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Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF BUTTE

JEM FARMS L.P.; CHANDON RANCH L.P.; BAINS BROTHERS FARMS, LLC; JASWINDER SINGH BAINS AND GURINDER PAL BAINS, individually and as trustees of the Jaswinder Singh Bains and Gurinder Pal Bains Family Trust; GEORGE AND KATHERINE ANITA BARBER; BRUSH HARDWOODS; CHICO PRODUCE, INC., d/b/a ProPacific Fresh; FORREST MILLER; TOM MILLER, JR., individually and as trustee of the Tom O. Miller Separate Property Trust; MP FARMS; PURPLE LINE URBAN WINERY, LLC; ROPLAST INDUSTRIES, INC.; TRI ALLIANCE AUTOMOTIVE GROUP, INC., d/b/a DIRKS AUTOMOTIVE AND

CASE NO. 18CV00324

COMPLAINT FOR:

1) **DANGEROUS CONDITION OF PUBLIC PROPERTY (GOV. CODE, § 835)**
2) **PRIVATE NUISANCE**
3) **PUBLIC NUISANCE**
4) **PREMISES LIABILITY**
5) **INVERSE CONDEMNATION**

DEMAND FOR JURY TRIAL

COMPLAINT

TRANSMISSION; JEANETTE MORTON; MELISSA MORTON; ASHLEY MORTON; AJK FARMS, LLC; DON BEEMAN; ADRIAN G. BENNING and MICHELE A. BENNING, individually and as trustees of the Benning Family Trust; CKMR2, LP; GREGORY E. DRIVER; WILLIAM A. DRIVER, individually and as trustee of the William A. Driver Revocable Trust; JEFFREY E. DYER; GARCIA FARMS, INC.; B.E. GIOVANNETTI & SONS; EMIL JOSEPH GIOVANNETTI; ANITA BELLE KANE, individually and as trustee of the Kane Trust; TOM KANE; L.A.B./ROSEVILLE; LANG FAMILY #1 LIMITED PARTNERSHIP; K A LANG FAMILY LIMITED PARTNERSHIP; WILLIAM F. MATTOS AND KIM H. MATTOS, individually and as trustees of the Mattos Family Revocable Trust; KATHLEEN A. MITCHELL, individually and as trustee of the Mitchell Trust; CENTRAL VALLEY FARMS, LLC; DOUGLAS G. NAREAU; NICOLI NICHOLAS; NICOLI NICHOLAS, JR.; BUZZ OATES, LLC; PHILIP D. OATES; OBF, LLC; OK&B LLC; FRANK C. RAMOS and JOANNE M. RAMOS, individually and as trustees of the Frank C. Ramos and Joanne M. Ramos Family Trust; RECLAMATION DISTRICT NO. 1600; LANCE JEFFREY STANLEY and SARAH HILEA STANLEY, individually and as trustees of the Stanley Revocable Living Trust; DAVID TEVELDE, individually and as trustee of the TeVelde Family Trust; YOLO LAND TRUST; and POES 11 through 500, inclusive,

Plaintiffs,

v.

CALIFORNIA DEPARTMENT OF WATER RESOURCES, and **DOES 1 through 100,**

Defendants.

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Plaintiffs JEM Farms L.P.; Chandon Ranch L.P.; Bains Brothers Farms, LLC; Jaswinder Singh Bains and Gurinder Pal Bains, individually and as trustees of the Jaswinder Singh Bains and Gurinder Pal Bains Family Trust; George and Katherine Anita Barber; Brush Hardwoods; Chico Produce, Inc., d/b/a ProPacific Fresh; Forrest Miller; Tom Miller, Jr., individually and as trustee of the Tom O. Miller Separate Property Trust; MP Farms; Purple Line Urban Winery, LLC; Roplast Industries, Inc.; Tri Alliance Automotive Group, Inc., d/b/a Dirks Automotive and Transmission; Jeanette Morton; Melissa Morton; Ashley Morton; AJK Farms, LLC.; Don Beeman; Adrian G. Benning and Michele A. Benning, individually and as trustees of the Benning Family Trust; CKMR2, LP; Gregory E. Driver; William A. Driver, individually and as trustee of the William A. Driver Revocable Trust; Jeffrey Dyer; Garcia Farms, Inc.; B.E. Giovannetti & Sons; Emil Joseph Giovannetti; Anita Belle Kane, individually and as trustee of the Kane Trust; Tom Kane; L.A.B./Roseville; Lang Family #1 Limited Partnership; K A Lang Family Limited Partnership; William F. Mattos and Kim H. Mattos, individually and as trustees of the Mattos Family Revocable Trust; Kathleen A. Mitchell, individually and as trustee of The Mitchell Trust; Central Valley Farms, LLC; Douglas G. Nareau; Nicoli Nicholas; Nicoli Nicholas, Jr.; Buzz Oates, LLC; Philip D. Oates; OBF, LLC; OK&B LLC; Frank C. Ramos and Joanne M. Ramos, individually and as trustees of the Frank C. Ramos and Joanne M. Ramos Family Trust; Reclamation District No. 1600; Lance Jeffrey Stanley and Sarah Hilea Stanley, individually and as trustees of the Stanley Revocable Living Trust; David TeVelde, individually and as trustee of the TeVelde Family Trust; and Yolo Land Trust (collectively, "Plaintiffs") bring this action against the California Department of Water Resources ("DWR").

I. INTRODUCTION

1. California citizens are bearing the price of DWR's reckless conduct. This suit is brought to correct that injustice.

2. At 770 feet, Oroville Dam is the nation's tallest dam, but unfortunately, it is far from the nation's safest. The dam and reservoir are the primary water storage for the

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State Water Project and provide water for over 25 million Californians. In early February 2017, the dam's main spillway crumbled. When the dam's emergency spillway was engaged, it failed as well. The dam's failure triggered an evacuation of 188,000 people in the Feather River Basin — one of the largest evacuations in California history. The catastrophe of the "**Oroville Dam crisis**" was a major socioeconomic blow to the dam's downstream communities' residents and farmers

3. The Oroville Dam crisis was not an act of God. As confirmed by independent, expert reports and accounts of DWR insiders, the crisis was caused by decades of mismanagement and intentional lack of maintenance by the California Department of Water Resources ("DWR"). DWR management was such that it was a den of improper conduct and management went so far as to fabricate required reports. As one expert opined, the Oroville Dam was **"managed to failure"** by DWR. For decades, DWR had notice of the vulnerabilities of the main spillway and the emergency spillway, as made clear during the relicensing proceedings for the hydroelectric facilities. Instead of taking action, DWR buried its head in the sand.

4. DWR's maintenance of the main spillway over the decades was far from adequate, and has been characterized as little more than **"patch and pray."** Cracks in the concrete spillway were discovered "almost immediately after construction." Although these cracks were originally thought of as unusual, they were quickly deemed normal, and as simply requiring ongoing repairs. According to a team of independent experts retained to review the dam's failure, **"repeated repairs were ineffective and possibly detrimental."**

5. DWR's management of the dam was further hampered by a culture of corruption and harassment. For years, DWR supervisors were more interested in lining their own pockets than ensuring the safety of the facility and its workers. Important maintenance projects were delayed or never completed, and substandard supplies were used to address vulnerabilities in the dam's armored spillway. Workers who voiced concerns were silenced by DWR management in various deliberate ways that made its way

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all the way to the top administrators. Most importantly, State Water Contractors, who were in many cases responsible for the costs of the maintenance of the dam, were permitted to veto or defer important maintenance projects. Ultimately, the profits of the State Water Contractors were placed above safety because of favors to administrators of DWR.

6. The reckless conduct of DWR not only harmed Plaintiffs but also continues to pose a risk to the entire region and the State of California.

Water rushes down Oroville Dam's spillways on February 12, 2017
Source: Chico Enterprise Record

II. JURISDICTION AND VENUE

7. This Court has jurisdiction over this matter pursuant to California Code of Civil Procedure section 410.10. Plaintiff's damages exceed the jurisdictional minimum of this Court. Further, venue and jurisdiction is proper in this Court pursuant to Code of Civil Procedure section 404.3 and California Rule of Court 3.540.

8. Venue is proper in Butte County, pursuant to Government Code, section 955, because this is an action against a department of the State of California for taking or damaging private property for public use. Venue is also proper in the Butte County, pursuant to Government Code, section 955.2, because a department of the State of California is named as a defendant, this case involves injury to personal property, and Butte County is the county in which that injury occurred. Venue is proper in Butte County pursuant to Code of Civil Procedure section 392(a)(1), because this suit involves injuries to real property, and real property at issue in this suit is situated in Butte County.

III. PARTIES

9. Plaintiff **JEM Farms L.P.** ("JEM Farms") is a California Limited Partnership. Together with Plaintiff Chandon Ranch L.P., JEM Farms operates a walnut farm on approximately 2,000 acres along the Feather River in Oroville, California.

10. Plaintiff **Chandon Ranch L.P.** ("Chandon Ranch") is a California Limited Partnership. Together with Plaintiff JEM Farms, Chandon Ranch operates a walnut farm on approximately 2,000 acres along the Feather River in Oroville California.

11. Plaintiff **Bains Brothers Farms, LLC** ("Bains Brothers Farms") is a California Limited Liability Corporation engaged in the practice of farming. Bains Brothers Farms is a tenant on properties owned by Plaintiffs Jaswinder and Gurinder Bains.

12. Plaintiffs **Jaswinder Singh Bains and Gurinder Pal Bains** (collectively, the "Bainses") are residents of Yuba City, California, and trustees of the Jaswinder Singh Bains and Gurinder Pal Bains Family Trust ("Bains Family Trust"), which owns real property in Oroville, California.

13. Plaintiffs **George and Katherine Anita Barber** (collectively, the "Barbers") are residents of and own a home in downtown Oroville, California.

14. Plaintiff **Brush Hardwoods** harvests walnut burls throughout California, including fields in Marysville, California along the Yuba River. Brush Hardwoods operates out of Manteca, California in Stanislaus County.

15. Plaintiff **Chico Produce, Inc**., d/b/a ProPacific Fresh ("Chico Produce") is a California Corporation headquartered in Durham, California. Chico Produce specializes in the distribution of quality fresh, frozen, and dry food and related products to a diverse customer base, including foodservice, retail, healthcare, schools, institutional and distributors throughout central and northern California, southern Oregon, and western Nevada.

16. Plaintiff **Forrest Miller** is a resident of and works as a tenant farmer in Olivehurst, California.

17. Plaintiff **Tom Miller, Jr.** is the trustee of the Tom O. Miller Family Trust, which owns 52 acres of walnut orchards with 2,100 walnut trees along the Feather River in Marysville, California.

18. Plaintiff **MP Farms** is a general partnership which operates a walnut farm on approximately 183.5 acres in Butte County, downriver from the Oroville Dam.

19. Plaintiff **Purple Line Urban Winery, LLC** ("PLUW") is a California limited liability corporation based in Oroville. PLUW was the first downtown winery in Oroville, and is located in the historical district, one block from the Feather River at 760 Safford Street.

20. Plaintiff **Roplast Industries, Inc.** ("Roplast") is a California Corporation. Roplast manufactures custom polyethylene films and bags, and is located in Oroville, California.

21. Plaintiff **Tri Alliance Automotive Group, Inc.** d/b/a Dirks Automotive and Transmission ("Dirks") is an auto repair shop located in Oroville, California.

22. Plaintiff **Jeanette Morton** is a resident of and owns various real property in Oroville, California. Jeanette Morton is the mother of Plaintiffs Melissa Morton and Ashley Morton.

23. Plaintiff **Melissa Morton** is a resident of and owns real property in Oroville, California.

24. Plaintiff **Ashley Morton** is a resident of and owns real property in Oroville, California.

25. Plaintiff **AJK Farms, LLC** ("AJK Farms") is a California limited liability company, located in the County of Yolo. AJK Farms owns a 104 acre pistachio orchard located at 16878 County Road 117, West Sacramento, California.

26. Plaintiff **Don Beeman** leased, as a tenant farmer, certain agricultural real property located in Yolo County, California.

27. Plaintiffs **Adrian G. Benning** and **Michele A. Benning** (collectively, the "Bennings") are trustees of the Benning Family Trust, which owns an interest in agricultural real property located in Yolo County, California.

28. Plaintiff **CKMR2, LP** ("CKMR2"), a California limited partnership, owns an interest in agricultural real property located in Yolo County, California.

29. Plaintiff **Gregory E. Driver** owns agricultural real property located in Yolo County, California, consisting of an 8.4-acre parcel of walnut trees located beside the Sacramento River near Knights Landing, California.

30. Plaintiff **William A. Driver** is the trustee of the William A. Driver Revocable Trust, which owns a 100-acre parcel of walnut trees located in Knights Landing, California, adjacent to the Sacramento River.

31. Plaintiff **Jeffrey E. Dyer**, along with his wife, Jan Wing-Dyer, co-owns agricultural real property located in Sutter County, California.

32. Plaintiff **Garcia Farms, Inc.** ("Garcia Farms") leases agricultural real property located at 15124 County Road 117, West Sacramento, California.

33. Plaintiff **B.E. Giovannetti & Sons** is a general partnership. It leases and farms Chalmers Ranch. B.E. Giovannetti & Sons also owns and farms real property bordering the Sacramento River in West Sacramento, California, known as Monument Ranch.

34. Plaintiff **Emil Joseph Giovannetti** ("E.J. Giovannetti") is a resident of Urbandale, Iowa, who owns property bordering the Sacramento River in Knights Landing, California, known as Chalmers Ranch.

35. Plaintiff **Anita Belle Kane** is the Trustee of the Kane Trust, which owns agricultural real property located in Yolo County, California, along the Sacramento River.

36. Plaintiff, **Tom Kane** is a tenant farmer on the real property owned by the Kane Trust.

37. Plaintiff **L.A.B./Roseville** ("LAB"), a California General Partnership, owns an interest in agricultural real property located in Yolo County, California.

38. Plaintiff **Lang Family #1 Limited Partnership** ("Lang Family #1 LP") owns agricultural real property located in Yolo County, California, along the Sacramento River, including but not limited to, the Hann's Ranch, 21450 Old River Road, West Sacramento.

39. Plaintiff **K A Lang Family Limited Partnership** ("K A Lang Family LP") owns and leases agricultural real property located in the Yolo County, California, along the Sacramento River, including Bell Ranch and Bandy Ranch, both located in West Sacramento, California.

40. Plaintiffs **William F. Mattos and Kim H. Mattos** (collectively, the "Mattoses"), are trustees of the Mattos Family Revocable Trust, which owns agricultural real property located in West Sacramento, California.

41. Plaintiff **Kathleen A. Mitchell** is the trustee of the Mitchell Trust. Along with Plaintiff **Central Valley Farms LLC**, the Mitchell Trust jointly owns agricultural real property located in Yolo County, California.

42. Plaintiff **Central Valley Farms LLC** is an Iowa Limited Liability Corporation, registered to do business in California.

43. Plaintiff **Douglas G. Nareau** is an individual who owns real property in Sutter County, California.

44. Plaintiff **Nicoli Nicholas** is an individual who operates a cattle ranch in Sutter County, California.

45. Plaintiff **Nicoli Nicholas, Jr.** is an individual who operates a cattle ranch in Sutter County, California.

46. Plaintiff **Buzz Oates, LLC** ("Buzz Oates"), a California Limited Liability Company, owns an interest in agricultural real property located in Yolo County, California.

47. Plaintiff **Philip D. Oates** is an individual who owns an interest in agricultural real property located in Yolo County, California.

48. Plaintiff **OBF, LLC** ("OBF"), a Delaware Limited Liability Company, owns an interest in agricultural real property located in Yolo County, California.

49. Plaintiff **OK&B, LLC ("OKB")**, is a Delaware limited liability company. It is the successor in interest to O.K. and B, a California General Partnership. OKB owns an interest in agricultural real property located in Yolo County, California.

50. Plaintiffs **Frank C. Ramos** and **Joanne M. Ramos** (collectively, the "Ramoses") are the trustees of the Frank C. Ramos and Joanne M. Ramos Family Trust ("Ramos Trust"), which owns an interest in agricultural real property located in the Yolo County, California.

51. Plaintiff **Reclamation District No. 1600** ("RD 1600") is located in Yolo County, California, north of Interstate 5, and between the Sacramento River and the Yolo Bypass. RD 1600 comprises approximately 10.8 square miles (approximately 7,000 acres).

52. Plaintiffs **Lance Jeffrey Stanley** and **Sarah Hilea Stanley** (collectively, the "Stanleys") are the trustees of the Stanley Revocable Living Trust (the "Stanley Trust"), which owns agricultural real property located in Yolo County, California, consisting of a 150 acre parcel located in West Sacramento.

53. Plaintiff **David TeVelde**, along with his wife Alice TeVelde, is the co-trustee of the TeVelde Family Trust, which owns agricultural real property located in West Sacramento, California commonly known as the "Bypass Farm."

54. Plaintiff **Yolo Land Trust** is a California Nonprofit Corporation located in Woodland, California. Yolo Land Trust owns agricultural real property located in Yolo County, California, which is leased out to tenant farmer Garcia Farms.

55. Defendant **California Department of Water Resources ("DWR")** is part of the California Natural Resources Agency and is responsible for the State of California's management and regulation of water usage, including maintenance and regulation of the Oroville Dam. DWR has been tasked with protecting, conserving, developing, and managing much of California's water supply including the State Water Project which provides water for 25 million residents, farms, and businesses.

IV. FACTUAL ALLEGATIONS

A. BACKGROUND

1. Department of Water Resources

56. DWR was established by the State Legislature in 1956. It presently employees about 2,800 state civil service employees, including engineers, construction personnel, and environmental specialists. DWR is headed by a Director appointed by the governor. There has been considerable turnover in the director position in recent years, due to alleged incompetence and lack of control. Recent directors of DWR include:

- Lester A. Snow (February 2004 to January 2010)
- Mark W. Cowin (February 2010 to December 2016)
- Bill Croyle, Acting Director (December 2016 to July 2017)
- Grant Davis (July 2017 to January 2018)
- Karla Nemeth (January 2018 to present)

57. DWR's mission is to manage the water resources of California in cooperation with other agencies, to benefit the State's people and to protect, restore, and enhance natural and human environments.

58. DWR also acts as a public utility which buys and sells electricity from its water generating capability. DWR is primarily funded by State Water Project ("SWP") funds, general funds, and fees.

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59. The Division of Safety of Dams ("DSOD") is a division of DWR. DSOD engineers review and approve plans and specifications for the design of dams and oversee their construction to ensure compliance with the approved plans and specifications. Additionally, DSOD engineers inspect over 1,200 dams on a yearly schedule to ensure they are performing and being maintained in a safe manor.

2. Oroville Dam

60. Oroville Dam is an earthfill embankment dam on the Feather River, east of the City of Oroville, California that was built and is maintained by DWR. It was first conceived in 1951 and took almost seven years to build from 1961 and 1968. The dam is 770 feet high and almost 7,000 feet long. The dam impounds more than 3.5 million acre feet of water in Lake Oroville, the second largest man-made lake in California.

Lake Oroville and the Oroville Dam

61. Reports indicate that Oroville Dam was designed by an inexperienced engineer who was hired directly from a university post-graduate program. According to research, the engineer's prior experience was limited to one or two summers for a consulting firm, and he had no prior professional experience designing spillways, as then known by DWR personnel. DWR has recently maintained that the dam was designed by the "best of the best," contrary to all the public information now out in the public domain.

62. The Oroville Dam is represented as the beginning of the California State Water Project. From Oroville, water flows down the Feather and Sacramento Rivers and enters the northern reaches of the Sacramento-San Joaquin Delta. Thereafter, it is picked up at the Harvey O. Banks Pumping Station near the southern reaches of the Sacramento-San Joaquin Delta, and pumped into the Governor Edmund G. Brown California Aqueduct, which conveys water southwards to millions of Californians. The construction of the State Water Project was authorized in 1959, when Governor Edmund G. Brown signed the California Water Resources Development Bond Act.

63. Construction of the Edward Hyatt Pump-Generating Plant ("Hyatt plant") was finished at the Oroville Dam shortly after the dam was completed. At the time, it was the largest underground power station in the United States. Since 1969, the Hyatt plant has worked in tandem with an extensive pumped-storage operation comprising two offstream reservoirs west of Oroville. These two facilities are collectively known as the Oroville-Thermalito complex.

64. Water is diverted into the upper Thermalito reservoir ("Thermalito Forebay") via the Thermalito Diversion Dam on the Feather River. During periods of off-peak power use, surplus energy generated at the Hyatt plant is used to lift water from Thermalito's lower reservoir (the Thermalito Afterbay) to the Thermalito Forebay, which releases water back into the afterbay to generate up to 114 MW of power at times of high demand. The Hyatt and Thermalito plants produce an average of 2.2 billion kilowatt hours (kWh) of electricity each year, which serves millions of Californians.

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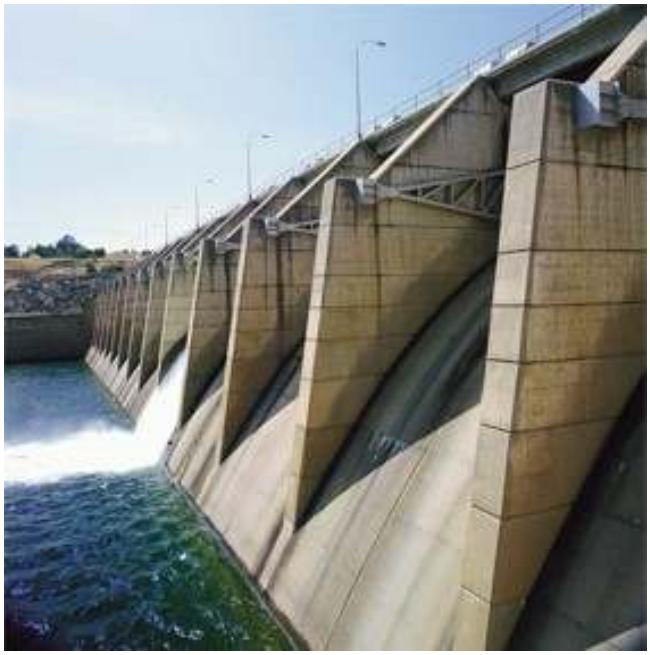


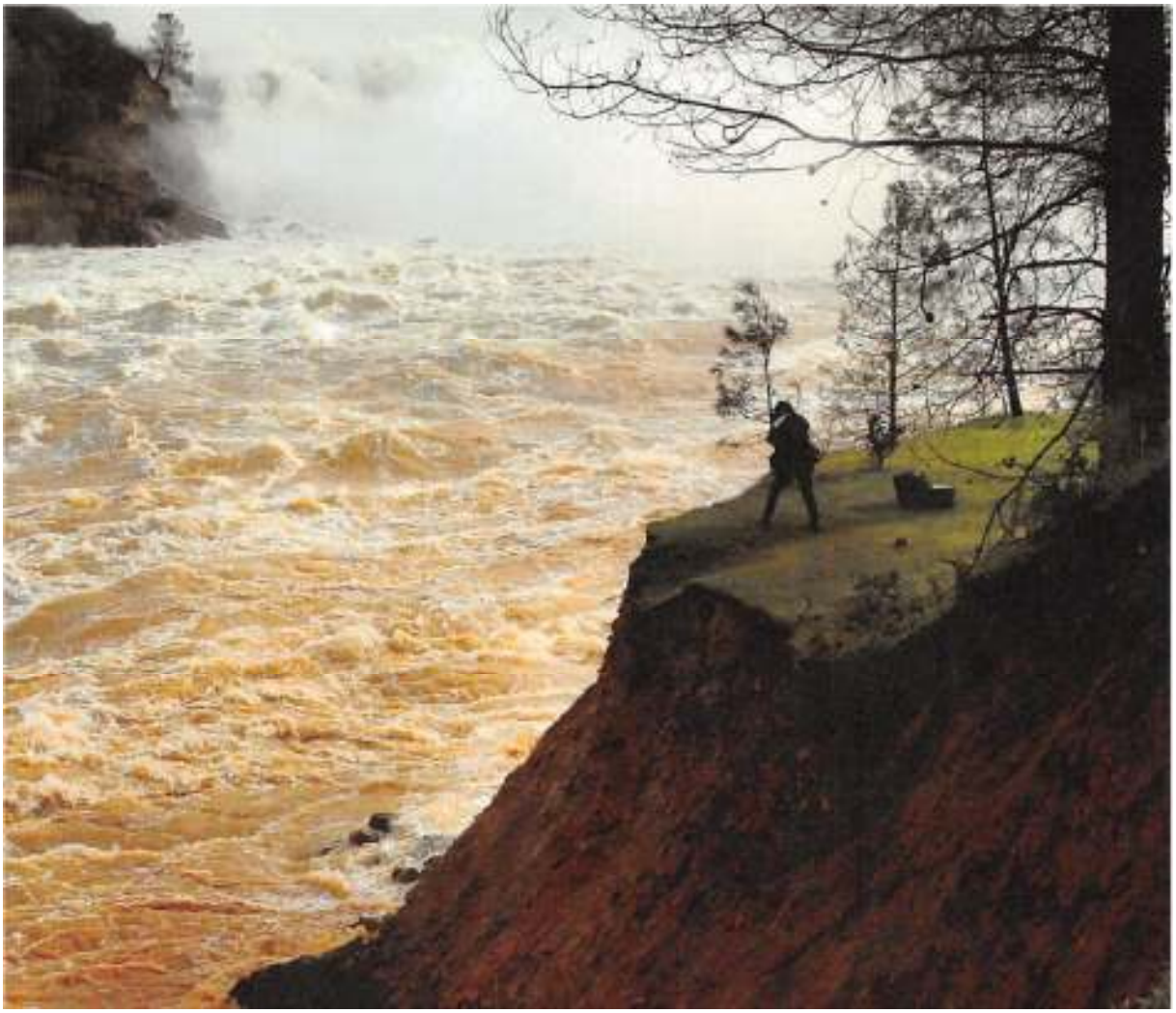
Thermalito Diversion Dam
Source: Department of Water Resources

65. Water may also pass downstream of Oroville Dam through three other channels, which are critical to the movement of water.

66. **First**, there is a river outlet, or bypass valve, which when operational, has a water-flow capacity of 5,400 cubic feet per second (cfs). The river outlet has been non-operational since July 2009, when a steel panel in the bypass valve collapsed, injuring four DWR employees, and was intentionally not maintained.

67. **Second,** a main spillway is used to quickly release large amounts of excess water downstream through a concrete channel, and to control the height of the reservoir. The main spillway is controlled by gates and has a designated flow capacity of 150,000 cfs. This main spillway failed in February 2017, precipitating the Oroville Dam crisis.

68. **Third,** water may flow over the top of an un-gated "emergency spillway," where a concrete 1,730-foot long weir is built 21 feet below the height of the main dam. This emergency spillway was employed after the main spillway **failed** during the Oroville Dam crisis. The emergency spillway also failed, prompting the evacuation of over 180,000 people in the area, creating a major crisis across hundreds of square miles, all of which could have been avoided but for the intentional misconduct of DWR.



Water released down Oroville Dam spillway into the Feather River, February 13, 2017
Source: San Francisco Chronicle

3. Prior Levee System Failures in 1986 And 1997

69. The Feather River levee systems previously failed before 2017, causing floods in 1986 and 1997, which were a direct cause of poor maintenance and reckless disregard for safety.

70. In 1986, peak inflow to the Oroville Reservoir reached 275,000 cfs, and peak flow releases reached 150,000 cfs. The outflow from Oroville Reservoir combined with flows in the Yuba River to trigger a levee break along the Yuba River, quickly inundating the towns of Linda and Olivehurst. This flooding occurred even though flows into the Yuba River at the time were only 60 percent of the design capacity of the floodway formed by levees along the Yuba River.

71. The 1986 floods destroyed 896 homes and damaged more than 3,000 homes. Losses were estimated at $22 million, putting DWR on full notice of the risks to Oroville and the surrounding communities.

