
State Water Resources Control Board

NOTICE OF PRE-HEARING CONFERENCE AND PUBLIC HEARING

The State Water Resources Control Board
Administrative Hearings Office
will hold a 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 Pre-Hearing Conference will begin on
August 11, 2021 at 9:00 a.m.**

**The Public Hearing will begin on
September 21, 2021 at 9:00 a.m.**
**This Public Hearing will continue as necessary on
September 22, 2021 and September 23, 2021,
beginning each day at 9:00 a.m.**
Additional hearing days will be scheduled if necessary.

The pre-hearing conference and hearing will be held by Zoom teleconference.

To participate, please use the following link:
<https://waterboards.zoom.us/j/97116503192?pwd=NjBnT3B5V2wwbGlrcXdoWIN3RmcyQT09> with Meeting ID: 971 1650 3192 and Passcode: 967163
or call in at: +16699009128,,97116503192#,,, *967163# US (San Jose)

**To observe without participating, please access the
Administrative Hearings Office YouTube channel:**
<https://www.youtube.com/channel/UCM-gmipRyd7Nw-g8l-C7Nig/videos?view=57>

PURPOSE OF HEARING

The purpose of this hearing is for the Administrative Hearings Office (“AHO”) to receive evidence relevant to, and arguments regarding, the Draft CDO described above and any responses or defenses to it. After the hearing, 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 developed before, during and after the hearing.

BACKGROUND

Cease and Desist Order Statutes

California Water Code section 1831 authorizes the State Water Resources Control Board (“State Water Board” or “Board”) to issue a cease-and-desist order when the Board determines any person is violating, or threatening to violate, any of the requirements listed in subdivision (d) of section 1831. These prohibitions include the prohibition in Water Code section 1052 against the unauthorized diversion or use of water subject to Division 2 (sections 1000-5976) of the Water Code.

Water Code section 1834 provides that, when a violation of one or more of these requirements is occurring or threatening to occur, the Board shall notify the party making or threatening to make the alleged violation that he or she may request a hearing.

Draft Cease and Desist Order

On April 23, 2021, Julé Rizzardo, Assistant Deputy Director for the Permitting and Enforcement Branch of the State Water Board’s Division of Water Rights (“Division”) issued a Notice (“Draft CDO Notice”) of Revised Report of Investigation and Draft Cease and Desist Order (“Draft CDO”) to Nestlé Waters North America, Inc. (“Nestlé”).

The Draft CDO alleged that Nestlé’s diversion and use of water from Strawberry Creek in San Bernardino County violated or threatened to violate the prohibition in Water Code section 1052 against the unauthorized diversion or use of water subject to Division 2 of the Water Code. The Draft CDO Notice, issued under Water Code section 1834, advised Nestlé that, if Nestlé wanted to request a hearing on the Draft CDO, then it had to submit a written request for hearing to the AHO within 20 days from Nestlé’s receipt of the notice. (See Water Code, § 1834, subd. (b).)

The Division has posted copies of its transmittal letter for the Draft CDO Notice, the Revised Report of Investigation, the Draft CDO, and related documents at:
https://www.waterboards.ca.gov/waterrights/water_issues/programs/enforcement/complaints/nestle.html

Request for Hearing

On May 11, 2021, Robert E. Donlan of Ellison Schneider Harris & Donlan, L.L.P., attorneys for BlueTriton Brands, Inc. (“BlueTriton” or “Respondent”), filed a request for hearing on the matters and allegations in the Draft CDO Notice. This request for hearing stated that BlueTriton is the “successor by name change” to Nestlé, is “the owner of the water rights and obligations subject to the [Draft CDO] Notice, and is authorized to request a hearing in this matter.”

Administrative Hearings Office

Water Code section 1110 established the AHO as an independent organizational unit within the State Water Board. Water Code section 1112, subdivision (a)(2), provides that, subject to an exception not applicable here, an AHO hearing officer shall preside over a hearing in any matter involving a notice of proposed cease and desist order under Water Code section 1834. Water Code section 1114, subdivision (c)(1), provides that, after holding this hearing, the AHO hearing officer shall prepare a proposed order and transmit it to the Board for the Board’s consideration.

HEARING ISSUES

The AHO hearing officer will receive evidence and arguments relevant to the following hearing issues:

- 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?
- 2) If any such violations or threatened violations are occurring, then should the State Water Board issue a cease-and-desist order to Respondent under Water Code section 1831?
- 3) If the State Water Board decides to issue a cease-and-desist order to Respondent under Water Code section 1831, then what provisions should be in the order?

HEARING OFFICER AND HEARING TEAM

An AHO hearing officer will preside during the pre-hearing conference and the hearing. Other AHO staff members may be present and may assist the hearing officer throughout these proceedings. The hearing officer and other AHO staff members may consult with staff of the Division of Water Rights, attorneys in the Board’s Office of Chief Counsel, members of the executive management of the State Water Board, and State Water Board members, to discuss or deliberate on matters relevant to this proceeding.

The hearing officer and other AHO staff members will not discuss this matter with any members of the Board's Office of Enforcement or the Division's Enforcement Section.

PROSECUTION TEAM

The State Water Board Prosecution Team will include attorneys in the Board's Office of Enforcement and staff in the Division of Water Rights Enforcement Section. During the pre-hearing conference, the AHO hearing officer will ask the Prosecution Team to specify its members.

