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## State Water Resources Control Board

April 18, 2025

### **Re: Procedural Ruling on Evidentiary Motions – Incidental Take Permit, Rebuttal, and Claimed Water Rights**

#### **TO ALL PARTIES:**

This procedural ruling addresses the objections submitted by the parties to evidence offered into the evidentiary record in the portions of the hearing that addressed the Sites Project Authority's incidental take permit, rebuttal, and information submitted in response to the AHO's request for supplemental information from the parties about claims of injury to water rights.

#### *Evidentiary Rulings*

Sites Project Authority (Authority) 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 Rebuttal Evidence Submitted by Tribal and NGO Parties
- Attachment 2 – Ruling on Authority's Evidentiary Objections to South Delta Water Agency Parties' Rebuttal Testimony and Exhibits
- Attachment 3 – Ruling on Authority's Evidentiary Objections to T&M King Farms' Rebuttal Testimony and Exhibits
- Attachment 4 – Ruling on FOR et al.'s Evidentiary Objections to Authority's Rebuttal Testimony and Exhibits

Sincerely,

A handwritten signature in blue ink that reads "Nicole Kuenzi". The signature is written in a cursive, flowing style.

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

Attachments:

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- Attachment 5 – Service List

**ATTACHMENT 1****Ruling on Authority's Evidentiary Objections to Rebuttal Evidence Submitted by Tribal and NGO Parties**

<b>MATERIAL OBJECTED TO</b>	<b>GROUND FOR OBJECTION</b>	<b>RESPONSE TO OBJECTION</b>	<b>RULING ON OBJECTION</b>
CSPA-101 (Rebuttal Testimony of Chris Shutes, ¶¶ 4, 38- 45); CSPA-102, CSPA-103	Irrelevant. (Gov. Code, § 11513 subd. (c).) The purpose of this hearing is to investigate the facts and reach conclusions grounded in an evidentiary record that contain the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs. Mr. Shutes' description of the implementation of the Rock Creek – Cresta Settlement Agreement by the "Ecological Resources Committee" on the North Fork Feather River is irrelevant to the hearing issues established by the AHO and irrelevant to the State Water Board's consideration of the Sites Project Authority's (Authority) application and petitions. Additionally, Mr. Shutes fails to establish how reliance on the adaptive management actions related to that matter have any bearing on the proposed Project. Moreover, Mr. Shutes failed to	<p>The Sites Project Authority objects to paragraphs 4 and 38-45 of exhibit CSPA-101c (Testimony Responsive to the Incidental Take Permit for Sites Project Operations and Rebuttal Testimony of Chris Shutes), and to supporting exhibits CSPA-102 (Rock Creek – Cresta Settlement Agreement, 2000) and CSPA-103 (FERC license amendment application, 2023) on grounds of relevance. The Hearing Officer should overrule the Authority's objections.</p> <p>Paragraph 4 of Exhibit CSPA-101c provides foundation for Mr. Shutes's expertise in adaptive management.</p> <p>Paragraphs 38-45 of Exhibit CSPA-101c provide analysis of an actual partially successful adaptive management program. Mr. Spranza's case-in-chief testimony (Exhibit Sites-103) in support of the</p>	<p>Sustained</p> <p>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, and supporting exhibits, address Mr. Shute's knowledge of factors that in his opinion support the success of an adaptive management plan and provide a reasonable basis for his opinion concerning the adequacy of the Sites adaptive</p>

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	<p>establish that exhibits CSPA-102 and -103 contain factual information supporting his opinions or that his opinions are formed on the basis of such exhibits.</p>	<p>Sites Project Authority's as-yet-undeveloped adaptive management program provided no description of proposed structure of such program. Mr. Spranza did not describe the latitude ("decision space") of potential management changes that the Sites adaptive management program would incorporate. Mr. Spranza did not provide the criteria or metrics by which the people implementing the program would evaluate data the program collected. Instead, Mr. Spranza's testimony was largely conceptual and described general aspects of adaptive management.</p> <p>In response to the absence of specificity in Mr. Spranza's testimony, Mr. Shutes presented in CSPA-101c, paragraphs 38-45, a description and analysis of a partially successful adaptive management program in which he is a 19-year participant. Mr. Shutes determined that a description of a real-life adaptive management program was more illustrative than</p>	<p>management program. The testimony responds to case-in-chief testimony submitted by Mr. Spranza (Exhibit Sites-103) about development and implementation of an adaptive management program for diversion criteria and operations of the Sites Reservoir Project to reduce effects on fish and other aquatic species. (Exhibit Sites-103, ¶ 5.)</p>

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		<p>a conceptual or more generalized description.</p> <p>Exhibits CSPA-102 and CSPA-103 support Exhibit CSPA-101c.</p> <p>Exhibit CSPA-102 provides a practical example of the necessary elements of a successful adaptive management program. Exhibit CSPA-102 provides an example of how an adaptive management program laid out in advance the decision space, the range of options to be studied, and the criteria by which data collected in the adaptive management program would be evaluated. Exhibit CSPA-102 thus stands in contrast to Mr. Spranza's conceptual description of the proposed future Sites adaptive management program. Exhibit CSPA-102 also stands in contrast to the Operations Incidental Take Permit for the proposed Sites project, which describes monitoring requirements for the Sites adaptive management program, but which does not describe the criteria by</p>	

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		<p>which those persons conducting monitoring under the Sites adaptive management program will evaluate or use the monitoring data collected to evaluate or modify operations.</p> <p>Exhibit CSPA-103 provides a practical example of how the positions and interests of adaptive management participants carry through from the beginning to the end of an adaptive management program and affect the manner in which participants evaluate data collective over the course of adaptive management implementation. Pages 34-36 of Exhibit CSPA-103 provide a practical example of how entities with differing interests arrived at very different conclusions about a dataset generated over a period of 18 years. The evidence cited in Exhibit CSPA-103 thus supports Mr. Shutes's opinion in Exhibit CSPA-101c (see <i>esp.</i> paragraphs 41-44) that generation of additional factual information through monitoring in an adaptive</p>	

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		<p>management program does not change the interests of adaptive management participants and does not change the general criteria by which such participants evaluate new factual information. More generally, Exhibit CSPA-103 provides practical examples that support Mr. Shutes's opinions in Exhibit CSPA-101c that confounding issues, anomalous conditions, and unforeseen circumstances complicate the interpretation of data collected in monitoring pursuant to an adaptive management program.</p> <p>Exhibits CSPA-102 and CSPA-103 also provide foundation for Exhibit CSPA-101c because of Mr. Shutes's longstanding participation in the Rock Creek – Cresta adaptive management implementation committee. Exhibits CSPA-102 and CSPA-103 provide substantial evidence of Mr. Shutes's expertise in the subject matter of adaptive management. These exhibits provide factual basis</p>	