Water flowing down Oroville Dam's main spillway during 1986 storms.
Source: California Department of Water Resources

72. The "New Year's flood" of January 1997 was considered one of the largest floods in the Northern California record and killed at least three people. A heavy rain fell for 9 days in the Feather River Basin. In response to forecasts, DWR made early flood releases from Oroville Dam. Outflows reached 150,000 cfs and 160,000 cfs. As reservoir inflows spiked, the City of Oroville was advised to prepare to evacuate.

73. Ultimately, there was no evacuation from Oroville. The reservoir peaked at 13.8 feet below full, with more than two hundred thousand acre-feet of unfilled flood-control space. However, based on their own criteria, the cities of Marysville and Yuba City ordered evacuations as a precaution in case the high waters caused levee failures there.

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74. To the south, the precautions proved to be justified when the Feather River's left bank levee failed downstream of its confluence with the Yuba River, carrying an at-capacity flood flow. Along the Feather River, the 1997 flood caused flood depths up to 30 feet in some areas. At least three people died. Flooding destroyed 322 homes and seriously damaged 407 more. Local damage from the 1997 floods was estimated to be more than $300 million to the local economy.

B. DWR WAS ON NOTICE AND KNEW OF THE DAM'S VULNERABILITIES YEARS AGO

1. Spillway Vulnerabilities Were Well Known and Raised in FERC Proceedings in 2005

75. In accordance with the Federal Power Act, hydropower projects such as the one at Oroville Dam must undergo relicensing of their facilities every 30 to 50 years. The Federal Energy Regulatory Commission ("FERC") relicensing process for the Oroville Dam commenced in December 2000.

76. It was well known that there were serious problems with the dam back in 2000. A number of parties to the relicensing proceedings sharply disputed the suitability of the emergency spillway on Oroville Dam — the spillway that was compromised in February 2017 and forced the evacuation of 180,000 people in the Feather River Basin.

77. Friends of the River, The Sierra Club, and South Yuba River Citizens League (collectively, "FOR") moved to intervene in the FERC proceedings in 2005.[1] Among other things, FOR sought a licensing order reclassifying the Oroville Dam emergency spillway as an auxiliary spillway and requiring DWR to armor the emergency spillway with concrete.

78. FOR argued that the unarmored and ungated emergency spillway did not have an actual concrete spillway and was thus in no condition to operate as envisioned in the operative flood-control manual. In fact, in 1997 DWR chose not to use this emergency spillway, presumably because of the danger of hillside erosion and the potential loss of the

[1] A copy of FOR's motion to intervene is available at https://www.scribd.com/document/339226431/Oroville-Dam-Motion-to-Intervene-of-Friends-of-the-River-Sierra-Club-and-South-Yuba-River-Citizens-League-filed-on-October-17-2005.

spillway's foundation that such use could cause. Given its assigned mission and the damages that might be associated with its use, FOR told FERC that the emergency spillway did not meet FERC's engineering guidelines and other requirements.

79. Other intervenors in the FERC proceedings, California Sportfishing Protection Alliance and American Whitewater supported FOR's arguments relating to the need for flood facility modifications for safety reasons.

80. The joint intervention of Sutter County, the City of Yuba, and Levee District 1 raised similar issues and concerns, when they argued that if Oroville Dam could not provide surcharge storage, then the flood-control manual should increase flood space from 750,000 to 900,000 acre-feet to protect the local communities and avoid an overflow crisis.

81. Butte County raised public safety and other issues during the relicensing proceeding, contending that DWR had not adequately addressed significant public-safety risks associated with the Oroville Dam. Butte County expressed concerns about heavy rainfall events bringing Oroville Reservoir to possible overflow conditions well known to DWR. The County criticized DWR for failing to address emergency operations, including the need to relocate the County's Emergency Operation Center out of the path of a flood in the event of dam failure or a large outflow from the reservoir.

82. Over the course of the FERC proceeding, DWR took the position that it was neither necessary nor appropriate to address specific issues related to dam safety in relicensing. Neither DWR nor other entities responsible for the dam indicated how the public could engage on dam-safety issues if not in relicensing.

83. DWR also asserted that the geologic conditions at the emergency spillway had recently been reviewed, and that the review had determined that the emergency spillway was a safe and stable structure founded on solid bedrock that would not erode.

84. Contrary to DWR's false representations to FERC, the emergency spillway was not founded on good quality rock. Indeed, pre-design and design geological explorations in 1948 and 1961 recognized the poor quality of the foundation as reported internally to DWR. And a 1962 geology report fully described the typical deep weathering

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pattern in bedrock, and clearly recognized its very irregular pattern, noting that "weathered rock will of course be subject to relatively accelerated erosion; where this is critical, the rock should be protected." Subsequent reviews falsely characterized the foundation as good quality rock.

85. FERC ultimately punted on the issue of the emergency spillway's inadequacy. FERC licensing staff thus proposed to relicense the Oroville Dam without any spillway modifications and acceded to the false presentations of DWR.

2. Decades of Inspection Reports Revealed Dam Vulnerabilities and Failed Maintenance Covered Up By DWR

86. DWR inspection reports spanning nearly two decades, from 1998 to 2016, indicate DWR delayed or intentionally ignored a wide variety of maintenance and management issues.[2] The inspection reports repeatedly identify the need for a long-term phreatic surface[3] monitoring plan, aging radial gate anchor tendons which had reached or exceeded their useful life, a large and growing crack in gate 8 of the Oroville Dam's headworks, various occurrences of spalling concrete, and vegetation and debris clogging drains and impacting water flow.

87. Another issue raised by a number of the inspection reports is that of extensive corrosion and calcification of internal structures. A 1996 inspection report shows that:

> **"[maintenance work] has been requested of Civil Maintenance, but they never get to it. They are presently busy constructing a float for the Fourth of July Fireworks show . . . Other work has also been requested for several years and has not been completed."**

88. Inspection records confirm that, in 2008, a chain was used to sound the floor of the main spillway chute wherein "suspect areas and visible defects were marked for future repairs." This "chain-drag test" was conducted by DWR maintenance workers

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[2] These inspection reports are available at: https://d3.water.ca.gov/owncloud/index.php/s/j76ZsTk6tDgKxoo

[3] The phreatic surface is the water that naturally flows through an earthen dam.

without any additional training or documentation of pending repairs. The purpose of the test was to identify voids underneath the concrete spillway. Such voids eventually contributed to the spillway's failure in February 2017.

C. PRIOR INCIDENTS OF FAILURE OF MAINTENANCE

1. July 2009 Injuries at the Oroville Dam

89. In 2009, five DWR employees were injured in an accident involving the river valves at the Hyatt plant due to poor supervision and review

90. The employees had been testing 72-inch river valves, which are used to control temperature and water flow from the dam to the Feather River. Shortly after the valves were opened, a 6-foot-tall, 10-foot-wide steel panel near the employees collapsed, sending flying debris toward the workers and creating a vacuum-like force that pulled them toward a tunnel carrying water out of the dam.

91. The order to open the valve was issued by Oroville Field Division Chief Pat Whitlock, who was the DWR field division chief at the time.

92. The accident was due to a lack of an energy dispersion ring in the river valve, which was the result of poor maintenance and supervision. The original ring had been damaged in 1968, and remained defective ever since. Rather than replacing the ring, DWR decided to merely remove it earlier in 2009. Whitlock and DWR management knew that there was a risk of undue pressure on the valve after the energy dispersion ring was removed and created a potential disaster.

93. Five employees suffered injuries, including head trauma and a broken arm and leg, as a result of the incident. Given the nature of the incident, there was a significant risk that these employees could have perished due to the culture and lack of concern for safety.

94. An investigation by the California Division of Occupational Safety and Health found that DWR **knowingly** put its employees in harm's way by instructing them to perform a task under dangerous conditions.

2. Fire at the Thermalito Power Plant

95. On Thanksgiving, November 22, 2012, there was a major fire at the Thermalito Pumping Generating Plant, which is operated by DWR at the Oroville Dam. The fire forced an immediate shutdown of the plant.

96. The fire began three floors below ground level, and spread upward into the control room on the next floor.

97. Firefighters were forced out of the burning building by life-threatening dangers from collapsing equipment, zero visibility and other harmful conditions. Prior to evacuating the plant, Cal Fire personnel installed an unmanned nozzle that continued fighting the fire, ultimately bringing it under control late Saturday morning, November 24, 2012.

98. A forensic expert brought in by the State identified contributing factors to the fire, including: aged cables, mixed voltages and over-stacked cables in the cable trays, a lack of fire stops between elevations, an inoperable dry chemical fire extinguisher cart, and combustible materials such as plant schematics and additional historical items printed on large paper sheets stored within the plant.

99. Although there were no injuries to plant personnel, annual revenue loss from hydroelectric generation was estimated to be in the millions and no one was terminated for the failure.

D. CULTURE OF INADEQUATE SUPERVISION AND CONTROL BY DWR DIRECTORS AND SUPERVISORS

1. DWR's Inadequate Maintenance Program

100. DWR's maintenance of the Oroville Dam in the years preceding its failure in 2017 was well known to be inadequate.

101. For example, in 2013, Michael Hopkins, who worked for DWR as a utility craft worker for many years, observed that several areas of the dam's spillway exhibited cracking and/or spalling, and some cracks in the corners of the spillway slabs were as wide

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as 8 feet. The spillway slabs were designed to be several feet thick, but in some areas they were reduced to just 3 to 6 inches in thickness.

102. Hopkins was part of a spillway repair crew in 2013. The crew was instructed to drag a 20-foot chain across the entire length of the concrete spillway, and listen for "hollow sounds." One member of the crew who was assigned to listen for hollow sounds was legally deaf, and it became the subject of jokes. She informed the supervisor in charge of the repair, Gregg Ahlers, **"this isn't going to work,"** to which Ahlers responded that she should get back to work.

103. During the 2013 "chain-drag test," hollow-sounding areas were marked with spray paint. Hopkins observed that some of the 20 foot by 20 foot concrete slabs in the spillway sounded **entirely hollow**. The crew chipped out rough areas with air hammers and then inserted steel rods into the concrete and filled the holes with "Quikrete." Supervisor Ahlers instructed the crew to **"make it look pretty."**

Photo of Cracks on Main Spillway
Source: UC Berkeley Center for Catastrophic Risk Management

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104. Another DWR employee who worked on the spillway crew in 2012 and 2013 stated that the repairs also involved drilling holes in the spillway concrete and inserting rebar and a Sika concrete repair epoxy. The employee noticed that the Sika epoxy used for the job was expired and alerted his supervisor. The supervisor instructed him to use it anyway. A supervisor had purchased the epoxy from a friend, and knew the expiration date was long past. This was but one example of the daily coverups.

105. Filling voids underneath the concrete main spillway, also known as low pressure grouting, was a common practice at the Oroville Dam. Low pressure grouting should only be done by experienced personnel, as pumping too much concrete into a void can cause further damage and compromise the spillway's integrity. Moreover, low pressure grouting had the potential to clog the drainage system underneath the spillway, further compromising the structure. DWR regularly tasked inexperienced personnel to perform low pressure grouting, and the grouting that was done was performed incorrectly.

106. DWR employees also observed other problems with the Oroville Dam, including a large crack in the main spillway gate, poorly patched portions of the main spillway's concrete, and spillway drains clogged with vegetation and debris. All of these problems were brought to the attention of supervisors'.

107. DWR management was ill-equipped to address any of these issues. DWR's Planning/Scheduling branch is charged with keeping track of various projects at the Oroville Dam, but made few attempts to do so. On many occasions, this branch would mark projects or tasks as complete when they had not even been started, and reports were filed indicating that they were done.

108. As a result of these reckless practices, necessary maintenance was never performed. For example, incomplete projects to clean the spillway drains and seal the spillway gates were intentionally marked "done" when they were not. Supervisors knew of this.

109. Former senior executives at DWR have opined that the required DSOD periodic review of the Oroville Dam spillway should have brought to light the lack of

maintenance and improper repairs to the spillway chute underslab drainage system and maintenance of the vegetation near the spillway. Based on their review of the evidence, they have also concluded that the repairs were likely performed by unqualified workers and without consultation with the DSOD, all of which should have been done.

2. Influence of State Water Contractors

110. In 2004, there was a shift in the culture at DWR, when Lester Snow was appointed Director of the agency. Snow served as Director of DWR until 2011. Snow and his successors have allowed California's State Water Contractors to exert undue influence over the management of the agency.

111. During the 1960s, as the State Water Project ("SWP") was being constructed, long-term contracts were signed with public water agencies, known as the State Water Contractors. They receive annual allocations, specified annual amounts of water, as agreed to in some of their contracts, which will expire in 2035. In return, the contractors repay principal and interest on both the general obligation bonds that initially funded the Project's construction and the revenue bonds that paid for additional facilities. The State Water Contractors are also required to pay all costs, including labor and power, to maintain and operate the SWP's facilities, including the Oroville Dam.

112. Excerpts from the Water Supply Contract between DWR and one of the State Water Contractors, the **Metropolitan Water District of Southern California**, are attached hereto as **Exhibit A**. In relevant part, the contract provides that the Metropolitan Water District was to make payments to the State for capital costs; operation, maintenance, power, and replacement costs for State Water Project facilities.

113. It is well known that the State Water Contractors have lobbied DWR to defer maintenance at SWP facilities, in order to reduce their own costs. Former high level executives at DWR have stated that while past directors, such as David Kennedy who was known for his ethics and integrity, kept the State Water Contractors at bay, Snow allowed them to dictate DWR maintenance policy.

114. As a result of the undue influence exerted by the State Water Contractors, necessary maintenance at the Oroville Dam has been deferred and/or put off altogether. As one example, State Water Contractors **vetoed** a project to conduct a seismic evaluation of the Oroville Dam, as suggested by a DWR structural engineer who was concerned about the stability of the dam.

115. Snow also appointed unqualified and inexperienced persons to high-level positions within DWR, based solely on their personal or political connections.

3. Toxic Culture of Discrimination and Harassment of Employees

116. Over the decades, DWR has perpetuated a toxic culture and hostile work environment at the Oroville Dam. DWR management at the Oroville Dam was openly hostile to women and minorities. This toxic culture has not only impacted its workers but also undermined the maintenance and safety of the dam.

117. For example, in 2010 or 2011, supervisors at DWR condoned and allowed a noose to be hung at a meeting room used daily by DWR staff. It was directed at an African American employee. The noose remained there for two to three months in plain view of supervisors until the African-American employee took it down himself.

Noose found in DWR Meeting Room
Source: Anonymous DWR Employee

118. As but another example of the atmosphere of workplace harassment, the same African American DWR employee at the dam found a doll hanging in his locker. It is believed that DWR has hired no more than one or two African Americans at the Oroville Dam over the past 20 years.

119. In or around 2010, a white DWR employee told an African American employee that "This job is not like picking cotton." A DWR supervisor, Maury Miller was present and heard the racist comment, but took no action when confronted, stating "**I heard nothing**."

120. This African-American employee was also called "nigger," but no action was taken by DWR management to address the racist behavior.

121. DWR has also allowed sexual harassment against female employees to proceed with impunity.

122. For example, one of the few female employees at Oroville Dam was constantly harassed by her male supervisors and counterparts. One supervisor repeatedly asked her out on lunch dates. She was exposed to graphic images, including a CPR mannequin posed in a sexual position at one of her worksites. DWR employees described a woman's conference attended by a female employee as a "Dyke conference," and regularly referred to female employees as dykes.

123. When employees spoke up on behalf of the victims of harassment, they were at times physically threatened by other DWR employees outside of the work site.

4. DWR's Culture of Corruption — The Water Mafia

124. DWR's management at the Oroville Dam was at times corrupt, with supervisors and other employees stealing state equipment and supplies for their own personal use.

125. It is reported that at least one supervisor frequently stole gasoline from the Oroville field division for his own personal use.

126. It is reported that another DWR maintenance supervisor, Chuck Saiz, was denied a promotion after it was discovered that he had stolen state property, including

asphalt and tools, from Oroville Dam worksites. Saiz has also encouraged a crony system at Oroville Dam, offering overtime work to the employees whom he considers to be close friends. This was in direct violation of DWR's official overtime policy. The word and the joke among staff was that DWR supervisors were the "**water mafia**."

127. Gregg Ahlers, another DWR supervisor at Oroville, purchased Sika concrete products from his hometown hardware store, many miles from Oroville, for DWR's use, even though DWR policy was that such products were to be purchased locally. Many of these products were expired, which Ahlers knew when he purchased them.

128. The Sika products were also applied incorrectly. Labels on the containers warned that the epoxy should not be applied when ambient temperatures exceeded 100 degrees Fahrenheit. But DWR applied the epoxy on days when the temperature spiked above 107 degrees Fahrenheit.

129. DWR employees alerted Ahlers to the temperature warning. Ahlers responded — incorrectly — that the temperature warning was in **Celsius**, rather than **Fahrenheit**, and instructed the employees to use it anyway!

130. DWR managers would on occasion purchase overpriced tools and supplies from friends with state money for use at the Oroville Dam.

131. This culture of corruption extended all the way to DWR senior management. It is reported that DWR maintains **two sets of accounting books**. DWR's "official" accounting system is maintained on an SAP server. However, DWR also maintains a second set of books at a data center located at 1416 9th Street in Sacramento. This second set of books reflects DWR's actual finances. It is alleged that the books show that DWR often expended funds that had been earmarked for one project on various other projects. This was reported to DWR senior management.

E. 2017 DAM FAILURE

1. February 2017 Dam Failure

132. In February 2017, the Oroville Dam's main spillway failed, causing millions of dollars of damage and the evacuation of 180,000 people.

133. The 2017 water year was a record year for many of the state's important watersheds. As a result, by mid-winter 2017, DWR was making flood control releases to maintain required space in the Oroville reservoir. Between February 6 and 10, 2017, almost 13 inches of rain fell in the Feather River Basin, increasing inflow into Oroville reservoir from 30,000 cfs to over 130,000 cfs on February 7. Many of the DWR personnel became concerned about the problems with the dam.

134. While releasing 54,000 cfs down the Oroville Dam's main spillway on February 7, 2017, DWR identified an unusual flow pattern and stopped releases to discover a large crater spanning almost the entire width of the dam's concrete-lined main spillway. The main spillway's concrete lining was completely destroyed in one section, and water was escaping the concrete chute to the side into a new and soon-to-be massive eroding gully, setting the stage for a crisis.

135. The huge volume of water flowing through the main spillway had eroded chunks of concrete and dug a 30 foot hole in the spillway's base. The power of the water had destroyed nearly half of the main spillway and carried it downstream to the Feather River and beyond.

Concrete section eroded in the middle section of the main spillway
Source: Kelly M. Grow/Department of Water Resources

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Oroville Dam spillway damage, February 27, 2017
Source: Department of Water Resources

136. In the days preceding the Oroville Dam crisis, Mathews Readymix, a concrete company based in Yuba City, supplied DWR with hundreds of cubic yards of concrete in the middle of night. Local residents speculated DWR scheduled an unusual delivery time so as to avoid detection of emergency repairs.

137. On February 9, 2017, DWR increased water releases down the main spillway, in an attempt to strike a balance between the rapidly increasing erosion of a gully to the south side of the spillway and the risk of losing more concrete spillway, versus rising reservoir levels and the prospect of using the dam's emergency spillway for the first time.

138. Because DWR was not making releases that it would ordinarily implement, the reservoir began filling up. According to reports, reservoir inflows peaked at more than 190,000 cfs from February 8 to 10, 2017, and DWR began preparing for possible use of the emergency spillway.

139. On the evening of Saturday, February 11, 2017, the water level in the Oroville Reservoir reached 901 feet, causing the water to spill over the emergency spillway

for the first time in its history. The water flowing over the emergency spillway caused erosion of the hilltop immediately below the spillway's lip, threatening to undermine and collapse the concrete lip that formed the emergency spillway. Failure of this lip could have resulted in the sudden loss of the top thirty feet of water in the reservoir, with catastrophic flooding to communities downstream of the dam. DWR personnel became extremely concerned and local law enforcement personnel were notified of the pending crisis.

Main and auxiliary spillway at Oroville Dam on February 11, 2017 at 3 p.m.
Source: William Croyle/California Department of Water Resources

140. On February 12, in response to the erosion caused by use of the emergency spillway, DWR further opened the gates to the main spillway allowing 100,000 cfs to pass. The increased release from the main spillway pulled the reservoir down, reducing flows over the emergency spillway.

141. DWR continued releases down the main spillway to relieve pressure on the emergency spillway foundations and to recover the required reservoir flood reservations

(required empty space in the reservoir to absorb inflows), into which high inflows had encroached during the previous days.

142. Following the incident, all of the Oroville Dam complex's outlets were compromised. The emergency spillway was unsafe to use. The main spillway was broken and contributing to massive amounts of sediment and debris to the Feather River/Oroville Dam power afterbay. The powerhouse at the base of Oroville Dam was unusable because of high water in its afterbay caused by debris and because PG&E had de-energized transmission lines to the powerhouse, whose towers were vulnerable to erosion from the use of either spillway. The river valve outlets at the base of the dam were also non-operational because of afterbay backwater conditions.

2. Evacuation of Oroville and DWR's Failure to Handle the Crisis

143. An evacuation order was issued on February 12, 2017, soon after the emergency spillway was employed. The decision making process surrounding the evacuation order was chaotic. Due to indecision by DWR officials, the Butte County Sherriff, Kory Honea, had to step in and order the evacuation. This chaotic decision making was documented in DWR notes, known as Incident Command Notes, which are attached hereto as **Exhibit B**.

144. State water officials struggled to monitor the unfolding crisis as the Oroville Dam spillways crumbled. Since at least 2011, federal regulators had requested that state officials in charge of the dam consider installing cameras, lights, and more sensors and monitors to help alert managers to potential structural problems. But on February 12, 2017, while the dam's spillway's failed, DWR officials could not see what was happening.

145. During the Oroville Dam Crisis, state water officials used drones and scrambled to borrow cameras and helicopters from other agencies, including the California Transportation Department, to inspect their own dam and its spillways.

146. Due to the lack of information, there was indecision as to whether an evacuation order was necessary. At one point on the night of February 12, a state geologist

showed officials overseeing the crisis a current drone photograph which provided a clearer picture of the state of the spillway.

147. At the time, Butte County Sheriff Kory Honea saw dam officials were concerned by the picture, and he had them explain to him what it meant. Dam officials conferred among themselves for about 10 to 15 minutes. When they came back to Honea, he could tell they were highly concerned about a potential crisis.

148. Realizing time was of the essence, Honea began to interrogate the group. Honea told the officials that it sounded like they needed to order an evacuation. Various people in the conference room began to talk among themselves. Honea took over and said in a loud voice "Everybody listen to me," and recounted the facts that had been presented to him. He then said they needed to evacuate, and if anyone disagreed he needed to know now. The room fell silent, and Honea issued the evacuation order when the DWR supervisors failed to respond.

149. Downstream, officials extended the evacuation order or advisories to parts of Sutter and Yuba counties, including the cities of Yuba City and Marysville. The evacuation orders covered 180,000 people.

Oroville Dam Evacuees at Chico State Fairgrounds
Source: San Francisco Chronicle

150. The orders sent tens of thousands of cars simultaneously onto undersized roads, creating hours-long backups. Some drivers ran out of gas, creating major problems because it was a last minute order. Others used the shoulder to get past traffic and created a major traffic problem because of the delay of DWR to give advance warning. It took one Yuba City resident six hours to get to Davis. Highways 70 and 99 southbound were still at a crawl near midnight at their merge north of Sacramento, all because of prior inaction by DWR officials.

F. THE OROVILLE DAM CRISIS COULD AND SHOULD HAVE BEEN PREVENTED

1. Center for Catastrophic Risk Management Independent Report

151. A team from the University of California ("UC"), led by Professor Robert G. Bea, conducted an independent review of Oroville Dam's failure. Bea is a founder of the UC Berkeley Center for Catastrophic Risk Management ("CCRM") and has reviewed other high-profile disasters, such as Hurricane Katrina and the BP oil spills. CCRM's first report, titled *Root Causes Analyses of the Oroville Dam Gate Spillway Failures and Other Developments* ("CCRM Root Causes Report"),[4] found that there were pervasive design defects in the gated spillway, and that these flaws were propagated by construction defects and inadequacies in maintenance. All of this was known to DWR.

152. The CCRM Root Causes Report concludes that Oroville Dam's failure was "preventable," and that over decades there were many opportunities for DWR and DSOD to recognize and investigate serious issues that could have led to effective remedial measures. The report states:

> ***"These egregious long-term repeated failures violated the First Principle of Civil Law: 'imposing Risks on people if and only if it is reasonable to assume they have consented to accept those Risks.' "***

[4] A copy of the CCRM Root Causes Report is available at https://drive.google.com/file/d/0Bz1I1mIutSEnbFJuVUJZWWNNVlU/view.

153. The gravamen of the CCRM Root Causes Report is that original design defects and flaws were ingrained into the main spillway from its construction, and that, over time, these defects were compounded by **ineffective inspections and maintenance**. Ultimately, the flawed maintenance repairs propagated and increased the spillway degradation.

154. Due to design flaws, each flood control operation of the Oroville Dam's main spillway degraded the concrete spillway in its foundational and anchorage structural integrity. Penetrating water flows into and under the spillway's slabs created scouring erosion conditions. As a result, the compacted clay "fines" layer was carried off through the course drain rock and out through the drains to the spillway. This same process eroded and transported fines deeper within the slab foundation to where voids formed.

155. For decades, DWR intentionally failed to adequately address these defects. For example, a 2007 photograph reveals that one section of the spillway drains servicing 18,250 square feet of spillway drainage area were non-functional. Nevertheless, this non-functional drain state was not repaired for nearly 10 years, and persisted until the time the spillway crumbled in 2017. Had DWR properly addressed this issue, an investigation would have revealed the source of widespread clogging of the spillway drains, and remedial action could have been initiated.

Non-functioning Sidewall drain revealed in a Nov. 9, 2007 spillway photograph
Source: CCRM Root Causes Report

156. **The CCRM Root Causes Report found that inappropriate standards, guidelines, procedures, and processes were used by the DWR to evaluate and manage the risk of failure of the Oroville Dam's gated spillway**. Specifically, these standards, guidelines, procedures, and processes failed to adequately and properly address technological obsolescence, and increased risk of failure characteristics of the spillway.

157. According to the CCRM Root Causes Report, the gated spillway was **"managed to failure"** by DWR. According to the report, the root causes of the dam's failures were founded primarily on organization malfunctions due to human and organizational decision making, task performance, knowledge development and utilization as developed and propagated by DWR during the spillway's design, construction, and operations and maintenance activities. Identified deficiencies in the dam were either intentionally ignored, treated as low priority, not acted upon, or a combination thereof, all to the detriment of the safety of the dam.

158. In terms of operations and maintenance, the CCRM Root Causes Report identified two major defects: (1) "Repeated ineffective repairs made to cracks and joint displacements to prevent water stagnation and cavitation pressure induced water intrusion under the base slabs with subsequent erosion of the spillway subgrade, and in some cases, to effectively 'plug' and severely decrease water flow through the spillway drains"; and (2) "Allowing trees and other vigorous vegetation to grow adjacent to the spillway walls whose roots could intrude below the base slabs and into the subgrade drainage pipes resulting in reduced flow and plugging of the drainage pipes."

159. Over the decades, there were many opportunities for DWR to recognize and investigate serious issues that could have led to effective remedial measures. The CCRM Root Causes Report found DWR's lack of recognition of the significance of these severe issues revealed significant failure by DWR to identify and rectify critical components of the Oroville Dam's main spillway. The main spillway was destroying itself from within, and the problem grew worse with each flood control spill, all known to DWR.

160. One of the greatest failures identified by the CCRM Root Causes Report was the deficiency of insuring the operational structural integrity based on inspections and analyses of inspection results performed by DWR and DSOD.

