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## State Water Resources Control Board

### **NOTICE OF SITE VISIT**

In connection with the hearing being held by  
the State Water Resources Control Board,  
Administrative Hearings Office  
on the draft cease-and-desist order to

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

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

the Administrative Hearings Office will hold

**a site visit on February 16-17, 2022.**

#### **BACKGROUND**

The Notice of Second Pre-Hearing Conference and Public Hearing, issued by the Administrative Hearings Office (“AHO”) on November 17, 2021, discusses the purpose of this hearing, background information, hearing issues and other hearing information. That information is not repeated here.

The AHO held initial hearing days on January 10-14 and 31, and February 1-2, 2022. The AHO has scheduled additional hearing days for rebuttal exhibits and testimony for February 28 and March 1-4, 2022. The AHO’s November 17 and January 27, 2022 notices provide information regarding these hearing dates and related matters. Except as expressly stated in this notice, all provisions of the November 17, 2021 and January 27, 2022 notices remain in effect.

#### **PURPOSE OF SITE VISIT; ITINERARY AND SCHEDULE**

The AHO has scheduled this site visit so the AHO hearing officer and AHO staff (collectively, “AHO personnel”) may view the relevant facilities and topographical features. The AHO may use information obtained during this site visit to inform the AHO’s preparation of the draft and final proposed orders in this matter. AHO personnel will prepare an audio+video recording at each site visit stop and take photographs. The AHO will add these recordings and photographs to the administrative record for this matter.

E. JOAQUIN ESQUIVEL, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

AHO personnel plan to follow this itinerary and schedule:

February 16, 2022, 9:00 am to 12:00 noon: AHO personnel will meet with representatives of the parties at the turnout across the highway from Barkley Plumbing, 26208 Highway 18, Rimforest, California. If parking is not available at this turnout, there is an additional turnout approximately 50 yards to the east where people can park and then walk to the meeting turnout. After meeting and taking attendance, AHO personnel will hike down a trail to the facilities associated with the Forest Service's water-right License 1649 (Application A006108), the facilities of BlueTriton Brands, Inc. ("BlueTriton") at Boreholes 1, 1A and 8 and Spring Tunnels 2 and 3, and Springs 1, 4 and 8. After viewing these facilities, features and nearby points of interest, AHO personnel will hike back up the trail to the highway turnout and advise representatives of the parties if there are any changes to the afternoon itinerary or schedule. The locations of the A006108 spring and these tunnels and boreholes are depicted on the attached Exhibit 1, which is a copy of Figure 3 of the Prosecution Team's Revised Report of Investigation (exh. PT-3).

February 16, 2022, 1:00 to 4:00 pm: AHO personnel will meet with representatives of the parties at the turnout described in the preceding paragraph. After meeting and taking attendance, AHO personnel will hike down a trail to BlueTriton's facilities associated with Spring Tunnel 7 and Boreholes 7, 7A, 7B and 7C. The locations of this tunnel and these boreholes are depicted on the attached Exhibit 1. After viewing these facilities, features and nearby points of interest, AHO personnel will hike back up the trail to the highway turnout.

February 16, 2022, 4:30 to 5:00 pm: After completing the hike described in the preceding paragraph, AHO personnel will drive to the Red Rock Scenic Overlook depicted on the Google Map image attached to this notice as Exhibit 2 and meet with representatives of the parties to view Strawberry Canyon topography, facilities and features.

February 17, 2022, 8:00 to 11:30 am. AHO personnel will meet with representatives of the parties at the Luxivair's tarmac at the San Bernardino International Airport, 1601 East 3<sup>rd</sup> Street, # 100, San Bernardino, California. After AHO personnel take attendance, Larry Lawrence of BlueTriton will advise the people who will be participating in this part of the site visit about the logistics and health and safety protocols for the helicopter flights. AHO personnel and representatives of parties will make these flights and view Boreholes 10, 11 and 12, the facility that discharges surplus water from these boreholes to Strawberry Creek, and nearby points of interest. The locations of Boreholes 10, 11 and 12 are depicted on the attached Exhibit 1. After making these flights and viewing these boreholes and points of interest in the vicinity, the parties will return by helicopter to the airport.

