

Eggers, Tomas@Waterboards

From: Steve Loe <stevloe01@gmail.com>
Sent: Tuesday, February 06, 2018 8:53 AM
To: Vasquez, Victor@Waterboards
Cc: Stork, Natalie@Waterboards; Brandt, Jeff@Wildlife; Taylor, Robert G -FS; Susan Lien Longville; Gibson, Joanna@Wildlife; Lisa Belenky; Michael O'Heaney; Gary Earney; Gail Fry; Gail Fry; Hugh Bialecki; Heidi Fron; James, Ian; Ileene Anderson; Eddie Kurtz; Amanda Frye; Rachel Doughty; Sansonetti, Nancy; Steve Loe; DaveG; Dan Silver; James Steinberg; James Steinberg; Jeff Villepique; Greg Ballmer; Glen Thompson; Miranda Fox; Anthony Serrano
Subject: Input to Report of Investigation and Staff Findings regarding complaint, INV 8217 Strawberry Creek, San Bernardino County.
Attachments: Permit from FOIA.pdf; SCNFFWG Appeal of Board Report of investigation.docx

Victor: Enclosed are the Comments from the Southern California Native Freshwater Fauna working group where I am the co-lead. Thank you and your staff for considering these comments and request for improvement in the final report. This watershed and its fauna are very important to our group. Thank you for protecting this critical resource.

I am also attaching the Coldwater Canyon Permit on the San Bernardino National Forest in case you do not have it.

Please confirm receipt of this e-mail.

Thank you.

Steve Loe, Co-lead
Southern California Native Freshwater Fauna Working Group.
33832 Nebraska St., Yucaipa, CA 92399
909-809-4726



United States
Department of
Agriculture

Forest
Service

San Bernardino National Forest
Supervisor's Office

602 South Tippecanoe Ave
San Bernardino, CA 92408
Phone: 909-382-2600
Fax: 909-383-5770
TTD: 909-383-5616

File Code: 6270

Date: May 17, 2016

Steve Loe
Stevelo01@gmail.com

Dear Mr. Loe,

This is the San Bernardino National Forest's response to your Freedom of Information Act (FOIA) request on May 2, 2016 for Strawberry Creek studies and Coldwater Canyon Permit. I am releasing the Coldwater Canyon Permit (Campus Crusade for Christ International), and it was processed with the control # 2016-FS-R5-03784-F. However, your request for the Strawberry Creek studies has been referred to the Pacific Southwest Regional Office for review and release determination. If you have any questions regarding this referral, please contact Ms. Latanga Rush, Regional FOIA Coordinator, at (707) 562-9193 or email at lrush@fs.fed.us

The San Bernardino National Forest considers their responsibility to you under FOIA as fulfilled. If further assistance is required or if you have any questions regarding the enclosed responsive records you may contact Larry A. Lee, Administrative Operations Specialist, at (909) 382-2669 or you may email him at lawrencealee@fs.fed.us. Please identify your request by the assigned control number 2016-FS-R5-03784-F.

I believe this fully satisfies your request, however the FOIA provides you the right to appeal this response. Any appeal must be made in writing, within 45 days from the date of this letter, to the Chief, USDA, Forest Service: by email to wo_foia@fs.fed.us, by regular mail to Mail Stop 1143, 1400 Independence Avenue, SW, Washington, DC 20250-1143, by Fed Ex or UPS to Mail Stop 1143, 201 14th Street SW, Washington, DC 20250-1143, or by fax to (202) 260-3245. The term "FOIA APPEAL" should be placed in capital letters on the subject line of the email or on the front of the envelope. To facilitate the processing of your appeal, please include a copy of this letter and/or the FOIA control number assigned to your FOIA request 2016-FS-R5-03784-F.

Sincerely,

JODY NOIRON
Forest Supervisor

Enclosure: Coldwater Canyon Special Use Permit



2016-FS-R5-03784-F

Lee, Lawrence A -FS

From: Steve Loe <stevelo01@gmail.com>
Sent: Monday, May 02, 2016 3:31 PM
To: Lee, Lawrence A -FS
Subject: FOIA and Nestle NEPA request

Hi Larry. Bob said he had passed my request for Strawberry Creek studies and the Coldwater Canyon permit. Bob didn't say so, but I assumed you would be able to get me something in time to ~~review them to aid me~~ making logical comments on the Scoping for the Nestle Permit proposal.

Since I didn't get them in time, can you please check and see if I can get an extension of my time to provide comments? Like I told Bob, if the Forest is planning on using East Twin for a comparison, then the surface water extraction permit in East Twin needs to be considered and factored in all flow determinations. It appears that there is T+E habitat in East Twin above the confluence that would be affected by the diversion. All of the great habitat below the confluence would be affected by both the Strawberry wells and the East Twin surface diversion.

The East Twin permit is likely expired as well. It would be good to describe in the document and consider the ramifications to T+E Species downstream.

I am anxious to hear if I can have an extension. I will make it timely when I get the documents.

Thank you.

Steve Loe
909-809-4726

c. Record no. (1-2) <u>70</u>	b. Region (3-4) <u>05</u>	c. Forest (5-6) <u>12</u>
d. District (7-8) <u>53</u>	e. User number (9-12) <u>3120</u>	f. Kind of use (13-15) <u>916</u>
g. State (16-17) <u>06</u>	h. County (18-20) <u>071</u>	k. Cord no. (21) <u>1</u>

SPECIAL USE PERMIT

Act of June 4, 1897
This permit is revocable and nontransferable
(Ref. FSM 2710)

Permission is hereby granted to CAMPUS CRUSADE FOR CHRIST INTERNATIONAL

of Arrowhead Springs, San Bernardino, CA 92403

hereinafter called the permittee, to use subject to the conditions set out below, the following described lands or improvements:

A three foot right-of-way across a portion of the SW1/4SE1/4, Section 1, T.1N., R.4W., SBB&M as shown on map Exhibit "A", Campus Crusade for Christ, dated 7/75 and made a part hereof.

