

1 MATTHEW L. EMRICK (SBN 148250)
2 LAW OFFICES OF MATTHEW EMRICK
3 6520 Lone Tree Blvd., #1009
4 Rocklin, CA 95765
5 Telephone: (916) 337-0361
6 Facsimile: (916) 771-0200
7 matthew@mlelaw.com

8
9 Attorneys for Protestant,
10 Clifton Court, L.P.

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

BEFORE THE
CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

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

OBJECTION AND MOTION TO
STRIKE DWR RESPONSES TO
CLIFTON COURT, L.P.'S CROSS
EXAMINATION QUESTIONS

Clifton Court, L.P. ("CCLP") respectfully moves that the Hearing Officers strike the responses by the Department of Water Resources ("DWR") to Clifton Court, L.P.'s cross-examination questions for DWR's Part 2 Rebuttal Witnesses. The questions appear to have been treated as an interrogatory by DWR's attorneys. The answers are not legally adequate as a response to cross-examination questions, in that the answers are not signed and there is no indication of whether the witness or the attorney

1 produced a specific answer. Only DWR's witnesses should answer the cross-
2 examination questions.

3 In addition, some of the questions are not answered because DWR's attorneys
4 objected to the questions. Clifton Court, L.P. requests that the Hearing Officers overrule
5 the objections, based on Chair Doduc's ruling during CCLP's 8-10-18 cross examination
6 of Panel Two. DWR's responses to many of CCLP's questions are also nonresponsive,
7 and at times misleading and factually inaccurate.

8 The discussion below explains the inadequacy of DWR's responses to each of the
9 15 questions, referring to DWR's witness/attorney responses to CCLP written part 2
10 cross-examination questions simply as "DWR."

11 **Question CCLP 1A.** Does the proposed Control Structure take out our diversion at
12 Delta Mendota Canal station L53+50?

13 **DWR response to 1A:** *"DWR accepts Ms. Womack's representation that station*
14 *L53+50 is the diversion point of CCLP. In response to this new information, DWR*
15 *plans to explore other locations for the proposed DMC Control structure that will*
avoid alterations to the diversion point at station L53+50 and, in the alternative
commits to moving or modifying the CCLP diversion point," (DWR p.2 lines 4-9)

16 **CCLP objection** – Misstates the evidence.

17 **Basis of objection** -- Petitioner claims that CCLP's diversion L53+50 is "new
18 information." But on August 30, 2000, Floyd Summers, then Program Coordinator for
19 the "Tracy Fish Facility Improvement Program," (CALFED) wrote Sheldon Moore
20 enclosing the November 3, 1955 Land Purchase Contract with the United States
21 Department of the Interior, Bureau of Reclamation, Central Valley Project, California.
22 The farm's flood gate diversion and farm property were taken for the "Tracy Fish
23 Facility" at the head of the DMC Intake in 1955. According to the contract, "The United

1 States agrees to transport and convey through said canal to the pump constructed by
2 Vendor said Vendor's riparian, appropriative or prescriptive waters. (Attachment A.-CVP
3 contract for reference purposes as to CCLP Objections to DWR Responses). Petitioners
4 have records of CCLP's diversion at L53+50 and of DOI's 1955 contract.

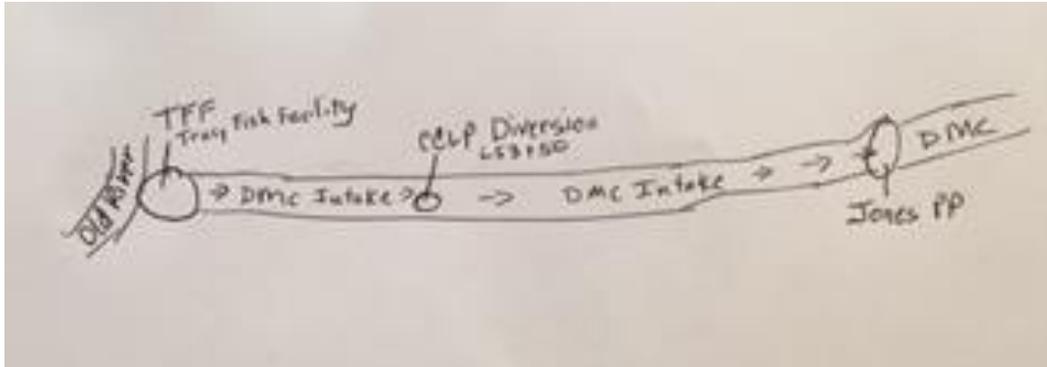
5
6 **Question CCLP 1B.** If so, why? (Why is Control Structure taking out diversion)

7 **DWR'S response 1B:** *"Through preliminary design, DWR intends to investigate*
8 *moving the DMC Control Structure from the spot proposed in the Supplemental*
9 *EIR/EIS to the west...If moving the structure is infeasible, DWR will relocate the*
10 *diversion point to the east of the DMC Control Structure, closer to the Delta, or will*
11 *modify station L53 + 50 to allow diversions to continue..." (DWR P. 2 Lines 14-21)"*

12 **CCLP objection** – CCLP objects to DWR's response as misstating the evidence
13 and non-responsive.

14 **Basis of objection** – The CVP facility at Clifton Court consists of the 1950's built
15 Tracy Fish Facility (TFF) with trash rack, fish screen, and no gate; the Delta Mendota
16 Canal (DMC) Intake with CCLP's diversion at L53+50; and Jones Pumping Plant. Jones
17 PP draws the water through the DMC Intake "effectively" transporting and conveying our
18 year round water rights to our diversion (CCLP16). Moving the location of the new 14.8
19 Control Structure to the west will still obstruct CCLP's DMC Intake, as shown in the
20 sketch below.

21 CCLP notes that many of DWR's answers to CCLP questions refer back to the
22 factually inaccurate, misleading, and nonresponsive statements in DWR response 1A &
23 1B.



1 Sketch of current CVP Facility with CCLP intake

Question CCLP 2. Questions if CWF moves Control Structure to accommodate our diversion

A. "The footprint of the structure changed from 2.2 acre 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?

DWR response 2A: *"It is incorrect to say that the structure is seven times bigger because the size is referring to the footprint not the structure."* (DWR p .3 lines 7-9)

CCLP objection -- DWR's response 2A is non-responsive and misrepresents the evidence. The Supplemental EIR/EIS clearly says "footprint of the structure." DWR's witnesses should describe what this 14.8 acre Control Structure site and the 2.2 acre Control Structure site will look like so that changes can be properly evaluated.

Question CCLP 2D. Is there modeling analysis as to how the Control Structure will work in relation to my diversion in the DMC Intake?

DWR response 2D: *"Through the conceptual engineering work completed to date, engineering analyses including hydraulic evaluation of the existing and new facilities, were conducted to establish design criteria for the California WaterFix. DWR will design the DMC control structure so as not to interfere with the existing diversion point it will mitigate by moving the DMC control structure, moving the station L53+50"*

1 *diversion point or otherwise modifying the existing diversion point as described in the*
2 *above responses. All of these mitigation options will result in station L53 +50*
3 *retaining its existing access to and source of water in the southern Delta.” (DWR p. 4*
4 *lines 4-13)*

5 **CCLP objection** -- This answer is vague and nonresponsive, and misstates the
6 evidence. It is completely unclear what “hydraulic evaluation including existing and new
7 facilities” means, and whether there was actual hydraulic modeling of the control
8 structure. DWR also states in footnote 1, page 4, that “DWR has conducted
9 engineering analysis in the CER evaluating existing and new facilities to establish
10 design criteria for the project”. What exactly is this engineering analysis?

