

# State Water Resources Control Board

January 22, 2025

## Re: Procedural Ruling on Evidentiary Motions, Case-in-Chief

### TO ALL PARTIES:

This procedural ruling addresses the objections submitted by the parties to evidence offered into the evidentiary record in the case-in-chief portion of the hearing and requests supplemental information from the parties about claims of injury to water rights.

### *Evidentiary Rulings*

Sites Project Authority (Authority), State Water Contractors, and Friends of the River et al. (FOR et al.), submitted objections to written testimony and other exhibits offered by the parties into evidence. The hearing officer rules on these objections in the following attachments:

- Attachment 1 – Ruling on Authority’s Evidentiary Objections to Evidence Submitted by Tribal and NGO Parties
- Attachment 2 – Ruling on Sites Project Authority’s Evidentiary Objections to Delta Water Agency Parties’ Case-In-Chief Testimony and Exhibits
- Attachment 3 – Ruling on Supplemental Evidentiary Objections to Evidence Submitted by Tribal and NGO Parties
- Attachment 4 – Ruling on Sites Project Authority’s Evidentiary Objections to T&M King Farms’ and Clark Ornbau’s Case-In-Chief Testimony and Exhibits
- Attachment 5 – Ruling on State Water Contractor’s Evidentiary Objections to Written Testimony
- Attachment 6 – Ruling on FOR et al.’s Evidentiary Objections to Sites Project Authority’s Testimony and Exhibits
- Attachment 7 – Ruling on Authority’s Evidentiary Objections to AHO Exhibits

E. JOAQUIN ESQUIVEL, CHAIR | ERIC OPPENHEIMER, EXECUTIVE DIRECTOR

*Ruling on Request to Allow Late Testimony by Chairman Mitchum*

FOR et al. timely submitted written case-in-chief testimony of Wayne R. Mitchum, Jr., Chairman of the Cachil DeHe Band of Wintun Indians (Exh. FOR-8). The coordinating tribal and NGO parties had the opportunity to present summaries of their witnesses' written testimony and make their witnesses available for cross-examination on October 2, 8, 9, 10, 21, and November 4 and 7, 2024. On October 4, Ms. Dorman of FOR et al., indicated to the AHO by e-mail that she was working with Chairman Mitchum to identify a date for his testimony. Chairman Mitchum did not appear to testify on any of the remaining hearing dates. Because the Authority has not had the opportunity to cross-examine Chairman Mitchum, Exhibit FOR-8 is excluded from the evidentiary record. FOR et al. may offer Chairman Mitchum's testimony as rebuttal evidence, subject to the rules applicable to rebuttal evidence.

*Rebuttal Evidence*

Rebuttal evidence is evidence that responds to another party's case-in-chief evidence. Testimony and related exhibits submitted by the parties as rebuttal evidence should clearly indicate the case-in-chief evidence to which the testimony is responsive.

*Submission of Revised Testimony or Slides*

The parties shall submit a revised copy of any exhibit of which a portion is, in accordance with this ruling, excluded from the evidentiary record. Exclusion of testimony shall be shown in strikeout text. Revisions to Powerpoint slides shall be shown in strikeout text, if possible, or other format to clearly indicate the portions of the slide that are excluded from the evidentiary record.

*Request for Order of ITP Witnesses*

The AHO requests that the Authority submit by **January 24, 2025**, a proposed order of presentation of witnesses whose testimony is related to the incidental take permit.

*Request for Supplemental Information*

The AHO requests that parties claiming a risk of injury to water rights from approval of the proposed project, submit the following supporting information about their claimed

rights by **February 10, 2025**. This information is necessary for the Board to evaluate risk of injury to legal users from approval of the water right application and petitions.

1. Identify each type of water right claimed (a water right permit or license issued by the State Water Board with a permit or license number, riparian right, pre-1914 appropriative right, overlying groundwater right, appropriative groundwater right, federal reserved right, etc.). For water rights other than permits or licenses issued by the State Water Board, provide the priority date, maximum authorized rate and amount of diversion or storage, if applicable, point of diversion, place of use, and purpose of use; and
2. Submit documentation or other evidence sufficient to demonstrate the validity and scope of the claimed rights as described in response to (1), if such documentation is not already available on the Board's electronic Water Right Information Management System (eWRIMS). The AHO particularly requests that the tribes claiming federal reserved rights or other tribal water rights submit copies of any official records or other evidence that may support and document the claimed rights, such as, for example, an executive order reserving lands and associated water rights.

The request for supplemental information is made pursuant to Water Code sections 1332 and 1334. Pursuant to Water Code section 1335, subdivision (c)(2) and (3), the Board may cancel a protest if the protestant fails to submit information that is reasonably necessary to determine if the protestant has a valid water right, or information concerning the protestant's historical, current, or proposed future diversion and use of water that is reasonably necessary to determine if the proposed appropriation will result in injury to the protestant's exercise of its water right.

Sincerely,



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

## Attachments:

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- Attachment 7 – Ruling on Authority’s Evidentiary Objections to AHO Exhibits
- Attachment 8 – Service List

## ATTACHMENT 1

### RULING ON AUTHORITY’S OBJECTIONS TO EVIDENCE SUBMITTED BY TRIBAL AND NGO PARTIES

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
<p>FOR-2 (Testimony of Sherri Norris), p. 5:21-6:2, ¶¶ 14-15, p. 7:22-8:10, ¶ 21, p. 12:4-6, ¶ 25.</p>	<p>Inadmissible opinion testimony by expert witness. (Evid. Code, §§ 720, 800-803.) Friends of the River (FOR) has offered no evidence in Ms. Norris’s written testimony or related exhibits that she has special knowledge, skill, experience, training, or education to form the basis of the opinions contained in her testimony related to the Sites Project Authority’s assessment of potential impacts to the salmon population. During the hearing, Ms. Norris testified that she is not a biologist. (Sites Reservoir Public Hearing on 2024-09-30 (pm) YouTube webcast at 33:20-33:27.)</p> <p>Lack of foundation. (Evid. Code, § 702; <i>Sargon Enterprises, Inc. v. University of Southern California</i> (2012) 55 Cal.4th 747, 770 (<i>Sargon</i>) [“the matter relied on must provide a reasonable basis for the particular opinion offered,</p>	<p>Ms. Norris testified that she has over 25 years of experience conducting safe fish consumption health education and water quality advocacy in collaboration with California tribes. (FOR-1, ¶ 1.) Moreover, during that time she has advocated for Tribal and environmental health before Regional Water Quality Control Boards, the State Water Board, before the Department of Water Resources in collaboration with Tribes, and internationally before the United Nations and European Union international fora. (<i>Id.</i>)</p> <p>Moreover, she has provided hundreds of presentations and training on the cycle and health effects of mercury on environmental health, exposure- reduction strategies, solution development and opportunities for advocacy related to mining issues in California. (FOR-2.)</p> <p>Her professional background and experience over the last 25 years provides her the special knowledge skill, experience to form the basis for her opinions.</p>	<p>Sustained X Overruled</p> <p>Although Ms. Norris’ testimony meets the standards for admissibility, the hearing officer will consider the Authority’s arguments in evaluating the weight of the evidence.</p>

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
	<p>and ... an expert opinion based on speculation or conjecture is inadmissible”].) Testimony lacks foundation when the underlying factual basis has not been submitted or is improper. Ms. Norris’s testimony includes statements without citations or supporting documentation regarding her opinions related to fish biology.</p>	<p>Additionally, on redirect, Ms. Norris, testified as to the definition of Traditional Ecological Knowledge (TEK) or Indigenous Knowledge (IK) as a basis of expertise of indigenous Peoples into the record, as a means to support the testimonies of the Tribal witnesses. See 2024-02-10 Sites Public Hearing (am) 43:55 – 53:55.)</p> <p>As for Ms. Norris’ opinion and testimony regarding the Project’s impacts on salmon, her professional experience has provided her the special knowledge and skill to assess and evaluate the impacts the Project will have on salmon populations and human health.</p> <p>Sites’ objection to Ms. Norris’ testimony is a clear example of Sites failing to recognize the expertise that one gains through professional experience and with respect to the Tribal witnesses, cultural and historical information that serves as a basis for the witness’s expertise.</p> <p>As for lack of foundation, Ms. Norris’ testimony in fact includes numerous citations regarding fish populations and impacts associated with mercury. (See footnotes at FOR-2 at pp. 8-18.) These are clearly documents, reports and judicial decision that Ms. Norris reviewed in</p>	

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		forming her opinion based upon her special knowledge and skill based upon her professional experience.	
<p>Oral Testimony of Sherri Norris (Sites Reservoir Public Hearing on 2024-09-30 (pm) YouTube webcast at 35:05-37:05).</p>	<p>Hearsay. (Gov. Code, § 11513, subd. (d); Cal. Code Regs., tit. 23, § 648.5.1.) Ms. Norris stated that she relied on conversations with tribes to form an opinion that the Authority inadequately analyzed the potential impacts of project changes on flows and temperatures, and related impacts on salmon. These statements and any related opinions in her written testimony contain hearsay that is not supported by other evidence and cannot be used to support a finding by the AHO.</p>	<p>Hearsay evidence is admissible subject to the provisions of Gov't Code § 11513. (Title 23 Cal. Code Regs., § 648.5.1.)</p> <p>Ms. Norris' statements are the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions. (Gov't Code, § 11513(c).)</p>	<p>X Sustained Overruled</p> <p>Out of court statements by tribal members and representatives are hearsay. Such statements can be used only for the purpose of supplementing or explaining other evidence, but are not sufficient in themselves to support findings unless they would be admissible over objection in civil actions. (Gov. Code, § 11513, subd. (d).) This hearsay testimony is admitted into evidence but will only be relied upon to supplement or explain other evidence.</p>
<p>FOR-2 (Testimony of Sherri Norris), ¶¶ 7-11, 33-35.</p>	<p>Inadmissible opinion testimony by expert witness. (Evid. Code, §§ 720, 800-803.) FOR has offered no evidence in Ms. Norris's written testimony or related exhibits that she has special knowledge, skill, experience,</p>	<p>While Ms. Norris is not be a lawyer, her 25 years of experience demonstrates her special knowledge skill, and experience to form the basis for her opinions. (FOR-1, ¶ 1-2.) Moreover, during that time she has advocated for Tribal and environmental health before</p>	<p>Sustained. X Overruled.</p> <p>Ms. Norris's testimony appears to reach legal conclusions that are not within the scope of her expertise. Rather than</p>

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	<p>training, or education to form the basis of the opinions contained in her testimony related to water rights. During the hearing, Ms. Norris acknowledged she is not a lawyer. (Sites Reservoir Public Hearing on 2024-09-30 (pm) YouTube webcast at 27:35-27:50.)</p> <p>Lack of foundation. (Evid. Code, § 702; <i>Sargon, supra</i>, 55 Cal.4th at p. 770 [“the matter relied on must provide a reasonable basis for the particular opinion offered, and ... an expert opinion based on speculation or conjecture is inadmissible”].) Testimony lacks foundation when the underlying factual basis has not been submitted or is improper. FOR failed to establish a reasonable basis for Ms. Norris’s opinions regarding water rights, and she is not an attorney.</p>	<p>Regional Water Quality Control Boards, the State Water Board, before the Department of Water Resources in collaboration with Tribes, and internationally before the United Nations and European Union international fora. (Id.)</p> <p>Moreover, she has provided hundreds of presentations and training on the cycle and health effects of mercury, exposure-reduction strategies, solution development and opportunities for advocacy related to mining issues in California. (FOR-2.)</p> <p>As for Ms. Norris’ opinion and testimony regarding the Project’s impacts on water rights, her professional experience has provided her the special knowledge and skill to assess and evaluate the impacts the Project will have on salmon populations in human health.</p> <p>As for lack of foundation, Ms. Norris’ testimony in fact includes numerous citations regarding fish populations and impacts associated with mercury. (See footnotes at FOR-2 at pp. 8-18.) These are clearly documents, reports and judicial decision that Ms. Norris reviewed in forming her opinion based upon her</p>	<p>attempt to disentangle the admissible from inadmissible testimony, however, I overrule the objection and will consider the Authority’s objection, and Ms. Norris’s education and experience, when considering the weight to be afforded the testimony. The inclusion of legal opinion or conclusion in testimony in an administrative proceeding before the AHO is not typically a basis to exclude the testimony, but, rather, goes to the weight of the evidence.</p> <p>The Authority does not specifically identify its objection to paragraphs 33-35, so the hearing officer overrules the objection and will consider Ms. Norris’s experience in evaluating the weight of the testimony. To the extent that these paragraphs include legal conclusions, the hearing officer will disregard those conclusions.</p> <p>The Authority’s remaining objections are overruled.</p>



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		special knowledge and skill based upon her professional experience.	
<p>FOR-2 (Testimony of Sherri Norris), ¶¶ 12-13, 16-17.</p>	<p>Inadmissible opinion testimony by expert witness. (Evid. Code, §§ 720, 800-803.) FOR has offered no evidence in Ms. Norris’s written testimony or related exhibits that she has special knowledge, skill, experience, training, or education to form the basis of the opinions contained in her testimony regarding the requirements of the California Endangered Species Act and the Health and Safety Code. During the hearing, Ms. Norris acknowledged she is not a lawyer. (Sites Reservoir Public Hearing on 2024-09-30 (pm) YouTube webcast at 27:35-27:50.)</p> <p>Lack of foundation. (Evid. Code, § 702; <i>Sargon, supra</i>, 55 Cal.4th at p. 770 [“the matter relied on must provide a reasonable basis for the particular opinion offered, and ... an expert opinion based on speculation or conjecture is inadmissible”].) Testimony lacks foundation when the</p>	<p>Ms. Norris testified that she has over 25 years of experience conducting safe fish consumption health education and water quality advocacy in collaboration with California tribes. (FOR-1, ¶ 1.) Moreover, during that time she has advocated for Tribal and environmental health before Regional Water Quality Control Boards, the State Water Board, before the Department of Water Resources in collaboration with Tribes, and internationally before the United Nations and European Union international fora. (<i>Id.</i>)</p> <p>Moreover, she has provided hundreds of presentations and training on the cycle and health effects of mercury exposure-reduction strategies, solution development and opportunities for advocacy related to mining issues in California. (FOR-2.)</p> <p>Her professional background and experience over the last 25 years provides her the special knowledge skill, experience to form the basis for her opinions.</p> <p>As for Ms. Norris’ opinion and testimony regarding the California</p>	<p>Sustained X Overruled</p> <p>Ms. Norris’s testimony appears to reach legal conclusions that are not clearly within the scope of her expertise, although she has expertise in matters related to tribal health. Rather than attempt to disentangle the admissible from inadmissible testimony, I overrule the objection and will consider the Authority’s objection, and Ms. Norris’s education and experience, when considering the weight to be afforded the testimony. The inclusion of legal opinion or conclusion in testimony in an administrative proceeding before the AHO is not typically a basis to exclude the testimony, but, rather, goes to the weight of the evidence. The hearing officer has the training and experience to disregard legal opinion.</p>

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	<p>underlying factual basis has not been submitted or is improper. FOR failed to establish a reasonable basis for Ms. Norris's opinions on the California Endangered Species Act and the Health and Safety Code, and she is not an attorney.</p>	<p>Endangered Species Act and Health &amp; Safety Code, her background clearly indicates professional experience that qualifies her for offering such opinions.</p> <p>As for lack of foundation, Ms. Norris' testimony in fact includes numerous citations regarding fish populations and impacts associated with mercury. (See footnotes at FOR-2 at pp. 8-18.) These are clearly documents, reports and judicial decision that Ms. Norris reviewed in forming her opinion based upon her special knowledge and skill based upon her professional experience.</p>	
<p>FOR-2 (Testimony of Sherri Norris) at 18:19-20.</p>	<p>Hearsay. (Gov. Code, § 11513, subd. (d); Cal. Code Regs., tit. 23, § 648.5.1.) Ms. Norris stated that she relied on conversations with tribes to form an opinion that the Authority inadequately consulted with Tribes. These opinions contain hearsay that is not supported by other evidence and cannot be used to support a finding by the AHO.</p>		<p>X Sustained Overruled</p> <p>Out of court statements by tribal members and representatives are hearsay. Such statements can be used only for the purpose of supplementing or explaining other evidence and are not sufficient to support findings unless they would be admissible over objection in civil actions. (Gov. Code, § 11513, subd. (d).) This hearsay testimony is admitted into</p>

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			evidence but will only be relied upon to supplement or explain other evidence.
<p>FOR-4 (Testimony of Gary Mulcahy), ¶¶ 4, 6-17, 20-33, 42, 43, 46-48, 51.</p>	<p>Irrelevant. (Gov. Code, § 11513, subd. (c).) The purpose of the hearing is to investigate the facts and reach conclusions grounded in an evidentiary record that contains the sort of evidence on which responsible persons are accustomed to rely upon in the conduct of serious affairs. The witness statements provided in these paragraphs, including those regarding historical background, Baird Fish Hatchery on the McCloud River, and salmon reintroduction, are irrelevant to the hearing issues established by the Administrative Hearing Officer (AHO) and are irrelevant to the State Water Board’s consideration of the Sites Project Authority’s application.</p> <p>The probative value of the proposed evidence is substantially outweighed by the probability that its admission will necessitate</p>	<p>The Authority seeks to throw multiple paragraphs into the same bucket to overshadow the significance of important and relevant testimony. Paragraphs 10-19 , 42-45 and 47 are foundational as to the relationship, knowledge and expertise the Winnemem Wintu have with salmon in the Sacramento River watershed, and demonstrates the efforts of not only the Tribe, but NOAA, California Fish and Wildlife and DWR try and prevent an endangered species, (winter-run salmon) from going extinct. Thus, the legitimate concern of the Winnemem Wintu Tribe regarding the issuance of a water permit that would allow additional diversions of water from the Sacramento River that could affect an already endangered species and create additional hazard for out-migrating juvenile salmon via diversion intakes and thus severely impacting the reintroduction efforts. This question falls well within the scope of the SWRCB’s consideration of whether</p>	<p>Sustained X Overruled</p> <p>Evidence Code section 210 provides that “relevant evidence means evidence ... having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action.”</p> <p>These paragraphs address the Winnemem Wintu’s history in relation to the State of California and provide historical and cultural context for the State Water Board’s consideration of potential impacts to tribal lands, tribal interests, and tribal cultural resources, and whether the proposed appropriation is in the public interest in light of any impacts.</p> <p>The subject of this testimony, which describes tribal cultural resources and cultural history, is not addressed by other testimonies and, particularly given that cross-examination</p>

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	<p>undue consumption of time. (Gov. Code, § 11513, subd. (f).) The AHO should exercise her discretion to exclude the irrelevant testimony based on the minimal probative value and because the information is otherwise addressed in other testimonies.</p>	<p>to issue a new water permit, or not.</p> <p>Concurrently, paragraphs 20-34 and 36 are foundational and demonstrative of the devastation that the construction of dams can do to a Tribe’s traditional homelands, cultural resources, sacred sites and tribal cultural landscape. The historical account of how Shasta Dam came to be and the irreparable harm it continues to wreak upon the Winnemem Wintu is overwhelmingly relevant to the SWRCB’s deliberation on whether to issue a new water permit that would allow the construction of a dam that would devastate the traditional homelands of another Native American Tribe, the Cachil Dehe. These paragraphs also contain the admission of the U.S. Government on the harms and devastation that dams do to Tribal homelands, cultures, resources and even spiritual practices. It is clear why the Authority would want to exclude this testimony and evidence because of its overwhelming probative value to the SWRCB’s deliberations.</p> <p>[Additional argument truncated, see 2024-11-15 FOR et al. Opposition to Evidentiary Objections.]</p>	<p>is already complete, is not likely to necessitate an undue consumption of time.</p> <p>The hearing officer will consider Mr. Mulcahy’s testimony in the context of the record as a whole when determining the weight to be afforded his testimony.</p>
<p>FOR-4 (Testimony of Gary</p>	<p>Inadmissible opinion testimony by expert witness. (Evid. Code, §§ 720, 800-803.) FOR has not offered</p>	<p>Sites objects that paragraphs 5 and 50 (testifying that new water rights allocations are categorically “illegal” and should be suspended in light of</p>	<p>Sustained X Overruled</p>

