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## State Water Resources Control Board

### **AMENDED NOTICE OF PUBLIC HEARING AND NOTICE OF PRE-HEARING CONFERENCE**

The State Water Resources Control Board  
Administrative Hearings Office  
will hold a Pre-Hearing Conference and Public Hearing  
on the petition for change filed by  
**the City of Solvang**

for water-right Permit 15878 (Application A022423),  
which authorizes diversions of water from the Santa Ynez River (underflow)  
in Santa Barbara County.

**The Pre-Hearing Conference will begin on  
October 18, 2023, at 1:00 p.m.**

**The Public Hearing will begin on  
November 6, 2023, at 9 a.m.,  
and continue on November 8, 9, 29 & 30, and December 6 & 7, beginning at 9 a.m.**

Representatives of parties and other people who want to participate in this pre-hearing conference or this hearing may access these Zoom teleconferences by using the following link and call-in information:

Please access Zoom by using the link:

<https://waterboards.zoom.us/j/92786481140?pwd=b2xXK2ErbTdyenh3ZTFUUEJvSHdZQT09> with Meeting ID: 927 8648 1140 and Passcode: 786867

or by calling in at: +16699009128,,92786481140#,,,,\*786867# US (San Jose)

**Interested members of the public who would like to watch this hearing without participating may do so through the Administrative Hearings Office YouTube channel at:**

<https://www.youtube.com/channel/UCM-gmipRyd7Nw-g8l-C7Nig/videos?view=57>

### **PURPOSE OF HEARING**

The purpose of this hearing is to receive evidence to be considered in determining whether the State Water Resources Control Board (State Water Board or Board) should approve the

petitions for change filed by the City of Solvang for water-right Permit 15878 (Application A022423), and, if so, whether any new terms or conditions should be added to the permit.

## **BACKGROUND**

### Water Right Permit 15878

The State Water Board issued water right Permit 15878 to the Solvang Municipal Improvement District on August 25, 1969. The Board issued an order on July 7, 1981, which amended some of the terms of this permit. The permit was assigned to the City of Solvang (Solvang) on February 27, 1986.

Permit 15878 authorizes Solvang to divert up to 5.0 cubic-feet per second (cfs) of water from the Santa Ynez River (underflow) in Santa Barbara County from January 1 to December 31 of each year for municipal purposes. As amended by the July 7, 1981 order, Permit 15878 specifies that: (a) complete application of the water to the proposed use shall be made on or before December 1, 1990; and (b) total annual diversions and use under the permit shall not exceed 3,600 acre-feet per year. The authorized points of diversion are “several wells to be located at moveable points” between a specified “Point C” and a specified “Point D,” which reach extends from the Alisal Bridge upstream approximately 11,231 feet. The authorized place of use is Solvang’s service area.

Solvang currently has two active river wells that divert water under Permit 15878, Wells 3 and 7A. Well 3 is located at the Alisal Bridge and Well 7A is located approximately 800 feet upstream of the Alisal Bridge between the river wells for Alisal Guest Ranch and Santa Ynez River Water Conservation District-Improvement District No. 1 (Improvement District No. 1). Solvang maintains an easement for a third well, Well 5, which was destroyed and has not been replaced.

The records in the Division of Water Rights Records Unit and on eWRIMS contain the permittee progress reports that Solvang and its predecessor district filed for each year from 1969 through 2022, except that there are no reports for 2002. According to these reports, Solvang’s highest total annual diversion under Permit 15878 was 445,965,000 gallons (approximately 1,368.6 acre-feet) in 1988. The highest monthly diversion was 56,980,000 gallons in August 1988, which is equal to an average diversion rate of approximately 2.84 cfs.<sup>1</sup>

### Petitions for Change and Extension of Time

On May 7, 2015, Solvang filed a petition for change and a petition for extension of time for Permit 15878.

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<sup>1</sup> Exhibit “A” to Solvang’s 1988 permittee progress report contains some hand-written notations regarding these usage amounts and conversions to cfs and acre-feet per year.

The petition for change seeks to amend Permit 15878 to increase the length of the reach of the Santa Ynez River underflow from which Solvang may divert water by changing the lower point of the present authorized reach, Point D, to a new Point E, which would be located approximately 1.5 miles downstream of Point D. The petition states that the rationale for this request is that, within the existing reach (between Point C and Point D), “the Santa Ynez River [is] impacted by other diverters and is unlikely to produce the additional water the City requires to meet its water needs without well interference and environmental impacts.” The petition states that this change “is intended to provide the City the ability to locate future groundwater wells away from other permitted water rights diverters and critical habitat areas to minimize adverse impacts on other diverters in the river, the riparian environment, and the fish.”

On March 24, 2016, the State Water Board, Division of Water Rights, issued a public notice of the petitions.

Solvang withdrew its petition for extension of time on August 7, 2020, and modified its May 7, 2015 petition for change. Solvang submitted a revised project description to the Administrative Hearings Office on October 19, 2020. Pursuant to the October 19, 2020 revised River Wells Project, Solvang proposes to install a maximum of two additional wells located at least 3,000 feet downstream of the Alisal Bridge and limit total diversions under Permit 15878 to 1,368 acre-feet per year, limit the maximum diversion rate to 2.84 cfs.

On September 30, 2021, Solvang submitted a second revised project description, dated September 27, 2021, to the Administrative Hearings Office. The proposed reach of diversion under the September 27 revised petition begins at the Alisal Bridge and extends 8,060 feet downstream. If the Board approves Solvang’s petition and amends Permit 15878, Solvang proposes to eventually abandon Well 7A, which is located upstream of the Alisal Bridge.

### Protests to Petitions

On April 25, 2016, the United States Department of the Interior, Bureau of Reclamation (Reclamation), submitted a letter with comments on the petitions. In a December 20, 2016 e-mail to Division of Water Rights staff, Reclamation’s representative stated that Reclamation “intended this letter to be a letter of comment, and not a formal protest.”

The following four entities filed protests to Solvang’s petitions: (1) National Marine Fisheries Service (NMFS); (2) California Trout; (3) Alisal Guest Ranch; and (4) Improvement District No. 1. Solvang filed answers to these four protests and Reclamation’s comment letter.

On August 9, 2021, Solvang, Alisal Guest Ranch, and Improvement District No. 1 entered into a settlement agreement that resolved the parties’ protests to Solvang’s petition for change. The settlement agreement includes terms that impose, among other

requirements, operational limits on Solvang's diversions depending on surface water flow and subsurface water level conditions. The settlement agreement also provides that Solvang will permanently abandon Well 7A and the reach of diversion upstream of the Alisal Bridge when the combined production capacity of Well 3 and any new wells reaches 950 gpm, or Solvang constructs two new wells located 3,500 feet or more downstream of the Alisal Bridge, whichever occurs first. The terms of the settlement agreement appear to be consistent with Solvang's second revised project description dated September 27, 2021.