11 CCLP also objects to the second part of the answer, starting with “DWR will design”
12 as beyond the scope of the question.

13 **Basis of objection** -- CCLP needs to know if the analysis uses modeling, and
14 obtain any modeling well in advance of Part 2 sur-rebuttal so that CCLP can have
15 appropriate experts perform analysis of the modeling.

16 CCLP also does not have “access to and source of water in the southern Delta”,
17 CCLP has a contract with the United States, Department of the Interior, Bureau of
18 Reclamation, Central Valley Project that provides that the Petitioner will in the Delta-
19 Mendota Canal Intake “transport and convey through said canal to the pump
20 constructed by Vendor said Vendor’s riparian, appropriative or prescriptive waters...”
21 CCLP notes that other DWR responses refer to DWR response 2D and should be
22 considered nonresponsive, vague, ambiguous, and misleading.
23

1 **Question CCLP 2E.** How will the Control Structure operations affect tidal flow in
2 DMC Intake? Has this been modeled? If so, where is the modeling?

3 **DWR response 2E:** *“Based upon the prior answers it is anticipated that there will be
4 no impacts to the tidal flow related to station L53+50”.*

5 **CCLP objection** - Non-responsive. What specifically is the answer “no impacts to
6 tidal flow” based on? DWR needs to state whether or not the effects of tidal flow on the
7 DMC intake have been modeled, and if so, describe the modeling and where it can be
8 obtained.

9 **Question CCLP 2 F.** CCLP has year round water rights/license. During
10 construction, will CCLP be compensated for every day that water is not available?
11 CCLP would like permit terms that beyond one single day that water is not available,
12 CWF will pay \$50,000 per day without going through any claims process as no water
13 at crucial times can ruin crops. Since CWF claims that the DMC Intake will not be
14 without water for more than part of one single day, this term should be no problem.

15 **DWR response 2F:** *“Should the CA WaterFix impact CCLP’s diversion of water, it
16 will be made whole as described in response to question 1B.”*

17 **CCLP objection** – Vague and non-responsive. The answer to 1B states that
18 Petitioners will move CCLP’s diversion or the Control Structure. What does DWR mean
19 when it says it will make CCLP whole? DWR’s witnesses need to answer the question
20 as to whether CCLP will be paid for days during construction when water is not
21 available.

22 **Basis of objection** -- Ten days of no water can damage or wipe out an entire year
23 of crop production – a form of inverse condemnation. The terms, “make whole” are
24 vague and non-responsive, especially given DWR’s history of refusing to pay for
25 damages sustained by CCLP.

1 **Question CCLP 3.** Questions about the Control Structure and Subsidence

2 A. Impact Soils-3 in the Supplemental EIR/EIS, Exhibit 113, Chapter 10,
3 refers to "Property Loss, Personal Injury, or Death from Instability, Failure, and
4 Damage from Construction on or in Soils Subject to Subsidence as a Result of
5 Constructing the Proposed Water Conveyance Facilities. (p. 10-6 at 8-10.) Are
6 the soils for where the Control Structure is located subject to subsidence?

7 **DWR response 3A:** *DWR has conducted some geotechnical work in the vicinity
8 of the proposed DMC control structure. Additional geotechnical work is still
9 necessary and will be conducted through preliminary and final design as
10 disclosed in the CER.*

11 **CCLP objection** -- Non-responsive. DWR's witnesses need to indicate whether the
12 geotechnical work that DWR did in the vicinity of the proposed Control Structure shows
13 that the soils are subject to subsidence.

14 **Question CCLP 3B.** What impacts would there be if there was subsidence during
15 construction? During operation?

16 **DWR response 3B:** *DWR objects that the question is vague and ambiguous as to
17 the location of any subsidence during construction or operation. DWR answers this
18 question assuming that the question refers to the location of the DMC control
19 structure and responds as follows: If after further geotechnical work is completed
20 there are indications that some potential vulnerability in the soils located at the
21 Control Structure exist, DWR will remediate the site before any construction begins
22 by stabilizing the soils. Thus, DWR anticipates there will not be any subsidence
23 impacts during or after construction.*

24 **CCLP 3B objection** -- Non-responsive.

25 **Basis of objection** -- CCLP did not ask what steps DWR would take to mitigate the
26 risks from subsidence, but what the impacts would be. CCLP requests that DWR's
27 witnesses answer the question asked. Question 3B refers to the DMC Control
Structure location, as stated in question 3A.

Question CCLP 3C. 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?

DWR response 3C: *The geotechnical studies completed to date serve as the basis of the CER, as previously testified to Mr. Bednarski and Mr. Paramaribo, and are shown within the CERs (exhibits DWR-1304, DWR-1305 and DWR-1306). Future geotechnical work will be completed through preliminary and final design.*

CCLP 3C objection -- Non-responsive. CCLP asked where the actual geotechnical studies were that DWR has done. If DWR’s witnesses are representing that the reports from the geotechnical studies are in exhibits DWR-1304, DWR-1305, and DWR-1306, DWR’s witnesses should indicate which pages of those exhibits contain the actual geotechnical reports.

Question CCLP 3F. What “state and federal design standards and guidelines” apply to the Control Structure?

DWR response 3F: *DWR is required to design and construct the facilities according to state and federal design standards and guidelines (e.g., California Building Code, American Society of 39 Civil Engineers Minimum Design Loads for Buildings and Other Structures, ASCE/SEI 7-10, 2010. (DWR-1304, p. 10-6, lines 38-40.)*

CCLP objection -- Vague and non-responsive. DWR’s witnesses should indicate what specific “state and federal design standards and guidelines” they believe apply to the Control Structure.

Question CCLP 4. Operation – Isolated North Delta Operation “Only BTF is used in this scenario and the CCF intake and the TFF gates will be closed. (DWR 1304, 5-6, 5.1.6.2.) During hearing, 8-10-18, Mr. Valles confirmed that there are no gates on the TFF and that the gates refer to the Control Structure.

Question CCLP 4A. How will CCLP access its year round water rights if the gates are closed?

DWR response 4A: “See response to question 1B” (DWR p. 8 line 2)

1 **Basis of objection** -- The Tracy Fish Facility (TFF) is an integral, necessary part of
2 the CVP operation, and the question of how the TFF will be operated with the new
3 control structures are properly within the scope of this hearing.

4 **Question CCLP 4C.** Where is this modeled how the Isolated North Delta Operation
5 will affect my diversion in the DMC Intake?

6 **DWR response 4C:** *“There will be no impact to CCLP diversion as described in the*
7 *response to question 1B. Modeling exists for the expected mitigation of any effects*
8 *to CCLP diversions as described in the response to question 2D.” (DWR p.8 lines*
9 *19-21)*

10 **CCLP objection:** The reference to DWR response to 1B is non-responsive. DWR
11 needs to describe what modelling evaluates CCLP operations, not provide general
12 references to modeling of “expected mitigation of any effects.”