February 17, 2022, 1:00 to 3:30 pm: If the San Manuel Band of Mission Indians ("San Manuel Band") authorizes this part of the site visit, AHO personnel will meet with

representatives of the parties at a location to be specified by the San Manuel Band, and then will drive by car caravan (led by the San Manuel Band's tour guide), to view: (a) the holding tanks or tanks that temporarily store water conveyed from BlueTriton's Strawberry Creek Canyon facilities; (b) the pipes and related facilities used to convey overflow water from this tank or these tanks to Strawberry Creek or East Twin Creek; (c) the confluence of Coldwater Canyon and Strawberry Creek; (d) the junction facilities (valves and meters) that control flows of water to the former Arrowhead Springs Hotel facilities and to the facility described in clause (f); (e) the exterior of the former Arrowhead Springs Hotel; (f) the facility used to transfer water from the pipes into tank trucks; and (g) nearby points of interest. The general locations of the former Arrowhead Springs Hotel, lower Strawberry Creek, and Coldwater Canyon (depicted as "East Twin Creek") are depicted on the attached Exhibit 3, which is a copy of Figure 6 of the Prosecution Team's Revised Report of Investigation.

February 17, 2022, 4:00 to 4:30 pm: After completing the part of the site visit described in the preceding paragraph, AHO personnel will drive to the place where 40<sup>th</sup> Street in San Bernardino crosses East Twin Creek and meet with representatives of the parties to view the creek there.

### **SITE VISIT GROUP LIMITATIONS**

February 16: Representatives of some of the parties have informed the AHO that the trails that AHO personnel plan to use on February 16 are narrow, and that the gathering and observation points at some or all of the tunnels, boreholes and springs that AHO personnel plan to visit on this day are small. To address these size limitations, AHO personnel will hike to each of these areas with a lead group (the "Lead Group"), which will consist of Natalie Stork or Victor Vasquez of the State Water Board's Prosecution Team, Larry Lawrence of BlueTriton, Amanda Frye, Hugh Bialecki, one attorney each from the Prosecution Team, BlueTriton and the Story of Stuff Project, and three AHO personnel (a total of ten people). The AHO has designated Ms. Stork or Mr. Vasquez, Mr. Lawrence, Ms. Frye and Mr. Bialecki as members of the Lead Group because they are the witnesses who have testified during the AHO hearing that they have been to some or all of the tunnels, boreholes and springs described in this notice and can describe these facilities and features to AHO personnel. Although Steve Loe also has extensive knowledge of these facilities and features, he stated during the AHO hearing that he will not attend this part of the site visit because of health issues.

The AHO's understanding is that all of these tunnels, boreholes and springs are located on federal lands for which there are no restrictions on public access. The AHO therefore may not, and will not, attempt to limit anyone from following the Lead Group as it goes to each site. The AHO requests that all other people give the Lead Group sufficient space during the various segments of the hikes and at the various stops so that AHO personnel can adequately view the facilities and related topography, ask other members of the Lead Group questions, take photographs, and make video recordings.

February 17, morning: The AHO's understanding is that BlueTriton may limit the total number of people that BlueTriton allows to travel by helicopter from the San Bernardino International Airport to the landing point near Boreholes 10, 11 and 12. If the number of people who want to attend this part of the site visit exceeds the number that BlueTriton allows the helicopters to transport, then some people who want to attend may not be able to do so. To avoid the prohibition on *ex parte* contacts described on pages 10-11 of the November 17, 2021 hearing notice, AHO personnel will not participate in this part of the site visit unless BlueTriton allows all members of the Lead Group, Steve Loe and Anthony Serrano to attend. The AHO requests that BlueTriton allow both Mr. Vasquez and Ms. Stork to attend this part of the site visit, because both of them have testified during the AHO hearing about their personal knowledge of these boreholes and this area.

February 17, afternoon: The San Manuel Band may place limitations on the total number of people who may travel by caravan to visit the facilities and features described above for this part of the site visit. To avoid the prohibition on *ex parte* contacts, AHO personnel will not participate in this part of the site visit unless the San Manuel Band allows all members of the Lead Group, Mr. Loe and Mr. Serrano to attend.

## **HAZARDS**

At all times: People who participate in this site visit are likely to be in close proximity to other people, and, as a result, may be exposed to COVID-19 or other infectious diseases. The AHO requests that no one who has tested positive for COVID-19 within 10 days before the site visit or has COVID-19 symptoms participate in the site visit, and that each person participating in the site visit (regardless of vaccination status or prior COVID-19 symptoms) wear a well-fitting mask whenever that person is within 6 feet of anyone else.

February 16: The AHO's understanding is that Highway 18 is a well-traveled highway and that people crossing it, or who are at the turnouts or parking lots along it, may be subject to risks associated with moving vehicles, including risks of serious injury, illness and death. The AHO's understanding is that there will be some substantial hazards associated with the hiking and related activities on very rough terrain for the portions of the site visit scheduled for February 16. The trails are rough, narrow in places, and not improved or maintained. People hiking on them may be subject to slips or falls, falling rocks, rattlesnakes, ticks, encounters with other wild animals, poison oak and other harmful vegetation, dehydration, sun exposure, and other risks that the AHO does not know about. Such known or unknown risks could result in serious injury, illness or death.

