



State Water Resources Control Board

October 27, 2023

RE: Hearing Officer's Rulings on City of Solvang's Evidentiary Objections in the Matter of City of Solvang's Petition for Change of Water Right Permit 15878

TO ALL PARTIES:

On September 22, 2023, the City of Solvang (Solvang) filed (1) Evidentiary Objections to Direct Testimony of Kyle Evans, Direct Testimony of Hans Sin, Direct Testimony of Bryan DeMucha, and Certain Exhibits Submitted by California Department of Fish and Wildlife (CDFW), (2) Evidentiary Objections to Direct Testimony of Richard Bush, and Certain Exhibits Submitted by National Marine Fisheries Service (NMFS), and (3) Evidentiary Objections to Direct Testimony of William (Bill) Trush. On September 29, 2023, CDFW, NMFS, and CalTrout filed responses to Solvang's evidentiary objections.

Attached to this letter are the following rulings on these evidentiary objections:

Attachment A – Hearing Officer's Rulings on Solvang's Evidentiary Objections to Direct Testimony of Kyle Evans, Direct Testimony of Hans Sin, Direct Testimony of Bryan DeMucha, and Certain Exhibits Submitted by CDFW

Attachment B – Hearing Officer's Rulings on Solvang's Evidentiary Objections to Direct Testimony of Richard Bush, and Certain Exhibits Submitted by NMFS

Attachment C – Hearing Officer's Rulings on Solvang's Evidentiary Objections to Direct Testimony of William (Bill) Trush

Sincerely,

/s/ Nicole L. Kuenzi

Nicole L. Kuenzi
Presiding Hearing Officer
Administrative Hearings Office
State Water Resources Control Board

E. JOAQUIN ESQUIVEL, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

SERVICE LIST

B. Tilden Kim
Richards Watson Gershon
350 South Grand Ave., 37th Floor
Los Angeles, CA 90071
tkim@rwglaw.com
Attorney for City of Solvang

Chelsea O'Sullivan
847 Monterey Street, Suite 206
San Luis Obispo, CA 93401
cosullivan@rwglaw.com
Attorney for the City of Solvang

Stephanie Osler Hastings
Jessica L. Diaz
Brownstein Hyatt Farber Schreck, LLP
1021 Anacapa Street, 2nd Floor
Santa Barbara, CA 93101
SHastings@bhfs.com
jdiaz@bhfs.com
Attorneys for Alisal Guest Ranch

Gary M. Kvistad
Brownstein Hyatt Farber Schreck, LLP
1021 Anacapa Street, 2nd Floor
Santa Barbara, CA 93101
Gkvistad@bhfs.com
Attorney for Santa Ynez River Water
Conservation District, ID No. 1

Elisabeth L. Esposito
Brownstein Hyatt Farber Schreck, LLP
1415 L Street, Suite 800
Sacramento, CA 95814
Eesposito@bhfs.com
Attorney for Santa Ynez River Water
Conservation District, ID No. 1

Laurie K. Beale
NOAA Office of General Counsel
GCNW, 7600 Sand Point Way NE
Seattle, WA 98115
laurie.beale@noaa.gov

Attorney-Advisor for NOAA Fisheries
Rick Bush
NOAA Fisheries
501 West Ocean Blvd., Suite 4200
Long Beach, CA 90802
Rick.Bush@noaa.gov

Mary Capdeville
Deputy Chief, Southwest Section
NOAA Office of General Counsel
U.S. Department of Commerce
501 W. Ocean Blvd., Suite 4470
Long Beach, CA 90802
mary.capdeville@noaa.gov

Maggie Hall
Linda Krop
Alicia Roessler
California Trout
Environmental Defense Center
906 Garden Street
Santa Barbara, CA 93101
mhall@environmentaldefensecenter.org
lkrop@environmentaldefensecenter.org
aroessler@environmentaldefensecenter.org
Attorneys for California Trout

Steven M. Torigiani
Brett A. Stroud
Young Wooldridge, LLP
1800 30th St., 4th Floor
Bakersfield, CA 93314
storigiani@youngwooldridge.com
bstroud@youngwooldridge.com
kmoen@youngwooldridge.com
wgerl@youngwooldridge.com
cobrien@youngwooldridge.com
Attorneys for Santa Ynez River Water
Conservation District

Paeter Garcia, General Manager
Santa Ynez River Water Conservation
District, ID No. 1
P.O. Box 157
Santa Ynez, CA 93460
pgarcia@syrwd.org

Randy Murphy
City Manager, City of Solvang
1644 Oak Street
Solvang, CA 93463
randym@cityofsolvang.com

Lena Germinario
Stephen Puccini
Office of General Counsel
California Department of Fish and Wildlife
P.O. Box 944209
Sacramento, CA 94244-2090
lana.germinario@wildlife.ca.gov
stephen.puccini@wildlife.ca.gov
Attorneys for California Department of Fish and Wildlife

Sam Bivins
Downey Brand LLP
621 Capitol Mall, Fl. 18,
Sacramento, CA 95814
sbivins@downeybrand.com
nchapman@downeybrand.com
pcantle@ccrb-board.org
Attorney for Cachuma Conservation Release Board

Administrative Hearings Office
adminhrгоffice@waterboards.ca.gov

1 RICHARDS, WATSON & GERSHON
 A Professional Corporation
 2 B. TILDEN KIM (BAR NO. 143937)
 tkim@rwglaw.com
 3 CHELSEA E. O'SULLIVAN (BAR NO. 308369)
 co'sullivan@rwglaw.com
 4 JACOB METZ (BAR NO. 341565)
 jmetz@rwglaw.com
 5 TAYLOR FOLAND (BAR NO. 333673)
 tfoland@rwglaw.com
 6 847 Monterey Street, Suite 206
 San Luis Obispo, California 93401
 7 Telephone: 805.439.3515
 Facsimile: 800.552.0078

8 Attorneys for Petitioner
 9 CITY OF SOLVANG

10 **STATE WATER RESOURCES CONTROL BOARD**
 11 **OFFICE OF ADMINISTRATIVE HEARINGS**

12
 13 In the matter of the Petition for Change of the
 14 City of Solvang for Water-Right Permit 15878
 (Application A022423), which authorizes
 15 diversion of water from the Santa Ynez River
 16 (underflow) in Santa Barbara County

**CITY OF SOLVANG'S EVIDENTIARY
 OBJECTIONS TO DIRECT TESTIMONY
 OF KYLE EVANS, DIRECT TESTIMONY
 OF HANS SIN, DIRECT TESTIMONY OF
 BRYAN DEMUCHA, AND CERTAIN
 EXHIBITS SUBMITTED BY CALIFORNIA
 DEPARTMENT OF FISH AND WILDLIFE**

Hearing Dates and Time:

Dates: November 6, 8-9, 29-30, 2023; and
 December 6-7, 2023
 Time: 9:00 a.m.
 Hearing Officer: Nicole Kuenzi

1 TO THE STATE WATER RESOURCES CONTROL BOARD, OFFICE OF
 2 ADMINISTRATIVE HEARINGS, AND ADMINISTRATIVE HEARING OFFICER NICOLE
 3 KUENZI, AND ALL PARTIES AND THEIR COUNSEL OF RECORD:

4 PLEASE TAKE NOTICE that Petitioner City of Solvang (hereinafter “Petitioner”) hereby
 5 submits the following Evidentiary Objections to the Direct Testimony of Kyle Evans (hereinafter
 6 “Evans”), the Direct Testimony of Hans Sin (hereinafter “Sin”), and the Direct Testimony of Bryan
 7 DeMucha (hereinafter “DeMucha”) filed by the California Department of Fish and Wildlife
 8 (hereinafter “CDFW”), and certain exhibits submitted by CDFW, including exhibits submitted by
 9 CDFW but not authenticated and/or not cited in any of the Remaining Protesters’ written
 10 testimonies:

11 **CITY’S OBJECTIONS TO TESTIMONY OF EVANS AND CERTAIN EXHIBITS**

<u>MATERIAL OBJECTED TO:</u>	<u>GROUND S FOR OBJECTION:</u>	<u>RULING ON THE OBJECTION</u>
<p>12 Objection 1: CDFW-3 (Kyle 13 Evans Testimony)</p>	<p>14 Relevance Gov. Code § 11513(c); 15 Evid. Code § 350; Irrelevant and 16 unnecessary expert testimony Evid. 17 Code §801; see also City’s Motion In 18 Limine No. 4 seeking to exclude the 19 written testimony of Kyle Evans in 20 its entirety.</p>	<p>21 Sustained: _____ 22 Overruled: <u> x </u> 23 See AHO's evidentiary 24 ruling on Solvang's 25 MIL #3.</p>
<p>26 Objection 2: All Exhibits Cited 27 in Expert Testimony of Kyle 28 Evans, including: CDFW-4 through CDFW-16, CDFW-33, CDFW-40, and CDFW-50.</p>	<p>Relevance Gov. Code § 11513(c); Evid. Code § 350; Cited for irrelevant and unnecessary expert testimony Evid. Code §801; Lack of Authentication. Evid. Code § 1400, 1401. Lack of Authentication ; Lack of Foundation. Evid. Code § 403;</p>	<p>Sustained: _____ Overruled: <u> x </u> See AHO's evidentiary ruling on Solvang's MIL #1 & #3</p>

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	<p>See also City’s Motion In Limine No. 4 seeking to exclude the written testimony of Kyle Evans in its entirety.</p>	
--	---	--