2. NBC Bay Area Investigation and Report

161. NBC Bay Area conducted a six month investigation that reviewed two decades worth of safety documents and inspection reports concerning the Oroville Dam, which raised questions about safety of the Oroville Dam beyond the spillway.[5]

162. NBC had seven engineers review 20 years of FERC and DSOD inspection reports, engineering studies, and other documents. All of the engineers told NBC that the documents raised serious safety concerns **"that must be addressed sooner rather than later or risk failure of Oroville Dam itself."**

163. According to the NBC Report, FERC and DSOD inspection reports and engineering studies repeatedly identified problems with the stability, safety and monitoring of the dam. Issues raised by engineers contacted by NBC included:

(1) a 15 foot-long-crack in the concrete at a gate in the dam's headworks (flood control structure) which appeared to be growing;

(2) spalling of concrete in other areas of the dam;

(3) cracking tendons, or trunnion rods, that help move the dam's 20-ton radial gates, which control the flow of water through the dam; and

(4) failure of DWR to develop a long-term plan to monitor the amount and speed of water that naturally flows through the earthen dam, despite requests by federal inspectors to do so since 2011.

164. Don Colson, a former engineer at DWR, told NBC Bay Area that the green spot on the face of the Oroville Dam could be a sign that the phreatic surface is already leaking internally through the face of the dam. If the phreatic surface comes out at the

[5] A copy of the NBC Bay Area Report is available at https://www.nbcbayarea.com/investigations/Records-Raise-Safety-Questions-Surrounding-Oroville-Dam-448318083.html.

wrong place and the wrong speed, it could erode the structure from the inside, and if enough force is created, it could wash away the entire dam.

165. NBC Bay Area also spoke with two retired DWR engineers who identified serious problems at the Oroville Dam. They wished to remain anonymous for fear that DWR would retaliate against them. One of the insiders, known by the pseudonym "Mark," said that DWR is "**not addressing issues that have been pointed out and documented in previous [DSOD] inspection reports**." The other insider, called "Tony" in the report, said that DWR's delayed response to these issues may be in due large part to DWR's culture:

> **"They have a tendency to try to reduce their maintenance costs by trying to do things themselves and not getting adequate technical help."**

Those same individuals worried these problems could lead to a collapse worse than the one in February 2017. Tony said:

> **"Here you'll have catastrophic structural failure that's not going to allow you to operate the facility the way it's supposed to."**

3. Independent Forensic Team ("IFT") Faults DWR for Organizational and Operational Failures

166. At the request of federal officials, DWR retained an Independent Forensic Team ("IFT"), composed of professional engineers, to determine the root cause of the 2017 spillway incident at the Oroville Dam. The IFT issued a final report summarizing its findings on January 5, 2018.[6]

167. In its January 5 report, the IFT concluded that the dam's service spillway chute failure was most likely initiated by the uplift and removal of a slab in the main spillway chute. Once the initial section of the chute slab was removed, the underlying rock and soil material was directly exposed to high-velocity spillway flow. The high-velocity

[6] A copy of the IFT's Report is available at https://damsafety.org/sites/default/files/files/Independent%20Forensic%20Team%20Report%20Final%2001-05-18.pdf

flow rapidly eroded the foundation materials, removed additional chute slab sections in both upstream and downstream directions, and quickly created an erosion hole.

168. According to the IFT, the uplift and removal of the slab section was most likely caused by water uplift pressure beneath a section of the chute slab. The excessive uplift pressure was mainly due to high-velocity spillway flow injecting water into slab surface features, such as open joints, unsealed cracks over the herringbone drains, spalled concrete at either a joint or drain location in either a new or previously repaired area, or some combination of these features.

169. The IFT identified a number of design and construction fragilities which lead to vulnerability to uplift, which included:

(1) underdrains that intruded into the chute slabs section, resulting in cracks above most of the herring bone drains;

(2) absence of waterstops at contraction joints, and less than optimal shear key configuration;

(3) up to 50 percent of the foundation in some areas was not properly treated by removal of weathered materials and cleaning of soil-like materials from the surface;

(4) shallow and inadequate rock anchorage;

(5) a drainage system with many deficiencies, such as no filtering, possibly broken or disconnected pipes, and inadequate collector drain capacity;

(6) single top layer of nominal reinforcement bars; and

(7) placement of joint dowels so as to create a plane of weakness near the top surface of the joint.

170. According to the IFT, DWR represented to the public that the entire SWP was designed by the "**best of the best**." This was a total falsehood. DWR concealed from the public the fact that the principal designer of this "tallest in the nation" dam was a young man hired right out of a post-grad program, with very limited engineering work experience, and no prior professional experience in spillway design. Subsequently, cracks were observed at the main spillway soon after the dam's construction. These cracks, and the

associated large drain flows resulting from dam seepage, were considered to be normal. Such seepage further contributed to the corrosion of spillway anchors and erosion of the spillway foundation.

171. The IFT found that the failure of the emergency spillway was caused by "significant depths of erodible soil and rock in features orientated to allow rapid headcutting toward the crest control structure." Emergency spillway damage also resulted from factors such as hillside topography that concentrated flows and increased erosive forces, facilitating headcut formation.

172. The IFT states that, "Although the poor foundation conditions at both spillways were well documented in geology reports, these conditions were not properly addressed in the original design and construction, and all subsequent reviews mischaracterized the foundation as good quality rock."

173. The IFT **faulted** DWR for failing to conduct comprehensive periodic reviews of the original design and construction of the dam that took into account a comparison with the current state of the practice. Such a review would have "connected the dots" and identified the physical factors that led to the failure of the service spillway chute, including design shortcomings; construction procedures, decisions, and changes to designs that exacerbated the shortcomings of the dam design; subsurface geologic conditions that left portions of the spillway susceptible to uplift and subsequent foundation erosion; chute repairs that were generally limited in extent, rather than designed to reliably and durably withstand high-velocity flows, thermal effects, and other loading conditions; and geology, topography, infrastructure, and other conditions on the hillside downstream of the emergency spillway that made the hillside susceptible to substantial and rapid erosion.

174. The IFT states that the primarily visual inspections which have occurred in the past may offer a base for the recommendation of further investigation and testing methods, but are not typically capable of detecting "'hidden' defects and deficiencies, such as problematic chute slab details and voids under slabs."

175. IFT concluded:

"DWR has been somewhat overconfident and complacent regarding the integrity of its civil infrastructure and has tended to emphasize shorter-term operational considerations. Combined with cost pressures, this resulted in strained internal relationships and inadequate priority for dam safety."

176. IFT also identified other general organizational, regulatory, and industry factors that contributed to the spillways failure. These factors included: a reactive approach to civil infrastructure maintenance and cost control; insufficient priority on dam safety; a reliance by dam owners on regulators and regulatory processes; inadequate information management for dams; insufficient technical expertise in dam engineering and safety.

177. IFT further concluded that:

"DWR has been a somewhat insular organization, which inhibited accessing industry knowledge and developing needed technical expertise."

178. IFT refers to the crisis as a "wake-up call for everyone involved in dam safety" as the incident occurred at the nation's tallest dam in spite of federal regulatory oversight and numerous consultant evaluations.

179. IFT concludes that, although "decisions were made with the best of intentions," the choice to take the main spillway out of service was "against the advice of civil engineering and geological personnel." Essentially, dam operators should have never allowed water releases which utilized the emergency spillway.

180. The IFT also found that neither the probabilities nor the risks of limiting releases from the main spillway at the time of the crisis were adequately reviewed and laid out for decision makers. At the time of the crisis, concerns were expressed that if water releases over the main spillway were not limited, DWR could lose the ability to deliver water to agricultural and urban water districts. One top official at DWR told the IFT that losing the ability to deliver water "was deemed as potentially one of the biggest disasters in the history of California." In fact, according to the IFT, "the reduction in water availability

to downstream Contractors would have perhaps been more correctly portrayed as presenting significant business and legal challenges, but actual reductions in water deliveries would have been no worse than in the drought years."

181. In sum, the IFT found that the crisis was ultimately the result of a **"long-term systemic failure."**

G. DWR'S INTENTIONAL COVER-UP OF THE LACK OF MAINTENANCE

1. DWR's Cover-up and Destruction of Evidence

182. After the Oroville Dam's failure, there were rumors that DWR issued a directive that any notes, files, memos, or other documents regarding the crisis be destroyed.

183. On October 23, 2017, the undersigned counsel sent a letter to the Chief Counsel of DWR, requesting that nothing be destroyed or tampered with, which in any way concerned the design, construction of, inspection, maintenance or repairs upon Oroville Dam, or the Oroville Dam crisis of February 2017. A copy of that letter is attached hereto as **Exhibit C**.

184. DWR has never responded to this letter as of the date of this filing.

185. DWR also disposed of key physical evidence of its inadequate maintenance.

186. When the Oroville Dam's main spillway failed in February 2017, a large chunk of cement from the spillway floor, about 12 feet thick, was uprooted and came to rest against one of the spillway's energy dissipaters, large concrete columns at the bottom of the spillway used to break up the flow of water into the river below. This piece of concrete appears to have been evidence of improper low pressure grouting. DWR disposed of the concrete before it could be inspected or tested according to some at DWR.

187. DWR also barred Robert Bea, a renowned expert in catastrophic risk management and the head of CCRM from inspecting the Oroville Dam site after the crisis, claiming potential "terrorism concerns."

/ / /

2. DWR's Mischaracterization of Dam Seepage

188. Wet spots and vegetation growing on the face of the Oroville Dam (also called "green spots") have raised concerns that a large volume of water is running through the earthen dam, threatening the integrity of the entire structure.

189. DWR dismissed these concerns in an August 30, 2017 report, stating that vegetation growing on the face of the Oroville Dam was caused by rain, and posed no real threat. DWR has stated the green spot is not a cause for the worry because it is dry in the summer and green in wet months, and because seepage measurements at the base of the dam have stayed low since the dam's construction.

190. In a report issued on September 5, 2017, CCRM disputed the DWR report as a "superficial" public relations ploy that mischaracterized the risks of seepage related hazards at the dam.[7]

191. CCRM asserted that DWR's explanation was wrong because wet spots had been observed on the dam even during drought years and in times of extreme heat. CCRM also noted that DWR's explanation of the wet spots had changed over time. In 2014, DWR then told FERC that the seepage source was from a natural spring or springs.

192. CCRM also noted the lack of working piezometers[8] in the dam, meaning that DWR could not reliably measure water flow through the dam. Moreover, since at least 2013, federal and state dam inspections had noted that of the 56 piezometers installed in the dam to detect leaks and other problems, only three still worked. In place of these piezometers, DWR monitors peripheral seepage points, which collect water at certain locations. DWR staff merely observe these locations to see whether or not they are wet. As a result, DWR has no accurate way of determining how much water is seeping through the earthen dam, or at what rate.

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[7] A copy of the CCR report on wet sports at the Oroville Dam is available at https://drive.google.com/file/d/0Bz1I1mIutSEnbFJuVUJZWWNNVlU/view

[8] A piezometer which measures the pressure of groundwater at a specific point, and can be used to gauge uplift pressures in dam foundations.

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193. Moreover, DSOD inspection reports have noted a volume of water penetration, increasing every year, through deep rock cracks in an abutment into the Hyatt plant. According to CCRM, this level of high transmissivity in the abutment has the ability to divert internal unseen leakages away from the toe drain seepage weir used by DWR as an indicator.

3. DWR Has Redacted Key Maintenance Documents to Hide Key Facts

194. DWR has retained a Board of Consultants (BOC) to assess the repairs and emergency response which have occurred at the Oroville Dam spillways since the dam's failure in February 2017.

195. Despite DWR's commitment to maintain transparency with regard to BOC findings and recommendations, DWR has heavily redacted each of the BOC's 14 reports, claiming they contain sensitive "Critical Energy Infrastructure Information."[9]

196. DWR's redaction of these key documents constitutes a blatant attempt to keep the public in the dark about the safety of the Oroville Dam and DWR's failure of maintenance and supervision.

4. DWR Retained as Consultants Retired DWR Staff, Formerly Responsible for the Inadequate Supervision of the Oroville Dam

197. Effective management of DWR and DSOD has also been hampered by the outsourcing of management responsibilities to private consultants – retired DSOD chiefs and retired SWP chiefs who take paid positions with local engineering consultant firms. Most of these consultants are provided by GEI Consultants, Inc. ("GEI"), a consulting engineering and environmental firm. According to former DWR executives, these consultant's high level involvement on DWR projects may intimidate current DWR staff and affect DWR's independent decision making process.

[9] The BOC's 14 reports are available at http://www.water.ca.gov/oroville-spillway/bocreports.cfm

198. These same insiders have also expressed concerns that the GEI consultants hired by DWR were responsible for the lax supervision and maintenance at the Oroville Dam, and that they are now being brought on to cover-up the fact that supervision and maintenance of the dam was lacking.

199. For example, in February 2017, DWR began using GEI consultant David Gutiérrez to advise DWR on the Oroville Dam Spillway. As former chief of DSOD, Gutiérrez had been responsible for inspection reports for the Oroville Dam headworks and concrete spillway. Gutiérrez is now being used (and paid as a consultant) by DWR as a spokesperson on the current repairs to the Oroville Dam spillway. He was also used (and paid as a consultant) by DWR as an Oroville Dam spillway spokesperson during a May 2017 legislative hearing on the subject.

200. DWR has also retained GEI consultant Steve Verigin, who served as chief of DSOD from 1999 to 2004.

H. PLAINTIFFS WERE HARMED BY OROVILLE DAM CRISIS

1. JEM Farms and Chandon Ranch

201. On or about February 2017, Plaintiffs JEM Farms and Chandon Ranch owned real property at 356 Jem Road, Oroville, California, on which JEM Farms and Chandon Ranch operated a walnut farm.

202. As a proximate result of DWR's wrongful conduct, as alleged herein, JEM Farms and Chandon Ranch were damaged as follows:

203. Due to flooding, seepage, high water, excessive flows and abrupt and erratic releases of high volumes of water from the dam, JEM Farms and Chandon Ranch suffered:

a. A permanent loss of approximately 27 acres,

b. Loss of producing walnut trees with approximately 189,000 pounds of marketable walnuts per year, with a foreseeable remaining tree life of approximately 36 years,

c. General damage to the property, including destruction of portions of the irrigation system,

d. Loss of use of its real property, and

e. Cleanup costs estimated at approximately $200,000.

204. JEM Farms and Chandon Ranch suffered damages of $15,000,000 or more, according to proof. Pursuant to Civil Code section 3346 these damages should be tripled or doubled as allowed by law.

205. On August 11, 2017, Jem Farms and Chandon Ranch filed a Government Claim Form with the State of California, pursuant to Government Code section 910, in connection with the damages sustained as a result of the Oroville Dam Crisis. The State rejected the claim on September 20, 2017.

2. Bains Brothers Farms

206. On or about February 2017, Plaintiff Bains Brothers Farms was engaged in the business of farming on real property owned by Plaintiffs Jas and Gurinder Bains in Sutter County, California**.**

207. As a proximate result of DWR's wrongful conduct, as alleged herein, JEM Farms and Chandon Ranch were damaged as follows:

208. Due to flooding, seepage, high water, excessive flows and abrupt and erratic releases of high volumes of water from the dam, Bains Brothers Farms suffered lost acreage, lost production, tree replacement costs, and loss of production life of trees. Approximately 180 acres were destroyed as a result of the flooding of the nearby Feather River.

209. Bains Brothers Farms suffered damages according to proof. Pursuant to Civil Code section 3346 these damages should be tripled or doubled as allowed by law.

210. On August 11, 2017, Bains Brothers Farms filed a Government Claim Form with the State of California, pursuant to Government Code section 910, in connection with the damages sustained as a result of the Oroville Dam Crisis. The State rejected the claim on September 20, 2017.

3. Jaswinder and Gurinder Bains

211. On or about February 2017, Plaintiffs Jas and Gurinder Bains were trustees of the Bains Family Trust, which owned real property in the Sutter County, California, located south of JEM Farms, Sutter County Assessor's Parcel Number ("APN") 023-300-169.

212. As a proximate result of DWR's wrongful conduct, as alleged herein, JEM Farms and Chandon Ranch were damaged as follows:

213. Due to flooding, seepage, high water, excessive flows and abrupt and erratic releases of high volumes of water from the dam, the Bainses, individually and as trustees of the Bains Family Trust, suffered lost acreage, lost production, tree replacement costs, and loss of production life of trees. Nearly 180 acres were destroyed as a result of the flooding of the nearby Feather River. The Bainses also suffered loss of use of their property.

214. The Bainses, individually and trustees, sustained damages of at least $20,000,000, or more, according to proof. Pursuant to Civil Code section 3346 these damages should be tripled or doubled as allowed by law.

215. On August 11, 2017, the Bainses filed a Government Claim Form with the State of California, pursuant to Government Code section 910, in connection with the damages sustained as a result of the Oroville Dam Crisis. The State rejected the claim on November 17, 2017.

4. George and Katherine Anita Barber

216. On or about February 2017, Plaintiffs George and Katherine Anita Barber owned real property generally known as 1218 Montgomery Street, Oroville, California.

217. As a proximate result of DWR's wrongful conduct, as alleged herein, JEM Farms and Chandon Ranch were damaged as follows:

218. Due to flooding, seepage, high water, excessive flows and abrupt and erratic releases of high volumes of water from the dam, as well as the continuing danger posed by the unsafe condition of the Oroville Dam, the Barbers suffered a substantial loss of property value, estimated at a 50 percent diminution.

219. The Barbers suffered damages of $165,000 or more, according to proof.

220. On August 11, 2017, the Barbers filed a Government Claim Form with the State of California, pursuant to Government Code section 910, in connection with the damages sustained as a result of the Oroville Dam Crisis. The State rejected the claim on September 20, 2017.

5. Brush Hardwoods

221. Plaintiff Brush Hardwoods harvests walnut burls throughout California, including fields in Marysville, California along the Yuba River.

222. As a proximate result of DWR's wrongful conduct, as alleged herein, Brush Hardwoods was damaged as follows:

223. Due to flooding, seepage, high water, excessive flows and abrupt and erratic releases of high volumes of water from the dam, the 324 acres to be harvested by Brush Hardwoods for burls and logs was under 15 feet of water, and burls and logs that were already cut and were in the orchard were washed away into the Yuba River.

224. Brush Hardwoods sustained damages of about $5 million or more according to proof. Pursuant to Civil Code section 3346 these damages should be tripled or doubled as allowed by law.

225. On August 11, 2017, Brush Hardwoods filed a Government Claim Form with the State of California, pursuant to Government Code section 910, in connection with the damages sustained as a result of the Oroville Dam Crisis. The State rejected the claim on November 20, 2017.

6. Chico Produce

226. On or about February 2017, Plaintiff Chico Produce was in the business of distributing fresh produce, fresh food products such as dairy, cheese, eggs, beef, poultry and pork, frozen foods, and dry and refrigerated grocery products.

227. As a proximate result of DWR's wrongful conduct, as alleged herein, Chico Produce was damaged as follows:

228. Due to flooding, seepage, high water, excessive flows and abrupt and erratic releases of high volumes of water from the dam, Chico Produce suffered a loss of business revenues and gross profit, a loss of perishable products and excessive internal labor costs.

229. Chico Produce suffered damages of at least $300,000, or more, according to proof.

230. On August 11, 2017, Chico Produce, Inc. filed a Government Claim Form with the State of California, pursuant to Government Code section 910, in connection with the damages sustained as a result of the Oroville Dam Crisis. The State rejected the claim on September 21, 2017.

7. Forrest Miller

231. Plaintiff Forrest Miller leases 66 acres of land in Olivehurst, California for the purpose of farming walnut trees. The land farmed by Forrest Miller is generally known as 215 Country Club Road, Olivehurst, California.

232. As a proximate result of DWR's wrongful conduct, as alleged herein, Forrest Miller was damaged as follows:

233. Due to flooding, seepage, high water, excessive flows and abrupt and erratic releases of high volumes of water from the dam, Forrest Miller suffered damage to trees and property that he farms.

234. Forrest Miller suffered damages of at least $80,000, or more, according to proof. Pursuant to Civil Code section 3346 these damages should be tripled or doubled as allowed by law.

235. On August 8, 2017, Forrest Miller filed a Government Claim Form with the State of California, pursuant to Government Code section 910, in connection with the damages sustained as a result of the Oroville Dam Crisis. The State rejected the claim.

8. Tom Miller, Jr.

236. On or about February 2017, Plaintiff Tom Miller, Jr. was and still is the trustee of the Tom O. Miller Separate Property Trust, which owned real property in Yuba County, California, generally known as 304 Silva Avenue, District 10.

237. As a proximate result of DWR's wrongful conduct, as alleged herein, Tom Miller, Jr., individually and as trustee, was damaged as follows:

238. Due to flooding, seepage, high water, excessive flows and abrupt and erratic releases of high volumes of water from the dam, Tom Miller, Jr. suffered severe flooding of his 53 acre walnut orchard with 2100 walnut trees. Tom Miller Jr. sustained damages as a result of:

a. Lost crops,

b. Dead trees,

c. Damages to the farm's irrigation system,

d. Damages to trailers,

e. Costs incurred clearing debris,

f. Loss of use of real property, and

g. Erosion of the property.

239. Tom Miller Jr., individually and as trustee, sustained damages of $951,500 or more, according to proof. Pursuant to Civil Code section 3346 these damages should be tripled or doubled as allowed by law.

240. On August 7, 2017, Tom Miller Jr. filed a Government Claim Form with the State of California, pursuant to Government Code section 910, in connection with the damages sustained as a result of the Oroville Dam Crisis. The State rejected the claim on November 21, 2017.

9. MP Farms

241. On or about February 2017, Plaintiff MP Farms owned and operated a walnut farm on approximately 183.5 acres in Butte County, California, Butte County APN 025-330-008-000.

242. As a proximate result of DWR's wrongful conduct, as alleged herein, MP Farms was damaged as follows:

243. Due to flooding, seepage, high water, excessive flows and abrupt and erratic releases of high volumes of water from the dam, MP Farms suffered flooding which

resulted in the loss of at least 5 acres, loss of producing walnut trees, loss of approximately 2.5 tons of marketable walnuts per year, and general damages to the property, including destruction to portions of the drainage/irrigation system, and clean-up costs estimated at approximately $32,000. MP Farms also suffered erosion of its property and a loss of use of real property.

244. MP Farms sustained damages of at least $2,299,000, according to proof. Pursuant to Civil Code section 3346 these damages should be tripled or doubled as allowed by law.

245. On August 11, 2017, MP Farms filed a Government Claim Form with the State of California, pursuant to Government Code section 910, in connection with the damages sustained as a result of the Oroville Dam Crisis. The State rejected the claim on November 20, 2017.

10. Purple Line Urban Winery ("PLUW")

246. On or about February 2017, Plaintiff PLUW owned real property at 760 Safford Street, Oroville, California.

247. As a proximate result of DWR's wrongful conduct, as alleged herein, PLUW was damaged as follows:

248. Due to flooding, seepage, high water, excessive flows and abrupt and erratic releases of high volumes of water from the dam, PLUW suffered loss of revenue. PLUW also incurred costs to move and store property off-site to prevent damage from flooding. Additionally, due to the continuing danger posed by the unsafe condition of the Oroville Dam, PLUW sustained damages as a result of the diminution of value of its property. PLUW also suffered a loss of use of real property.

249. In total, PLUW sustained damages of at least $210,000, according to proof.

250. On August 11, 2017, PLUW filed a Government Claim Form with the State of California, pursuant to Government Code section 910, in connection with the damages sustained as a result of the Oroville Dam Crisis. The State rejected the claim on September 20, 2017.

11. Roplast

251. On or about February 2017, Plaintiff Roplast manufactured custom polyethylene films and bags.

252. As a proximate result of DWR's wrongful conduct, as alleged herein, Roplast was damaged as follows:

253. Due to flooding, seepage, high water, excessive flows and abrupt and erratic releases of high volumes of water from the dam, as well as the resulting evacuation, Roplast suffered a loss of business as operations were ceased and an emergency shutdown of equipment was performed. Roplast also paid wages for time not worked and suffered lost production and resulting maintenance costs. Roplast suffered the loss of customer goodwill due to, among things, the risk of inundation of Roplast's facilities. Two of Roplast's largest customers, including Disney, have indicated they are now looking for second suppliers. The market value of Roplast's facilities and Roplast's value as an ongoing concern have also been negatively affected by the increased risk of inundation. The market value of Roplast's real property has significantly diminished in value. Moreover, the value of the equipment as it stands in Oroville has been reduced. A reasonable approximation of the loss in value is the cost of moving it to a location not threatened with inundation.

254. Roplast sustained damages of at approximately $1.6 million or more, according to proof. Should Roplast need to move to another location, it would sustain another $1.5 million or more in moving expenses.

255. On April 12, 2017, Roplast filed a Government Claim Form with the State of California, pursuant to Government Code section 910, in connection with the damages sustained as a result of the Oroville Dam Crisis. The State rejected the claim on October 2, 2017.

12. Dirks

256. On or about February 2017, Plaintiff Dirks, owned and operated an auto repair shop in Oroville, California.

257. As a proximate result of DWR's wrongful conduct, as alleged herein, Dirks was damaged as follows:

258. Due to flooding, seepage, high water, excessive flows and abrupt and erratic releases of high volumes of water from the dam, Dirks suffered a loss of business and incurred expenses from the transportation of personal property.

259. Dirks sustained damages of at least $40,000, or more, according to proof.

260. Dirks filed a Government Claim Form with the State of California, pursuant to Government Code section 910, in connection with the damages sustained as a result of the Oroville Dam Crisis. The State rejected the claim on December 14, 2017.

13. Jeanette Morton

261. On or about February 2017, Plaintiff Jeanette Morton owned six rental properties in Oroville, California: 58 Riverview Terrace, 64 Riverview Terrace, 68 Riverview Terrace, 7 Nikki Court, 7 Patrick Court, and 4405 Woodduck Court.

262. As a proximate result of DWR's wrongful conduct, as alleged herein, Jeanette Morton was damaged as follows:

263. Due to flooding, seepage, high water, excessive flows and abrupt and erratic releases of high volumes of water from the dam, as well as the continuing threat posed by the unsafe condition of the Oroville Dam, Jeanette Morton suffered a loss of value in six homes, used as rental properties, directly downstream of the dam. The loss of value is estimated at $50,000 for each home.

264. Jeanette Morton suffered damages of at least $300,000, or more, according to proof.

265. Pursuant to Government Code section 910, on August 9, 2017, Jeanette Morton filed a claim with the State of California in connection with the damages she suffered as a result of the Oroville Dam Crisis. The State rejected the claim on September 5, 2017.

14. Melissa Morton

266. On or about February 2017, Plaintiff Melissa Morton owned real property at 1267 Montgomery Street in Oroville, California.

267. As a proximate result of DWR's wrongful conduct, as alleged herein, Melissa Morton was damaged as follows:

268. Due to flooding, seepage, high water, excessive flows and abrupt and erratic releases of high volumes of water from the dam, as well as the continuing threat posed by the unsafe condition of the Oroville Dam, Melissa Morton suffered a loss of value in her home directly downstream of the dam estimated at $50,000.

269. Melissa Morton suffered damages of at least $50,000, or more, according to proof. She also suffered emotional distress.

270. Pursuant to Government Code section 910, on August 10, 2017, Melissa Morton filed a claim with the State of California in connection with the damages she suffered as a result of the Oroville Dam Crisis. The State rejected the claim.

15. Ashley Morton

271. On or about February 2017, Plaintiff Ashley Morton owned real property at 2827 Yard Street in Oroville, California.

272. As a proximate result of DWR's wrongful conduct, as alleged herein, Ashley Morton was damaged as follows:

273. Due to flooding, seepage, high water, excessive flows and abrupt and erratic releases of high volumes of water from the dam, as well as the continuing threat posed by the unsafe condition of the Oroville Dam, Ashley Morton suffered a loss of value in her home directly downstream of the dam estimated at $50,000.

274. Ashley Morton suffered damages of at least $50,000, or more, according to proof. She also suffered emotional distress.

275. Pursuant to Government Code section 910, Ashley Morton filed a Government Claim Form with the State of California in connection with the damages she suffered as a result of the Oroville Dam Crisis. The State rejected the claim.