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<p>Mulcahy), ¶¶ 5, 50.</p>	<p>support in Mr. Mulcahy’s written testimony or related exhibits that he has special knowledge, skill, experience, training, or education to form the basis of the opinions contained in his testimony related to interpretation of the law. These paragraphs contain unsupported legal opinions; the witness is not offered as a legal expert.</p> <p>Lack of foundation. (Evid. Code, § 702; <i>Sargon, supra</i>, 55 Cal.4th at p. 770 [“the matter relied on must provide a reasonable basis for the particular opinion offered, and ... an expert opinion based on speculation or conjecture is inadmissible”].) Testimony lacks foundation when the underlying factual basis has not been submitted or is improper. Mr. Mulcahy’s testimony does not establish the necessarily factual basis to support his legal opinions.</p>	<p>inherent tribal water rights) as “unsupported legal conclusion.” Although the Water Board’s website states that experts are not allowed to testify to legal conclusions, the applicable Evidence Code provisions do not so state. Evidence Code section 805, which applies to these proceedings, provides that “[t]estimony in the form of an opinion that is otherwise admissible is not objectionable because it embraces the ultimate issue to be decided by the trier of fact.”</p> <p>Here, the testimony goes to the ultimate fact about the legality of the requested water right; it is therefore squarely relevant, and it is “not objectionable” simply because it goes to this ultimate issue.</p> <p>As to the Authority’s argument that the testimony is “unsupported,” several paragraphs of testimony regarding the Tribe’s history with state genocide and the refusal to ratify the Treaty of Peace and Friendship show that the Tribe’s land and resources were not ceded and that, from the Tribe’s perspective, any efforts to further alienate them are per se illegal until “the inherent water</p>	<p>The inclusion of legal opinion or conclusion in an administrative proceeding before the AHO is not typically a basis to exclude the testimony, but, rather, goes to the weight of the evidence. Strict rules governing the admissibility of evidence do not apply in administrative proceedings. This is so in part because the hearing officer is “presumably competent to ... discount that evidence which has lesser probative value, it makes little sense, as a practical matter, for a judge in that position to apply strict exclusionary evidentiary rules.” (<i>Underwood v. Elkay Min., Inc.</i> (4th Cir. 1997) 105 F.3d 946, 949.)</p> <p>Mr. Mulcahy is an expert in the Winnemem Wintu’s cultural history and government relations by virtue of his tribal membership as well as his 25 years of work experience representing the tribe on water and water-related issues, salmon issues, cultural issues affecting the tribe, and litigation for those issues. (FOR-4, ¶ 1.) He may</p>

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		rights of the Indigenous People of this state are recognized, allocated, protected, and preserved.”	<p>provide opinions about the history of these topics, as related to state or federal government actions or inactions toward his tribe, based on this expertise.</p> <p>Under Evidence Code § 702, subd. (b), a witness may demonstrate personal knowledge with their own testimony. Mr. Mulcahy’s testimony lays a foundation for his opinions in paragraphs 5 and 50 (FOR-4, ¶¶ 2-4, 6-9, 20-28), which is based on his personal knowledge working for and representing the tribe for 25 years.</p> <p>Given the more liberal standards that govern admissibility of evidence in administrative proceedings before the Board, the hearing officer will consider these objections as arguments regarding the weight of the evidence rather than objections to its admissibility.</p>
FOR-4 (Testimony of Gary Mulcahy), ¶¶ 18-19,	Inadmissible opinion testimony by expert witness. (Evid. Code, §§ 720, 800-803.) Mr. Mulcahy’s written testimony and related	This block again seeks to throw multiple paragraphs into the same bucket in an attempt to discredit expert testimony and relegate it to formulated opinion. Paragraphs 46-48 could fall	<p>Sustained</p> <p>X Overruled</p> <p>Based on Mr. Mulcahy’s 25-year experience studying and</p>

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<p>20-33, 37-41, 46-48.</p>	<p>exhibits do not state or otherwise establish that he has special knowledge, skill, experience, training, or education to form the basis of the opinions contained in his testimony related to impacts to salmon, the history of Shasta Dam and projects up to the Trinity River (including impacts to the Delta ecosystem and fish), and biological studies. Mr. Mulcahy does not have qualifications beyond common experience to offer opinions on these matters.</p>	<p>within that bucket, but the remaining paragraphs are filled with factual and verifiable information based on well-documented facts publicly available and on Mr. Mulcahy’s personal experience, knowledge and expertise in those areas.</p> <p>Additionally, on redirect, Ms. Norris, testified as to the definition of Traditional Ecological Knowledge (TEK) or Indigenous Knowledge (IK) as a basis of expertise of indigenous Peoples into the record, as a means to support the testimonies of the Tribal [witnesses]. See 2024-02-10 Sites Public Hearing (am) 43:55 – 53:55.)</p> <p>First and foremost, Mr. Mulcahy is a member of the Winnemem Wintu Tribe whose traditional knowledge and interactions with the Sacramento River watershed go back to time immemorial. Tribal cultural practices and spiritual beliefs are all based on traditional knowledge and interaction with the environment. Mr. Mulcahy appeared before this hearing as an expert witness of the Winnemem Wintu Tribe which necessarily encompassed that traditional knowledge. (see definitions for Traditional Ecological Knowledge, or Indigenous Knowledge)</p>	<p>testifying about the Winnemem Wintu’s practices related to salmon egg harvesting and hatching, the tribe’s history with the state and federal governments, and federal agencies’ actions and conclusions that have impacted and may impact the tribe’s ability to engage in tribal cultural practices, Mr. Mulcahy may offer the testimony to which the Authority objects as an expert in these topics or as lay person opinion testimony based on his personal observations.</p> <p>Strict rules governing the admissibility of evidence do not apply in administrative proceedings. This is so in part because the hearing officer is “presumably competent to ... discount that evidence which has lesser probative value, it makes little sense, as a practical matter, for a judge in that position to apply strict exclusionary evidentiary rules.” (<i>Underwood v. Elkay Min., Inc.</i> (4th Cir. 1997) 105 F.3d 946, 949.) The hearing officer will consider this objection in considering the</p>

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		<p>Second, Mr. Mulcahy further stated in his qualifications his participation in various government committees, policy making committees, advisory committees, adjudicatory processes and NGO committees for various watershed restoration, water storage and Leg &amp; Policy issues. All of these in one way or another concerned water management, water policy, species protection, Biological Opinion implementation, and water infrastructure. Is it Sites Authority's intent to challenge the validity of each and every one of those committees and processes and the information that was developed and shared within? It appears that that is their intent here by the way they have framed their objection. Does Sites Authority have any personal knowledge of any of the information that was covered in any of the above processes? We believe not. Therefore, these objections should be overruled.</p> <p>[Additional argument truncated, see 2024-11-15 FOR et al. Opposition to Evidentiary Objections.]</p>	<p>weight to be afforded the testimony in the context of the record as a whole.</p>
<p>FOR-6 (Testimony of Melissa Tayaba), ¶ 7, p. 8:9-13, 14-16.</p>	<p>Inadmissible opinion testimony by expert witness. (Evid. Code, §§ 720, 800-803.) FOR has offered no evidence in Ms. Norris's written testimony or related exhibits that she has special</p>	<p>Unclear objections as the objection references Ms. Norris written testimony, not Vice Chair Tayaba's testimony.</p> <p>If these objections are intended for Paragraph 7 of Vice Chair Tayaba's testimony, here is the response:</p>	<p>Sustained X Overruled</p> <p>Paragraph 7 of Ms. Tayaba's testimony appears to be a verbatim recitation of statements made by</p>



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	<p>knowledge, skill, experience, training, or education to form the basis of the opinions contained in her testimony related to hydrology, water quality, fish biology, harmful algal blooms, or statistics.</p> <p>Lack of foundation. (Evid. Code, § 702; <i>Sargon, supra</i>, 55 Cal.4th 747 at p. 770 [“the matter relied on must provide a reasonable basis for the particular opinion offered, and ... an expert opinion based on speculation or conjecture is inadmissible”].) Testimony lacks foundation when the underlying factual basis has not been submitted or is improper. FOR failed to establish a reasonable basis for Ms. Norris’s opinions on hydrology, water quality, fish biology, harmful algal blooms, or statistics.</p>	<p>Qualification of Malissa Tayaba (FOR-5) identifies Vice Chair Tayaba as the Vice Chair of the Tribal Council. It also identifies her as the Director Traditional Ecological Knowledge. On October 2, 2024, information on Traditional Ecological Knowledge, a branch of science, was introduced into the record in response to the cross-examination of Tribal witnesses that had testified on September 30, 2024 and October 2, 2024. While there are varying specific definitions for Traditional Ecological Knowledge, several things remain true and accurate: (1) Native American people are considered experts in Traditional Ecological Knowledge sciences; and (2) environmental sciences, including hydrology, water quality, fish biology, HABs, and statistics, are a part of Traditional Ecological Knowledge.</p> <p>Traditional Ecological Knowledge is generally based on personal and community gathered data. Sharing of Traditional Ecological Knowledge threatens Indigenous Data Sovereignty<sup>1</sup> and can put traditional knowledge at risk. Both objections to the testimony should be overruled as these are expert statements from Vice Chair Tayaba as she is an expert in Traditional Ecological Knowledge.</p>	<p>representatives from the Stanford Environmental Law Clinic in support of a Title VI Civil Rights complaint filed against the State Water Board. Those statements as they appear in the Title VI complaint cite, in support, official State Water Board orders or reports that are either offered into evidence in this proceeding or are otherwise subject to official notice. Going forward, I ask the parties to please be diligent in citing the source of factual information on which a witness relies in his or her testimony to avoid the risk of exclusion of the testimony for lack of foundation or probative value.</p> <p>Page 8, lines 13-16 do not exist in Ms. Tayaba’s testimony and therefore any objection to those lines is overruled.</p>

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
		<p>Additionally, on redirect, Ms. Norris testified as to the definition of Traditional Ecological Knowledge (TEK) or Indigenous Knowledge (IK) as a basis of expertise of indigenous Peoples into the record, as a means to support the testimonies of the Tribal witnesses. See 2024-02-10 Sites Public Hearing (am) 43:55 – 53:55.)</p> <p>This portion of the testimony should be submitted as admissible testimony by a witness.</p>	
<p>FOR-6 (Testimony of Melissa Tayaba), ¶ 2, pp. 6:23-7:1, 7:2-7:3, 7:12.</p>	<p>Irrelevant. (Gov. Code, § 11513, subd. (c).) The purpose of the hearing is to investigate the facts and reach conclusions grounded in an evidentiary record that contains the sort of evidence on which responsible persons are accustomed to rely upon in the conduct of serious affairs. The testimony is irrelevant to the hearing issues established by the AHO and is irrelevant to the State Water Board’s consideration of the Sites Project Authority’s application.</p>	<p>6:23-7:3 – These statements are relevant to Hearing Issue 3(d)(i) “Would the proposed appropriation impact tribal lands, tribal interests, or tribal cultural resources?”</p> <p>The purpose of this statement is to emphasize the threat to California tribes that the Sites Reservoir Project poses.</p> <p>It is an accurate statement of the relationship that California tribes have with the State of California and is relevant to decisions that the State Water Resources Control Board makes regarding water resources that are important to tribes. The State Water Resources Control Board and staff regularly take into consideration impacts to tribes and cultural resources into their decision-making process, and that</p>	<p>Sustained X Overruled</p> <p>Ms. Tayaba’s testimony about the tribe’s history with the state and federal governments provides historical and cultural context for the State Water Board’s consideration of potential impacts to tribal lands, tribal interests, and tribal cultural resources, and whether the proposed appropriation is in the public interest, and therefore is relevant testimony.</p>

<b>MATERIAL OBJECTED TO</b>	<b>GROUND FOR OBJECTION</b>	<b>RESPONSE TO OBJECTION</b>	<b>RULING ON OBJECTION</b>
		<p>includes taking historical factors into consideration.</p> <p>Additionally, this is a relevant statement to this proceeding as it is regarding a water rights application and tribal communities often hold the opinion that because of the historical impacts listed in this statement, they have been systemically excluded or inhibited from obtaining water rights.</p> <p>7:12 – This is not an irrelevant statement. The loss of culture to tribes because of this project is very relevant specifically to issue 3(d)(i) “Would the proposed appropriation impact tribal lands, tribal interests, or tribal cultural resources?” The purposeful destruction of resources and landscapes that are unique and important to a specific culture caused by purposeful action by another is considered cultural genocide.<sup>2</sup> As is noted in Paragraph 16, lines 6-9, Shingle Springs Band of Miwok Indians’ culture, religion, and identity is intrinsically tied to the lands, plants, fish, and animals that will be impacted by the Sites Reservoir Project. The irreparable harm to those tribal significant resources lends itself towards cultural genocide and therefore the statement is relevant to the situation facing the Tribe.</p>	

<b>MATERIAL OBJECTED TO</b>	<b>GROUND FOR OBJECTION</b>	<b>RESPONSE TO OBJECTION</b>	<b>RULING ON OBJECTION</b>
<p>FOR-8 (Testimony of Chairman Wayne Mitchum).</p>	<p>Sites Project Authority reserves the right to submit objections to this exhibit pending Chairman Mitchum's direct and cross-examination, scheduled for November 4, 2024 or thereafter. (State Water Resources Control Board [SWRCB] Fifth Amended Notice of Public Hearing, Oct. 18, 2024, p. 2.)</p>	<p>As discussed with the AHO, the protestants propose allowing Chairman Mitchum's case-in-chief testimony to be provided when hearings resume in January or February.</p>	<p>See procedural ruling, excluding FOR-8 without prejudice.</p>
<p>FOR-10a (Corrected Testimony of Ron Stork), ¶¶ 9, 45-52, 61-63, 70-81, 84-88.</p>	<p>Inadmissible opinion testimony by expert witness. (Evid. Code, §§ 720, 800-803.) There is no basis in Mr. Stork's written testimony to support that his opinions in these paragraphs are based on his special knowledge, skill, experience, training, or education that is reasonably reliable for an expert; are related to a subject that is beyond common experience; and are based on matters personally known or made known to him. Paragraphs 61 through 63 contain unsupported legal opinions; Mr. Stork is not offered as a legal expert. Moreover, regarding</p>	<p>[Voluminous response not provided in Word format.]</p>	<p>Sustained X Overruled Mr. Stork's extensive professional expertise provides adequate basis for his expert opinion on these subject matters. The hearing officer will consider Mr. Stork's qualifications and expertise when evaluating the weight of his testimony. The inclusion of legal opinion or conclusion in an administrative proceeding before the AHO is not typically a basis to exclude the testimony, but, rather, goes to the weight of the evidence.</p>

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
	<p>paragraphs 84 through 89, Mr. Stork cannot confirm the accuracy of the quoted information.</p>		
<p>FOR-28 (Summary of Testimony – Ron Stork), slides 2 (hyperlink), 12, 13, 15, 16 (bullet 2).</p>	<p>Witnesses may not provide oral direct testimony on matters not in their written proposed testimony. (SWRCB Amended Notice of Public Hearing and Pre-Hearing Conference, June 5, 2024 [hereafter Amended Notice], p. 28.) Mr. Stork’s summary presentation slides exceed the scope of his written testimony (FOR-10a).</p>	<p>Slide 2, hyperlink. This objection to the hyperlink is correct. The hyperlink on the slide was not included in the witness testimony or qualifications. It was not mentioned in the actual witness testimony.</p> <p>Slide 12, “Surplus” and “areas of deficiency” Fight over area of origin laws.</p> <p>Response: Testimony refers to political compromises and north-state, south-state compromises to get the county and area of origin statutes (1931 &amp; 1933) and explanations of the controversy from the later battle to create the SWP and subject to area and county of origin protections. See paragraphs 3, 5, 6, and supporting references; paragraph 29 and supporting references that MWD’s later concern that SWP yields might diminish over time because of area of origin depletions; exhibit FOR-53 PDF p. 4 (county or origin response to Owens Valley experience) pp. 7-12 (MWD opposition to SWP without contracts not subject to later reductions by future north state water demands),</p>	<p>X Sustained (only as to the hyperlink on slide 2). Overruled</p>

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
		<p>exhibit FOR-54 p. 6 (north-south state fight over county and origin law enactments), exhibit FOR-57 PDF p. 12 (pre-SWP concerns that the north might invoke the County of origin law and prohibit water from going south); exhibit FOR- 84 p. 13 (area of origin might block SWP creation). <u>The objection is correct, however, that there is no mention in the testimony of MWD involvement in the controversies and compromise leading to the creation of the county and area of origin laws in 1931 &amp; 1993.</u></p> <p>Slide 13, dam-building era. Response: Summarizes paragraphs 7 to 12 with their supporting references/exhibits. Also covered to some extent in Exhibit 56 pp. 3-6.</p> <p>Slide 15, Reclamation post-war dam proposals, including items of interest near the Sites Reservoir project. Response: summarizes paragraphs 14 to 18 with their supporting references/exhibits.</p> <p>Slide 16, bullet 2, expanding CVP service areas with consequent increased demand on CVP. Response: This bullet summarizes paragraph 18.</p>	
FOR-12 (Testimony)	Inadmissible opinion testimony by expert witness.	Mr. Macdonald's qualifications are in FOR-11 and Witness statement. He	Sustained

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
<p>of Clyde Macdonald), ¶¶ 16-23, 25-27, p. 6:17-26; FOR-29 (Summary of Testimony – Clyde MacDonald) [to the extent the objectionable opinions from FOR-12 are incorporated into the presentation].</p>	<p>(Evid. Code, §§ 720, 800-803.) Mr. Macdonald’s written testimony and related exhibits do not state or otherwise establish that he has special knowledge, skill, experience, training, or education to form the basis of the opinions contained in his testimony regarding the application of Water Code sections 1215 and 11460 to the Sites Reservoir Project. His testimony on this issue constitutes legal conclusions that are inadmissible. (<i>Hayman v. Block</i> (1986) 176 Cal.App.3d 629, 638-639 [“affidavits must cite evidentiary facts, not legal conclusions or ‘ultimate facts’”].)</p> <p>Lack of foundation. (Evid. Code, § 702; <i>Sargon, supra</i>, 55 Cal.4th at p. 770 [“the matter relied on must provide a reasonable basis for the particular opinion offered, and ... an expert opinion based on speculation or conjecture is inadmissible”].) Testimony lacks foundation when the underlying factual basis has not been submitted or is</p>	<p>was the California Assembly’s Water Parks &amp; Wildlife Committee chief consultant and lead responsible for staffing the creation of Water Code section 1215. It would be hard to find someone more qualified to offer an expert opinion on this subject. The objected-to paragraphs are facts known to the expert. The final recommendations are based on his experience with north-state/south state controversies/compromises associated with the state and federal export projects.</p>	<p>X Overruled</p> <p>Mr. Macdonald has specialized knowledge and experience, about the legislative history of Water Code section 1215 and related provisions. The inclusion of legal opinion or conclusion in an administrative proceeding before the AHO is not typically a basis to exclude the testimony, but, rather, goes to the weight of the evidence. The hearing officer will discount legal opinion testimony.</p>

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
	improper. Mr. Macdonald’s testimony does not establish a reasonable factual basis supporting his legal opinions.		
FOR-14 (Testimony of Jeffrey Michael), <sup>1</sup> ¶¶ 25, 26, 27 (at 14:26-15:3), 28 (at 15:3-17), 29 (at 16:6-9).	Inadmissible opinion testimony by expert witness. (Evid. Code § 720, 800-803.) Dr. Michael’s written testimony and related exhibits do not state or otherwise establish that he has special knowledge, skill, experience, training, or education to form the basis of the opinions contained in his testimony regarding agricultural uses in the Sacramento Valley, crops likely to be supported by Sites Reservoir Project, and decision-making processes of water agencies regarding investments in water supplies. Dr. Michael does not have qualifications beyond common experience to offer opinions on these matters (see FOR-13); Dr. Michael is an economist, not an agronomist. Moreover, these statements	Dr. Michael has expertise in agricultural economics. This is evidenced by multiple economic impact studies of agriculture in California. Both masters and Ph.D. program included graduate level courses in agricultural production economics. The testimony in question is not about agronomy, but is about profitability – agricultural economics.  Context: In paragraphs 23 and 24 – evidence is presented (FOR 104) that benefits did not exceed costs for individual water agencies in Sites JPA – only in the aggregate. The aggregate finding is based on two participating urban agencies increasing the value of Sites water to the cost of desalinated water. Thus, the financial feasibility of agriculture is already established.  Paragraph 25 provides a simple illustration to make agricultural unaffordability clear and reinforce the	Sustained X Overruled  The hearing officer will consider the objections in determining the weight to be afforded the testimony.

<sup>1</sup> Sites Project Authority joins in and incorporates as its own those evidentiary objections to FOR-14 submitted by the State Water Contractors.



MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
	<p>are not admissible as lay testimony, because they are not rationally based on the witnesses' perception. (Evid. Code, § 800, subd. (a).) Dr. Michael has not established personal knowledge regarding the opinions provided; instead, his testimony is purely speculation. (See Sites Reservoir Public Hearing on 2024-10-09 (pm) at 02:01:28 – 02:01:37 [Dr. Michael confirmed he has no personal knowledge of the internal planning and decision making processes of either Metropolitan Water District or San Bernadino Valley Municipal Water District].)</p> <p>Lack of foundation. (Evid. Code, § 702; <i>Sargon, supra</i>, 55 Cal.4th at p. 770 [“the matter relied on must provide a reasonable basis for the particular opinion offered, and ... an expert opinion based on speculation or conjecture is inadmissible”].) Testimony lacks foundation when the underlying factual basis has not been submitted or is</p>	<p>finding of paragraphs 23 and 24. It is clearly based in facts.</p> <p>Paragraph 26: Dr. Michael has expertise in economics and public policy. This paragraph explains why farmers may support a project that is unlikely to be in their economic interest.</p> <p>Paragraphs 27-29 are about urban water demand, and whether Sites is needed to provide water supply reliability. Dr. Michael has personal expertise in demand forecasting, and cites to the State Water Board's (FOR-96) projections of lower urban water demand as well as the two largest urban water agency participants' planning documents that show they easily meet projected demand without Sites (FOR- 108, FOR-109), and in the case of FOR 108, the entire document is about selecting investments from a portfolio and that choosing one investment like Sites will likely mean not investing in alternatives – FOR 108 clearly substantiates the statement at the end of paragraph 28.</p> <p>The objection says Dr. Michael has no internal knowledge of these agencies decision processes, but he did not testify about their decision processes – so this objection is off</p>	

<b>MATERIAL OBJECTED TO</b>	<b>GROUND FOR OBJECTION</b>	<b>RESPONSE TO OBJECTION</b>	<b>RULING ON OBJECTION</b>
	<p>improper. Dr. Michael’s testimony includes unsupported statements of “fact” without citation or supporting documentation on the matters described herein.</p>	<p>the mark. From the Authority’s cross-examination questions and this objection, it appears their position is that economic public interest is adequately considered by agency boards when they make final investment decisions – and that it isn’t the board’s concern. Dr. Michael disputes that these agency decision processes really consider the public interest and affordability, but that is not the issue here as the Board’s role is to consider the public interest – which definitely includes cost-of-living and affordability considerations.</p>	
<p>FOR-20 (Testimony of Mark Easter), ¶ 17, fn. 30 [“I have provided with my testimony an appendix of high impact scientific studies documenting greenhouse gas</p>	<p>Inadmissible opinion testimony by expert witness. (Evid. Code, §§ 720, 800-803.) There is no basis in the written testimony to support that his opinions in these paragraphs are based on his special knowledge, skill, experience, training, or education that is reasonably reliable for an expert; are related to a subject that is beyond common experience; and are based on matters personally known or made known to him. This paragraph contains reference to studies with</p>	<p>[Not provided in Word format, see 2024-11-15 FOR et al. Opposition to Evidentiary Objections.]</p>	<p>X Sustained (in part) Overruled</p> <p>The documents referenced in footnote 30 are admissible under Gov. Code § 11513, subdivision (d), even as hearsay. To the extent the documents are not subject to any exception to the hearsay rule, the hearing officer will only reply upon the documents to supplement or explain other evidence. The hearing officer will consider whether the</p>

<b>MATERIAL OBJECTED TO</b>	<b>GROUND FOR OBJECTION</b>	<b>RESPONSE TO OBJECTION</b>	<b>RULING ON OBJECTION</b>
<p>emissions from dams and reservoirs (FOR-165), incorporate d herein”].</p>	<p>insufficient information to determine his reliance on them in preparing his opinions and personal knowledge of them.</p> <p>Lack of foundation. (Evid. Code, § 702; <i>Sargon, supra</i>, 55 Cal.4th at p. 770 [“the matter relied on must provide a reasonable basis for the particular opinion offered, and ... an expert opinion based on speculation or conjecture is inadmissible”].) Testimony lacks foundation when the underlying factual basis has not been submitted or is improper. The studies cannot be incorporated by reference into the written testimony because the witness did not establish the necessary knowledge of the documents and the subject matter therein.</p> <p>Hearsay. (Gov. Code, § 11513, subd. (d); Cal. Code Regs., tit. 23, § 648.5.1.) These paragraphs contain hearsay that is not supported by other evidence and cannot</p>		<p>documents are subject to any hearsay exception if the hearing officer’s draft decision relies on the document to support a finding rather than to supplement or explain other evidence.</p> <p>The attempt to incorporate the referenced studies into Mr. Easter’s testimony is stricken – the studies may be offered as scientific reports that speak for themselves but not as the expert testimony of Mr. Easter. The Authority’s remaining objections are overruled.</p>

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
	<p>be used to support a finding by the AHO.</p>		
<p>FOR-33 (Summary of Testimony – Mark Easter), slides 3, 4, 6.</p>	<p>Witnesses may not provide oral direct testimony on matters not in their written proposed testimony. (Amended Notice, p. 28.) Mr. Easter’s summary presentation slides and accompanying oral testimony exceed the scope of his written testimony (FOR-20).</p>	<p>The record reflects that the slides regarding his summary testimony is well within the scope of the written testimony. Regarding slide #3: These summary items are pulled directly from the written testimony, and are summary sentences that present the concepts provided in the written testimony:</p> <p>Paragraph 4, page 3 (“The Sites Project Authority significantly underestimates the project emissions”)</p> <p>Paragraph 5, page 4 (“The Sites Project Authority did not include multiple major emissions sources in their estimate.”)</p> <p>Paragraph 5 states: “The Sites Project Authority’s estimates do not include the following as sources: carbon leakage, downstream carbon emissions, and dam decommissioning.” This omission by the Sites Project Authority’s accounting is also reflected in the table within item 5, page 4 of Mr. Easter’s written testimony.</p> <p>Paragraph 10, page 6, and Paragraph 11, page 7 (“This follows</p>	<p>X Sustained, in part. Overruled</p> <p>The reference to 810,000 metric tons of CO2 per year on Slide 3 is stricken, with the associated graph, as the number is not included in the written testimony. The Authority’s remaining objections are overruled.</p>

<b>MATERIAL OBJECTED TO</b>	<b>GROUND FOR OBJECTION</b>	<b>RESPONSE TO OBJECTION</b>	<b>RULING ON OBJECTION</b>
		<p>a well- established pattern by industry in this and other sectors”)</p> <p>Paragraph 10, page 6 reads “These significant underestimates follow an unfortunate, but well-established pattern in greenhouse gas inventory methods that are based upon industry-reported data, particularly where methane is modeled.”</p> <p>Paragraph 11, page 7 reads “The evidence described above shows that this pattern of initial under-reporting and under-counting of dangerous climate-heating emissions from a new source category is occurring again, this time in the context of emissions from reservoirs.”</p> <p>Paragraphs 11 &amp; 12, pages 7 &amp; 8 (“Building projects that add such significant additional greenhouse gases to the atmosphere, especially methane, is extremely unsafe”).</p> <p>Page 7, line 13 of written testimony reads “Adding Yet More Greenhouse Gas Emissions to the Atmosphere, Especially Methane, is Extremely Unsafe”</p> <p>The text in paragraph 12 directly links significant methane emissions to reservoir projects.</p>	

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
		<p>Regarding slide #4: The information in the slide is directly from the written testimony (FOR-20).</p> <p>The two bulleted items of text on the slide are pulled from item 5, page 4 and item 15, page 10 of written testimony (FOR-20.)</p> <p>The image on the lower right side of the graph is a graphic representation of the data provided in the bulleted text items at the top of the slide.</p> <p>The table in the slide is pulled from item 5, page 4 of written testimony. (FOR-20.)</p> <p>Regarding slide #6: The material presented are directly from paragraph 10, page 6 of written testimony (FOR-20), including the citations (Nesser <i>et al</i> (2024), footnote 17, and Sherwin <i>et al.</i> (2024), listed as footnote 18).</p>	
<p>PCFFA-1 (Sites Testimony Bradshaw), ¶¶ II (p. 2), 12 (in part), 24, 28, 29 (in part), 30, 35, first numbered ¶ 36 (p. 16),</p>	<p>Inadmissible opinion testimony by expert witness. (Evid. Code, §§ 720, 800-803.) Mr. Bradshaw’s written testimony and related exhibits do not state or otherwise establish that he has special knowledge, skill, experience, training, or education to form the basis of the opinions contained in</p>	<p>[PCFFA response not provided in requested format.]</p>	<p>X Sustained, in part Overruled</p> <p>The testimony purporting to incorporate referenced documents into the testimony is stricken. The Authority’s remaining objections are overruled.</p>

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
37, 38, 40, 41.	his testimony related to matters that exceed the scope of Mr. Bradshaw's stated qualifications.		
PCFFA-1 (Sites Testimony Bradshaw), ¶¶ 12 (in part), 20, 34.	<p>Hearsay. (Gov. Code, § 11513, subd. (d); Cal. Code Regs., tit. 23, § 648.5.1.) These paragraphs contain hearsay that is not supported by other evidence and cannot be used to support a finding by the AHO.</p> <p>The probative value of the proposed evidence is substantially outweighed by the probability that its admission will necessitate undue consumption of time. (Gov. Code, § 11513, subd. (f).) The AHO should exercise her discretion to exclude the evidence based on the minimal probative value compared to any future time that may be spent in hearings and briefing related to the opinions contained in PCFFA-1.</p>	[PCFFA response not provided in requested format.]	<p>X Sustained (in part) Overruled</p> <p>The Authority's hearsay objection is sustained pursuant to Government Code section 11513, subdivision (d). The hearing officer will rely upon hearsay evidence only to supplement or explain other evidence. The Authority's remaining objections are overruled.</p>
PCFFA-1 (Sites Testimony	The witness seeks to "incorporate by reference" the listed exhibits. The	[PCFFA response not provided in requested format.]	X Sustained (in part) Overruled

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
<p>Bradshaw), ¶¶ 6, 12 (fns. 6 &amp; 7), 13 (fns. 8 &amp; 9), 17, 20; PCFFA-4; PCFFA-6 through PCFFA-10; PCFFA-12; PCFFA-13.</p>	<p>language in PCFFA-1 “hereby” incorporating these exhibits by reference and each of the incorporated exhibits is objectionable as follows.</p> <p>Inadmissible opinion testimony by expert witness. (Evid. Code, §§ 720, 800-803.) There is no basis in the written testimony to support that his opinions in these paragraphs are based on his special knowledge, skill, experience, training, or education that is reasonably reliable for an expert; are related to a subject that is beyond common experience; and are based on matters personally known or made known to him. These paragraphs seek to incorporate exhibits by reference without providing information to determine the witness’s reliance on them in preparing his opinions and personal knowledge of them.</p> <p>Lack of foundation. (Evid. Code, § 702; <i>Sargon, supra</i>, 55 Cal.4th at p. 770 [“The matter relied on must provide a reasonable basis</p>		<p>The referenced documents are admissible even as hearsay, under Gov. Code § 11513, subdivision (d). To the extent the documents are not subject to any exception to the hearsay rule, the hearing officer will only reply upon the documents to supplement or explain other evidence. The hearing officer will consider whether the documents are subject to any hearsay exception if the hearing officer’s draft decision relies on the document to support a finding rather than to supplement or explain other evidence.</p>



MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
	<p>for the particular opinion offered, and ... an expert opinion based on speculation or conjecture is inadmissible”].) Testimony lacks foundation when the underlying factual basis has not been submitted or is improper. The documents cannot be incorporated by reference into the written testimony because the witness did not establish the necessary knowledge of the documents and the subject matter therein.</p> <p>Hearsay. (Gov. Code, § 11513, subd. (d); Cal. Code Regs., tit. 23, § 648.5.1.) These paragraphs contain hearsay that is not supported by other evidence and cannot be used to support a finding by the AHO.</p>		
<p>GSSA-1 (Expert Declaration of Scott Artis), ¶¶ 1-3 (in part), 13 (in part), 18, 19, 20 (in part), 24,</p>	<p>Inadmissible opinion testimony by expert witness. (Evid. Code, §§ 720, 800-803.) Mr. Artis’s written testimony and related exhibits do not state or otherwise establish that he has special knowledge, skill, experience, training, or</p>	<p>Sites Authority’s vague objections should be overruled. Sites claims the improper testimony is salmon populations, commercial fishing, fish biology, and “related matters,” but Sites does not describe which portions of the “in part” paragraphs should be excluded, identify what the related matters are, or explain why</p>	<p>Sustained X Overruled</p> <p>The hearing officer will consider the Authority’s objections in determining the weight to be afforded the testimony.</p>

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
<p>26 (in part), 27 (in part), 49 (in part).</p>	<p>education to form the basis of the opinions contained in his testimony related to salmon populations, commercial fishing, fish biology, and related matters. These paragraphs contain opinions outside the scope of Mr. Artis's stated expertise. Mr. Artis does not have the qualifications to offer expert opinions on the matters stated therein.</p>	<p>Mr. Artis cannot provide testimony on those subjects.</p> <p>Mr. Artis' experience and work, as detailed in his written and oral testimony, are more than sufficient to allow him to testify about the declines in salmon populations relative to historic abundance (¶¶ 1, 13, 18, 19), declines relative to 1995-2004 (¶ 13), increased risk of extirpation since 2017 (¶ 1), history of spring run since the 1990s (¶¶ 19, 20), and the impacts on fall-run salmon (¶¶ 24, 27).</p> <p>Mr. Artis' testimony about "fish biology" is similarly admissible and well founded. The "biology" testimony consists largely of his statements that adequate flows are essential for outmigration, adequate temperatures are important to egg incubation, and that diversions proposed by Sites do not ensure adequate flow remains in the Sacramento River to ensure outmigration of juveniles. (See ¶¶ 2, 49.)</p> <p>With respect to commercial fishing, Mr. Artis testified about the fact of fishery closures, the impact of the closure, and that the closures were the result of low egg to juvenile</p>	

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
		<p>survival rates caused by low flow and high temperature. (See ¶ 1.)</p> <p>Finally, the “related matters” in the paragraphs Sites objected to mostly consist of the statements that there are no current out-migration flow requirements for juveniles (¶ 14), a description of fall-run hatchery experiments (¶ 26), and the lack of safeguards against Temporary Urgency Change Petitions and orders (¶ 49).</p> <p>Mr. Artis’ personal and professional experience working related to salmon in California is more than sufficient to support his testimony. And Mr. Artis freely admitted that he was deferring to Dr. Rosenfield about the questions related to fish biology.</p>	
<p>GSSA-1 (Expert Declaration of Scott Artis), ¶¶ 31-42.</p>	<p>Hearsay. (Gov. Code, § 11513, subd. (d); Cal. Code Regs., tit. 23, § 648.5.1.) These paragraphs contain hearsay that is not supported by other, non-hearsay evidence and cannot be used to support a finding by the AHO.</p> <p>Irrelevant. (Gov. Code, § 11513, subd. (c).) The purpose of the hearing is to investigate the facts and</p>	<p>Hearsay is admissible. These statements are not intended to provide the sole basis for rejecting Sites Authority’s application. Instead, they are relevant information, providing valuable and specific testimony about the context and consequences of the construction and operation of the proposed Sites Reservoir.</p> <p>These paragraphs are specifically related to direct conversations with members of our organization and/or the fishing community who are</p>	<p>X Sustained (in part) Overruled</p> <p>The Authority’s hearsay objection is sustained pursuant to Government Code section 11513, subdivision (d). Such hearsay testimony can be used only for the purpose of supplementing or explaining other evidence and is not sufficient to support findings unless it</p>

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
	<p>reach conclusions grounded in an evidentiary record that contains the sort of evidence on which responsible persons are accustomed to rely upon in the conduct of serious affairs. Mr. Artis's reiterations of others' opinions and statements regarding impacts to salmon fisheries is not a factual investigation or analysis and such statements are not subject to examination.</p> <p>The probative value of the proposed evidence is substantially outweighed by the probability that its admission will necessitate undue consumption of time. (Gov. Code, § 11513, subd. (f).) The AHO should exercise her discretion to exclude the evidence based on the minimal probative value compared to any future time that may be spent in hearings and briefing related to the opinions contained in these paragraphs of PCFFA-1.</p>	<p>experiencing real impacts to their businesses and livelihoods as a result of declining salmon returns and subsequent salmon fishing season closures.</p> <p>There is no prejudice to including this evidence, and no prejudice to the lack of cross-examination Sites Authority complains of.</p>	<p>would be admissible over objection in civil actions. (Gov. Code, § 11513, subd. (d).) This hearsay testimony is admitted into evidence but will only be relied upon to supplement or explain other evidence.</p> <p>Although the Authority's remaining objections are overruled, the hearing officer will take the Authority's objections into account and the lack of opportunity for the Authority to cross-examine witnesses whose hearsay testimony is offered, in considering the weight to be afforded the evidence.</p>
WCT 3 (Testimony of Eli	Inadmissible opinion testimony by expert witness. (Evid. Code, §§ 720, 800-	[Voluminous response not provided in Word format.]	Sustained X Overruled

<b>MATERIAL OBJECTED TO</b>	<b>GROUND FOR OBJECTION</b>	<b>RESPONSE TO OBJECTION</b>	<b>RULING ON OBJECTION</b>
<p>Asarian), ¶¶ 4-12, 14-19.</p>	<p>803.) Water Climate Trust (WCT) offered no evidence in Mr. Asarian’s written testimony, related exhibits, or summary presentation that he has special knowledge, skill, experience, training, or education to form the basis of the opinions contained in the paragraphs cited related to agricultural irrigation practices, managed aquifer recharge operations, and related economic issues. During the hearing, Mr. Asarian testified that he does not have direct experience advising irrigators on their irrigation practices. (See Sites Reservoir Public Hearing on 2024-10-09 (pm) YouTube webcast at 4:07:30 – 4:07:48.) Further, during the hearing, Mr. Asarian acknowledged he did not focus on the economic portions of the primary study he cited (WCT-27) to support his conclusion that managed aquifer recharge is less expensive than surface water storage. (See Sites Reservoir Public Hearing on 2024-10-10 (am) YouTube</p>		<p>Although Mr. Asarian may not have direct experience advising irrigators on irrigation practices, Mr. Asarian appears to have experience in water management and planning and cites each source on which he based his opinions. The Authority’s objection goes to the weight of the evidence and the hearing officer will take the Authority’s objections into account in considering the weight to be afforded the evidence.</p>

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
	<p>webcast at 1:03:15 – 1:03:30.)</p> <p>Lack of foundation. (Evid. Code, § 702; <i>Sargon, supra</i>, 55 Cal.4th at p. 770 [“the matter relied on must provide a reasonable basis for the particular opinion offered, and ... an expert opinion based on speculation or conjecture is inadmissible.”]) Testimony lacks foundation when the underlying factual basis has not been submitted or is improper. WCT did not establish that WCT-27 was appropriate or reliable or formed the basis of Mr. Asarian’s opinions. (See also Evid. Code, § 403.)</p>		
<p>WCT-101 (Bruce Reznik Testimony)<sup>2</sup> at 3:25-7:19, 9:4-18, 14:20-15:2, 15:24-26, 19:5-6.</p>	<p>Irrelevant. (Gov. Code, § 11513, subd. (c).) The purpose of the hearing is to investigate the facts and reach conclusions grounded in an evidentiary record that contains the sort of evidence on which responsible persons are accustomed to rely upon in the conduct of</p>	<p>The objection argues that Mr. Reznik’s testimony is irrelevant. To the contrary, the evidence is relevant to Hearing Issues 1b and 3d which address the public interest and Issue 4 which addresses whether there are feasible alternatives to or mitigation measures for the Sites’ diversion project.</p>	<p>Sustained X Overruled</p> <p>Testimony about the availability of alternative sources of supply is potentially relevant to the issue of whether the proposed appropriation would be in the public</p>

<sup>2</sup> Sites Project Authority joins in and incorporates as its own those evidentiary objections to WCT-101 submitted by the State Water Contractors.

