

Eggers, Tomas@Waterboards

From: Amanda Frye <amandafrye6@gmail.com>
Sent: Friday, January 12, 2018 11:15 AM
To: Stork, Natalie@Waterboards; Petruzzelli, Kenneth@Waterboards; Vasquez, Victor@Waterboards
Subject: Remarks regarding Nestle Water Investigation
Attachments: Appeal state water board.pdf

Dear Mr. Petruzzelli, Ms. Stork and Mr. Vasquez,

Below is the electronic copy of my remarks to the Nestle Water investigation. The exhibits can be found in the dropbox link below. If you have questions or need further documentation feel free to contact me. I will be sending one paper file via U.S. mail as well. Thank you for your investigation of Nestlé's water withdrawals in our San Bernardino National Forest.

Sincerely,
Amanda Frye

Link to Exhibits and other documents

[Arrowhead Research Link:](https://www.dropbox.com/sh/znf9d4vc3lfnm4/AAAEPh_kI6-rUcHPRTO5hFL5a?dl=0)

https://www.dropbox.com/sh/znf9d4vc3lfnm4/AAAEPh_kI6-rUcHPRTO5hFL5a?dl=0

Amanda Frye
12714 Hilltop Drive
Redlands, CA 92373
(909) 794-9526

amandafrye6@gmail.com

State Water Resources Control Board
801 K Street
23rd Floor
Sacramento, CA 95814

Attn:
Victor Vasquez
Natalie Stork
Kenneth Petruzzelli

Sent: email/U.S. Mail

Re: Nestle's Report of Investigation INV 8217

Arrowhead water withdrawals San Bernardino National Forest

January 12, 2018

Dear Honorable Officials and Staff of the State Water Resource Control Board:

I, Amanda Frye, complainant and petitioner, ask the State Water Resource Control Board to re-examine the Report of Investigation, INV 8217 Nestlé Waters North America, Arrowhead Facility, San Bernardino National Forest issued December 20, 2017 in accordance with Cal Water Code Section 1122. I appreciate the State Water Resource Control Board's efforts on the complex case about Nestle's water rights and withdrawals in the San Bernardino National Forest. However, after reviewing the report, there are issues that were misunderstood and led to false assumptions which I will try to clarify in the following discussions and exhibits.

Nestle cites extensive case law which appears an attempt to muddy the water and mislead the State Water Resource Control Board. Furthermore, Nestle conflates physical springs with spring water bottling law for food labelling purposes. Of uppermost importance, the location of Nestle's water withdrawals which are on federal lands.

These withdrawals take place on our San Bernardino National Forest lands whose water has been reserved upon its founding February 25, 1893.

Federal Reserve Rights and overlaying landowner ground water rights apply in this case. Appropriation through adverse possession is not applicable to U.S. Forest lands. The Del Rosa Judgment was an adverse possession case giving water rights reserved for the National Forest to California Consolidated Water. Furthermore, the foreign Swiss Nestle is not the landowner of our National Forest. It seems treasonous to give a Swiss foreign corporation our Federal forest water and imply that they have groundwater rights as if they are the landowners of our San Bernardino National Forest.

There is no proof that Nestle or their predecessor-in-interest had any valid water rights in the San Bernardino National Forest for the Upper Strawberry Canyon or "Indian Springs" tunnels prior to 1893 nor pre-1914 water rights. The early water bottlers contracted water from the Arrowhead Property owners. Some bottlers of "Arrowhead water" were said use "Los Angeles city" and "hydrant" water. There were multiple companies bottling "Arrowhead water" starting in 1909. The water bottlers and the water rights owners have been functioned as separate entities pre-1914 which is well documented by archived lawsuit testimony, judgments and other sources. There is a difference between the water bottling company and the Arrowhead property and water rights owner. This is a matter of contractual agreements versus water rights holders. The "Arrowhead Springs Water Co." incorporated in Los Angeles [Exhibit A28] had only an agreement with the Arrowhead Hot Springs Co. (the water rights holder and property owner) to obtain water from Coldwater Canyon which was then transported to Los Angeles, bottled, sold and distribute the water. The water bottlers obtained no water rights they only had a water contract.

The San Bernardino National Forest was established February 25, 1893 thus any claims for water or land within the forest boundaries were required as publicly noticed in 1894. The water rights associated with the Arrowhead Springs Property ultimately stayed with the property as documented in recorded deeds at the San Bernardino County Records Office.

Arrowhead Springs Water Co. water was from Cold Water Canyon known as "Agua Fria" located at the base of Arrowhead mountain on the NW quarter of Section 12

T1N R4W of the Arrowhead Property. [Exhibit A-30] Cold water from fissures from stratum on precipices were said to feed Cold water creek at this location. A pipeline on the high mesa in this location was run to capture some of this water for bottling. This 1909-1913 water for bottling is well documented in repeated testimony from the Court Cases 11399 and 12532 in 1910 and 1913. [Exhibit A-30 and 31] There were broken contracts, injunctions and lawsuits between the bottler Arrowhead Springs Water Co. and the water right and property owners Arrowhead Hot Springs Co. which caused deteriorated relationships.

In 1912/1913 Arrowhead Hot Springs Company decided to build a water bottling facility near the hotel to bottle and distribute Arrowhead Springs water. The water bottling enterprise was then named Arrowhead Springs Co. In 1917, Arrowhead Springs Co. moved their water bottling facility to a new facility in Los Angeles on Washington and Compton. However, the water rights remained with the property not the water bottling works.

The Coldwater canyon/creek water was captured in a pipe to transport water for bottling. "Agua Fria" was the name for the water of cold water canyon which is also referred to as "Indian Springs" by Bailey (1917). The spring "Fuente Frio" was also used for water bottling in 1909 according to several sources as this was listed as Penyugal Cold Springs. Fuente Frio is located in Arrowhead Canyon on the Arrowhead Spring property in a ravine north of the hot El Penyugal Spring. Arrowhead Water Co. (Los Angeles) bottled Cold water canyon water and Fuente Frio during the winter when the Cold water creek turned muddy. The 1910 lawsuits and fraud charges later put the LA Arrowhead Springs Water Co. out of business. However, shareholders recapitalized another bottling Company Arrowhead Cold Springs Co. which filed for bankruptcy in 1912 [Exhibit A-33 and A34]

When Arrowhead Hot Springs Co. started their own water bottling company (Arrowhead Springs Co.) next to the hotel, they bottled water from Penyugal springs and other springs such as Granite springs, Fuente Frio and soda Ginger ale advertising the products with different properties such as high in arsenic or aperient. Penyugal springs was advertised as high in arsenic and Arrowhead springs high in radiation.

So two water companies bottling were competing to sell and distribute Arrowhead water and products after relationships deteriorated with lawsuits and injunctions filed. Ads show Arrowhead Springs Water Co. and Arrowhead Hot Springs Co. [Exhibit C] Arrowhead springs water was also called Indian medicine water with an American Indian featured on the Arrowhead water label. The Arrowhead Hot Springs Co. were the owner of the Arrowhead Springs property retained the water rights. The bottling business became Arrowhead Springs Co. until 1923 when they rejoined the water bottling with property assets to form Arrowhead Springs Corp which were later split, merged and sold.