### Solvang's Draft and Final EIRs

In June 2012, Solvang completed and circulated a Draft Environmental Impact Report for its Water System Master Plan Update. In January 2014, Solvang completed and circulated a Final Environmental Impact Report (Final EIR) for the Master Plan Update, certified the Final EIR, and approved the project described in the Final EIR. The proposed project analyzed in the Final EIR appears to be consistent with the 2015 petition for change and petition for extension of time filed by Solvang with the State Water Board.

On January 10, 2022, the City Council for the City of Solvang adopted Resolution 22-1154, adopting an Addendum to the 2011 Water System Master Plan Update Final Environmental Report (Addendum to 2014 Final EIR) and approving the revised River Wells Project. The project analyzed in the Addendum to the 2014 Final EIR appears to be consistent with Solvang's September 27, 2021 revised proposed project description. The locations of the two additional wells proposed under the revised River Wells Project would be located 3,500 feet or more downstream of the Alisal Bridge, within the diversion reach previously identified and analyzed in the Final EIR. These new wells would be connected to the City's existing water distribution system by a new 12-inch diameter water-line approximately 2,000 feet in length.

### State Water Board's Order WR 2019-0148

On September 17, 2019, the State Water Board adopted Order WR 2019-0148. This order amended water-right Permits 11308 and 11310 (Applications A011331 and A011332), which are held by Reclamation for its operations of the Cachuma Project on the Santa Ynez River. Terms 15 and 16, on pages 133 to 137 of Order WR 2019-0148, impose bypass and instream-flow requirements on the operation of the Cachuma Project to protect public trust resources and downstream water rights in the Santa Ynez River.

### **AHO PROCEEDING**

Water Code section 1110 established the Administrative Hearings Office (AHO) within the State Water Board, effective July 1, 2019. Water Code section 1112, subdivision (c)(2), provides that the Board may assign an adjudicative hearing, in whole or in part, to the AHO. Water Code section 1114 provides that, after such a hearing is held and

the matter is submitted to the AHO, the AHO hearing officer shall prepare a proposed order and provide it to the Board for the Board's consideration.

On February 10, 2020, Erik Ekdahl, Deputy Director of the Division of Water Rights, sent a memorandum to Eileen Sobeck, the State Water Board's Executive Director, which recommended transferring Solvang's petitions to the AHO. On February 10, 2020, Ms. Sobeck issued a memorandum to AHO, assigning these petitions and related hearing issues, in whole, to the AHO.

On March 30, 2020, the AHO issued a Notice of Public Hearing and Pre-Hearing Conference regarding the petitions filed by Solvang for change and extension of time for water right Permit 15878. Solvang, NMFS, Cal Trout, California Department of Fish and Wildlife, Improvement District No. 1, and Alisal Guest Ranch, filed timely Notices of Intent to Appear (NOIs) in April 2020. The AHO held a pre-hearing conference on April 29, 2020, and canceled the hearing dates that had been set in the March 30 Notice. The AHO held subsequent status and pre-hearing conferences on June 29, September 24, and November 6, 2020; March 26, July 22, and December 16, 2021; February 2 and August 30, 2022; and April 27 and July 31, 2023.

In status conference rulings issued between May 22, 2020, and August 10, 2022, the AHO hearing officer directed and set deadlines for Solvang to finalize its revised proposed project description; attempt to resolve outstanding protests to the pending petitions; and prepare an updated hydrological analysis, environmental documentation under California Environmental Quality Act (CEQA), and any other technical analyses necessary to support the revised project. The AHO hearing officer also directed the protestants to submit information, such as requests for additional information, that might clarify or narrow their objections to Solvang's revised proposed project.

By letter dated August 7, 2020, Solvang withdrew its petition for extension of time and modified its May 7, 2015 petition for change (as described above).

On May 26 and 28, 2021, Solvang submitted technical memoranda and reports in support of its petition for change. These memoranda and reports included a cultural resources inventory, a terrestrial biological resources technical report, and "Review of Santa Ynez River Mechanics and Technical Memoranda Associated with City of Solvang's Revised River Wells Project" (Hydrology-Hydraulic Technical Memorandum). The Hydrology-Hydraulic Technical Memorandum addressed the revised River Wells Project as compared to the project analyzed in the 2014 Final EIR and potential impacts from changes in river conditions because of flows required by the 2000 Biological Opinion for the Operation and Maintenance of the Cachuma Project by Reclamation and State Water Board Order WR 2019-0148. The protestants had the opportunity to submit comments on these memoranda and technical reports.

On September 30, 2021, Solvang filed with the AHO a second revised project description dated September 27, 2021 (as described above) and submitted the settlement agreement between Solvang, Alisal Guest Ranch, and Improvement District

No. 1 that resolved the parties' protests to Solvang's petition for change. On January 10, 2022, the City Council for the City of Solvang adopted the Addendum to the 2014 Final EIR.

Between October 18, 2022, and February 14, 2023, the AHO hearing officer conducted mediation among Solvang, NMFS, California Trout, and the California Department of Fish and Wildlife. The AHO hearing officer and representatives of the parties signed a mediation agreement which provided that all communications made by any party in connection with the mediation process would be confidential and that, to the extent permitted by applicable law, all such communications would be and would remain, subject to California Evidence Code sections 1115-1128 and 703.5. The AHO hearing officer reported in a February 14, 2023 Notice of Termination of Mediation that the mediation did not resolve any pending issues and representatives of the parties to the mediation did not sign any settlement agreement. To maintain the confidentiality of the mediation proceedings, the Presiding Hearing Officer re-assigned this matter to herself for the purpose of conducting a hearing and preparing a proposed order for the Board's consideration.

## **HEARING ISSUES**

The purpose of the hearing in this matter is to receive evidence regarding the following issues:

1. Should the State Water Board approve Solvang's petition to change water right Permit 15878?
  - a. Would the State Water Board's approval of this petition result in injury to any other legal user of water?
  - b. Would the State Water Board's approval of this petition effectively initiate a new water right?
  - c. Would the State Water Board's approval of this petition unreasonably affect any fish, wildlife, or any other instream beneficial use? Would the State Water Board's approval of this petition comply with any applicable requirements of the Fish and Game Code and the federal Endangered Species Act of 1973?
  - d. Would the State Water Board's approval of this petition protect public trust resources whenever feasible?
  - e. Would the State Water Board's approval of this petition be in the public interest?
  
