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7
8 **BEFORE THE**
9 **CALIFORNIA STATE WATER RESOURCES CONTROL BOARD**

10 **HEARING IN THE MATTER OF CALIFORNIA**
11 **DEPARTMENT OF WATER RESOURCES**
12 **AND UNITED STATES BUREAU OF**
13 **RECLAMATION REQUEST FOR A CHANGE**
14 **IN POINT OF DIVERSION FOR CALIFORNIA**
15 **WATER FIX**

DEPARTMENT OF WATER
RESOURCES' MOTION TO QUASH
AND FOR PROTECTIVE ORDER
FROM DEIRDRE DE JARDINS'
NOTICE CALLING WITNESS TO
APPEAR AT THE WATERFIX
HEARING

16 **Introduction**

17 Petitioner California Department of Water Resources ("DWR") submits this objection
18 to Deirdre Des Jardins' July 13, 2018, Notice to the Department of Water Resources
19 Calling Witness to Appear at the Waterfix Hearing pursuant to Government code section
20 11513(b) and section 11450.50. The witness named in the Notice is Tim Wehling, an
21 employee of DWR. DWR respectfully asks that the Hearing Officers quash the Notice and
22 issue a protective order.
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24 **Procedural Background**

25 This is an administrative hearing governed by Title 23 of the California Code of
26 Regulations, section 648-648.8, 649.6, and 760; Chapter 4.5 of the Administrative
27 Procedure Act (commencing with 11400 of the Government Code); sections 801 to 805 of
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1 the Evidence Code; and section 11513 of the Government Code. (Cal. Code Regs., tit. 23,
2 § 648, subd. (b).) Under Government Code section 11450.50 “the service of a subpoena
3 on the witness is not required if written notice requesting the witness to attend, with the
4 time and place of the hearing, is served on the attorney of the party or person.” (Gov. Code,
5 §11450.50, subd. (a).) The service of this notice “shall be made in the manner and is
6 subject to the conditions provided in Section 1987 of the Code of Civil Procedure for
7 service of written notice to attend in a civil action or proceeding.” (Gov. Code, §11450.50,
8 subd. (b).) “The giving of the notice shall have the same effect as service of a subpoena on
9 the witness, and the parties shall have those rights . . . as in the case of a subpoena for
10 attendance” (Code Civ. Proc., § 1987, subd. (b).) “A person served with a subpoena or
11 a subpoena duces tecum may object to its terms by a motion for a protective order,
12 including a motion to quash.” (Gov. Code, § 11450.30, subd. (a).)
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15 **Discussion**

16 The Hearing Officers should grant DWR’s motion to quash and for a protective order
17 because calling Mr. Wehling to testify without providing a basis for his presence would be
18 unreasonable and oppressive. (Civ Proc section 1987.1 subd. (a); Gov. Code, § 11450.30,
19 subd. (b).) Given the limited information in the July 13, 2018, Notice DWR is unable to
20 confirm if Mr. Wehling is an appropriate witness because the subject matter to which
21 Deirdre Des Jardins expects him to be able to testify about is not provided. Mr. Wehling has
22 never before appeared as a witness in the hearing so no inference can be drawn from past
23 testimony regarding the potential subject matter. As Mr. Wehling’s work related to WaterFix
24 has been nominal, DWR ventures that Mr. Wehling may have been called as a witness to
25 respond to questions on Clifton Court Forebay. As discussed in the testimony of John
26 Bednarski, under the proposed modifications to the project Byron Tract Forebay would be
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1 used instead of Clifton Court Forebay. (DWR-1212, pages 4-5, section G.) If that is the
2 case then any testimony would be irrelevant upon approval of the revised project. "It is the
3 policy of the State and Regional Boards to discourage the introduction of surprise testimony
4 and exhibits." (Cal. Code Regs., tit. 23, § 648.4, subd. (a).) It would be contradictory to this
5 policy to allow Deirdre Des Jardins to call a witness without providing any information as to
6 why.
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8 **Conclusion**

9 For the foregoing reasons, DWR respectfully objects to Deirdre Des Jardins Notice
10 and asks that the Hearing Officers quash the Notice and issue a protective order.
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12 In the alternative, should be Board not immediately quash the notice to appear for
13 lack of an adequate basis to require the production of Mr. Wehling, it should order Deirdre
14 Des Jardin to provide substantial information as to the topics and lines of inquiry she
15 wishes to pursue and to connect those lines of inquiry to key hearing issues as described in
16 the hearing notices and rulings.
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18 Executed on this 19th day of July, 2018, in Sacramento, California.
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21 _____
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23 Attorney
24 California Department of Water Resources
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