

State Water Resources Control Board

PRE-HEARING CONFERENCE ORDER AND NOTICE OF SECOND PRE-HEARING CONFERENCE

The State Water Resources Control Board
Administrative Hearings Office (“AHO”)
held a pre-hearing conference 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.

**The AHO will hold a Second Pre-Hearing Conference
on October 12, 2022, beginning at 9:00 a.m.**

The Second Pre-Hearing Conference will be held by Zoom teleconference.

Any interested party may participate in the Zoom teleconference
of the Second Pre-Hearing Conference by using this link:

[https://waterboards.zoom.us/j/95899889673?pwd=R2lwclZjS2xwdWVRaXg3ZlhtW
Xg4UT09](https://waterboards.zoom.us/j/95899889673?pwd=R2lwclZjS2xwdWVRaXg3ZlhtW
Xg4UT09) with Meeting ID: 958 9988 9673 and Passcode: 561435

or by calling in at: +16699009128,,95899889673#,,,,*561435# US (San Jose)

Any interested member of the public who would like to watch the Second Pre-Hearing
Conference without participating may access the Administrative Hearings Office
YouTube channel at:

<https://www.youtube.com/channel/UCM-gmipRyd7Nw-g8l-C7Nig/videos?view=57>

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 the pre-hearing conference described in that notice on May 25, 2022. The AHO makes the following changes to the May 6, 2022 hearing notice. Except as expressly stated in this order and notice, all provisions of the May 6, 2022 hearing notice remain in effect.

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

ADDITIONAL DOCUMENTS FROM COURT'S FILES

Marina Coast Water District shall upload pdf files of the three documents described on page 4, at lines 14-20, of MCWD's and City of Marina's May 16, 2022 Joint Pre-Hearing Conference Statement on or before **June 8, 2022, at 1:00 p.m.**

MOTIONS IN LIMINE AND RELATED ISSUES

Proposed Testimony of Dave Owen

On or before **June 8, 2022, at 1:00 p.m.**, California-American Water Company shall file a statement stating whether or not it still intends to call Dave Owen as a witness in this proceeding, and, if so, listing the specific topics on which it proposes to ask Mr. Owen to testify.

If any other party wants to file a motion in limine, asking the AHO to issue a ruling regarding Mr. Owen's proposed testimony, then it shall file that motion on or before **June 22, 2022, at 1:00 p.m.**

If California-American Water Company wants to file an opposition to any such motion in limine, then it shall file that opposition on or before **July 6, 2022, at 1:00 p.m.**

Motions in Limine Regarding Written Proposed Testimony

If any party wants to file a motion in limine, asking the AHO to issue a ruling regarding any witness's written proposed direct testimony or written proposed rebuttal testimony, then the party shall file such motion on or before **September 7, 2022, at 1:00 p.m.**

If any party wants to file any opposition to any such motion in limine, then the party shall file such opposition on or before **September 28, 2022, at 1:00 p.m.**

TECHNICAL MODELS AND COMPLEX TECHNICAL ANALYSES

On page 15 of the May 6, 2022 hearing notice, paragraph 7.a. states:

- 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.

Testimony regarding technical models may be central to several of the hearing issues in this proceeding, and it is likely that the parties will ask their expert witnesses to review and evaluate the testimony of other parties' expert witnesses regarding such models, including model assumptions and model input data files. Parties also may ask their expert witnesses to try to reproduce the modeling results prepared by other parties' expert witnesses.

For these reasons, any party that wants to submit any exhibits or written proposed testimony based on complex technical analyses, models or technical studies shall submit, either as part of a witness's written proposed testimony or as separate exhibits that are referenced in the appropriate witness's written proposed testimony, sufficient information so that a qualified independent expert could reproduce the results of the analyses, models or technical studies. This information shall include, at minimum, a description of the model and all modeling assumptions, and files containing the input data used for the model.

There may be logistical, licensing, and security issues associated with uploading complete modeling programs to the State Water Board's FTP site. For this reason, I am not requiring parties to submit modeling programs or related software packages as exhibits. However, any party that submits testimony that relies on complex modeling shall make the modeling program and associated software available to other parties within seven days of the other parties' request.

If any parties have any disagreements or logistical issues regarding making modeling programs and associated software available to other parties, then the parties shall promptly meet and confer to try to resolve their disagreements or logistical issues. If the parties cannot resolve their disagreements or logistical issues, then any party may file a motion in limine regarding these disagreements or logistical issues. Any party filing such a motion shall file it within 14 days after the deadline for filing the written proposed testimony or other exhibits that describe the modeling work. Any other party may file an opposition within 14 days after the motion is filed. (These deadlines, which concern only motions in limine regarding requested exchanges of modeling programs and associated software, are separate from the deadlines for motions in limine regarding witnesses' written proposed testimony, which are listed in the following table.)

As a part of, or separate from, this motion in limine process, I may direct parties to submit additional exhibits regarding their modeling programs.

If any party believes that there are any logistical limitations on uploading the necessary exhibit files, then the party's representative shall send me an e-mail (with copies to everyone else on the service list) describing the logistical limitations and a proposed method to address them.

As discussed in paragraph 7.e. on page 16 of the May 6, 2022 hearing notice, parties normally must submit all exhibits in pdf format, except that spreadsheets may be

submitted in Microsoft Excel format. This exception allows parties to submit model input data files and other modeling files in Excel format.

As discussed in paragraph 7.f. on page 16 of the May 6, 2022 hearing notice, if any party wants to submit an exhibit in any other format, then the party shall submit a written request to me, and serve copies 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. If appropriate, I will ask other parties to respond to such requests before I rule on them. If possible, I will rule on such requests before the applicable exhibit submittal deadline.