CITY’S OBJECTION TO TESTIMONY OF SIN AND CERTAIN EXHIBITS

<u>MATERIAL OBJECTED TO:</u>	<u>GROUND FOR OBJECTION:</u>	<u>RULING ON THE OBJECTION</u>
<p>Objection 1: Exhibit CDFW-53, paragraphs 27-30, page 10, lines 13-28, page 11, lines 1-22 (in their entirety, including statements not reproduced here in the interest of brevity): “72. SWFL Population Trend Data on the Santa Ynez River . . .29. These data and reports are contrary to the Addendum’s biological assessments, which state that quality SWFL/LVBI habitat is less than 1.3 miles downstream of the proposed Well Site B, but not within proposed Well Site B . . . ”</p>	<p>Time-Barred and Impermissible Collateral Attack on City’s CEQA Documentation, which is now final and conclusively presumed valid in all respects, Pub. Resources Code, § 21167; Pub. Resources Code, § 21167.2, 14 CCR, § 15112.).</p>	<p>Overruled See AHO's evidentiary ruling on Solvang's MIL #2.</p>
<p>Objection 2: Exhibit CDFW-53; paragraph 44.C, line 20: “On May 18th, 2023, CDFW staff</p>	<p>Relevance Gov. Code § 11513(c); Evid. Code § 350; Lack of Foundation Evid. Code § 403. Lack</p>	<p>Sustained: _____ Overruled: <u> x </u></p>



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<p>took photos (CDFW-67) between Well Sites A and B, immediately below the rock quarry, looking downstream...”</p>	<p>of Personal Knowledge. Evid. Code § 702(a). Lack of Authentication Evid. Code § 1400, 1401.</p>	<p>See AHO's evidentiary ruling on Solvang's MIL #1; see also Gov. Code, § 11513, subd. (c); Cal. Code Regs., tit. 23, § 648.</p>
<p>Objection 3: CDFW-53; paragraphs 68-81, page 25, lines 22-25, page 26-28, page 29, lines 1-19 (in their entirety, including statements not reproduced here in the interest of brevity): “In the next section, I discuss why the conclusions of the Master Plan Update EIR and Addendum regarding impacts from the proposed project on riparian communities and listed species are not supported by the best available science. . . .”</p>	<p>Time-Barred and Impermissible Collateral Attack on City’s CEQA Documentation, which is now final and conclusively presumed valid in all respects, Pub. Resources Code, § 21167; Pub. Resources Code, § 21167.2, 14 CCR, § 15112.).</p>	<p>Sustained: _____ Overruled: <u> x </u> See AHO's evidentiary ruling on Solvang's MIL #2.</p>
<p>Objection 4: CDFW-53, paragraph 70, page 26, lines 14-16: “This data shows the bottom of the riverbed is at 332 feet on the western section of well site B and 342 feet on the eastern section of well site B, averaging at 337 feet.”</p>	<p>Improper Expert Testimony Outside Subject on which Witness has Special Knowledge, Skill, Experience, Training, or Education, Evid. Code §§ 720, 800-803; Relevance Gov. Code § 11513(c); Evid. Code § 350.</p>	<p>Sustained. Opinion offered is outside of subject matter in which expert witness has special knowledge, skill, experience, training, or education. (Evid. Code, § 801.)</p>

RICHARDS WATSON GERSHON
ATTORNEYS AT LAW - A PROFESSIONAL CORPORATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<p>Objection 5: CDFW-53, paragraphs 71-72, page 26, lines 17-25 (emphasis in original): “71. Historical water use shows that the groundwater level was higher than the bottom of the riverbed (337 feet average elevation) from the 1930s through the 1960s. This historical use data shows that in 1935, the groundwater was at a maximum level of 366 feet in elevation, which is 29 feet <i>above</i> the bottom of the riverbed, and in 1990, the groundwater was at its lowest recorded level at 318 feet in elevation. This historical fluctuation is 48 feet, well outside the 9-foot historical fluctuation that is mentioned in the Addendum. 72. Then in the early 1970s, the groundwater values started to trend downward, until they reached the level of 327—341 feet in elevation (up to 10 feet below the riverbed) from 2003-2022.”</p>	<p>Improper Expert Testimony Outside Subject on which Witness has Special Knowledge, Skill, Experience, Training, or Education, Evid. Code §§ 720, 800-803; Relevance Gov. Code § 11513(c); Evid. Code § 350.</p>	<p>Sustained: <u> x </u></p> <p>Overruled: _____</p> <p>Opinion offered is outside of subject matter in which expert witness has special knowledge, skill, experience, training, or education. (Evid. Code, § 801.)</p>
--	---	---

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<p>Objection 6: CDFW-53, paragraph 71, lines 21-22: “This historical fluctuation is 48 feet, well outside the 9-foot historical fluctuation that is mentioned in the Addendum.”</p>	<p>Improper Basis for Opinion Evid. Code § 802, 803. <i>Bader v. Johnson & Johnson</i> (2022) 86 Cal.App.5th 1094, 1105: “[T]he matter relied on must provide a reasonable basis for the particular opinion offered, and ... an expert opinion based on speculation or conjecture is inadmissible.” <i>Smith v. Workmens Comp. App. Bd. v. County of Los Angeles</i> (1969) 71 Cal.2d 588, 593: “an expert’s opinion which does not rest upon relevant facts or which assumes an incorrect legal theory cannot constitute substantial evidence.”; Relevance Gov. Code § 11513(c); Lack of Foundation. Evid. Code § 403; Lack of Authentication Evid. Code § 1400, 1401.</p>	<p>Overruled. Testimony excluded on other grounds, see <i>supra</i>.</p>
<p>Objection 7: CDFW-53; paragraphs 75-78, page 27, lines 15-27 and page 28, lines 1-12 (in their entirety, including statements not reproduced here in the interest of brevity): “75. An addition 9 - 11 feet of drawdown (as predicted based on CDFW’s</p>	<p>Improper Expert Testimony Outside Subject on which Witness has Special Knowledge, Skill, Experience, Training, or Education, Evid. Code §§ 720, 800-803; Relevance Gov. Code § 11513, Evid. Code § 350; and Lack of Foundation Evid. Code § 403. The cited portions</p>	<p>Sustained: <u> x </u> Overruled: _____ Opinion offered is outside of subject matter in which expert witness has special knowledge, skill, experience, training, or education. (Evid. Code, § 801.)</p>

RICHARDS WATSON GERSHON
ATTORNEYS AT LAW - A PROFESSIONAL CORPORATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

analysis) will lower the groundwater up to 21 feet below the riverbed bottom, based on the average groundwater data from 2003-2022. 76. The Groundwater Sustainability Plan for the Santa Ynez River Valley Groundwater Basin, Bulletin 118 Basin No. 3-15 (CDFW-76; hereafter referred to as GSP) mentions a measurable objective for depletions of interconnected surface flow and groundwater, as follows 77. The GSP on page 55 states that groundwater levels dropping below 15 feet in the eastern area of the Santa Ynez River Alluvium, which includes the proposed project area, would result in undesirable results including depletion of interconnected surface water. In addition, groundwater elevations 5 feet below the channel thalweg would maintain soil wetness as well as maintain groundwater dependent ecosystems and the riparian corridor. 78. The

of the GSP are irrelevant to the issues in this case, which involve diversions of underflow of the river (i.e., surface water) to which the referenced measurable objectives and minimum thresholds are not applicable. SGMA measurable objectives and minimum thresholds apply to the management of diversion of groundwater, not surface water. Probative value is substantially outweighed by the probability that admission will necessitate undue consumption of time and testimony regarding the interpretation of a voluminous groundwater sustainability plan (GSP) that is pending approval by the Department of Water Resources. Gov Code § 11513(f).

RICHARDS WATSON GERSHON
ATTORNEYS AT LAW - A PROFESSIONAL CORPORATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<p>additional 9-10 feet drawdown that will lower the groundwater up to 21 feet below the riverbed bottom will be outside the GSP guidelines.”</p>		
<p>Objection 8: CDFW-53; paragraph 89, lines 17-19: “On September 30, 2022, USFWS recommended protocol-level surveys for the Santa Ynez River, based on the surveys conducted by Griffith Wildlife Biology with NFWF as a next step for promoting recovery of declining LBVI populations (CDFW-78)”</p>	<p>Improper Basis for Opinion Evid. Code §§ 802, 803. <i>Bader v. Johnson & Johnson</i> (2022) 86 Cal.App.5th 1094, 1105: “[T]he matter relied on must provide a reasonable basis for the particular opinion offered, and ... an expert opinion based on speculation or conjecture is inadmissible.” <i>Smith v. Workmens Comp. App. Bd. v. County of Los Angeles</i> (1969) 71 Cal.2d 588, 593: “an expert’s opinion which does not rest upon relevant facts or which assumes an incorrect legal theory cannot constitute substantial evidence.” Relevance Gov. Code § 11513(c); Evid. Code § 350; Lack of Foundation. Evid. Code § 403; Lack of Authentication Evid. Code § 1400, 1401.</p>	<p>Sustained: _____</p> <p>Overruled: <u> x </u></p> <p>Solvang will have the opportunity to cross-examine Mr. Sin about the bases for his testimony and offer rebuttal evidence in response.</p> <p>Mr. Sin's testimony is apparently within his area of expertise and is based on an exhibit (CDFW-78) offered into evidence.</p>

RICHARDS WATSON GERSHON
ATTORNEYS AT LAW - A PROFESSIONAL CORPORATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<p>Objection 9: CDFW-53; paragraph 91, lines 27-2: “Development of a water budget will also be helpful to evaluate inputs and outputs of Solvang’s water use to make informed decisions.”</p>	<p>Relevance, Outside Scope of Proceedings Gov. Code § 11513(c); Evid. Code § 350; Probative value is substantially outweighed by the probability that admission will necessitate undue consumption of time Gov Code § 11513(f).</p>	<p>Sustained: <input checked="" type="checkbox"/> x Overruled: _____ Statement appears to be outside of the subject matter expertise of testifying expert (see Evid. Code § 801); as a result, the probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time (Gov Code § 11513(f)).</p>
<p>Objection 10: CDFW-53; paragraph 92: “I also recommend a comprehensive analysis of all the wells currently along the Santa Ynez River to determine whether pumping from the proposed wells, when considered together with pumping from existing wells, would create cumulative effects on the riparian habitats along the main stem and tributaries (CDFW-79).”</p>	<p>Relevance, Outside Scope of Proceedings Gov. Code § 11513(c); Evid. Code § 350; Probative value is substantially outweighed by the probability that admission will necessitate undue consumption of time Gov Code § 11513(f).</p>	<p>Sustained: _____ Overruled: <input checked="" type="checkbox"/> x Opinion offered appears relevant to question of whether impact of change in point of diversion proposed by Solvang would impact fish, wildlife or any other instream beneficial use (see Hearing Issue 1.c.), adequately protect public trust resources (Hearing Issue 1.d.), and be in the public interest (Hearing Issue 1.e.) when considering cumulative effects with existing diversions.</p>
<p>Objection 11: CDFW-67</p>	<p>Lack of Foundation. Evid. Code § 403. Relevance Gov. Code § 11513(c); Evid. Code § 350; Lack of Authentication. Evid. Code § 1400, 1401.</p>	<p>Sustained: _____ Overruled: _____ Ruling deferred. Photographs require some authentication and foundation to meet standard under Gov. Code section 11513, subd. (c).</p>
<p>Objection 12: CDFW-78</p>	<p>Relevance, Gov. Code § 11513(c); Evid. Code § 350. Unsubstantiated</p>	<p>Sustained: _____</p>

--	--	--

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CITY’S OBJECTIONS TO TESTIMONY OF DEMUCHA AND CERTAIN EXHIBITS.