PRE-HEARING CONFERENCE

The hearing officer will hold a pre-hearing conference on the date and at the time listed on the first page of this notice. The AHO will hold this pre-hearing conference by Zoom teleconference. The AHO will not allow any in-person appearances at this conference. To participate in this pre-hearing conference, please use the Zoom teleconference information provided on the first page of this notice.

To facilitate a clear understanding of who is speaking, the hearing officer will ask participants to identify themselves as necessary during the conference. The pre-hearing conference will be recorded electronically by Zoom teleconference. The hearing officer will prepare a pre-hearing conference order after the conference. The AHO is not ordering a court reporter for this pre-hearing conference. Any party may order a court reporter at his, her or its own expense.

The pre-hearing conference will address the following issues:

1. Should the hearing officer amend any of the hearing issues listed above or add any additional hearing issues?
2. Should the hearing officer change any of the deadlines for submitting exhibits and testimony, or the hearing dates, listed in this notice, or make any other changes to the hearing schedule?
3. Should the hearing officer set a deadline for submission of rebuttal evidence and require parties to submit written proposed rebuttal testimony and rebuttal exhibits before the hearing?
4. What time limits should the hearing officer set for oral policy statements and oral summaries of written statements, and parties' opening statements, oral summaries of written testimony, cross-examination, and rebuttal testimony?
5. Are there any other procedural issues concerning the hearing that any of the participants would like to raise? If so, what are those issues?

Parties do not need to file pre-hearing conference statements. If any party wants to file a pre-hearing conference statement, then the party shall file the pre-hearing conference statement with the AHO before the deadline listed below. Any pre-hearing conference statement may address any of the pre-hearing conference issues listed above. Because the AHO will post all pre-hearing conference statements on the Water Board's FTP site, parties do not need to send copies of their pre-hearing conference statements to the other parties.

NOTICES OF INTENT TO APPEAR

Any person or entity who wants to participate in the pre-hearing conference or the hearing in this matter must file a Notice of Intent to Appear (NOI) with the AHO, using the form enclosed with this notice, before the deadline listed below. Because the AHO will post all NOIs on the Water Board's FTP site, parties do not need to send copies of their NOIs to the other parties.

The AHO encourages parties to agree to accept electronic service (by e-mail) of all documents regarding this hearing. If a party is not willing to do this, then the party may check the appropriate box on the NOI form. Parties not agreeing to accept electronic service of documents will experience delays as paper copies of documents are transmitted to them by U.S. Mail. If this box is not checked, then the AHO will assume that the party agrees to accept electronic service.

After the deadline to submit NOIs and pre-hearing conference statements, the AHO will post the NOIs and pre-hearing conference statements on the Water Board's FTP site ("FTP site," discussed below) in the folder for this matter.

HEARING SCHEDULE AND DEADLINES

Deadlines / Schedule	Date and Time
Deadline for any party who wants to participate in the hearing to file an NOI.	August 5, 2021, 12:00 p.m.
Deadline for filing optional pre-hearing conference statements.	August 5, 2021, 12:00 p.m.
Pre-hearing conference.	August 11, 2021, 9:00 a.m.
Deadline for all parties to file exhibits and exhibit identification indices with AHO and serve copies on all other parties	August 31, 2021, 12:00 p.m.
Hearing begins.	September 21, 2021, 9:00 a.m.
Additional hearing days (if necessary)	September 22 and September 23, 2021, 9:00 a.m., and additional dates if necessary.

SUBMITTALS OF DOCUMENTS TO AHO AND OTHER PARTIES

All documents submitted to the AHO shall be addressed and submitted to the AHO by one of the following methods. (Parties may not upload NOIs or pre-hearing conference statements to the FTP site.)

Method	Address
By email (preferred method for documents besides exhibits):	AdminHrgOffice@waterboards.ca.gov adminhrgoffice@waterboards.ca.gov With Subject Line “ BlueTriton Brands, Inc. CDO Hearing ”
By Uploading to FTP site (preferred method for exhibits):	After the pre-hearing conference, the AHO will provide a unique username and password to each party that has filed an NOI, which that party then may use to access the FTP site to upload exhibits and other documents.
By Mail:	State Water Resources Control Board Administrative Hearings Office, Mail Stop 2-A P. O. Box 100 Sacramento, CA 95812-0100
By Hand Delivery (see note below):	Joe Serna Jr. CalEPA Building Administrative Hearings Office 1001 I Street, 2 nd Floor Sacramento, CA 95814

Service of documents by hand-delivery may be more difficult or delayed due to closures of the CalEPA Building related to the COVID-19 pandemic. Please plan ahead if you wish to hand deliver documents and e-mail AHO staff in advance at AdminHrgOffice@waterboards.ca.gov to arrange for hand-delivery of documents.

Please see the part of this notice below titled “PROCEDURES FOR THIS WATER-RIGHT HEARING” for more information regarding hearing procedures and submittals of exhibits.

INITIAL ADMINISTRATIVE RECORD; POLICY STATEMENTS

The AHO has copied documents from the public records posted by the Division of Water Rights Enforcement Section on the State Water Board’s webpage, and documents the AHO has received, that may be relevant to this proceeding, and has included them in the initial administrative record for this hearing. The AHO has posted this initial administrative record on the Board’s FTP site in the folder for this matter. Instructions on how to access this folder on the Board’s FTP site are in Section 8 below.