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		<p>on which Mr. Shutes bases his opinions.</p> <p>Exhibit CSPA-101c at paragraph 43 (which the Sites Project Authority seeks to strike) offers the opinion, based on the direct experience of Mr. Shutes, “that even well-designed and regulated adaptive management programs regarding water diversion and use have limited value in assuring outcomes that are protective of fish and other instream resources.” This fact-based analysis directly rebuts the opinion of Mr. Spranza that the Sites adaptive management program will “avoid, minimize, and/or reduce potential adverse impacts to fish” (Exhibit Sites 103, paragraph 14).</p> <p>For these reasons, the Hearing Officer should overrule the Sites Project Authority’s objections to portions of Exhibit CSPA-101c and the Authority’s objections to exhibits CSPA-102 and CSPA-103.</p>	



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CSPA-106	<p>Lack of foundation. (Evid. Code, §§ 702, 801; <i>Sargon Enterprises, Inc. v. Univ. 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” (internal quotes omitted)].) Testimony lacks foundation when the underlying factual basis has not been submitted or is improper. This exhibit was used for cross-examination of Angela Bezzone by Mr. Shutes, but no foundation was laid. (See Hearing Transcript, Vol. XXIV (Feb. 21, 2025) at 5909:18-5913:9.) Ms. Bezzone expressly stated that she was not familiar with the document, and Mr. Shutes failed to otherwise lay a foundation for the document for the purposes of cross-examination. Mr. Shutes failed to establish how the document otherwise contained factual information supporting his rebuttal opinions or that his</p>	<p>Exhibit CSPA-106 is a copy of the March 5, 2015 Temporary Urgency Change Order regarding Delta operations issued by the Executive Director of the State Water Board to the Department of Water Resources and the Bureau of Reclamation. The passages cited by Mr. Shutes in cross-examination of Ms. Bezzone address the rules for use of Delta export facilities in transferring water to areas south of the Delta.</p> <p>The Sites Project Authority objects to Exhibit CSPA-106 on the grounds that Mr. Shutes “failed to lay a foundation for the document for purposes of cross-examination.” The Authority adds that Ms. Bezzone “expressly stated that she was not familiar with the document.” The Hearing Officer should overrule the objection.</p> <p>Reviewing Ms. Bezzone’s written rebuttal testimony (Exhibit Sites-395c), it is clear that she is familiar with the type of document that</p>	<p>Sustained X Overruled</p> <p>To the extent that the objection is for lack of foundation for CSPA-106, the document is self-authenticating as an order of the State Water Board.</p> <p>Additionally, Ms. Bezzone’s rebuttal testimony demonstrates that she is familiar with these types of orders issued by the State Water Board and was at least somewhat familiar with this particular document.</p>

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	opinions were formed on the basis of the exhibit.	CSPA-106 is. In paragraph 40, she directly quotes from Exhibit CSPA-7, the February 3, 2015 Temporary Urgency Change Order for Delta operations issued by the State Water Board's Executive Director that preceded by one month the document introduced as Exhibit CSPA-106. The subject matter of paragraphs 50-53 of Ms. Bezzone's rebuttal testimony is explicitly how a permit for the Sites Reservoir Project might treat times when a Temporary Urgency Change Order for Delta operations is in effect. In footnote 20 on page 22 of her written rebuttal testimony, Ms. Bezzone cites to Temporary Urgency Change Order for Delta operations dating to April 4, 2022 (misidentified by Ms. Bezzone as 2024) and to June 1, 2021. In addition, Ms. Bezzone in footnote 20 provides a link to the State Water Board's web page on which Temporary Urgency Change Orders can be found, including the March 5, 2015 Order that Mr.	

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		<p>Shutes presented as Exhibit CSPA-106.</p> <p>The hearing transcript (Volume 24, February 21, 2025 at page 5913:6-14) states:</p> <p>“MR. SHUTES:· -- Ms. Bezzone, are you familiar with this document?</p> <p>MS. BEZZONE:· I'm not -- I'm not as familiar with this one.· I -- I probably was along -- well, in 2015. However, I will note that I refer to specifically two orders regarding TUCPs that were issued in 2021 and 2022. Perhaps those would be better to bring up as they are more recent than this one from 2015, and they are what I refer to in -- in my testimony.”</p> <p>Thus, Ms. Bezzone does not state, as paraphrased in the objection, that she was “not familiar with the document.” She states she was not “<b>as familiar</b>” with the document as she was with other similar</p>	

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		<p>documents. And it was not possible to “bring up” the 2021 and 2022 Temporary Urgency Change Order for Delta operations Ms. Bezzone referenced, because she did not introduce them into the record as exhibits. And although Ms. Bezzone under cross-examination from page 5913:14 through page 5918:10 referred more generally to the 2021 and 2022 orders she referenced, the discussion originated with presentation of Exhibit CSPA-106 and in some measure referred to it.</p> <p>Additionally, it is now not possible for the Hearing Officer and the State Water Board to contemplate the language in the 2021 and 2022 that Ms. Bezzone generally described under cross examination because they are not in the record. Therefore, Exhibit CSPA-106 is a useful part of the record that presents specific language for the Hearing Officer and the State Water Board to consider in evaluating potential permit terms relating to exports from the Delta of water</p>	

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		<p>previously stored in Sites Reservoir.</p> <p>For these reasons, the Hearing Officer should overrule the Sites Project Authority's objection to Exhibit CSPA-106.</p>	
SCS-091a [Rebuttal Testimony of L. Marston], Paragraphs 24-26	<p>Outside the scope of rebuttal testimony. Pursuant to the August 8, 2024 Second Amended Notice of Public Hearing issued by the AHO (Second Amended Notice), rebuttal testimony is limited to "new evidence used to rebut evidence another party has presented in its case-in-chief." (Second Amended Notice, p. 30 [§ 10.c.]; see also Gov. Code, § 11513, subds. (b), (c).) Additionally, "written rebuttal testimony must specify the previously submitted testimony that is being rebutted." (Second Amended Notice, p. 30 [§ 10.c.].) Paragraphs 24-26 are improper rebuttal testimony because they do not specify any previously submitted testimony being rebutted</p>	<p>Paragraph 24 is a restatement of Mr. Marston's case in chief testimony, which is already in the record, and is included here to establish context for the following paragraphs.</p> <p>For Paragraphs 25 and 26, Mr. Marston's intent was to present evidence that was lacking from the Sites Project Authority's case in chief evidence that is relevant to the potential impacts to Tribal interests, specifically Tribal water rights. Given the lack of information due to the failure of the Sites Project Authority to address the topics in Paragraphs 25 and 26 in its case in chief evidence, there was no specific testimony able to be identified to which Mr. Marston could respond. There are multiple</p>	<p>Sustained X Overruled</p> <p>Paragraphs 24 through 26 appear to respond to the Authority's evidence that unappropriated water is available for appropriation under its water right application. As described by Mr. Walker, the water availability analyses submitted by the Authority did not consider federal reserved water rights claimed by the tribes. (See e.g., Exhibit Sites-025, p. 5:2-11.)</p>