The bottled water withdrawals on San Bernardino National Forest lands seemed to have started around 1928 when Arrowhead Springs Corp (Ltd) sold false rights on forest lands to water bottler and distributor California Consolidated Waters in what appears to be an attempt to raise funds for a bond debt and use water sources other than the hotel property [Exhibit 31]. Even Arrowhead Springs Corp admitted no “warranty” rights above township 12 in T1N R4W in an agreement which would have included Indian Springs tunnels and Strawberry Canyon wells/springs and tunnels. (Exhibit A-19 pg 4) False claims were acknowledged in some documents. Basically the false claims made by Arrowhead Springs Corp to California Consolidated Water Co. involved false water rights and easements on San Bernardino National Forest lands leading to the unwarranted water withdrawal from our National forest since 1928. (Exhibit A-17, A-18) Arrowhead Springs Corp didn’t transfer water rights to Consolidated Waters they simply made up new ones in our San Bernardino National Forest so Consolidated Waters could develop more water sources, give Arrowhead Springs property more water and promote the Arrowhead name by bottling and selling the water while Arrowhead Springs Corp. profited. The appropriation of these fake rights became the basis for the adverse possession case involved in the Del Rosa lawsuit.

Federal property is immune from adverse possession; a county court ruling should not be considered valid given these circumstances. The Federal government was not party to the Del Rosa suit and the San Bernardino National Forest land not mentioned. Even title insurance clauses exempted water rights title on federal lands which would have invalidated legal water rights on Forest Service lands in Nestle’s

predecessors-in-interest. (Schedule B – Exhibit A 20)

All these facts can become confusing if location is not the focus. The “1929 Indian Springs tunnels” referenced by Byron Waters 1929 letter have been documented in survey plat maps filed in Map book 2 pages 18 and 19. According to the 1929 pipeline survey plat map these tunnels are located in T1N R4W which when plotted on USGS/USFS maps are located 1000 ft North and 200 feet west of the NE corner marker of Section 11 placing these tunnels directly on the E ½ of Sec 2 T1N R4W which is San Bernardino National Forest land. [Exhibit A-8] Nestle’s upper Strawberry Canyon wells/tunnels/springs are also on National Forest lands T2N R3W. Moreover, the Del Rosa Suit never authorized section 30 were most the wells are located.

Nonetheless, these “Indian Springs tunnels” and upper Strawberry Canyon water rights were not claimed in 1893/1894. There is never any indication that Arrowhead Property owners were using these areas in the National Forest for water. Thus, the Indian Springs tunnels like the upper Strawberry Canyon sites appear to be a “taking” of forest land ecosystems and water. **“Indian Springs” tunnels on the San Bernardino National Forest land T1N R4W E1/2 of Section 2 and the Upper Strawberry Canyon water withdrawal sites T2N R3W were not the site of the water used for the first water bottling and therefore no pre-1914 rights can be conferred anyway.**

Moreover, in 1930, Consolidated Waters quitclaimed water rights of these “Indian Springs” tunnels to Arrowhead Springs Corp on page 125 of Book 648 pg 122. (Exhibit A-21). Archived documents indicate that there is an “Indian Springs” tunnel pipeline running under U.S. Forest land. Nestle has no valid pre-1914 water rights in the San Bernardino National Forest. The Del Rosa lawsuit was really an adverse possession suit that should have no valid claim of forest water or land for Nestle’s predecessor-in-interest within the San Bernardino National Forest boundaries.

The letter from 1929 by Byron Waters appears to be an attempt to build the adverse possession case for California Consolidated Waters and Arrowhead Springs Corp. Byron Waters letter is an admission that these “Indian Springs tunnels” are man made tunnels by appropriation with out permission and on federal lands with a legal

description that confirms their location on San Bernardino National Forest land. Federal property is immune from adverse possession. These Indian Spring tunnels are not the water for pre-1914 water bottling which was from private land of the Arrowhead Springs property.

Federal and State property adverse possession immunity was never considered in the Del Rosa lawsuit or by the State Water Resource Control Board. The San Bernardino National Forest was founded on February 25, 1893 and public notice to stake claim within the boundaries was given for a 90 day period in 1894. Thus, any claim of water within the San Bernardino National Forest would be subject to the 1894 not the 1914 rule.

Boundaries and surveys are extremely important in this case. The USGS and USFS San Bernardino topo maps should be used as base maps to establish forest service versus private property boundaries. It is obvious that private owners did stake claim to water and property based on these official topo and quadrangle maps and reflected boundaries. Federal Reserve Rights and overlaying landowner groundwater rights should apply to this case.

The following discussion and documentation should provide the information needed to prove that Nestle has no rights of water withdrawal for surface or groundwater in our San Bernardino National Forest. There may be a corporation chain of title for Nestle and their predecessor-in-interest but there is no proof of chain of title for the "real property" water rights filed at the San Bernardino County recorders office. Which 1909 Arrowhead Water bottling company is Nestle claiming as a predecessor-in-interest? Was it Arrowhead Spring Water Co. (Los Angeles) or Arrowhead Hot Springs Company or Arrowhead Springs Co. or Arrowhead Cold Springs Co.?

Nestle's corporate chain of title is essential for their successor- in-liability. There have been millions of gallons of water withdrawn from our public lands which has negatively impacted the endangered and threatened species habitat, the forest ecosystem and deprived the valleys below groundwater recharge. Dried creek beds, diminished damp headwater springs are just visual evidence that has been extensively documented.

Please reconsider Nestlé groundwater and any surface withdrawal and diversion in and from the San Bernardino National Forest. Nestlé's water withdrawals and diversions in our San Bernardino National Forest lands should immediately cease. Nestle should be held liable as a successor-in-interest and be charged for damages to our local water shed and our National Forest.

The following discussion and documentation should prove that Nestle has no pre-1914 water rights or water rights in our San Bernardino National Forest. Feel free to contact me if clarification or other documentation is needed. I have tried to build a concise case with supporting documents, but this case is complicated.

Sincerely,

Amanda Frye

1. San Bernardino Federal Reserve (National Forest) formation, location and Federal Reserve Rights consideration.

Facts:

- San Bernardino Federal Reserve formed February 25, 1893
- San Bernardino Federal Reserve name changed to San Bernardino National Forest March 1907.
- Water rights reserved when Federal Reserve was formed these rights are Federal Reserve Rights.
- Public given 90 days to stake claim in 1894.
- Forest Reserve formed to maintain a “permanent” supply of water and public noticed not to remove any “natural product” from San Bernardino Federal Reserve April 14, 1894.
- Federal Reserve Rights are senior to all other claims.
- Overlaying landowner have rights over groundwater.
- The San Bernardino National Forest is the landowner at Nestlé’s water withdrawal sites in T2N R3W and T1N R4W SBBM known as Upper Strawberry Canyon and Indian Springs tunnels.

Discussion:

Although the State Water Board report “Background” information stated that Nestlé’s water diversion and extraction operation is in the San Bernardino National Forest, the report fails to properly identify the San Bernardino National Forest boundaries or consider the federal reserve water rights and overlaying landowner groundwater rights associated with the San Bernardino National Forest. When the United States reserved the San Bernardino Federal Reserve it “implicitly reserved water to support these areas.” **The Federal Reserve Rights are senior to all other claims.**

The San Bernardino Forest Reserve was established on February 25, 1893. [Exhibit A-1] The San Bernardino Forest Reserve (San Bernardino National Forest) was formed by “Proclamation 354-Setting Apart as a Public Reservation Certain Lands in California” issued by U.S. President Benjamin Harrison. The San Bernardino Forest boundaries were surveyed and plat maps filed in the U. S. Land Office at Los Angeles, CA on April 2, 1894.