16. AJK Farms

276. On or about February 2017, Plaintiff AJK Farms owned agricultural real property located in the County of Yolo, California, consisting of a 104 acre pistachio orchard located at 16878 County Road 117, West Sacramento, California.

277. As a proximate result of DWR's wrongful conduct, AJK Farms was damaged, as follows:

a. Due to flooding, seepage, high water, excessive flows and abrupt and erratic releases of high volumes of water from the dam, four acres of pistachio trees were killed.

b. AJK Farms suffered harvest loss for a 104 acres of pistachio orchard that was so severely damaged that it had to be pruned back. This resulted in a significant loss of productivity.

c. Due to damage from flooding, AJK Farms incurred costs to rip out and remove dead trees from the orchard, as well as costs to replant and re-stake new trees.

d. AJK Farms suffered a loss of use of real property.

278. AJK Farms sustained damages of $2,900,000 or more, according to proof. Pursuant to Civil Code section 3346, these damages should be tripled or doubled as allowed by law.

279. Pursuant to Government Code section 910, on August 1, 2017, AJK Farms filed a claim with the State of California in connection with the damages it suffered as a result of the Oroville Dam Crisis. AJK Farms filed an amended claim form on August 11, 2017. The State rejected the claim on December 8, 2017.

17. Don Beeman

280. On or about February 2017, Plaintiff Don Beeman leased, as a tenant farmer, certain agricultural real property located in the Yolo County, being Yolo County APNs 057-240-07, 057-230-05, 057-230-03, 057-230-02, 057-230-01, 057-220-07, 057-220-06,

057-220-02, 057-220-01, 057-210-11, 057-210-10, 057-210-09, 057-210-04, 057-210-02, 057-210-01, and 042-290-01.

281. As a proximate result of DWR's wrongful conduct, as alleged herein, Beeman was damaged as follows:

282. Due to flooding, seepage, high water, excessive flows and abrupt and erratic releases of high volumes of water from the dam, Beeman suffered extensive crop loss, including, but not limited to the loss of opportunity to plant 450 acres of tomatoes. This crop would have yielded 55 tons per acre, for total tonnage of 24,750. It would have sold for $70 per ton, for a total tomato loss of $1,732,500. Beeman also lost 1,100 acres of planted wheat. The wheat crop would have yielded 50 sacks per acre for a yield of 55,000 sacks. The price was $10 per sack, for a total wheat loss of $550,000.

283. Beeman also suffered a loss of use of real property.

284. Beeman sustained total damages of at least $2,300,000, or more, according to proof. Pursuant to Civil Code section 3346 these damages should be tripled or doubled as allowed by law.

285. Pursuant to Government Code section 910, on August 1, 2017, Beeman filed a claim with the State of California in connection with damages sustained as a result of the Oroville Dam Crisis. Beeman filed an amended claim on August 11, 2017. The State rejected the original claim on August 9, 2011.

18. Adrien Benning and Michelle A. Benning

286. On or about February 2017, the Bennings were trustees of the Benning Family Trust, which owned an interest in agricultural real property located in Yolo County, California, consisting of Yolo County APNs 057-240-07, 057-230-05, 057-230-03, 057-230-02, 057-230-01, 057-220-07, 057-220-06, 057-220-02, 057-220-01, 057-210-11, 057-210-10, 057-210-09, 057-210-04, 057-210-02, 057-210-01, and 042-290-01, which was leased out to a tenant farmer, Don Beeman.

287. As a proximate result of DWR's wrongful conduct, as alleged herein, the Bennings, as individuals and as trustees of the Benning Family Trust, were damaged as follows:

288. Due to flooding, seepage, high water, excessive flows and abrupt and erratic releases of high volumes of water from the dam, the Bennings suffered the loss of their share of the interest in the tomatoes which would have been grown on the premises in the 2017 cropping year, in the sum of at least $8,318, or more, according to proof. Pursuant to Civil Code section 3346 these damages should be tripled or doubled as allowed by law. The Bennings also suffered a loss of use of real property.

289. Pursuant to Government Code section 910, on August 11, 2017, the Bennings filed a claim with the State of California in connection with the damages sustained as a result of the Oroville Dam Crisis. The claim was rejected on November 21, 2017.

19. CKMR2

290. On or about February 2017, Plaintiff CKMR2 owned an interest in agricultural real property located in the County of Yolo, California, consisting of Yolo County APNs 057-240-07, 057-230-05, 057-230-03, 057-230-02, 057-230-01, 057-220-07, 057-220-06, 057-220-02, 057-220-01, 057-210-11, 057-210-10, 057-210-09, 057-210-04, 057-210-02, 057-210-01, and 042-290-01, which was leased out to a tenant farmer, Don Beeman.

291. As a proximate result of DWR's wrongful conduct, as alleged herein, CKMR2 LP was damaged as follows:

292. Due to flooding, seepage, high water, excessive flows and abrupt and erratic releases of high volumes of water from the dam, CKMR2 suffered the loss of its share of the tomatoes which would have been grown on the premises in the 2017 cropping year, in the sum of at least $46,000 or more, according to proof. Pursuant to Civil Code section 3346 these damages should be tripled or doubled as allowed by law.

293. CKMR2 also suffered a loss of use of real property.

294. Pursuant to Government Code section 910, on August 11, 2017, CKMR2 filed a claim with the State of California in connection with damages sustained as a result of the Oroville Dam Crisis. The State rejected the claim on September 13, 2017.

20. Gregory E. Driver

295. On or about February 2017, Plaintiff Gregory E. Driver, owned agricultural real property located in Yolo County, California, consisting of an 8.4-acre walnut orchard on a 15 acre parcel located beside the Sacramento River near Knights Landing, California, Yolo County APN 056-160-009-000.

296. Flooding, seepage, high water, excessive flows and abrupt and erratic releases of high volumes of water from Oroville dam caused damages to Gregory E. Driver who suffered 44 dead walnut trees, and 49 sick walnut trees.

297. Gregory E. Driver's damages include, but are not limited to, dead trees, sick trees and multiple years' yield losses for each. Damages also include the cost to replace trees, cost to remove trees, and replanting costs. Other factors on damages include whether other sick trees will die and whether other trees will become sick. Gregory E. Driver also suffered a loss of use of real property.

298. The amount of Gregory E. Driver's damages is calculated to be $73,000, or more, according to proof. Pursuant to Civil Code section 3346 these damages should be tripled or doubled as allowed by law.

299. Gregory E. Driver filed a Government Claim Form with the State of California, pursuant to Government Code section 910, on August 1, 2017, in connection with damages sustained as a result of the Oroville Dam Crisis. An amended claim was filed on August 11, 2017. The State rejected the original claim on August 4, 2017.

21. William A. Driver

300. On or about February 2017, Plaintiff William A. Driver was trustee of the William A. Driver Revocable Trust, dated October 5, 2006, which owned agricultural real property located in Yolo County, California, consisting of an 100 acre parcel of walnut

trees located at 5224 Highway 45, Knights Landing, CA 95645; APN 056-010-021-000 and APN 056-010-022-000. Said property is beside the Sacramento River.

301. As a proximate result of DWR's wrongful conduct, as alleged herein, William A. Driver, individually and as trustee, was damaged as follows:

302. Due to flooding, seepage, high water, excessive flows and abrupt and erratic releases of high volumes of water from the dam, William A. Driver suffered in the Tulare variety walnut orchard, 90 dead walnut trees and 351 sick walnut trees; and in the Chandler variety walnut orchard, 75 dead trees and 227 sick walnut trees.

303. These damages include, but are not limited to, dead trees, sick trees and multiple years' yield losses for each. Damages also include the cost to replace trees, cost to remove trees, and replanting costs. Other factors on damages include whether other sick trees will die and whether other trees will become sick. William A. Driver also suffered a loss of use of real property.

304. The amount of damages sustained by William A. Driver is calculated at $684,123, or more, according to proof. Pursuant to Civil Code section 3346 these damages should be tripled or doubled as allowed by law.

305. William A. Driver filed a Government Claim Form with the State of California, pursuant to Government Code section 910, on August 1, 2017, in connection with damages sustained as a result of the Oroville Dam Crisis. An amended claim was filed on August 11, 2017. The State rejected the claim on November 21, 2017.

22. Jeffrey E. Dyer

306. On or about February, 2017, Plaintiff Jeffrey E. Dyer, co-owned agricultural real property located in the Sutter County, California, APN 24-040-014.

307. As a proximate result of the wrongful conduct of defendants, and each of them, Dyer was damaged as follows: due to flooding, seepage, high water, excessive flows and abrupt and erratic releases of high volumes of water from the dam, Dyer suffered losses to his ninety acre walnut orchard. Dyer also suffered a loss of use of real property.

308. These damages include, but are not limited to, the dead trees, the sick trees and the multiple years' yield losses for each. Damages also include the cost to replace trees, cost to remove trees, and replanting costs. Other factors on damages include whether other sick trees will die and whether other trees will become sick.

309. The amount of damages is calculated at $900,000 or more, according to proof. Pursuant to Civil Code section 3346 these damages should be tripled or doubled as allowed by law.

310. Dyer filed a Government Claim Form with the State of California, pursuant to Government Code section 910, on August 9, 2017, in connection with damages sustained as a result of the Oroville Dam Crisis. The State rejected the claim on November 20, 2017.

23. Garcia Farms

311. On or about February 2017, Plaintiff Garcia Farms leased agricultural real property located in the County of Yolo, California; at 15124 County Road 117, West Sacramento, California.

312. As a proximate result of DWR's wrongful conduct, Garcia Farms was damaged as follows:

313. Due to flooding, seepage, high water, excessive flows and abrupt and erratic releases of high volumes of water from the dam, Garcia Farms suffered losses to orchards it was leasing from various parties, including but not limited to Hershey Woods, Welfare Ranch, Serrs Ranch, Sheep Camp Ranch, and Georges.

314. These damages include, but are not limited to, dead trees, sick trees and multiple years' yield losses for each. Damages also include the cost to replace trees, cost to remove trees, and replanting costs.

315. The amount of Garcia Farms, Inc.'s damages is calculated at $16,000,000 or more, according to proof. Pursuant to Civil Code section 3346, these damages should be tripled or doubled as allowed by law.

316. Garcia Farms filed a Government Claim Form with the State of California, pursuant to Government Code section 910, on August 1, 2017, in connection with damages sustained as a result of the Oroville Dam Crisis. An amended claim was filed on August 11, 2017. The State rejected the original claim August 4, 2017.

24. B.E. Giovannetti & Sons and E.J. Giovannetti

317. On or about February 2017, Plaintiff E.J. Giovannetti owned property known as Chalmers Ranch, APNs 056-170-013 and 056-170-014. Plaintiff B.E. Giovannetti & Sons leased this property for farming. B.E. Giovannetti & Sons also owned and farmed Monument Ranch in West Sacramento, APNs 042-320-033, 042-320-034, and 042-320-035.

318. As a proximate result of DWR's wrongful conduct, B.E. Giovannetti & Sons and E.J. Giovannetti were damaged as follows:

319. Due to flooding, seepage, high water, excessive flows and abrupt and erratic releases of high volumes of water from the dam, B.E. Giovannetti & Sons and E.J. Giovannetti suffered losses to their orchards.

320. B.E. Giovannetti & Sons and E.J. Giovannetti's damages include, but are not limited to, dead trees, sick trees and multiple years' yield losses for each. Damages also include the cost to replace trees, cost to remove trees, and replanting costs.

321. B.E. Giovannetti & Sons and E.J. Giovannetti also suffered loss of use of real property.

322. The amount of B.E. Giovannetti & Sons and E.J. Giovannetti's damages is calculated at $22,000,000 or more, according to proof. Pursuant to Civil Code section 3346 these damages should be tripled or doubled as allowed by law.

323. B.E. Giovannetti & Sons and E.J. Giovannetti filed a Government Claim Form with the State of California, pursuant to Government Code section 910, on August 1, 2017, and also filed an amended claim on August 11, 2017. The State rejected the original claim on August 9, 2017.

25. Anita Belle Kane and Tom Kane

324. On or about February 2017, Plaintiff Anita Belle Kane was trustee of the Kane Trust, which owned agricultural real property located in the Yolo County, California, along the Sacramento River off Old River Road, APN 42-320-012-000, which is farmed by Plaintiff Tom Kane, tenant farmer.

325. As a proximate result of DWR's wrongful conduct, Anita Belle Kane, individually and as trustee, and Tom Kane were damaged as follows:

326. Due to flooding, seepage, high water, excessive flows and abrupt and erratic releases of high volumes of water from the dam, Anita Belle Kane and Tom Kane suffered losses to an 18-acre, 9-year-old walnut orchard.

327. These damages include, but are not limited to, dead trees, sick trees and multiple years' yield losses for each. Damages also include the cost to replace trees, cost to remove trees, and replanting costs. Other factors on damages include whether other sick trees will die and whether other trees will become sick.

328. Anita Belle Kane also suffered a loss of use of real property.

329. The amount of damages is calculated to be $375,000 or more, according to proof. Pursuant to Civil Code section 3346 these damages should be tripled or doubled as allowed by law.

330. Anita Belle Kane and Tom Kane filed a Government Claim Form with the State of California, pursuant to Government Code section 910, on August 1, 2017, and also filed an amended claim on August 11, 2017. The State rejected the original claim on August 4, 2017.

26. LAB

331. On or about February 2017, Plaintiff LAB owned an interest in agricultural real property located in the Yolo County, California, consisting of Yolo County APNs 057-240-07, 057-230-05, 057-230-03, 057-230-02, 057-230-01, 057-220-07, 057-220-06, 057-220-02, 057-220-01, 057-210-11, 057-210-10, 057-210-09, 057-210-04, 057-210-02, 057-210-01, and 042-290-01, which was leased out to a tenant farmer, Don Beeman.

332. As a proximate result of DWR's wrongful conduct, as alleged herein, LAB was damaged as follows:

333. Due to flooding, seepage, high water, excessive flows and abrupt and erratic releases of high volumes of water from the dam, LAB suffered the loss of the share of its interest in the tomatoes which would have been grown on the premises in the 2017 cropping year, in the sum of at least $5,000, or more, according to proof. Pursuant to Civil Code section 3346 these damages should be tripled or doubled as allowed by law. LAB also suffered a loss of use of real property.

334. Pursuant to Government Code section 910, on August 11, 2017, LAB filed a claim with the State of California in connection with damages sustained as a result of the Oroville Dam Crisis. The State rejected the claim on November 20, 2017.

27. Lang Family #1 LP

335. On or about February 2017, Plaintiff Lang Family #1 LP owned agricultural real property located in Yolo County, California, along the Sacramento River, including but not limited to, the Hann's Ranch, 21450 Old River Road, West Sacramento.

336. As a proximate result of DWR's wrongful conduct, Lang Family #1 LP was damaged as follows:

337. Due to flooding, seepage, high water, excessive flows and abrupt and erratic releases of high volumes of water from the dam, Lang Family #1 LP suffered losses to its walnut orchards.

338. These damages include, but are not limited to, dead trees, sick trees and multiple years' yield losses for each. Damages also include the cost to replace trees, cost to remove trees, and replanting costs. Other factors on damages include whether other sick trees will die and whether other trees will become sick. Lang Family #1 LP also suffered loss of use of real property.

339. The amount of damages is calculated at $8,000,000 or more, according to proof. Pursuant to Civil Code section 3346 these damages should be tripled or doubled as allowed by law.

340. On August 1, 2017, Lang Family #1 LP filed a Government Claim Form with the State of California, pursuant to Government Code section 910, for damages sustained as a result of the Oroville Dam Crisis. An amended claim was filed on August 11, 2017. The claim was rejected on November 20, 2017.

28. K A Lang Family LP

341. On or about February 2017, Plaintiff K A Lang Family LP, owned and leased agricultural real property located in the Yolo County, California, along the Sacramento River, including Bell Ranch, 21548 Old River Road, West Sacramento; and Bandy Ranch, 21000 Old River Road, West Sacramento.

342. As a proximate result of DWR's wrongful conduct, K A Lang Family LP was damaged as follows:

343. Due to flooding, seepage, high water, excessive flows and abrupt and erratic releases of high volumes of water from the dam, K A Lang Family LP suffered losses to its mature producing walnut orchards.

344. These damages include, but are not limited to, dead trees, sick trees and multiple years' yield losses for each. Damages also include the cost to replace trees, cost to remove trees, and replanting costs. K A Lang Family LP also suffered a loss of use of real property.

345. In total, K A Lang Family LP sustained damages of $14,000,000 or more, according to proof. Pursuant to Civil Code section 3346 these damages should be tripled or doubled as allowed by law.

346. Pursuant to Government Code section 910, K A Lang Family LP filed a claim with the State of California for the damages sustained as result of the Oroville Dam Crisis on August 1, 2017. K A Lang Family LP filed an amended claim on August 11, 2017. The claim was rejected on November 20, 2017.

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29. The Mattoses

347. On or about February 2017, Plaintiffs William F. Mattos and Kim H. Mattos were trustees of the Mattos Family Revocable Trust, which owned agricultural real property located in Yolo County, California, commonly known as: 20550 Old River Road, West Sacramento, California, being Yolo County APNs 042-320-030 and 042-320-016.

348. As a proximate result of DWR's wrongful conduct, as alleged herein, the Mattoses, individually and as trustees, were damaged as follows:

349. Due to flooding, seepage, high water, excessive flows and abrupt and erratic releases of high volumes of water from the dam, the Mattoses suffered extensive damage to their orchard. These damages include, but are not limited to, dead trees, sick trees and the multiple years' yield losses for each. Damages also include the cost to replace trees, cost to remove trees, and replanting costs. Other factors on damages include whether other sick trees will die and whether other trees will become sick.

350. The amount of damages is calculated to be the sum of at least $155,000, or more, according to proof. Pursuant to Civil Code section 3346 these damages should be tripled or doubled as allowed by law.

351. The Mattoses also suffered a loss of use of real property.

352. The Mattoses filed a Government Claim Form with the State of California, pursuant to Government Code section 910, on August 1, 2017, and also filed an amended claim on August 11, 2017. The State rejected the original claim on August 9, 2017.

30. Kathleen A. Mitchell and Central Valley Farms, LLC

353. On or about February 2017, Plaintiff Kathleen A. Mitchell, as trustee of the Mitchell Trust, together with tenant-in-common Central Valley Farms, LLC. (collectively, "Mitchell"), owned agricultural real property located in Yolo County, California, commonly known as: Yolo County APN 033-150-059-000, near Yolo County Road 36 and 106.

354. As a proximate result of DWR's wrongful conduct, as alleged herein, Mitchell, individually and as trustee, was damaged as follows:

355. Due to flooding, seepage, high water, excessive flows and abrupt and erratic releases of high volumes of water from the dam, Mitchell suffered extensive crop loss, including, but not limited to a 275-acre alfalfa crop and orchard grass crop.

356. Mitchell's damages include loss of the 2017 crop, as well as loss of the 2018, 2019 and 2020 crop for this 5-year alfalfa planting. Moreover, Mitchell incurred extra costs for Roundup Ready seed, and for tillage and nutrients needed on the ground after the crop was destroyed, as well as damage to irrigation pipe and extensive cleanup cost.

357. As a further direct consequence of the total loss of this multi-year alfalfa crop, Mitchell could not service the debt on the property, and was forced to sell it at auction, at a substantial loss. Mitchell also lost the opportunity to sell a conservation easement to the Yolo Habitat Conservancy, which sale had already been approved by the Conservancy in 2016. The buyer of the property is following through with this sale, and will reap the benefit of the conservation easement sale which would have inured to the benefit of Mitchell, all to Mitchell's damage in an amount according to proof.

358. Mitchell also suffered a loss of use of real property.

359. Mitchell's total damages are the sum of at least $4,387,500, or more, according to proof. Pursuant to Civil Code section 3346 these damages should be tripled or doubled as allowed by law.

360. Mitchell filed a Government Claim Form with the State of California in connection with damages resulting from the Oroville Dam Crisis on August 11, 2017. The State rejected the claim on September 26, 2017.

31. Douglas G. Nareau

361. On or about February 2017, Plaintiff Douglas G. Nareau owned real property in Sutter County, California, generally known as 4076 Garden Highway, Nicolaus.

362. As a proximate result of DWR's wrongful conduct, as alleged herein, Nareau was damaged as follows:

363. Due to flooding, seepage, high water, excessive flows and abrupt and erratic releases of high volumes of water from the dam, Nareau sustained structural damage to his

house, floors and foundation from the water. He also incurred damages to trees and shrubs including a black walnut tree, and loss of use of his house for more than 30 days due to a flooded septic system.

364. Nareau also suffered a loss of use of real property.

365. Nareau seeks damages of at least $45,000, or more, according to proof. Pursuant to Civil Code section 3346 these damages should be tripled or doubled as allowed by law.

366. Pursuant to Government Code section 910, on August 11, 2017, Nareau filed a Government Claim Form with the State of California for the damages sustained as a result of the Oroville Dam Crisis. The State rejected the claim on September 26, 2017.

32. Nicoli Nicholas

367. On or about February 2017, Plaintiff Nicoli Nicholas was engaged in a farming and ranching operation on his family ranch at Verona, in south Sutter County, California, including but not limited to, property described as Sutter County APN 34-140-006 (the "Home Ranch").

368. As a proximate result of DWR's wrongful conduct, as alleged herein, Nicholas was damaged as follows.

369. Due to flooding, seepage, high water, excessive flows and abrupt and erratic releases of high volumes of water from the dam, Nicholas was forced to evacuate hundreds of cattle, tons of baled hay, farming and ranching equipment and machinery, shop tools and supplies, and ranch office material, and was damaged as follows:

370. Nicholas incurred costs of relocation and for the return of his cattle, baled hay, farming and ranching equipment and machinery, shop tools and supplies, and ranch office material and the cost of feed and/or pasture for his cattle in an amount of at least $150,000 or more, according to proof.

371. Additionally, some of Nicholas's cows were infected with a virus during the time they were on the rangeland pastures where they were taken after the evacuation. That virus, possibly a species of Bovine Coronavirus, was completely unknown on the Home

Ranch. Following their return to the Home Ranch, when the cows gave birth, the new-born calves became infected with the virus and, despite intensive care and treatment, some died and continue to die. As of January 27, 2018, 81 of Nicholas' calves have died, and Nicholas has incurred expenses in fighting the malady in an amount in excess of $25,000 or more, according to proof.

372. Additionally, Nicholas sustained the loss of a new stand of Roundup Ready Alfalfa and a new stand of three-way and vetch which, not counting the unrealized crop value, in the aggregate, amounts to $12,464.60 or more, according to proof.

373. On August 11, 2017, Nicholas filed a Government Claim Form with the State of California, pursuant to Government Code section 910, in connection with damages sustained as a result of the Oroville Dam Crisis. The State rejected the claim on November 20, 2017.

33. Nicoli Nicholas, Jr.

374. On or about February 2017, Plaintiff Nicoli Nicholas, Jr. was engaged in a farming and ranching operation on his family ranch at Verona, in south Sutter County, California, including but not limited to, property described as Sutter County APN 34-190-000 (the "Home Ranch").

375. As a proximate result of DWR's wrongful conduct, as alleged herein, Nicholas, Jr. was damaged as follows.

376. Due to flooding, seepage, high water, excessive flows and abrupt and erratic releases of high volumes of water from the dam, Nicholas, Jr. was forced to evacuate hundreds of cattle, tons of baled hay, farming and ranching equipment and machinery, shop tools and supplies, and ranch office material, and was damaged as follows:

377. Nicholas, Jr. incurred costs of relocation and for the return of his cattle, baled hay, farming and ranching equipment and machinery, shop tools and supplies, and ranch office material and the cost of feed and/or pasture for his cattle in an amount of at least $100,000 or more, according to proof.

378. Additionally, some of Nicholas Jr.'s cows were infected with a virus during the time they were on the rangeland pastures where they were taken after the evacuation. That virus, possibly a species of Bovine Coronavirus, was completely unknown on the Home Ranch. Following their return to the Home Ranch, when the cows gave birth, the new-born calves became infected with the virus and, despite intensive care and treatment, some died and continue to die. As of January 27, 2018, 50 of Nicholas, Jr.'s calves have died, and Nicholas, Jr. has incurred expenses in fighting the malady in an amount according to proof.

379. Additionally, Nicholas, Jr. sustained the loss of a new stand of Roundup Ready Alfalfa and a new stand of three-way and vetch which, not counting the unrealized crop value, in the aggregate, amounts to $7,516.12 or more, according to proof.

380. Nicholas, Jr. filed a Government Claim Form with the State of California, pursuant to Government Code section 910, in connection with damages sustained as a result of the Oroville Dam Crisis on August 11, 2017. The State rejected the claim on November 20, 2017.

34. Buzz Oates

381. On or about February 2017, Plaintiff Buzz Oates owned an interest in agricultural real property located in Yolo County, California, consisting of Yolo County APNs 057-240-07, 057-230-05, 057-230-03, 057-230-02, 057-230-01, 057-220-07, 057-220-06, 057-220-02, 057-220-01, 057-210-11, 057-210-10, 057-210-09, 057-210-04, 057-210-02, 057-210-01, and 042-290-01, which was leased out to a tenant farmer, Don Beeman.

382. As a proximate result of DWR's wrongful conduct, as alleged herein, Buzz Oates was damaged as follows:

383. Due to flooding, seepage, high water, excessive flows and abrupt and erratic releases of high volumes of water from the dam, Buzz Oates suffered the loss of its share of the landlord's crop share interest in the tomatoes which would have been grown on the premises in the 2017 cropping year, in the sum of at least $56,813.00, or more, according

to proof. Pursuant to Civil Code section 3346 these damages should be tripled or doubled as allowed by law. Buzz Oates also suffered the loss of use of real property.

384. Buzz Oates filed a Government Claim Form with the State of California, pursuant to Government Code section 910, on August 11, 2017, in connection with damages sustained as a result of the Oroville Dam Crisis. The claim was rejected on November 21, 2017.

35. Philip D. Oates

385. On or about February 2017, Plaintiff Philip D. Oates owned an interest in agricultural real property located in Yolo County, California, consisting of Yolo County APNs 057-240-07, 057-230-05, 057-230-03, 057-230-02, 057-230-01, 057-220-07, 057-220-06, 057-220-02, 057-220-01, 057-210-11, 057-210-10, 057-210-09, 057-210-04, 057-210-02, 057-210-01, and 042-290-01, which was leased out to a tenant farmer, Don Beeman.

386. As a proximate result of DWR's wrongful conduct, as alleged herein, Plaintiff was damaged as follows:

387. Due to flooding, seepage, high water, excessive flows and abrupt and erratic releases of high volumes of water from the dam, Philip D. Oates suffered the loss of his share of the landlord's crop share interest in the tomatoes which would have been grown on the premises in the 2017 cropping year, in the sum of at least $46,000, or more, according to proof. Pursuant to Civil Code section 3346 these damages should be tripled or doubled as allowed by law. Philip D. Oates suffered a loss of use of real property.

388. Philip D. Oates filed a Government Claim Form with the State of California, pursuant to Government Code section 910, on August 11, 2017, in connection with damages sustained as a result of the Oroville Dam Crisis. The claim was rejected on November 21, 2017.

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36. OBF

389. On or about February 2017, Plaintiff OBF owned an interest in agricultural real property located in Yolo County, California, consisting of Yolo County APNs 057-240-07, 057-230-05, 057-230-03, 057-230-02, 057-230-01, 057-220-07, 057-220-06, 057-220-02, 057-220-01, 057-210-11, 057-210-10, 057-210-09, 057-210-04, 057-210-02, 057-210-01, and 042-290-01, which was leased out to a tenant farmer, Plaintiff Don Beeman.

390. As a proximate result of DWR's wrongful conduct, as alleged herein, OBF was damaged as follows:

391. Due to flooding, seepage, high water, excessive flows and abrupt and erratic releases of high volumes of water from the dam, OBF suffered the loss of its share of the landlord's crop share interest in the tomatoes which would have been grown on the premises in the 2017 cropping year, in the sum of at least $8,000, or more, according to proof. Pursuant to Civil Code section 3346 these damages should be tripled or doubled as allowed by law. OBF also suffered a loss of use of real property.