This permit covers .05 acres and/or .13 miles and is issued for the purpose of:
maintaining a water transmission conduit, intake dam, service trail and other appurtenances to convey water from Coldwater Creek to permittee's private land.

1. Construction or occupancy and use under this permit shall begin within --- months, and construction, if any, shall be completed within --- months, from the date of the permit. This use shall be actually exercised at least --- days each year, unless otherwise authorized in writing.

2. In consideration for this use, the permittee shall pay to the Forest Service, U.S. Department of Agriculture, the sum of twenty and 83/100 Dollars (\$ 20.83) for the period from March 1 1977, to December 31, 1977, and thereafter annually on January 1 Twenty-five and no/100 Dollars (\$ 25.00):

Provided, however, Charges for this use may be made or readjusted whenever necessary to place the charges on a basis commensurate with the value of use authorized by this permit.

3. This permit is accepted subject to the conditions set forth herein, and to conditions 18 to 26 attached hereto and made a part of this permit.

PERMITTEE	NAME OF PERMITTEE CAMPUS CRUSADE FOR CHRIST	SIGNATURE OF AUTHORIZED OFFICER <i>Thomas S. Brandon</i>	DATE <u>9/20/76</u>
		TITLE Assistant Secretary	
ISSUING OFFICER	NAME AND SIGNATURE <i>Mark Williams</i>	TITLE Forest Supervisor	DATE <u>10/5/76</u>

4. Development plans; layout plans; construction, reconstruction, or alteration of improvements; or revision of layout or construction plans for this area must be approved in advance and in writing by the forest supervisor. Trees or shrubbery on the permitted area may be removed or destroyed only after the forest officer in charge has approved, and has marked or otherwise designated that which may be removed or destroyed. Timber cut or destroyed will be paid for by the permittee as follows: Merchantable timber at appraised value; young-growth timber below merchantable size at current damage appraisal value; *provided* that the Forest Service reserves the right to dispose of the merchantable timber to others than the permittee at no stumpage cost to the permittee. Trees, shrubs, and other plants may be planted in such manner and in such places about the premises as may be approved by the forest officer in charge.

5. The permittee shall maintain the improvements and premises to standards of repair, orderliness, neatness, sanitation, and safety acceptable to the forest officer in charge.

6. This permit is subject to all valid claims.

7. The permittee, in exercising the privileges granted by this permit, shall comply with the regulations of the Department of Agriculture and all Federal, State, county, and municipal laws, ordinances, or regulations which are applicable to the area or operations covered by this permit.

8. The permittee shall take all reasonable precautions to prevent and suppress forest fires. No material shall be disposed of by burning in open fires during the closed season established by law or regulation without a written permit from the forest officer in charge or his authorized agent.

9. The permittee shall exercise diligence in protecting from damage the land and property of the United States covered by and used in connection with this permit, and shall pay the United States for any damage resulting from negligence or from the violation of the terms of this permit or of any law or regulation applicable to the National Forests by the permittee, or by any agents or employees of the permittee acting within the scope of their agency or employment.

10. The permittee shall fully repair all damage, other than ordinary wear and tear, to national forest roads and trails caused by the permittee in the exercise of the privilege granted by this permit.

11. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this agreement or to any benefit that may arise herefrom unless it is made with a corporation for its general benefit.

12. Upon abandonment, termination, revocation, or cancellation of this permit, the permittee shall remove within a reasonable time all structures and improvements except those owned by the United States, and shall restore the site, unless otherwise agreed upon in writing or in this permit. If the permittee fails to remove all such structures or improvements within a reasonable period, they shall become the property of the United States, but that will not relieve the permittee of liability for the cost of their removal and restoration of the site.

13. This permit is not transferable. If the permittee through voluntary sale or transfer, or through enforcement of contract, foreclosure, tax sale, or other valid legal proceeding shall cease to be the owner of the physical improvements other than those owned by the United States situated on the land described in this permit and is unable to furnish adequate proof of ability to redeem or otherwise reestablish title to said improvements, this permit shall be subject to cancellation. But if the person to whom title to said improvements shall have been transferred in either manner provided is qualified as a permittee and is willing that his future occupancy of the premises shall be subject to such new conditions and stipulations as existing or prospective circumstances may warrant, his continued occupancy of the premises may be authorized by permit to him if, in the opinion of the issuing officer or his successor, issuance of a permit is desirable and in the public interest.

14. In case of change of address, the permittee shall immediately notify the forest supervisor.

15. The temporary use and occupancy of the premises and improvements herein described may be sublet by the permittee to third parties only with the prior written approval of the forest supervisor but the permittee shall continue to be responsible for compliance with all conditions of this permit by persons to whom such premises may be sublet.

16. This permit may be terminated upon breach of any of the conditions herein or at the discretion of the regional forester or the Chief, Forest Service.

17. In the event of any conflict between any of the preceding printed clauses or any provisions thereof and any of the following clauses or any provisions thereof, the following clauses will control.

18. Service Charge

A service charge in addition to the regular fees shall be made for failure to meet the fee payment due date or any of the dates specified for submission of statements required for fee calculation. The service charge shall be one (1.0) percent per month of the fee from the date statement and fees were due or \$15, whichever is greater. If a due date falls on a nonworkday, the service charge will not apply until the end of the next workday.

Service Fee for Issuance of New Permit

A service fee of twenty-five dollars (\$25.00) will be charged for issuance of a new permit as a result of any change of ownership.

19. Indemnification of United States

The permittee shall indemnify the United States against any liability for damage to life or property arising from the occupancy or use of National Forest lands under this permit.

20. Esthetics

The permittee shall protect the scenic esthetic values of the area under this permit, and the adjacent land, as far as possible with the authorized use, during construction, operation, and maintenance of the improvements.

