
State Water Resources Control Board

PRE-HEARING CONFERENCE ORDER; NOTICE OF SECOND PRE-HEARING CONFERENCE AND NEW PLANNED HEARING SCHEDULE

The State Water Resources Control Board
Administrative Hearings Office
may hold a second Pre-Hearing Conference
and a Public Hearing to determine whether to prepare
a proposed cease-and-desist order to

BlueTriton Brands, Inc.
(successor by name change to Nestlé Waters North America, Inc.)

on the draft Cease and Desist Order
issued by the State Water Resources Control Board,
Division of Water Rights, Permitting and Enforcement Branch,
on April 23, 2021.

**The Second Pre-Hearing Conference is scheduled to begin on
December 8, 2021 at 9:00 a.m.**

**The Public Hearing is scheduled to begin on
January 10, 2022 at 9:00 a.m.,
and to continue as necessary on
January 11-14, 2022,
beginning each day at 9:00 a.m.**

A site visit is scheduled to be held on January 19-20, 2022.

**The Public Hearing is scheduled to continue, for rebuttal evidence,
on February 8-11, 2022.**

Additional hearing days may be scheduled.

On a later date, the Administrative Hearings Office may issue a separate notice of the second pre-hearing conference and the re-scheduled hearing, with information regarding how to participate in the pre-hearing conference and hearing and how to observe the pre-hearing conference of the hearing without participating.

PURPOSE OF PROCEEDING; BACKGROUND

The purpose of this proceeding is for the State Water Resources Control Board (“State Water Board” or “Board”), Administrative Hearings Office (“AHO”) to receive evidence relevant to, and arguments regarding, the Draft Cease and Desist Order (“Draft CDO”) described above and any responses or defenses to it. The AHO will prepare a proposed order for submission to and consideration by the State Water Board. The AHO’s proposed order will be based upon evidence and arguments in the administrative record.

The background, potential hearing issues, pre-hearing conference and hearing procedures, and related matters are described in detail in the AHO’s July 8, 2021 Notice of Pre-Hearing Conference and Public Hearing for this matter.

The AHO held a pre-hearing conference on August 11, 2021. The people listed in the attached service list in the section titled “Representatives of Participating Parties” participated in the pre-hearing conference and have filed Notices of Intent to Appear on behalf of the listed parties.

This order and notice follow the August 11, 2021 pre-hearing conference. Except as specifically stated in this order and notice, all provisions of the July 8, 2021 notice remain in effect.

COURT REPORTER

The attorneys for BlueTriton Brands, Inc. (“BlueTriton”) hired a court reporter for the August 11, 2021 pre-hearing conference. The court reporter is:

Francine Dias
Imagine Reporting
1350 Columbia Street, Suite 703
San Diego, CA 92101
619-888-0297

The AHO is not ordering a transcript of the pre-hearing conference. Any party may contact the court reporter to order a transcript at that party’s expense. Any party may transmit a pdf file of the transcript to the AHO (with copies to everyone else on the attached service list). If the AHO receives this pdf file, then the AHO will add it to the administrative record for this matter. However, the Zoom conference recording of the pre-hearing conference (audio + video) will remain the official record of the conference.

PRE-HEARING CONFERENCE ORDER

Filing Deadline for pdf files of Water-Right Complaints

No later than seven calendar days after the date of this order, the Division of Water Rights Prosecution Team (“Prosecution Team”) shall e-mail pdf files of the eight water-right complaints listed in Table 1 on page 6 of the Prosecution Team’s April 8, 2021 Revised Report of Investigation, INV 8217, to the AHO at adminhrgoffice@waterboards.ca.gov, with cc’s to all the e-mail addresses listed in the attached service list.

Filing Deadlines and Page Limits for Legal Briefs on BlueTriton’s Motion to Dismiss

On August 5, 2021, BlueTriton filed a motion to dismiss the Draft CDO with an accompanying brief. The following deadlines apply to subsequent briefs regarding BlueTriton’s motion. All briefs shall be filed by e-mail transmittals to the AHO at adminhrgoffice@waterboards.ca.gov, with cc’s to all the e-mail addresses listed in the attached service list. All filings shall be made on or before **4:00 pm** on the listed date.

September 10, 2021: Briefs supporting or opposing BlueTriton’s motion to dismiss. Any party besides BlueTriton, and any interested non-party, may file such a brief. These briefs shall be no longer than 15 pages, double-spaced (not including any attachments).

September 24, 2021: Reply briefs that directly respond to the briefs described in the preceding paragraph. Any party may file such a brief. Each brief shall state, in its introduction, the brief or briefs to which it is responding. These briefs shall be no longer than 10 pages, double-spaced (not including any attachments).

The AHO hearing officer will not be holding a hearing on the issues discussed in these briefs. The AHO hearing office will issue a written ruling on these issues.