The AHO has received several e-mails from interested people, stating their views about the hearing issues or this proceeding. The AHO has treated these e-mails as policy statements. See section 4 below for descriptions of the rules that apply to policy

statements. The AHO has prepared pdf files of all of these e-mails and has filed them in a folder titled "Policy Statements" in the initial administrative record. People who have submitted these policy statements do not need to re-submit them during the pre-hearing and hearing process.

AHO WEBPAGE AND NOTICES

Subject to legal limitations, including the requirements for Internet website accessibility in Government Code section 11546.7, the AHO will post all AHO notices and other AHO documents regarding these proceedings on the AHO's Internet webpage at [https://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_offi ce/](https://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office/).

INTERESTED PERSONS E-MAIL LIST; SERVICE LIST

Any person may add his or her e-mail address to the interested persons e-mail list for this matter by subscribing to the applicable Board LYRIS e-mail list. To subscribe, please use the following link:

https://www.waterboards.ca.gov/resources/email_subscriptions/swrcb_subscribe.html.

After logging on at this link, please provide your full name, entity affiliation, if any, and e-mail address, click the box beneath the Administrative Hearings Office tab for the *BlueTriton_Nestle_Water_Rights_Hearing* list and click the Subscribe button. (If the tab for the LYRIS list for this hearing is not available when you click on this link, please try again a few days later.) Future notices and communications related to this matter issued by the AHO will be sent to all e-mail addresses on this LYRIS e-mail list for this hearing and to all e-mail addresses on the AHO's general LYRIS e-mail list.

After the pre-hearing conference, the AHO will issue a pre-hearing conference order with an updated service list. The AHO will include in this updated service list only the people and entities that have filed NOIs and the people and entities who have advised the AHO that they want to be on the updated service list for this matter. If you want to continue to receive AHO notices and other parties' filings regarding this proceeding and are not filing an NOI, then you must advise the AHO in writing, using one of the methods listed above, that you want to be on the AHO's updated service list for this proceeding. You do not need to send copies of your request to the other parties.

HEARING LIVE-STREAM AND RECORDING

The pre-hearing conference and hearing will be live-streamed through the AHO YouTube channel, accessible by clicking on the link listed on the first page of this notice and below. The live-stream will consist of a morning session and an afternoon session. Each session may be accessed through the appropriate link on the AHO YouTube channel. To view the morning session, click the link identified as "morning." The morning session will conclude at the lunch break. To view the

afternoon session, click the link identified as “afternoon.” The afternoon session will begin after the lunch break.

After the conclusions of the pre-hearing conference and the hearing, recordings of the morning and afternoon YouTube live-stream sessions will be available on the AHO YouTube channel. These recordings will include automatic captions for accessibility.

The live-stream and recordings may be accessed at the following link: <https://www.youtube.com/channel/UCM-gmipRyd7Nw-g8l-C7Nig/videos?view=57>

The AHO is not ordering a court reporter for this hearing. Any party may order a court reporter at his, her or its own expense.

SEPARATION OF FUNCTIONS; PROHIBITION ON EX PARTE COMMUNICATIONS

All parties are prohibited from having any *ex parte* communications with any members of the AHO hearing team. (See Wat. Code, § 1110, subd. (c); Gov. Code, §§ 11430.10-11430.80.) The AHO has posted a discussion of *ex parte* communications on the AHO’s webpage at https://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office/docs/2021/2021_04_06_webpage_faq.pdf. (See response to FAQ 18.)

If any party wants to communicate with the AHO at any time regarding any procedural or substantive issue regarding these proceedings, including any issue regarding the pre-hearing conference, hearing procedures or the filing of documents, then that party shall make such communication to the AHO in writing (by e-mail or letter) and, except as otherwise provided in this notice, shall serve all other parties with copies of the communication and include a proof of service demonstrating such service with the written communication to the AHO. A party may provide this proof of service through a formal proof of service or by other verification. For e-mails, the verification shall be a list of the e-mail addresses of the parties or their representatives in an electronic-mail “cc” (carbon copy) list. For letters, the verification shall be a list of the names and mailing addresses of the other parties or their representatives in the cc portion of the letter.

Before the AHO circulates the list of parties described below, any party submitting any document to the AHO for this proceeding shall transmit copies of the document to all of the other parties listed in the attached service list. After the AHO circulates the pre-hearing conference order and updated service list, any party submitting any document to the AHO shall transmit copies of the document to all of the other parties on the updated service list. This transmittal may be by e-mail to parties for whom e-mail addresses are listed in the service list. For other parties, this transmittal shall be by U.S. Mail. Whenever any party files any document with the AHO for this proceeding for which these service requirements apply, the party shall include a proof of service using one of the methods described above that confirms that the party has transmitted copies of the document to all other parties and that describes the method of service.

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 hearing, 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.

PROCEDURES FOR THIS WATER-RIGHT HEARING

The following procedures apply to this hearing. The hearing officer may amend these procedures before, during or after the hearing as he or she deems appropriate.

- 1. HEARING PROCEDURES:** The Administrative Hearings Office (AHO) will conduct this hearing according to the procedures for hearings set forth in California Code of Regulations, title 23, sections 648-648.8, 649.6 and 760. Copies of these regulations are posted on the State Water Resources Control Board's website: https://www.waterboards.ca.gov/laws_regulations/. If there is any conflict between any provision of this notice and any provision of these regulations or any applicable statute, then the provision of the regulation or statute shall apply to this proceeding.

