Jones PP downstream of the Skinner Fish Facility and downstream of the Trach Fish Facility must maintain a lower WSE from all three sources to maintain flow control of all the throttling gates at each source. (DWR 1304 5-6, 5.1.6.3)

A. Since farmer will not be able to depend on tides for water level, will DWR/CVP/CWF pay for pumping costs and pump replacement costs due to lower WSE? Will DWR agree to immediate payments to CCLP without going through any claim process as a permit term?

B. Will DWR/CVP/CWF pay for crop failure if there is not sufficient water for pumping? Will DWR agree to immediate payments to CCLP without going through any claim process as a permit term?

7. Implications of WaterFix BTO on Current SWP & CVP Operations DWR 1304 5-14, 5.5

“Removing tidal influence on water levels upstream of both export pumping plants when diverting from BTF.”

A. Do you have modeling of how this will affect CCLP’s DMC diversion with tidal waters?

B. “Receiving water from BTF will require a greater level of daily operational coordination between DWR & Reclamation.” Was this in the approved plan? If not this is a huge operational change -where is the operations information? How will CCLP’s water rights be protected if there are operational mishaps? Has DWR made any attempt to determine impacts to CCLP’s diversions or water rights? Will DWR commit to permit terms intended to protect CCLP’s diversions and water rights?

C. “Common scheduling of individual pump operations at both Banks and Jones PP will be needed to manage the WSEs and volumes in both BTF & CCF & associated conveyance facilities.” Is this in the approved plan? How will CCLP water rights be protected if there are scheduling mishaps? Why is CCF included if it is not part of the CWF? Will DWR commit to permit terms intended to protect CCLP’s diversions and water rights?

- D. "Utilizing a common conveyance system serving BTF that would be connected to both Banks and Jones PP." What is this talking about? (South Tunnels & South Tunnels Outlet Structure?) Where is this in the approved plan? Where is the modeling to show how this affects CCLP's diversion in the DMC Intake?

8. South Tunnel Questions

- A. Were the 1.6 miles of South Tunnels a part of the approved plan?
- B. Impact Soils-4 in the Supplemental EIR/EIS, Chapter 10, refers to Risk to Life and Property as a Result of Constructing the Proposed Water Conveyance Facilities in Areas of Expansive, Corrosive, and Compressible Soils (p. 7 at 8-9.) Are the soils that the South Tunnels will be constructed in expansive or compressive?
- C. The South Tunnels are routed near Clifton Court Forebay. What would be the potential impacts if the South Tunnels leaked in that location because of expansion or compression?
- D. Chapter 10 of the Supplemental EIR/EIS states that risks of expansive or compressive soils will be addressed because DWR will be required to design and construct the facilities in conformance with "state and federal design standards and guidelines" (Exhibit SWRCB-113, p. 10-7 at 32.)
- E. What "state and federal design standards and guidelines" apply to the South Tunnels? Who will review the South Tunnel design for conformance with these standards?
- F. How will the South Tunnels operate? Where is the operations information in the Conceptual Engineering Report, DWR 1304?
- G. How much will the 1.6 miles of tunnels cost?
- H. Is this part of the \$17 billion total cost?
- I. Where are the studies and modeling that show how CCLP's diversion in the DMC Intake will be affected by the South Tunnels?

9. Bouldin Island Construction Questions

- A. John Bednarski's testimony refers to Exhibit DWR-1309 (p. 27 at line 20.) Exhibit DWR-1309 is a draft contract to begin construction on the Bouldin Island Tunnel Launch Pad, tentatively in December of 2018. Why December of 2018?
- B. How do you expect to meet the commitments to do more complete geotechnical exploration and engineering design if you start construction in December 2018?
- C. Who has reviewed the design for the Bouldin Island Tunnel Launch Pad for conformance with applicable state and federal guidelines?
- D. Exhibit DWR-1309 states on p. 4:
Pursuant to Document 00703 – Applicable Laws and Regulations, Contractor shall obtain necessary permits and licenses not obtained by the Department.

So the contractor will be responsible for obtaining any further permits?

E. Under Borrow Areas, Exhibit DWR-1309 states:

1.11 PROJECT CONDITIONS

1. Borrow Areas

- a. The Contractor is responsible for finding earthfill for tunnel shaft pads and embankment. Where will the Contractor get this dirt? What type of dirt is needed for the shafts and embankments?
- b. The Contractor shall be responsible for all loading, hauling, and unloading of borrow material. How will the "dirt" get to the site? By barge or by truck?
- c. Do you have a detailed study for Bouldin Island identifying where the fill/dirt will come from on the island?
- d. If not, how do you expect the contractor to identify sources for the fill/dirt?

10. South Tunnel Outlet Structure DWR 1305 pdf 84 & 85(attached)

- A. What is a Dual Conveyance Facility at the South Tunnels Outlet Structure? DWR 1305 pdf 84
- B. How will the Dual Conveyance Facility operate in specific terms?
- C. Was the "South Tunnel Outlet Structure" part of the approved plan? Why is it not included in DWR 1304 5-8, 5.3.2. Overall Operation of System Components?

