

The following is my request for action by the Board:

Dear Esteemed Members of the Water Board:

Thank you for the opportunity to comment on the proposed CDO to be issued to Blue Triton (BT). I want to thank the Board and all of the staff for doing such a good job on the water rights investigation and putting Strawberry Creek on the to do list for the Board with the many priorities for the state. I know how many important things you do for us in protecting our water resources. Strawberry Creek and the springs that feed it are very important to us, the citizens.

I was one of the original complainants (as co-leader of the Southern California Native Freshwater Fauna Working Group) that requested the Board to take action regarding unauthorized take, unreasonable use, and waste of water by Nestle/BT and the need to protect the Strawberry Creek ecosystem, its fishery, multiple endangered species dependent on year-round water in the stream, and the National Forest. In addition to our concern that the water rights were not legally held by Blue Triton, severe damage was being done to the stream and dependent resources by BT dewatering the stream during the critical summer period. The BT dewatering of the stream from what was historically a healthy year-round stream supporting a trout fishery and numerous threatened and endangered species has been well documented and confirmed in the hearing proceedings leading to this proposed order.

The public went to Nestle/Blue Triton in the midst of the terrible 2014 drought and begged them to reduce their take in Strawberry Creek to protect the natural resources and communities. The mountain communities were having to ration their water. Nestle/BT leadership refused to reduce the take, expressed pride in removing more than before the drought, and said they would take more if they could. That refusal to cooperate on the take of public water on public land led to the huge nation-wide public outcry to the Forest Service and the Board.

Nestle/BT and predecessors have always claimed that the spring water they were taking was from natural springs that bubble to the surface. They have paid for many studies to prove to regulators that they were taking spring water coming from historic natural springs and not just random groundwater. Their advertising (Arrowhead Spring Water) brags that they only take spring water along with pictures of flowing streams and lush surroundings. Only after the public began to question the Forest Service permit and the lack of state or federal water rights, did BT change their story. Now after 90 years, they argue that their spring water is really groundwater. It is very important that they finally be held accountable.

I fully participated in the Draft CDO hearing proceedings from start to finish and provided testimony (See attached Closing Brief) based on my 30 years of work as a fish and wildlife biologist in the project area on the Forest Service Special Use Permit for BT's spring developments and pipeline as well as other National Forest projects .

I ask that you adopt the proposed order in its entirety with a minor spelling change. Please correct the spelling of my name on page 45, first paragraph.

Reasons to Adopt the Proposed Order

The long, in-depth hearing process clarified and documented the serious degradation of the natural springs, stream and surrounding environment resulting from the dewatering of several miles of National Forest perennial stream in the summer months, due to the unauthorized diversion of the headwater springs. Diverting the flows from the headwater spring sources into a pipeline for delivery miles downstream has serious ecological ramifications all the way downstream to the City of San Bernardino and their water supply. Discharging unused water downstream and bypassing the natural stream drainages by BT has had tremendous impacts on the springs, stream, and their surroundings. Fish and wildlife dependent upon year-round spring and stream flow have been eliminated. Species that need moist conditions have been seriously affected. The current BT operation in Strawberry Creek is unauthorized, unreasonable, and wasteful.

Summer flows are so low now that the stream can no longer support fish in most of the historical habitat. Large stream reaches and stretches of riparian habitat are no longer suitable for threatened and endangered species that occurred here prior to spring development. Strawberry Creek and East Twin Creek below the Strawberry confluence are considered by the agencies to have high potential for reintroduction of Santa Ana speckled dace, Santa Ana sucker, and mountain yellow-legged frog (all seriously imperiled species) if reliable summer flows from the springs can be returned to the stream.

Continued removal of all of the spring water will continue to significantly affect the microclimate and vegetation around the springs and streams that have been dewatered. This creates a large unnaturally dry, brushy area immediately below the mountain community and significantly increases the fire hazard over what it would be with the naturally lush wet area. Since the spring diversions are higher and upslope of some of the mountain communities (Lake Gregory) the removal of spring and stream water could be affecting their water supply due to the fractured nature of the geology. Eliminating or reducing the take of these headwater springs through this order will help protect the mountain communities.

As a resident that must pay to import water that we can't get naturally from our mountains, the unauthorized and unreasonable removal and waste of water by BT in the Strawberry Creek Watershed is not in the best interest of us local citizens or the State. Implementing this CDO and finishing up the investigation for 10,11,12, the public trust and downstream effects is in our best interest.

