

## Eggers, Tomas@Waterboards

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**From:** Elizabeth Nussbaumer <enussbaumer@fwwatch.org>  
**Sent:** Friday, February 09, 2018 10:20 AM  
**To:** Vasquez, Victor@Waterboards  
**Subject:** Public comment submission re: Report of Investigation and Staff Findings of Unauthorized Diversion Regarding Complaint Against Nestlé Waters North America, Strawberry Creek, San Bernardino County  
**Attachments:** F&WW Public Comment, Nestle Waters Strawberry Creek 2-9-18.pdf

Hello Mr. Vasquez,

Attached is a public comment for consideration by the SWRCB regarding the Report of Investigation and Staff Findings of Unauthorized Diversion Regarding Complaint Against Nestlé Waters North America, Strawberry Creek, San Bernardino County. Thank you for your time.

Best,  
Elizabeth Nussbaumer

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State Water Resources Control Board  
Division of Water Rights  
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February 9, 2018

**Re: Report of Investigation and Staff Findings of Unauthorized Diversion Regarding Complaint Against Nestlé Waters North America, Strawberry Creek, San Bernardino County**

On behalf of Food & Water Watch (FWW) — a national non-profit consumer advocacy organization with offices in Los Angeles and Oakland — and its nearly 200,000 supporters in California, I urge the State Water Resources Control Board to immediately order that Nestlé Waters North America (“Nestlé”) cease all unauthorized diversions of water in excess of its rights of 26 acre-feet per year (AFA), deny Nestlé any exemption or permit to any fully appropriated streams in California (including the Santa Ana River) and order a thorough investigation into “allegations of unreasonable use and injury to public trust resources.”<sup>1</sup> Especially as another drought looms, Strawberry Creek and the San Bernardino National Forest — public resources on public lands — must be protected for the public, not exploited for private gain by Nestlé.

**California should not allow the interests of multinational bottled water company Nestlé Waters to take precedence over the interests of the public.**

**Nestlé has been using water supplies without state authorization for private gain.**

Nestlé has definitive water rights to 26 AFA of water (8.5 million gallons) from Strawberry Creek in San Bernardino County, but believes that it has claims to at least 152 acre-feet per year (49.5 million gallons) of water, or more, and has taken an average of 192 acre-feet of water (62.6 million gallons) per year from 1947 to 2015 — more than six times what they have definitive rights to, exceeding their rights by an average of 54.1 million gallons per year.<sup>2</sup> Over the nearly 70 years that Nestlé (and its predecessor companies) have taken water from Strawberry Creek, definitive water rights have been exceeded by as much as 11,454 AFA or 3.7 billion gallons of water.<sup>3</sup>

For comparison, the unauthorized usage of 54.1 million gallons of water a year could fill 82 Olympic-sized pools<sup>4</sup> or supply local households with over 3 million showers;<sup>5</sup> 3.7 billion gallons of water could fill over 5,600 Olympic-sized pools<sup>6</sup> or supply local households with

more than 215 million showers.<sup>7</sup> These waters could also be vital in fighting increasingly severe and frequent wildfires across the state.

Nestlé and its predecessors have egregiously exceeded their water rights and Nestlé must not be granted any exemption or permit to any fully appropriated streams, including the Santa Ana River, as offered by the SWRCB in its report of investigation.

Moreover, Nestlé pays only \$524 annually in permit fees to extract water from Strawberry Creek, amounting to \$0.000008 per gallon for the 62.6 million gallons taken each year, on average.<sup>8</sup> Allowing Nestlé to continue its extraction of water from Strawberry Creek at its current rates puts the corporation's interests first, further enabling Nestlé to profit from selling water resources that don't belong to them — this water belongs to the public.

### **Nestlé is not a good steward of the state's public water resources.**

During the historic California drought, Nestlé Water's Arrowhead brand continued to take and bottle groundwater throughout the state, including from Strawberry Creek in the San Bernardino National Forest.<sup>9</sup> Nestlé's California water use increased by 19 percent during the 2011 to 2014 drought years, withdrawing 705 million gallons of water annually — enough to supply nearly 2,200 families per year.<sup>10</sup> Nestlé's CEO even refused to consider moving bottling operations outside of California, stating: "Absolutely not. In fact, if I could increase it, I would.... If I stop bottling water tomorrow, people would buy another brand."<sup>11</sup>

When asked if it's fair that Nestlé makes so much money off of water resources it pays so little for, Nestlé's chief sustainability officer, Nelson Switzer, responded, "Nestlé has water rights of course in this area. From a legal stand point, of course it's fair, from a perception standpoint, I understand why people are asking that question. But water belongs to no one."<sup>12</sup> On the contrary, the water resources in question belong to the public, not profit-seeking corporations like Nestlé.