<u>MATERIAL OBJECTED TO:</u>	<u>GROUND FOR OBJECTION:</u>	<u>RULING ON THE OBJECTION</u>
<p>Objection 1: CDFW-101 (Bryan DeMucha Testimony)</p>	<p>Improper Expert Testimony Outside Subject on which Witness has Special Knowledge, Skill, Experience, Training, or Education, Evid. Code §§ 720, 800-803; Lack of Foundation. Evid. Code § 403; Time-Barred and Impermissible Collateral Attack on City’s CEQA Documentation, which is now final and conclusively presumed valid in all respects, Pub. Resources Code, § 21167; Pub. Resources Code, § 21167.2; 14 CCR, § 15112.); see also City’s Motion In Limine No. 3</p>	<p>Sustained: _____ Overruled: <u> x </u> See AHO evidentiary ruling on Solvang's MIL #2.</p>

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	<p>seeking to exclude the written testimony of Bryan DeMucha in its entirety.</p>	
<p>Objection 2: All Exhibits Cited in Expert Testimony of Bryan Demucha, including: CDFW-80 through CDFW-98.</p>	<p>Relevance Gov. Code § 11513(c); Evid. Code § 350; Cited for Improper Expert Testimony Outside Subject on which Witness has Special Knowledge, Skill, Experience, Training, or Education, Evid. Code §§ 720, 800-803; Lack of Foundation. Evid. Code § 403; Time-Barred and Impermissible Collateral Attack, Pub. Resources Code, § 21167; Pub. Resources Code, § 21167.2.); Lack of Authentication. Evid. Code § 1400, 1401; See also City’s Motion In Limine No. 3 seeking to exclude the written testimony of Bryan DeMucha in its entirety.</p>	<p>Sustained: _____ Overruled: <u> x </u> <i>Ibid.</i></p>

CITY’S OBJECTIONS TO CERTAIN EXHIBITS
NOT AUTHENTICATED AND/OR NOT CITED

<u>MATERIAL OBJECTED TO:</u>	<u>GROUND FOR OBJECTION:</u>	<u>RULING ON THE OBJECTION</u>
-------------------------------------	-------------------------------------	---------------------------------------

1	Objection 1: CDFW-17	Relevance, Not Cited Gov. Code § 11513(c); Evid. Code § 350.	Sustained: _____ Overruled: <u> x </u> See AHO's evidentiary ruling on Solvang's MIL #1.
2			
3			
4			
5	Objection 2: CDFW-18	Relevance, Not Cited Gov. Code § 11513(c); Evid. Code § 350.	Sustained: _____ Overruled: <u> x </u> <i>Ibid.</i>
6			
7			
8	Objection 3: CDFW-19	Relevance, Not Cited Gov. Code § 11513(c); Evid. Code § 350.	Sustained: _____ Overruled: <u> x </u> <i>Ibid.</i>
9			
10			
11	Objection 4: CDFW-20	Relevance, Not Cited Gov. Code § 11513(c); Evid. Code § 350.	Sustained: _____ Overruled: <u> x </u> <i>Ibid.</i>
12			
13			
14	Objection 5: CDFW-21	Relevance, Not Cited Gov. Code § 11513(c); Evid. Code § 350.	Sustained: _____ Overruled: <u> x </u> <i>Ibid.</i>
15			
16			
17	Objection 6: CDFW-22	Relevance, Not Cited Gov. Code § 11513(c); Evid. Code § 350.	Sustained: _____ Overruled: <u> x </u> <i>Ibid.</i>
18			
19			
20	Objection 7: CDFW-23	Relevance, Not Cited Gov. Code § 11513(c); Evid. Code § 350.	Sustained: _____ Overruled: <u> x </u> <i>Ibid.</i>
21			
22			
23	Objection 8: CDFW-24	Relevance, Not Cited Gov. Code § 11513(c); Evid. Code § 350.	Sustained: _____ Overruled: <u> x </u> <i>Ibid.</i>
24			
25			
26	Objection 9: CDFW-25	Relevance, Not Cited Gov. Code § 11513(c); Evid. Code § 350.	Sustained: _____
27			
28			

1			Overruled: <u> x </u> <i>Ibid.</i>
2			
3	Objection 10: CDFW-26	Relevance, Not Cited Gov. Code §	Sustained: _____
4		11513(c); Evid. Code § 350.	Overruled: <u> x </u>
5			<i>Ibid.</i>
6	Objection 11: CDFW-27	Relevance, Not Cited Gov. Code §	Sustained: _____
7		11513(c); Evid. Code § 350.	Overruled: <u> x </u>
8			<i>Ibid.</i>
9	Objection 12: CDFW-28	Relevance, Not Cited Gov. Code §	Sustained: _____
10		11513(c); Evid. Code § 350.	Overruled: <u> x </u>
11			<i>Ibid.</i>
12	Objection 13: CDFW-29	Relevance, Not Cited Gov. Code §	Sustained: _____
13		11513(c); Evid. Code § 350.	Overruled: <u> x </u>
14			<i>Ibid.</i>
15	Objection 14: CDFW-30	Relevance, Not Cited Gov. Code §	Sustained: _____
16		11513(c); Evid. Code § 350.	Overruled: <u> x </u>
17			<i>Ibid.</i>
18	Objection 15: CDFW-31	Relevance, Not Cited Gov. Code §	Sustained: _____
19		11513(c); Evid. Code § 350.	Overruled: <u> x </u>
20			<i>Ibid.</i>
21	Objection 16: CDFW 32	Relevance, Not Cited Gov. Code §	Sustained: _____
22		11513(c); Evid. Code § 350.	Overruled: <u> x </u>
23			<i>Ibid.</i>
24	Objection 17: CDFW-35	Relevance, Not Cited Gov. Code §	Sustained: _____
25		11513(c); Evid. Code § 350.	Overruled: <u> x </u>
26			<i>Ibid.</i>
27	Objection 18: CDFW-36	Relevance, Not Cited Gov. Code §	Sustained: _____
28			

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	11513(c); Evid. Code § 350.	Overruled: <u> x </u> <i>Ibid.</i>
Objection 19: CDFW-37	Relevance, Not Cited Gov. Code § 11513(c); Evid. Code § 350.	Sustained: _____ Overruled: <u> x </u> <i>Ibid.</i>
Objection 20: CDFW-38	Relevance, Not Cited Gov. Code § 11513(c); Evid. Code § 350. Further, to the extent relied on, Improper Basis for Opinion, Evid. Code §§ 802, 803. Issue Preclusion, Collateral Estoppel because previously raised by NMFS in Cachuma proceedings; <i>Lucido v. Superior Court</i> (1990) 51 Cal.3d 335, 341: “Collateral estoppel precludes relitigation of issues argued and decided in prior proceedings.” <i>People v. Sims</i> (1982) 32 Cal.3d 468, 489: “Collateral estoppel may be applied to decisions made by administrative agencies “[w]hen an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate.” (emphasis removed). <i>Murray v. Alaska Airlines, Inc.</i> (2010) 50 Cal.4th 860, 868-69	Sustained: _____ Overruled: _____ Ruling deferred. I will hear additional argument during or after the hearing addressing whether certain issues decided in the Board's recent Order WR 2019-0148 are subject to collateral estoppel or otherwise should not be reconsidered in this proceeding.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	<p>[factual findings and final decisions of an administrative agency can be given preclusive effect in a subsequent action between the same parties]. <i>In the Matter of the Petition For Reconsideration of the Kings River Water Association, Regarding Water Right Fee Determinations For Fiscal Year 2005-2006</i>, 2006 WL 900466, at *5-7 [factual findings on identical issue were binding on same parties in subsequent State Water Board proceeding.]</p>	
<p>Objection 21: CDFW-39</p>	<p>Relevance, Not Cited Gov. Code § 11513(c); Evid. Code § 350.</p>	<p>Sustained: _____ Overruled: <u> x </u> See AHO's evidentiary ruling on Solvang's MIL #1.</p>
<p>Objection 22: CDFW-41</p>	<p>Relevance, Not Cited Gov. Code § 11513(c); Evid. Code § 350.</p>	<p>Sustained: _____ Overruled: <u> x </u> <i>Ibid.</i></p>
<p>Objection 23: CDFW-42</p>	<p>Relevance, Not Cited Gov. Code § 11513(c); Evid. Code § 350.</p>	<p>Sustained: _____ Overruled: <u> x </u> <i>Ibid.</i></p>
<p>Objection 24: CDFW-43</p>	<p>Relevance, Not Cited Gov. Code § 11513(c); Evid. Code § 350.</p>	<p>Sustained: _____ Overruled: <u> x </u> <i>Ibid.</i></p>