Consistent with California Code of Regulations, title 23, section 648.5, unless the hearing officer determines otherwise before or during the hearing, each party may make an opening statement, present witnesses and exhibits, cross-examine opposing parties' witnesses, impeach any witness, rebut adverse evidence, and subpoena, call and examine an adverse party or witness as if that witness were under cross-examination. The hearing officer may allow parties to present closing arguments or submit closing briefs. These procedures are described in more detail in section 10. The hearing officer may issue rulings regarding these procedures before or during the hearing.

The AHO encourages parties with common interests to work together to make unified presentations and to take other actions to make the hearing process more efficient.

Parties may file any requests for exceptions to these hearing procedures in writing with the AHO and must serve any such requests on the other parties. To provide time for parties to respond, the hearing officer normally will not rule on procedural requests filed in writing until at least five days after receiving the request, unless the hearing schedule requires an earlier ruling.

- 2. SETTLEMENT DISCUSSIONS:** In a water-right enforcement hearing, the parties normally include a State Water Board Prosecution Team and a respondent. The Prosecution Team and the respondent may engage in private settlement discussions, and may, or may not, include any other persons in those discussions.

No representative of the AHO will participate in such settlement discussions. If the parties or their representatives sign a written settlement agreement, then they shall promptly file a copy of the signed agreement with the AHO.

Although the AHO may authorize other persons to participate in the hearing as parties, such authorizations do not necessarily allow those persons to participate in any settlement discussions between the Prosecution Team and the respondent in water-right enforcement matters.

The State Water Board, or the Executive Director under State Water Board Resolution No. 2012-0061, may issue an order approving a settlement agreement between the Prosecution Team and the respondent in a water-right enforcement matter, even if other parties to the proceeding have not approved the settlement agreement. The hearing officer normally will give all parties opportunities to comment on any settlement agreement submitted to the AHO before the AHO transmits a proposed order approving the settlement agreement to State Water Board or Executive Director, unless all parties to the hearing or their representatives have signed the settlement agreement.

3. **PARTIES:** As provided in California Code of Regulations, title 23, section 648.1, subdivision (b), BlueTriton Brands, Inc. and the Prosecution Team are parties to this proceeding.

The hearing officer may allow any other person or entity that timely files a Notice of Intent to Appear to participate in the hearing as a party. (See Cal. Code Regs., tit. 23, § 648.1, subd. (a) & (b).) A person or entity that has not been identified as a party in this notice that wants to participate as a party in this hearing shall file a Notice of Intent to Appear with the AHO before the deadline specified in this notice. The person or entity shall include an attachment to the Notice of Intent to Appear form demonstrating good cause as to why the hearing officer should allow the person or entity to participate in the hearing as a party rather than as an interested person presenting a policy statement.

The hearing officer may impose limitations on any party's participation in the hearing. (See Gov. Code, § 11440.50, subd. (c).) The hearing officer also may designate persons or entities that do not file timely Notices of Intent to Appear as parties, for good cause shown and subject to appropriate conditions. Except as specifically provided in this notice or by ruling of the hearing officer, the hearing officer will allow only parties to present evidence, make objections, and examine witnesses.

4. **POLICY STATEMENTS BY INTERESTED PERSONS:** As provided in California Code of Regulations, title 23, section 648.1, subdivision (d), the hearing officer normally will allow interested persons who are not designated as parties to present or submit non-evidentiary policy statements. Policy statements may be submitted in writing before the hearing or presented or summarized orally during the hearing.

The hearing officer will not permit a person or entity that appears and presents only a policy statement to make objections, offer evidence, conduct cross-examination, make legal arguments, or otherwise participate in the evidentiary hearing. The AHO will not add such persons or entities to the service list.

Policy statements are not subject to the pre-hearing requirements for testimony or exhibits, except that interested persons who want to make oral policy statements during the hearing should file Notices of Intent to Appear indicating an intent to make only a policy statement. The hearing officer may impose time limits on presentations of oral policy statements or oral summaries of written policy statements.

The AHO requests that interested persons and entities who file written policy statements with the AHO serve copies of their statements on all parties before the person or entity presents such statements or summaries of them during the hearing. See section 8 for details regarding electronic submittals of documents.

- 5. NOTICES OF INTENT TO APPEAR:** As provided in California Code of Regulations, title 23, section 648.4, all people and entities that want to participate in the hearing as parties must file either an electronic copy or a paper copy of a Notice of Intent to Appear with the AHO before the deadline specified in this notice. The AHO may interpret a failure to file a Notice of Intent to Appear by this deadline as a decision not to appear. The AHO requests that any interested person who will not be participating as a party, but will be presenting only an oral non-evidentiary policy statement or oral summary of a written policy statement, file a Notice of Intent to Appear before the deadline and specify in the notice that the person only will be presenting an oral policy statement or oral summary of a written policy statement.

As provided in California Code of Regulations section 648.4, subdivision (b), the Notice of Intent to Appear for parties (but not for people only presenting policy statements) must state the name and address of the participant. For parties, the Notice of Intent to Appear also must state: (1) the name of each witness whom the party intends to call at the hearing; (2) a brief description of the subject of each witness's proposed testimony; and (3) an estimate of the time that the party requests for each of its witnesses to present an oral summary of his or her written testimony. (See section 6 for requirements that apply to written testimony.) The total time requested for summaries of all of each party's witnesses shall not to exceed the total time limit for oral summaries of written testimony described in section 10, part b.ii. If a party intends to call any expert witnesses, the party shall designate each expert witness in the party's Notice of Intent to Appear.

