

1 THOMAS H. KEELING (SBN 114979)
FREEMAN FIRM
2 1818 Grand Canal Boulevard, Suite 4
Stockton, CA 95207
3 Telephone: (209) 474-1818
Facsimile: (209) 474-1245
4 Email: tkeeling@freemanfirm.com

5 J. MARK MYLES (SBN 200823)
Office of the County Counsel
6 County of San Joaquin
7 44 N. San Joaquin Street, Suite 679
Stockton, CA 95202-2931
8 Telephone: (209) 468-2980
Facsimile: (209) 468-0315
9 Email: jmyles@sigov.org

10 Attorneys for Protestants County of San Joaquin,
11 San Joaquin County Flood Control and
Water Conservation District, and
12 Mokelumne River Water and Power Authority

13 [ADDITIONAL COUNSEL LISTED ON FOLLOWING PAGE]

14
15 **BEFORE THE**
16 **CALIFORNIA STATE WATER RESOURCES CONTROL BOARD**

17 HEARING IN THE MATTER OF
18 CALIFORNIA DEPARTMENT OF WATER
RESOURCES AND UNITED STATES
19 BUREAU OF RECLAMATION
20 REQUEST FOR A CHANGE IN POINT OF
DIVERSION FOR CALIFORNIA WATER
21 FIX

**JOINT OBJECTIONS OF THE SAN
JOAQUIN COUNTY PROTESTANTS, THE
NORTH SAN JOAQUIN WATER
CONSERVATION DISTRICT, AND THE
LOCAL AGENCIES OF THE NORTH
DELTA, ET AL. TO THE CASE-IN-CHIEF
TESTIMONY SUBMITTED BY
WESTLANDS WATER DISTRICT; JOINT
MOTION TO EXCLUDE THE WESTLANDS
WATER DISTRICT TESTIMONY**

1 JENNIFER SPALETTA (SBN 200032)
2 SPALETTA LAW PC
3 P.O. BOX 2660
4 LODI, CA 95241
5 Telephone: (209) 224-5568
6 Facsimile: (209) 224-5589
7 Email: jennifer@spalettalaw.com

8 Attorneys for Protestants County of San Joaquin,
9 San Joaquin County Flood Control and
10 Water Conservation District, Mokelumne River
11 Water and Power Authority the North San Joaquin Water
12 Conservation District

13 OSHA R. MESERVE (SBN 204240)
14 SOLURI MESERVE, A LAW CORPORATION
15 1010 F Street, Suite 100
16 Sacramento, CA 95814
17 Telephone: (916) 455-7300
18 Facsimile: (916) 244-7300
19 Email: osha@semlawyers.com

20 Attorneys for Protestants
21 Local Agencies of the North Delta
22 Bogle Vineyards / Delta Watershed Landowner Coalition
23 Diablo Vineyards and Brad Lange / Delta Watershed Landowner Coalition
24 Stillwater Orchards / Delta Watershed Landowner Coalition
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1 **I. INTRODUCTION**

2 Protestants County of San Joaquin, San Joaquin County Flood Control and Water
3 Conservation District, Mokelumne River Water and Power Authority (San Joaquin County
4 Protestants), North San Joaquin Water Conservation District (“NSJWCD”), and Local
5 Agencies of the North Delta, et al. (“LAND”) jointly object to and move to exclude the case-in-
6 chief testimony submitted by Westlands Water District (“Westlands”) on September 1, 2016.
7 Westlands’ submission consists of the Testimony of Jose Gutierrez and related exhibits.

8 Simply stated, Mr. Gutierrez’ testimony is entirely irrelevant to any issue before the
9 Board in Part 1B of this Hearing. It does not touch upon any potential injury to any legal user
10 of water that might result from approval of the Petition for Change in the Point of Diversion. It
11 does not discuss any adverse consequence to any human use of water that might result from
12 the changes proposed in the Petition. Westlands’ Testimony does not address the question
13 of whether the Petition seeks, in effect, to initiate a new water right. Nor does Westlands’
14 Testimony in any way address the question whether Petitioners met their burden of proof in
15 Part 1A.

16 Instead, Mr. Gutierrez’ testimony: (1) describes the operations of Westlands Water
17 District, including its sources of water and the importance of Central Valley Project Operations
18 to Westlands’ Water Supply; (2) argues that Westlands is an efficient user of water; (3)
19 bemoans Westlands’ declining allocations of CVP water since 1991; (4) touts the potential
20 benefits of WaterFix to Westlands as “tremendous”; and (5) warns of adverse consequences
21 that it claims might result if the Petitioner is **not** approved as proposed by the Petitioners.