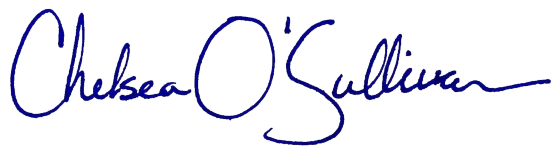
RICHARDS WATSON GERSHON
ATTORNEYS AT LAW - A PROFESSIONAL CORPORATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<p>Objection 25: CDFW-44</p>	<p>Relevance, Not Cited Gov. Code § 11513(c); Evid. Code § 350.</p>	<p>Sustained: _____ Overruled: <u> x </u> <i>Ibid.</i></p>
<p>Objection 26: CDFW-45</p>	<p>Relevance, Not Cited Gov. Code § 11513(c); Evid. Code § 350.</p>	<p>Sustained: _____ Overruled: <u> x </u> <i>Ibid.</i></p>
<p>Objection 27: CDFW-46</p>	<p>Relevance, Not Cited Gov. Code § 11513(c); Evid. Code § 350.</p>	<p>Sustained: _____ Overruled: <u> x </u> <i>Ibid.</i></p>
<p>Objection 28: CDFW-47</p>	<p>Relevance, Not Cited Gov. Code § 11513(c); Evid. Code § 350.</p>	<p>Sustained: _____ Overruled: <u> x </u> <i>Ibid.</i></p>
<p>Objection 29: CDFW-49</p>	<p>Relevance, Not Cited Gov. Code § 11513(c); Evid. Code § 350.</p>	<p>Sustained: _____ Overruled: <u> x </u> <i>Ibid.</i></p>

DATED: September 22, 2023

RICHARDS, WATSON & GERSHON
A Professional Corporation
B. TILDEN KIM
CHELSEA E. O’SULLIVAN
JACOB METZ
TAYLOR FOLAND



By: _____
Chelsea O’Sullivan
Attorneys for Petitioner
CITY OF SOLVANG

1 RICHARDS, WATSON & GERSHON
 A Professional Corporation
 2 B. TILDEN KIM (BAR NO. 143937)
 tkim@rwglaw.com
 3 CHELSEA E. O'SULLIVAN (BAR NO. 308369)
 co'sullivan@rwglaw.com
 4 JACOB METZ (BAR NO. 341565)
 jmetz@rwglaw.com
 5 TAYLOR FOLAND (BAR NO. 333673)
 tfoland@rwglaw.com
 6 847 Monterey Street, Suite 206
 San Luis Obispo, California 93401
 7 Telephone: 805.439.3515
 Facsimile: 800.552.0078

8 Attorneys for Petitioner
 9 CITY OF SOLVANG

10 **STATE WATER RESOURCES CONTROL BOARD**
 11 **OFFICE OF ADMINISTRATIVE HEARINGS**

12
 13 In the matter of the Petition for Change of the
 14 City of Solvang for Water-Right Permit 15878
 (Application A022423), which authorizes
 15 diversion of water from the Santa Ynez River
 16 (underflow) in Santa Barbara County

**CITY OF SOLVANG'S EVIDENTIARY
 OBJECTIONS TO DIRECT
 TESTIMONY OF RICHARD BUSH,
 AND CERTAIN EXHIBITS
 SUBMITTED BY NATIONAL MARINE
 FISHERIES SERVICE**

Hearing Dates and Time:

Dates: November 6, 8-9, 29-30, 2023; and
 December 6-7, 2023
 Time: 9:00 a.m.
 Hearing Officer: Nicole Kuenzi

1 TO THE STATE WATER RESOURCES CONTROL BOARD, OFFICE OF
 2 ADMINISTRATIVE HEARINGS, AND ADMINISTRATIVE HEARING OFFICER NICOLE
 3 KUENZI, AND ALL PARTIES AND THEIR COUNSEL OF RECORD:

4 PLEASE TAKE NOTICE that Petitioner City of Solvang (hereinafter “Petitioner”) hereby
 5 submits the following Evidentiary Objections to the Direct Testimony of Richard Bush (hereinafter
 6 “Bush”) filed by National Marine Fisheries Service (hereinafter “NMFS”), and certain exhibits
 7 submitted by NMFS, including exhibits submitted by NMFS but not authenticated and/or not cited
 8 in any of the Remaining Protesters’ written testimonies:

9 **CITY’S OBJECTIONS TO TESTIMONY OF RICHARD BUSH**
 10 **AND CERTAIN EXHIBITS, INCLUDING EXHIBITS NOT**
 11 **AUTHENTICATED AND/OR CITED**

<u>MATERIAL OBJECTED TO:</u>	<u>GROUND FOR OBJECTION:</u>	<u>RULING ON THE OBJECTION</u>
<p>12 Objection 1: NMFS-1, paragraph 13 9, second and third sentences 14 (“The expected decrease in 15 amount and extent of surface 16 flow in the main-stem Santa Ynez 17 River due to Solvang’s proposal 18 is expected to be 1.6 cfs assuming 19 a 1:1 relationship between the 20 Santa Ynez River surface and 21 subsurface underflow. The 22 operation of the proposed 23 Solvang wells are therefore 24 expected to adversely affect 25 different features of designated</p>	<p>Lack of Foundation Evid. Code § 403; Improper Basis for Opinion on unexplained calculations and inappropriate application of 1:1 relationship. Evid. Code §§ 802, 803. <i>Bader v. Johnson & Johnson</i> (2022) 86 Cal.App.5th 1094, 1105: “[T]he matter relied on must provide a reasonable basis for the particular opinion offered, and ... an expert opinion based on speculation or conjecture is inadmissible.”; <i>Smith v.</i> <i>Workmens Comp. App. Bd. v. County</i> <i>of Los Angeles</i> (1969) 71 Cal.2d 588,</p>	<p>Sustained: _____ Overruled: _____ Deferred. See AHO's evidentiary ruling on Solvang's MIL #2. Solvang will have the opportunity to cross examine Mr. Bush about the bases for his expert opinions. The hearing officer will assess the admissibility of Mr. Bush's testimony in the context of the record developed during the hearing and determine whether Solvang's objections are a basis to exclude the testimony or go to the</p>

RICHARDS WATSON GERSHON
ATTORNEYS AT LAW - A PROFESSIONAL CORPORATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<p>critical habitat for endangered steelhead, particularly when streamflow is relatively low, for example during the dry season or prolonged rain-free periods.”</p>	<p>593: “an expert’s opinion which does not rest upon relevant facts or which assumes an incorrect legal theory cannot constitute substantial evidence.” Relevance, Gov. Code § 11513(c); Evid. Code § 350.</p>	<p>weight to be afforded his testimony.</p>
<p>Objection 2: NMFS-1 Paragraph 13 (“Even though it does not seem biological monitoring has been required to assess the impacts of the operation of Solvang’s current wells, the available information suggests monitoring should be required. For instance, reports indicate that existing well operations in the vicinity of Alisal Bridge have contributed to Santa Ynez River dewatering and possibly the death of several steelhead during late June 2007¹⁴. The expected effects I report here are underscored by the fact that the Solvang proposal lacks a meaningful monitoring plan for detecting the presence of steelhead, assessing potential adverse impacts to steelhead, and</p>	<p>Lack of Foundation Evid. Code § 403; Improper Basis for Opinion. Evid. Code §§ 802, 803. <i>Bader v. Johnson & Johnson</i> (2022) 86 Cal.App.5th 1094, 1105: “[T]he matter relied on must provide a reasonable basis for the particular opinion offered, and ... an expert opinion based on speculation or conjecture is inadmissible.”; <i>Smith v. Workmens Comp. App. Bd. v. County of Los Angeles</i> (1969) 71 Cal.2d 588, 593: “an expert’s opinion which does not rest upon relevant facts or which assumes an incorrect legal theory cannot constitute substantial evidence.” Relevance, Gov. Code § 11513(c); Evid. Code § 350; Issue Preclusion, Collateral Estoppel because statement is inconsistent with NMFS position in Cachuma</p>	<p>Sustained: _____ Overruled: _____ Deferred. <i>Ibid.</i> The hearing officer will consider arguments about the potential application of collateral estoppel to specific issues during or after the hearing but not as a threshold matter. The hearing officer may request written briefs on this issue.</p>

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<p>taking necessary action to avoid harming or killing steelhead resulting from the City's groundwater pumping in the Santa Ynez River. The expected impacts to juvenile steelhead decrease prospects that affected individuals would reach the smolt stage, which is necessary to sustain the endangered population of southern California steelhead.”)</p>	<p>proceedings and findings in Water Order 2019-0148, at 35 (“Reclamation failed to meet rearing flows at Alisal Bridge in 2007, which resulted in unauthorized take.”); <i>Lucido v. Superior Court</i> (1990) 51 Cal.3d 335, 341: “Collateral estoppel precludes relitigation of issues argued and decided in prior proceedings.” <i>People v. Sims</i> (1982) 32 Cal.3d 468, 489: “Collateral estoppel may be applied to decisions made by administrative agencies “[w]hen an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate.” (emphasis removed). <i>Murray v. Alaska Airlines, Inc.</i> (2010) 50 Cal.4th 860, 868-69 [factual findings and final decisions of an administrative agency can be given preclusive effect in a subsequent action between the same parties]. <i>In the Matter of the Petition For Reconsideration of the Kings River Water Association, Regarding</i></p>	
--	---	--