Parties that do not intend to present cases-in-chief but want to cross-examine witnesses or present rebuttal testimony should so indicate on their Notices of Intent to Appear.¹ A party that decides not to present a case-in-chief after having

¹ A party is not required to present evidence as part of a case-in-chief. The hearing officer will allow parties not presenting evidence as cases-in-chief to participate through opening statements, cross-examination, and rebuttal, and to present closing statements

submitted a Notice of Intent to Appear should notify the AHO and the other parties as soon as possible.

Parties that are not willing to accept electronic service of hearing documents must check the appropriate box on the Notice of Intent to Appear. Because service of documents to such parties normally will be by U.S. Mail, such parties will experience delays in receiving hearing documents.

After the pre-hearing conference, the AHO will e-mail or mail an updated service list with the names of parties and their contact information to each person or entity that has submitted a Notice of Intent to Appear or has asked to be on the updated service list. The service list will indicate if any party is not willing to accept electronic service. If there is any change in the hearing schedule, the hearing officer will send a notice of such change to the parties on the service list and interested persons who have filed Notices of Intent to Appear expressing their intentions to present policy statements.

- 6. WRITTEN TESTIMONY AND OTHER EXHIBITS:** Exhibits include all written testimony, statements of qualifications of expert witnesses, and other documents to be submitted as evidence. As provided in California Code of Regulations, title 23, section 648.4, subdivision (c), each party that wants to offer testimony into evidence shall submit written proposed direct testimony of each witness by the deadline for filing exhibits. The hearing officer will not permit a witness to give oral testimony that goes beyond the scope of the witness's written proposed testimony absent good cause. Each party shall designate each of its witness's written proposed testimony as a separate exhibit. Each party must submit all of its witnesses' written testimony with the party's other exhibits before the exhibit filing deadline. A party who offers expert testimony must submit an exhibit containing a statement of each expert witness's qualifications, in addition to a separate exhibit with the expert witness's written proposed testimony.

The AHO encourages all parties to prepare and submit as a separate exhibit for each witness a set of slides that summarize each witness's testimony. During the hearing, the party may use the exhibit with the slides to facilitate each of the party's witness's oral summary of his or her written proposed testimony. The parties must label the slides for each witness as a separate exhibit and submit it by the exhibit submittal deadline.

See section 10, part c. for information about rebuttal evidence.

- 7. EXHIBIT FORMATTING AND ORGANIZATION:** A party submitting evidence must file with the AHO both the exhibits and an Exhibit Identification Index, which is a list of exhibits in Excel format.

or briefs, if the hearing officer allows other parties to present such closing statements or briefs.

Each party should label exhibits with a short version of the party's name and sequential numbers. For example, BlueTriton's exhibits should be numbered BlueTriton-1, BlueTriton-2, etc., The Prosecution Team's exhibits should be numbered PT-1, PT-2, etc. Do not use any sub-letters like 1a, 1b, etc. for exhibit numbers.

Each party should number each paragraph of each witness's written testimony sequentially, 1, 2, 3, etc. (This paragraph numbering will make it easier for the hearing officer and representatives of other parties to ask each witness questions about his or her written testimony.) Witnesses should not use any sub-paragraph letters like 1a, 1b, etc. in their written testimony. A witness may include headings like "Background," "Introduction," etc. for different sections of the witness's proposed written testimony but should not number or letter these headings and should not re-start the paragraph numbering in each section.

Parties may use pleading paper with line numbers in the left margins for their witnesses' written proposed testimony.

Documents uploaded by the parties normally must be in Adobe Portable Document Format (PDF), except that spreadsheets may be submitted in Microsoft Excel, slide presentations may be submitted in Microsoft PowerPoint, and exhibit identification indices must be submitted in Microsoft Excel.

If a party wants to submit an exhibit in any other format, then the party shall submit a written request to the hearing officer, and serve copies of the request on all other parties on the service list, at least 14 days before the deadline for submitting exhibits. The request shall describe the other format, explain what software is necessary for the hearing officer and other parties to be able to review the exhibit in that format, and explain why the party believes it is appropriate for the party to submit the exhibit in that format. The hearing officer normally will rule on such requests before the exhibit submittal deadline.

Each party must submit to the AHO the exhibits and exhibit indices for this hearing before the deadline specified in the Hearing Notice. The AHO may treat a party's failure to submit exhibits before this deadline as a waiver of the party's right to submit exhibits for the hearing and a waiver of the party's status as a party.

- a. Parties submitting exhibits based on complex technical analyses also must submit sufficient information so that a qualified independent expert could reproduce the results.

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.

