1 THE HONORABLE ROBERT J. BRYAN
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9 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

LIGHTHOUSE RESOURCES INC., *et al.*, Plaintiffs, and BNSF RAILWAY COMPANY, Plaintiff-Intervenor, v. JAY INSLEE, *et al.*, Defendants, WASHINGTON ENVIRONMENTAL COUNCIL, *et al.*, Defendant-Intervenors.	NO. 3:18-cv-05005-RJB PLAINTIFFS LIGHTHOUSE RESOURCES, *ET AL.* AND PLAINTIFF-INTERVENOR BNSF RAILWAY COMPANY'S REPLY IN SUPPORT OF THEIR MOTION FOR PARTIAL SUMMARY JUDGMENT ON FOREIGN COMMERCE CLAIM (COUNT I)

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INTRODUCTION

Defendants do not dispute that they used their discretion under state law to permanently block, by denying with prejudice, Lighthouse's proposal to export coal to Asia from its Longview, Washington facility. Nor do they disagree that the dormant foreign Commerce Clause requires "additional scrutiny when state regulation affects foreign commerce" in a manner that defeats the federal government's constitutional authority to "speak with one voice" in that arena. Instead, their counter-argument depends on the narrow and technical claim that they are not actually regulating foreign commerce, despite the fact that their decision effectively prohibits the export of coal to Asia through Washington State.

To bolster their position, Defendants argue against a straw man. But Lighthouse and BNSF have never said that "virtually any" state decision with "an incidental effect" on foreign commerce is unconstitutional. So long as they do not discriminate against or disproportionately burden foreign commerce, Defendants can apply state law to Lighthouse's proposed terminal. What they cannot do is what they now expressly acknowledge doing: make a discretionary policy decision that closes a trade route between the United States and Asian countries. That decision both deploys state policy judgment in an area of exclusive, plenary federal authority and deviates from federal policy concerning coal exports.

ARGUMENT

The U.S. Supreme Court has held that state action can "prevent[] the federal government from 'speaking with one voice' in international trade"[1] in at least two separate ways. First, a state action may "implicate[] foreign policy issues which must be left to the Federal government."[2] Alternatively, a state action may "violate[] a clear federal directive."[3] If either

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[1] *Japan Line Ltd. v. Cty. of Los Angeles*, 441 U.S. 434, 454 (1979).

[2] *Container Corp. of Am. v. Franchise Tax Bd.*, 463 U.S. 159, 194 (1983).

[3] *Id.*

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1 of these conditions is met, the state's action is unconstitutional under the dormant foreign
2 Commerce Clause.[4]

3
4 **I. Defendants are using discretionary policymaking authority under state law to permanently block a trade route from interior states to Asian countries.**

5 **A. The Terminal is an instrumentality of foreign commerce and Defendants are indisputably regulating it.**

6 Lighthouse and BNSF's motion leads with the argument that Defendants' discretionary
7 decision to block the Terminal usurps the federal government's exclusive authority over foreign
8 commerce, regardless of any explicit federal policies concerning coal exports.[5] The major
9 premise of Defendants' response is that "Ecology's decision does not regulate foreign
10 commerce in any conceivable respect."[6] That premise is fatally flawed.

11 Defendants admit that their actions qualify as "regulation." They simply characterize it
12 as "Regulat[ing] a Single Proposal at a Single Site."[7] So to escape the strictures of the dormant
13 foreign Commerce Clause, Defendants must argue that what they are regulating is not "foreign
14 commerce." To that end, they contend that their 401 Denial "does not reference any particular
15 foreign nation or instrument of foreign commerce" and that "[t]his case . . . does not involve
16 regulation of any instrumentality of foreign commerce . . . ."[8] This is where their argument goes
17 off the rails.

18 As Lighthouse and BNSF noted in their motion, the Supreme Court specifically says in
19 *Gibbons v. Ogden* that the federal government's authority over foreign commerce extends to
20 commerce "that may commence or terminate at a port within a State."[9] Consistent with that
21 holding, the Code of Federal Regulation defines "instrumentalities" of commerce to include

22
23 [4] *Id.*

24 [5] Dkt. 212, Plaintiffs' Mtn. for Partial Summ. J. ("Plaintiffs' Mtn.") at 10-16.