392. OBF filed a Government Claim Form with the State of California, pursuant to Government Code section 910, on August 11, 2017, in connection with damages sustained as a result of the Oroville Dam Crisis. The claim was rejected on September 26, 2017.

37. OKB

393. On or about February 2017, OKB, owned an interest in agricultural real property located in Yolo County, California, consisting of Yolo County APNs 057-240-07, 057-230-05, 057-230-03, 057-230-02, 057-230-01, 057-220-07, 057-220-06, 057-220-02, 057-220-01, 057-210-11, 057-210-10, 057-210-09, 057-210-04, 057-210-02, 057-210-01, and 042-290-01, which was leased out to a tenant farmer, Plaintiff Don Beeman. OKB is the successor in interest to O.K. and B. Partnership.

394. As a proximate result of DWR's wrongful conduct, as alleged herein, OKB was damaged as follows:

395. Due to flooding, seepage, high water, excessive flows and abrupt and erratic releases of high volumes of water from the dam, OKB suffered the loss of its share of its interest in the tomatoes which would have been grown on the premises in the 2017 cropping year, in the sum of at least $42,000, or more according to proof. Pursuant to Civil Code section 3346 these damages should be tripled or doubled as allowed by law. OKB also suffered the loss of use of real property.

396. Pursuant to Government Code section 910, on August 11, 2017, O.K. and B. Partnership, OKB's predecessor in interest, filed a Government Claim Form with the State of California in connection with damages sustained as a result of the Oroville Dam Crisis. The claim was rejected on November 21, 2017.

38. The Ramoses

397. On or about February 2017, Plaintiffs Frank C. Ramos and Joanne M. Ramos were trustees of the Ramos Trust, which owned an interest in agricultural real property located in Yolo County, California, consisting of Yolo County APNs 057-240-07, 057-230-05, 057-230-03, 057-230-02, 057-230-01, 057-220-07, 057-220-06, 057-220-02, 057-220-01, 057-210-11, 057-210-10, 057-210-09, 057-210-04, 057-210-02, 057-210-01, and 042-290-01, which was leased out to a tenant farmer, Plaintiff Don Beeman.

398. As a proximate result of DWR's wrongful conduct, as alleged herein, the Ramoses, individually and as trustees, were damaged as follows:

399. Due to flooding, seepage, high water, excessive flows and abrupt and erratic releases of high volumes of water from the dam, the Ramoses suffered the loss of their share of the landlord's crop share interest in the tomatoes which would have been grown on the premises in the 2017 cropping year, in the sum of at least $30,000, or more, according to proof. Pursuant to Civil Code section 3346 these damages should be tripled or doubled as allowed by law. The Ramoses also suffered a loss of use of real property.

400. The Ramoses filed a Government Claim Form with the State of California, pursuant to Government Code section 910, on August 11, 2017, in connection with

damages sustained as a result of the Oroville Dam Crisis. The claim was rejected on November 21, 2017.

39. Reclamation District 1600

401. On or about February 2017, Plaintiff, RD 1600, is and was located in Yolo County, California, north of Interstate 5, and between the Sacramento River and the Yolo Bypass; the district comprises approximately 10.8 square miles (approximately 7,000 acres).

402. As a proximate result of DWR's wrongful conduct, as alleged herein, RD 1600 was damaged as follows:

403. Due to flooding, seepage, high water, excessive flows and abrupt and erratic releases of high volumes of water from the dam, RD 1600 incurred substantial extraordinary costs, including, but not limited to, damage to discharge and other piping, land slip (requiring regrading and compaction of levees to original condition), tree removal of downed trees, additional power charges caused by extra pumping required, patrolling costs due to high water, "wavewash" damage along 4.2 miles of levee, damage to levees from erosion, damage to patrol road, toe stabilization of levees, and addition of material, culvert installation to drain seepage, and other damages.

404. RD 1600 also suffered a loss of use of real property.

405. RD 1600's total damages are in excess of $4,000,000, or more, according to proof. Pursuant to Civil Code section 3346 these damages should be tripled or doubled as allowed by law.

406. On August 11, 2017, RD 1600 filed a Government Claim Form with the State of California, pursuant to Government Code section 910, in connection with the damages sustained as a result of the Oroville Dam Crisis. The State rejected the claim on September 19, 2017.

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40. The Stanleys

407. On or about February 2017, Plaintiffs the Stanleys were trustees of the Stanley Trust, which owned agricultural real property located in Yolo County, California, consisting of a 150-acre parcel located at 17292 County Road 117, West Sacramento.

408. As a proximate result of DWR's wrongful conduct, the Stanleys, individually and as trustees, were damaged, as follows:

409. Due to flooding, seepage, high water, excessive flows and abrupt and erratic releases of high volumes of water from the dam, the Stanleys sustained damages.

410. First, the Stanleys had prepared 63 acres to be planted to almonds in 2017. The Stanleys had purchased bare root rootstock from Burchell Nursery. Because of the flooding caused by the Oroville Dam Crisis, the almond tress had to be destroyed because their window of opportunity to be planted was forfeited.

411. Secondly, the Stanley's seven-year-old, 63-acre pistachio orchard was severely damaged. The damage resulted in a crop loss of an approximate 44,000 lbs. for 2017. Also, 18 percent of the tress were killed, 29 percent of the trees were so severely damaged that they had to be pruned back heavily resulting in a setback of four years. Another 14 percent of the trees were so severely damaged that they had to be pruned back with a three-year set back. And another 18 percent of the trees were pruned back resulting in a two year set back. Finally, 15 percent of trees were pruned back resulting in a one-year loss. Only six percent of tress were unaffected.

412. Damages also include the cost incurred to rip out and remove the dead trees from the orchard, and the cost to purchase, replant, and re-stake new trees.

413. The Stanleys also suffered a loss of use of real property.

414. In total, the Stanleys sustained damages of over $2,124,755.00, or more, according to proof. Pursuant to Civil Code section 3346 these damages should be tripled or doubled as allowed by law.

415. Pursuant to Government Code section 910, the Stanleys filed a government claim for with the State of California in connection with the damages caused by the

Oroville Dam Crisis on August 11, 2017. The State rejected the claim on November 20, 2017.

41. David TeVelde

416. On or about February 2017, Plaintiff David TeVelde was trustee of the TeVelde Family Trust, which owned agricultural real property located in Yolo County, California at 14130 County Road 117, West Sacramento, and commonly known as the "Bypass Farm," consisting of Yolo County APNs 057-030-005; 057-040-002; 057-040-001; 057-050-001; 057-050-002; 057-050-003; 057-060-002; 057-060-005.

417. As a proximate result of DWR's wrongful conduct, as alleged herein, TeVelde, individually and as trustee, was damaged as follows:

418. Due to flooding, seepage, high water, excessive flows and abrupt and erratic releases of high volumes of water from the dam, TeVelde suffered extensive crop loss, including, but not limited to row crops, such as garlic and onion seed, and to multi-year crops including alfalfa, as well as extensive damage to pistachio and walnut orchards.

419. These damages include, but are not limited to, dead trees, sick trees and the multiple years' yield losses for each. Damages also include the cost to replace trees, cost to remove trees, and replanting costs.

420. TeVelde also suffered a loss of use of real property.

421. The amount of damages is calculated to be the sum of at least $4,000,000, or more, according to proof. Pursuant to Civil Code section 3346 these damages should be tripled or doubled as allowed by law.

422. Pursuant to Government Code section 910, TeVelde filed a Government Claim Form with the State of California in connection with the damages caused by the Oroville Dam Crisis on August 11, 2017. The State rejected the claim on November 20, 2017.

42. Yolo Land Trust

423. On or about February 2017, Plaintiff Yolo Land Trust owned agricultural real property located in Yolo County, California, consisting of Yolo County APNs 57-120-01,

57-120-09; 57-160-06, near CR 117, which is leased out to a tenant farmer, Garcia Farms, Inc.

424. As a proximate result of DWR's wrongful conduct, as alleged herein, Yolo Land Trust was damaged as follows:

425. Due to flooding, seepage, high water, excessive flows and abrupt and erratic releases of high volumes of water from the dam, Yolo Land Trust's mature walnut orchard was destroyed. Approximately 14,695 trees spread over 6 orchards died or were severely damaged.

426. Additionally, damages include removal cost of trees, ground preparation cost, replacement cost, and loss of revenue from a 150-acre row crop farm in 2017. Yolo land trust also suffered loss of use of real property.

427. The amount of Yolo Land Trust's damages is calculated to be $19,620,000 or more. Pursuant to Civil Code section 3346, these damages should be tripled or doubled as allowed by law.

428. Yolo Land Trust filed a Government Claim Form with the State of California, pursuant to Government Code section 910, on August 11, 2017, in connection with damages sustained as a result of the Oroville Dam Crisis. The State failed to act on the claim, and it was effectively deemed rejected on September 25, 2017.

V. CAUSES OF ACTION

FIRST CAUSE OF ACTION

Dangerous Condition of Public Property

Government Code § 835

(On Behalf of All Plaintiffs against Defendant and Does 1-100)

429. Plaintiffs incorporate herein by reference and realleges the allegations stated in this complaint.

430. Defendant owns or controls the Oroville Dam.

431. The Oroville Dam was in a dangerous condition at the time the main spillway and emergency spillway failed in February 2017.

432. The dangerous condition of the Oroville Dam created a reasonably foreseeable risk that the main spillway and emergency spillway would fail pursuant to the law of California.

433. Defendant had actual and constructive notice of the Oroville Dam's dangerous condition in a reasonable amount of time to have taken preventative measures.

434. Plaintiffs were injured as a result of the failure of the Oroville Dam in February 2017 as set forth above.

SECOND CAUSE OF ACTION

Private Nuisance

(On Behalf of All Plaintiffs against Defendant and Does 1-100)

435. Plaintiffs incorporate herein by reference and realleges the allegations stated in this complaint.

436. Defendant owns or controls the Oroville Dam.

437. Defendant's operation of the Oroville Dam created a condition or permitted a condition to exist that was and continues to be harmful to health; or was an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property; or posed a danger of flooding Plaintiffs' property.

438. Defendant's operation of the Oroville Dam interfered with the Plaintiffs' use or enjoyment of Plaintiffs' land.

439. Plaintiffs did not consent to Defendant's conduct.

440. An ordinary person would be reasonably annoyed or disturbed by Defendant's conduct.

441. Plaintiffs were harmed, and Defendant's conduct was a substantial factor in causing Plaintiff's harm.

442. The seriousness of the harm to Plaintiffs outweighs the public benefit of Defendant's conduct.

THIRD CAUSE OF ACTION

Public Nuisance

(On Behalf of All Plaintiffs against Defendant and Does 1-100)

443. Plaintiffs incorporate herein by reference and realleges the allegations stated in this complaint.

444. Defendant owns or controls the Oroville Dam.

445. Defendant's operation of the Oroville Dam created a condition or permitted a condition to exist that was and continues to be harmful to health; or was an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property; or posed a danger of flooding to Plaintiffs' property.

446. The hazardous condition created by Defendant's operation of the Oroville Dam affected a substantial number of persons at the same time.

447. An ordinary person would be reasonably annoyed or disturbed by the condition.

448. The seriousness of the harm created by Defendant's conduct outweighs the social utility of Defendant's conduct.

449. Plaintiffs did not consent to Defendant's conduct.

450. Plaintiffs suffered harm that was different from the type of harm suffered by the general public.

451. Defendant's conduct was a substantial factor in causing the Plaintiffs harm.

FOURTH CAUSE OF ACTION

Premises Liability

(On Behalf of All Plaintiffs against Defendant and Does 1-100)

452. Plaintiffs incorporate herein by reference and realleges the allegations stated in this complaint.

453. Defendant owns or controls the Oroville Dam.

454. Defendant was negligent in the use or maintenance of the Oroville Dam pursuant to California law under the facts above stated.

455. Plaintiffs were harmed and damaged, and Defendant's negligence was a substantial factor in causing that harm.

FIFTH CAUSE OF ACTION

Inverse Condemnation

(On Behalf of Plaintiffs JEM Farms L.P.; Chandon Ranch L.P.; Jaswinder Bains and Gurinder Bains, individually and as trustees of the Jaswinder Singh Bains and Gurinder Pal Bains Family Trust; George and Katherine Anita Barber; Tom Miller, Jr., individually and as trustee of the Tom O. Miller Separate Property Trust; MP Farms; Purple Line Urban Winery, LLP; Roplast Industries, Inc.; Tri Alliance Automotive Group, d/b/a Dirks Automotive and Transmission; Jeanette Morton; Melissa Morton; Ashley Morton; AJK Farms, LLC.; Adrian G. Benning and Michele A. Benning, individually and as trustees of the Benning Family Trust; CKMR2, LP; Gregory E. Driver; William A. Driver, individually and as trustee of the William A. Driver Revocable Trust; Jeffrey E. Dyer; B.E. Giovannetti & Sons; Emil Joseph Giovannetti; Anita Belle Kane, individually and as trustee of the Kane Trust; L.A.B./Roseville; Lang Family #1 Limited Partnership; K A Lang Family Limited Partnership; William F. Mattos and Kim H. Mattos, individually and as trustees of the Mattos Family Revocable Trust; Kathleen A. Mitchell, individually and as trustee of the Mitchell Trust; Central Valley Farms, LLC; Douglas G. Nareau; Nicoli Nicholas; Nicoli Nicholas, Jr.; Buzz Oates, LLC; Philip D. Oates; OBF, LLC; OKB, LLC; Frank C. Ramos and Joanne M. Ramos, individually and as trustees of the Frank C. Ramos and Joanne M. Ramos Family Trust; Lance Jeffrey Stanley and Sarah Hilea Stanley, individually and as trustees of the Stanley Revocable Living Trust; David TeVelde, individually and as trustee of the TeVelde Family Trust; and Yolo Land Trust against Defendant and Does 1-100)

456. Plaintiffs incorporate herein by reference and realleges the allegations stated in this complaint.

457. On February 12, 2017, Plaintiff was the owner of real property and/or personal property located within Butte County in the area of the Oroville Dam.

458. Prior to and on February 12, 2017, Defendants and each of them, installed, owned, operated, used, controlled and/or maintained the Oroville Dam.

459. On February 12, as a direct, proximate, and legal result of Defendant's installation, ownership, operation, use, control, and/or maintenance of the Oroville Dam for a public use, the Oroville Dam failed, causing an evacuation and flood, resulting in the damage/or destruction of Plaintiff's real and/or personal property.

460. The above described damage to Plaintiff's property was proximately and substantially caused by the actions of Defendants, and each of them, in Defendants' installation, ownership, operation, use, control, and/or maintenance for a public use of the Oroville Dam was negligent and caused the Oroville Dam's failure.

461. Plaintiffs have not received adequate compensation for the damage to and/or destruction of their property, thus constituting a taking or damaging of Plaintiffs' property by the Defendants, and each of them, without just compensation.

462. As a direct, proximate, and legal result of the wrongful acts and/or omissions of Defendants, and each of them, Plaintiffs have suffered damage to real property, including but not limited to loss of use, interference with access, enjoyment, and marketability, and injury to personal property. As a direct, proximate, and legal result of the wrongful acts and/or omissions of Defendants, and each of them, Plaintiffs have incurred and will continue to incur expenses related to damage to personal and/or real property, including but not limited to costs of repair, depreciation, and/or replacement. As a direct, proximate, and legal result of the wrongful acts and/or omissions of Defendants, and each of them, Plaintiffs have suffered loss of wages, earning capacity and/or business profits or proceeds and/or related displacement expenses. Plaintiffs have been damaged in an amount according to proof at trial. Plaintiffs' damages exceed the minimum jurisdiction for an unlimited civil matter, the exact amount will be according to proof.

463. Plaintiffs have incurred and will continue to incur attorneys', appraisal, and engineering fees because of the conduct of Defendants, and each of them, in amounts that cannot yet be ascertained, but which are recoverable in this action under Code of Civil Procedure section 1036.

VI. PRAYER FOR RELIEF AND DEMAND FOR JURY

WHEREFORE, Plaintiffs pray this Court enter a judgment against Defendant that:

1. Awards compensatory, statutory and all other damages sustained by Plaintiff as to all causes of action where such relief is permitted.

2. Awards Plaintiffs the costs of this action, including reasonable attorney's fees and expenses.

3. Awards appropriate injunctive relief;

4. Awards attorney's fees and expert fees as may be allowable under applicable law, including California Code of Civil Procedure sections 1021.5 and 1036;

5. Awards pre-judgment and post-judgment interest;

6. Orders appropriate declaratory relief; and such further legal and equitable relief as this Court may deem just and proper.

7. Plaintiffs demand a jury trial on all issues so triable.

Dated: January 31, 2018

COTCHETT, PITRE & McCARTHY, LLP

By: _____
NIALL P. McCARTHY

GARDNER, JANES, NAKKEN, HUGO & NOLAN

By: _____
DAVID JANES

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Attorneys for Plaintiffs

EXHIBIT A

STATE OF CALIFORNIA
THE RESOURCES AGENCY OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES

WATER SUPPLY CONTRACT
BETWEEN

THE STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES

AND

THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

Disclaimer: This document integrates The Metropolitan Water District of Southern California's State Water Project water supply contract and amendments to the contract entered into since November 4, 1960. It is intended only to provide a convenient reference source, and the Department of Water Resources is unable to provide assurances that this integrated version accurately represents the original documents. For legal purposes, or when precise accuracy is required, users should direct their attention to original source documents rather than this integrated version.

(Incorporates through Amendment No. 28, executed October 24, 2003)
(No other amendments through 2015)

C. PAYMENT PROVISIONS

22. Delta Water Charge.

(a) <Payment of Reimbursable Costs of Project Conservation Facilities> The payments to be made by each contractor for project water shall include an annual charge designated as the Delta Water Charge. This charge, together with the total revenues derived during the project repayment period from the sale or other disposal of electrical energy generated in connection with operation of project conservation facilities, shall return to the State during the project repayment period all costs of the project conservation facilities incurred during the project repayment period, including capital, operation, maintenance, power, and replacement costs, which are allocated to the purpose of water conservation in, above, and below the Delta pursuant to subdivision (e) of this article. Wherever reference is made, in connection with the computation or determination of the Delta Water Charge, to the costs of any facility or facilities included in the System, such reference shall be only to those costs of such facility or facilities which are reimbursable by the contractors as determined by the State.

(b)[40] <Delta Water Rate Until 1970; Components of Rate Thereafter> For each contractor receiving project water in any year through December 31, 1969, the Delta Water Charge shall be the product of $3.50 and the contractor's annual entitlement to project water for the respective year. For each contractor receiving project water in the year 1970, the Delta Water Charge shall be the product of $6.65 and the contractor's annual entitlement to project water for that year. The $6.65 rate for the year 1970 shall consist of a capital cost component of $5.04 and a minimum operation, maintenance, power and replacement component of $1.61. For each contractor receiving project water in the year 1971, the Delta Water Charge shall be the product of $7.24 and the contractor's annual entitlement to project water for that year. The $7.24 rate for the year 1971 shall consist of a capital cost component of $5.44 and a minimum operation, maintenance, power and replacement component of $1.80. After December 31, 1971, the Delta Water Charge shall consist and be the sum of the following components as these are computed in accordance with subdivisions (c) and (d) of this article: a capital cost component; a minimum operation, maintenance, power and replacement component; and a variable operation, maintenance, power and replacement component.

(c) <Computation of the Components of the Delta Water Rate> The capital cost, the minimum operation, maintenance, power, and replacement, and the variable operation, maintenance, power, and replacement components of the Delta Water Charge, together with that portion of the revenues derived during the project repayment period from the sale or other disposal of electrical energy generated in connection with operation of project conservation facilities which is allocated by the State to repayment of the respective category of costs, shall return to the State during the project repayment period, respectively, the following categories of

40 Amended: Amendments 9, 10

the costs allocated to the purpose of water conservation in, above, and below the Delta pursuant to subdivision (e) of this article: (1) capital costs; (2) operation, maintenance, power, and replacement costs incurred irrespective of the amount of project water delivered to the contractors; and (3) operation, maintenance, power, and replacement costs incurred in an amount which is dependent upon and varies with the amount of project water delivered to the contractors: Provided, That each of the above categories of costs shall be inclusive of the appropriate costs properly chargeable to the generation and transmission of electrical energy in connection with operation of project conservation facilities. Each component of the Delta Water Charge shall be computed on the basis of a rate which, when charged during the project repayment period for each acre-foot of the sum of the yearly totals of annual entitlements of all contractors, will be sufficient, together with that portion of the revenues derived during the project repayment period from the sale or other disposal of electrical energy generated in connection with operation of project conservation facilities which is allocated by the State to repayment of the respective category of costs, to return to the State during the project repayment period all costs included in the respective category of costs covered by that component. Each such rate shall be computed in accordance with the following formula:

$$\frac{(c_1 - r_1)(1+i)^{-1} + (c_2 - r_2)(1+i)^{-2} + \ldots + (c_n - r_n)(1+i)^{-n}}{e_1(1+i)^{-1} + e_2(1+i)^{-2} + \ldots + e_n(1+i)^{-n}}$$

Where:

i = The project interest rate.

c = The total costs included in the respective category of costs and incurred for the respective year of the project repayment period.

r = That portion of the revenues derived from the sale or other disposal of electrical energy allocated by the State to repayment of the costs included in the respective category and incurred for the respective year of the project repayment period.

1, 2, and n appearing below c and r = The respective year of the project repayment period during which costs are included in the respective category, n being the last year of the project repayment period.

e = With respect to the capital cost and minimum operation, maintenance, power, and replacement components, the total of annual entitlements to project water of all contractors for the respective year of the project repayment period.

e = With respect to the variable operation, maintenance, power, and replacement component, the total of the amounts of project water delivered to all contractors for the respective year of the expired portion of the project repayment period, together with the total of annual entitlements to project water of all contractors for the respective year of the unexpired portion of the project repayment period.

1, 2, and n

appearing below

e = The respective year of the project repayment period in which the annual entitlements or project water deliveries occur, *n* being the last year of the project repayment period.

n used as an exponent = The number of years in the project repayment period.

(d) **<Application of Component Rates>** The capital cost and minimum operation, maintenance, power, and replacement components of the Delta Water Charge shall be the product of the appropriate rate computed under subdivision (c) of this article, and the contractor's annual entitlement to project water for the respective year. The variable operation, maintenance, power, and replacement component of the charge shall be the product of the appropriate rate computed under subdivision (c) of this article and the number of acre-feet of project water delivered to the contractor during the respective year: Provided, That when project water has been requested by a contractor and delivery thereof has been commenced by the State, and, through no fault of the State, such water is wasted as a result of failure or refusal by the contractor to accept delivery thereof, said variable component during such period shall be the product of said rate per acre-foot and the sum of the number of acre-feet of project water delivered to the contractor and the number of acre-feet wasted.

(e)[41] **<Allocations to Project Purposes>** Prior to the time that additional project conservation facilities or supplemental conservation facilities are constructed, the Delta Water Charge shall be determined on the basis of an allocation to project purposes, by the separable cost-remaining benefits method, of all actual and projected costs of all those initial project conservation facilities located in and above the Delta, and upon an allocation to the purposes of water conservation and water transportation, by the proportionate use of facilities method, of all actual and projected costs of the following project facilities located below the Delta: The aqueduct intake facilities at the Delta, Pumping Plant I (Delta Pumping Plant), the aqueduct from the Delta to San Luis Forebay (O'Neill Forebay), San Luis Forebay (O'Neill Forebay), and San Luis Reservoir: Provided, That all of the actual and projected costs properly chargeable to the generation and transmission of electrical energy in connection with operation of project conservation facilities shall be allocated to the purpose of water conservation in, above, and below the Delta: Provided further, That allocations to purposes the cost of which are to be paid by the United States shall be as determined by the United States.

Commencing in the year in which the State first awards a major construction contract for construction of a major feature of additional project conservation facilities, or first commences payments under a contract with a federal agency in the event a major feature of additional project conservation facilities is constructed by such federal agency under an agreement requiring the State to pay all or part of the costs of such construction, the Delta Water Charge shall be

41 Amended: Amendment 11

determined on the basis of the foregoing allocations and upon an allocation to project purposes, by the separable costs-remaining benefits method and subject to the foregoing provisos, of all projected costs of such feature of the additional project conservation facilities: Provided, That if the agreement with such federal agency allows repayment of costs of a portion of a facility to be deferred, the associated costs of such portion shall be excluded from the Delta Water Charge computations until repayment of such deferred costs or interest thereon is commenced by the State: Provided further, That all costs of additional project conservation facilities incurred prior to the award of a major construction contract, shall be included in the Delta Water Charge computations in the year in which they are incurred.

(f) **<Yearly Recomputation of Rates After 1970>** The rates to be used in determining the components of the Delta Water Charge pursuant to subdivision (d) of this article and to become effective on January 1, 1970, shall be computed by the State in accordance with subdivision (c) of this article prior to that date. Such computation shall include an adjustment which shall account for the difference, if any, between revenues received by the State under the Delta Water Charge prior to January 1, 1970, and revenues which would have been received under the charge prior to that date had it been computed and charged in accordance with subdivisions (c) and (d) of this article. Upon such computation, a document establishing such rates shall be prepared by the State and attached to this contract as an amendment of this article. The State shall recompute such rates each year thereafter, and each such recomputation shall take account of and reflect increases or decreases from year to year in projected costs, outstanding reimbursable indebtedness of the State incurred to construct the project conservation facilities described in subdivision (e) of this article, annual entitlements, deliveries of project water, project interest rate, revenues from the sale or other disposal of electrical energy, and all other factors which are determinative of such rates. In addition, each such recomputation shall include an adjustment of the rates for succeeding years which shall account for the differences, if any, between projections of costs used by the State in determining said rates for all preceding years, and actual costs incurred by the State during such years. Upon each such recomputation, an appropriately revised copy of the document establishing such rates shall be prepared by the State and attached to this contract as an amendment of this article.

(g)[42] **<Supplemental Conservation Facilities>** Upon the construction of the supplemental conservation facilities, the Delta Water Charge shall be paid by all contractors for supplemental water, as well as by contractors for project water, and, together with revenues derived from the sale or other disposal of electrical energy generated in connection with operation of project conservation facilities and supplemental conservation facilities, shall return to the State, in addition to those costs of the project conservation facilities allocated to the purpose of water conservation, in, above, and below the Delta pursuant to subdivision (e) of this article, all costs of such supplemental conservation facilities, including capital, operation, maintenance, power, and replacement costs which are allocated to the purpose of water conservation, in, above, and below the Delta pursuant hereto. Commencing in the year in which the State first awards a major construction contract for construction of a major feature of any supplemental conservation facilities, or first commences payments under a contract with a

42 Amended: Amendment 11

federal agency in the event a major feature of supplemental conservation facilities is constructed by such federal agency under an agreement requiring the State to pay all or part of the costs of such construction, the Delta Water Charge shall be determined on the basis of the allocations made pursuant to subdivision (e) of this article, and upon an allocation to project purposes, by the separable costs-remaining benefits method and subject to provisos corresponding to those contained in said subdivision (e), of all projected costs of such feature of the supplemental conservation facilities. Commencing in the same year, the computation of the rates to be used in determining the components of the Delta Water Charge shall include the annual entitlements to water under all contracts for supplemental water. If the repayment period of any bonds sold to construct supplemental conservation facilities or the repayment period under any agreement with a federal agency for repayment of the costs of supplemental conservation facilities constructed by such federal agency extends beyond the repayment period of the contract, the Delta Water Charge shall be determined and redetermined on the basis of such extended repayment period as the State determines to be appropriate: Provided, That if the agreement with such federal agency allows repayment of costs of a portion of a facility to be deferred, the associated costs of such portion shall be excluded from the Delta Water Charge computations until repayment of such deferred costs or interest thereon is commenced by the State.