February 17, morning: In addition to the risks described in the preceding paragraph, which also may be present during the part of the site visit in the morning on February 17, there may be additional risks associated with helicopter travel. These risks are described in detail in the waiver and release form in the attached Exhibit 4.

February 17, afternoon: In addition to the risks described for February 16, which also may be present during the part of the site visit in the afternoon on February 17, there may be additional risks, and the San Manuel Band may require people participating in the part of the site visit that will be on San Manuel Band lands to sign a waiver and release form that describes these additional risks.

The AHO is neither requiring nor inviting anyone to participate in any part of this site visit. Rather, the AHO is providing notice of this site visit to all parties and because this site visit will be part of the AHO's public proceeding in this matter. Decisions by a party or a party's representatives not to participate in any part of this site visit will not adversely affect the AHO's treatment of that party in the draft and final proposed orders the AHO prepares for this matter, or in any other AHO proceedings regarding this matter.

Everyone participating in this site visit will be responsible for his or her own transportation, except for the helicopter transportation to be provided by BlueTriton.

The AHO and the State of California are not assuming any responsibility to, or liability for, anyone who decides to participate in any part of this site visit. Any person who decides to participate in, or observe, any part of this site visit will be doing so based on his or her own free will and personal decision, having been notified of the risks described in this notice and having decided to assume these risks.

## **SIGN-UPS**

Anyone who wants to participate in any part of this site visit must fill out the form in Exhibit 5 and e-mail it to [adminhrgoffice@waterboards.ca.gov](mailto:adminhrgoffice@waterboards.ca.gov) on or before **February 14, at 12:00 noon**. People e-mailing these forms to the AHO do not need to send copies of them to anyone else on the service list for this matter. After receiving these forms, the AHO will prepare a list of everyone who has sent the AHO a completed form. This list will list the portion or portions of the site visit that each person has asked to participate in. For each person who has asked to participate in the part of the site visit that is scheduled for the morning of February 17, which will require helicopter travel, this list will state the person's weight. Before 5:00 pm on February 14, the AHO will prepare a list of all people who have filed such forms and send copies of that list to everyone on the service list for this hearing.

Anyone who wants to participate in the part of the site visit that is scheduled for the morning of February 17 also must complete the BlueTriton Brands, Inc. waiver and release form that is included in Exhibit 4 and e-mail it to the AHO on or before **February 14, at 12:00 noon**. The AHO will forward the completed forms it receives to Mr. Lawrence before 5:00 pm on February 14. People e-mailing these forms to the AHO do not need to send copies of them to anyone else on the service list for this hearing. As discussed earlier in this notice, BlueTriton may limit the total number of people who may participate in this part of the site visit. Accordingly, some people who submit these forms and ask to participate in this part of the site visit may not be able to do so.

BlueTriton has advised the AHO that the weight of each person's personal gear may not exceed ten pounds

Feb. 9, 2022  
Date

/s/ ALAN B. LILLY  
Alan B. Lilly  
Presiding Hearing Officer

Enclosures:

- Service List (copies of this notice sent by e-mail only)
- Exhibit 1: Figure 3 from Revised Report of Investigation
- Exhibit 2: Red Rock Scenic Overlook, Google Map image
- Exhibit 3: Figure 6 from Revised Report of Investigation
- Exhibit 4: BlueTriton Brands, Inc. waiver and release form
- Exhibit 5: AHO site visit sign-up form

## SERVICE LIST

### Representatives of participating parties:

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**People who have asked to be on service list:**

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Staff Attorney  
Office of the General Counsel, USDA  
[joshua.rider@usda.gov](mailto:joshua.rider@usda.gov)