<b>MATERIAL OBJECTED TO</b>	<b>GROUND FOR OBJECTION</b>	<b>RESPONSE TO OBJECTION</b>	<b>RULING ON OBJECTION</b>
	<p>serious affairs. Mr. Reznik’s statements are mere policy arguments regarding how the State of California and the Los Angeles region should establish overarching goals for water planning and make water planning decisions generally. Mr. Reznik’s opinions regarding the optimal water planning process for the State of California and the Los Angeles region are irrelevant to the hearing issues established by the AHO and are irrelevant to the State Water Board’s consideration of the Sites Project Authority’s application.</p>	<p>Contrary to Sites’ assertion, Mr. Reznik’s testimony goes directly to whether the Project is within the public interest and whether there are alternatives to the project. The “Overview of Testimony” in WCT 102 conveys the relevance of the testimony:</p> <p>“My testimony will focus on efforts to transition urban communities in Southern California towards more resilient and sustainable local water supplies as an alternative to imported water through more diversions and dams, including the Sites Reservoir Project (Sites). I will focus predominantly on efforts to promote great water conservation and efficiency, stormwater capture, wastewater recycling and groundwater remediation in Los Angeles County, where I have the most current and extensive expertise. These efforts are generally applicable to all municipalities, including those that would be served by Sites Reservoir. My testimony will also focus on how prioritizing resilient local water supplies fits within regional statewide water planning. Finally, I will focus on how projects like Sites Reservoir are not needed as we dramatically increase local water projects, and how such projects actually undermine resilient</p>	<p>interest and whether the appropriated water would be put to reasonable and beneficial use. The hearing officer will take the Authority’s objections into account in considering the weight to be afforded the evidence.</p>

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
		<p>local water planning by diverting critical resources away from such local projects.”</p> <p>Thus, the testimony provides background information (foundational information) and concludes with an Opinion regarding the public interest and alternatives that are based upon Mr. Reznik’s professional experience and knowledge achieved over the last several decades being involved in water planning and policy in the Southern California.</p>	
<p>WCT-101 (Bruce Reznik Testimony) at 7:1-9:2, 10:24-11:7, 11:15-19, 11:21-12:4, 13:1-11, 14:1-9, 14:24-15:2, 15:6-26, 16:4-7, 17:16-18:26.</p>	<p>Lack of foundation. (Evid. Code, § 702; <i>Sargon, supra</i>, 55 Cal.4th at p. 770 [“the matter relied on must provide a reasonable basis for the particular opinion offered, and ... an expert opinion based on speculation or conjecture is inadmissible”].) Testimony lacks foundation when the underlying factual basis has not been submitted or is improper. Mr. Reznik’s testimony includes unsupported statements of “fact” without citation or supporting documentation.</p>	<p>Regarding Page 8, lines 22-23 and Page 9, lines 1-2:</p> <p>WCT-108 (LA County Water Plan, Appendix B – Targets, which comments on limited resources and revenue potential of underserved communities’ water systems to address water quality needs. <a href="https://lacountywaterplan.org/assets/pdf/Final%20CWP/B.%20Targets.pdf">https://lacountywaterplan.org/assets/pdf/Final%20CWP/B.%20Targets.pdf</a>)</p> <p>Regarding Page 11, lines 21-26 and Page 12, lines 1-4: WCT-116 (Advancing Resilience through Distributed Stormwater Capture and Conservation, March 2024) <a href="https://acceleratela.org/wp-content/uploads/ARLA_Incentives_Roadmap_Feb2024.pdf">https://acceleratela.org/wp-content/uploads/ARLA_Incentives_Roadmap_Feb2024.pdf</a></p>	<p>X Sustained, in part. Overruled</p> <p>Mr. Reznik’s testimony includes factual assertions for which Mr. Reznik does not provide a basis of calculation or cite a secondary source in support. This testimony is stricken for lack of foundation and because the probative value is negligible given the lack of information in the record to allow any party or the hearing team to verify the calculations. The following portions of Mr. Reznik’s</p>



<b>MATERIAL OBJECTED TO</b>	<b>GROUND FOR OBJECTION</b>	<b>RESPONSE TO OBJECTION</b>	<b>RULING ON OBJECTION</b>
	<p>Furthermore, during oral testimony, Mr. Reznik only vaguely identified potential sources of this information, without naming any specific documents. (Sites Reservoir Public Hearing on 2024-10-08 (am) YouTube webcast at 2:08:08 – 2:14:15, 2:15:47 – 2:17:07.)</p>	<p>Additionally, during cross-examination, Mr. Reznik provided numerous references as to the sources of information he relied upon in forming his opinions.</p>	<p>testimony is stricken, as follows:                      p. 8:1-9;                      p. 10:24-11:3;                      p. 11:15-19;                      p. 13:1-11;                      p. 14:1-9;                      p. 15:7-9;                      p. 15: 12-18;                      p. 15:22-24; and                      p. 18:17-26.</p> <p>This ruling is made without prejudice to WCT resubmitting Mr. Reznik’s testimony, if it is within the scope of rebuttal, with appropriate citations or explanation of the underlying calculations.</p> <p>The Authority’s remaining objections are overruled.</p>
<p>WCT-101 (Bruce Reznik Testimony) at 7:12-19, 11:21-12:4, 19:14-</p>	<p>Inadmissible opinion testimony by expert witness. (Evid. Code §§ 720, 800-803.) There is no basis in the written testimony to support that his opinions in these paragraphs are based on his special knowledge,</p>	<p>Sites objects to Mr. Reznik’s testimony asserting that he does not have the special knowledge, skill, experience, training, or education that is reasonably reliable for an expert. In making this argument Sites again dismisses a witness’s professional experience. Mr. Reznik</p>	<p>Sustained                      X Overruled                      The hearing officer will take the Authority’s objections into account in considering</p>

<b>MATERIAL OBJECTED TO</b>	<b>GROUND FOR OBJECTION</b>	<b>RESPONSE TO OBJECTION</b>	<b>RULING ON OBJECTION</b>
<p>20:22, 21:15-17.</p>	<p>skill, experience, training, or education that is reasonably reliable for an expert; are related to a subject that is beyond common experience; and are based on matters personally known or made known to him. These paragraphs contain unsupported opinions regarding the ability of water purveyors and ratepayers to afford various water supply options and how affordability may impact whether water purveyors pursue alternative water supply options. They also contain unsupported statements regarding Sites Reservoir Project’s impact on “local projects.” Mr. Reznik does not have qualifications beyond common experience to offer opinions on these matters. Moreover, these statements are not admissible as lay testimony, because they are not rationally based on the witnesses’ perception. (Evid. Code, § 800, subd. (a).) Mr. Reznik has not established personal knowledge or involvement in the water planning</p>	<p>has significant professional experience in water issues in southern California. His CV states: “Managing the Los Angeles region’s preeminent environmental watchdog group fighting for the health of the region’s waterways, and for sustainable, equitable and climate-smart water supplies. Leading a staff of twelve, under Reznik’s leadership LAW: has been at the center of developing, passing and implementing the region’s groundbreaking \$280M/year Safe Clean Water Program; has been leading efforts to ensure the region moves forward with \$20B in investments in wastewater recycling and other local projects to ensure the region’s water security; has helped bring more than a hundred industrial sites into clean water compliance while ensuring strong regulations are in place to prevent water pollution; and is leading critical campaigns around LA River restoration, stronger safeguards for Marine Protected Areas, greening schools, and greater government transparency and accountability.” (WDCT-100.). Additionally, has served on panels/commissions regarding water supply and planning. (WCT-100.)</p>	<p>the weight to be afforded the evidence.</p>

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
	<p>processes discussed; instead, his testimony is purely speculation. (Sites Reservoir Public Hearing on 2024-10-09 (am) YouTube webcast at 2:17:10 – 2:17:26.)</p> <p>Lack of foundation. (Evid. Code, § 702; <i>Sargon, supra</i>, 55 Cal.4th at p. 770 [“the matter relied on must provide a reasonable basis for the particular opinion offered, and ... an expert opinion based on speculation or conjecture is inadmissible”].) Testimony lacks foundation when the underlying factual basis has not been submitted or is improper. Mr. Reznik’s testimony includes unsupported statements of “fact” without citation or supporting documentation on the matters described herein.</p>	<p>Mr. Reznik’s experience and expertise goes far beyond the common experience to form the basis to offer opinions on these matters.</p>	
<p>WCT-101 (Bruce Reznik Testimony) at 10:1-18:26.</p>	<p>Inadmissible opinion Testimony by expert witness. (Evid. Code, §§ 720, 800-803.) There is no basis in the written testimony to support that his opinions in these paragraphs are based</p>	<p>Sites objects to Mr. Reznik’s testimony asserting that he does not have the special knowledge, skill, experience, training, or education that is reasonably reliable for an expert. In making this argument Sites’ again dismisses a witness’s</p>	<p>X Sustained, in part. Overruled See stricken testimony listed above. The Authority’s remaining objections are overruled.</p>

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
	<p>on his special knowledge, skill, experience, training, or education that is reasonably reliable for an expert; are related to a subject that is beyond common experience; and are based on matters personally known or made known to him. These paragraphs contain unsupported opinions regarding conservation, stormwater capture, water recycling, and groundwater remediation. Mr. Reznik does not have qualifications beyond common experience to offer opinions on these matters. Moreover, these statements are not admissible as lay testimony, because they are not rationally based on the witnesses' perception. (Evid. Code, § 800, subd. (a).) Mr. Reznik has not established personal knowledge or involvement in the matters discussed.</p> <p>Lack of foundation. (Evid. Code, § 702; <i>Sargon, supra</i>, 55 Cal.4th at p. 770 [“the matter relied on must provide a reasonable basis for the particular opinion</p>	<p>professional experience. Mr. Reznik has significant professional experience in water issues in southern California. His CV states:</p> <p>“Managing the Los Angeles region’s preeminent environmental watchdog group fighting for the health of the region’s waterways, and for sustainable, equitable and climate-smart water supplies. Leading a staff of twelve, under Reznik’s leadership LAW: has been at the center of developing, passing and implementing the region’s groundbreaking</p> <p>\$280M/year Safe Clean Water Program; has been leading efforts to ensure the region moves forward with \$20B in investments in wastewater recycling and other local projects to ensure the region’s water security; has helped bring more than a hundred industrial sites into clean water compliance while ensuring strong regulations are in place to prevent water pollution; and is leading critical campaigns around LA River restoration, stronger safeguards for Marine Protected Areas, greening schools, and greater government transparency and accountability.” (WCT-100.).</p> <p>Additionally, Mr. Reznik has served on panels/commissions regarding</p>	<p>Testimony about the availability of alternative sources of supply is potentially relevant to the issue of whether the proposed appropriation would be in the public interest and whether the appropriated water would be put to reasonable and beneficial use. The hearing officer will take the Authority’s objections into account in considering the weight to be afforded the evidence.</p>

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
	<p>offered, and ... an expert opinion based on speculation or conjecture is inadmissible”].) Testimony lacks foundation when the underlying factual basis has not been submitted or is improper. Mr. Reznik’s testimony includes unsupported statements of “fact” without citation or supporting documentation on the matters described herein.</p> <p>Irrelevant. (Gov. Code, § 11513, subd. (c).) The purpose of the hearing is to investigate the facts and reach conclusions grounded in an evidentiary record that contains the sort of evidence on which responsible persons are accustomed to rely upon in the conduct of serious affairs. Mr. Reznik’s statements merely identify potential water supply options. Sites reservoir does not preclude the use of those water supply options, and as explained above, Mr. Reznik lacks expertise to render an opinion regarding whether Sites reservoir would impact water</p>	<p><u>water supply and planning. (WCT-100.)</u></p>	

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
	<p>purveyors' decisions to pursue conservation, stormwater capture, water recycling, and groundwater remediation. Mr. Reznik's opinions on this matter are irrelevant to the hearing issues established by the AHO and are irrelevant to the State Water Board's consideration of the Sites Project Authority's application.</p>		
<p>BK-122 (Declaration of Sejal Choksi-Chugh).</p>	<p>The AHO previously ruled to exclude BK-122 in its entirety. (SWRCB Procedural Ruling Regarding Evidentiary Issues, Time Limits, and Site Visit in the AHO Proceeding on the Proposed Sites Reservoir Project, Sept. 3, 2024, pp. 1, 4-5; Cal. Code Regs., tit. 23, § 648.4, subds. (c), (e).) Based on the AHO's prior ruling, the exhibit may not be admitted into evidence.</p>	<p>Sites stipulated to admitting Baykeeper 122 without paragraph 7. That is what was offered into evidence. There is no use of time required – the initial basis for excluding the documents.</p>	<p>X Sustained Overruled Per September 3, 2024 Procedural Ruling.</p>
<p>GSSA-20 (Declaration of Scott Artis).</p>	<p>The AHO previously ruled to exclude GSSA-20. (SWRCB Procedural Ruling Regarding Evidentiary Issues, Time Limits, and Site Visit in the AHO Proceeding on the</p>		<p>X Sustained Overruled Per September 3, 2024 Procedural Ruling.</p>

<b>MATERIAL OBJECTED TO</b>	<b>GROUND FOR OBJECTION</b>	<b>RESPONSE TO OBJECTION</b>	<b>RULING ON OBJECTION</b>
	<p>Proposed Sites Reservoir Project, Sept. 3, 2024, pp. 1, 4-5; Cal. Code Regs., tit. 23, § 648.4, subds. (c), (e).                      Based on the prior AHO's ruling, the exhibit may not be admitted into evidence.</p>		

## ATTACHMENT 2

### RULING ON SITES PROJECT AUTHORITY’S EVIDENTIARY OBJECTIONS TO DELTA WATER AGENCY PARTIES’ CASE-IN-CHIEF TESTIMONY AND EXHIBITS

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
<p>SDWA-11 through SDWA-30, inclusive (Case-in-Chief Testimony and Exhibits of Dante John Nomellini, Sr.).<sup>3</sup></p>	<p>“A lawyer shall not act as an advocate in a trial in which the lawyer is likely to be a witness unless” one of three conditions is met. (Rules Prof. Conduct, rule 3.7 [hereinafter Rule 3.7], subd. (a).) “This rule applies to a trial before a[n] ... administrative law judge ... .” (Rule 3.7, Comment 1.) Mr. Nomellini confirmed that he is currently acting as a legal advocate on behalf of protestant Central Delta Water Agency (CDWA) in the Sites Reservoir Project administrative proceeding before the State Water Board while simultaneously seeking to serve as a witness in the proceeding. Mr. Nomellini stated that he is currently serving as legal counsel for CDWA (Sites Reservoir Public Hearing on 2024-10-23</p>	<p>Mr. Nomellini testified that he is not serving as an attorney in this case but is serving as a witness on behalf of CDWA (Sites Reservoir Public Hearing on 2024-10-23(pm) You Tube webcast at 00:07:54.) The hearing officer recalls typing “attorney for CDWA” after Mr. Nomellini’s name on the proof of service for the Fifth Amended hearing notice. (id.at 00:9.57) The fact that Mr. Nomellini is included on the proof of service has no significance. Mr.Nomellini is not listed on his firm’s caption as one of the attorneys of record for CDWA in this matter.</p> <p>Mr. Nomellini is the manager of CDWA and is vested with the discretion to decide who should provide testimony for CDWA in proceedings such as the instant proceeding. Though Mr.Nomellini is not acting as an attorney in this proceeding, in the abundance of caution, the CDWA Board of</p>	<p>Sustained X Overruled</p> <p>The hearing officer will consider that Mr. Nomellini serves as an attorney for CDWA in other matters (though not in this proceeding) when considering the weight to be afforded Mr. Nomellini’s testimony.</p> <p>The Authority’s remaining objections are overruled, see also, ruling on SWC’s objections to SDWA exhibits.</p>

<sup>3</sup> Sites Project Authority joins in and incorporates those evidentiary objections to SDWA-11 and supporting exhibits submitted by the State Water Contractors.



MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
	<p>(pm) YouTube webcast at 00:02:36 – 00:02:49) and that his participation in the current administrative proceeding is within the scope of his legal representation of CDWA (<i>id.</i> at 00:03:08 – 00:03:18). Mr. Nomellini confirmed that he is being offered as an expert witness on behalf of CDWA in this proceeding. (<i>id.</i> at 00:03:23 – 00:03:34.) Mr. Nomellini’s testimony does not relate to an uncontested issue or matter nor does his testimony relate to the nature and value of legal services rendered in the case. (Rule 3.7, subd. (a)(1)-(2).) Mr. Nomellini did not confirm, orally or in a filing with the Administrative Hearing Officer (AHO), that he fully advised CDWA of the implications of such dual role or obtained written consent of CDWA to serve in this dual role. (Rule 3.7, subd. (a)(3); <i>Lyle v. Superior Court</i> (1981) 122 Cal.App.3d 470, 475 (<i>Lyle</i>.) Regardless, the AHO has “discretion to take action, up to and including disqualification of a lawyer who seeks to both testify and</p>	<p>Directors has been advised of Rule 3.7 and the Board President has provided written consent, on behalf of the entire Board, for Mr. Nomellini to serve as a witness in the instant proceeding. A copy of said written consent will be provided if requested by the AHO. Said consent is in accordance with section (a)(3) of Rule 3.7. Comment three to Rule 3.7 provides that “notwithstanding a client’s informed written consent, court’s retain discretion to take action, up to and including disqualification of a lawyer who seeks to both testify and serve as an advocate, to protect the trier of fact from being misled or the opposing party from being prejudiced.” Mr. Nomellini is acting as witness not an attorney. The Hearing Officer certainly is not misled by Mr. Nomellini’s involvement and the Sites Authority suffers no prejudice from Mr. Nomellini’s participation. Disagreeing with a witness’s testimony does not constitute prejudice.</p> <p>This is an adversarial proceeding. Mr. Nomellini is a witness for the SDWA Parties who oppose the Authority’s application as proposed. As such, Mr. Nomellini’s testimony is biased against the Authority and supportive of the SDWA Parties.</p>	

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
	<p>serve as an advocate, to protect the trier of fact from being misled or the opposing party from being prejudiced.” (Rule 3.7, Comment 3, citing <i>Lyle, supra</i>, 122 Cal.App.3d 470.) In fact, Mr. Nomellini confirmed his bias in favor of his clients’ interests. (Sites Reservoir Public Hearing on 2024-10-23 (pm) YouTube webcast at 00:12:28 – 00:12:37 [“I’m certainly biased in favor of the Delta and my client’s efforts there’s no question about that ...”].) Mr. Nomellini further confirmed that he has a personal interest in the outcome of the proceeding before the AHO that may be perceived as biased. (Sites Reservoir Public Hearing on 2024-10-23 (pm) YouTube webcast at 00:15:21 – 00:16:17.) The inclusion of Mr. Nomellini’s testimony is, therefore, contrary to the protective purpose of Rule 3.7, and his written and oral testimony and supporting exhibits should be excluded in their entirety.</p> <p>Irrelevant. (Gov. Code, § 11513, subd. (c).) The</p>	<p>That is not grounds to disqualify Mr. Nomellini or to strike his testimony.</p> <p>Mr. Nomellini’s well-known history of protecting the Delta, and his bias in favor of said protections which are being advocated by the SDWA Parties in this proceeding does not render his testimony irrelevant.</p> <p>Moreover, Mr. Nomellini’s so called personal interest in this proceeding (because he lives on Roberts Island and adjacent to the San Joaquin River) is not disqualifying.</p>	

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
	<p>purpose of the hearing is to investigate the facts and reach conclusions grounded in an evidentiary record that contains the sort of evidence on which responsible persons are accustomed to rely upon in the conduct of serious affairs. Mr. Nomellini's written and oral testimony is not the sort of evidence on which responsible persons are accustomed to rely upon in the conduct of serious affairs, based on his express admission of bias and is, therefore, irrelevant.</p> <p>The probative value of the proposed evidence is substantially outweighed by the probability that its admission will necessitate undue consumption of time. (Gov. Code, § 11513, subd. (f).) The AHO should exercise her discretion to exclude the evidence based on the minimal probative value in light of Mr. Nomellini's express admissions of bias and failure to comply with the Rules of Professional Conduct cited herein.</p>		

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
<p>SDWA-11 (Case-in-Chief Testimony of Dante John Nomellini, Sr.) ¶ 2 [“SDWA exhibits 12-30 are referenced and incorporated as part of my testimony.”]; SDWA-12 through SDWA-30, inclusive.</p>	<p>Inadmissible opinion testimony by expert witness. (Evid. Code, §§ 720, 800-803.) There is no basis in the written testimony to support that the witness has the necessary knowledge, skill, experience, training, or education to submit the opinions contained in the documents incorporated by reference.</p> <p>Lack of foundation. (Evid. Code, § 702; <i>Sargon Enterprises, Inc. v. University of Southern California</i> (2012) 55 Cal.4th 747, 770 (<i>Sargon</i>) [“the matter relied on must provide a reasonable basis for the particular opinion offered, and ... an expert opinion based on speculation or conjecture is inadmissible”].) Testimony lacks foundation when the underlying factual basis has not been submitted or is improper. The documents cannot be incorporated by reference into the written testimony because the expert did not establish the necessary knowledge of the</p>	<p>Mr. Nomellini’s testimony refers to and incorporates SDWA exhibits 12-30 which are comprised of excerpts from various public documents including: California Water Plans, DWR Bulletins, statutes, CDEC data, State Water Board resolutions and communications, Department of Interior Publications, CDFW reports, and Sites Authority. Said excerpts pertain to the issues of water rights, water law, and water availability, public interest and public trust – all topics which germane to this proceeding. Mr. Nomellini’s testimony, and the associated exhibits 12-30 should be admitted into evidence and the Hearing Officer can determine the appropriate weight they should be given. Mr. Nomellini has been deeply involved in California water matters, and particularly those affecting the Delta. Mr. Nomellini has managed the CDWA and numerous reclamation districts for over forty years (See Mr. Nomellini’s Statement of Qualifications (SDWA 31 ). Mr. Nomellini has testified as an expert witness in other similar proceedings including the California Waterfix. Mr. Nomellini has the necessary knowledge and experience to opine on the issues</p>	<p>X Sustained Overruled</p> <p>The referenced sentence is stricken from Mr. Nomellini’s testimony. In general, the statements of others cannot be incorporated as expert testimony except, possibly, in unusual circumstances in which the expert witness has expertise in the same subject matter, and adopts, under oath, the statements of the third party as his or her own opinion verbatim, based on his or her own experience and knowledge, and the bases for which opinions the witness is willing and able to be cross-examined. I do not understand that to be the case here. The referenced documents are accepted into evidence independent</p>

