

STATE OF CALIFORNIA  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
STATE WATER RESOURCES CONTROL BOARD

**DIVISION OF WATER RIGHTS**

**ORDER WR 2021-0XXX-DWR**

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**CEASE AND DESIST ORDER**

In the Matters of Unauthorized Diversion by

**NESTLÉ WATERS NORTH AMERICA, INC.**

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SOURCE: Unnamed Springs tributary to Strawberry Creek

COUNTY: San Bernardino

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The State Water Resources Control Board (State Water Board or Board) is authorized under California Water Code (Water Code) section 1831 to issue a Cease and Desist Order (CDO) requiring Nestlé Waters North America, Inc. (referred to herein as the Diverter<sup>1</sup>) to cease and/or abate an ongoing violation, or a threatened violation, of Water Code section 1052.

Water Code section 1831, subdivision (d), states in part that the State Water Board is authorized to issue a Cease and Desist Order when it determines that any person is violating or threatening to violate the prohibition set forth in section 1052 against the unauthorized diversion or use of water subject to Division 2 of the Water Code.

On {Date}, and in accordance with the provisions of section 1834 of the Water Code, the State Water Board, Division of Water Rights (Division) provided notice of the CDO against the Diverter for violations and threatened violations of the prohibition against unauthorized diversion or use of water. Pursuant to State Water Board Resolution 2012-0029, the Deputy Director for Water Rights is authorized to issue a notice of CDO, and when a hearing has not been timely requested, issue a CDO in accordance with Water Code section 1831, *et seq.* State Water Board Resolution 2012-0029 authorizes re-delegation of this authority from the Deputy Director for Water Rights to the Assistant

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<sup>1</sup> This order identifies the Diverter as Nestlé Waters North America, Inc. However, the Diverter has a long history with many changes in corporate identity. For simplicity, references to the Diverter include its corporate predecessors and successors in interest. A discussion of the Diverter's history is contained in section 3.4.2 of the revised Report of Investigation (ROI), with a general timeline provided in Section 3.4.2.3.

Deputy Director for Water Rights (Assistant Deputy Director). This authority has been re-delegated.

### **BACKGROUND INFORMATION**

1. The Diverter operates a spring water diversion facility at the headwaters of the Strawberry Creek watershed in the San Bernardino National Forest, San Bernardino County, California. The Diverter diverts water from eight springs for bottling at facilities located in Los Angeles. The Diverter uses 13 points of diversion (PODs), consisting of three tunnels and 10 horizontal boreholes.
2. In accordance with Water Code section 5001, the Diverter has reported appropriations as far back as 1947 from the Strawberry Creek watershed PODs (identified parenthetically) under the following Groundwater Recordation Numbers: G360476 (Borehole 1, Borehole 1A), G360477 (Spring Tunnel 2), G360478 (Spring Tunnel 3), G360479 (Spring Tunnel 7), G362857 (Borehole 7), G360480 (Borehole 7A), G360481 (Borehole 7B), G361986 (Borehole 7C), G360482 (Borehole 8), G362800 (Borehole 10), G362894 (Borehole 11), and G362856 (Borehole 12). The Diverter does not currently divert water directly from the Spring Tunnel 7.
3. The Diverter does not hold any permits or licenses issued by the Board for diversion and use of water subject to appropriation from the Strawberry Creek watershed. Neither has the Diverter filed a Statement of Diversion and Use for diverting and using water from the Strawberry Creek watershed claiming a basis of right for diverting and using water from that watershed.
4. On January 17, 2014, Governor Edmund G. Brown Jr. declared a drought emergency based on extremely dry conditions beginning in 2012, projections of record dry conditions in 2014, dwindling reservoir and snowpack levels, and the inability of any local government to independently address drought-related threats of the magnitude projected.
5. In April 2015, the Division started receiving water right complaints from the public regarding the Diverter's operations in the Strawberry Creek watershed. By September 2017, the Division had received eight water right complaints regarding the Diverter's Strawberry Creek operations; including one petition signed by 500 individuals. Collectively, these parties are referred to as the Complainants.
6. The Complainants' water rights allegations included diverting water without a valid basis of right, using water unreasonably (i.e., bottling and exporting water during a drought), and injuring public trust resources. In addition, the Complainants alleged that the Diverter was diverting water under an expired 1978 special-use permit (SUP), which was issued by the United States Forest Service (US Forest Service). The issuance or renewal of the SUP is not within the authority of the State Water Board. However, the Diverter's operations occur upstream of the Santa Ana River — a fully appropriated, adjudicated watershed, where diverters utilize water for public

water supply, among other beneficial uses. The Division of Water Rights reviewed all complaints and conducted investigations as necessary.