2. Are the Final EIR and Addendum that Solvang has prepared and certified for the proposed project sufficient under CEQA for the State Water Board to act on Solvang's petition and make any necessary findings as a responsible agency under CEQA? (See CEQA Guidelines, § 15096.) If not, what additional CEQA documents are necessary and what entity should prepare them?

3. If the State Water Board approves this change petition, then what new terms or conditions, if any, including any plans for operation of the revised River Wells Project, should the State Water Board add to Permit 15878?
  - a. What new terms and conditions should the State Water Board add to Permit 15878 to meet the requirements identified in sub-issues 1.a. – 1.e.?
  - b. What new terms and conditions would avoid, minimize, or mitigate significant effects on the environment within the State Water Board's authority that may result from approval of Solvang's petition?

The parties shall prepare proposed permit terms and conditions in response to hearing issue 3, including sub-issues 3.a. and 3.b. Parties shall submit these proposed permit terms to the AHO by the deadline for submittal of case-in-chief exhibits. This request for proposed permit terms is a request for additional information pursuant to Water Code section 1703.5. Failure of a party to submit proposed permit terms, or to submit a statement that there are no such permit terms and the State Water Board should deny the petition, may result in cancellation of the petition or protest by the Board.

### **HEARING OFFICER AND HEARING TEAM**

Presiding Hearing Officer Nicole Kuenzi will preside over the hearing in this matter. Other AHO staff members may be present and may assist the hearing officer during the pre-hearing conference and the hearing and throughout these proceedings. The hearing officer and other AHO staff members may consult with staff of the Division of Water Rights, staff of the Board's Office of Chief Counsel, members of the executive management of the State Water Board, and State Water Board members, to discuss or deliberate on matters relevant to this proceeding.

### **PRE-HEARING CONFERENCE**

The hearing officer will hold a pre-hearing conference on the date and at the time listed on the first page of this notice. To participate in the pre-hearing conference, please use the Zoom teleconference information provided on the first page of this notice. No in-person appearances will be allowed for this pre-hearing conference.

The pre-hearing conference will address the following issues:

1. Should the hearing officer allow for the submission of opening briefs? If so, what should be the deadline for parties to submit opening briefs? What page limitations should apply to opening briefs?
2. Should the hearing officer set a deadline for submission of closing briefs at this time? If so, what should be the deadline for parties to submit closing briefs? What page limitations should apply to closing briefs?

3. In what order will each party present its witnesses?
4. Are there any other procedural issues concerning the hearing that the participants would like to raise?

Parties do not need to file pre-hearing conference statements. If any party wants to file a pre-hearing conference statement, then the party shall file the pre-hearing conference statement with the AHO, and serve copies of it on the other parties listed in the attached service list. Any pre-hearing conference statement may address any of the issues listed above.

**HEARING SCHEDULE AND DEADLINES**

| <b>Deadlines / Schedule</b>   | <b>Date and Time</b>  |
|---|---|
| Deadline for all parties to file amended NOIs and deadline for any interested person who intends to give a policy statement to file an NOI. | <b>August 15, 2023, at 12:00 p.m.</b>   |
| Deadline for all parties to file case-in-chief exhibits, exhibit identification indices, and proposed permit terms.                         | <b>September 8, 2023, at 12:00 p.m.</b>   |
| Deadline for all parties to file second amended NOIs identifying rebuttal witnesses.  | <b>September 22, 2023, at 12:00 p.m.</b>  |
| Deadline for parties to file written evidentiary objections to case-in-chief exhibits.  | <b>September 22, 2023, at 12:00 p.m.</b>  |
| Deadline for parties to file responses to written evidentiary objections to case-in-chief exhibits.   | <b>September 29, 2023, at 12:00 p.m.</b>  |
| Deadline for all parties to file rebuttal exhibits and rebuttal exhibit identification indices.   | <b>October 16, 2023, at 12:00 p.m.</b>  |
| Deadline for parties to file written evidentiary objections to rebuttal exhibits.   | <b>October 26, 2023, at 12:00 p.m.</b>  |
| Deadline for parties to file responses to written evidentiary objections to case-in-chief exhibits.   | <b>October 31, 2023, at 12:00 p.m.</b>  |
| Hearing begins.   | <b>November 6, 2023, at 9:00 a.m.</b>   |
| Additional case-in-chief hearing days (as necessary).   | <b>November 8 &amp; 9, 2023, at 9:00 a.m.</b>                                     |
| Rebuttal hearing days (as necessary).   | <b>November 29, &amp; 30, 2023, at 9:00 a.m.</b>                                  |
| Additional hearing days (as necessary).   | <b>December 6 &amp; 7, 2023, at 9:00 a.m., and additional dates as necessary.</b> |

**SUBMITTALS OF DOCUMENTS TO AHO AND OTHER PARTIES**

All documents submitted to the AHO shall be addressed and submitted by one of the following methods (with proofs of service, as discussed below):



| <b>Method</b>  | <b>Address</b>  |
|--|---|
| By e-mail<br>(preferred method for documents other than exhibits): | <a href="mailto:AdminHrgOffice@waterboards.ca.gov">AdminHrgOffice@waterboards.ca.gov</a><br>With subject line <b>“City of Solvang Application 22423”</b>  |
| By Uploading to FTP site<br>(preferred method for exhibits):       | <a href="https://ftp.waterboards.ca.gov">https://ftp.waterboards.ca.gov</a><br>Please send an e-mail to <a href="mailto:AdminHrgOffice@waterboards.ca.gov">AdminHrgOffice@waterboards.ca.gov</a> with <b>“Request for AHO-FTP download password”</b> in the subject line. The AHO will reply with the party’s username and password, which the party then can use to upload the party’s exhibits. |
| By Mail:   | State Water Resources Control Board<br>Administrative Hearings Office<br>P.O. Box 100<br>Sacramento, CA 95812-0100  |
| By Hand-Delivery   | Joe Serna Jr. CalEPA Building<br>Administrative Hearings Office<br>1001 I Street<br>Sacramento, CA 95814  |

Please see the part of this notice below titled “PROCEDURES FOR THIS WATER RIGHT HEARING” for more information regarding hearing procedures and submittals of exhibits.

