

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
)
Daniel J. Moulton, an individual, also) AWA Docket No. **19-0004**
known as Dan Moulton, doing business)
as Moulton Chinchilla Ranch,)
)
Respondent.)

Conditions Order UPDATES, to Monitor the Hearing

Appearances:

Rupa Chilukuri, Esq., and John V. Rodriguez, Esq., each with the Office of the General Counsel, United States Department of Agriculture, 1400 Independence Ave SW, Washington, DC 20250, for the Complainant. The Complainant is the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture (“APHIS” or Complainant); and

the Respondent Daniel J. Moulton, also known as Dan Moulton, representing himself.

1. My “Conditions Order, to Monitor the Hearing” was issued July 22, 2021 and remains in effect, as updated by this order.
2. The third week of the Hearing will be conducted by Zoom, using APHIS’s Zoom license. Each of the 3 non-party observers already granted access to the Hearing needs do nothing further; each will be emailed the Zoom connection information.
3. For the 2 non-parties who have not already agreed to the Conditions to monitor the Hearing, following, in paragraph 6, are the conditions that must be agreed to, to be granted access. These Conditions are relaxed only slightly from the July 22 “Conditions Order, to Monitor the Hearing”, because I consider these Conditions necessary to protect Hearing integrity and to prevent witness harassment, AND it would be unfair to have one set of restrictions for APHIS’s case in chief and a different set of restrictions for Mr. Moulton’s case in chief.
4. Each of the 3 non-party observers already granted access to the Hearing will of course be entitled to the slightly relaxed Conditions without doing anything further.
5. The updates to the Conditions to monitor the Hearing are (a) to allow **more than one person** to monitor from each entity for which a person has been granted access as a non-party observer; and (b) to address the **restrictions on non-party observers**

reporting evidence not already in the public domain prior to all evidence having been received.

6. Order: I order that the individuals identified in paragraph 3 will agree to the following conditions, to be granted access to the Hearing. These conditions persist through the conclusion of the Hearing (now scheduled to end September 24 [Fri], 2021, but likely to go longer).

- a. I agree that I am permitted to share the Zoom connection information with up to five individuals within my organization (not including myself), so that those individuals may also serve as non-party observers during the Hearing.
- b. I agree NOT to share the Zoom connection information with anyone outside of my organization.
- c. I agree NOT to share the Zoom connection information with anyone who does not agree to abide by the conditions set forth in this Order.
- d. I agree that it is my responsibility to obtain from my organization's non-party observers their agreement to the conditions set forth in this Order.
- e. I agree to use a handset or headset, NOT "speaker," if I am dialing into the Zoom Hearing by telephone.
- f. I agree to abide by the objective of the Exclusion Order filed July 22, 2021, by not disseminating evidence (except that which is already publicly available, as may be found on an APHIS website) before the conclusion of Respondent's case in chief, which is scheduled to begin during the next segment of Hearing on September 20, 2021. Evidence consists of testimony and exhibits.
- g. I agree that I am not given access to the exhibits. I may make a Freedom of Information Act (FOIA) request for exhibits that become part of the record (that is, exhibits that are admitted by the Judge OR rejected by the Judge), which will be summarized by the Judge after conclusion of the hearing. (*See* paragraph 7 regarding the lists of witnesses and exhibits.)
- h. I agree that monitoring the Hearing allows me to listen and to take notes but NOT TO RECORD OR BROADCAST. Recording is permitted only by the Court Reporter. Transcripts may be ordered by contacting the Court Reporter's company, Heritage Reporting Corporation. The Court Reporter will provide his company's contact information when the roll is called at the beginning of each day.
- i. I agree to identify myself when the roll is called, including my name, the organization I represent, that organization's main office city, state, and zip code, and an email address.
- j. I agree to keep my microphone on "mute" when I am not speaking, to keep background noise to a minimum.
- k. I agree that I am not permitted to question the witnesses. I am to be a silent observer, speaking only when called upon to speak.

1. I agree to use my discretion when I identify witnesses, mindful of preventing witness harassment.

This is an Order, for which good cause has been shown, that I call “Updated Conditions Order”.

7. As soon as possible following the close of Respondent’s case in chief, the Judge will prepare (1) an acknowledgement of the witnesses who testified and (2) an itemized list of exhibits that were either rejected or accepted into evidence and are therefore part of the record. Both documents will be distributed to the non-party observers who agreed to the Conditions Order, as well as the other Hearing participants.