On April 2, 1894 and May 29, 1894, public notices to all settlers and claimants on public lands were published regarding San Bernardino Forest Reserve of surveyed land plats filed with the U.S. Land Office in Los Angeles on April 2, 1894. Settlers were given 90 days to present claims within the surveyed forest lands. [Exhibit A-2, 3] On August 29, 1894, public notices were published and posted in San Bernardino Forest Reserve. The notice declared San Bernardino Forest Reserve (San Bernardino National Forest) land set apart and reserved as a forest preservation as authorized by Congress March 3, 1891. The notice stated “ The reservation is made for the benefit of the adjoining communities, being created to maintain a permanent supply of water...” “All persons are hereby warned not to settle upon, occupy or use any of these lands for agricultural, prospecting, mining or other business purposes; nor to remove... or other natural products” “Bona Fide settlers having properly initiated their claims prior to withdrawal of lands for said reservation and actual owners of lands within the reserve, ...will not be allowed to occupy or use lands within the reservation outside of their claims, nor to use, damage or destroy any timber or other natural products of such lands.” “ Any person violating the regulations will be prosecuted... and will be held responsible pecuniarily for waste or damage..” (Exhibit A-4)

U.S. Forest Service San Bernardino National Forest Atlas clearly shows the recognized private property claims within the forest boundaries (featured in white) among the forest lands (green). Arrowhead properties located in Township 1 N R4W are clearly recognized as private property. (Exhibit A-5). These boundaries are important in the water rights discussions since Nestle’s water rights claims are on forest lands. Nestle’s

water right claims are in Upper Strawberry Canyon T2N R3W and the “Indian Springs” tunnels in T1N R4W E1/2 Section 2.

The State Water Resource maps do not show San Bernardino National Forest and private land (Arrowhead Springs) boundaries which are essential for the discussion of water rights in this case. Furthermore, the state board failed to realize that the San Bernardino National Forest is immune to adverse possession claims which Nestlé’s predecessors-in-interest claimed as water rights and which the Del Rosa lawsuit judgment (Exhibit A-6) is based. The San Bernardino National Forest are immune from adverse possession claims especially those of made by a foreign owned Swiss corporation such as Nestle. State Water Board ruling is allowing a foreign corporation based in Switzerland to steal and destroy federal and state government (public lands) resources and property; this defies logic and is a treasonous act.

The federal reserved San Bernardino National Forest boundaries, formation date and federal reserve rights were overlooked by the State Water Resource Board investigation, but these federal reserve dates, federal reserve rights, property ownership, boundaries and historical dates are an integral to the water right and diversion issues in this case. The San Bernardino National Forest is the overlaying landowner for Nestle’s water withdrawal sites thus the San Bernardino National Forest should have the groundwater rights for this land **not Nestle**.

In order for Nestlé or their predecessor-in-interest water claims to be legitimate they would have filed water right claims in the San Bernardino National Forest prior to noticed date in 1894. **There is no recorded claims at Nestle’s water withdrawal sites on San Bernardino National Forest lands including T2NR3W (upper Strawberry Creek) or “Indian Springs” T1NR4W E 1/2 Sec 2.** Making exception for Nestle’s corporation failings to validate water rights is wrong. Post 1984, all persons violating the public notice were noticed of wronging doing subject to prosecution and held responsible for waste and damage to the Forest. Furthermore, Nestle is foreign entity from Switzerland who has taken claim to our National forest and its resources

(water) destroying habitats, forest ground water, basin groundwater supplies, the forest headwater Strawberry Creek spring and upper stream ultimately altering forest ecology including the threatened and endangered species. This is WRONG!

Nestle's corporate chain of title is a chain of corporate ownership. However, the chain of title for any water rights in the National Forest are not recorded in the San Bernardino Co. recorder's office bogus or not. Nestle should be held liable for damage as successor-in-Interest of millions of gallons withdrawn from our state and National Forest since their predecessor-in-interest take which should be about 1928. This is a violation of public trust. The citizens of the U.S. and the great state of California rely on the State Water Board to protect our water!

All private land appropriate water rights associated with Arrowhead hotel and spa and possessory claim of David Noble Smith approximately 2000' in Sections 11 and 12 designated on USGS/USFS maps have been appropriated. The private land claims are expressed on the USGS maps. (Exhibit A-5)

"Indian Springs" and tunnels as described in letter from Byron Waters to California Consumer Company/ California Consolidated Water Co February 14, 1929 (Exhibit A-9) and the 1929 Pipeline Survey Map (Exhibit A-7) clearly show that "Indian Springs" tunnels is on San Bernardino National Forest land when plotted on USGS base topo map (Exhibit A-8) based on the 1000 ft Northwest of NE Corner marker of Sec. 11 in T1N R4W.

The Byron Waters (Exhibit A-9) letter clearly states that the Indian springs is "water developed in tunnels" which is groundwater. Waters claims ownership vested by use ... continuously and adversely .." These federal lands are immune from adverse possession and this use would have been an illegal take. Furthermore, the Waters' letter describes the tunnel which are mining forest groundwater would be a take of a natural resource prohibited from removal per 1894 notice. Also, Waters' letter states pg 2. "3. Also, whatever rights and interests ARROWHEAD SPRINGS

CORPORATION owns and possess in water flowing from Indian Springs.” This “3.” Statements is intentionally ambiguous implying that he knows that the Arrowhead Springs corporation and California Consolidated Waters has no legal rights in that location. In fact, the lack of rights on this land was stated in the Del Rosa lawsuit. (Exhibit A-6)

The Byron Waters’ letter (Exhibit A-9) is based on his familiarity with the area as an attorney instead of legal recorded documents, deeds survey plats and forest land survey boundaries or federal laws prohibiting adverse possession or theft. The Byron Waters’ letter water take of Arrowhead Springs Corp. on present owners (The San Bernardino National Forest) land and the “prescriptive” and “adverse” “ownership” of these rights which immunity has been established via common law.

The implied federal reserve water rights have been determined and repeatedly confirmed by the Supreme Court (Winters v. United States, 207 U.S. 564 (1908), Arizona v. California, 373 U.S. 546 (1963), Cappaert v. United States, 426 U.S. 128 (1976) and United States v. New Mexico, 438 U.S. 696 (1978). These federal reserve groundwater rights were recently upheld in the U.S. Court of Appeals Ninth Circuit in Agua Caliente Band of Cahuila Indians, United States of America v. Coachella Valley Water District et al (2017) whose decision was upheld when the U.S. Supreme Court refused to hear the appeal case November 27, 2017. Nestle has no legal basis for surface or groundwater withdrawals on the federal public lands of the San Bernardino National Forest lands founded in 1893.

Nestle should be found liable for the surface and groundwater take from the San Bernardino National Forest and the people of California. The Strawberry Creek headwater spring no longer flows and the upper Strawberry Creek bed is only damp. (Exhibit A-10). According to retired Forest Service ranger Gary Earney, on January 7, 2018 wrote “ I located it (Strawberry Creek headwater spring 6108) yesterday afternoon after leading a hike into Nestle’s main wells (excluding the well #7 complex); it is flowing at about 0.25 gal/minute from the lone remaining pipe. That would be about 360 gallons/day; the surface expression runs down the intermittent channel for about 30 feet before it disappears. Its easy to get to now as I did some brush pruning. The route in

had recently been flagged in white...The fact that it could flow at such a rate in 1928, and essentially no longer flows at all says something about Nestle's impact on the area. I personally know of it essentially not flowing at all from 1982 until now as I have never seen water from it in the minor intermittent flow channel in which it is located, which channel crosses the old road bed leading to Nestle's wells 1, 2, 3, and 8; that is the old road bed well all hike in on, which was cleared of dense brush sometime in early 2017. I have hiked in on that road bed numerous times since 1982. Nestle has most certainly created a "water draw down trough" in the upper area of the bowl that is the headwater of the West Fork. Gary"

The State Water Resource board report section 3.4.1 License 1649 File Review also discusses the headwater spring. According to historical documents housed at the State Water Resource Institute- "Report ON Certain Water Sources in San Bernardino For Arrowhead and Puritas" April 1948. Discusses the appropriated spring 1649 called the "Highway Spring" which is said to be 100 feet North of the Arrowhead well site 1 where the spring water escapes from the Highway spring source and feeds well 1 Furthermore, a FOIA request reveal State Water Board letter January 23, 1940 stating the Forest Service was the only rights holder in section 30.