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	by the contents of those paragraphs.	<p>witnesses that may have been able to address the relevant issues, including Angela Bezzone, Alicia Forsythe, or Wesley Walker, however, no evidence was presented from those witnesses as to the specific evidence Mr. Marston included in Paragraphs 25 and 26. Therefore, Mr. Marston's testimony here is meant to respond to the lack of evidence provided by the Sites Project Authority.</p> <p>Per Government Code, Section 11513(b), "[a]ny relevant evidence shall be admitted if it is 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." In general, evidence is relevant if it "has any tendency in reason to prove or disprove a disputed fact that is of consequence to the determination</p>	

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		<p>of the action.” (<i>McCoy v. Board of Retirement</i> (1986) 183 Cal.App.3d 1044, 1054.)</p> <p>Paragraphs 25 and 26 present evidence that is relevant because it explains the potential for impacts to Tribal water rights regarding adjudication and the interests of Tribes. Mr. Marston’s testimony was presented in order to address impacts to Tribal interests in this proceeding as is relevant to Hearing Issue 3(d)(i)( <i>Would the proposed appropriation impact tribal lands, tribal interests, or tribal cultural resources?</i>) and the evidence being objected to is relevant in order to make a decision on Hearing Issue 3(d)(i).</p> <p>Government Code, Section 11513(f) further reserves to the presiding hearing officer the “discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time.” The</p>	

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		<p>probative value of the brief paragraphs subject to this objection is greater than the probability that the introduction of such evidence would “necessitate undue consumption of time.” The information included in Paragraphs 25 and 26 provide clarity on the topic of Tribal water rights and provide further evidence regarding the impact to Tribal interests.</p> <p>For these reasons, the Hearing Officer should overrule the Sites Project Authority’s objections to Paragraphs 24-26 of Exhibit SCS-091a.</p>	
BK-128, BK-129, BK-130	Hearsay. (Gov. Code, § 11513, subd. (d); Cal. Code Regs., tit. 23, § 648.5.1.) These exhibits are voluminous and contain numerous hearsay statements that are not sufficient in themselves to support a finding by the State Water Board unless they would be admissible over objection in civil actions. (Gov. Code, § 11513, subd. (d).) These exhibits contain out-of-court	<p>The Authority’s objections should be overruled.</p> <p>First, hearsay evidence is admissible in these proceedings.</p> <p>Second, Exhibits 128, 129, and 130 are analyses and findings made by the Bureau of Reclamation (Exs. BK 128 and 130) and the National Marine Fisheries Service (Ex. BK 129). There is no indication that</p>	<p>Sustained X Overruled</p> <p>An out of court/hearing statement provided for the truth of the matter asserted is hearsay. Such a statement is admissible, but can be used only for the purpose of</p>



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	<p>statements offered for the truth of the matter asserted, and except for the passages cited by Dr. Jonathan Rosenfield in paragraph 21 of BK-132 (BK-128 at Attachment 4-1 (PDF p. 79); BK-129 at pp. 269, 903 (PDF pp. 62, 143); BK-130 at Table L.2-2, p. L.2-6), these statements are unsupported by other evidence and therefore cannot be used to support a finding by the AHO.</p> <p>Furthermore, except for the provisions cited by Dr. Rosenfield, 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 its discretion to exclude these exhibits, except for the provisions cited by Dr. Rosenfield, as there is minimal probative value for evidentiary purposes, and they</p>	<p>these documents are not reliable or that the materials relied upon by Dr. Rosenfield are inaccurate or untrustworthy.</p> <p>Third, none of the documents is of excessive length. Exhibit 130 is a single “line of attachment” that is 22 pages long. Exhibit 129 is already an excerpt of the Biological Opinion to include just chapters 7.1 and 11, which include the pages cited by Dr. Rosenfield, ensuring the necessary context for a complete record and limiting the length of the exhibit. And Exhibit 128 is a single, final federal document, is just 127 pages long, and should be admitted in its entirety to ensure complete a complete record.</p> <p>Fourth, the Authorities’ assertion that the inclusion of the documents as offered will cause undue consumption of time is unsupported and incorrect. No extra time was needed to cross-examine Dr. Rosenfield because of the length of exhibits BK 128 to BK 130, and there is no rationale or</p>	<p>supplementing or explaining other evidence, and is not sufficient by itself to support a finding unless it would be admissible over objection in civil actions. (Gov. Code § 11513, subd. (d)).</p> <p>As records prepared by government agencies, these documents, or portions thereof, may be subject to the official record exception to the hearsay rule. (Evid. Code § 1280.) The hearing officer will consider whether any such exception applies if any draft decision purports to rely on the exhibits for a purpose other than supplementing or explaining other evidence.</p>

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	otherwise include inadmissible hearsay.	demonstration by the Authority that admission of these documents into evidence will actually confuse or burden the parties, the AHO or the Board.  The objections should be overruled.	
FOR-304, FOR-305	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 AHO. All survey responses/results summarized by Dr. Brunner in her testimony and summary presentation are out-of-court statements offered for the truth of the matter asserted. (See FOR-304, at 3:24-11:4; FOR-305 slides -21.) Since these responses/results are unsupported by other evidence, such as the actual survey results or direct testimony from the respondents, they cannot be used to support findings regarding the scope or quality of the Authority's	Dr. Brunner is offered as an expert and Sites does not object to qualifications as an expert. (See FOR-304 at p. 1, line 2 to 2, line 8; FOR-303 [Dr. Brunner's curriculum vitae].) Experts can base their opinions on matters "whether or not admissible," including hearsay. (Evid. Code, § 801.) Additionally, hearsay is admissible subject to the provisions of Gov't Code § 11513 (Title 23 Cal. Code Regs. § 648.5.1.)  Additionally, the actual survey results were presented in the written and oral testimony. (See FOR-20.)	Sustained X Overruled  An expert's opinion may be based on "matter (including his special knowledge, skill, experience, training, and education) perceived by or personally known to the witness or made known to him at or before the hearing, whether or not admissible, that is of a type that reasonably may be relied upon by an expert in forming an opinion upon the subject to which his testimony relates." Evid. Code § 801,