21. Erosion Control

The permittee shall be responsible for the prevention and control of said erosion and gulying caused by permittee either directly or indirectly, on the area covered by this permit and lands adjacent thereto, and shall provide preventive measures as required by the Forest Service.

22. Permit Termination

Unless sooner terminated or revoked by the Forest Service in accordance with the provisions of the permit, this permit shall, subject to annual revalidation by the Forest Service and payment of fees by the permittee, expire and become void on December 31, 1986; but a new permit to occupy and use the same National Forest land may be granted provided the permittee will comply with the then existing laws and regulations governing the occupancy and use of National Forest lands and shall have notified the Forest Supervisor not less than one (1) year prior to said date that such new permit is desired.

23. Rights Reserved

The land herein described is subject to certain rights reserved by or outstanding in parties other than the United States, and nothing herein shall abridge said rights or authorize prevention or obstruction of the reasonable exercise thereof.

24. Area Access

The permittee agrees to permit the free and unrestricted access to and upon the premises at all times for all lawful and proper purposes not inconsistent with the intent of the permit or with the reasonable exercise and enjoyment by the permittee of the privileges thereof.

25. Water Rights

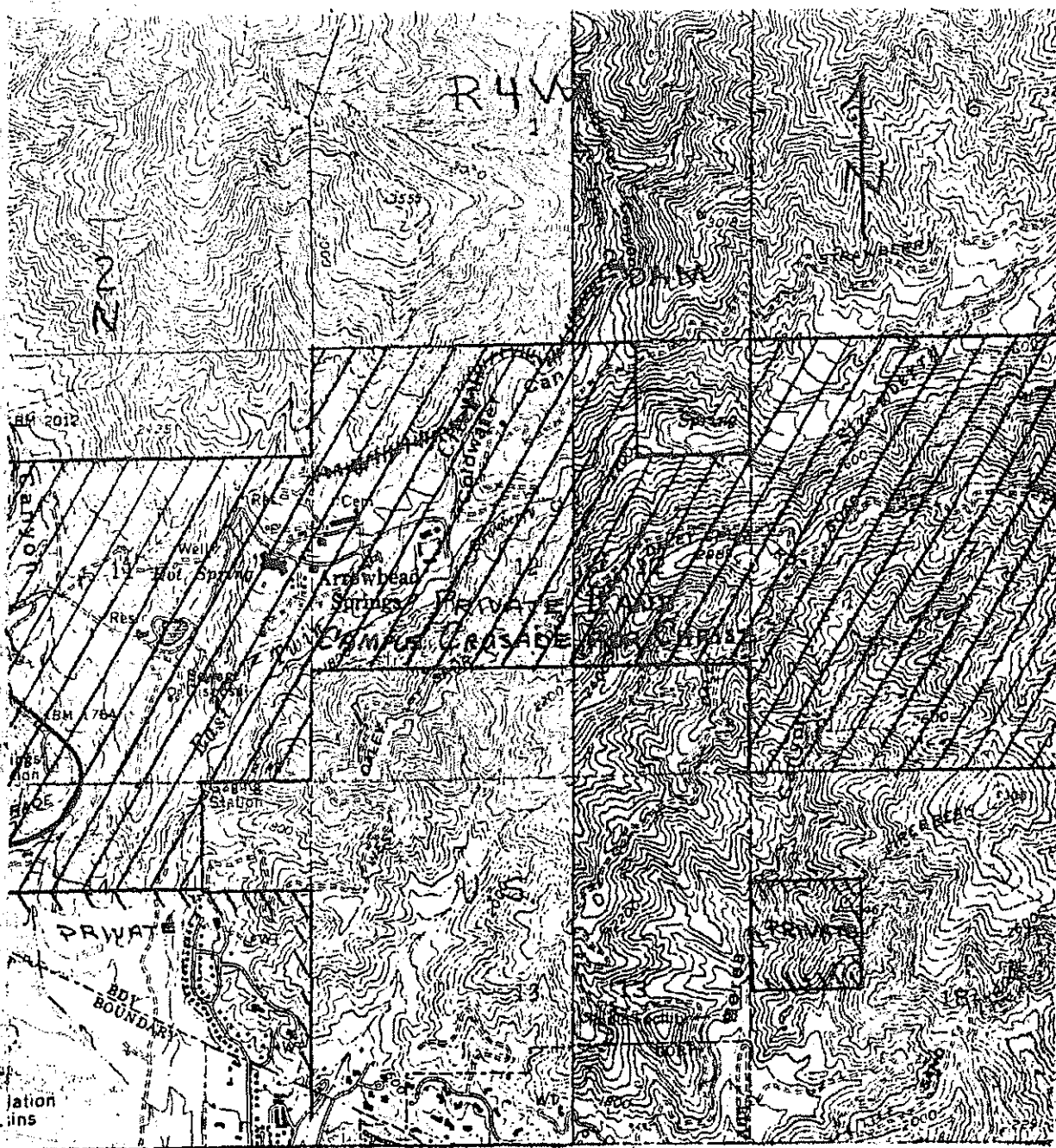
This permit confers no right to the use of water by the permittee.

26. Superseded Permit

This permit supersedes a Special Use Permit designated:

CAMPUS CRUSADE FOR CHRIST, Water Transmission,
4/16/63, signed by D.M. Tucker, Acting Forest
Supervisor.