### **AHO EXHIBIT LIST**

The AHO has copied documents from the public records maintained by the State Water Board’s Division of Water Rights that may be relevant to this proceeding. The AHO has included these documents in the initial administrative record for this hearing. The AHO has posted files of these documents with an assigned AHO exhibit number on the FTP site in the folder for this matter. The AHO has also posted an Administrative Record Index which identifies the AHO exhibit number for each document. Instructions on how to access the FTP site are listed in Section 8 below. The parties may review the Division of Water Rights Records Unit’s public files and may submit as exhibits copies of other relevant documents in these files.

Parties may reference AHO exhibits by their AHO exhibit number and do not need to submit copies of these same documents as a separate exhibit. The hearing officer will offer the exhibits identified in the AHO’s Administrative Record Index into the evidentiary record during the hearing. Any party may object to the admission of any of these AHO exhibits into the evidentiary record and the hearing officer will consider those objections before deciding whether to accept the exhibit.

## **AHO WEBPAGE AND NOTICES**

Subject to legal limitations, including the requirements for Internet website accessibility in Government Code section 11546.7, the AHO will post all notices and other documents regarding these proceedings on the AHO's Internet webpage at [https://www.waterboards.ca.gov/water\\_issues/programs/administrative\\_hearings\\_office/](https://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office/)

## **HEARING LIVE-STREAM AND RECORDING**

The pre-hearing conference and hearing will be live-streamed through the Administrative Hearings Office YouTube channel, accessible by clicking on the link provided below. The live-stream will consist of a morning session and an afternoon session. Each session may be accessed through the appropriate link on the Administrative Hearings Office YouTube channel. To view the morning session, click the link identified as "morning." The morning session will conclude at the lunch break. To view the afternoon session, click the link identified as "afternoon." The afternoon session will begin after the lunch break.

After the conclusion of the hearing, a recording of the morning and afternoon YouTube live-stream sessions will be available on the Administrative Hearings Office YouTube channel. These recordings will include automatic captions for accessibility.

The live-stream and recordings may be accessed at the following link: <https://www.youtube.com/channel/UCM-gmipRyd7Nw-g8l-C7Nig/videos?view=57>

## **SEPARATION OF FUNCTIONS; PROHIBITION ON *EX PARTE* COMMUNICATIONS**

All parties are prohibited from having any *ex parte* communications with any members of the AHO hearing team. (See Wat. Code, § 1110, subd. (c); Gov. Code, §§ 11430.10-11430.80.) The AHO has posted a discussion of *ex parte* communications on the AHO's webpage at [https://www.waterboards.ca.gov/water\\_issues/programs/administrative\\_hearings\\_office/docs/2021/2021-07-06\\_webpage\\_faq.pdf](https://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office/docs/2021/2021-07-06_webpage_faq.pdf). (See response to FAQ 16.)

If any party wants to communicate with the AHO at any time regarding any procedural or substantive issue regarding these proceedings, including any issue regarding the pre-hearing conference, hearing procedures or filing of documents, then that party shall make such communication to the AHO in writing (by e-mail or letter) and serve all other parties with copies of the communication and include a proof of service demonstrating such service of the written communication to the AHO. A party may provide this proof of service through a formal proof of service or by other verification. For e-mails, the verification shall be a list of the e-mail addresses of the parties or their representatives in an electronic-mail "cc" (carbon copy) list. For letters, the verification shall be a list of the names and mailing addresses of the other parties or their representatives in the cc portion of the letter.

Any party submitting any document to the AHO shall transmit copies of the document to all of the other parties on the service list. This transmittal may be by e-mail to parties for whom e-mail addresses are listed in the service list. For other parties, this transmittal shall be by U.S. Mail. Whenever any party files any document with the AHO for this proceeding, the party shall include a proof of service using one of the methods described above that confirms that the party has transmitted copies of the document to all other parties and that describes the method of service.

Please do not attempt to communicate by telephone or in person with any AHO hearing team member regarding any procedural or substantive issue concerning this hearing, because other parties would not be able to participate in such communications. If oral communications with any members of the AHO hearing team are necessary to discuss any procedural or substantive issue, then the AHO will set up a conference call in which representatives of all parties may participate. Any party may request such a conference call at any time using the written communications protocols described above.

### **PROCEDURES FOR THIS WATER RIGHT HEARING**

The following procedures apply to this hearing. The hearing officer may amend these procedures before, during or after the hearing as he or she deems appropriate.

- 1. HEARING PROCEDURES:** The Administrative Hearings Office (AHO) will conduct this hearing according to the procedures for hearings set forth in California Code of Regulations, title 23, sections 648-648.8, 649.6 and 760. Copies of these regulations are posted on the Board's website at the following link: [http://www.waterboards.ca.gov/laws\\_regulations](http://www.waterboards.ca.gov/laws_regulations). If there is any conflict between any provision of this notice and any provision of these regulations or any applicable statute, then the provision of the regulation or statute shall apply to this proceeding.

Consistent with California Code of Regulations, title 23, section 648.5, unless the hearing officer determines otherwise before or during the hearing, each party may make an opening statement, present witnesses and exhibits, cross-examine opposing parties' witnesses, impeach any witness, rebut adverse evidence, and subpoena, call and examine an adverse party or witness as if that witness were under cross-examination. The hearing officer may allow parties to present closing arguments or submit closing briefs. These procedures are described in more detail in section 10. The hearing officer may issue rulings regarding these procedures before or during the hearing.

The AHO encourages parties with common interests to work together to make unified presentations and to take other actions to make the hearing process more efficient.

Parties may file any requests for exceptions to these hearing procedures in writing with the AHO and must serve any such requests on the other parties. To provide time for parties to respond, the hearing officer normally will not rule on procedural

requests filed in writing until at least five days after receiving the request, unless the hearing schedule requires an earlier ruling.

2. **SETTLEMENTS:** In water right permitting matters, the parties normally include the applicant or petitioner and protestants. The applicant or petitioner and protestants may engage in private settlement discussions, and may, or may not, include any other persons in those discussions. No representative of the AHO will participate in such settlement discussions. If the parties or their representatives sign a written settlement agreement, then they shall promptly file a copy of the signed agreement with the AHO.

Although the AHO may authorize other persons to participate in the hearing as parties, such authorizations do not necessarily allow those persons to participate in any settlement discussions between the applicant or petitioner and protestants in water right permitting matters.

The State Water Board, or the Executive Director under State Water Board Resolution No. 2012-0061, may issue an order approving a settlement agreement between the applicant or petitioner and some or all of the protestants in water right permitting matters, even if other parties to the proceeding have not approved the settlement agreement. The hearing officer normally will give all parties opportunities to comment on any settlement agreement submitted to the AHO before the AHO transmits a proposed order approving the settlement agreement to State Water Board or Executive Director, unless all parties to the hearing or their representatives have signed the settlement agreement.