13 **Question CCLP 5B.** How is CCF not considered part of the CWF if it is part of this
14 sophisticated SCADA system?

15 **DWR response 5B:** *“California WaterFix does not contemplate any changes to the*
16 *existing Clifton Court Forebay. California WaterFix will be operated as an integral*
17 *part of the CVP/SWP projects.” (DWR p. 9 lines 12-15)*

18 **CCLP objection** - DWR’s response to 5B is vague and ambiguous, because it does
19 not specify whether DWR will change operation of Clifton Court Forebay.

20 **Basis of objection** -- First DWR says the California WaterFix is not going to change
21 Clifton Court Forebay, then it says the California WaterFix will be operated as an
22 integral part of the existing CVP/SWP facilities, including Clifton Court Forebay, with the
23 new SCADA system.

24 **Question CCLP 5 C.** Where is there a model of this sophisticated system
25 (SCADA)? What would be the impact to CCLP’s water rights and diversions?
26
27

1 **DWR response 5C.** *“during preliminary and final design DWR will work on modeling*
2 *new structures as they fit into existing operations and interact with existing*
3 *structures. However, these operations as described above, will not have an impact*
4 *on any legal user of water, including CCLP.” (DWR p.9 lines 22-25)*

5 **CCLP objection** – Nonresponsive. DWR’s witnesses need to explain the basis of
6 their conclusion that the operation of SCADA will have no impact on CCLP.

7 **Question CCLP 5E.** What happens 10 years down the road when the sophisticated
8 system is obsolete and is not maintained properly? Will DWR/CVP/CWF pay for
9 higher pumping costs, burnt out pump replacement, and lost crops caused by
10 SCADA system failure? Will DWR agree to immediate payments to CCLP for
11 damages without going through any claim process as a permit term?

12 **DWR response 5E:** *“DWR objects to this incorrect assumption that the “system”*
13 *would not be maintained.” (DWR p. 10 lines 11-12)*

14 **CCLP objection** -- Nonresponsive. CCLP requests that DWR’s witnesses explain,
15 as a hypothetical, what would happen if there was a SCADA failure due to system
16 maintenance issues.

17 **Basis of objection** -- There is extensive evidence of DWR not maintaining simple
18 systems.

- 19 1. CCLP 8 – Security fence not maintained
- 20 2. CCLP 9 – Security fence photo not maintained
- 21 3. CCLP 40 – Request from DWR, Delta Field Division for CCLP to fix DWR’s
22 drainage pipe – on DWR’s property.
- 23 4. CCLP 56 – Squirrel/animal burrows in embankment of DWR property.

24 **DWR response 5E continued:** *“DWR further objects to the question on the basis*
25 *that it implies that there will be a SCADA failure because it assumes facts not in*
26 *evidence. DWR also objects to the question because it lacks foundation and does*
27 *not provide evidence that a SCADA failure would cause the alleged injury.” (DWR*
p.10 lines 12-15)

1 **CCLP objection** – Nonresponsive. DWR’s witnesses need to answer the questions.

2 **Basis of objection** – DWR has the burden of proof to show that a complex control
3 system will not have unintended impacts.

4 **DWR response 5E continued:** *Finally, DWR objects to the question as outside the*
5 *scope of the hearing as it attempts to circumvent the California Tort Claims Act.*
6 *DWR responds that CCLP will not incur damages as described in the response to*
7 *1B.” (DWR p. 10 lines 15-18)*

8 **CCLP objection** - DWR’s response 5E is misleading in that it claims CCLP will not
9 incur damages from SCADA because of their 1B response. What does moving CCLP’s
10 diversion or the Control Structure in the DMC Intake have to do with SCADA failure
11 causing damages to CCLP?

12 **Basis of objection** -- In response to DWR’s assertion that the question attempts to
13 circumvent the California Tort Claim Act, CCLP provides the following argument. Even
14 though at this time DWR has no evaluation of SCADA - the complex new system that
15 controls the gates at the Control Structures, if harm occurs, based on DWR’s pattern
16 and practice, DWR will not respond to requests for compensation. Then injured parties
17 would have to take Petitioners to court and begin the long legal battle for those injured
18 to attempt to recover damages. This is a form of inverse condemnation. Since
19 Petitioners all have in house legal counsel, these legal battles give them years to not
20 have to pay the price of their injuries. Due to inflation alone, Petitioners win. Since many
21 of those injured have no time or money for extended legal battle, Petitioners win when
22 those injured do not file.

23 For these reasons, CCLP respectfully argues that these issues are within the scope
24 of this hearing, and particularly pertain to the Board’s determination that the project is in

1 the public interest and will not harm legal users of water. Small businesses in the Delta
2 cannot sustain damages and injuries that they have no control over and still remain in
3 business. CCLP will therefore argue that the Board needs to ensure, by permit terms,
4 that Petitioners will pay for any injuries that construction, operation, and maintenance of
5 the California WaterFix causes-especially since Petitioners do not even have a
6 preliminary design of the facilities, a construction plan, or a maintenance plan.

7
8 **Question CCLP 6 A & B.** DWR 1304 5-6, 5.1.6.3 “The open channels that feeds
9 Banks and Jones PP downstream of the Skinner Fish Facility and downstream of the
10 Tracy Fish Facility must maintain a lower WSE from all three sources to maintain
11 flow control of all throttling gates at each source”

- 12 A. Since farmer will not be able to depend on tides for water level, will
13 DWR/CVP/CWF pay for pumping costs and pump replacement costs due
14 to lower WSE? Will DWR agree to immediate payments to CCLP without
15 going through any claim process as a permit term?
16 B. Will DWR/CVP /CWF pay for crop failure if there is not sufficient water for
17 pumping? Will DWR agree to immediate payments to CCLP without going
18 through any claim process as a permit term?

19 **DWR response 6A** “DWR objects to the question as outside the scope of the
20 hearing as it attempts to circumvent the California Tort Claims Act. DWR responds
21 that a permit term is not necessary since as described in 1B, CCLP will remain
22 whole and its operations will not be impacted by the California WaterFix.” (DWR p. 11
23 lines 2-5)

24 **DWR response 6B.** “DWR objects to this question as it assumes facts not in
25 evidence, lacks foundation and is outside the scope of this proceeding to the extent
26 it attempts to circumvent the California Torts Claims Act. DWR responds that as
27 provided in response 1B CCLP will remain whole and its diversions will not be
impacted by the California WaterFix.” (DWR p. 11 lines 11-15).

CCLP objection 6A & 6B. CCLP Objects to DWR non-responsive, and misstates
the evidence.

1 **DWR response 7D:** ...” *The South Tunnels and South Tunnels Outlet Structure are*
2 *part of the 2018 Supplemental EIR/S not the approved Project. There were further*
3 *refinements to mitigate impact to CCLP by relocating the terminal facility to Byron*
4 *Tract and away from the CCLP Property. There is no modeling with respect to*
5 *CCLP’s diversion because the modeling of this operation is wholly within the*
6 *CVP/SWP facilities. However, there will be additionally operations modeling as*
7 *explained above.” (DWR p. 13 lines 9-12)*

8 **CCLP objection** – Non-responsive.