EXHIBIT 'A'



CAMPUS CRUSADE SYSTEM SUPPLY

RANGER DISTRICT CAJON

SCALE 1" = 2000'

T. 2N, R. 4W, SEC. 1, SW SE 1/4

FIELD WORK BY: K. DYKEMAN SUBDIVISION DATE 7-75

PLATTED BY: P. CLARK DATE 7-76

APPROVED BY: _____ DATE _____

DISTRICT RANGER

APPROVED: _____ DATE _____

Steve Loe, Certified Wildlife Biologist (TWS), Co-lead
Southern California Native Freshwater Fauna Working Group
33832 Nebraska St.
Yucaipa, CA 92399
909-809-4726

State Water Resources Control Board
Division of Water Rights Attn: Victor Vasquez
PO Box 2000
Sacramento, CA 95812-2000

February 5, 2018

Attn:
Victor Vasquez
Natalie Stork
Kenneth Petruzzelli
Sent: email/U.S. Mail

Re: Report of Investigation and staff findings of Unauthorized Diversion regarding complaint against Nestlé Waters North America, Strawberry Creek, San Bernardino County. INV 8217.

Dear Honorable Officials and Staff of the State Water Resource Control Board: I, Steve Loe, as co-lead for the Southern California Native Freshwater Fauna Working Group, a complainant and petitioner, request that the State Water Resource Control Board re-examine the current situation and historical information to improve and expand on the Report of Investigation, INV 8217 Nestlé Waters North America, Arrowhead Facility, Strawberry Creek, San Bernardino National Forest (NF) issued December 20, 2017.

We appreciate the Board and Staff looking into this critical matter and all the work that has been put into the investigation and the report. Working with Victor and Natalie has been a pleasure. They are extremely professional and have helped us through the process. We fully support the State of California managing our water resources and want to support your efforts.

We do not agree with some of the conclusions in the report and ask you to reconsider in drafting the final report. We do not believe Nestlé has any right to 26 acre feet of surface diversions from Coldwater or Strawberry Creek. We do not believe Nestlé has any groundwater rights. We request that you describe and acknowledge Forest Service groundwater, riparian and Reserve Rights in cooperation with the State. We ask you to take immediate action on the Impact to the Public Trust and Waste and Unreasonable Use of Water caused by Nestlé permitted, but unauthorized take of water on the National Forest. A 300 year drought event is

enough of a reason to assume potential significant damage to any stream in southern California if you take away significant amounts of groundwater at the source. Especially for a non-essential and poorly permitted use of water to export for bottling.

Our group includes several biologists that have worked many years in the San Bernardino Front Country, including Strawberry Creek. Several of our group, including myself, worked on the Inland Feeder "Arrowhead" Tunnel under the National Forest adjacent to the Strawberry Creek Watershed. I served as the lead Biologist on the Arrowhead Tunnel Project (the largest tunnel ever on National Forest lands). One of my last tasks on the Tunnel project, in coordination with Michelle Bearmar, Forest Service hydro-geology lead, was evaluating the Strawberry Creek Watershed to see if the Arrowhead Tunnel had ongoing biological impacts to Strawberry Creek from groundwater loss to the tunnel. I served as a Forest Biologist for the Forest Service for 40 years with 30 years on the San Bernardino National Forest. My area of responsibility included the Strawberry Creek Watershed.

The following are our concerns with the current report and its conclusions:

Nestlé's Claimed Water Rights

From the beginning, Nestlé and their predecessors have claimed pre-National Forest and pre-1914 Water Rights, and told the FS that they were valid proven rights included in the Del Rosa judgement. Several of our members have worked for the San Bernardino National Forest for many years and have been involved in trying to get Nestlé and their predecessors to prove their water rights. They would provide a one or two page write-up of unverified claims and tell the Forest Service to accept them. Several times several staff (now retired) tried to pressure Nestlé and predecessors to really prove the rights but politically were stopped from further pursuing the issue. It always seemed odd to the local Forest Service staff that these deep wells and tunnels were covered by Pre-1914 surface rights. Almost all of these are groundwater harvesting tunnels and horizontal wells and not spring developments.

Telling FS that their rights were for surface springs with pre-1914 rights that pre-dated the National Forest while registering them as groundwater wells and reporting as groundwater rather than surface water diversions, seems to validate the fact that Nestlé and their predecessors had no legal surface rights. In 1985 the Forest Service denied Nestlé's predecessor's request to expand and install more horizontal wells to harvest more water using the same Del Rosa court case as proof of their right. This FS denial was based on the FS need for water on National Forest for fish and wildlife, recreation, and fire control. Nestlé's predecessor did not dispute the denial as they apparently realized they did not have the legal right and that the FS had discretion to approve or not approve more wells. The FS also prohibited them from upsizing pipelines and improving wells and tunnels because they realized it was harming the environment.

The Forest Service and their managers and scientists have progressed since 1929 when the permit was issued until today. By 1985 the Forest Service realized that they had control over the amount of groundwater that could be removed to protect the National Forest and that there were reasons to question Nestlé and their predecessors really having valid state water rights. At one point, the local office of the FS determined that Nestlé should pay for the water as it was groundwater and not surface water. This effort was stopped at higher levels of the Forest Service that are more subject to corporate political pressure.

There are no surface rights owned by Nestlé or their predecessors. We believe the San Manuel Band of Mission Indians (Recently acquired Campus Crusade Property) have the only upper watershed surface rights in Coldwater or Strawberry Creek other than the US Forest Service. Those rights are the original riparian rights that were part of the Arrowhead Springs/Campus Crusade/San Manuel Band of Mission Indian property. They still have a surface diversion in lower Coldwater Canyon on National Forest under FS Special Use Permit for irrigation (landscaping)(See Attachment). As far as we know and understand, this FS permitted diversion is the only known surface diversion in Coldwater Canyon. We believe that any surface water rights have been retained with ownership of the property. Historical records indicate that the water for bottling was taken from various springs and streams on the private property by various entities, often under contract. The only surface water rights we know of have been with the landowner.

The work completed by the Board Staff, Amanda Frye and others has shown how poorly documented the water rights claims by Nestlé and their predecessors are and were. The dates of the supposed claims do not predate the National Forest and the Reserved Water Rights. The San Bernardino Federal Reserve was created February 25, 1893. Any claim by Nestlé or its predecessors are after that date.