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
	documents and the subject matter therein.	which are the subject of his testimony.	from Mr. Nomellini's testimony.
<p>SDWA-11 (Case-in-Chief Testimony of Dante John Nomellini, Sr), ¶¶ 105 through 114.</p>	<p>Lack of foundation. (Evid. Code, § 702; <i>Sargon, supra</i>, 55 Cal.4th at p. 770 [“the matter relied on must provide a reasonable basis for the particular opinion offered, and ... an expert opinion based on speculation or conjecture is inadmissible”].) Testimony lacks foundation when the underlying factual basis has not been submitted or is improper. The witness has not shown that he has personal knowledge of matters contained in his written testimony. These paragraphs contain quoted material that is not cited in the written testimony nor submitted as exhibits. Mr. Nomellini has not established the foundation necessary to admit the evidence.</p> <p>Hearsay. (Gov. Code, § 11513(d); Cal. Code Regs., tit. 23, § 648.5.1.) These paragraphs contain hearsay that is not supported by other evidence and cannot be used</p>	<p>The subject paragraphs merely provide excerpts from policy statements made by the Bureau of Reclamation and the Department of Interior reflecting those agencies' interpretation of and recognition of California Water Code section 11460. The excerpts have been published and are helpful in providing a historical context for the commitments made to protect the area of origin at or near the time the CVP and SWP were implemented. Such information is relevant and helpful in this proceeding because the Authority seeks a permanent right to take water from the areas of origin for export to south of the Delta and is further relevant to the question of whether there is water available for assignment.</p> <p>Experts are allowed to rely on materials and information prepared by third parties. By including the information and excerpts in his written material, Mr. Nomellini demonstrates that he has personal knowledge of the existence of the statements and excerpts, and he is qualified to provide testimony and opinions regarding the materials.</p>	<p>X Sustained, in part. Overruled</p> <p>The testimony is hearsay, which is admissible in State Water Board hearings. Hearsay evidence can be used only for the purpose of supplementing or explaining other evidence and is not sufficient to support findings unless it would be admissible over objection in civil actions. (Gov. Code, § 11513, subd. (d).) This hearsay evidence is admitted into evidence but will only be relied upon to supplement or explain other evidence.</p> <p>The testimony lacks foundation absent inclusion of the original quoted documents in the record, however. A reasonable person would not rely on</p>

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
	<p>to support a finding by the AHO.</p>	<p>The subject paragraphs of Mr. Nomellini’s testimony provide excerpts from statements made by public employees within the scope of their duties, and the writings (reports) were made at or near the time the statements were made, and there is nothing to suggest the reports cited by Mr. Nomellini are not trustworthy. Thus, they should be considered official records and exception to the hearsay rule pursuant to Cal Evidence Code section 1280. Additionally, pursuant Govt Code 11513 (d) hearsay evidence may be used in administrative hearings for the purpose of supplementing or explaining other evidence.</p>	<p>hearsay quotations from these documents if the primary source is readily available. The testimony is conditionally stricken, but will be accepted into the evidentiary record if SDWA submits copies of the underlying primary documents by the deadline for rebuttal exhibits.</p> <p>I will allow the Authority and aligned parties to cross-examine Mr. Nomellini about these documents should they request to do so.</p>
<p>SDWA-32a (Corrected Summary of Dante John Nomellini, Sr.’s Case-In-Chief Testimony), slides 3 and 25.</p>	<p>Witnesses may not provide oral direct testimony on matters not in their written proposed testimony. (State Water Resources Control Board [SWRCB] Amended Notice of Public Hearing and Pre-Hearing Conference, June 5, 2024 [hereafter “Amended Notice”], p. 28.) Mr. Nomellini’s summary presentation slides and accompanying oral testimony</p>	<p>Par. 195 of SDWA 11 includes a discussion of Mr. Nomellini’s opinion of the place of use, as compared to place of use described by the Authority. Slide 3 of SDWA-32a is simply a graphical depiction of the place of use and therefore is not outside the scope or inconsistent with Mr. Nomellini’s written testimony.</p> <p>A central theme of Mr. Nomellini’s written testimony (SDWA 11)</p>	<p>Sustained X Overruled</p> <p>Because the slides were submitted by the submission date for written testimony, I will not exclude the slides as outside of the scope of the written testimony. The Authority does not point to specific</p>

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
	<p>on direct examination exceed the scope of his written testimony.</p>	<p>pertains to harm caused by CVP and SWP exports from the Delta and his opinion that the subject water rights application as proposed would increase exports from the Delta, and thereby exacerbate the harm. Exports are mentioned not less than 46 times in Mr. Nomellini's testimony. Slide 25 of Mr. Nomellini's summary of testimony is graph depicting CVP and SWP exports from the Delta from 1923-2004 and is therefore not outside the scope of his written testimony.</p>	<p>elements of Mr. Nomellini's oral summary of his written testimony that it claims is outside of the scope of his written testimony and therefore was surprise testimony.</p>
<p>SDWA-51 (Case-In-Chief Testimony of Bruce Herbold), ¶¶ 6 through 10, 16 through 18, 21 through 22, 24, 32, 36 through 38.</p>	<p>Inadmissible opinion testimony by expert witness. (Evid. Code, §§ 720, 800-803.) There is no basis in Mr. Herbold's written testimony to support that he has special knowledge, skill, experience, training, or education to form the basis of the opinions contained in these paragraphs. These paragraphs are limited to hydrologic or climate change information (and related modeling), which is beyond the scope of his expertise in aquatics ecology.</p>	<p>The objection to the testimony of Dr. Herbold does not apply the correct standard. Because the proceeding is an administrative hearing, Government Code Section 11513 section (c) provides the relevant test for admissibility and clarifies that relevant evidence should be admitted without considering technical rules for evidence in civil proceedings. Dr. Herbold's testimony states that the Sites project proponents used hydrologic models that omit recent precipitation history in the 21st century, which has been relatively dry. Dr. Herbold then observes Sites may thus overpredict river flows and potential diversions that would be allowed. For these reasons, the testimony is relevant to</p>	<p>Sustained X Overruled</p> <p>State Water Board regulations provide that Evidence Code sections 801-805 apply to this proceeding. (Cal. Code Regs., tit. 23, § 648, subd. (b).) Dr. Herbold appears qualified to offer the portions of the testimony in question that are expert opinion given his extensive experience and training, and the nexus</p>

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
		<p>the alleged benefits of the project, as well as impacts on fish and wildlife. The testimony meets the test of Government Code section 11513, subdivision (c).</p> <p>Even if Evidence Code section 720 and 800- 803 applied, Dr. Herbold's testimony meets those standards. The basis of the objection is that his testimony supposedly relates to hydrology, which is outside his expertise in fisheries. Sites incorrectly argues that Dr. Herbold offers opinion that is beyond the scope of his expertise as an expert. Evidence Code Section 801 provides the test for the scope of allowable opinion testimony by an expert: the opinion must be related to a subject beyond typical comprehension and thus useful for the trier of fact and also based on matter that may be reasonably relied upon by the expert.</p> <p>[Full response abbreviated, see 2024-11-15 SDWA Response to Sites Exhibit A to Evid Objections.]</p>	<p>between climate and fish ecology. The remaining testimony provides context and foundational facts based on evidence in the record to which Dr. Herbold provides citations. The hearing officer will consider the Authority's objection in evaluating the weight of Dr. Herbold's testimony, and will appropriately discount any portion of testimony that is not within Dr. Herbold's area of expertise.</p>
<p>SDWA-66 (Case-In-Chief Testimony of Joey Ratto) and SDWA-67 (Video of</p>	<p>Evidence Code, secs. 702, subd. (a), 802, 803 – The testimony of a witness is inadmissible unless he has personal knowledge of the matter. Mr. Ratto's testimony</p>	<p>[Response not able to be copied into Word format.]</p>	<p>X Sustained, in part. Overruled Mr. Ratto testified that his opinions about the relationship between</p>



MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
<p>Middle River at Undine Road Bridge).</p>	<p>states that he is “informed” regarding the proposed Sites project operations and provided an opinion regarding the impacts of such operations. (SDWA-66, paragraph 9.) However, Mr. Ratto confirmed on cross-examination that he was informed regarding the operations of the proposed project operations only based on statements made by his legal counsel. (Sites Reservoir Public Hearing on 2024-11-07 (am) YouTube webcast at 00:38:34 – 00:39:56.) He did not review any documentation to confirm his legal counsel’s representations to him regarding proposed operations. (Ibid.) Mr. Ratto has no personal knowledge of Sites proposed project operations and, therefore, cannot opine regarding the impact of such operations.</p>		<p>exports and conditions that he observed in the Delta were based on hearsay, “I hear people talk ... I just hear that the pumps are pumping at full bore and that’s why we got low water table ... or level.” (Vol. 21 Transcript of Proceedings, 5219:11-14.) Although Mr. Ratto has special knowledge and experience as an irrigator in the Delta, the basis for his opinion about the relationship between exports and conditions in the Delta does not appear to be the type of information upon which experts in the field would reasonably rely.</p> <p>To the extent that Mr. Ratto is testifying based on his personal perceptions and not as an expert, opinion based on information other than his personal perceptions is not</p>

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
			admissible. Because the opinion expressed in paragraph 9 is neither based on his personal perception nor the type of information on which an expert would reasonably rely, the testimony in paragraph 9 is excluded.
<p>SDWA-76 (Case-In-Chief Testimony of Richard Pellegrini), ¶ 10:12-13 [“Actual exports from June to August 25 were from (approximately) 600 to 1200 cfs (see attached).”].</p>	<p>Inadmissible opinion testimony by expert witness. (Evid. Code, §§ 720, 800-803.) There is no basis in the written testimony to support that the witness has the necessary knowledge, skill, experience, training, or education to submit the opinions contained in this sentence without the referenced attachment, which was not submitted.</p> <p>Lack of foundation. (Evid. Code, § 702; <i>Sargon, supra</i>, 55 Cal.4th at p. 770 [“the matter relied on must provide a reasonable basis for the particular opinion offered, and ... an expert opinion based on speculation or conjecture is inadmissible”].) Testimony lacks foundation when the</p>	<p>The attachment was inadvertently omitted.</p> <p>Nevertheless, the actual export data described by Mr. Pellegrini is readily available on DWR’s Monthly Operations website and from CDEC. Both data sets are public information. Moreover, the omitted attachment does not detract from Mr. Pellegrini’s testimony that Tom Paine Slough filled on each tidal cycle.</p>	<p>Sustained</p> <p>X Overruled, conditionally.</p> <p>SDWA shall submit by the deadline for submission of rebuttal evidence a true and correct copy of the data that was included in the omitted attachment, which I understand is export data available on either of the referenced websites. Absent such a submission, the testimony may be excluded.</p>

<b>MATERIAL OBJECTED TO</b>	<b>GROUND FOR OBJECTION</b>	<b>RESPONSE TO OBJECTION</b>	<b>RULING ON OBJECTION</b>
	<p>underlying factual basis has not been submitted or is improper. The witness did not establish his knowledge of "actual exports" by failure to attach the relevant exhibit.</p>		

### ATTACHMENT 3

#### RULING ON SUPPLEMENTAL EVIDENTIARY OBJECTIONS TO EVIDENCE SUBMITTED BY TRIBAL AND NGO PARTIES

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
<p>Portion of in-person direct testimony of Dr. Rosenfield submitted on behalf of Tribal and NGO Parties.</p>	<p>Witnesses may not provide oral direct testimony on matters not in their written proposed testimony. (State Water Resources Control Board [SWRCB] Amended Notice of Public Hearing and Pre-Hearing Conference, June 5, 2024 [hereafter “Amended Notice”], p. 28.) Mr. Rosenfield’s oral testimony accompanying his summary presentation on direct examination exceeded the scope of his written testimony. Following the conclusion of his slide presentation, Mr. Rosenfield continued testifying to potential terms and conditions to include in any water rights permit issued for the Sites Project, but that were not set forth in Dr. Rosenfield’s written testimony. (See Sites Reservoir Public Hearing on 2024-11-04 (am))</p>	<p>Dr. Rosenfield did not testify beyond the scope of his written testimony.  <i>Compare:</i>  <i>Oral Testimony</i> at 2:23:22 – 2:24:42 [describing approach for science-based conditions and general overview of diversions that will impede recovery and cause harm versus diversions that may not have an impact based on what we know today] <i>with Baykeeper Ex. 1</i> at ¶¶ 21, 23, 25, 38-42, 47, 50-52, 55, 56, 58, 60, 69, 80, 83-85, 89, 94, 106, 107, 116, 118, 128, 132, 134, 151, 155, and 163.  <i>Oral Testimony</i> at 2:24:42 – 2:26:21 [describing need to maintain at least 700 cubic meters per second of flow to support winter-run Chinook Salmon] <i>with Baykeeper Ex. 1</i> at ¶¶ 38(a); 38(h); 39; 40.  <i>Oral Testimony</i> at 2:26:21 – 2:27:10 [describing need to maintain &gt; 400 cubic meters per</p>	<p>X Sustained                      Overruled                      Dr. Rosenfield’s written testimony does not include recommendations for terms and conditions for inclusion in any water right permit issued to the Authority for the proposed project. Although the substance of Dr. Rosenfield’s recommendations appears to be based on information in his written testimony, the recommendation of a particular limitation or bypass term is “surprise” oral testimony. This portion of Mr. Rosenfield’s oral testimony is excluded, without prejudice.</p>

	<p>YouTube webcast at 02:23:22 – 02:30:41.)</p>	<p>second of flow] <i>with Baykeeper Ex. 1</i> at ¶¶ 38(j), 39.  <i>Oral Testimony</i> at 2:27:10 – 2:27:54 [describing benefits of at least 1,000 cubic meters per second of flow at Freeport] <i>with Baykeeper Ex. 1</i> at ¶¶ 38(b); 38(g); 39; 40; 47(c); 51; 55; 56; 58.  <i>Oral Testimony</i> at 2:27:54 – 2:27:59 [noting other necessary conditions for other species] <i>with Baykeeper Ex. 1</i> at ¶¶ 89 (White Sturgeon); 106 (Green Sturgeon); 128 (Longfin Smelt).  <i>Oral Testimony</i> at 2:27:59 – 2:28:48 [describing need for 75% Delta outflow] <i>with Baykeeper Ex. 1</i> at ¶ 23.</p>	
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MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
<p>BK-3 – BK-121, BK-124 (Exhibits accompanying Rosenfield Testimony submitted on behalf of Tribal and NGO Parties).</p>	<p>Sites Project Authority objects to the extent these voluminous exhibits contain hearsay statements that are not sufficient in themselves to support a finding by the SWRCB. (Gov. Code, § 11513, subd. (d).) Sites Project Authority requests that the AHO exercise her discretion to weigh the probative value of the evidence against the probability that the evidence creates substantial danger of undue prejudice, confuses the issues, or is misleading. (Evid. Code, § 352; Gov. Code, § 11513, subd. (f); Cal. Code Regs., tit. 23, § 648.4, subd. (e).)</p>		<p>X Sustained (in part) Overruled</p> <p>The documents are admissible as hearsay under Gov. Code § 11513, subdivision (d). To the extent the documents are not subject to any exception to the hearsay rule, the hearing officer will only rely on the documents to supplement or explain other evidence. The hearing officer will consider whether the documents are subject to any hearsay exception if the hearing officer’s draft decision relies on the document to support a finding rather than to supplement or explain other evidence.</p>
<p>FOR-8 (Witness Statement of Wayne R. Mitchum, Jr. submitted on behalf of Tribal and NGO Parties).</p>	<p>Pursuant to the AHO’s direction in the Hearing Notices, “[a]ll witnesses presenting testimony shall appear at the hearing,” and “all witnesses shall swear or affirm that the written ... testimony</p>		<p>X Sustained Overruled</p> <p>See procedural ruling on FOR-8.</p>

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
	<p>they will present will be true and correct.” (See, e.g., SWRCB Amended Notice, p. 28.) “A witness provides their direct testimony when they confirm that a designated exhibit is their testimony.” (<i>Ibid.</i>) Mr. Mitchum has not appeared at the case-in chief hearing to present his testimony in person, and the Sites Project Authority and other parties have not been provided the opportunity to cross-examine Mr. Mitchum. (<i>Id.</i>, pp. 20 [“each party may... cross-examine opposing parties’ witnesses, impeach any witness, [and] rebut adverse evidence ...”], 28; Cal. Code Regs., tit. 23, §§ 648.4, subd. (d), 648.5.)</p>		

### ATTACHMENT 4

#### RULING ON SITES PROJECT AUTHORITY’S EVIDENTIARY OBJECTIONS TO T&M KING FARMS’ AND CLARK ORNBAUN’S CASE-IN-CHIEF TESTIMONY AND EXHIBITS

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
King-1 through King-66	<p>Inadmissible opinion testimony by expert witness. (Evid. Code, §§ 720, 800-803.) There is no basis in the written testimony to support that the witness has the necessary knowledge, skill, experience, training, or education to testify in the form of opinions to the matters addressed in the exhibits.</p> <p>Lack of foundation. (Evid. Code, § 702; Sargon Enterprises, Inc. v. University of Southern California (2012) 55 Cal.4th 747, 770 (Sargon) [“the matter relied on must provide a reasonable basis for the particular opinion offered, and ... an expert opinion based on speculation or conjecture is inadmissible”].) Testimony lacks foundation when the underlying factual basis has not been submitted or is improper. Mr. King’s submitted exhibits, often unidentified excerpts, are not cited in or otherwise relied</p>	<p>These objections were raised and argued orally during the AHO’s hearing on November 4, 2024. (See Volume 20, Transcript of Proceedings, 11-04-2024, pp. 5105-.)</p>	<p>X Sustained, in part. Overruled</p> <p>King-32 is excluded for lack of foundation. The supporting written testimony is excluded as testimony outside of Mr. King’s area of expertise.</p> <p>King-34 is excluded for lack of relevance. There is no connection in the testimony, opening statement, or response to this objection about the relevance of the document to the hearing issues, and no relevance is otherwise apparent.</p> <p>King-58 is excluded for lack of foundation. There is no information in the testimony or exhibits about the source of the document, who authored it and when, the purpose for which it was created, or other characteristics that would establish its reliability.</p> <p>King-64 is excluded for lack of foundation. There is no information in the document, other exhibits, or</p>



	<p>upon the Case-in-Chief testimony offered by Mr. King (King-68). Mr. King has not established that the exhibits contain the factual information supporting his opinions or that his opinions are formed on the basis of such exhibits. Specifically, regarding King-64, Mr. King did not and could not identify the creator of the document or its intended purpose; an objection regarding lack of foundation for purposes of King-64 as a cross-examination exhibit was sustained by the Administrative Hearing Officer (AHO). (Sites Reservoir Public Hearing on 2024-08-27 (pm) YouTube webcast at 02:31:51 – 02:33:00.) Irrelevant. (Gov. Code, § 11513, subd. (c).) The purpose of the hearing is to investigate the facts and reach conclusions grounded in an evidentiary record that contains the sort of evidence on which responsible persons are accustomed to rely upon in the conduct of serious affairs. Mr. King has not established the relevance of these documents to any opinions offered to address the hearing issues.</p>		<p>testimony about the source of the document, who created the spreadsheet and when, the purpose for which it was created, or other characteristics that would establish its reliability or explain the nature of the data included in the document.</p> <p>The remaining objections are overruled. The hearing officer will consider the objections in determining the weight to be afforded the testimony.</p>
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<p>King-68 (Proposed Testimony of Ben King as Expert Witness for T&amp;M King Farms, LLC)</p>	<p>Inadmissible opinion testimony by expert witness. (Evid. Code, §§ 720, 800-803.) The witness did not offer testimony in the form of opinions that are related to any subject that is sufficiently beyond common experience that would assist the trier of fact and that are based on the knowledge, skill, experience, training, or education perceived by or personally known to the witness. The probative value of the proposed evidence is substantially outweighed by the probability that its admission will necessitate undue consumption of time. (Gov. Code, § 11513, subd. (f).) The AHO should exercise her discretion to exclude the evidence based on the minimal probative value compared to any future time that may be spent in hearings and/or briefing related to the opinions contained in King-68.</p>		<p>X Sustained, in part. Overruled With the exception of paragraphs B.3. and C.7., King-68 is excluded from the evidentiary record. Mr. King's testimony consists primarily of (1) legal and policy arguments, (2) recitation of alleged facts derived from primary sources that are otherwise admitted into evidence, or (3) opinion testimony outside of Mr. King's areas of special knowledge or expertise. Given the limited probative value of this testimony, its admission is outweighed by the risk of confusion and additional consumption of time in this proceeding. Paragraph B.3. and C.7. appear to be opinion testimony generally within Mr. King's areas of expertise and knowledge based on his operation of a family farm in the Colusa Subbasin, training in agricultural economics, and participation on the technical advisory committee for the Colusa Groundwater Authority. These paragraphs are admitted into evidence. The hearing officer will consider the Authority's objections when considering the weight to be afforded the testimony. The hearing officer will consider Mr.</p>
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			King's legal and policy arguments, which make up most of the testimony, in the same way that she would consider them if included in a closing brief. These types of arguments would be most appropriately included in a closing brief.
King-69	The AHO previously denied Mr. King's motion to submit exhibit King-69 as a Case-In-Chief exhibit. (State Water Resources Control Board [SWRCB] Procedural Ruling Regarding Evidentiary Issues, Time Limits, and Site Visit in the AHO Proceeding on the Proposed Sites Reservoir Project, Sept. 3, 2024, pp. 1-3; Cal. Code Regs., tit. 23, § 648.4, subds. (c), (e).) Based on the AHO's ruling, the exhibit may not be admitted into evidence during the case-in-chief portion of the proceeding.		Sustained. X Overruled Although initially late-filed, Mr. King re-introduced King-69 during cross-examination of Ms. Bezzone and Ms. Forsythe. (Vol. 3, Transcript of Proceedings, 08-24-2024, pp.691-699.) Exhibits introduced for the purpose of cross-examination are included in the evidentiary record for the limited purposes of impeachment or eliciting relevant testimony from the witness, and are not admitted in their entirety as substantive evidence.
King-73	The AHO may refuse to admit the proposed exhibit into evidence because it was untimely submitted. (Cal. Code Regs., tit. 23, § 648.4, subds. (c), (e).) Mr. King submitted King-73 to the AHO on August 27, 2024, after completion of his cross-examination of Sites Project Authority witnesses and		X Sustained. Overruled