(h)[43] <Local Project as Additional Conservation Facility>

The determination of the rate for water under the Delta Water Charge shall be made by including the appropriate costs and quantities of water, calculated in accordance with subdivisions (c), (d) and (e) above, for all additional project conservation facilities as defined in Article 1(h) hereinabove. In the event a Local Project as defined in Article 1(h)(2) will, pursuant to written agreement between the State and the sponsoring contractor, be considered and treated as an additional project conservation facility for less than the estimated life of the facility, the rate under the Delta Water Charge will be determined on the basis of that portion of the appropriate cost and water supply associated with such facility as the period of time during which such facility shall be considered as an additional project conservation facility bears to the estimated life of such facility. No costs for the construction or implementation of any Local Project are to be included in the Delta Water Charge unless and until the written agreement required by Article 1(h) has been entered into.

(i)[44] <Project Water Purchased by State> In calculating the rate for project water to be paid by each contractor for the Delta Water Charge under subdivisions (c), (d) and (e) above, the component for operation, maintenance, power and replacement costs shall include, but not be limited to, all costs to the State incurred in purchasing water, which is competitive with alternative sources as determined by the State, for delivery as project water.

(j)[45] <Recovery of Water System Revenue Bond Financing Costs> Notwithstanding provisions of Article 22(a) through (i), the capital cost component and the minimum OMP&R component of the Delta Water Charge shall include an annual charge to recover the District's

43 Amended: Amendment 18
44 Amended: Amendment 18
45 Added: Amendments 20, 25

share of the conservation portion of the water system revenue bond financing costs. Charges to the District for these costs shall be calculated in accordance with provisions in Article 50 of this contract. Charges for the conservation portion of the water system revenue bond financing costs shall not be affected by any reductions in payments pursuant to Article 51.

23. Transportation Charge.

The payments to be made by each contractor entitled to delivery of project water from the project transportation facilities shall include an annual charge under the designation Transportation Charge. This charge shall return to the State during the project repayment period those costs of all project transportation facilities necessary to deliver project water to the contractor incurred during the project repayment period, including capital, operation, maintenance, power, and replacement costs, which are allocated to the contractor in accordance with the cost allocation principles and procedures hereinafter set forth. Wherever reference is made, in connection with the computation, determination, or payment of the Transportation Charge, to the costs of any facility or facilities included in the System, such reference shall be only to those costs of such facility or facilities which are reimbursable by the contractors as determined by the State. The Transportation Charge shall consist of a capital cost component; a minimum operation, maintenance, power, and replacement component; and a variable operation, maintenance, power, and replacement component, as these components are defined in and determined under Articles 24, 25, and 26, respectively. For the purpose of allocations of costs pursuant to said articles, the project transportation facilities shall be segregated into such aqueduct reaches as are determined by the State to be necessary for such allocations of costs. Subject to such modifications as are determined by the State to be required by reason of any request furnished by the District to the State pursuant to Article 17(a) of this contract, or by reason of contracts entered into by the State with other contractors, the aqueduct reaches of the project transportation facilities are established as follows: Provided, That those costs of the aqueduct reaches from the Delta through the outlet of San Luis Reservoir which are allocated to the purpose of water conservation in, above, and below the Delta for the purpose of determining the Delta Water Charge, as hereinbefore set forth, shall not be included in the Transportation Charge.

Aqueduct Reach	**Major Features of Reach**
Delta to Discharge Pumping Plant I:	Intake Canal, Fish Protective Facilities Pumping Plant I
Discharge Pumping Plant I to San Luis Forebay:	Aqueduct
San Luis Forebay to Outlet San Luis Reservoir:	San Luis Forebay and Dam, Pumping Plant II, San Luis Reservoir and Dam
Outlet San Luis Reservoir to Avenal Gap:	Aqueduct

Avenal Gap to Pumping III:	Aqueduct
Pumping Plant III to Pumping Plants IV-V:	Pumping Plant III, Aqueduct
Pumping Plant IV-V to Pumping Plant VI:	Pumping Plant IV, Pumping Plant V Aqueduct
Pumping Plant VI to South Portal Tehachapi Tunnels:	Pumping Plant VI Tehachapi Tunnels

East Branch Aqueduct

South Portal Tehachapi Tunnels to Cottonwood Power Plant:	Aqueduct Cottonwood Power Plants 1 and 2
Cottonwood Power Plant to a point near Fairmont Reservoir:	Aqueduct
Near Fairmont Reservoir to Little Rock Creek:	Aqueduct
Little Rock Creek to West Fork Mojave River:	Pumping Plant VIII Aqueduct
West Fork Mojave River to Perris Reservoir	Cedar Springs Reservoir and Dam Devil Canyon Power Plants 1 and 2 Aqueduct Perris Reservoir and Dam

West Branch Aqueduct

South Portal Tehachapi Tunnels to West Branch Terminal Reservoir:	Aqueduct
West Branch Terminal Reservoir:	Dam, reservoir, and outlet facilities

24. Transportation Charge - Capital Cost Component.

(a) <Method of Computation> The capital cost component of the Transportation Charge shall be sufficient to return to the State those capital costs of the project transportation facilities necessary to deliver water to the contractor which are allocated to the contractor pursuant to subdivision (b) of this article. The amount of this component shall be determined in two steps as follows: (1) an allocation of capital costs to the contractor, and (2) a computation of annual payment of such allocated capital costs and interest thereon, computed at the project interest rate, to be made by the contractor.

(b)[46] **<Allocation of Capital Costs Among Contractors>** In the first step, the total amount of capital costs of each aqueduct reach to be returned to the State shall be allocated among all contractors entitled to delivery of project water from or through the reach by the proportionate use of facilities method of cost allocation and in accordance with (1) and (2) below. The measure of the proportionate use of each contractor of each reach shall be the average of the following two ratios: (i) the ratio of the contractor's maximum annual entitlement to be delivered from or through the reach to the total of the maximum annual entitlements of all contractors to be delivered from or through the reach from the year in which charges are to be paid through the end of the project repayment period and (ii) the ratio of the capacity provided in the reach for the transport and delivery of project water to the contractor to the total capacity provided in the reach for the transport and delivery of project water to all contractors served from or through the reach from the year in which charges are to be paid through the end of the project repayment period. Allocations of capital costs to the District pursuant hereto shall be on the basis of relevant values which will be set forth in Table B by the State as soon as designs and cost estimates are prepared by it subsequent to receipt of requests from the District as to the maximum monthly delivery capability to be provided in each aqueduct reach of the project transportation facilities for the transport and delivery of project water to the District, pursuant to Article 17(a): Provided, That these values shall be subject to redetermination by the State in accordance with Article 28: Provided further, That the principles and procedures set forth in this subdivision shall be controlling as to allocations of capital costs to the District. Proportionate use of facilities factors for prior years shall not be adjusted by the State in response to changes or transfers of entitlement among contractors unless otherwise agreed by the State and the parties to the transfer and unless there is no impact on past charges or credits of other contractors.

TABLE B
<PLACEHOLDER: TABLE B WITHOUT VALUES SHOWN IN ORIGINAL CONTRACT>
<TABLE B PUBLISHED AS TABLES B-1 AND B-2 IN BULLETIN 132>

(1) The total amount of capital costs allocated to a contractor shall be the sum of the products obtained when there is multiplied, for each aqueduct reach necessary to deliver water to the contractor, the total amount of the capital costs of the reach to be returned to the State under the Transportation Charge by the average of the two foregoing ratios for such reach as said average is set forth in the appropriate table included in its contract.

(2) In the event that excess capacity is provided in any aqueduct reach for the purpose of making project water available in the future to an agency or agencies with which the State has not executed contracts at the time of any allocation of costs pursuant to this subdivision, the prospective maximum annual entitlement or entitlements to be supplied by such excess capacity, as determined by the State, shall be deemed to be contracted for by said agency or agencies for the purpose of such allocation of costs, to the end that the capital costs of providing such excess capacity are not charged to any contractor entitled by virtue of an executed contract to the delivery of project water from

46 Amended: Amendment 25

or through that aqueduct reach at the time of such allocation. Where additional capacity is provided in any aqueduct reach to compensate for loss of water due to evaporation, leakage, seepage, or other causes, or to compensate for scheduled outages for purposes of necessary investigation, inspection, maintenance, repair or replacement of the facilities of the project facilities, then, for the purpose of any allocation of costs pursuant to this subdivision: (i) the maximum annual entitlement to be delivered from or through the reach of each contractor entitled to delivery of project water from or through the reach shall be increased by an amount which bears the same proportion to the maximum annual delivery capability provided by such additional capacity that the contractor's maximum annual entitlement to be delivered from or through the reach bears to the total of the maximum annual entitlements to be delivered from or through the reach under all contracts; and (ii) the capacity provided in the reach for each contractor entitled to delivery of project water from or through the reach shall be increased in the same proportion that the contractor's maximum annual entitlement to be delivered from or through the reach is increased pursuant to (i) above.

(3) The projected amounts of capital costs to be allocated annually to the District under the capital cost component of the Transportation Charge shall be determined by the State in accordance with the cost allocation principles and procedures set forth in this subdivision, which principles and procedures shall be controlling as to allocations of capital costs to the District. Such amounts will be set forth in Table C by the State as soon as designs and cost estimates are prepared by it subsequent to receipt of requests from the District as to the maximum monthly delivery capability to be provided in each aqueduct reach for transport and delivery of project water to the District, pursuant to Article 17(a): Provided, That these amounts shall be subject to redetermination by the State in accordance with Article 28.

TABLE C
<PLACEHOLDER: TABLE C WITHOUT VALUES SHOWN IN ORIGINAL CONTRACT>
<TABLE C PUBLISHED AS TABLE B-14 IN BULLETIN 132>

(c) <Annual Payments of Allocated Capital Costs> In the second step, the District's annual payment of its allocated capital costs and interest thereon, computed at the project interest rate and compounded annually, shall be determined in accordance with a repayment schedule established by the State and determined in accordance with the principles set forth in (1), (2), and (3) below, which principles shall be controlling as to the District's payment of its allocated capital costs. The District's repayment schedule will be set forth in Table D by the State as soon as designs and cost estimates are prepared by it subsequent to receipt of requests from the District as to the maximum monthly delivery capability to be provided in each aqueduct reach for transport and delivery of project water to the District, pursuant to Article 17(a): Provided, That the amounts set forth in Table D shall be subject to redetermination by the State, pursuant to Article 28.

(1) The District's annual payment shall be the sum of the amounts due from the District on the District's allocated capital costs for the then current year and for each

previous year where each such amount will pay, in not more than fifty (50) equal annual installments of principal and interest, the District's allocated capital costs for the respective year and interest thereon, computed at the project interest rate and compounded annually.

(2) The District may make payments at a more rapid rate if approved by the State.

(3) Such annual payments shall cease when all allocated capital costs and interest thereon, computed at the project interest rate and compounded annually, are repaid.

TABLE D

<PLACEHOLDER: TABLE D WITHOUT VALUES SHOWN IN ORIGINAL CONTRACT>
<TABLE D PUBLISHED (UNADJUSTED) AS TABLE B-15 IN BULLETIN 132>

(d) <Payment in Advance for Excess Peaking Capacity> In the event that any contractor, pursuant to Article 12(b), requests delivery capacity in any aqueduct reach which will permit maximum monthly deliveries to such contractor in excess of the percentage amounts specified in said Article 12(b) for the uses designated therein, such contractor shall furnish to the State, in advance of the construction of such aqueduct reach, funds sufficient to cover the costs of providing such excess capacity, which funds shall be in an amount which bears the same proportion to the total capital costs of such reach, including the costs of providing such excess capacity, as such excess capacity bears to the total capacity of such reach, including such excess capacity. For the purpose of any allocation of costs pursuant to subdivision (b) of this article, the total capital costs of such aqueduct reach shall be allocated among all contractors entitled to delivery of project water from or through the reach in the following manner: (1) The costs which would have been incurred for such reach had no such excess capacity been provided shall be estimated by the State and allocated among all such contractors in the manner provided in said subdivision (b); and (2) the amount of the difference between said estimated costs and the projected actual costs of such reach shall be allocated to the contractor or contractors for which such excess capacity is provided. Where such excess capacity is provided for more than one contractor, the costs allocated to them under (2) above shall be further allocated between or among them in amounts which bear the same proportion to the total of said allocated costs as the amount of such excess capacity provided for the respective contractor bears to the total of such excess capacity provided in such reach. In the event that the funds advanced by a contractor pursuant to this subdivision are more or less than the costs so allocated to such contractor under (2) above, the account of such contractor shall be credited or debited accordingly.

(e)[47] <Off-Aqueduct Power Facilities> The capital costs of project aqueduct power recovery plants shall be charged and allocated in accordance with this Article 24. The capital costs of off-aqueduct power facilities shall be charged and allocated in accordance with Article 25(d).

47 Added: Amendment 18

(f)[48] **<East Branch Enlargement Facilities>** Notwithstanding provisions of Article 24(a) through 24(d), capital costs associated with East Branch Enlargement Facilities as defined in Article 49(a) shall be collected under the capital cost component of the East Branch Enlargement Transportation Charge [Article 49(d)]. Any capital costs of off-aqueduct power facilities associated with deliveries through East Branch Enlargement Facilities shall be charged and allocated in accordance with Article 25(d).

(g)[49] **<Recovery of Water System Revenue Bond Financing Costs>** Notwithstanding provisions of Article 24(a) through (d), the capital cost component of the Transportation Charge shall include an annual charge to recover the District's share of the transportation portion of the water system revenue bond financing costs. Charges to the District for these costs shall be calculated in accordance with the provisions of Article 50 of this contract. Charges for the transportation portion of the water system revenue bond financing costs shall not be affected by any reductions in payments pursuant to Article 51.

25. Transportation Charge - Minimum Operation, Maintenance, Power, and Replacement Component.

(a) **<Method of Computation>** The minimum operation, maintenance, power, and replacement component of the Transportation Charge shall return to the State those costs of the project transportation facilities necessary to deliver water to the contractor which constitute operation, maintenance, power, and replacement costs incurred irrespective of the amount of project water delivered to the contractor and which are allocated to the contractor pursuant to (b) below: Provided, That to the extent permitted by law, the State may establish reserve funds to meet anticipated minimum replacement costs; and deposits in such reserve funds by the State: (1) shall be made in such amounts that such reserve funds will be adequate to meet such anticipated costs as they are incurred, and (2) shall be deemed to be a part of the minimum replacement costs for the year in which such deposits are made.

(b) **<Allocation of Costs>** The total projected minimum operation, maintenance, power, and replacement costs of each aqueduct reach of the project transportation facilities for the respective year shall be allocated among all contractors entitled to delivery of project water from said facilities by the proportionate use of facilities method of cost allocation, in the same manner and upon the same bases as are set forth for the allocation of capital costs in Article 24: Provided, That such minimum operation, maintenance, power, and replacement costs as are incurred generally for the project transportation facilities first shall be allocated to each aqueduct reach in an amount which bears the same proportion to the total amount of such general costs that the amount of the costs incurred directly for the reach bears to the total of all direct costs for all aqueduct reaches.

(c) **<Payment Table>** The amount to be paid each year by the District under the minimum operation, maintenance, power, and replacement component of the Transportation Charge shall be determined in accordance with subdivision (b) of this article on the basis of the relevant values to be set forth for the respective aqueduct reaches in Table B, included in

48 Added: Amendment 19
49 Added: Amendments 20, 25

Article 24: Provided, That these values shall be subject to redetermination by the State in accordance with Article 28. Such amounts and any interest thereon shall be set forth by the State in Table E as soon as designs and cost estimates have been prepared by it subsequent to receipt of requests from the District as to the maximum monthly delivery capability to be provided in each aqueduct reach for transport and delivery of project water to the District, pursuant to Article 17(a): Provided, That the amounts set forth in Table E shall be subject to redetermination by the State in accordance with Article 28.

TABLE E
<PLACEHOLDER: TABLE E WITHOUT VALUES SHOWN IN ORIGINAL CONTRACT>
<TABLE E PUBLISHED AS TABLE B-16A IN BULLETIN 132>

(d)[50] **<Off-Aqueduct Power Facilities>** Notwithstanding the provisions of subdivisions (a) and (b) of this article, or of Article 1(u), the costs of off-aqueduct power facilities shall be determined and allocated as follows:

(1) The off-aqueduct power costs shall include all annual costs the State incurs for any off-aqueduct power facility, which shall include, but not be limited to, power purchases, any annual principal and interest payments on funds borrowed by or advanced to the State, annual principal and interest on bonds issued by the State or other agency, or under revenue bond financing contracts, any requirements for coverage, deposits to reserves, and associated operation and maintenance costs of such facility, less any credits, interest earnings, or other monies received by the State in connection with such facility. In the event the State finances all or any part of an off-aqueduct power facility directly from funds other than bonds or borrowed funds, in lieu of such annual principal and interest payments, the repayment of capital costs as to that part financed by such other funds shall be determined on the basis of the schedule that would have been required under Article 24.

(2) The annual costs of off-aqueduct power facilities as computed in (1) above shall initially be allocated among contractors in amounts which bear the same proportions to the total amount of such power costs that the total estimated electrical energy (kilowatt hours) required to pump through project transportation facilities the desired delivery amounts of annual entitlements for that year, as submitted pursuant to Article 12(a)(1) and as may be modified by the State pursuant to Article 12(a)(2), bears to the total estimated electrical energy (kilowatt hours) required to pump all such amounts for all contractors through project transportation facilities for that year, all as determined by the State.

(3)[51] An interim adjustment in the allocation of the power costs calculated in accordance with (2) above, may be made in May of each year based on April revisions in approved schedules of deliveries of project and nonproject water for contractors for such year. A further adjustment shall be made in the following year based on actual deliveries

50 Added: Amendment 18
51 Amended: Amendment 25

of project and nonproject water for contractors; provided, however, in the event no deliveries are made through a pumping plant, the adjustments shall not be made for that year at that plant.

(4) To the extent the monies received or to be received by the State from all contractors for off-aqueduct power costs in any year are determined by the State to be less than the amount required to pay the off-aqueduct power costs in such year, the State may allocate and charge that amount of off-aqueduct power costs to the District and other contractors in the same manner as costs under the capital cost component of the Transportation Charge are allocated and charged. After that amount has been so allocated, charged and collected, the State shall provide a reallocation of the amounts allocated pursuant to this paragraph (4), such reallocation to be based on the allocations made pursuant to (2) and (3) above for that year, or in the event no such allocation was made for that year, on the last previous allocation made pursuant to (2) and (3) above. Any such reallocation shall include appropriate interest at the project interest rate.

(e)[52] **<No Subtitle>** The total minimum operation, maintenance, power and replacement component due that year from each contractor shall be the sum of the allocations made under the proportionate use of facilities method provided in subdivision (b) of this article and the allocations made pursuant to subdivision (d) of this article for each contractor.

(f) [53] **<East Branch Enlargement Facilities>** Notwithstanding provisions of Article 25(a) through 25(c) and 25(e), minimum operation, maintenance, power, and replacement costs associated with deliveries through East Branch Enlargement Facilities as defined in Article 49(a) shall be collected under the minimum operation, maintenance, power, and replacement component of the East Branch Enlargement Transportation Charge [Article 49(e)].

26. Transportation Charge - Variable Operation, Maintenance, Power, and Replacement Component.

(a) **<Method of Computation>** The variable operation, maintenance, power, and replacement component of the Transportation Charge shall return to the State those costs of the project transportation facilities necessary to deliver water to the contractor which constitute operation, maintenance, power and replacement costs incurred in an amount which is dependent upon and varies with the amount of project water delivered to the contractor and which are allocated to the contractor pursuant to (1) and (2) below: Provided, That to the extent permitted by law, the State may establish reserve funds to meet anticipated variable replacement costs; and deposits in such reserve funds by the State: (1) shall be made in such amounts that such reserve funds will be adequate to meet such anticipated costs as they are incurred, and (2) shall be deemed to be a part of the variable replacement costs for the year in which such deposits are made. The amount of this component shall be determined as follows:

52 Added: Amendment 18
53 Added: Amendment 19

(1) There shall be computed for each aqueduct reach of the project transportation facilities a charge per acre-foot of water which will return to the State the total projected variable operation, maintenance, power, and replacement costs of the reach for the respective year. This computation shall be made by dividing said total by the number of acre-feet of project water estimated to be delivered from or through the reach to all contractors during the year.

(2) The amount of the variable component shall be the product of the sum of the charges per acre-foot of water, determined under (1) above, for each aqueduct reach necessary to deliver water to the contractor, and the number of acre-feet of project water delivered to the contractor during the year: Provided, That when project water has been requested by a contractor and delivery thereof has been commenced by the State, and, through no fault of the State, such water is wasted as a result of failure or refusal by the contractor to accept delivery thereof, the amount of said variable component to be paid by such contractor during such period shall be the product of the above sum and the sum of the number of acre-feet of project water delivered to the contractor and the number of acre-feet wasted.

(b) <Revenue from Aqueduct Power Recovery Plants> There shall be credited against the amount of the variable component to be paid by each contractor, as determined pursuant to subdivision (a) of this article, a portion of the projected net value of any power recovered during the respective year at project aqueduct power recovery plants located upstream on the particular aqueduct from the delivery structures for delivery of project water to the contractor. Such portion shall be in an amount which bears the same proportion to said projected net value that the number of acre-feet of project water delivered to the contractor through said plants during the year bears to the number of acre-feet of project water delivered to all contractors through said plants during the year.

(c) <Payment Table> The amount to be paid each year by the District under the variable operation, maintenance, power, and replacement component of the Transportation Charge shall be determined in accordance with subdivision (a) of this article for the respective aqueduct reaches in Table B, included in Article 24. Such amounts and any interest thereon shall be set forth by the State in Table F as soon as designs and cost estimates are prepared by it subsequent to receipt of requests from the District as to the maximum monthly delivery capability to be provided in each aqueduct reach for transport and delivery of project water to the District, pursuant to Article 17(a): Provided, That the amounts set forth in Table F shall be subject to redetermination by the State in accordance with Article 28.

(d)[54] <East Branch Enlargement Facilities> There shall be no separate variable operation, maintenance, power, and replacement component for deliveries of water through East Branch Enlargement Facilities defined in Article 49(a).

TABLE F
<PLACEHOLDER: TABLE F WITHOUT VALUES SHOWN IN ORIGINAL CONTRACT>
<TABLE F PUBLISHED AS TABLE B-18 IN BULLETIN 132>

54 Added: Amendment 19

27. Transportation Charge - Repayment Schedule. The amounts to be paid by the District for each year of the project repayment period under the capital cost and minimum operation, maintenance, power, and replacement components of the Transportation Charge, and under the variable operation, maintenance, power, and replacement component of said charge on the basis of then estimated deliveries, shall be set forth by the State in Table G as soon as designs and cost estimates have been prepared by it subsequent to receipt of requests from the District as to the maximum monthly delivery capability to be provided in each aqueduct reach for transport and delivery of project water to the District, pursuant to Article 17(a), which Table G shall constitute a summation of Tables D, E, and F: Provided, That each of the amounts set forth in Table G shall be subject to redetermination by the State in accordance with Article 28: Provided further, That the principles and procedures set forth in Articles 24, 25, and 26 shall be controlling as to such amounts. Such amounts shall be paid by the District in accordance with the provisions of Article 29.

TABLE G
<PLACEHOLDER: TABLE G WITHOUT VALUES SHOWN IN ORIGINAL CONTRACT>
<TABLE G PUBLISHED AS TABLE B-19 IN BULLETIN 132>

28.[55] Transportation Charge - Redetermination.

(a) Determinative Factors Subject to Retroactive Charge

The State shall redetermine the values and amounts set forth in Tables B, C, D, E, F, and G of this contract in the year following the year in which the State commences construction of the project transportation facilities and each year thereafter in order that the Transportation Charge to the District and the components thereof may accurately reflect the increases or decreases from year to year in projected costs, outstanding reimbursable indebtedness of the State incurred to construct the project transportation facilities described in Table I of this contract, annual entitlements, estimated deliveries, project interest rate, and all other factors which are determinative of such charges. In addition, each such redetermination shall include an adjustment of the components of the Transportation Charge to be paid by the District for succeeding years which shall account for the differences, if any, between those factors used by the State in determining the amounts of such components for all preceding years and the factors as then currently known by the State. Such adjustment shall be computed by the State and paid by the District or credited to the District's account in the manner described in (b) and (c) below.

(b) Adjustment: Transportation Charge - Capital Cost Component

Adjustments for prior underpayments or overpayments of the capital cost component of the Transportation Charge to the District, together with accrued interest charges or credits thereon computed at the then current project interest rate on the amount of the underpayment or overpayment and compounded annually for the number of years from the year the underpayment or overpayment occurred to and including the year following the redetermination, shall be paid in the year following the redetermination: Provided, That the District may elect to exercise the option whereby when the redetermined Transportation Charge for the following year, with

55 Amended: Amendment 14

adjustments, including adjustments of the operation, maintenance, power, and replacement components provided for in subdivision (c) of this article, is more or less than the last estimate of the Charge provided pursuant to Article 27 for the corresponding year, without adjustments, an amount equal to the total of such difference shall be deducted from or added to the adjusted capital cost component for that year and paid or credited in accordance with the following schedule:

Percent that Transportation Charge differs from last estimate (+ or -)	**Period, in years, for amortizing the difference in indicated charge**
for 10% or less	no amortization
more than 10%, but not more than 20%	2
more than 20%, but not more than 30%	3
more than 30%, but not more than 40%	4
more than 40%.	5

Such payments or credits shall be in equal semi-annual amounts of principal and interest on or before the 1st day of January and the 1st day of July, with interest computed at the project interest rate and compounded annually, during varying amortization periods as set forth in the preceding schedule: Provided, That for the purpose of determining the above differences in the Transportation Charge, the variable operation, maintenance, power, and replacement component shall be computed on the basis of the same estimated project water deliveries as was assumed in computing pursuant to Article 26(c).

(c) Adjustment: Transportation Charge - Minimum and Variable Components

One-twelfth of the adjustments for prior underpayments or overpayments of the District's minimum and variable operation, power, and replacement components for each year shall be added or credited to the corresponding components to be paid in the corresponding month of the year following the redetermination, together with accrued interest charges or credits thereon computed at the then current project interest rate on the amount of the underpayment or overpayment and compounded annually for the number of years from the year the underpayment or overpayment occurred to and including the year following the redetermination.

(d) Exercise of Option

The option provided for in subdivision (b) above shall be exercised in writing on or before the January 1 due date of the first payment of the capital cost component of the Transportation Charge for the year in which the option is to become effective.

Such option, once having been exercised, shall be applicable for all of the remaining years of the project repayment period.

(e) [56] **<No Subtitle>** Notwithstanding the provisions of Article 28(b), adjustments for prior overpayments and underpayments shall be repaid beginning in the year following the redetermination by application of a unit rate per acre-foot which, when paid for the projected portion of the District's annual entitlement will return to the State, during the project repayment period, together with interest thereon computed at the project interest rate and compounded annually, the full amount of the adjustments resulting from financing after January 1, 1987, from all bonds, advances, or loans listed in Article 1(r) <1(t)> except for Article 1(r)(3) <1(t)3> and except for bonds issued by the State under the Central Valley Project Act after January 1, 1987 for facilities not listed among the water system facilities in Article 1(hh). Notwithstanding the immediately preceding exception, such amortization shall also apply to any adjustments in this component charge resulting from a change in the project interest rate due to any refunding after January 1, 1986 of bonds issued under the Central Valley Project Act. However, amortization of adjustments resulting from items (1)(r)(4) <1(t)(4)> through (7) shall be limited to a period which would allow the Department to repay the debt service on a current basis until such time as bonds are issued to reimburse the source of such funding. In no event shall this amortization period be greater than the project repayment period.

(f)[57] **Adjustment: Water System Revenue Bond Financing Costs** The use of water system revenue bonds for financing facilities listed in Article 1(hh) would result in adjustments for prior underpayments or overpayments of the capital cost component of the Transportation Charge to the District under the provisions of this article; however, in place of making such adjustments, charges to the District will be governed by Article 50.

