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Sent: Friday, August 10, 2018 4:08 PM
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Subject: **California WaterFix Hearing - PCFFA and IFR Opposition to Westlands' Motion to Strike LAND-290**
Attachments: PCFFA and IFR Opposition to WWD Motion to Strike Land-290.pdf;
2018-8-10 Statement of Service re Opp of PCFFA and IFR to Mtn to Strike filed by Westlands.pdf

Dear Hearing Officers:

Protestants Pacific Coast Federation of Fishermen's Associations and Institute for Fisheries Resources submit the attached OPPOSITION OF PCFFA AND IFR TO MOTION TO STRIKE ENTIRETY OF LAND-290 FILED BY WESTLANDS WATER DISTRICT.

Due to the number of email recipients, this message and its attachment are being sent via 3 emails.

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8 BEFORE THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

9 HEARING REGARDING PETITION FILED)
BY THE DEPARTMENT OF WATER) **OPPOSITION OF PCFFA AND IFR TO**
10 RESOURCES AND U.S. BUREAU OF) **MOTION TO STRIKE ENTIRETY OF**
RECLAMATION REQUESTING CHANGES) **LAND-290 FILED BY WESTLANDS**
11 IN WATER RIGHTS FOR THE CALIFORNIA) **WATER DISTRICT**
WATERFIX PROJECT)
12)
13)

14 **I. INTRODUCTION**

15 Protestants Pacific Coast Federation of Fishermen’s Associations and Institute for
16 Fisheries Resources (collectively, “PCFFA”) hereby oppose the August 9, 2018 motion by
17 Westlands Water District (“WWD”) to strike LAND-290, Rebuttal Testimony of Thomas Stokely,
18 in its entirety. As stated in PCFFA’s August 1, 2018 Motion for Reconsideration, the testimony
19 of Thomas Stokely is appropriate rebuttal, and for that reason WWD’s Motion to Strike should
20 be denied, and PCFFA’s Motion for Reconsideration should be granted.

21 **II. ARGUMENT**

22 **A. WWD’S MOTION TO STRIKE IS IMPROPER**

23 WWD provides testimony, in the guise of “background,” that attempts to rebut Mr.
24 Stokely’s testimony. WWD Motion 2-3. None of WWD’s background information should be
25 considered while the Hearing Officers resolve WWD’s Motion, as it is not relevant to
26 determining whether Mr. Stokely’s testimony is proper rebuttal addressing Part 2 issues.
27 WWD’s claims that Revised Water Right Decision 1641, the Barcellos Judgment, and WWD’s
28 contracts with the Bureau of Reclamation somehow make Mr. Stokely’s testimony irrelevant are

1 mere smokescreen.

2 **B. LAND-290 IS RELEVANT TO PART 2 ISSUES**

3 Despite WWD’s protestations, Mr. Stokely’s testimony is relevant to Part 2 issues.
4 WWD Motion 6-7. Mr. Stokely’s testimony addresses whether the petition is in the public
5 interest – a Part 2 issue – and rebuts Mr. Gutierrez’s testimony regarding the same. Indeed,
6 Mr. Gutierrez testified that “it would be important that this Project and process not reduce water
7 supply to Westlands.” March 9, 2018 Hearing Transcript, 182:22-24 (see also 182:16-18). And
8 thus WWD has asked the Hearing Officers to resolve whether it is in the public interest if the
9 Project impacts WWD’s water supply as part of its Part 2 case-in-chief.

10 **C. THE TESTIMONY OF THOMAS STOKELY IS PROPER REBUTTAL**

11 Mr. Stokely’s testimony is directly responsive to the Part 2 Testimony of Westlands’
12 witness Jose Gutierrez (WWD-15 and WWD-17) on all three points challenged by WWD –
13 area, volume and area-of-origin.

14 First, Mr. Gutierrez testified that the WWD service area encompasses over 600,000
15 acres, and testified that WWD has historically met its end-users’ water demands with CVP
16 deliveries. WWD-15, 3:4-10. Mr. Gutierrez offered his testimony to further WWD’s interest in
17 avoiding reductions in CVP deliveries. E.g. WWD-15, 24:18. Mr. Stokely’s testimony rebuts Mr.
18 Gutierrez’s testimony that this use is in the public interest by showing that WWD’s use does not
19 comport with Congressional intent.