	<p>submitted King-73 to all parties on October 3, 2024 “to provide the source and foundation for the introduction of King Exhibit 64.” (Oct. 3, 2024, Email from B. King to Sites service list, Updated Statement of Qualification and Exhibit Lists for T&amp;M King Farms, LLC.) Both submissions of the exhibit to the administrative record were late and without good cause. The exhibit should not be admitted into the evidentiary record. Moreover, King-73 in support of King-64 was submitted after a ruling by the AHO that Mr. King failed to establish the foundation for King-64 for purposes of cross-examination. (Sites Reservoir Public Hearing on 2024-08-27 (pm) YouTube webcast at 02:31:51 – 02:33:00.)</p>		
<p>King-74</p>	<p>The AHO may refuse to admit the proposed exhibit into evidence because it was untimely submitted. (Cal. Code Regs., tit. 23, § 648.4, subds. (c), (e).) Mr. King submitted King-74 to the AHO and the service list on October 9, 2024. (Oct. 9, 2024, Email from B. King to Sites service list, Opening Statement of T&amp;M King Farms, LLC.) Mr. King failed to provide good cause for the late-filed exhibit.</p>		<p>X Sustained. Overruled</p>

<p>King-75 (Opening Statement)</p>	<p>“[T]he party ... 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.” (SWRCB Notice of Public Hearing, March 1, 2024, p 28.) The “policy-oriented” purpose of the opening statement is not appropriate for inclusion in the evidentiary record. Irrelevant. (Gov. Code, § 11513, subd. (c).) The purpose of the hearing is to investigate the facts and reach conclusions grounded in an evidentiary record that contains the sort of evidence on which responsible persons are accustomed to rely upon in the conduct of serious affairs. The opening statement is not an evidentiary record and should not be admitted as such.</p>		<p>X Sustained. Overruled</p> <p>Mr. King’s opening statement will be included in the administrative record for the proceeding but not the evidentiary record. (See Vol. 20, Transcript of Proceedings, 11-04-2024, p. 5106.)</p>
<p>Ornbaun 4, 6-7, 9, 11, 13, 14-16.</p>	<p>These objections were raised and argued orally during the AHO’s hearing on November 4, 2024. (See Sites Reservoir Public Hearing on 2024-11-04 (am) YouTube webcast at 00:52:13 – 01:27:00.)</p>		<p>X Sustained, in part. Overruled</p> <p>Ornbaun-4, p. 7, is excluded. The first 6 pages appear to be screenshots from publicly available websites accessible to the parties. The hearing</p>

		<p>officer will disregard the handwritten notes on the slides. Page 7 does not identify any source and Mr. Ornbaun did not identify the source of the information on the slide.</p> <p>Ornbaun-6, -7, -14, and -15 are excluded because the source of the excerpts is not identified. Mr. Ornbaun may resubmit the exhibits with the sources identified by the deadline for submission of rebuttal exhibits.</p> <p>Ornbaun-9, pp. 3-8 is excluded because the source of the excerpts is not identified. Mr. Ornbaun may resubmit the exhibit with the source identified by the deadline for submission of rebuttal exhibits.</p> <p>Ornbaun-11 is excluded from the evidentiary record. Mr. Ornbaun's statement consists almost entirely of legal and policy arguments and opinions that do not meet the standards for expert or lay opinion testimony. The probative value is also outweighed by the risk of confusion and undue consumption of time. The statement shall be included in the administrative record as a policy statement. The remaining portions of Ornbaun-11 appear to either already be within the evidentiary record, or the source of the information is not</p>
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			<p>identified. The remainder of the Authority's objections are overruled.</p>
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**ATTACHMENT 5**  
**RULING ON STATE WATER CONTRACTOR’S EVIDENTIARY OBJECTIONS TO WRITTEN TESTIMONY**

<b>EXHIBIT NUMBER</b>	<b>STATEMENT OBJECTED TO:</b>	<b>GROUND FOR OBJECTION</b>	<b>RESPONSE TO OBJECTION</b>	<b>RULING ON OBJECTION</b>
WCT-101	Page 3:25–7:19	Relevance	The State Water Contractors’ Objections are duplicative of the Authority’s objections. The responses to the Authority’s objections to Mr. Reznik’s written testimony are incorporated herein.	See Rulings on the Authority’s objections to Mr. Reznik’s testimony, above.
WCT-101	Page 7:1–9:2	Foundation		
WCT-101	Page 7:12–19	Foundation; outside the scope of expert opinion; and improper lay testimony		
WCT-101	Page 9:4–18	Relevance		
WCT-101	Page 10:1–18:26	Relevance; foundation; outside the scope of expert opinion; and improper lay testimony		
WCT-101	Page 10:24–11:7	Foundation		
WCT-101	Page 11:15–19	Foundation		
WCT-101	Page 11:21-12:4	Foundation		
WCT-101	Page 13:1–11	Foundation		
WCT-101	Page 14:1–9	Foundation		



EXHIBIT NUMBER	STATEMENT OBJECTED TO:	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
WCT-101	Page 14:20–15:2	Relevance		
WCT-101	Page 14:24-15:2	Foundation		
WCT-101	Page 15:6–26	Foundation		
WCT-101	Page 15:24–26	Relevance		
WCT-101	Page 16:4–7	Foundation		
WCT-101	Page 17:16–18:26	Foundation		
WCT-101	Page 19:5–6	Relevance		
WCT-101	Page 19:14–20:22	Foundation; outside the scope of expert opinion; and improper lay testimony		
WCT-101	Page 21:15–17	Foundation; outside the scope of expert opinion; and improper lay testimony		
FOR-14	¶ 25	Foundation; outside the scope of expert opinion; and improper lay testimony	Dr. Michael has expertise in agricultural economics. This is evidenced by multiple economic impact studies of agriculture in California. Both masters and Ph.D. program included graduate level courses in agricultural production economics. The testimony in question is not about agronomy, but is about profitability – agricultural economics. Context: In paragraphs 23 and 24 – evidence is presented (FOR 104) that benefits did not	Sustained X Overruled  SWC’s objections to FOR-14 are overruled. The hearing officer will consider the objections in determining the weight to be afforded the testimony.

EXHIBIT NUMBER	STATEMENT OBJECTED TO:	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
			<p>exceed costs for individual water agencies in Sites JPA – only in the aggregate. The aggregate finding is based on two participating urban agencies increasing the value of Sites water to the cost of desalinated water. Thus, the financial feasibility of agriculture is already established.</p> <p>Paragraph 25 provides a simple illustration to make agricultural unaffordability clear and reinforce the finding of paragraphs 23 and 24. It is clearly based in facts.</p> <p>Paragraph 26: Dr. Michael has expertise in economics and public policy. This paragraph explains why farmers may support a project that is unlikely to be in their economic interest.</p>	
FOR-14	¶ 26	Foundation; outside the scope of expert opinion; and improper lay testimony		
FOR-14	¶ 27, Page 14:26–15:3	Foundation; outside the scope of expert opinion;		

EXHIBIT NUMBER	STATEMENT OBJECTED TO:	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
		and improper lay testimony		
FOR-14	¶ 28, Page 15:3-17	Foundation; outside the scope of expert opinion; and improper lay testimony		
FOR-14	¶ 29, Page 16:6-9	Foundation; outside the scope of expert opinion; and improper lay testimony		
SDWA-11	¶ 6, Page 4:22-24	Outside the scope of expert opinion (improper legal opinion)		Sustained X Overruled (in part)
SDWA-11	¶ 7	Outside the scope of expert opinion (improper legal opinion)		With the exception of ¶¶ 16 and 160, as described below, SWC's objections to SDWA-11 are <b>overruled</b> . The testimony is generally relevant to the hearing issues and the opinions expressed are based on the witness's extensive knowledge of and experience in California water rights matters. Given the general relevance and expertise of the witness, a line-by-line consideration of the probative value and relevance of the testimony is not an efficient use of the
SDWA-11	¶ 9, Page 6:1-2	Outside the scope of expert opinion		
SDWA-11	¶ 10, Page 6:14-17	Outside the scope of expert opinion		
SDWA-11	¶ 12, Page 7:12-14, 7:21-23	Outside the scope of expert opinion (improper legal opinion)		
SDWA-11	¶ 12, Page 7:24-8:3	Outside the scope of expert opinion		
SDWA-11	¶ 15, Page 9:13-15	Outside the scope of expert opinion		

EXHIBIT NUMBER	STATEMENT OBJECTED TO:	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
				<p>hearing officer’s time. The hearing officer will consider the objections in determining the weight to be afforded particular portions of the testimony and will disregard legal opinion that lacks probative value. Those portions of the testimony that are non-evidentiary policy or legal argument shall be considered by the hearing officer as such, and not as evidence.</p>
SDWA-11	¶ 15, Page 9:18–19	Lacks foundation		<p><b>Sustained</b>, with respect to ¶¶16, page 9:18-19. Mr. Nomellini Sr.’s testimony that operation of the SWP and CVP without regard to meeting legal standards was “deliberate” does not identify the information, evidence or personal observation on which the opinion is based.</p>
SDWA-11	¶ 20, Page 11:7–8	Outside the scope of expert opinion (improper legal opinion)		
SDWA-11	¶ 21	Relevance/outside the scope of expert opinion (supporting information		

EXHIBIT NUMBER	STATEMENT OBJECTED TO:	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
		for improper legal opinion)		
SDWA-11	¶ 22	Relevance/outside the scope of expert opinion (supporting information for improper legal opinion)		
SDWA-11	¶ 23	Relevance; outside the scope of expert opinion (improper legal opinion)		
SDWA-11	¶ 24	Relevance; outside the scope of expert opinion (improper legal opinion)		
SDWA-11	¶ 25	Relevance; outside the scope of expert opinion (improper legal opinion)		
SDWA-11	¶ 26	Relevance; outside the scope of expert opinion (improper legal opinion)		
SDWA-11	¶ 27	Relevance; outside the scope of expert opinion (improper legal opinion)		
SDWA-11	¶ 28	Relevance; outside the scope of expert opinion (improper legal opinion)		
SDWA-11	¶ 29	Relevance		
SDWA-11	¶ 30	Outside the scope of expert opinion (improper legal opinion)		

EXHIBIT NUMBER	STATEMENT OBJECTED TO:	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
SDWA-11	¶ 31	Relevance; outside the scope of expert opinion (improper legal opinion and supporting information for improper legal opinion)		
SDWA-11	¶ 32	Relevance/outside the scope of expert opinion (supporting information for improper legal opinion)		
SDWA-11	¶ 33	Relevance/outside the scope of expert opinion (supporting information for improper legal opinion)		
SDWA-11	¶ 34	Outside the scope of expert opinion (improper legal opinion)		
SDWA-11	¶ 37	Outside the scope of expert opinion (improper legal opinion)		
SDWA-11	¶ 35	Outside the scope of expert opinion (improper legal opinion)		
SDWA-11	¶ 36	Outside the scope of expert opinion (improper legal opinion)		
SDWA-11	¶ 37	Outside the scope of expert opinion (improper legal opinion)		

EXHIBIT NUMBER	STATEMENT OBJECTED TO:	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
SDWA-11	¶ 38	Relevance/outside the scope of expert opinion (supporting information for improper legal opinion)		
SDWA-11	¶ 39	Relevance/outside the scope of expert opinion (supporting information for improper legal opinion)		
SDWA-11	¶ 40	Relevance/outside the scope of expert opinion (supporting information for improper legal opinion)		
SDWA-11	¶ 41	Relevance/outside the scope of expert opinion (supporting information for improper legal opinion)		
SDWA-11	¶ 42	Outside the scope of expert opinion (improper legal opinion)		
SDWA-11	¶ 55	Relevance/outside the scope of expert opinion (supporting information for improper legal opinion)		
SDWA-11	¶ 56	Relevance/outside the scope of expert opinion (supporting information		

EXHIBIT NUMBER	STATEMENT OBJECTED TO:	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
		for improper legal opinion)		
SDWA-11	¶ 57	Outside the scope of expert opinion (improper legal opinion)		
SDWA-11	¶ 58	Outside the scope of expert opinion (improper legal opinion)		
SDWA-11	¶ 59	Outside the scope of expert opinion (improper legal opinion)		
SDWA-11	¶ 60	Outside the scope of expert opinion (improper legal opinion)		
SDWA-11	¶ 61	Outside the scope of expert opinion		
SDWA-11	¶ 62	Outside the scope of expert opinion (improper legal opinion)		
SDWA-11	¶ 63, Page 21:7–8	Outside the scope of expert opinion (improper legal opinion)		
SDWA-11	¶ 64, Page 21:9–13	Outside the scope of expert opinion (improper legal opinion)		
SDWA-11	¶ 65	Outside the scope of expert opinion		
SDWA-11	¶ 66, Page 22:11–12	Outside the scope of expert opinion		



EXHIBIT NUMBER	STATEMENT OBJECTED TO:	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
SDWA-11	¶ 68	Outside the scope of expert opinion (improper legal opinion)		
SDWA-11	¶ 69, Page 22:23–25	Outside the scope of expert opinion (improper legal opinion)		
SDWA-11	¶ 70	Outside the scope of expert opinion (improper legal opinion)		
SDWA-11	¶ 71	Relevance/lacks foundation		
SDWA-11	¶ 72	Relevance/lacks foundation		
SDWA-11	¶ 73	Relevance/lacks foundation		
SDWA-11	¶ 73, Page 24:6–9	Outside the scope of expert opinion		
SDWA-11	¶ 74	Outside the scope of expert opinion/Relevance/lacks foundation		
SDWA-11	¶ 75	Relevance/lacks foundation		
SDWA-11	¶ 76	Outside the scope of expert opinion		
SDWA-11	¶ 77	Lacks foundation		
SDWA-11	¶ 80	Relevance/lacks foundation		

EXHIBIT NUMBER	STATEMENT OBJECTED TO:	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
SDWA-11	¶ 82, Page 27:11–13	Outside the scope of expert opinion (improper legal opinion)		
SDWA-11	¶ 83	Relevance/lacks foundation		
SDWA-11	¶ 84	Relevance/lacks foundation		
SDWA-11	¶ 85	Relevance/outside the scope of expert opinion (information related to improper legal opinion)		
SDWA-11	¶ 87, Page 28:22–24	Outside the scope of expert opinion		
SDWA-11	¶ 90	Relevance		
SDWA-11	¶ 91	Relevance		
SDWA-11	¶ 91, Page 30:7–11	Outside the scope of expert opinion		
SDWA-11	¶ 100	Outside the scope of expert opinion (improper legal opinion)		
SDWA-11	¶ 101	Relevance/outside the scope of expert opinion (information related to improper legal opinion)		
SDWA-11	¶ 105	Relevance/outside the scope of expert opinion (information related to improper legal opinion)		

EXHIBIT NUMBER	STATEMENT OBJECTED TO:	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
SDWA-11	¶ 106	Relevance/outside the scope of expert opinion (information related to improper legal opinion)		
SDWA-11	¶ 107	Relevance/outside the scope of expert opinion (information related to improper legal opinion)		
SDWA-11	¶ 108	Relevance/outside the scope of expert opinion (information related to improper legal opinion)		
SDWA-11	¶ 109	Relevance/outside the scope of expert opinion (information related to improper legal opinion)		
SDWA-11	¶ 110	Relevance/outside the scope of expert opinion (information related to improper legal opinion)		
SDWA-11	¶ 111	Relevance/outside the scope of expert opinion (information related to improper legal opinion)		
SDWA-11	¶ 112	Relevance/outside the scope of expert opinion (information related to improper legal opinion)		
SDWA-11	¶ 113	Relevance/outside the scope of expert opinion		

EXHIBIT NUMBER	STATEMENT OBJECTED TO:	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
		(information related to improper legal opinion)		
SDWA-11	¶ 114	Relevance/outside the scope of expert opinion (information related to improper legal opinion)		
SDWA-11	¶ 116	Relevance/outside the scope of expert opinion (information related to improper legal opinion)		
SDWA-11	¶ 119	Relevance/outside the scope of expert opinion (information related to improper legal opinion)		
SDWA-11	¶ 120	Relevance/outside the scope of expert opinion (information related to improper legal opinion)		
SDWA-11	¶ 121	Relevance/outside the scope of expert opinion (information related to improper legal opinion)		
SDWA-11	¶ 122	Relevance/outside the scope of expert opinion (information related to improper legal opinion)		
SDWA-11	¶ 123	Relevance/outside the scope of expert opinion (information related to improper legal opinion)		

EXHIBIT NUMBER	STATEMENT OBJECTED TO:	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
SDWA-11	¶ 124	Relevance/outside the scope of expert opinion (information related to improper legal opinion)		
SDWA-11	¶ 125	Relevance/outside the scope of expert opinion (information related to improper legal opinion)		
SDWA-11	¶ 126	Relevance/outside the scope of expert opinion (information related to improper legal opinion)		
SDWA-11	¶ 127	Relevance/outside the scope of expert opinion (information related to improper legal opinion)		
SDWA-11	¶ 128	Relevance/outside the scope of expert opinion (information related to improper legal opinion)		
SDWA-11	¶ 129	Relevance/outside the scope of expert opinion (information related to improper legal opinion)		
SDWA-11	¶ 130	Relevance/outside the scope of expert opinion (information related to improper legal opinion)		
SDWA-11	¶ 131	Relevance/outside the scope of expert opinion		

EXHIBIT NUMBER	STATEMENT OBJECTED TO:	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
		(information related to improper legal opinion)		
SDWA-11	¶ 132	Relevance/outside the scope of expert opinion (information related to improper legal opinion)		
SDWA-11	¶ 133	Relevance/outside the scope of expert opinion (information related to improper legal opinion)		
SDWA-11	¶ 134	Relevance/outside the scope of expert opinion (information related to improper legal opinion)		
SDWA-11	¶ 135	Relevance/outside the scope of expert opinion (information related to improper legal opinion)		
SDWA-11	¶ 136	Relevance/outside the scope of expert opinion (information related to improper legal opinion)		
SDWA-11	¶ 137	Outside the scope of expert opinion (improper legal opinion)		
SDWA-11	¶ 138	Outside the scope of expert opinion (improper legal opinion)		
SDWA-11	¶ 139	Relevance/outside the scope of expert opinion		

EXHIBIT NUMBER	STATEMENT OBJECTED TO:	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
		(information related to improper legal opinion)		
SDWA-11	¶ 140	Relevance/outside the scope of expert opinion (information related to improper legal opinion)		
SDWA-11	¶ 141	Outside the scope of expert opinion (improper legal opinion)		
SDWA-11	¶ 142	Outside the scope of expert opinion (improper legal opinion)		
SDWA-11	¶ 143	Relevance/outside the scope of expert opinion (information related to improper legal opinion)		
SDWA-11	¶ 144	Relevance/outside the scope of expert opinion (information related to improper legal opinion)		
SDWA-11	¶ 145	Relevance/outside the scope of expert opinion (information related to improper legal opinion)		
SDWA-11	¶ 146	Relevance/outside the scope of expert opinion (information related to improper legal opinion)		
SDWA-11	¶ 147	Relevance/outside the scope of expert opinion		