The State Water Resource Board is allowing the Swiss Nestle to continue the take of forest ground and surface water which should be supporting critical forest habitat. The continued water withdrawal would be aiding and abetting the destruction of endangered and threatened federal and state habitat and federal forest lands aka federal government property and depriving the valley groundwater recharge of water basins below causing drought restrictions to be placed on the local residents as a foreign corporation profits.

References:

Benjamin Harrison: "Proclamation 354-Setting Apart as a Public Reservation Certain Lands in the State of California," February 25, 1893. Retrieved from <http://www.presidency.ucsb.edu/ws/?pid=71172>.

Public “Notice to Settlers” from Department of Interior Posted in San Bernardino Mountains August 28, 1894. Sources: The Daily Courier (San Bernardino, California) Sunday, May 13 p. 1 and Los Angeles Herald (Los Angeles, California) Tuesday, May 29, 1894, p. 8. Retrieved from <http://www.newspapers.com>.

Public Notice Given from Department of Interior General Land Office April 14, 1894. Source: Los Angeles Herald (Los Angeles, California) Wednesday, August 29, 1894 pg 8. Retrieved from <http://newspapers.com>.

USFS San Bernardino National Forest Atlas Quadrangle Topographic Map. First Ed. (2004). USDA, Forest Service Pacific Southwest Region R5-RG-067.

Del Rosa Mutual Water Co. v D.J. Carpenter et al. Cal. 31798 (1930/1931).

1929 Survey Maps Arrowhead Springs Corp pipeline. Recorded San Bernardino County Map Book 2 pages 18 and 19.

USGS topo base map with “Indian Spring” tunnel mapped based on 1929 Survey using Arc GIS.

Byron Waters letter (February 14, 1929) to Consolidated Consumers Company.

USFS “Memo to File Documentation of site survey of water rights A6108) October 2016.

Report On Certain Water Sources in San Bernardino Mountains For Arrowhead & Puritas Waters, Inc. (April 1948). Rowe & Webb Engineers.

2. Ground Water Rights of overlaying land owner and Federal Reserve Rights

Facts:

- Federal Reserve Rights of National Forest water rights via Winters Doctrine and confirmed by Supreme Court and case law. San Bernardino National Forest owns all land and water rights within its boundary as declared February 25, 1893 which were not claimed by August 28, 1894.

- San Bernardino National Forest is the landowner of Upper Strawberry Canyon T2N R3W tunnels/ wells and “springs” claimed by Nestle and T1N R4W E ½ Sec 11 “Indian Springs” tunnels.
- Therefore, the San Bernardino National Forest has overlaying groundwater rights and Federal Reserve rights.

References:

Federal Reserved Water Rights pdf

Outline of California Water Rights pdf

Federal Reserved Water Rights and State Law Claims pdf USDA/USFS website.

US Forest File Arrowhead Mountain Spring Water Co./ Arrowhead Springs, Strawberry Canyon

State Water Data base for groundwater recordation/water rights plotted using Arcgis

Discussion:

Federal Reserve Water Rights from the CA Water Plan Update Vol. 4 Reference Guide “When the United States reserves public lands such as Indian reservations...forest.., it also implicitly reserves sufficient water to satisfy the purposes for which the reservation was created.....have implied rights.. The date of priority of a federal reserve right is the date the reservation was established.” The San Bernardino Forest Reserve (National Forest) was established February 25, 1893. Any water claims would have had to be established before this date. Therefore, Nestle would have to have a water right claim pre-1893 and Nestle has no pre-1893 water rights in upper Strawberry Canyon or Indian Springs. Furthermore, the Del Rosa lawsuit findings are not valid for Nestle’s predecessor-in-interest California Consolidated Waters.

From the State Water Resource Control Board website “The California Supreme Court decided in the 1903 case Katz v. Walkinshaw that the “reasonable use” provision that governs other types of water rights also applies to ground water. Prior to this time, the English system of unregulated ground water pumping had dominated but proved to

be inappropriate to California's semiarid climate. The Supreme Court case established the concept of overlying rights, in which the rights of others with land overlying the aquifer must be taken into account. Later court decisions established that ground water may be appropriated for use outside the basin, although appropriator's rights are subordinate to those with overlying rights." (Exhibit A-8)

The San Bernardino National Forest is the overlying land owner in the forest where Nestle has its groundwater withdrawals in Upper Strawberry Canyon and "Indian Spring" tunnels T1N R4W. Nestle calls these borehole wells and tunnels "springs" trying to deceive the public, the U.S. Forest Service, the State Water Resource Control Board and other officials.

Nestle's diversion from their water withdrawal operations to Code of Federal Regulation Title 21 food laws is inane. Nestle tries to conflate spring water labelling requirement with the water right issues. What the FDA Code of Federal Regulation Title 21 or the California public health laws consider spring water for "water bottling purposes" has nothing to do with State Water Board purview. The State Water Resource Control Board should not be ruling or influenced by Nestle's conflated spring definitions based on food labeling compliance. The State Water Board oversight is not food labeling misbranding issues. Bringing up FDA Title 21 Code of Federal Regulation requirements and compliance is ludicrous.

As cited above federal reserve rights of groundwater have been decided by the U.S. Supreme Court. The San Bernardino National Forest have groundwater rights in the National Forest not Nestle. The "Indian Springs" are manmade tunnels on federal forest land which made for extracting forest groundwater as confirmed by the Byron Waters letter 1929.

Nestlé and predecessor-in-interest have recorded ground water withdrawals documenting the liability created for Nestle as successor-in-interest for years of removing groundwater from federal lands. Nestle should not be authorized to withdraw forest groundwater as there is no valid basis to their claims.

3. Del Rosa Mutual Water Company v. Carpenter et al. Case 31798 California San Bernardino Superior Court (1931)

Facts:

- San Bernardino National Forest (United States) was not party to the lawsuit.
- The location of the “Upper Strawberry Canyon” and “Indian Springs” tunnels were never described as being on federal land (San Bernardino National Forest)
- Admission of no previous water rights by Arrowhead Springs Corp and California Consolidated Waters (in property recognized as San Bernardino National Forest).
- The judgment did not alter all contracts and agreements between Arrowhead Springs Corp. and California Consolidated Waters.
- California Consolidated Waters case was an adverse possession case of National Forest lands and water. Federal lands are immune from adverse possession. The San Bernardino Superior Court ruling does not have the authority to adversely possess Federal land and water.
- California Consolidated Waters deed back “Indian Springs” in 1930 to Arrowhead Springs Corp.
- There were never any water rights authorized in T2N R3W Sec 30 were Nestle and predecessors in interest have been taking “spring” water, drilling borehole wells and digging tunnels in the San Bernardino National Forest.