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	<p>engagement with the respondents specifically, or tribes more generally. Further, they cannot be used to support any findings regarding potential Project impacts, including impacts on tribal resources.</p>	<p>Also, providing the raw data would conflict with Indigenous data sovereignty and the privacy was a term of taking the survey. (See Carroll, S R, et al. “The CARE Principles for Indigenous Data Governance”. <i>Data Science Journal</i>, vol. 19, no. 1, 2020, p. 43. <a href="https://doi.org/10.5334/dsj-2020-042">https://doi.org/10.5334/dsj-2020-042</a> (“Indigenous Peoples’ data include data generated by Indigenous Peoples as well as by governments and other institutions on and about Indigenous Peoples and territories, as well as information about Indigenous communities and the individuals, Indigenous and non-Indigenous, that live within.”); see also, Carroll, S R, et al.. “Indigenous Data Governance: Strategies from United States Native Nations”. <i>Data Science Journal</i>, vol. 18, no. 1, 2019, p. 31. <a href="https://doi.org/10.5334/dsj-2019-031">https://doi.org/10.5334/dsj-2019-031</a> (“Indigenous data sovereignty is the rights of Indigenous peoples and tribes to govern the collection,</p>	<p>subd. (b)). That the underlying information is hearsay is not a basis to exclude expert testimony if the expert reasonably relied upon it. Furthermore, hearsay evidence is admissible in administrative proceedings. (Gov. Code, § 11513, subd. (d)).</p> <p>The objection is, however, noted, and will be considered in determining the weight to be afforded the testimony.</p>

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		ownership, and application of their own data."))	
FOR-317, FOR-318	<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” (internal quotes omitted)]). Testimony lacks foundation when the underlying factual basis has not been submitted or is improper. The following portions of exhibits cite purported results from the All-Res model, but no foundation was ever established for these portions of these exhibits because the All-Res model was not offered into evidence by Mr. Easter or Friends of the River:</p> <p>FOR-317 at 9:19-22: “By not quantifying these missing emissions, the Sites Project Authority significantly increases the climate risk of the proposed project.</p>	<p>Sites objects to the rebuttal testimony of Mr. Easter on the grounds that his rebuttal testimony relies upon the All-Res model. Sites argues that neither Mr. Easter nor Friends of the River has offered the model into evidence, and the summary document that Mr. Easter and Friends of the River rely on for the results of the All-Res model does not contain sufficient information to explain the operation of the model so that an independent expert could reproduce the results.</p> <p>Sites fails to discuss that Mr. Easter’s case-in-chief testimony also relied upon the All-Res model and Sites raised no objection to that testimony based upon the All-Res model. (See Pro(See FOR-20 at pp. 2, 6, &amp; 9; see also Transcript, Oct 8, 2024, Vol. 14: 3624, 3630, 3649, 3650; see also Procedural Ruling on Evidentiary Motion, Case-in-Chief, 1/22/25, Exhibit 1 at p. 22-23.) Sites’ failure to timely object to the All-Res model</p>	<p>Sustained X Overruled</p> <p>Mr. Easter’s rebuttal testimony relies on results of the All-Res Model, which was not offered into evidence by the Protestants.</p> <p>The Second Amended Notice of Hearing (August 8, 2024) directed that: “Parties submitting exhibits based on models or technical studies (such as reports, recommendations, or requirements) also must submit sufficient information to clearly identify and explain the logic, assumptions, development, and operation of the</p>

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	<p>These emissions sources were included in the emissions estimate completed with the All-Res modeling framework (FOR-20, FOR-166)."</p> <p>FOR-317 at 10:4-6: "The annual estimated emissions are 362,000 metric tons/yr, with a confidence interval of +127%/-72% (FOR-166, pp. 3 and 19)."</p> <p>FOR-317 at 11:6-12: "The recommended value for the alpha factor used in the surface methane emissions estimates (per Table 7.11 of the IPCC 2019 Wetlands Refinement, FOR-251) based on such a classification would be 17.5, with a range of 5.3 to 39.4, or +125%/-70%. Please note that this is quite similar to the confidence interval estimate provided by the All-Res tool, with some critically important differences: The Sites Project Authority did not incorporate uncertainty into its estimate of</p>	<p>constitutes a waiver of any objection.</p> <p>During cross-examination of Mr. Easter's case-in-chief testimony, Sites questioned Mr. Easter about the All-Res model and the summary of the results:</p> <p>MS. CHESTER: Thank you. Ms. Easter, this is the Wockner, et al., document that's cited in footnote 1 that correct?</p> <p>PANEL MEMBER EASTER: Yes. MS. CHESTER: And this document summarizes results from the All-Res modeling tool. Is that correct?</p> <p>PANEL MEMBER EASTER: Yes.</p> <p>MS. CHESTER: And the All-Res modeling tool was used to -- well, first, for context, could we please go to PDF page 3. Thank you. Is it correct that the All-Res modeling tool was used to estimate that the project will emit approximately 362,000 metric tons of carbon dioxide equivalent per year?</p>	<p>models or studies, so that a qualified independent expert could reproduce the model or technical study and use it to obtain the same results."</p> <p>The Authority did not request access to the model, does not claim that it could not have obtained access if it had sought to have an independent expert recreate Mr. Easter's results, nor does it claim that it was unable to recreate the results. Furthermore, Mr. Easter's case-in-chief testimony also relied upon the model, but the Authority raised no objection to the testimony on this basis, waiting instead until after the close of rebuttal testimony to object.</p>

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
	<p>reservoir surface methane emissions.”</p> <p>FOR-317 at 13:2-5: “In our assessment, the proposed Sites Reservoir, if built, has the very real risk of contributing more than 800,000 metric tons of carbon dioxide equivalents per year to the atmosphere as indicated in the upper end of the total system emissions confidence interval, most of that in the form of methane.”</p> <p>FOR-317 at 13:10-21: Portion of figure purporting to present estimate of All-Res emissions results.</p> <p>FOR-318 slide 9, bullet point 2: “The All-Res annual estimated emissions are 362,000 metric tons/yr, with a confidence interval of +127%/-72%.”</p> <p>FOR-318 slide 10: Entire slide, which is purportedly a figure from the All-Res model.</p>	<p>PANEL MEMBER EASTER: Yes.</p> <p>MS. CHESTER: Can we please go to PDF page 9. Thank you. And as stated in the second paragraph here, the All-Res modeling tool assumed a 100-year lifecycle of the Sites Project. Is that correct?</p> <p>PANEL MEMBER EASTER: Yes. That's correct.</p> <p>(Transcript, Oct 8, 2024, Vol. 14 at 3651, lines 10—25 to 3652, line 3.) Thus, Mr. Easter testified to summary of the All-Res model and the use of the All-Res model. To the extent Sites had any objections to Mr. Easter's use of the All-Res model that was the time to raise such objections. The failure to raise the objections constitutes a waiver. Additionally, Site's objections fails to state why the objection was not timely raised.</p> <p>To the extent that Sites argues that its previous objection addressed the issue raised</p>	<p>The Authority does not allege that the model is an unreliable basis for expert testimony, the Authority had the opportunity to cross-examine Mr. Easter about his application of the model to produce the results in question, and the Authority's own witnesses testified concerning the modeling results.</p> <p>Expert testimony may be based on matters not formally admitted into the evidentiary record if it is the type of information, or in this case scientific methodology, reasonably relied upon by experts in the field. (Evid. Code, § 801, (subd. (b))). The Authority has offered no evidence and does not argue that the</p>