- D. Where is the modeling of how the “South Tunnel Outlet Structure will work in conjunction with the existing DMC Intake and Jones pumping plant?
- E. The approved plan had a simple canal connection. What is the estimated cost of the South Tunnel Outlet Structure?
- F. Will this “South Tunnel Outlet Structure” change the DMC Intake (Jones Channel)? Could you describe how it will change the DMC?
- G. Where is the operations information for the “South Tunnel Outlet Structure”?
- H. Who will operate this structure DWR or Bureau? What documents describe how this operation or joint operation will work?
- I. How will the operations of the South Tunnel Outlet Structure affect my diversion and my water rights?

11. Agricultural Delivery & Drainage Ditches DWR 1304 24-36, 24.13.7

CCLP believes that the damages caused by the addition of the Control Structure and the South Tunnel & South Tunnel Outlet Structure to the DMC intake cannot be mitigated. If CWF does not take all of CCLP, will CWF/DWR/Bureau provide:

- A. New pumping plant in DMC Intake with special modifications for control structure and special accommodations to prevent trespassing by fishermen?
- B. New extended pipe delivery?
- C. New delivery and drainage system?
- D. New drainage pumping plant?
- E. New access roads on top of DMC Intake embankment - built to a high standard so that CWF/DWR/Bureau can easily replace CCLP pumps when they burn out.

F. Agree to all of the above as a permit condition?

12. Liquefaction – EARTHQUAKES DWR 1304 4-11, 4.2.1.6

“Available subsurface information indicates that the potential for liquefaction exists along all sides of the existing Clifton Court Forebay. For the purpose of the conceptual design, it is assumed that this analysis is valid for the area of the BTF. As more subsurface data is collected, additional liquefaction analyses should be performed to evaluate embankment stability and to determine potential mitigation measures.”

- A. Doesn't this analysis also indicate that CCF embankments are subject to failure from liquefaction?
- B. If CCF embankments fail from liquefaction, couldn't it also take out BTF?
- C. When was the most recent seismic hazard analysis for CCF embankments?

13. Flood Protection Considerations DWR 1304 4- 12, 4.2

“The conveyance facilities are considered to be critical lifeline facilities for the State of California.”

- A. Given the CCF Intake structure failure in March of 2017, how can CWF ignore the problems with the aging CCF?
- B. Given the fact that the embankments of the CCF do not meet 200 year flood standards, how can CWF and the Board ignore flood safety measures for the CCF?
- C. Given the fact that DWR admits the CCF has under-seepage problems, how can CWF ignore installing slurry cutoff walls on all sides of the CCF to help prevent embankment failure?

13. Hydrogen Sulfide and Emissions

- A. Could the excavations for Byron Tract Forebay cause the emission of Hydrogen Sulfide?
- B. Could excavations for borrow fill for Byron Tract Forebay cause emission of Hydrogen Sulfide?

- C. Exhibit DWR-1306, p. 13 shows new tunnel muck pile to the North and West of the new Byron Tract Forebay. Could the tunnel muck piles emit Hydrogen Sulfide gas?
- D. The Supplemental EIR/EIS has a table of emissions on p. 22-9 (Table 22-2.) Why is Hydrogen Sulfide gas not included in the table of emissions?
- E. Has there been any analysis of Hydrogen Sulfide gas emissions?

14. Recreation

During Ms. Womack's cross exam of Mr. Bednarski on Friday, August 3, 2018, Ms. Womack asked Mr. Bednarski to show where the recreation activities at South of the Clifton Court Forebay mentioned in SWRCB 113 CH 15-2 line 28 were located. Mr. Bednarski pointed out water skiing on West (Western) Canal. While it's unfortunate that Mr. Bednarski did not realize this was East of the CCF, it is even more unfortunate that Mr. Bednarski appeared to not know that DWR encourages fishing on the South Bank of the CCF. In a meeting between CCLP & DFD required by Tam Doduc, on Friday, August 26, 2016, transcripts show Delta Field Division Chief, Diana Gillis, spoke in great detail about fishermen on the South Bank of the CCF. (Attached)

According to SWRCB 113 p 15-2 line 28, "Construction of the Byron Tract Forebay under the proposed project would help reduce the impact on recreation activities on and near Clifton Court Forebay's south embankment." Because there will be noisy construction for up to 11 years, CCLP fears their property will be inundated with fishermen and their families looking to fish on the South banks of the CCF who will park on Herdlyn Road and cut across our fields. Trespassers are a major source of injury for CCLP. The CCF runs an attractive nuisance when they do not maintain their security fences around the CCF and they encourage fishing at the CCF Intake.

- A. What measures are DWR going to take to provide public access, public parking, and public bathrooms at Clifton Court Forebay south embankment during the 11 year construction process?
- B. As part of the permit terms, will DWR pay compensation for any damages suffered by CCLP due to trespassers as a result of construction without going through any claim process? Will DWR indemnify CCLP from lawsuits arising from fishermen trespassing across our land?