8. Additional evidence will be taken after completion of Respondent’s case in chief. As stated in the August 16, 2021 Order (“2021 September 20 [Mon] Hearing Resumes”), the evidence that remains to be heard includes:

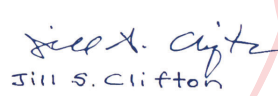
- a. The Respondent Dan Moulton’s Case in Chief;
- b. The Complainant APHIS’s Rebuttal, if any;
- c. Dan Moulton’s Surrebuttal, if any;
- d. [APHIS, with the burden of persuasion, goes first and last];
- e. APHIS’s requested and recommended ORDER for the Judge’s Decision and Order, which will likely include requested and recommended remedies/sanctions;
- f. Dan Moulton’s requested and recommended ORDER for the Judge’s Decision and Order; and
- g. Both parties are advised to include references to 7 U.S.C. § 2149(a) and (b); plus any applicable “inflation adjustments” to civil monetary penalties such as may be described in 7 C.F.R. § 3.91.

9. No additional access will be granted to the Hearing. Only the 3 non-party observers already granted access to the Hearing; plus the 2 non-parties who had not already agreed to the Conditions to monitor the Hearing (each of whom previously filed with the Hearing Clerk a request for access to the Hearing), will be emailed the Zoom connection information only IF the individual files with the Hearing Clerk, copying marilyn.kennedy@usda.gov and erin.hoagland@usda.gov to state agreement with the conditions in paragraph 6 of this Updated Conditions Order filed September 14, 2021.

10. Due to the corona virus pandemic and limited in-office staffing, filing via email with the Hearing Clerk at SM.OHA.HearingClerks@usda.gov is preferred. Or, use the FAX number for the Hearing Clerk, if you prefer. The Hearing Clerk receives FAXes sent to **1-844-325-6940** in an inbox on the computer, so coming into the office is not required to retrieve the FAXes.

Copies of this “Conditions Order UPDATES, to Monitor the Hearing” shall be sent by the Hearing Clerk to each of the parties. The Hearing Clerk is requested to send copies also to those identified in paragraph 9.

Issued at Washington, D.C. this 14th day of September 2021


Jill S. Clifton

Digitally signed
by JILL CLIFTON
Date: 2021.09.14
09:48:57 -04'00'

Jill S. Clifton
Administrative Law Judge

Hearing Clerk’s Office
United States Department of Agriculture
South Building, Room 1031-S
1400 Independence Ave SW
Washington, DC 20250-9203

Phone: 1-202-720-4443
Fax: 1-844-325-6940
sm.oha.HearingClerks@usda.gov

CERTIFICATE OF SERVICE

Daniel J. Moulton, a/k/a Dan Moulton, d/b/a Moulton Chinchilla Ranch, Respondent
Docket: 19-0004

Having personal knowledge of the foregoing, I declare under penalty of perjury that the information herein is true and correct, and this is to certify that a copy of the CONDITIONS ORDER UPDATES, TO MONITOR THE HEARING has been furnished and was served upon the following parties on September 14, 2021 by the following:

USDA (OGC) - Electronic Mail

John V. Rodriguez, OGC

John.Rodriguez@usda.gov

Rupa Chilukuri, OGC

Rupa.Chilukuri@usda.gov

Joyce McFadden, OGC

Joyce.McFadden@usda.gov

Donna Erwin, OGC

Donna.Erwin@usda.gov

Carla Wagner, OGC

Carla.Wagner@usda.gov

USDA (APHIS) – Electronic Mail

IES, APHIS

IESLegals@usda.gov

ac.rss.mailbox@usda.gov

Respondent – Electronic Mail

Daniel J. Moulton

Moultonchinchilla@gmail.com

Animal Welfare Institute – Electronic Mail

Nadia S. Adawi

Executive Director/General Counsel

Animal Welfare Institute

Tel: (202) 446-2122

Cell: (215) 292-3080

E-mail: nadia@awionline.org

Animal Folks – Electronic Mail

Ann Olson

Animal Folks

Tel: (651) 222-2821

E-mail: ann@animalfolks.org

Science Magazine – Electronic Mail

Meredith Wadman, BM BCh

Science Magazine

1200 New York Avenue N.W., #1144

Washington, D.C. 20005

Tel: (703) 343-3572

E-mail: mwadman@aaas.org

National Geographics – Electronic Mail

Dina Fine Maron

National Geographics

Tel: (202) 870-6374

E-mail: Dina.Maron@natgeo.com

Lewis & Clark Law School – Electronic Mail

Russ Mead

Lewis & Clark Law School

E-mail: rmead@lclark.edu

Respectfully Submitted,

Eliuth Morón, Assistant Hearing Clerk
USDA/Office of Administrative Law Judges
Hearing Clerk's Office, Room 1031-S
1400 Independence Ave., SW
Washington, DC 20250-9203