22 In short, Westlands’ Testimony is an advertisement for the tunnels by one of the most
23 vocal WaterFix proponents, seasoned with a pinch of self-promotion.

24 Westlands may have a right to advocate and advertise. In this proceeding, however,
25 any such advocacy must take place within the framework established by the Board and the
26 Water Code; for instance, it is possible that some of Westlands’ material would be appropriate
27 in a policy statement.

1 Westlands' Testimony does not comply with this Board's requirements, and it is
2 therefore irrelevant to any issue pending in Part 1B. For this reason, the objection set forth
3 herein should be sustained, and Westlands Testimony should be excluded in its entirety.

4 **II. ARGUMENT**

5 **A. By Order of this Board, Part 1B of this Proceeding Addresses Injury to Legal**
6 **Users of Water that Might Result from the Changes Proposed in the Petition,**
7 **as Well as the Question of Whether the Petition Seeks to Initiate a New Water**
8 **Right.**

9 The Board's orders and rulings in this proceeding clearly define the scope of Part 1B
10 In a manner consistent with Water Code sections 1701.1, 1701.2, and 1702. In its October
11 30, 2015 Notice, the Board defined the scope of issues Part 1:

12 1. Will the changes proposed in the Petition in effect initiate a new water
13 right?

14 2. Will the proposed changes cause injury to any municipal, industrial or
15 agricultural uses of water, including associated legal users of water?

16 a. Will the proposed changes in points of diversion alter water
17 flows in a manner that causes injury to municipal, industrial, or agricultural uses
18 of water?

19 b. Will the proposed changes in points of diversion alter water
20 quality in a manner that causes injury to municipal, industrial, or agricultural
21 uses of water?

22 c. If so, what specific conditions, if any, should the State Water
23 Board include in any approval of the Petition to avoid injury to these uses?

24 (October 30, 2015 Notice of Petition and Notice of Public Hearing and Pre-Hearing
25 Conference to Consider the Petition, p. 11.)

26 In response to comments raised in connection with the pre-hearing conference,
27 the Board clarified the scope of Part 1, explaining that "some issues could crossover
28 Part 1 and 2, but generally Part 1 focuses on human uses of water (water right and
water use impacts)." (February 11, 2016 Hearing Officers' Ruling on Pre-Hearing

1 Conference Procedural Issues, p. 10.) The Board further explained – and
2 appropriately so -- that in this context the question of injury to legal users of water is
3 not restricted to formal water rights issues but includes human uses of water more
4 broadly:

5
6 Part 1 can address human uses that extend beyond the strict definition of legal
7 users of water, including flood control issues and environmental justice
8 concerns. If a human use is associated with the health of a fishery or recreation,
9 testimony on this matter should be presented in Part 2.

9 (*Ibid.*)

10 Based on their review of the many Part 1B case in chief submissions, the San Joaquin
11 County Protestants, NSJWCD, and LAND believe that most of the submissions fall generally
12 within the expanded scope of Part 1, as established by this Board. One notable exception,
13 however, is the case in chief submitted by Westlands, as explained below.

14 **B. Westlands' Proffered Testimony Falls Completely Outside the Scope of Part**
15 **1B and Is Therefore Irrelevant.**

16 Mr. Gutierrez admits, without apology, that his proffered testimony consists of a
17 description of Westlands' operations and an argument that the WaterFix, as proposed by the
18 Petitioners, should be approved:

19 In this testimony, I will provide background information regarding
20 Westlands and describe Westlands' water supply, the role of Central Valley
21 Project operations in delivering Westlands' supply, and how Westlands puts its
22 water to use. In addition, I will discuss the need for California WaterFix existing
23 in Westlands, and both the likely benefits to Westlands if California WaterFix
24 moves forward and likely adverse impacts to Westlands if California WaterFix
25 does not move forward, or moves forward in a way with more significant
26 operational limitations than exist today.

24 (Testimony of Jose Gutierrez [WWD-1], p. 2.)

25 Nor does Mr. Gutierrez attempt to disguise the fact that Westlands long ago aligned
26 itself with the Petitioners as a proponent of the tunnel proposal:

27 Westlands' support for the California WaterFix dates back to 2006, when
28 Westlands, along with other federal, state, and local agencies, and non-

1 governmental organizations, executed the planning agreement for the Bay Delta
2 Conservation Plan (“BDCP”). (Exh. WWD-6.)

3 (Testimony of Jose Gutierrez [WWD-1], p. 20.) Consistent with its long-standing support for
4 the WaterFix project, Westlands is effusive in touting as “tremendous” the benefits it hopes to
5 enjoy if this Board approves the Petition as proposed, without imposing any new restrictions.

6 (Testimony of Jose Gutierrez [WWD-1], p. 21.)