9 **Basis of objection** -- what impact studies show that relocating the terminal facility
10 (Is this the South Tunnels and South Tunnels Outlet Structure?) will mitigate impacts to
11 CCLP? CCLP would like a copy of this study.

12 **Question CCLP 8B.** Impact Soils--4 in the Supplemental EIR/EIS, Chapter 10,
13 refers to Risk to Life and Property as a Result of Constructing the Proposed Water
14 Conveyance Facilities in Areas of Expansive, Corrosive, and Compressible Soils
15 (p. 7 at 8-9.) Are the soils that the South Tunnels will be constructed in expansive or
16 compressive?

17 **DWR response 8B:** *During preliminary and final plan design geotechnical data will*
18 *be obtained and the tunnels will be designed appropriately.*

19 **CCLP 8B objection** -- Non-responsive.

20 **Basis of objection** -- DWR’s witnesses need answer the question. Do DWR’s
21 witnesses have any knowledge of whether the soils that the South Tunnels will be
22 constructed in are expansive or compressive?

23 **Question CCLP 8C.** The South Tunnels are routed near Clifton Court Forebay.
24 What would be the potential impacts if the South Tunnels leaked in that location
25 because of expansion or compression?

26 **DWR response 8C:** *The tunnels will use the same tunnel liner system as the main*
27 *tunnels and significant leakage is not anticipated, as Mr. Bednarski has previously*
and extensively testified in both Part 1 and Part 2.

1 **CCLP 8C objection** -- Non-responsive, and beyond the scope of the question.

2 CCLP requested that DWR's witnesses explain the potential impacts if the South
3 Tunnels leaked near Clifton Court Forebay, not mitigation that DWR was proposing.

4 **Question CCLP 8E.** What "state and federal design standards and guidelines" apply
5 to the South Tunnels? Who will review the South Tunnel design for conformance
with these standards?

6 **DWR response 8E:** DWR would be required to design and construct the facilities
7 according to state and federal design standards and guidelines (e.g., California
8 Building Code, American Society of Civil Engineers Minimum Design Loads for
Buildings and Other Structures, ASCE/SEI 7-10, 2010. (DWR-1304, p. 10-6, lines
38-40.) As stated above DWR licensed engineers will review and approve the plans.

9 **CCLP objection** -- Non-responsive. DWR's witnesses should indicate what specific
10 "state and federal design standards and guidelines" they believe apply to the South
11 Tunnels.

12
13 **Question CCLIP 9A.** John Bednarski's testimony refers to Exhibit DWR--1309
14 (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
15 of 2018?

16 **DWR response 9A:** Construction cannot begin until several regulatory proceedings
17 have concluded and permits are issued. It is common for projects to have draft dates
and they may or may not be met depending on several factors.

18 **CCLP objection:** Non-responsive and beyond the scope of the question. CCLP
19 only asked why the draft contract had a date of December 2018.

20 **Question CCLP 9C.** Who has reviewed the design for the Bouldin Island Tunnel
21 Launch Pad for conformance with applicable state and federal guidelines?

22 **DWR response 9C:** Conformance with applicable state and federal guidelines will
23 begin in preliminary design and concluded in final design. State and federal
guideline conformance is not appropriate at conceptual design.

1 **Question CCLP 10-D** Where is the modeling of how the “South Tunnel Outlet
Structure will work in conjunction with the existing DMC Intake and Jones Pumping
2 Plant?

3 **DWR response 10 D.** “See response to question 8 H.” (Question 8 H. is re: tunnel
costs – “Is this part of the \$17 billion total cost? DWR response 8H is “DWR Objects
4 to this question as outside the scope of this hearing and on relevance grounds.
(DWR p. 15 lines 16-19).

5
6 **CCLP 10D objection** -- DWR’s response is non-responsive and frankly does not
7 relate to the question.

8 **Basis of objection** -- since the “South Tunnel Outlet Structure” connects by
9 “channel” to the DMC Intake and then Jones PP, CCLP needs to know what modeling
10 has been done to see what the impact of this structure will be on the DMC Intake which
11 is part of the CVP facility where CCLP’s diversion is located.

12 **Question CCLP 10 F.** Will this “South Tunnel Outlet Structure” change the DMC
13 Intake? Could you describe how it will change the DMC (Intake)?

14 **DWR response 10F:** The South Tunnel Outlet Structure does not change the DMC.

15 **CCLP objection** -- DWR’s response 10F is evasive and CCLP objects that it
16 misstates the evidence.

17 **Question CCLP 10G.** Where is the operations information for the “South Tunnel
18 Outlet Structure”?

19 **DWR response 10G:** “Detailed discussion on operations of the South Tunnel Outlet
Structure are in 5.3.7 of DWR-1304. The South Tunnel Outlet Structure is not part of
20 the approved Project it was included in the Supplemental EIR/S. (DWR 1304 at
pg.5-11.)

21 **CCLP 10G objection** - DWR’s 10G response is incorrect and therefore
22 nonresponsive.

1 **Basis of objection** -- this response does not address water rights. The response
2 also contradicts DWR's response to 7B, 7C & 7D which states that there will be
3 operational changes but they will be within the CVP facility.

4 **Question CCLP 11.** Agriculture Delivery & Drainage Ditches (DWR 1304 24-36,
5 24.13.7. CCLP believes that the damages caused by the addition of the Control
6 Structure and South Tunnel & South Tunnel Outlet Structure to the DMC intake
7 cannot be mitigated. If CWF does not take all of CCLP, will CWF/DWR/Bureau
8 provide:

9 A. New pumping plant in DMC Intake with special modifications for control
10 structure and special accommodations to prevent trespassing by fishermen?

11 **DWR response 11 A:** *"DWR objects to this question as ambiguous as to pumping
12 plant. DWR also objects to the fact that it cannot control trespassing and that CCLP
13 will need to call the appropriate authorities. To the extent that pumping plant refers
14 to CCLP diversion point see answer to question 1B."*

15 **CCLP 11A objection** - CCLP agrees that Petitioners cannot control trespassers, but
16 since CCLP's diversion sits on Petitioners DMC Intake land, Petitioners should answer
17 the question as to whether they would take steps to keep trespassers off their land
18 (DMC Intake Canal) and away from CCLP's diversion pump. "See answer to question
19 1b" provides no information.

20 **Question CCLP 11B:** New extended pipe delivery?

21 **DWR response 11B:** "See response to question 1B". (DWR p. 21 line 6)

22 **CCLP 11B objection** – Basis of objection -- DWR's response does not answer
23 question, and the information is not in the response to question 1B.

24 **Question CCLP 11C:** New delivery and drainage system?

25 **DWR response 11C:** DWR objects to this question as it assumes fact not in
26 evidence There is no evidence that California WaterFix will impact CCLP drainage
27 as to the diversion point see the response to question 1B (DWR p. 21 lines 9-11)

1 **DWR response 11 F:** DWR will agree to mitigation for any adverse impact as
2 described in response to question 1B.

3 **CCLP objection** – Non-responsive. What does mitigation mean specifically with
4 respect to CCLP’s proposed permit terms?