RICHARDS WATSON GERSHON
ATTORNEYS AT LAW - A PROFESSIONAL CORPORATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	<p><i>Water Right Fee Determinations For Fiscal Year 2005-2006</i>, 2006 WL 900466, at *5-7 [factual findings on identical issue were binding on same parties in subsequent State Water Board proceeding].</p>	
<p>Objection 3: NMFS-1, paragraph 14, page 7: “Information contained in Solvang (2022) and NMFS' own records indicate the City's groundwater pumping operations may cause unauthorized take of endangered steelhead in violation of the U.S. Endangered Species Act. NMFS informed the City of this potential consequence in letters dated April 3, 2017, April 25, 2016, July 20, 2012, and February 23, 2010.”</p>	<p>Lack of Foundation Evid. Code § 403; Improper Basis for Opinion. Evid. Code §§ 802, 803. <i>Bader v. Johnson & Johnson</i> (2022) 86 Cal.App.5th 1094, 1105: “[T]he matter relied on must provide a reasonable basis for the particular opinion offered, and ... an expert opinion based on speculation or conjecture is inadmissible.”; <i>Smith v. Workmens Comp. App. Bd. v. County of Los Angeles</i> (1969) 71 Cal.2d 588, 593: “an expert’s opinion which does not rest upon relevant facts or which assumes an incorrect legal theory cannot constitute substantial evidence.” Relevance, Gov. Code § 11513(c); Evid. Code § 350</p>	<p>Sustained: _____ Overruled: _____ Deferred. See AHO's evidentiary ruling on Solvang's MIL #2 and response to Objection 1.</p>
<p>Objection 4: NMFS-1, paragraph 15, second sentence, pages 7-8:</p>	<p>Lack of Foundation Evid. Code § 403; Improper Basis for Opinion as</p>	<p>Sustained: _____</p>

RICHARDS WATSON GERSHON
 ATTORNEYS AT LAW - A PROFESSIONAL CORPORATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<p>“Additionally, I believe any approval of the petition should include the terms conditions submitted by California Department of Fish and Wildlife on behalf of NMFS, California Department of Fish and Wildlife, and CalTrout, in order to avoid and minimize significant effects on endangered species and their designated critical habitat within the State Water Board’s authority that may result in final approval of Solvang’s petition.”</p>	<p>the statement does not lay a factual foundation for any permit terms and fails to clearly identify any specific permit terms, Evid. Code §§ 802, 803. <i>Bader v. Johnson & Johnson</i> (2022) 86 Cal.App.5th 1094, 1105: “[T]he matter relied on must provide a reasonable basis for the particular opinion offered, and ... an expert opinion based on speculation or conjecture is inadmissible.”; <i>Smith v. Workmens Comp. App. Bd. v. County of Los Angeles</i> (1969) 71 Cal.2d 588, 593: “an expert’s opinion which does not rest upon relevant facts or which assumes an incorrect legal theory cannot constitute substantial evidence.” Relevance, Gov. Code § 11513(c); Evid. Code § 350.</p>	<p>Overruled: _____ Deferred. <i>Ibid.</i></p>
<p>Objection 5: NMFS-9</p>	<p>Relevance, Gov. Code § 11513(c); Evid. Code § 350. Issue Preclusion, Collateral Estoppel because previously raised by NMFS in Cachuma proceedings; <i>Lucido v. Superior Court</i> (1990) 51 Cal.3d 335, 341: “Collateral estoppel precludes relitigation of issues</p>	<p>Sustained: _____ Overruled: _____ Deferred.</p>

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	<p>argued and decided in prior proceedings.” <i>People v. Sims</i> (1982) 32 Cal.3d 468, 489: “Collateral estoppel may be applied to decisions made by administrative agencies “[w]hen an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate.” (emphasis removed). <i>Murray v. Alaska Airlines, Inc.</i> (2010) 50 Cal.4th 860, 868-69 [factual findings and final decisions of an administrative agency can be given preclusive effect in a subsequent action between the same parties]. <i>In the Matter of the Petition For Reconsideration of the Kings River Water Association, Regarding Water Right Fee Determinations For Fiscal Year 2005-2006</i>, 2006 WL 900466, at *5–7 [factual findings on identical issue were binding on same parties in subsequent State Water Board proceeding.]</p>	<p>The hearing officer will consider arguments about the potential application of collateral estoppel to specific issues during or after the hearing but not as a threshold matter. The hearing officer may request written briefs on this issue.</p>
--	---	---

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<p>Objection 6: NMFS-10</p>	<p>Relevance, Gov. Code § 11513(c); Evid. Code § 350. Issue Preclusion, Collateral Estoppel because previously raised by NMFS in Cachuma proceedings; <i>Lucido v. Superior Court</i> (1990) 51 Cal.3d 335, 341: “Collateral estoppel precludes relitigation of issues argued and decided in prior proceedings.” <i>People v. Sims</i> (1982) 32 Cal.3d 468, 489: “Collateral estoppel may be applied to decisions made by administrative agencies “[w]hen an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate.” (emphasis removed). <i>Murray v. Alaska Airlines, Inc.</i> (2010) 50 Cal.4th 860, 868-69 [factual findings and final decisions of an administrative agency can be given preclusive effect in a subsequent action between the same parties]. <i>In the Matter of the Petition For Reconsideration of the Kings River Water Association, Regarding</i></p>	<p>Sustained: _____ Overruled: _____ Deferred. <i>Ibid.</i></p>
------------------------------------	--	--

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	<p><i>Water Right Fee Determinations For Fiscal Year 2005-2006, 2006 WL 900466, at *5-7 [factual findings on identical issue were binding on same parties in subsequent State Water Board proceeding].</i></p>	
<p>Objection 7: NMFS-15</p>	<p>Relevance Gov. Code § 11513(c); Evid. Code § 350. Improper Basis for Opinion, Evid. Code §§ 802, 803. Issue Preclusion, Collateral Estoppel because previously raised by NMFS in Cachuma proceedings; <i>Lucido v. Superior Court</i> (1990) 51 Cal.3d 335, 341: “Collateral estoppel precludes relitigation of issues argued and decided in prior proceedings.” <i>People v. Sims</i> (1982) 32 Cal.3d 468, 489: “Collateral estoppel may be applied to decisions made by administrative agencies “[w]hen an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate.” (emphasis removed). <i>Murray v. Alaska Airlines, Inc.</i></p>	<p>Sustained: _____ Overruled: <u> x </u> without prejudice. The 2016 Biological Opinion was not part of the evidentiary record for the hearing that led to the Board's issuance of Order WR 2019-0148 (Order WR 2019-0148, p. 43), so the Board did not directly consider the document in that prior proceeding. This ruling is made without prejudice to the opportunity for Solvang to object to the admission of NMFS-15 based on</p>

RICHARDS WATSON GERSHON
ATTORNEYS AT LAW - A PROFESSIONAL CORPORATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	<p>(2010) 50 Cal.4th 860, 868-69 [factual findings and final decisions of an administrative agency can be given preclusive effect in a subsequent action between the same parties]. <i>In the Matter of the Petition For Reconsideration of the Kings River Water Association, Regarding Water Right Fee Determinations For Fiscal Year 2005-2006</i>, 2006 WL 900466, at *5-7 [factual findings on identical issue were binding on same parties in subsequent State Water Board proceeding].</p>	<p>the hearing officer rules that parties are estopped from relitigating certain factual or legal issues in this proceeding.</p>
<p>Objection 8: NMFS-16</p>	<p>Relevance, Gov. Code § 11513(c); Evid. Code § 350. Unsubstantiated for Purpose Being Offered Evid. Code § 803. Improper Expert Testimony Evid. Code §§ 720, 800-803; <i>Smith v. Workmens Comp. App. Bd. v. County of Los Angeles</i> (1969) 71 Cal.2d 588, 593 [“an expert’s opinion which does not rest upon relevant facts or which assumes an incorrect legal theory cannot constitute substantial evidence.”]; Relevance Gov. Code § 11513(c);</p>	<p>Sustained: _____ Overruled: <u> x </u> without prejudice. NMFS-16 does not appear to be offered as expert testimony. See also AHO's evidentiary rulings on Solvang's MIL #1 and MIL #2. This ruling is made without prejudice to the opportunity for Solvang to object to the admission of NMFS-15 based on relevance if</p>

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Evid. Code § 350. Issue Preclusion, Collateral Estoppel because cited for position inconsistent with NMFS position in Cachuma proceedings and findings in Water Order 2019-0148, at 35 (“Reclamation failed to meet rearing flows at Alisal Bridge in 2007, which resulted in unauthorized take.”); *Lucido v. Superior Court* (1990) 51 Cal.3d 335, 341: “Collateral estoppel precludes relitigation of issues argued and decided in prior proceedings.” *People v. Sims* (1982) 32 Cal.3d 468, 489: “Collateral estoppel may be applied to decisions made by administrative agencies “[w]hen an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate.” (emphasis removed). *Murray v. Alaska Airlines, Inc.* (2010) 50 Cal.4th 860, 868-69 [factual findings and final decisions of an administrative agency can be given preclusive effect in a subsequent

the hearing officer rules that parties are estopped from relitigating certain factual or legal issues in this proceeding.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	<p>action between the same parties]. <i>In the Matter of the Petition For Reconsideration of the Kings River Water Association, Regarding Water Right Fee Determinations For Fiscal Year 2005-2006, 2006 WL 900466, at *5-7 [factual findings on identical issue were binding on same parties in subsequent State Water Board proceeding].</i></p>	
<p>Objection 9: NMFS-21</p>	<p>Relevance, Not Cited. Gov. Code § 11513(c); Evid. Code § 350.</p>	<p>Sustained: _____ Overruled: <u> x </u> See AHO's evidentiary ruling on Solvang's MIL #1.</p>

