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6 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
7 AT SEATTLE

8 UNITED STATES OF AMERICA,

9 Plaintiff,

10 v.

11 BOBBY WOLFORD TRUCKING &  
12 SALVAGE, INC., et al.,

13 Defendants.

C18-747 TSZ

MINUTE ORDER

14 The following Minute Order is made by direction of the Court, the Honorable  
Thomas S. Zilly, United States District Judge:

15 (1) The motion to exclude the expert testimony of Mark Buckley, Ph.D.  
16 brought by defendant Bobby Wolford Trucking & Salvage, Inc. (“BWT”), pursuant to  
*Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993), docket no. 30, is DENIED.  
17 Defendant’s motion does not challenge the credentials of Dr. Buckley; rather, it  
challenges solely the methodology used by Dr. Buckley. *See* Motion at 7 (docket no. 30).  
18 Dr. Buckley has analyzed two of the statutory factors relevant to the determination of a  
civil penalty under the Clean Water Act (“CWA”). *See* 33 U.S.C. § 1319(d). Defendant  
19 contends that the CWA “requires” an expert to examine all six factors and, as a result,  
Dr. Buckley’s expert report “fails to comport with the law.” Motion at 10. Defendant’s  
20 contention is without merit. In support of the United States’ claim for a civil penalty,  
Dr. Buckley has analyzed the two factors that involve questions of economics, to wit:  
21 the economic benefit, if any, BWT obtained (factor 2) and the economic impact of a  
penalty on BWT (factor 5). Dr. Buckley analyzed these two economic factors using a  
22 reliable method consistently applied. If BWT disagrees with the analysis, vigorous cross-

1 examination and presentation of contrary evidence is available to BWT to challenge  
2 Dr. Buckley's conclusions.<sup>1</sup> *See Daubert*, 509 U.S. at 596.<sup>2</sup>

3 (2) The Clerk is directed to send a copy of this Minute Order to all counsel of  
4 record.

5 Dated this 4th day of November, 2019.

6 William M. McCool  
7 Clerk

8 s/Karen Dews  
9 Deputy Clerk

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19 <sup>1</sup> BWT's suggestion that Dr. Buckley was also required to consider the EPA's Policy on  
20 Civil Penalties is without merit. That document is only a guide in connection with settlement  
under the CWA and the Government is not bound by it. *United States v. City of Evansville, Ind.*,  
2011 WL 2470670 at \*6 (S.D. Ind. June 20, 2011).

21 <sup>2</sup> The Court has also considered the Government's challenge to the late disclosure of  
22 Dr. Dunford's expert report dated June 21, 2019, and concludes that the report, Ex. C to Hansen  
23 Decl. (docket no. 38), will be considered by the Court but it does not support BWT's motion to  
exclude Dr. Buckley's testimony.