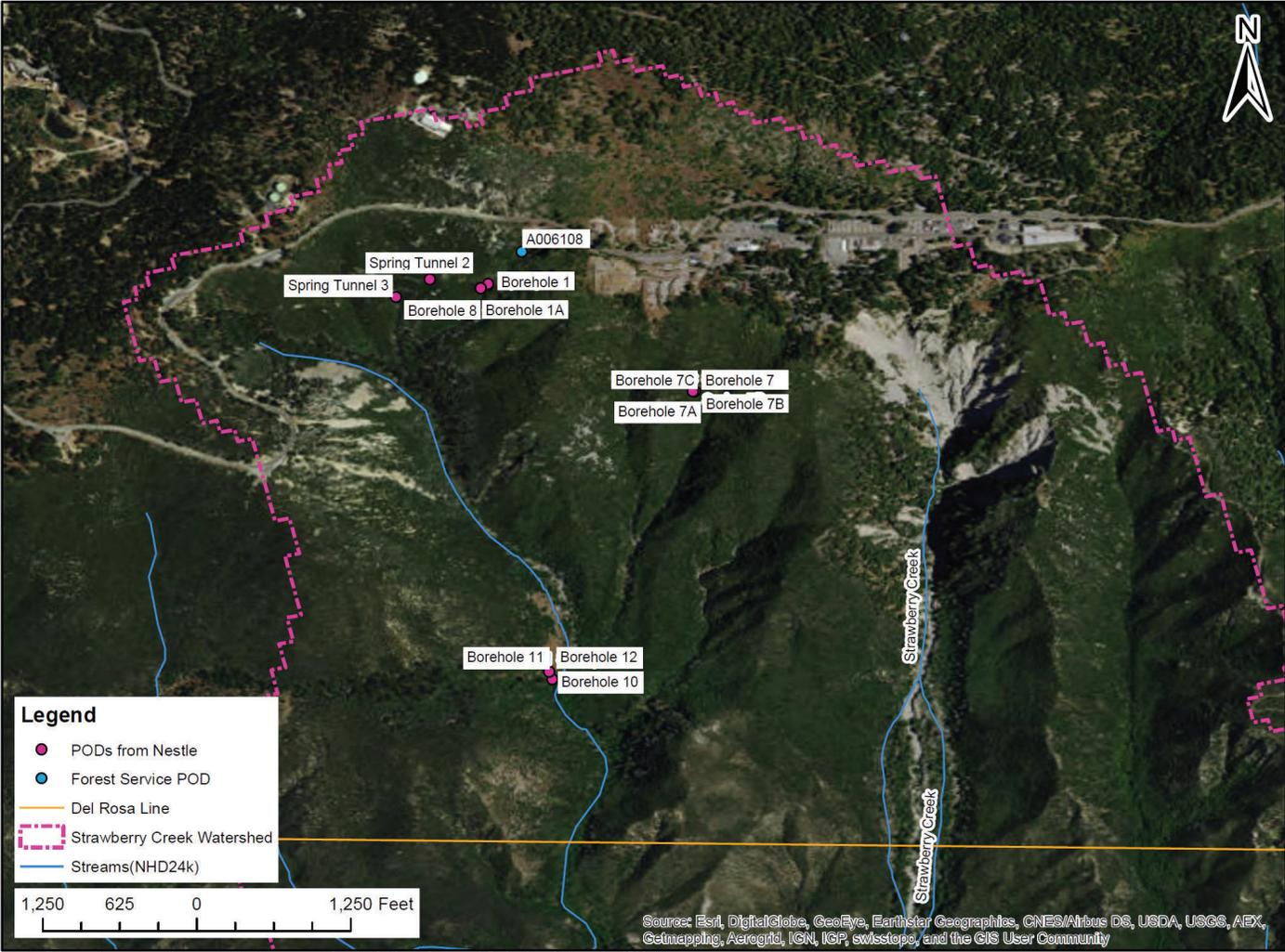
Joe Rechsteiner  
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San Bernardino National Forest  
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Robert Taylor  
Forest Hydrologist  
San Bernardino National Forest  
[robert.taylor2@usda.gov](mailto:robert.taylor2@usda.gov)