5 **Question CCLP 12.** Liquefaction – EARTHQUAKES DWR 1304 4--11, 4.2.1.6
6 “Available subsurface information indicates that the potential for liquefaction exists
7 along all sides of the existing Clifton Court Forebay. For the purpose of the
8 conceptual design, it is assumed that this analysis is valid for the area of the BTF.
9 As more subsurface data is collected, additional liquefaction analyses should be
performed to evaluate embankment stability and to determine potential mitigation
measures.”

10 **Question CCLP 12A.** Doesn’t this analysis also indicate that CCF embankments
11 are subject to failure from liquefaction?

12 **DWR response 12A:** DWR is not proposing any changes to the Clifton Court
13 Forebay. DWR objects to this question as it is outside the scope of the hearing
because this is a potential impact that is not related to California WaterFix.

14 **CCLP objection** – Nonresponsive.

15 **Basis of objection --** DWR’s witness, John Bednarski, testified that failure of CCF
16 could cause failure of Byron Tract Forebay. DWR’s proposed changes eliminate
17 upgrades to the foundations of the CCF embankments. The Board should fully and
18 adequately consider public safety issues with the new Byron Tract / Clifton Court
19 Forebay complex in determining whether the revised project will be in the public
20 interest, and whether it will be a reasonable diversion of water under Article X, section 2
21 of the California Constitution.

22 **Question CCLP 12B.** If CCF embankments fail from liquefaction, couldn’t it also
23 take out BTF?

1 **DWR response 12B:** DWR is not proposing any changes to the Clifton Court
2 Forebay. DWR objects to this question as it is outside the scope of the hearing
3 because this is a potential impact that is not related to California WaterFix.

4 **CCLP objection** – Nonresponsive. The question directly asks about failure of Byron
5 Tract Forebay.

6 **Question CCLP 12C.** When was the most recent seismic hazard analysis for CCF
7 embankments?

8 **DWR response 12B:** DWR is not proposing any changes to the Clifton Court
9 Forebay. DWR objects to this question as it is outside the scope of the hearing
because this is a potential impact that is not related to California WaterFix.

10 **CCLP objection** – Nonresponsive.

11 **Basis of objection** – DWR’s proposed changes eliminate upgrades to the
12 foundations of the CCF embankments, and to the embankments themselves. See also
13 objection to DWR Response 12A.

14 **Question CCLP 13.** Flood Protection Considerations DWR 1304 4-12, 4.2 “The
15 conveyance facilities are considered to be critical lifeline facilities for the State of
California.”

16 A. Given the CCF Intake Structure’s failure in March of 2017, How can CWF
ignore the problems with the aging CCF?

17 **DWR response 13A.** DWR is not proposing any changes to the Clifton Court
18 Forebay. DWR objects to this question as it is outside the scope of the hearing
because this is a potential impact that is not related to California WaterFix.

19 **CCLP 13A objection** – Non-responsive.

20 **Basis of objection** – Scour is a potential cause of failure of CCF embankments.
21 There were serious scour issues with CCF which damaged the intake structure in 2017.
22 DWR’s witness, John Bednarski, testified that failure of CCF could cause failure of
23

1 Byron Tract Forebay. DWR's proposed changes eliminate upgrades to the CCF
2 embankments. The Board should fully and adequately consider public safety issues
3 with the new Byron Tract / Clifton Court Forebay complex in determining whether the
4 revised project will be in the public interest, and whether it will be a reasonable diversion
5 of water under Article X, section 2 of the California Constitution.

6 **Question CCLP 13 B.** Given the fact that the embankments of the CCF do not meet
7 200 year flood standards, how can CWF and the Board ignore flood safety
measures for the CCF?

8 **DWR response 13B.** DWR is not proposing any changes to the Clifton Court
9 Forebay. DWR objects to this question as it is outside the scope of the hearing
because this is a potential impact that is not related to California WaterFix.

10 **CCLP 13B objection** – Non-responsive.

11 **Basis of objection** – Not meeting flood standards could cause failure of CCF. See
12 also Basis of objection to DWR's response to question 13A.

13
14 **Question CCLP 13C** – Given the fact that DWR admits the CCF has under-seepage
15 problems, how can CWF ignore installing slurry cutoff walls on all side of the CCF to
help prevent embankment failure?

16 **DWR response 13B.** DWR is not proposing any changes to the Clifton Court
17 Forebay. DWR objects to this question as it is outside the scope of the hearing
because this is a potential impact that is not related to California WaterFix.
18 Furthermore, DWR has entered into a settlement agreement with the owners of
CCLP related to seepage. (DWR 939)

19 **CCLP 13C objection** – Non-responsive.

20 **Basis of objection** – Underseepage could cause failure of Clifton Court Forebay
21 embankments. See also Basis of objection to DWR's response to question 13A.

22 **Question CCLP 14 A.** According to SWRCB 113 p. 15-2 line 28 "Construction of the
23 Byron Tract Forebay under the proposed project would help reduce the impact on
recreation activities on and near the Clifton Court Forebay's south embankment." A.

1 What measures are DWR going to take to provide public access, public parking, and
2 at Clifton Court Forebay south embankment during the 11 year construction
3 process?

4 **DWR response 14 A.** "DWR is not modifying Clifton Court Forebay under the
5 Supplemental EIR/S and therefore is not taking any measures to provide for public
6 access, public parking, and public bathrooms at Clifton Court Forebay south
7 embankment."

8 **CCLP 14 A objection** – Nonresponsive.

9 **Basis of objection** -- In the Supplemental EIR/S document that was released for
10 public comment, DWR states there are recreation activities on the Clifton Court Forebay
11 south embankment. It is entirely foreseeable that recreational activities on sections of
12 Clifton Court Forebay that are adjacent to Byron Court Forebay could be redirected to
13 the south Clifton Court Forebay embankment due to construction, increasing issues with
14 lack of public parking and public bathrooms. This is a public health and safety issue that
15 the Board should consider in deciding whether the revised project is in the public
16 interest.

17 **Question CCLP 14 B.** As part of the permit terms, will DWR pay compensation for
18 any damages suffered by CCLP due to trespassers as a result of construction
19 without going through a claim process? Will DWR indemnify CCLP from lawsuits
20 arising from fishermen trespassing across CCLP land?

21 **DWR response 14B:** Trespassing is a legal violation that is outside the scope of
22 DWR's authority and DWR has not legal standing to pursue or police trespassing on
23 property it does not own.

24 **CCLP 14B objection** – Nonresponsive and factually incorrect.

25 **Basis of objection** -- As a landowner, DWR has both the right and responsibility to
26 ensure that recreational activities on DWR's Clifton Court Forebay property do not result
27 in nuisance trespassing on adjacent properties. For supporting facts, see ongoing
broken CCF security fences (CCLP 8 & 9).

1 DWR announced publicly in the Supplemental EIR/S that “Construction of the Byron
2 Tract Forebay under the proposed project would help reduce the impact on recreation
3 activities on and near the Clifton Court Forebay south embankment.” (SWRCB 113
4 p. 15-2 line 28). But this answer does not provide any information on how DWR will
5 deal with any increased public recreation on the south bank of the CCF due to
6 construction.

