

**Westlands Water District**



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September 26, 2016

**Via Email**

Hearing Chair Tam Doduc  
Hearing Co-Chair Felicia Marcus  
State Water Resources Control Board  
1001 I Street  
Sacramento, CA 95814

Email: CWFhearing@waterboards.ca.gov

***Re: Response to Request for Additional Cross-Examination to Address Surprise Testimony Presented on Friendly Cross Examination***

Dear Ms. Doduc and Ms. Marcus:

Westlands Water District (Westlands) opposes the characterization of its cross-examination of Ray Sahlburg on September 22, 2016, as “surprise testimony” where Mr. Sahlburg “express[ed] previously undisclosed opinions regarding certain water-right permit terms[.]”

Our reason for this opposition is simple: as we prefaced to the hearing officers prior to our cross examination of Mr. Sahlburg, on August 10, 2015, Mr. Alan Lilly with Mr. Ryan Bezerra sitting beside him, made specific reference in his cross examination of the Operations Panel to “Term 11” – the term in the two permits which was the sole subject of Westlands’ cross examination.<sup>1</sup> This specific reference included producing and displaying Exhibit BKS-1 – “BKS” standing for the firm for which the two men work. A party should not be allowed to successfully argue that evidence which has been previously introduced is “surprise testimony,” especially when the subject matter of that evidence was deliberately introduced by the very party now alleging surprise.

Neither can this cross-examination be characterized as expressing previously undisclosed opinions, as the official record, including a cover letter to the State Water Board Water Rights Decision 893, is replete with the very information which Mr. Sahlburg provided to the hearing officers. Mr. Sahlburg’s testimony on our cross-examination spoke directly to terms and facts inside existing public documents; those documents and the portions of those documents which were relevant to his then-current testimony, were marked as Westlands’ exhibits, and produced for the entire proceeding. Though his testimony may have summarized some facts, nowhere in his testimony did his recitation of fact depart from the source documents in question. The only opinion he can be said to have provided was his opinion that the language in Term 11 of Permits 11315 and 11316 and Term 14 of D-893 were nearly identical.

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<sup>1</sup> See, e.g. Transcript for 8-10-16 Hearing, Vol. 8 at pp. 247-267.)

Felicia Marcus, Chair  
Tam Doduc, Member  
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Coupled with several of Messrs. Lilly and Bezerra's clients' Notices of Intent to Appear,<sup>2</sup> after Mr. Lilly introduced Term 11 as part of his cross-examination it became clear that he intended to discuss his clients' contracts with the Bureau of Reclamation – where else to do that except with the Water Rights Panel, as it is the panel of experts best equipped to address issues of legal injury to Central Valley Project contractors? In anticipation of that approach, I approached Mr. Sahlburg to discuss my line of questioning regarding Term 11. As part of that, I provided documents to support the leading questions I anticipated asking in order to ensure that the question accurately reflected the source document. Mr. Sahlburg's testimony as to those documents remained his own.

While Westlands does not object to his request, should the hearing officers find it appropriate to provide Mr. Bezerra with additional time for cross, Westlands respectfully warns of the confusing precedent it would set inside the context of this proceeding. The nature and organization of this proceeding is such that parties are constantly informed of new material which they may later use to their advantage. Messrs. Lilly and Bezerra's clients are part of Group 7 – parties of which specifically asked for staggered briefing of cases in chief – which is comprised of many different parties and is represented by many different attorneys, yet it is clear that these parties and their attorneys are coordinating; indeed, they have often said as much. Westlands has not objected because we understand that this is the nature of a proceeding as important and complicated as the present one.

Westlands chose to exploit an opportunity which Messrs. Lilly and Bezerra presented on August 10<sup>th</sup>, 2016. My sole intent was to protect my client's interest by elucidating a point which those gentlemen initiated, fearful that unless we did, the hearing officers would be left with an incomplete picture of the history and meaning of a point which is at the heart of one of the key questions to this proceeding.

Thank you for your consideration and your service.

Sincerely,



Philip A. Williams  
Deputy General Counsel  
Westlands Water District

cc: California WaterFix Service List

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<sup>2</sup> See, e.g., Attachment to City of Folsom Protest at pp. 7-11.

**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):

Response to Request for Addition Cross-Examination by Counsel for the Cities of Folsom and Roseville

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 9/20/2016, 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](http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/service_list.shtml):

*Note: In the event that any emails to any parties on the Current Service List are undeliverable, you must attempt to effectuate service using another method of service, if necessary, and submit another statement of service that describes any changes to the date and method of service for those parties.*

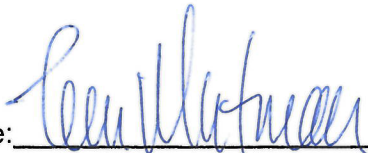
**For Petitioners Only:**

	I caused a true and correct <b>hard copy</b> of the document(s) to be served by the following method of service to Suzanne Womack & Sheldon Moore, Clifton Court, L.P., 3619 Land Park Drive, Sacramento, CA 95818:
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	<b>Method of Service:</b> _____
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I certify that the foregoing is true and correct and that this document was executed on 9/26/2016

Date

Signature: 

Name: Terri Whitman

Title: Legal Secretary

Party/Affiliation: Westlands Water District

Address: 400 Capitol Mall, 27th Floor  
Sacramento, CA 95814