 RICHARDS WATSON GERSHON
ATTORNEYS AT LAW - A PROFESSIONAL CORPORATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

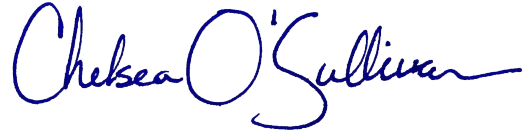
<p>Objection 10: NMFS-22</p>	<p>Relevance, Gov. Code § 11513(c); Evid. Code § 350. Unsubstantiated for Purpose Being Offered Evid. Code § 803. Improper Expert Testimony Evid. Code §§ 720, 800- 803; <i>Smith v. Workmens Comp. App.</i> <i>Bd. v. County of Los Angeles</i> (1969) 71 Cal.2d 588, 593 [“an expert’s opinion which does not rest upon relevant facts or which assumes an incorrect legal theory cannot constitute substantial evidence.”]; Relevance Gov. Code § 11513(c); Evid. Code § 350. Issue Preclusion, Collateral Estoppel because cited for position inconsistent with NMFS position in Cachuma proceedings and findings in Water Order 2019-0148, at 35 (“Reclamation failed to meet rearing flows at Alisal Bridge in 2007, which resulted in unauthorized take.”); <i>Lucido v. Superior Court</i> (1990) 51 Cal.3d 335, 341: “Collateral estoppel precludes relitigation of issues argued and decided in prior proceedings.” <i>People v. Sims</i> (1982) 32 Cal.3d 468, 489: “Collateral estoppel may be</p>	<p>Sustained: _____ Overruled: <u> x </u> without prejudice. NMFS-22 does not appear to be offered as expert testimony. See also AHO's evidentiary rulings on Solvang's MIL #1 and MIL #2. This ruling is made without prejudice to the opportunity for Solvang to object to the admission of NMFS-15 based on relevance if the hearing officer rules that parties are estopped from relitigating certain factual or legal issues in this proceeding.</p>
-------------------------------------	--	--

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	<p>applied to decisions made by administrative agencies “[w]hen an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate.” (emphasis removed). <i>Murray v. Alaska Airlines, Inc.</i> (2010) 50 Cal.4th 860, 868-69 [factual findings and final decisions of an administrative agency can be given preclusive effect in a subsequent action between the same parties]. <i>In the Matter of the Petition For Reconsideration of the Kings River Water Association, Regarding Water Right Fee Determinations For Fiscal Year 2005-2006</i>, 2006 WL 900466, at *5-7 [factual findings on identical issue were binding on same parties in subsequent State Water Board proceeding].</p>	
--	--	--

1 DATED: September 22, 2023

RICHARDS, WATSON & GERSHON
A Professional Corporation
B. TILDEN KIM
CHELSEA E. O'SULLIVAN
JACOB METZ
TAYLOR FOLAND



By: _____

Chelsea O'Sullivan
Attorneys for Petitioner
CITY OF SOLVANG

 RICHARDS WATSON GERSHON
ATTORNEYS AT LAW - A PROFESSIONAL CORPORATION

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 RICHARDS, WATSON & GERSHON
 A Professional Corporation
 2 B. TILDEN KIM (BAR NO. 143937)
 tkim@rwglaw.com
 3 CHELSEA E. O'SULLIVAN (BAR NO. 308369)
 co'sullivan@rwglaw.com
 4 JACOB METZ (BAR NO. 341565)
 jmetz@rwglaw.com
 5 TAYLOR FOLAND (BAR NO. 333673)
 tfoland@rwglaw.com
 6 847 Monterey Street, Suite 206
 San Luis Obispo, California 93401
 7 Telephone: 805.439.3515
 Facsimile: 800.552.0078

8 Attorneys for Petitioner
 9 CITY OF SOLVANG

10 **STATE WATER RESOURCES CONTROL BOARD**
 11 **OFFICE OF ADMINISTRATIVE HEARINGS**

12
 13 In the matter of the Petition for Change of the
 14 City of Solvang for Water-Right Permit 15878
 (Application A022423), which authorizes
 15 diversion of water from the Santa Ynez River
 16 (underflow) in Santa Barbara County

**CITY OF SOLVANG'S EVIDENTIARY
 OBJECTIONS TO DIRECT
 TESTIMONY OF WILLIAM (BILL)
 TRUSH**

Hearing Dates and Time:

Dates: November 6, 8-9, 29-30, 2023; and
 December 6-7, 2023
 Time: 9:00 a.m.
 Hearing Officer: Nicole Kuenzi

RICHARDS WATSON GERSHON
 ATTORNEYS AT LAW - A PROFESSIONAL CORPORATION

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 TO THE BOARD AND ALL PARTIES AND THEIR COUNSEL OF RECORD:
 2 PLEASE TAKE NOTICE that Petitioner City of Solvang (hereinafter “Petitioner”) hereby
 3 submits the following Evidentiary Objections to the Direct Testimony of William (Bill) Trush
 4 (hereinafter “Dr. Trush”) filed by California Trout (hereinafter “CalTrout”).

5 **CITY’S OBJECTIONS TO TESTIMONY OF WILLIAM (BILL) TRUSH**

<u>MATERIAL OBJECTED TO:</u>	<u>GROUND FOR OBJECTION:</u>	<u>RULING ON THE OBJECTION</u>
<p>6 7 8 9 Objection 1: CalTrout-3; 10 paragraph 19, page 12, line 4-6; 11 “With extremely limited onsite 12 fieldwork during higher 13 streamflows, these threshold RCT 14 depths would be greater than 15 those in Figure 9, and therefore 16 require higher streamflows”</p>	<p>Lack of Foundation Evid. Code § 403; Improper Basis for Opinion Evid. Code §§ 802, 803. <i>Bader v.</i> <i>Johnson & Johnson</i> (2022) 86 Cal.App.5th 1094, 1105: “[T]he matter relied on must provide a reasonable basis for the particular opinion offered, and ... an expert opinion based on speculation or conjecture is inadmissible.”; <i>Smith v.</i> <i>Workmens Comp. App. Bd. v. County</i> <i>of Los Angeles</i> (1969) 71 Cal.2d 588, 593: “an expert’s opinion which does not rest upon relevant facts or which assumes an incorrect legal theory cannot constitute substantial evidence.” Relevance Gov. Code § 11513(c); Evid. Code § 350.</p>	<p>Sustained: _____ Overruled: _____ Deferred. See AHO's evidentiary ruling on Solvang's MIL #2.</p>
<p>17 18 19 20 21 22 23 24 25 26 27 Objection 2: CalTrout-3; 28 paragraph 19, page 12, line 1-2,</p>	<p>Lack of Foundation that the Eel River is “reasonably similar” to the</p>	<p>Sustained: _____ Overruled: _____</p>

<p>1 and Figure 9 (“I used the South 2 Fork Eel River Tributary RCT 3 thresholds because the channel 4 dimensions were <u>reasonably</u> 5 <u>similar</u> those of to Santa Ynez 6 River.”) (underline added). 7 8 9 10 11 12 13 14 15 16 17 18</p>	<p>Santa Ynez River. Evid. Code § 403; Improper Basis for Opinion Evid. Code §§ 802, 803. <i>Bader v.</i> <i>Johnson & Johnson</i> (2022) 86 Cal.App.5th 1094, 1105: “[T]he matter relied on must provide a reasonable basis for the particular opinion offered, and ... an expert opinion based on speculation or conjecture is inadmissible.”; <i>Smith v.</i> <i>Workmens Comp. App. Bd. v. County</i> <i>of Los Angeles</i> (1969) 71 Cal.2d 588, 593: “an expert’s opinion which does not rest upon relevant facts or which assumes an incorrect legal theory cannot constitute substantial evidence.” Relevance Gov. Code § 11513(c); Evid. Code § 350.</p>	<p>Deferred. <i>Ibid.</i></p>
<p>19 Objection 3: CalTrout-3; 20 paragraph 20, page 12, lines 19- 21 27, page 13, lines 1-2: “My 22 analysis, additional evidence, and 23 calculations support proposed 24 Term 9’s trigger for ceasing 25 diversions when flows at the 26 Alisal gauge are less than 150 cfs 27 during the adult migration season. 28 NMFS’ 2016 draft Biological</p>	<p>Lack of Foundation Evid. Code § 403, Improper Basis for Opinion for setting 150 cfs flow target at Alisal Bridge based on recommendation for 150 cfs release from Cachuma project (Draft 2016 BiOp Table 2-13 pg. 144; pg. 15) Evid. Code §§ 802, 803. <i>Bader v. Johnson & Johnson</i> (2022) 86 Cal.App.5th 1094, 1105: “[T]he matter relied on must provide</p>	<p>Sustained: _____ Overruled: _____ Deferred. <i>Ibid.</i> The hearing officer will consider arguments about the potential application of collateral estoppel to specific issues during or after the hearing but not as a threshold matter. The hearing officer may request written briefs on this issue.</p>

<p>1 Opinion recommends releases 2 from Cachuma Reservoir of 150 3 cfs for adult steelhead migration 4 to avoid jeopardy to southern 5 California steelhead. (Exhibit 6 CalTrout-5) This 7 recommendation derives from the 8 2015 River Institute Report. 9 (Exhibit CalTrout-4) The rating 10 curve equation, $RCT = 0.2257 X$ 11 $Q^{0.3899}$ for the Santa Ynez 12 River at the Alisal Gauge (Figure 13 8) substantiates Term 9's trigger. 14 Flows (Q) of 150 cfs correspond 15 to a RCT depth of 1.59 feet 16 (Figure 8) which along with the 17 associated velocity and 18 turbulence at the studied riffle 19 creates conditions in the range of 20 unrestricted migration for 21 steelhead (RCT depth of 1.40 feet 22 or greater). (Figure 9)"</p>	<p>a reasonable basis for the particular opinion offered, and ... an expert opinion based on speculation or conjecture is inadmissible."; <i>Smith v.</i> <i>Workmens Comp. App. Bd. v. County</i> <i>of Los Angeles</i> (1969) 71 Cal.2d 588, 593: "an expert's opinion which does not rest upon relevant facts or which assumes an incorrect legal theory cannot constitute substantial evidence." Relevance Gov. Code § 11513(c); Evid. Code § 350. Issue Preclusion, Collateral Estoppel because 2016 BiOp flow recommendations were previously raised by NMFS in Cachuma proceedings; <i>Lucido v. Superior</i> <i>Court</i> (1990) 51 Cal.3d 335, 341: "Collateral estoppel precludes relitigation of issues argued and decided in prior proceedings." <i>People v. Sims</i> (1982) 32 Cal.3d 468, 489: "Collateral estoppel may be applied to decisions made by administrative agencies "[w]hen an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly</p>	
---	---	--