SUMMARY SLIDES

Each party shall file, on or before the deadline specified in the following table, slides for the party's witnesses to use when summarizing their testimony. Witnesses that have prepared both written proposed direct testimony and written proposed rebuttal testimony shall prepare a separate set of slides for each written proposed testimony. Each witness's summary slides shall include only summaries of topics covered in that witness's written proposed testimony. The summary slides shall not include any topics that are not covered in the witness's written proposed testimony.

Each party shall use a separate exhibit number for each set of summary slides.

HEARING BRIEFS

Each party shall file a hearing brief on or before the deadline listed in the following table. Each brief shall separately discuss each of the hearing issues listed on pages 3-4 of the May 6, 2022 notice. Each brief shall be no longer than 20 pages, double-spaced.

SITE VISIT

The parties' representatives shall meet and confer and develop a proposed itinerary and schedule for the AHO's site visit for this proceeding. The parties shall file this proposed itinerary and schedule (including lists of any disagreements regarding it) by the deadline listed in the following table. I am tentatively scheduling the site visit for the date listed in the following table.

DEPOSITIONS

Any deposition of any witness for whom written proposed direct testimony or written proposed rebuttal testimony has been filed shall not exceed seven hours.

If any party wants to file any motion regarding any dispute the parties cannot resolve regarding these depositions, including any disputes regarding payment of expert witness fees, then the party shall file such motion with the court, and not with the AHO.

SUBMITTALS OF DOCUMENTS TO AHO AND OTHER PARTIES

Parties shall file all documents described in this order and notice by uploading them to the parties' Upload Folders described on page 17 of the May 6, 2022 hearing notice, and shall transmit one paper copy of each such document to the AHO using one of the methods described on page 18 of the May 6, 2022 hearing notice. Whenever any party uploads any document or documents to the party's Upload Folder, the party shall send an e-mail to the AHO e-mail address, with copies to everyone else on the e-mail service list for this proceeding, describing the document or documents the party uploaded. AHO staff then will transfer the uploaded files to the AHO-FTP Download Folder and advise everyone on the e-mail service list that it has done this.

SECOND PRE-HEARING CONFERENCE TOPICS

During the Second Pre-Hearing Conference, I will discuss with the parties: (a) appropriate time limits for oral opening statements, witnesses' summaries of their written proposed testimony, and cross-examination, (b) the itinerary and schedule for the site visit; (c) requests for witnesses to respond to new points made in other witnesses' written proposed rebuttal testimony, and a process and schedule for such responses; and (d) any other issues raised by the parties in their second pre-hearing conference statements or during the second pre-hearing conference

PRE-HEARING AND HEARING SCHEDULE AND DEADLINES

The pre-hearing and hearing schedule and deadlines listed in the May 6, 2022 notice are amended to the dates stated in the following table.

Deadline / Schedule	Date and Time
Deadline for all parties to file written proposed direct testimony, associated exhibits, and exhibit identification indices with AHO, except for written proposed testimony and associated exhibits for Timothy Durbin	July 1, 2022, 1:00 p.m.
Deadline for California-American Water Company to file written proposed direct testimony of Timothy Durbin and associated exhibits	July 15, 2022, 1:00 p.m.
Deadline for all parties to file written proposed rebuttal testimony, associated exhibits, and exhibit identification indices with AHO	Aug. 17, 2022, 1:00 p.m.
Dates for depositions of witnesses for whom parties have submitted written proposed testimony	Aug. 24 through Sept. 30, 2022
Deadline for parties to file slides summarizing their witnesses' written proposed direct testimony and rebuttal testimony	Sept. 7, 2022, 1:00 p.m.
Deadline for parties to file motions in limine regarding other parties' written proposed direct testimony or rebuttal testimony	Sept. 7, 2022, 1:00 p.m.
Deadline for parties to file stipulations regarding authenticity, admissibility or use of public records.	Sept. 28, 2022, 1:00 p.m.
Deadline for parties to file oppositions to motions in limine	Sept. 28, 2022, 1:00 p.m.
Deadline for parties to file Hearing Briefs	Oct. 5, 2022, 1:00 p.m.
Deadline for parties to file proposed Site Visit itinerary and schedule	Oct. 5, 2022, 1:00 p.m.
Deadline for parties to file optional statements for second pre-hearing conference	Oct. 5, 2022, 1:00 p.m.
Second pre-hearing conference	Oct. 12, 2022, 9:00 a.m.
Hearing begins	Oct. 19, 2022, 9:00 a.m.
Additional hearing days (if necessary)	Oct. 20-21, 24-28, and 31, and Nov. 1-4, 2022, beginning each day at 9:00 a.m.
Site visit (tentative date)	Oct. 28, 2022
Deadline for all parties to file written closing briefs	Dec. 19, 2022, 1:00 p.m.

June 1, 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)
Remy, Moose, Manley LLP
555 Capitol Mall
Suite 800
Sacramento, Ca 95814
cwilkins@rmmenvirolaw.com
Attorney for Marina Coast Water District

David L. Osias, Robert R. Moore
Michael J. Betz
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
*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
Shartsis Friese LLP
One Maritime Plaza, 18th Floor
San Francisco, CA 94111-3598
sspaulding@sflaw.com
lmeisenheimer@sflaw.com
jmauch@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*

Perla Conder
Clerk of the Court, Department 15
Monterey County Courts
1200 Aguajito Road
Monterey, CA 93940
Perla.Conder@monterey.courts.ca.gov