3. **PARTIES:** Solvang, the National Marine Fisheries Service, Cal Trout, California Department of Fish and Wildlife, Santa Ynez River Water Conservation District, Improvement District No. 1, and Alisal Guest Ranch, filed timely Notices of Intent to Appear (NOIs) in April 2020, in accordance with the AHO's March 30, 2020 Notice of Public Hearing and Pre-Hearing Conference, and are parties to this proceeding.

The hearing officer may impose limitations on any party's participation in the hearing. (See Gov. Code, § 11440.50, subd. (c).) The hearing officer also may designate persons or entities that do not file timely Notices of Intent to Appear as parties, for good cause shown and subject to appropriate conditions. Except as specifically provided in this notice or by ruling of the hearing officer, only parties will be allowed to present evidence, make objections, and examine witnesses.

4. **POLICY STATEMENTS BY INTERESTED PERSONS:** As provided in California Code of Regulations, title 23, section 648.1, subdivision (d), the hearing officer normally will allow interested persons who are not designated as parties to present or submit non-evidentiary policy statements. Policy statements may be submitted in writing in advance of the hearing or presented orally during the hearing. The hearing officer will not permit a person or entity that appears and presents only a policy statement to make objections, offer evidence, conduct cross-examination, make

legal arguments, or otherwise participate in the evidentiary hearing. The AHO will not add such persons or entities to the service list.

Policy statements are not subject to the pre-hearing requirements for testimony or exhibits, except that interested persons who want to make oral policy statements during the hearing are requested to file a Notice of Intent to Appear indicating an intent to make only a policy statement. The hearing officer may impose time limits on presentations of oral policy statements or oral summaries of written policy statements.

The AHO requests that interested persons and entities who file written policy statements with the AHO serve copies of their statements on all parties before the person or entity presents such statements or summaries of them during the hearing. See section 8 for details regarding electronic submittals of documents.

- 5. NOTICES OF INTENT TO APPEAR:** All people and entities that intend to participate in the hearing as parties must file either an electronic copy or a paper copy of an amended Notice of Intent to Appear with the AHO no later than the deadline specified in this notice. The AHO may interpret a failure to file an amended Notice of Intent to Appear by this deadline as a decision not to appear. Parties that intend to submit rebuttal testimony should submit second amended NOIs by the deadline specified in this notice.

The AHO requests that any interested person who will not be participating as a party, but will be presenting only a non-evidentiary policy statement, file a Notice of Intent to Appear by the deadline for filing amended Notices of Intent to Appear, and specify in the notice that the person only will be presenting a policy statement.

As provided in California Code of Regulations section 648.4, subdivision (b), the Notice of Intent to Appear for parties (but not for people only presenting policy statements) must state the name and address of the participant. For parties, the Notice of Intent to Appear also must state: (1) the name of each witness whom the party intends to call at the hearing; (2) a brief description of the subject of each witness's proposed testimony; and (3) an estimate of the time that the party requests for each of its witnesses to present an oral summary of his or her written testimony. (See section 6 for requirements that apply to written testimony.) The total time requested for summaries of all of each party's witnesses shall not to exceed the total time limit for oral summaries of written testimony described in section 10, part b.ii. If a party intends to call any expert witnesses, the party shall designate each expert witness as an expert witness in the party's Notice of Intent to Appear.

Parties that do not intend to present cases-in-chief but want to cross-examine witnesses or present rebuttal testimony should so indicate on their Notices of Intent to Appear.<sup>2</sup> A party that decides not to present a case-in-chief after having

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<sup>2</sup> A party is not required to present evidence as part of a case-in-chief. The hearing officer will allow parties not presenting evidence as cases-in-chief to participate through

submitted a Notice of Intent to Appear should notify the AHO and the other parties as soon as possible.

Parties that are not willing to accept electronic service of hearing documents must check the appropriate box on the Notice of Intent to Appear. Because service of documents to such parties normally will be by U.S. Mail, such parties will experience delays in receiving hearing documents.

- 6. WRITTEN TESTIMONY AND OTHER EXHIBITS:** Exhibits include all written testimony, statements of qualifications of expert witnesses, and other documents to be submitted as evidence. As provided in California Code of Regulations, title 23, section 648.4, subdivision (c), each party that wants to offer testimony into evidence shall submit written proposed direct testimony of each witness by the deadline for filing exhibits. The hearing officer will not permit a witness to give oral testimony that goes beyond the scope of the witness's written proposed testimony absent good cause.

Each party shall designate each of its witness's written proposed testimony as a separate exhibit. Each party must submit all its witnesses' written proposed testimony with the party's other exhibits before the exhibit filing deadline. A party who offers expert testimony must submit an exhibit containing a statement of each expert witness's qualifications, in addition to a separate exhibit with the expert witness's written proposed testimony.

The AHO encourages all parties to prepare and submit as a separate exhibit for each witness a set of slides that summarize each witness's testimony. During the hearing, the party may use the exhibit with the slides to facilitate each of the party's witness's oral summary of his or her written proposed testimony. The parties must label the slides for each witness as a separate exhibit and submit it by the exhibit submittal deadline.

Unless the hearing officer orders otherwise, parties do not need to submit rebuttal testimony or exhibits before the hearing. See section 10, part c. for more information about rebuttal evidence.

- 7. EXHIBIT FORMATTING AND ORGANIZATION:** A party submitting evidence must file with the AHO both the exhibits and an Exhibit Identification Index, which is a list of exhibits in Excel format.

Each party should label exhibits with a short version of the party's name and sequential numbers. For example, the City of Solvang's exhibits should be

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opening statements, cross-examination, and rebuttal, and to present closing statements or briefs, if the hearing officer allows other parties to present such closing statements or briefs.

numbered Solvang-1, Solvang-2, etc. Do not use any sub-letters like 1a, 1b, etc. for exhibit numbers.

Each party should number each paragraph of each witness's written testimony sequentially, 1, 2, 3, etc. (This paragraph numbering will make it easier for the hearing officer and representatives of other parties to ask each witness questions about his or her written testimony.) Witnesses should not use any sub-paragraph letters like 1a, 1b, etc. in their written testimony. A witness may include headings like "Background," "Introduction," etc. for different sections of the witness's proposed written testimony but should not number or letter these headings and should not re-start the paragraph numbering in each section.

Parties may use pleading paper with line numbers in the left margins for their witnesses' written proposed testimony.

**Each party must submit to the AHO the exhibits and exhibit identification indices for this hearing before the deadline specified in the Hearing Notice.**

The AHO may treat a party's failure to submit exhibits before this deadline as a waiver of the party's right to submit exhibits for the hearing and a waiver of the party's status as a party.