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

9 **DWR response 15.** DWR objects to this question because this would not be an
10 appropriate permit term. Eminent Domain is a separate legal proceeding outside the
11 scope of the State Water Board’s jurisdiction. DWR has moved facilities so as not to
12 impact CCLP property. As demonstrated through the responses to these questions,
DWR will ensure there is no harm to CCLP as outlined in response to question 1B.

12 **CCLP 15 objection** – Nonresponsive.

13 **Basis for objection** – CCLP argues that there has already been harm to CCLP,
14 which should be a consideration in evaluating DWR’s vague future promises. Since
15 2006, CCLP property has been a key parcel in the approved project. CCLP has been
16 under cloud of condemnation. The existing project has also impacted CCLP’s property
17 over the years with various damages. The proposed project indicates that damages
18 could be potentially more severe especially since there are no repairs to CCF.

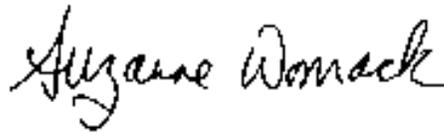
19 **Conclusion.** Based on the foregoing, Clifton Court, L.P. moves to strike DWR’s
20 responses to the Clifton Court, L.P.’s cross-examination questions enumerated above.
21 Clifton Court, L.P. requests that Hearing Officers require DWR to provide a complete,
22 legally adequate response to all questions from DWR’s witnesses, with each answer

1 identified as to witness/lawyer, and signed by the witnesses/lawyers that answered the
2 question.

3 To the extent that Petitioners have done modeling or other engineering analyses of
4 operational changes within the modified CVP facility proposed in the Supplemental
5 EIR/EIS, CCLP also requests that the Hearing Officers direct DWR to produce the
6 modeling and engineering analyses. CCLP will need time to study the modeling and
7 engineering analyses for sur-rebuttal.

8 In the alternative, the modifications to the project discussed in the Supplemental
9 EIR/EIS should not be considered as part of the project for the change petition.

10 Dated: August 23, 2018 Respectfully,
11

12 
13

14 Suzanne Womack
15

16 General Partner, Clifton Court, L.P.
17
18
19
20
21
22
23

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

EXHIBIT A

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
CENTRAL VALLEY PROJECT, CALIFORNIA

**Delta-Mendota
Unit No. B-C-C**

LAND PURCHASE CONTRACT

14-06-1955-4864

11-2-55

THIS CONTRACT, made this **3rd** day of **November**, 19**55**, in pursuance of the Act of June 17, 1902 (32 Stat., 388), and Acts amendatory thereof or supplementary or applicable thereto between THE UNITED STATES OF AMERICA, hereinafter styled the United States, represented by the contracting officer executing this contract, and

GRACE S. RITCHIE, a widow,

hereinafter styled Vendor, of --

County of -- State of --

2. WITNESSETH, That for and in consideration of the mutual agreements herein contained, the parties hereto do covenant and agree as follows:

3. The Vendor shall sell and by good and sufficient grant deed, convey to the United States, free of lien or encumbrance, the following described real estate situated in the County of **Contra Costa**, State of California, to-wit:

A tract of land in the Rancho El Pescadero in Township One (1) South of Range Four (4) East of the Mount Diablo Meridian, and being a portion of what would be the northeast quarter (NE¹/₄) of Section Twenty-nine (29) in said Township and Range if the pattern of said Section were projected into said Rancho in accordance with the standard Government System for surveys of the public lands. Said tract of land contains an area of 2.77 acres, more or less, and is described as follows:

Beginning at the southeasterly corner of that certain 10.29-acre tract of land described in the Final Judgment filed on April 1, 1954 in an action entitled United States of America, Plaintiff vs. 10.29 acres of land, more or less, in the County

J. P. ... 11-2-55

CD/6

of Contra Costa, State of California, Weston G. Ritchie, Grace S. Ritchie, individually and as Administratrix of the Estate of Weston G. Ritchie, et al., Defendants, in the United States District Court, Northern District of California, Southern Division, Civil No. 27912, a certified copy of said Judgment having been recorded on April 9, 1954 in the office of the County Recorder of said County in Book 2297 of Official Records at page 561; said southeasterly corner is distant East 2669.4 feet along the southerly boundary of said 10.29-acre tract from the west quarter corner of said Section 29; thence from said point of beginning North $00^{\circ} 34'$ East 247.6 feet along the easterly boundary of said 10.29-acre tract to the northeasterly corner of said tract; thence North $74^{\circ} 04'$ East 612.0 feet; thence South $18^{\circ} 25'$ East 65.2 feet; thence South $54^{\circ} 35'$ West 260.2 feet to the northeasterly corner of that certain 0.54-acre tract of land described as Parcel 2 in Judgment on Declaration of Taking, entered on September 12, 1950 in an action entitled United States of America, Plaintiff vs. 47.51 acres of land, more or less, in the Counties of Contra Costa, Alameda, and San Joaquin, State of California, Berverdor, Inc., Grace S. Ritchie, et al., Defendants, in the United States District Court, Northern District of California, Southern Division, Civil No. 30016, a certified copy of which was recorded in the office of the County Recorder of said County on September 14, 1950 in Volume 1632 of Official Records at page 415; thence continuing South $54^{\circ} 35'$ West 150.8 feet along the northwesterly boundary of said 0.54-acre tract; thence South $32^{\circ} 30'$ West 137.0 feet along said northwesterly boundary to a point in the northerly boundary of that certain 3.49-acre tract of land described as Parcel 4 in the aforesaid Judgment on Declaration of Taking, Civil No. 30016; last said point being distant East 203.0 feet from the point of beginning; thence West 203.0 feet along the northerly boundary of said 3.49-acre tract to the point of beginning.

SUBJECT, however, to existing rights of way in favor of the public or third parties for highways, roads, railroads, telegraph, telephone and electrical transmission lines and canals, laterals, ditches, flumes, siphons, pipe lines and levees on, over and across said premises; and

SUBJECT to the effect of reservations and leases, if any, of oil, gas and minerals in or under said land; and

There shall be reserved to Vendor, her heirs, executors, administrators and assigns, any riparian or other water right or water rights now appurtenant to the lands of the Vendor lying northerly from and adjacent to the land hereinabove described.