- b. Consistent with California Code of Regulations, title 23, section 648.3, the hearing officer has discretion to decide whether to receive into evidence by reference any relevant, otherwise admissible, public records of the State Water Board and any documents or other evidence that a public agency has prepared or published, provided that the original or a copy was in the possession of the State Water Board before the hearing officer issued this notice. A party offering such an exhibit by reference shall advise the other parties and the AHO of the title of the document, the particular portions of the document, including page and paragraph numbers, that the party will ask the hearing officer to consider, the purpose for which the party will use the portions of the exhibit if it is accepted into evidence, and the specific file folder or other exact location in the State Water Board's files where the document may be found.
 - c. The hearing officer normally will exclude exhibits that rely on unpublished technical documents unless the hearing office has admitted unpublished technical documents into evidence.
 - d. Parties submitting large-format exhibits such as maps, charts, and other graphics shall provide the originals for the hearing record in a form that can be folded to 8 ½ x 11 inches. Parties also shall file, for the hearing record, a reduced copy of a large-format original exhibit. The hearing officer will determine whether the large-format version or the reduced copy, or both, will be admitted into evidence.
- 8. SUBMISSIONS OF DOCUMENTS:** To expedite the exchange of documents, reduce paper use, and lower the cost of participating in the hearing, all participants must submit hearing documents by uploading them to the FTP site in electronic form (in addition to two paper copies) unless the hearing officer authorizes submission of exhibits in different formats.

The FTP site may be accessed at <https://ftp.waterboards.ca.gov/>. All parties may use the shared account on this site to access and download documents in the administrative record for this hearing. This shared account is referred to in this notice as the "AHO-FTP download folders". The AHO will provide each party a unique account to upload the party's documents for this hearing. These accounts are referred to in this hearing notice as the parties' "upload accounts".

a. AHO-FTP Download Folders:

To access the AHO-FTP download folders, please submit an email request to the AHO at AdminHrgOffice@Waterboards.ca.gov with "Request for AHO-FTP download password" in the subject line. After receiving such an e-mail request, AHO staff will provide a username and password to the requester for access to

the AHO-FTP download folders. It is not necessary to include other parties in the cc line for these email requests.

Anyone may download documents from the AHO-FTP download folders at any time. The AHO will create a folder for each proceeding that contains all documents related to that hearing and may contain subfolders for background documents and hearing documents. Only AHO personnel may upload files to these folders. The AHO will post exhibits, exhibit indices and closing briefs to these folders promptly after each filing deadline. The AHO may add other documents to the administrative record during this proceeding (including recordings of hearings) by posting them to these folders. The documents in these folders will be the AHO's administrative record for this proceeding.

If any party believes that the AHO should add or remove any documents in these folders, then the party may file a request to the hearing officer for such action, and shall transmit copies of the request to all other parties on the service list. The hearing officer will issue rulings or take other actions on such requests as the hearing officer deems appropriate.

b. Upload Folders:

The AHO will provide a separate upload account for each party that files an NOI to appear as a party for this hearing so that the party may upload the party's exhibits and other documents to the FTP site. In most cases, these accounts will be specific for each party and each hearing and the AHO will close the accounts after the hearing and related proceedings have been completed.

Any party to this proceeding may upload documents for this proceeding (primarily exhibits and exhibit identification indices) using the party's upload account. Only the party may upload files to the party's folder, and only the AHO may view, transfer and download files from this folder. After the applicable filing deadline, AHO staff will move documents uploaded by each party to the party's upload account folder to the administrative record in the AHO-FTP download folder for the proceeding, so all other parties may view and download the documents.

Each party shall upload its exhibits and exhibit identification index to the FTP site before the exhibit filing deadline specified in this notice. A party that uploads hearing documents to the FTP site does not need to serve copies of the documents on the other parties, except that, if another party has not agreed to accept electronic service of documents, then the party uploading hearing documents to the FTP site also shall serve paper copies of all such documents on that other party and shall file a proof of this service with the AHO. When a party has uploaded all of the party's exhibits to the FTP site, the party or party's representative shall send an email the AHO at AdminHrgOffice@Waterboards.ca.gov, with copies to the other parties on the service list, notifying the AHO that the party has uploaded the documents.

Each party also shall mail or hand-deliver two paper copies of its exhibits and exhibit identification index to one of the AHO's two addresses listed below, with a proof of service of these paper copies. A party may provide this proof of service of these paper copies by sending an e-mail or letter to the AHO, with the transmittal of copies of the e-mail or letter to the other parties shown in the e-mail "cc" (carbon copy) list or the cc portion of the letter. The party shall make this mailing of the paper copies of the party's exhibits by the exhibit filing deadline, but the AHO does not need to receive the mailed paper copies of the exhibits by this deadline.

After the exhibit filing deadline, the AHO will move all filed exhibits and exhibit identification indices from the parties' upload folders to the administrative record folder for that hearing and advise the parties that these documents are available for download. The AHO may rename or renumber exhibits that do not have proper exhibit names or numbers. If the AHO does this, then the AHO may create an electronic folder of documents that the party has submitted, and a separate electronic folder of any documents the AHO has renamed or renumbered, in the administrative record folder.

If a party cannot upload exhibits to FTP site, then the party may mail paper copies of its exhibits to the AHO at:

State Water Resources Control Board
Administrative Hearings Office, Mail Stop 2-C
P. O. Box 100
Sacramento, CA 95812-0100

Alternatively, a party may send paper copies of its exhibits to the AHO by overnight delivery to:

Joe Serna Jr. CalEPA Building
State Water Resources Control Board
Administrative Hearings Office, Mail Stop 2-C
1001 I Street, 2nd Floor
Sacramento, CA 95814

If a party uses either of these alternative means of filing paper copies of its exhibits with the AHO in lieu of electronically filing the exhibits, then the party shall complete the filing of the paper copies by the exhibit filing deadline specified in this notice.