It appears that much of the early water bottling was on again, off again with water being contracted for rather than actual transfer of water rights ownership. Any claim of surface or groundwater rights by Nestlé would have to be tied to water that was taken on private land at the base of the mountain. However, Nestlé's claim of chain of ownership of the water rights is very sketchy and cannot be verified. See Amanda Frye's January 12, 2018 Appeal. We do not believe Nestlé has valid pre-1914 water rights or subsequent surface or groundwater rights.

We do not believe Nestlé has any groundwater rights on National Forest because the National Forest as the overlying owner is granted groundwater rights in cooperation with the State. We hope the State is not saying in the report that the wells that were put on NF under false pretense as pre-NF, pre-1914 surface rights, resulted in Nestlé and their predecessors having gained any groundwater rights on or off the NF. Those permits were given based on false information and never conferred any right to the water. If Nestlé wants to try to get a new permit after many years of study, then the FS can issue a permit for water that is in excess to

NF and State of California needs. This would take a long-term study and monitoring to determine excess water. We hope your report can make it clear that there are no Nestlé water rights on National Forest. What they have, and we believe you will see upon further analysis, is only a permit for wells, tunnels and pipelines from the FS that has been passed down to Nestlé. They have not had, or had passed down any real water rights.

The Forest Service made a decision to permit the wells before they understood California Water Law, surface water groundwater relationships, ecosystem effects. A new permit taking groundwater from the headwaters of a perennial stream would never be issued. The Forest Service has opposed them locally on private land in recent times.

The Forest Service can permit groundwater removal when in excess to National Forest needs, but does not give up the control of the amount and timing of water removed or NF Reserve and riparian water rights. The courts have upheld the Reserve Rights for both surface and groundwater on the National Forests and other reserved federal lands. The Forest Service and the State of California have agreed to cooperate on water use and management on the National Forests and have several agreements committing to cooperation. It is important that the process be a cooperative one between the State, Federal and local government agencies and water districts. This is public water and public lands.

We are asking the Board to recognize FS Reserve rights and riparian rights which pre-date any Nestlé claim, and include a brief discussion in your final report. We are asking the State (Board and Department of Fish and Wildlife) to take an active role in protecting the Public Trust and working with the Forest Service in determining if there is any water in excess of what is needed for the public, FS Reserve Rights, Riparian Rights and Fish and wildlife populations and habitat. Since there are both state and federal listed threatened and endangered species on site in suitable habitat, the state must be actively involved in protecting the species and the public trust.

Nestlé has threatened the Forest when they proposed controlling Nestlé water removal in their NEPA Proposed Action, so it is important that the agencies work together and not be bullied. It is important that the State be a party to the decision on how much water can be removed and is excess. The history of the permit (expired 30 years ago) demonstrates the political influences that have kept the Forest Service from taking any permit actions to reduce water removal, even during this extreme drought. These political pressures are generally not in the interest of the public, the natural resources or the state. We were told by the FS District Ranger when we first approached the Forest Service about controlling water removal during the drought that he would be transferred if he brought up reviewing and modifying the permit because of the drought. That is the kind of political pressure that has been put on FS managers.

Any water taken by Nestlé, if they are found to have any rights, should be taken at the bottom of the mountain where the water rights would have originated, not in upper Strawberry Creek on National Forest and affecting downstream resources.

We are concerned that due to the geology, elevation, and depth of the wells and tunnels, the uncontrolled removal of so much groundwater could be having an adverse effect on public and private wells and potentially Lake Gregory. These private and public water resources and users should be considered in your decision along with the Public Trust resources.

The State of California (through the Board, or Cal. Fish and Wildlife), San Bernardino Valley Municipal Water District and the Forest Service need to work together to determine if there is water available in addition to the needs of the National Forest, the State, and downstream water users. The FS permit is so long expired that a new permit that protects the National Forest and the other users needs to be developed for any water removal. The Forest Plan requires that the proponent prove there is water in excess of National Forest needs. Since any diversions of stream/springs will require a State Streambed Alteration Permit, and since there are State Listed threatened and endangered species present that can be adversely affected by the removal of water, an Endangered Species Take Permit will also be required from the State. The Forest Service has an MOU with the Department of Fish and Wildlife and there are several agreements with the State Board on cooperative management of water and fish and wildlife on National Forests. Nestlé could be a part of the analysis and planning, but should not be in the lead. The planning effort also needs to be open and transparent. For several years, everyone from the agencies has not been able to openly talk about this project or issue. There needs to be an open cooperatively developed plan for the watershed to determine if there is excess water.

Impacts to the Public Trust

We have a great concern of the Board not fully addressing the impact to Public Trust Resources and taking immediate action to stop the take of water. There is a severe immediate threat to the public trust with the continuing drought. This perennial stream system and associated plants and animals are extremely rare in the San Bernardino Front Country of the San Bernardino Mountains. We understand that the Forest Service needs to be involved in leading the effort, but any removal of spring water will require streambed alteration permits and an endangered species take permits from the Department of Fish and Wildlife. We believe the State, SBVMWD, and the Forest Service need to all agree on an immediate halt to water removal by Nestlé, and jointly work on a watershed management plan that protects the Public Trust resources. All need to be involved and sign off on any water rights or use water use decisions.

Public Trust Values at Risk in Strawberry Creek Watershed include fish and wildlife (including Endangered and Threatened Species), plants and plant communities, aesthetics, fire control benefits of a healthy riparian area (References), and water that contributes to communities and individual water supplies both on the mountain and at the base of the mountains. We believe that some of the groundwater that is removed would potentially contribute to Lake Gregory and wells on the north side

of the mountain. Water is so essential for the quality of life on the mountaintop and it shares some of the same water that is being exported if it were left in the ground to recharge the aquifer. Everyone on the mountain is experiencing declining water tables and noticing stress and loss of trees and shrubs. Mountaintop residents have had to reduce their use substantially due to the drought. Any yet, Nestlé continues to take all water they can squeeze out of their groundwater harvesting wells on National Forest.