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
	<p>FOR-318 slide 13: Portion of figure referencing All-Res results. Text box comparing All-Res to Authority's analysis, including arrows.</p> <p>Failure to comply with the Second Amended Notice which states: "Parties submitting exhibits based on models or technical studies (such as reports, recommendations, or requirements) also must submit sufficient information to clearly identify and explain the logic, assumptions, development, and operation of the models or studies, so that a qualified independent expert could reproduce the model or technical study and use it to obtain the same results." (See Second Amended Notice, p. 26, § 7.b, under the heading "Exhibit Formatting and Organization.") This notice provision is an additional basis for the AHO to strike the provisions referenced in FOR-317 and FOR-318. Neither Mr. Easter nor Friends of the River has offered the model into evidence, and the</p>	<p>"Testimony lacks foundation when the underlying factual basis has not been submitted or is an improper. The studies cannot be incorporated by reference into the written testimony because the witnesses did not establish the necessary knowledge of the documents and the subject matter therein." (Procedural Ruling, Exh. 1 at pp. 22-23.) That AHO's ruling overruled that part of the objection. (<i>Id.</i>)</p> <p>Sites' Objection is also inappropriate as Sites' witnesses referenced the All-Res model in their testimony, and purported to know enough about it to formulate opinions on it. Following are references to Sites' testimony regarding the All-Res model:</p> <p>SITES-027 (Matsui Testimony), general discussion of All-Res results in paragraph 7 (p. 5), especially relevant testimony at 5:11-16. For context, page 19 of the ALL-RES report states that the total Project emissions as</p>	<p>All-Res model is not reasonably relied upon by experts in the field of GHG emissions.</p>

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
	<p>summary document that Mr. Easter and Friends of the River rely on for the results of the All-Res model does not contain sufficient information to explain the operation of the model so that an independent expert could reproduce the results.</p>	<p>calculated by ALL-RES are 362,000 MTCO<sub>2</sub>e, and the uncertainty range of total emissions as determined by the preparers of the report is more than 700,000 MT CO<sub>2</sub>e. When this uncertainty range is compared to the total Project emissions presented in the report (362,000 MT CO<sub>2</sub>e), it is clear that the large uncertainty precludes any meaningful application of the report for policy or decision-making purposes.”</p> <p>SITES-027 5:20 – 6:1. “Also, the estimates of emissions from ALL-RES that the protestants have claimed represent the Project have considerable uncertainty and are thus uninformative.”</p> <p>SITES-269 (Matsui PPT) has slides (PDF pages 6 and 7) titled “Assessment of All-Res Modeling Tool from Save The World’s Rivers” – they relied on All-Res report of Sites Emissions (FOR-166) for this analysis, similar statements as written testimony.</p>	



MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
		<p>Transcript XI, p. 2934:3 thru 2935:13 (oral direct testimony by Matsui).</p> <p>The following provides responses to Sites' specific citations to Mr. Easter's Testimony:</p> <p>Sites: Objection to: RE: FOR-317 at 9:19-22: "By not quantifying these missing emissions, the Sites Project Authority significantly increases the climate risk of the proposed project. These emissions sources were included in the emissions estimate completed with the All-Res modeling framework (FOR-20, FOR 166)."</p> <p>The first sentence here is based on Mr. Easter expertise and stands alone</p> <p>Sites Objection to: FOR-317 at 10:4-6: "The annual estimated emissions are 362,000 metric tons/yr, with a confidence interval of</p>	

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
		<p>+127%/-72% (FOR-166, pp. 3 and 19)."</p> <p>This information is already in the record at FOR-20 4:3. Confidence interval represented graphically in FOR-166, PDF p. 19 (Figure 4), Sites witness Matsui testified about confidence intervals and opined on them, SITES-027, p. 5, para. 7, see general discussion of "uncertainty bars"]</p> <p>Sites objection to FOR-317 at 11:6-12: "The recommended value for the alpha factor used in the surface methane emissions estimates (per Table 7.11 of the IPCC 2019 Wetlands Refinement, FOR-251) based on such a classification would be 17.5, with a range of 5.3 to 39.4, or +125%/-70%. Please note that this is quite similar to the confidence interval estimate provided by the All-Res tool, with some critically important differences: The Sites Project Authority did not incorporate uncertainty into its estimate of</p>	

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
		<p>reservoir surface methane emissions.”</p> <p>The confidence interval already presented graphically in FOR-166 PDF p. 19 (Figure 4). Also, the first and third sentences here are based on Mark’s expertise (and IPCC guidance) and not the All-Res model.</p> <p>Sites objection to FOR-317 at 13:2-5: “In our assessment, the proposed Sites Reservoir, if built, has the very real risk of contributing more than 800,000 metric tons of carbon dioxide equivalents per year to the atmosphere as indicated in the upper end of the total system emissions confidence interval, most of that in the form of methane.”</p> <p>Value of 800,000 and opinion already in evidence, FOR-20 2:3, FOR-20 10:1, FOR-166 p. 19 Fig 4.</p> <p>Sites Objection to FOR-317 at 3:10-21: Portion of figure purporting to</p>	

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
		<p>present estimate of All-Res emissions results.</p> <p>All-Res emissions results already graphically represented in evidence, FOR-166 p. 19, Fig. 4.</p> <p>Sites objection to FOR-318 slide 9, bullet point 2: “The All-Res annual estimated emissions are 362,000 metric tons/yr , with a confidence interval of +127%/-72%.”</p> <p>Already in record, FOR-20 4:3. Confidence interval represented graphically in FOR-166, PDF p. 19 (Figure 4), Sites witness Matsui testified about confidence intervals and opined on them, SITES-027, p. 5, para. 7, see general discussion of “uncertainty bars”.</p> <p>Sites objection to FOR-318 slide 10: Entire slide, which is purportedly a figure from the All-Res model.</p> <p>This figure is already in evidence. FOR 166, p. 19, Fig. 4.</p>	

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
		<p>Sites objection to FOR-318 slide 13: Portion of figure referencing All-Res results. Text box comparing All-Res to Authority's analysis, including arrows.</p> <p>All-Res emissions results already graphically represented in evidence, FOR-166 p. 19, Fig. 4. Figure used in rebuttal testimony at 13:10-21, also objected to there.</p>	
CICC 11, CICC 12 [Water Right Exhibits of the Cachil Dehe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria (Mar. 14, 2025 email to Service List)]	Failure to comply with the January 22, 2025, Procedural Ruling on Evidentiary Motions, Case-in-Chief (January 22 Evidentiary Ruling). The AHO required parties claiming a risk of injury from approval of the water right application and petitions submit information regarding the permit, license, or other claimed water right with sufficient detail to confirm the priority date, maximum diversion rate and amount of diversion or storage, if applicable, point of diversion, place of use, and purpose of use. (January 22	First, the risk of injury to the water rights of CICC stems from the failure of Sites to perform sufficient groundwater analysis to determine connection between streams and the groundwater providing water to the reservation and which may affect other groundwater uses by CICC. Second, risk of injury stems from diversion of water by Sites at points above the fee lands and reservation lands. Third, CICC will file a Request to Supplement the Supplement Water Rights filing with an offer of proof because the documents underlying the formation of the reservation were not available at the time of the filing. Fourth, the Request will also	<p>X Sustained</p> <p>Overruled</p> <p>CICC-11, with supporting exhibit CICC-12, appears to be a statement submitted by Ms. Margaret Rosenfeld, an attorney for CICC. This statement is not properly admitted as evidence because the statement is not submitted under oath and Ms. Rosenfeld has not been made</p>