**EXHIBIT 1**

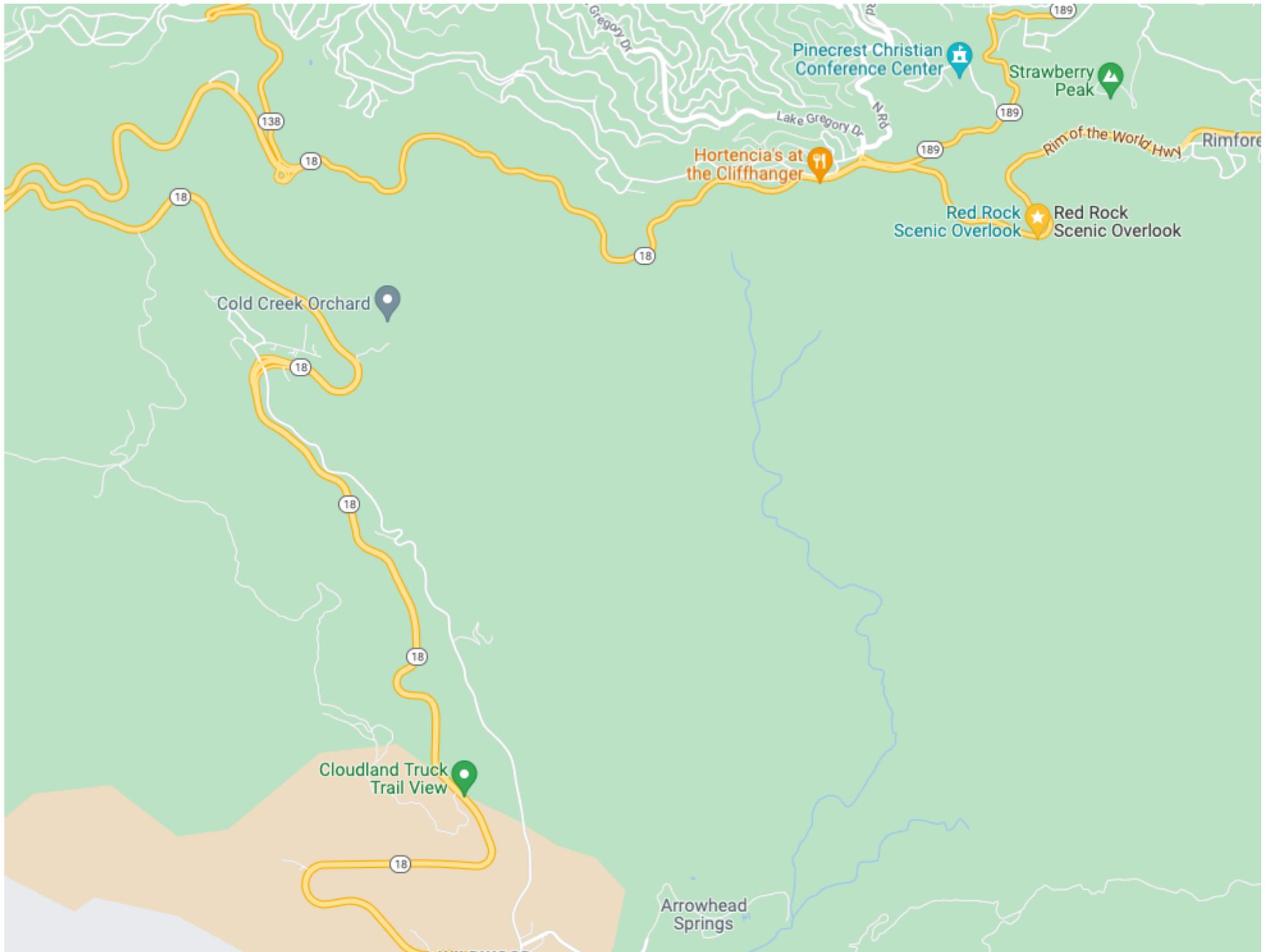
Figure 3. Strawberry Creek Spring PODs  
(from Prosecution Team's April 2021 Revised Report of Investigation,  
Exhibit PT-3)