- 9. PRE-HEARING CONFERENCE:** The hearing officer will conduct a pre-hearing conference before the hearing to discuss the pre-hearing and hearing schedules, time limits for summaries of testimony, opening statements and policy statements, rebuttal evidence, and any other appropriate procedural issues. This notice states the date and time of the pre-hearing conference. The hearing officer may issue notices of subsequent pre-hearing conferences. The hearing officer may issue a pre-hearing conference order after each pre-hearing conference.
- 10. ORDER OF PROCEEDING:** The hearing officer will follow the order of proceedings specified in California Code of Regulations, title 23, section 648.5, unless the hearing officer decides to modify the order of proceeding before or during the hearing. The hearing officer will set time limits for each element of the proceeding specified below before or during the hearing.
- a. **Policy Statements:** The hearing officer will allow interested persons to present policy statements at the start of the hearing before the presentations of cases-in-chief. Oral policy statements and oral summaries of written policy statements will be limited to 5 minutes.
- b. **Presentation of Cases-In-Chief:** Each party that so indicates in its Notice of Intent to Appear may present a case-in-chief addressing the key issues in the hearing notice. Each case-in-chief will consist of an opening statement, if the party decides to make one, and oral summaries of the witnesses' written testimony. The hearing officer then will allow other parties to cross-examine the witnesses who have presented written testimony or oral summaries of their written testimony. The hearing officer may allow re-direct examination and re-cross examination. The hearing officer will decide whether to accept the party's exhibits into evidence upon a request or motion by the party after completion of all examination of the party's witnesses. Unless otherwise specified, documents such as written testimony, motions, written comments, and briefs shall be submitted to the AHO on pleading paper (with each line numbered in the left margin) using 12-point font and one-inch margins. If pleading paper is not available, the documents described above shall be double-spaced. For either format, the party shall sequentially number the paragraphs in the written testimony.
- i. **Opening Statements:** At the beginning of each party's case-in-chief, the party or the party's attorney or other representative may make an opening statement that briefly and concisely states the objectives of the case-in-chief, the major points that the proposed evidence is intended to establish, and the relationship between the major points and the key issues. Oral opening statements will be limited to 5 minutes per party. A party may submit a written opening statement before the hearing or during the hearing before the party's case-in-chief and then, if desired, may provide an oral summary of the written opening statement. A party should include any policy-oriented statements in the party's opening statement.

- ii. **Oral Summaries of Written Testimony:** All witnesses presenting testimony shall appear at the hearing. Before testifying, all witnesses shall swear or affirm that the written and oral testimony they will present will be true and correct. A witness shall not read written testimony into the record. A witness provides his or her direct testimony when he or she confirms that a designated exhibit or exhibits is or are his or her written testimony. The hearing officer initially will allow BlueTriton Brands, Inc. and the Prosecution Team 60 minutes each, and all other parties 30 minutes each, for their witnesses to summarize their written proposed testimony. The hearing officer may allow parties additional time for their witnesses to provide oral summaries of their written proposed testimony. The parties may discuss the need for additional time for such summaries during the pre-hearing conference or during the party's presentation of the party's witnesses.
 - iii. **Cross-Examination:** The hearing officer will permit other parties to cross-examine a party's witnesses on the witnesses' written submittals, oral summaries and clarifying testimony, and other relevant matters not covered in the direct testimony. (Gov. Code, § 11513, subd. (b).) If a party presents multiple witnesses, the hearing officer will decide whether the party's witnesses will be cross-examined individually or as a panel or panels. The hearing officer may allow additional time for cross-examination if the cross-examining party demonstrates in an offer of proof good cause to take additional time for cross-examination. Ordinarily, only a party or the party's representative will be permitted to cross-examine a witness, but the hearing officer may allow a party to designate a person technically qualified in the subject being considered to cross-examine a witness.
 - iv. **Re-Direct and Re-Cross Examination:** The hearing officer may allow re-direct and re-cross examination of each party's witnesses. Any allowed re-direct examination and re-cross examination may not exceed the scope of the cross-examination and the re-direct examination, respectively. The hearing officer may establish time limits for any permitted re-direct and re-cross examination.
 - v. **Questions by Hearing Officer:** Consistent with California Code of Regulations, title 23, section 648.5, subdivision (b), the hearing officer may ask any witness questions and may cross-examine any witness at any time.
- c. **Rebuttal:** After all parties have presented their cases-in-chief and their witnesses have been cross-examined, the hearing officer may allow parties to present rebuttal evidence. Rebuttal evidence is new evidence used to rebut evidence another party has presented in its case-in-chief.

Unless the hearing officer orders otherwise, parties do not need to submit rebuttal testimony or exhibits before the hearing. The hearing officer may set a schedule for submittal of written rebuttal testimony or exhibits before the hearing or after the parties have presented their cases-in-chief. The hearing officer may require written rebuttal testimony to specify the previously submitted testimony that is being rebutted. Cross-examination of witnesses offering rebuttal evidence normally will be limited to the scope of the rebuttal evidence.

- d. **Closing Briefs:** The hearing officer will set a schedule for the parties to file written closing briefs. The parties shall follow the procedures described above for uploading exhibits to the FTP site when they upload their closing briefs and shall file two paper copies with the AHO. Each party shall mail a paper copy of its closing brief to any party that has not agreed to accept electronic service of documents and shall indicate this service in a proof of service filed with the AHO. No party may attach any documents of an evidentiary nature to the party's closing brief unless the hearing officer already has admitted the document into evidence, or the document is the subject of an offer of proof made during the hearing. After the deadline for filing closing briefs, the AHO will post all closing briefs to the administrative record folder for this matter on the Board's FTP site.

