
State Water Resources Control Board

NOTICE OF REQUEST FOR HEARING

The State Water Resources Control Board
Administrative Hearings Office
has received a request for hearing by

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

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

DRAFT CEASE-AND-DESIST ORDER

On April 23, 2021, Julé Rizzardo, Assistant Deputy Director for the Permitting and Enforcement Branch of the State Water Resources Control Board (“State Water Board” or “Board”) 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 alleges that Nestlé is making, and threatens to continue to make, unauthorized diversions of water from Strawberry Creek in San Bernardino County. 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 State Water Resources Control Board, Administrative Hearings Office (“AHO”) within 20 days of 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”), filed a request for hearing on the

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

matters and allegations in the Draft CDO Notice. This request for hearing states 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.” A copy of this request for hearing is attached to this notice as Attachment 1.

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 OFFICER AND HEARING TEAM; NOTICE OF PRE-HEARING CONFERENCE AND HEARING

A hearing officer from the State Water Board’s Administrative Hearings Office will preside over the hearing in this matter and related proceedings. Other members of the AHO may be present and assist the hearing officer throughout these proceedings.

The AHO will be issuing a notice of pre-hearing conference and hearing for these proceedings.

PROHIBITION ON EX PARTE COMMUNICATIONS

Parties and interested persons are prohibited from having any ex parte communications with any members of the AHO hearing team regarding these proceedings. (See Wat. Code, § 1110, subd. (c); Gov. Code, §§ 11430.10-11430.80.) For a discussion of ex parte communications regarding AHO hearing officers and staff, see the response to FAQ 18 of the AHO FAQs, which are posted at https://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office/docs/2021/2021_04_06_webpage_faq.pdf.

If any party or interested person wants to communicate with the AHO regarding a procedural or substantive issue related to these proceedings, the party or interested person shall make the communication in writing, shall serve all parties listed on the service list for this proceeding with copies of the communication, and include a proof of service demonstrating such service with the written communication to the AHO.

Any such communication shall be sent to the AHO by e-mail to:

AdminHrgOffice@waterboards.ca.gov, or by letter addressed to:

State Water Resources Control Board
Administrative Hearings Office
P.O. Box 100
Sacramento, CA 95814-0100

A party or interested person may provide the proof of service through a formal proof of service or by other verification. Until the AHO issues an updated service list for these proceedings, parties shall use the initial service list attached to this notice (Attachment 2). Transmittals of copies shall be by U.S. Mail to the people on this service list with listed mail addresses and by e-mail to the people on this service list with listed e-mail addresses.

Please do not attempt to communicate by telephone or in person with AHO staff or any AHO hearing team member regarding these proceedings, because other parties would not be able to participate in such communications. If oral communications with members of the AHO hearing team are necessary to discuss a procedural or substantive issue, 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.

INITIAL SERVICE LIST AND UPDATES; FUTURE AHO NOTICES

For this notice, the AHO is using attached initial service list, which was attached to the Division of Water Rights Draft CDO Notice and has been updated to include entries for BlueTriton's attorneys. The AHO requests that any person or party listed on the attached initial service list who has updated contact information provide the AHO with the updated contact information by e-mail at adminhrgoffice@waterboards.ca.gov, or by letter to the AHO mailing address listed above, on or before **June 4, 2021**. People and parties do not need to send copies of these e-mails or letters to the other people and parties on the initial service list.

After June 4, the AHO will prepare an updated initial service list and circulate it to the parties' representatives with the AHO's notice of pre-hearing conference and hearing. The notice of pre-hearing conference and hearing will contain instructions for filing Notices of Intent to Appear (NOIs) for the pre-hearing conference and hearing and a deadline for filing NOIs. After deadline for filing NOIs, the AHO will prepare an updated service list, which will list the persons and parties that have filed NOIs. The AHO will use that updated service list for transmitting subsequent notices in these proceedings.

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 notices and other documents regarding these proceedings on the AHO's internet webpage at https://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office/

Any interested person may sign up to receive all AHO notices by e-mail at https://www.waterboards.ca.gov/resources/email_subscriptions/swrcb_subscribe.html.