The Strawberry Creek Watershed is a very important natural area in southern California ecoregion, largely on the San Bernardino National Forest. It is very important ecologically. There are numerous imperiled species (Table 1 and 2) which are listed by State or Federal Agencies as threatened, endangered, sensitive, or of special concern that currently or historically used Strawberry Creek. Significant take of groundwater and spring water from the upper watershed has had and is continuing to have a significant adverse effect on the flora, fauna, and ecological function of the watershed as we learned on the Arrowhead Tunnel Project. Summer flows are limiting for plants and animals and reductions due to unnatural water removal adversely affect the stream and associated plants and animals. There is little doubt that FS permitted removal of so much groundwater and spring water was in-part responsible for the loss of Santa Ana speckled dace and mountain yellow-legged frog in the watershed.

The stream and associated vegetation support a huge diversity of species. The extent of surface and sub-surface stream flow and associated dependent vegetation has been extremely limited by lack of flows in the summer. Summer flows are almost totally dependent on groundwater. Summer storms add temporary flow, but flows quickly revert to what can be supplied by groundwater. Year-long removal of groundwater at unlimited amounts under the expired permit seriously affects summer flows and life that the watershed can support. In the past 4 years, summer flows have been some of the lowest ever recorded. Removing so much water in the headwaters has to contribute to these low flows and ecosystem effects.

Removal of large amounts of groundwater at the highest elevations of the watershed is having an effect on the habitat at the well, borehole and tunnel sites as well as the entire watershed downstream of the removal in the West Fork of Strawberry Creek, and potentially the East Fork and Coldwater Canyon. From the Arrowhead Tunnel Project, we learned that unnatural removal of groundwater up gradient from a stream in this type of geology will have significant effects on riparian vegetation and associated wildlife downstream. We also noticed tunnel effects on groundwater a mile away from the tunnel boring machine. Removal of this amount of water can and will reduce the length of surface flows, the number and depth of pools, and riparian health. We also learned that replacing these losses through applying mitigation water made it possible to maintain critical habitat factors such as surface flow, amount and length of surface flow expression, ability to support riparian vegetation, depth of pools for aquatic and semi-aquatic species until natural flows resumed. The Strawberry Creek Watershed over the last 5 years is as dry as it has been in recorded history. Any removal of water at the top of the watershed is sure to have significant effects on downslope surface and groundwater. It must be stopped to protect the National Forest and public trust resources.

Riparian habitat is limited to the area that still gets surface or near surface flows in spite of the wells which remove huge amounts of groundwater. During drought periods, even the areas that have supported riparian habitat are reduced further. Species such as canyon live oak, bigcone Douglas-fir,

and California bay are being adversely affected by the removal of so much groundwater. These species do not require surface water, but require good subsurface moisture in the summer to reach tree size. Groundwater mining, as is being conducted under the expired permit, can seriously affect riparian and woodland/forest habitat. There would be much healthier and greater extent of riparian and woodland habitat if natural flows were returned to the stream.

The area where the horizontal wells and tunnels are drilled into the mountain is one of the areas of greatest potential for State Threatened, southern rubber boa in the entire San Bernardino Mountains. Removal of large amounts of groundwater, especially in low rainfall periods could impact southern rubber and other ground dwelling species that are dependent upon near-surface moisture in the summer.

Many of the imperiled species of plants and animals in the watershed depend on surface water or near-surface water. Least Bell's vireo, southwestern willow flycatcher, California spotted owls, two-striped garter snake, and Santa Ana speckled dace, are known to use the suitable habitat in and adjacent to Strawberry Creek. Suitable habitat is limited by the amount of water that is allowed to flow on the surface or subsurface in the drainage. Removal of large amounts of groundwater reduces stream flow and limits the amount of habitat that is supported for these species. There would be significantly more riparian habitat if so much water wasn't being removed. Riparian area dieback in drought summers happens even when there isn't artificial water removal. Artificial removal of groundwater through tunnels, wells, can and does affect riparian health as documented on the Arrowhead Tunnel Project.

Some of the sensitive species which aren't dependent upon surface or near surface water find habitats with good moisture more productive than dry habitats. A well-watered watershed is much more productive for many species. Mule deer, mountain lion, black bear, coyote, bobcat and fox need water for drinking and do much better where there are adequate water supplies for them.

The Strawberry Creek drainage is a very important landscape linkage. The east-west trending stream and watershed are unique and provide a landscape linkage to the City Creek Watershed and the Waterman Canyon Watershed. This east-west trending stream below the mountain communities also provides a degree of fire protection if it is maintained in a healthy, green state. If it is dried by excessive removal of spring and groundwater, it will not provide the fire control benefits of a healthy stream (see References). Maintaining more natural flows would greatly enhance the value and functionality of this landscape linkage for plants and animals, and for fire protection and control.

Strawberry Creek recently supported Santa Ana speckled dace. It was one of the last 7 tributaries of the Santa Ana River to maintain the species. The fire and floods of 2003 along with the water removal by Nestlé eliminated the dace from this drainage. The lack of water prior to these events greatly limited the ability of the fish to survive. Dace in adjacent streams with natural flows were able to survive. The excessive, unnatural removal of water from this watershed makes aquatic species vulnerable to these natural events. Plans are being made to reintroduce Santa Ana speckled dace and the State Department of Fish and Game is considering Strawberry Creek as a potential reintroduction site for mountain yellow-legged frog. Reintroductions will be hindered if adequate summer flows cannot be assured in any new permit.

We should not have to prove that there are environmental problems with removing large amounts of water in the headwaters of Strawberry Creek. All perennial streams in southern California have been

under extreme stress the last 5 years due to very low rainfall and extreme summer temperatures. Many streams and reaches of streams have dried to levels not seen in recent history. Considering and conducting fish and other aquatic species rescues from drying streams during this drought have been more common than ever before. The need to prove no impact is Nestlé responsibility. The public does not need to prove there is an impact. Studies to prove no impact cannot be done after prolonged drought as you have no idea what the conditions would be under natural conditions without removal of massive amounts of groundwater. The system needs to be allowed to recover enough that springs, seeps, surface expressions in stream reaches etc. can be determined. Then studies could be done to predict effects.