In 2017, parts of Strawberry Creek went dry for the first time.<sup>13</sup>

### **Climate change-fueled droughts and wildfires require urgent action to protect public water supplies from unauthorized, unnecessary and excessive use by Nestlé.**

Right now, California is seeing record heat and dry conditions throughout the state, raising concerns of another drought.<sup>14</sup> Rains have been extremely low and snowpack is 70 percent below normal levels, only slightly higher than it was in 2015 when the state was in the midst of an historic and severe drought. California's snowpack typically supplies about 30 percent of the state's water demands, and with current levels much lower than normal, the state cannot afford to lose any water resources to the greed of multinational corporations like Nestlé.

Forests throughout the state, like the San Bernardino National Forest, have also suffered from recent drought conditions. The U.S. Forest Service estimated that over 102 million trees have died due to drought and invasive beetle species since 2010, covering 7.7 million acres.<sup>15</sup>

Wildfires in California have been increasingly severe and frequent, and are only compounded by drought conditions. By December 3, 2017, the California Department of Forestry and Fire Protection (CalFire) had reported 6,762 fires and 505,391 acres of land burned statewide.<sup>16</sup>

The cost of fighting these wildfires is becoming astronomically expensive. By early December, 2017, CalFire had already exceeded its 2017-2018 budget for extinguishing large wildfires, with expenses totaling \$490.3 million — \$63.4 million over its \$426.9 million budget, and the fiscal year was only halfway through.<sup>17</sup> The U.S. Forest Service spent \$632.8 million during the 2017 calendar year fighting wildfires in California’s national forests.<sup>18</sup>

Fire-fighting agencies also rely on the state’s water resources, like those in Strawberry Creek and others in the San Bernardino National Forest, to extinguish wildfires. Suppressing blazes can often use millions of gallons of water, with a single blaze requiring anywhere from 2 million to 11 million gallons of water, or more.<sup>19</sup> Historic drought conditions have made it harder to fight these wildfires as water sources across the state have dried up, forcing firefighters to travel greater distances in search of bodies of water.<sup>20</sup>

Nestlé’s over drafting of public water resources is done so at the expense of the state, its citizens and the environment, and is in direct conflict with statewide crises of drought, wildfires and climate change.

California’s vital resources — like the waters of Strawberry Creek and the San Bernardino National Forest, which are located on public, Federal lands — must be managed under a statewide commons and public trust framework. If water is treated as a commodity, it cannot adequately be protected for future generations. The public trust doctrine puts public interests before private interests and when a resource is held in the public trust, it is more difficult for private parties to inflict harm.<sup>21</sup>

The public trust doctrine is rooted in ancient legal principles and enables sovereign states to hold and protect natural resources.<sup>22</sup> Under this doctrine, which dates from ancient Rome, running water — just like the air we breathe and the sea — is a common resource.<sup>23</sup> Water belongs to the public and should be protected and preserved for the public.<sup>24</sup>

**Nestlé’s profit-seeking harms the environment and natural resources that communities may rely on for local farming, residential recreation and more**

When bottled water companies tap groundwater sources, they do not replenish what they pump out.<sup>25</sup> This differentiates water bottlers from other water users —such as local irrigation and local agricultural users — who do return water to aquifers.<sup>26</sup>

Groundwater sources are often connected to surface waters, and when an aquifer is over-pumped, the water levels of a connected surface water body can fall and water flows can change.<sup>27</sup> This activity may affect the overall groundwater and hydrological system. As said in a U.S. Geological Survey report, “changes in the natural interaction of ground water and surface water caused by human activities can potentially have a significant effect on aquatic environments.”<sup>28</sup>

Likewise, state officials have said that large-scale groundwater extraction, such as for water bottling plants, could reduce the availability of local groundwater and surface water sources to the detriment of the resources that depend on them.<sup>29</sup>

Given the world's growing population, increasing pollution, and expanding overuse, the available freshwater supply is becoming more and more limited. A 2009 publication sponsored by the World Bank's International Finance Corporation, as well as a number of multinational corporations including Nestlé S.A. and The Coca-Cola Company, found that by 2030 global freshwater demand will exceed availability by 40 percent.<sup>30</sup> The United States is not an exception from this threat of water shortages.<sup>31</sup>

And according to a 2014 report by the Government Accountability Office (GAO): "In particular, 40 of 50 state water managers expected shortages in some portion of their states under average conditions in the next 10 years."<sup>32</sup>

Yet the bottled water industry is profiting off of these dwindling supplies, selling off the water in creeks, and commodifying a common resource essential for all life on Earth.

