



United States
Department of
Agriculture

Forest
Service

San Bernardino National Forest
Supervisor's Office

602 S. Tippecanoe Ave.
San Bernardino, CA 92408
909-382-2600
TDD: 1-800-735-2922
Fax: 909-383-5770

File Code: 2720; 2540
Date: January 19, 2018

Victor Vasquez
Senior WRCE
State Water Resources Control Board
Division of Water Rights
ATTN: Victor Vasquez
P.O. Box 2000
Sacramento CA 95812-2000

Dear Mr. Vasquez:

This letter is in response to the Report of Investigation (INV 8217) issued by your office on December 20, 2017. I have reviewed the report with my staff and our detailed comments are attached. I am also attaching additional information as it relates to developments at Indian Springs, which are located on the San Bernardino National Forest.

Nestlé's special use permit requires them to comply with all applicable state law or regulations. Please contact me directly if I can assist you or your staff with any compliance actions related to Nestlé's occupancy and use of National Forest System lands. I am particularly interested in coordinating with staff about any studies that you require Nestlé to undertake as part of any compliance actions.

Please contact Robert Taylor, Forest Hydrologist, at 909-382-2600 if you have any questions about this letter.

Sincerely,

JODY NOIRON
Forest Supervisor

Attachments:

Comments on the Report of Investigation
1929 Survey Map



Forest Service comments on the Report of Investigation (INV 8217)

Section 2 Background, page 6

According to Forest Service records the first permit was issued on March 26, 1929.

3.4.1 License 1649 File Review, pages 14 and 15

The Forest Service has submitted corrected reports using the information gathered during this process. The spring location has been located and monthly measurements are being collected as per California Water Code (Title 23, Division 3, Chapter 2.8) for water rights in excess of 10 acre feet per year. Future records will have more accurate data. The Forest Service may use Water Code §1707 to create an instream flow dedication when flow from this location becomes more pronounced and constant at the face value of the water right (9,000 gallons per day).

Section 3.4.2 Historical Document Search, page 15

A copy of the Licensed Land Surveyor's Map of pipe lines and easements of the Arrowhead Springs Corporation (Arrowhead), as filed with San Bernardino County in Book 2 pages 18 and 19 is attached. The tunnels noted on page 2 are also labeled "Indian Springs". Both tunnels and a portion of the pipe line are located on National Forest System land. The Forest Service has searched our records and could not find any permit on file that would have authorized the occupancy and use of the National Forest System land. The Master Title Plats maintained by the Bureau of Land Management do not show any recorded easements in that area. Unfortunately the Forest Service only maintains records for existing uses, and it is possible that records for a now abandoned use were destroyed according to routine record maintenance.

The map also shows that water developed in Waterman Canyon was conveyed to the Arrowhead property, converging at the same location as the reservoir for Indian Springs. Based on these maps it is likely that any water bottled from Indian Springs also included water from Waterman Canyon.

Section 3.4.3 Hydrological Data and Reports, page 17

Nestlé has been reporting daily water extraction totals by well on a monthly basis to the Forest Service beginning in October 2016. Nestlé upgraded their monitoring equipment in 2017, and the data from the updated equipment was used to prepare the October 2017 summary of water extraction. Nestlé continues to submit monthly reports as required by the Forest Service. Nestlé is also reporting monthly surface water measurements along select sections of Strawberry Creek. Contact Nestlé for the detailed extraction and surface flow reports.

4.6.3 Allegation of Unreasonable Use, page 31

During the course of our evaluation of Nestlé's special use application, the Forest Service became aware that Nestlé extracts water from Strawberry Creek but lacks the storage capacity to use all of the extracted water for bottling. That surplus water is discharged from the tanks back into East Twin Creek through private property. Nestlé confirmed that practice on December 20, 2017 when they submitted their unsolicited version of a "Final Draft Adaptive Management Plan", which states:

"Nwana uses 80 percent of the water that flows through the water pipeline for its business purposes. A local Native American Tribe has the rights to the remaining 20 percent of the spring water collected by Nwana at Strawberry Canyon spring sites, for



the Tribe's use and economic benefit. Currently, when available spring water exceeds the needs of both the Tribe and Nwana, that water is discharged back into Strawberry Creek from the private land near the location of the storage tanks, outside of SBNF lands, consistent with historic practices."

This information would seem to be relevant to any SWRCB investigation of reasonable use.

4.6.5 Allegation of Diverting Without a Valid Basis of Right, page 32

The report states that "Nestlé may hold appropriate groundwater rights not within the permitting authority of the State...." The Forest Service would like to clarify that while Nestlé may be "appropriating groundwater" (i.e. taking water from a groundwater basin and using it somewhere else), such use does not establish a "right" against the overlying land owner, in this case the federal government. Nestlé's occupancy and use of National Forest System lands is subject to federal jurisdiction, including Forest Service permit requirements.

Staff concludes that "PODs can be changed to other sites within a streams respective watershed for diversions under a pre-1914 right" citing Water Code § 1706. That section of the water code states:

§ 1706. The person entitled to the use of water by virtue of an appropriation other than under the Water Commission Act or this code may change the point of diversion, place of use, or purpose of use if others are not injured by such change, and may extend the ditch, flume, pipe, or aqueduct by which the diversion is made to places beyond that where the first use was made.

The California Consolidated Water Company (CCWC) quit claimed Indian Springs back to the Arrowhead Springs Corporation in August of 1930, reserving the right to the surplus water. It would be logical to conclude from the agreement that Arrowhead continued to use water from Indian Springs for domestic purposes and CCWC continued to use the surplus water from the existing springs and pipelines. Is there any evidence in the record that Consolidated changed the point of diversion and extended the existing pipe by which the diversion is made as allowed by §1706, or did both parties continue to use Indian Springs while developing additional water sources higher in the watershed using new facilities?

LICENSED LAND SURVEYOR'S MAP
SHOWING CERTAIN PIPE LINES AND EASEMENTS
ARROWHEAD SPRINGS CORPORATION
E.T. HAM SURVEYOR
SCALE 1 IN=200 FT

E. T. HAM SURVEYOR

SHEET 1 OF 2 SHEETS

SCALE 1 IN. 200 FT.