[6] Dkt. 271, Defendants' and Defendant-Intervenors' Opp. to Plaintiffs' Mtn. for Partial Summ. J. ("Defendants' Resp.") at 6.

25 [7] *Id.*

26 [8] *Id.* at 8, 9 n.4.

[9] *Gibbons v. Ogden*, 22 U.S. 1, 195 (1824); *see* Plaintiffs' Mtn. at 8.

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every facility or mode of transportation that carries such commerce, including "railroad, bus, truck or steamship terminals," as well as the "railroads" and "ships" themselves.[10] These common-sense definitions flatly contradict Defendants' primary arguments. Not only does the 401 Denial "reference" the railroads and ships that would transport coal from the mine, to the Terminal, and then to Asian customers, it ***directly regulates*** the Terminal, which is indisputably an instrumentality of foreign commerce.

In short, by regulating the Terminal, Defendants are inherently, unavoidably regulating foreign commerce. That fact alone does not mean their actions violate the dormant foreign Commerce Clause. But they cannot avoid dormant Commerce Clause scrutiny by claiming that their actions do not regulate foreign commerce.[11]

B. Both aspects of Defendants' 401 Denial involved their policy discretion.

In another attempt to deflect attention from their discretionary decisions, Defendants argue that their 401 Denial was based "in part" on Lighthouse's alleged "fail[ure] to demonstrate compliance with state water quality standards."[12] "That part of Ecology's decision," they say, "was not discretionary."[13]

This argument ignores several pages of Lighthouse and BNSF's motion, which pointed out that the water quality aspect of Ecology's decision ***was*** discretionary, at least to the extent that it was made "with prejudice."[14] In other forums, Defendants have conceded this point, acknowledging that "Ecology did not deny the [401] certification 'with prejudice' based on

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[10] 29 C.F.R. § 776.29(a).

[11] Defendants' reliance on *Norfolk Southern v. Oberly* will not save them. 822 F.2d 388 (3rd Cir. 1987). The court in that case is clear that the plaintiff never "claimed that heightened scrutiny is independently justified by a threat that the [state law] will prevent the nation from speaking with one voice in regulating foreign commerce." *Id*. at 405. Lighthouse and BNSF's motion, by contrast, squarely presents the "one voice" issue.

[12] Defendants' Resp. at 8.

[13] *Id.*

[14] Plaintiffs' Mtn. at 14-16.

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[alleged water quality] deficiencies."[15] That concession is fully consistent with the facts uncovered in this case, which indicate that Defendant Bellon overrode her staff's original "without prejudice" denial.[16] Defendants' silence about the discretionary nature of this "with prejudice" decision speaks volumes.

Defendants likewise make no effort to dispute that the aspect of their 401 Denial that involved Washington's State Environmental Policy Act ("SEPA") was discretionary. As Lighthouse and BNSF explained in their motion, substantive SEPA denials are always discretionary,[17] and Defendants have admitted as much in this case.[18]

C. As a matter of law, Defendants cannot regulate foreign commerce using their policy discretion.

On the legal merits of Lighthouse and BNSF's summary judgment argument, Defendants argue that "whether or not Ecology's decision was discretionary is simply not relevant" because the 401 Denial does not "impair[] the federal government's ability to speak with one voice regarding foreign commerce."[19] In so doing, Defendants ignore the specifics of the legal standard they cite. U.S. Supreme Court precedent describes the federal government's power over foreign commerce as "exclusive and plenary," such that "its exercise may not be limited, qualified, or impeded to any extent by state action."[20] To protect this power, the Court held in *Container Corp.* that state action violates the dormant foreign Commerce Clause's "one voice standard" if it "implicates foreign policy issues which must be left to the Federal government."[21]

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[15] Dkt. 228, Pollution Control Hearings Board, No. 17-090, Ecology's Reply in Support of Mtn. for Partial Summ. J. at 2 (May 2, 2018).

[16] Plaintiffs' Mot. at 15; Dkt. 228-17, Bellon Dep. Tr. 246:18-23.

[17] Plaintiffs' Mot. at 12 (citing *Polygon Corp. v. City of Seattle*, 578 P.2d 1309, 1312-13 (Wash. 1978)).

[18] Plaintiffs' Mot. at 12 (citing Dkt. 228-7, Ecology 30(b)(6) Dep. Tr. 108:15-18).