References:

See Exhibit A-6

Discussion:

Water Board Investigation report 3.1.4 Information from USFS, San Bernardino Mountains-

The United States Forest Service was not party to the Del Rosa Mutual Water Co. v D.J. Carpenter et al (1930/1931) case even though the Strawberry Creek and land involved is public forest reserve (national forest) land established in 1893. The formation of the forest reserve was done to protect the water supply and water take and trespassing was noticed to be illegal in 1894. The Del Rosa judgment involved adverse possession of federal property (water). Federal property is immune from adverse possession thus this judgment should not be considered valid regarding the rights given to California Consolidated Water Co. The Federal Reserve Water Rights of National Forest has been well established in The Winters Doctrine. The Forest Service has deferred to the State Water Resource Board for the Nestle ruling as required by the McCarren Amendment. The citizens expect the State Water Resource Board to honor the established Federal Reserve Rights and overlaying landowner rights in our San Bernardino National Forest. Even though the federal reserved right may have limits we are in drought, the Strawberry Canyon area is an endangered and threatened species habitat area plus the original proclamation for the San Bernardino Forest Reserve was to ensure a water supply for the local communities. The mountain communities and the groundwater basins have been severely impacted by the drought with depleted groundwater tables. Allowing Nestle to have any water withdrawal is a **VIOLATION OF PUBLIC TRUST and the law**. Federal reserve rights are not subject to non-use even though San Bernardino National Forest has not exercised its rights over the groundwater and surface water withdrawals by Nestle and predecessors-in-interest.

Robert Taylor is a hydrologist for the Forest Service and not an attorney for the U.S.D.A U.S. forest service. Thus, Mr. Taylor can offer no legal opinion on the basis of water right for the National Forest. Mr. Taylor did not understand that the Del Rosa judgment was not valid on federal land as it was an adverse possession case. Mr. Taylor did not have a legible copy of the Del Rosa judgement so how could he have any knowledge as to what the case was about? The State Water Resource board can obtain a copy of the

Del Rosa Judgement from the San Bernardino Superior Courthouse for a nominal fee. (Exhibit A-6)

The Del Rosa judgment **does not** authorize any rights in T2N R3W section 30 where Nestle and predecessors in interest have been withdrawing millions of gallons of water since 1929. (Exhibit A-9, 14, and 15) At the Water Resource Institute, there is a large survey blueprint plat of the exact location of Arrowhead and Puritas Water (Nestle's predecessor-in-interest) wells/tunnels/"springs" and pipelines in Section 30 T2N R3W SBBM completed on December 1953.

In order to understand the judgment, rights, surveys and other legal documents associated with this case an understanding of township, range and section measurements are essential. GPS points are a modern tool with a great deal of accuracy variation upward 50 meters especially in lands such as the forest. USGS maps must be used not GPS points since old deeds, water rights and surveys use survey township, section and range. San Bernardino National Forest boundaries are important. GIS using USGS base maps with township, range, and sections are important for this project. These base maps show public and private boundaries. Three-D projections with boundaries further help can an understanding of those early days of the possessory claim and early water withdrawal locations.

4. Possessory Claim of David Noble Smith and pre1914 water rights

Facts:

- David Noble Smith's possessory claim is for 160 acres at the base of Arrowhead "Ace of Spades" mountain around the hot springs located in T1N R4W East half of the SE quarter and SE quarter of the NE quarter of Section 11 plus the NW quarter of the SW quarter of Section 12.
- Water rights are for the springs and hot spring on these parcels.

Discussion:

The Smith possessory claim is the 160 acres in T1N R4W SBBM Sec 11 E1/2 SE1/4 and SE ¼ of NE ¼ plus Sec 12 NW ¼ SW1/4 this would not have included the

Coldwater creek springs “Agua Fria” used for the first water bottling in 1909. This would certainly not have included any water within current SB National Forest in upper Strawberry Canyon or “Indian Spring tunnels”. I have no idea how Nestle is citing the possessory claim as a proof of water rights where they have wells/tunnels/springs. Besides the water bottling operations were separate from the contracted water rights.

Board’s report of 4.3 Bases of Right is flawed. There is no basis for Nestle’s water rights with the possessory claim of David Noble Smith which is filed at the San Bernardino County archives (Exhibit A-22) This claim is only for the 160 acres as later defined by the subsequent patent which can be accessed at glorerecords.blm.gov or the San Bernardino County Archives (Exhibit A-23). This claim is in T1N R4W E1/2 SE 1/4 and SE 1/4 NE 1/4 Sec 11 and NW 1/4 SW 1/4 12 as defined. Many early surveys of the property and area are also available at historic records BLM website.

The water rights associated with David Noble Smith’s possessory claim are the property owners of this 160 acres which is not Nestle. The property is only part of the Arrowhead Springs Property. The State Water Resource Board did identify patented properties that are private and were incorporated into Arrowhead Properties.

References:

David Noble Smith (1865) Possessory Claim Book A, San Bernardino County Archives

Glorerecords.blm.gov for subsequent patent and surveys for David Noble Smith T1N R4W Sec 11 and 12

Patent and homestead for David Noble Smith, San Bernardino County Archives.

5. The springs of Arrowhead Springs

Facts:

- Many springs hot and cold are located on the Arrowhead Springs property in T1N R4W at the base of Arrowhead mountain elevation approximately 2000 feet.
- The testimony in the 1910 case 11399 said there were over 22 springs feeding Coldwater canyon from fissures in different stratum in the precipice.

(Exhibit A-25, 26, 27)

- Highly radioactive and high arsenic levels are claimed for Arrowhead hot springs. (Exhibit B)
- El Penyugal spring named by the Indians which means “Arrowhead”. Located at the foot of the Arrowhead. Located in the bottom of “Hot Water Canyon” 1900 feet 200 yards North West of the Hotel . Produced 55,000 gallons in 24 hours. Temperature 198-202 ° F. Water said to be radioactive (radium) and high in arsenic (di sodium arsenate). Sulphur spring. Cooled and bottled (Bailey 1917) Discharged 15 gallon/ minute (Waring 1915)
- Granite Hot Spring- located on the top of the mesa in “Hot Spring Canyon or Arrowhead Canyon] Northwest and elevation around 2025 feet. Temperature of the water 158 ° F. (Bailey 1917, 1910) Sulphur spring (Bailey1910)
- Palm Hot Spring-located on the mesa just north of the hotel supplied water for the plunge bath and hotel baths. Elevation 2055 and temperature 180°F. Heavy flow on mesa causes a marsh or “cienega”. (Bailey 1917) Sulphur (Bailey 1910)
- Other hot springs- “Scores of springs, gushing from the banks of the Hot Water Canyon” [Arrowhead Canyon] below Penyugal Spring. (Bailey 1917)
- Waterman Springs- Situated in Waterman Canyon on east bank and ¾ mile northeast from hotel at elevation around 1950 feet above sea level. Sulphur. Temperature 158-200°F.
- **Cold Springs in Coldwater Canyon and Waterman Canyon**
- Fuente Frio Spring in bottom of Arrowhead Canyon (Bailey,1917, 1910) Cold Spring up the ravine from El Penyugal , Comes from belt of white feldspar (Bailey 1910) Placed on the market as table water 1909 (Waring 1915) Listed as a minor spring (Waring 1915)
- Auga Fria (Indian Springs) in Coldwater canyon. (Bailey 1917) Is the water of cold canyon at the head of the pipe line leading to the main reservoirs on the high mesa north of the hotel. Water from granite rocks.

Discussion:

The Arrowhead spring are documented and are considered only those springs on the private Arrowhead springs property not the upper Strawberry Canyon or "Indian Spring" tunnels of 1929 map. Documents have stated 36 springs on the David Noble Smith property. Twenty two springs were noted on the East side of the Arrowhead Property in section 12 T1N R4W. There are many groups of springs including hot and cold.

