

State Water Resources Control Board

PRE-HEARING CONFERENCE ORDER

The State Water Resources Control Board
Administrative Hearings Office (“AHO”)
held a pre-hearing conference on October 19, 2022
in the AHO proceeding
on the issues the court has referred
to the Board pursuant to Water Code section 2000 in

City of Marina v. RMC Lonestar,
Monterey County Superior Court No. 20CV001387.

BACKGROUND

The purpose of this proceeding, background, hearing issues and pre-hearing and hearing processes are described in the May 6, 2022 Notice of Public Hearing and Pre-Hearing Conference issued by the State Water Resources Control Board (“State Water Board”) Administrative Hearings Office (“AHO”). The AHO held a second pre-hearing conference on October 19, 2022 to consider the topics listed on page 5 of the AHO’s June 1, 2022 Pre-Hearing Conference Order and Notice of Second Pre-Hearing Conference.

This order follows the second pre-hearing conference. Except as expressly stated in this order, all provisions of the May 6, 2022 hearing notice, the June 1, 2022 order and notice, and the September 2, 2022 order remain in effect.

AHO NOTICES

As I stated during the October 19 pre-hearing conference, Natalie Stork and Regina Graziano, engineering geologists in the State Water Board’s Office of Research, Planning and Performance (“ORPP”) will be members of the AHO hearing team for this proceeding. Ms. Stork previously testified as a witness for the Enforcement Team in the AHO’s proceeding on the draft cease and desist order issued by the State Water Board’s Division of Water Rights, Permitting and Enforcement Branch to Blue Triton Brands, Inc., successor by name change to Nestlé Waters North America, Inc.

Consistent with the rules and guidelines stated in *Morongo Band of Mission Indians v. State Water Resources Control Bd.* (2009) 45 Cal.4th 731 and other applicable legal authorities, Ms. Stork may work with AHO personnel in this proceeding, but neither she nor any of her colleagues within ORPP will have any communications or interactions

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

with any AHO personnel about anything regarding the AHO's BlueTriton Brands proceeding, and Ms. Stork and her colleagues will not have access to any AHO internal files or deliberative materials regarding the AHO's BlueTriton Brands proceeding.

As I also stated during the October 19 pre-hearing conference, I plan to retire as the AHO's presiding hearing officer in late 2022 or early 2023. I will continue to work part-time for the State Water Board in the AHO as necessary to complete proposed orders and reports in the proceedings in which I have been the AHO hearing officer, including this proceeding.

ORDER OF PROCEEDING; TIME LIMITS; GENERAL RULES

For the phase of this proceeding that will begin on October 26, the following order of proceeding, time limits and general rules will apply:

California-American Water Company ("Cal-Am"):

- Oral opening statement: 20 minutes.
- Witnesses' summaries of their written proposed direct and rebuttal testimony: 1 hour total for all witnesses
- Cross-examination of these witnesses by other parties' attorneys: 30 minutes total for RMC Pacific Materials ("RMC"); 2 hours total for Marina Coast Water District ("Marina Coast"), 2 hours total for City of Marina ("Marina")
- Questions by AHO hearing team
- Re-direct questions by Cal-Am attorney
- Offers of exhibits into evidence; objections; AHO hearing officer rulings

Marina Coast Water District

- Oral opening statement: 10 minutes (for this phase, with an additional 10 minutes for next phase).
- Witnesses' summaries of their written proposed direct and rebuttal testimony: 45 minutes total for all witnesses
- Cross-examination of these witnesses by other parties' attorneys: 30 minutes total for Marina; 2 hours total for Cal-Am, 30 minutes total for RMC Pacific Materials ("RMC").
- Questions by AHO hearing team
- Re-direct questions by Marina Coast attorney
- Offers of exhibits into evidence; objections; AHO hearing officer rulings

City of Marina

- Oral opening statement: 10 minutes (for this phase, with an additional 10 minutes for next phase).
- Witness's summary of his written proposed direct and rebuttal testimony: 30 minutes
- Cross-examination of this witness by other parties' attorneys: 15 minutes total for Marina Coast; 30 minutes total for Cal-Am, 30 minutes total for RMC Pacific Materials ("RMC").

