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Comments:

The State Water Resources Control Board (State Water Board), Division of Water Rights (Division) has the following comments related to the San Bernardino National Forest's (SBNF) Notice of the Special Use Permit for Nestle Water North America (Nwana):

The basis of right for Nwana's water source in the Strawberry Creek watershed is not yet clearly defined in the scoping document. The NEPA evaluation could be affected by the type of water right being exercised. Accordingly, SBNF should require Nwana to identify its basis of right, and to what extent the water being diverted is percolating groundwater, surface water subject to appropriation, or developed spring water for each point of diversion in the Strawberry Creek Watershed. This information should be known for any Special Use Permit issued by SBNF. The State Water Board can provide assistance to Nwana or SBNF if requested.

The SWRCB is required to prevent and to investigate allegations of waste and unreasonable use of water, and diversions resulting in injury to public trust resources may constitute waste and unreasonable use of water. Division staff understands that Strawberry Creek is a spring-fed stream that provides habitat for species designated as threatened or sensitive. Therefore, hydrologic and riparian studies and an adaptive management plan are important considerations in reevaluating the Nwana extraction and transmission of water. These studies will provide valuable information about the current conditions of the public trust resources in the Nwana project areas. The scoping document indicates that the Nwana project area includes suitable habitat and Protected Activity Center areas for the California spotted owl (designated Forest Service Sensitive). Additionally, Federal Endangered Species Act-listed southwest willow flycatcher (designated Threatened) and Santa Ana speckled dace (designated Forest Service Sensitive) are located downstream of the project area near the confluence of Strawberry Creek and East Twin Creek. The Proposed Action document states that initial studies provided by Nwana show that extraction of groundwater could be reducing surface flow in Strawberry Creek. Should the studies indicate impacts to public trust resources due to ongoing diversions, Nwana can address and identify how it can mitigate those impacts. We anticipate that the studies and adaptive management plan will fulfill this need.