### **Conclusion**

The production of bottled water causes significant equity and environmental problems. Bottled water companies like Nestlé are profiting by commodifying groundwater supplies or selling tap water in overpriced and environmentally damaging plastic bottles.

If water is treated as a commodity, it cannot adequately be protected for future generations. That is why Food & Water Watch urges the SWRCB to:

- (1) order Nestlé Waters North America to immediately cease all unauthorized diversions of water in excess of its rights to 26 acre-feet per year,
- (2) deny Nestlé any exemption or permit to any fully appropriated streams in California (including the Santa Ana River), and
- (3) order a thorough investigation into "allegations of unreasonable use and injury to public trust resources."

Put the people and the environment before private interests and profits.

Thank you for your consideration,



Adam Scow  
California Director  
Food & Water Watch

## Endnotes

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<sup>1</sup> Vasquez, Victor. California State Water Resources Control Board. Letter to Larry Lawrence. Nestlé Waters North America. Rita Maguire. Maguire, Pearce & Storey, PLLC. “Report of Investigation Letter: Report of Investigation and Staff Findings of Unauthorized Diversion Regarding Complaint Against Nestlé Waters North America, Strawberry Creek, San Bernardino County.” December 20, 2017 at 2.

<sup>2</sup> Food & Water Watch calculation based on Vasquez, Victor. California State Water Resources Control Board. Letter to Larry Lawrence. Nestlé Waters North America. Rita Maguire. Maguire, Pearce & Storey, PLLC. “Report of Investigation Letter: Report of Investigation and Staff Findings of Unauthorized Diversion Regarding Complaint Against Nestlé Waters North America, Strawberry Creek, San Bernardino County.” December 20, 2017 at 1.

<sup>3</sup> Food & Water Watch calculation based on Vasquez, Victor. California State Water Resources Control Board. Letter to Larry Lawrence. Nestlé Waters North America. Rita Maguire. Maguire, Pearce & Storey, PLLC. “Report of Investigation Letter: Report of Investigation and Staff Findings of Unauthorized Diversion Regarding Complaint Against Nestlé Waters North America, Strawberry Creek, San Bernardino County.” December 20, 2017 at 1.

<sup>4</sup> Nestlé’s annual water withdrawal average/average Olympic pool size:  $54,100,000/660253 = 81.938$ . Olympic pool size data, via: Hoefs, Jeremy. “Measurements for an Olympic Size Swimming Pool.” Livestrong.com August 20, 2013

<sup>5</sup> Nestlé’s annual water withdrawal average/average water used per shower:  $54,100,000/17.2 = 3,145,348.8372$  Average water used per shower is 17.2 gallons, via: Mayer, Peter M. et al. AWWA Research Foundation. “Residential End Uses of Water.” 1999 at 102.

<sup>6</sup> Nestlé’s water withdrawal 1947-2015 average/average Olympic pool size:  $3,700,000,000/660253 = 5,603.912$ . Olympic pool size data, via: Hoefs, Jeremy. “Measurements for an Olympic Size Swimming Pool.” Livestrong.com August 20, 2013

<sup>7</sup> Nestlé’s water withdrawal 1947-2015 average/average water used per shower:  $3,700,000,000/17.2 = 215,116,279.0697$  Average water used per shower is 17.2 gallons, via: Mayer, Peter M. et al. AWWA Research Foundation. “Residential End Uses of Water.” 1999 at 102.

<sup>8</sup> James, Ian. “Bottling water without scrutiny.” *Desert Sun* (CA). March 8, 2015; Nestle’s cost per gallon:  $524/62600000 = \$0.000008$  per gallon

<sup>9</sup> James (March 8, 2015); Lurie, Julia. “Bottled water comes from the most drought-ridden places in the country.” *Mother Jones*. August 11, 2014; Otsuka. “Annual Report 2015.” December 31, 2015 at 41.

<sup>10</sup> James (March 8, 2015); Brown (April 28, 2015); Dangelantonio (2015).

<sup>11</sup> Dangelantonio (2015).

<sup>12</sup> “Nestlé faces backlash over collecting water from drought-hit California.” *CBS News*. May 9, 2017.

<sup>13</sup> Steinberg, Jim. “State gives Nestle, environmentalists and individuals more time to comment about water withdrawals.” *San Bernardino Sun*. January 26, 2018.

