
Lahontan Regional Water Quality Control Board

November 20, 2012

Scott R. Lane, Esq.
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725 South Figueroa Street, Suite 3200
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Dear Mr. Lane,

The Advisory Team received your letter of November 15, 2012. I wanted to address your objections and requests as soon as possible so that we can continue to move forward.

First, I am willing to hold a pre-hearing conference after the Thanksgiving holiday, but in the meantime, would encourage as a first step that you contact the Prosecution Team to begin settlement negotiations. I believe that such a step would be more fruitful, and would preserve any confidentiality afforded during settlement negotiations. Discussions with the Water Board's advisors and the Prosecution Team would not be considered confidential settlement negotiations.

Second, I am partially approving your request for additional time to present your case. I am willing to extend the time for you and the Prosecution Team to present their cases to 90 minutes each. In addition to your 90 minutes, you will have time to respond to Water Board member questions; none of that time for responses to Water Board member questions counts against your allotted time. With Water Board questions, I anticipate that this hearing would likely last about 4 hours, and from our experience that is sufficient for parties to present their case. Although the Administrative Civil Liability Complaint is roughly 50 pages and the proposed liability amount may be substantial, the factual and legal issues are not any more complex than what the Water Board generally handles during hearings. Nonetheless, if you would like to present to me additional information of why you believe that the issues and facts of this case necessitate six times the amount of time usually allocated to a party, I am willing to consider that information.

Please note that the structure of an administrative hearing is much different than a courtroom trial, and in general is much less time-intensive. Unlike a court hearing where you are limited to direct or cross-examination, here your witnesses are able to directly address the Water Board. Similarly, because you submit all of your evidence in advance of the hearing, and because the Water Board is somewhat familiar with the arguments and the evidence by the time of the hearing, the parties generally use the hearing to summarize their arguments, as opposed to walking through their case and submitting each piece of evidence. Similarly, evidentiary objections should be handled in advance of the hearing. I am hoping that with this better understanding of the Water Board administrative hearings, you will agree that six hours to put on your hearing is unnecessary. If at the hearing you run out of time, you could request the Board Chair for additional time.

As to your second and third objections, **I am denying that request for additional time to prepare your case and a later hearing date.** You reference having only “a mere three weeks” to prepare, which is inconsistent with the hearing procedures. Currently, you are not required to submit evidence, including all of your legal and technical arguments or analysis, until December 21, which is five weeks away. Although you will not obtain the Prosecution Team’s evidence until December 3, you already have the basis of their complaint – all of their technical and legal arguments. The only thing that you do not have are some of the specific documents referenced. It is very likely, however, that your client already has much of this same information. Five weeks to prepare your case for the Board is sufficient.

As to your fourth objection, **I am clarifying that 648.5 and 648.5.1 apply to the hearing.** Section 648.5 sets out the order of proceeding that will generally be followed, and allows cross-examination, and section 648.5.1 specifies that the proceeding will be conducted in accordance with the provisions and rules set forth in Government Code 11513, and allows hearsay evidence subject to that provision. **I am denying your request for the inclusion of sections 648(b).** I am not clear what you are asking for. If there are requirements and processes that you want to request be included as part of the hearing procedures, I will consider your specific requests.

As to your fifth objection, **you do have the ability to request the Board to issue a subpoena or subpoenas *duces tecum* for attendance at a proceeding and for production of documents, or you may, as the attorney of record for a party, issue the subpoena.** Pursuant to section 11450.40, your client would be responsible for mileage and fees.

As to your sixth objection, **to the extent that you are requesting that this dispute be sent to ADR at this time, I am denying that request.** If, however, you believe that settlement is possible, I encourage you to contact the Prosecution Team and engage in settlement negotiations. If settlement is not possible, then the Water Board intends to hear this matter at its January Board meeting. I would consider future request for ADR if you are able to identify specific reasons why ADR would be more appropriate for this particular dispute.



PATTY Z. KOUYOUMDJIAN
Executive Officer

c/ec: Kimberly Niemeyer, Staff Counsel, State Water Resources Control Board
Lauri Kemper, AEO, Lahontan Regional Water Quality Control Board
Anna Kathryn Benedict, Staff Counsel, State Water Resources Control Board
Bill Moller, Arimol Group, Inc.
Interested Persons

Enclosure (3): Arimol’s Objections to Hearing Procedures
Arimol’s Request for Pre-Hearing Conference
Arimol’s Request for ADR or Settlement Conference

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November 15, 2012

OUR FILE NUMBER
16670

Via Email and Federal Express

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**RE: In the Matter of Arimol Group, Inc., San Bernardino County
WDID Nos. 6B36CN601729 and 6B36C363433
Administrative Civil Liability Complaint No. R6V-2012-00049**

OBJECTIONS TO HEARING PROCEDURES

TO THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, LAHONTAN
REGION:

ARIMOL GROUP, INC. hereby objects to the Hearing Procedures, dated November 6, 2012:

1. Objection is made to the Hearing Procedures (page 5) to the extent they limit ARIMOL GROUP, INC. to a mere 45 minutes in order to "present evidence, cross-examine witnesses, and provide a closing statement" in response to the voluminous and highly detailed Administrative Civil Liability Complaint at issue in this proceeding. In view of the substantial monetary penalty sought by the Prosecution Team, the significant number of witnesses and documents anticipated to be presented at the

Arimol's Objections to Hearing Procedures
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hearing, and the complex factual and legal issues involved in this matter, ARIMOL GROUP, INC., will require additional time to properly present a full and complete defense to the charges, and respectfully contends and requests that 6 hours should be granted to ARIMOL GROUP, INC., to present its defense at the hearing of this matter.