The Nestlé application for renewing their FS permit said that their one year study (during the height of the drought) determined there was no significant effect of removing unlimited amounts of water on the resources on National Forest. This is an impossible conclusion to reach after one year of study during the worst drought on record. Without stopping the removal it is impossible to know what the potential of the stream and springs are and what effect the removal is having. This shows how allowing the proponent to conduct the studies and make a determination cannot be allowed. Through the National Forest Arrowhead Tunnel project, we found that an understanding of how the system works in good years and bad years was essential. Without stopping the take of water, it is not possible to see how the available water would naturally manifest itself during the low flow summer months.

In addition, the scenic value, recreational value and resistance to wildfire damage are being adversely affected by the excessive removal of groundwater. There would be more forest and woodland, improved recreational opportunity if there were natural water flows.

Waste or Unreasonable Use of Water

Especially in light of the questionable water rights, it is important that water not be taken from upper Strawberry Creek during this severe, extended drought. Residents and communities with wells that are in all likelihood connected to the groundwater tapped by Nestlé under FS permit are being told to limit and reduce water use while Nestlé keeps exporting it as quickly as possible. The downstream Bunker Hill Basin (which would receive the water if was allowed to flow) is suffering from substantial groundwater decline, and hundreds of thousands of residents are having to reduce their use and pay for imported water. Even during the drought, Nestlé in 2016 increased their take during one near-normal year even though cumulatively the groundwater was severely depleted and declining. They were able to take advantage of good winter storms in their tunnels that respond quickly to winter storms. This is a waste of water, as that water is critical to recharging the groundwater. They have admitted that they have other West Coast “spring water” facilities that are for sure in better shape moisture-wise than southern California.

We would like to see the Board take a strong position to get the water first to the stream, National Forest and local users, especially during this severe drought and until studies determine if there is excess water. To take unlimited amounts of water at the headwaters and exporting it when there are alternatives is a significant waste of water. We want the unauthorized and wasteful use of water to stop immediately to avoid further damage.

Thank you,

/s/

Steve Loe Co-lead
Southern California Native Freshwater Fauna Working Group

References

1. <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=139778&inline> CA Fish and Wildlife Instream Flow Program, Winter 2017.
2. <https://www.wildlife.ca.gov/Conservation/Watersheds/Water-Rights> CA Fish and Wildlife Water Rights
3. <https://www.fs.fed.us/biology/nsaec/assets/riparianfirefinal.pdf> WORKSHOP ON THE MULTIPLE INFLUENCES OF RIPARIAN/STREAM ECOSYSTEMS ON FIRES IN WESTERN FOREST LANDSCAPES SUMMARY REPORT By J. Boone Kauffman Department of Fisheries and Wildlife Oregon State University Corvallis, OR 97331 Presented To: Rocky Mountain Forest and Range Experiment Station Stream Systems Technology Center Fort Collins, CO 80526-2098 July, 2001

Table 1: THREATENED, ENDANGERED, PROPOSED, AND CANDIDATE WILDLIFE SPECIES ON THE SBNF							
COMMON NAME	LATIN NAME	Occurrence on SBNF Districts*			HABITAT TYPE**	CRITICAL HABITAT ON SBNF	OCCURS IN PROJECT AREA
		Mountain-top	Front Country	San Jacinto			
ENDANGERED SPECIES							
Quino checkerspot butterfly	<i>Euphydryas editha quino</i>	N	N	Y	c	Designated	N
unarmored threespine stickleback	<i>Gasterosteus aculeatus williamsoni</i>	Y	H	N	aq		N
arroyo toad	<i>Anaxyrus californicus</i>	Y	Y	Y	d,aq,r	Designated	U
mountain yellow-legged frog	<i>Rana muscosa</i>	Y	Y	Y	r, aq	Designated	P (with water)
California condor	<i>Gymnogyps californianus</i>	Y	Y	H	mc,g,c,a,rk,wo		Y
southwestern willow flycatcher	<i>Empidonax trailii extimus</i>	Y	Y	Y	r,m	Designated	Y
least Bell's vireo	<i>Vireo bellii pusillus</i>	N	Y	P	r,m		Y
San Bernardino kangaroo rat	<i>Dipodomys merriami parvus</i>	N	Y	Y	w	Designated	U
Stephens' kangaroo rat	<i>Dipodomys stephensi</i>	N	N	L	g		N
peninsular bighorn sheep	<i>Ovis Canadensis nelsoni</i>	N	N	Y	wo, rk, d	Designated	N
THREATENED SPECIES							
Santa Ana sucker	<i>Catostomus santanae</i>	N	H	N	aq	Designated	P (with water)
California red-legged frog	<i>Rana draytonii</i>	H	H	N	r,aq		U
desert tortoise	<i>Gopherus agassizii</i>	Y	P	Y	d		N
coastal California gnatcatcher	<i>Poliptila californica californica</i>	N	P	P	c		P
FEDERAL CANDIDATE SPECIES							
western yellow-billed cuckoo	<i>Coccyzus americanus</i>	P	P	P	r	N/A	U
<p>*Occurrence Information: N = Outside known distribution/range of the species. U = Occurrence of the species is unlikely based on habitat present. P = Occurrence of the species is possible; suitable habitat exists. L = Occurrence of the species is likely; suitable habitat exists and the species is known from nearby locations. Y = Species is known to occur. H = Part of the historical range but the species has been extirpated. B = Species is known or likely to nest in the area. M = The species uses the area during migration as a stopover.</p>		<p>**HABITAT TYPES/HABITAT COMPONENTS a = aerial; usually seen in flight, often over several habitat types r = riparian (streamside thickets and woodlands) g = grasslands, fields, and agricultural areas m = marshes, meadows; both freshwater areas and moist meadows c = chaparral and coastal sage scrub wo = woodlands; pinyon-juniper, oaks mc = mixed conifer forests; Jeffrey pine, ponderosa pine, big-cone douglas fir, coulter pine, sugar pine, white fir overstory d = desert; Joshua tree woodlands, creosote bush scrub, blackbrush scrub aq = aquatic; lakes, reservoirs, ponds, vernal pools/puddles u = urbanized areas w = washes and alluvial fans rk = cliffs and rocky outcrops s = snags and cavities</p>					

