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5	Principal, California Water Research
6	BEFORE THE
7	CALIFORNIA STATE WATER RESOURCES CONTROL BOARD
8	
9	HEARING REGARDING PETITION CALIFORNIA WATER RESEARCH'S
10	FILED BY THE DEPARTMENT OFRESPONSE TO THE CALIFORNIAWATER RESOURCES AND U.S. BUREAUDEPARTMENT OF WATER
11	OF RECLAMATION REQUESTING RESOURCES' MOTION TO QUASH THE
	CHANGES IN WATER RIGHTS FOR THE SUBPOENA OF TIM WEHLING CALIFORNIA WATERFIX PROJECT
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15	Deindre Des Leudins animeinel et Celifernie Weten Dessenth ("Celifernie Weten
16	Deirdre Des Jardins, principal at California Water Research ("California Water
17	Research") hereby requests that the Hearing Officers deny the California Department of Water
18	Resources' motion to quash the subpoena of Tim Wehling, Chief of the Geotechnical and
	Engineering Services Branch of the Department of Water Resources' Dams and Canals Section.
19	As explained below, cross-examination of Mr. Wehling is relevant to whether Clifton
20	Court Forebay is a reasonable diversion of water under Article X, section 2 of the California
21	

Constitution, to whether the new Waterfix BTO project is in the public interest, and also to

permit terms that the Board might impose as part of any order approving the Change Petition.

For these reasons, cross-examination of Mr. Wehling is necessary and relevant to this hearing,

and California Water Research requests that the Hearing Officers allow Mr. Wehling to be

subpoenaed for cross-examination.

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28 California Water Research's Response to the California Department of Water Resources' Motion to Quash the Subpoena of Tim Wehling

I. BACKGROUND

Clifton Court Forebay impounds up to 28,653 acre feet of water, according to Petitioner's July 2018 Conceptual Engineering Report (DWR_1304, p. 5-2.) Uncontrolled release of the water due to a failure of the embankment could have major adverse impacts on legal users of water and third parties near Clifton Court Forebay, including property damage, personal injury, or death. It could also potentially cause a failure of the new Byron Tract Forebay.

Ms. Suzanne Womack has reported seepage on her property adjacent to Clifton Court Forebay, and has provided documentation of the seepage and testimony for the WaterFix hearing. While Ms. Womack's primary concern has been crop damage, there are more serious safety concerns raised by seepage adjacent to the base of an earthen dam. As will be testified by Dr. Clyde Thomas Williams (Exhibit DDJ-300), FEMA guidelines state that seepage is the cause of about half of all dam failures (Federal Emergency Management Agency, *Evaluation and Monitoring of Seepage and Internal Erosion, Interagency Committee on Dam Safety*, 2015, Exhibit DDJ-304.)

Underseepage from Clifton Court Forebay has been reported since the forebay was built. Adequate assessment and monitoring of the seepage, and implementation of any needed remediation is thus a fundamental requirement for public safety. For Clifton Court Forebay to be a reasonable diversion of water under Article X, section 2 of the California constitution, public safety and potential failure modes must be adequately addressed. For the WaterFix project to be in the public interest, building of Byron Tract Forebay must not come at the expense of needed remediation for Clifton Court Forebay.

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II. PART 1 CROSS-EXAMINATION

Issues of the seismic adequacy of the existing Clifton Court Forebay embankments were raised in Part 1 of the WaterFix hearing on cross-examination of John Bednarski and Prada Pirabarooban. Mr. Pirabarooban testified that new embankments would be re-built inside the -2-

California Water Research's Response to the California Department of Water Resources' Motion to Quash the Subpoena of Tim Wehling

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existing Clifton Court Forebay, and that the safety of the embankment would be evaluated as part of the design. Pirabarooban also testified that he expected that the foundation solids would be improved. (R.T. August 23, 2016, 31:23-33:6.) The reconstruction of the embankments appeared to make issues of the safety of the existing embankments moot, including both seismic and seepage hazards.

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III. CHANGES TO THE WATERFIX PROJECT

The WaterFix project has since been changed to build a new dam, Byron Tract Forebay, instead of expanding Clifton Court Forebay. There are no longer plans for reconstruction of the Clifton Court Forebay embankments or improvement of the foundation under the forebay embankments. With this change in the project, the adequacy of the evaluation by the Department of Water Resources of the seepage reported by Ms. Womack is relevant to key hearing issues, and also steps taken for remediation.

Tim Wehling, Chief of the Geotechnical and Engineering Services Branch of the Department of Water Resources' Dams and Canals Section, sent a memo to Ms. Womack evaluating seepage, dated May 26, 2017 (Exhibit DDJ-302.) Based on the forebay embankments consisting of clay soils, Mr. Wehling made an assessment that seepage was not likely to occur. Wehling's memo cites DWR's *Bulletin 200, California State Water Project, Volume III: Storage Facilities* (Exhibit DDJ-303.)

But as Dr. Williams will testify, Bulletin 200, Volume III documents that there is one to twelve feet of peat soil under the Clifton Court Forebay embankments (Exhibit DDJ-301.) Dr. Clyde Thomas Williams testifies that significant underseepage would be expected with this depth of peat soils in the foundation for the embankments. Tim Wehling is called as a witness to examine why his geotechnical evaluation failed to even mention the issues with the foundation of the Clifton Court Forebay embankments.

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California Water Research's Response to the California Department of Water Resources' Motion to Quash the Subpoena of Tim Wehling

There is also a significant issue that the failure to do adequate geotechnical evaluation of the foundation for the Clifton Court Forebay embankments is part of a pattern and practice by the Department of Water Resources. The failure by the Department of Water Resources to do adequate geotechnical assessment of the foundation for the Oroville emergency spillway caused a crisis that resulted in the evacuation of 200,000 people, and major distress for downstream inhabitants, as testified to by Nicky Suard in Part 2 of this hearing.

In sum, there are significant issues with the Department of Water Resources' evaluation of reports of seepage from Clifton Court Forebay which are now relevant to key hearing issues, given the changes to the WaterFix Project. Examination of the issues requires cross-examination of Mr. Wehling, the Geotechnical engineer who did the evaluation.

Dated July 24, 2018

Respectfully submitted,

PPA

Deirdre Des Jardins Principal, California Water Research

8 California Water Research's Response to the California Department of Water Resources' Motion to Quash the Subpoena of Tim Wehling

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1	STATEMENT OF SERVICE
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3	CALIFORNIA WATERFIX PETITION HEARING
4	Department of Water Resources and U.S. Bureau of Reclamation (Petitioners)
5	I hereby certify that I have this day submitted to the State Water Resources
6	Control Board and caused a true and correct copy of the following document(s):
7 8	California Water Research's Response to the California Department Of Water Resources' Motion to Quash the Subpoena of Tim Wehling
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 July 3, 2018, posted by the State
11	Water Resources Control Board at <u>http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_</u>
12	waterfix/service_list.shtml
13	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
14	necessary, and submit another statement of service that describes any changes to the date and method of service for those parties.
15	
16	I certify that the foregoing is true and correct and that this document was executed on July 24, 2018.
17	
18	
19	PDA
20	Signature:
21	Name: Deirdre Des Jardins
22	Title: Principal, California Water Research
23	Party/Affiliation: Deirdre Des Jardins
24	
25	Address: 145 Beel Dr
26	Santa Cruz, California 95060
27	
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