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	<p>before it which the parties have had an adequate opportunity to litigate.” (emphasis removed). <i>Murray v. Alaska Airlines, Inc.</i> (2010) 50 Cal.4th 860, 868-69 [factual findings and final decisions of an administrative agency can be given preclusive effect in a subsequent action between the same parties]. <i>In the Matter of the Petition For Reconsideration of the Kings River Water Association, Regarding Water Right Fee Determinations For Fiscal Year 2005-2006</i>, 2006 WL 900466, at *5-7 [factual findings on identical issue were binding on same parties in subsequent State Water Board proceeding]</p>	
<p>Objection 4: CalTrout-3; paragraph 21 permit term 38 cfs “Similarly, Term 10’s trigger for ceasing diversions (38 cfs at the Alisal gauge) is warranted to protect steelhead rearing in the river downstream from Alisal. <u>These flows would require subsequent analysis and validation.</u>” (underline added).</p>	<p>Lack of Foundation Evid. Code § 403, Improper Basis for Opinion for setting 38 cfs flow target at Alisal Bridge, Draft 2016 BiOp Table 2-13 pg. 144, Evid. Code §§ 802, 803. <i>Bader v. Johnson & Johnson</i> (2022) 86 Cal.App.5th 1094, 1105: “[T]he matter relied on must provide a reasonable basis for the particular opinion offered, and ... an expert</p>	<p>Sustained: _____ Overruled: _____ Deferred. See AHO's evidentiary ruling on Solvang's MIL #2.</p>

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	<p>opinion based on speculation or conjecture is inadmissible.” <i>Smith v. Workmens Comp. App. Bd. v. County of Los Angeles</i> (1969) 71 Cal.2d 588, 593: “an expert’s opinion which does not rest upon relevant facts or which assumes an incorrect legal theory cannot constitute substantial evidence.” Relevance Gov. Code § 11513(c); Evid. Code § 350.</p>	
<p>Objection 5: CalTrout-3; paragraph 6 “Only adult steelhead migration/passage and 0+ juvenile steelhead over-summering are sufficiently advanced to report on my findings; <u>investigating water temperature and dissolved oxygen risks are underway.</u>” (underline added).</p>	<p>Lack of Foundation Evid. Code § 403, Improper Basis for Opinion, Evid. Code §§ 802, 803. <i>Bader v. Johnson & Johnson</i> (2022) 86 Cal.App.5th 1094, 1105: “[T]he matter relied on must provide a reasonable basis for the particular opinion offered, and ... an expert opinion based on speculation or conjecture is inadmissible.” Relevance Gov. Code § 11513(c); Evid. Code § 350. Improper Expert Testimony Evid. Code §§ 720, 800-803; <i>Smith v. Workmens Comp. App. Bd. v. County of Los Angeles</i> (1969) 71 Cal.2d 588, 593: “an expert’s opinion which does not rest upon relevant facts or which assumes an</p>	<p>Sustained: _____ Overruled: _____ Deferred. <i>Ibid.</i></p>

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	<p>incorrect legal theory cannot constitute substantial evidence.”</p>	
<p>Objection 6: CalTrout-4; Humboldt State University River Institute, Annual Hydrograph Assessment for Steelhead Migration in the Santa Ynez River, June 30, 2014</p>	<p>Relevance, Gov. Code § 11513(c); Evid. Code § 350. Unsubstantiated for Purpose Being Offered regarding 1.40 RCT depth, Evid. Code § 803. Improper Expert Testimony Evid. Code §§ 720, 800-803; <i>Smith v. Workmens Comp. App. Bd. v. County of Los Angeles</i> (1969) 71 Cal.2d 588, 593 [“an expert’s opinion which does not rest upon relevant facts or which assumes an incorrect legal theory cannot constitute substantial evidence.”]; Relevance Gov. Code § 11513(c); Evid. Code § 350. Issue Preclusion, Collateral Estoppel because previously raised by NMFS in Cachuma proceedings as a resource cited in the Draft 2016 BiOp; <i>Lucido v. Superior Court</i> (1990) 51 Cal.3d 335, 341: “Collateral estoppel precludes relitigation of issues argued and decided in prior proceedings.” <i>People v. Sims</i> (1982) 32 Cal.3d 468, 489: “Collateral estoppel may be</p>	<p>Sustained: _____ Overruled: _____ Deferred. <i>Ibid.</i></p>

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	<p>applied to decisions made by administrative agencies “[w]hen an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate.” (emphasis removed). <i>Murray v. Alaska Airlines, Inc.</i> (2010) 50 Cal.4th 860, 868-69 [factual findings and final decisions of an administrative agency can be given preclusive effect in a subsequent action between the same parties]. <i>In the Matter of the Petition For Reconsideration of the Kings River Water Association, Regarding Water Right Fee Determinations For Fiscal Year 2005-2006</i>, 2006 WL 900466, at *5-7 [factual findings on identical issue were binding on same parties in subsequent State Water Board proceeding].</p>	
<p>Objection 7: CalTrout-5</p>	<p>Relevance, Gov. Code § 11513(c); Evid. Code § 350. Unsubstantiated for Purpose Being Offered regarding flow requirements, Evid. Code § 803. Improper Expert Testimony Evid.</p>	<p>Sustained: _____ Overruled: <u> x </u> without prejudice.</p>

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	<p>Code §§ 720, 800-803; <i>Smith v. Workmens Comp. App. Bd. v. County of Los Angeles</i> (1969) 71 Cal.2d 588, 593 [“an expert’s opinion which does not rest upon relevant facts or which assumes an incorrect legal theory cannot constitute substantial evidence.”]; Relevance Gov. Code § 11513(c); Evid. Code § 350. Issue Preclusion, Collateral Estoppel because previously raised by NMFS in Cachuma proceedings; <i>Lucido v. Superior Court</i> (1990) 51 Cal.3d 335, 341: “Collateral estoppel precludes relitigation of issues argued and decided in prior proceedings.” <i>People v. Sims</i> (1982) 32 Cal.3d 468, 489: “Collateral estoppel may be applied to decisions made by administrative agencies “[w]hen an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate.” (emphasis removed). <i>Murray v. Alaska Airlines, Inc.</i> (2010) 50 Cal.4th 860, 868-69</p>	<p>CalTrout-5 appears to be a cover letter by NMFS to which is attached a 2016 Draft Biological Opinion for operation of the Cachuma Project. CalTrout is not offering the 2016 Draft Biological Opinion as expert testimony, therefore, it is not subject to Evidence Code sections 801 to 805. See also the AHO's evidentiary rulings on Solvang's MIL #1 and MIL #2.</p> <p>The 2016 Biological Opinion was not part of the evidentiary record for the hearing that led to the Board's issuance of Order WR 2019-0148 (Order WR 2019-0148, p. 43), so the Board did not directly consider the document in that prior proceeding. As discussed above, the hearing officer defers ruling on the application of collateral estoppel to any of the issues raised in this proceeding until a later time during or after the hearing.</p>
--	--	--

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	<p>[factual findings and final decisions of an administrative agency can be given preclusive effect in a subsequent action between the same parties]. <i>In the Matter of the Petition For Reconsideration of the Kings River Water Association, Regarding Water Right Fee Determinations For Fiscal Year 2005-2006</i>, 2006 WL 900466, at *5-7 [factual findings on identical issue were binding on same parties in subsequent State Water Board proceeding].</p>	
<p>Objection 8: CalTrout-6</p>	<p>Not cited in any written testimonies submitted by Remaining Protesters. Lack of Foundation. Evid. Code § 403. Relevance Gov. Code § 11513(c); Evid. Code § 350; Lack of Authentication. Evid. Code § 1400, 1401.</p>	<p>Sustained: _____ Overruled: <u> x </u> See AHO's evidentiary ruling on Solvang's MIL #1.</p>
<p>Objection 9: CalTrout-7</p>	<p>Not cited in any written testimonies submitted by Remaining Protesters. Lack of Foundation. Evid. Code § 403. Relevance Gov. Code § 11513(c); Evid. Code § 350; Lack of Authentication. Evid. Code § 1400, 1401.</p>	<p>Sustained: _____ Overruled: <u> x </u> <i>Ibid.</i></p>

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<p>Objection 10: CalTrout-8</p>	<p>Not cited in any written testimonies submitted by Remaining Protesters. Lack of Foundation. Evid. Code § 403. Relevance Gov. Code § 11513(c); Evid. Code § 350; Lack of Authentication. Evid. Code § 1400, 1401.</p>	<p>Sustained: _____ Overruled: <u> x </u> <i>Ibid.</i></p>
<p>Objection 11: CalTrout-9</p>	<p>Not cited in any written testimonies submitted by Remaining Protesters. Lack of Foundation. Evid. Code § 403. Relevance Gov. Code § 11513(c); Evid. Code § 350; Lack of Authentication. Evid. Code § 1400, 1401.</p>	<p>Sustained: _____ Overruled: <u> x </u> <i>Ibid.</i></p>
<p>Objection 12: CalTrout-10</p>	<p>Not cited in any written testimonies submitted by Remaining Protesters. Lack of Foundation. Evid. Code § 403. Relevance Gov. Code § 11513(c); Evid. Code § 350; Lack of Authentication. Evid. Code § 1400, 1401.</p>	<p>Sustained: _____ Overruled: <u> x </u> <i>Ibid.</i></p>
<p>Objection 13: CalTrout-11</p>	<p>Not cited in any written testimonies submitted by Remaining Protesters. Lack of Foundation. Evid. Code § 403. Relevance Gov. Code § 11513(c); Evid. Code § 350; Lack of Authentication. Evid. Code § 1400,</p>	<p>Sustained: _____ Overruled: <u> x </u> <i>Ibid.</i></p>