15. Would DWR agree that the most effective way to resolve these issues of impacts to CCLP would be a permit term requiring DWR to purchase CCLP? If no, please explain in detail why not?

CCLP makes a formal request for a Sur-Rebuttal due to change of project and substantial engineering and operation changes as well as missing modeling, studies and information. CCLP could be willing to consider foregoing right to Sur-Rebuttal if DWR would agree to purchase all CCLP property as a condition of Permit Approval.

Sincerely,

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):

CCLP Part Two Questions

to be served by **Electronic Mail** (email) upon the parties listed in Table 1 of the **Current Service List** for the California WaterFix Petition Hearing, dated August 7, 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.

For Petitioners Only:

I caused a true and correct **hard copy** of the document(s) to be served by the following method of service to Suzanne Womack & Sheldon Moore, Clifton Court, L.P., 3619 Land Park Drive, Sacramento, CA 95818:

Method of Service: N/A

I certify that the foregoing is true and correct and that this document was executed on 8-9-2018
Date

Signature: 

Name: Suzanne Womack

Title: General Partner

Party/Affiliation: Clifton Court, L.P.

Address: 3619 Land Park Drive
Sacramento, CA 95818

NOTE:
 1. SHEETS BT-C-0099B AND BT-C-0099B
 2. ALTERNATIVES FOR CONTROL STRUCTURES
 3. CONTROL STRUCTURES (E.G., NUMBER OF
 GATES, GATE TYPE, MATERIAL) WILL BE
 BASED ON ESTABLISHED OPERATIONAL
 SCHEMES AND FLOW CONDITIONS.



PROJECT NO.	20070
REV. NO.	0
DATE	08/05/06

CONCEPTUAL ENGINEERING REPORT
 CALIFORNIA WATERFIX
 BANKS INTAKE CHANNEL TO JONES INTAKE CHANNEL



PLAN
 100-307

DESIGNED	APPROVAL	RECOMMENDED
DRAWN	REVISION BY	
CHECKED		

DATE	BY	APP'D
JULY 2011	FINAL	
08/05/06		

Printed by:

Edited by:

Sincerely,

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DEPARTMENT OF WATER RESOURCES

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1001 I Street, East Training Room

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Sacramento CA 95814

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Transcript of Proceedings

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Friday, August 26, 2016

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10:30 a.m.

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 COPY

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25 Brittany Flores, CSR 13460

CALIFORNIA REPORTING, LLC (510) 224-4476

1 APPEARANCES

2

3 Staff:

4 Ms. Cathy Crothers, legal counsel

5 Mr. Allan Davis, real estate agent

6 Ms. Diana Gillis, Delta Field Division Chief

7 Mr. Mark Holderman, South Delta Branch Chief

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9 Also present:

10 Suzanne Womack, Clifton Court, L.P.

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Fishing

1 they have bicycles mostly.
2 MS. WOMACK: Yeah
3 MS. GILLIS: And they ride all the way
4 across.
5 MS. WOMACK: Oh, no, no, no.
6 MS. GILLIS: And you're absolutely right.]
7 MS. WOMACK: Oh.
8 MS. GILLIS: The best fishing is right there] Best Fishing
9 at the intake structure. It is.
10 MS. WOMACK: Uh-huh. Right there. Uh-huh.
11 MS. CROTHERS: So some of them do go on this
12 road or --
13 MS. GILLIS: Yes.
14 MS. CROTHERS: -- embankment for the State] ←
15 property.
16 MS. GILLIS: And they -- they can come --
17 they can peddle all the way around.
18 MS. CROTHERS: So they have access to the] ←
19 state property, but some people choose not to do that.
20 MS. WOMACK: Whereas, and you have to
21 understand, we have had this road condemned here. So
22 from here to here is private road and it's not --
23 MS. CROTHERS: And so people are going this]
24 way, but some people are trespassing across your
25 property.

1 MS. WOMACK: Yes. And, you know, this
2 was -- you can see, there were six or eight cars that
3 day -- one, two, three -- this is an ongoing nuisance
4 problem, an attractive nuisance.

5 MR. DAVIS: Can I see that.

6 MS. WOMACK: Yeah. I asked -- yeah -- I
7 asked Mr. Torgersen to indemnify us from -- because, of
8 course, we're afraid of being sued for somebody, oh,
9 slipping and falling and hitting themselves, and then,
10 you know, all of this stuff. You're running something
11 where right now, hey, for another, what, 2017, these
12 gates -- everybody knows the gates are open. The fences
13 are open. Those fishermen all know each other somehow.

14 MS. GILLIS: You know, we do fix part of the
15 same part of fence line. We fix constantly.

16 MS. WOMACK: So it's not being solved.

17 MS. GILLIS: So it's not being solved.
18 But we're doing what we can. We do our weekly
19 inspections. The fence is cut, we fix the fence.

20
21 MS. WOMACK: It's not fixed right now, the
22 one that --

23 MS. GILLIS: Every, every small fix that we
24 can do -- there's two major fixes that we have to wait
25 for environmental --