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
	<p>Evidentiary Ruling, p. 3.) Additionally, the AHO requested that tribes claiming federal reserved rights or other tribal water rights submit copies of official records or evidence that may support and document the claimed rights. (<i>Ibid.</i>) Cachil Dehe's responses to the Procedural Ruling—labeled as exhibits CICC 11 and CICC 12—include claims of riparian rights, pre-1914 rights, water company rights, groundwater rights, Colusa Basin drain rights, and county of origin rights are not described in sufficient detail nor supported with documentation as required by the January 22 Evidentiary Ruling. The submission omits information and/or copies of records or other evidence identifying points of diversions, places of use, and amounts of diversion or storage, including copies of referenced contracts. Moreover, the submission fails to identify the risk of injury to any held or claimed water rights resulting from approval</p>	<p>include an offer of proof regarding the bases of the other water rights claims including points of diversion and amount of diversion for fee lands. These documents, which support the table, were not available to counsel at the filing deadline.</p>	<p>available for cross-examination. The hearing officer will consider the claims as non-evidentiary factual and legal argument, in conjunction with any closing brief filed by CICC.</p>

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
	of the water right application and petitions.		

**ATTACHMENT 2****Ruling on Authority's Evidentiary Objections to South Delta Water Agency  
Parties' Rebuttal Testimony and Exhibits**

<b>MATERIAL OBJECTED TO</b>	<b>GROUND FOR OBJECTION</b>	<b>RESPONSE TO OBJECTION</b>	<b>RULING ON OBJECTION</b>
SDWA-91, ¶ 49	Hearsay. (Gov. Code, § 11513, subd. (d); Cal. Code Regs., tit. 23, § 648.5.1.) Mr. Burke states in his written rebuttal testimony, "I am informed ..." in reference to the frequency of submissions of complaints of low water levels to DWR. (SDWA-91 at 25:4-5, ¶ 49.) Mr. Burke confirmed on cross-examination that he has no personal knowledge of such complaints, but rather he was told such information by SDWA counsel John Herrick. (Sites Reservoir Public Hearing on 2025-03-04 (pm) YouTube webcast at 2:48:50-2:50:02.) These out-of-court statements, offered for the truth of the matter asserted, are unsupported by other evidence and therefore cannot be used to support a finding by the State Water Board.		X Sustained  Overruled  An out of court/hearing statement provided for the truth of the matter asserted is hearsay. Such a statement is admissible, but can be used only for the purpose of supplementing or explaining other evidence, and is not sufficient by itself to support a finding unless it would be admissible over objection in civil actions. (Gov. Code § 11513, subd. (d).)



MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
SDWA-94	<p>Hearsay. (Gov. Code, § 11513, subd. (d); Cal. Code Regs., tit. 23, § 648.5.1.) During his summary presentation, Mr. Burke made comments about conditions “noticed significantly by the irrigation master that’s working in the Pescadero tract and manages the control structure for Tom Paine Slough....” (Sites Reservoir Public Hearing on 2025-03-04 (am) YouTube webcast at 3:04:50-3:05:13.) These out-of-court statements, offered for the truth of the matter asserted, are unsupported by other evidence and therefore cannot be used to support a finding by the State Water Board.</p>		<p>X Sustained Overruled</p> <p>An out of court/hearing statement provided for the truth of the matter asserted is hearsay. Such a statement is admissible, but can be used only for the purpose of supplementing or explaining other evidence, and is not sufficient by itself to support a finding unless it would be admissible over objection in civil actions. (Gov. Code § 11513, subd. (d).)</p>

**ATTACHMENT 3****Ruling on Authority's Evidentiary Objections to T&M King Farms' Rebuttal Testimony and Exhibits**

<b>MATERIAL OBJECTED TO</b>	<b>GROUND'S FOR OBJECTION</b>	<b>RESPONSE TO OBJECTION</b>	<b>RULING ON OBJECTION</b>
King 80	<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 exhibit. The document contains scientific commentary on groundwater quality in California, which is outside the scope of Mr. King's areas of special knowledge or expertise. (See AHO Procedural Ruling on Evidentiary Motions, Case-in-Chief (Jan. 22, 2025) (January 22 Evidentiary Ruling), Attach. 4.)</p> <p>Lack of foundation. (Evid. Code, §§ 702, 801; <i>Sargon Enterprises, Inc. v. Univ. 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</p>		<p>Sustained</p> <p>X Overruled</p> <p>King-80 appears to be an article in the journal titled Environmental Science and Technology.</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 the admission of exhibits or testimony. In an administrative proceeding, not every exhibit requires sponsoring testimony to demonstrate authenticity and relevance. Sufficient information to meet</p>

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
	<p>opinion based on speculation or conjecture is inadmissible” (internal quotes omitted)].) Testimony lacks foundation when the underlying factual basis has not been submitted or is improper. No witness with relevant expertise laid the foundation for this exhibit.</p>		<p>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.</p>
King 82	<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 exhibit. The document contains scientific commentary on groundwater quality in California, which is outside the scope of Mr. King’s areas of special knowledge or expertise. (See January 22 Evidentiary Ruling, Attach. 4.)</p> <p>Lack of foundation. (Evid. Code, §§ 702, 801; <i>Sargon, supra</i>,</p>		<p>Sustained X Overruled</p> <p>King-82 appears to be an article in the journal titled Reviews on Environmental Health that is self-authenticating.</p> <p>(See response to objection above.)</p>

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
	<p>55 Cal.4th at p. 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” (internal quotes omitted)].) Testimony lacks foundation when the underlying factual basis has not been submitted or is improper. No witness with relevant expertise laid the foundation for this exhibit.</p>		
<p>King 84c (including the 84c2, 84c3 versions)</p>	<p>Inadmissible opinion testimony by expert witness. (Evid. Code, §§ 720, 801-803.) Regarding all pages of the pdf version of King 84c submitted March 14, 2025, 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 this exhibit. Mr. King’s opinions are improper legal or policy arguments, recitation of alleged facts derived from primary sources, or opinion testimony outside of Mr. King’s areas of specialty, knowledge, or expertise, including his opinions on the scope of</p>		<p>X Sustained, in part Overruled</p> <p>King 84c contains a mixture of testimony and legal argument. Rather than attempt at this time to disentangle the statements that may properly carry evidentiary weight, the hearing officer will consider the Authority’s objection if and when relying on any of the statements for</p>