- a. Parties submitting exhibits based on complex technical analyses also must submit sufficient information so that a qualified independent expert could reproduce the results.

Parties submitting exhibits based on models or technical studies (such as reports, recommendations, or requirements) also must submit sufficient information to clearly identify and explain the logic, assumptions, development, and operation of the models or studies, so that a qualified independent expert could reproduce the model or technical study and use it to obtain the same results.

- b. Consistent with California Code of Regulations, title 23, section 648.3, the hearing officer has discretion to decide whether to receive into evidence by reference any relevant, otherwise admissible, public records of the State Water Board and any documents or other evidence that a public agency has prepared or published, provided that the original or a copy was in the possession of the State Water Board before the hearing officer issued this notice. A party offering such an exhibit by reference shall advise the other parties and the AHO of the title of the document, the particular portions of the document, including page and paragraph numbers, that the party will ask the hearing officer to consider, the purpose for which the party will use the portions of the exhibit if it is accepted into evidence, and the specific file folder or other exact location in the State Water Board's files where the document may be found.

- c. The hearing officer normally will exclude exhibits that rely on unpublished technical documents unless the hearing office has admitted the unpublished technical documents into evidence.

**8. SUBMISSIONS OF DOCUMENTS:** To expedite the exchange of documents, reduce paper use, and lower the cost of participating in the hearing, all participants must submit hearing documents by uploading them to the State Water Board's FTP site in electronic form (in addition to filing two paper copies of each exhibit with the AHO) unless the hearing officer authorizes submission of exhibits in different formats.

The State Water Board's FTP site may be accessed at <https://ftp.waterboards.ca.gov/>. All parties may use the shared account on this site to access and download documents in the administrative record for this hearing. This shared account is referred to in this notice as the "AHO-FTP download folders". The AHO will provide each party a unique account to upload the party's documents for this hearing. These accounts are referred to in this hearing notice as the parties' "upload accounts".

**a. AHO-FTP Download Folders:**

The AHO will create a folder for each proceeding on the State Water Board's FTP site. The folder for each proceeding will contain all administrative record documents related to that proceeding and may contain various subfolders, including subfolders for background documents and hearing documents. Only AHO personnel may upload files to this folder. The AHO will post each party's hearing exhibits, exhibit identification indices and closing briefs to this folder promptly after each filing deadline. The AHO may add other administrative record documents to this folder during this proceeding (including recordings of hearings). The documents in this folder will be the AHO's administrative record for this proceeding. Anyone may download documents from the AHO-FTP download folder for any proceeding at any time.

If any party believes that the AHO should add documents to, or remove any documents from this folder for this proceeding, then the party may file a request to the hearing officer for such action (by e-mailing the request to the AHO e-mail inbox), and shall transmit copies of the request to all other parties on the service list. The hearing officer will issue rulings or take other actions on such requests as the hearing officer deems appropriate.

**b. Upload Folders:**

The AHO will create a separate upload account for each party that files an NOI as a party for this hearing, so that the party may upload the party's exhibits and other documents to the folder for that account. In most cases, these accounts will be



specific for each party and each hearing and the AHO will close the accounts for each hearing after the hearing and related proceedings have been completed.

Any party to this proceeding may upload documents for this proceeding (primarily exhibits and exhibit identification indices and closing briefs) using the party's upload account. Only the party may upload files to the party's folder, and only the AHO may view, transfer and download files from this folder. After the applicable filing deadline, AHO staff will move documents uploaded by each party to the administrative record in the AHO-FTP download folder for the proceeding, so all other parties may view and download the documents.

Documents uploaded by the parties normally must be in Adobe Portable Document Format (PDF), except that spreadsheets may be submitted in Microsoft Excel format, slide presentations may be submitted in Microsoft PowerPoint format, and exhibit identification indices must be submitted in Microsoft Excel format.

If a party wants to submit an exhibit in any other format, then the party shall submit a written request to the hearing officer, and serve copies of the request on all other parties on the service list, at least 14 days before the deadline for submitting exhibits. The request shall describe the other format, explain what software is necessary for the hearing officer and other parties to be able to review the exhibit in that format, and explain why the party believes it is appropriate for the party to submit the exhibit in that format. The hearing officer normally will rule on such requests before the exhibit submittal deadline.

Each party shall upload its exhibits and exhibit identification index to the party's folder on the State Water Board's FTP site before the exhibit filing deadline specified in this notice. A party that uploads hearing documents to the FTP site does not need to serve copies of the documents on the other parties, except that, if another party has not agreed to accept electronic service of documents, then the party uploading hearing documents to the Board's FTP site also shall serve paper copies of all such documents on that other party and shall file a proof of this service with the AHO.

**When a party has uploaded all of the party's exhibits to the Board's FTP site, the party or party's representative shall send an email the AHO at [AdminHrgOffice@Waterboards.ca.gov](mailto:AdminHrgOffice@Waterboards.ca.gov), with copies to the other parties on the service list, notifying the AHO that the party has uploaded the documents.**

After the exhibit filing deadline, the AHO will move all filed exhibits and Exhibit Identification Indices from the parties' upload folders to the administrative record folder and advise the parties that these documents are available for downloading from that folder. The AHO may rename or renumber exhibits that do not have proper exhibit names or numbers. If the AHO does this, then the AHO may create an electronic folder of documents that the party has submitted and a separate electronic folder of any documents the AHO has renamed or renumbered, in the administrative record folder.

If a party cannot upload exhibits to the FTP site, then the party may mail two paper copies of all its exhibits to the AHO at:

State Water Resources Control Board  
Administrative Hearings Office  
P. O. Box 100  
Sacramento, CA 95812-0100

Alternatively, a party may send paper copies of its exhibits to the AHO by overnight delivery to:

Joe Serna Jr. CalEPA Building  
State Water Resources Control Board, Administrative Hearings Office  
1001 I Street  
Sacramento, CA 95814

If a party uses either of these alternative means of filing paper copies of its exhibits with the AHO in lieu of electronically filing the exhibits, then the party shall complete the filing of the paper copies by the exhibit filing deadline specified in this notice.