[19] Defendants' Resp. at 8.

[20] *Bd. of Trustees of Univ. of Ill. v. U.S.*, 289 U.S. 48, 56-57 (1933).

[21] *Container Corp.*, 463 U.S. at 194.

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Put another way, only the federal government can impose its policy priorities and exercise its policy judgment with respect to instrumentalities of foreign commerce. That is the definition of "exclusive and plenary" power.[22] "[A]n actual conflict between state and federal law" is unnecessary because the dormant foreign Commerce Clause broadly protects "the policy of uniformity . . . which presumptively prevails" even when the federal government has not spoken directly to a particular issue.[23]

Defendants have decided here that the Terminal—an instrumentality of foreign commerce—can ***never*** be permitted because the project is inconsistent with discretionary ***state*** policy.[24] They chose to elevate their state policy preferences over federal ones. In so doing, they infringed on the federal government's constitutional role as the sole policymaker when it comes to matters of foreign commerce. Defendants simply do not have any discretionary authority to block the Terminal, no matter how emphatically they couch their decision as an effort to "protect state water quality."[25] By enforcing unwritten, discretionary state policy preferences against an instrumentality of foreign commerce, Defendants' decision unavoidably "implicates foreign policy issues which must be left to the Federal Government."[26]

Finally, there is no slippery slope here, as Defendants imply. Enforcing the dormant foreign Commerce Clause against their 401 Denial would not eliminate state regulation over every port and vessel that traffics in foreign goods.[27] The Terminal is the last remaining proposal for opening a significant coal export route to Asia.[28] Defendants' discretionary policy

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[22] *Bd. of Trustees*, 289 U.S. at 56.

[23] *Wardair Canada v. Fla. Dep't of Revenue*, 477 U.S. 1, 8 (1986).

[24] *See* Dkt. 1-1, Order #15417, *In the Matter of Denying Section 401 Water Quality Certification to Millennium Bulk Terminals Longview-LLC* ("401 Denial") at 5-10; Plaintiffs' Mot. at 13-14.

[25] Defendants' Resp. at 8.

[26] *Container Corp.*, 463 U.S. at 194.

[27] Defendants' Resp. at 9.

[28] *See, e.g.,* Dkt. 262-7 (Defendant-Intervenors admitting that the 401 Denial represents "[t]he last surviving coal export terminal proposed in the Northwest"); Dkt. 262-6 (Defendants admitting that the Terminal is the "[o]nly coal export terminal in WA or OR that hasn't been [been] withdrawn or been denied").

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decision to prohibit its construction has massive ramifications for the economies of multiple western states. In these circumstances, at least, the dormant foreign Commerce Clause prohibits the State of Washington from usurping the federal government's policymaking role.

* * *

Because Defendants lack discretionary authority to block the Terminal, the 401 Denial with prejudice should be vacated, Defendants should be enjoined from using SEPA to block the Terminal, and Lighthouse should be given the opportunity to further demonstrate that it can comply with Washington State's water quality standards by providing the additional information sought by the Department of Ecology staff before Defendant Bellon's decision.

II. Defendants are ignoring clear federal policy favoring coal exports.

The independent second prong of the U.S. Supreme Court's "one voice" test in *Container Corp.* prohibits state action that "violates a clear federal directive."[29] Defendants offer three reasons why their actions are valid under this test: (1) Executive Branch statements are inadequate evidence of federal policy; (2) if a federal policy exists, it allows balancing of other interests; and (3) Lighthouse's and BNSF's lobbying efforts suggest that current policy is unclear or unfavorable.[30] These arguments are insufficient, on their own or collectively, to overcome the unrebutted evidence that federal policy favors coal exports.

A. Congress has expressed support for coal and coal exports.

Defendants' first argument rests on an over-reading of the U.S. Supreme Court's decision in *Barclays Bank PLC v. Franchise Tax Board*.[31] As Defendants see it, the Court in that case found that "Executive Branch statements that do not have the force of law cannot render unconstitutional duly enacted state laws."[32] It is true that in *Barclays Bank*, the Court

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[29] *Container Corp.*, 463 U.S. at 194.

[30] Defendants' Resp. at 3-5.

[31] *Barclays Bank PLC v. Franchise Tax Bd.*, 512 U.S. 298 (1994).

[32] Defendants' Resp. at 3.