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
	<p>his riparian claim on the Colusa Basin Drain, the project application's compliance with statutory requirements and water quality objectives, impacts to human health or aquatic life impacts related to hexavalent chromium and other water quality constituents, and the constitutionality of Sites' agreement with Colusa County. The probative value of the proposed evidence is substantially outweighed by the risk of confusion. (Gov. Code, § 11513, subd. (f).)</p> <p>In addition, the testimony in King 84c at 1:5-3:11 and 10:34-12:31 is outside the scope of rebuttal testimony. Mr. King does not specify or cite to any previously submitted testimony that is purportedly being rebutted. Pursuant to the August 8, 2024 Second Amended Notice of Public Hearing issued by the AHO (Second Amended Notice), rebuttal testimony is limited to "new evidence used to rebut evidence another party has presented in its case-in-chief." (Second Amended Notice, p. 30)</p>		<p>evidentiary value in the draft decision.</p> <p>The text on page 7, lines 11 through 31 (omitting the last sentence in the paragraph) and pages 8-9, are excluded from the evidentiary record as opinion testimony about water quality that is outside of the scope of Mr. King's expertise.</p> <p>The testimony in King 84c at 1:5-3:11 generally responds to evidence submitted by the Authority about the availability of unappropriated water and the claimed water rights considered by the Authority in their analyses. The Authority's objection is overruled.</p> <p>The testimony in King 84c at 10:34-</p>

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
	[§ 10.c.]; see also Gov. Code, § 11513, subds. (b), (c).)		12:31 is excluded from the evidentiary record as improper rebuttal testimony. Mr. King does not identify any case-in-chief evidence to which the testimony responds. Furthermore, the testimony substantially consists of legal argument that is more appropriate for inclusion in a closing brief.
King 85	Lack of foundation. (Evid. Code, §§ 702, 801; <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 parcel map itself does not reflect ownership, sale, or the terms of sale of property allegedly held by T&M King Farms.		Sustained X Overruled  Given the more liberal standards that govern admissibility of evidence in administrative proceedings before the Board, and the pro se status of the party, the hearing officer will consider this objection as argument regarding

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
	<p>The handwritten notes on the parcel map are not sufficient evidence of property ownership or alleged retention of riparian claims, which must be proven through title documents, contracts, and/or similar reliable records that can be readily and accurately verified.</p>		<p>the weight of the evidence rather than excluding the exhibit from the evidentiary record.</p>
<p>King 85 through King 96, inclusive</p>	<p>In addition to the objections stated herein, the Authority objects to T&amp;M King Farms' claimed rights allegedly at risk of injury from approval of the water right application and petitions. The "Water Rights Relating to T&amp;M King Farms, LLC" document sent to the Service List on Feb. 18, 2025, and recirculated on March 14, 2025 (hereinafter King 96) contains a summary of alleged property ownership and accompanying water rights. King 96 fails to establish how the alleged facts relate or are relevant to the State Water Board's consideration of the Authority's application and petitions – specifically, how the alleged water rights will be harmed by the Authority, as opposed to the actions of other entities.</p>		<p>X Sustained (as to King-96) X Overruled (as to King-85 through King-95) The evidentiary objection is a substantive argument as to the factual and legal connection between the Authority's water right application and petitions and potential impacts or alleged injury to Mr. King's claimed water rights, rather than an objection to the admissibility of the underlying evidence intended</p>

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
	<p>Lack of foundation. (Evid. Code, §§ 702, 801; <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. Contrary to the January 22 Evidentiary Ruling, T&amp;M King Farms, LLC does not provide supporting documentation or other evidence sufficient to demonstrate the validity and scope of the claimed rights. The documentation submitted as King 85 through King 95 does not clearly reflect ownership, sale, or the terms of sale of property allegedly held by T&amp;M King Farms or the alleged water rights benefiting those properties. Moreover, T&amp;M King Farms relies on handwritten annotations on documents, which are not sufficient evidence of property ownership or alleged retention of riparian claims,</p>		<p>to substantiate the claimed rights.</p> <p>Given the more liberal standards that govern admissibility of evidence in administrative proceedings before the Board, and the pro se status of the party, the hearing officer will consider this objection as argument regarding the weight of the evidence rather than excluding the exhibits from the evidentiary record.</p> <p>King-96 (2025-02-18 Water Rights Supplemental Information Relating to TM King Farms) is excluded from the evidentiary record. The hearing officer will consider the statements in this document as non-evidentiary legal argument in</p>



MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION	RESPONSE TO OBJECTION	RULING ON OBJECTION
	<p>as such annotations are not reliable records that can be readily and accurately verified.</p> <p>Additionally, King 96 relies, in part, on King 58 (see King 96, subd. 1.f) which was previously excluded from the evidentiary record for lack of foundation, as reflected in Attachment 4 to the January 22 Evidentiary Ruling.</p>		<p>conjunction with any closing brief filed by T&amp;M King Farms.</p>

**ATTACHMENT 4****Ruling on FOR et al.'s Evidentiary Objections to Authority's Rebuttal Testimony and Exhibits**

<b>EXHIBIT #</b>	<b>OBJECTION</b>	<b>RESPONSE</b>	<b>RULING</b>
SITES-417: Rebuttal Testimony of Jordon Navarrot, ¶¶ 8, 9	<i>Opinion testimony from an undisclosed witness. 23 C.C.R. § 648.4(b), (c), and (d); Evidence Code §§ 720, 801, 803.</i> Sites-417 is the written rebuttal testimony of Jordan Navarott. Sites did not identify Mr. Navarrot as an expert witness in this matter and nothing in the record sets forth his qualifications to offer opinion testimony regarding economic issues associated with the Project. (See 2-24-25 YouTube Hearing Transcript at pp. 3-4, ¶¶ 32-35.) Mr. Navarott opines about what makes economic sense regarding water supply for various crops.	<p>Pursuant to a December 9, 2024 email from the Presiding Hearing Officer to the Service List, entitled "RE: Rebuttal Witness List," "[t]he 7th Amended Hearing Notice issued on November 22 does not include a deadline to file rebuttal witness lists because [the Presiding Hearing Officer is] not requiring advance submission of rebuttal witness lists." Sites Project Authority was not required to identify Mr. Navarrot as a witness at all, let alone an expert witness.</p> <p>A person is qualified to testify as an expert if they have special knowledge, skill, experience, training, or education sufficient to qualify that person as an expert on the subject matter. (Evid. Code, § 801.) Pursuant to Evidence Code section 702, subdivision (b), an expert witness' special knowledge or education "may be shown by any otherwise admissible evidence, including his own testimony." Mr. Navarrot establishes his basis of expertise regarding what makes economic sense with respect to water supply for various crops</p>	<p><input type="checkbox"/> ___ Sustained</p> <p><input checked="" type="checkbox"/> ___ Overruled</p> <p>The hearing officer will consider FOR's objection when determining the weight to be afforded the testimony.</p>