<sup>14</sup> Lin, Rong-Gong. “Amid record heat and dry conditions, fears of another drought in California.” *LA Times*. January 2018.

<sup>15</sup> Lin, Rong-Gong. “Amid record heat and dry conditions, fears of another drought in California.” *LA Times*. January 2018.

<sup>16</sup> Downey, David. “California keeps going over budget as costs of fighting wildfires continue to increase.” *Press-Enterprise* (CA). December 7, 2017.

<sup>17</sup> Downey, David. “California keeps going over budget as costs of fighting wildfires continue to increase.” *Press-Enterprise* (CA). December 7, 2017.

<sup>18</sup> Downey, David. “California keeps going over budget as costs of fighting wildfires continue to increase.” *Press-Enterprise* (CA). December 7, 2017.

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<sup>19</sup> Ghose, Tia. “Water Woes: Firefighters Get Creative to Douse Flames in California.” *LiveScience*. September 25, 2015; Gazzar, Brenda. “How firefighters get their water, why it’s sometimes tricky to get enough.” *Daily News (CA)*. December 17, 2017; Panzar, Javier, et al. “Battle against Thomas fire enters second week as blaze continues to grow.” *LA Times*. December 12, 2017.

<sup>20</sup> Ghose, Tia. “Water Woes: Firefighters Get Creative to Douse Flames in California.” *LiveScience*. September 25, 2015.

<sup>21</sup> Kanner, Allan. “The Public Trust Doctrine, *Parens Patriae*, and the Attorney General as the Guardian of the State’s Natural Resources.” *Duke Environmental Law & Policy Forum*, vol. 16, iss. 1. Fall 2005 at 61 and 62; Klass, Alexandra B. and Ling-Yee Huang. Center for Progressive Reform. “Restoring the Trust: Water Resources and the Public Trust Doctrine, A Manual for Advocates.” September 2009 at 1.

<sup>22</sup> Kanner, 2005 at 61 and 62; Simmons, Randy T. “Property and the Public Trust Doctrine.” PERC Policy Series, iss. PS-39. April 2007 at 2; Sax, Joseph L. “The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention” *Michigan Law Review*, vol. 68, iss. 3. January 1970 at 475.

<sup>23</sup> See Food & Water Watch. “Water Is NOT a Commodity, Water Is a COMMON Resource: The Rationale for States to Hold Groundwater in the Public Trust.” June 2012.

<sup>24</sup> See Food & Water Watch. “Water Is NOT a Commodity, Water Is a COMMON Resource: The Rationale for States to Hold Groundwater in the Public Trust.” June 2012.

<sup>25</sup> Boldt-Van Rooy, Tara. “‘Bottling Up’ Our Natural Resources: The Fight Over Bottled Water Extraction in the United States.” *Journal of Land Use*. Vol. 18. Iss. 2. Spring 2003 at 279 and 280.

<sup>26</sup> Boldt-Van Rooy, Tara. “‘Bottling Up’ Our Natural Resources: The Fight Over Bottled Water Extraction in the United States.” *Journal of Land Use*. Vol. 18. Iss. 2. Spring 2003 at 279.

<sup>27</sup> Winter, T.C. et al. U.S. Department of the Interior. U.S. Geological Survey. “Ground Water and Surface Water. A Single Source.” U.S. Geological Survey Circular 1139. U.S. Government Printing Office. 1998 at iii, 1 and 14.

<sup>28</sup> Winter, T.C. et al. U.S. Department of the Interior. U.S. Geological Survey. “Ground Water and Surface Water. A Single Source.” U.S. Geological Survey Circular 1139. U.S. Government Printing Office. 1998 at vii.

<sup>29</sup> U.S. Government Accountability Office. “Bottled Water: FDA Safety and Consumer Protections are Often Less Stringent than Comparable EPA Protections for Tap Water.” (GAO-09-610.) June 2009 at 26.

<sup>30</sup> The 2030 Water Resources Group. “Charting our Water Future: Economic frameworks to inform decision making.” 2009 at i and 5.

<sup>31</sup> Kloss, Christopher. United States Environmental Protection Agency. “Managing Wet Weather with Green Infrastructure Municipal Handbook: Rainwater Harvesting Policies.” (EPA-833-F-08-010). December 2008 at 1.

<sup>32</sup> U.S. Government Accountability Office. “Freshwater. Supply Concerns Continue, and Uncertainties Complicate Planning.” May 2014 at PDF page 1.