2. Objection is made to the Hearing Procedures (pages 5 – 7) because they impose an expedited schedule requiring ARIMOL GROUP, INC., to procure, review, and analyze all evidence against it and then prepare its defense in the form of written evidence, exhibits, expert and percipient testimony, legal and technical arguments and analysis, in a mere three weeks. In contrast, the Prosecution Team has had the luxury of having months to prepare its case against ARIMOL GROUP, INC., and has no doubt had ample time to interview witnesses, retain experts, review documents, and frame the legal and factual issues in support of its prosecution. The extensive nature of the Prosecution Team's preparation is demonstrated by the detailed and fact-intensive 15 page single spaced Administrative Civil Liability Complaint, which included approximately 30 additional pages of attachments. In view of the substantial monetary penalty sought by the Prosecution Team, the significant number of witnesses and documents anticipated to be presented at the hearing, and the complex factual and legal issues involved in this matter, ARIMOL GROUP, INC., will require additional time to properly present a full and complete defense to the charges, and respectfully contends and requests that 60 days should be granted to ARIMOL GROUP, INC., to present its written submission in connection with this matter.

3. Objection is made to the Hearing Procedures setting hearing dates on January 16-17, 2013 as that date will not accommodate the request for additional time identified in the preceding paragraph of these objections.

4. Objection is made to the Hearing Procedures because they are vague and ambiguous and unclear as to whether the procedures set forth in California Code of Regulations, title 23, sections 648(b), 648.5 and 648.5.1 are included in the Hearing Procedures or not. ARIMOL GROUP, INC. requests and demands the inclusion of sections 648(b), 648.5 and 648.5.1 in the Hearing Procedures and objects to the Hearing Procedures, or interpretation thereof, which purports to exclude the aforementioned procedures as a violation of due process.

5. Objection is made to the failure to the Hearing Procedures to incorporate California Code of Regulations, title 23, section 649.6, regarding the issuance of subpoenas and subpoenas duces temum. In view of the substantial monetary penalty sought by the Prosecution Team, the significant number of factual witnesses (some of whom are members of the Prosecution Team) and documents anticipated to be presented at the hearing, ARIMOL GROUP, INC., requests the opportunity to subpoena witnesses and documents prior to the hearing of this matter.

6. Objection is made to the failure to the Hearing Procedures to incorporate California Code of Regulations, title 23, section 648.6, "Alternative Dispute Resolution." In view of the substantial monetary penalty sought by the Prosecution Team, the significant number of witnesses and documents anticipated to be presented at the hearing, as well as the availability of the administrative, judicial and appellate review process which could extend a final resolution of this matter for several more years, it would be a more efficient and equitable use of the parties' resources to resolve this matter through an

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alternative dispute resolution procedure such as mediation, settlement conference or non-binding arbitration.

7. ARIMOL GROUP, INC. asserts the right to have a court reporter at any hearings.

Respectfully submitted,

MONTELEONE & McCRORY, LLP

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Attorneys for Arimol Group, Inc.

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REQUEST FOR PRE-HEARING CONFERENCE

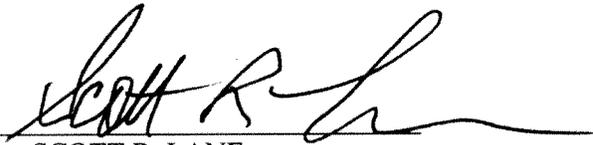
TO THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, LAHONTAN
REGION:

Pursuant to the Hearing Procedures, dated November 6, 2012, page 7, ARIMOL GROUP, INC., respectfully requests a pre-hearing conference be held before the hearing in accordance with Water Code section 13228.15 in order to address the matters described in Government Code section 11511.1. AMIROL GROUP, INC. requests the following issues be discussed at this conference: (1) exploration of settlement possibilities; (2) preparation of stipulations; (3) clarification of issues; (4) identifying and limiting the number of witnesses; (5) objections to proffers of evidence; (6) ordering the presentation of evidence and cross-examination; (7) rulings regarding the issuance of subpoenas; (8) scheduling the

submission of written briefs and schedules for the commencement and conduct of the hearing; (9) exchanging witness lists and exhibits or documents to be offered in evidence at the hearing; and (10) exploring the use of alternative dispute resolution mechanisms.

Respectfully submitted,

MONTELEONE & McCRORY, LLP

By: 

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REQUEST FOR ADR OR SETTLEMENT CONFERENCE

TO THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, LAHONTAN
REGION:

Pursuant to California Code of Regulations, title 23, section 648.6, "Alternative Dispute Resolution," ARIMOL GROUP, INC. hereby requests that this dispute be referred to mediation or nonbinding arbitration, with ARIMOL GROUP, INC.'s preference being mediation.

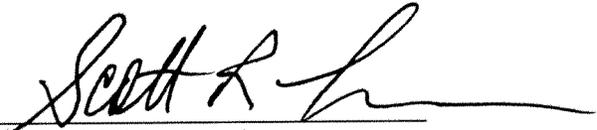
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Arimol's Request for Pre-Hearing Conference
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Alternatively, and separate and apart from the aforementioned provision, ARIMIOL GROUP, INC. requests the parties voluntarily agree to (1) a mediation before a neutral mediator or (2) a settlement conference/meeting without a neutral mediator, as per the preference of the Water Board.

Respectfully submitted

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