Nestle tries deceive the board by telling them that the groundwater extractions used for bottled spring water are considered springs by the FDA. Title 21 Code of Federal Regulations define what can be put in the bottle and labelled and sold as spring water but this food code for labelling has nothing to do with the physical definition of a spring. The case for Nestle's bottled spring water case is still in appeal with the FDA.

References:

USGS topographic base maps for T1N R4W SBBM

US Forest Service (2004) Topographic maps for the San Bernardino National Forest

Bailey, G. E. (1910) *A report on the Arrowhead hot springs, San Bernardino California*. Arrowhead, San Bernardino, CA: The Arrowhead Hot Springs Co.

Bailey, G.E. (1919) *Some hot springs of Southern California; their origin and classification*. Los Angeles: University of Southern California Press.

Bailey, G.E. (1917) *Arrowhead Hot Springs, California's the ideal spa*. Oakland, CA: Union Lithograph Co.

Sanders, F.C.S. (1916) *California as a Health Resort*. San Francisco, CA: Bolte & Braden, Co.

Waring, G.A. (1915) *Springs of California*. Water Supply Paper 338, US Department of Interior, USGS. Washington, D.C.: Government Printing Office.

Arrowhead Hot Springs Company v Arrowhead Cold Springs Company. San Bernardino Superior Court 12532. 1912/1913.

Arrowhead Springs Water Company v. Arrowhead Hot Springs Company. San Bernardino Superior Court 11399. 1910.

6. Water bottling of Arrowhead Springs

Facts:

- First Arrowhead Water Bottling in 1909
- First Water Bottling Company was Arrowhead Springs Water Co. in Los Angeles. Owners were separate from the Arrowhead hotel owners (Arrowhead Hot Spring Co.)
- Water from Arrowhead properties contracted by Arrowhead Springs Water Co. (bottlers/ distributors)
- Arrowhead Hot Springs Co. bottled water after dispute 1913 to 1917 name for bottling entity Arrowhead Springs Co.
- Arrowhead Hot Springs Co. moved bottling operation to Los Angeles in 1917
- Cold Water Canyon water from Arrowhead Spring Property was used in the First Bottling Operation
- Arrowhead Hot Springs Co started bottling own water in 1913 on hotel property.
- Arrowhead Springs Water Co. put out of business.
- Arrowhead Cold Springs Co. recapitalized then bankrupt in 1912.

Discussion:

The first bottling of Arrowhead water commenced in 1909. An LA corporation called Arrowhead Springs Water Co. located at 1515 E. 7th Street in Los Angeles. Manufactured Ginger Ale and bottled water. Bottled and distribute the Arrowhead water of Coldwater Canyon/Creek via a water contract with the hotel property Arrowhead Hot Springs Co. The Arrowhead Water Co. put in a pipeline from Coldwater canyon to a large iron galvanized 1000 gallon reservoir near the hotel. Santa Fe Railroad furnished a tank car to haul the water to the bottling plant in Los Angeles. During the winter when Coldwater canyon water turned muddy the cold spring Penyugal (Fuente Frio) was used. (Exhibit A-31) Disputes, injunctions and lawsuits ensued over the water, labelling and advertising. The Arrowhead Hot Springs Co. opened a water bottling operation near the hotel in 1913. Arrowhead Springs Water Co. and Arrowhead Hot Springs Co. (Arrowhead Spring Co.) were both in the water bottling business at the same time. A new distributor for Arrowhead Hot Springs Co, Al McRae, was found to distribute the various arrowhead waters and soda including ginger ale. At the end of 1917, Arrowhead Hot Springs Co (Arrowhead Spring Co.) opened a water bottling operation in Los Angeles which was sometimes called Arrowhead Bottling Works. This continued until the hotel was sold in 1925 and then a money raising effort for hotel improvement was taken was taken on. In 1928, Arrowhead Springs Corp (property owner) bottling operation run by Charles Anthony made agreements with California Consolidated Waters and Puritas to merge to bottle and distribute water for large sums of money which aligned with funds needed for bond debts. However, there were many false claims including selling rights in the San Bernardino National Forest and pipeline easements through the forest. California Consolidated Water was able to convince a judge to adversely possess rights in the San Bernardino National Forest.

The San Bernardino Superior Court Cases 11399 (1910) and 12532 (1912/1913) give location of water exported for pre-1914 water bottling as only defined private property of Arrowhead Hot Springs Corp not included within these boundaries. There is no basis for Staff's pre-1914 Strawberry Canyon or Indian Springs tunnels T1N R4W Sec 2 claim.

“Indian Springs” identified by the State Water Resource board is on San Bernardino National Forest Lands based on the 1929 plat survey map. “Indian springs” are described as manmade tunnels manufactured for water according to Byron Waters letter dated 1929. Furthermore, surveys, plat maps, legal descriptions and Byron Water 1929 letter place these “ Indian Springs” tunnels on Forest Service land in Section 2 T1N R4W. Indian spring has no –pre 1914 right attached. The original Indian Springs was a series of springs in “Agua Fria” which was Cold Water Canyon and on the Arrowhead Springs property. Cold Water Canyon was fed by many springs as documented in the 1910 lawsuit 11399. The original water bottling was from Coldwater Canyon as documented in San Bernardino Superior Court Case 11399 -1910 and Court Case 12532 which are available at the San Bernardino County Archives.

The appropriated right recognized by the Del Rosa Judgement for California Consolidated Water is not valid as this is an adverse possession of federal forest land which is immune to adverse possession claims. The San Bernardino National forest was not mentioned in this judgment nor party to the lawsuit.

The only mention of any right to Strawberry Canyon for Arrowhead Springs Hotel is for defined sections in T1N R4W not upper Strawberry Canyon of T2 N R3W which is National Forest land and where Nestle has water withdrawals. The 1930 title report was altered by quit claim deeds. Agreement by Arrowhead Springs Corp acknowledge no warranty of rights above Section 12 T1N R4W which would include the Upper Strawberry Canyon implied by Nestle. Nestle’s attorneys should recognize that Federal lands are immune from adverse possession as defined by admission of “appropriation” in Byron Water’s 1929 letter. Furthermore, the Supreme Court and California law has upheld Federal Reserves Rights and overlaying property owners to groundwater.

Agua Fria the water in Cold water canyon had a series of springs in feeding Cold water Creek referred by Bailey 1917 as Indian Springs. Cold water creek water used for water bottling by Arrowhead Springs Water Co. 1909. Arrowhead Hot Springs Co. started bottling at the hotel site in 1913-1917. They bottled many different spring water including Penyugal, Granite springs, Agua Fria “Indian Spring” from Coldwater Canyon etc. The USGS *Springs of California Water Supply Bulletin 338* (1915) Gerald Waring

along with Congressional records and other records have documented that the first water used for bottling at Arrowhead Springs was from “Fuente Frio” spring on the Arrowhead Springs Corp property. G.E. Bailey’s references describe early bottled water withdrawals were from “Agua Fria” also known as the cold water in Coldwater Canyon. Agua Fria in Coldwater Canyon was referenced as “Indian Springs” by G.E. Bailey (1917). The first water for water bottling is well documented to be in Coldwater Canyon in 1909 in the Case 11399. Fuente Frio spring north of El Penyuagal was used for “table water” according to the Waring USGS California Springs 1915 Water Supply Paper 338. Later water was taken from El Penyuagal Springs because of high arsenic value which is also on the Arrowhead Springs property. Indian Springs water was advertised as used in soda such as ginger ale. In the back of Bailey’s 1917 Arrowhead booklet Indian Springs water is “flowing from granite rock out of the side of Arrowhead Mountain at an elevation of 2500 feet.”