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was not swayed by various "Executive statements" of policy. But that was in the context of an issue on which "Congress [had] focused its attention" and affirmatively decided not to "exercise[e] its authority."[33] The Court's narrow holding in *Barclays* is thus that Executive Branch policy preferences cannot invalidate state laws that are specifically "congressionally condoned."[34]

In this case, Defendants' actions are congressionally condemned, not "congressionally condoned." As far back as 1970, Congress declared that "it is the continuing policy of the Federal Government in the national interest to foster and encourage private enterprise in [] the development of economically sound and stable domestic mining, minerals, metal and mineral reclamation industries," including coal.[35] In 1993, Congress further ordered the Secretary of Commerce to prepare "a plan for expanding exports of coal mined in the United States."[36] Congress has also broadly delegated authority over foreign commerce and trade policy to the Executive, most recently in the Trade Preferences Extension Act of 2015.[37] That Congressional context, on top of the evidence referenced in Lighthouse and BNSF's motion, establishes a "clear federal directive" favoring coal export from private terminals.[38]

B. Only the federal government can balance competing federal policies.

Defendants accurately observe that the United States National Security Strategy favors "an approach that balances energy security, economic development, and environmental protection."[39] Their mistake is to assume that Defendant Bellon is empowered to strike that balance by deciding that the Terminal fails to sufficiently protect the environment. As

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[33] *Barclays Bank*, 512 U.S. at 329.

[34] *Id.* at 330.

[35] Mining Minerals Policy Act of 1970 § 101, Pub. L. 91–631.

[36] 42 U.S.C. § 13367(a).

[37] Pub. L. 114-27.

[38] Plaintiffs' Mot. at 16-18.

[39] Defendants' Resp. at 4.

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Lighthouse and BNSF have explained, the National Security Strategy is clear about the outcome of the federal government's balancing: "The United States will promote exports of our energy resources" by "expand[ing] our export capacity through the continued support of private sector development of coastal terminals."[40] Defendants' decision with respect to the Terminal thwarts this clear federal directive, as well as the federal government's subsequent efforts to specifically implement it, such as the Japan-U.S. Strategic Energy Partnership.[41]

C. Lobbying for active federal intervention does not speak to dormant foreign Commerce Clause issues.

Finally, Defendants argue that Lighthouse's and BNSF's lobbying efforts somehow represent a concession that "no clear federal policy exists."[42] They say nothing about their own far more relevant concession that they "make[] no contention regarding the policy of the United States with respect to American coal export to Asia."[43] In any event, Lighthouse and BNSF's claims in this case are brought under the ***dormant*** Commerce Clause—i.e., the implicit constitutional prohibition on state actions that exists even in the absence of an express federal law.[44] That the federal government has never enacted a statute authorizing the Terminal or otherwise directly corrected Washington State's missteps says nothing about a more general federal policy favoring coal export under the dormant Commerce Clause.

[40] Dkt. 222-11, U.S. National Security Strategy at 23.

[41] Robisch Decl., Ex. 2, National Coal Council Report at 49. *See also* Japan-United States Strategic Energy Partnership, *available at* https://www.meti.go.jp/english/press/2017/pdf/1107_001a.pdf. Defendants relatedly argue that because the U.S. Army Corps of Engineers (Corps) denied a Section 404 permit for a Whatcom County coal export terminal, that federal policy is to "balance exports with other values." Defendants' Resp. at 4-5. There again, it was the federal government—not a state—that balanced competing values.

[42] Defendants' Resp. at 5.

[43] Dkt. 222-15, Def. Bellon's Answers to Plaintiffs' Third Set of Interrogatories and Requests for Production, Resp. to Interrogatory 15; Dkt. 222-16, Def. Inslee's Answers to Plaintiffs' Third Set of Interrogatories and Requests for Production, Resp. to Interrogatory 11.

[44] *Wardair Canada*, 467 U.S. at 8.

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III. The Clean Water Act does not exempt Defendants' actions from dormant foreign Commerce Clause scrutiny.