- Questions by AHO hearing team
- Re-direct questions by City of Marina attorney
- Offers of exhibits into evidence; objections; AHO hearing officer rulings

General Rules

-Only one attorney may present each party's oral opening statement. That attorney may use slides as presentation aids. Any party wanting to use such presentation slides shall file them with the AHO on or before **Monday, October 24, at 1:00 pm**, by uploading them to the party's AHO-FTP folder and sending the AHO an e-mail, with cc's to everyone on the service list, advising the AHO of the upload. The party shall give the file with these slides an exhibit number, although I will not admit the slides into evidence.

-Except for good cause shown, only one attorney per party may cross-examine each witness. Different attorneys for the same party may cross-examine different witnesses in the same panel of witnesses, but the total time limits specified above shall apply to all cross-examination of witnesses on a panel by each party's attorneys.

-For good cause shown, I may extend the time limits for cross-examination, if I believe the party's initial cross-examination has been as efficient as possible and the party presents a legitimate proposal for the subjects and estimated times for additional cross-examination.

-Re-direct questions will be limited to topics covered during cross-examination or AHO hearing officer questions.

-Our normal schedule will be from 9:00 am to 5:00 pm each day, with 15-minute breaks in the morning and afternoon, and a lunch break from 11:45 am to 1:15 pm. I may modify this schedule each day as necessary for an efficient process.

DEPOSITION EXHIBITS AND TRANSCRIPTS; OTHER IMPEACHMENT EXHIBITS

-An attorney for Marina shall upload the exhibits that have been used as deposition exhibits in the depositions conducted in connection with this proceeding on or before **October 24, at 1:00 pm**, and send an e-mail to the AHO, with cc's to everyone else on the service list, advising the AHO of this upload. The AHO then will transfer the files of these exhibits to a separate folder in the AHO's folder for this proceeding on the State Water Board's FTP site. Any attorney then may ask the AHO to screen-share any of these exhibits during that attorney's cross-examination of other party's witnesses. As necessary, we will mark deposition exhibits used for this purpose as additional party exhibits and I will consider accepting them into evidence when considering the other exhibits of the witnesses.

-If any attorney wants to use a deposition transcript for impeachment purposes, then that attorney shall upload the deposition transcript on or before **October 25, at 1:00**

pm, and send an e-mail to the AHO, with cc's to everyone else on the service list, advising the AHO of this upload. The AHO then will transfer the files of these transcripts to a separate folder in the AHO's folder for this proceeding on the State Water Board's FTP site. Any attorney then may ask the AHO to screen-share any of these transcripts during that attorney's cross-examination of other party's witnesses. As necessary, we will mark such transcripts as additional party exhibits and I will consider accepting the parts of them that were discussed during the hearing into evidence when considering the other exhibits of the witnesses that testified during that part of the hearing.

-If any attorney wants to use any other documents for impeachment purposes, then that attorney shall upload files of those other documents as soon as practicable and advise the AHO, either by e-mail or during the hearing, of the upload. The attorney making the upload does not need to include the other parties on the cc line for this advice e-mail. The attorney then may ask the AHO to screen-share any of these files during that attorney's cross-examination of other party's witnesses. AHO staff will not copy these files to the download folder or make them available to other parties unless the attorney that uploaded to file advises the AHO that he or she plans to use the file during the hearing. As necessary, we will mark such files as additional party exhibits and I will consider them into evidence when considering the other exhibits of the witnesses that testified during that part of the hearing.

SITE VISIT

I am re-scheduling the site visit to **November 2, 2022, starting at 9:00 am**. I will circulate a notice of site visit, with proposed itinerary, before that date.

To provide for travel time to the site, I will not hold any hearing during the afternoon on November 1. If additional hearing days are necessary, I will re-start the hearings on November 3, at 9:00 am.

