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Subject: **California WaterFix Hearing - LAND'S Opposition to WWD'S Motion to Strike Entirety of LAND-290 and Reply to WWD's Opposition to Motions for Reconsideration**
Attachments: 180810 LAND Response WWD Oppn.pdf

Dear California WaterFix Hearing Officers, Staff, and All Parties:

Attached please find LAND'S Opposition to WWD'S Motion to Strike Entirety of LAND-290 and Reply to WWD'S Opposition to Motions for Reconsideration of July 27, 2018 Ruling. My statement of service is attached to this document.

I have divided the email recipients provided on the service list into 2 groups. This message and attachment will be sent via another email to the remaining recipients not included here.

Sincerely,

Mae Ryan Empleo
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This email and any attachments thereto may contain private, confidential, and privileged material for the sole use of the intended recipient.

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10 Attorneys for Protestants Local Agencies of the North Delta

11 **BEFORE THE**

12 **CALIFORNIA STATE WATER RESOURCES CONTROL BOARD**

13 HEARING IN THE MATTER OF
14 CALIFORNIA DEPARTMENT OF WATER
15 RESOURCES AND UNITED STATES
16 BUREAU OF RECLAMATION
17 REQUEST FOR A CHANGE IN POINT OF
18 DIVERSION FOR CALIFORNIA WATER FIX

19 **LAND'S OPPOSITION TO WWD'S MOTION
20 TO STRIKE ENTIRETY OF LAND-290 AND
21 REPLY TO WWD'S OPPOSITION TO
22 MOTIONS FOR RECONSIDERATION OF
23 JULY 27, 2018 RULING**

1 **I. BACKGROUND**

2 The Hearing Officers struck portions of Thomas Stokely’s testimony (LAND-290) in a
3 July 27, 2018 ruling. On August 2, 2018, Protestant Local Agencies of the North Delta
4 (“LAND”) filed a Joinder in Support of Protestants Pacific Coast Federation of Fisherman’s
5 Association and Institute for Fisheries Resources’ Motion for Reconsidering of the July 27,
6 2018 Ruling. In response, Westlands Water District (“WWD”) filed a Motion to Strike Entirety
7 of LAND-290 and Opposition to the Motions for Reconsideration (“Motion to Strike”).

8 LAND continues to assert that LAND-290 is proper rebuttal testimony as it is directly
9 responsive to statements by WWD witness Jose Gutierrez (WWD-15). WWD’s arguments to
10 strike the entirety of LAND-290 are unfounded, and WWD’s attempt to use the Motion to Strike
11 to support its positions should be rejected.

12 **II. LAND-290 IS PROPER REBUTTAL TESTIMONY**

13 In LAND-290, Mr. Stokely makes three arguments in rebuttal to Mr. Gutierrez’s
14 testimony. The first is a clarification that the San Luis Act limits water exports to only 500,000
15 acres of the entire San Luis Unit, which Mr. Gutierrez mistakenly categorizes as including
16 WWD’s 600,000-acre service area. (LAND-290, pp. 3:1 to 6:18.) Second, that Mr. Gutierrez’s
17 testimony on WWD’s water service contract is incorrect to the extent that Mr. Gutierrez’s
18 represents that WWD has a permanent water service contract for Central Valley Project water
19 of 1,150,000 acre feet of CVP water per year. (LAND-290, pp. 6:19 to 9:14.) Third, contrary to
20 Mr. Gutierrez’ testimony that the United States Bureau of Reclamation, the Water Board, and
21 courts have applied area of origin principles to Central Valley Project contracts. (LAND-290,
22 pp. 9:15 to 11:19.) Each of these arguments are in response to, as clarifications and
23 corrections, Mr. Gutierrez’s testimony.

24 The question of WWD’s entitlement to water from the Project is a public interest
25 consideration proper for Part 2 of these proceeding. (See October 30, 2015 Notice of Petition,
26 p. 12.) Whether WWD is entitled to water from the Project factors into the balance of beneficial
27 uses for the Project. If WWD is not entitled to the water, its use is not beneficial and exports to
28

1 WWD would be against the public interest. Mr. Stokely's testimony properly responds to Mr.
2 Gutierrez's testimony and properly falls under Part 2 considerations.

3 **III. WWD'S MOTION IS IMPROPER**

4 WWD's Motion to Strike consists of improper arguments about the substance of Mr.
5 Stokely's testimony. While WWD accuses Mr. Stokely of dredging up history and rehashing
6 settled issues (see, e.g., pp. 1–2), WWD's Motion to Strike attempts to introduce new evidence
7 that should have been presented as testimony to the extent it would be relevant to the Hearing
8 issues. For example, WWD's discussion of Decision 1641 goes well beyond Stokely's one
9 reference to it in relation to the *State Water Resources Control Board Cases (2005) 136*
10 *Cal.App.4th 674*.

11 Moreover, each of WWD's claims that LAND-290 is not rebuttal (Motion to Strike, pp. 4–
12 5) are attempts to insert its own counterarguments to Mr. Stokely. LAND-290 is properly “used
13 to rebut evidence presented by another party” as directed by the Hearing Officers. (October
14 30, 2015, Notice of Petition, p. 35.) That WWD devoted an entire brief to substantively contest
15 Mr. Stokely's arguments only supports that LAND-290 is proper rebuttal testimony. WWD
16 instead should either address these issues on cross examination or submit surrebuttal
17 testimony rather than attempt to improperly insert the information through a motion to strike.

18 **IV. CONCLUSION**

19 LAND-290 is proper rebuttal testimony responding to WWD's Part 2 Case in Chief
20 testimony and should not be stricken in its entirety. Mr. Stokely's testimony is relevant to the
21 Hearing issues and is not impermissible legal argument. Further, WWD's Motion to Strike is a
22 procedurally improper attempt to introduce new evidence and arguments via motion.

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STATEMENT OF SERVICE

I hereby certify that I have this day, August 10, 2018, submitted to the State Water Resources Control Board and caused a true and correct copy of the following document:

**LAND'S OPPOSITION TO WWD'S MOTION TO STRIKE ENTIRETY OF LAND-290 AND
REPLY TO WWD'S OPPOSITION TO MOTIONS FOR
RECONSIDERATION OF JULY 27, 2018 RULING**

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 https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_water_fix/service_list.shtml

I certify that the foregoing is true and correct and that this document was executed on August 10, 2018.

Signature: 
Name: Mae Ryan Empleo
Title: Legal Assistant for Osha R. Meserve
Soluri Meserve, A Law Corporation

Party/Affiliation:
Local Agencies of the North Delta

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