4. The United States shall purchase said property on the terms herein expressed, and on execution and delivery of the deed and the vesting in it of the fee simple title as provided in Article 3 and the issuance of the policy of title insurance and the signing of the usual Government vouchers, and their approval by the proper Government officials, it shall cause to be paid to the Vendor, by United States Treasury warrant or fiscal officer's check, and as full purchase price for the property and full payment for all damages for entry on and use of the said property, the sum of ELEVEN THOUSAND SEVEN HUNDRED SEVENTY AND NO/100 (\$11,770.00) DOLLARS; and

The United States shall, as additional consideration for the execution and delivery of said deed, convey unto Vendor, her heirs, executors, administrators and assigns, the perpetual right, privilege and easement, exclusive of any water right or water rights, to install, replace, maintain and use thereon a pumping plant with all necessary appurtenant structures at a point on the intake canal of the Delta-Mendota Canal of the United States approximately 57 feet north from the centerline and approximately 103 feet south from the inside shoulder of the north bank thereof at or near Canal Station L53+50, together with the right to pump such water as rights thereto are hereinabove reserved from said canal for the irrigation of Vendor's remaining land adjacent to said intake canal which had previously been irrigated from point of diversion No. 2 located within the Southwest 1/4 of the Northeast 1/4 of Section 29, as described in Permit No. 2268 of the Division of Water Rights of the State of California, approved October 10, 1925. The United States agrees to transport and convey through said canal to the pump constructed by Vendor said Vendor's riparian, appropriative or prescriptive waters, provided, however, that said water so to be transported for use of Vendor shall not exceed the rate of one (1) cubic foot per second continuous flow to each eighty (80) acres of irrigated land formerly irrigated through the facilities located at said point of diversion No. 2. Vendor shall at all times have the right of ingress to and egress from Vendor's remaining land adjacent to said intake canal to said pumping plant, by the shortest practicable route approved by the Construction Engineer of the United States in charge of the construction of said intake canal over lands of the United States in order to operate, repair, maintain and renew said pumping plant and necessary appurtenant structures, provided that any pumping plant or irrigation facility installed on said easement shall be installed, operated and maintained at Vendor's sole expense, and

shall be installed at the time, in the manner and in accordance with plans and specifications approved in advance by said Construction Engineer, and provided that said right of way and easement shall be constructed and used in such a manner as not to interfere with or endanger the facilities of the United States on said land. The United States hereby agrees that it will not interfere with Vendor's existing pumping plant now located on said 2.77-acre parcel of land until completion of the installation of said new pumping plant, and Vendor agrees to commence said construction immediately upon the execution of this contract and to prosecute said work with all possible dispatch.

GSR
THL
MP

The United States agrees that it will construct and maintain its development on the lands herein agreed to be conveyed so as to afford protection to the adjacent lands of Vendor equal to that which has been had by the use of the levee now located upon the said lands to be conveyed, in such manner as shall be determined is reasonable, necessary and proper to afford such protection, except that such maintenance shall not interfere with the use of said land by the United States or the operation or maintenance of its development now or hereafter constructed thereon, and the United States hereby agrees that Vendor shall have the right of ingress and egress over and across the hereinabove described land for the purposes of reconstructing, repairing and maintaining the levee or other protective developments to be constructed by the United States along or adjacent to the northerly boundary line of said lands, in the event that the United States shall fail to repair and maintain said levee so as to afford protection to the remaining lands of Grantor equal to that afforded by the levee now located on the land herein described, which said levee to be constructed by the United States shall have a proper connection with existing levees at the easterly and westerly end of the said tract of land hereinbefore described.

5. Liens or encumbrances existing against said property may, at the option of the United States, be removed by reserving from the purchase price the amount necessary, and discharging the same with the money so reserved, but this provision shall not be construed to authorize the incurrence of any lien or encumbrance as against this contract, nor as an assumption of the same by the United States. Abstracts or certificates of title and title insurance on the said property will be procured by and at the expense of the United States.

6. Upon the execution of this contract by the United States, it shall have at all times the unrestricted right to enter upon

the land described in Article 3 and survey for and construct reclamation works, telephone and electrical transmission lines, and other structures and appliances incident to said reclamation works, free of any claim for damage or compensation on the part of the Vendor.

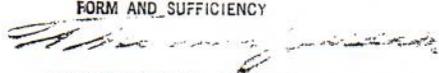
7. This contract shall inure to the benefit of and be binding on the heirs, executors, administrators and assigns of the Vendor, and the successors and assigns of the United States.

8. The Vendor warrants that she has not employed any person to solicit or secure this contract upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the Government the right to annul the contract, or, in its discretion, to deduct from the contract price or consideration the amount of such commission, percentage, brokerage, or contingent fees. This warranty shall not apply to commissions payable by contractors upon contracts or sales secured or made through bona fide established commercial or selling agencies maintained by the Vendor for the purpose of securing business with others than the Government.

9. No Member of or Delegate to Congress, or Resident Commissioner shall be admitted to any share or part of this contract or agreement, or to any benefit to arise therefrom. Nothing, however, herein contained shall be construed to extend to this contract if made with a corporation for its general benefit.

IN WITNESS WHEREOF the parties have hereto signed their names the day and year first above written.

APPROVED AS TO LEGAL
FORM AND SUFFICIENCY


ASSISTANT REGIONAL SOLICITOR
DEPARTMENT OF THE INTERIOR

THE UNITED STATES OF AMERICA

By 
Regional Director, Region 2
Bureau of Reclamation

(Sgd.) Grace S. Ritchie

(Sgd.) Rod E. Tiernan
Witness

STATE OF CALIFORNIA)
)
County of San Joaquin) ss.

On this 3rd day of November, in the year 1955,
before me TOM H. LOUITTIT, a Notary Public in and
for the County and State aforesaid, personally appeared _____

GRACE S. RITCHIE, a widow,

known to me to be the person whose name is subscribed to the
within instrument, and acknowledged that she executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official
seal the day and year in this certificate first above written.

(S E A L)

(Sgd.) TOM H. LOUITTIT

Notary Public

in and for the County of
San Joaquin, State of
California

My commission expires:

May 11, 1957

C-6/6



United States Department of the Interior

BUREAU OF RECLAMATION
South-Central California Area Office
Tracy Office (CVP)
RR 1 Box 35
Byron CA 94514-9614

IN REPLY
REFER TO:

TO-406
PRJ-8.10

AUG 30 2000

Mr. Sheldon G. Moore
7555 Herdlyn Road
Byron, California 94514

Subject: Tracy Fish Facility Improvement Program

Dear Mr. Moore:

This letter confirms items discussed with you and Mrs. Moore by Mr. Ron Brockman and myself, at your residence on August 10, 2000. This discussion was prompted by your letter of May 8, 2000, (enclosure B).

Following are responses to your letter and other items discussed:

1. Enclosure B, first paragraph:

After reading the Tracy Fish Test Facility, March 2000, Fact Sheet Update, it is clear to me the Bureau of Reclamation wishes to continue encroachment upon our property. This is just extension of the prior piece-by-piece encroachment. My operations have been disrupted at least four times in the last forty years by these intrusions. I will very vigorously oppose any further expansion in our direction.

Several potential locations for the Tracy Fish Test Facility (TFTF) were evaluated. The potential location and evaluation process were explained to you briefly, explained again at the August 15, 2000, public meeting at the Bureau of Reclamation's (Reclamation) Kelso Road complex (which you and Mrs. Moore attended), and is explained in detail in the Draft Environmental Assessment and Initial Study for the Tracy Fish Facility Improvement Program, Tracy Fish Test Facility, issued July 28, 2000.

The selected location, Site A, does not encroach on your property according to Reclamation records as depicted on enclosure I.

We explained that property lines from copies of plats in our files were electronically transferred from "meets and bounds" descriptions to a current system of coordinates, but have not been field verified. We intend to have the boundaries of most of the plats of the first three miles of the Delta-Mendota Canal right-of-way re-surveyed and field verified by a registered Professional Land Surveyor, monuments set and plats re-filed with the County. We will provide that information to you on plats with your property lines when it is available.