EXHIBIT NUMBER	STATEMENT OBJECTED TO:	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
		(information related to improper legal opinion)		
SDWA-11	¶ 148	Relevance/outside the scope of expert opinion (information related to improper legal opinion)		
SDWA-11	¶ 149	Outside the scope of expert opinion (improper legal opinion)		
SDWA-11	¶ 150	Outside the scope of expert opinion (improper legal opinion)		
SDWA-11	¶ 151	Outside the scope of expert opinion (improper legal opinion)		
SDWA-11	¶ 152	Relevance/outside the scope of expert opinion (information related to improper legal opinion)		
SDWA-11	¶ 152	Relevance/outside the scope of expert opinion (information related to improper legal opinion)		
SDWA-11	¶ 154	Outside the scope of expert opinion		
SDWA-11	¶ 159	Outside the scope of expert opinion		
SDWA-11	¶ 160, Page 50:22–26	Lacks Foundation		X Sustained Overruled



EXHIBIT NUMBER	STATEMENT OBJECTED TO:	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
				The testimony lacks information about the information, evidence or personal observation on which this opinion is based.
SDWA-11	¶ 163	Lacks Foundation		
SDWA-11	¶ 165, Page 51:27–51:1	Lacks Foundation		
SDWA-11	¶ 173	Relevance		
SDWA-11	¶ 174	Relevance		
SDWA-11	¶ 175	Outside the scope of expert opinion/relevance		
SDWA-11	¶ 176	Relevance		
SDWA-11	¶ 177	Relevance		
SDWA-11	¶ 178	Relevance		
SDWA-11	¶ 179	Relevance		
SDWA-11	¶ 180	Relevance		
SDWA-11	¶ 181	Relevance		
SDWA-11	¶ 182	Relevance		

EXHIBIT NUMBER	STATEMENT OBJECTED TO:	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
SDWA-11	¶ 183	Relevance		
SDWA-11	¶ 185	Relevance		
SDWA-11	¶ 187	Outside the scope of expert opinion		
SDWA-11	¶ 191	Outside the scope of expert opinion		

## ATTACHMENT 6

### RULING ON FOR ET AL.'S EVIDENTIARY OBJECTIONS TO SITES PROJECT AUTHORITY'S TESTIMONY AND EXHIBITS

<u>Exhibit Number</u>	<u>Objection</u>	<u>Response</u>	<u>Ruling</u>
SITES-284, "Declaration of Bradley Cavallo"	<p><i>Lacks Foundation.</i></p> <p>Both witnesses asked about the document (Mr. Artis and Mr. Bradshaw) indicated they were not familiar with it, and the document's author did not testify or authenticate the document or the opinions expressed in it.</p>	<p>FOR does not cite applicable statutory provisions or judicial decisions in support of the objection. Moreover, FOR offers no citation supporting the characterization that the witnesses were not familiar with the document. Pursuant to Evid. Code § 702(b), "[a] witness' personal knowledge of a matter may be shown by any otherwise admissible evidence, including his own testimony." Here, Mr. Artis's personal knowledge of the contents of the document was established on cross- examination by the examining attorney. The examining attorney represented to Mr. Artis the title and preparer of the document. (Sites Reservoir Public Hearing on 2024-10- 08 (am) YouTube webcast at 00:51:23-00:52:10.) Mr. Artis was then given the opportunity to review the document before responding to questions based on his knowledge. (See, e.g., <i>id.</i> at 00:53:09-00:53:32 [the examining attorney specified that he would identify specific statements for Mr. Artis's review].) Over FOR's objection, the AHO allowed questioning of Mr. Artis regarding SITES-284</p>	<p>___ Sustained</p> <p>X_ Overruled</p> <p>Exhibits introduced for the purpose of cross-examination are included in the evidentiary record for the limited purposes of impeachment or eliciting relevant testimony from the witness, and are not admitted in their entirety as substantive evidence.</p>

<u>Exhibit Number</u>	<u>Objection</u>	<u>Response</u>	<u>Ruling</u>
		<p>to the extent of his personal knowledge. (<i>Id.</i> at 00:53:33-00:55:34.) It is unclear how Mr. Bradshaw’s testimony is relevant to FOR’s objection. Mr. Bradshaw was not asked about SITES-284 on cross-examination.</p>	
<p>SITES-284, “Declaration of Bradley Cavallo”</p>	<p><i>Hearsay. Gov. Code § 11513(d)</i></p> <p>The declaration was offered for the truth of the statements contained in it, not to “supplement[] or explain[]” other testimony or evidence. Moreover, the declaration would not be admissible under evidentiary hearsay exceptions in court.</p>	<p>Hearsay is admissible pursuant to Gov. Code § 11513(d). Gov. Code § 11513 establishes that hearsay evidence is admissible for supplementing or explaining other evidence, even if it may “not be sufficient in itself to support a finding” by the Board.</p> <p>SITES-284 was introduced as a cross-examination exhibit to explain the testimony presented by Mr. Artis.(Sites Reservoir Public Hearing on 2024-10-08 (am) YouTube webcast at 00:54:07-00:54:29.)</p>	<p>X_ Sustained            ___ Overruled</p> <p>The objection is sustained pursuant to Government Code section 11513, subdivision (d). To the extent the document is not subject to any exception to the hearsay rule, the hearing officer will only rely upon the documents to supplement or explain other evidence. The hearing officer will consider whether the document is subject to any hearsay exception if the hearing officer’s draft decision relies on the document to support a finding rather than to supplement or explain other evidence.</p>

<b><u>Exhibit Number</u></b>	<b><u>Objection</u></b>	<b><u>Response</u></b>	<b><u>Ruling</u></b>
<p>SITES-284, "Declaration of Bradley Cavallo"</p>	<p><i>Opinion testimony from an undisclosed witness. 23 C.C.R. § 648.4(b), (c), and (d).</i></p> <p>The Sites Authority did not disclose Mr. Cavallo as a witness and he was not subject to direct or cross-examination. Any opinions from Mr. Cavallo that the Authority would like to introduce need to be from him directly, not through a declaration in another matter without cross-examination.</p>	<p>The objection misstates the purpose of SITES-284 and is not a reasonable basis for exclusion of SITES-284 from the evidentiary record. The Authority did not submit SITES-284 as direct testimony and was not required to present Mr. Cavallo as a witness pursuant to 23 C.C.R. § 648.4. Rather, the Authority used SITES-284 to explain Mr. Artis's direct testimony and for purposes of impeachment.</p>	<p>___ Sustained X_ Overruled</p> <p>Exhibits introduced for the purpose of cross-examination are included in the evidentiary record for the limited purposes of impeachment or eliciting relevant testimony from the witness, and are not admitted in their entirety as substantive evidence.</p>
<p>SITES-286, "2020 Urban Water Management Plan"</p>	<p><i>Lacks Foundation.</i></p> <p>Mr. Resnick testified he had not previously reviewed the plan when shown the document on Cross Examination.</p> <p>No witness testified to the Plan, the accuracy of the document, or any other foundational information that</p>	<p>FOR does not cite applicable statutory provisions or judicial decisions in support of the objection. Moreover, FOR offers no citation supporting the characterization that the witness was not familiar with the document.</p> <p>Pursuant to Evid. Code § 702(b), "[a] witness' personal knowledge of a matter may be shown by any otherwise admissible evidence, including his own testimony." Here, Mr. Resnick's personal knowledge of the contents of the document was established on cross-</p>	<p>___ Sustained X_ Overruled</p> <p>Exhibits introduced for the purpose of cross-examination are included in the evidentiary record for the limited purposes of impeachment or eliciting relevant testimony from the witness, and are not admitted in their entirety</p>

<b><u>Exhibit Number</u></b>	<b><u>Objection</u></b>	<b><u>Response</u></b>	<b><u>Ruling</u></b>
	<p>would allow it to be admitted and reliable.</p>	<p>examination by the examining attorney. (Sites Reservoir Public Hearing on 2024-10-09 (am) YouTube webcast at 01:08:07-01:08:45 [Mr. Resnick confirmed he had “some familiarity” with SITES-286].) Public records prepared and published by a public agency do not require witness testimony to establish the foundation. (23 C.C.R. § 648.3.) Regardless, Mr. Resnick confirmed on the basis of his personal knowledge that SITES-286 appeared to be a true and correct copy. (Sites Reservoir Public Hearing on 2024-10-09 (am) YouTube webcast at 01:10:40-01:10:55.)</p>	<p>as substantive evidence.</p>
<p>SITES-286, “2020 Urban Water Management Plan”</p>	<p><i>Hearsay. Gov. Code § 11513(d)</i> The Plan does not explain or supplement other testimony and is not admissible for the truth of the matters stated in the Plan on its own.</p>	<p>Hearsay is admissible pursuant to Gov. Code § 11513(d). Gov. Code § 11513 establishes that hearsay evidence is admissible for supplementing or explaining other evidence, even if it may “not be sufficient in itself to support a finding” by the Board. SITES-284 was introduced as a cross-examination exhibit to explain the testimony presented by Mr. Resnick. (Sites Reservoir Public Hearing on 2024-10-09 (am) YouTube webcast at 01:10:40-1:28:17.)</p>	<p>X _ Sustained ___ Overruled The objection is sustained pursuant to Government Code section 11513, subdivision (d). To the extent the document is not subject to any exception to the hearsay rule, the hearing officer will only rely upon the document to supplement or explain other evidence. The hearing officer will consider</p>

<u>Exhibit Number</u>	<u>Objection</u>	<u>Response</u>	<u>Ruling</u>
			whether the document is subject to any hearsay exception if the hearing officer's draft decision relies on the document to support a finding rather than to supplement or explain other evidence.
SITES-287, "Sites Project Executive Summary," August 2017	<p>Lacks Foundation.</p> <p>Dr. Michael testified he was not familiar with and had not seen the document.</p> <p>There is no sponsoring witness who has authenticated or testified to the truth of the material contained in the document.</p>	<p>FOR does not cite applicable statutory provisions or judicial decisions in support of the objection. Moreover, FOR offers no citation supporting the characterization that the witness was not familiar with the document. Pursuant to Evid. Code § 702(b), "[a] witness' personal knowledge of a matter may be shown by any otherwise admissible evidence, including his own testimony." Here, Dr. Michael's personal knowledge of the contents of the document was established on cross-examination by the examining attorney. The examining attorney represented to Dr. Michael the title and preparer of the document. (Sites Reservoir Public Hearing on 2024-10-09 (pm) YouTube webcast at 1:19:19-1:19:33.) Dr. Michael was then given the opportunity to review the document before responding to questions based on his knowledge. (See, e.g., <i>id.</i></p>	<p>___ Sustained</p> <p>X _ Overruled</p> <p>Exhibits introduced for the purpose of cross-examination will be included in the evidentiary record for the limited purposes of impeachment or eliciting relevant testimony from the witness, and generally will not be admitted in their entirety as substantive evidence.</p> <p>Neither State Water Board regulations nor Chapter 4.5 of the Administrative Procedure Act (APA) strictly require a party to authenticate or lay a formal foundation for</p>

<u>Exhibit Number</u>	<u>Objection</u>	<u>Response</u>	<u>Ruling</u>
		at 1:20:00-1:20:44 [Dr. Michael was instructed to read a specific paragraph before responding].)	the admission of exhibits or testimony. In an administrative proceeding before the AHO, not every exhibit requires sponsoring testimony to demonstrate authenticity and relevance. Sufficient information to meet the standard for admission into the evidentiary record may be self-evident from the document, may be provided by a witness's testimony, or may be evident from other properly admitted evidence.
SITES-287, "Sites Project Executive Summary," August 2017	<i>Hearsay. Gov. Code § 11513(d)</i>  The Executive Summary does not explain or supplement other testimony and is not admissible for the truth of the matters stated in the Executive Summary on its own.	Hearsay is admissible pursuant to Gov. Code § 11513(d). Gov. Code § 11513 establishes that hearsay evidence is admissible for supplementing or explaining other evidence, even if it may "not be sufficient in itself to support a finding" by the Board. SITES-287 was introduced as a cross-examination exhibit to explain the testimony presented by Dr. Michael, including to clarify his understanding of the proposed project and the basis for that understanding. (Sites	X _ Sustained  ___ Overruled  The objection is sustained pursuant to Government Code section 11513, subdivision (d). To the extent the document is not subject to any exception to the hearsay rule, the hearing officer will only rely upon the document to



<u>Exhibit Number</u>	<u>Objection</u>	<u>Response</u>	<u>Ruling</u>
		<p>Reservoir Public Hearing on 2024-10-09 (pm) YouTube webcast at 01:20:00 [beginning the cross- examination of Dr. Michael regarding SITES-287].)</p>	<p>supplement or explain other evidence. The hearing officer will consider whether the document is subject to any hearsay exception if the hearing officer’s draft decision relies on the document to support a finding rather than to supplement or explain other evidence.</p>
<p>SITES-289, “Colusa County Water District Water Management Plan, 2020”</p>	<p>Lacks Foundation.</p> <p>Mr. Asarian testified he had not previously reviewed the plan when shown the document on Cross Examination.</p> <p>No witness testified to the Plan, the accuracy of the document, or any other foundational information that would allow it to be admitted and reliable.</p>	<p>FOR does not cite applicable statutory provisions or judicial decisions in support of the objection. Moreover, FOR offers no citation supporting the characterization that the witness was not familiar with the document. Pursuant to Evid. Code § 702(b), “[a] witness’ personal knowledge of a matter may be shown by any otherwise admissible evidence, including his own testimony.” Here, Mr. Asarian’s personal knowledge of the contents of the document was established on cross-examination by the examining attorney. Mr. Asarian was given the opportunity to review the document before responding to questions based on his knowledge. (See Sites Reservoir Public Hearing on 2024-10-09 (pm) YouTube webcast at 3:52:21 [beginning the cross-examination of Mr. Asarian regarding SITES-289].)</p>	<p>___ Sustained</p> <p>X _ Overruled</p> <p>Exhibits introduced for the purpose of cross-examination will be included in the evidentiary record for the limited purposes of impeachment or eliciting relevant testimony from the witness, and generally will not be admitted in their entirety as substantive evidence.</p>

<u>Exhibit Number</u>	<u>Objection</u>	<u>Response</u>	<u>Ruling</u>
		Public records prepared and published by a public agency do not require witness testimony to establish the foundation. (23 C.C.R. § 648.3.)	
SITES-289, "Colusa County Water District Water Management Plan, 2020"	<p><i>Hearsay. Gov. Code § 11513(d)</i></p> <p>The Plan does not explain or supplement other testimony and is not admissible for the truth of the matters stated in the Plan on its own.</p>	<p>Hearsay is admissible pursuant to Gov. Code § 11513(d). Gov. Code § 11513 establishes that hearsay evidence is admissible for supplementing or explaining other evidence, even if it may "not be sufficient in itself to support a finding" by the Board.</p> <p>SITES-289 was introduced as a cross-examination exhibit to explain the testimony presented by Mr. Asarian, including the scope of his understanding of water supply planning by Sites members. (See Sites Reservoir Public Hearing on 2024-10-09 (pm) YouTube webcast at 3:52:21 [beginning the cross-examination of Mr. Asarian regarding SITES-289].)</p>	<p>X _ Sustained</p> <p>___ Overruled</p> <p>The objection is sustained pursuant to Government Code section 11513, subdivision (d). To the extent the document is not subject to any exception to the hearsay rule, the hearing officer will only rely upon the document to supplement or explain other evidence. The hearing officer will consider whether the document is subject to any hearsay exception if the hearing officer's draft decision relies on the document to support a finding rather than to supplement or explain other evidence.</p>
SITES-290, E-Mail Chain dated	Lacks Foundation.	FOR does not cite applicable statutory provisions or judicial	<p>___ Sustained</p> <p>X _ Overruled</p>

<u>Exhibit Number</u>	<u>Objection</u>	<u>Response</u>	<u>Ruling</u>
February 23, 2023	No witness testified about the document who was listed as a sender or recipient on the emails.	<p>decisions in support of the objection. Moreover, FOR offers no citation supporting the characterization that the witness was not familiar with the document. Pursuant to Evid. Code § 702(b), “[a] witness’ personal knowledge of a matter may be shown by any otherwise admissible evidence, including his own testimony.” Here, Mr. Asarian’s personal knowledge of the contents of the document was established on cross-examination by the examining attorney. Mr. Asarian was given the opportunity to review the document before responding to questions based on his knowledge. (Sites Reservoir Public Hearing on 2024-10-10 (am) YouTube webcast at 00:17:57-00:19:22.) Mr. Asarian confirmed the sender and recipients of the email based on his review. (<i>Id.</i> at 00:17:57-00:18:40.)</p>	<p>Exhibits introduced for the purpose of cross-examination will be included in the evidentiary record for the limited purposes of impeachment or eliciting relevant testimony from the witness, and generally will not be admitted in their entirety as substantive evidence.</p> <p>Neither State Water Board regulations nor Chapter 4.5 of the APA strictly require a party to authenticate or lay a formal foundation for the admission of exhibits or testimony. In an administrative proceeding before the AHO, not every exhibit requires sponsoring testimony to demonstrate authenticity and relevance. Sufficient information to meet the standard for admission into the evidentiary record may be self-evident from</p>

<u>Exhibit Number</u>	<u>Objection</u>	<u>Response</u>	<u>Ruling</u>
			the document, may be provided by a witnesses' testimony, or may be evident from other properly admitted evidence.
SITES-290, E-Mail Chain dated February 23, 2023	<i>Hearsay. Gov. Code § 11513(d)</i>  The e-mail chain does not explain or supplement other testimony and is not admissible in court for the truth of the matters asserted in the correspondence.	Hearsay is admissible pursuant to Gov. Code § 11513(d). Gov. Code § 11513 establishes that hearsay evidence is admissible for supplementing or explaining other evidence, even if it may "not be sufficient in itself to support a finding" by the Board. SITES-290 was introduced as a cross-examination exhibit to explain the testimony presented by Mr. Asarian, including information available to NGO protestants. (Sites Reservoir Public Hearing on 2024-10-10 (am) YouTube webcast at 00:18:41-00:20:11.)	X _ Sustained  ___ Overruled  The objection is sustained pursuant to Government Code section 11513, subdivision (d). To the extent the document is not subject to any exception to the hearsay rule, the hearing officer will only rely upon the document to supplement or explain other evidence. The hearing officer will consider whether the document is subject to any hearsay exception if the hearing officer's draft decision relies on the document to support a finding rather than to supplement or explain other evidence.
Sites-71, ¶ 59	<i>Evidence Code §§ 720, 801,</i>	Lay testimony in the form of an opinion is admissible	___ Sustained

<u>Exhibit Number</u>	<u>Objection</u>	<u>Response</u>	<u>Ruling</u>
<p>Opinion testimony regarding Mercury</p>	<p>803. Sites 71 is the written testimony Alicia Forsythe. Sites did not identify Ms. Forsythe as an expert witness in this matter and nothing in the record sets forth her qualifications to offer opinion testimony regarding mercury related issues associated with the Project.</p>	<p>where rationally based on the perception of the witness. (Evid. Code § 800.) Ms. Forsythe establishes her basis of knowledge regarding the Authority’s mercury management efforts as Environmental Planning and Permitting Manager on behalf of the Authority and attests to having personal knowledge of the matters set forth in her testimony. (SITES-71c, ¶ 1.) Specifically, Ms. Forsythe is tasked with implementing the Sites Reservoir Project’s environmental planning, permitting, and water operations program. (<i>Ibid.</i>) Paragraph 59 of Ms. Forsythe’s testimony specifically relates to actions to be taken by the Authority in implementing the project to monitor mercury based on the results of the Final EIR/EIS. (SITES-71c, ¶ 59.) This paragraph relates to the implementation of the Project, as opposed to the scientific analyses of Project impacts. Pursuant to Evid. Code § 702(b), personal knowledge of a matter “may be shown by any otherwise admissible evidence ... .” FOR has not shown that the testimony of Ms. Forsythe is inadmissible in whole or</p>	<p>X _Overruled  The hearing officer will consider FOR’s objection when determining the weight to be afforded the testimony.</p>