Table 2: FOREST SERVICE REGION 5 SENSITIVE WILDLIFE SPECIES ON THE SBNF

COMMON NAME	LATIN NAME	Occurrence on SBNF Districts*			HABITAT TYPE**	OCCURS IN PROJECT AREA*
		Mountaintop	Front Country	San Jacinto		
Santa Ana speckled dace	<i>Rhinichthys osculus</i> ssp.	N	Y	Y	aq	H
arroyo chub	<i>Gila orcutti</i>	Y	P	Y	aq	P (with water)
partially armored threespine stickleback	<i>Gasterosteus aculeatus microcephalus</i>	N	H	Y	aq	N
large-blotched ensatina	<i>Ensatina eschscholtzii klauberi</i>	Y	Y	Y	r, mc	P
yellow-blotched ensatina	<i>Ensatina eschscholtzii croceater</i>	Y	Y	N	r, mc	P
San Gabriel Mountain slender salamander	<i>Batrachoseps gabrieli</i>	N	Y	N	talus, mc, r	N
southwestern pond turtle	<i>Emys marmorata pallida</i>	P	N	Y	aq, r	U
California legless lizard	<i>Aniella pulchra</i>	?	Y	Y	c, d	P
San Diego coast horned lizard	<i>Phrynosoma coronatum blainvillii</i>	Y	Y	Y	w, d, wo	P
southern rubber boa	<i>Charina umbratica</i>	Y	Y	Y	mc, c, r	P
coastal rosy boa	<i>Lichanura trivirgata rosafusca</i>	P	Y	Y	c, d, rk	Y
San Bernardino ringneck snake	<i>Diadophis punctatus modestus</i>	Y	Y	Y	c, g, rk, r	P
San Diego ringneck snake	<i>Diadophis punctatus similis</i>	N	N	Y	c, g, rk	N
San Bernardino mountain kingsnake	<i>Lampropeltis zonata parvirubra</i>	Y	Y	Y	mc, c, pj, r	Y
San Diego mountain kingsnake	<i>Lampropeltis zonata pulchra</i>	N	N	Y	mc, r	N
Two-striped garter snake	<i>Thamnophis hammondi</i>	Y	N	Y	r, aq	Y
northern goshawk	<i>Accipiter gentilis</i>	Y	Y	Y	mc	U
bald eagle	<i>Haliaeetus leucocephalus</i>	Y	U	Y	aq,r,m	U
American peregrine falcon	<i>Falco peregrinus anatus</i>	Y	Y	Y	rk (nests)	Y (foraging)
Western yellow-billed cuckoo	<i>Coccyzus americanus occidentalis</i>	P	P	P	r	P
California spotted owl	<i>Strix occidentalis occidentalis</i>	Y	Y	Y	mc	Y
Willow flycatcher (migrant)	<i>Empidonax traillii</i>	Y	Y	Y	r	Y
San Diego cactus wren	<i>Campylorhynchus bruneicapillus sandiegense</i>	N	Y	H	d, c	N
California leaf-nosed bat	<i>Macrotus californicus</i>	Y	?	P	d, wo (pj)	N
western red bat	<i>Lasiurus blossevillii</i>	Y	?	?	mc, r	P
Townsend's big-eared bat	<i>Corynorhinus townsendii</i>	Y	?	Y	mc, r, aq, wo, c, mines	N
pallid bat	<i>Antrozous pallidus</i>	L	P	Y	c, wo, mc, d, rk	P
San Bernardino flying squirrel	<i>Glaucomys sabrinus californicus</i>	Y	Y	H	mc, r	P
San Bernardino white-eared pocket mouse	<i>Perognathus alticolus alticolus</i>	H	P	N	mc, wo	P (Historical records nearby)
Los Angeles little pocket mouse	<i>Perognathus longimembris brevinasus</i>	U	U	Y	c	N
San Gabriel Mountains bighorn sheep	<i>Ovis canadensis nelsoni</i>	N	Y	N	wo, rk, d	N
Spadefoot toad (State Sp. Of Special Concern)	<i>Spea hammondi</i>	Y	Y	Y	R,c,g	Y

*Occurrence Information:
N = Outside known distribution/range of the species.
U = Occurrence of the species is unlikely based on habitat present.
P = Occurrence of the species is possible; suitable habitat exists.

**HABITAT TYPES/HABITAT COMPONENTS
a = aerial; usually seen in flight, often over several habitat types
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aq = aquatic; lakes, reservoirs, ponds, vernal pools/puddles
u = urbanized areas

<p>L = Occurrence of the species is likely; suitable habitat exists and the species is known for nearby locations. Y = Species is known to occur. H = Part of the historical range but the species has been extirpated. B = Species is known or likely to nest in the area. M = The species uses the area during migration as a stopover.</p>	<p>m = marshes, meadows; both freshwater areas and moist meadows c = chaparral and coastal sage scrub wo = woodlands; pinyon-juniper, oaks mc = mixed conifer forests; jeffrey pine, ponderosa pine, bigcone douglas fir, coulter pine, sugar pine, white fir overstory</p>	<p>w = washes and alluvial fans rk = cliffs and rocky outcrops s = snags and cavities</p>
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