As explained to you, if we find that Reclamation is encroached on your land, we will pursue an equitable resolution. Similarly, if we find that Reclamation's property encompasses some of your land or facilities, such as the access road to your property, we will pursue a resolution that is reasonable and acceptable to you.

2. Enclosure B, second paragraph:

You should know that there is property for sale on the open market, right next to your current fish facility, and it has been on the market

for one year. It is my understanding that the Bureau currently leases part of those 350 acres.

This land, we think to which you refer, is west of Lindemann Road and south of the Delta-Mendota Canal. That area is not as workable for the TTF as the selected site because of the costs and time required to acquire land and having to do more substantial site preparation, plus other factors.

3. Enclosure B, third paragraph:

It is time to be honest with the citizens of American. There was never an Environmental Impact study on the effect of both the Federal and State of California plans to export vast quantities of water, from the Sacramento-San Joaquin Delta. We are morally responsible to see that no further action takes place in this area without such a study. This is a moral question. We can and we must right the errors and omissions of the past.

We have not researched the records of environmental analyses of the Central Valley Project (CVP) nor the State Water Project. In general, authorization of the CVP preceded the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. Part 4321 et seq.). Authorization of the State Water Project preceded the California Environmental Quality Act (CEQA) of 1973 (Public Resources Code Section 21000 et seq.). Any current and future proposals for increased Delta exports have to comply with these laws; the TTF does not propose such action.

If you wish to pursue a perceived moral obligation of the Federal or State projects to do a post-project environmental evaluation, that is beyond the scope of this discussion and should be pursued by you with elected representatives.

4. Enclosure B, fourth paragraph:

How much fossil fuel, or its equivalents, is consumed each month to transport water to the southern half of California? It makes me sad to go to southern California and to see the waste of water and total lack of an effective regional transportation system. Fossil fuel is expended so more fossil fuel can be wasted. There can be not justification for this tragic use of natural resources.

Authorization of the CVP was by public process, at the request of the State of California. A recap of economic and social justification would be extensive and is beyond the scope of the TTF project.

5. Enclosure B, fifth paragraph:

We have a regional transportation system here in Contra Costa County. Water use is restricted in years when the water supply is short of needs. We have numerous water facilities in our area taking up valuable land area. Your fish screen as its sits would be paying BART taxes if the Bureau did not live on taxpayer money. I have paid tens of thousands of dollars in the past and must pay thousands in the future for the privilege of being in a mass transit district, BART.

We briefly discussed funding sources for the TTF which are in essence a combination of water user rates and tax revenue appropriated by the Congress and the Legislature, thus coming from the same sources as payment of property tax assessments for public infrastructure.

6. Enclosure B, sixth paragraph:

It looks to me that your entire effort is to ensure that the southland can waste more water and fossil fuel. You do not have a worthy cause.

This is a personal qualitative statement, and we certainly respect it.

7. Enclosure B, seventh paragraph:

The Bureau of Reclamation and the State of California are trying to do a mass relocation of water. This diversion has many adverse effects on this and other areas. A massive change, all without complete disclosure to the citizens involved or affected. Certainly the fish are affected, but so are we.

Please see response number 3.

8. Enclosure B, eighth paragraph:

I would like to meet with you or whoever has the authority, very soon, to work out a solution for problems your current system has imposed on our property for more than forty years. It is time to correct the burden you have imposed on your neighbors. I want you to know that I oppose any further encroachment, on our property. There are too many hidden negative effects of such action, which are not disclosed and never corrected when apparent. The Bureaus' past actions clearly indicate that we are on our own to correct adverse conditions your systems impose upon us. The Federal and State water program is classic Adverse Possession.

Mr. Brockman and I met with you and Mrs. Moore on August 10, 2000, which this letter documents that meeting.

Additional items which you presented to us on August 10, 2000, and our responses follow (9 through 13).

9. The CVP diversion causes increased operating expense because of having to pump water upstream from the trashrack to replace a gravity diversion through the levee.

We will investigate the history of Reclamation commitments to the owner (you, or possibly your predecessor) of the gravity diversion when it was replaced because of the Delta-Mendota Canal construction. If we find there is an unmet obligation, we will certainly pursue a solution with you.

10. CVP causes increased power expense and pump operating problems due to water-borne plants plugging the trashrack and causing a suction break at low tide.

This is the same pump diversion referred to in number 9. Water-borne aquatic growth is a problem at times for the Delta-Mendota Canal also. We will look into it.

11. Reclamation employees shooting at your facilities from inside the Tracy Fish Collecting Facility.

This is a surprise, and we do not believe it is happening. If you have more specific information that we can pass on to a law enforcement agency, which for Reclamation is the Federal Bureau of Investigation, we will request an investigation.

12. Reclamation not patrolling your access road (and possibly including Herdlyn Road) to prevent encroachment and vandalism on your property.

Herdlyn Road is managed by Contra Costa County; Reclamation has no authority or obligation to patrol it. Similarly there is no authority or responsibility for Reclamation to patrol your private road.

13. Reclamation should locate the TTF at Western Canal because of more flow available and more sweeping flow.

The Kings Island site considered for the TTF would be more toward the Western Canal. One major adverse factor would be the necessity of a long canal from the TTF to the Delta-Mendota Canal.

Finally, some details of these issues, and potentially other items, were listed by you at the August 15, 2000, public meeting. These will be addressed in the final Environmental Assessment.

Mr. Moore, we will pursue the items of concern seriously, and will contact you when we have some answers or need additional information.

Thank you for the time that you have spent with us to help us "newcomers" understand your concerns. If you have any questions, please feel free to contact me at (209) 836-6236 or (209) 836-6282 for the hearing impaired.

Sincerely



Floyd R. Summers
Program Coordinator

Enclosures 9

- A-06/14/00, Ltr to Sheldon Moore from Reclamation (Floyd Summers)
- B-05/08/00, Ltr to Reclamation (Ron Brockman) from Sheldon Moore
- C-Land Purchase Contract, Delta-Mendota, Unit No. B-0-C
- D-Contra Costa County (CCC) Assessor's Map, Book 1, Pg 8 (part)
- E-CCC Assessor's Map, Book 1, Pg 8 (part), enlarged
- F-CCC Assessor's Map, Book 1, Pg 8 (part), enlarged Detail "A"
- G-CCC Assessor's Map, Book 1, Pg 8 (part), enlarged Detail "A", enlarged
- H-Drawing 214-215-5546, Headworks, Grace P. Ritchie-R.O.W.
- I-Drawing 214-208-12591, Tracy Fish Collection Facility, Topography

cc: Regional Director, Sacramento CA
Attention: MP-410 (RBrockman) (w/enclosures)
MP-3000 (MFinnegan) (w/enclosures)
MP-222 (TReaves) (w/enclosures)
Office of the Solicitor, Pacific Northwest
Attention: Mr. James Turner (w/enclosures)
Area Manager, Fresno CA
Attention: SCC-102 (MJackson) (w/enclosures)
SCC-412 (JTapia) (w/enclosures)
SCC-450 (BEpperson) (w/enclosures)

Mr. Dave Langlois (w/enclosures)
Director, O&M
San Luis & Delta-Mendota Water Authority
RR1, Box 35F
Byron, California 94514-9614