As they did in connection with their motion for summary judgment, Defendants argue here that their actions are exempt from dormant foreign Commerce Clause scrutiny because "the 401 denial was expressly authorized by Congress."[45] That is, at least, an exaggeration. Congress did not expressly authorize Washington State to deny Section 401 certification for this particular project. Section 401 of the federal Clean Water Act ("CWA") generally authorizes states to assess a proposed project's compliance with their water quality standards.[46] As Lighthouse and BNSF explained in opposition to Defendants' summary judgment motion, that broad authorization does not immunize each individual Section 401 decision from dormant Commerce Clause review.[47]

In opposition to Lighthouse and BNSF's summary judgment motion, Defendants now cite *Barclays* to support the proposition that CWA Section 401 "passively" authorized their regulation of foreign commerce.[48] Again, however, they are over-reading that case. The "passive" authorization that the Supreme Court condoned in *Barclays* stemmed from the fact that the Court's *Container Corp.* decision, which upheld the same law, had "left the ball in Congress' court."[49] The Court reasoned that Congress' decision not to act in the face of the *Container Corp.* decision, despite numerous efforts to overturn that decision, was a tacit endorsement of it.[50] There are no comparable circumstances in this case. Because no court before this one has addressed the constitutionality of Defendants' actions, there is no argument for "passive" endorsement of the 401 Denial.

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[45] Defendants' Resp. at 9.

[46] 33 U.S.C. § 1341.

[47] *See* Dkt. 262, Plaintiffs' Opp. to Defendants' Mtn. for Summ. J. at 49-51.

[48] Defendants' Resp. at 10.

[49] *Barclays Bank*, 512 U.S. at 324.

[50] *Id.* at 324-27.

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1 **IV. Defendants' motion to strike should be denied.**

2 Defendants separately ask the Court to strike the declarations of Plaintiffs' expert, G.
3 David Banks, and a fact witness, Kenji Ushimaru.[51] Both requests should be denied.[52]

4 **A. Banks Declaration**

5 As to Banks, Defendants argue that he offers only legal conclusions, lacks adequate
6 foundation for his opinions, and was not identified as an initial expert.[53] Like almost any
7 witness, Banks offers testimony "about one of the key legal questions before this Court."[54] But
8 his declaration does not contain "legal conclusions." It is, of course, "sometimes impossible for
9 an expert to render his or her opinion on a subject without resorting to language that recurs in
10 the applicable legal standard."[55] That is perfectly appropriate.[56] Banks offers uniquely helpful,
11 unrebutted testimony on the how, what, and why of federal coal export policy. That is factual
12 testimony, not a legal conclusion.

13 Banks' opinions are also well-grounded. As President Trump's Special Assistant for
14 International Energy and Environment, and President Bush's Senior Advisor on International
15 Affairs and Climate Change, Banks quite literally formulated and effectuated federal energy
16 policy.[57] Because he frequently facilitated in-person energy negotiations with Japan, South
17 Korea, and other governments, his "conversation and work experience is not . . . reflected in a
18 piece of paper that's been published."[58] He painstakingly detailed this specialized knowledge,
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21 [51] *See* Defendants' Resp. at 11-13.

22 [52] In all events, neither declaration should be wholly stricken. If the Court finds part of a declaration infirm, it should simply disregard that part of the declaration. *See Dolan v. Sentry Credit, Inc.*, No. C17-1632 RAJ, 2018 WL 6604212 at *3 (W.D. Wash. Dec. 17, 2018) (only disregarding evidence "to the extent" it is inadmissible).

23 [53] Defendants' Resp. at 11.

[54] *Id.*

24 [55] *See, e.g., U.S. v. Diaz*, 876 F.3d 1194, 1198-99 (9th Cir. 2017).

25 [56] *See Hangarter v. Provident Life and Acc. Ins Co.*, 373 F.3d 998, 1017 (9th Cir. 2004).

[57] Dkt. 219, Banks Decl. ¶¶ 1-5; Robisch Decl., Ex. 1, Banks Dep. 57:25-58:7 ("I was very much involved in creating this policy.").

26 [58] Robisch Decl., Ex. 1, Banks Dep. 49:20-52:23,

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1 and the foundation for it, in a 23-page report and full-day deposition.[59] This sort of "knowledge
2 [and] experience" plainly falls within Federal Rule of Evidence 702's ambit.[60] Defendants'
3 untimely, shadow *Daubert* motion should therefore be denied.