“Indian Spring” tunnels on the San Bernardino National Forest lands were manmade tunnel used to extract groundwater from the San Bernardino Forest land. These are not the pre-1914 Indian Springs in Agua Fria. The Indian Springs tunnels and springs have no ties to the Possessory Claim of David Noble Smith.

Early water bottling is documented as being from two locations on the Arrowhead Springs property. Arrowhead springs water was bottled by an independent Los Angeles Corporation founded to bottle and distribute the Arrowhead water from Cold Water Creek. The water was provided by the Arrowhead Hot Springs Corp (The Arrowhead hotel). The San Bernardino Superior Court Case Arrowhead Water Co v Arrowhead Hot Springs Co. court case 11399 describes Arrowhead Water Co. of Los Angeles as bottling water being obtained from Cold water creek in Cold water canyon. “Fuente Frio” was a minor spring was used for “table water” in 1909 according to the Waring’s USGS Springs of California Water supply paper 338 (1915). However, Bailey’s Fuente Frio is described at the bottom of Arrowhead Canyon quarter mile north of the hotel and in the same ravine as the El Penyuagal hot spring coincides with the use of the spring during the muddy winter waters 1909. . Furthermore, the court case 125532 in 1912/1913 confirms that all water used for bottling was from within the Arrowhead

Springs Property boundaries not on U.S. Forest lands.

“Arsenic” water from Penyugal spring, radioactive arrowhead hot spring, Granite hot spring were also bottled and sold by Arrowhead Hot Springs Corp. There is no proof of any pre-1914 rights were transferred to Nestle’s predecessor-in-interest through chain of title. Arrowhead Springs Corp (hotel property land) retained the water rights which have been deeded through the Arrowhead Property. In 1928, when Arrowhead Springs Corp sold their bottling operation to California Consolidated Water they sold false spring rights in the National Forest which are the Upper Strawberry Canyon and Indian Springs tunnel well sites. The Indian springs tunnels on forest land were deeded back to Arrowhead Springs Corp. in 1930.

7. Beneficial Use

Facts:

- The Strawberry Canyon site has been designated as a valuable ecosystem for threatened and endangered species.
- Nestle and predecessors-in-interest have dried up the Strawberry Creek headwater spring and upper Strawberry Creek.
- Reduced water flow of West branch (Nestle’s withdrawal) Strawberry Creek at East and West branch confluence.
- Environmental health of our National Forest a beneficial and primary use.
- Strawberry Creek essential for groundwater recharge of valley groundwater basins and streams.
- Federal Reserve rights are immune to most state water laws and not subject to diversion, beneficial use requirements and cannot be lost by non-use.

Discussion:

3.3 Inspection Narrative includes observations. Beneficial use for Nestle’s water withdrawals for bottled water are not an issue since Federal Reserve Rights outweigh

Nestle's use. The Federal Reserve Rights should be honored as well as overlaying groundwater rights since Nestle's water withdrawals are on San Bernardino National Forest. I have hiked the upper and Strawberry Creek water shed where Nestle withdraws water that is piped down the mountain.. I have seen the dry Strawberry Creek bed in the upper canyon T2N R3W section 30 and have located approximate location of the headwater Strawberry Creek Spring as documented in the USFS photographs and reports obtained through FOIA documents. I have seen Nestle's well withdrawal sites including vault 3 and their extensive pipeline network which visually mars the appearance of the San Bernardino Forest. I have witnessed a great deal of diverse fauna and flora on my various trips hiking in Strawberry Canyon even though they were not prime conditions or times for sightings. Some animals seen included 2 striped garter snake in Strawberry Creek, king snake, rattle snakes, lizards including horn toad lizard, plus frogs including California tree frog. Have witnessed many varieties of butterflies and unusual flies. Have seen evidence of mountain lion, deer, and bear. Wild elderberries and native blackberries grow in some spots among the diverse chaparral. I have also hiked Strawberry Creek to the confluence where the East and West (Nestle withdrawal side) Strawberry Creek join deep in the forest ravine. I have witnessed the West branch barely flowing, walked on this branch of Strawberry Creek which contained stagnant water more like a bog as water gushed through the pipeline nearby. The East branch of Strawberry creek without Nestle withdrawals water was several inches deep and swiftly running near the confluence providing most of the water for Strawberry Creek (October 2017). The ecosystem habitat studies to date have been limited and inadequate. It is obvious that Strawberry Creek is a unique and diverse habitat for fauna and flora is being negatively impacted by Nestlé's water withdrawals thus violating public trust and the endangered threatened species and their habitats. Hiking is the best way to see Nestle's operation and impact on the forest ecosystems. Most animal populations are near the flowing water and during later afternoon hours. Since my brief trips have witnessed so much diverse fauna and flora this must just be a small sampling of a much larger collection of fauna and flora. Many of my Strawberry Creek trips have been well documented in the Desert Sun and the San Bernardino Sun.

Living in Redlands, our groundwater basin is impacted as well.

8. Other Comments

3.4.2 Historical Document Search

Although I provided some documents to the State Water Resource control board these documents are a fraction of historical documents, records, deeds, court cases, newspaper clipping that I have uncovered over the last three years after extensive research of legal documents, deeds, archives, newspapers. The State Water Board historical account of the water bottling operation is inaccurate and incomplete producing incorrect assumptions regarding ownership and rights. The Arrowhead Corp hotel, water, water bottling companies have gone through multiple private, public, publicly traded companies including holding companies since the beginning so the ownership chain of title is complicated. The Possessory Claim holder David Noble Smith was concerned with the “curative” Arrowhead Hot Springs located on his

The Arrowhead history is documented in a multitude of records, court cases, newspaper clippings, recorded deeds and articles of incorporation. The bottling of Arrowhead water often coincided with needs for the Arrowhead property to raise money for disgruntled share holders (1909) or bond payments (1928). The first Arrowhead water bottling company was an independent water bottler incorporated in Los Angeles who contracted with the Arrowhead Hot Springs Co. (Seth Marshall’s hotel) to bottle and distribute Arrowhead water. Court Cases alleging fraud from 1910 and 1912/1913 provide detailed testimony and proof that early water was from the Arrowhead Property which is documented to have over 36 springs. The first water was from Cold Water Canyon, Coldwater creek and springs around this area (Agua Fria—sometimes called Indian Springs) which were within the Arrowhead property boundaries. Fuente Frio was also used for early water bottling according to USGS as well as Granite and El Penyugal springs. After several lawsuits Seth Marshall’s Arrowhead Hot Springs Co. broke ties with Arrowhead Water Co. and started bottling water at the Arrowhead Springs Property (1913) and later built a water bottling plant in Los Angeles (1917). The Arrowhead Springs only refer to the springs on the Arrowhead Property which is well documented in those early court cases. Once again Nestle and predecessor in interest have misrepresented the product they sell and bottle.