<u>Exhibit Number</u>	<u>Objection</u>	<u>Response</u>	<u>Ruling</u>
		<p>in part. Ms. Forsythe establishes her basis of knowledge as Environmental Planning and Permitting Manager on behalf of the Authority and from review of exhibits and testimony specifically cited in her testimony. (SITES-71c, ¶¶ 1, 59.)</p>	
<p>Sites-71, ¶ 60 Opinion testimony regarding Metal Impacts in Stone Creek</p>	<p><i>Evidence Code §§ 720, 801, 803.</i> Sites 71 is the written testimony Alicia Forsythe. Sites did not identify Ms. Forsythe as an expert witness in this matter and nothing in the record sets forth her qualifications to offer opinion testimony regarding metal impacts in Stone Creek.</p>	<p>Lay testimony in the form of an opinion is admissible where rationally based on the perception of the witness. (Evid. Code § 800.) Ms. Forsythe establishes her basis of knowledge regarding the Authority’s metals management efforts as Environmental Planning and Permitting Manager on behalf of the Authority and attests to having personal knowledge of the matters set forth in her testimony. (SITES-71c, ¶ 1.) Specifically, Ms. Forsythe is tasked with implementing the Sites Reservoir Project’s environmental planning, permitting, and water operations program. (<i>Ibid.</i>) Paragraph 60 of Ms. Forsythe’s testimony specifically relates to actions to be taken by the Authority to reduce metal impacts based on the results of the Final EIR/EIS. (SITES-71c, ¶ 60.) This paragraph relates to the implementation of the Project, as opposed to the</p>	<p>___ Sustained X _ Overruled  The hearing officer will consider FOR’s objection when determining the weight to be afforded the testimony.</p>

<u>Exhibit Number</u>	<u>Objection</u>	<u>Response</u>	<u>Ruling</u>
		<p>scientific analyses of Project impacts. Pursuant to Evid. Code § 702(b), personal knowledge of a matter “may be shown by any otherwise admissible evidence ... .” FOR has not shown that the testimony of Ms. Forsythe is inadmissible in whole or in part. Ms. Forsythe establishes her basis of knowledge as Environmental Planning and Permitting Manager on behalf of the Authority and from review of exhibits and testimony specifically cited in her testimony. (SITES-71c, ¶¶ 1, 60.)</p>	
<p>Sites-71, ¶ 61 Opinion testimony regarding Metals and Pesticides in the Yolo Bypass</p>	<p><i>Evidence Code §§ 720, 801, 803.</i> Sites 71 is the written testimony Alicia Forsythe. Sites did not identify Ms. Forsythe as an expert witness in this matter and nothing in the record sets forth her qualifications to offer opinion testimony regarding the Project’s impacts to metals and pesticides in the Yolo Bypass.</p>	<p>Lay testimony in the form of an opinion is admissible where rationally based on the perception of the witness. (Evid. Code § 800.) Ms. Forsythe establishes her basis of knowledge regarding Authority metals and pesticide management efforts as Environmental Planning and Permitting Manager on behalf of the Authority and attests to having personal knowledge of the matters set forth in her testimony. (SITES-71c, ¶ 1.) Specifically, Ms. Forsythe is tasked with implementing the Sites Reservoir Project’s environmental planning, permitting, and water operations program. (<i>Ibid.</i>) Paragraph 61 of Ms. Forsythe’s testimony specifically relates to</p>	<p>___ Sustained X _ Overruled  The hearing officer will consider FOR’s objection when determining the weight to be afforded the testimony.</p>

<u>Exhibit Number</u>	<u>Objection</u>	<u>Response</u>	<u>Ruling</u>
		<p>actions to be taken by the Authority to reduce metal and pesticide impacts in the Yolo Bypass based on the results of the Final EIR/EIS. (SITES-71c, ¶ 61.) This paragraph relates to the implementation of the Project, as opposed to the scientific analyses of Project impacts. Pursuant to Evid. Code § 702(b), personal knowledge of a matter “may be shown by any otherwise admissible evidence ... .” FOR has not shown that the testimony of Ms. Forsythe is inadmissible in whole or in part. Ms. Forsythe establishes her basis of knowledge as Environmental Planning and Permitting Manager on behalf of the Authority and from review of exhibits and testimony specifically cited in her testimony. (SITES-71c, ¶¶ 1, 61.)</p>	
<p>Sites-71, ¶ 62 Opinion testimony regarding water quality</p>	<p><i>Evidence Code §§ 720, 801, 803.</i> Sites 71 is the written testimony Alicia Forsythe. Sites did not identify Ms. Forsythe as an expert witness in this matter and nothing in the record sets forth her qualifications to offer opinion testimony regarding the Project’s impacts to water quality</p>	<p>Lay testimony in the form of an opinion is admissible where rationally based on the perception of the witness. (Evid. Code § 800.) Ms. Forsythe establishes her basis of knowledge regarding the Authority’s operations conditions as Environmental Planning and Permitting Manager on behalf of the Authority and attests to having personal knowledge of the</p>	<p>___ Sustained X _ Overruled  The hearing officer will consider FOR’s objection when determining the weight to be afforded the testimony.</p>



<u>Exhibit Number</u>	<u>Objection</u>	<u>Response</u>	<u>Ruling</u>
		<p>matters set forth in her testimony. (SITES-71c, ¶ 1.) Specifically, Ms. Forsythe is tasked with implementing the Sites Reservoir Project’s environmental planning, permitting, and water operations program. (<i>Ibid.</i>) Paragraph 62 of Ms. Forsythe’s testimony discusses the incorporation of operating conditions to ensure the Project meets water quality objectives. (SITES-71c, ¶ 62.) This paragraph relates to the implementation of the Project, as opposed to the scientific analyses of Project impacts. Pursuant to Evid. Code § 702(b), personal knowledge of a matter “may be shown by any otherwise admissible evidence ... .” FOR has not shown that the testimony of Ms. Forsythe is inadmissible in whole or in part. Ms. Forsythe establishes her basis of knowledge as Environmental Planning and Permitting Manager on behalf of the Authority. (SITES-71c, ¶ 1.)</p>	
<p>Sites-71, ¶ 63</p>	<p><i>Evidence Code §§ 720, 801, 803. Sites 71 is</i></p>	<p>Lay testimony in the form of an opinion is admissible</p>	<p>___ Sustained X Overruled</p>

<u>Exhibit Number</u>	<u>Objection</u>	<u>Response</u>	<u>Ruling</u>
<p>Opinion testimony regarding water quality</p>	<p>the written testimony Alicia Forsythe. Sites did not identify Ms. Forsythe as an expert witness in this matter and nothing in the record sets forth her qualifications to offer opinion testimony regarding the Project's impacts to water quality.</p>	<p>where rationally based on the perception of the witness. (Evid. Code § 800.) Ms. Forsythe establishes her basis of knowledge regarding Authority operations that may impact water quality as Environmental Planning and Permitting Manager on behalf of the Authority and attests to having personal knowledge of the matters set forth in her testimony. (SITES-71c, ¶ 1.) Specifically, Ms. Forsythe is tasked with implementing the Sites Reservoir Project's environmental planning, permitting, and water operations program. (<i>Ibid.</i>) Paragraph 63 of Ms. Forsythe's testimony discusses Project benefits, with citations to supporting exhibits. (SITES-71c, ¶ 63.) This paragraph relates to the implementation of the Project, as opposed to the scientific analyses of Project impacts. Pursuant to Evid. Code § 702(b), personal knowledge of a matter "may be shown by any otherwise admissible evidence ... ." FOR has not shown that the testimony of Ms. Forsythe</p>	<p>The hearing officer will consider FOR's objection when determining the weight to be afforded the testimony and will disregard any legal opinion included in the testimony.</p>

<u>Exhibit Number</u>	<u>Objection</u>	<u>Response</u>	<u>Ruling</u>
		<p>is inadmissible in whole or in part. Ms. Forsythe establishes her basis of knowledge as Environmental Planning and Permitting Manager on behalf of the Authority. (SITES-71c, ¶ 1.)</p>	
<p>Sites-71, ¶ 66, (First and third sentences) Opinion testimony regarding consistency with plans</p>	<p><i>Evidence Code §§ 720, 801, 803.</i> Sites 71 is the written testimony Alicia Forsythe. Sites did not identify Ms. Forsythe as an expert witness in this matter and nothing in the record sets forth her qualifications to offer opinion testimony regarding the Project's consistency with general or coordinated plans.</p>	<p>Lay testimony in the form of an opinion is admissible where rationally based on the perception of the witness. (Evid. Code § 800.) Ms. Forsythe establishes her basis of knowledge regarding whether releases from priority would not conflict with a general or coordinated plan as Environmental Planning and Permitting Manager on behalf of the Authority and attests to having personal knowledge of the matters set forth in her testimony. (SITES-71c, ¶ 1.) Specifically, Ms. Forsythe is tasked with implementing the Sites Reservoir Project's environmental planning, permitting, and water operations program. (<i>Ibid.</i>) Additionally, Ms. Forsythe oversaw the preparation of the Authority's petitions for releases. (See SITES-71c, ¶ 39.) Paragraph 66 of Ms. Forsythe's testimony</p>	<p>___ Sustained                      X _ Overruled                      The hearing officer will consider FOR's objection when determining the weight to be afforded the testimony and will disregard any legal opinion expressed in the testimony.</p>

<u>Exhibit Number</u>	<u>Objection</u>	<u>Response</u>	<u>Ruling</u>
		<p>relates to permitting of the Project and is supported by discussion and citations in ¶¶ 44-46 of her testimony. (See SITES-71c, ¶ 65.) Pursuant to Evid. Code § 702(b), personal knowledge of a matter “may be shown by any otherwise admissible evidence ... .” FOR has not shown that the testimony of Ms. Forsythe is inadmissible in whole or in part. Ms. Forsythe establishes her basis of knowledge as Environmental Planning and Permitting Manager on behalf of the Authority. (SITES-71c, ¶ 1.)</p>	
<p>Sites-71, ¶ 67 (Second sentence) Opinion testimony regarding consistency with the State Water Plan</p>	<p><i>Evidence Code §§ 720, 801, 803.</i> Sites 71 is the written testimony Alicia Forsythe. Sites did not identify Ms. Forsythe as an expert witness in this matter and nothing in the record sets forth her qualifications to offer opinion testimony regarding the Project’s consistency with the State Water Plan for water supply and fish</p>	<p>Lay testimony in the form of an opinion is admissible where rationally based on the perception of the witness. (Evid. Code § 800.) Ms. Forsythe establishes her basis of knowledge regarding whether the releases would not be in conflict with a general or coordinated plan as Environmental Planning and Permitting Manager on behalf of the Authority and attests to having personal knowledge of the matters set forth in her</p>	<p>___ Sustained                      X _ Overruled                      The hearing officer will consider FOR’s objection when determining the weight to be afforded the testimony and will disregard any legal opinion expressed in the testimony.</p>

<u>Exhibit Number</u>	<u>Objection</u>	<u>Response</u>	<u>Ruling</u>
	enhancement benefits.	testimony. (SITES-71c, ¶ 1.) Specifically, Ms. Forsythe is tasked with implementing the Sites Reservoir Project’s environmental planning, permitting, and water operations program. ( <i>Ibid.</i> ) Additionally, Ms. Forsythe oversaw the preparation of the Authority’s petitions for releases. (See SITES-71c, ¶ 39.) Paragraph 67 of Ms. Forsythe’s testimony relates to permitting of the Project and is supported by discussion and citations in ¶¶ 44-46 of her testimony. (See SITES-71c, ¶ 65.) Pursuant to Evid. Code § 702(b), personal knowledge of a matter “may be shown by any otherwise admissible evidence ... .” FOR has not shown that the testimony of Ms. Forsythe is inadmissible in whole or in part. Ms. Forsythe establishes her basis of knowledge as Environmental Planning and Permitting Manager on behalf of the Authority. (SITES-71c, ¶ 1.)	
Sites-71, ¶ 68 Opinion testimony regarding	<i>Evidence Code §§ 720, 801, 803. Sites 71 is the written testimony of</i>	Lay testimony in the form of an opinion is admissible where rationally based on the perception of the	___ Sustained X _ Overruled

<b><u>Exhibit Number</u></b>	<b><u>Objection</u></b>	<b><u>Response</u></b>	<b><u>Ruling</u></b>
<p>Project's consistency with water quality objectives.</p>	<p>Alicia Forsythe. Sites did not identify Ms. Forsythe as an expert witness in this matter and nothing in the record sets forth her qualifications to offer opinion testimony regarding the Project's consistency with water quality objectives.</p>	<p>witness. (Evid. Code § 800.) Ms. Forsythe establishes her basis of knowledge regarding whether the project would not conflict with water quality objectives as Environmental Planning and Permitting Manager on behalf of the Authority and attests to having personal knowledge of the matters set forth in her testimony. (SITES-71c, ¶ 1.) Specifically, Ms. Forsythe is tasked with implementing the Sites Reservoir Project's environmental planning, permitting, and water operations program. (<i>Ibid.</i>) Additionally, Ms. Forsythe oversaw the preparation of the Authority's petitions for releases. (See SITES-71c, ¶ 39.) Paragraph 68 of Ms. Forsythe's testimony relates to permitting of the Project and is supported by discussion and citations in ¶¶ 44-46 and 57-63 of her testimony. (See SITES-71c, ¶¶ 65, 68.) Pursuant to Evid. Code § 702(b), personal knowledge of a matter "may be shown by any otherwise admissible evidence ... ." FOR has not shown that the testimony of Ms. Forsythe</p>	<p>The hearing officer will consider FOR's objection when determining the weight to be afforded the testimony and will disregard any legal opinion expressed in the testimony.</p>

<u>Exhibit Number</u>	<u>Objection</u>	<u>Response</u>	<u>Ruling</u>
		<p>is inadmissible in whole or in part. Ms. Forsythe establishes her basis of knowledge as Environmental Planning and Permitting Manager on behalf of the Authority. (SITES-71c, ¶ 1.)</p>	
<p>Sites-262, Pages 16-27 (Summary of Forsythe Testimony) Opinion testimony regarding Project's consistency with water quality objectives.</p>	<p><i>Evidence Code §§ 720, 801, 803.</i> Sites 262 is the summary of Ms. Forsythe's written testimony (Sites-71.) Sites did not identify Ms. Forsythe as an expert witness in this matter and nothing in the record sets forth her qualifications to offer opinion testimony regarding the Project's consistency with applicable plans and water quality objectives.</p>	<p>Lay testimony in the form of an opinion is admissible where rationally based on the perception of the witness. (Evid. Code § 800.) Ms. Forsythe establishes her basis of knowledge regarding the necessary findings for the Authority's petitions for assignment and releases as Environmental Planning and Permitting Manager on behalf of the Authority and attests to having personal knowledge of the matters set forth in her testimony. (SITES-71c, ¶ 1.) Specifically, Ms. Forsythe is tasked with implementing the Sites Reservoir Project's environmental planning, permitting, and water operations program. (<i>ibid.</i>) Additionally, Ms. Forsythe oversaw the preparation of the Authority's petitions for releases. (See SITES-71c, ¶ 39.) SITES-262, pp. 16-27, relate to permitting of the Project</p>	<p>___ Sustained                      X _ Overruled</p> <p>The hearing officer will consider FOR's objection when determining the weight to be afforded the testimony and will disregard any legal opinion expressed in the testimony.</p>

<u>Exhibit Number</u>	<u>Objection</u>	<u>Response</u>	<u>Ruling</u>
		<p>and are supported by discussion and citations in ¶¶ 40-68 of her testimony. (See SITES-71c, ¶ 65.) Pursuant to Evid. Code § 702(b), personal knowledge of a matter “may be shown by any otherwise admissible evidence ... .” FOR has not shown that the testimony of Ms. Forsythe is inadmissible in whole or in part. Ms. Forsythe establishes her basis of knowledge as Environmental Planning and Permitting Manager on behalf of the Authority. (SITES-71c, ¶ 1.)</p>	
<p>Sites-91c, paragraphs 7, 15 to 40</p>	<p><i>Evidence Code §§ 720, 801, 803.</i> Sites 91c is the corrected written testimony of Danielle Risse. Ms. Risse acknowledged that she is not trained ethnographer, cultural geographer or specialists in the matters regarding Tribal issues. See YouTube Recording, September 23, 2024 (pm) at 2:33:00 to 2:35:00 and September 24,</p>	<p>A person is qualified to testify as an expert if she has special knowledge, skill, experience, training, or education sufficient to qualify her as an expert on the subject matter. (Evid. Code, § 801.) Expert testimony in the form of an opinion is admissible where based on matter perceived by or personally known to the witness or made known to her. (<i>Ibid.</i>) Ms. Risse establishes her basis of knowledge as an archaeologist with an educational background in anthropology and Native American Studies, work experience on projects with Native American resources, and attests to having personal knowledge of and</p>	<p>___ Sustained                      X _ Overruled                      The hearing officer will consider FOR’s objection when determining the weight to be afforded the testimony.</p>



<u>Exhibit Number</u>	<u>Objection</u>	<u>Response</u>	<u>Ruling</u>
	2024 (am) at 6:00 to 1:33.	<p>expertise related to the matters set forth in her testimony.                      (SITES-91c, ¶ 1; SITES-105, p. 1.)                      Pursuant to Evid. Code § 702(b), an expert witness' special knowledge or education "may be shown by any otherwise admissible evidence, including [her] own testimony." FOR has not shown that the testimony of Ms. Risse is inadmissible in whole or in part. Ms. Risse establishes her basis of knowledge in her testimony based on special knowledge, skill, and education, as well as her review of the Project Final EIR/EIS. (SITES-91c, ¶¶ 1, 7, 15, 40.)</p>	

## ATTACHMENT 7

### RULING ON AUTHORITY’S EVIDENTIARY OBJECTIONS TO AHO EXHIBITS

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
<p>AHO-258, AHO-259, AHO-271 through AHO-274, AHO-277, AHO-279</p>	<p>Hearsay. (Gov. Code, § 11513, subd. (d); Cal. Code Regs., tit. 23, § 648.5.1.) These exhibits contain hearsay that is unsupported by other evidence and cannot be used to support a finding by the Administrative Hearing Officer (AHO).</p> <p>The probative value of the proposed evidence is substantially outweighed by the probability that its admission will necessitate undue consumption of time in evaluating the validity of any claims therein relied upon by any party in this proceeding. (Gov. Code, § 11513, subd. (f).) The AHO should exercise her discretion to exclude these exhibits, as there is minimal probative value for evidentiary purposes, and they otherwise include inadmissible hearsay.</p>	<p>[Response by FOR et al., not provided in Word format, see 2024-11-15 FOR et al. Opposition to Evidentiary Objections.]</p>	<p>x Sustained (in part)                      ___ Overruled</p> <p>The exhibits identified are hearsay but some of the documents or portions thereof are subject to the official record exception to the hearsay rule. Regardless, the documents are admissible under Gov. Code, § 11513, subd. (d), and the hearing officer declines to exercise her discretion to exclude them. The hearing officer will consider whether the documents are subject to a hearsay exception if the hearing officer’s draft decision relies on the document to support a finding rather than to supplement or explain other evidence.</p>

<b>MATERIAL OBJECTED TO</b>	<b>GROUND FOR OBJECTION</b>	<b>RESPONSE TO OBJECTION</b>	<b>RULING ON OBJECTION</b>
<p>AHO-280 through AHO-309, AHO-313</p>	<p>Irrelevant. (Gov. Code, § 11513, subd. (c).) The purpose of the hearing is to investigate the facts and reach conclusions grounded in an evidentiary record that contains the sort of evidence on which responsible persons are accustomed to rely upon in the conduct of serious affairs.</p> <p>The probative value of the proposed evidence is substantially outweighed by the probability that its admission will necessitate undue consumption of time. (Gov. Code, § 11513, subd. (f).) The AHO should exercise her discretion to exclude these exhibits, because they are irrelevant to the evidentiary purposes of the proceeding.</p>	<p>Response by FOR et al.: AHO-280 through AH-309 are the protest submitted by the various protestants to this matter and the Authority's respective answers to those Protest.</p> <p>As they are the protests and the Authority's answers to the protests, they are clearly applicable and relevant to this proceeding. The Authority's objection, however, fails to discuss or identify how they are not relevant. Certainly how the environmental issues and concerns raised in the protests constitutes the type of evidence on which responsible persons are accustomed to rely upon in the conduct of serious affairs. Moreover, how the Authority responds to the protests through its respective Answers is the type of evidence on which responsible persons are accustomed to rely upon in the conduct of serious affairs.</p>	<p>Sustained x Overruled</p> <p>The protests to the Authority's water right application and associated petitions are relevant to this proceeding. The hearing officer will consider the nature of the protests when considering the evidentiary weight to be afforded the information included in them, and the extent to which that information is the type on which a reasonable person would rely in the conduct of serious affairs.</p>

<b>MATERIAL OBJECTED TO</b>	<b> GROUNDS FOR OBJECTION</b>	<b> RESPONSE TO OBJECTION</b>	<b> RULING ON OBJECTION</b>
		<p>At a minimum, the AHO should exercise her discretion to deny the objection with respect to the protests and respective answers of the parties that are participating in the water rights hearing. That would be the following Exhibits:</p> <p>AHO-281 (State Water Contractors); 282 (Baykeeper); 286 (Center for Biological Diversity); 287 (Orbaun); 288 (California Sportfishing Protection Alliance); 289 (PCCFA); 290 (San Joaquin County); 292 (King Farms); 294 (Water Climate Trust) and the Authority's respective Answers: AHO, 295, 296, 298, 301, 304, 306, 309, and 313.</p>	

**Attachment 8  
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