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## State Water Resources Control Board

December 8, 2021

### **Public Hearing on Prosecution Team’s Draft Cease-and-Desist Order to BlueTriton Brands, Inc.: Hearing Officer’s Orders Following Second Pre-Hearing Conference**

#### **Background**

On November 17, 2021, the State Water Board’s Administrative Hearings Office (“AHO”) issued its Notice of Second Pre-Hearing Conference and Public Hearing (“Hearing Notice”) in this matter. The Division of Water Rights Prosecution Team (“Prosecution Team”) and BlueTriton Brands, Inc. (“BlueTriton”) filed pre-hearing conference statements on December 1. The AHO held its second pre-hearing conference on December 8, 2021. The following paragraphs contain my orders following the second pre-hearing conference.

#### **Orders**

1. In its pre-hearing conference statement, BlueTriton asked for leave to amend its December 17 submittal of exhibits and written proposed testimony and its Notice of Intent to Appear (“NOI”) witness list, if necessary, by December 30 to respond to new information or arguments that have not previously been provided to BlueTriton.

I partially grant BlueTriton’s request. If the Prosecution Team submits exhibits or written proposed testimony that contain new substantial material facts or new substantial arguments that are not in the Prosecution Team’s April 23, 2021 Draft Cease and Desist Order, its April 8, 2021 Revised Report of Investigation, or any other documents that the Prosecution Team already has provided to BlueTriton, then BlueTriton may add witnesses to its NOI witness list and may submit additional written proposed testimony or exhibits that address such new substantial material facts or new substantial arguments. BlueTriton shall file such supplemental documents before **December 30, 2021, at 4:00 pm**, using the same procedures that BlueTriton will use to file its written proposed testimony and exhibits by the December 17, 2021 deadline.

BlueTriton shall number such new exhibits with numbers that sequentially follow the numbers of the exhibits it submits on December 17. At the same time BlueTriton

files such supplemental exhibits, BlueTriton shall file a transmittal letter describing, with citations to the Prosecution Team's exhibits, the new substantial material facts or new substantial arguments in the Prosecution Team's submittals, and why BlueTriton needs to call new witnesses or submit additional written proposed testimony or exhibits to address these new substantial material facts or new substantial arguments.

Except as expressly stated in the previous two paragraphs, all of the requirements regarding notices of intent to appear, written proposed testimony and exhibits, and rebuttal evidence in the November 17, 2021 Hearing Notice remain in effect.

2. The deadlines for mailing paper copies of each party's exhibits to the AHO described on page 18 of the November 17, 2021 Hearing Notice are extended to three business days after the date on which the party's exhibits must be uploaded to the State Water Board's FTP site. The preceding sentence does not change any of the deadlines for parties to upload their exhibits to this FTP site.
3. Hearing Issue 1) on page 3 of the November 17, 2021 Hearing Notice is amended to read as follows:
  - 1) Is the Respondent violating, or threatening to violate, the prohibition in Water Code section 1052, subdivision (a) (which is referred to in Water Code section 1831, subdivision (d)(1)) against the unauthorized diversion or use of water subject to Division 2 (sections 1000-5976) of the Water Code? This issue does not include the issue of whether Respondent is violating the judgments in *Western Municipal Water Dist. v. East San Bernardino County Water Dist.*, Riverside Superior Court No. 78426 (April 17, 1969) and *Orange County Water Dist. v. City of Chino*, Orange County Superior Court No. 117628 (April 17, 1969).
4. The Prosecution Team shall organize a video+audio conference of all parties' representatives to confer and to attempt to reach agreement on a proposed itinerary and schedule for the January 26-27, 2022 site visit in this matter. This conference shall occur before December 15, 2021. During the conference, the parties shall attempt to reach agreement on the sites that will be visited, the method that will be used to access each site, and the schedule. Before **December 15, 2021, at 4:00 pm**, the Prosecution Team shall transmit the proposed itinerary and schedule, with a detailed map, to the AHO, and shall serve copies of this document on all other parties. If necessary, this transmittal shall state the issues on which the parties were not able to reach agreement and the various parties' positions on such issues.

The proposed itinerary and schedule shall include visits to all of the Points of Diversion shown in Figure 3 of the Prosecution Team's April 8, 2021 Revised Report of Investigation, the Spring at Headwaters and the Confluence shown in Figure 4 to this report, the Arrowhead Springs Hotel (1931) site shown in Figure 5 of this report, and the transfer facility discussed during the December 8, 2021 second pre-hearing

conference. The proposed itinerary may include other sites that any of the parties believe should be included in the site visit.

The AHO will hold a video+audio conference on **December 16, 2021, beginning at 1:00 pm**, to discuss the parties' proposed itinerary and schedule, and to develop a final itinerary and schedule. Any party may participate in this conference by using the following link or using the following telephone number:

<https://waterboards.zoom.us/j/97116503192?pwd=NjBnT3B5V2wwbGlrcXdoWIN3RmcyQT09> with Meeting ID: 971 1650 3192 and Passcode: 967163 +16699009128,,97116503192#,,,,\*967163# US (San Jose)

The AHO will broadcast this conference through its YouTube channel, which anyone may access at:

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

The AHO will include the Zoom recording of this conference in the administrative record for this matter.

5. Any party that wants to file a memorandum opposing the Prosecution Team's December 2, 2021 motion to quash BlueTriton's November 30, 2021 subpoena duces tecum to the Prosecution Team shall file such opposition memorandum before **December 13, 2021, at 4:00 pm**. Any such opposition memorandum shall not exceed 10 pages, double-spaced.

Any party that wants to file a reply memorandum in response to any opposition memorandum described in the preceding paragraph such reply memorandum before **December 20, 2021, at 4:00 pm**. Any such reply memorandum shall not exceed five pages, double-spaced.

After December 20, I will issue a ruling on the Prosecution Team's motion to quash and serve the ruling on all parties.

6. The AHO will send a request to San Bernardino Valley Municipal Water District's attorneys, with copies to all other parties, that will specify the groundwater extraction reports that the AHO has not been able to obtain from the State Water Board's Division of Water Rights Records Unit, and to request that the district provide these reports to the AHO. If necessary, the AHO will send a follow-up request to BlueTriton for any missing reports. After receiving these reports, the AHO will post them in the groundwater extraction report subfolders within the AHO-FTP folder for this matter. I intend to offer these exhibits into evidence, as AHO exhibits, during the hearing.

Any party that wants to file records of diversions that occurred before 1947 shall include such records in the parties' exhibits and shall authenticate those records in the written proposed testimony of one of the party's witnesses.

December 8, 2021

/s/ ALAN B. LILLY

Alan B. Lilly

Presiding Hearing Officer

Administrative Hearings Office

Enclosure: Service List

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