29. Time and Method of Payment.

(a) **<Initial Payment - Delta Water Charge>** Payments by the District under the Delta Water Charge shall commence in the year of initial water delivery to the District.

(b) **<Initial Payment - Transportation Charge: Capital Component>** Payments by the District under the capital cost component of the Transportation Charge shall commence in the year following the year in which the State commences construction of the project transportation facilities.

(c) **<Initial Payment - Transportation Charge: Minimum Component>** Payments by the District under the minimum operation, maintenance, power, and replacement component of the Transportation Charge shall commence for each aqueduct reach in the year following the year in which construction of that reach is completed.

(d) **<Initial Payment - Transportation Charge: Variable Component>** Payments by the District under the variable operation, maintenance, power and replacement component of the Transportation Charge shall commence in the year of initial water delivery to the District.

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56 Added: Amendment 20 <Note: Article 1(r) defines Project Interest Rate in the Standard Provisions of most contractors; however Article 1(t) defines Project Interest Rate in Metropolitan's Contract. The correct article number is shown in brackets.>

57 Amended: Amendment No. 20

(e) **<Statement of Charges>** The State shall, on or before July 1 of each year, commencing with the year preceding the year in which payment of the respective charge is to commence pursuant to this article, furnish the District with a written statement of: (1) the charges to the District for the next succeeding year under the capital cost and minimum operation, maintenance, power and replacement components of the Delta Water Charge and Transportation Charge; (2) the unit charges to the District for the next succeeding year under the variable operation, maintenance, power and replacement components of said Delta Water Charge and Transportation Charge; and (3) the total charges to the District for the preceding year under the variable operation, maintenance, power and replacement components of said Delta Water Charge and Transportation Charge: Provided, That through December 31, 1969, the Delta Water Charge shall be based upon a unit rate of $3.50 per acre-foot and shall be paid by the contractors on the basis of their respective annual entitlements to project water, as provided in Article 22(b). All such statements shall be accompanied by the latest revised copies of the document amendatory to Article 22 and of the tables included in Articles 24 through 27 of this contract, together with such other data and computations used by the State in determining the amounts of the above charges as the State deems appropriate. The State shall, on or before the fifteenth day of each month of each year, commencing with the year of initial water delivery to the District, furnish the District with a statement of the charges to the District for the preceding month under the variable operation, maintenance, power and replacement components of the Delta Water Charge and Transportation Charge. Such charges shall be determined by the State in accordance with the relevant provisions of Articles 22 and 26 of this contract, upon the basis of metered deliveries of project water to the District, except as otherwise provided in those articles.

(f) **<Timing of Payment - Capital Components>** The District shall pay to the State, on or before January 1 of each year, commencing with the year in which payment of the respective charge is to commence pursuant to this article, one-half (½) of the charge to the District for the year under the capital cost component of the Delta Water Charge and one-half (½) of the charge to the District for the year under the capital cost component of the Transportation Charge, as such charges are stated pursuant to subdivision (e) of this article; and shall pay the remaining one-half (½) of each of said charges on or before July 1 of that year.

(g) **<Timing of Payment - Minimum Components>** The District shall pay to the State, on or before the first day of each month of each year, commencing with the year of initial water delivery to the District, one-twelfth (1/12) of the sum of the charges to the District for the year under the minimum operation, maintenance, power, and replacement components of the Delta Water Charge and Transportation Charge, respectively, as such charges are stated pursuant to subdivision (e) of this article.

(h) **<Timing of Payment - Variable Components>** The District shall pay to the State on or before the fifteenth day of each month of each year, commencing with the year of initial water delivery to the District, the charges to the District under the variable operation, maintenance, power, and replacement components of the Delta Water Charge

and Transportation Charge, respectively, for which a statement was received by the District during the preceding month pursuant to subdivision (e) of this article, as such charges are stated in such statement.

(i) <Contest of Accuracy of Charges> In the event that the District in good faith contests the accuracy of any statement submitted to it pursuant to subdivision (e) of this article, it shall give the State notice thereof at least ten (10) days prior to the day upon which payment of the stated amounts is due. To the extent that the State finds the District's contentions regarding the statement to be correct, it shall revise the statement accordingly, and the District shall make payment of the revised amounts on or before the due date. To the extent that the State does not find the District's contentions to be correct, or where time is not available for a review of such contentions prior to the due date, the District shall make payment of the stated amounts on or before the due date, but may make the contested part of such payment under protest and seek to recover the amount thereof from the State.

<30.[58] Surcharge for Project Water Used on Excess Land - Deleted>

31. Adjustment for Overpayment or Underpayment. If in any year, by reason of errors in computation or other causes, there is an overpayment or underpayment to the State by the District of the charges provided for herein, which overpayment or underpayment is not accounted for and corrected in the annual redetermination of said charges, the amount of such overpayment or underpayment shall be credited or debited, as the case may be, to the District's account for the next succeeding year and the State shall notify the District thereof in writing.

32. Delinquency in Payment.

(a) <District to Provide for Punctual Payment> The governing body of the District shall provide for the punctual payment to the State of payments which become due under this contract.

(b)[59] <Interest on Overdue Payments> Upon every amount of money required to be paid by the District to the State pursuant to this contract which remains unpaid after it becomes due and payable, interest shall accrue at an annual rate equal to that earned by the Pooled Money Investment Fund, as provided in Government Code Sections 16480, et seq. calculated monthly on the amount of such delinquent payment from and after the due date until it is paid, and the District hereby agrees to pay such interest: provided, that no interest shall be charged to or be paid by the District unless such delinquency continues for more than thirty (30) days.

33. Obligation of District to Make Payments.

(a) <Refusal of Water Does Not Affect Obligation> The District's failure or refusal to accept delivery of project water to which it is entitled under Article 6(b) shall in no way relieve the District of its obligation to make payments to the State as provided for in this contract. The State, however, shall make reasonable efforts to dispose of any water made

58 Deleted: Amendment 13
59 Amended: Amendment 18

available to but not required by the District, and any net revenues from such disposal shall be credited to the District's account hereunder.

(b) <Character of Obligation> The District as a whole is obligated to pay to the State the payments becoming due under this contract, notwithstanding any individual default by its constituents or others in the payment to the District of assessments, tolls, or other charges levied by the District.

34. Obligation of District to Levy Taxes and Assessments.

(a) <When Obligated> If in any year the District fails or is unable to raise sufficient funds by other means, the governing body of the District shall levy upon all property in the District not exempt from taxation, a tax or assessment sufficient to provide for all payments under this contract then due or to become due within that year.

(b) <Enforcement by Officers of District> Taxes or assessments levied by the governing body of the District pursuant to subdivision (a) of this article shall be enforced and collected by all officers of the District charged with the duty of enforcing and collecting taxes or assessments levied by the District.

(c) <Deposit in Separate Fund> All money collected for taxes or assessments under this article shall be kept in a separate fund by the treasurer or other officer of the District charged with the safekeeping and disbursement of funds of the District, and, upon the written demand of the State, the treasurer or other officer shall pay over to the State all such money in his possession or control then due the State under this contract, which money shall be applied by the State to the satisfaction of the amount due under this contract.

(d) <Enforcement of Levy> In the event of failure, neglect, or refusal of any officer of the District to levy any tax or assessment necessary to provide payment by the District under this contract, to enforce or to collect the tax or assessment, or to pay over to the State any money then due the State collected on the tax or assessment, the State may take such action in a court of competent jurisdiction as it deems necessary to compel the performance in their proper sequence of all such duties. Action taken pursuant hereto shall not deprive the State of or limit any remedy provided by this contract or by law for the recovery of money due or which may become due under this contract.

D. GENERAL PROVISIONS

35. Remedies Not Exclusive. The use by either party of any remedy specified herein for the enforcement of this contract is not exclusive and shall not deprive the party using such remedy of, or limit the application of, any other remedy provided by law.

36. **Amendments.** This contract may be amended at any time by mutual agreement of the parties, except insofar as any proposed amendments are in any way contrary to applicable law.

37. **Reservation With Respect to State Laws.** Nothing herein contained shall be construed as estopping or otherwise preventing the District or any person, firm, association, corporation, or public body or agency claiming by, through, or under the District from contesting by litigation or other lawful means the validity, constitutionality, construction or application of any law of this State, including laws referred to in the Bond Act, or as preventing or prejudicing the amendment or repeal of any such law, and each contract executed by the State for a dependable supply of project water shall contain a similar reservation with respect to State laws.

38. **Opinions and Determinations.** Where the terms of this contract provide for action to be based upon the opinion, judgment, approval, review, or determination of either party hereto, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable.

39. **Contracting Officer of the State.** The contracting officer of the State shall be the Director of Water Resources of the State of California and his successors, or their duly authorized representatives. The contracting officer shall be responsible for all discretionary acts, opinions, judgments, approvals, reviews, and determinations required of the State under the terms of this contract.

40. **Successors and Assigns Obligated.** This contract and all of its provisions shall apply to and bind the successors and assigns of the parties hereto.

41. **Assignment.** No assignment or transfer of this contract or any part hereof, rights hereunder, or interest herein by the District shall be valid unless and until it is approved by the State and made subject to such reasonable terms and conditions as the State may impose. No assignment or transfer of this contract or any part hereof, rights hereunder, or interest herein by the State shall be valid except as such assignment or transfer is made pursuant to and in conformity with applicable law.

42. **Waiver of Rights.** Any waiver at any time by either party hereto of its rights with respect to a default or any other matter arising in connection with this contract, shall not be deemed to be a waiver with respect to any other default or matter.

43. **Notices.** All notices that are required either expressly or by implication to be given by one party to the other under this contract shall be signed for the State by its contracting officer, and for the District by its General Manager and Chief Engineer and his successors or their duly authorized representatives. All such notices shall be deemed to have been given if delivered personally or if enclosed in a properly addressed envelope and deposited in a United States Post Office for delivery by registered or certified mail. Unless and until formally notified otherwise, the District shall address all notices to the State as follows: <Address no longer valid and not included here> and the State shall address all notices to the District as follows: <Address no longer valid and not included here>.

IN WITNESS WHEREOF, the parties hereto have executed this contract on the date first above written.

STATE OF CALIFORNIA

By _____
Governor

Approved as to legal form
and sufficiency:

_____
Chief Counsel
Department of Water Resources

STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES

By _____
Director

Attest:

_____
Executive Secretary
The Metropolitan Water District
of Southern California

THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

By _____
Assistant Chief Engineer

Approved as to form
and execution:

_____
General Counsel
The Metropolitan Water District
of Southern California

EXHIBIT A

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA
ANNUAL TABLE A AND CAPACITY VALUES FOR EACH REACH (a)
FOR COST ALLOCATION AND REPAYMENT ONLY

The values related to this transfer are estimated to be as follows:

Repayment Reach	Before Table A Transfer				Table A Transferred to DWA	Capacity Transferred to DWA	After Table A Transfer	
	Maximum Annual Table A (AF)	Table A Capacity (cfs)	East Branch Enlargement Capacity (cfs)	Total Capacity [2] + [3] (cfs)	(AF)	(cfs)	Total Annual Table A [1] - [5] (AF)	Total Capacity [4] - [6] (cfs)
	[1]	[2]	[3]	[4]	[5]	[6]	[7]	[8]
California Aqueduct								
Reach 1	1,923,400	2,741		2,741	11,900	16	1,911,500	2,725
Reach 2A	1,923,400	2,741		2,741	11,900	16	1,911,500	2,725
Reach 2B	1,923,400	2,741		2,741	11,900	16	1,911,500	2,725
Reach 3	1,923,400	2,741		2,741	11,900	16	1,911,500	2,725
Reach 4	1,923,400	2,741		2,741	11,900	16	1,911,500	2,725
Reach 5	1,923,400	2,741		2,741	11,900	16	1,911,500	2,725
Reach 6	1,923,400	2,741		2,741	11,900	16	1,911,500	2,725
Reach 7	1,923,400	2,741		2,741	11,900	16	1,911,500	2,725
Reach 8C	1,923,400	2,741		2,741	11,900	16	1,911,500	2,725
Reach 8D	1,923,400	2,741		2,741	11,900	16	1,911,500	2,725
Reach 9	1,923,400	2,741		2,741	11,900	16	1,911,500	2,725
Reach 10A	1,923,400	2,741		2,741	11,900	16	1,911,500	2,725
Reach 11B	1,923,400	2,741		2,741	11,900	16	1,911,500	2,725
Reach 12D	1,923,400	2,741		2,741	11,900	16	1,911,500	2,725
Reach 12E	1,923,400	2,741		2,741	11,900	16	1,911,500	2,725
Reach 13B	1,923,400	2,741		2,741	11,900	16	1,911,500	2,725
Reach 14A	1,923,400	2,741		2,741	11,900	16	1,911,500	2,725
Reach 14B	1,923,400	2,741		2,741	11,900	16	1,911,500	2,725
Reach 14C	1,923,400	2,741		2,741	11,900	16	1,911,500	2,725
Reach 15A	1,923,400	2,741		2,741	11,900	16	1,911,500	2,725
Reach 16A	1,923,400	2,741		2,741	11,900	16	1,911,500	2,725
Reach 17E	1,923,400	2,741		2,741	11,900	16	1,911,500	2,725
Reach 17F	1,923,400	2,741		2,741	11,900	16	1,911,500	2,725
East Branch Aqueduct								
Reach 18A	468,400	732	1,200	1,932	11,900	16	456,500	1,916
Reach 19	468,400	732	1,200	1,932	11,900	16	456,500	1,916
Reach 20A	468,400	732	1,200	1,932	11,900	16	456,500	1,916
Reach 20B	468,400	732	1,200	1,932	11,900	16	456,500	1,916
Reach 21	468,400	732	1,200	1,932	11,900	16	456,500	1,916
Reach 22A	468,400	732	1,200	1,932	11,900	16	456,500	1,916
Reach 22B	468,400	732	1,200	1,932	11,900	16	456,500	1,916
Reach 23 (b)	468,400	732	1,200	1,932	11,900	16	456,500	1,916
Reach 24	468,400	(c)	1,200	(c)	11,900	(c)	456,500	(c)
Reach 25	468,400	773	1,200	1,973	11,900	16	456,500	1,957
Reach 26A	468,400	773	1,200	1,973	11,900	16	456,500	1,957
Reach 28G	184,400	255		255	11,900	16	172,500	239
Reach 28H	184,400	255		255	11,900	16	172,500	239
Reach 28J	184,400	(c)		(c)	11,900	(c)	172,500	(c)

(a) Does not include capacity for outages and losses.
(b) East Branch Enlargement costs in Reach 23 are split into Reach 23B (excluding Mojave Siphon Power Plant) and Reach 23C (Mojave Siphon Power Plant).
(c) Aqueduct capacity is not applicable to Silverwood Lake (Reach 24) and Lake Perris (Reach 28J).

State Water Project Analysis Office
October 8, 2003 (**revised 12/30/03**)

ATTACHMENT 1

<Amendment No 20>

<Only would apply if condition in Article 50(i)(5) met.>

Article 1(r) is amended to read:

(r) Project Interest Rate

"Project interest rate" shall mean the weighted average interest rate of (1) through (6) below computed by dividing (i) the total interest cost required to be paid or credited by the State during the life of the indebtedness or advance by (ii) the total of the products of the various principal amounts and the respective terms in years of all such amounts:

(1) general obligation bonds issued by the State under the Bond Act,

(2) revenue bonds issued by the State under the Central Valley Project Act after May 1, 1969,

(3) bonds issued by the State under any other authority granted by the Legislature or the voters,

(4) bonds issued by any agency, district, political subdivision, public corporation, or nonprofit corporation of this State,

(5) funds advanced by any contractor without the actual incurring of bonded debt therefor, for which the net interest cost and terms shall be those which would have resulted if the contractor had sold bonds for the purpose of funding the advance, as determined by the State, and

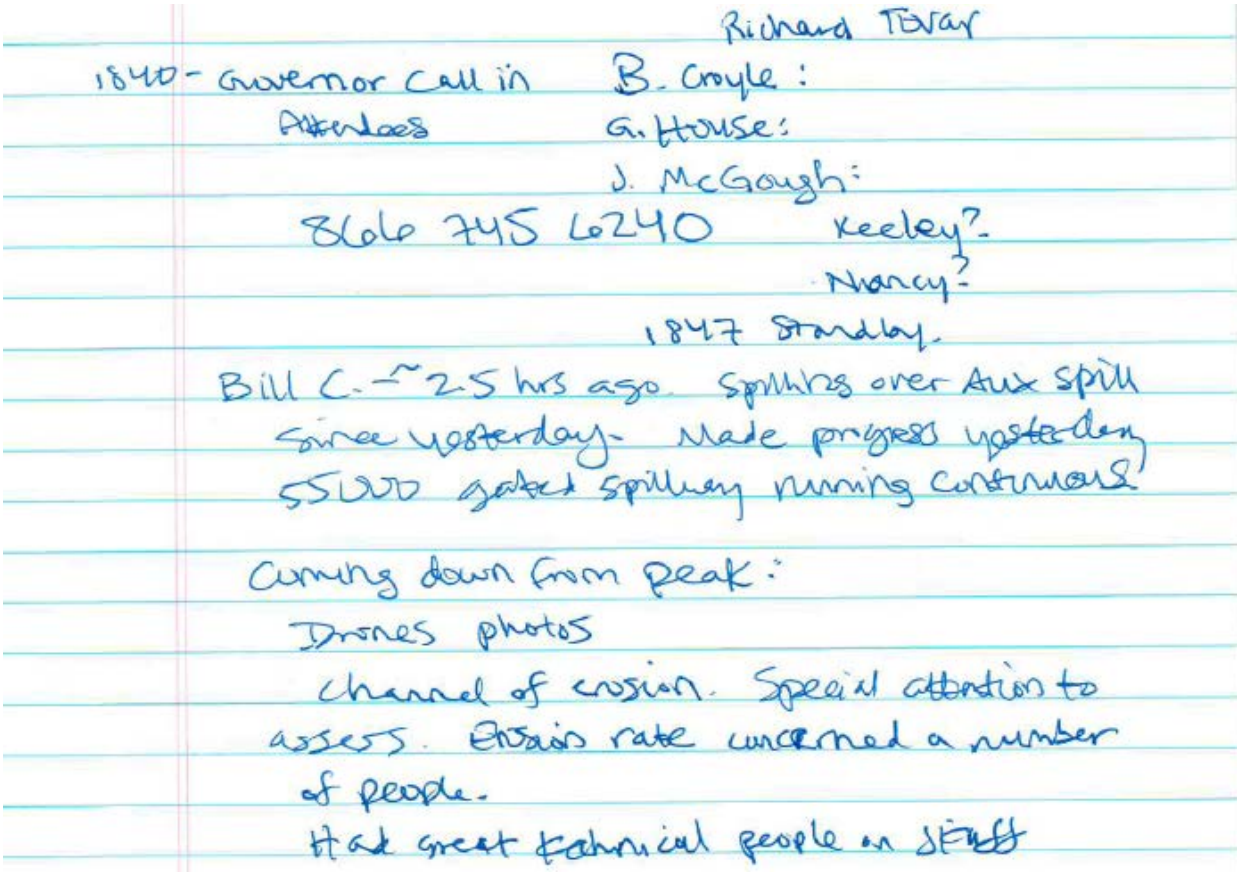
(6) funds borrowed from the General Fund or other funds in the Treasury of the State of California, for which the total interest cost shall be computed at the interest rate earned over the period of such borrowing by moneys in the Pooled Money Investment Account of such Treasury invested in securities, to the extent the proceeds of any such bonds, advances or loans are for construction of the State Water Facilities defined in Section 12934(d) of the Water Code, the additional project conservation facilities, and the supplemental conservation facilities, (except off-aqueduct power facilities and advances for delivery structures, measuring devices and excess capacity) and without regard to any premiums received on the sale of bonds under item (1) above. The "project interest rate" shall be computed as a decimal fraction to five places.

EXHIBIT B

Incident Command Communications

February 8 to February 13, 2017

02-12-2017



Richard TEVay

1840 - Governor Call in — B. Croyle:
Attendees — G. House:
J. McGough:
866 745 6240 — Keeley?
Nancy?
1847 Standby.

Bill C. ~2.5 hrs ago. Spillway over Aux Spill since yesterday. Made progress yesterday 55000 gated spillway running Contractors?

Coming down from peak:
Drones photos
channel of erosion. Special attention to assess. Erosion rate concerned a number of people.
Had great technical people on staff

B. went to site to visually see.

went back to ICC. P Sheriff was there.
There was discussion before I got back.

the number the engineers stated we needed to release was not a number we would do

↑ to 100,000 cfs.

Litefeed – could see rate of erosion

Based on rate of erosion Sheriff received.

Sheriff decided to evacuate low lying areas downstream.

At moment discharge is 100,000 cfs.

Flood control – is 150 – 160 K cfs.

concern is if erosion up to weir caused the ~~and~~ spillway to fail, the amount of water would be ~~greater~~ to exceed levee system

looking @ geology.

Sheriff continued to initiate evac orders.

ICS expanded. Sheriff implemented

Calls went out

Based on max flood event. ICS could be compromised (we do not believe it at this time)

to be safe – we relocated.

City and EMAS initiating evac orders.

DWR

question Is Aux spillway in danger?

Last time we saw it,

should stop flow within the hour

02-12-17

2-11

energy causing erosion ~~should be dissipated~~
was lowered with ~~a~~
more spill

Still need inspection of Aux. Spill
DSOD + FERC reps.

we will work through.

Q: IS risk gone?

present condition: erosion on downstream
side of emergency spillway

flow should stop ~~of~~ in hr.

Dont have eyes.

Until we see it, assume it is ~~a~~
threat

Lake e 901 + ft cant get more full.

Inflow ~30,000 outflow 100'000 +

Cant confirm. Dark.

Pushing a lot more water down spillway
further degrade spillway - try not to

we have additional weather coming in.

~~Higher~~ flows

Need Gated spillway for the rest of the
spring runoff

Normally would have 05 ~~mt~~ maf. we have
no buffer.

Need to maintain integrity of gated spill
and reinforce Aux. Spill

At this time - we may have enough reserve for this next storm.

Running forecast 4x/day.

Each time its higher or lower?

We have no available flood storage.

Erosion has caused sediment dam in diversion pool. Issues for running plant.
- compromised due to flooding, or tower feeding grid

Been able to pump significant amounts of water South.

Need plant running. - challenged to run water for ~~60~~

Q: Evacuations?

- Everyone is responding to evac. Notice.

Q: Tell everyone to come back.

Mark: Sheriff issued Evac.
will remain in place. until DWR can assess situation.
Won't happen until tomorrow morning

1,000s 10s of thousands are evacuating.
Hospitals ect.

Q How much time did they have to pack bags?

Sheriff - make sure we had at least 2 hrs.
Had 2 hrs.
~~Had~~ Needed to leave ASAP

Q: Tonight, has danger subsided?

Q: Still not understanding. Further explain

there is still more that needs to be assessed. inspections needed.

Need to consult with regulatory departments.

more immediate question.

Q: News was saying - could have a major flood.

- Risk of major flood is far less than two hrs ago.
- Still risk.

Mark: - Not ready to pull plug on evac. order.
- Need inspections
- Unsure of current state.

1912 - Ready to take off in 10 min Sheriff copter M. Anderson chopper, → D. Walker maybe to observe? ← Gini recommend

→ We are using emergency | aux spill.
Not an issue w/ Oroville Dam currently.
Large issue with Aux. Spill.

Evacs were focused to areas near Feather Riv.

Q: This will be a real problem - there is confusion

Mark: People are moving to higher ground - prescribed.
~~Need to find out.~~
Need a count on how many issued evac. orders.

Based on a failure of emergency spillway
Whole dam?

1918 PERC on dam
Gasan + Don Walker to go on Butte County Sheriff

Q: Nancy. Scope of geographic area of evac. order
Need clarified
Sheriff is making a decision on how many.
Shortly we will have eyes-on issue.

Q: Need someone from DWR at SOC
B. ~~Sent~~ C. Jones.
Contact

1920 Sheriff still @ press conf. can't come here.
Lawyers working on State of Emerg?

Lots of media

Director: Try to find out if camera on dam operates in dark. (Caltrans)
to get eyes on it.

DSOD has great resources.

Part of education process - assess threat and next steps.

Task
G. Bardini to SOC
can cover multiple programs.

N: They are getting unclear stories 13,000+ people evacuated.
they will update numbers.
Red Cross is on scene.
National Guard contacted.
ICC in Oroville - relocating.
- working on healthcare facilities - evacuation status

Very complex. Let local law enforcement handle media for now?
Transferring prisoners

1928 - Sheriff has arrived. He is taking questions

~~Gov. been here~~.
- Thank you for support
- Once decided to pull trigger.
  Started w/ media
  Oville pt South to head north

Reverse 911 focusing on areas around river
1st and most affected.
House staff going door to door in select areas.
Search + Rescue brought in
Told that there is a lot of congested traffic.
working w/ CHP to mitigate.

Been Advised Sutter County has been advised.
Evac @ Chico fairgrounds.

Q: How many utilizing?
It is filling up - dont have exact.

cant make it happen fast enough
Great support from Assemblemen, DPR, CHP, ~~EBT~~ etc.

Yes there is confusion + chaos. Better than what it could be. thats the nature

Media seems satisfied w/ briefing at this time.
- Seem to be thankful we pulled "big red handle"

Trying to hit all media outlets.

It is ugly, shitty mess and we are trying to make the best of it.

QN - Is there anything more we could be doing?

Sheriff I will put in call. We cant be over resourced to help with PIO.

Q: JIC set up to coordinate. Will continue with evac order until it can be expected.

Keep it going until you get clear from DWR.

Sher: Recognize that it has displaced a lot of people. But we need to keep them out for now.

- the message we put out
  - Complex ~~s~~ situation - unprecedented, no models for it
    Rapidly developing
    Evacs in interest of public safety.
  - Err on side of caution.
  - Erosion up to face of Aux spill is not as rapid as we were feeling
    Flows 100,000
  - Try to Stabilize Situation.
  - We want to avoid a ~~p~~ potentially catastrophic event.

N: Be clear its not the dam - its the Spillway

QM: Framed? Spillway. Not dam.

It was important subject matter experts
can explain.

Q: Talked to other sheriffs
Yes Dexter
No other - name?

Evac notice
Have resources
Addition flowing in as necessary
Everything stay in place until given All clear
Coord: JIC a consistent message

Thank you. ~~3044~~

Shmt June →

Back to Director
Resident center at FOC

N: Didn't know about Evac order until after
it hit the press.

Tailrace 2119.16 @ ∓ 1933
its going down - recede
rock is coming + helicopters. END CALL 1945

Dir: we have been working hard to protect
plant. Its important for us. (DWR)
Risk to public more important.

Honey: Has water over aux spill stopped?

D: Last update was 2"

Less than 1 hr. should ~~be~~ not be spilling

Honey: 100,000 cfs flood control spillway

Honey: offering helicopters

Couple: we will be going through this all Spring
Set up community / town hall meeting?

Look at what happened tonight.

Even if we get stable, what to expect for rest of season.

- Can't do rock tonight ~~at~~ choppers not in until tomorrow morning.

1952 Can we verify we have a staging area?
Gina to → Doug.

Rock coming from Bangor
Bugs from Sutter Butte
Lines from Sac are MIA

PG&E wants an ICT call @2000

1954 - Director:
Need to focus on spillway (gated)
Tower powerlines are still hot.
working on getting SEG connected.
Take a couple hours.

Do we have SEG hooked up?
Need to deenergize lines

How long to do that?
I thought it was getting worked on.
PG&E is worried.

2000 Swap Hyatt to SEG From Gina ~45 min to an hr to complete
Kill 2 breakers
Take 30 min to connect intake SEG
Then they can isolate PG&E lines.

02-12-2017

2027 K. Lawson – Unified command w/ Sheriff
Cal Fire, DWR & Sheriff
Croyle: Resource mgmt
DWR = technical side
need to be completely integrated
Anderson:
DSOD and our best eyes. inspect
at 1st light.