The proposed CDO, as written, has very important components that must be implemented as soon as possible to protect the public's water, mountaintop communities and public trust resources. Please retain them in any changes you make to the CDO. They include: 1) the stopping of unauthorized taking of water from the headwater springs; 2) the daily monitoring and reporting of the water take at all spring diversions; 3) the requirement to release any unneeded flows at the spring sites, rather than downstream from the pipeline; 4) the requirement to report all the monitoring; and 5) the requirement to provide Enforcement Section personnel reasonable access

to the records and facilities. Implementing these will significantly improve conditions over the current unlimited take and transport of water from the springs and the refusal to provide Water Board access. Please approve, implement and enforce the CDO as quickly as possible. .

Implementing the proposed CDO and continuing the Board's work to investigate the public trust, downstream user effects and address the issues at springs 10,11, and 12 will largely restore Strawberry Creek to its naturally productive and most valuable state.

Request for Board Direction to Continue and Complete the Investigation of Springs 10,11,12

The Proposed Order states on page 87, that "the Enforcement Section may investigate such diversions and, if it deems it appropriate, prepare a new draft cease-and-desist order regarding those diversions". Springs 10,11,12 were well documented in the hearing to be historical natural springs contributing to flows in Strawberry Creek, and thus subject to Board oversight just as all the other springs covered in this proposed CDO (see attached Closing Brief). The protection of the watershed and downstream users will require that springs 10,11,12 also be dealt with as soon as possible. Prior to unauthorized diversion, these springs were significant contributors to Strawberry Creek flows (well documented in Hearing Record).

A huge amount of agency and public time and funding has been spent to deal with the unauthorized use, unreasonable use and waste of the water because of the importance of Strawberry Creek to the public and State. I ask that you finish the job by directing the Enforcement Section to complete the investigation of springs 10,11,12, and the need for changes in water use to protect the public trust and downstream users. During the hearing process, so much factual information was presented on water use and rights, historical and current flows, and stream and watershed conditions. Using the facts that were documented in the CDO hearing process regarding historical and current spring and stream flows at all the springs, historical water development and use, and water rights, finalizing the investigation should be very simple. As we have done so far, we(the public) are willing and able to help the Board uncover the facts needed to complete the investigation.

Protection of Downstream Users, the Public Trust and T&E Species

Since downstream users, the protection of the public trust and protection of threatened and endangered species were not included in this CDO hearing process because they were not included in the original Draft CDO, I request that the continued investigation by the Enforcement Section include these in the analysis and any follow-up CDO or other action. These were the reasons for the public complaints and appeals to the Board to urgently take some action. I am sure that consideration of those values were the reason that the Board made this Strawberry Creek issue a priority. Please follow through and complete the work. We have all spent thousands of hours and a huge amount of public and private funds working on this. The public (including myself) will continue to do all we can to help complete the work.

Protection of these values will require some additional measures regarding things such as timing and amounts of water that is taken for riparian right uses, diversion points for the riparian take, best management practices for operation of diversions, etc..Some springs may be able to be returned to the natural state and riparian diversion may be located further downstream to restore several miles of stream on the National Forest. This proposed CDO goes a long way in dealing with the unauthorized take at all of the springs but 10,11,12. It is very important in making continuous individual well monitoring a requirement, and making unneeded spring water be left on site rather than piped to downstream dump sites. Failing to finish the examination and CDO requirements for 10,11,12, downstream users, public trust and threatened and endangered species, is still allowing the unauthorized and unreasonable use to adversely affect these values.

With a final determination on San Manuel riparian water right amounts and springs 10,11,12 Board jurisdiction, there would be options to return the upper springs to their natural state (rewatering several miles of dry stream), and provide for the historical riparian use and water right at spring 10,11,12 or at a downstream in-stream diversion (which was used originally before the spring developments). The riparian rights at the hotel (San Manuel) property have not required spring water. The water has been used for landscape maintenance.The needs were originally met with a Strawberry Creek in-stream diversion which would restore several miles of National Forest perennial stream.

In conclusion, I urge you to adopt the proposed CDO quickly so that restoration of the stream can begin with benefits to the mountaintop communities, downstream users, threatened and endangered species, and all the public trust resources. In addition, please direct the Enforcement Division to complete the Board work on springs 10,11,12, the public trust and downstream users to finalize the protection, management and use of Strawberry Creek water.

Thank you,

Steve Loe