EXHIBIT #	OBJECTION	RESPONSE	RULING
		based on more than 10 years as the Deputy Manager of Reclamation District No. 108 and his management of Dunnigan Water District. (SITES-417, ¶ 1.) Mr. Navarrot is opining on what makes economic sense for growers in Reclamation District No. 108 where he has been responsible for the collection, analysis, and disbursement of water diversion and water usage data for the majority of his 10-year career there. Furthermore, the analysis of water diversion and usage for a special purpose district like Reclamation District No. 108 includes analyses necessary to make economic decisions for the district and its growers.	
SITES-381 Rebuttal Testimony of Hale, ¶¶ 8, 9, 10, 11	<i>Lack of Foundation.</i> Ms. Hale testified as an exhibit Ms. Hale's testimony discussed wildlife surveys to Date at the Project site. In cross-examination Ms. Hale testified that she has no personal knowledge of the wildlife surveys, that she does not know the dates the surveys were performed, that she does not know the biologists that performed the surveys. (See 3-4-25 YouTube Transcript at pp. 56-63.) She further testified she does not know what species were found at what location. ( <i>Id.</i> ) Ms. Hale further testified that her entire testimony relied upon a summary of the wildlife	FOR does not cite applicable law in support of the objection. Pursuant to Evidence Code section 702, subdivision (b), "[a] witness' personal knowledge of a matter may be shown by any otherwise admissible evidence, including [her] own testimony." On redirect, Ms. Hale clarified that while she could not specify the dates or locations of the wildlife surveys at the moment she was asked during cross-examination, "[she] could find	<input type="checkbox"/> ___ Sustained <input checked="" type="checkbox"/> ___ Overruled  Under Evidence Code § 801, subd. (b), an expert may base an opinion on a matter "made known to him at or before the hearing," if it is the type of information

EXHIBIT #	OBJECTION	RESPONSE	RULING
	surveys, but that she does not know who prepared the summaries or when they were prepared. ( <i>Id.</i> ) Finally, Sites did not include the summaries as an exhibit to Ms. Hale's testimony. ( <i>Id.</i> )	<p>that information if [she] needed to" because the information was located in the materials she reviewed to prepare her testimony. (See Vol. 28 Hearing Transcript (Mar. 4, 2025) at 6452:8-22.) Moreover, Ms. Hale established her personal knowledge of the wildlife surveys when she confirmed that the summary reports, monitoring logs, and the GIS data were used as the bases for her written testimony (SITES-381) and Table 1 (SITES-383). (See Vol. 28 Hearing Transcript (Mar. 4, 2025) at 6452:24-6454:26.)</p> <p>During the case in chief portion of this hearing, Ms. Hale established her expertise in wildlife resources. (See SITES-154.) As an expert in wildlife resources, Ms. Hale is entitled to rely on wildlife surveys in forming her opinions about potential project impacts. (See Evid. Code, § 801(b).) To the extent that this objection is intended to be an objection to Ms. Hale's opinions offered in reliance on these wildlife surveys, the AHO should overrule this objection.</p>	<p>that reasonably may be relied upon by an expert in forming an opinion. The underlying information on which the expert bases an opinion need not itself be admissible.</p> <p>Ms. Hale clarified during cross-examination that she had reviewed the wildlife survey summary reports to prepare her testimony. As an expert in the field, she may review and rely upon wildlife survey summaries of the type reasonably relied upon by experts in the field, in forming her opinions about potential project impacts.</p> <p>The hearing officer will</p>

EXHIBIT #	OBJECTION	RESPONSE	RULING
			consider FOR's objection when determining the weight to be afforded the testimony.
SITES-383 Table 1. Wildlife Species Observed in the Sites Reservoir Project Study Area during 2022-2024 Surveys and Monitoring	<i>Lack of Foundation:</i> Ms. Hale testified that she prepared Sites-383, but also testified that she has no personal knowledge of the wildlife surveys, that she does not know the dates the surveys were performed, that she does not know the biologists that performed the surveys. (See 3-4-25 YouTube Transcript at pp. 56-63.) She further testified she does not know what species were found at what location. ( <i>Id.</i> ) Ms. Hale further testified that her entire testimony relied upon summaries of the wildlife surveys, but that she does not know who prepared the summaries or when they were prepared. ( <i>Id.</i> ) Finally, Sites did not include the summaries as an exhibit to Ms. Hale's testimony. ( <i>Id.</i> )	FOR does not cite applicable law in support of the objection. Pursuant to Evidence Code section 702, subdivision (b), "[a] witness' personal knowledge of a matter may be shown by any otherwise admissible evidence, including [her] own testimony." On redirect, Ms. Hale clarified that while she could not specify the dates of the wildlife surveys, the locations of the wildlife surveys, nor the species found at each location at the moment she was asked during cross-examination, "[she] could find that information if [she] needed to" because the information was located in the materials she reviewed to prepare her testimony. (See Vol. 28 Hearing Transcript (Mar. 4, 2025) at 6452:8-22.) Moreover, Ms. Hale established her personal knowledge of the wildlife surveys when she confirmed that the summary reports, monitoring logs, and the GIS data were used as the bases for her written testimony (SITES-381) and Table 1	<input type="checkbox"/> ___ Sustained <input checked="" type="checkbox"/> ___ Overruled  Under Evidence Code § 801, subd. (b), an expert opinion may be based on a matter "made known to him at or before the hearing," and the matter itself need not be admissible  Ms. Hale clarified during cross-examination that she had reviewed the wildlife survey summary reports to prepare her testimony. As an expert in the field, she may review and rely upon wildlife survey summaries of the

EXHIBIT #	OBJECTION	RESPONSE	RULING
		<p>(SITES-383). (See Vol. 28 Hearing Transcript (Mar. 4, 2025) at 6452:24-6454:26.)</p> <p>During the case in chief portion of this hearing, Ms. Hale established her expertise in wildlife resources. (See SITES-154.) As an expert in wildlife resources, Ms. Hale is entitled to rely on wildlife surveys in forming her opinions about potential project impacts. (See Evid. Code, § 801(b).) To the extent that this objection is intended to be an objection to Ms. Hale's opinions offered in reliance on these wildlife surveys, the AHO should overrule this objection.</p>	<p>type reasonably relied upon by experts in the field, in forming her opinions about potential project impacts.</p> <p>The hearing officer will consider FOR's objection and the lack of underlying data in the evidentiary record when determining the weight to be afforded the testimony.</p>

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