Date: May 21, 2021

SIGNATURE ON FILE

Alan B. Lilly, Presiding Hearing Officer

Attachments:

- Attachment 1 – BlueTriton Request for Hearing
- Attachment 2 – Initial Service List (copies sent by U.S. Mail to listed mailing addresses and by e-mail to listed e-mail addresses)

ATTACHMENT 1

BLUETRITON BRANDS, INC. REQUEST FOR HEARING

1 ELLISON SCHNEIDER HARRIS & DONLAN L.L.P.
2 Robert E. Donlan (State Bar No. 186185)
3 Christopher M. Sanders (State Bar No. 195990)
4 2600 Capitol Avenue, Suite 400
5 Sacramento, California 95816
6 Telephone: (916) 447-216
7 Email: red@eslawfirm.com
8 cms@eslawfirm.com

9 Rita P. Maguire, Attorney at Law, PLLC
10 P.O. Box 60702
11 Phoenix, Arizona 85082
12 Email: rmaguire@azwaterlaw.com

13 *Attorneys for Respondent BlueTriton Brands, Inc.*

14 **STATE WATER RESOURCES CONTROL BOARD**

15 State Water Resources Control Board,
16 Division of Water Rights

17 Prosecution,

18 vs.

19 BlueTriton Brands, Inc.

20 Respondent.

VV: INV 8217

**REQUEST FOR HEARING
REGARDING NOTICE OF
REVISED REPORT OF
INVESTIGATION AND DRAFT
CEASE AND DESIST ORDER FOR
ALLEGED UNAUTHORIZED
DIVERSION FROM
STRAWBERRY CREEK, SAN
BERNARDINO COUNTY**

21 **TO ALL PARTIES AND TO THEIR RESPECTIVE COUNSEL OF RECORD:**
22 **PLEASE TAKE NOTICE** that, in response to the State Water Resources Control Board's
23 Division of Water Rights' *Notice of Revised Report of Investigation and Draft Cease and*
24 *Desist Order for Nestlé Waters North America, Inc. for Unauthorized Diversion and*
25 *Threatened Unauthorized Diversion from Strawberry Creek, San Bernardino County*, dated
26 April 23, 2021 (Notice), and pursuant to Water Code section 1831, *et seq.*, BlueTriton Brands,
27 Inc., successor by name change to Nestlé Waters North America Inc., hereby requests a hearing
28 on the matters and allegations contained within and enclosed with said Notice. BlueTriton
Brands, Inc. is the owner of the water rights and obligations subject to the Notice, and is
authorized to request a hearing in this matter. BlueTriton Brands, Inc. respectfully requests the

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1 Executive Director to commence the process for assignment of this matter to the State Water
2 Resources Control Board's Administrative Hearings Office, as provided in the Notice.

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4 Dated: May 11, 2021

ELLISON SCHNEIDER HARRIS & DONLAN LLP

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6 By Robert E. Donlan

7 Robert E. Donlan

8 Attorneys for Respondent BlueTriton Brands, Inc.
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1 **PROOF OF SERVICE**

2 I, Patty Slomski, declare that:

3 I am employed in the County of Sacramento, State of California. I am over the age of eighteen
4 and am not a party to the within action. My business address is ELLISON SCHNEIDER
5 HARRIS & DONLAN LLP; 2600 Capitol Avenue, Suite 400; Sacramento, California, 95816.

6 On May 11, 2021, I delivered the foregoing document described as:

7 **REQUEST FOR HEARING REGARDING NOTICE OF REVISED REPORT OF**
8 **INVESTIGATION AND DRAFT CEASE AND DESIST ORDER FOR ALLEGED**
9 **UNAUTHORIZED DIVERSION FROM STRAWBERRY CREEK, SAN BERNARDINO**
10 **COUNTY**

11 by placing it in two sealed envelopes for collection and next day delivery via overnight courier,
12 addressed to:

13 Administrative Hearings Office
14 State Water Resources Control Board
15 1001 I Street
16 Sacramento, CA 95814


17 Ms. Julé Rizzardo
18 Assistant Deputy Director, Division of Water Rights
19 State Water Resources Control Board
20 1001 I Street
21 Sacramento, CA 95814

22 and by sending it via electronic transmission to the following email addresses:

23 EXEC-AdminHrgOffice@Waterboards.ca.gov

24 Jule.Rizzardo@waterboards.ca.gov

25 I declare under penalty of perjury under the laws of the State of California the foregoing is true
26 and correct and that this declaration was executed May 11, 2021 at Sacramento, California.

27 
28 _____

ATTACHMENT 2
INITIAL SERVICE LIST

By U.S. mail:

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

Ellen Shaw
Acting Forest Supervisor
San Bernardino National Forest
602 S. Tippecanoe Ave.
San Bernardino, CA 92408

Kay Wiand
Deputy Forest Supervisor
San Bernardino National Forest
602 S. Tippecanoe Ave.
San Bernardino, CA 92408

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

Laszlo Zoltan
11409 West Bernardo Court
San Diego, CA 92127

By U.S. mail and e-mail:

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