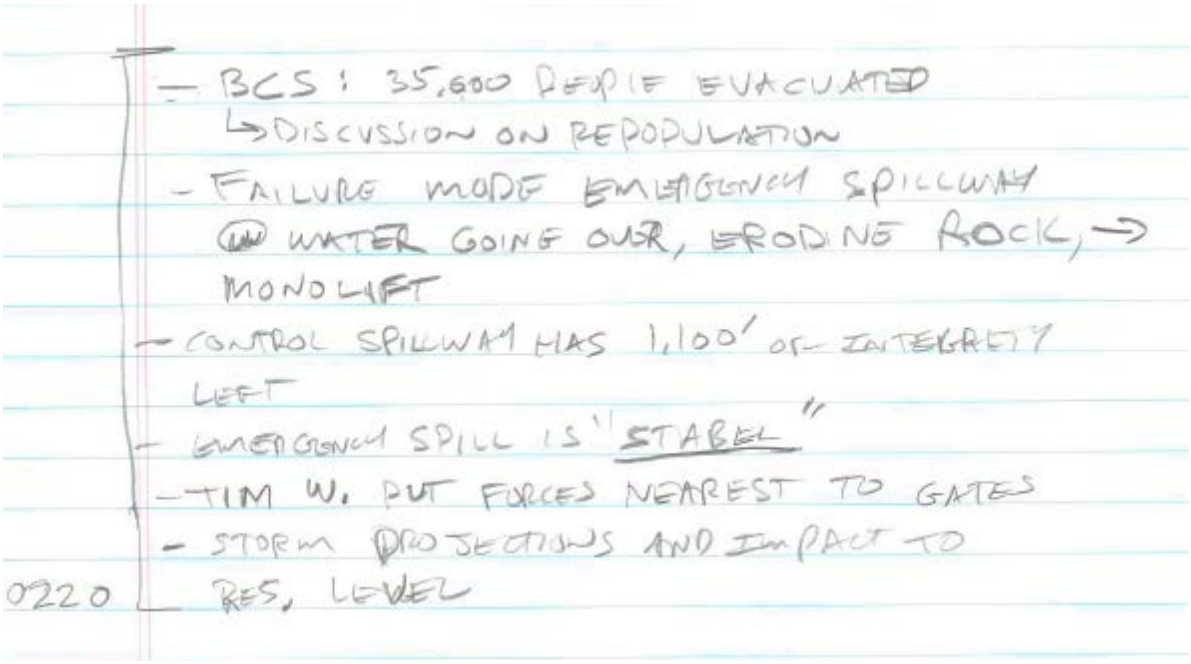
Lawson: Need 1 person

2030 – PG&E Conf Call: Croyle, Lawson, G House,
Biermann,
Need follow up on redundant power (side note from Croyle to G House)

3 copters activated (2) engines n mongz
South region staffed & avail.

K Lawson has briefing:
Focus on Substat
Butte, Yuba & Sutter summary.
Unified command w/ BCSO
Preplanning implemented already networking
currently evacuations mostly handled in
Butte unit.
Evacuees → Fairgrounds – make sure they have support

02-12-2017



- BCS: 35,600 PEOPLE EVACUATED
  - ↳ DISCUSSION ON REPOPULATION
- FAILURE MODE EMERGENCY SPILLWAY
  - (W) WATER GOING OVER, ERODING ROCK, → MONOLIFT
- CONTROL SPILLWAY HAS 1,100' OF INTEGRITY LEFT
- EMERGENCY SPILL IS "STABEL"
- TIM W. PUT FORCES NEAREST TO GATES
- STORM PROJECTIONS AND IMPACT TO RES. LEVEL

0220

~~0730~~ want to meet at 0730.

Pat to Director: People in field needs to get info back to Pat - IC.

G. House informed Director that OPS is overwhelmed. Problem with span of control

Whitsell:
If it wasn't for one geologist that came down and got Pats attn; he is afraid that we wouldn't have even caught the problem.

Director: when he went up to the dam, had ~10 people (technical) telling him that it was a problem. He asked them if it was getting relayed to IC?

People have already been evacuated outside the max probable flood area. Need to make sure we ask the right request - Re: mapping of flows?

Here's threat → here's what it could look like

Provide the answer to the precise question. Don't provide something that isn't ~~that~~ exactly what is being asked for.

Lewson: Team below Div Dam is different. they are starving for information

Coyle: Need to do more than a drone in marginal light. Also need more.

Lewson: ~~people~~ as time goes on, pressure will rise to lift evac orders. Ppl will get upset.

Lvy A. 35,000 cfs and ↓
100,000 cfs control spill
0 Aux cc 1000 hrs stopped
Tailrace - 251.86
Scour - No addition concrete cfs controlled spillway
minor erosion laterally.
Significant scour in 3 areas.
Inflow 150K into lake 1.5 days.
~~take use to~~ should have enough reserv.

Safety
- Be aware
- Be in contact

Team 3. Eval. Comm. Collab.
working w/ T. Crib.
↳ Team A Assess roadways
Div X - pulled boats - evaluating flows
Evaluating debris load on
Div dam.

2 type 1 rescue teams

Flights: 13 ships @ air attack base
heli platform. - any drone or recon flights need to go to Ivin

There are some resources that don't have cal fire radios.

Injuries - call 911.

D.WR Mgmt has difficultly rescinding control.

P. Whittock wanted to increase flows, mgmt said to hold, Pat did (regrettably), and we lost time because of it.

G. House: They are sending resources to replace people that have way more knowledge. They are uncomfortable so Gina is uncomfortable giving it to them.

Lawson B. Croyle - his PIO - Doug? shouldn't be on media anymore

-Need to steal ppl from other field divisions

Sheriff: ~~want~~ Brainstorming 3rd party SME's
Need list of resources needed from other field divisions and army corp.
If I tell him thats what we need, pretty ~~dam~~ confident they will respond.
-Yesterday scary - 1,000's of ppl could have died. Lets not let that happen again.

---

213 ordering make sure you use form

PIO: Intern. media attn: allows media access. as long as they aren't hampering activities

Photos - send to them - find email in packet.

Finance No change in coding report finance issues to finance

C. Hong - pulled red handle - this is what it looks like

~~G. House~~ C. Lawson: Unified command w/ BCSO + DNR

Comm. up + Down - Left + right.

Face challenges head on.

Public Safety and our Safety.

It was the right decision.

May have tweaks in command staff

Keep info flow moving

0619 J. Rub - update ~~Inspected~~ stop logs

- every thing dry
- Batteries - re energized chargers.

Plant sump pumps running and holding steady

#2 running + keeping up } core block
#1 failed.

All evacuations dry. Plant is ~~humid~~ humid

0621 - Keep C + G together - keep folks out that aren't C + G. May need someone posted at the door.

K. Lawson needs the information

#1 inspect Aux. Spillway — Inspection, validation of current damage.

we will need info that allows EMAS to return the public.

DNR brains work differently - Don't weigh worst case as heavily.

Matt: 70% there - re: clarity of what flights need to be out there - he is coordinating.

Drone is 20 min flight this AM Now
No ships until 0800 — for dropping rock
PG+E, (Solar brothers, PJs) — SRC + DWR ordered.
↑ cost not incurred to Calfire

~~others~~ Can we only use privates to move the rock? would be more comfortable if yes.

Yes - there is a plan in place. G. House - P. Whitlock

Director: Need to collect necessary data to understand so the solution we propose is good.

Verifying - No birds fly 'til Matt says go.

Matt: ASGS: has talked to PG+E. 90% there
20% was talking to you guys.
Last 10% is talking w/ Pam (PG+E)

Hony: Have a number of people coming that may want recon.

Matt: we do recons ~~doing~~ during missions all the time
Have 3 type 2 copters available

Honey: Mission takes priority. - if we can work in recon, then go ahead.

0715 Matt - left room

~~Whitlock~~

Director: Full ops, time sensitive + mission critical. I'll Herd M. Anderson. Don't want him going around the ICS. I'm here to help. Need to be here or not?

Lawson: I think it is critical Director is here. to make big decisions

1-13

0700 House
2 Monitoring groups - one under Planning
one under OPS

Director: Planning is key- need to make sure certain projects are top priority.
Going through a shift change. - currently.
Complicates it a little.
Meeting Adjourn 0722-
reconvine at 0730

02-13-2017

0742 - Director, Whitlock, & House, Biermann, Henry, Lawson - Meeting. - Emergency spillway is Emergency spillway.
Spillway structure is taller the closer it is to controlled spillway.
~60' deep on chart
Bottom of controlled spill is 813'

reviewing drawings of monoliths.

Area of concern ~ 30'

If we lost a block - 25,000 cfs but it varies on which block

100,000 cfs if 4 blocks were gone.

If we saw that much water it wouldn't be catastrophic - we could turn off controlled spill.

-But if there is piping (under) + carrying sediment, its more troublesome.

Max 150,000 cfs - safely release matching what other releases are. (POC)

Hony - Clarify please.

Director - "Only" what if."

Hony - Use of emergency spillway is off the table.

Director - It is holding water currently, not releasing water.

Lawson - Stay away from spilling over emerg. spill.

House: 3 Days - have maintained status at Control Spillway.
Forecast - Lake should be down ~ 30' by thurs.
Higher flows = shooting out over eroded area.

Lawson: will 30' be enough?

Director: Goal is to get to 848'. Im managing risk. Need to get to regulatory threshold.
Get powerlines off tower + remove tower.
Want to get powerplant back online.
2nd - burn at top of spillway - alluvial fan. Issue.
Today - gone on - want to cut a channel through the alluvial.

- Issue in Russia - leveled a powerplant
Cannot risk - hydrology. - cant turn on plant with too much water in tailrace.

Brennan Q - If we cant run the generators, what do we ~~use~~ 813 what level until we cant get ↑ water out?

SWP summary.
Delta, not just water distribution to So-cal.

they have been pumping at red line. this year.

Just filled San Luis reservoir.
Give water to feds.
All contractors downstream are taking as much as they can. Alot of water goes to rice country DDD primarily here to Sac. deliveries. Ag's.

Max is 4000 cfs after 813.

Director - allocation call needed.
100% this year? Numbers being run now.

Assume maybe that we could only use RVDS?
Once we can get in chute, we can do some Serious work. - As long as we dont flood power plant.

Lawson Back to Basics - will 30' buy us what we need based on latest projections/ forecasts?

Director - have a lot of spring runoff to handle.
Lawson: How many days on powerlines - 2.
How many days to make channel - ?

Can we run plant this week?

Need 230' of elevation in order to get significant flow out of the plant Ruck
tailrace 252

1-16

Whitelock To get the trench - we would have to shut off / reduce flows @ control spill.

Weigh gains vs. losses. Lose a little to gain a lot.

Lawson: Right now - maintain 100k due to bad forecast.
Once we get a clearer trended forecast of good weather - then get tactical.

Director - series of storms - hopefully cold.

Lawson - requests chart - Phil to track down. for OQW meeting

Horn: Try to hold this as much of a hole as possible.
Deterioration of control spill seems to have stabilized. - At 55,000 cfs.
Ramped up to 100,000 cfs. - only been running there for less than 12 hrs.
Is that enough to determine that stability we saw at 55,000 will stay?

Director - Tower - is measurable - Based on current observations - Yes Stable.

Horn If the 100,000 was unstable - we would have seen degradation by now. Correct?

Yes.

Could get asked.
- Why should we believe this is stable if we also thought the Alex Emerg Spill was stable?

Director: Don't know. Doing best we can w/ current monitoring. There could be an issue later, it appears stable now.

Henry: Have done a good job showing how critical the plant is.

House: Tailrace elevation is 6" from flooding the plant. Was raising. - Has stabilized.

Henry: Mitigation?

House: Sand bags, sump pumps,
Digging is eminent. 10' deep trench.

Henry: Back to Em/Sp. Subject matter experts
Who are they? - Not names - disciplines.
Geologist
Geotechs
Dam Engineers - FERC, DSOD, O&M
O & M experts
Geotech consultant

Do we have enough. Are they competent? Credentialed?

Director they did inspect last night. Want to inspect again in the day.

Henry - Lake has dropped 3'. At that level, are we concerned about the pressure on the E/S?
No concern about pressure on blocks
Director - Concern last night was the foundation.
Stopped erosion by stopping the water.
They are checking for piping & boiling.

Henry/Cathie Do we release evacuations before the lake drops 60'?

Lawson - Rabbit trail
N. Vogel - telling us No, we dont need more PIOs.
~~We~~ We need more PIOs
Director will chase
Meeting end 0838

02-13-2017

1133 - Intel Brief Meeting Need.

Derfler + Parker + Honea, R. Barry. T. Wheling + ~~DE~~ ICT

Seen site 2x today.

Rocks ripple.

Block ripple - episodic

Stable until another block tumbles.

Large cracks between scour holes. It is not material that should see water.

Build a road, use rock trucks.

what we built before worked well.

Have time to put in temporary repairs.

Honea FERC Army. DSOD, DWR

Other folks still analyzing.

Need as many SMEs as we can.

All agree

Ground is bad - cannot use E/S until it is fixed.

it is unreliable.

Crisis of confidence

Long term and a ~~temp~~ temp fix is needed.

Based on what you are telling me - ~~it could~~ if we kept water on it, the situation would have been much worse.

Things are dynamic + subject to change.

1-26

Does temp fix, if efforts to keep Lake level low, fail, and it does come in to play.

Horea would temp fix hold?

~~Is~~ where we can place rock - it will hold.

Need to be quick + efficient.

How long for repairs?

Need 2 days.

FERC - what you are asking for, we can't answer.

Risks are reduced - but can't guarantee.

Horea - Can we let people back in and live with ourselves? yes.

Minds work different, takes interrogation sometimes.

We have what we need.

Next Brief - ~~1330~~ 1400 - more intel

Go to work - start going

END 11:52

02-13-2017

- Director to meet w/ Sheriff.

J. PHS - assure you that Horea is on board. He was the one asking all the questions at the technical / intel Meeting.

02-08-2017 to 02-11-2017

1730 – Live feed of Bill Croyle – froze a few minutes in.

1745 – distributed sit stat report to ICS Chiefs

1808 – Standing by for Conference Call.

Joel – engineers just performed inspection at spillway. Want to talk about hydrology and projections. Discuss new spill numbers. Then we can discuss thresholds and metrics.

John – status of storm – just passed peak inflow (1600-1700) inflows got up to 190000. Should start to see decreases from here. Current status is that there is 35,000 on the spillway and 7,000 through the plant. Updated projects as of 1400. Forecast was significantly wetter than previous forecast. Didn't get

quite as much flow out of Hyatt as desired. In order to not spill over E/S we need to make an adjustment to those releases. Suggestion of combined release rate of 55,000 cfs. Increase to 50,000 on the spillway. 15,000 cfs increase.

D. Panec – have metrics changed? We are at Station 30+50 at this point, upstream of breach looks good. Spillway is acting just as it should. Will continue to have erosion on the right site, left side is good. Going to 50,000 is anticipated and could occur but the monitoring needs to be spot on. It has to become seamless. We are working diligently to make sure everyone knows what they are looking at and that everyone is staffed. Need to safely monitor the headcut. The cut back rate appears to have slowed down.

Randy: do we need more monitors?

D. Panec: 10 more personnel coming from NRO. Making sure we have enough people for each shift. Request is that one of those people is an engineer or geologist.

J. Berringer: Scheduled through 1800 tomorrow.

J. Ledesma says if we need more personnel let him know. We can get more resources.

Based on last forecast, upping combined flows to 55,000 would barely cover us.

We really do not want the high voltage line to go down because Hyatt would be out for an extended period of time.

If we get a load rejection we could pop headcovers. Anything less than 20,000 over emergency spillway is lowest risk, some would say its highest risk. Can we lower the elevation in the diversion pool a few feet, then we only need to increase flows down the spillway by a few thousand and run the plant at full capacity.

Are there concerns with that? Pat cannot think of any of hand. Can't think of any downstream issues. Can we temporarily isolate the power canal?

Try to lower the tailrace and get all units back on, then that will minimize the spillway increase.

Assuming head differential trick works, it could pull sediment out. Sequence: diversion dam opened up, then go up on Spillway (5,000). Sending water down the emergency spillway at 10,000 to 20,000 cfs might be better than ruining the plant.

Power one over four is anchored in the same good rock. Erosion could get closer and still not take it out.

Duval – recommend opening Diversion dam to lower diversion pool so that we can

Sheriff - open up the diversion dam – send more water down the system? Yes. What kind of increase will that cause? 2) director told him that every effort was to avoid the emergency spillway. Sounds like this plan may see the emergency spillway as a solution. M. Anderson responds – no. We do not want to

use the emergency spillway. Need advanced pubic notice, inundation maps, flowrate in the lowflow, etc. Does this new plan push out the emergency spillway? Yes it does.

Should inform the public that we are trying to avoid using the spillway, but there may be the potential that the emergency spillway gets used. If we do nothing, it is possible that we will hit the emergency spillway midnight tomorrow night.

We can't sit on the information – the information needs to get out. Get information to E. See and he will get it to Sheriff. You should be getting updates every 6 hours when new forecasts come out. Downstream control is 180,000 cfs – but it's not commonly seen and the public just needs to be aware.

In 1997 we had 160,000 cfs. We are looking at 50,000 to 70,000. Social media is different now and we need to be more prudent about getting good information out there.

Pat: We've already provided direction to senior operator to lower the Diversion Dam. Bruce is on phone talking to senior operator. He's probably working with POC to make it work.

Tower 1-4: should we increase spillway flows? With possible potential of losing Tower 1-4. Lets go up 5,000 on Spillway and monitor.

1850- 6k out Diversion Dam happening now

J. Royer – I would feel better going in 5000 increments.

Joel – clarifying that there are metrics in place for lateral cutting.

Do we have concern about the tower – the foundation is on rock. No concern presently.

HDR – rate of erosion is drastically reduced (1/5th what it was). Assuming same erosion propagates, we have 200 feet right now. How long can we use the spillway? Thought we could go to station 18 – it's 1200 feet away.

What happens if we go from 35,000 to 42,000 is not much of an increase.

DSOD and FERC seem to be in concurrence. Station 18 is reasonable.

Go to 42000 on gated chute – suggested.

Call moved to a new location because DOC is on line at 1900.

02-08-2017 to 02-11-2017

1400 - FOC Call IN

Dozens of People Calling in

E. See: Now have a daily update meeting at 10:00 at DPR to touch base with emergency responders. Intended primarily for event we are having locally. Oroville Dam Spillway, not a flood response ICT. Flows we are releasing now are not that high. We've released flows this high in the past. Misconceptions in media about flooding here in Oroville. Not floodstage releases in Oroville. Regarding our Emergency Spillway, with latest forecast we are hoping we do not need to use the Emergency Spillway. We are not anticipating releases going above 65,000 cfs today, it may go a little higher, but not by much. Sheriff Hony – set up trigger points of when he should be notified to get his people ready. Established number at 80,000 cfs. So, if Oroville releases hit 80,000 he will begin planning for a possible flooding situation. He has to plan for worst case scenario. Helpful for us – are there downstream trigger points?

Question: How long does Oroville feel like they can pass 65,000 safely? Is there a point in the future when we would cut back?

Response – would continue to spill until we are unencroached in our Army Corp reserve. It depends on Monitoring.

Question: Rate of erosion approach thresholds within next 10 days?

E. See: Right now, expect that there is hard rock and should be able to continue to spill. If we are going to spill, it would be a very small spill. Does not mean there will be a flood.

Question: Does 80,000 scare anyone?

M. Murray: Triggers local law enforcement here in Oroville.

FOC-Everything is subject to change – what kind of notice or heads up can flood center expect the flow to go to zero.

No certainty in river flows or forecasts - getting a heads up on release changes is important. Can FOC get an update as soon as possible?

M. Murray - Brian Smith from FOC is stationed here. He should be the point of contact. Also Blackboard Connect notifications are made.

Wendy - Every 6 hours the forecasts are being done.

FOC – biggest concern is debris

E. See – if debris gets passed the boom lines (large woody debris) it would likely be stopped at the Diversion Dam. The clearing occurring now is prepatory/cautionary.

SBFCA – next event? Possibly another atmospheric event? At some point we cant operate the gated spillway, what happens next if we can't use the gated spillway and are left to the mercy of the emergency spillway? Are there any other trends that look like this may be a unique year.

NWS – river forecast center are issuing inflow forecasts – 5 days worth of forecast. They are being provided information as much as we can.

Suppose we could look at trends and some of the past years data. Long term modeling is not accurate beyond 7 days. At the FOC we look at the weather system by system.

Forecasted Coordinated Operations Program – excellent communication going on – call every day since January 5, 2017.

E. See – How do we get that information to the responders? – that is a key element, need to bridge that gap. Eric to call: 530-741-5015

Should we use same trigger (80,000) point for you downstream?

M. Murray – will have Brian Smith relay release changes immediately – even if contemplated.

SBFCA – Are we able to monitor rate of erosion in real time? With water on the spillway it's covered. Some things we can see visually. But to see anything in detail we would need to shut it down. We still have quite a ways to go before we hit any triggers.

From where original problem started to where it is today?

K. Dossey – approximately 200 feet. Reached better good rock under the spillway.

8 hours to Gridley.

They will email link to the travel time after the meeting or they could look in the FERC EAP or they can check cdec.

Reclamation district – impacted by Shasta and Oroville – is there communication between Shasta and Oroville. Positioned Slightly upstream of Fremont Weir. At this point we are not looking at inflows that rival 1997.

Averaging moderate flow to high flows.

Oroville to Marysville is 24 hours.

Yolo County – monitoring effects of debris if they we spill over the emergency spillway.

K. Dossey clarified – in FERC EAP, dam failure, initial wave is 14 hours from Oroville to Marysville.

Can we take the flow higher out the spillway?

E. See – balance concern for erosion, hydrology, engineering, etc. Prepared to have the discussion, they are comfortable with the 65,000.

Three rivers – what is capacity of gated spillway?

E. See & Dossey: 500,000 cfs is capacity of emergency spillway. Probable maximum flood. That's with 16' of water going over it.

Need for this call tomorrow? Don't see a need.

Another press conference tomorrow? E. See – maybe. Two press releases a day, updates via social media.

1457 – END OF CALL

02-08-2017 to 02-11-2017

0400 – Email from Bill Croyle

Bill Croyle emailed Gina if locals have been notified if the emergency spillway will need to be used

The deputy mentioned that he already notified the Sheriff. He will contact the police if he has a concern. Phil mentioned Gina to ask Bill if anyone else should be notified.

02-11-2013

2/11

M. Anderson - 0738 - Need better monitoring continuous all day.

- Need a guy here from J. Leahigh.

- Direct communication w/ someone that can put it on the board.

- Underwriting to public
  ↳ Sheriff is hearing 3,300 - 33,000.

at 80,000 - its the trigger - will get there today.

Inflow vs spillway - differential builds head. Eventually it will go over, not at same rate going in.

10,000 cfs Aux spill
up to for up to 2 days
think it will be 1 day. J. Leahigh

Dont have ability to monitor
Recommend to deenergize tower - PWE

Plant is secured.

Cannot determine risk to 1/4

0744 Left meeting to follow Pat

0800 J. Ledesma. Director + Sheriff meeting
- Hopefully relayed info they need.

Need table from A. Miller in reverse.

0927 M. Anderson just came in

Can see the debris - Boulder Bar

Down hill is completely clear

Do we need to see it from the air?

Explosive plan might not work.

Might have plan to increase that flow.

Debris Dam - opportunity to knotch.
↳ think we can relieve the tailrace?
potentially accessible. Saves plant
and increase flow down river

Cant jeopardize tower.

Attempt to reestablish the plant. *

Keep plant

Sheriff - problem w/ plant - need to start
talking to Media about it.

1 Transparency

Anderson - we explained when tailrace is high,
we cant generate.

People dont understand the gravity.

Get something for B. Croyle.

operation- debris in Div. Pool. continuing

1' overtopping 12-13K 36 hr. peak at 2100
55 cfs middle range.

range on discharge- range on Q range on time.

New
Forecast - Consistent

Max Elev: 1' to 1.5' above weir.
Max Flow 6 to 12,000 cfs.
Don't have time
Duration → 38 to 56 hrs

0900 estimate of clear flow
144 cfs at 0800
668 cfs at 0900 Inflow @ 0900 89,000 cfs

Next call at 1230. Call End 0937

Sheriffs expose vulnerability- security concern.?
M. Smith question) Facility concern.?

EXHIBIT C

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October 23, 2017

Spencer Kenner, Chief Counsel
California Department of Water Resources
P.O. Box 942836, Room 1104
Sacramento, CA 94236-0001

Re: OROVILLE DAM CRISIS / SPILLWAY FAILURE
FEBRUARY 2017

Dear Mr. Kenner,

We represent various individuals who have filed claims pursuant to Gov. Code § 810, *et seq.* involving the above spill. Rumors have surfaced to the effect that a memorandum/memoranda or other form of directive has issued from DWR, directing that any notes, files, memos, etc. regarding the Oroville Dam crisis, or maintenance upon same, be destroyed. While this sounds morally reprehensible, it may be accurate, and we thus call this to your attention. We request that absolutely nothing be destroyed or tampered with, which in any way concerns the design, construction of, inspection, maintenance or repairs upon Oroville Dam, or the Oroville Dam crisis of February, 2017. If such a memo or communication was sent to staff, we request a copy of any such memorandum/memoranda that may have been issued.

We hereby notify the DWR and its contractors and agents, of our request that they not destroy, conceal, or alter any information contained not only in documentary, photographic, videographic, or other tangible form, including all documentary or electronic memorializations sent or received through any form of Social Media, but also any such information stored in electronic or digital form or generated by your computer systems or electronic devices. This information may be relevant to the above matter and be unavailable from any other source. As you may know, such electronic information can easily be inadvertently destroyed, and the failure to take reasonable measures to preserve it can result in serious consequences. *See, e.g.*, *Cedars-Sinai Med. Ctr. v. Superior Court* (1998) 18 Cal. 4th 1. We request that you immediately provide a copy of this Preservation Letter to each contractor with whom DWR has contracted, communicated or engaged, concerning any aspect of the Oroville Dam Project, from 2005 to date, inclusive.

The electronic data and the storage devices in which documents are kept that DWR is obligated to maintain and preserve during the pendency of the investigation of the dam failure include all of the following data and devices, which are in the possession of DWR, including its contractors or agents:

1. Electronic files, including deleted files and file fragments, stored in machine-readable format on magnetic, optical, or other storage media, including hard drives or floppy disks in all DWR instruments, or contractors employed by DWR, desktop computers, laptop computers, home personal computers, and the backup media used for each;

2. E-mail, both sent and received, internally or externally;

3. Telephone files and logs such as voicemail and universal mobile telecommunications system (UMTS) data;

4. Word processing files, including drafts and revisions;

5. Spreadsheets, including drafts and revisions;

6. Databases;

7. Electronic files in portable storage devices, such as floppy disks, compact disks, digital video disks, ZIP drives, thumb drives, or pen drives;

8. Computer-aided design files;

9. Presentation data or slide shows, such as PowerPoint;

10. Graphs, charts, and other data produced by project management software;

11. Data generated by calendaring, task management, and personal information management software, such as Microsoft Outlook;

12. Data created with the use of personal data assistants, such as PalmPilot;

13. Data created with the use of document management software;

14. Data created with the use of paper and electronic mail logging and routing software;

15. Internet and web-browser-generated history files, caches, and "cookies" files generated at the workstation of each employee, contractor or agent of DWR's employ and on any and all backup storage media;

16. Logs of network use by DWR employees, contractors or agents, whether kept in paper or electronic format;

17. Copies of DWR's backup tapes and the software necessary to reconstruct the data on those tapes on each and every personal computer or workstation and network server in your client's control and custody;

18. Electronic information in copiers, fax machines, and printers.

We formally request that you consult with DWR's Supervisors and notify us if there are any questions about our inquiry regarding the documents requested in the first paragraph of this letter.

Very truly yours,

COTCHETT, PITRE & McCARTHY

BY _____
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