ADDITIONAL HEARING DAYS

In addition to the hearing days that already are scheduled for December 7-9 and 12-16, 2022, I am scheduling potential additional hearing days for **January 23-27, January 31, February 1 and March 13-17, 2023**. Please reserve these days on your calendars.

TESTIMONY OF IAN CROOKS

For the reasons I stated during the October 19 pre-hearing conference, I will not allow Ian Crooks to testify unless Cal-Am makes him available for deposition before October 26, 2022.

Oct. 21, 2022 _____
Date

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

Enclosure: Service List (copies of notice sent by e-mail only, to all listed e-mail addresses)

Service List
City of Marina v. RMC Lonestar Court Reference

Marina Pantchenko
Salinas Valley Basin Groundwater
Sustainability Agency
Office of County Counsel
168 West Alisal
3rd Floor
Salinas, CA 93901
Pantchenkoms@co.monterey.ca.us

Howard F. Wilkins III (Chip)
Christina L. Berglund
Kathryn A. Ramirez
Remy, Moose, Manley LLP
555 Capitol Mall
Suite 800
Sacramento, Ca 95814
cwilkins@rmmenvirolaw.com
cberglund@rmmenvirolaw.com
kramirez@rmmenvirolaw.com
*Attorneys for Marina Coast Water
District*

David L. Osias, Robert R. Moore,
Michael J. Betz, Kathryn Horning,
Alexander J. Doherty
Allen Matkins Leck Gamble Mallory
& Natsis LLP
Three Embarcadero Center
12th Floor
San Francisco, CA 94111
dosias@allenmatkins.com
rmoore@allenmatkins.com
mbetz@allenmatkins.com
Kathryn.Horning@amwater.com
adoherty@allenmatkins.com
*Attorneys for California-American Water
Company*

Robert E. Donlan
Ellison Schneider Harris & Donlan
2600 Capitol Avenue
Suite 400
Sacramento, CA 95816
red@eslawfirm.com
*Attorney for California-American Water
Company*

B. Tilden Kim
Richards, Watson & Gershon
350 South Grand Avenue
37th Floor
Los Angeles, CA 90071
tkim@rwglaw.com
Attorney for Marina Coast Water District

James L. Markman
Richards, Watson & Gershon
1 Civic Center Circle
P.O. Box 1059
Brea, CA 92822-1059
jmarkman@rwglaw.com
Attorney for Marina Coast Water District

Kyle H. Brochard
Richards, Watson & Gershon
350 South Grand Avenue
37th Floor
Los Angeles, CA 90071
kbrochard@rwglaw.com
Attorney for Marina Coast Water District

Ruth Stoner Muzzin
Friedman & Springwater LLP
350 Sansome Street
Suite 800
San Francisco, CA 94104
rmuzzin@friedmanspring.com
Attorney for Marina Coast Water District

James Neudecker
Jeffer, Mangels Butler & Mitchell LLP
Two Embarcadero Center
5th Floor
San Francisco, CA 94111
jneudecker@jmbm.com
*Attorney for RMC Pacific Materials LLC
d/b/a CEMEX*

Paul P. Spaulding, III, Larisa A.
Meisenheimer, Joseph V. Mauch,
Suzanne S. Orza, Chris Berggren
Shartsis Friese LLP
One Maritime Plaza, 18th Floor
San Francisco, CA 94111-3598
sspaulding@sflaw.com
lmeisenheimer@sflaw.com
jmauch@sflaw.com
sorza@sflaw.com
cberggren@sflaw.com
Attorneys for City of Marina

Andrew Sawyer
Tina Leahy
David Rose
1001 I Street 22nd Floor
Sacramento CA 95814
andy.sawyer@waterboards.ca.gov
Tina.Leahy@Waterboards.ca.gov
david.rose@waterboards.ca.gov
*Attorneys for State Water Resources
Control Board*

Tom Luster
Tom.Luster@coastal.ca.gov