- 9. PRE-HEARING CONFERENCE:** The hearing officer will conduct a pre-hearing conference before the hearing to discuss the pre-hearing and hearing schedules, the scope of the hearing, the status of any protests, the formats of exhibits, opening statements and policy statements, methods of service, and any other appropriate procedural issues. This notice states the date and time of the pre-hearing conference.
- 10. ORDER OF PROCEEDING:** The hearing officer will follow the order of proceedings specified in California Code of Regulations, title 23, section 648.5, unless the hearing officer decides to modify the order of proceeding before or during the hearing. The hearing officer will set time limits for each element of the proceeding specified below before or during the hearing.
  - a. **Policy Statements:** The hearing officer will allow interested persons to present policy statements at the start of the hearing before the presentations of cases-in-chief. **Oral policy statements and oral summaries of written policy statements will be limited to 5 minutes.**

- b. **Presentation of Cases-In-Chief:** Each party that so indicates in its Notice of Intent to Appear may present a case-in-chief addressing the key issues in the hearing notice. Each case-in-chief will consist of an opening statement, if the party decides to make one, and oral summaries of the witnesses' written testimony. The hearing officer then will allow other parties to cross-examine the witnesses who have presented written testimony or oral summaries of their written testimony. The hearing officer may allow re-direct examination and re-cross examination. The hearing officer will decide whether to accept the party's exhibits into evidence upon the party's request or motion after completion of all examinations of the party's witnesses.

Unless otherwise specified, documents such as written testimony, motions, written comments, and briefs shall be submitted to the AHO on pleading paper (with each line numbered in the left margin) using 12-point font and one-inch margins. If pleading paper is not available, the documents described above shall be double-spaced. For either format, the party shall sequentially number the paragraphs in the written testimony.

- i. **Opening Statements:** At the beginning of each party's case-in-chief, the party or the party's attorney or other representative may make an opening statement that briefly and concisely states the objectives of the case-in-chief, the major points that the proposed evidence is intended to establish, and the relationship between the major points and the key issues. **Oral opening statements will be limited to 10 minutes per party.** A party may submit a written opening statement before the hearing or during the hearing before the party's case-in-chief and then, if desired, may provide an oral summary of the written opening statement. A party should include any policy-oriented statements in the party's opening statement.

- ii. **Oral Summaries of Written Testimony:** All witnesses presenting testimony shall appear at the hearing. Before testifying, all witnesses shall swear or affirm that the written and oral testimony they will present will be true and correct. A witness shall not read written testimony into the record, but instead shall just provide a summary. A witness provides his or her direct testimony when he or she confirms that a designated exhibit or exhibits is or are his or her written testimony. Solvang shall be **limited to 120 minutes** to present all of the oral summaries of written testimony by its witnesses. National Marine Fisheries Service, Cal Trout, and California Department of Fish and Wildlife shall collectively be **limited to 120 minutes** to present all of the oral summaries of written testimony by their witnesses. The hearing officer may allow additional time for oral summaries or clarifying testimony. The hearing officer has not specified time limits for presentation of oral summaries of written testimony by the witnesses of Santa Ynez River Water Conservation District, Improvement District No. 1, and Alisal Guest Ranch because these parties stated during the pre-hearing conference that they do not intend to submit case-in-chief testimony.
- iii. **Cross-Examination:** The hearing officer will permit other parties to cross-examine a party's witnesses on the witnesses' written submittals, oral summaries and clarifying testimony, and other relevant matters not covered in the direct testimony. (Gov. Code, § 11513, subd. (b).) The hearing officer may allow additional time for cross-examination if the cross-examining party demonstrates in an offer of proof good cause to take additional time for cross-examination. Ordinarily, only a party or the party's representative will be permitted to cross-examine a witness, but the hearing officer may allow a party to designate a person technically qualified in the subject being considered to cross-examine a witness.
- iv. **Re-Direct and Re-Cross Examination:** The hearing officer may allow re-direct and re-cross examination of each party's witnesses. Any re-direct examination and re-cross examination permitted may not exceed the scope of the cross-examination and the re-direct examination, respectively. The hearing officer may establish time limits for any permitted re-direct and re-cross examination.
- v. **Hearing Officer's Questions:** Consistent with California Code of Regulations, title 23, section 648.5, subdivision (b), the hearing officer may ask any witness questions and may cross-examine any witness at any time.
- c. **Rebuttal:** After all parties have presented their cases-in-chief and their witnesses have been cross-examined, the hearing officer will allow parties to present rebuttal evidence. Rebuttal evidence is new evidence used to rebut evidence another party has presented in its case-in-chief.

Parties must submit rebuttal testimony and exhibits before the hearing by the deadline specified in this notice. Written rebuttal testimony must specify the previously submitted testimony that is being rebutted. Solvang shall be limited to **60 minutes** to present all of the oral summaries of written rebuttal testimony by its witnesses. National Marine Fisheries Service, Cal Trout, and California Department of Fish and Wildlife shall collectively be limited to **60 minutes** to present all of the oral summaries of written rebuttal testimony by their witnesses. Santa Ynez River Water Conservation District shall be limited to **30 minutes** to present all of the oral summaries of written rebuttal testimony by its witnesses. Cross-examination of witnesses offering rebuttal evidence normally will be limited to the scope of the rebuttal evidence. If Improvement District No. 1 and Alisal Guest Ranch submit written rebuttal testimony, they shall collectively be limited to **30 minutes** to present all of the oral summaries of written rebuttal testimony by their witnesses. The hearing officer may allow additional time for oral summaries or clarifying testimony.

- d. **Closing Briefs:** The hearing officer will set a schedule for the parties to file written closing briefs. The parties shall follow the procedures described above for uploading exhibits to the parties' folders on the State Water Board's FTP site when they upload their closing briefs. Each party shall mail a paper copy of its closing brief to any party that has not agreed to accept electronic service of documents and shall indicate this service in a proof of service filed with the AHO. No party may attach any documents of an evidentiary nature to the party's closing brief unless the hearing officer already has admitted the document into evidence or the document is the subject of an offer of proof made during the hearing. After the deadline for filing closing briefs, the AHO will post all closing briefs to the FTP site.

**11. RULES OF EVIDENCE:** Government Code section 11513 shall apply to all evidence offered during the hearing. Consistent with Government Code section 11513, subdivision (d), a party may use hearsay evidence to supplement or explain other evidence, but over timely objection such evidence will not be sufficient by itself to support a finding unless the evidence would be admissible over objection in a civil action.

**12. TELECONFERENCE HEARING:** The AHO will conduct this hearing and by Zoom teleconference. New users of Zoom may want to review Zoom's support guide: <https://support.zoom.us/hc/en-us/categories/200101697>.

To facilitate a clear understanding of who is speaking, the hearing officer will ask each person to identify himself or herself as necessary during the teleconference hearing. The hearing officer prefers that parties participate by both audio and video through the Zoom meeting link. If this is not possible, then the hearing officer will accept audio-only participations.