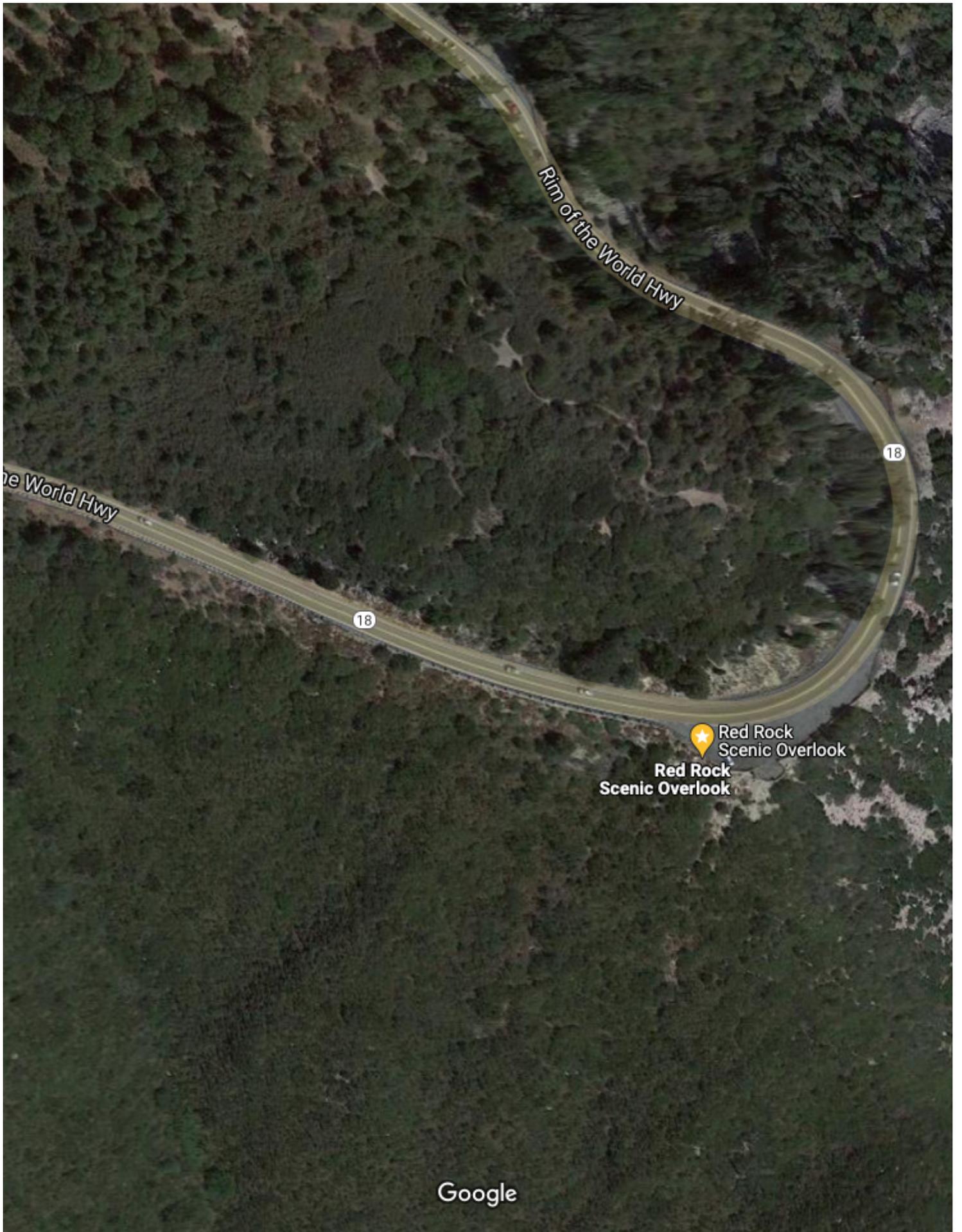
Figure 3. Strawberry Creek Spring PODs



**EXHIBIT 2**

Red Rock Scenic Overlook, Google Map image  
(attached to Feb. 8, 2022 e-mail from Jessica Taylor,  
Attorney for Story of Stuff Project, to AHO)