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	1401.	
Objection 14: CalTrout-12	Not cited in any written testimonies submitted by Remaining Protesters. Lack of Foundation. Evid. Code § 403. Relevance Gov. Code § 11513(c); Evid. Code § 350; Lack of Authentication. Evid. Code § 1400, 1401.	Sustained: _____ Overruled: <u> x </u> <i>Ibid.</i>
Objection 15: CalTrout-13	Not cited in any written testimonies submitted by Remaining Protesters. Lack of Foundation. Evid. Code § 403. Relevance Gov. Code § 11513(c); Evid. Code § 350; Lack of Authentication. Evid. Code § 1400, 1401.	Sustained: _____ Overruled: <u> x </u> <i>Ibid.</i>
Objection 16: CalTrout-14	Not cited in any written testimonies submitted by Remaining Protesters. Lack of Foundation. Evid. Code § 403. Relevance Gov. Code § 11513(c); Evid. Code § 350; Lack of Authentication. Evid. Code § 1400, 1401.	Sustained: _____ Overruled: <u> x </u> <i>Ibid.</i>
Objection 17: CalTrout-15	Not cited in any written testimonies submitted by Remaining Protesters. Lack of Foundation. Evid. Code § 403. Relevance Gov. Code §	Sustained: _____ Overruled: <u> x </u> <i>Ibid.</i>

1		11513(c); Evid. Code § 350; Lack of	
2		Authentication. Evid. Code § 1400,	
3		1401.	
4	Objection 18: CalTrout-16	Not cited in any written testimonies	Sustained: <u> x </u>
5		submitted by Remaining Protesters.	Document requires some
6		Lack of Foundation. Evid. Code §	foundation to show
7		403. Relevance Gov. Code §	relevance and reliability.
8		11513(c); Evid. Code § 350; Lack of	
9		Authentication. Evid. Code § 1400,	
10		1401.	
11	Objection 19: CalTrout-17	Not cited in any written testimonies	Sustained: _____
12		submitted by Remaining Protesters.	Overruled: <u> x </u>
13		Lack of Foundation. Evid. Code §	<i>Ibid.</i>
14		403. Relevance Gov. Code §	
15		11513(c); Evid. Code § 350; Lack of	
16		Authentication. Evid. Code § 1400,	
17		1401.	
18	Objection 20: CalTrout-18	Not cited in any written testimonies	Sustained: _____
19		submitted by Remaining Protesters.	Overruled: <u> x </u>
20		Lack of Foundation. Evid. Code §	<i>Ibid.</i>
21		403. Relevance Gov. Code §	
22		11513(c); Evid. Code § 350; Lack of	
23		Authentication. Evid. Code § 1400,	
24		1401.	
25	Objection 21: CalTrout-19	Not cited in any written testimonies	Sustained: <u> x </u>
26		submitted by Remaining Protesters.	Document requires
27		Lack of Foundation. Evid. Code §	some foundation to
28			show relevance
			and reliability.

1		403. Relevance Gov. Code §	
2		11513(c); Evid. Code § 350; Lack of	
3		Authentication. Evid. Code § 1400,	
4		1401.	
5	Objection 22: CalTrout-20	Not cited in any written testimonies	Sustained: _____
6		submitted by Remaining Protesters.	Overruled: <u> x </u>
7		Lack of Foundation. Evid. Code §	See AHO's
8		403. Relevance Gov. Code §	evidentiary ruling
9		11513(c); Evid. Code § 350; Lack of	on Solvang's MIL
10		Authentication. Evid. Code § 1400,	#1.
11		1401.	
12	Objection 23: CalTrout-21	Not cited in any written testimonies	Sustained: _____
13		submitted by Remaining Protesters.	Overruled: <u> x </u>
14		Lack of Foundation. Evid. Code §	<i>Ibid.</i>
15		403. Relevance Gov. Code §	
16		11513(c); Evid. Code § 350; Lack of	
17		Authentication. Evid. Code § 1400,	
18		1401.	
19	Objection 24: CalTrout-22	Not cited in any written testimonies	Sustained: _____
20		submitted by Remaining Protesters.	Overruled: <u> x </u>
21		Lack of Foundation. Evid. Code §	<i>Ibid.</i>
22		403. Relevance Gov. Code §	
23		11513(c); Evid. Code § 350; Lack of	
24		Authentication. Evid. Code § 1400,	
25		1401.	
26	Objection 25: CalTrout-23	Not cited in any written testimonies	Sustained: _____
27		submitted by Remaining Protesters.	Overruled: <u> x </u>
28			

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	Lack of Foundation. Evid. Code § 403. Relevance Gov. Code § 11513(c); Evid. Code § 350; Lack of Authentication. Evid. Code § 1400, 1401.	<i>Ibid.</i>
Objection 26: CalTrout-24	Not cited in any written testimonies submitted by Remaining Protesters. Lack of Foundation. Evid. Code § 403. Relevance Gov. Code § 11513(c); Evid. Code § 350; Lack of Authentication. Evid. Code § 1400, 1401.	Sustained: _____ Overruled: <u> x </u> <i>Ibid.</i>
Objection 27: CalTrout-25	Not cited in any written testimonies submitted by Remaining Protesters. Lack of Foundation. Evid. Code § 403. Relevance Gov. Code § 11513(c); Evid. Code § 350; Lack of Authentication. Evid. Code § 1400, 1401.	Sustained: _____ Overruled: <u> x </u> <i>Ibid.</i>
Objection 28: CalTrout-26	Not cited in any written testimonies submitted by Remaining Protesters. Lack of Foundation. Evid. Code § 403. Relevance Gov. Code § 11513(c); Evid. Code § 350; Lack of Authentication. Evid. Code § 1400, 1401.	Sustained: _____ Overruled: <u> x </u> <i>Ibid.</i>

1	Objection 29: CalTrout-27	Not cited in any written testimonies submitted by Remaining Protesters. Lack of Foundation. Evid. Code § 403. Relevance Gov. Code § 11513(c); Evid. Code § 350; Lack of Authentication. Evid. Code § 1400, 1401.	Sustained: _____ Overruled: <u> x </u> <i>Ibid.</i>
2			
3			
4			
5			
6			
7			
8	Objection 30: CalTrout-28	Not cited in any written testimonies submitted by Remaining Protesters. Lack of Foundation. Evid. Code § 403. Relevance Gov. Code § 11513(c); Evid. Code § 350; Lack of Authentication. Evid. Code § 1400, 1401.	Sustained: _____ Overruled: <u> x </u> <i>Ibid.</i>
9			
10			
11			
12			
13			
14			
15	Objection 31: CalTrout-29	Not cited in any written testimonies submitted by Remaining Protesters. Lack of Foundation. Evid. Code § 403. Relevance Gov. Code § 11513(c); Evid. Code § 350; Lack of Authentication. Evid. Code § 1400, 1401.	Sustained: _____ Overruled: <u> x </u> <i>Ibid.</i>
16			
17			
18			
19			
20			
21			
22	Objection 32: CalTrout-30	Not cited in any written testimonies submitted by Remaining Protesters. Lack of Foundation. Evid. Code § 403. Relevance Gov. Code § 11513(c); Evid. Code § 350; Lack of Authentication. Evid. Code § 1400, 1401.	Sustained: _____ Overruled: <u> x </u> <i>Ibid.</i>
23			
24			
25			
26			
27			
28			

1		1401.	
2			
3	Objection 33: CalTrout-31	Not cited in any written testimonies	Sustained: _____
4		submitted by Remaining Protesters.	Overruled: _____
5		Lack of Foundation. Evid. Code §	<i>Ibid.</i>
6		403. Relevance Gov. Code §	
7		11513(c); Evid. Code § 350; Lack of	
8		Authentication. Evid. Code § 1400,	
9		1401.	
10	Objection 34: CalTrout-32	Not cited in any written testimonies	Sustained: _____
11		submitted by Remaining Protesters.	Overruled: <u> x </u>
12		Lack of Foundation. Evid. Code §	<i>Ibid.</i>
13		403. Relevance Gov. Code §	
14		11513(c); Evid. Code § 350; Lack of	
15		Authentication. Evid. Code § 1400,	
16		1401.	
17	Objection 35: CalTrout-34	Not cited in any written testimonies	Sustained: <u> x </u>
18		submitted by Remaining Protesters.	Document requires some
19		Lack of Foundation. Evid. Code §	foundation to show
20		403. Relevance Gov. Code §	relevance and reliability.
21		11513(c); Evid. Code § 350; Lack of	
22		Authentication. Evid. Code § 1400,	
23		1401.	
24	Objection 36: CalTrout-35	Not cited in any written testimonies	Sustained: _____
25		submitted by Remaining Protesters.	Overruled: <u> x </u>
26		Lack of Foundation. Evid. Code §	<i>Ibid.</i>
27		403. Relevance Gov. Code §	
28			

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	11513(c); Evid. Code § 350; Lack of Authentication. Evid. Code § 1400, 1401.	
Objection 37: CalTrout-36	Not cited in any written testimonies submitted by Remaining Protesters. Lack of Foundation. Evid. Code § 403. Relevance Gov. Code § 11513(c); Evid. Code § 350; Lack of Authentication. Evid. Code § 1400, 1401.	Sustained: <u> x </u> Document requires some foundation to show relevance and reliability.

RICHARDS WATSON GERSHON
ATTORNEYS AT LAW - A PROFESSIONAL CORPORATION

DATED: September 22, 2023

RICHARDS, WATSON & GERSHON
A Professional Corporation
B. TILDEN KIM
CHELSEA E. O’SULLIVAN
JACOB METZ
TAYLOR FOLAND



By: _____
Chelsea O’Sullivan
Attorneys for Petitioner
CITY OF SOLVANG