## INVESTIGATION

7. Division staff conducted a complaint investigation to determine if the Diverter is diverting water that is within the permitting authority of the State Water Board without a valid basis of right. The investigation included communications between Division staff and the Diverter, the US Forest Service, and several Complainants. The Diverter submitted historical documents and hydrogeologic information in response to Division staff's information requests. The Diverter provided information which asserted a pre-1914 appropriative right adjudicated in a 1931 stipulated judgment involving its predecessor. Some Complainants also provided historical documents and information supporting their allegations that the Diverter lacked water rights. Division staff then conducted their own research for historical and geologic information.
8. Division staff conducted a field inspection on June 16, 2016. During the field inspection, Division staff observed the Diverter's facilities in the Strawberry Creek watershed and interviewed the Diverter's representatives at the site. Division staff observed a tunnel containing a historical infiltration gallery formerly used to extract water and the current 12 active tunnels and boreholes the Diverter uses to extract water. Division staff also observed and documented conveyance pipelines and the topology, geology, natural channels, watercourses, and springs in the vicinity of the tunnels and boreholes.
9. Division staff reviewed and analyzed the information gathered during the investigation and issued a Report of Investigation (ROI) on December 21, 2017. Public comments on the ROI were accepted by the Division until February 9, 2018, and the Diverter, several Complainants, and many members of the public submitted comments and information in response to the ROI. Division staff received over 8,000 comments, including approximately 45 unique comments with new information submitted in response to the 2017 ROI. Enforcement staff conducted an extensive review and issued a revised ROI. The revised ROI contains Division staff's investigation conclusions and recommendations as well as the detailed review and analyses conducted by Division staff to support its conclusions and analyses. The revised ROI is attached to this CDO as Attachment A and incorporated by reference into this CDO. It includes the following conclusions:
  - a. The Diverter's claim to a pre-1914 water right that originates from an 1865 possessory claim by David Noble Smith is not valid because the possessory claim only established a riparian right to water. The Diverter's claim to a pre-1914 water right, whether based on the David Noble Smith possessory claim or based on acquisition of land identified in the 1930 title company report, is not valid for the Diverter's current appropriative diversion and use of water from the San Bernardino National Forest. Water was bottled within the Arrowhead Hotel

property, but this was a riparian use and not an appropriation. (see revised ROI, sections 4.3.1, 4.3.4, and 5.)

- b. The Diverter may claim an appropriation of up to 7.26 acre-feet annually (AFA) under a pre-1914 basis of right, based on a 1909 contract to appropriate up to 7.26 AFA for delivery to a company with bottling facilities in Los Angeles. This is the earliest Division staff could identify an appropriation or plan of development. The larger bottling plant that opened in downtown Los Angeles in 1917 could not expand the pre-1914 appropriation because it was not part of the originally contemplated plan of development. (see revised ROI, sections 4.3.2, 5.)
- c. The Diverter likely has an appropriative groundwater claim to an unknown amount of percolating groundwater from Boreholes 7, 7A, 7B, 7C, 10, 11, and 12 that would not have flowed in a natural surface channel elsewhere in the watershed. Division staff estimates that up to 52% of the water from Boreholes 7, 7A, 7B, and 7C and up to 100% of the water from Boreholes 10, 11, and 12 may be percolating groundwater. Division staff acknowledges that these percentages are based on the limited available information at the time of the investigation and may be revised if new information becomes available. (see revised ROI, sections 4.4, 5.)
- d. The Diverter's diversions and use of water greater than 7.26 AF during a calendar year consisting of the combined diversions from Spring Tunnels 2, 3, and 7 and Boreholes 1, 1A, 8, 7, 7A, 7B, and 7C that are within the permitting authority of the State Water Board are unauthorized diversions. At this time, Division enforcement staff does not have information on any mitigation measures implemented by the Diverter to prevent unauthorized diversions. (see revised ROI, sections 4.3.2, 4.4, 5.)
- e. While the Diverter may be able to claim a valid basis of right to some water from the Strawberry Creek watershed, a significant portion of the water currently diverted by the Diverter appears to be diverted without a valid basis of right. (see revised ROI, sections 4.4, 5.1.)
- f. The Diverter cited the stipulated judgment in *Del Rosa Mutual Water Company v. D.J. Carpenter, et al.*, No. 31798, San Bernardino County Superior Court, October 31, 1931 (*Del Rosa Judgment*), as a basis of right. While the parties to the *Del Rosa Judgment* agreed not to restrict the Diverter from taking and exporting water from the East Twin Creek watershed, they did not recognize that the Diverter held any water rights either. The diversion and use of water recognized in the *Del Rosa Judgment* would have required a permit insofar as it was based on an appropriation initiated after 1914 and within the State Water Board's permitting authority. Furthermore, the Board was not a party to the *Del Rosa Judgment*, and while judgments warrant consideration, they only bind those who were parties. (see revised ROI, sections 4.3.3, 5.)