20 Second, Mr. Gutierrez testified to WWD’s historical demand for water, and stated that
21 this historical demand was primarily satisfied by the Central Valley Project (“CVP”). WWD-15,
22 3:4-10. He further testified that “[a]s a consequence of the judgment entered on December 30,
23 1986, in *Barcellos and Wolfsen, Inc., et al., v. Westlands Water District, et al.*, No. CV
24 79-106-EDP (E.D. Calif. Dec. 30, 1986), Westlands’ contractual entitlement to CVP water
25 increased to 1,150,000 acre-feet of CVP water per year.” WWD-15, 4:21-24. Mr. Stokely’s
26 testimony addresses whether WWD’s contractual claim to this quantity of water can reasonably
27 be expected to remain the same into the future. LAND-290, 6:19-9:14. This is a reasonable
28 rebuttal of Mr. Gutierrez’s testimony, which implies the contractual entitlement remains the

1 same.

2 Last, Mr. Gutierrez testified that:

3 It is my understanding that Reclamation, the Water Board, and courts have
4 consistently declined to give priority to contractors based on "area of origin"
5 principles. Rather, Reclamation makes allocation decisions based on the terms
6 of the CVP contracts and other policies. Different allocations are made to
7 contractors in one region versus another only in circumstances where
8 Reclamation is unable because of regulatory constraints to move CVP water from
9 one region to another.

10 WWD-15, 3:29-23.

11 Mr. Stokely's testimony regarding the area of origin directly addresses Mr. Gutierrez's claim that
12 "[d]ifferent allocations are made to contractors in one region versus another only in
13 circumstances where Reclamation is unable because of regulatory constraints to move CVP
14 water from one region to another." WWD 15, 3:21-23. Mr. Stokely's testimony that Water Code
15 section 10505 area of origin requirements apply to CVP Trinity River permits rebuts this claim.

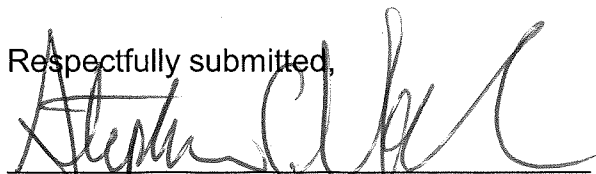
16 Thus, Mr. Stokely's testimony is directly responsive to testimony presented by Mr.
17 Gutierrez. Because Mr. Stokely's testimony is thus proper rebuttal testimony, WWD's Motion
18 must be denied.

19 III. CONCLUSION

20 As shown above, the testimony Thomas Stokely (LAND-290) is responsive to the Part 2
21 testimony of other witnesses. Therefore, it is proper rebuttal testimony, and should not be
22 stricken. Accordingly, the Hearing Officers should deny WWD's Motion. In addition, the
23 Hearing Officers should reconsider the July 27, 2018 Ruling, and on reconsideration, reinstate
24 the portions of LAND-290 that were stricken.

25 Dated: August 10, 2018

26 Respectfully submitted,



27 STEPHAN C. VOLKER
28 Attorney for Protestants
PACIFIC COAST FEDERATION OF FISHERMEN'S
ASSOCIATIONS and INSTITUTE FOR FISHERIES
RESOURCES

STATEMENT OF SERVICE

CALIFORNIA WATERFIX PETITION HEARING
Department of Water Resources and U.S. Bureau of Reclamation (Petitioners)

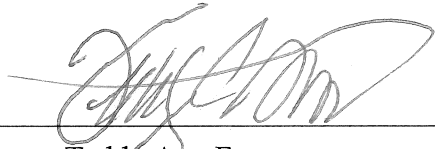
I hereby certify that I have this day submitted to the State Water Resources Control Board and caused a true and correct copy of the following document(s):

OPPOSITION OF PCFFA AND IFR TO MOTION TO STRIKE ENTIRETY OF LAND-290 FILED BY WESTLANDS WATER DISTRICT

to be served by Electronic Mail (email) upon the parties listed in Table 1 of the Current Service List for the California WaterFix Petition Hearing, dated August 7, 2018, posted by the State Water Resources Control Board at

http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/service_list.shtml

I certify that the foregoing is true and correct and that this document was executed on August 7, 2018.



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