The AHO will not order a court reporter for videoconference pre-hearing conferences or hearings. Any interested party may order a court reporter at the party's own expense. The AHO will record the teleconference pre-hearing conference and hearing and will post an audio-plus-video file and a Zoom-generated transcript of the hearing on the AHO-FTP site as part of the administrative record for this matter.

Parties should test their devices' video and audio functions before the start of the hearing or pre-hearing conference. At the lower left-hand side of the Zoom window is a microphone and a video camera symbol. If there is a red line across the symbols, your microphone is on mute and video camera is off.

Please plan to call into the video conference at least 10 minutes before the scheduled hearing or pre-hearing conference time to ensure you can resolve any technical issues before the hearing or pre-hearing conference begins. You will initially be in a virtual waiting room and will be admitted to the hearing by a member of the AHO office. When you speak, please turn your video on and unmute your microphone by clicking on the symbols in the lower left-hand side of the Zoom window. During the hearing, please be respectful and patient, raising your hand on-screen to get the hearing officer's attention.

To reduce acoustic background noise, please remain on mute if you are not speaking. If you have other devices that are tuned into the meeting, please turn off the speaker volume of those devices. Other participants will be able to see your name, depending on your Zoom account settings. Other participants may also see the last three digits of your phone number unless you have called in anonymously. During the hearing, AHO staff may add designations of participants' names to the Zoom display.

If the device you are using freezes, please notify staff at [AdminHrgOffice@Waterboards.ca.gov](mailto:AdminHrgOffice@Waterboards.ca.gov) or by calling (916) 341-6940 and leaving a voicemail message and restart the device. AHO staff will be monitoring the e-mail inbox and voicemail and will notify the hearing officer. If restarting the device does not work, try calling into the hearing using the phone number provided to you with the Zoom meeting information.

In lieu of participating in the Zoom hearing, anyone may watch past or present AHO hearings by clicking "Watch AHO Hearings" on [https://www.waterboards.ca.gov/water\\_issues/programs/administrative\\_hearings\\_office/](https://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office/) People watching AHO hearings by this method will not be able to participate in the hearing and will not be identified to anyone else.

Date: August 15, 2023

Nicole Kuenzi  
Nicole Kuenzi  
Presiding Hearing Officer

Attachments:

- Notice of Intent to Appear Form
- Exhibit Identification Index
- Service List

**NOTICE OF INTENT TO APPEAR**

(Name of Participant or Party) \_\_\_\_\_ plans to participate in the water right hearing regarding City of Solvang Application 22423 Hearing

**Scheduled to begin on November 6, 2023**

**1) Check only one of the following boxes:**

- Option 1:** I/we intend to present a policy statement only and, therefore, not to participate as a party in this hearing.
- Option 2:** I/we intend to participate as a party by presenting any of the following: an opening statement, direct testimony, cross-examination or rebuttal, and intend to participate as a party in this hearing.

**Reason for Requesting Party Status.** If you are not identified as a party in the Hearing Notice, describe why you should be allowed to participate as a party:

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**2) If you selected Option 2 above and intend to provide direct testimony, complete the witness table below. If not, skip to item 3 below.**

| Witness Name | Expert Witness?          |                          | Subject of Proposed Testimony | Estimated Length of Oral Direct Testimony (minutes) |
|--------------|--------------------------|--------------------------|-------------------------------|---|
|              | Yes                      | No                       |                               |   |
|              | <input type="checkbox"/> | <input type="checkbox"/> |                               |   |
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(If more space is required, please add additional pages.)



**3) Fill in the following information of the participant, party, attorney, or other representative:**

Name (type or print):

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Represented party (if applicable):

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Mailing Address:

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Telephone Number:

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E-mail Address:

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Optional:

I/we decline electronic service of hearing-related materials.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT IDENTIFICATION INDEX**

City of Solvang Application 22423 Hearing

The Public Hearing will begin on  
**November 6, 2023**

PARTICIPANT: \_\_\_\_\_

| <b>Exhibit Identification Number</b> | <b>Exhibit Description</b> | <b>Status of Evidence (for AHO use only)</b> |                 |                           |
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## SERVICE LIST

B. Tilden Kim  
Richards Watson Gershon  
350 South Grand Ave., 37<sup>th</sup> Floor  
Los Angeles, CA 90071  
[tkim@rwglaw.com](mailto:tkim@rwglaw.com)  
Attorney for City of Solvang

Chelsea O'Sullivan  
847 Monterey Street, Suite 206  
San Luis Obispo, CA 93401  
[co'sullivan@rwglaw.com](mailto:co'sullivan@rwglaw.com)  
Attorney for the City of Solvang

Stephanie Osler Hastings  
Jessica L. Diaz  
Brownstein Hyatt Farber Schreck, LLP  
1021 Anacapa Street, 2<sup>nd</sup> Floor  
Santa Barbara, CA 93101  
[SHastings@bhfs.com](mailto:SHastings@bhfs.com)  
[jdiaz@bhfs.com](mailto:jdiaz@bhfs.com)  
Attorneys for Alisal Guest Ranch

Gary M. Kvistad  
Brownstein Hyatt Farber Schreck, LLP  
1021 Anacapa Street, 2<sup>nd</sup> Floor  
Santa Barbara, CA 93101  
[Gkvistad@bhfs.com](mailto: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](mailto: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](mailto: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](mailto:Rick.Bush@noaa.gov)

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

Steven M. Torigiani  
Brett A. Stroud  
Young Wooldridge, LLP  
1800 30<sup>th</sup> St., 4<sup>th</sup> Floor  
Bakersfield, CA 93314  
[storigiani@youngwooldridge.com](mailto:storigiani@youngwooldridge.com)  
[bstroud@youngwooldridge.com](mailto:bstroud@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](mailto:pgarcia@syrwd.org)

Lena Germinario  
Matthew Jones  
Office of General Counsel  
California Department of Fish and Wildlife  
P.O. Box 944209  
Sacramento, CA 94244-2090  
[lena.germinario@wildlife.ca.gov](mailto:lena.germinario@wildlife.ca.gov)  
[matthew.jones@wildlife.ca.gov](mailto:matthew.jones@wildlife.ca.gov)  
Attorneys for California Department of  
Fish and Wildlife

Randy Murphy  
City Manager, City of Solvang  
1644 Oak Street  
Solvang, CA 93463  
[randym@cityofsolvang.com](mailto:randym@cityofsolvang.com)

Administrative Hearings Office  
[adminhrgoffice@waterboards.ca.gov](mailto:adminhrgoffice@waterboards.ca.gov)