- g. The US Forest Service issued a new SUP to the Diverter on June 27, 2018 for the extraction and transmission of water using existing facilities within the San Bernardino National Forest. The SUP requires studies, monitoring, and adaptive management measures that will characterize and mitigate the impact of the Diverter's diversions on public trust resources in Strawberry Canyon. The SUP has a five-year term, with an initial permit term of three years and discretionary annual permits for two additional years. The Adaptive Management Plan (AMP) studies conducted by the Diverter under the SUP are ongoing for a period of three years, and data and information from these studies may provide a better understanding of the hydrogeology of the Strawberry Canyon watershed sources. (see revised ROI, sections 3.4.4, 3.4.4.1, 3.4.4.5, 5.)

### APPLICABLE LAW AND FINDINGS

10. Under Water Code section 1052, the diversion or use of water subject to Division 2 of the Water Code other than as authorized in Division 2 is a trespass.
  - a. Under Division 2 of the Water Code, all water flowing in any natural channel is public water of the State and subject to appropriation in accordance with the Water Code. (Water Code §1201.) There are three exceptions: (1) water applied to useful and beneficial purposes on any natural channel; (2) water that is or may be reasonably necessary for useful and beneficial purposes on riparian land; and (3) water otherwise appropriated.
  - b. Water not otherwise appropriated is water: (1) never appropriated; (2) appropriated before 1914 and no longer put to beneficial use; (3) appropriated pursuant to the Water Commission Act or Water Code and no longer put to beneficial use; and (4) water appropriated or used and abandoned. (Water Code §1202.)
  - c. Any diversion or use of water other than those exempted in Water Code section 1201 is conditioned upon compliance with the appropriation procedures in Division 2. (*People v. Shirokow* (1980) 26 Cal.3d 301, 309.) A trespass occurs if a person diverts or uses water subject to Division 2 of the Water Code and not authorized under Division 2, whether under a riparian right, appropriation before 1914, or appropriation after 1914 under a permit or license issued by the State Water Board. (*Id.* at 304; *State v. Hansen* (1961) 189 Cal.App.2d 604, 610.) Each independent diversion or use of water is a separate trespass. (Order WR 2004-0004, p. 30.)
  - d. A spring is "[w]ater rising to the surface of the earth from below, and either flowing away in the form of a small stream or standing as a pool or small lake." (*Wolfskill v. Smith* (1907) 5 Cal.App. 175, 181.) A spring that flows off an owner's land is subject to appropriation regardless of whether the water flows to the surface naturally or by artificial means, such as by boring a hole in the ground. (*Ibid.*; *State v. Hansen* (1961) 189 Cal.App.2d 604, 610.)

