

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

FOOD & WATER WATCH, INC. *et al.*,

Plaintiffs,

v.

U.S. ENVIRONMENTAL PROTECTION
AGENCY *et al.*,

Defendants.

Civil Action No. 3:17-cv-02162-EMC

**STIPULATION AND [PROPOSED] ORDER
REGARDING DECEMBER 2, 2022
PROTECTIVE ORDER**

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1 At the January 12, 2023 status conference, “the Court directed the parties to schedule
2 adjudication of EPA’s assertion of privilege over the May 2022 draft of the NTP report and FWW’s
3 entitlement to discovery into critiques of that draft.” *See* Dkt. No. 340, Order at 3. On January 17,
4 2023, Plaintiffs served non-party National Institute for Environmental Health Sciences (“NIEHS”) with
5 a subpoena requesting the production of agency comments, NTP’s responses thereto, and other
6 documents related to NTP’s decision whether to publish the May 2022 prepublication fluoride
7 monograph and the related meta-analysis. (NTP is an interagency program that is administratively
8 headquartered at NIEHS.)

9 On February 3, 2023, counsel for Plaintiffs and NIEHS met and conferred regarding the
10 subpoena. NIEHS notified Plaintiffs that NTP will be publicly posting to NTP’s website the materials
11 provided to the NTP Board of Scientific Counselors (“BSC”) working group that is evaluating the
12 comments on the monograph and the related meta-analysis, as well as NTP’s responses thereto. The
13 materials posted will include the May 2022 prepublication monograph and the related meta-analysis,
14 both of which are presently subject to the Court’s December 2, 2022 protective order (Dkt. No. 324).
15 The posting will also include, without attribution or complete date information, the agency comments
16 sought by the subpoena as well as NTP’s responses thereto.¹ NIEHS intends to post these materials on
17 or by March 15, 2023.

18 In light of these developments, NIEHS has notified Plaintiffs that it does not object to the lifting
19 of the December 2, 2022 protective order upon the earlier of March 15, 2023 or the posting of these
20 materials to NTP’s website. Further, NIEHS has agreed to produce to Plaintiffs a copy of the materials
21 provided to the BSC working group as soon as practicable on the condition that they are made subject to
22 the protective order until the protective order is lifted.

23 To that end, Plaintiffs, Defendants, and NIEHS stipulate to and jointly request an order providing
24 the following:

- 25 • NIEHS’s document production in response to Plaintiffs’ January 17, 2023 subpoena shall
26 be subject to the December 2, 2022 protective order.

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28 ¹ Plaintiffs and NIEHS continue to meet and confer regarding production of the name and date
information associated with the agency comments and NTP’s responses.

- The December 2, 2022 protective order shall be lifted at the earlier of March 15, 2023 at 5:00 p.m. Eastern Daylight Time or the posting of the materials provided to the BSC working group on NTP’s website.

IT IS SO STIPULATED.

DATED: February 8, 2023

Respectfully submitted,

WATERS, KRAUS & PAUL

/s/ Michael Connett

MICHAEL CONNETT

C. ANDREW WATERS

KAY GUNDERSON REEVES (*pro hac vice*)

Attorneys for Plaintiffs

DATED: February 8, 2023

Respectfully submitted,

STEPHANIE M. HINDS

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/s/ Emmet P. Ong*

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Trial Attorneys

U.S. Department of Justice

Environmental & Natural Resources Division

Attorneys for Defendants U.S. Environmental Protection Agency and Michael S. Regan, in his official capacity as Administrator of U.S. Environmental Protection Agency, and Non-Party National Institute of Environmental Health Sciences

*In compliance with Civil Local Rule 5-1(h)(3), the filer of this document attests under penalty of perjury that concurrence in the filing of the document has been obtained from the other Signatory.

[PROPOSED] ORDER

Pursuant to stipulation of the parties, IT IS SO ORDERED.

DATED: _____

HON. EDWARD M. CHEN
United States Senior District Judge

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