4 It is irrelevant that Banks prepared only a rebuttal report. Defendants identify no rule or
5 precedent indicating that a timely identified expert—rebuttal or otherwise—cannot support a
6 summary judgment motion by declaration.[61] What is more, Banks' testimony squarely answers
7 Defendants' claim—echoed by their experts—that there is no federal pro-coal export policy.
8 For all these reasons, Banks' testimony is proper on summary judgment.

9 **B. Ushimaru Declaration**

10 Ushimaru's declaration is proper too. Defendants admit that Ushimaru's "personal
11 perceptions are fair game for lay witness testimony," but complain that his observations
12 constitute "ultimate legal opinions."[62] Again, Defendants confuse Ushimaru's fact testimony
13 ***about*** legal issues with testimony in the form of legal conclusions. For over thirty-five years,
14 Ushimaru has worked with Japanese businesses, utilities, and officials on energy and trade
15 policy issues, including directly consulting the Japanese government.[63] His declaration reflects
16 perceptions and observations gathered during numerous meetings, negotiations, and consulting
17 sessions. Defendants' sole example of a "legal conclusion"—Ushimaru's statement that actions
18 like the 401 Denial "creat[e] political tension with the Japanese"—is not even couched in
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[59] *See* Dkt. 219, Banks Decl.; Robisch Decl., Ex. 1, Banks Dep. 51:6-10.

[60] Fed. R. Evid. 702. *See also Siring v. Oregon State Bd. of Higher Edu.*, 927 F. Supp. 2d 1069, 1075 (D. Ore. 2013) (an experts' "understanding of and experience in implementing [policy]" satisfies FRE 702); *Woods v. Conagra Foods Lamb Weston, Inc.*, No. 4:15-cv-05067-SAB, 2016 U.S. Dist. LEXIS 126584 at *4 (E.D. Wash. June 3, 2016) ("[p]rofessional experience is a legitimate basis for expert testimony, based on general background and life experience.").

[61] *Cf.* Defendants' Resp. at 12. In *Truckstop.net, LLC v. Sprint Commc'ns Co.*, the court excluded a rebuttal report, citing no reason why, when the opposing party didn't cite even the "gist" of the opinion the report rebutted. And in *George v. Sonoma Cnty. Sheriff's Dep't* and *Smit v. Wal-Mart Stores*, the courts excluded rebuttal testimony that, unlike here, didn't actually rebut anything.

[62] Defendants' Resp. at 12.

[63] Dkt. 215, Ushimaru Decl. ¶¶ 1-7.

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legalese.[64] It is nothing more than a factual observation stemming from Ushimaru's understanding of U.S.-Japan bi-lateral agreements, Japan's geopolitical setting, and his observations working with Japanese interests.[65]

Nor is Ushimaru's declaration "completely comprised of inadmissible hearsay."[66] Ushimaru's declaration contains no quotes or statements from anyone else and only sporadically mentions his clients' views or understandings. When Ushimaru does occasionally reference his clients, it is to provide foundation for ***his*** understanding and perception, or the advice ***he*** offers to his clients.[67] Even if Ushimaru did offer some hearsay, it likely satisfies one or more hearsay exceptions, such as present sense impression or state of mind.[68] At this stage, evidence is excludable only if it "cannot be presented in a form that would be admissible."[69]

CONCLUSION

For the reasons stated above and in Lighthouse and BNSF's motion for summary judgment, Defendants' with prejudice 401 Denial should be vacated and Lighthouse should be given the opportunity to demonstrate that it can comply with applicable state water quality standards.

Dated this 15th day of March, 2019.

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[64] Defendants' Resp. at 13.

[65] *See* Dkt. 215, Ushimaru Decl. ¶¶ 24-29.

[66] Defendants' Rep. at 13.

[67] *See U.S. v. Maestre-Polo*, No. 6:13-cr-256-Orl-37GJK, 2014 U.S. Dist. LEXIS 21902 at *11-12 (M.D. Fla. Feb. 21, 2014) (a statement "offered for its effect on [a] listener" is "not hearsay").

[68] For example, a Japanese officials' description of a meeting or event, or description of their intent or plan, which would satisfy FRE 803(1) and FRE 803(3), respectively.

[69] *See, e.g.,* Fed. R. Civ. P. 56(c)(2).

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CERTIFICATE OF SERVICE

I hereby certify that on March 15, 2019, I caused the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of the filing to all counsel of record.

By: s/Amanda L. Crawford

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