- e. California law presumes that a spring tributary to a stream is part of the stream and is therefore subject to the dual doctrines of riparian rights and prior appropriation. (*Gutierrez v. Wege* (1905) 145 Cal. 730, 734.) Even if the effect of diversion from a spring is to increase the amount of hydrologically interconnected groundwater flowing into the surface water body or spring, the diversion is still subject to the Board's water right permitting and licensing authority and subject to the prohibition against unauthorized diversion or use of water under section 1052 of the Water Code. (In the Matter of Draft Cease and Desist Order and Civil Liability Complaint against G. Scott Fahey and Sugar Pine Spring Water, L.P. (2019) Order 2019-0149, pp. 75-76; see Decisions 681, 932, 1022, 1149, 1209, 1263, 1325, 1352, 1363, 1451, 1482, 1494, and 1595.)
  - f. A person who augments the natural flow of a stream may appropriate the augmented flow only if the appropriation would not injure prior rights attached to the stream. (*Roberts v. Crafts* (1903) 141 Cal. 20, 27; *L. Mini Estate Co. v. Walsh* (1935) 4 Cal.2d 249, 254; *Vineland Irrigation Dist. v. Azusa Irrigation Co.* (1899) 126 Cal. 486, 495; *Cohen v. La Canada Land & Water Co.* (1904) 142 Cal. 437, 439-440; In the Matter of the Declaration of Fully Appropriated Stream Systems in California (1998) Order WR 98-08, p. 16.) The burden of proof to establish that water diverted from a spring is groundwater that would not otherwise surface naturally, however, is on the party claiming the exception. (*Churchill v. Rose* (1902) 136 Cal. 576, 578; *Larsen v. Apollonio* (1936) 5 Cal.2d 440, 444; In the Matter of Draft Cease and Desist Order and Civil Liability Complaint against G. Scott Fahey and Sugar Pine Spring Water, L.P. (2019) Order 2019-0149, pp. 75-76.)
11. The Diverter's POD's subject to Division 2 of the Water Code divert water from natural spring sites that would have otherwise contributed to nearby surface streams are Springs 1, 2, 3, 7, and 8. These natural spring sites are adjacent to or in the immediate vicinity of tributary ravines (i.e., narrow natural channels with steep-sloped sides, typically greater in length and depth than a gully, providing a drainage course for water towards a lower elevation natural channel or other outlet) of Strawberry Creek at the head of Coldwater Canyon. The Diverter developed these springs by either 1) constructing a tunnel into the mountain horizontally at the spring orifice; or 2) drilling horizontal boreholes into the orifice. Nestlé's methods of spring development obliterated the original spring orifices and completely capture all spring flows, which then drained by gravity into a pipeline running down the mountain to the Waterman Canyon water storage tank and truck loading facilities. The Diverter has additional POD's developed by installing boreholes near Springs 10, 11, and 12, but not at the spring orifices. The Prosecution Team does not have sufficient evidence to conclude that these diversions near Springs 10, 11, and 12 are subject to Division 2 of the Water Code.
- a. The Diverter developed Spring 2 and Spring 3, which are located close to one another, by constructing Spring Tunnel 2 and Spring Tunnel 3 horizontally into the mountain at each spring orifice. The Diverter diverts water directly from Spring Tunnel 2 and Spring Tunnel 3. (see revised ROI, section 4.4.1.)

- i. Spring 2 and Spring 3 are both adjacent to natural channels and would have discharged surface flow to these channels. Thus, Spring 2 and Spring 3 were presumptively subject to Division 2 of the Water Code. The Diverter built Spring Tunnel 2 at the orifice of Spring 2 and Spring Tunnel 3 at the orifice of Spring 3. Each tunnel captures the entire natural flow of the original spring. Division staff is not aware of any evidence that suggests the flow from these Springs has increased due to development of the POD's. Therefore, all flows from Spring Tunnel 2 and Spring Tunnel 3 are presumptively subject to Division 2 of the Water Code.
  - ii. Construction of Spring Tunnel 2 and Spring Tunnel 3 altered or destroyed the natural spring orifices. The Division has no information indicating the original springs' flows or how much of the existing flows may be developed flow, if any. Thus, no information is available to rebut the presumption that all flows from Spring Tunnel 2 and Spring Tunnel 3 are subject to Division 2 of the Water Code.
- b. The Diverter developed Spring 7 by constructing Spring Tunnel 7 horizontally into the mountain at the spring orifice. The Diverter later constructed Boreholes 7, 7A, 7B, and 7C below Spring Tunnel 7 to intercept the tunnel's flows. The Diverter no longer actively diverts and uses water directly from Spring Tunnel 7. The Diverter instead diverts from Boreholes 7, 7A, 7B, and 7C, but could resume diverting from Spring Tunnel 7 at any time. (see revised ROI, sections 4.4.1, 4.4.4, Appendix C.)
- i. Spring 7 was adjacent to a natural surface channel and water from the spring would have flowed to the natural surface channel. Thus, Spring 7 was presumptively subject to Division 2 of the Water Code. Nestlé built Spring Tunnel 7 at the orifice of Spring 7. Spring Tunnel 7 captures the entire natural flow of Spring 7. Therefore, all flows from Spring Tunnel 7 is presumptively subject to Division 2 of the Water Code. (see revised ROI, section 4.4.1)
  - ii. Construction of Spring Tunnel 7 altered or destroyed the natural spring orifices. The Division has no information indicating the original spring's flow or how much of Spring Tunnel 7's flow would be developed flow, if any.. Thus, no information is available to rebut the presumption that all flow from Spring Tunnel 7 is subject to Division 2 of the Water Code. (see revised ROI, section 4.4.1.)
  - iii. The Diverter bored Boreholes 7, 7A, 7B, and 7C horizontally several hundred feet, through what appears to be the Rim Forest Fault, which likely acts as a barrier to groundwater flow, and completed on the fault's upgradient side. A 1997 technical report, as well as information from the Diverter, indicates that hydraulic testing demonstrated a hydraulic connection between Spring Tunnel 7 and the boreholes, such that the flow of Spring Tunnel 7 ceases when the boreholes are allowed to flow. Therefore, some portion of the water diverted from the boreholes is flow that would have naturally surfaced and flowed in