11. RULES OF EVIDENCE: Government Code section 11513 shall apply to all evidence offered during the hearing. Consistent with Government Code section 11513, subdivision (d), a party may use hearsay evidence to supplement or explain other evidence, but over timely objection such evidence will not be sufficient by itself to support a finding unless the evidence would be admissible over objection in a civil action.

12. TELECONFERENCE HEARING: Due to the on-going COVID-19 pandemic and the associated closure of the Joe Serna Jr. CalEPA Building to the public, the AHO currently is conducting all hearings and conferences by Zoom teleconference. The AHO may continue to conduct some or all of its hearings by Zoom teleconference after this pandemic and associated closure end. The hearing notice specifies the method by which this hearing will be conducted.

Before the hearing, the AHO will provide a Zoom meeting link for people who want to participate in the hearing or pre-hearing conference to all parties and interested persons who have filed NOIs. To facilitate a clear understanding of who is speaking, the hearing officer will ask each person to identify himself or herself as necessary during the teleconference hearing. The hearing officer prefers that parties participate by both audio and video through the Zoom meeting link. If this is not possible, then the hearing officer will accept audio-only participations.

The AHO will not order a court reporter for videoconference pre-hearing conferences or hearings. Any interested party may order a court reporter at the party's own expense. The AHO will record the teleconference pre-hearing conference and hearing and will post an audio-plus-video file and a Zoom-generated transcript of the hearing on the FTP site as part of the administrative record for this matter.

Parties should test their devices' video and audio functions before the start of the hearing or pre-hearing conference. At the lower left-hand side of the Zoom window is a microphone and a video camera symbol. If there is a red line across the symbols, your microphone is on mute and video camera is off.

Please plan to call into the video conference at least 10 minutes before the scheduled hearing or pre-hearing conference time to ensure you can resolve any technical issues before the hearing or pre-hearing conference begins. You will initially be in a virtual waiting room and will be admitted to the hearing by a member of the AHO office. When you speak, please turn your video on and unmute your microphone by clicking on the symbols in the lower left-hand side of the Zoom window. During the hearing, please be respectful and patient, raising your hand on-screen to get the hearing officer's attention. To reduce acoustic background noise, please remain on mute if you are not speaking. If you have other devices that are tuned into the meeting, please turn off the speaker volume of those devices. Other participants will be able to see your name, depending on your Zoom account settings. Other participants may also see the last three digits of your phone number unless you have called in anonymously. During the hearing, AHO staff may add designations of participants' names to the Zoom display.

If the device you are using freezes, please notify staff at AdminHrgOffice@Waterboards.ca.gov or by calling (916) 341-6940 and leaving a voicemail message and restart the device. AHO staff will be monitoring the e-mail inbox and voicemail and will notify the hearing officer. If restarting the device does not work, try calling into the hearing using the phone number provided to you with the Zoom meeting information.

In lieu of participating in the Zoom hearing, anyone may watch past or present AHO hearings by clicking "Watch AHO Hearings" on https://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office. People watching AHO hearings by this method will not be able to participate in the hearing and will not be identified to anyone else.

July 8, 2021
Date

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

Enclosures:

- Notice of Intent to Appear form
- Sample Exhibit Identification Index form
- Service List

NOTICE OF INTENT TO APPEAR FORM

(Name of Participant or Party) _____ plans to participate in the water right hearing regarding the BlueTriton Public Hearing,

Scheduled to begin on September 21, 2021

1) Check only one of the following boxes:

- Option 1:** I/we intend to present a policy statement only and, therefore, not to participate as a party in this hearing.
- Option 2:** I/we intend to participate as a party by presenting any of the following: an opening statement, direct testimony, cross-examination or rebuttal, and intend to participate as a party in this hearing.

2) If you selected Option 2 above and intend to provide direct testimony, complete the witness table below. If not, skip to item 3 below.

Witness Name	Expert Witness?		Subject of Proposed Testimony	Estimated Length of Oral Direct Testimony (minutes)
	Yes	No		
	<input type="checkbox"/>	<input type="checkbox"/>		
	<input type="checkbox"/>	<input type="checkbox"/>		
	<input type="checkbox"/>	<input type="checkbox"/>		
	<input type="checkbox"/>	<input type="checkbox"/>		
	<input type="checkbox"/>	<input type="checkbox"/>		
	<input type="checkbox"/>	<input type="checkbox"/>		
	<input type="checkbox"/>	<input type="checkbox"/>		

(If more space is required, please add additional pages.)

3) Fill in the following information of the participant, party, attorney, or other representative:

Name (type or print):

Represented party (if applicable):

Mailing Address:

Telephone Number:

E-mail Address:

Optional:

I/we decline electronic service of hearing-related materials.

Signature: _____

Date: _____

SERVICE LIST

By U.S. mail:

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General Manager
San Bernardino Valley MWD
380 East Vanderbilt Way
San Bernardino, CA 92408

Dennis McCoy
10141 Samoa Avenue Unit #25
Tujunga, CA 91042

Laszlo Zoltan
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San Diego, CA 92127

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