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## State Water Resources Control Board

August 8, 2022

### **Public Hearing on Prosecution Team’s Draft Cease-and-Desist Order to BlueTriton Brands, Inc.: Hearing Officer’s Rulings on BlueTriton Brands, Inc.’s Motion for Judgment After Hearing**

#### Background

On June 28, 2022, Respondent BlueTriton Brands, Inc. (“BlueTriton”) filed a motion for judgment after hearing with the Administrative Hearings Office (“AHO”). On July 7, 2022, the Prosecution Team filed its opposition to this motion.

In its motion, BlueTriton argues that the Prosecution Team has not met its burden to establish that BlueTriton collects water in violation of the prohibition in Water Code section 1052, subdivision (a), against the unauthorized diversion or use of water subject to Division 2 of the Water Code. BlueTriton states that its motion is “similar to a motion for judgment pursuant to section 631.8 of the Code of Civil Procedure.” (2022-06-28 BlueTriton Mtn. for Judgment, p. 2.) BlueTriton argues that “a dispositive ruling at this point in the proceeding, before requiring the parties to brief any additional issues, is required by Water Code section 1110 . . . and California Code of Regulations, [t]itle 23, section 648.5.” (2022-06-28 BlueTriton Mtn. for Judgment, p. 8.) BlueTriton’s motion asks me to issue a “final determination dismissing the SWRCB Division of Water Rights Enforcement Branch’s April 23, 2021 Draft CDO.” (*Id.*, p. 9.)

In its opposition, the Prosecution Team argues that Code of Civil Procedure section 631.8 does not apply to State Water Board administrative proceedings, and, to the extent this statute provides guidance, BlueTriton’s motion is not timely, citing *In re Javier G.* (2006) 137 Cal.App.4th 453, 458.

The parties filed their closing briefs on August 5, 2022.

#### Discussion

I agree with the Prosecution Team that, if this were a trial-court proceeding, BlueTriton’s motion for judgment would be untimely. (See *In re Javier G.*, *supra*, 137 Cal.App.4th, at p. 458.) Also, Code of Civil Procedure section 631.8 does not explicitly apply to administrative proceedings, and I have discretion to decide whether to apply its principles here.

I disagree with BlueTriton's argument that Water Code section 1110 requires the AHO to issue a dispositive ruling on BlueTriton's motion. This statute provides that the AHO is a "neutral, fair, and efficient forum for adjudications." I have discretion to decide what hearing and post-hearing processes will best achieve this goal.

I also disagree with BlueTriton's argument that California Code of Regulations, title 23, section 648.5 requires me to issue a dispositive ruling on BlueTriton's motion. I have discretion to determine the appropriate process to receive evidence and arguments and to prepare a proposed order addressing the relevant evidence and hearing issues expeditiously and without unnecessary delay or expense to the parties.

As discussed in my November 4, 2021 ruling on BlueTriton's motion to dismiss in this proceeding, and in my March 25, 2022 ruling on BlueTriton's motion for nonsuit and/or judgment, this proceeding involves complex legal issues, many of which are issues of first impression. There also are disputed factual issues. The AHO's hearing process has given the parties opportunities to address these issues in detail through exhibits and testimony and in their closing briefs.

Exercising my discretion to determine the appropriate post-hearing process for this proceeding, I conclude that I should consider the entire administrative record and all the parties' arguments in their closing briefs as I prepare my proposed order. For these reasons, I deny BlueTriton's motion for judgment. This ruling will not affect my consideration of the arguments BlueTriton and other parties have made in their closing briefs.

August 8, 2022

/s/ ALAN B. LILLY

Alan B. Lilly

Presiding Hearing Officer

Administrative Hearings Office

Enclosure: Service List (copies sent by e-mail only)

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