- natural surface channels adjacent to Spring Tunnel 7. (see revised ROI, section 4.4.4, Appendix C.)
- iv. Based on extremely limited hydrogeologic data and known precipitation amounts, up to approximately 52% of the water diverted on an annual basis from the boreholes may be water not within the permitting authority of the State Water Board. It could, however, be as little as 0%. It is unknown if this water that is not within the permitting authority of the State Water Board would have surfaced elsewhere in the watershed due to the fault barrier. Nonetheless, this information rebuts the presumption that all of Spring 7 borehole's collective flow is part of a stream and therefore subject to Division 2 of the Water Code. (see revised ROI, section 4.4.4, Appendix C.)
  - v. Division staff determined that, at a minimum, approximately 48% of all water diverted on an annual basis from the boreholes would be subject to Division 2 of the Water Code, because this water would have naturally surfaced and flowed in the natural surface channel adjacent to Spring Tunnel 7 if not diverted. However, this percentage is based on limited information and may be higher; as much as 100%. (see revised ROI, section 4.4.4, Appendix C.)
  - vi. No less than 48% of the boreholes' collective flow, and possibly all the flow, would have naturally flowed in natural surface channels if not diverted by the Diverter, regardless of the collective flow rate of all four boreholes. Therefore, the Diverter's diversions from the boreholes are subject to Division 2, regardless of collective diversion rate. (see revised ROI, section 4.4.4, Appendix C.)
- c. The Diverter initially developed Spring 1 and Spring 8 by installing a horizontal boring at each spring orifice. According to a 1998 technical report, when the flow at the original boreholes declined significantly, a new off-set borehole was drilled at an angle to intercept the original borehole. Once a new borehole was drilled, the original spring borehole was capped at the surface; this resulted in diverting the spring flow to the new borehole. Since installing the original boreholes in Spring 1 and Spring 8, the Diverter has capped the boreholes. It replaced the Spring 1 borehole with Borehole 1 and the Spring 8 borehole with Borehole 8, and then added Borehole 1A. All three boreholes occupy a single concrete block structure below the original Spring 1 and Spring 8 orifices. (see revised ROI, sections 4.4.2, 4.4.3)
- i. Spring 1 and Spring 8 were both adjacent to natural channels, and natural spring flow would have surfaced and flowed to these channels. Thus, Spring 1 and Spring 8 were presumptively subject to Division 2 of the Water Code. The Diverter installed boreholes at the orifices of each spring. Each borehole captured the entire natural flow of the original spring. Borehole 1 has since replaced and completely captures the flows from the Spring 1 borehole and Borehole 8 has since replaced and completely captures the flows from the Spring 8 borehole. Therefore, all flows from Borehole 1 and Borehole 8 are