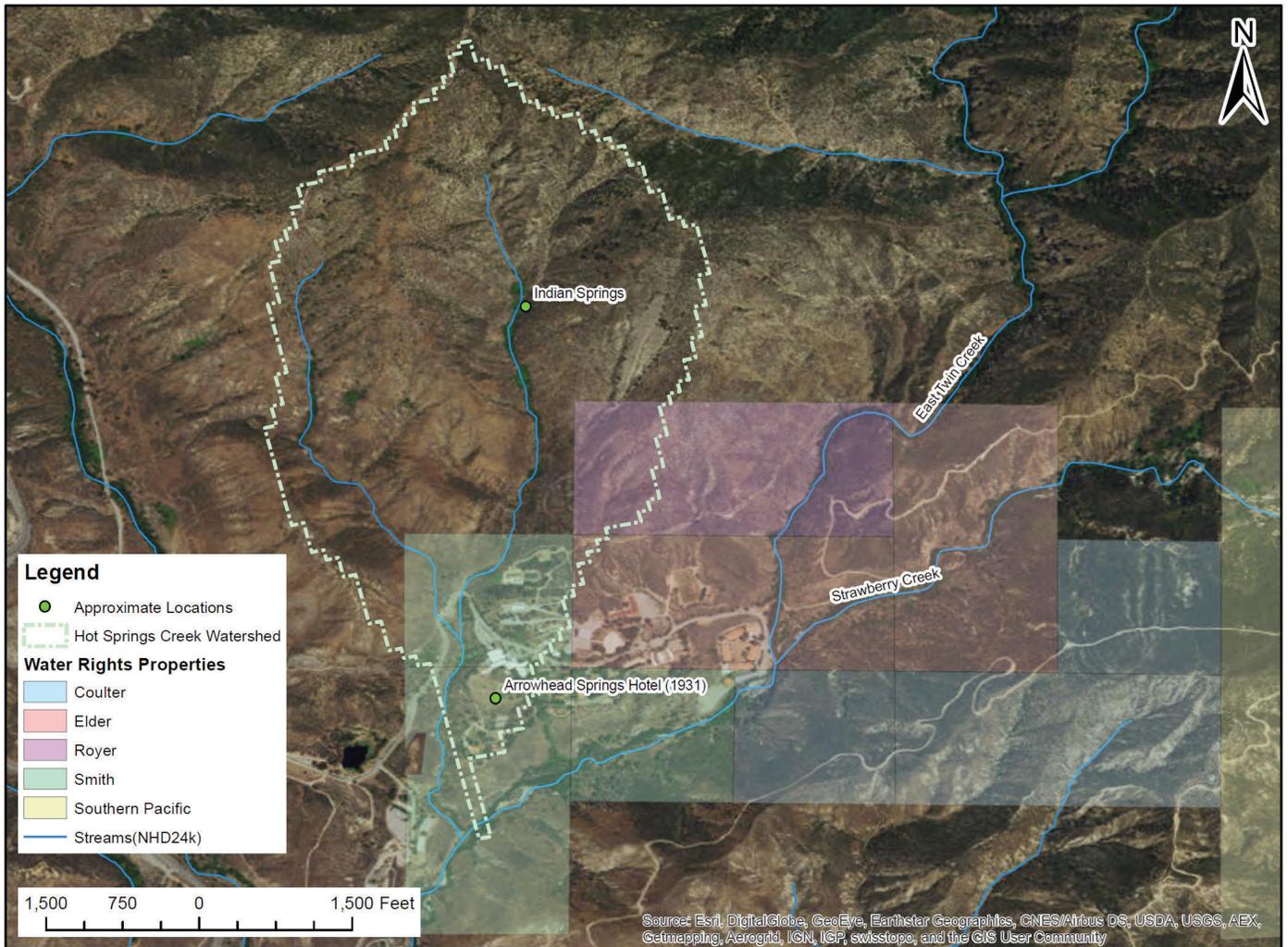




**EXHIBIT 3**

Figure 6. Arrowhead Springs Hotel Area  
(from Prosecution Team's April 2021 Revised Report of Investigation,  
Exhibit PT-3)

Figure 6. Arrowhead Springs Hotel Area



Note: This map does not constitute a public land survey as defined by California Business & Professions Code section 8726. It has been prepared for descriptive purposes only.

**EXHIBIT 4**

BlueTriton Brands, Inc. waiver and release form

*Dates of Site Visit: February 17, 2022*

**STANDARD SITE VISIT WAIVER AND RELEASE**

**(ARROWHEAD)**

I hereby acknowledge that I have voluntarily made the decision to visit Boreholes 10, 11 and 12 and lands in the vicinity of boreholes, located in Strawberry Canyon, San Bernardino National Forest, San Bernardino County, California (the “**Site**”). I acknowledge that the Site is a wilderness area, and that my access and visit to the Site (the “**Site Visit**”), including the associated helicopter flights, are inherently dangerous. These dangers include injury from, among other things, rattlesnakes, other wildlife, poison oak, mountainous terrain, and the risks associated with helicopter travel. I understand that I will be engaging in activities that involve the risk of serious personal injury, illness, permanent disability, dismemberment, and death. I understand that the Site Visit may also involve the risk of severe economic and property loss and damage. I understand these risks may result from the actions, inaction, or negligence of myself and others (including other individuals participating in the Site Visit and the Released Parties (as defined below)), and from the condition of any property, facilities, transport, or equipment used. I also understand that there may be risks involved that are not known to me or to the Released Parties, and may not be foreseen or reasonably foreseeable by any of us at this time or at the time of the Site Visit.

I agree to assume all of the foregoing risks, as well as the risk of any negligence of other participants or the Released Parties, and the risk of injury caused by the condition of any property, facilities, transport, or equipment used during the Site Visit. I accept personal responsibility for any injury (including personal injury, disability, dismemberment, and death), illness, damage, loss, claim, liability or expense, of any kind or nature, that I or my property may suffer arising out of or in connection with my presence at the Site or my participation in the Site Visit.

On my own behalf, and on behalf of my heirs, executors, administrators, assigns, and next of kin, I hereby release, covenant not to sue, and forever discharge BlueTriton Brands, Inc. (“**BTB**”) and Airwest Helicopters, Inc. (“**AWH**”), and their respective affiliates, successors, assigns, officers, directors, employees, representatives, agents, and contractors (collectively, and together with BTB and AWH, the “**Released Parties**”), of and from all liabilities, claims, actions, losses, damages, costs, or expenses of any kind or nature (collectively, the “**Claims**”) arising out of or in any way connected with my presence at the Site or my participation in the Site Visit, and further agree to indemnify and hold each of the Released Parties harmless from and against any and all such Claims arising out of or in any way connected with my presence at the Site or my participation in the Site Visit, and further agree to indemnify and hold each of the Released Parties harmless from and against any and all such Claims (including all attorneys’ fees and costs of litigation, through and including any appeal). I understand that this release and indemnity includes any Claims based on the negligence, action, or inaction of any of the Released Parties and covers bodily injury (including death), property damage, and loss by theft or otherwise, whether suffered by me before, during, or after my participation in the Site Visit. I acknowledge that the Released Parties make no representations or warranties (express or implied) with respect to the condition of the Site.

