

Eggers, Tomas@Waterboards

From: Betsy Starbuck <betsy.starbuck@gmail.com>
Sent: Friday, February 09, 2018 4:15 PM
To: Vasquez, Victor@Waterboards
Subject: LWV Response to ROI of Nestle's Water N.A. at Strawberry Creek, San Bernardino Co.
Attachments: LWVSB LTR to SWRCB 20180209 Final.doc

Dear Mr. Vasquez: I have attached our formal letter of response to the Report of Investigation from the League of Women Voters of the San Bernardino Area.

Betsy Starbuck



LEAGUE OF WOMEN VOTERS® of SAN BERNARDINO
P.O. Box 3394, San Bernardino, CA 92413

February 9, 2018

Victor Vasquez
Division of Water Rights
State Water Resources Control Board
P.O. Box 2000
Sacramento, CA 95812-2000

via vvasquez@waterboards.ca.gov

Re: Report of Investigation— Findings of Unauthorized Diversion of Nestle Waters North America, Strawberry Creek, San Bernardino County

Dear Mr. Vasquez:

The League of Women Voters of the San Bernardino Area (League) is responding to the Report of Investigation (Investigation) that concluded “NWN’s current operations do not appear to be supported by rights to the diversion or use of water exceeding 26 acre-feet per annum (AFA) and, accordingly, any diversions in excess of that amount may be unauthorized.”

The League became a party of interest in the Investigation by the State Water Resources Control Board (SWRCB) Division of Water Rights when conducting our own formal League study on the expired Special Use Permit that continues to authorize the operation of a private water collection system located in the San Bernardino National Forest that allows Nestlé Waters North America to collect spring water on a year-round basis from Strawberry Creek that infiltrates into collection tunnels or horizontal wells and is transported through 4.5 miles of 4” steel water transmission pipes located on National Forest Service lands to storage tanks located on private land. On March 11, 2017, the League’s Board of Directors adopted a formal position opposing Special Use Permit San Bernardino National Forest Project Proposal #7285 unless defined conditions were met. Subsequently, the Forest Service announced that no further action on the aforementioned Proposal would take place until the conclusion of a five-year study of the Strawberry Creek Watershed that is now underway.

The League disagrees with the State Board’s conclusions and recommendations on the grounds that all water on National Forest Service land was reserved upon its founding on February 25, 1893 for beneficial use. Adverse possession, estoppel, waiver are not defenses that can be used to acquire federal lands or water. The League believes the SWRCB also should consider these issues may become the basis for the filing of an amicus brief.

Also, on these grounds, the League believes that SWRCB must examine whether Nestle does have the authority within the State of California to divert water from the San Bernardino National Forest and export it by means of a Special Use Permit for the sale of Arrowhead Mountain Spring Water.

The Investigation prompted the San Bernardino Valley Municipal Water District (Valley District) to respond stating that “the diversion of water by Nestle in excess of the diversion of water during the 1959-1963 base period (of the Western Judgment) represents an unauthorized diversion that constitutes injury” that resulted in a “reduction of water levels in the San Bernardino Basin Area

that is approximately equal to the over-appropriation of water by Nestle.” Valley District stated that the “simplest way to remedy (Remedy) this situation would be for Nestle to purchase a quantity of replacement water to refill the ‘hole’ in the San Bernardino Basin Area caused by the over-appropriation.” The League requests that the SWRCB support this Remedy and furthermore requests that the Board respond definitively to the League whether it has the authority to do so.

The Investigation also prompted the San Bernardino Valley Municipal Water District to state that “the over-appropriation has likely had an adverse impact on fish and wildlife in the Strawberry Creek watershed.” The League concurs that should Nestle have only diverted 26 AFA during the years of operation in the National Forest, the adverse impacts to the Strawberry Creek Watershed would have been less severe than those reported by the scientific community. The League requests that the SWRCB examine the harm to public trust resources that has occurred and furthermore requests that the Board respond definitively to the League what authority it has protect the public trust.

The Investigation furthermore prompted the San Bernardino Valley Municipal Water District to state that “It would be appropriate for Nestle to fund a reasonable proportion of the activities proposed under the habitat conservation plan to holistically restore the habitats for those species” impacted by over-appropriation of water by Nestle to a “remedy the adverse effects of over-appropriation on these populations.” Because the Forest Service is the midst of the aforementioned study of the Strawberry Creek watershed, the League understands that restoring those species to Strawberry Creek may not be permitted by the Forest Service during this time. The League requests that the State Water Resources Control Board (Board) support that Nestle “fund a reasonable proportion the activities proposed under the habitat conservation plan to holistically restore the habitats for those species” and furthermore requests that the Board respond definitively to the Board whether it has the authority to do so.

Valley District also urged the SWRCB “work with Valley District, Nestle and the San Bernardino National Forest, as well as the U.S. Fish and Wildlife Service and the California Department of Fish and Game, to craft a physical solution that will remedy the adverse effects of Nestlé’s over-appropriation from Strawberry Creek.” The League requests that the SWRCB undertake these actions to remedy the harm to public trust resources that have occurred and furthermore requests that the Board respond definitively to the League whether it has the authority to do so.

Sincerely,

Jill Vassilakos-Long and Betsy Starbuck

Jill Vassilakos-Long and Betsy Starbuck, Co-Presidents,
League of Women Voters of the San Bernardino Area