- presumptively subject to Division 2 of the Water Code. (see revised ROI, section 4.4.2)
- ii. Spring 1 and Spring 8 were each tributary to a stream; therefore, all flows from Spring 1 and Spring 8 were presumed to be subject to Division 2 of the Water Code. (see revised ROI, section 4.4.2)
  - iii. Developing Spring 1 and Spring 8 altered or destroyed the natural spring orifices. As a result, the Division has no information indicating the original spring flows or how much of the flows from Boreholes 1 and 8 may be developed flow, if any. Water which would not otherwise flow to a natural surface channel, if any, cannot be determined. Therefore, no information is available to rebut the presumption that all flows from Boreholes 1 and 8 are tributary to, and part of, a stream; subject to Division 2 of the Water Code. (see revised ROI, section 4.4.2)
  - iv. The Diverter developed Borehole 1A by installing a horizontal boring into the mountain. Although the Division has no information indicating whether the Diverter installed the boring at a spring orifice, a 1998 technical report states that hydraulic testing demonstrated that Borehole 1A and Borehole 8 are hydraulically connected such that the flow of Borehole 1A increases when Borehole 8 is shut in, and water that does not flow from Borehole 8 may instead flow to the surface from Borehole 1A. There are no known hydrogeologic barriers between Borehole 1A and Borehole 8 and no known downgradient springs. Since all flow from Borehole 8 is presumed to be subject to Division 2 of the Water Code, as described above, flow from Borehole 1A may be presumed, because of the hydraulic connectivity to Borehole 8, to also be subject to Division 2 of the Water Code. No information is available to rebut this presumption. (see revised ROI, section 4.4.3)
- d. The Diverter installed Boreholes 10, 11, and 12 near Springs 10, 11, and 12 but not at the natural spring orifices. The information available to the Division is limited and insufficient to conclusively determine that the water extracted from Boreholes 10, 11, and 12 is subject to Division 2 of the Water Code.
  - e. Information currently available for precisely determining how much flow from Boreholes 7, 7A, 7B, 7C, 10, 11, and 12 is subject to the State Water Board's permitting authority is limited. Data and information from studies the Diverter is conducting under the US Forest Service SUP may provide a better understanding of the hydrogeology of the Strawberry Canyon watershed sources. The results of these studies may assist in more precisely determining the proportion of water diverted from Boreholes 7, 7A, 7B, 7C, 10, 11, and 12 that is subject to the State Water Board's permitting authority. These studies are expected to be completed within three years of the when the SUP was signed and may allow for more precise determination of how much water from the POD's is subject to Division 2 of the Water Code. (see revised ROI, section 4.4.5)

12. The Diverter uses the diverted spring water for bottling at various locations, including the bottling plant in downtown Los Angeles.
13. The Diverter diverts or uses water in excess of its pre-1914 right if, in any year, it collectively or cumulatively diverts or uses more than 7.26 acre-feet of water that is subject to Division 2 of the Water Code from Spring Tunnels 2, 3, and 7 and Boreholes 7, 7A, 7B, 7C, 1, 1A, and 8. (see revised ROI, sections 4.4, 5.1.) Reports the Diverter filed pursuant to the Groundwater Recordation Act (Water Code § 5000 *et seq.*), as well as other evidence, show the Diverter has exceeded this amount almost every year since at least 1947. The State Water Board may therefore issue a CDO under Water Code section 1831, because the diversion or use of water from the springs violates or threatens to violate the prohibition in Water Code section 1052 against the unauthorized diversion or use of water subject to Division 2 of the Water Code.

**IT IS HEREBY ORDERED**, pursuant to sections 1051 and 1831 through 1836 of the California Water Code, that the Diverter, and any successor in interest:

1. Immediately cease all unauthorized diversions of water within the State Water Board's permitting authority until demonstrating, to the satisfaction of the Deputy Director, a valid basis of right. Unauthorized diversions occur if, during a calendar year, the total quantity of water that the Diverter diverts and uses from Spring Tunnels 2, 3, and 7 and Boreholes 1, 1A, 8, 7, 7A, 7B, and 7C is greater than 7.26 acre-feet of water that is subject to Division 2 of the Water Code, although this criteria may be revised based on findings of the Deputy Director in Directives 6 and 7 of this Order.
2. No less than 30 days after issuance of this Order:
  - a. Update ownership of Groundwater Recordations.
  - b. File a Statement of Water Diversion and Use, pursuant to Water Code section 5101, for any diversion requiring a statement.
3. No less than 180 days after issuance of this Order, submit a report with evidence acceptable to the Deputy Director demonstrating implementation of Directive 1 of this Order. The report must include a description of the methods used to determine that no more than 7.26 acre-feet of water within the State Water Board's permitting authority has been diverted annually from Spring Tunnels 2, 3, and 7 and Boreholes 1, 1A, 8, 7, 7A, 7B, and 7C each calendar year.
4. By June 30 of each year, submit a monitoring report for the previous calendar year to report the daily, monthly, and annual diversions of water within the permitting authority of the State Water Board from Spring Tunnels 2, 3, and 7 and Boreholes 1, 1A, 8, 7, 7A, 7B, and 7C. This report is not required to the extent the information is duplicative of information in the report submitted in compliance with Directive 3 of this Order.