Filing Deadlines and Page Limits for Legal Briefs on Public Trust Doctrine, Article 10, Section 2 and Municipal Priority Threshold Issues

On August 5, 2021, the Prosecution Team and Story of Stuff filed pre-hearing conference statements, which, among other things, raised issues regarding the applicability of the public-trust doctrine, article 10, section 2 of the California Constitution, and the priorities of municipal water supplies to BlueTriton’s diversions of water.

The present proceeding is before the AHO under Water Code section 1112, subdivision (a)(2), for a hearing on the Draft CDO, which the Prosecution Team issued to BlueTriton

on April 23, 2021, and on which BlueTriton requested a hearing on May 11, 2021. The Board has not assigned any hearing regarding BlueTriton's diversions to the AHO under Water Code section 1112, subdivision (c)(2), and the Board has not made any requests regarding BlueTriton's diversions to the AHO under Water Code section 1112, subdivision (c)(3).

The hearing officer invites parties to file briefs on the threshold issue of whether, in light of this procedural background, the AHO has the authority to include in the proposed order the AHO will be transmitting to the Board any analyses, conclusions or orders regarding application to BlueTriton's diversions of the public trust doctrine, article 10, section 2 of the California Constitution, or any priorities that may apply to municipal water supplies. These briefs shall be limited to the threshold issue of whether the AHO may consider these issues during this hearing and in this proposed order. These briefs shall not address the merits of these issues.

The following deadlines apply to the briefs regarding this threshold issue. All briefs shall be filed by e-mail transmittals to the AHO at adminhrgoffice@waterboards.ca.gov, with cc's to all the e-mail addresses listed in the attached service list. All filings shall be made on or before **4:00 pm** on the applicable date.

September 10, 2021: Briefs supporting arguments that the AHO may consider during the hearing in this matter, and address in its proposed order in this matter, issues, analyses, conclusions or orders regarding application to BlueTriton's diversions of the public trust doctrine, article 10, section 2 of the California Constitution, and the priorities of municipal water supplies. These briefs shall be no longer than 15 pages, double spaced (not including any attachments).

September 24, 2021: Briefs responding to the briefs described in the preceding paragraph. These briefs shall be no longer than 15 pages, double spaced (not including any attachments).

October 8, 2021: Reply briefs that directly respond to the briefs described in the preceding paragraph. Each brief shall state in its introduction the brief or briefs to which it is responding. These briefs shall be no longer than 10 pages, double spaced (not including any attachments).

The AHO hearing officer will not be holding a hearing on the issues discussed in these briefs. The AHO hearing office will issue a written ruling on this threshold issue.

AMENDED FILING DEADLINES AND AMENDED HEARING SCHEDULE

The August 31, 2021 deadline for filing exhibits and exhibit identification indices and the September 21-23 hearing dates described in the July 8, 2021 Notice of Pre-Hearing Conference and Public Hearing are vacated.

The AHO hearing officer intends to issue his written ruling on the issues addressed in the legal briefs discussed above on or before November 5, 2021. If, after issuing that ruling, the AHO hearing officer concludes that the hearing in this matter should proceed, then the AHO will issue a new notice of pre-hearing conference and hearing.

To facilitate the parties' planning, scheduling, preparation of written proposed testimony, exhibits, and other pre-hearing work, the AHO hearing officer is advising the parties now of the following planned schedule for these proceedings. By issuing this planned schedule, the AHO is not pre-determining any of the issues that will be addressed in the AHO hearing officer's written ruling. Depending on the AHO hearing officer's rulings on these issues, the AHO hearing officer may cancel or amend this planned schedule.

December 8, 2021: second pre-hearing conference.

December 17, 2021: deadline for all parties to file exhibits (including written proposed testimony and summary slides) and exhibit identification indices for their cases-in-chief with AHO.

January 10-14, 2022: hearing on parties' cases-in-chief.

January 19-20, 2022: site visit.

January 28, 2022: deadline for all parties to file rebuttal exhibits (including written proposed rebuttal testimony and summary slides) and exhibit identification indices with AHO.

February 8-11, 2022: hearing on rebuttal evidence (Zoom teleconference and YouTube information will be included in new hearing notice).

March 11, 2022: deadline for parties to file written closing briefs with AHO.

UPDATED SERVICE LIST; PROHIBITION ON TELEPHONE AND IN-PERSON COMMUNICATIONS

An updated service list is attached to this order and notice. Whenever anyone sends any e-mail to the AHO regarding this matter, the sender shall include all of the e-mail

addresses listed in this updated service list in the cc line of the transmittal e-mail. Whenever anyone sends any paper documents to the AHO regarding this matter, the sender shall send paper copies of the documents to all of the mailing addresses listed in this update service list.

Please advise the AHO promptly of any changes in your contact information listed in the updated service list.

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

August 16, 2021

/s/ ALAN B. LILLY

Alan B. Lilly

Presiding Hearing Officer

Enclosure: Service List

SERVICE LIST

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