In 1925, the Arrowhead Springs Property (Arrowhead Springs Corp) changed ownership with Charles Anthony in charge. A large bond was taken out for the hotel and bottling operation. Around 1928, a deal was made with California Consolidated water et. al. to bottle and distribute the Arrowhead Springs water which coincided with the time a bond payment was due. Agreements show Arrowhead Springs Corp misleading Consolidated water to extract water from forest service land in Upper Strawberry Canyon and the "Indian Springs" tunnel site in on Forest Service land T1N R4W Sec 2. No survey was done by Consolidated Water and deeds were worded with "whatever rights" in these areas. Multiple agreements were made between Anthony's Arrowhead Spring and Consolidated Water even giving back all rights to "Indian Springs", developing pipelines in the forest and other agreements. Of course, Arrowhead Springs Corp had no authority to authorize water extraction or pipeline easements on Forest lands. A series of letters including the 1929 Byron Water's letter indicate a questioning of water rights. Byron Water's letter implies justification of rights as adverse possession of water extraction in Forest Service lands in upper Strawberry Canyon and "Indian Springs tunnels". There is no proof that these Indian Springs tunnels were used by Smith. The Del Rosa Lawsuit was an adverse possession suit for California Consolidated Water, but the U.S. Forest Service was not party nor was it mentioned that the Upper Strawberry Canyon nor the "Indian Springs" tunnels were on Forest Service land. However, the suit did say that all agreements between Arrowhead Springs Corp and California Consolidated Water would hold so thus since California Consolidated Water deed back" Indian Springs" tunnels then Nestle has no rights what so ever to these tunnels. (Exhibit A-21)

3.4.3.2 Hydrological Studies for FDA compliance

The compliance that Nestle is meeting spring water bottling code is still under appeal by Story of Stuff and Campaign Courage.

4.3.2 Pre-1914 Right Based on Plans to Export Water for Bottling

Nestle does not have pre-1914 rights on United States Forest lands. According to San Bernardino Superior Court Case 12532 "Finding of Fact and Conclusions of Law" dated April 18, 1913 that the water manufactured by Arrowhead (Cold) Water Co. was taken

within the private Arrowhead Springs property as listed in the suit and judgment. The Water was from Cold water creek which intersects the Arrowhead Property. (Exhibit B - 1)

4.6.2 Allegations of Chain of Title Issues

Water rights are property rights which should be recorded at the San Bernardino County recorders office. The Articles of Incorporation chain of title is filed at the San Bernardino County Recorders office, but the proof of water rights are not. Not all corporations acquire all properties and rights of predecessors. Quit Claim deeds involving water rights are questionable especially the 1987 Beatrice proof of water rights which appear deceptive. There is no proof that Nestle holds any water rights in San Bernardino County National Forest land or on the private lands within. Any water rights that Nestle's successor in interest may have had to the "Indian Springs" and tunnels were deeded back to the hotel property owners Arrowhead Springs Corp as filed in Book 648 pg 122 as defined on page 125 of said document filed in San Bernardino County.

4.35 Summary of Division staff's determination regarding bases of right claimed.

Nestle does not have a pre-1914 water right based on the Superior Court cases from 1910 and 1912/1913 and deeds from 1915. (Exhibit A-24) If the state board would like to see more documentation please contact me.

4.4 Diversions Subject to Permitting Authority

Consolidated Waters had no valid rights to water in the San Bernardino National Forest. The original well and water developments appear to be done with intent to adversely possess the water right and land starting in 1928. Furthermore, it was Arrowhead Springs Corp that falsely authorized original rights and easements to Consolidated Waters not the courts or the San Bernardino National Forest. The upper Strawberry Canyon wells and "Indian Springs" tunnels are on Forest Service land which is not subject to adverse possession. The permit does not grant water rights. Nestle's failure to produce valid deeded water rights should have nullified the SUP. There appear to be no current permits from the U.S. Forest Service for pipeline easements at the "Indian Springs tunnels" T1N R4W E ½ Sec 2.

Nestle has continued to file documents under a surrendered corporation name of "Arrowhead Drinking Water Co." They have also used the name Arrowhead Mountain Spring Water Co. for billing and permit purposes which is not found in Nestle's articles of incorporation nor is their a fictitious business name on file in San Bernardino Co. It [Exhibit A-29] Can a corporation in California legally operating under surrendered corporation names and shell company names? Why has this been allowed?

4.6 Evaluation of Allegations

The State Water Resource board needs to re evaluate much of their report especially the pre-1914 rights and reconsider Federal Reserve Rights and Overlaying landowners groundwater rights. There is no proof of chain of title of water rights. The chain of title of incorporations does exist creating definite liability for Nestle as successor in-Interest. The water right chain of title is incomplete and chain of title for water rights not deeded to Nestle Waters of North America, Inc.

I appreciate the State Water Resource Board for examining this complicated case involving Nestle's water withdrawals in the San Bernardino National Forest. Hopefully, my documents and explanation will force a re-examination of the case and clarify that Nestle has no rights or pre-1914 rights for San Bernardino National Forest ground or surface water. The people of California and the United States of America with vested interests in public land, water and our resources are counting on the California State Water Resource Control Board for public trust, water and environmental resource protection.

Sincerely,

Amanda Frye

Exhibits

- A-1 Proclamation 354-Setting Apart as a Public Reservation Certain Lands in the State of California. Benjamin Harrison February 25, 1893
- A-2 Public Notice to Settlers. May 13, 1894
- A-3 Land Office Notice of Interest of Settlers May 29, 1894
- A-4 Public Notice from the Dept. of Interior not to occupy forest land or take natural resources Aug. 29, 1894.
- A-5 San Bernardino National Forest atlas pg 16 and 17 showing National Forest and private property boundaries.
- A-6 Del Rosa Mutual Water Company v D.J. Carpenter et. al. case 31798 (1930/1931)
- A-7 Survey Plat map (1929) Arrowhead Springs Corp pipeline T1N R4W from Map Book2 pg 18 and 19.
- A-8 Location of Indian Springs tunnels plotted on USGS topo map base using ArcGIS online. Based on measurements NE Corner sec 11 from 1929 survey plat and Byron Waters letter (1929) pin at top of tunnels.
- A-9 Byron Waters letter (1929)
- A-10 Head Water Strawberry Creek Spring site A6108 USFS 2016
- A-11 Federal Reserved Water Rights
- A-12 Outline of California Water Rights
- A-13 Federal Reserved Water Rights and State
- A-14 Forest Service Special Use Permit
- A-15 Arrowhead well site locations
- A-16 Plot of Nestle (Arrowhead) well sites based on ewrims data
- A-17 Arrowhead Springs Corp quit claim deeds and agreements
- A-18 Agreement
- A-19 Grant Deed
- A-20 Schedule B of Grant Deed
- A-21 Agreement and deeding of Indian Springs tunnels water to Arrowhead Spring Corp.
- A-22 Possessory Claim David Noble Smith

- A-23 Land Patent David Noble Smith
- A-24 1915 deed with water rights of Arrowhead Springs Corp
- A-25 Select pages form A Report on the Arrowhead Hot Springs, San Bernardino CA.
Bailey, G.E. (1910)
- A-26 Select pages from USGS Water Supply Paper 338 (1915) Waring, G.A.
- A-27 Bailey, G.E. (1917) Arrowhead Hot Springs California's Ideal Spa pg with water labels.
- A-28 Arrowhead Springs Water Co. (1909) notice of incorporation and Notice of Water from Cold water canyon
- A-29 Surrendered Corporation Arrowhead Drinking Water
- A-30 Witness testimony from 1910 Arrowhead case 11399 Testimony of water for bottling from Cold water canyon
- A-31 Witness testimony taking water from cold spring penyugal (Fuente Frio)
- A-32 Arrowhead Springs Co. new LA bottling facility
- A-33 Bankruptcy of Arrowhead Cold Springs Co. (1912)
- A-34 Notice of Incorporation Arrowhead Cold Springs Co. (1910)

- Exhibit B-1 Arrowhead Hot Springs Co v Arrowhead Cold Springs Co. (1913)
Findings of Fact and Conclusion of Law. California San Bernardino Superior Court Case 12532.

- Exhibit C-1 Various Newspaper clippings