5. When a report for each study conducted for the US Forest Service SUP is provided to the US Forest Service, provide a copy to the Division.
6. Within 180 days of completing studies conducted for Objectives 1 and 2 of the US Forest Service SUP AMP, submit a report more precisely determining the amount of flow at Spring Tunnels 2, 3, and 7 and Boreholes 1, 1A, 8, 7, 7A, 7B, and 7C that is water that originally surfaced naturally as a spring and is therefore subject to the permitting authority of the State Water Board, based on information and analysis from the studies. If this determination is infeasible, the Diverter must explain the infeasibility. The Deputy Director may, based on a review of that report, refine the conclusions of the revised ROI regarding how much water diverted at each POD is subject to the permitting authority of the State Water Board.

**IT IS FURTHER HEREBY ORDERED**, pursuant to section 1051 of the California Water Code, that the Diverter, and any successor in interest:

7. Within 180 days of completing studies conducted for Objectives 1 and 2 of the US Forest Service SUP AMP, submit a report more precisely determining the amount of flow at Boreholes 10, 11, and 12 that if not diverted would have otherwise surfaced naturally at a spring. If this determination is infeasible, the Diverter must explain the infeasibility. The Deputy Director may, based on a review of that report, refine the conclusions of the revised ROI regarding how much water diverted at each POD is subject to the permitting authority of the State Water Board.

### **Consequences of Non-Compliance**

In the event the Diverter, or any successor in interest, fails to comply with the requirements of this Order, the Diverter, or the Diverter's successor in interest, shall be in violation of this CDO and subject to additional enforcement, which may include the imposition of administrative civil liability. Violation of a CDO may be referred to the Attorney General to take further injunctive enforcement actions as described in Water Code section 1845, subdivision (a):

*Upon the failure of any person to comply with a cease and desist order issued by the board pursuant to this chapter [California Water Code division 2, part 2, chapter 12] the Attorney General, upon request of the board, shall petition the superior court for the issuance of prohibitory or mandatory injunctive relief as appropriate, including a temporary restraining order, preliminary injunction, or permanent injunction.*

Failure to comply with this Order may subject the Diverter, or the Diverter's successor in interest, to the imposition of an administrative civil liability pursuant to Water Code section 1845, subdivision (b)(1)(B), in the amount not to exceed \$1,000 for each day in which the violations occur during a non-drought year. In a period for which the Governor has issued a proclamation of state of emergency based on drought conditions, the Diverter, or the Diverter's successor in interest, may be subject to the imposition of

administrative civil liability pursuant to Water Code section 1845, subdivision (b)(1)(A), in the amount not to exceed \$10,000 for each day in which the violations occurs.

### **Reservation of Enforcement Authority and Discretion**

Nothing in this Order is intended to or shall be construed to limit or preclude the State Water Board from exercising its authority under any statute, regulation, ordinance, or other law, including but not limited to, the authority to bring enforcement against the Diverter for unauthorized diversion or use of water in violation of Water Code section 1052.

### **Regulatory Changes**

Nothing in this Order shall excuse the Diverter from meeting any more stringent requirements that may be imposed hereafter by applicable legally binding legislation, regulations or water right permit requirements.

### **Compliance with Other Regulatory Requirements**

Nothing in this Order shall excuse the Diverter, or any successor in interest, from meeting any additional regulatory requirement that may be imposed by other local, state or federal regulatory entities for corrective actions taken by the Diverter to comply with this Order.

### **Exemption from CEQA**

This is an action to enforce the laws and regulations administered by the State Water Board. The State Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations.

STATE WATER RESOURCES CONTROL BOARD



*Julé Rizzardo, Assistant Deputy Director  
Division of Water Rights*

Dated: April 23, 2021