I am physically fit for participation in the Site Visit, and have not been advised otherwise. In connection with any injury sustained or illness or medical condition experienced during the Site Visit, I authorize any emergency first aid, medication, medical treatment, or surgery deemed necessary by any attending medical personnel if I am not able to act on my own behalf. Additionally, I authorize medical treatment for me, at my own cost, if the need arises; however, I acknowledge that the Released Parties will have no duty, obligation, or liability arising out of the provision of, or failure to provide, medical treatment or emergency transportation.

I acknowledge receipt of, and agree to comply at all times with, the safety rules and regulations (collectively, the “**Safety Rules**”) printed on the reverse side of this Standard Site Visit Waiver and Release (this “**Release**”), and applicable law. I acknowledge that BTB is voluntarily providing for the Site Visit at no cost to me, and at its sole discretion. I understand that my right to participate in the Site Visit is a license that is freely revocable by BTB. I agree that BTB has the right to terminate my participation in the Site Visit at any time, for any reason or no reason (including my failure to comply with the Safety Rules). If BTB terminates my participation, I understand that I will have no recourse against BTB or AWH.

I am over the age of eighteen (18) years. I have read the foregoing and fully understand its contents. I am willfully, knowingly, and voluntarily signing this Release, in consideration for my presence at the Site and my participation in the Site Visit. This Release will be binding upon me and my heirs, executors, administrators, assigns, and next of kin. This Release embodies the entire agreement of the undersigned with respect to the subject matter hereof. No modification of this Release will be effective unless in writing and signed by the undersigned and BTB. Should any action be brought to enforce the terms of this Release, the prevailing party will be entitled to recover its attorneys’ fees and costs. This Release will be governed by California law.

Name: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Date: \_\_\_\_\_

**SAFETY RULES AND REGULATIONS**  
**(BLUE TRITON BRANDS, INC.) INC**

**General Site Visit Safety Rules**

*The following rules must be followed by all participants:*

1. Do not leave the group.
2. Do not go off-trail.
3. Watch where you step. Beware of cliffs, ledges, hills, unstable soil, slippery areas, rocks, downed trees, snakes, snake holes, rodent holes, etc.
4. Do not feed or touch wildlife.
5. Do not touch poison oak (shiny, three-leaf pattern).
6. Avoid ticks (walk in center of trail; use insect repellent; tuck pants into socks; check gear).
7. Bring all required personal items (see below).

**Helicopter Safety Rules**

*The following rules must be followed by all participants:*

1. Wait for signal to approach helicopter.
2. Approach helicopter in GREEN zones.
3. Watch for flying debris.
4. Don't rush to helicopter.
5. Fasten seatbelt and stow loose materials.
6. Make sure pilot can hear you on intercom.
7. Confirm with pilot when you are ready for departure.
8. Follow all directions from pilot and/or ground crew.

**Required Personal Items**

*All participants must carry the following gear:*

1. Hiking shoes or boots (and socks). No athletic shoes or sandals.
2. Long thick pants.
3. Layers of top cover: T-shirt; button-up long sleeve shirt; light jacket.
4. Hat (sun protection).
5. Gloves.
6. Sunglasses.
7. Sunscreen.
8. Insect repellent.
9. Alcohol-based sanitizer.
10. Small pack (as desired).
11. Medications and other special needs items.
12. Water; snacks; lunch.
13. Change of clothes for flight home (due to potential to come into contact with poison oak).

**Helicopter Safety Zones**



**EXHIBIT 5**

AHO Feb. 16-17, 2022 site visit sign-up form

Name: \_\_\_\_\_

Party represented or associated with (if any): \_\_\_\_\_

E-mail address: \_\_\_\_\_

Telephone number: \_\_\_\_\_

Mailing address: \_\_\_\_\_

Parts of site visit for which attendance is planned or requested (check all that apply):

Feb. 16, morning (Boreholes 1, 1A and 8, Spring Tunnels 2 and 3, and Springs 1, 4 and 8)

Feb. 16, afternoon (Spring Tunnel 7 and Boreholes 7, 7A, 7B and 7C)

Feb. 16, afternoon (Red Rock Scenic Overlook)

Feb. 17, morning (Boreholes 10, 11 and 12, with helicopter transport)

If you checked this box, then list your weight in pounds here: \_\_\_\_\_

If you checked this box, then you must complete the waiver and release form in Exhibit 4 and e-mail it to the AHO with this sign-up form.

Feb. 17, afternoon (San Manuel Band of Mission Indians lands)

Feb. 17, afternoon (40<sup>th</sup> Street bridge crossing East Twin Creek)

Signature: \_\_\_\_\_