7 Conspicuous by its complete absence from Mr. Gutierrez’ testimony, however, is any
8 attempt to show, or even discuss, injury to legal users of water or other impairment of human
9 uses of water that may result if the Petition is approved. Nor does Mr. Gutierrez anywhere
10 suggest that the Petitioners have failed to carry their burden in Part 1A with respect to the no
11 injury requirement – indeed, he nowhere mentions the fact that Petitioners even have such a
12 burden. Nor does Mr. Gutierrez discuss the question of whether the Petition effectively seeks
13 to initiate a new water right.

14
15 Westlands has a legal right to act as a cheerleading section for Petitioners’ proposed
16 project. However, it does not have the right to do so in the guise of participating in Part 1B of
17 this Hearing as a protestant. In order to do that, it must submit something within the scope of
18 Part 1B as established by this Board. The Westlands Testimony submitted on September 1,
19 2016, is completely irrelevant and transparently calculated to influence decision-makers with
20 matter extraneous to the issues in Part 1B.¹

22 **III. Objection and Motion to Exclude the Westlands Testimony**

23 The San Joaquin County Protestants, NSJWCD, and LAND object to the Westlands
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27 ¹ Based on its Notice of Intent filed herein on or about January 5, 2016, it seems clear that
28 Westlands never intended to submit anything relevant to the issues in Part 1. Its “Subject of
Proposed Testimony” description for Mr. Gutierrez reads as follows: “Use of Central Valley
Project Water in Westlands Water District, to include municipal and agricultural uses.”

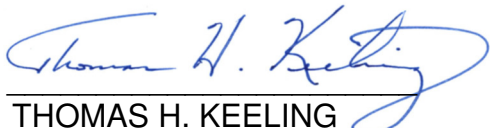
1 case-in-chief testimony (Mr. Gutierrez' testimony and the related exhibits) on the ground that it
2 is not within the scope of the submissions allowed within Part 1B, as defined in the above-
3 referenced orders and rulings of this Board, and is therefore irrelevant to any issue in Part 1B.

4 On this basis, the San Joaquin County Protestants, NSJWCD, and LAND move to
5 exclude the Westlands case-in-chief testimony in its entirety. We request an Order from this
6 Board sustaining the objection and granting our motion to exclude the evidence.
7

8 Respectfully submitted,


9
10 Dated: September 21, 2016

FREEMAN FIRM,

11 By: 
12 THOMAS H. KEELING
13 Attorneys for Protestants County of San
14 Joaquin, San Joaquin County Flood Control
15 and Water Conservation District, and
16 Mokelumne River Water and Power
17 Authority

18 Dated: September 21, 2016

SPALETTA LAW PC,

19 By: 
20 JENNIFER L. SPALETTA
21 Attorneys for Protestants County of San
22 Joaquin, San Joaquin County Flood Control
23 and Water Conservation District, and
24 Mokelumne River Water and Power Authority
25 and North San Joaquin Water Conservation
26 District
27
28

1 Dated: September 21, 2016

2 **SOLURI MESERVE,**
3 **A LAW CORPORATION**

4 By: _____

5 OSHA R. MESERVE
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7 Local Agencies of the North Delta,
8 Bogle Vineyards/DWLC,
9 Diablo Vineyards and Brad Lange/DWLC,
10 Stillwater Orchards/DWLC

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STATEMENT OF SERVICE

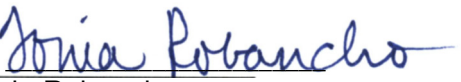
**CALIFORNIA WATERFIX PETITION HEARING
Department of Water Resources and U.S. Bureau of Reclamation (Petitioners)**

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):

**JOINT OBJECTIONS OF THE SAN JOAQUIN COUNTY PROTESTANTS, THE
NORTH SAN JOAQUIN WATER CONSERVATION DISTRICT, AND THE
LOCAL AGENCIES OF THE NORTH DELTA, ET AL. TO THE CASE-IN-CHIEF
TESTIMONY SUBMITTED BY WESTLANDS WATER DISTRICT; JOINT
MOTION TO EXCLUDE THE WESTLANDS WATER DISTRICT TESTIMONY**

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 September 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

I certify that the foregoing is true and correct and that this document was executed on September 21, 2016.

Signature: 
Name: Tonia Robancho
Title: Legal Assistant for Thomas H. Keeling
Freeman Firm

Party/Affiliation:
County of San Joaquin, San Joaquin County Flood Control
and Water Conservation District, and Mokelumne River
Water and Power Authority

Address:
Freeman Firm, A Professional Law Corporation
1818 Grand Canal Blvd., Suite 4, Stockton, CA 95207